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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.

www.scottish.parliament.uk/delegated-powers
DPLR.Committee@scottish.parliament.uk
0131 348 5175
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 16 June 2015, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Air Weapons and Licensing (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 was introduced by the then Cabinet Secretary for Justice on 14 May 2014. The Bill makes provision for the licensing and regulation of air weapons; to amend the Licensing (Scotland) Act 2005; to amend and extend the licensing provisions of the Civic Government (Scotland) Act 1982; and for connected purposes.

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”)\(^2\).

4. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its 5\(^{th}\) report of 2015.

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\(^1\) Air Weapons and Licensing (Scotland) Bill as amended at Stage 2 available here: [http://www.scottish.parliament.uk/S4_Bills/Air%20Weapons%20and%20Licensing%20(Scotland)%20Bill/b49as4-stage2-amend.pdf](http://www.scottish.parliament.uk/S4_Bills/Air%20Weapons%20and%20Licensing%20(Scotland)%20Bill/b49as4-stage2-amend.pdf)

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

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

- Section 65 – inserting new section 33A(7)(b) of the Civic Government (Scotland) Act 1982 (“the 1982 Act”) – Acceptable forms of payment for metal
- Section 66 – inserting section 33B(6)(a) of the 1982 Act - Metal dealers and itinerant metal dealers: records
- Section 66A – inserting new section 35A of the 1982 Act – Register of dealers in metal
- Section 78(1) – Commencement
Recommendation

7. The Committee comments on the remaining power in the Bill as follows:

Section 66C– inserting new section 37A of the 1982 Act – Exemptions from requirements of sections 28 to 37 of 1982 Act

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9. The new section 37A provides a new regulation making power, which enables the Ministers to make provision specifying circumstances in which the provisions of sections 28 to 37 of the 1982 Act on metal dealer licensing are not to apply. This extends to the disapplication of the amendments and new provisions made by sections 63 to 66B of the bill to the regime for metal dealer licensing.

10. The SDPM states:

   “The Scottish Government is confident that the definition of a dealer is now the right one. It provides clarity to capture those activities that should fall within licensing, but avoids licensing those peripheral activities where the metal acquired is wholly incidental. It is also flexible enough to respond to the particular facts of individual cases. Nevertheless, we believe it right to enhance the flexibility to deal with circumstances that may not emerge until after the new regime is up-and-running.

   This amendment will allow the Scottish Ministers to prescribe circumstances where the metal dealer and itinerant metal dealer regime does not apply, and a licence is not required.”

11. The Committee notes that this power is designed to permit the Scottish Ministers the flexibility to grant exemption in relation to particular activities, operators or premises, should this be required once the new regime contained in the bill is in force, so that a licence in those circumstances would not be required. However the power is framed more widely. It allows regulations to make provision specifying circumstances in which the provisions of sections 28 to 37 of the 1982 Act are not to apply (that is, the entire licensing and regulation of metal dealers regime in the 1982 Act, as amended by sections 63 to 66C of the bill). For example, the power is capable of being used to disapply provisions for offences. (There are offence provisions related to metal dealer licensing in sections 33A and 34 of the 1982 Act, as amended by the bill; for example in connection with the disposal of metal to, or purchase from, a person aged under 16).
12. The Committee considers therefore, given the potential scope of this power, that regulations under new section 37A of the 1982 Act would be more suitably scrutinised by the Parliament by the affirmative procedure, rather than the negative procedure.

13. The Committee therefore calls on the Scottish Government to consider amending the Bill at Stage 3, so that the power in section 66C (inserting new section 37A of the 1982 Act) is subject to the affirmative procedure.