



The Scottish Parliament  
Pàrlamaid na h-Alba

# **Delegated Powers and Law Reform Committee**

## **36th Report, 2013 (Session 4)**

### **Post-16 Education (Scotland) Bill as amended at stage 2**

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## **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 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.
  - (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:**

Christian Allard  
Nigel Don (Convener)  
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



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## Delegated Powers and Law Reform Committee

### 36th Report, 2013 (Session 4)

#### Post-16 Education (Scotland) Bill as amended at stage 2

The Committee reports to the Parliament as follows—

#### INTRODUCTION

1. At its meeting on 18 June 2013, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Post-16 Education (Scotland) Bill as amended at Stage 2 (“the Bill”)<sup>1</sup>. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.
2. The Post-16 Education (Scotland) Bill was introduced in the Scottish Parliament by the Scottish Government on 27 November 2012. It is described as providing a technical and administrative underpinning to the Scottish Government’s wider post-16 education reform programme. As a result, the Bill principally amends the two main enactments in this area, the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”) and the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”).
3. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”)<sup>2</sup>.
4. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its [14<sup>th</sup> report of 2013](#).

#### DELEGATED POWERS PROVISIONS

5. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.

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<sup>1</sup> Post-16 Education (Scotland) Bill (as amended at stage 2) available here: [http://www.scottish.parliament.uk/S4\\_Bills/Post-16%20Education%20Bill/b18as4-amend-rev.pdf](http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18as4-amend-rev.pdf)

<sup>2</sup> Post-16 Education (Scotland) Bill Supplementary Delegated Powers Memorandum available here: [http://www.scottish.parliament.uk/S4\\_Bills/P-16\\_SDPM.pdf](http://www.scottish.parliament.uk/S4_Bills/P-16_SDPM.pdf)

6. The Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers provisions:

Section 5 (inserting section 7A(2) of the 2005 Act) – Regional colleges,

Section 6 (inserting paragraphs 3B(2) and 3C(1A) of Schedule 2 to the 1992 Act)-  
Colleges: boards of management,

Section 7 (inserting section 24(1) and (3) of the 1992 Act),

Section 8(3) (inserting section 7C of the 2005 Act) – Assignment of colleges,

Section 11(2) (inserting paragraphs 3(5A) and 5(2) of new Schedule 2B (Regional boards-membership) to the 2005 Act),

Section 12 (inserting section 23N(1) of the 2005 Act- Mismanagement of regional boards),

Section 15(1), (5), (9) and (10) – Duty to provide information to Skills Development Scotland,

Schedule, paragraph 2(1A), (1B) and (3A) (modification of the 1992 Act),

Schedule, paragraph 6(5) (inserting section 7D of the 2005 Act),

Schedule, paragraph 6(16) (modifying section 25 of the 2005 Act),

Schedule, paragraph 6(20) (modifying section 34(4) of the 2005 Act).

7. The Committee's comments and recommendations on the remaining delegated power are considered below.

**Section 15(2A) – Duty to provide information to Skills Development Scotland**

<b>Power conferred on:</b>	<b>The Scottish Ministers</b>
<b>Power exercised by:</b>	<b>Order</b>
<b>Parliamentary procedure:</b>	<b>Affirmative</b>

*Background*

8. Section 15(2A) extends the delegated powers contained in the section. These are powers by order to require a person to provide information the person holds about a young person to The Skills Development Scotland Co. Limited ("SDS"), for certain purposes in connection with education or training.

9. The new power in section 15(2A) allows the Scottish Ministers by order to place a duty on SDS to provide information which that body holds about a young person to such persons who provide education and training to young persons, as may be specified in the order. By virtue of section 15(2B) Scottish Ministers may specify the information to be provided and the form and manner in which it is to be provided.

*Comments*

10. As section 15(2A) extends the powers to require the provision of information which are contained in the section, the Committee considers that observations made in the Committee's report at Stage 1 also apply to this new power introduced at Stage 2. (This refers to the comments and recommendations in paragraphs 50 to 55 of the report).

**11. The Committee agrees that the exercise of this power should be subject to the affirmative procedure, to ensure adequate Parliamentary scrutiny of the use of the power.**

**12. The Committee however observes that, as for the power in section 15(1), the exercise of the power in section 15(2A) appears likely to engage the rights under Article 8 of the European Convention on Human Rights of the persons whose personal data is shared in terms of an order under this section. It accordingly notes that it will wish to be reassured, when it comes to consider any subordinate legislation made under this power, that adequate consideration has been given to the Convention rights (in particular Article 8) and that – to the extent that Article 8 is engaged – any interference is capable of being objectively justified and is proportionate.**

**13. The Committee also welcomes that various amendments to the delegated powers provisions which were agreed at Stage 2 implement recommendations in its Report at Stage 1.**

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