



The Scottish Parliament
Pàrlamaid na h-Alba

Published 21 June 2023
SP Paper 409
44th Report, 2023 (Session 6)

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

Delegated powers provisions in the Charities (Regulation and Administration) (Scotland) after 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.



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Stuart McMillan
Scottish National Party



Bill Kidd
Scottish National Party



Jeremy Balfour
Scottish Conservative
and Unionist Party



Oliver Mundell
Scottish Conservative
and Unionist Party



Mercedes Villalba
Scottish Labour

Introduction

1. This report considers the delegated powers contained in the Charities (Regulation and Administration) (Scotland) Bill (“the Bill”) following amendments made at Stage 2.
2. The Committee previously reported on the delegated powers provisions at Stage 1 on 10 February 2023, with the report available [here](#).
3. The Stage 1 report notes that the Committee was content with all eight powers delegated to the Scottish Ministers
4. The Bill completed Stage 2 on 1 June 2023. Following Stage 2, there have been amendments to the Bill which include three new delegated powers being added.
5. The Scottish Government has lodged a [supplementary delegated powers memorandum](#) (“supplementary DPM”) covering the delegated powers in the Bill as amended at Stage 2.
6. The Committee is considering the powers under Rule 9.7.9 of the Standing Orders, in relation to any new or substantially altered powers provisions in the Bill, as amended.

Overview of the Bill

7. This Government Bill was introduced by the former Cabinet Secretary for Social Justice, Housing, and Local Government, Shona Robison MSP, on 15 November 2022. The lead committee is the Social Justice and Social Security Committee.
8. The Bill seeks to strengthen and update the law relating to the regulation and administration of charities and their assets within the current legislative framework, which is provided for in the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”). It does so by enhancing the powers of the Office of the Scottish Charity Regulator (“OSCR”) and by bringing Scottish charity legislation into line with key aspects of charity regulation and administration in England, Wales and Northern Ireland.
9. The Bill comprises twenty sections and one schedule.
10. Section 1 is an interpretative provision. Sections 2 and 3 (information about charity trustees etc.) require OSCR to include charity trustee names in the Scottish Charity Register, and to keep an internal schedule of charity trustees’ details.
11. Sections 4 to 7 (disqualification from being charity trustee etc.) update the rules on the automatic disqualification of charity trustees, extend them to individuals holding senior management positions in charities, and require OSCR to create a publicly searchable record of charity trustees who have been removed from office
12. Section 8 (appointment of interim charity trustees) provides OSCR with a power to appoint interim trustees where a charity is not able to do so.
13. Sections 9 to 11 (charity accounts) require OSCR to publish the statements of account and independent reports on accounts for all charities in the Scottish Charity Register and provide for the removal from the Scottish Charity Register of unresponsive charities that fail to submit statements of account.
14. Section 12 (charity mergers) requires OSCR to record all charity mergers notified to it and provides for the transfer of legacies where charities merge.
15. Sections 13 to 15 (inquiries) give OSCR power to conduct inquiries into former charities and their charity trustees, improve OSCR’s powers to gather information and give it a new power to issue directions to charities.
16. Section 16 (connection to Scotland) requires all charities in the Scottish Charity Register to have and retain a connection to Scotland.
17. Section 17 and the schedule make various other minor or technical amendments.
18. Sections 18 to 20 contain the usual final provisions of a Bill dealing with ancillary powers, commencement, and the short title.

Supplementary Delegated Powers

Section 12 (inserting new section 64B(4) into the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”)) - Power to make provision regarding when a notification is treated as given

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary Procedure: Negative

Provision

19. Section 12 of the Bill makes provision in relation to the recording of charity mergers and treatment of legacies by inserting new sections 64A to 64E into the 2005 Act.
20. New section 64B sets out the process for notifying OSCR of a charity merger. Section 64B(4) provides Scottish Ministers with the power to make provision about the circumstances in which, and the time at which, notice of the merger is to be treated as having been given.

