



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

60th Report, 2014 (Session 4)

Historic Environment Scotland Bill as amended at stage 2

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Pàrlamaid na h-Alba

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

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Elizabeth Anderson

Support Manager

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60th Report, 2014 (Session 4)

Historic Environment Scotland Bill as amended at stage 2

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meeting on 28 October 2014, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Historic Environment 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’s central objective is to create a new public body called Historic Environment Scotland. The Policy Note explains that it is intended that the new body will be a non-departmental public body (rather than a part of the Scottish Administration).
3. As a result of creating Historic Environment Scotland, the Royal Commission on the Ancient and Historical Monuments of Scotland (“RCAHMS”) would be abolished, and most of the assets, liabilities and staff of RCAHMS and Historic Scotland would be transferred to Historic Environment Scotland. Historic Scotland is an executive agency of the Scottish Government.
4. 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).
5. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its [30th report of 2014](#).

¹ Historic Environment Scotland Bill [as amended at Stage 2] available at:
[http://www.scottish.parliament.uk/S4_Bills/Historic%20Environment%20\(Scotland\)%20Bill/b47as4-stage2.pdf](http://www.scottish.parliament.uk/S4_Bills/Historic%20Environment%20(Scotland)%20Bill/b47as4-stage2.pdf)

² Historic Environment Scotland Bill Supplementary Delegated Powers Memorandum available at:
http://www.scottish.parliament.uk/S4_Bills/HES_SDPM.pdf

DELEGATED POWERS PROVISIONS

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

7. 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:

- Sections 3(7A) and 3A – Delegation of functions in relation to properties in care
- Section 7(6A) - Delegation of functions in relation to collections
- Paragraph 2(ea) of Schedule 2- power to specify persons required to be notified in relation to excluding or including a monument in the Schedule, or amending the entry in the Schedule relating to any monument under section 1 of the 1979 Act
- Paragraph 14(4A) of Schedule 2 - Power to make regulations or directions to provide that specified applications for scheduled monument consent must, where HES intends to grant consent, be notified to Scottish Ministers
- Paragraph 18A(d) of Schedule 2- Power to prescribe time within which a statement in writing in connection with scheduled monument consent enforcement appeals must be made, and to prescribe what further information is required
- Paragraphs 18B and 30 of Schedule 2 – Power to make regulations to make provision in respect of scheduled monument enforcement notice appeals
- Paragraph 9 of Schedule 3– power to specify the cases or classes of case in respect of which planning authorities are under a requirement to consult certain bodies, before granting or refusing applications for listed building consent

8. The Committee reports that it does not need to draw the attention of the Parliament to the remaining new or substantially amended delegated powers provisions listed below:

- Sections 3(1)(b) and (8) – Delegation of functions in relation to properties in care
- Section 7(1)(b) and (7) – Delegation of functions in relation to collections

9. However, the Committee notes the Scottish Government's correspondence on these powers which is reproduced at the Annex. The correspondence advises that the Scottish Government will lodge amendments at stage 3 to rectify an

oversight at stage 2. The amendments will provide that the powers in sections 3(1)(b) and 7(1)(b) will be subject to the affirmative procedure.

10. The Committee welcomes the Scottish Government's assurance that it will bring forward an amendment at Stage 3, to provide that the powers in sections 3(1)(b) and 7(1)(b) will be subject to the affirmative procedure. This will remedy an oversight at Stage 2.

ANNEX

Correspondence to the Committee from the Scottish Government

Dear Mr Donald

HISTORIC ENVIRONMENT SCOTLAND BILL

When you kindly offered initial comments on a draft of the Supplementary Delegated Powers Memorandum for the above Bill, you suggested that an official-to-official letter would be an appropriate way of dealing with a drafting issue which has recently come to our attention.

You will recall that, at Stage 1, the Committee recommended that, where any body other than Historic Environment Scotland is to be delegated Ministerial functions under sections 3 and 7 of the Bill, such a body should be specified by order with affirmative procedure, and not simply administratively, as the Bill provided at introduction.

This recommendation was accepted by Ministers and a commitment was given to amend.

Amendments were lodged and agreed at Stage 2 to make the necessary changes. Unfortunately, Parliamentary draftsmen have noted that the linked Stage 2 amendment to section 24 of the Bill did not correctly capture the policy intention. While Section 24(2) now correctly provides that orders in relation to these powers are not to be handled under the negative procedure, it does not, as it presently stands, provide for any procedure at all.

I confirm that amendment(s) to rectify this will be brought forward at Stage 3, specifying that the affirmative procedure is to apply in these circumstances

I apologise for this oversight and trust that the Committee will accept this means of ensuring that the matter is corrected.

Yours sincerely
Noel Fojut
Bill Team Leader

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