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

Children (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>



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Introduction

1. At its meeting on 18 August 2020, the Delegated Powers and Law Reform Committee considered the delegated powers in the Children (Scotland) Bill ("the Bill") as amended at Stage 2.
2. The Bill completed Stage 2 on 11 June 2020. The Scottish Government has since lodged a Supplementary Delegated Powers Memorandum covering the powers in the Bill as amended at Stage 2.ⁱ
3. The Committee submits this report to the Parliament under Rule 9.7.9 of the Standing Orders.
4. The Delegated Powers and Law Reform Committee published its Stage 1 Report on the Bill on 19 November 2019.ⁱⁱ The Committee reported that it was content with all of the delegated powers in the Bill.

ⁱ Children (Scotland) Bill, Supplementary Delegated Powers Memorandum

ⁱⁱ Delegated Powers and Law Reform Committee, Children (Scotland) Bill: Stage 1, 57th Report, 2019 (Session 5)

Overview of the Bill

5. This Government Bill was introduced by the Cabinet Secretary for Justice, Humza Yousaf MSP, on 2 September 2019. The lead committee is the Justice Committee.
6. The policy objectives of the Bill are described in the policy memorandum as:
 - to ensure the views of the child are heard in contact and residence cases;
 - to further protect victims of domestic abuse and their children;
 - to ensure the best interests of the child are at the centre of contact and residence cases and Children’s Hearings; and
 - to further compliance with the United Nations Convention on the Rights of the Child (UNCRC) in family court cases.
7. The Bill amends the Children (Scotland) Act 1995, the Adoption and Children (Scotland) Act 2007, the Vulnerable Witnesses (Scotland) Act 2004, the Children’s Hearings (Scotland) Act 2011, and the Matrimonial Proceedings (Children) Act 1958.
8. It adds provision to this legislation in relation to regard being had to a child’s view in certain proceedings; the deeming of a witness in certain proceedings as a vulnerable witness and the special measures available to the court in order to ensure the protection of that witness in the proceedings; registers for child welfare reporters and curators ad litem, regulation of contact centres; the promotion of contact between looked after children and their siblings; and the explanation of decisions in certain court proceedings to a child.
9. The Bill also makes provision to update the appeals provisions in the Children’s Hearings (Scotland) Act 2011 to include appeals to the Sheriff Appeal Court. It also provides the Scottish Ministers with the power to make regulations for the conferral of parental responsibilities and rights on a person whose child was born outside the UK and has not acquired those responsibilities and rights under the Children (Scotland) Act 1995.

Delegated Powers

10. The Committee considered each of the new and revised delegated powers in the Bill. The Committee determined that it is content with the new and revised delegated powers in the following provisions:
 - **Section 9(3) (inserting new section 101C(1) into the Children (Scotland) Act 1995) - Power to make provision about the regulation of contact services.**
 - **Section 11A (inserting new section 11ZC(1) into the 1995 Act): Power to make provision for legal aid to be available to enable parties to participate in alternative methods of dispute resolution.**
 - **Section 11A (inserting new section 11ZC(5) into the 1995 Act): Power to modify the list of alternative methods of dispute resolution set out in new section 11ZC(4).**
 - **Section 11B (inserting new section 11ZD(1) into the 1995 Act): Power to make provision for a pilot scheme to enable the court to require parties to attend a mediation information meeting.**
 - **Section 16(2) (inserting new section 11F(5) into the 1995 Act) – Power to modify new section 11F(3) of the 1995 Act to add, vary or remove a description of person who can investigate an actual or alleged failure to obey an order.**
11. The Committee therefore reports that it is content with all of the new and revised delegated powers in the Bill after Stage 2.
12. In respect of the power in section 11A (inserting new section 11ZC(5) into the 1995 Act), the Committee is content with the power but draws the Parliament's attention to a cross-referencing error. New section 11ZC(5) allows the Scottish Ministers by regulations to modify the list of alternative methods of dispute resolution. The text of the Bill refers to the list being in subsection (3) but this should refer to subsection (4).
13. The Committee notes that an amendment has been lodged at Stage 3 that, if agreed, would remove section 11A, thereby removing the noted error (amendment 24).

