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Delegated Powers and Law Reform Committee
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Lagh

Child Poverty (Scotland) Bill at Stage 1



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Contents

Introduction	1
Overview of the Bill	2
Delegated Powers Provisions	2
Recommendations	3
Annex	5

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 meetings on 7 March, 28 March and 18 April 2017, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Child Poverty (Scotland) Bill at Stage 1 ("the Bill")ⁱ. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.
2. The Scottish Government has produced a Delegated Powers Memorandum ("DPM")ⁱⁱ on the delegated powers provisions in the Bill.

ⁱ Child Poverty (Scotland) Bill [as introduced] is available here:[http://www.parliament.scot/Child%20Poverty%20\(Scotland\)%20Bill/SPBill06S052017.pdf](http://www.parliament.scot/Child%20Poverty%20(Scotland)%20Bill/SPBill06S052017.pdf)

ⁱⁱ [http://www.parliament.scot/Child%20Poverty%20\(Scotland\)%20Bill/CP_Delegated_Powers_Memorandum.pdf](http://www.parliament.scot/Child%20Poverty%20(Scotland)%20Bill/CP_Delegated_Powers_Memorandum.pdf)

Overview of the Bill

3. This Government Bill was introduced on 9 February 2017 by the Cabinet Secretary for Communities, Social Security and Equalities, Angela Constance MSP. The lead committee for the Bill is the Social Security Committee.
4. In July 2015, the UK Government announced its intention to repeal the four income-based targets for child poverty contained in the UK Child Poverty Act 2010 ("the 2010 Act") via what eventually became the Welfare Reform and Work Act 2016 ("the 2016 Act").
5. In response to the UK Government's intention, the Scottish Ministers secured an opt-out in the 2016 Act by repealing all parts of the 2010 Act that imposed any duty on the Scottish Ministers. The Scottish Parliament passed a legislative consent motion approving the provisions which formed the opt-out.
6. The purpose of the Bill is to set 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 with 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.
7. The Bill 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.

Delegated Powers Provisions

8. At its meeting on 7 March 2017, the Committee considered the one power in the Bill which confers delegated powers on the Scottish Ministers as follows:
 - **Section 3 – Absolute poverty base date amendment regulations**
9. The Committee agreed to write to the Scottish Government to raise questions on the power. This correspondence is reproduced at the Annex.
10. The Committee is not persuaded by the Scottish Government's response to one of the questions raised and makes a recommendation as set out in the next section of this report.

Recommendations

11. The Committee's comments and recommendations on the delegated powers in section 3 are detailed below:

Section 3 – Absolute poverty base date amendment regulations

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations**
- **Parliamentary procedure: Negative**

Provision

12. Section 3(2) provides that the Scottish Ministers may by regulations change the base date mentioned for the time being in subsection (1) (currently the financial year beginning 1 April 2010) for measuring the absolute poverty targetⁱⁱⁱ. Section 3(3) provides that this power is subject to the negative procedure.
13. The DPM explains that absolute poverty is a measure of whether the incomes of the lowest income households are keeping pace with inflation. It states that the rationale for taking the power in section 3 of the Bill is that the base year will need to be adjusted as time moves closer to the 2030 target date because of the way absolute poverty is measured.
14. The DPM goes on to explain that the reason for the current baseline being the financial year beginning 1 April 2010 is to allow a ten-year period for comparison between that base year and the 2020 target year which was originally set out in the UK Child Poverty Act 2010. It states that it is likely that in the future the base year will need to be changed to 2020 as the Scottish Government is moving towards a target in 2030. The DPM indicates that the Scottish Government's intention therefore is that the regulation-making power to change the baseline date will only be exercised once.

Comment

Baseline Year

15. The Committee sought an explanation from the Scottish Government as to why, instead of the regulation-making power, section 3 of the Bill could not have expressed the 1 April 2010 baseline year to apply until 31 March 2020 and then automatically to change to the financial year beginning 1 April 2020. That baseline

ⁱⁱⁱ Section 3(1) of the Bill provides that absolute poverty applies in a financial year if the child lives in a household whose equivalised net income for the year is less than 60% of the amount of median equivalised net household income for the financial year beginning with 1 April 2010, adjusted to take account of changes in the value of money since that financial year. Section 6 states that housing costs are included in the deductions made in calculating net household income. "Median equivalised net household income" is calculated on a UK-wide basis in relation to household income adjusted to take account of variations in household size and composition.

year would then apply for the 10-year period leading to the target financial year beginning 1 April 2030.

16. The Scottish Government's response states that it has worked with the UK Department for Work and Pensions ("DWP") to ensure consistency in the methodologies used to estimate poverty rates in Scotland and the UK. This will ensure that the statistics are comparable. However, it notes that there is a "minor risk" that DWP may choose a financial year other than that beginning 1 April 2020 for the revised baseline year. In those circumstances, the Scottish Ministers would need to decide whether to set the baseline year as 1 April 2020 or whether it is preferable to maintain consistency with DWP's methodology.
17. The Scottish Government also indicates that there is a "slight possibility" that specific factors in 2020/21 result in that financial year being a statistical anomaly which would make it an inappropriate choice for the next base year. Therefore, the response explains that the Scottish Ministers require the flexibility to specify a different base year for measuring absolute poverty that reflects the contemporary living standards in Scotland.
18. The Committee is content with the explanation provided by the Scottish Government on this matter.

