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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Child Poverty (Scotland) Bill at Stage 2 - Revised



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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 the following (and any additional matter added under Rule 6.1.5A)—

- (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;
- (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.
- (i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Introduction

1. At its meeting on 24 October 2017, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Child Poverty (Scotland) Bill as amended at stage 2 (“the Bill”).ⁱ The Committee submits this report to the Parliament under Rule 9.7.9 of the Standing Orders.
2. This Scottish Government Bill was introduced by the Cabinet Secretary for Communities, Social Security and Equalities, Angela Constance MSP, on 9 February 2017. Stage 2 was completed on 29 June 2017.
3. As introduced, the Bill sets four statutory income targets contributing to the eradication of child poverty. The targets, which the Scottish Ministers are under a duty to meet in the financial year beginning 1 April 2030, are that, of children living in households in Scotland:
 - a. less than 10% are in relative poverty;
 - b. less than 5% are in absolute poverty;
 - c. less than 5% are in combined low income and material deprivation; and
 - d. less than 5% are in persistent poverty.
4. The Bill as introduced creates a duty on the Scottish Ministers to publish child poverty “delivery plans” aligned to Parliamentary sessions, and to report on those plans annually. It also places a duty on local authorities and health boards to report annually on activity to reduce child poverty.
5. The Committee previously reported on the delegated powers provisions in the Bill at stage 1 in its 18th report of Session 5, 2017.ⁱⁱ

ⁱ The Child Poverty (Scotland) Bill as amended at stage 2 (SP Bill 6A) is available at: [http://www.parliament.scot/Child%20Poverty%20\(Scotland\)%20Bill/SPBill06AS052017.pdf](http://www.parliament.scot/Child%20Poverty%20(Scotland)%20Bill/SPBill06AS052017.pdf)

ⁱⁱ The Committee's stage 1 report is available here: <https://sp-bpr-en-prod-cdnep.azureedge.net/published/DPLR/2017/4/18/Child-Poverty--Scotland--Bill-at-Stage-1/18th%20Report.pdf>

Stage 2 Amendments

6. A substantial number of amendments were made to the Bill at stage 2. In relation to the delegated powers in the Bill, one existing delegated power has been amended and two new delegated powers have been added.
7. More generally, new section 1A introduces a number of interim targets that are to be met by the financial year beginning with 1 April 2023. New section 6A establishes an independent Poverty and Inequality Commission. A new schedule is inserted into the Bill setting out details on such matters as the Commission's membership, independence, and rights of access to information.
8. Section 7 as amended now requires further detailed information to be provided by the Scottish Ministers in a delivery plan. This includes details of what measures (if any) ought to be taken in relation to matters such as social security (including, specifically, topping up certain reserved benefits), education, housing, affordable childcare, employment and skills, and health. In preparing a delivery plan, the Scottish Ministers must consult the Commission, have regard to recommendations made by it and set out any changes made to the plan as a result of those recommendations.
9. Section 8 as amended now requires a progress report to be prepared before the end of the period of three months beginning with the last day of each reporting year, rather than as soon as reasonably practicable after the end of each reporting year. Among other things, it must now include details of how the Scottish Ministers propose to rectify a situation where a delivery plan does not appear to be ensuring sufficient progress towards meeting the child poverty targets. It must also include any comments or recommendations made by the Commission.
10. The detail to be provided in a local child poverty action report produced annually by a local authority and health boards is also enhanced. The report must now include details of income maximisation measures taken in the area of the local authority during the reporting year to assist pregnant women and families with children and any future measures proposed to be taken to contribute towards meeting the child poverty targets.
11. The Scottish Government provided the Parliament with a Supplementary Delegated Powers Memorandum ("DPM") following stage 2.ⁱⁱⁱ

ⁱⁱⁱ The Supplementary Delegated Powers Memorandum is available here:
[http://www.parliament.scot/Child%20Poverty%20\(Scotland\)%20Bill/
Child_Poverty_\(Scotland\)_Bill_-_sup_DPMFinal.pdf](http://www.parliament.scot/Child%20Poverty%20(Scotland)%20Bill/Child_Poverty_(Scotland)_Bill_-_sup_DPMFinal.pdf)

Delegated Powers Provisions

12. The Committee considered the delegated powers provisions in the Bill as amended at stage 2 and reports to the Parliament as follows.

Amendment to existing delegated power at Stage 2.

