



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 7 March 2017

Session 5



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE
8th Meeting 2017, Session 5

CONVENER

*John Scott (Ayr) (Con)

DEPUTY CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

COMMITTEE MEMBERS

*Alison Harris (Central Scotland) (Con)

*Monica Lennon (Central Scotland) (Lab)

*David Torrance (Kirkcaldy) (SNP)

*attended

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament
Delegated Powers and Law
Reform Committee

Tuesday 7 March 2017

[The Convener opened the meeting at 10:00]

Instruments subject to
Affirmative Procedure

The Convener (John Scott): I welcome members to the Delegated Powers and Law Reform Committee's eighth meeting in 2017. Agenda item 1 is the consideration of instruments that are subject to the affirmative procedure. No points have been raised by our legal advisers on the following three instruments.

Local Government Finance (Scotland)
Order 2017 [Draft]

Carbon Accounting Scheme (Scotland)
Amendment Regulations 2017 [Draft]

International Organisations (Immunities
and Privileges) (Scotland) Amendment
Order 2017 [Draft]

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments subject to Negative
Procedure

Council Tax Reduction (Scotland)
Amendment Regulations 2017 (SSI
2017/41)

10:00

The Convener: The regulations make further amendments to the Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303) and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319), which I will refer to as the principal regulations.

The Scottish Government introduced the principal regulations in January 2013 to reduce the council tax liability of people who have a low income, following the United Kingdom Government's decision to abolish council tax benefit from April 2013. From April 2013, people who were previously in receipt of council tax benefit received a reduction in their liability for council tax—provided that their circumstances remained the same—that was equivalent to the support that they would have received by way of council tax benefit.

Our legal advisers suggest that the regulations that are before us raise a devolution issue for the same reasons as the committee considered to apply to the Council Tax Reduction (Scotland) Amendment (No 2) Regulations 2016 (SSI 2016/253). Our legal advisers consider that these regulations raise a devolution issue, as they might relate to matters that are reserved by section F1—“Social security schemes”—of part II of schedule 5 to the Scotland Act 1998. In other words, there is a doubt about whether the regulations are within devolved competence. It is recognised that the Scottish Government takes a contrary view.

Since September last year, a new exception—exception 10—to the social security reservation has given the Scottish Parliament powers to create new benefit schemes in areas of devolved responsibility when the requirements of the exception, including the requirement that a new scheme must be funded from the Scottish consolidated fund, are satisfied.

Following the committee's guidelines on when a consolidating instrument might be useful, it can be noted that the principal 2012 regulations are much in need of consolidation, as SSI 2017/41 is the 11th amending instrument. Therefore, we might wish to suggest to the Scottish Government that framing a new, discrete scheme in a consolidating set of regulations could avoid the committee's concern, if that scheme were to comply with the

requirements of exception 10. Do members have any comments?

Stuart McMillan (Greenock and Inverclyde) (SNP): I have listened to what you said and have read the paperwork, and I agree with the Scottish Government that it has the power in question. Some of the arguments on exception 10 have validity, but I believe that the Scottish Government has the power to act in the proposed way.

The Convener: That is fair enough. You and your colleagues have adhered to that position over a number of years.

Does anyone else have anything to say?

Alison Harris (Central Scotland) (Con): I have some concerns. I hear what Stuart McMillan says, and I appreciate what has gone before, but we have taken legal advice. As I am not a lawyer, I seek legal advice and take that advice on board. My reading is that there is a validity question and that the regulations raise a devolution issue.

The Convener: It seems that the committee might not agree on the regulations, as happened with SSI 2016/253.

Does the committee wish to draw the regulations to the Parliament's attention on reporting ground (f), on the basis that they raise a devolution issue?

Members: No.

The Convener: In that case, we will vote on the proposition that the regulations raise a devolution issue, if everyone is happy with that way of proceeding.

The proposition is, that the committee considers that the regulations raise a devolution issue and should be drawn to the attention of the Parliament on that basis. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Harris, Alison (Central Scotland) (Con)
Lennon, Monica (Central Scotland) (Lab)
Scott, John (Ayr) (Con)

Against

McMillan, Stuart (Greenock and Inverclyde) (SNP)
Torrance, David (Kirkcaldy) (SNP)

The Convener: The result of the division is: For 3, Against 2, Abstentions 0.

The proposition is agreed to, so we will proceed on the basis that the regulations raise a devolution issue.

