



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 1 April 2025

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 1 April 2025

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
INSTRUMENT SUBJECT TO AFFIRMATIVE PROCEDURE	2
Land and Buildings Transaction Tax (Group Relief and Sub-sale Development Relief Modifications) (Scotland) Order 2025 [Draft]	2
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE	3
Recognition of Overseas Qualifications (Charges) (Scotland) Regulations 2025 (SSI 2025/67)	3
Railway Closure (Exclusion) (Hairmyres) Order 2025 (SSI 2025/81)	4
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE	5
Disclosure (Scotland) Act 2020 (Commencement No 5, Saving and Transitional Provision) Amendment Regulations 2025 (SSI 2025/73 (C.7))	5
Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024 (Commencement No 1) Regulations 2025 (SSI 2025/79 (C.8))	6
Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Miscellaneous) 2025 (SSI 2025/80)	6
Disclosure (Scotland) Act 2020 (Commencement No 5, Saving and Transitional Provision) Amendment (No 2) Regulations 2025 (SSI 2025/84 (C.9))	6
MINISTER FOR PARLIAMENTARY BUSINESS	7

DELEGATED POWERS AND LAW REFORM COMMITTEE
12th Meeting 2025, Session 6

CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

DEPUTY CONVENER

Bill Kidd (Glasgow Anniesland) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)

*Katy Clark (West Scotland) (Lab)

*Roz McCall (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jamie Hepburn (Minister for Parliamentary Business)

CLERK TO THE COMMITTEE

Greg Black

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 1 April 2025

[The Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Good morning and welcome to the 12th meeting in 2025 of the Delegated Powers and Law Reform Committee. I remind everyone to switch off or silence mobile devices. We have received apologies from Bill Kidd MSP.

The first item of business is a decision on taking business in private. Is the committee content to take item 6 in private?

Members indicated agreement.

Instrument subject to Affirmative Procedure

10:02

The Convener: Under item 2, we are considering one instrument, on which no points have been raised.

Land and Buildings Transaction Tax (Group Relief and Sub-sale Development Relief Modifications) (Scotland) Order 2025 [Draft]

The Convener: Is the committee content with the instrument?

Members indicated agreement.

Instruments subject to Negative Procedure

10:02

The Convener: Under agenda item 3, we are considering two instruments. An issue has been raised on one of the instruments.

Recognition of Overseas Qualifications (Charges) (Scotland) Regulations 2025 (SSI 2025/67)

The Convener: The instrument sets out charges that are payable for services relating to the recognition of overseas qualifications. Under section 28(2) of the Interpretation and Legislative Reform Scotland Act 2010, instruments that are subject to the negative procedure must be laid at least 28 days before they come into force, not counting recess periods of more than four days. The instrument breaches that requirement as it was laid on 13 March 2025 and came into force on the 28 March 2025.

As required under the act, the Scottish Government has set out the reasons for the breach in a letter to the Presiding Officer, which will be published in the committee's report on subordinate legislation that is considered at today's meeting. It explains that the instrument requires to come into force by 28 March to provide a statutory basis for Scottish customers to be charged on the start date of a new contract.

Does the committee wish to draw the instrument to the attention of the Parliament under reporting ground (j), for failure to comply with laying requirements?

Members indicated agreement.

The Convener: In correspondence with the Scottish Government, which is published alongside the papers for this meeting, the committee asked about the timing of a planned section 93 order to be made under the Scotland Act 1998, in the context of the wider legal issues that sit behind the making of the instrument.

The Scottish Government stated that arrangements are in place for the section 93 order to be made shortly and that it is due to be considered at the Privy Council in May 2025. It is of the view that the present instrument provides the necessary legal basis for the charging of the fees in Scotland and that the retrospective validation of fees that is proposed in the United Kingdom Government's Border Security, Asylum and Immigration Bill will need to attach only to fees that were charged for services that were provided in Scotland before the present instrument came into force.

Does the committee wish to highlight to the lead committee the unusual history and context of the instrument, including the correspondence regarding the proposed section 93 order?

Members indicated agreement.

The Convener: No points have been raised with regard to the following instrument.

