Subordinate Legislation Committee

16th Report 2003 (Session 2)

Primary Medical Services (Scotland) Bill as Amended at Stage 2
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Remit and Membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on

(a) any—

   (i) subordinate legislation laid before the Parliament;

   (ii) Scottish Statutory Instrument not laid before the Parliament but classified as
        general according to its subject matter,

and, in particular, to determine whether the attention of the Parliament should be
drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other
    proposed legislation;

(c) general questions relating to powers to make subordinate legislation; and

(d) whether any proposed delegated powers in particular Bills or other legislation
    should be expressed as a power to make subordinate legislation.

*(Standing Orders of the Scottish Parliament Rule 6.11)*

Membership:
Gordon Jackson QC (Deputy Convener)
Sylvia Jackson (Convener)
Stewart Maxwell
Christine May
Alasdair Morgan
Mike Pringle
Murray Tosh

Committee Clerks:
Alasdair Rankin
Joanne Clinton
Catherine Fergusson
The Committee reports to the Parliament as follows—

1. The Committee considered the inserted or substantially amended delegated powers provisions in the Primary Medical Services (Scotland) Bill as amended at Stage 2 at its meeting on 9th December 2003. The Committee reports to the Parliament on such provisions under Rule 9.7.9 of Standing Orders.
Primary Medical Services (Scotland) Bill

As amended at Stage 2

Report of the Subordinate Legislation Committee

Committee remit

1. Under the terms of its remit, the Committee considers and reports on proposed powers to make subordinate legislation in particular Bills or other proposed legislation and on whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

2. The term “subordinate legislation” carries the same definition in the Standing Orders as in the Interpretation Act 1978. Section 21(1) of that Act defines subordinate legislation as meaning “Orders in Council, orders, rules, regulations, schemes, warrants, bye-laws and other instruments made or to be made under any Act”. “Act” for this purpose includes an Act of the Scottish Parliament. The Committee therefore considers not only powers to make statutory instruments as such contained in a Bill but also all other proposed provisions conferring delegated powers of a legislative nature.

Background

3. The Committee considered the delegated powers in the above Bill at Stage 1 at its meetings on 16th and 23rd September 2003¹. The Bill has now completed Stage 2. Although none of the points made by the Committee at Stage 1 have been taken on board, draft Regulations were submitted some weeks ago both to the lead committee and this Committee as promised by the Executive and have been considered by the lead committee.

4. A number of amendments were made at Stage 2 to the subordinate powers in the Bill and, as required by the Standing Orders, these now fall to be considered by the Subordinate Legislation Committee. The Executive has submitted a short Memorandum on the changes for the assistance of the Committee which is reproduced at the Appendix to this report.

Amendments to delegated powers

5. The Executive’s Memorandum has summarised the various changes made to the delegated powers in the Bill. Although these are fairly numerous, the Committee notes that most are minor, either consequential on other changes made to the Bill or

¹ The Committee’s Stage 1 report is incorporated into the report of the Health Committee, the lead committee for the Bill. See Health Committee 6th Report 2003 (Session 2), published on 6th October 2003 and available on the Parliament’s website at: http://www.scottish.parliament.uk/health/reports/her03-06-03.htm#subleg
of a “housekeeping” nature and do not appear to give rise to any concerns. The Committee therefore approves these amendments without further comment.
MEMORANDUM TO THE SUBORDINATE LEGISLATION COMMITTEE OF THE SCOTTISH PARLIAMENT

Primary Medical Services (Scotland) Bill
As amended at Stage 2

Purpose
1. This supplementary Memorandum has been prepared by the Scottish Executive so as to explain changes relevant to powers to make subordinate legislation which were made to the Primary Medical Services (Scotland) Bill in consequence of amendments at Stage 2 of the Parliamentary Process. This Memorandum should be read in conjunction with the original Memorandum prepared for the Subordinate Legislation Committee (to assist its consideration in accordance with Rule 9.6.2 of the Parliament’s Standing Orders), the Bill, both as introduced and as amended at Stage 2 and the Marshalled list of amendments for Stage 2.

2. The Committee is referred in particular to paragraphs 2 to 6 of the original Memorandum which gives general background to the Bill and the subordinate legislation powers.

