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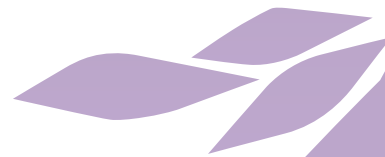
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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Liability for NHS Charges (Treatment of Industrial Disease) (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 meeting on 15 September 2020, the Delegated Powers and Law Reform Committee considered the delegated powers provision in the Liability for NHS Charges (Treatment of Industrial Disease) (Scotland) Bill ("the Bill") at Stage 1.
2. The Committee submits this report to the lead Committee for the Bill under Rule 9.6.2 of the Standing Orders.
3. The Member in Charge has provided the Parliament with a memorandum on the delegated powers provisions in the Bill.

Overview of the Bill

4. This Member's Bill was introduced by Stuart McMillan MSP on 9 March 2020. The lead committee is the Health and Sport Committee.
5. The Policy Memorandum states that the aim of the Bill is to allow the Scottish Government to recover the cost of treating industrial diseases in NHS hospitals in cases where a payment of compensation has been made to the injured person in respect of the disease.
6. There is an existing legislative framework which allows the Scottish Government to recover the costs of treating any injury, whether physical or psychological in NHS hospitals in cases where another person is responsible for the injury. Currently, injury is defined in Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 (the "2003 Act") to exclude any disease (other than diseases attributable to the injury). The Bill amends Part 3 of the 2003 Act so that in Scotland the existing system of NHS cost-recovery is extended to cover cases of industrial disease in addition to injury cases.
7. Part 3 of the 2003 Act already contains a number of regulation-making powers. Regulations made under these powers, for instance the Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006, provide the detail which allows calculation of the exact amounts of the NHS charges for which compensators are liable. They also deal with specific issues that may arise, for instance where more than one person is liable to pay compensation for the same injury.

Delegated Powers

8. The Bill includes one provision that confers a power to make subordinate legislation on the Scottish Ministers. The Member has prepared a Delegated Powers Memorandum (“DPM”) which sets out the reasoning for taking the delegated powers in the Bill and the parliamentary scrutiny procedure that has been chosen.
9. Section 2 of the Bill inserts four new subsections into section 153 of the 2003 Act, which provides for how the amounts of NHS charges that compensators are to repay are calculated.
10. The four subsections make provision for the amounts in certificates (i.e. the amounts to be repaid) to be reduced by a proportion reflecting the pre-commencement period of exposure of the injured person to harmful events. The purpose of the provisions is to ensure that the application of the Bill is non-retrospective and that an industrial employer’s liability (to repay NHS charges) only relates to that part of the period during which the employer exposed the worker to harmful events which was after the date on which the core provisions of the Bill came into force.
11. Subsection (3C) provides for the amount of that reduction to be calculated under regulation and enables the Scottish Ministers to provide a formula for calculating how the pre-commencement proportion is to be calculated.
12. The first regulations made under the power are subject to the affirmative procedure, with following regulations being subject to the negative procedure.
13. This affirmative and negative procedure approach is already contained within 2003 Act and similar regulations have been made in accordance with this approach.

The Committee considers that the provision amends section 153 of the 2003 Act, and as a result confers a power on the Scottish Ministers, to be acceptable in principle. The Committee is also content that the first regulations made under the power are subject to the affirmative procedure, with further regulations subject to the negative procedure.

