Subordinate Legislation Committee

18th Report, 2007 (Session 2)

Protection of Vulnerable Groups (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)
Janis Hughes
Mr Agam Ingram
Mr Kenneth Macintosh (Deputy Convener)
Mr Stewart Maxwell
Euan Robson
Murray Tosh
Committee Clerking Team:

Clerk to the Committee
Ruth Cooper

Senior Assistant Clerk
David McLaren

Assistant Clerk
Jake Thomas

Support Manager
Andrew Proudfoot
 Protection of Vulnerable Groups (Scotland) Bill - as amended at Stage 2

The Committee reports to the Parliament as follows—

1. At its meeting on 27 February 2007, the Committee considered the inserted or substantially amended delegated powers provisions in the Protection of Vulnerable Groups (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.¹

3. The Committee took evidence from officials at its meeting on 27 February 2007².

Delegated powers

4. The Committee considered all of the powers as set out in the Supplementary DPM and is content with sections: 7(A1), 8, 14, 17(5)(f), 19, 25, 29(4) and (5), 31, 43, 46, 60(2), 69A, 88, 94, 95(9), and schedule 2 part 3.

5. The Committee was content with amendment made at stage 2 of the bill to extend the lists of relevant bodies, which indirectly affected the scope of the powers at sections 8, 17(5)(f) and 19(3). The Committee was content with the new terminology inserted at section 85 (which amended the power in new section 120ZB(2)(d) to the Police Act 1997). The Committee noted the deletion of the powers at 96(1) (to specify care service providers) and Schedule 4 paragraph 26B(b) (to prescribe circumstances and manner of destroying fingerprints).

6. The Committee sought and received further clarification on the intended use of the power at part 5 of schedule 2 and part 5 of schedule 3 to the bill.

¹ Supplementary Delegated Powers Memorandum
² Official Report, 27 February 2007
Section 37 – police access to lists

7. As the DPM explains, in the bill as introduced, section 37 allowed for prescribed information to be shared with the police for the prevention or detection of crime, or the apprehension or prosecution of offenders. The power to prescribe this information was removed by amendment at stage 2 and replaced with an administrative procedure.

8. The Committee asked officials what type of information will be held on the children’s and adults’ lists and how the Executive would propose to exercise discretion in disclosing information to the police. The Executive explained that the fact that the individual is listed is itself the most sensitive piece of information and that other information is limited and is intended to be used to confirm identity. The Committee is reassured by the Executive’s response and simply notes the deletion.

Section 67 – fees

9. It was unclear to the Committee why this provision was necessary, as section 99(2)(b) allows regulations made under the bill to enable the prescription of varying fees. The Executive informed the Committee that it had brought forward this amendment at stage 2 to put beyond doubt that by charging for a disclosure, ministers can take into account the number of disclosure requests which a person/body may make and the previous fees that they have been charged (possibly with a view to discounting fees). The Committee is content with this explanation and the power as drafted.

Section 87(2) – transfer of Disclosure Scotland staff etc.

10. At stage 1, the Committee considered that it was inappropriate for an order to specify individuals by name, as these details would be published on the internet in a statutory instrument. Correspondence between the Executive and lead committee at stage 1 indicated that the Executive would only do this as a matter of last resort, when “absolutely necessary”. The Committee therefore asked the Executive to give examples of circumstances when it would be “absolutely necessary” to specify individuals.

11. The Executive responded that, for example, this situation might arise when two people might be doing the same or similar job in an organisation, and therefore their job title might be the same, but only one of them was to transfer. The only way to distinguish between the two members of staff would be by naming the person in an order.

12. The Committee asked whether a member of staff’s date of birth or staff number could be used instead, but was informed that due to the complexity of employment backgrounds a fallback position was needed. The Executive explained that it would only use this power when all other options had been explored and the Committee notes this assurance and is content with the power as drafted.
Schedule 4 – Minor and consequential amendments and repeals

13. The Committee noted the powers contained at paragraph 21 of schedule 4, which inserts three new sections into the Police Act 1997. The Committee is content with the powers at 113CA and 113CB and that they are subject to negative procedure.

Inserting new section 113CC(1) into 1997 Act

14. The Committee noted that section 113CC(1) enables Ministers by order to amend new section 113CA and 113CB for the purpose of altering the meaning of suitability information in relation to children and protected adults. The Committee normally expects a power to be subject to affirmative procedure when it is used to add, amend or remove the text of an Act. The Committee noted that elsewhere in this Bill, powers to so modify other enactments or the provisions of this bill itself are subject to affirmative procedure. The Committee therefore asked the Executive why it had adopted a different procedure in this instance.

15. The Executive responded that it considers that this approach is consistent with that of the Police Act 1997, where many of the procedures are negative. The Executive also explained that any modification of sections 113CA and 113CB under the power in section 113CC would be made in the context of provisions in earlier sections of the bill. The Committee is content with this power as drafted.
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