Subordinate Legislation Committee

42nd Report, 2012 (Session 4)

Legislative Consent Memorandum on the Prisons (Interference with Wireless Telegraphy) Bill

Published by the Scottish Parliament on 20 September 2012
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

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Irene Fleming

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Daren Pratt
Subordinate Legislation Committee

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The Committee reports to the Parliament as follows—

1. At its meeting on 18 September 2012, the Committee considered the provisions in the Prisons (Interference with Wireless Telegraphy) Bill ("the Bill") that confer on the Scottish Ministers powers to make subordinate legislation.

2. A Legislative Consent Memorandum ("LCM") has been lodged in relation to the Bill. The draft of the motion which will be lodged by the Cabinet Secretary for Justice is:

   “That the Parliament agrees that the relevant provisions of the Prisons (Interference with Wireless Telegraphy) Bill, introduced in the House of Commons on 20 June 2012, relating to the interference with wireless telegraphy in order to prevent the use of electronic communications devices (including mobile telephones) in, or detect or investigate the use of such devices within, prisons and young offender’s institutions, so far as these matters fall within the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

3. Under rule 9B.3.6 of Standing Orders, where the Bill that is the subject of an LCM contains provisions that confer on the Scottish Ministers powers to make subordinate legislation, the Subordinate Legislation Committee shall consider and may report to the lead committee on those provisions.

4. As with bills passed by the Scottish Parliament, the Committee considered whether it is appropriate in principle for the powers to be delegated to the Scottish Ministers, whether the terms of the powers are appropriately drawn and whether the level of scrutiny applied to the exercise of the powers is appropriate.

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1 The latest version of the Bill is available at: http://services.parliament.uk/bills/2012-13/prisonsinterferencewithwirelesstelegraphy.html
2 LCM on the Prisons (Interference with Wireless Telegraphy) Bill Available at: http://www.scottish.parliament.uk/LegislativeConsentMemoranda/prisonsbill-lcm.pdf
Prisons (Interference with Wireless Telegraphy) Bill

5. The Bill has 5 clauses, all extending to England, Wales and Scotland. Functions under the Bill are conferred on “the appropriate national authority”, which is the Secretary of State, in respect of England and Wales, and the Scottish Ministers, in respect of Scotland (clause 4(1)). The Bill confers powers on Scottish Ministers to authorise governors and directors of relevant institutions to interfere with wireless telegraphy, in order to prevent the use of electronic communications devices (including mobile telephones) in, or detect or investigate the use of such devices within, relevant institutions. In Scotland, this covers prisons and young offender institutions. This will be achieved through the use of signal denial equipment.

6. Paragraphs 7 to 14 of the LCM contain an outline of the Bill clauses which relate to Scotland, and explanation of the reasons for seeking a legislative consent motion.

Powers to make subordinate legislation

7. The Committee has identified 3 provisions which confer delegated powers on the Scottish Ministers. There are 2 powers of direction, and a commencement power. (There is no Delegated Powers Memorandum available for consideration.)

Clause 2(4) – Safeguards (required directions)

8. Clause 2(4) contains a requirement for Scottish Ministers to give directions to a person in charge of “a relevant institution”, which applies where Ministers authorise an interference with wireless telegraphy under clause 1. (Scottish Ministers are the “appropriate national authority” in relation to such institutions in Scotland). By clause 4(1), a “relevant institution” means, in Scotland, a prison and a young offenders institution (“YOI”).

9. The directions must specify descriptions of information to be provided to the Office of Communications; the intervals at, or occurrences on, which such information is to be so provided; and the circumstances in which the use of equipment for the purposes of the interference must be modified or discontinued. (And in particular, directions aimed at ensuring that the authorised interference will not result in disproportionate interference with wireless telegraphy outside the institution). Any direction under clause 2 must be in writing.

10. The Committee considered whether this power is acceptable to be exercised in the form of written directions. This power amounts to a requirement for the Scottish Ministers to issue written directions, in the specific situation where Ministers authorise the person in charge of a prison or a YOI to interfere with wireless telegraphy in the institution. Clause 2(4) defines what the directions shall cover. An equivalent power is conferred on the Secretary of State, in respect of England and Wales.
11. The Committee reports that it is content with the power to give directions conferred on the Scottish Ministers in clause 2(4).

Clause 2(5) – Safeguards (other directions)

12. By clause 2(5), the Scottish Ministers may give such other directions to the governor or director in charge of a prison or YOI, as the Ministers may consider necessary or desirable for the purposes of the Bill, where Ministers authorise an interference with wireless telegraphy under section 1.

13. Again, the Committee considered whether this power is acceptable to be exercised in the form of written directions.

14. Any further directions which may be issued to the person in charge of an institution under this power will relate to a specific authorised interference with wireless telegraphy under section 1. The directions would set out further conditions applying to such an authorisation. It appears that those conditions might need to be imposed urgently, to prevent or investigate the use of devices in an institution. The power also appears designed to permit some flexibility, to allow the matters which directions to the institution must cover in terms of clause 2(4) to be added to, if required.

15. An equivalent power is again conferred on the Secretary of State, in relation to institutions in England and Wales.

16. The Committee reports that it is content with the power to give directions conferred on the Scottish Ministers in clause 2(5).

Clause 5(2) and (3) – commencement

17. Clause 5(2) contains the power to commence sections 1 to 4 of the Act by order on an appointed day.

18. The Scottish Ministers have power to commence the provisions so far as extending to Scotland, and the Secretary of State as regards England and Wales. The Committee accepts that the Scottish Ministers have the power by order to commence the provisions, so far as extending to Scotland.

19. The Committee reports that it is content with the commencement power (so far as conferred on the Scottish Ministers) in clause 5(2) and (3), and that the power is not subject to Parliamentary procedure.

20. In summary, the Committee reports that it is content with the delegated powers in the Bill.
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