

The Scottish Parliament
Pàrlamaid na h-Alba

Subordinate Legislation Committee

39th Report, 2010 (Session 3)

**Criminal Justice and Licensing
(Scotland) Bill as amended at
Stage 2**

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Subordinate Legislation Committee

Remit and membership

Remit:

1. The remit of the Subordinate Legislation Committee is to consider and report on-

(a) any-

(i) subordinate legislation laid before the Parliament;

(ii) Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter;

(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; and

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Bob Doris
Helen Eadie
Rhoda Grant
Alex Johnstone
Ian McKee (Deputy Convener)
Elaine Smith
Jamie Stone (Convener)

Committee Clerking Team:

Clerk to the Committee

Irene Fleming

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Support Manager

Stephen Fricker



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Subordinate Legislation Committee

39th Report, 2010 (Session 3)

Criminal Justice and Licensing (Scotland) Bill as amended at Stage 2

The Committee reports to the Parliament as follows—

1. At its meeting on 22 June 2010, the Subordinate Legislation Committee considered the delegated powers provisions in the Criminal Justice and Licensing (Scotland) Bill as amended at Stage 2. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.
2. The Scottish Government provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill (“the supplementary DPM”)¹.

Delegated Powers Provisions

3. The Committee considered the supplementary DPM and other delegated powers in the Bill and is content with the powers contained in sections: 14 (new sections 227B(2A), 227FA(1), 227I(6), 227K(3), 227O(1), 227Z(2A), 227ZD(6) of the Criminal Procedure (Scotland) Act 1995) (“the 1995 Act”), section 18(2)(a)(iii), paragraphs 10(3) and (4) of schedule 2, 24A(1), 52A(2), 67A(1), 74A(2) (new section 85(5) of the Sexual Offences Act 2003) (“the 2003 Act”), 74A (6) (amending section 138 of the 2003 Act), 79A(3) (new section 9B(6) of the Rehabilitation of Offenders Act 1974) (“the 1974 Act”), 79A(4), (paragraphs 6(a),(b) and 8(1) of the new schedule 3 to the 1974 Act), 121(3) 124A, 131A, 132B, 138A(6) and section 146(1).

Background

Section 115 – Power to establish rules of court in relation to Part 6

4. Part 6 of the Bill creates a statutory regime for disclosure in criminal proceedings. Section 115 enables the High Court to make such rules as it considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to Part 6 of the Bill by Act of Adjournal. Given the terms of section 305(1)(a) and (b) of the Criminal Procedure (Scotland) Act 1995 (‘the 1995 Act’),

¹ [Supplementary Delegated Powers Memorandum](#)

the Committee was surprised that the Scottish Government considered it necessary and appropriate to create a new power. In its Stage 1 report, the Committee expressed concern that the power could permit matters addressed by Act of Adjournal (which would be subject to no procedure) to stray beyond the realms of criminal procedure into areas of substantive law.

5. In its response to the Committee's Stage 1 report, the Scottish Government stated that it was considered that section 305 of the 1995 Act was not sufficient for the Scottish Government's purposes. No explanation was given for this view being taken. There has been no amendment to the terms of section 115 at Stage 2.

6. The Committee accepts that any rules made in exercise of the power in section 115 may relate only to Part 6 of the Bill and may relate only to matters over which the High Court has jurisdiction. However, the original basis for its concern remains, namely that it is unclear why the rules are not restricted to matters of criminal procedure given that they are subject to no parliamentary procedure.

Section 121(3) – Power to set mandatory conditions to licences granted under the Civic Government (Scotland) Act 1982

7. This provision enables the Scottish Ministers to set mandatory conditions which are applicable to licences granted under the Civic Government (Scotland) Act 1982. Local authorities are the licensing authorities under the 1982 Act in relation to a number of activities listed in that Act. These include taxis, second hand dealers, knife dealers, metal dealers, street traders, markets, public entertainment, window cleaners and sex shops.

8. In its Stage 1 report the Committee noted that it was the Government's stated intention that the power to prescribe mandatory conditions in respect of licences under the Civic Government (Scotland) Act 1982 should be subject to affirmative procedure in line with the approach taken to alcohol licensing under the Licensing (Scotland) Act 2005, but that new section 3A(3) in fact provided for such orders to be subject to annulment. The Government has corrected this error at Stage 2.

9. The Committee welcomes the amendment brought forward by the Government which makes the exercise of the power under section 3A of the Civic Government (Scotland) Act 1982 subject to affirmative procedure.

Section 129(4) – new section 27A Licensing (Scotland) Act 2005 - Power to prescribe those areas in respect of which licensing boards may vary all or a particular group of premises licences' conditions of operation

10. Section 129(4) introduced a new section 27A(1) into the Licensing (Scotland) Act 2005 which confers on the Scottish Ministers the power to prescribe by regulations the matters in respect of which licensing boards may vary all or a particular group of premises licences' conditions of operation.

11. This power has been removed from this Bill and is being taken forward by the Alcohol etc. (Scotland) Bill.

12. The Committee notes that this power was removed at Stage 2.

Section 140(1) – Power to make provision for the imposition on relevant licence-holders of a social responsibility levy

13. Section 140 provides a power for the Scottish Ministers to make regulations imposing and setting out the detail of a social responsibility levy. This power has been removed from this Bill and is being taken forward by the Alcohol etc. (Scotland) Bill.

14. The Committee notes that this power was removed at Stage 2.

Section 146(1) – Power to make supplemental, incidental or consequential provision appropriate for the purposes of, or in connection with the Bill

15. Section 146(1) confers on the Scottish Ministers a power to make by order such supplemental, incidental, or consequential provision as they consider appropriate for the purposes of, or in connection with, giving full effect to any provision of the Bill. Section 146(2) provides that the power extends to the modification of any enactment.

16. On introduction section 143(4) provided that an order under section 146 which makes textual amendments to an Act is subject to affirmative procedure. Otherwise the power is subject to negative procedure.

17. Following correspondence with the Committee at Stage 1 the Government undertook to amend the Bill to provide that any provision made under section 146 which modifies any enactment whether directly by textual amendment or otherwise should be subject to affirmative procedure. The Committee notes that section 143 of the Bill has been amended at Stage 2 to reflect this.

18. The Committee welcomes the amendment brought forward by the Scottish Government to provide that any exercise of the power under section 146 which modifies enactments is subject to affirmative procedure.

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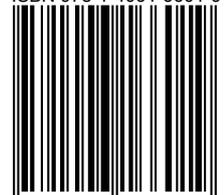
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