Subordinate Legislation Committee

35th Report, 2004 (Session 2)

School Education (Ministerial Powers and Independent Schools) (Scotland) Bill

As Amended at Stage 2
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Published by the Scottish Parliament on 4 October 2004
Subordinate Legislation Committee

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
Bruce Adamson
The Committee reports to the Parliament as follows—

1. At its meeting on 28\textsuperscript{th} September the Committee considered the inserted or substantially amended delegated powers provisions in the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill as amended at Stage 2. The Committee reports to the Parliament on such provisions under Rule 9.7.9 of Standing Orders.
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.

Report

Background
3. The Committee recalled that this Bill amongst other things contained, in Part 2, amendments to provisions related to independent schools contained in Part V of the Education (Scotland) Act 1980. Part 2 of the Bill included three powers to make subordinate legislation. The Committee had indicated in its Stage 1 Report on the delegated powers in the Bill that it was generally content with those powers with the exception of the power contained in section 4(2)1.

4. The Bill returned to the Committee because of two Executive amendments at Stage 2 to the delegated powers. The amendments implement recommendations made by this Committee and endorsed by the lead committee at Stage 1. This Committee is content that these amendments reflect their concerns and therefore welcomes them, commending them to the Parliament.

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1 The Committee’s Stage 1 report is incorporated into the Stage 1 report of the lead committee for the Bill. See Education Committee 7th Report 2004(Session2), SP Paper 177, published on 15th June 2004. The report is available on the Parliament’s website at: [http://www.scottish.parliament.uk/business/committees/education/reports-04/edr04-07-01.htm](http://www.scottish.parliament.uk/business/committees/education/reports-04/edr04-07-01.htm)
Appendix 1

SUPPLEMENTARY MEMORANDUM TO THE SUBORDINATE LEGISLATION COMMITTEE
BY THE SCOTTISH EXECUTIVE

School Education (Ministerial Powers and Independent Schools) (Scotland)
Bill as amended at Stage 2

Purpose

1. This Supplementary Memorandum has been prepared by the Scottish Executive to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.7.9 of the Parliament’s Standing Orders, of amendments made at Stage 2 to provisions in the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill affecting powers to make subordinate legislation. It describes the amendments that were lodged by the Scottish Executive and agreed by the Education Committee.

Policy Context

2. The objective of Part 1 of the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill is to give the Scottish Ministers proportionate powers that will assist them to meet their statutory duty to endeavour to secure improvement in the quality of school education which is provided for Scotland. This statutory duty on the Scottish Ministers is set out in section 3(1) of the Standards in Scotland’s Schools etc. Act 2000 (the “2000 Act”).

3. Part 1 of the Bill, therefore, introduces new ministerial powers to direct action by education authorities and by grant-aided schools if sufficient steps have not been taken to secure improvement following Her Majesty’s Inspectorate of Education (HMIE) inspections. There is no subordinate legislation arising from this part of the Bill.

4. The duty on the Scottish Ministers to secure improvement covers all school education, and Part 2 of the Bill amends the existing legislative provisions for independent schools. The statutory provisions for independent schools are contained in Part V of the Education (Scotland) Act 1980 Act (the “1980 Act”). They cover the process of registration and procedures for addressing concerns about these schools. The objective of Part 2 of the Bill is to update these provisions to ensure that they apply consistently across the independent school sector and that appropriate, timely and proportionate action can be taken by Ministers to address concerns.

5. The provisions of the Bill all amend existing legislation relating to the provision of education. As such, they make amendments of the 1980 Act and the 2000 Act. This reflects the objective of the Bill to build on the existing systems in place to deliver improvement.
Outline and Scope of the Bill

6. Part 1 provides the Scottish Ministers with new powers to direct education authorities and the managers of grant-aided schools to take specific actions to secure improvements following inspections by HMIE. The new provisions are inserted into the 1980 Act and the 2000 Act.

7. Part 2 contains amendments of the provisions governing independent schools in Part V of the 1980 Act, and amends the definition of an independent school under section 135 of that Act.

8. Part 3 provides for the short title, commencement, minor amendments and repeals and transitional provisions.

Subordinate Legislative Powers on Introduction

9. Part 2 of the Bill gives the Scottish Ministers power to make subordinate legislation as follows:

- regulations to stipulate what information registered schools must provide for the Registrar and in what form (Schedule 1 amendment to section 98(3)(a) of the 1980 Act);

- regulations on the form an application for registration of an independent school will take and what information it will contain (section 4(2) inserting section 98A(2) into the 1980 Act);

- regulations to define “prescribed person”. The consequence of a person falling within a class of persons defined as “prescribed persons” being that the Scottish Ministers would consider them not proper to be either a proprietor of an independent school or a teacher (section 4(2) inserting section 98A(6) into the 1980 Act); and

- commencement orders including transitional and savings provisions (section 9(2) and section 9(3)).

10. These provisions were explained in more detail in the Memorandum provided by the Scottish Executive for the Subordinate Legislation Committee on introduction of the Bill.

Summary of Amendments to Subordinate Legislative Powers

11. Amendments affecting subordinate legislation, lodged by the Scottish Executive and agreed by the Education Committee, relate to the following section of the Bill:

- In Schedule 1, paragraph 1 (6A): the provisions for preparing the regulations to define “prescribed person” under section 4(2) of this Bill, which inserts section 98A(6) into the 1980 Act.
Detail of Amendments to Subordinate Legislative Powers

Definition of a “prescribed person”

12. The power to prescribe by regulations the class of person that will be defined as a “prescribed person”, so that a person falling within that class of person would not be considered by Scottish Ministers to be a proper person to be the proprietor of an independent school or a teacher, was contained within section 4(2) of the Bill as introduced, inserted as section 98A(6) of the 1980 Act. The power remains unchanged within this section.

13. Schedule 1, paragraph 1(6A) provides for an amendment to the effect that any regulations made under this section, to prescribe persons not suitable to be teacher/proprietors, will be subject to affirmative procedure. Additionally, it provides for a statutory obligation to consult on a draft of such regulations before they are brought before the Parliament.

14. These amendments seek to address the concerns that the Subordinate Legislation Committee raised at their meetings on 17 and 25 May, and which were subsequently endorsed in the Education Committee’s report on the Bill at Stage 1.

Other Subordinate Legislative Powers

15. No other amendments were made to the provisions laid out in the initial memorandum submitted at introduction, and no new powers to make subordinate legislation were introduced.

Scottish Executive
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