



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 3 June 2025

Session 6



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DELEGATED POWERS AND LAW REFORM COMMITTEE

19th 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:

Catriona Lyle (Scottish Parliament)

Graham Simpson (Central Scotland) (Con)

CLERK TO THE COMMITTEE

Greg Black

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 3 June 2025

[The Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Welcome to the 19th meeting in 2025 of the Delegated Powers and Law Reform Committee. I remind everyone to please switch off or put to silent your mobile phones and other electronic devices.

The first item of business is a decision on taking business in private. Is the committee content to take items 5, 6, 7, 8, 9 and 10 in private?

Members indicated agreement.

Instruments subject to Negative Procedure

10:01

The Convener: Under agenda item 2, we are considering four instruments. Points have been raised on three of them. The committee asked questions of the Scottish Government in relation to all four instruments, and the full correspondence has been published alongside the papers for this meeting.

Education (Appeal Committee Procedures) (Scotland) Amendment Regulations 2025 (SSI 2025/144)

The Convener: The instrument makes amendments to the Education (Appeal Committee Procedures) (Scotland) Regulations 1982, which govern school admission and exclusion appeal hearings in Scotland. The committee asked a question about the enabling powers, specifically why section 28H(5) of the Education (Scotland) Act 1980 was not cited. The Scottish Government acknowledged that that section should have been cited as an enabling power, but considers that its omission does not affect the validity of the instrument.

Does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground of a failure to follow proper drafting practice, in that section 28H(5) of the Education (Scotland) Act 1980 has not been cited as an enabling power in the preamble?

Members indicated agreement.

Firefighters' Pension Scheme (Amendment) (Scotland) Regulations 2025 (SSI 2025/149)

The Convener: The purpose of this instrument is to change employee contribution rates by amending the Firefighters' Pension Scheme (Scotland) Regulations 2015 (SSI 2015/19). The committee asked whether the title of the instrument should in fact be the "Firefighters Pension Scheme (Scotland) Amendment Regulations 2025". The Scottish Government agreed that that would be the more appropriate title. It regretted the departure from drafting convention but considered that the meaning, understanding or effect of the instrument would not be affected by the form of the title in this case.

Does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground, in respect of the fact that its title is not in line with drafting convention?

Members indicated agreement.

**Teachers' Pension Scheme (Scotland)
(Amendment) Regulations 2025 (SSI
2025/152)**

The Convener: The committee asked two questions on this instrument, which, from 1 August 2025, amends the eligibility criteria for membership of the Scottish teachers' pension scheme by amending the principal regulations for the scheme—the Teachers' Pension Scheme (Scotland) (No 2) Regulations 2014 (SSI 2014/292).

The first question was whether it had been intentional to include a definition of "immediately before" in schedule 1, thus suggesting that the definition applies in each place where it appears, including references in both the new provisions that are inserted by this instrument and existing provisions. The Scottish Government confirmed that the intention had been for the definition to apply only to the new provisions. However, it considers that, in the context of the other 13 provisions, the new definition is inoperative and therefore of no effect.

The second question relates to proposed new paragraph 16(1)(d) of schedule 1 to the principal regulations, as inserted by regulation 4(c) of these amendment regulations. The committee asked the Scottish Government what the words

"this part of the scheme"

meant in the paragraph, and whether its meaning was sufficiently clear. The Scottish Government confirmed that the paragraph is meant to have effect in relation to the scheme as a whole, as established by the principal regulations, and the unintentional ambiguity is regretted. The Scottish Government intends to clarify both issues in the next amending instrument.

Does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground in that the definition of "immediately before", as inserted into schedule 1 of SSI 2014/292 by regulation 3 of the instrument, was intended to apply in relation to that term only where it appears in proposed new paragraphs 15B, 15C and 15D, but has been applied to all instances where that term appears in schedule 1; and that the reference to

"this part of the scheme"

in proposed new paragraph 16(1)(d) to schedule 1 of SSI 2014/292, as inserted by regulation 4(c) of the instrument, should be a reference to the scheme as a whole? Does the committee wish to note that the Scottish Government has undertaken to clarify those points in the next amending instrument?

Members indicated agreement.

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

**Valuation (Proposals Procedure)
(Scotland) Regulations 2025 (SSI 2025/146)**

The Convener: Is the committee content with the instrument?

Members indicated agreement.

