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Delegated Powers and Law Reform Committee

Private Housing (Tenancies) (Scotland) Bill as amended at Stage 2



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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—

- 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; and
- i. any Consolidation Bill as defined in Rule 9.18.1 referred to it by the Parliamentary Bureau in accordance with Rule 9.18.3.



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Introduction

1. At its meeting on 8 March 2016 the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Private Housing (Tenancies) (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. The Bill was introduced by the Cabinet Secretary for Social Justice, Communities and Pensioners’ Rights on 7 October 2015. The Bill seeks to make provision about private rented housing; in particular to establish a new type of tenancy to be known as a private residential tenancy.
3. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill (“the SDPM”)².
4. The Committee previously reported on the delegated powers provisions in this Bill at Stage 1 in its 75th report of 2015³.

Delegated Powers Provisions

5. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.
6. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the following new or substantially amended delegated powers provisions:
 - Section 34B(1)(a) – Further provision about making and determining an application under section 34A
 - Section 62 – Commencement

Recommendations

7. The Committee's comments and recommendations on the remaining delegated power in the Bill (as amended) are detailed below.

Section 30 – Power to designate a rent pressure zone

Power conferred on:	Scottish Ministers
Power exercisable by:	regulations
Parliamentary procedure:	affirmative or negative procedure
Revised or new power:	revised

Provision

8. Section 30(2) of the Bill allows the Scottish Ministers to designate a “rent pressure zone”. A zone may only be designated as such if a local authority makes an application for a designation (section 30(1)). The effect of the designation is to restrict the rate at which rent may be increased. Rent pressure zones are to be designated in regulations which are subject to the affirmative procedure. In its Stage 1 report the Committee was content with the power.
9. The Bill has been amended at Stage 2 so that the procedure to make regulations to designate a rent pressure zone is restricted to the affirmative procedure when the zone is first so designated and any subsequent revocation or amendment of the zone is subject to the negative procedure. This is achieved by adding new section 60(5) of the Bill which sets out different procedures for the regulations under section 30 depending on whether they are designating a rent pressure zone or making other provision (i.e. amendment or revocation of the zone).

Comment

10. The SDPM explains that the change in procedure is necessary because market conditions may mean that it is necessary to lift or adjust a rent pressure zone quickly, and that the affirmative procedure may be a barrier to prompt action during periods when the Parliament is in recess or dissolved.
11. The Committee considers it important that regulations which amend or revoke a designated rent pressure zone should be subject to the same level of scrutiny by the Parliament as the regulations which make that designation. The Committee also notes the steps in process which require to be taken prior to a rent pressure zone being designated. The Committee considers that a form of provisional affirmative procedure would meet the necessary tests sets out by the Scottish Government in the SDPM. A model is found in section 68(4) of the Land and Buildings Transaction Tax (Scotland) Act 2013. The Committee considers that such a model would allow regulations to be made and commenced during periods

of recess in a similar manner to those which are subject to the negative procedure, and that Parliament would retain the same level of scrutiny as if the instrument had been laid subject to the affirmative procedure.

- 12. The Committee finds the change in procedure for regulations under section 30 which amend or revoke a rent pressured zone from the affirmative procedure to the negative procedure to be unacceptable. The Committee, having regard to the steps that are taken before a rent pressure zone can be designated by the Scottish Ministers in regulations including being subject to the affirmative procedure, considers that a similar level of scrutiny by the Parliament should be available where it is proposed that a rent pressure zone is to be amended or revoked.**
- 13. The Committee recommends to the Scottish Government that the provisional affirmative procedure may be more appropriate, and suggests that a model similar to that in section 68(4) of the Land and Buildings Transaction Tax (Scotland) Act 2013 should be adopted.**

¹ Private Housing (Tenancies) (Scotland) Bill as amended at Stage 2 (SP Bill 79A, Session 4 (2016)) is available here:

[http://www.scottish.parliament.uk/S4_Bills/Private%20Housing%20\(Tenancies\)%20\(Scotland\)%20Bill/SPBill79AS042016.pdf](http://www.scottish.parliament.uk/S4_Bills/Private%20Housing%20(Tenancies)%20(Scotland)%20Bill/SPBill79AS042016.pdf) [accessed March 2016]

² Private Housing (Tenancies) (Scotland) Bill, Supplementary Delegated Powers Memorandum (SP Bill 79A-DPM, Session 4 (2016)) is available here:

[http://www.scottish.parliament.uk/S4_Bills/Private%20Housing%20\(Tenancies\)%20\(Scotland\)%20Bill/SPBill79ADPMS042016.pdf](http://www.scottish.parliament.uk/S4_Bills/Private%20Housing%20(Tenancies)%20(Scotland)%20Bill/SPBill79ADPMS042016.pdf) [accessed March 2016]

³ Delegated Powers and Law Reform Committee, 75th Report, 2015 (Session 4). *Private Housing (Tenancies) (Scotland) Bill at Stage 1* (SP Paper 843) is available here:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/94515.aspx> [accessed March 2016]

