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

Human Tissue (Authorisation) (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 4 June 2019, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Human Tissue (Authorisation) (Scotland) Bill as amended at Stage 2. The Committee submits this report to the Parliament under Rule 9.7.9 of the Standing Orders.
2. The Bill was introduced by the then Cabinet Secretary for Health and Sport, Shona Robison MSP, on 8 June 2018. The Bill completed Stage 2 on 7 May 2019. The lead Committee was the Health and Sport Committee.
3. The Delegated Powers and Law Reform Committee published its Stage 1 Report on the Bill on 6 November 2018.ⁱ The Committee reported that it was content with the powers proposed in the Bill.

Overview of the Bill

4. The Bill proposes to introduce a “soft opt out” system of organ and tissue donation for the purposes of transplantation. It amends the Human Tissue (Scotland) Act 2006 (“the 2006 Act”), to add to existing provisions in that Act providing for authorisation of removal and use of parts of the body of a deceased person for transplantation, and other specified purposes (research, education or training and audit or quality assurance). The Bill introduces a “deemed authorisation” system for deceased organ and tissue donation.
5. The Bill is structured in four Parts:
 - Part 1 provides an overview of the Bill structure.
 - Part 2 adds to the existing duties of Scottish Ministers under the 2006 Act to promote information and awareness about authorisation of transplantation and pre-death procedures, and to establish and maintain a register of information relating to decisions to authorise, or not authorise, donation.
 - Part 3 includes provisions which amend the 2006 Act in relation to authorisation of removal and use of a part of the body of a deceased person, including providing for “deemed authorisation” of organ and tissue donation for adults, for the purposes of transplantation of common types of organ and tissue; specific provisions regarding authorisation by or on behalf of a child; a framework for authorisation for pre-death procedures to allow successful transplantation; and setting out duties to inquire into the views of a potential donor.
 - Part 4 sets out various general and final provisions, including an interpretation section and some consequential amendments.

New or revised powers at Stage 2

6. The Scottish Government issued a Supplementary Delegated Powers Memorandum.ⁱⁱ
7. There are 3 revised delegated powers provisions and 2 new powers in the Bill as amended at Stage 2. These powers are contained in-
 - Section 3(2) (inserting new section 2D(2) of the 2006 Act)– Establishment and maintenance of Register (revised power)
 - Section 21 (amending section 11(1) and (2) of the 2006 Act)- Removal and use of part of a body of deceased person: further requirements (revised power)
 - Section 22(1) (inserting section 16B(1A) of the 2006 Act)– Pre-death procedures relating to transplantation (revised power)
 - Section 26(1A) (inserting section 16J(6) of the 2006 Act)– Interpretation– meaning of “health worker” (new power)
 - Section 26(1A) (inserting section 16J(8) of the 2006 Act)– Interpretation– meaning of “health worker” (new power)

Recommendation

8. **The Committee reports that it is content with the revised and new delegated powers provisions contained in the Bill as amended at Stage 2.**

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