Railway Closure (Exclusion) (Hairmyres) Order 2025 (SSI 2025/81)

The Convener: Is the committee content with the instrument?

Members indicated agreement.

Instruments not subject to Parliamentary Procedure

10:05

The Convener: Under agenda item 4, we are considering 4 instruments.

Disclosure (Scotland) Act 2020 (Commencement No 5, Saving and Transitional Provision) Amendment Regulations 2025 (SSI 2025/73 (C.7))

The Convener: An issue has been raised in relation to the instrument, which creates new transitional provisions and changes the coming into force date of some provisions of the act by amending the principal regulations, the Disclosure (Scotland) Act 2020 (Commencement No 5, Saving and Transitional Provision) Regulations 2025.

In correspondence with the Scottish Government, which was published alongside the papers for this meeting, the committee raised the issue that the instrument does not specify a commencement date for the new regulations 13 to 15, which it inserts into the principal regulations. The Scottish Government confirmed that that was an error. The committee considers that the error impedes the operation of the instrument.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (i), as its drafting appears to be defective, in that there is no commencement date for the new regulations 13 to 15?

Members indicated agreement.

The Convener: The Scottish Government has laid an amending instrument that the committee is also considering today, the Disclosure (Scotland) Act 2020 (Commencement No 5, Saving and Transitional Provision) Amendment (No 2) Regulations 2025. It inserts a coming into force date of 1 April 2025 for new regulations 13 to 15, which rectifies the error. Does the committee wish to welcome the fact that the Scottish Government has laid a corrective instrument, which will resolve the issue before the principal regulations come into force?

Members indicated agreement.

The Convener: Also under this agenda item, no points have been raised on the following instruments.

Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024 (Commencement No 1) Regulations 2025 (SSI 2025/79 (C.8))

Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Miscellaneous) 2025 (SSI 2025/80)

Disclosure (Scotland) Act 2020 (Commencement No 5, Saving and Transitional Provision) Amendment (No 2) Regulations 2025 (SSI 2025/84 (C.9))

The Convener: Is the Committee content with the instruments?

Members indicated agreement.

Minister for Parliamentary Business

10:06

The Convener: Under agenda item 5, the committee will take evidence from Jamie Hepburn MSP, the Minister for Parliamentary Business. This is one of our regular sessions with the minister on the Scottish Government's work that is relevant to the committee. The minister is accompanied by two Scottish Government officials, Steven McGregor, the head of the Parliament and legislation unit, and Douglas Kerr, the deputy legislation co-ordinator in the Scottish Government legal directorate. I welcome you all. You do not need to worry about pressing the microphone button; that will be done for you. I invite the minister to make some opening comments.

The Minister for Parliamentary Business (Jamie Hepburn): I do not have any significant opening remarks, convener, other than to thank you for the opportunity to be with you once again. Douglas Kerr, Steven MacGregor and I are very happy to do our best to answer any questions that the committee has, and, if required, we are also happy to follow things up in writing.

The Convener: Thank you, minister. At the evidence session in October, you provided members with details of the steps that the Scottish Government had taken to ensure that a high quality of drafting is achieved. Between December 2024 and February 2025, there has been a notable increase in the number of instruments that have been withdrawn and relaid as a result of the committee's raising concerns about their technical and legal accuracy. There were four such instruments in that quarter, compared with one in the same period last year. The committee picked up on that when it undertook its quarterly report. It would be useful for the committee to hear an explanation of that situation. You will be aware that I raised that question with the First Minister last week in the meeting of the Conveners Group.

Jamie Hepburn: I am aware of that, convener, and, clearly, I understand that this is an area of interest to you and to the committee. I appreciate and understand that four such instruments in one quarter seems high. Our estimation is that that is a blip rather than a trend. However, that is not any form of excuse. We do not want to be in a position where we have to lay any form of regulation and subsequently withdraw it because something is identified after the fact. We would much rather identify these things in advance. I would observe that identifying such issues is part of the scrutiny process—for example, some of the instruments were withdrawn on the back of this committee's

work in that regard. There is a degree to which it is part of the scrutiny process.

