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

Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill: Stage 1



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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 meetings on 11 and 25 September and on 2 October, the Delegated Powers and Law Reform Committee considered the delegated powers in the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill (“the Bill”).ⁱ The Scottish Government has provided the Parliament with a memorandum on the delegated powers provisions in the Bill.ⁱⁱ
2. The Committee submits this report to the lead Committee for the Bill (the Justice Committee) under Rule 9.6.2 of Standing Orders.
3. This Scottish Government Bill was introduced by the Cabinet Secretary for Justice on 12 June 2018.
4. The stated purpose of the Bill is to improve how children, in the first instance, and other vulnerable witnesses participate in the criminal justice system. It seeks to do so by enabling greater use of pre-recording when taking the evidence of children and vulnerable witnesses in advance of a criminal trial.

ⁱ The Bill as introduced is available [here](#).

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

Bill Overview

5. The Bill consists of 12 sections, grouped under 7 headings. The following paragraphs provide a broad overview.
6. Sections 1 and 2 (Child witnesses) require child witnesses (other than the accused) who are giving evidence in solemn proceedings for particularly serious offences to have all of their evidence pre-recorded before the trial, unless certain exceptions apply. This is referred to as “the new rule” in this report. Section 1 enables the Scottish Ministers to modify or remove the list of offences to which the new rule applies. For example, the new rule could be applied to all child witnesses in solemn proceedings (other than the accused).
7. Section 3 (Deemed vulnerable witnesses) empowers the Scottish Ministers to extend the new rule so that it applies to a “deemed vulnerable witness” (other than a child witnesses) or to particular types of deemed vulnerable witness. A “deemed vulnerable witnesses” is a complainer in proceedings for certain serious offences (sexual offences, human trafficking, domestic abuse or stalking).
8. Section 4 (Review of arrangements for taking evidence) restricts the ability of the court to use a review to displace a previous order authorising the use of pre-recording for vulnerable witnesses (other than children).

Delegated Powers Provisions

9. At its meeting on 2 October, the Committee considered the five delegated powers in the Bill, which are as follows:
- Section 1 - new section 271BZA(9) of the Criminal Procedure (Scotland) Act 1995 (“1995 Act”) (Child witnesses in certain solemn cases: special measures)
 - Section 3 - new section 271BZD of the 1995 Act (Deemed vulnerable witnesses in certain solemn cases)
 - Section 6 - new section 271AA of the 1995 Act (Using only standard special measures)
 - Section 10 – Ancillary provision
 - Section 11 – Commencement
10. The Committee determined that it did not need to draw the attention of the Parliament to any of the delegated powers.

Recommendation

- 11. The Committee therefore reports that it is content with the delegated powers provisions contained in the Bill.**

