



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 7 February 2012

Session 4

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SUBORDINATE LEGISLATION COMMITTEE

3rd 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 7 February 2012

[The Convener *opened the meeting at 14:30*]

Decision on Taking Business in
Private

The Convener (Nigel Don): I welcome members to the Subordinate Legislation Committee's third meeting this year and I ask them to turn off any mobile phones.

Under agenda item 1, it is proposed that the committee should take in private item 6, which is consideration of a draft stage 1 report on the delegated powers in the Criminal Cases (Punishment and Review) (Scotland) Bill. Do members agree to take that item in private?

Members *indicated agreement.*

Instruments subject to
Affirmative Procedure

Local Government Finance (Scotland)
Order 2012 [Draft]

Housing Support Grant (Scotland) Order
2012 [Draft]

Budget (Scotland) Act 2011 Amendment
Order 2012 [Draft]

Public Services Reform (Recovery of
Expenses in respect of Inspection of
Independent Further Education Colleges
and English Language Schools) (Scotland)
Order 2012 [Draft]

14:31

The committee agreed that no points arose on the instruments.

Instruments subject to Negative Procedure

Act of Sederunt (Fees of Sheriff Officers) (Amendment) 2012 (SSI 2012/7)

14:31

The Convener: The act of sederunt amends the Act of Sederunt (Fees of Sheriff Officers) (No 2) 2011 (SSI 2011/432) to correct errors in the provision that that instrument makes concerning “remote rural areas” and the fees that sheriff officers may claim in relation to such circumstances.

SSI 2012/7 was laid on 19 January and came into force on 22 January because the coming into force date for SSI 2011/432 was 23 January and the Lord President’s private office considered it necessary to correct the errors before SSI 2011/432 came into force. As SSI 2012/7 was not laid at least 28 days before it came into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, does the committee agree to draw the act of sederunt to the Parliament’s attention under reporting ground (j)?

Members *indicated agreement.*

The Convener: Does the committee agree that the explanation provided by the Lord President’s private office for the failure is acceptable, since action to correct errors in SSI 2011/432 required to be taken before 23 January, when that instrument was to come into force?

Members *indicated agreement.*

National Health Service (General Medical Services Contracts) (Scotland) Amendment Regulations 2012 (SSI 2012/9)

National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2012 (SSI 2012/10)

Scottish Road Works Register (Prescribed Fees) Regulations 2012 (SSI 2012/11)

Repayment of Student Loans (Scotland) Amendment Regulations 2012 (SSI 2012/22)

Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2012 (SSI 2012/24)

The committee agreed that no points arose on the instruments.

Instruments not subject to Parliamentary Procedure

Act of Sederunt (Fees of Messengers-at-Arms) (Amendment) 2012 (SSI 2012/8)

Representation of the People (Variation of Limits of Candidates’ Local Government Election Expenses) (Scotland) Order 2012 (SSI 2012/16)

Housing (Scotland) Act 2010 (Commencement No 5) Order 2012 (SSI 2012/19)

Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (Commencement) Order 2012 (SSI 2012/20)

Children’s Hearings (Scotland) Act 2011 (Commencement No 4) Order 2012 (SSI 2012/23)

14:34

The committee agreed that no points arose on the instruments.

Long Leases (Scotland) Bill: Stage 1

14:34

The Convener: Agenda item 5 is consideration of the delegated powers in the Long Leases (Scotland) Bill. In considering the bill, the committee is invited to agree the questions that it wishes to raise with the Scottish Government. It is suggested that the questions be raised in written correspondence. On the basis of the responses, the committee expects to consider a draft report at its meeting on 21 February.

It is recommended that the committee might wish to ask the Scottish Government questions in relation to the power under section 78(5), which enables the Scottish ministers to prescribe a date or period after which notices and agreements that are determined to be registrable by the courts or the Lands Tribunal for Scotland cannot be registered, and to provide that applications to the courts or the tribunal must be made within a specified period for the notices and agreements to be registrable.

The Government states that it considers that the powers relate to “straightforward matters” and that therefore the negative procedure provides “an appropriate balance”. It appears that the operation of the power is straightforward, but that the time limits that it imposes on exercising rights under the bill are an important issue. The committee might therefore wish to ask the Scottish Government to give further justification for the negative procedure being an appropriate level of scrutiny, given that the effect of the power is to specify deadlines for the exercise of rights under the bill; and to clarify how it would propose consulting on any order that is to be made under the power, and in particular whether it would consider providing that consultation must be undertaken before such an order is made. Do members agree to ask those questions?

Members indicated agreement.

The Convener: It is further recommended that the committee might wish to ask the Scottish Government about the power under section 81(1) to make supplementary, incidental, consequential, transitional, transitory or saving provision. Exercise of that power is subject to the negative procedure, except where it is used to amend any part of the text of an act, which may include the new act, in which case, the affirmative procedure applies.

The committee might wish to ask the Scottish Government to explain what further incidental or supplemental provision might be required; why,

given that such provision is likely to affect substantive property rights and so involve important questions of social policy, the negative procedure is considered to be a sufficient level of parliamentary scrutiny of the exercise of such powers; and whether the examples that are provided of transitional, transitory and saving provision given in the delegated powers memorandum could also fall within the scope of the power in section 83(3) and, if so, why the further power in section 83(3) is required. Do members agree to ask those questions?

Members indicated agreement.

The Convener: The committee might also wish to ask about the power in section 82 to make ancillary provision in relation to the exercise of all powers to make regulations and the power under section 78(5). That provision is not treated separately in the delegated powers memorandum and no commentary is provided on the need for the power in relation to the individual powers to which the bolt-on provision applies.

The committee might therefore wish to seek an explanation from the Scottish Government as to why the power in section 82(1)(a) is required in addition to the separate stand-alone power to make ancillary provision that is provided in section 81 and the further power to make transitional, transitory or saving provision in connection with commencement that is provided in section 83(3). Do members agree to ask for an explanation?

Members indicated agreement.

The Convener: Do members agree that we should raise those questions in writing in the normal way?

Members indicated agreement.

The Convener: That brings us to agenda item 6, which is to be taken in private. I therefore ask our visitors—although they are welcome and I thank them for coming—to leave us.

14:38

Meeting continued in private until 14:43.

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