



The Scottish Parliament  
Pàrlamaid na h-Alba

# **Delegated Powers and Law Reform Committee**

## **16th Report, 2014 (Session 4)**

### **Public Bodies (Joint Working) (Scotland) Bill as amended at stage 2**

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## **Delegated Powers and Law Reform Committee**

### **Remit and membership**

#### **Remit:**

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
  - (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; and
  - (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.

#### **Membership:**

Richard Baker  
Nigel Don (Convener)  
Mike MacKenzie  
Margaret McCulloch  
Stuart McMillan (Deputy Convener)  
John Scott  
Stewart Stevenson

**Committee Clerking Team:**

**Clerk to the Committee**

Euan Donald

**Assistant Clerk**

Elizabeth White

**Support Manager**

Daren Pratt



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## Delegated Powers and Law Reform Committee

### 16th Report, 2014 (Session 4)

#### Public Bodies (Joint Working) (Scotland) Bill as amended at stage 2

The Committee reports to the Parliament as follows—

#### INTRODUCTION

1. At its meeting on 18 February 2014, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Public Bodies (Joint Working) (Scotland) Bill as amended at Stage 2 (“the Bill”)<sup>1</sup>. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.
2. In broad outline, the Bill provides a framework with a view to the improvement of the quality and consistency of health and social care services, through the integration of health and social care services in Scotland. Four “models of integration” between local authority and Health Board functions may be used, by agreement subject to the approval of the Scottish Ministers. On default if an integration scheme is not submitted to Ministers, they may specify functions to be delegated to an integration joint board (*Part 1*).
3. The Bill also provides for the Common Services Agency (also known as NHS National Services Scotland) to provide goods and services to public bodies including local authorities (*Part 2, section 44*). It also provides for the Scottish Ministers to form a wider range of joint venture structures in relation to persons providing functions and services under the National Health Service (Scotland) Act 1978, to seek to make the most effective use of resources (*Part 3, section 46*). There is new provision that a Health Board may, with the agreement of another Health Board and the Scottish Ministers, carry out on behalf of that other Board any function of the other Board (*Part 3, section 47*).
4. The Bill also extends the scheme for meeting losses and liabilities of health service bodies which is run by NHS Scotland on behalf of the Scottish Ministers, to

<sup>1</sup> Public Bodies (Joint Working) (Scotland) Bill as amended at Stage 2 available at: [http://www.scottish.parliament.uk/S4\\_Bills/Public%20Bodies%20\(Joint%20Working\)%20\(Scotland\)%20Bill/b32as4-stage2-amend.pdf](http://www.scottish.parliament.uk/S4_Bills/Public%20Bodies%20(Joint%20Working)%20(Scotland)%20Bill/b32as4-stage2-amend.pdf)

local authorities and “integration joint boards” established under Part 1 (*Part 2, section 45*).

5. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”<sup>2</sup>).

6. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its [48<sup>th</sup> report of 2013](#).

#### DELEGATED POWERS PROVISIONS

7. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.

**8. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new or substantially amended delegated powers provisions listed below and that it is content with the Parliamentary procedure to which they are subject:**

- Section 1(4H) – Integration schemes: same local authority and Health Board area
- Section 9(3) – Functions delegated to an integration joint board
- Section 11(4) and (5)– Other staff of integration joint board
- Section 12 – Integration joint boards: further provision
- Section 14(1A) – Functions delegated to local authority or Health Board
- Section 15 – Transfer of staff where functions delegated to local authority or Health Board
- Section 18A – Health funding: further provision
- Sections 22 and 22A– Directions by integration authority; Section 22: supplementary
- Section 22A(6) – Section 22: supplementary
- Section 30B– Requirement to prepare replacement strategic plan
- Section 33(3)– Integration authority: performance report
- Section 34(3A) – Revised integration scheme

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<sup>2</sup> Public Bodies (Joint Working) (Scotland) Bill Supplementary Delegated Powers Memorandum available at: [http://www.scottish.parliament.uk/S4\\_Bills/Public\\_Bodies\\_SDPM.pdf](http://www.scottish.parliament.uk/S4_Bills/Public_Bodies_SDPM.pdf)

- Section 36 – Power to make provision in consequence of new integration scheme
- Section 41C(3) – Joint inspections of health services and social services
- Section 44(4A) – Shared services (Common Services Agency)

9. The Scottish Government has written to the Committee to advise that it intends to bring forward an amendment at stage 3 which would make the powers at section 1(4C) and (4D) subject to the affirmative procedure. The correspondence from the Government is reproduced at the **Annex**.

10. **The Committee reports that it finds the powers in section 1(4B) to (4D), (4F) and (4G) are acceptable in principle.**

11. **The Committee also notes the Scottish Government's intention to bring forward an amendment at Stage 3 to provide that the powers conferred by section 1(4C) and (4D) would be subject to the affirmative procedure. The Committee is content with that proposal, and that the powers in section 1(4B), (4F) and (4G) are subject to the negative procedure.**

12. **The Committee therefore reports that it is content with the provisions in the Bill which have been amended at Stage 2 to insert or substantially alter provisions conferring powers to make subordinate legislation.**

**ANNEX**

**Correspondence from the Scottish Government, dated 14 February 2014.**

I draw your attention to the Scottish Government's intention to lay a Stage 3 amendment in relation to section 1(4C) and (4D), which will amend the choice of procedure that these powers will be subject to. On reflection, given the significance of the powers at 1(4C) and (4D), the Scottish Government consider it more appropriate that these powers be subject to affirmative procedure.



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