As I said in my previous appearance before the committee, my aspiration is that we get it right first time in every instance, but I recognise that, realistically, that will not be the case, and that there will be times when we do not get it right.

By way of demonstration of the fact that I think that the issue that you raise represents a blip, I point out that the level that you mention is quite far above what it has been during a fairly sustained period. In the first quarter of last year, one instrument was withdrawn and relaid; in the second quarter, there were two. That is in line with what the level has been in the past few years—in fact, the number has never gone above three in any quarter.

I can understand why the issue has been flagged—it is quite a bit above the normal level—but I assure the committee that I am not getting any sense that there will be an upward trajectory. Certainly, I will do everything that I can to make it clear to colleagues and officials across the civil service that there had better not be an upward trajectory. I want to get it right first time in every instance. I recognise that we will not always get it right, but there should be minimal instances in which that happens. I do not want to see the issue repeated.

The Convener: Thank you for that assurance, minister. You were sitting at the table this morning when we went through the other instruments and I am sure that you anticipated that there would be a question about them too. Notwithstanding the scrutiny that we have just undertaken on them, we are reporting another couple this morning. You are right that doing so is part of the scrutiny process that this committee undertakes, either when instruments are withdrawn to be relaid or when the issues with them are caught just before they are laid.

I am sure that I speak for colleagues when I say that we would be keen to understand what more the Scottish Government can undertake to do internally around the drafting of instruments so that there will be fewer such instances. That is not to say that there are many—there are not—but the fact is that another two instruments have been highlighted this morning. Can you indicate to the committee what additional measures you think the Government could look at to improve the output?

Jamie Hepburn: It is regrettable that it has happened today, when I am here. *[Laughter.]* However, maybe it is for the better that I am here, because I am seeing the scrutiny in action.

I go back to the point that I made before: we have a process in place that, broadly speaking, works, which is demonstrated by the fact that the

numbers are not high overall. As I said, earlier, we will not get it right all the time, but the aspiration is to do so.

It is a shared responsibility: everyone involved in the process of laying an instrument, from drafting through to laying it before the Parliament—all the officials involved, those involved in legal checks, and ministers—have a share of the responsibility, and no part of that system should abrogate its responsibility. We ensure that Government lawyers have on-going support, training and guidance to consider proposals, legal issues and drafting. There is a monthly session for lawyers to share knowledge about SSIs. That happens over the process and provides opportunities for peer support and learning. Further, once a specific SSI is drafted, it is checked within the team that drafted the instrument. However, the team is not just marking its own homework—another lawyer who was not involved in the drafting has to check it, too.

That speaks to me of a system that, broadly speaking, works, but I am always up for considering what else can be done. It is incumbent on us to consider that but, if there are specific things that this committee or any other committee of Parliament, as a result of its experience of considering any instrument, thinks could improve the process further, we are completely open to hearing what that might be.

10:15

The Convener: Thank you for that.

Roz McCall (Mid Scotland and Fife) (Con): Good morning. Thank you for attending—it is great to speak to you.

Your officials provide this committee, and the subject committees, with a helpful weekly update of instruments that are expected to be laid in the following couple of weeks. As we are coming up to recess and the holidays are on our mind, can you provide an indication of the anticipated volume of SSIs that are likely to be laid between now and summer and the expected lead committees for those?

Jamie Hepburn: Yes, I can tell you that. First of all, it is good to see you, too—I am delighted to be here.

We expect to lay 57 SSIs between now and the summer recess. There will be 19 affirmative instruments, 27 negative, nine laid with no procedure and two affirmative orders in council, which require approval at a meeting of the Privy Council with the King present as well.

On the committee volumes, there will be 11 for the Finance and Public Administration Committee, nine of which will fall in this month. The Net Zero,

Energy and Transport Committee will have nine; the Local Government, Housing and Planning Committee and the Social Justice and Social Security Committee will have seven each; and the Education, Children and Young People Committee will have six. I think that there is nothing unexpected there—those are the committees that ordinarily have to deal with the most instruments. All the other committees will have fewer than five, at present—I should, of course, say that these things are always subject to change.

Of specific interest to this committee, there will be one for this committee, which will probably be towards the summer recess.

