



The Scottish Parliament
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee
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Age of Criminal Responsibility (Scotland) Bill at Stage 1

The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 15 May and seeks an explanation of the following matters:

Section 17 – Guidance

Power conferred on: Scottish Ministers
Power exercisable by: guidance
Parliamentary procedure: none

Section 17 provides for the issue by the Scottish Ministers of guidance to the independent reviewer about the exercise of the reviewer's functions.

The Committee asks the Scottish Government to explain why there is no further provision in section 17 similar to that contained in section 28(4) of the current Planning (Scotland) Bill (as introduced). That subsection (4) provides that the issued guidance which is the subject of that section must be made publicly available by the Scottish Ministers.

Section 19– Modifications of the functions of the independent reviewer

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative

The main function of the independent reviewer is stated in section 6 as, in short, to review information concerning behaviour of persons when under 12, before disclosure of such information in an enhanced disclosure certificate or a PVG scheme record. The reviewer's other functions stated in the Bill are incidental to that function.

The Committee asks the Scottish Government to explain:

(1) Why is it considered appropriate that there should be a very broad power to modify (including to enhance) the functions of the independent reviewer? Given that this power follows from the proposal to increase the minimum age of criminal responsibility to age 12, should this power be drawn more narrowly?

For example, could the power be drawn so as to permit the modification of functions provided that they relate to the review of information concerning behaviour of persons when they are under 12 years of age?

(2) In what circumstances might the Scottish Government exercise the power to enhance the functions of the independent reviewer?

Section 25 – Search of child under 12 without warrant

**Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative**

In relation to the power in subsection (4) of section 25, the Committee asks the Scottish Government to explain in what circumstances it could be necessary or appropriate to exercise this power to omit or modify provision in subparagraphs (a) to (c) of subsection (3), rather than adding further provision.

Section 46 – Guidance

**Power conferred on: Scottish Ministers
Power exercisable by: Guidance
Parliamentary procedure: None**

The Committee asks the Scottish Government to explain why it is considered appropriate that there is no further provision in section 46 similar to that in section 28(4) of the current Planning (Scotland) Bill (as introduced). That subsection (4) provides that the issued guidance which is the subject of that section must be made publicly available by the Scottish Ministers.

Section 67 – Ancillary provision

**Power conferred on: Scottish Ministers
Power exercisable by: Regulations**

Parliamentary procedure: affirmative if amends primary legislation, otherwise negative

The Committee notes that, in comparison with for example with section 15 of the Historical Sexual Offences (Pardons and Disregards) (Scotland) Bill and section 22 of the Islands (Scotland) Bill currently being considered by the Parliament, the ancillary powers in section 67 have certain differences.

Reference to the power “to give full effect to” the Act is not included. Reference to “any provision made under” the Act is included. Section 67(2) does not include a power to make different provision for different purposes.

The Committee asks the Scottish Government to explain why the drafting is different in section 67, or whether it is intended that the drafting should be consistent with the ancillary powers provisions in those Bills.

Please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Friday 10th August.

Thank you.

Andrew Proudfoot

Clerk to the Delegated Powers and Law Reform Committee