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

Legislative Consent Memorandum: Domestic Abuse Bill



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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 29 October 2019, the Committee considered the provisions in the UK Government's Domestic Abuse Bill ("the Bill") that confer power on the Scottish Ministers to make subordinate legislation.ⁱ
2. The Bill was introduced by the UK Government in the House of Commons on 16 July 2019 and is currently at Committee stage. A motion was agreed in the House of Commons on 2 October 2019 to carry over the Bill into a new session of the UK Parliament.
3. The majority of the provisions contained in the Bill apply to England and Wales only. However, there are two clauses which do extend to Scotland and require the legislative consent of the Scottish Parliament:
 - Clause 78(2) (amendments relating to offences committed outside the UK) introduces Part 2 of Schedule 2, which legislates for devolved purposes, by making provision for the Scottish courts to take extraterritorial jurisdiction over certain offences under the law of Scotland and making relevant amendments to Scots law to facilitate this.
 - Clause 85(3) allows the Scottish Ministers by regulations to commence clause 78(2) and Part 2 of Schedule 2.
4. The Scottish Government lodged a Legislative Consent Memorandum ("LCM") on 22 August 2019.ⁱⁱ The lead Committee in respect of this LCM is the Justice Committee.
5. Paragraph 6 of Rule 9B.3 of the Standing Orders provides that where the Bill that is the subject of a legislative consent memorandum contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee shall consider and may report to the lead committee on those provisions. The delegated powers provisions in the Bill are therefore considered below.

ⁱ The Bill is available [here](#).

ⁱⁱ The LCM is available [here](#).

Overview of Bill

6. The purpose of the Domestic Abuse Bill as stated by the UK Government is to raise awareness and understanding of domestic abuse and its impact on victims, to further improve the effectiveness of the justice system in providing protection for victims of domestic abuse and bringing perpetrators to justice, and to strengthen the support for victims of abuse provided by other statutory agencies.
7. The Bill is in five parts:
 - Part 1 makes provision in relation to domestic abuse in England and Wales.
 - Chapter 1 provides for a statutory definition of domestic abuse which underpins other provisions in this Part.
 - Chapter 2 creates the office of Domestic Abuse Commissioner, sets out the functions and powers of the Commissioner and imposes a duty on specified public authorities to co-operate with the Commissioner.
 - Chapter 3 provides for a new civil preventative order regime - the Domestic Abuse Protection Notice (“DAPN”) and Domestic Abuse Protection Order (“DAPO”).
 - Chapter 4 confers on victims of domestic abuse automatic eligibility for special measures in the criminal courts; enables domestic abuse offenders to be subject to polygraph testing as a condition of their licence following their release from custody; places the guidance supporting the Domestic Violence Disclosure Scheme on a statutory footing; and ensures that persons with secure or assured lifetime tenancies are granted a secure lifetime tenancy where the new tenancy is being granted for reasons connected to domestic abuse.
 - Part 2 makes provision in relation to domestic abuse in Northern Ireland and, in particular, provides for a new domestic abuse offence.
 - Part 3 prohibits perpetrators of certain offences from cross-examining their victims in person in the family courts in England and Wales (and vice versa) and gives family courts the power, in certain circumstances, to appoint a legal representative to conduct the cross-examination on behalf of the prohibited person.
 - Part 4 extends the extra-territorial jurisdiction of the criminal courts in England and Wales, Scotland and Northern Ireland to further violent and sexual offences.
 - Part 5 makes supplementary and general provisions, including a power for the Secretary of State to issue statutory guidance to practitioners in England and Wales about tackling domestic abuse.

Delegated Powers

8. There is only one clause in the Bill which confers a delegated power on the Scottish Ministers, which is clause 85(3).
 9. Clause 85(3) provides that clause 78(2) and Part 2 of Schedule 2 come into force in accordance with provision contained in regulations made by the Scottish Ministers.
 10. Clause 78(2) (amendments relating to offences committed outside the UK) introduces Part 2 of Schedule 2, which legislates for devolved purposes, by making provision for the Scottish courts to take extra-territorial jurisdiction over certain offences under the law of Scotland and making relevant amendments to Scots law to facilitate this. This is required by the Council of Europe Convention on preventing and combating violence against women and domestic violence (commonly known as the Istanbul Convention).
 11. Instruments made by the Scottish Ministers under clause 85(3) are required to be laid before the Scottish Parliament by virtue of section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 but are not subject to any parliamentary procedure.
 12. It is standard that commencement provisions are subject to the “laid-only” procedure as Parliament has approved the principle of the provisions to be commenced by enacting them. Commencement by regulations enables the provisions to be brought into force at a convenient time.
13. The Committee is therefore content with the power to make commencement regulations in clause 85(3) of the Bill in principle, and that the power is laid but not subject to any parliamentary procedure.

