Delegated Powers and Law Reform Committee

46th Report, 2014 (Session 4)

Delegated Powers in the Legal Writings (Counterparts and Delivery) (Scotland) Bill

Published by the Scottish Parliament on 6 August 2014
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. 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 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.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth Anderson

Support Manager
Daren Pratt
Delegated Powers and Law Reform Committee

46th Report, 2014 (Session 4)

Delegated Powers in the Legal Writings (Counterparts and Delivery) (Scotland) Bill

The Committee reports to the Parliament as follows—

1. At its meeting on 5 August 2014, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Legal Writings (Counterparts and Delivery) (Scotland) Bill at stage 1 (“the Bill”).

2. As lead committee for the Bill the Delegated Powers and Law Reform Committee will consider and report on the general principles of the Bill.

3. In addition to carrying out the role of lead committee, under rule 9.6.2 of Standing Orders the Committee is required to consider and report upon any provisions in the Bill which confer power to make subordinate legislation. The Committee may also consider and report on any provision in such a Bill conferring other delegated powers.

4. This report relates solely to the Committee’s consideration of the delegated powers provisions in the Bill.

OVERVIEW OF BILL

5. The Bill gives effect to two distinct policies relating to the formation of contracts under Scots law. Firstly, it provides a framework by which parties may “execute a document in counterpart” under Scots law and secondly, it provides a mechanism to enable documents created and signed on paper to have legal effect where delivered by electronic means. In doing so, it implements the majority of the legislative recommendations contained in the Scottish Law Commission Report on Formation of Contract: Execution in Counterpart (SLC No 231 - April 2013) (“the SLC Report”).

---

1 Legal Writings (Counterparts and Delivery) (Scotland) Bill (as introduced): http://www.scottish.parliament.uk/S4_Bills/Legal%20Writings%20(Counterparts%20and%20Delivery)%20(Scotland)%20Bill/b50s4-introd.pdf

DELEGATED POWERS PROVISIONS

6. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

7. The Committee’s conclusions on the delegated powers provisions in the Bill are set out below.

Section 5 – Ancillary provision

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>affirmative procedure if it amends an Act, otherwise negative procedure</td>
</tr>
</tbody>
</table>

8. Section 5 makes the usual ancillary provision generally found in Government Bills. It provides the Scottish Ministers with the power to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with, or for giving full effect to any provision of the Bill. Such an order may modify any enactment, including any provision made by the Bill.

9. The Committee finds this power to be acceptable in principle. The Committee also reports that it is content that the power is subject to the affirmative procedure where it amends primary legislation, but otherwise to the negative procedure.

Section 6 – Commencement

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>laid no procedure</td>
</tr>
</tbody>
</table>

10. Section 5, 6 and 7 of the Bill will come into force on the day after Royal Assent. Section 6(2) provides that the Scottish Ministers may, by order, appoint days on which the other provisions of the Bill come into force. Subsection (3) provides that a commencement order may include transitional, transitory or saving provision.

11. The Committee finds this power to be acceptable in principle, and is content that the exercise of the power is not subject to Parliamentary procedure.

---

3 Legal Writings (Counterparts and Delivery) (Scotland) Delegated Powers Memorandum available here: http://www.scottish.parliament.uk/S4_Bills/Legal_Writings_DPM.pdf
12. The Committee therefore reports that it is content with the delegated powers provisions in the Bill at stage 1.
Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.