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

Delegated powers in the Right to Addiction Recovery (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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Committee Membership



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Daniel Johnson
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Scottish Conservative
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Membership changes

1. The following changes to Committee membership occurred during the course of the Committee's scrutiny of the delegated powers in the Right to Addiction Recovery (Scotland) Bill:
 - on 29 October 2024, Roz McCall MSP replaced Tim Eagle MSP

Introduction

2. At its meetings on 24 Septemberⁱ and 29 October 2024ⁱⁱ, the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated powers contained in the [Right to Addiction Recovery \(Scotland\) Bill](#) ("the Bill") at Stage 1.
3. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.
4. This Members' Bill was introduced by Douglas Ross MSP ("the Member in Charge") on 14 May 2024. The lead committee is the Health, Social Care and Sport Committee.

ⁱ Daniel Johnson MSP and Tim Eagle MSP submitted apologies for this meeting

ⁱⁱ Rona MacKay MSP substituted for Bill Kidd MSP at this meeting

Overview of the Bill

5. The Bill aims to enshrine in law a right to treatment for those people diagnosed with a drug or alcohol addiction. It sets out the procedure for determining treatment, and how the treatment is to be provided.
6. The Bill also places a duty on the Scottish Ministers to secure the delivery of the rights conferred by the Bill. It requires the Scottish Ministers to make regulations setting out the arrangements that are in place or are to be put in place to ensure that the duty is complied with, which may confer functions on public bodies. There is also a duty to report to Parliament at the end of each “reporting period”, which is the period of 12 months beginning with the day the regulations which set out the arrangements are made, and each successive 12-month period.
7. The Bill requires the Scottish Ministers to prepare a draft code of practice in connection with the discharge by the bodies of the functions imposed on them by regulations as described above.

Delegated Powers

8. The Bill confers six powers on Scottish Ministers, including a power to make a code of practice.
9. The Member has prepared a [Delegated Powers Memorandum](#) (“DPM”) which sets out the reasons for taking the delegated powers in the Bill and for the procedure chosen.
10. At its meeting on Tuesday, 24 September, the Committee indicated that it was content with the delegated powers conferred by sections 7(1) and 10.
11. However, it agreed to [write](#) to the Member in Charge in relation to the following powers:
 - Section 1(6) – right to recovery
 - Section 3(3) – provision of treatment
 - Section 4(2) – duty to secure delivery
 - Section 6 – code of practice
12. The Member in Charge [responded](#) on 16 October 2024.
13. The Committee's consideration of the Member in Charge's response, and the other delegated powers contained in the Bill, are set out in the next section of the report.

Review of relevant powers

Section 1(6): Right to recovery

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

14. Section 1 provides that it is the right of every person diagnosed as having a drug or alcohol addiction to receive a treatment determination and be provided with the treatment. The appropriate treatment is to be determined by a relevant health professional.
15. Section 1(5) provides a non-exhaustive list of examples of “treatment” which may be deemed appropriate for the purposes of section 1. Those examples are:
 - residential rehabilitation,
 - community-based rehabilitation,
 - residential detoxification,
 - community- based detoxification,
 - stabilisation services,
 - substitute prescribing services,
 - any other treatment the relevant health professional deems appropriate.
16. Section 1(6) delegates a power to the Scottish Ministers, in order that they may, by regulations, add to list of treatments noted above.
17. Regulations made under section 1(6) are subject to the affirmative procedure. Section 8(1) provides that any regulations made under this power may make incidental, supplementary, consequential, transitional, transitory or saving provision, and may make different provision for different purposes.

Committee consideration

18. The Committee asked the Member in Charge about the attachment of the “bolt on” power to make incidental, supplementary, consequential, transitional, transitory or saving provision and to make different provision for different purposes to the power in section 1(6). This was on the basis that the list serves as an illustrative example rather than having a tangible effect on the law and as such it was not clear why or when the bolt on power would be used.
19. The Member in Charge responded that the provision was added to give the Scottish Ministers flexibility to implement the provisions of the Bill in such a manner as they

see fit but accepted that it may not strictly be deemed necessary, given that the list is non-exhaustive.

