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

Health and Care (Staffing) (Scotland) Bill: as amended at Stage 2



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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 26 March 2019, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Health and Care (Staffing) (Scotland) Bill as amended at Stage 2 (“the Bill”).ⁱ
2. The Committee submits this report to the Parliament under Rule 9.7.9 of the Standing Orders.
3. This Government Bill was introduced on 23 May 2018. The lead Committee is the Health and Sport Committee.
4. The Delegated Powers and Law Reform Committee published its Stage 1 Report on the Bill on 25 September 2018.ⁱⁱ
5. The Bill completed Stage 2 on 5 February 2019 with a number of amendments made to the Bill. In relation to delegated powers, one existing power was amended and nine new powers added. The Government lodged a Supplementary Delegated Powers Memorandum (“SDPM”) after Stage 2.ⁱⁱⁱ The Committee reports on the delegated powers provisions in the Bill as amended as follows.

ⁱ The Bill as amended is available [here](#).

ⁱⁱ The Committee's report, 40th Report, 2018 (Session 5) is available [here](#).

ⁱⁱⁱ The Supplementary Delegated Powers Memorandum is available [here](#).

Bill overview

6. The aim of the Bill is to provide a statutory basis for the provision of appropriate staffing in health and care service settings.
7. At stage 1, the Committee queried why guidance to be prepared under new section 82A(3) of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”) inserted by section 10 of the Bill did not require to be published. The Scottish Government confirmed it intended to publish that guidance and committed to making an amendment at stage 2 to ensure that guidance did require to be published.
8. The Scottish Government honoured its commitment to bring forward an amendment to require that guidance made under the power discussed at paragraph 6 is published (see new section 82A(3A) to be inserted into the 2010 Act by section 10 of the Bill).

Delegated powers provisions

9. The Committee considered each of the delegated powers in the Bill as amended. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in the following provisions:
- Section 3 – Guiding principles in care service staffing and planning (section 3(3) - new guidance power in relation to commissioners of care services)
 - Section 4 – NHS duties in relation to staffing (insertion of section 12IAC(1)(d) – duty to ensure appropriate staffing: number of registered healthcare professionals etc.)
 - Section 4 – NHS duties in relation to staffing (insertion of section 12IAD(2) – duty to ensure appropriate staffing: senior registered nurses)
 - Section 4 – NHS duties in relation to staffing (insertion of section 12IB(1) – duty to follow the common staffing method)
 - Section 5A – Role of Healthcare Improvement Scotland in relation to staffing (insertion of section 12IJ(4) – HIS: monitoring and development of staffing tools)
 - Section 5A – Role of Healthcare Improvement Scotland in relation to staffing (insertion of section 12IK(5) – HIS: monitoring and development of staffing tools)
 - Section 5A – Role of Healthcare Improvement Scotland in relation to staffing (insertion of section 12IK(6) – HIS: monitoring and development of staffing tools)
 - Section 5A – Role of Healthcare Improvement Scotland in relation to staffing (insertion of 12IO(1) – HIS: ministerial guidance on staffing functions)
 - Section 10 – Functions of SCSWIS in relation to staffing methods (insertion of sections 82B – regulations: requirement to use staffing methods)
 - Section 10 – Functions of SCSWIS in relation to staffing methods (insertion of section 82BA(4) – review and redevelopment of staffing methods)

Recommendation

10. **The Committee therefore reports that it is content with the delegated powers provisions contained in the Bill.**

