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

Domestic Abuse (Scotland) Bill at Stage 1



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For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

Introduction _____ **1**

Overview of the Bill _____ **2**

Delegated Powers Provisions _____ **3**

Recommendations _____ **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>



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Convener
John Scott
Scottish Conservative
and Unionist Party



Deputy Convener
Stuart McMillan
Scottish National Party



Alison Harris
Scottish Conservative
and Unionist Party



Monica Lennon
Scottish Labour



David Torrance
Scottish National Party

Introduction

1. At its meeting on 25 April 2017, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Domestic Abuse (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. The DPM sets out the reasoning for taking the delegated powers.

ⁱ Domestic Abuse (Scotland) Bill [as introduced] is available [here](#)

ⁱⁱ Domestic Abuse (Scotland) Bill Delegated Powers Memorandum is available [here](#)

Overview of the Bill

3. This Government Bill was introduced on 17 March 2017, by Michael Matheson MSP. The lead Committee is the Justice Committee.
4. Within the Programme for Government in November 2014, the First Minister announced that the Scottish Government would seek views on whether a specific offence of domestic abuse would enable the justice system to better respond to this form of offending. A consultation paper, “A criminal offence of domestic abuse” was issued in December 2015.
5. The Bill has 2 Parts. Broadly, Part 1 provides for an offence consisting of a course of abusive behaviour towards a partner or ex-partner, along with related procedural provision. This includes a statutory aggravation, which applies where the offence involves a child in specified ways.
6. Part 2 introduces a schedule which makes a number of associated reforms to rules of criminal procedure relating to the offence. These reforms also extend to offences subject to the statutory aggravation involving abuse of partners or ex-partners.
7. The reforms are mainly proposed by means of amendment to the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”):
 - Creating a standard bail condition prohibiting a person accused of a domestic abuse offence from conducting precognition of the complainer other than through a solicitor;
 - Prohibiting an accused person in a domestic abuse case from personally conducting the defence in court;
 - Applying the same rules for the benefit of vulnerable witnesses as apply to other serious offences;
 - Permitting certain expert evidence relating to the behaviour of the complainer in domestic abuse cases;
 - Requiring the court, when sentencing a person convicted of a domestic abuse offence, to have regard to the aim of ensuring that the victim is not subject to further abuse by the offender; and
 - Placing a duty on the court to automatically consider whether to make a non-harassment order against a person convicted of a domestic abuse offence.

Delegated Powers Provisions

8. At its meeting on 25 April, the Committee considered the two powers in the Bill conferred upon the Scottish Ministers, which are as follows:

- **Section 12 – Ancillary provision**
- **Section 13 – Commencement**

Section 12 - Ancillary provision

Provisions

9. Section 12 provides ancillary powers for the Scottish Ministers to make incidental, supplementary, consequential, transitional, transitory or saving provisions relating to the Bill. The provisions must be considered appropriate for the purposes of, in connection with or for giving full effect to the Act (once passed).
10. The regulations are subject to the affirmative procedure if they textually amend an Act (including the Bill once passed). Otherwise, the negative procedure applies.

Comment

11. The Committee agrees that the ancillary powers may be suitable in this Bill. Given the number and technical nature of some of the provisions in the schedule which amend, or add new rules of criminal procedure in the 1995 Act, it may be suitable or necessary to use these powers to make ancillary provision. The Committee agrees that the powers should be subject to the affirmative procedure, where the ancillary provision proposes to textually amend an Act, and otherwise that the negative procedure applies.

Section 13 – Commencement

Provisions

12. Section 13 provides that sections 12 to 14 would come into force on the day after Royal Assent. Section 14 states the short title of the Bill. The other provisions would be commenced by means of commencement regulations. These could include transitional, transitory or saving provisions, and could make different provisions for different purposes.

Comment

13. It is a normal position that the operative provisions of the Bill may be brought into force by means of commencement regulations. The usual procedure is for the Regulations to be laid before Parliament, but not subject to further procedure. The Regulations would, however, be scrutinised by this Committee.
14. The DPM explains that it is possible, though unlikely, that full or partial commencement of some of the provisions in the Bill schedule may take place ahead of introduction of the proposed new domestic abuse offence. It also explains it is anticipated this power would effect any straightforward and obvious transitional, transitory or saving provisions.

15. The Scottish Government would intend to use the section 12 ancillary powers (with a higher degree of scrutiny) to give effect to more complex transitional, transitory or saving provisions.

Recommendations

The Committee finds the ancillary powers in section 12 to be acceptable in principle and accepts that the exercise of the power is subject to the affirmative procedure where there is textual amendment of an Act. Otherwise the negative procedure would apply.

The Committee finds the commencement powers in section 13 to be acceptable in principle and accepts that the regulations would be laid before the Parliament, but not subject to further procedure.

