



The Scottish Parliament
Pàrlamaid na h-Alba

SUBORDINATE LEGISLATION COMMITTEE

AGENDA

2nd Meeting, 2013 (Session 4)

Tuesday 15 January 2013

The Committee will meet at 10.30 am in Committee Room 4.

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
2. **Instruments subject to negative procedure:** The Committee will consider the following—

[Welfare of Animals at the Time of Killing \(Scotland\) Amendment Regulations 2012 \(SSI 2012/355\);](#)
[Shetland Islands Regulated Fishery \(Scotland\) Order 2012 \(SSI 2012/348\);](#)
[Marketing of Bananas \(Scotland\) Regulations 2012 \(SSI 2012/349\);](#)
[Non-Domestic Rate \(Scotland\) \(No. 2\) Order 2012 \(SSI 2012/352\).](#)

3. **Instruments not subject to any parliamentary procedure:** The Committee will consider the following—

[Banchory and Crathes Light Railway Order 2012 \(SSI 2012/345\).](#)

4. **Public Body Consent Memorandum:** The Committee will consider the following draft order under section 9 of the UK Public Bodies Act 2011—

[Public Bodies \(Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions\) Order \[2013\].](#)

5. **Scottish Law Commission reports:** The Committee will consider a letter from the Standards, Procedures and Public Appointments Committee inviting the Convener to give evidence on this issue.

SL/S4/13/2/A

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The papers for this meeting are as follows—

Agenda Items 2 and 3

Legal Brief (private)

SL/S4/13/2/1 (P)

Agenda Items 2 and 3

Instrument Responses

SL/S4/13/2/2

Agenda Item 4

[The Public Bodies \(The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions\) Order 2013](#)

Briefing Paper (private)

SL/S4/13/2/3 (P)

Agenda Item 5

Briefing Paper (private)

SL/S4/13/2/4 (P)

SUBORDINATE LEGISLATION COMMITTEE

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Instrument Responses

INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE

Marketing of Bananas (Scotland) Regulations 2012 (SSI 2012/349)

On 21 December 2012, the Scottish Government was asked:

1. The Scottish Government is asked to explain the intended effect of regulation 12(10) which states that the decision of an appointed person in relation to the service of a stop notice is final. Can the Scottish Government confirm that the intended effect of the provision is not to remove a right to judicially review the service of the notice and if so what is the purpose of the provision. Is it not sufficiently clear without this provision that the administrative process set down in the regulations is completed once the decision of an appointed person is served?

2. The Scottish Government is also asked whether regulation 11(1) should refer to "an agent or employee **of** the owner" rather than "an agent or employee **or** the owner"? If this is an error what is considered to be its effect?

The Scottish Government responded as follows:

1. Regulation 12 empowers authorised officers to serve stop notices prohibiting the movement of bananas where there is suspicion of an offence under the regulation. Regulation 12(4) allows for a right to request that Ministers arrange a review of the decision to serve the notice and this can be done in a number of ways. The review is carried out by a person unconnected with the original decision and appointed by Ministers to carry out this type of review. Regulation 12 therefore sets up an administrative process of review in order to consider whether the issuing of a stop notice was appropriate. Regulation 12(10) provides that the administrative process is finalised when the appointed person determines the review. The Scottish Government can confirm that regulation 12(10) is not intended, and is of the view is not capable of being construed, as an ouster of the courts' jurisdiction. It remains open to a person aggrieved by the restraining of the stop notice to seek a judicial review of it through the courts.

2. The Scottish Government is grateful to the Committee for raising the issue of the typographical error in regulation 11(1). The Scottish Government considers that, when read as a whole, the relevant provision can only mean an agent or employee *of* the owner and are of the view that this typographical error might be corrected by way of a correction slip to read "an agent or employee *of* the owner" rather than "an agent or employee *or* the owner".

Welfare of Animals at the Time of Killing (Scotland) Amendment Regulations 2012 (SSI 2012/355)

Breach of laying requirements: letter to Presiding Officer

The above instrument was made by the Scottish Ministers under section 2(2) of the European Communities Act 1972 on 19 December 2012. It is being laid before the Scottish Parliament today and is to come into force on 1 January 2013.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with section 31(3) of that Act, this letter explains why.

SSI 2012/355 is required to correct drafting defects in the Welfare of Animals at the Time of Killing (Scotland) Regulations 2012 (SSI 2012/321) which were identified by the Subordinate Legislation Committee in its 60th Report, 2012 (Session 4) published 12 December 2012.

The Committee drew the instrument to the attention of the Parliament on reporting ground (f) on account that paragraphs 9 to 11 of Schedule 1 to the instrument appear to raise a devolution issue insofar as it is not clear that they are compatible with EU law, because it is doubtful whether those provisions are properly within the ambit of Article 26 of Council Regulation (EC) No. 1099/2009 on the protection of animals at the time of killing. Article 26 of Regulation 1099/2009 enables member states to maintain in force stricter national rules that are aimed at maintaining more extensive protection of animals at the time of killing, however, Member states may only do so provided that they were in force at 8 December 2009.

The Committee considered that in relation to paragraphs 9, 10 and 11 of Schedule 1 of SSI 2012/355, it appeared that the rules contained there, while based on the current national rules in the Welfare of Animals (Slaughter and Killing) Regulations 1995, do not have the same scope because they relate to the gas *stunning* of pigs and poultry whereas the equivalent provisions in the 1995 Regulations concern the gas *killing* of pigs and birds.

SSI 2012/355 seeks to resolve this issue by amending paragraphs 9, 10 and 11 of Schedule 1 to the Regulations to replace references to “stunning” with references to “killing”.

In addition, the opportunity is being taken to rectify the two defective drafting errors identified by the Committee by amending regulation 30 of the SSI 2012/321 to make provision for the revocation of regulation 7 of the Welfare of Animals (Slaughter or Killing) Regulations 1995 and by correcting an error in a cross-reference in the table in Part 1 of Schedule 5 in order to repeal paragraph 3 of Schedule 9 to the Deregulation and Contracting Out Act 1994.

SSI 2012/355 requires to be laid this week to ensure that the correction comes into effect at the same time as SSI 2012/321. Given that SSI 2012/321 is due to come into force on 1 January 2012, the Scottish Government’s view is that it is necessary to breach the 28 day rule to ensure that the error identified by the SLC is rectified immediately upon it coming into force on 1st January 2013.

INSTRUMENTS NOT SUBJECT TO ANY PARLIAMENTARY PROCEDURE**Banchory and Crathes Light Railway Order 2012 (SSI 2012/345)**

On 21 December 2012, the Scottish Government was asked:

1. It would have been in accordance with normal drafting practice for a policy note to be provided with this instrument. The Scottish Ministers are asked whether they would consider producing a policy note in order to assist the Committee and the lead Committee in considering this instrument. If the Scottish Ministers are minded to do so, it would be helpful if the note could specifically address the procedural requirements under the Light Railways Act 1896 which must be complied with in the making of an order of this nature.

2. The footnote to the preamble states that, in terms of section 22 of the Transport and Works (Scotland) Act 2007, no order is to be made under the 1896 Act on or after 28 December 2007. However, this provision is subject to the transitional provision in article 4(1) of Transport and Works (Scotland) Act 2007 (Consequential and Transitional Provisions) Order 2007 whereby nothing in section 22 applies to the making of an order if the application for the order was made before 28 December 2007. The Scottish Ministers are asked to state the date upon which the application for this Order was made.

3. The preamble narrates that the power conferred by section 18 of the 1896 Act is being exercised. That section provides that, where a company has power to construct or work a railway, it may be authorised by order to construct or work it as a light railway under the Act. The Scottish Ministers are asked to explain:

- a) Which provision of this Order is being made in exercise of that power?;
- b) What powers the Deeside Railway Company Ltd. has to operate an ordinary railway in any case?

4. Article 6 transfers rights and obligations to the Deeside Railway Company Ltd, so that the railway is to be subject to the statutory and other provisions applicable to the former railway as at 28 December 2012 (the date of coming into force of this Order). Furthermore, the company is to be entitled to exercise all rights, powers and privileges relating to the former railway, and to be subject to all obligations relating to the former railway. The “former railway” is defined in article 2(1) as “so much of the former railway referred to in Schedule 1 to this Order...” and Schedule 1 makes reference to “the former railway described in and authorised by the Deeside Railway Act 1852.

- a) The Scottish Ministers are asked whether BRB (Residuary) Limited is presently considered to be entitled to exercise the rights, powers, and privileges, and to be subject to the obligations relating to the former railway. In particular, is BRB (Residuary) Limited considered to be the statutory successor to The Deeside Railway Company which is re-incorporated under section 4 of the Deeside Railway Act 1852, and what is the basis for that?

- b) Is BRB (Residuary) Limited the company incorporated under the Companies Acts with registered number 04146505 and having its registered office at One Kemble Street, London WC2B 4AN, and do the Scottish Ministers consider this to be sufficiently clear in the absence of designation (in which respect we contrast the designation of The Deeside Railway Company Limited in article 2(1))?

The Scottish Government responded as follows:

1. A policy note has been prepared and accompanies this response to outline the steps that have taken place before the Order was made. We would mention that section 10 of the Light Railways Act 1896 provides that a confirmed Order “shall be conclusive evidence that all the requirements of this Act in respect of proceedings required to be taken before the making of the order have been complied with”.
2. The application for the Order was made on 12 December 2007.
3. The Scottish Government is grateful to the Committee for raising the issue of the appropriateness of referring to section 18 of the 1896 Act in the preamble. Following consideration of the Committee’s questions, we accept that that section should not have been cited, since there are no provisions in the Order which are made in exercise of the relevant power.
4. (a) Provisions such as those of article 6 are found in almost all Light Railway Orders and equivalent legislation transferring railways or former railways to new undertakers. Article 6 has effect subject to the qualifying words appearing in paragraphs (a) and (b)(ii) which provide that the transfer only applies to powers which are subsisting and capable of taking effect.

The main purpose of article 6 is to relieve BRB Residuary from duties imposed by the original railway Acts, e.g. to maintain statutorily authorised works and accommodation works such as drains and fences, since statutory duties of this nature can only be transferred by or under statute. Pre Order, BRB Residuary were ultimately liable for such duties even where (as is usually the case) the duties are discharged on a contractual basis by the owners or occupiers of the abandoned railway.

The liabilities in question – which were originally imposed on the former company which was established by the original Act – were transferred to its successor companies by a series of Acts of Parliament and subsequently by the Transport Act 1947 to the British Transport Commission which itself was set up by the 1947 Act as part of the nationalization of the rail network.

The national rail network together with related liabilities was transferred from the British Transport Commission to the British Railways Board by the Transport Act 1962. Eventually, the network was privatized under the Railways Act 1993 although certain functions – including responsibility for statutory liabilities relating to abandoned railways – remained with the British Railways Board and were transferred to BRB (Residuary) Limited which was formerly a subsidiary of the Strategic Rail Authority and is now, following the abolition of the SRA, wholly owned by the Department for Transport.

(b) We can confirm that BRB (Residuary) Limited is the company incorporated under the Companies Acts with registered number 04146505 and having its registered office at One Kemble Street, London WC2B 4AN. However, since BRB (Residuary) Limited is a publicly owned company the references to it in the Order should be sufficiently clear without the need for its registered office to be stated in the Order.