Subordinate Legislation Committee

22nd Report, 2006 (Session 2)

Police, Public Order and Criminal Justice (Scotland) Bill as amended at Stage 2
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Remit and membership

Remit:

1. 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:

Dr Sylvia Jackson (Convener)
Mr Adam Ingram
Gordon Jackson (Deputy Convener)
Mr Kenneth Macintosh
Mr Stewart Maxwell
Mr Jamie Stone
Murray Tosh
Committee Clerking Team:

Clerk to the Committee
David McLaren

Assistant Clerk
Jake Thomas

Support Manager
Andrew Proudfoot
The Scottish Parliament

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The Committee reports to the Parliament as follows—

Introduction

1. At its meetings on 16 and 23 May 2006, the Committee considered the inserted or substantially amended delegated powers provisions in the Police, Public Order and Criminal Justice (Scotland) Bill as amended at Stage 2. The Committee reports to the Parliament on such provisions under Rule 9.7.9 of Standing Orders.

2. Under Rule 9.7.10, the Executive provided the Parliament with a supplementary delegated powers memorandum and correspondence with the Executive is published in the Annex.

Delegated powers

3. The Committee considered all of the powers as set out in the DPM and is content with section 21(1), 37(3)(c), new sections 72B and 72B(5), section 76(1)(b), 86(1), 86(3), Schedule 1 paragraph 11(5), Schedule 2 paragraph 8 and Schedule 3 paragraph 2(1). The Committee noted that the Executive had fulfilled the undertakings it gave to the Committee following its comments at Stage 1 and, where relevant, has amended the Bill.

New Section 72C (Information about release: power to require giving of specified information) – Effect on section 96 of the Sexual Offences Act 2003 (Information about release or transfer)

4. The Committee noted that this is an important power which could raise sensitive issues, particularly in relation to confidentiality and that it could be extended. It asked the Executive therefore to provide further clarification of why it considered negative procedure to be appropriate in this instance.

1 Supplementary Delegated Powers Memorandum
5. In its response, the Executive considers that the negative procedure is consistent with the level of scrutiny currently imposed and provides the appropriate level of Parliamentary scrutiny required. In addition, the Executive does not consider that the nature of information to be specified in any regulations under section 96 which can disclosed about a relevant offender, requires the level of scrutiny that the affirmative procedure would give.

6. The Committee notes that the Executive appears to be aiming at parity with the UK legislation on this subject, but would not assume that an instrument made under similar powers should automatically be subject to the same procedure. However, in this instance the Committee is of the view that, in the light of the additional information supplied by the Executive, a case has been made for the power as drafted in the Bill.

7. The Committee is content with the Executive’s response and that the power is preceded. It is also content that the power is subject to negative procedure.
ANNEX

Police, Public Order and Criminal Justice (Scotland) Bill as amended at Stage 2

New Section 72C (Information about release: power to require giving of specified information) – Effect on section 96 of the Sexual Offences Act 2003 (Information about release or transfer)

8. The Committee notes that this is an important power which could raise very sensitive issues, including in relation to confidentiality. The Committee also notes that the power can be extended. The Committee therefore asks the Executive to provide further clarification of why it considers negative procedure to be appropriate in this instance.

The Scottish Executive responded as follows:

9. When scrutinising the original regulation making power under section 96 of the 2003 Act the Westminster Parliament considered that negative resolution procedures were appropriate because these powers did not seek to place any obligations on a relevant sex offender to do anything or provide information to any person. As the amendments to the regulation making power similarly do not place any requirements or burdens on a relevant sex offender, the Executive considers that the negative resolution procedure is consistent with the level of scrutiny currently imposed and provides the appropriate level of Parliamentary scrutiny required.

10. The regulations will make provision which will enable responsible persons to provide basic personal information about a relevant sex offender, who will be released or transferred, to a specified person such as the police. It is envisaged that this information will include the address or addresses where the offender is being released or transferred to, their date of birth or details of the offence which that person has committed. It is not considered that the nature of information to be specified in any regulations under section 96 which can disclosed about a relevant offender requires the level of scrutiny of affirmative procedure.
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