



The Scottish Parliament
Pàrlamaid na h-Alba

Subordinate Legislation Committee

40th Report, 2012 (Session 4)

Freedom of Information (Amendment) (Scotland) Bill

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Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) any—

(i) subordinate legislation laid before the Parliament;

(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; and

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Chic Brodie
Nigel Don (Convener)

James Dornan (Deputy Convener)
Mike MacKenzie
Hanzala Malik
John Pentland
John Scott

Committee Clerking Team:

Clerk to the Committee
Irene Fleming

Support Manager
Daren Pratt



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The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meeting on 4 September 2012, the Subordinate Legislation Committee considered the delegated power provisions in the Freedom of Information (Amendment) (Scotland) Bill (“the Bill”) at Stage 1. The Committee submits this report to the Finance Committee as lead committee for the Bill under Rule 9.6.2 of Standing Orders.
2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”¹).

OVERVIEW OF THE BILL

3. The Freedom of Information (Amendment) (Scotland) Bill was introduced in the Scottish Parliament on 30 May 2012. It is a Government Bill comprising eight sections.
4. The Bill makes various amendments to the Freedom of Information (Scotland) Act 2002 (“the 2002 Act”), in line with the Scottish Government’s obligation under the [Six Principles of Freedom of Information](#) to adjust the FOI regime where it considers it necessary and sensible to do so.
5. The Bill also seeks to mirror amendments recently made to the UK Freedom of Information Act 2000 for the purpose of ensuring consistency of approach to the disclosure of information relating to communications with Her Majesty, the Royal Family and the Royal Household.

¹ Freedom of Information (Amendment) (Scotland) Bill. Delegated Powers Memorandum. Available at: [http://www.scottish.parliament.uk/S4_Bills/Freedom%20of%20Information%20\(Amendment\)%20\(Scotland\)%20Bill/FOI\(A\)_DPM.pdf](http://www.scottish.parliament.uk/S4_Bills/Freedom%20of%20Information%20(Amendment)%20(Scotland)%20Bill/FOI(A)_DPM.pdf)

DELEGATED POWERS PROVISIONS

Section 4 – Historical periods

Power conferred on:	The Scottish Ministers
Power exercisable by:	Order
Parliamentary procedure:	Affirmative procedure

6. The 2002 Act provides that certain exemptions from disclosure are not available in relation to records which are more than 30 years old. Other exemptions are no longer available after 60 or 100 years have passed. Section 59 of the 2002 Act currently confers power on the Scottish Ministers to reduce these periods of time but does not allow Ministers to provide for different periods depending on the type of record. This power is subject to the affirmative procedure.

7. Section 4 of the Bill amends this order-making power to allow the Scottish Ministers to make different provision for records of different descriptions, or exemptions of different kinds, or different purposes in other respects. Section 4 of the Bill will allow for different provision to be made in respect of different records so that, for example, particular kinds of record may become “historical records” sooner than others. The procedure applicable to the exercise of the power is not changed.

8. The Committee is satisfied in principle with the power in section 4 of the Bill. The Committee is also satisfied that the amended power in section 59 of the 2002 Act will continue to be subject to the affirmative procedure.

Section 7 – Commencement

Power conferred on:	The Scottish Ministers
Power exercisable by:	Order
Parliamentary procedure:	Laid only

9. This section allows the Scottish Ministers to commence sections 1 to 5 of the Bill by order. (Sections 6, 7 and 8 will come into force on the day after Royal Assent.) Such an order may include transitional, transitory or savings provision.

10. Orders made under this power only require to be laid before the Parliament. There is no further form of parliamentary control over such orders.

11. The Committee is content with the power in section 7 which allows the Scottish Ministers to commence the provisions in the Bill (except for sections 6, 7 and 8, which will come into force the day after Royal Assent) and for that power to be subject to the laying requirement set out in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

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