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

Seat Belts on School Transport (Scotland) Bill Stage 2 - Revised Delegated Powers Memorandum



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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 3 October 2017, the Delegated Powers and Law Reform Committee considered the delegated powers provision in the Seat Belts on School Transport (Scotland) Bill as amended at stage 2 ("the Bill").ⁱ The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.
2. This Members Bill was introduced by Gillian Martin MSP on 28 February 2017. It has the support of the Scottish Government. The stated objective of the Bill is to improve road safety for school children. It creates an obligation on a "school authority" to ensure that a seat belt is fitted to each passenger seat of all motor vehicles which the authority provides or arranges to be provided for a "dedicated school transport service".
3. The Committee previously reported on the delegated powers provisions in this Bill at stage 1 in its 15th report of Session 5, 2017.ⁱⁱ
4. The member in charge provided the Parliament with a revised Delegated Powers Memorandum ("DPM") following stage 2.ⁱⁱⁱ

i The Seat Belts on School Transport (Scotland) Bill, as amended at stage 2 (SP Bill 7A) is available at: <http://www.parliament.scot/Seat%20Belts%20on%20School%20Transport/SPBill07AS052017.pdf>

ii The Committee's stage 1 report is available here: <https://sp-bpr-en-prod-cdnep.azureedge.net/published/DPLR/2017/3/17/Seat-Belts-on-School-Transport--Scotland--Bill-at-Stage-1/15th%20Report.pdf>

iii The Revised Delegated Powers Memorandum is available here: [http://www.parliament.scot/Seat%20Belts%20on%20School%20Transport/Seat_Belts_on_School_Transport_\(Scotland\)_Bill_-_Revised_Delegated_Powers_Memorandum.pdf](http://www.parliament.scot/Seat%20Belts%20on%20School%20Transport/Seat_Belts_on_School_Transport_(Scotland)_Bill_-_Revised_Delegated_Powers_Memorandum.pdf)

Delegated Powers Provisions

5. The Committee considered the amended delegated powers provision as follows.
6. **Section 5 – Commencement regulations**
Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Laid, no procedure
7. Section 5(1) provides that sections 2, 3, 5 and 6 come into force on the day after Royal Assent. Subsection (2) provides that the other provisions come into force on such day as the Scottish Ministers may by regulations appoint. Such regulations may include transitional, transitory or saving provision and may make different provision for different purposes (subsection (3)).
8. The power to make commencement regulations relates to the substantive duties in sections 1 and 4 of the Bill. The DPM explains that this allows for school authorities and transport providers to have time to adjust to the duty in section 1 to have seat belts fitted on dedicated school transport.
9. The Bill was amended at stage 2 to insert a new subsection (2A) into section 5 that provides that regulations under subsection (2) making provision in relation to section 1 may not appoint a day later than 31 December 2018. The effect of this new subsection is to specify that date as the ultimate deadline by which the Scottish Ministers must bring into force the duty imposed by section 1 of the Bill on a school authority to ensure that seat belts are fitted to each motor vehicle which that authority provides or arranges to be provided for a dedicated school transport service.
10. The DPM states that power to make transitional, transitory or saving provision is dependent on commencement. It explains that it may be necessary to make saving provision in relation to contracts between school authorities and transport providers that are entered into before the main duty in section 1 comes into force. The power in subsection (3) can also be used to deal with any unforeseen circumstances.

Recommendations

11. The Committee considers that the power in section 5 as amended at stage 2 is acceptable. In particular, the Committee is content that the effect of subsection (2A) as drafted is to impose a deadline for the Scottish Ministers to commence the duty in section 1 by 31 December 2018.
12. The Committee is also content in principle that the commencement power in section 5 includes, by virtue of subsection (3), the power to make transitional, transitory or saving provision and to make different provision for different purposes. It is standard for commencement provisions to contain such powers. As the revised Explanatory Notes provide by way of example, this would allow the duty in section 1 to be brought into force for primary school children at a different point in time to secondary school children.^{iv} However, this would be subject to the overall 31 December 2018 deadline in subsection (2A).
13. The DPM also provides the example of saving provision to be made in relation to contracts between school authorities and transport providers that are entered into before the main duty comes into force or to deal with any unforeseen issues which arise during commencement. However, any saving provision would have to be read in the context of subsection (2A) and would therefore be limited to specific circumstances.
14. For those reasons, the Committee finds the power in section 5 as amended at stage 2 to be acceptable in principle.
15. In terms of the choice of procedure, the Committee is content that regulations made under section 5 will be laid before the Parliament but will not be subject to any further parliamentary procedure.
16. In light of the above, the Committee considers that it does not need to draw the attention of the Parliament to this amended provision.

17. The Committee finds the commencement power in section 5 of the Bill as amended at stage 2 to be acceptable in principle.

18. The Committee is also content that regulations made under this section will be laid before the Parliament but will not be subject to any further Parliamentary procedure.

^{iv} Paragraph 22 of the Revised Explanatory Notes, which are available at:
<http://www.parliament.scot/Seat%20Belts%20on%20School%20Transport/SPBill7AENS052017.pdf>

