Subordinate Legislation Committee

10th Report, 2012 (Session 4)

Public Bodies Consent Memorandum on the draft Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012

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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 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.

(Standing Orders of the Scottish Parliament, Rule 6.11)
Membership:

Chic Brodie
Nigel Don (Convener)
James Dornan (Deputy Convener)
Mike MacKenzie
Michael McMahon
John Pentland
John Scott

Committee Clerking Team:

Clerk to the Committee
Irene Fleming

Assistant Clerk
Rob Littlejohn

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

1. At its meeting on 28 February 2012, the Committee considered the draft Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012. The Order is a UK Government instrument that the Parliament has been asked to consent to under section 9 of the Public Bodies Act 2011 (“the 2011 Act”). The Committee submits this report to the Economy, Energy and Tourism Committee as part of its consideration of the Order.

2. The Scottish Government provided the Parliament with a public bodies consent memorandum (“PBCM”) which contained the draft Order.

**Background**

3. The 2011 Act provides UK Ministers with the power to make orders to improve the exercise of public functions, having regard to efficiency, effectiveness, economy and securing accountability to Ministers. Section 9(1) of the Act requires the consent of the Scottish Parliament to any order that would be within the legislative competence of the Parliament.

4. At its meeting on 11 December 2011, the Parliamentary Bureau agreed an interim arrangement for the parliamentary scrutiny of such orders, with a view to the Standards, Procedures and Public Appointments Committee considering the procedure in the longer term. In doing so, the Parliamentary Bureau recommended a variation to the Subordinate Legislation Committee’s remit to allow it to consider this instrument and any other subsequent orders brought forward under the 2011 Act. This variation was agreed to by the Parliament at its meeting on 2 February 2012.

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1 Public Bodies Consent Memorandum
Draft Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012

5. The draft Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 is the first order that the Parliament has been asked to consent to under the 2011 Act. The order abolishes the National Endowment for Science, Technology and the Arts (NESTA), which was established by section 16 of the National Lottery Act 1998. NESTA will then be reconstituted in the charity sector and will continue to administer the National Lottery endowment which it currently holds.

6. The PBCM explains that the UK Department for Business, Innovation and Skills (BIS), which is promoting the order, considers that while lotteries are a reserved matter, the specific matters in relation to which NESTA exercises its functions (science, technology and the arts) are not generally reserved. It therefore concludes that the removal of NESTA’s functions is a matter that would fall within the legislative competence of the Scottish Parliament. The consent of the Parliament is therefore required before the order can be made.

Subordinate Legislation Committee consideration

7. At its meeting on 28 February, the Committee considered the instrument under the same grounds as instruments laid before the Parliament.

8. In considering the instrument, the Committee notes that the consequential amendment to section 430(1) of the Income Tax Act 2007 set out in the Schedule to the Order purports to omit the work “and” preceding paragraph (c). However, unlike other amendments made by the Schedule there is no preceding “and” used as a conjunction between paragraph (c) and the preceding paragraph (b). The Committee does note, however, that there is one preceding “and” in the name of the body listed in paragraph (b) (“The Historic Buildings and Monuments Commission for England”) which the Committee presumes it is not the intention to remove.

Recommendation

9. As the Order contains a minor drafting error, the Committee draws the instrument to the attention of the Parliament under the general ground in Rule 10.3.1 of standing orders. However, in doing so, the Committee considers that it is unlikely that the amendment would operate so as to alter the entry in paragraph (b) when that is clearly not consequential upon the abolition of NESTA. It therefore does not consider that the error will affect the operation of the instrument.
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