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

Motion S5M-07795: The Lobbying (Scotland) Act 2016 (Reporting Procedures) Resolution 2017



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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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Deputy Convener
Stuart McMillan
Scottish National Party



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Graham Simpson
Scottish Conservative
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David Torrance
Scottish National Party

Introduction

1. The purpose of motion S5M-07795 is to agree the terms of the Lobbying (Scotland) Act 2016 (Reporting Procedures) Resolution 2017. The motion is set out in Annex A.
2. The resolution has been referred to this Committee in accordance with rule 3C.2.7 of Standing Orders.
3. It is for this Committee to determine whether the attention of the Parliament should be drawn to any issue which would constitute a reporting ground in terms of Rule 10.3, as if the provision set out within the motion were set out in an instrument.
4. The Lobbying (Scotland) Act 2016 creates a registration system for regulated lobbying (which is defined in the Act). Monitoring the compliance of the duties under the Act falls to the Clerk of the Parliament. Complaints about apparent failures to comply with certain duties under the Act can be made to the Commissioner for Ethical Standards in Public Life in Scotland.
5. Section 41 of the Act requires the Parliament to make a resolution about the procedures to be followed where the Commissioner submits a report to the Parliament under Part 3 of the 2016 Act (within which the Commissioner's functions are set out).

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6. Paragraph 2 of the resolution provides that a report by the Commissioner must be in writing. Paragraph 3 provides that the report shall be referred to the committee mentioned in Rule 6.4 of the Parliament's Standing Orders for consideration. Currently, that is the Standards, Procedures and Public Appointments Committee. That Committee will report to the Parliament with recommendations, where appropriate to do so.
 7. Paragraph 4 of the resolution deals with censure. Where the Committee recommends censure in a report to the Parliament, such a censure can only be imposed by the Parliament in pursuance of a motion to that effect being lodged by a member of the Committee. The member must also give the Parliament notice of the motion.
 8. The Scottish Government has been consulted on the terms of the resolution. That is a statutory requirement by virtue of section 48(1) of the 2016 Act.
9. The Committee agreed not to draw the motion to the attention of the Parliament.

Annex A

Motion S5M-07795: Clare Adamson, Motherwell and Wishaw, Scottish National Party, On Behalf of Standards, Procedures and Public Appointments Committee, Date Lodged: 20/09/2017

Lobbying (Scotland) Act 2016 (Reporting Procedures) Resolution 2017

That the Parliament, in exercise of the power conferred by section 41 of the Lobbying (Scotland) Act 2016 (“the 2016 Act”) makes The Lobbying (Scotland) Act 2016 (Reporting Procedures) Resolution 2017 and—

(a) resolves that with effect from the day after this resolution is made the provisions which are contained in paragraphs 1 to 4 of this resolution shall come into force; and

(b) notes that in accordance with section 48(1) of the 2016 Act the Parliament has consulted the Scottish Ministers.

ANNEXE

SCOTTISH PARLIAMENT

LOBBYING (SCOTLAND) ACT 2016 (REPORTING PROCEDURES) RESOLUTION 2017

Made 2017

Coming into force in accordance with paragraph (a)

That the Parliament –

(a) in exercise of the power conferred by section 41 of the Lobbying (Scotland) Act 2016 (“the 2016 Act”) resolves that with effect from the day after this resolution is made the provisions which are contained in paragraphs 1 to 4 of this resolution shall come into force; and

(b) notes that in accordance with section 48(1) of the 2016 Act the Parliament has consulted the Scottish Ministers.

1. Citation

This resolution may be cited as the Lobbying (Scotland) Act 2016 (Reporting Procedures) Resolution 2017.

2. Reports by the Commissioner for Ethical Standards in Public Life in Scotland

A report to the Parliament by the Commissioner for Ethical Standards in Public Life in Scotland under Part 3 of the 2016 Act must be made in writing.

3. Parliament’s consideration of report

(1) A report made in accordance with paragraph 2 shall be referred to the committee mentioned in Rule 6.4 of the Parliament's Standing Orders ("the Committee") for consideration.

(2) Following consideration, the Committee shall, where appropriate, report to the Parliament, with its recommendations.

4. Exercise of power of censure

Where the Committee recommends censure of any person who is the subject of a report, such censure may only be imposed by the Parliament:

(a) in pursuance of a motion to that effect by a member of the Committee, and

(b) after notice of that motion has been given to the Parliament by a member of the Committee.

EXPLANATORY NOTE

(This note is not part of the Resolution)

The Lobbying (Scotland) Act 2016 ("the Act") establishes a registration regime for "regulated lobbying", as defined in the Act. In doing so it makes provision for a lobbying register which is to be operated by the Clerk of the Scottish Parliament ("the Clerk"). The Clerk along with the Commissioner for Ethical Standards in Public Life in Scotland ("the Commissioner") have responsibilities for oversight and enforcement of the Act. The Act sets out various reporting obligations on the Commissioner, and section 41 requires the Parliament, by resolution, to make provision about procedures to be followed when the Commissioner submits a report to the Parliament under Part 3 (Oversight and Enforcement) of the Act. This Resolution makes provision in that regard.

Paragraph 2 provides that whenever the Commissioner reports to the Parliament under Part 3 of the Act then that report is to be made in writing.

"Writing", for the purpose of the resolution, attracts the wording contained within the Interpretation and Legislative Reform (Scotland) Act 2010. It is stated there that "writing" includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form; and that expressions referring to writing are to be construed accordingly. In consequence, a report by the Commissioner can, for example, be in electronic form.

Paragraph 3 makes provision for the Parliament's consideration of a report made by the Commissioner under Part 3 of the Act. In the first instance, it is to be referred to the committee mentioned in Rule 6.4 of the Parliament's Standing Orders (currently, the Standards, Procedures and Public Appointments Committee). That committee will then consider the relevant report. This might involve, for example, simply noting the content. In other circumstances, the nature and content of the report is likely to require the committee to report to the Parliament, with its recommendations.

Paragraph 4 makes provision for those circumstances in which the committee, having considered a report from the Commissioner, recommends censure of the person who is the subject of that report. Censure may only be imposed by the Parliament itself, and not by the Standards, Procedures and Public Appointments Committee, or by any other

committee of the Parliament. The process for censure requires a motion to that effect by a member of the Standards, Procedures and Public Appointments Committee.

Rule 8.4.1 of the Parliament's Standing Orders provides that a motion can be amended (except as otherwise provided in the Standing Orders).

