Delegated Powers and Law Reform Committee

Criminal Justice (Scotland) Bill as amended at Stage 2
Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

a. any—
   i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   ii. [deleted]
   iii. pension or grants motion as described in Rule 8.11A.1; 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;

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

e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

g. any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

i. any Consolidation Bill as defined in Rule 9.18.1 referred to it by the Parliamentary Bureau in accordance with Rule 9.18.3.
Committee Membership

Convener
Nigel Don
Scottish National Party

Deputy Convener
John Mason
Scottish National Party

Richard Baker
Scottish Labour

John Scott
Scottish Conservative and Unionist Party

Stewart Stevenson
Scottish National Party
Introduction

1. At its meeting on 8 December 2015, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Criminal Justice (Scotland) Bill as amended at Stage 2 (“the Bill”)\(^1\). The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Bill was introduced on 20 June 2013 by the former Cabinet Secretary for Justice. It seeks to make provision about criminal justice including as to police powers and rights of suspects and as to criminal evidence, procedure and sentencing; to establish the Police Negotiating Board for Scotland; and for connected purposes.

3. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM")\(^2\).

4. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its 53rd report of 2013\(^3\).
Delegated Powers Provisions

5. The Committee considered each of the new, removed or substantially amended delegated powers provisions in the Bill after Stage 2.

6. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the substantially amended or new delegated powers provisions listed below, and that it is content with the parliamentary procedure to which they are subject:
   - Section D1 – Provisions about possession of alcohol
   - Section G1 – Contents of code of practice
   - Section K1 – Bringing code of practice into effect
   - Section 53A – Further provision about application of Part 1
   - Section 53B – Further provision about vulnerable persons
   - Section 82A – Duty to undertake a child and family impact assessment
   - Section 86A – inserting new section 305(1A) into the Criminal Procedure (Scotland) 1995 Act – Electronic proceedings
   - Schedule 3 – inserting new schedule 2A to the Police and Fire Reform (Scotland) Act 2012 – Police Negotiating Board for Scotland

7. The Committee therefore reports that it is content with the provisions in the Bill which have been amended at Stage 2 to insert or substantially alter provisions conferring powers to make subordinate legislation.

8. The Committee also considered Stage 3 amendments, introducing five new delegated powers, contained within a new Chapter of the Bill “Support for vulnerable persons”. The Scottish Government wrote to advise the Committee of these proposed changes in advance of formally lodging the amendments. This correspondence is reproduced at the Annexe.

9. The Committee reports that it does not need to draw the attention of the Parliament to the new delegated powers provisions listed below, and that it is content with the parliamentary procedure to which they are subject:
   - Amendment 65 – After Section 82B, subsection 1 – Meaning of appropriate adult support
   - Amendment 65 – After Section 82B, subsection 4 – Meaning of appropriate adult support
- Amendment 66 – After Section 82B – Responsibility for ensuring availability of appropriate adults

- Amendment 67 – After Section 82B – Assessment of quality of appropriate adult support

- Amendment 68 – After Section 82B – Training for appropriate adults
Delegated Powers and Law Reform Committee
Criminal Justice (Scotland) Bill as amended at Stage 2, 78th Report, 2015 (Session 4)

1 Criminal Justice (Scotland) Bill as amended at Stage 2 is available at the following website: http://www.scottish.parliament.uk/S4_Bills/Criminal%20Justice%20(Scotland)%20Bill/SPBill35AS042015. pdf [accessed December 2015]

2 Criminal Justice (Scotland) Bill as amended at Stage 2, Supplementary Delegated Powers Memorandum is available at the following website: http://www.scottish.parliament.uk/S4_Bills/Criminal%20Justice%20(Scotland)%20Bill/SPBill35ADPMS042015.pdf [accessed December 2015]

3 Delegated Powers and Law Reform Committee. 53rd Report, 2013 (Session 4) Criminal Justice (Scotland) Bill at Stage 1 (SP Paper 411) is available at the following website: http://www.scottish.parliament.uk/S4_SubordinateLegislationCommittee/Reports/sur-13-53w.pdf [accessed December 2015]
Correspondence from the Scottish Government

On 26 November 2015 the Cabinet Secretary for Justice wrote to the Convener as follows:

I am writing to give you advance notice of Stage 3 amendments which the Government intends to lodge in relation to the Criminal Justice (Scotland) Bill (“the Bill”) that will give Ministers new subordinate legislation making powers.

The amendment, or amendments, the Government means to lodge will empower Ministers to make regulations conferring on a body the duty to ensure that support is available for vulnerable persons at certain points in a criminal investigation or criminal proceedings. The sort of support in question is that provided by people generally known as appropriate adults.

The proposal to take this power at this late stage in the Bill process is a result of concerns expressed by members (in particular Alison McInnes) during Stage 2 consideration of the Bill. During the Justice Committee’s stage 2 deliberations, I said this (SP OR J 6 October 2015, col 67):

> When the Bill was introduced, it was considered that the appropriate adult system was working well and that a light-touch approach should be adopted — in essence placing the referral process on a statutory basis but going no further. However, further evidence … has persuaded me that the current model for appropriate adult services is not sustainable over the longer term. Concerns have been expressed about the accessibility and consistency of service provision, the exact remit of appropriate adults and funding for the service, all of which warrant further consideration.

The limited time available between Stages 2 and 3 of the Bill is insufficient to give these important matters the careful consideration which they warrant, especially when a number of stakeholders including Police Scotland, local authorities and the appropriate adult network all need to be involved in developing the new model for the delivery of appropriate adult services to ensure that it is sustainable in the long term.

The power the Government proposes to take will be restricted so as to be exercisable only after Scottish Ministers have carried out a public consultation, and any regulations made under it will be subject to the affirmative procedure so that Parliament is given a proper opportunity to consider what is proposed.

A copy of this letter is being sent to the Convener of the Justice Committee.

I hope this is helpful.