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

United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill: Stage 2



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Textphone: 0800 092 7100
Email: sp.info@parliament.scot

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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.



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Convener
Bill Bowman
Scottish Conservative
and Unionist Party



Mary Fee
Scottish Labour



Gil Paterson
Scottish National Party



Michelle Ballantyne
Reform UK



Joe FitzPatrick
Scottish National Party

Introduction

1. At its meeting on 9 March 2021, the Delegated Powers and Law Reform Committee considered the delegated powers in the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (“the Bill”) as amended at Stage 2.ⁱ
2. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.
3. The Bill completed Stage 2 on 11 February 2021.

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

Overview of the Bill

4. This Scottish Government Bill was introduced by the Deputy First Minister and Cabinet Secretary for Education and Skills, John Swinney MSP, on 1 September 2020. The lead Committee is the Equalities and Human Rights Committee.
5. The Bill incorporates the United Nations Convention on the Rights of the Child ('UNCRC') into Scots law. The UNCRC is an international human rights treaty that covers all aspects of children's lives. It encompasses civil, political, economic and cultural rights.
6. The Bill provides for rights and obligations derived from the Convention, and its first 2 optional protocols, to be given effect in Scots law in the following ways: -
 - it places public authorities under a duty not to act incompatibly with "the UNCRC requirements" (as defined in section 1), and provides legal remedies should they fail to do so (Part 2);
 - it places the Scottish Ministers under a duty to produce, and periodically report against, a scheme setting out what it is doing to comply with its duty in relation to the UNCRC requirements, and places a duty on certain other public authorities to produce periodic reports on their compliance with those requirements (Part 3);
 - it obliges the Scottish Ministers, when bringing forward any new legislation, to make a statement about its compatibility with the UNCRC requirements (Part 4, section 18);
 - it requires that legislation (old and new) be read wherever possible in a way that is compatible with the UNCRC requirements and, where a compatible reading is not possible, it allows the courts to strike down such incompatible legislation or make a declaration of its incompatibility (Part 4, sections 19 to 21); and
 - it enables the Scottish Ministers to change the law, by regulations, to cure incompatibilities (or possible incompatibilities) with the UNCRC requirements (Part 6).

Delegated Powers

7. The Committee considered the delegated powers in this Bill at Stage 1 at its meeting on 8 December 2020. It reported that it was content with the delegated powers provisions contained in the Bill and published its Stage 1 Report on it on 2 December 2020ⁱⁱ.
8. The Scottish Government has revised the Delegated Powers Memorandum which this Committee considered at Stage 1, to reflect the amendments made to the Bill at Stage 2.ⁱⁱⁱ Minor adjustments have been made to four of the seven delegated powers in the Bill.
9. The Committee considered the revised delegated powers:
 - Section 3 – Power to modify the schedule;
 - Section 7(5) – Power to add to the powers of a tribunal to ensure an appropriate remedy;
 - Section 32(1) – Power to make remedial regulations; and
 - Section 40(2) – Commencement.

10. **The Committee is content with the revised delegated powers provisions contained in the Bill and with the choice of procedure applicable in each case.**

ⁱⁱ Delegated Powers and Law Reform Committee, 73rd Report 2020 (Session 5): The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill: Stage 1

ⁱⁱⁱ The Revised Delegated Powers Memorandum is available [here](#)

