



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 24 January 2012

Session 4

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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	241
INSTRUMENTS SUBJECT TO AFFIRMATIVE PROCEDURE	242
Scottish Public Services Ombudsman Act 2002 Amendment (No 2) Order 2012 [Draft]	242
Forestry Commissioners (Climate Change Functions) (Scotland) Order 2012 [Draft]	242
Advice and Assistance (Assistance By Way of Representation) (Scotland) Amendment Regulations 2012 [Draft]	242
Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Amendment Regulations 2012 [Draft]	242
Scottish Local Government Elections Amendment Order 2012 [Draft]	242
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE	243
Specified Products from China (Restriction on First Placing on the Market) (Scotland) Amendment Regulations 2012 (SSI 2012/3)	243
National Health Service (Travelling Expenses and Remission Charges) (Scotland) (No 2) Amendment Regulations 2011 (SSI 2011/449)	243
Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2012 (SSI 2012/4)	243
Fodder Plant Seed (Scotland) Amendment Regulations 2012 (SSI 2012/5)	243
Conservation of Salmon (River Annan Salmon Fishery District) (Scotland) Regulations 2012 (SSI 2012/6)	243
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE	245
Children's Hearings (Scotland) Act 2011 (Commencement No 3) Order 2012 (SSI 2012/1)	245
Private Rented Housing (Scotland) Act 2011 (Commencement No 2 and Transitional Provision) Order 2012 (SSI 2012/2)	245
CRIMINAL CASES (PUNISHMENT AND REVIEW) (SCOTLAND) BILL: STAGE 1	246
BUDGET (SCOTLAND) BILL: STAGE 1	247

SUBORDINATE LEGISLATION COMMITTEE

2nd Meeting 2012, Session 4

CONVENER

*Nigel Don (Angus North and Mearns) (SNP)

DEPUTY CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

COMMITTEE MEMBERS

*Chic Brodie (South Scotland) (SNP)

*Mike MacKenzie (Highlands and Islands) (SNP)

*Michael McMahon (Uddingston and Bellshill) (Lab)

*John Pentland (Motherwell and Wishaw) (Lab)

*John Scott (Ayr) (Con)

*attended

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 6

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 24 January 2012

[The Convener *opened the meeting at 14:31*]

Decision on Taking Business in
Private

The Convener (Nigel Don): I welcome members to the second meeting in 2012 of the Subordinate Legislation Committee, and I ask them to turn off mobile phones.

Agenda item 1 is a decision on taking business in private. It is proposed that the committee considers items 7 and 8 in private. Item 7 is consideration of a draft stage 1 report on the Alcohol (Minimum Pricing) (Scotland) Bill, and item 8 is consideration of a draft stage 1 report on the Land Registration etc (Scotland) Bill. I note that we have previously discussed those issues in public.

Does the committee agree to take items 7 and 8 in private?

Members *indicated agreement.*

Instruments subject to
Affirmative Procedure

Scottish Public Services Ombudsman Act 2002 Amendment (No 2) Order 2012 [Draft]

Forestry Commissioners (Climate Change Functions) (Scotland) Order 2012 [Draft]

Advice and Assistance (Assistance By Way of Representation) (Scotland) Amendment Regulations 2012 [Draft]

Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Amendment Regulations 2012 [Draft]

Scottish Local Government Elections Amendment Order 2012 [Draft]

14:32

The committee agreed that no points arose on the instruments.

The Convener: Can we note that one of the amendments made by the Scottish Local Government Elections Amendment Order 2010 [draft] addresses a point that we raised on the principal order? That is covered at article 2(2)(b), which substitutes a reference to paragraph (1) with a reference to paragraph (2).

Members *indicated agreement.*

Instruments subject to Negative Procedure

Specified Products from China (Restriction on First Placing on the Market) (Scotland) Amendment Regulations 2012 (SSI 2012/3)

14:33

The Convener: We move to agenda item 3. There has been a failure to lay the regulations at least 28 days before they come into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. Are we content to draw the regulations to the Parliament's attention under reporting ground (j)?

Members indicated agreement.

The Convener: In doing so, are we content to find the explanation provided by the Food Standards Agency for that failure to be acceptable, as urgent action was required to implement by 12 January 2012 an emergency European Union food and feed safety measure that was published on 23 December 2011?

Members indicated agreement.