Parliamentary procedure

19. The DPM explains that it is the Scottish Government's intention that the regulation-making power would only be exercised once to change the baseline date to 2020. However, it may be that when the 10-year comparison is made, the Scottish Ministers reach a different conclusion. In that event, while placing the specific dates on the face of the Bill might not be workable in policy terms, the Committee considers it more appropriate for the regulations to be subject to a higher level of scrutiny by applying the affirmative, rather than the negative, procedure. This would allow the Parliament to have enhanced oversight of the reasons for the setting of a baseline year other than the financial year beginning 1 April 2020.
20. Accordingly, the Committee sought an explanation from the Scottish Government on the proposed choice of parliamentary procedure.
21. The Scottish Government responded that it considered any change to the base year to be a "methodological change" which would be aimed at maintaining the relevance of the measure and does not merit the affirmative procedure. However, the Scottish Government notes the Committee's comments on the appropriateness of the procedure and will take full account of its comments together with any other recommendations made at Stage 1.

The Committee is not persuaded that any change to the base year would be merely a "methodological change". The Committee recommends that the power in section 3 is amended at Stage 2 so that it is subject to the affirmative procedure.

Annex

Correspondence with the Scottish Government

On 7 March 2017, the Committee wrote to the Scottish Government as follows:

The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 7 March and seeks an explanation of the following matters:

- **Section 3 – Absolute poverty base date amendment regulations**
- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations**

Section 3(2) provides that the Scottish Ministers may by regulations change the base date mentioned for the time being in subsection (1) (currently financial year beginning 1st April 2010) for measuring the absolute poverty target. Section 3(3) provides that this power is subject to the negative procedure.

The Committee asks Scottish Government to explain the following, in connection with Section 3(2) and 3(3):

a) Section 3(2) provides that the Scottish Ministers may by regulations change the base date mentioned for the time being in subsection (1) of that section (currently financial year beginning 1st April 2010) for the absolute poverty target.

Please explain why, instead of this regulation-making power, section 3 of the Bill itself could not have expressed the 1st April 2010 baseline date to apply until 31st March 2020 and thereafter to change automatically to 1st April 2020 for the 10-year period leading to the target date of 1st April 2030.

b) Section 3(3) provides that the power to make regulations in section 3(2) is subject to the negative procedure. The Delegated Powers Memorandum indicates that the current baseline date of 1st April 2010 is set to allow a ten year period for comparison between that base year and the 2020 target year which was originally set out in the UK Child Poverty Act 2010. It also explains that it is likely that the future baseline date will need to be changed to 2020 to reflect the move towards a target date in 2030. The Memorandum also indicates that it is the Scottish Government's intention that the regulation-making power would only be exercised once.

In light of the stated intention that the power to make regulations would be made as a consequence of a 10-year comparison between equivalised net household incomes, would it not be more appropriate that, if a power to make regulations is necessary, it is subject to the affirmative procedure rather than the negative procedure, to ensure that the Parliament can exercise an enhanced level of control over the setting of the baseline date for absolute poverty?

On 21 March 2017, the Scottish Government responded as follows:

Thank you for your letter of 7 March 2017 regarding the Delegated Powers and Law Reform Committee's consideration of the above Bill. Please find below responses to the matters raised in your letter.

Section 3(2) provides that the Scottish Ministers may by regulations change the base date mentioned for the time being in subsection (1) of that section (currently financial year beginning 1st April 2010) for the absolute poverty target.

Please explain why, instead of this regulation-making power, section 3 of the Bill itself could not have expressed the 1st April 2010 baseline date to apply until 31st March 2020 and thereafter to change automatically to 1st April 2020 for the 10-year period leading to the target date of 1st April 2030.

The rationale for updating the absolute poverty base line is to ensure that the absolute poverty measure is consistent with contemporary living standards. The base line needs to cover a relevant time frame with which to measure whether incomes are increasing or not. If the base year is too far back in time, the measure loses meaning as the reference period is no longer relevant.

The Scottish Government and the Department for Work and Pensions (DWP) have worked to ensure consistent methodologies in the estimation of poverty rates in Scotland and the UK. This means that we have directly comparable statistics between the component parts of the UK, and between Scotland and the UK as a whole. This comparability is an important element in understanding changes in poverty over time, and in understanding the causes of poverty.

Ideally, that consistency would be maintained, and both Scottish Government and the DWP would in future change the base year to 2020/21.

However, there is a minor risk that DWP would not choose to do so. Scottish Ministers would then need to decide whether it was appropriate to set a base year for Scotland at 2020/21, or whether it would be preferable to maintain consistency with DWP methodology to allow comparison as described above.

There is also a slight possibility that specific factors at the time mean that 2020/21 is not an appropriate choice for a base year (for example if it is not a typical year for some reason).

Scottish Ministers therefore require the flexibility to specify a different base year for measuring absolute poverty that is relevant to Scotland and reflects the contemporary living standards in Scotland.

Section 3(3) provides that the power to make regulations in section 3(2) is subject to the negative procedure. The Delegated Powers Memorandum indicates that the current baseline date of 1st April 2010 is set to allow a ten year period for comparison between that base year and the 2020 target year which was originally set out in the UK Child Poverty Act 2010. It also explains that it is likely that the future baseline date will need to be changed to 2020 to reflect the move towards a target date in 2030. The Memorandum also indicates that it is the Scottish Government's intention that the regulation-making power would only be exercised once.

In light of the stated intention that the power to make regulations would be made as a consequence of a 10-year comparison between equivalised net household incomes, would it not be more appropriate that, if a power to make regulations is necessary, it is subject to the affirmative procedure rather than the negative procedure, to ensure that the Parliament can exercise an enhanced level of control over the setting of the baseline date for absolute poverty?

As set out in the Delegated Powers Memorandum, any change to the base year would be considered a methodological change, aimed at maintaining the relevance of the measure, and does not in the Scottish Government's view merit the affirmative procedure. However, we note the Committee's comments on the appropriateness of the procedure. We will take full account of these comments along with any other recommendations made at Stage 1.

I trust that this information is satisfactory. Please do not hesitate to contact us if you require any further clarification.