20. The Committee also asked whether anything further could be added to the face of the Bill to clarify or emphasise that the list is non-exhaustive.
21. The Member in Charge responded that in his view, the Bill makes it sufficiently clear that the list is non-exhaustive given the provision contains the phrase “but not limited to” but would give any further suggestions from the Committee his full consideration.
22. The Committee normally recommends that delegated powers are construed narrowly in order that their use is foreseeable and goes no further than is necessary for the purpose understood by the Parliament at the time of delegation. The Member in Charge has not provided any example of when the “bolt on” power is likely to be necessary, and as such the Committee considers that the power to make incidental, supplementary, consequential, transitional, transitory or saving provision and to make different provision for different purposes should not apply to the power in section 1(6).
23. With regards to the question about whether it is sufficiently clear that the list is non-exhaustive, the Committee is content with the Member in Charge’s response. Although the list is illustrative only, the Committee consider that it will provide clarity to readers of the legislation, particularly those individuals who may be considering their rights under the Bill. It appears appropriate to the Committee that the list is non-exhaustive as it would seem contrary to the purpose of the Bill to restrict medical professionals in any way from providing the treatment they consider appropriate.

24. The Committee recommends that the bolt on power in section 8(1) to make incidental, supplementary, consequential, transitional, transitory or saving provision and to make different provision for different purposes does not apply to the power in section 1(6).

25. The Committee is content with the substantive power to add to the list in section 1(5) in principle, and that it is subject to the affirmative procedure.

Section 3(3): Provision of treatment

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

26. Section 3 of the Bill provides that the treatment determined as appropriate is to be made available to the patient as soon as reasonably practical and no later than 3 weeks after the treatment determination is made. Section 3(2) sets out that treatment is not to be refused to a patient on the basis of any matter, other than an

assessment by a relevant health professional of the best interests of the patient. It sets out a non-exhaustive list of reasons that may not be used in refusing treatment to a patient which includes: the cost of the treatment, any ongoing misuse of alcohol or other substances or the patient being in receipt of substitute prescribing services, regardless of the volume of prescription.

27. Section 3(3) delegates a power to the Scottish Ministers, in order that they may, by regulations, add to the list of reasons which may not be used in refusing treatment to a patient.
28. Regulations made under section 3(3) are subject to the affirmative procedure. Section 8(1) provides that any regulations made under this power may make incidental, supplementary, consequential, transitional, transitory or saving provision, and may make different provision for different purposes.

Committee consideration

29. As with section 1(6), the Committee asked the Member in Charge about the attachment of the “bolt on” power to make incidental, supplementary, consequential, transitional, transitory or saving provision and to make different provision for different purposes to the power in section 3(3). This was on the basis that the list serves as an illustrative example rather than having a tangible effect on the law and as such it was not clear why or when the bolt on power would be used.
30. The Member in Charge responded that the provision was added to give the Scottish Ministers flexibility to implement the provisions of the Bill in such a manner as they see fit but accepted that it may not strictly be deemed necessary, given that the list is non-exhaustive.
31. The Committee also asked whether anything further could be added to the face of the Bill to clarify or emphasise that the list is non-exhaustive.
32. The Member in Charge responded that in his view, the Bill makes it sufficiently clear that the list is non-exhaustive given the provision contains the phrase “including” but would give any further suggestions from the Committee his full consideration.
33. The Committees makes the same commentary as above at paragraphs 22 and 23.

34. The Committee recommends that the bolt on power in section 8(1) to make incidental, supplementary, consequential, transitional, transitory or saving provision and to make different provision for different purposes does not apply to the power in section 3(3).

35. The Committee is content with the substantive power to add to the list in section 1(5) in principle, and that it is subject to the affirmative procedure.

Section 4(2): Duty to secure delivery

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative**Provision**

36. Section 4 places a duty on the Scottish Ministers to secure the delivery of the rights conferred by the Bill.
37. Section 4(2) provides that within 2 months of the section coming into force, the Scottish Ministers must lay draft regulations before the Parliament setting out the arrangements that are in place, or are to be put in place, by the Scottish Ministers to ensure that they comply with the duty under section 4.
38. Draft regulations made under section 4(2) may make provision in connection with conferring functions on the following bodies: a Health Board, a Special Health Board, the Common Services Agency, a local authority and an integration joint board.
39. Regulations made under section 4(2) are subject to the affirmative procedure. Section 8(1) provides that any regulations made under this power may make incidental, supplementary, consequential, transitional, transitory or saving provision, and may make different provision for different purposes.

Committee consideration

40. The Committee asked the Member in Charge for further clarification on the duty to secure delivery, and whether the power could be narrowed in order to limit the functions that may be conferred under this power. It also asked whether any work has been done to establish what regulations made under this power may look like.
41. The Member in Charge responded that he has not been overly prescriptive as to the contents of the regulations which may well need to be broad-ranging to ensure compliance with the duty to deliver rights. He stated that he anticipates that regulations would include processes for bodies to follow to ensure they deliver the provisions of the Bill and also ensure that they can demonstrate that they are delivering the provisions of the Bill.
42. Given the level of detail likely to be included in such regulations, it appears appropriate to the Committee that such detail is set out in subordinate legislation rather than on the face of the Bill. The Committee is therefore content that although the specific measures which are likely to be included are at this time unknown, the affirmative procedure will enable the Parliament to fully consider those measures at a later date, and that such measures are likely to be procedural in nature.