Roz McCall: That is wonderful and very helpful.

The committee appreciates the forward look that the Scottish Government provides us with. Given that some SSIs are much longer and more complex than others, it is particularly useful for this committee, as well as subject committees, to be given as much advance notice as possible of large and complex instruments. Do you know whether there are any such instruments or sets of such instruments in the pipeline? If so, can you keep us updated on their progress?

Jamie Hepburn: We will certainly endeavour to do so. There will be some instruments that might be longer than others.

This may be an issue that one of the committee members was going to follow up with me, but I am aware that there was a particular issue with one instrument. That goes back to the point about an instrument being withdrawn and relaid. A particularly lengthy set of regulations went to the Net Zero, Energy and Transport Committee, and the committee had concerns about the time that was available to it to consider that instrument.

Following that experience and after discussion with officials, at my request, my officials have reviewed and updated the guidance for SSIs to emphasise the absolute need for the people with policy responsibility for any SSI to engage with the relevant subject committee as early as possible if there are to be regulations of significance. Clearly, we want to ensure that the relevant committee can build that into its programme and understand that it will have to set aside time for that.

We have also implemented an initial level of triage for bids for SSIs that are lengthy or complex. That is an internal process, through which we can ensure that the instrument is in the right place and that it absolutely needs to be one lengthy instrument. There might be another means of handling the issue, such as breaking it down into more than one instrument. That would not necessarily reduce workload for the committee overall, but it might make the process more manageable. That will enable my officials, who

have overall responsibility for ensuring that the programme of legislation moves forward—but not direct policy responsibility—to re-emphasise the need for such engagement with the relevant committee. That is a practical example of having learned from experience to make sure that we refine and improve our processes going forward.

Roz McCall: That is excellent, thank you.

Jamie Hepburn: I am sorry, I should add that I am happy to write in due course with more details about when more lengthy SSIs will be laid.

Roz McCall: Forward information is always beneficial. Thank you, minister.

Jeremy Balfour (Lothian) (Con): Good morning. The standing item on the agenda when you and your colleagues come to visit us is the historical commitments that the Government has made to the committee in relation to instruments. On numerous occasions, the committee has requested an update on the amendment to the Scotland Act 1998 (Specification of Functions and Transfer of Property etc) Order 2019 (SI 2019/183). The last time that you gave evidence, you said that there might be an update in this calendar year. Are you able to update us?

Jamie Hepburn: I recognise that that is taking too long; I will not suggest otherwise. Work is ongoing on a proposed section 93 order under the Scotland Act 1998 that will correct the error in the 2019 order. One of the challenges that we face, which has raised some complications, is that there is another proposed instrument in play that is interlinked, so that needs to be worked through. That involves us having to interact with the UK Government, which inevitably adds a layer of complexity. I am not trying to suggest that there is fault at either end, but that is an inevitable part of the complexity of the process.

I am looking to meet with my counterpart in the UK Government's Scotland Office, Kirsty McNeill, in due course. This issue is one of the specific things that I want to discuss to try to make sure that we make some substantial progress so that, the next time that I am before the committee, I hope that I will be able to report that we have achieved such.

Jeremy Balfour: I am not sure whether that was a yes or no to my question. Is it likely that something will come forward this calendar year?

Jamie Hepburn: I will come back to the committee on that as soon as possible. I need to engage with the UK Government to be able to give a more definitive answer.

Jeremy Balfour: What engagement has taken place since the last time that you came to give evidence?

Jamie Hepburn: There is on-going engagement between officials in the Scottish Government and those in the UK Government to try to resolve the issue.

Jeremy Balfour: What is the hold-up?

Jamie Hepburn: I have made the point that there are some complexities involved relating to interactions with other subordinate legislation and the other demands on those who are involved in the process across a range of other activities. That is the challenge that we face.

Jeremy Balfour: Okay, that is helpful. In addition to that commitment, there are six other outstanding commitments that the Scottish Government has made to the committee. Four of those date from 2023 and two date from last year. What has been done to ensure that those six commitments will be met?