The Convener: Can we also note that the regulations were brought into force before they were laid and ask our officials to explore with Scottish Government officials options for avoiding that happening again?

Members indicated agreement.

National Health Service (Travelling Expenses and Remission Charges) (Scotland) (No 2) Amendment Regulations 2011 (SSI 2011/449)

Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2012 (SSI 2012/4)

Fodder Plant Seed (Scotland) Amendment Regulations 2012 (SSI 2012/5)

Conservation of Salmon (River Annan Salmon Fishery District) (Scotland) Regulations 2012 (SSI 2012/6)

The Convener: Although no points were raised on the instruments, we note, first, that the transposition of the directive that SSI 2012/5 implements is slightly late, as it should have been dealt with by 30 November 2011. Secondly, as the Fodder Plant Seed (Scotland) Regulations 2005 (SSI 2005/329) have now been amended eight times, can we encourage the Scottish Government

to consolidate them at the next legislative opportunity?

Members indicated agreement.

Chic Brodie (South Scotland) (SNP): I know that it is difficult, but is there any notional limit on the number of times that we should go through instruments before the Government has a look at the whole thing?

The Convener: We have discussed the subject informally and elsewhere. One of the issues about consolidation, though not in this case, is that the eighth amendment might be just like the seventh, the sixth, the fifth and so on down to the first, because one number has been changed eight times, in which case it would not be possible to consolidate it, because you would have in front of you the finished article.

Equally, the instrument may have been substantially rewritten eight times and may have become impenetrable after the fourth amendment, never mind the eighth. Although we probably need to ask the general question every time just to get the Government to think about it, the answer will depend on where on the spectrum the instrument is. Unless we are prepared to do the work to explore that, which I suggest that we probably should not do, it is impossible to know where the right answer lies.

Chic Brodie: Okay, thank you.

The Convener: Is the committee otherwise content with the instruments?

Members indicated agreement.

Instruments not subject to Parliamentary Procedure

Children's Hearings (Scotland) Act 2011 (Commencement No 3) Order 2012 (SSI 2012/1)

14:36

The Convener: In commencing part of the Children's Hearings (Scotland) Act 2011, article 2(2) of the order incorrectly refers to commencing "paragraph 8(a) and (b)" of schedule 5 to the 2011 act, when the correct reference should be to paragraphs 1(8)(a) and (b) of that schedule. Do we agree to draw the order to the Parliament's attention under the general reporting ground, as it contains a drafting error in article 2(2)? In doing so, can we note that the error should not affect the proper operation of the order?

Members *indicated agreement.*

Private Rented Housing (Scotland) Act 2011 (Commencement No 2 and Transitional Provision) Order 2012 (SSI 2012/2)

The committee agreed that no points arose on the instrument.

Criminal Cases (Punishment and Review) (Scotland) Bill: Stage 1

14:37

The Convener: The purpose of this item is for the committee to consider the delegated powers in the bill. The committee is invited to agree what questions it wishes to raise with the Scottish Government. It is suggested that the questions are raised in written correspondence. On the basis of the responses received, the committee will consider a draft report at its meeting on 7 February.

For section 2, "Ancillary provision", do we agree to ask the Scottish Government to confirm whether it is intended that regulations under section 2 may modify any primary legislation, or whether it is intended that they may modify only part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007, and whether that is clear from section 2(2) as it is presently drafted?

Members *indicated agreement.*

The Convener: I think that it is clear to our legal advisers that, as currently drafted, the intention seems to be very wide, which may be inappropriate and unintended.

Do we agree to ask the Scottish Government what sort of provision it envisages may be required in section 5, on commencement and ancillary provision on commencement, and whether that could be complex or cause practical problems in implementation? Here, of course, we are back with the usual discussion, which has been common over the past few weeks, about whether commencement orders prove to be complicated.

Do we agree to draw that to the Government's attention?

Members *indicated agreement.*

Budget (Scotland) Bill: Stage 1

14:39

The Convener: The bill confers one delegated power—set out in section 7—which makes provision for budget revision orders and which is subject to the affirmative procedure. Do we agree to report to the Parliament that we are content with the delegation of the power and that the affirmative procedure is acceptable?

Members *indicated agreement.*

The Convener: That brings us to agenda item 7, which we are taking in private.

14:40

Meeting continued in private until 14:49.

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