Subordinate Legislation Committee

3rd Report, 2013 (Session 4)

Freedom of Information (Amendment)(Scotland) Bill as amended at stage 2

Published by the Scottish Parliament on 8 January 2013
Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a)  subordinate legislation laid before the Parliament;

   (i)  any Scottish Statutory Instrument not laid before the Parliament but
classed as general according to its subject matter;

and, in particular, to determine whether the attention of 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;

*(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:

Clerk to the Committee
Euan Donald
Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows—

1. At its meeting on 8 January 2013, the Subordinate Legislation Committee considered the delegated powers provisions in the Freedom of Information (Amendment) (Scotland) Bill¹, 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 memorandum² on the new provisions in the Bill.

Delegated Powers Provisions

3. At Stage 1 of the Bill, the Committee reported that it did not need to draw the attention of the Parliament to the powers in sections 4 and 7.

4. Under Section 5(1) of the Freedom of Information (Scotland) Act 2002 Scottish Ministers can designate persons who appear to exercise functions of a public nature or are providing a service which is a function of a public authority as a Scottish Public Authority for the purposes of the Act. Section 1A of the amended Bill expands on this by requiring Ministers to consult any additional persons that they consider appropriate before making such an order.

5. Furthermore, the new section 7A requires Ministers to lay reports on the exercise of the section 5 power before the Parliament commencing before 30 June 2016 and at least every 3 years thereafter.

6. The Committee reports that it is satisfied in principle with the alterations to the consultation requirements prior to the exercise of powers under section 5(1) of the Freedom of Information (Scotland) Act 2002 made by section 1A of the Bill.


² Freedom of Information (Amendment) (Scotland) Bill Supplementary Delegated Powers Memorandum available at: http://www.scottish.parliament.uk/S4_Bills/Supplementary_DPM_-_FOI.pdf
7. Section 4 has been modified at stage 2 to add a new power to section 59 of the Freedom of Information (Scotland) Act 2002 to allow for modification, by order, of the meaning of ‘historical record’. The power has also been expanded to include the full range of ancillary powers.

8. The amended power continues to be subject to affirmative procedure.

9. The Committee reports that it is satisfied in principle with the power in section 4 of the Bill as amended at stage 2. Furthermore, the Committee is satisfied that the amended power in section 59 of the 2002 Act will continue to be subject to affirmative procedure.
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