Delegated Powers and Law Reform Committee

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill as amended at Stage 2
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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 Inquiries into Fatal Accidents and Sudden Deaths etc. (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 19 March 2015 by the Cabinet Secretary for Justice. This Bill seeks to make provision for the holding of public inquiries in respect of certain deaths.

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 31st report of 2015³.
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Delegated Powers Provisions

5. The Committee considered the one new delegated power provision in the Bill after Stage 2. The recommendations on this power can be found on pages 3 and 4.
Recommendations

6. The Committee’s comments and recommendations on the new delegated power in the Bill as amended, are detailed below.

Section 10A(3) – Availability of civil legal aid

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative

Provision

7. New Section 10A(3) inserts new subsections (2A) to (2C) into section 15 of the Legal Aid (Scotland) Act 1986 (financial conditions) (“the 1986 Act”). Section 15 currently provides that a person is eligible for legal aid if his or her disposable income and disposable capital do not exceed certain prescribed limits. New subsection (2A) disapplies those financial conditions in respect of specified types of family member applying for civil legal aid in order to participate in a fatal accident inquiry (“FAI”) into the circumstances of the death of their relative. The family members are spouses, civil partners or persons living with the deceased as if married or, in the absence of such persons, the nearest known relative of the deceased.

8. Subsection (2B) places a duty on the Scottish Ministers to make regulations providing for the alternative financial conditions which will apply where such a family member makes an application for civil legal aid in respect of a fatal accident inquiry. New section 15(2C) requires the regulations to ensure that civil legal aid is made available to allow the family member to participate fully in the fatal accident inquiry proceedings.

Comment

9. The Committee is content in principle with the power conferred by new section 10A(3) of the Bill. However it considers that the power should be subject to the affirmative procedure. Section 10A(3) confers a broad power to develop a new scheme for financial eligibility for legal aid, the parameters of which are not set out on the face of the Bill. The scheme will potentially have a significant impact on both individuals and the legal aid budget, and as such the affirmative procedure would afford a more appropriate level of parliamentary scrutiny.

10. The Committee also notes that regulations under section 36(2)(b) of the 1986 Act, which confers power to substitute different amounts for the disposable income and capital limits set out in section 15(1) and (2) of that Act, are subject to the affirmative procedure. The Committee considers that it would be appropriate for
the same form of procedure to apply to the analogous power conferred by new section 10A(3).

11. The Committee is content in principle with the power in section 10A(3), however it recommends that the Bill be amended at Stage 3 to make exercise of the power subject to the affirmative procedure.
Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill as amended at Stage 2 is available at the following website:

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill as amended at Stage 2 Supplementary Delegated Powers Memorandum is available at the following website:

Delegated Powers and Law Reform Committee. 31st Report, 2015 (Session 4) Report on the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill at Stage 1 (SP Paper 730) is available at the following website: