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

Post-mortem Examinations (Defence Time Limit) (Scotland) Bill: Stage 1



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Public Information on:
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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.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Convener
Bill Bowman
Scottish Conservative
and Unionist Party



Mary Fee
Scottish Labour



Deputy Convener
Stuart McMillan
Scottish National Party



Gil Paterson
Scottish National Party



Michelle Ballantyne
Scottish Conservative
and Unionist Party

Introduction

1. At its meeting on 22 September 2020, the Delegated Powers and Law Reform Committee considered the delegated powers provision in the Post-mortem Examinations (Defence Time Limit) (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 Gil Paterson MSP on 21 May 2020. The lead committee is the Justice Committee.
5. The Bill has a single purpose which is to make the existing right of the defence to instruct a post-mortem examination (PME), for the purpose of an accused person's defence, subject to an extendable time limit.
6. The Bill seeks to achieve this purpose by inserting three new sections into the Criminal (Procedure) (Scotland) Act 1995. Those sections provide that the defence must either instruct a PME or inform the Crown Office that they will not exercise their right to do so within 14 days of the cause of death being notified to the accused. This is subject to the criteria that: a PME has already been carried out by the Crown Office, a person has been charged in connection with causing or contributing to the death, and the dead person's body has not yet been released by the Crown Office.
7. Under the proposed legislation, the defence could apply to the court for an extension of the 14-day time limit.

Delegated Powers

8. The Bill confers one power to make subordinate legislation on the Scottish Ministers. The Member has prepared [a Delegated Powers Memorandum](#) (“DPM”) which sets out the reason for taking the delegated power and the parliamentary scrutiny procedure that has been chosen.
 9. Section 3 makes standard ancillary provision, giving the Scottish Ministers the power to make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to the Act flowing from this Bill, or any provision made under it.
 10. By virtue of subsection (2), regulations made under section 3 may modify any other enactment but may not modify the Bill itself.
 11. Section 3(3) provides that the affirmative procedure will apply where regulations made under section 3 amend primary legislation and that otherwise the negative procedure will apply.
 12. The DPM states that the power is necessary to ensure the successful implementation of the Bill. The DPM sets out that although this is standard with all new legislation, it is particularly necessary for this Bill which puts into statute for the first time one specific element of a process that is currently governed by convention and guidance. As such it has been difficult to identify all the possible consequences of the Bill. This regulation making power provides the Scottish Ministers with a mechanism to deal with technical, operational or other matters which would be within the scope of this Bill without the need for further primary legislation, which would not be an efficient use of Parliamentary time.
13. The Committee finds the power to make ancillary provision in section 3 acceptable in principle. It is also content that it is subject to the affirmative procedure if amending primary legislation, and otherwise subject to the negative procedure.