Does the committee wish to suggest to the Scottish Government that framing a new, discrete scheme could avoid the committee's concern, if

that scheme were to comply with the requirements of exception 10?

Members indicated agreement.

The Convener: Finally, does the committee agree to suggest to the Scottish Government that there would be a further benefit of accessibility to readers if consolidated regulations could be produced that complied with the requirements of exception 10?

Members indicated agreement.

The Convener: No points have been raised by our legal advisers on the following six instruments.

Participation Request (Procedure) (Scotland) Regulations 2017 (SSI 2017/39)

Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2017 (SSI 2017/43)

Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Outer Hebrides) Order 2017 (SSI 2017/48)

Scottish Road Works Register (Prescribed Fees) Regulations 2017 (SSI 2017/49)

Sale of Tobacco and Nicotine Vapour Products by Persons Under 18 (Scotland) Regulations 2017 (SSI 2017/50)

Sale of Tobacco (Register of Tobacco Retailers) (Scotland) Amendment Regulations 2017 (SSI 2017/51)

The Convener: Is the committee content with the instruments?

Members indicated agreement.

Instruments not subject to Parliamentary Procedure

Community Empowerment (Scotland) Act 2015 (Commencement No 7) Order 2017 (SSI 2017/40 (C 5))

10:08

The Convener: No points have been raised by our legal advisers on the order. Is the committee content with it?

Members indicated agreement.

Child Poverty (Scotland) Bill: Stage 1

10:09

The Convener: Agenda item 4 is consideration of the delegated powers in the Child Poverty (Scotland) Bill. The bill's purpose is to set four statutory income targets that will contribute to the eradication of child poverty, and it confers on Scottish ministers one power to make subordinate legislation. Section 3(2) provides that Scottish ministers may, by regulations, change the base date mentioned for the time being in section 3(1) for measuring the absolute poverty target. The current base date in section 3(1) is 1 April 2010, and section 3(3) provides that the power in section 3(2) is subject to the negative procedure.

Does the committee agree to ask the following questions in relation to the power? First, section 3(2) provides that Scottish ministers may, by regulations, change the base date mentioned for the time being in section 3(1)—currently the financial year beginning 1 April 2010—for the absolute poverty target. Does the committee agree to ask why, instead of setting out that regulation-making power, section 3 cannot say that the 1 April 2010 baseline date applies until 31 March 2020 and thereafter will change automatically to 1 April 2020 for the 10-year period that leads to the target date of 1 April 2030?

Secondly, section 3(3) provides that the power to make regulations in section 3(2) is subject to the negative procedure. The delegated powers memorandum indicates that the current baseline date of 1 April 2010 is set

“to allow a ten-year”

period for

“comparison between the base year and the 2020 target year which was originally set out in the”

United Kingdom

“Child Poverty Act 2010.”

The memorandum also explains that it is likely that the future baseline date

“will need to be changed to 2020”

to reflect the move towards a target date in 2030, and it indicates that the Scottish Government's intention is that the regulation-making power would be exercised only once.

In light of the stated intention that the power to make regulations would be used as a consequence of a 10-year comparison of equivalised net household incomes, does the committee agree to ask whether it would be more appropriate, if a power to make regulations were

to be necessary, for it to be subject to the affirmative procedure rather than the negative procedure, to ensure that the Parliament could exercise an enhanced level of control over the setting of the baseline date for absolute poverty?

Members *indicated agreement.*

The Convener: Many thanks.

Contract (Third Party Rights) (Scotland) Bill: Stage 1

10:12

The Convener: Item 5 is consideration of the delegated powers in the Contract (Third Party Rights) (Scotland) Bill. As members will be aware, we are looking at the bill in our capacity as a secondary committee that is considering the powers in the bill. That differs from our role as lead committee, when we look at the bill's policy merits.

The bill contains only one delegated power, which is a commencement provision, and it is suggested that we should be content with that power. Is the committee content with the one delegated power in the bill and content to reflect that in its stage 1 report as lead committee for the bill?

Members *indicated agreement.*

The Convener: At our next meeting, which is on 14 March, we will, in addition to our regular consideration of Scottish statutory instruments and our consideration of an approach paper on the Seat Belts on School Transport (Scotland) Bill, hold our first evidence session on the Contract (Third Party Rights) (Scotland) Bill, which will be with the Scottish Government bill team and the Scottish Law Commission. I look forward to seeing you all next week. Thank you for attending today.

Meeting closed at 10:14.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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