OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 3 February 2026

Session 6

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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE
5th Meeting 2026, Session 6

CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

DEPUTY CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Ind)
*Katy Clark (West Scotland) (Lab)
*Roz McCall (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Siobhian Brown (Minister for Victims and Community Safety)

CLERK TO THE COMMITTEE

Greg Black

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 3 February 2026

[The Convener opened the meeting at 09:48]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Welcome to the fifth meeting in 2026 of the Delegated Powers and Law Reform Committee. I remind everyone to switch off, or put to silent, their mobile phones and other electronic devices.

The first item of business is to decide whether to take items 6 and 7 in private. Is the committee content to take those items in private?

Members *indicated agreement*.

Instruments subject to Affirmative Procedure

09:48

The Convener: Under agenda item 2, we are considering eight draft instruments, on which no points have been raised.

Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2026 [Draft]

Budget (Scotland) Act 2025 Amendment Regulations 2026 [Draft]

Absent Voting (Miscellaneous Amendment) (Scotland) Order 2026 [Draft]

Absent Voting (Miscellaneous Amendment) (Scotland) Regulations 2026 [Draft]

Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Amendment Order 2026 [Draft]

Public Services Reform (Scottish Water) Order 2026 [Draft]

Renewables Obligation (Scotland) Amendment Order 2026 [Draft]

Council Tax (Variation for Unoccupied Dwellings) (Scotland) Amendment Regulations 2026 [Draft]

The Convener: Is the committee content that no reporting grounds are engaged?

Members *indicated agreement*.

Instruments subject to Negative Procedure

09:49

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

Revenue Scotland and Tax Powers Act (Interest on Unpaid Tax and Interest Rates in General) Amendment Regulations 2026 (SSI 2026/17)

Revenue Scotland and Tax Powers Act (Involved Third Party) Amendment Order 2026 (SSI 2026/18)

Education (Scotland) Act 1980 (Modification) Regulations 2026 (SSI 2026/19)

NHS Education for Scotland and Common Services Agency (Transfer of Staff) Regulations 2026 (SSI 2026/23)

The Convener: Is the committee content that no reporting grounds are engaged?

Members *indicated agreement*.

Instruments not subject to Parliamentary Procedure

09:50

The Convener: Under agenda item 4, we are considering one instrument, on which no points have been raised.

Bail and Release from Custody (Scotland) Act 2023 (Commencement No 3) Regulations 2026 (SSI 2026/24 (C 2))

The Convener: Is the committee content that no reporting grounds are engaged?

Members *indicated agreement*.

Contract (Formation and Remedies) (Scotland) Bill: Stage 2

09:50

The Convener: Under agenda item 4, we are considering the Contract (Formation and Remedies) (Scotland) Bill at stage 2. I welcome to the meeting the Minister for Victims and Community Safety, Siobhian Brown MSP, and three Scottish Government officials. I remind the minister's officials that they cannot participate in the stage 2 proceedings, but they can communicate with the minister directly.

For anyone watching, I will briefly explain the procedure that we will follow in today's proceedings. Members should have with them a copy of the bill, the marshalled list and the groupings of amendments; the documents are available on the bill page on the Scottish Parliament's website for anyone observing.

We have 17 amendments to consider and dispose of. I will call each amendment individually, in the order on the marshalled list. The groupings of amendments set out the amendments in the order in which they will be debated; there will be one debate on each group. In each debate, I will call the minister to speak to and move the first amendment in the group, and to speak to all other amendments in the group. I will then call any members who wish to speak in the debate. Members who wish to speak should indicate as much by catching my attention or that of the clerks.

Finally, I will call the minister to wind up, after which I will put the question on the first amendment. I will then move through each amendment on the marshalled list until we reach the next group.

If there is a division, only committee members are entitled to vote. I will call for members who wish to vote yes first of all, then for those who wish to vote no, and then for any abstentions. The clerks will collate the vote and pass it to me to read out and confirm the result. If there is a tie, I must exercise a casting vote.

The committee is also required to consider and decide on each section of the bill and the long title. I will put the question on each of those provisions at the appropriate point.

Section 1—Autonomy of parties: application of sections 2 to 13

The Convener: Amendment 1, in the name of the minister, is grouped with amendments 2 to 11.

The Minister for Victims and Community Safety (Siobhian Brown): Good morning. First, I want to thank the committee and all stakeholders for their comments on the bill as introduced. I believe that the amendments that I have lodged address a number of those comments and make the bill stronger.

Amendments 1, 2 and 5 to 10 respond to the comments made by Dumfries and Galloway Council, which stated that in

"section 2, the terms 'Formation' and 'Conclusion'"

are

"used interchangeably."

I agree that a more consistent term could usefully be used throughout part 1 of the bill, and these amendments do that by preferring the use of the term "formation".

The committee asked the Scottish Government to consider the drafting point raised in the written evidence of Professor Stephen Bogle and Tom Johnson that section 2(2) is overly "verbose". Having considered the drafting in light of those comments, I have lodged amendment 3 to simplify the provision.

Amendment 4 relates to section 2, which provides that whether a contract exists is to be determined from the statements and conduct of the parties. So long as the parties are agreed on the necessary content, there can be a contract, even though the parties are continuing to negotiate on other matters that might be relevant to their transaction. However, there might be circumstances in which parties want to agree all matters before forming a contract and, as a result, section 2(3) allows parties to a contract to specify in advance matters on which there needs to be agreement before any contract is formed. The Law Society is concerned about the drafting of section 2(3) of the bill because it thinks that there is a risk that it could apply to situations in which one party

"subjectively intends not to contract prior to agreement on a certain point."

