



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 23 June 2015

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**Tuesday 23 June 2015**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE</b> .....	1
<b>INSTRUMENTS SUBJECT TO AFFIRMATIVE PROCEDURE</b> .....	2
Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2015 [Draft] .....	2
Courts Reform (Scotland) Act 2014 (Consequential Provisions No 2) Order 2015 [Draft] .....	2
<b>INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE</b> .....	3
Scheduled Monuments (Appeals) (Scotland) Regulations 2015 (SSI 2015/231) .....	3
Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 (SSI 2015/243) .....	3
St Mary's Music School (Aided Places) (Scotland) Regulations 2015 (SSI 2015/248) .....	4
Scheduled Monuments (Notification and Publication) (Scotland) Regulations 2015 (SSI 2015/230) .....	4
Scheduled Monuments (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 2015 (SSI 2015/232) .....	4
Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/249) .....	4
<b>INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE</b> .....	5
Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No 2) (Personal Injury and Remits) 2015 (SSI 2015/227) .....	5
Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No 3) (Courts Reform (Scotland) Act 2014) 2015 (SSI 2015/228) .....	5
Act of Sederunt (Rules of the Court of Session 1994 and Fees of Solicitors in the Sheriff Court Amendment) (Courts Reform (Scotland) Act 2014) 2015 (SSI 2015/246) .....	6
Courts Reform (Scotland) Act 2014 (Commencement No 3, Transitional and Saving Provisions) Order 2015 (SSI 2015/247) .....	6
<b>PRISONERS (CONTROL OF RELEASE) (SCOTLAND) BILL: AFTER STAGE 2</b> .....	7

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**22<sup>nd</sup> Meeting 2015, Session 4**

**CONVENER**

\*Nigel Don (Angus North and Mearns) (SNP)

**DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

\*Margaret McCulloch (Central Scotland) (Lab)

\*John Scott (Ayr) (Con)

\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

The Adam Smith Room (CR5)



**Scottish Parliament**  
**Delegated Powers and Law  
 Reform Committee**

*Tuesday 23 June 2015*

*[The Convener opened the meeting at 11:30]*

**Decision on Taking Business in  
 Private**

**The Convener (Nigel Don):** I welcome members to the 22nd meeting in 2015 of the Delegated Powers and Law Reform Committee. I ask everyone to turn off any mobile devices.

Under agenda item 1, it is proposed that we take item 6 in private. This will allow the committee to consider its approach to the scrutiny of the Succession (Scotland) Bill at stage 1 in the event that the bill is formally referred to the committee by the Parliament later this week. Does the committee agree to take item 6 in private?

**Members** *indicated agreement.*

**Instruments subject to  
 Affirmative Procedure**

**Legal Aid and Advice and Assistance  
 (Miscellaneous Amendments) (Scotland)  
 Regulations 2015 [Draft]**

11:30

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

**Courts Reform (Scotland) Act 2014  
 (Consequential Provisions No 2) Order  
 2015 [Draft]**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

## Instruments subject to Negative Procedure

### Scheduled Monuments (Appeals) (Scotland) Regulations 2015 (SSI 2015/231)

11:31

**The Convener:** Our legal advisers have identified three minor drafting errors with this instrument.

First, regulation 6(4) contains an incorrect cross-reference to “paragraph (4)” of regulation 6. This should instead be a reference to “paragraph (3)” of regulation 6. Secondly, regulation 16(4)(c) refers to

“documents which ... were sent with the planning authority’s response”.

It should instead refer to

“documents which ... were sent with Historic Environment Scotland’s response”.

Thirdly, regulation 17(1) contains an incorrect cross-reference to “regulation 15”. This should instead be a reference to “regulation 16”. The Scottish Government intends to bring forward an amending instrument to correct these errors.

Does the committee agree to draw this instrument to the attention of the Parliament on the general reporting ground as it contains minor drafting errors?

**Members indicated agreement.**

**John Scott (Ayr) (Con):** I also welcome the fact that the Government will bring forward an amending instrument.

### Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 (SSI 2015/243)

**The Convener:** This instrument also contains a drafting error. Regulation 19(1) provides that

“subject to paragraph (2), the provisions specified in paragraph (2) are revoked”.

The first reference to “paragraph (2)” should be to “paragraph (3)”. The Scottish Government agrees that this is an error but does not plan to amend the regulations at this time.

Does the committee agree to draw this instrument to the attention of the Parliament on the general reporting ground as it contains a drafting error?

**Members indicated agreement.**

**The Convener:** Does the committee also agree to call on the Scottish Government to amend this error at a suitable opportunity in the future?

**Members indicated agreement.**

### St Mary’s Music School (Aided Places) (Scotland) Regulations 2015 (SSI 2015/248)

**The Convener:** This instrument has breached the 28-day rule. It was laid before Parliament on 5 June 2015 and will come into force on 1 August 2015, meaning that the requirement to leave a minimum of 28 days, discounting recess periods, between laying and coming into force has not been complied with.

