



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

41st Report, 2014 (Session 4)

Housing (Scotland) Bill as amended at stage 2

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Pàrlamaid na h-Alba

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

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41st Report, 2014 (Session 4)

Housing (Scotland) Bill as amended at stage 2

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meeting on 17 June 2014, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Housing (Scotland) Bill as amended at Stage 2 (“the Bill”)¹. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. Very broadly, the Bill makes provision about abolition of the right to buy, the allocation of social housing, the law affecting private housing, the regulation of letting agents and the licensing of sites for mobile homes. It also provides for the transfer of jurisdiction from the sheriff courts to the First-tier Tribunal for Scotland (to be established in the Tribunals (Scotland) Bill) in cases involving private rented sector housing disputes.

3. 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”²).

4. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its [18th report of 2014](#).

DELEGATED POWERS PROVISIONS

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

¹ Housing (Scotland) Bill [as amended at Stage 2 available] at:
[http://www.scottish.parliament.uk/S4_Bills/Housing%20\(Scotland\)%20Bill/b41as4-stage2-amend.pdf](http://www.scottish.parliament.uk/S4_Bills/Housing%20(Scotland)%20Bill/b41as4-stage2-amend.pdf)

² Housing (Scotland) Bill Supplementary Delegated Powers Memorandum available at:
[http://www.scottish.parliament.uk/S4_Bills/Housing%20\(Scotland\)%20Bill/Housing_SDPM.pdf](http://www.scottish.parliament.uk/S4_Bills/Housing%20(Scotland)%20Bill/Housing_SDPM.pdf)

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

- Section 4(2) – Power to issue guidance regarding the making or altering of social landlords’ rules on allocation of housing (inserts new subsection (3A) in section 21 of the Housing (Scotland) Act 1987)
- Section 7(2) – Power to issue guidance on the imposition of a minimum period before an applicant is eligible for the allocation of housing (inserts new section 20B(3) in the Housing (Scotland) Act 1987)
- Section 8(1) – Power to issue guidance regarding the creation of, or conversion of a tenancy to, a short Scottish secure tenancy on the grounds of antisocial behaviour (inserts new section 34(9) in the Housing (Scotland) Act 2001)
- Section 15(1) – Power to publish guidance on recovery of possession where the grounds for eviction include antisocial behaviour
- Section 22A – Power to issue guidance on provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (inserts provision in section 13 of the Housing (Scotland) Act 2006)
- Section 22B – Power to issue guidance on electrical safety standards (inserts provision in section 13 of the Housing (Scotland) Act 2006)
- Section 22C – Power to modify repairing standard etc. (inserts new section 20A in the Housing (Scotland) Act 2006) (*new power*)
- Section 29(2)(c) – Power to prescribe training requirements for registered letting agents (*new power*)
- Section 41(1) – Power to set out a code of practice which makes provision about the standard of practice of persons who carry out letting agency work (*amended power*)
- Section 46A(2) – Power to make provision about information required for the purpose of monitoring compliance (*new power*)
- Section 51(3)(a) – Power to exclude specified bodies or schemes from the definition of letting agency work (*addition of new element to existing power*)
- Section 55 – Power to specify time limits for the determination of a site licence application (inserts section 32F(2A) in the Caravan Sites and Control of Development Act 1960) (*new power*)
- Section 60 – Power to make provision concerning the procedure to be followed in relation to the application and transfer of site licences, and

appeals relating to site licences (Inserts section 32N in the Caravan Sites and Control of Development Act 1960) (*amended power*)

- Section 63 - Power to vary maximum fine (formerly inserted section 32T in the Caravan Sites and Control of Development Act 1960) (*removed power*)
- Section 70 – Power to publish guidance on the operation of Part 1A of the Caravan Sites and Control of Development Act 1960 (inserts new section 32Z5A in the 1960 Act)
- Section 72A(1) – Power to prescribe form of notice of discharge of potential liability for costs (inserts new subsections (3A) and (3B) in section 10A of the Title Conditions (Scotland) Act 2003) (*new power*)
- Section 72A(2) – Power to prescribe form of notice of discharge of potential liability for costs (inserts new subsections (3A) and (3B) in section 13 of the Tenements (Scotland) Act 2004) (*new power*)

7. The Committee's comments and, where appropriate, recommendations on the remaining new, removed or substantially altered delegated power in the Bill as amended are detailed below.

