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Stuart McMillan
Convener
Delegated Powers and Law Reform Committee

By Email: DPLR.Committee@parliament.scot

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Dear Convener

It has come to my attention that there is an omission and some inaccuracies in cross-references in the [Delegated Powers Memorandum submitted alongside the Children \(Care, Care Experience and Services Planning\) \(Scotland\) Bill](#). With apologies for those, this letter sets out the missing information and corrects the inaccuracies.

A copy of this letter is also being sent to Douglas Ross, convener of the lead committee for the Bill.

The information omitted from the Delegated Powers Memorandum relates to the commencement power (section 25 of the Bill). Following the usual format for a Delegated Powers Memorandum, the explanation in relation to that power is as follows:

Power conferred on:	Scottish Ministers
Power exercisable by:	Regulations made by Scottish statutory instrument
Parliamentary procedure:	Laying before the Parliament only

Provision

Section 25(2) and (3) confers a power on the Scottish Ministers to make regulations appointing the days on which the provisions of the Bill come into force (apart from the formal provisions of sections 23, 24, 25 and 26 which, as is usual, come into force on the day after Royal Assent). The regulations may include transitional, transitory or saving provision and may make different provisions for different purposes (for example by appointing different days for the coming into force of different provisions).

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Reason for taking the power

There is a need for those affected by the changes to the law that the Bill's provisions will bring about to have advance notice of the precise date on which the law will change. Depending on the nature of the provision, there may be a need for new systems to be put in place, training to be provided and so forth. For these reasons, it is the norm that the date for an Act's substantive provisions coming into force is appointed by regulations.

It is also common for regulations setting the date that a provision of an Act is to come into force to be combined with transitional, transitory or saving provision. These are provisions that smooth away any operational rough edges that may otherwise arise between what the law was the day before a section of the Act comes into force and what the law becomes on that day. To give a generic example, it may be that a case has been raised under an administrative process that an Act is replacing with a new process. In order to accommodate the fact that there will already be cases in train under the old process at the time the new process comes into force, there may be a need to say that cases which had already begun can continue under the old process (this would be a saving provision) or that cases validly raised under the old process are to be treated as though they were validly raised under the new process (this would be a transitional provision).

Choice of procedure

As is usual for commencement regulations, the default laying requirement in [section 30 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#) will apply. This is considered appropriate on the basis that commencement regulations do not reflect any significant policy decisions. The Parliament will have approved the substance of the Bill's provisions, and the only matters the regulations have to address is when those approved provisions come into legal effect. Transitional, transitory and saving provisions, should they be required, are simply technical adjustments to the law's operation to prevent unintended consequences arising from a sudden change from the existing legal rule to the new rule that the Parliament has chosen to enact.

The corrections to references in the Delegated Powers Memorandum are given below. In the list below, corrections are specified by reference to numbered paragraphs but will apply to the headings that precede those paragraphs too. Paragraph numbering is by reference to the print version of the Memorandum published on the Parliament's website:

- In paragraph 20 of the Memorandum, the reference to section 7 of the Bill should be to section 8 of the Bill.
- In paragraph 21 of the Memorandum, the reference to section 78(1)(a) of the 2010 Act should be to section 78E(1)(a).
- In paragraph 22 of the Memorandum, the reference to section 78(1)(b) of the 2010 Act should be to section 78E(1)(b).
- In paragraphs 27 and 28 of the Memorandum, references to section 8 of the Bill should be section 9 of the Bill.

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- In paragraph 33 of the Memorandum, the reference to section 9 of the Bill should be to section 10 of the Bill.
- In paragraph 40 of the Memorandum, the reference to section 10(13) of the Bill should be to section 11(15) of the Bill.
- In paragraph 42 of the Memorandum, the reference to section 2(aa) should be to paragraph (aa) of section 177(2) (of the Children's Hearings (Scotland) Act 2011), and the reference to section 2(a) should be to paragraph (a) of that subsection.
- The heading above paragraph 43 (and that paragraph's references to "this section") should be references to section 23 of the Bill not section 24.

Yours sincerely,



Natalie Don-Innes MSP
Minister for Children, Young People and The Promise

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