It has suggested that section 2(3) be amended to include the need for some form of express communication of agreement. Amendment 4 does that by making it clear that the party specifying the essential matters of a contract must do so "explicitly".

I come to amendment 11. Section 13(1) provides that any notification in relation to the formation of a contract takes effect when it reaches the addressee. However, by virtue of section 13(2), it is subject to any time limit for acceptance referred to in section 11(1)(a). As drafted, section 13(1) is not subject to section 11(1)(b). Section 11(1)(b) says that if no timeframe for acceptance is stated, an acceptance is effective only if it occurs

"within a reasonable time after the notification of the offer has taken effect."

The effect of that drafting is that, in general, acceptances must be notified to the offeror within any time limit stated in the offer, but, where there is no stated timeframe, it would be possible for an acceptance to be effective when it has been communicated unreasonably late. Amendment 11 deals with that anomaly by providing that, for an acceptance to be effective to form a contract, it must be notified either within any time limit stated in the offer or within a reasonable time.

I move amendment 1, and I ask members to support my other amendments in the group. I am happy to take any questions.

Jeremy Balfour (Lothian) (Ind): I did not want to intervene on you, minister, because you were in full flow. Some concern has been raised with regard to negotiations between a smaller party and a bigger party. One of your amendments will allow bits of the contract to be agreed before other parts. I am looking for reassurance that you are not concerned that a smaller player will be affected by that in any way.

Siobhian Brown: So far, no concerns have been raised with me on that. Officials have reached out to stakeholders and to members ahead of this stage, but if any member has concerns that they want to highlight to me ahead of stage 3, I am happy to discuss them. However, at this stage, no concerns have been raised, so I am content.

Jeremy Balfour: I am grateful. Thank you, minister.

The Convener: Minister, would you like to wind up?

Siobhian Brown: No, thank you. I will just press amendment 1.

Amendment 1 agreed to.

Section 1, as amended, agreed to.

Section 2—Formation of contract: general

Amendments 2 to 5 moved—[Siobhian Brown]—and agreed to.

Section 2, as amended, agreed to.

Section 3—Conclusion of contract by unnotified acts

Amendments 6 and 7 moved—[Siobhian Brown]—and agreed to.

Section 3, as amended, agreed to.

Sections 4 and 5 agreed to.

Section 6—Lapsing of offer on fundamental change of circumstances

Amendments 8 to 10 moved—[Siobhian Brown]—and agreed to.

Section 6, as amended, agreed to.

Sections 7 to 12 agreed to.

Section 13—When notification takes effect

10:00

Amendment 11 moved—[Siobhian Brown]—and agreed to.

Section 13, as amended, agreed to.

Sections 14 and 15 agreed to.

Section 16—Autonomy of parties: application of sections 17 to 21 and of the Law Reform (Contributory Negligence) Act 1945

The Convener: Amendment 12, in the name of the minister, is grouped with amendments 13 to 17.

Siobhian Brown: I will begin with amendment 13. Sections 18 to 21 of the bill define a new remedy of return of benefits received after rescission—termination—of a contract for material breach. Section 19 sets out rules on the valuation of a non-money benefit that is not returnable by the recipient, under sections 18(6) and 18(7). When determining the value that must be paid in lieu of returning an item or for a service, the valuation of the item or service is assessed at the time of the party's performance providing that benefit, as set out in section 19(2). Additional guidance is provided in sections 19(3) and 19(4). The present formulation of section 19(2) appears to infer that the party seeking restitution must show that it has performed the whole of the obligation incumbent upon it before its claim can succeed. That goes too far, in my view, as what is recoverable is any performance in so far as it has not been reciprocated by the recipient in accordance with the contract. Accordingly, my amendment 13

removes the words “of the obligation” from section 19(2).

I am pleased to speak to the remaining amendments in the group, which will restate and reform the law of retention. The amendments build on the work that was undertaken by the Scottish Law Commission and separately by Lorna Richardson of the University of Edinburgh. In 2018, the SLC said that, although the law of retention needed some clarification, it should be left to the courts to do that. By 2024, though, the SLC’s position had changed and stakeholders agreed that legislation was needed to bring clarity to the law. The Scottish Government consulted on a scheme for the reform of retention and my amendments 14 to 17 give effect to that.

At stage 1, there was a question about whether the provisions would be default provisions. Amendment 12 is clear on the principle of party autonomy and has the effect that the provisions on contractual retention are default rules. It is therefore open to parties to provide their own, different rules or to fall back on these default rules.

I have considered the drafting suggestions to improve the bill and I wrote to the committee ahead of today’s session to set out my views. I believe that my amendment 17 addresses the concerns raised by the Law Society and Dr Hamish Patrick about particular transactions. As to the comments made by the Royal Incorporation of Architects in Scotland, I believe that the amendments also address its concerns.

I move amendment 12 in my name and ask members to support it and my other amendments in the group.

Amendment 12 agreed to.

Section 16, as amended, agreed to.

Sections 17 and 18 agreed to.

Section 19—Value of benefit

Amendment 13 moved—[Siobhian Brown]—and agreed to.

Section 19, as amended, agreed to.

Sections 20 and 21 agreed to.

After section 21

Amendments 14 to 17 moved—[Siobhian Brown]—and agreed to.

Sections 22 to 26 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the minister and her officials for attending. That concludes the public part of the meeting.

10:05

Meeting continued in private until 10:07.

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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