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

Islands (Scotland) Bill : as amended at Stage 2



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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>



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Convener
Graham Simpson
Scottish Conservative
and Unionist Party



Deputy Convener
Stuart McMillan
Scottish National Party



Tom Arthur
Scottish National Party



Neil Findlay
Scottish Labour



Alison Harris
Scottish Conservative
and Unionist Party

Introduction

1. At its meeting on 15 May 2018, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Islands (Scotland) Bill as amended at Stage 2 ("the Bill").ⁱ The Committee submits this report to the Parliament under Rule 9.7.9 of the Standing Orders.
2. The Bill was introduced by the Cabinet Secretary for Rural Economy and Connectivity, Fergus Ewing MSP, on 9 June 2017. The Bill completed Stage 2 on 28 March 2018. The Rural Economy and Connectivity Committee is the lead Committee.
3. The Bill's purposes are to make provision for a national islands plan, to impose a duty on certain public authorities to have regard to island communities, to make provision about the electoral representation of island communities, and to establish a licensing scheme in respect of marine development adjacent to islands.
4. Amendments were made to the Bill at Stage 2. Therefore, the Scottish Government provided the Parliament with a supplementary memorandum ("SDPM") on the delegated powers provisions in the Bill.ⁱⁱ
5. The Committee previously reported on the delegated powers provision in this Bill at Stage 1 in its [49th Report, 2017 \(Session 5\)](#).

i i The Bill as amended at Stage 2 can be found [here](#).

ii The Supplementary Delegated Powers Memorandum can be found [here](#).

Delegated Powers Provisions as amended at Stage 2

6. The Committee considered each of the delegated powers provisions in the Bill as amended at Stage 2.
7. The Committee determined that it did not need to draw the Parliament's attention to the delegated powers in the following provisions:
 - section 10(2)(za) (as amended at stage 2) Guidance about section 7 duty
 - section 18(2)(b) (as amended at stage 2) Scottish island marine area licence

Section 2A(2) – Meaning of “islands authority”

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations**
- **Revised or new power: new**
- **Parliamentary procedure: laid, no further procedure**

Provision

8. Section 2A was added at Stage 2. It provides a definition of “islands authority” in the list of key definitions. A power is conferred in section 2A(2) to enable Ministers to amend that definition.
9. The SDPM explains that the definition was intended to be used for the purposes of certain amendments on local empowerment and the devolution of powers, also considered at Stage 2. While the amendment (29) resulting in section 2A was agreed to, the other amendments (80 and 81) were not.
10. As a result, “islands authority” is not used in the Bill as amended at Stage 2. The definition serves no purpose. The Scottish Government has undertaken to put forward an amendment to remove section 2A from the Bill at Stage 3.

Recommendation

11. **The Committee notes that the Scottish Government has undertaken to put forward an amendment at Stage 3 which would remove section 2A, including the power contained in subsection (2), as the section serves no purpose in the Bill as amended.**

Section 7(3) – Duty to have regard to island communities

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations**
- **Revised or new power: revised**
- **Parliamentary procedure: affirmative procedure**

Provision

12. Section 7(3) in the Bill as introduced provided that Ministers may by regulations amend the schedule which lists the “relevant authorities” which are to be subject to the duty imposed by section 7(1), to have regard to island communities when exercising their functions. The provision allowed modification by adding or removing an entry for any person, body or office-holder.
13. The Committee recommended at Stage 1 that the power should be extended to include a power to modify an entry in the schedule, to be consistent with other similar legislation. Section 7(3) has now been amended to enable regulations to also vary the description of an entry in the schedule.

Recommendation

14. **The Committee accepts the amendment of the power contained in section 7(3) and welcomes that this has implemented its recommendation at Stage 1.**

