



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 12 December 2017

Session 5



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE

35th Meeting 2017, Session 5

CONVENER

*Graham Simpson (Central Scotland) (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 Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 12 December 2017

[The Convener opened the meeting at 10:01]

Instruments subject to Negative Procedure

The Convener (Graham Simpson): I welcome members to the 35th meeting in 2017 of the Delegated Powers and Law Reform Committee. Apologies have been received from Monica Lennon.

Under agenda item 1, no points have been raised by our legal advisers on the following three instruments.

Razor Clams (Prohibition on Fishing and Landing) (Scotland) Order 2017 (SSI 2017/419)

Notice to Local Authorities (Scotland) Amendment (No 2) Regulations 2017 (SSI 2017/421)

Sale of Nicotine Vapour Products (Vending Machines) (Scotland) Regulations 2017 (SSI 2017/422)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

10:02

The Convener: Under agenda item 2, no points have been raised by our legal advisers on the following four instruments.

Community Empowerment (Scotland) Act 2015 (Commencement No 9) Order 2017 (SSI 2017/420 (C31))

Air Weapons and Licensing (Scotland) Act 2015 (Commencement No 7) Order 2017 (SSI 2017/424 (C32))

Lands Tribunal for Scotland Amendment (Fees) Rules 2017 (SSI 2017/426)

Lands Tribunal for Scotland Amendment Rules 2017 (SSI 2017/427)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Gender Representation on Public Boards (Scotland) Bill

10:02

The Convener: Agenda item 3 is consideration of the Scottish Government's response to the committee's stage 1 report on the Gender Representation on Public Boards (Scotland) Bill.

The committee recommended that the power to modify schedule 1 of the bill, which allows the Government to modify the list of bodies that are subject to the bill, should have a greater level of scrutiny attached to it than is currently allowed for in the bill. The Government has accepted the committee's recommendation and, at stage 2, it will lodge an amendment to alter to the affirmative procedure the scrutiny provision that is attached to the power in section 8. That will increase the level of parliamentary scrutiny that is afforded to the exercise of the power.

Is the committee content with the Government's response to the committee's stage 1 report?

Members *indicated agreement.*

Wild Animals in Travelling Circuses (Scotland) Bill

10:03

The Convener: Agenda item 4 is consideration of the Wild Animals in Travelling Circuses (Scotland) Bill, as amended at stage 2.

New section 3A confers on the Scottish ministers a power to specify, under subsection (1)(a),

“a kind of animal that is to be regarded as wild”

and, under subsection (1)(b),

“a kind of animal that is not to be regarded as wild,”

for the purposes of the bill.

Any regulations under section 3A(1)(a) that specify a kind of animal as wild are without prejudice to the meaning of “wild animal” in section 2 of the bill. Section 2 provides a general definition of the expression “wild animal”. In turn, the meaning of “wild animal” in section 2 is subject to whatever is done by regulations under section 3A(1)(b), which provides the power to specify by regulations that a kind of animal is not to be regarded as wild for the purposes of the bill.

The effect of the power in section 3A(1)(a) and 3A(2)(a) is unusual in principle. If a kind of animal that was to be regarded as wild were specified in the regulations, that would not affect whether that kind of animal in fact came within the generality of the meaning of “wild animal” in section 2. Regulations that were made under section 3A(1)(a) would therefore indicate only the Scottish Government’s interpretation of kinds of animals that it considered came within the meaning of “wild animal” as specified in section 2. The committee could consider that regulations are not the appropriate form of instrument to provide such an interpretation.

The same issue arises with new section 3B. It confers on the Scottish ministers a power to make regulations to describe a particular type of

“undertaking, act, entertainment or similar thing”

that is or is not to be regarded as a “travelling circus” within the meaning in the bill. Provision in any regulations under section 3B(1)(a) describing something as a “travelling circus” is without prejudice to the meaning that is set out in section 3.

Does the committee therefore agree to recommend that the Scottish Government consider, in advance of stage 3, whether guidance or a Government note would be more appropriate than regulations for the power in section 3A to

specify what is a “wild animal” and the power in section 3B to describe

“an undertaking, act, entertainment or similar thing”

that is a “travelling circus”?

Members indicated agreement.

The Convener: Given that stage 3 has been included in the business programme for Wednesday 20 December, does the committee agree to write to the Scottish Government to ask it to clarify the use of the regulation-making powers in sections 3A and 3B during the stage 3 debate?

Members indicated agreement.

Meeting closed at 10:06.

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.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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