Does the committee agree to draw the instrument to the attention of the Parliament on reporting ground (j), as there has been a failure to observe the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010?

**Members indicated agreement.**

**The Convener:** Does the committee agree to accept the Scottish Government’s explanation as to why the instrument could not have been laid earlier than 5 June 2015 and to accept the explanation as to why the commencement date of 1 August was chosen, in light of the start of the academic year?

**Members indicated agreement.**

### Scheduled Monuments (Notification and Publication) (Scotland) Regulations 2015 (SSI 2015/230)

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members indicated agreement.**

### Scheduled Monuments (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 2015 (SSI 2015/232)

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members indicated agreement.**

### Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/249)

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members indicated agreement.**

## Instruments not subject to Parliamentary Procedure

### Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No 2) (Personal Injury and Remits) 2015 (SSI 2015/227)

11:34

**The Convener:** This instrument contains a minor drafting error. Paragraph 8(5) inserts a new chapter 15A of the Rules of the Court of Session 1994 on motions intimated and lodged by email. Rule 15A has two paragraphs numbered (2). The Lord President's private office has undertaken to lay an amending instrument to correct the error.

Does the committee agree to draw this instrument to the attention of the Parliament on the general reporting ground, as it contains a minor drafting error?

**Members** *indicated agreement.*

### Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No 3) (Courts Reform (Scotland) Act 2014) 2015 (SSI 2015/228)

**The Convener:** This instrument contains two minor drafting errors. First, there is an error in the new rule 58.15 of the Rules of the Court of Session 1994, which is inserted by paragraph 3(3) of the instrument. The paragraph numbering within the rule is (1), (4) and (5). Secondly, in the form of petition for judicial review in schedule 1, the heading with the new numbering of the form—58.3—is omitted. The new rule 58.3(3) refers to a petition for judicial review to be made in form 58.3, but the form in schedule 1 is not so numbered.

The Lord President's private office has undertaken to lay an amending instrument to correct the errors, and an error identified in the aforementioned Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No 2) (Personal Injury and Remits) 2015 (SSI 2015/227). The amendment is intended to come into force by 22 September 2015 as this is the commencement date of the instrument.

Does the committee agree to draw this instrument to the attention of the Parliament as it contains a couple of minor drafting errors?

**Members** *indicated agreement.*

### Act of Sederunt (Rules of the Court of Session 1994 and Fees of Solicitors in the Sheriff Court Amendment) (Courts Reform (Scotland) Act 2014) 2015 (SSI 2015/246)

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

### Courts Reform (Scotland) Act 2014 (Commencement No 3, Transitional and Saving Provisions) Order 2015 (SSI 2015/247)

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

## Prisoners (Control of Release) (Scotland) Bill: After Stage 2

11:36

**The Convener:** Agenda item 5 is for the committee to consider the delegated powers provisions in the Prisoners (Control of Release) (Scotland) Bill as amended at stage 2. The committee's conclusions will form the basis of a report from the committee ahead of today's stage 3 debate. The committee should therefore agree its conclusions at this meeting.

Members will have seen that the Scottish Government has provided a supplementary delegated powers memorandum, and members will have seen the briefing paper for the committee.

As you will recall, at stage 1 of the bill the committee was particularly concerned about the fact that transitional, transitory and saving provisions may have been required in a commencement order subject to no procedure under the bill, as the use of such provisions could have a potentially significant effect on certain persons affected by the bill, such as long-term prisoners. At stage 2, the ability to make transitional, transitory and saving provision was removed from the bill; instead, the saving provision required in relation to the automatic early release of certain prisoners has been put on the face of the bill.

The commencement provisions also introduce a limited delegated power in section 3(4) beyond the power to commence sections 1 and 2 of the bill by order in the usual way. The new section 3(4) of the bill allows the commencement order to amend section 1(1A) of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

New section 1(1A) is inserted by section 1(2) of the bill to provide the saving provision that defines which long-term prisoners the new early release rules do and do not apply to. The new rules apply only in the cases of prisoners serving sentences imposed on or after the day that section 1 of the bill comes into force. Accordingly, once a commencement order has been made, anyone reading the amended version of section 1(1A) will be able to see immediately whether the new or old early release rules apply to a prisoner sentenced on a particular day. The commencement order would be laid before Parliament but not subject to further procedure.

Is the committee content with the commencement powers in section 3, as amended at stage 2, and that a commencement order would

be laid before Parliament but not subject to further procedure?

**Members** *indicated agreement.*

**The Convener:** Does the committee agree to welcome the amendments made to sections 1 and 3 of the bill, as they have taken account of the committee's recommendation at stage 1 to enhance parliamentary scrutiny of the provisions?

**Members** *indicated agreement.*

**The Convener:** With that, I move the meeting into private for item 6.

11:39

*Meeting continued in private until 11:59.*



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