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The Scottish Parliament  
Pàrlamaid na h-Alba

## 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)  
Kezia Dugdale  
Mike MacKenzie  
John Scott  
Drew Smith

**Committee Clerking Team:**

**Clerk to the Committee**  
Irene Fleming

**Assistant Clerk**  
Euan Donald

**Support Manager**  
Lori Gray



The Scottish Parliament  
Pàrlamaid na h-Alba

## Subordinate Legislation Committee

21st Report, 2011 (Session 4)

### National Library of Scotland Bill

The Committee reports to the Parliament as follows—

#### INTRODUCTION

1. At its meetings on 22 November and 13 December 2011, the Subordinate Legislation Committee considered the delegated powers provisions in the National Library of Scotland Bill at Stage 1. The Committee submits this report to the Education and Culture Committee as the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

#### OVERVIEW OF THE BILL

2. The National Library of Scotland Bill was introduced in the Parliament on 26 October 2011. It is an Executive Bill.

3. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

4. In the consideration of the memorandum at its meeting on 22 November, the Committee agreed to write to the Scottish Government to raise questions on the power at section 12(2).

5. This correspondence is reproduced in the Annexe.

6. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers contained in section 8 (directions and guidance), section 10(2) (incidental or consequential provision), or schedule 1, paragraph 2(3) (variation of number of members of the National Library of Scotland).

#### **Delegated powers provision:**

**Section 12(2) – Power to commence provisions (including transitional, transitory or saving provisions)**

<b>Power conferred on:</b>	<b>The Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Order</b>
<b>Parliamentary procedure:</b>	<b>Default laying requirement</b>

7. This power enables the Scottish Parliament to appoint a day or days when the provisions of the new Act are to come into force. An order which does so can also include transitional, transitory or saving provision.

8. An order made under section 12(2), whether simply commencing provisions, or whether also making transitional, transitory or saving provision, is subject only to the basic laying requirement as provided for under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 2010 Act”).

9. The Committee contrasted the difference in procedural treatment under section 10(2) and section 12(2). An order to make incidental or consequential provision set out at section 10(2) would be subject to the negative procedure (or affirmative where amending the text of an Act). No indication was given in the DPM of circumstances in which this power might be used, whether that could potentially be significant, or why it should be subject simply to the laid only procedural requirement.

10. The Committee asked the Scottish Government why an order made under the section 12(2) power, where it includes transitional, transitory or saving provision, should be subject simply to the default “laid only” procedural requirement. Clarification was sought as to what sort of provision could be necessary in this case and for justification why exercise of this power need not attract parliamentary scrutiny.

11. The Committee notes from the reply that the Scottish Government considers the approach taken within section 12(2) to be appropriate. The Committee notes that the Bill makes major changes to the size and makeup of the board of trustees, and that the power might be required to deal with unforeseen transitional issues.

12. It is also notes that this is a Bill of narrow scope, and that it is stated by the Scottish Government that any provision is not likely to be lengthy or complex, or to affect the legal rights of the public at large. The Committee further observes that the power cannot be used to modify enactments.

13. The Committee takes the view that while, along with clarity of provision, these are important considerations, the attraction of covering transitional, transitory or saving provisions within a commencement order for those reasons requires to be balanced with an assessment of whether an appropriate level of Parliamentary input is given to such an order.

14. In this particular instance, having regard to the content of this Bill, its narrow scope, and the restricted nature of the power, the Committee is satisfied with the response provided, and the provision made.

**15. The Committee, having heard further from the Scottish Government, is content with the order making power under section 12(2), relating to commencement, which may include transitional, transitory or saving provision, and furthermore, is content that an order under this power is not to be subject to Parliamentary procedure beyond the default laying requirement.**

## **ANNEXE**

### **Correspondence with the Scottish Government**

#### **Section 12(2) – Power to commence provisions (including transitional, transitory or saving provisions)**

The Committee asks the Scottish Government why an order made under section 12(2), where it includes transitional, transitory or saving provision, should be subject simply to the default “laid only” procedural requirement (in contrast to an order which makes incidental or consequential provision under section 10(2), which would be subject to (at minimum) the negative procedure)?

The Committee further asks the Scottish Government to explain, with reference to this power, what sort of provision might be necessary, and for justification why exercise of the power need not attract Parliamentary scrutiny?

#### **Scottish Government Response**

Thank you for your letter of 22 November 2011 seeking an explanation on the power to commence provision at Section 12 (2) of the National Library of Scotland Bill.

As a general policy, the Scottish Government does not consider that commencement orders should be subject to Parliamentary procedure and sees no reason why transitional, transitory or saving provisions should not be included in such orders. It is clearer for the users of the legislation to be able to see any transitional, transitory or saving provisions in the commencement order(s).

The type of provision which might be necessary for the National Library of Scotland Bill might relate to the transition from the current board of trustees of 32 members, of whom only 5 are appointed on the recommendation of the Scottish Ministers, to a board of between 7 and 14 members appointed directly by the Scottish Ministers. As stated in the Delegated Powers Memorandum, the power is to deal with any unforeseen transitional issues. Given the narrow scope of the Bill it can be anticipated that any provision is not likely to be lengthy or complex or affect the legal rights of the public at large. The power cannot be used to modify enactments. Accordingly, it is felt that any transitional, transitory or saving provisions need not be subject to Parliamentary procedure beyond the default laying requirement.

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Published in Edinburgh by APS Group Scotland

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Printed in Scotland by APS Group Scotland

ISBN 978-1-4061-8046-6

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