Subordinate Legislation Committee

5th Report, 2011 (Session 4)

Legislative Consent Memorandum on London Olympic Games and Paralympic Games (Amendment) Bill
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Remit and membership

Remit:
The remit of the Subordinate Legislation Committee is to consider and report on—

(a) any—

   (i) subordinate legislation laid before the Parliament;

   (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.

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Chic Brodie
Nigel Don (Convener)
The Committee reports to the Parliament as follows—

1. At its meetings on 13 September and 20 September 2011, the Committee considered the provisions in the London Olympic Games and Paralympic Games (Amendment) Bill (“the Bill”) which confer on the Scottish Ministers powers to make subordinate legislation.

2. A Legislative Consent Memorandum (“LCM”) has been lodged in relation to the Bill. The draft of the motion lodged by the Cabinet Secretary for Health and Wellbeing is—

   “That the Parliament agrees that the relevant provisions of the London Olympic Games and Paralympic Games (Amendment) Bill, introduced in the House of Commons on 16 March 2011, relating to the advertising and street trading and ticket touting provisions, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

3. In terms of standing orders rule 9B.3.6, where the Bill that is the subject of the memorandum contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Subordinate Legislation Committee shall consider and may report to the lead committee on those provisions.

4. The Committee considered the powers conferred on the Scottish Ministers to make subordinate legislation in terms of the subject matter of the Memorandum. Only one such provision was identified, in clause 2(6) of the Bill.

The Bill

5. The Bill makes a relatively small number of amendments to the advertising and trading, ticket touting and traffic management provisions of the London Olympic Games and Paralympic Games Act 2006. These amendments cover in general—
the seizure of articles which contravene advertising and trading regulations,
the parliamentary procedure and notice periods required when new advertising and trading regulations are introduced,
the penalty for unauthorised sales of Olympic tickets,
traffic regulation and enforcement during the Games.

6. The LCM (paragraphs 5-10) summarises the provisions which extend to Scotland. Only clause 2(6) appears to concern Scottish delegated powers. Clause 2(5) is a consequential provision to 2(6).

Clause 2(6)

7. Clause 2(6) confers powers on the Scottish Ministers to make regulations under sections 19, 25 and 37. The first regulations under these sections will be subject to the affirmative procedure with any subsequent regulations subject to the negative procedure.

8. Section 19 of the London Olympic Games and Paralympic Games Act 2006 (“the 2006 Act”) sets out powers to make regulations about advertising, in the vicinity of London Olympic events. The Games are scheduled to be held from 27 July to 12 August 2012.

9. The Games venues are predominantly around London, but also scheduled for Hampden Park Glasgow for football (and the Millennium Stadium Cardiff).

10. Section 25 of the 2006 Act sets out powers which make regulations about outdoor trading, in the vicinity of the events. Section 37(8) applies those sections to any Games events in Scotland. The Scottish Ministers have power to make the regulations, in relation to Scottish events.

11. The detail of what the advertising and outdoor trading regulations may contain is set out in sections 19 and 20, and 25 and 26. The content is similar between advertising and trading. The Regulations can widely control advertising and outdoor trading in the vicinity of Games events. Particularly, in summary—

- Scottish Ministers must aim in making them to secure compliance with obligations imposed on anyone by the Olympics Host City Contract. They must have regard to any requests or guidance from the IOC, and shall also have regard to amenity and public safety;
- the Regulations shall provide for the period of time during which they apply, and shall only apply for such time as Ministers consider necessary to secure compliance with obligations in the Host City Contract;
- before making regulations, Ministers must consult planning authorities or trade licensing authorities (as the case may be), persons representing interests likely to be affected by the regulations, the Olympic Delivery Authority and London Organising Committee;
the Regulations can apply for different periods and in different places;
the Regulations may apply or make provision similar to any enactment (for instance applying control of advertising legislation), and may to a specified extent or for specified purposes, disapply or modify enactments concerning planning, control of advertising or trading.

12. In the 2006 Act, any making of the advertising and outdoor trading regulations is subject to affirmative procedure (sections 20(2), 26(2) and 37). As previously noted section 2 of the Bill proposes to amend this so that only the first regulations are subject to the affirmative procedure. Subsequent regulations shall be subject to the negative procedure.

13. The LCM (paragraph 7) explains that “this change is intended to provide a practical means for the regulations to be amended by negative procedure if, for example, a Games venue or the scheduled time for an event needs to be changed at short notice after the principal regulations have been made.”

14. Affirmative procedure regulations would require positive approval by Parliament. Due to the timing of the Games, if urgent amending affirmative procedure regulations were required shortly prior to or during them, they could not be made in the summer recess (unless the Parliament was to be recalled). Negative procedure regulations can be made in the recess and be brought into force, though subject to annulment when Parliament returns after recess. (By that point the Games would be over).

15. An intention of clause 2 is to align the procedure for making advertising and trading regulations in relation to the Olympics, with the comparable procedures in section 43(4) of the Glasgow Commonwealth Games Act 2008.

Comment

16. In the third session the Subordinate Legislation Committee considered the similar procedural provisions in relation to the delegated powers, in the Glasgow Commonwealth Games Bill.\(^1\) The Committee’s concern in relation to those provisions was essentially that, while the Government had indicated any subsequent making of regulations under negative procedure would only be needed in an urgent situation to react to any events close to and during the limited period of the Games, the power to make further regulations under negative procedure (rather than affirmative procedure) was not actually restricted in the Bill in this way.

17. However the Committee has also noted the following aspects—

(a) The Scottish Government has already published, for consultation, detailed draft affirmative procedure advertising and street trading Regulations, and the consultation period is closed. (The consultation indicates that the

\(^1\) Subordinate Legislation Committee – Report on Glasgow Commonwealth Games Bill at stage 1
Subordinate Legislation Committee – Report on the Glasgow Commonwealth Games Bill at stage 2
Regulations are restricted in extent so far as they will apply controls only in an “event zone” of streets around Hampden Park, and for the “relevant event period” of 24 to 28 July, and 31 July to 3 August 2012;

(b) The Government has stated in paragraph 7 of the LCM that subsequent negative procedure regulations would be used in circumstances if for instance a Games venue or the scheduled time for an event required to be changed at short notice;

(c) The timing of the Olympic Games in the summer recess is such that it would not be possible to use the affirmative procedure to make such changes to come into force for the Games, unless the Parliament was recalled to approve the regulations in recess.

18. The Committee reports to the lead committee that it accepts the amendment made by clause 2(6), in principle. That subclause provides that the first regulations applying to Scotland under sections 19, 25 and 37 of the London Olympic Games and Paralympic Games Act 2006 shall be subject to the affirmative procedure, and subsequent regulations shall be subject to the negative procedure.

19. The Committee will however expect all substantive provisions for the advertising and street trading regulations applying to Scotland to be contained in the first regulations under the affirmative procedure, in order that they can be subject to appropriate scrutiny. It accepts that (as paragraph 7 of the LCM indicates) subsequent regulations under the negative procedure may be used if a Games venue or the scheduled time for an event needs to be changed at short notice after the first regulations have been made.
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