Committee consideration

21. The Scottish Government addresses this new power at paragraphs 5 to 8 of the supplementary DPM. This explanation sets out that:
 - ” In most cases the giving of a notice of a charity merger will be instantaneous, with the charity using either email or OSCR’s online system to notify OSCR of a merger. However, where notification is sent by post, there may be a need to make specific rules around when that notification should be treated as having been given (for example to deal with cases of delay due to postal strikes, etc.).
22. Accordingly, the Government considers that this new power is required in order that the Scottish Ministers can deal quickly with any unforeseen issues relating to notifications that arise in practice.
23. The Committee accepts the reasons set out in the supplementary DPM as regards to the need for this power in principle and the choice of procedure applicable to its exercise.
24. **The Committee accepts this new power in principle, and is content that it is subject to the negative procedure.**

Section 12A (inserting new section 42(10)(a) into the 2005 Act) – Power to modify the definition of “endowment”

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory instrument

Parliamentary procedure: Affirmative*Provision*

25. Section 12A inserts a new section 42(10)(a) into the 2005 Act regarding the reorganisation of charitable endowments. Currently section 42 of the 2005 Act relies on the definition of “endowment” set out in Part 6 of the Education (Scotland) Act 1980. This will continue to be the case following the modifications made to that section by section 12A of the Bill. However, section 42(10)(a) gives the Scottish Ministers the power to modify the definition of “endowment” in the 2005 Act by regulations.

Committee consideration

26. The Scottish Government addresses this new power at paragraph 11 of the supplementary DPM. This explanation sets out that this power is included “to build in suitable flexibility to be able to respond should experience of the new provisions regarding the reorganisation of endowments give rise in practice to any issues about the understanding of what is meant by “endowment”.” Given this new power (i) permits the modification of primary legislation, and (ii) has the potential to impact on charities’ ability to reorganise via OSCR, the Scottish Government considers that the affirmative procedure provides an appropriate level of parliamentary scrutiny.
27. The Committee accepts the reasons set out in the supplementary DPM as regards to the need for this power in principle and the choice of procedure applicable to its exercise.

28. **The Committee accepts this new power in principle, and is content that it is subject to the affirmative procedure.**

Section 12A (inserting new section 42(10)(b) into the 2005 Act) – Power to disapply provisions for particular charities or types of charity**Power conferred on: Scottish Ministers****Power exercisable by: Regulations made by Scottish statutory instrument****Parliamentary procedure: Affirmative***Provision*

29. Section 12A inserts a new section 42(10)(b) into the 2005 Act in connection with the amendments made to the Bill at stage 2 relating to the reorganisation of charitable endowments. This new provision gives the Scottish Ministers the power to restrict the reorganisation of particular charities or endowments, where there are specific policy reasons to do so.

Committee consideration

30. The Scottish Government addresses this new power at paragraph 14 of the supplementary DPM, stating:

” Certain charities may...have special governance requirements or they may operate in specific circumstances which would make reorganisation using the process in Chapter 5 of Part 1 of the 2005 Act inappropriate. It is recognised that there is potentially a broad range of charities and endowments that may be affected by these provisions and it has not been possible to make an individual assessment of the impact of the changes on each of them. It is therefore considered sensible for Ministers to have power to adjust the application of the provisions by disapplying them in respect of particular endowments, or types of endowment, should it prove necessary to do so. This is also in line with the approach taken by the 2005 Act more broadly – for example, section 7(5) of the 2005 Act allows elements of the charity test to be disappplied in relation to particular bodies or types of body, and section 19(8) of the 2005 Act allows particular property to be exempted from the rules about protection of assets where that is considered appropriate.

31. The Committee accepts the reasons set out in the supplementary DPM as regards to the need for this power in principle and the choice of procedure applicable to its exercise.

32. The Committee accepts this new power in principle, and is content that it is subject to the affirmative procedure.