Section 3(2) – Date of base financial year for absolute poverty target

- **Power conferred on: the Scottish Ministers**
 - **Power exercisable by: regulations made by Scottish statutory instrument**
 - **Parliamentary procedure: affirmative**
13. Section 3(2) allows the Scottish Ministers to make regulations specifying a change to the date of the base year mentioned for the time being in subsection (1) (currently the financial year beginning 1 April 2010) for the absolute poverty target.
14. In its Stage 1 report, the Committee recommended that section 3(3) of the Bill be amended at stage 2 to provide that regulations under section 3(2) are subject to the affirmative procedure, rather than the negative procedure as the Bill provided for at introduction.
15. Following that recommendation, section 3(3) was amended at Stage 2 to provide that regulations under section 3(2) will be subject to the affirmative procedure. In its supplementary DPM, the Scottish Government recognises that any change to the base year for the calculation of the absolute poverty target is more appropriately subject to the enhanced Parliamentary scrutiny afforded by the affirmative procedure.

16. **The Committee welcomes the amendment to section 3 of the Bill so that the affirmative procedure rather than the negative procedure applies to regulations specifying a change to the base year for the absolute poverty target.**

New delegated powers introduced at Stage 2

17. The Bill was amended at Stage 2 to establish a Poverty and Inequality Commission, and to introduce a schedule containing further provisions about the Commission. Two new delegated powers form part of the schedule. In relation to one of those delegated powers, the Committee reports to the Parliament as follows.

Schedule, paragraph 3 – Access to information

- **Power conferred on: the Scottish Ministers**
- **Power exercisable by: regulations made by Scottish statutory instrument**
- **Parliamentary procedure: negative**

18. Paragraph 3 of the schedule confers on the Commission a right of access at reasonable times to any information in the possession or under the control of any member of the Scottish Government or a local authority that the Commission may reasonably require for the purpose of performing its functions.
19. The Commission may also require any person who holds or is accountable for relevant information to provide at reasonable times any assistance or explanation that the Commission may reasonably require for the purpose of performing its functions or exercising its right of information.
20. The delegated power is contained in sub-paragraph (2)(c). The effect is to allow the Scottish Ministers by regulations to specify such other person (or person of a certain description) to which the Commission has rights of access to information and assistance or explanation.
21. Sub-paragraph (4) provides that regulations made under sub-paragraph (2)(c) are subject to the negative procedure.
22. The supplementary DPM states that the power will allow Ministers to give the Commission access to information held by other persons that may be relevant to the Commission's role. The justification given in the supplementary DPM refers to the provision made in paragraph 3(3) that the right of access to information is subject to any other legislation or rule of law that prohibits or restricts the disclosure of any information or the giving of any assistance or explanation (e.g., data protection legislation).
23. In terms of the choice of the negative procedure, the supplementary DPM states that this procedure is appropriate given the relatively limited nature of the power and the restriction referred to above in paragraph 3(3).
24. The approach taken in section 10 of the Scottish Fiscal Commission Act 2016 (the "2016 Act") is instructive.^{iv} It provides for the Scottish Fiscal Commission to have a right of access to relevant information held by specified public bodies that may be required by the Commission in order for it to perform its functions. Like paragraph 3(2)(c) of the schedule to the Bill, section 10(2)(f) of the 2016 Act allows the Scottish Ministers to add to the list of specified bodies by regulations. However, unlike the Bill, section 10(4) of the 2016 Act provides that these regulations are subject to the affirmative procedure.
25. Paragraph 17 of the Scottish Government's Delegated Powers Memorandum for the 2016 Act states that the affirmative procedure is considered to be appropriate because the regulations would impose new specific duties on public bodies or officeholders in the Scottish Administration.^v
26. The Committee considers that the regulation-making power in section 10 of the 2016 Act is comparable to the power in paragraph 3 of the schedule to the Bill. In this regard, it is notable that, like paragraph 3(3) of the Bill, section 10(3) of the

iv The 2016 Act is referred to by the Scottish Government in its supplementary DPM to justify the choice of procedure in relation to the other new delegated power, in paragraph 1 of the schedule to the Bill.

v The DPM for the 2016 Act is available at: http://www.parliament.scot/S4_Bills/Scottish%20Fiscal%20Commission%20Bill/SPBill78DPMS042015.pdf

2016 Act contains the same restriction that prevents the Scottish Fiscal Commission accessing information where other prohibitions or restrictions prohibit its disclosure.

- 27. Accordingly, the Committee recommends that paragraph 3(4) of the schedule to the Bill is amended at stage 3 to provide that the power in paragraph 3(2)(c) of the schedule is subject to the affirmative procedure rather than the negative procedure. This would align with the similar power contained in section 10(2)(f) of the Scottish Fiscal Commission Act 2016.**