Jamie Hepburn: We continue to work our way through the various historical commitments that we have made. For example, we are due to lay instruments relating to police, teacher and firefighter pensions on 24 April.

The regulations that relate to the national health service pension schemes will become part of a wider amending instrument that is required to bring NHS remediable service regulations up to date. That instrument is anticipated to be laid before the summer recess.

We also intend to lay regulations relating to the Valuation (Proposals Procedure) (Scotland) Amendment Regulations 2024 (SSI 2024/186) before the summer recess, which will seek to remedy the point that the committee raised.

An amendment will be made to the Burial (Applications and Register) (Scotland) Regulations 2024 (22I 2024/334) at the same time as the next set of burial regulations are made under the terms of the primary legislation, the Burial and Cremation (Scotland) Act 2016. We will keep the Parliament updated on the timings.

Jeremy Balfour: Thank you. As you are aware, this committee's remit includes consideration of bills that come from the Scottish Law Commission and, after the Easter recess, we will look at the Leases (Automatic Continuation etc) (Scotland) Bill. Do you expect any other bills to come to the committee this session?

Jamie Hepburn: There is a commitment to refer one in each parliamentary year, so yes. We will make it clear in due course what that might be, but, essentially, we intend to meet the agreement that we have with the committee.

Katy Clark (West Scotland) (Lab): Minister, could you provide us with an update on discussions that the Scottish Government has had

with the United Kingdom Government on its powers to make UK secondary legislation on matters within devolved competence? What arrangements have been considered for notifying the Scottish Parliament about any such secondary legislation?

Jamie Hepburn: Again, that is a matter of on-going discussion with the UK Government. I understand that the Chancellor of the Duchy of Lancaster has written to your committee on the issue, and both Administrations are aware of the Scottish Parliament's desire to have a scrutiny role with regard to those matters. I am also desirous of that, where that is sensible and proportionate to do so. I have made a commitment that we will continue to press that case with the UK Government. I have already made the point that I am looking to meet my counterpart in the Scotland Office, Kirsty McNeill, and I will make that point to her as well.

Katy Clark: Would you be happy to keep the committee updated in that regard?

Jamie Hepburn: Of course.

Katy Clark: Brilliant—thank you. Can you update the committee on the latest position on any upcoming legislative consent motions, particularly ones that are likely to engage the remit of this committee?

Jamie Hepburn: Certainly—just let me get to the right part of my briefing papers.

Inevitably, some LCMs will come to the Scottish Parliament arising out of the UK Government's programme. As to what those might be, that is something that we would flag in the usual fashion.

We have given some indication of legislation that we anticipate might require an LCM in due course, including the proposed railways bill, the Artificial Intelligence (Regulation) Bill, the Absent Voting (Elections in Scotland and Wales) Bill—a private member's bill, which I am involved in responding to on our side—the Animal Welfare (Import of Dogs, Cats and Ferrets) Bill and various other bills. Any LCMs that might be lodged in connection with those bills would be dealt with in the usual way, and we would certainly let the committee know as quickly as possible if any were to trigger the specific interests of this committee. That said, looking down the list, I cannot see any that would require the specific, detailed consideration of this committee; I think that they would all be more for subject committees to consider.

The Convener: Minister, you will be aware that the committee recently published the report of our inquiry into framework legislation and Henry VIII powers. We will receive a full response from you in

due course, but do you have any initial views on the report?

10:30

Jamie Hepburn: I welcome the report. I have looked over it, but I had better keep my powder dry as to what I might say about it until we have sent the full response, which we will do in due course. Some of the findings will probably tally with what I laid out in the evidence that I gave when I came to speak to the inquiry. Obviously, the bureau is still to determine when a business motion will go before the Parliament and I should not get ahead of that too much, but I hope that it has been communicated to the committee that we have identified a date on which we hope to be able to debate the committee's report. That will be later this month, just after recess. I hope that the Parliament will agree to that so that we can debate the report in fuller detail.

The Convener: As colleagues have no further questions, I thank the minister and his officials very much for their attendance. The committee may follow up by letter with any additional questions stemming from the session. That concludes the public part of the meeting.

10:31

Meeting continued in private until 10:35.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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