Delegated Powers and Law Reform Committee

Scottish Elections (Reduction of Voting Age) Bill at stage 1
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Delegated Powers and Law Reform Committee

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.
Committee Membership

Convener
Nigel Don
Scottish National Party

Deputy Convener
John Mason
Scottish National Party

Margaret McCulloch
Scottish Labour

John Scott
Scottish Conservative and Unionist Party

Stewart Stevenson
Scottish National Party
Introduction

1. At its meeting on 21 April 2015, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Scottish Elections (Reduction of Voting Age) Bill at stage 1 (“the Bill”). The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

3. The Bill provides for the lowering of the voting age to 16 for Scottish Parliament and local government elections in Scotland, including by-elections. It also does so in relation to any other poll using the franchise for local government elections in Scotland – for example elections for membership of National Park authorities.

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1 Scottish Elections (Reduction of Voting Age) Bill [as introduced] available here: [link]

2 Scottish Elections (Reduction of Voting Age) Bill Delegated Powers Memorandum available here: [link]
## Delegated Powers Provisions

4. The Committee considered each of the delegated powers in the Bill and determined that it did not need to draw the attention of the Parliament to any of the delegated powers therein. The Committee therefore reports on the delegated powers as follows:

### Section 4 – Invitations to register: Further provision for persons aged under 16

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5. Section 9E of the Representation of the People Act 1983 requires registration officers to invite persons to apply for registration in the electoral register if they are not currently registered but the officer believes they may be entitled to be registered. Section 4(1) of the Bill confers power on the Scottish Ministers to make provision about invitations to be given to persons under the age of 16 in relation to the registration of local government electors. Subsection (2) provides a non-exclusive list of examples of how the power might be used. The power may be used to modify any enactment and to make ancillary provision.

6. Before making regulations the Scottish Ministers must consult the Electoral Commission. The regulations may confer functions on the Electoral Commission. The regulations are subject to the affirmative procedure.

7. The DPM explains that there is not presently any intention to use this power. Section 3 of the Bill adjusts the existing system for giving invitations to register to accommodate invitations to those under 16. However, this power is taken in case it proves necessary to make specific changes for that age group in light of practical experience.

8. The power to confer functions on the Electoral Commission (specifically to design an invitation) mirrors that which already exists in relation to invitations to register for persons aged 16 and over.

9. The Committee accepts that procedural matters concerning this level of detail are appropriate for subordinate legislation and that flexibility to adapt in light of experience would be useful. Given the breadth of the power and the sensitivity of the subject matter the Committee also considers that the higher level of parliamentary scrutiny afforded by the affirmative procedure is appropriate.

10. The Committee finds this power to be acceptable in principle, and is content that it is subject to the affirmative procedure.
Section 14 – Further provision for exceptions

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

11. Sections 12, 13 and 14 of the Bill set out the limited circumstances in which details of entries in the local government electoral register relating to under 16 year olds may be published, disclosed or shared. Disclosure (etc.) of information is only permitted in the circumstances set out in section 13 or in regulations which are made under section 14. Unauthorised disclosure is a criminal offence punishable by a fine up to £5000.

12. The power to make regulations under section 14 is broad in scope: to make provision for or about the disclosure of a young person’s information. Section 14(2) provides a non-exclusive list of examples of what might be done with the power. The list includes authorising or requiring the supply of information to specified persons, specifying the purposes for which such information may be used, prohibiting further supply of information, and prohibitions on the supply of copies of the full register.

13. Regulations under section 14 may modify section 13 (which sets out when disclosure is permitted) and may make ancillary provision. The Scottish Ministers must consult the Electoral Commission and such other persons as they consider appropriate before making regulations. The regulations are subject to the affirmative procedure.

14. The Committee considers that the regulation of access to data concerning young voters raises important ECHR concerns. Any proposals to widen access to that information should therefore be scrutinised carefully. It may have been preferable for this issue of principle to have been fleshed out more fully within the Bill, but it is accepted that the legislative timetable is constrained by the practical arrangements for implementation and the date of the next Scottish Parliament election. In any event, some flexibility to modify the arrangements in light of experience would appear to be a useful and sensible approach. The Committee considers that the subject matter of the regulations merits the higher level of scrutiny afforded by the affirmative procedure.

15. The Committee notes that regulations under section 14 may create criminal offences but that the maximum penalty which can be imposed is set out on the face of the Bill. The level set is consistent with the arrangements proposed under section 13 and under current electoral legislation.

16. The Committee finds this power to be acceptable in principle, and is content that it is subject to the affirmative procedure.
Section 17 – Ancillary provision

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure where amending primary legislation, otherwise negative procedure

17. Section 17 permits regulations to make the full range of ancillary provision: incidental, supplemental, consequential, transitional, transitory or saving provision. Ministers may make such provision if they consider it necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of the Bill. The power may make different provision for different purposes and may modify any enactment. Where the power is used to amend primary legislation it is subject to the affirmative procedure. Otherwise it is subject to the negative procedure.

18. This is a comprehensive example of a power to make ancillary provision. However, the Committee considers that this is appropriate in the circumstances. The Bill makes a number of detailed and technical changes to secondary legislation and so it may be hoped that there will be no need to make further consequential provision. But the complexity of electoral legislation and the need to make different provision in the application of those rules to younger persons in certain circumstances suggests it would be prudent to take powers to respond to any unexpected difficulties encountered in practice. As the DPM points out, with individual electoral registration also being rolled out, further changes may be required to modify its approach to younger voters in light of practical experience.

19. The Committee finds this power to be acceptable in principle, and is content that it is subject to the affirmative procedure where used to amend primary legislation and otherwise subject to the negative procedure.