Delegated Powers and Law Reform Committee

55th Report, 2014 (Session 4)

Courts Reform (Scotland) Bill as amended at stage 2

Published by the Scottish Parliament on 7 October 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 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:

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

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Courts Reform (Scotland) Bill as amended at stage 2

The Committee reports to the Parliament as follows—

1. At its meeting on 7 October 2014, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Courts Reform (Scotland) Bill as amended at Stage 2 ("the Bill")\(^1\). The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Bill makes wide-ranging provision for the structural and functional reform of the Scottish civil courts system, following the recommendations made in September 2009 in the Scottish Civil Courts Review ("SCCR") headed by Lord Gill, then Lord Justice Clerk and now Lord President of the Court of Session.

3. Many of the recommendations will not be implemented directly by the Bill, and instead will be implemented by court rules made by act of sederunt. The Delegated Powers Memorandum ("DPM") which accompanied the Bill on introduction explains that this is because the Scottish Government considers that they concern matters which either do not require primary legislation or are more appropriate for setting out in court rules as they concern the day-to-day work and organisation of the courts. The intention is for the Bill to establish the framework for the civil courts as recommended by the Review, with the detailed arrangements being made by court rules.

4. The Bill also makes changes to the criminal justice system. Some of the provisions on sheriff courts will impact directly on criminal cases as well as civil ones, as will the creation of the new Sheriff Appeal Court. Part 5 of the Bill makes provision for criminal appeals, while Part 6 deals with Justice of the Peace Courts.

5. 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")\(^2\).

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\(^1\) Courts Reform (Scotland) Bill [as amended at Stage 2] available at: http://www.scottish.parliament.uk/S4_Bills/Courts%20Reform%20(Scotland)%20Bill/b46as4-stage2-amend.pdf

\(^2\) Courts Reform (Scotland) Bill Supplementary Delegated Powers Memorandum available at: http://www.scottish.parliament.uk/S4_Bills/SDPM_Courts_Reform.pdf
6. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its **29th report in 2014**

**DELEGATED POWERS PROVISIONS**

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

8. **After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new or substantially amended delegated powers provisions listed below and that it is content with the Parliamentary procedure to which they are subject:**

   - Section 2(1) – Power to alter sheriffdoms, sheriff court districts and sheriff courts
   - Section 39(7) – Exclusive competence
   - Section 60(2B)(b) – Records of the Sheriff Appeal Court
   - Section 70(6A) – Simple procedure
   - Section 96 – Power to regulate procedure in the Court of Session
   - Section 97(2)(q) – Power to regulate procedure in the Court of Session
   - Section 98(1) – Power to regulate fees in the Court of Session
   - Section 98(1)(f) – Power to specify persons whose fees may be regulated by the Court of Session
   - Section 102A(1) – Power to provide for fees for SCTS, court clerks and other officers
   - Section 102A(4) – Power to provide for fees for SCTS, court clerks and other officers
   - Section 102B(7) – Sanction for counsel in the sheriff court and Sheriff Appeal Court
   - Section 117 - Power to establish, relocate and disestablish justice of the peace courts (amends section 59 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007)

9. **The Committee therefore reports that it is content with the provisions in the Bill which have been amended at Stage 2 to insert or substantially alter provisions conferring powers to make subordinate legislation and other delegated powers.**
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