Delegated Powers and Law Reform Committee

Smoking Prohibition (Children in Motor Vehicles) (Scotland) 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 12 May 2015, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Smoking Prohibition (Children in Motor Vehicles) (Scotland) 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 member in charge of the Bill, Jim Hume MSP, provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

3. Section 1 of the Bill creates a new criminal offence which is committed when an adult smokes in a private motor vehicle which is located in a public place and with a child present in the vehicle. No offence is committed where the vehicle has been designed or adapted for human habitation, and is being used as such while parked for the purposes of providing accommodation for not less than one night. There is a defence available where the adult who smokes reasonably believed that all other occupants of the vehicle were adults. For this purpose adults are persons aged 18 and over and children are persons under the age of 18.

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\(^1\) Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill [as introduced] available here: [http://www.scottish.parliament.uk/S4_Bills/Smoking%20Prohibition%20Bill/b58s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Smoking%20Prohibition%20Bill/b58s4-introd.pdf)

\(^2\) Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill [Delegated Powers Memorandum] available here: [http://www.scottish.parliament.uk/S4_Bills/Smoking_Prohibition_etc_DPM.pdf](http://www.scottish.parliament.uk/S4_Bills/Smoking_Prohibition_etc_DPM.pdf)
Delegated Powers and Law Reform Committee
Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill, 28th Report, Session 4, (2015)

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 the power in section 3(3) or paragraph 9 of the schedule. The Committee however reports on one aspect of the delegated power in paragraph 8 of the schedule as follows:

Schedule paragraph 8 – application of fixed penalties and preparation of accounts
Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure

5. The schedule sets out a scheme under which a fixed penalty may be applied for contravention of section 1 as an alternative to a prosecution. Paragraph 8 confers power on the Scottish Ministers to make regulations about (a) the application of the proceeds of fixed penalties and (b) the keeping of accounts and the preparation and publication about statements of account relating to the proceeds.

6. The DPM explains that the power is intended to allow the Scottish Ministers to control the spending of fixed penalties in the public interest. It is suggested that part of the proceeds might be retained to defray court expenses in collecting the penalties. Given the sensitivity of policy decisions as to the use of public resources the affirmative procedure is suggested as the appropriate level of scrutiny.

7. This power is modelled on that which applies under the fixed penalty regime in relation to the offence of smoking in a public place. The Committee considers that the power is justified as views on how the proceeds should be defrayed may change over time. The Committee agrees that the higher level of scrutiny is merited for the power in paragraph (a) given that there is likely to be some interest in how funds raised are spent. However, regulation of the keeping of accounts is more an administrative matter and the power need not always be exercised at the same time as that relating to the application of funds. The Committee takes the view that it would not be an effective use of parliamentary time to require the power in paragraph (b) to be subject to the affirmative procedure.

8. The Committee finds this power to be acceptable in principle, and is content that the power in paragraph 8(a) is subject to the affirmative procedure. The Committee recommends however that the negative procedure would provide a better balance of parliamentary resources against scrutiny given the administrative nature of the power in paragraph 8(b).