43. **The Committee is content with the power in section 4(2) in principle, and that it is subject to the affirmative procedure.**

Section 6: Code of practice**Power conferred on: Scottish Ministers****Parliamentary procedure: Laid, no procedure****Provision**

44. Section 6 provides that the Scottish Ministers must prepare a code of practice to be laid in Parliament in draft at the same time as the draft regulations under section 4 are laid. The code of practice will cover the discharge of functions by the bodies mentioned above, as imposed on them by regulations made under section 4. Section 6(5) states that the bodies mentioned above must comply with the code of practice.
45. Section 6(6) provides that the code of practice must specify the form of the written statement of reasons to be provided under section 2(3)(a) where a relevant health professional determines either that no treatment is appropriate or that a treatment requested by the patient is not appropriate for the patient.
46. A draft code of practice must be laid before the Parliament at the same time as laying draft regulations under section 4(2). The final code of practice must be published at the same time as regulations are made under section 4, and the code of practice must be laid before the Parliament as soon as practicable after publication. The Scottish Ministers may also publish a revised code of practice from time to time.

Committee consideration

47. The Committee asked the Member in Charge whether it was his intention that there will be an opportunity for Members of the Parliament to make representations on the code when it is laid in draft. The Member in Charge responded that he considers the contents of the code will be scrutinised carefully and consideration of its contents would also contribute to scrutiny of the regulations made under section 4(2), which would be subject to the affirmative procedure.
48. The Member in Charge stated that he is very keen that the code of practice is scrutinised carefully, and that, in scrutinising the code the Parliament makes representations on behalf of the bodies that will have to implement the provisions of the code. He said he would be content to lodge an amendment to apply a specific procedure if the Committee considered that appropriate.
49. When considering whether a specific parliamentary procedure should apply to publications such as a Code of Practice, the Committee considers the balance of ensuring appropriate scrutiny and protecting parliamentary time. In this instance, it is the Committee's view that the laying of the Code in draft alongside affirmative regulations ensures the appropriate level of oversight, given it will have an opportunity at that stage to make representations on the Code. The Committee therefore considers it is not necessary in this instance to subject the Code to further parliamentary procedure.

50. **The Committee is content with the power in principle, and that the Code of Practice will be laid in draft alongside regulations made under section 4(2), and thereafter be laid only after publication.**

Section 7(1): Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: negative**Provision**

51. Section 7 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 the Bill.
52. Section 8(3) provides that the negative procedure will apply where regulations are made under section 7.

Committee consideration

53. This power is considered at paragraphs 20 to 24 of the DPM.
54. The power to make standalone ancillary provision by regulations is common in modern primary legislation. The power is limited to the extent that it can only be used if the Scottish Ministers consider it appropriate for the purposes of, in connection with, or for giving full effect to the Bill or any provision made under it.
55. The power allows issues of an ancillary nature which may arise to be dealt with effectively by the Scottish Ministers. Without such a power, any changes would require to be made by primary legislation, which we consider would not be an effective use of either the Parliament's time or the Scottish Government's resources.

56. **The Committee is content with the power to make ancillary provision in regulations under section 7 of the Bill. It is also content that the negative procedure applies, given that the power does not extend to modifying any primary legislation, including the Act flowing from this Bill.**

Section 10: Commencement**Power conferred on: Scottish Ministers****Power exercisable by: Regulations made by Scottish statutory instrument****Parliamentary procedure: Laid, no procedure****Provision**

57. Section 10 makes commencement provision. The following provisions of the Bill come into force the day after Royal Assent: sections 4, 6, 7, 8, 9, 10 and 11.
58. The delegated power is contained in section 10(2), which provides that the Scottish Ministers can, by regulations, appoint when the other provisions of the Bill are to come into force.
59. Such regulations are to be laid before the Parliament but are not subject to any parliamentary procedure.

Committee consideration

60. It is standard to take a power at the end of a Bill to commence those sections of the Bill where provision has not been made for commencement. This allows the Scottish Ministers to appoint the day on which those sections are to be commenced.
61. The Member in Charge notes in the DPM that the Bill is not commencing sections 1 to 3 (right to recovery, procedure for determining treatment and provision of treatment) and section 5 (duty to report to Parliament) in order that the Scottish Ministers can ensure that those provisions come into force at the same time as the regulations and code of practice under sections 4 and 6.

62. In light of the above, the Committee is content with the power in principle and that it is not subject to any parliamentary procedure.

