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

Delegated powers provisions in the Trusts and Succession (Scotland) Bill at 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.



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Introduction

1. At its meeting on 17 January 2023, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the Trusts and Succession (Scotland) Bill (“the Bill”) at Stage 1.ⁱ
2. The Committee submits this report to the lead Committee for the Bill under Rule 9.6.2 of Standing Orders.

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

Overview of the Bill

3. This Scottish Government Bill was introduced by the Cabinet Secretary for Justice, Keith Brown MSP on 22 November 2022. The lead committee is the Delegated Powers and Law Reform Committee.
4. A trust is a legal relationship created when ownership of specified property held by one person (“the truster”) is transferred to another (“the trustee”) to be used for the benefit of another person (“the beneficiary”) before then being transferred to them at some certain point in time. The present statute governing the law on trusts in Scotland is the Trusts (Scotland) Act 1921 (“the 1921 Act”). There have been significant changes made to the 1921 Act since it came into force with it being amended by four statutes throughout the 1960s, further amended in 1990 and again in 2005.
5. This area of law has been subject to a significant reform project undertaken by the Scottish Law Commission which took over a decade to complete. It is considered that the law in this area has not kept pace with modern society and the Scottish Law Commission states in its report that the Scottish law on trusts is widely perceived as “seriously outdated” in comparison to other jurisdictions.
6. The Bill comprises 81 sections and two schedules which will consolidate and reform the Scots private law on trusts and make modifications to the law on succession to ensure that the Scots law of trusts is clear, coherent and able to respond appropriately to modern conditions.

Delegated Powers

7. The Bill confers two powers to make subordinate legislation on the Scottish Ministers.
8. The Scottish Government has produced a [Delegated Powers Memorandum](#) which sets out its reasons for taking the delegated powers in the Bill, and for the procedures chosen.
9. The Committee considered each of the delegated powers in the Bill at its meeting on 17 January. It determined that it did not need to draw the attention of the Parliament to the delegated powers in either of the two provisions:
 - Section 78(1) - Ancillary provision; and
 - Section 80(3) – Commencement.

10. **The Committee is therefore content with the delegated powers provisions contained in the Bill.**

