



The Scottish Parliament
Pàrlamaid na h-Alba

Subordinate Legislation Committee

53rd Report, 2012 (Session 4)

Social Care (Self-directed Support) (Scotland) Bill as amended at Stage 2

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Pàrlamaid na h-Alba

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) [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.

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Nigel Don (Convener)
Jim Eadie

Mike MacKenzie
Hanzala Malik
John Pentland
John Scott
Stewart Stevenson (Deputy Convener)

Committee Clerking Team:

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Elizabeth White

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53rd Report, 2012 (Session 4)

Social Care (Self-directed Support) (Scotland) Bill as amended at Stage 2

The Committee reports to the Parliament as follows—

1. At its meeting on 20 November 2012, the Subordinate Legislation Committee considered the delegated powers provisions in the Social Care (Self-directed Support) (Scotland) Bill, as amended at Stage 2. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.
2. The Scottish Government provided the Parliament with a supplementary delegated powers memorandum¹ on the new provisions in the Bill.

Delegated Powers Provisions

Section 12 – Power to modify section 3

Power conferred on:	The Scottish Ministers
Power exercisable by:	Regulations
Parliamentary procedure:	Affirmative procedure

3. Section 12 enables the Scottish Ministers to make regulations which modify section 3 of the Bill. So far as it is necessary in consequence of any modification to section 3, they may also modify sections 4, 6 and 7.
4. Section 3 lists the options for self-directed support made available under the Bill. The supported individual is to be offered a choice of these options, and sections 4, 6 and 7 make provision about making that choice of support for adults, adult carers and children respectively.
5. At Stage 1 the Committee considered that the section 12 power ought to be subject to a statutory requirement to consult interested bodies on any draft

¹ Social Care (Self-Directed Support) (Scotland) Bill. Supplementary Delegated Powers Memorandum.

Available at: http://www.scottish.parliament.uk/S4_Bills/2012.11.14_Supplementary_DPM.pdf

regulations. Were it subject to such a requirement, the Committee indicated that it would be content for the regulations to be subject to the affirmative procedure.

6. The Bill has been amended at Stage 2, by the addition of a new section 20(4), to add a further requirement that regulations under section 12 will be subject to statutory consultation.

7. In addition, section 12 has been amended at Stage 2 to add section 13(2)(b) and section 21(1A) to the list of provisions which may be amended consequentially by virtue of regulations made under section 12. This ensures that all of the relevant internal references to SDS options can be updated in response to any revision to the options provided within section 3.

Section 21 – Power to modify application of Act

Power conferred on:	The Scottish Ministers
Power exercisable by:	Regulations
Parliamentary procedure:	Affirmative procedure

8. Section 21 confers power upon the Scottish Ministers to make provision for or in connection with disapplying sections 4(2) or 7(2) of the Bill. Sections 4(2) and 7(2) are key to the Bill, as it is those provisions which require local authorities to give supported persons the opportunity to choose one of the section 3 options for delivery of support.

9. Where regulations disapply section 4(2) or 7(2), section 21(2)(a) provides that the person may also be deemed to have chosen Option 3, and section 21(2)(b) provides that the regulations may disapply or modify any other section of the Bill.

10. At Stage 1 the Committee considered that the section 21 power ought to be subject to a statutory requirement to consult interested bodies on any draft regulations. Were it subject to such a requirement, the Committee indicated that it would be content for the regulations to be subject to the affirmative procedure.

11. In response to these concerns the Bill has been amended at Stage 2 to add a requirement that regulations under section 21 will be subject to statutory consultation.

12. In addition, the provision permitting Ministers to use regulations to deem a person to have chosen option 3 has been replaced with a provision *requiring* any such regulations to include provision deeming a person to have chosen Option 3. This would mean that Ministers could not use regulations to disapply option 3, which would remain the default when no other options are available. In practical terms this will prevent Scottish Ministers from using subordinate legislation in order to “switch off” the provision of social care and support to any particular user group or any particular circumstance. This represents a further limitation on the discretion of Ministers in relation to this power.

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