The Convener: Does the committee wish to welcome that the instrument fulfils a commitment by the Scottish Government to correct a drafting error in the Valuation (Proposals Procedure) (Scotland) Amendment Regulations 2024 (SSI 2024/186)?

Members indicated agreement.

The Convener: Does the committee also wish to note that the Scottish Government intends to correct a minor cross-referencing error identified by the committee as soon as possible, through a correction slip?

Members indicated agreement.

Instrument not subject to Parliamentary Procedure

10:06

The Convener: Under agenda item 3, we are considering one instrument, on which no points have been raised.

Children (Scotland) Act 2020 (Commencement No 3 and Saving Provision) Regulations 2025 (SSI 2025/157 (C14))

The Convener: Is the committee content with the instrument?

Members *indicated agreement.*

Scottish Parliament (Recall and Removal of Members) Bill

10:06

The Convener: Agenda item 4 is an evidence-taking session with Graham Simpson MSP, the member in charge of the Scottish Parliament (Recall and Removal of Members) Bill. He is accompanied by Catriona Lyle, a solicitor from legal services at the Scottish Parliament. I welcome you both to the meeting and, indeed, welcome Mr Simpson back to the committee, even for just a short time, as he convened the committee in the last parliamentary session.

I remind you both that you do not have to press any buttons, as that will be done for you. We will move to questions.

It is quite rare to see an express power to legislatively sub-delegate in a bill. The committee is keenly interested in that, as it has the potential to erode democratic accountability. It is one thing to give Scottish ministers the power to make regulations, but it is another to give Scottish ministers the power to award that power to a third party.

With that in mind, it would be helpful if you could provide the committee with further context to that proposal in the bill. Is there a precedent that served as a model for section 21 of the bill?

Graham Simpson (Central Scotland) (Con): Thank you very much for your welcome, convener. It is good to be back as it has been a while since I have been here. As you know, I enjoyed being convener of the committee and found it to be one of the most valuable parliamentary committees. I am not saying that to butter you all up so that you will give me an easier time—it is just the reality.

If it is okay, convener, I thought it would be useful for Catriona Lyle to set out the background, and I can then respond more fully to your question.

The Convener: No problem.

Catriona Lyle (Scottish Parliament): Good morning, committee. I will give some background as to why section 21 of the bill, which is the power to make regulations, is drafted in the way that it is.

There is a similar provision in the United Kingdom Recall of MPs Act 2015, which is also quite a broad power. In that legislation, there is quite a long section that sets out a number of lists of where regulations may be made and what they might cover, but the lists are not exhaustive.

Also, the Recall of MPs Act 2015 does not cover provisions in the member's bill in relation to the

regional aspect, so there are differences. Although the policy has been to emulate, as far as possible, what is in the 2015 act, it is not possible to do that to the letter, and there are differences between the bill and the act. The act was also drafted 10 years ago, so there are differences in drafting—in styles and suchlike.

The section has been drafted in this way to emulate section 12 of the Scotland Act 1998, which makes provision with regard to the conduct of Scottish Parliament elections. It was felt that, when it came to a number of provisions in the bill in which matters, such as campaign expenditure, would be left to regulations, we could emulate the way in which provisions are made under section 12 of the 1998 act. Under that section, for example, there was an order that was made in 2015, and it was felt that such matters could be dealt with in a similar way in the bill by emulating how section 12 is set out.

That is why section 21 of the bill emulates the style of the power under section 12 of the 1998 act to make further provision about Scottish parliamentary elections by order, with the 2015 order then setting out further detail. For example, it contains powers to sub-delegate to the Electoral Commission, although those powers are quite limited. They are administrative in nature and are about filling in some of the detail where the Electoral Commission might have more expertise in running and manning elections.

Graham Simpson: I hope that that was useful, but, in essence, the question is whether it is appropriate for the Government to confer powers on somebody else to make legislation.

Frankly, I think that this is an example of the committee doing its job, which is what I want. I want the committees that deal with the bill to scrutinise it thoroughly and properly, because, inevitably, as it moves through the parliamentary process, I will want to see people coming up with good ideas to improve it. I think that you have landed on something that we ought to look at for stage 2.

Between being invited back to the committee and coming here today, I got in touch with the Electoral Commission, which, as a body, could be invited to put together the subordinate legislation. I wanted to get its take on that, because I have been in contact with it about the bill and I will continue that contact; in fact, we might work on amendments to the bill for stages 2 and 3. Therefore, I wanted to know what it thought about that provision, and it was pretty clear in its response to me. It said:

“We wouldn't seek to take on the writing of secondary legislation, given our role as an independent statutory body accountable to the Scottish, Welsh and UK Parliaments. Drafting secondary legislation would raise policy questions

which would be for the Scottish parliament to decide. We would expect it would be for Scottish Government ministers to write the secondary legislation, as is currently set out in s21 of the Bill as introduced, and we would expect to be consulted on the relevant draft legislation.”

Given that that is the Electoral Commission's position, which is pretty clear, I think that we should probably be looking at that matter for stage 2.

The Convener: Thank you. It would be helpful if you could also send the reply from the Electoral Commission to the committee.

I call Jeremy Balfour.

Jeremy Balfour (Lothian) (Con): I thank Mr Simpson for coming along. In the light of what he has said, I have no further questions.

The Convener: I call Katy Clark.

Katy Clark (West Scotland) (Lab): Welcome to the committee, Mr Simpson. You state in your written response that you anticipate that the powers to make subordinate legislation will be given to the Electoral Commission or the Electoral Management Board for Scotland. Should that be specified in the bill? There is an argument that, at present, the bill's drafting allows any third party to be given powers to legislate. Have you given that any thought or do you have any comment?

10:15

Graham Simpson: Thank you for the question, but what I have just read out perhaps supersedes it. We ought to reconsider that issue at stage 2. I am more than happy to work with the committee if it wants to be involved in that, because I want the bill to proceed, but I want to get it right.

I realise that there are other areas of the bill that your committee is not looking at where there are questions that should be answered and where things could be improved or changed. However, subordinate legislation is an area that the committee would look at because of your remit, so I invite you to consider the offer to work with me for stage 2.

Katy Clark: Is it your position that the Electoral Commission or the Electoral Management Board should have a role in the drafting and that you would not necessarily oppose the powers and subordinate legislation being made by Scottish ministers? Is that a fair reflection? Are you happy to consider that and work on it?

Graham Simpson: The Electoral Commission's position is clear: it does not want to draft subordinate legislation, but it would like to be consulted on it. I am quite happy to respect that it is the Government's job to draft the legislation.

You would expect that to be the commission's position.

Katy Clark: You are comfortable with the consultation of the Electoral Commission, Electoral Management Board or other relevant bodies—is that right?

Graham Simpson: Yes.

Katy Clark: Thank you very much.

Bill Kidd (Glasgow Anniesland) (SNP): My question is along the lines of what you have already answered, so I do not want to be too rambly. Your written response correctly pointed out that the regulations that were made under the Recall of MPs Act 2015 created criminal offences, but those regulations were made by UK ministers directly under powers in the 2015 act. The committee is looking at section 21 of the bill, which, as you have already said, would give powers to unnamed third parties. The Electoral Commission and the Electoral Management Board have been named. Might any other third parties be involved?

Graham Simpson: I am not aware of any.

Bill Kidd: You are not—that is fine.

Why is there a requirement for a power to create criminal offences? What is the criminality element that could apply to someone?

Catriona Lyle: The delegated power memorandum sets out some level of detail on where it would be expected that criminal offences might occur in relation to the recall element. Some of the detail is not known at this point, because a lot of it would be made under regulations. The 2015 act makes provision for criminal offences, but it is not the intent that it would be a third party or anyone other than Scottish ministers drafting subordinate legislation that would make provision for offences.

Section 21 of the bill says:

“The Scottish Ministers may by regulations make any provision”

for the purpose of

“the conduct of recall petition processes”.

Therefore, the scope is limited as the power can be used only for recall or in relation to the conduct of the poll.

Section 21(2) then sets out that,

“For the avoidance of doubt”,

regulations made by ministers may do any of what is listed under subsections 2(a), 2(b) or 2(c). However, it is certainly not the intent that that power will be sub-delegated to someone else—an

unknown person—for the purpose of creating a criminal offence.

Bill Kidd: That is perfectly clear—thank you both very much for that. I just wonder about where something moves from being a breach of regulations, which are established, to someone acting in a criminal way. That seems to take it to a very different level altogether. That is what I am thinking about. Does that make any sense at all? So, if someone is elected, which is a very important position, and they do not turn up regularly enough, or that kind of thing, that would be wrong and may be a breach of their duties, but at what point does that move to becoming a criminal act?

Graham Simpson: Mr Kidd, the power that you are talking about relates to the recall element of the bill and not to the non-attendance element of the bill.

