Subordinate Legislation Committee

25th Report, 2012 (Session 4)

Alcohol (Minimum Pricing) (Scotland) Bill as amended at Stage 2

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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;

(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:**

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Irene Fleming

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Subordinate Legislation Committee

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The Committee reports to the Parliament as follows—

1. At its meeting on 15 May 2012, the Subordinate Legislation Committee considered the delegated powers provisions in the Alcohol (Minimum Pricing) (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 memorandum on the new provisions in the Bill (“the supplementary DPM”)¹. The Committee’s consideration of these powers is set out below.

New delegated powers

Section 1A(2) – power to make an order to continue the minimum pricing provisions

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>order made by SSI</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>affirmative</td>
</tr>
</tbody>
</table>

3. New section 1A(1) places a time limit on the effect of the minimum pricing provisions introduced by section 1. Section 1A(1) provides that those provisions will expire six years after they come into force. Section 1A(2) gives the Scottish Ministers the power to override this sunset clause and make the minimum pricing provisions permanent. This power is exercisable only within the year prior to the sunset clause taking effect. It is exercisable by affirmative order.

4. The Committee is content with this power in principle and that it is subject to the affirmative procedure.

¹ Alcohol (Minimum Pricing) (Scotland) Bill. Supplementary Delegated Powers Memorandum. Available at: 
http://www.scottish.parliament.uk/S4_SubordinateLegislationCommittee/Supplementary_delegated_powers_memorandum.pdf
5. Section 1B requires the Scottish Ministers to lay a report on how the minimum pricing provisions operated and the effect that they had during the first five years of their operation. The report must be laid as soon as practicable after the end of that five-year period. The Bill does not require Ministers to lay the report before they lay a draft order before the Parliament. However, the Committee notes that this report will have an important function in informing the debate on whether to approve any order brought forward by Ministers under section 1A(2). The Committee therefore considers that the report should be laid before an order is brought forward for approval.

6. The Committee therefore considers that Ministers should lay the report on the operation of the minimum pricing provisions before they bring forward a draft order to make the provisions permanent.

Response to the Committee’s Stage 1 report

7. In its stage 1 report, the Committee noted that in order for the Parliament to consider whether an order setting the minimum price per unit was compatible with European Union law further supporting information would need to be provided beyond that normally provided with Scottish statutory instruments. The Scottish Government agrees that this will be required and has undertaken to provide it. However, the Government has not implemented the Committee’s recommendation that the requirement to do so is placed on a statutory footing. This would have ensured that any future administration would be required to adopt a similar approach.

8. The Committee notes the Scottish Government’s acknowledgement that such information is necessary to the proper consideration of such an order and its commitment to provide this when the draft order is laid.
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