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)
Kezia Dugdale (until 22 December 2011)
Mike MacKenzie
Michael McMahon (from 22 December 2011)
John Pentland (from 22 December 2011)
John Scott
Drew Smith (until 22 December 2011)

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—

Introduction

1. This Report covers the work of the Subordinate Legislation Committee during the parliamentary year from 11 May 2011 to 10 May 2012. The Committee has scrutinised a number of Bills and Scottish statutory instruments this year, reporting to subject Committees and the Parliament on issues such as the scope of delegated powers and whether delegated powers are within vires, as well as on detailed drafting issues.

Bills

2. The Committee considers delegated powers provisions in Government, Members’, Committee and Private Bills. Over the reporting period, the Committee has considered and reported on the following eight Bills at Stage 1:

   Alcohol (Minimum Pricing) (Scotland) Bill;
   National Library of Scotland Bill;
   Land Registration etc. (Scotland) Bill;
   Budget (Scotland) Bill;
   Criminal Cases (Punishment and Review) (Scotland) Bill;
   Long Leases (Scotland) Bill;
   Police and Fire Reform (Scotland) Bill; and
   Welfare Reform (Further Provision) (Scotland) Bill.

3. The Committee also considered and reported on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill as amended at Stage 2.

4. All of the Bills were Government Bills and, as with previous years, the recommendations of the Committee on Bills have led to a number of changes by the Government to relevant provisions. Through its scrutiny process, the Committee also aims to ensure that the correct balance between primary and secondary legislation is maintained.
5. The Committee has also considered three Legislative Consent Memorandums (LCMs). These are Westminster Bills which seek to change the law or alter Scottish Ministers’ or the Scottish Parliament’s powers in relation to devolved matters. The three LCMs considered by the Committee were on:

- London Olympic Games and Paralympic Games (Amendment) Bill;
- Welfare Reform Bill; and
- Scotland Bill.

6. The Committee also gave consideration to four Public Body Consent Memorandums (PBCMs). These relate to draft orders made under sections 1 to 5 of the Public Bodies Act 2011 which would fall within the Scottish Parliament’s legislative competence. The four PBCMs considered by the Committee were on:

- Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 [draft];
- Advisory Committee on Hazardous Substances (Abolition) Order 2012 [draft];
- Inland Waterways Advisory Council (Abolition) Order 2012 [draft]; and
- British Waterways Board (Transfer of Functions) Order 2012 [draft].

Subordinate Legislation

7. The Committee has continued to work to tight timescales in its consideration of subordinate legislation, producing 45 reports over the reporting year. During the parliamentary year, the Committee published 30 statutory instrument reports, reporting on 244 Scottish statutory instruments in total.

8. Of the instruments considered, 41 were subject to affirmative procedure, 130 to negative procedure, and 73 were not subject to any Parliamentary procedure.

Equalities

9. The Committee considers equalities issues which can arise under the European Convention on Human Rights and under Community law. It is part of the Committee’s remit to draw the attention of lead committees and the Parliament to any instrument that, in its opinion, fails to comply with any such requirement.

10. It is also within the Committee’s remit to report any instrument on the grounds of an unusual or unexpected use of a power which raises equalities issues.

11. The Committee also scrutinises drafting practice and so points out, for example, failure to use gender neutral language in instruments.

Meetings

12. During the parliamentary year, the Committee met 28 times. Of these meetings, none were entirely in private and 19 were partly in private.

13. All the meetings have been held in Edinburgh.
Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.