Bill Kidd: That is true.

Graham Simpson: Non-attendance is entirely separate, and I presume that the committee is content with that. The power relates only to the recall element.

Bill Kidd: Well, that is fine. Thank you.

Katy Clark: I am very sympathetic to the creation of criminal offences, but do you agree that criminal offences should be created in primary legislation and not in subordinate legislation, or is your view that, because subordinate legislation would go through the committee process, that would be acceptable? Have you thought about and explored that?

Graham Simpson: My preference is that we leave it to subordinate legislation, possibly after a period of consultation by the Government.

Katy Clark: Would those instruments be subject to the affirmative or negative procedure? What would the scrutiny process be, and what would Parliament's role be in the creation of those offences? I know that you have very strong views on that issue in relation to other arenas, and I suspect that in many situations you would prefer powers to be set out in a bill because that requires more scrutiny. Have you thought about that in this context?

Graham Simpson: It is always my preference to have powers set out in a bill, but sometimes that cannot be done. You have to trust ministers to do their job sometimes, Ms Clark—even I do that. [*Laughter.*] However, my preference in this instance—it will not surprise you to hear this—is that, if we can, we should apply the affirmative procedure, rather than the negative. We should use the highest possible level of parliamentary scrutiny.

Katy Clark: Your preference would be that the affirmative procedure is used in relation to the delegated subordinate legislation.

Graham Simpson: Yes.

Roz McCall (Mid Scotland and Fife) (Con): I think that you have already answered this question, so I am only asking to get clarity. The subordinate legislation under section 21 can amend primary legislation, but, as you have already highlighted, bodies such as the Electoral Commission do not want to get involved in that. Are you happy that the issue of changing primary legislation has been covered by the Electoral Commission's submission? If not, would it be better to limit that power? I think that you have already answered that question, but I want to highlight that.

Graham Simpson: I think that I have answered it.

Roz McCall: That is fine.

The Convener: I have a more policy-related question for Mr Simpson. An act was passed in the UK Parliament and you have introduced this bill about MSPs. When you started working on it and were looking at it in its infancy, did you consider expanding the bill to include local authority councillors?

Graham Simpson: It is a radical idea, convener. The answer is no, I had not considered it. If I was to think it through, I think that it would open up a hornet's nest that we might not want to open. I imagine that the Convention of Scottish Local Authorities would have a pretty strong view were we to request a power of recall for councillors. I do not think that such a power exists anywhere in the UK.

If you were to suggest a stage 2 amendment along those lines, convener, I would probably resist it. *[Interruption.]* Convener, you seem to have sparked something off in the committee.

The Convener: It was something that struck me when I looked at the bill. I assume that it would not be feasible to include such a provision, because the bill is so tightly focused on parliamentarians. I do not imagine that any such amendments would be successful, but I thought I would take the opportunity to ask the question as you are sitting in front of us this morning.

Graham Simpson: It would be out of scope, because the bill relates only to MSPs. It is an interesting idea, convener, but it is one that I would not agree with.

The Convener: I did not say that I agree with it. I just thought that I would pose the question; that is what we are here to do.

Jeremy Balfour: I am sorry to jump on board, but I think that that power does exist within law. If a local councillor does not appear at a council meeting for six months, they are automatically struck off and there has to be a by-election. That power does exist and it is interesting that there is a six-month rule for local government.

Just to show how nerdy I am, I know that City of Edinburgh Council had to pass a special motion last month because one councillor had not attended for five months and was about to be struck off. Councillors can give special reasons for not attending. It might be worth looking at the local government powers that already exist.

Graham Simpson: The convener was asking whether I considered extending the power of recall to cover local councillors. One element of the bill relates to the matter that you have just raised, Mr Balfour. The idea that I started with was the question about non-attendance. As you rightly point out, having been a local councillor, as I have, there is in law a provision whereby a councillor who does not attend for six months can be removed. That is a feature of my bill as it relates to MSPs. As you also know, it is entirely possible for an MSP not to come to work and not do the job that the public expects of them. That is a key feature of the bill, so I hope that that reassures you.

Jeremy Balfour: I am very reassured.

Graham Simpson: Good.

The Convener: As there are no further questions, I thank Mr Simpson and Ms Lyle for their evidence this morning. The committee might follow up in writing if additional questions stem from this morning's session. Thank you once again.

That concludes the public part of the meeting.

10:29

Meeting continued in private until 11:06.

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