3. This Memorandum is in 3 parts as follows:-

Part I New Subordinate Legislative Powers
Part II Changes to Subordinate Legislative Powers
Part III Changes to illustrative lists

PART I NEW SUBORDINATE LEGISLATIVE POWERS

Section 2: Provision of Primary Medical Services: Section 17C Arrangements

Relevant provision: Section 2 Inserting New Subsection 17D(1B) into the 1978 Act
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Statutory Instrument
Parliamentary procedure: Negative Resolution of the Scottish Parliament (section 105(2) of the 1978 Act)

4. This new subsection enables regulations to set out what effect a change in membership of a partnership is to have on a section 17C agreement which is made with a partnership. The intention is, in some circumstances, to allow the membership of the partnership to change without necessarily requiring a new contract to be entered into merely because such a change in membership has taken place. This power mirrors that in new section 17L(4) to be inserted into the 1978 Act by section 4 of the Bill in respect of GMS contracts (see paragraphs 30 and 32 of the original Memorandum in that regard).
5. The matters in new subsection 17D(1B) are considered to be more suitable for secondary legislation than primary legislation, given the level of detail required and the fact that there is a need for flexibility as new circumstances arise.

PART II    CHANGES TO SUBORDINATE LEGISLATIVE POWERS

Section 1(2) inserting new section 2C(3)
6. Reference is made to paragraphs 8 and 9 of the original memorandum. Amendment 4 removed the words, “which they provide or the provision of which they secure under subsection (1)” and replaced them with the words “provided under this part”. This makes it clear that the Scottish Ministers’ power to prescribe the information that must be published by a Health Board relates to any aspect of primary medical services provided under Part 1 of the 1978 Act rather than simply to primary medical services provided under section 2C(1).

Section 2(3)(b) inserting new subsection (1A) into section 17D
7. Reference is made to paragraphs 15 and 16 of the original Memorandum. Amendment No.12 ensures the cross reference in the second line of the new subsection refers back to all of the new subparagraphs in section 17D(1)(b) as new subparagraphs were added on amendment at Stage 2. Amendment 13 adds a reference back to section 17D(1)(e) – this ensures that the Scottish Ministers may use the power in new subsection (1A) to prescribe conditions on the power to make an agreement with companies which count as “qualifying bodies” as defined in section 17D of the 1978 Act.

Section 2(3)(d) inserting new subsection (3) into section 17D
8. Reference is made to paragraphs 17 and 18 of the original Memorandum. Amendment 28 again updates the cross reference here back to section 17D(1)(b). It also ensures consistent use of “person or individual” to reflect the terminology used in section 17D(1)(b).

Section 4 inserting new section 17O(2) into the 1978 Act
9. Reference is made to paragraphs 41 and 43 of the original Memorandum. Amendments 36, 37 and 38 change the tenses used to ensure the section is clear.

Section 5 inserting new section 17P(1) into the 1978 Act
10. Reference is made to paragraphs 44 to 48 of the original Memorandum. Amendment 39 amended the wording to refer back to new section 2C(1) inserted by section 1 of the Bill. This was to ensure that it was clear that the regulations could be used to require a performer of primary medical services to be on the list for each Health Board having the duty to provide or secure the provision of the service which that performer is providing.

Section 7(1)
11. Reference is made to paragraphs 50 to 53 of the original Memorandum. Amendment 48 makes it clear that the power might be used to make consequential amendments to legislation necessary due to changes in the law applicable to Northern Ireland similar to the provisions in our Bill. Northern Ireland is currently planning similar legislation to that in our Bill and so there may be a need to make such consequential changes.
PART III CHANGES TO ILLUSTRATIVE LISTS

12. The Committee may wish to note the following changes to illustrative lists of matters which the subordinate legislative powers may be used to make provision for. These are to ensure the illustrations of what the powers might be used for are as clear and accurate as possible at this stage. The changes are:-

(a) Section 2(4)(c) inserting new subsection (3A) into section 17E – amended by amendment 21;

(b) Section 2(4)(c) inserting new subsection (3D) into section 17E – amended in by amendment 22;

(c) Section 4 inserting new section 17N(3)(a) and (c)– amended by amendments 33 and 34;

(d) Section 4 inserting new section 17O(1)(a) – amended by amendment 35;

and

(e) Section 5 inserting new section 17P(3)(c),(e),(f),(h) and (k) – amended by amendments 41 to 46.

Scottish Executive Health Department

5 December 2003