Section 77A(3) – Power to modify description of members of the First-tier Tribunal disqualified from the exercise of certain functions

Section 77B – Power to modify description of members of the Private Rented Housing Panel disqualified from membership (inserts new paragraph 1A(2) in Schedule 4 to the Rent (Scotland) Act 1984)

Powers conferred on:	the Scottish Ministers
Powers exercisable by:	order
Parliamentary procedure:	negative procedure

8. Section 77A provides that elected and certain other politicians are disqualified from hearing housing cases transferred under the Bill to the First-Tier Tribunal (FTT). Section 77B amends the Rent (Scotland) Act 1984 to provide that the same elected and other politicians are also disqualified from being appointed as or remaining a member of the Private Rented Housing Panel (PRHP). Both provisions confer power on the Scottish Ministers by order to modify the list of disqualified offices.

9. The SDPM explains that on introduction, the Tribunals (Scotland) Bill (now passed) contained a provision which set out that the holders of certain offices would have been disqualified from also being a member of the First-tier Tribunal (FTT). These disqualifications would also have applied to members of the PRHP once its jurisdiction was transferred into the FTT under provisions in the Tribunals Bill. However, the provisions were removed during the passage of that Bill to allow the policy on disqualifications to be a matter for the founding legislation for each individual tribunal jurisdiction. Accordingly the Housing Bill, as amended at stage 2, now makes provision about disqualification.

10. The SDPM explains why flexibility to adjust that list of disqualified office holders is required. The jurisdiction of the FTT which deals with housing cases could be placed in a chamber with other jurisdictions of the FTT, set up under a different parent Act. Equally, the PRHP could also be placed in a chamber alongside other jurisdictions within the FTT. It may be desirable for members of the same chamber to be subject to the same disqualification rules. The Scottish Government considers that an order-making power will allow the flexibility to consider how disqualifications work in practice when more detail about the structure of the FTT is available and to take account of any potential future changes.

11. The Committee considers it acceptable for power to be delegated to the Scottish Ministers in those circumstances, to alter the disqualification provisions in line with other jurisdictions (if appropriate), once it is known what these will be.

12. The provisions confer power on the Scottish Ministers to modify primary legislation by adding to, varying or removing an office from the list of disqualified offices set out on the face of the Bill. There is a presumption that powers such as these which enable the amendment of primary legislation will be subject to the affirmative procedure.

13. In explaining the choice of negative procedure in this case, the SDPM mentions powers which exist in connection with other tribunal jurisdictions and which are subject to the negative procedure. The Committee notes, however, that these powers (which relate to the Mental Health Tribunal Scotland, the Additional Support Needs Tribunal for Scotland and the Scottish Charity Appeals Panel) do not enable the modification of primary legislation. Rather they are expressed as powers to specify *additional* descriptions of offices which would disqualify a person from membership of the relevant tribunal. They are not powers to modify or remove the description of offices set out in those Acts. As such they are on one view quite different to the powers conferred by sections 77A and 77B of the Bill, which do enable modification of the primary legislation. The Committee is concerned that the powers could be exercised, for example, to remove an office from the list of disqualified offices which has been approved by the Parliament on the face of the Bill.

14. The Committee is content in principle with the new powers in section 77A(3) of the Bill and paragraph 1A(2) of Schedule 4 to the Rent (Scotland) Act 1984 (inserted by section 77B of the Bill). However, the Committee recommends that the Scottish Ministers lodge amendments at stage 3 to make the powers subject to the affirmative procedure.

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