



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 21 February 2012

Session 4

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SUBORDINATE LEGISLATION COMMITTEE

4th 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

THE FOLLOWING ALSO ATTENDED:

Margaret McCulloch (Central Scotland) (Lab) (Committee Substitute)

Judith Morrison (Legal Adviser)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 5

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 21 February 2012

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

Decision on Taking Business in
Private

The Convener (Nigel Don): Good afternoon, folks. I welcome members to the fourth meeting in 2012 of the Subordinate Legislation Committee. I note John Pentland's apologies and welcome Margaret McCulloch to the committee. It is good to see you.

I ask members to turn off any mobile phones or other electronic equipment, please.

Item 1 is a decision on taking business in private. It is proposed that the committee considers items 4 and 5 in private. Item 4 is consideration of a draft stage 1 report on the delegated powers in the Long Leases (Scotland) Bill. Item 5 is consideration of the committee's approach to transitional provisions.

Do members agree to take items 4 and 5 in private?

Members *indicated agreement.*

Instruments subject to Negative
Procedure

Non-Domestic Rate (Scotland) Order 2012
(SSI 2012/27)

14:30

The committee agreed that no points arose on the instrument.

Non-Domestic Rates (Levying) (Scotland)
Regulations 2012 (SSI 2012/28)

Michael McMahon (Uddingston and Bellshill) (Lab): Convener, I appreciate your giving me the opportunity to talk to the regulations. I will not go into the policy issue—I know that that is not what the committee is here to do—but I will focus on the appropriateness of using secondary legislation to introduce a new tax. I do not think that that is appropriate and it does not sit well with the Parliament's democratic principles. Such an issue should be discussed before the Parliament. The Government is consulting on issues that have been raised by those who would normally be consulted on the order and it sets a bad and dangerous precedent that something as fundamental as the introduction of a new tax could be pushed through using negative procedure.

In a letter of June 2011, the Scottish Government said that there were no intentions to create this tax, but here it is, without having come directly before the Parliament as a separate tax issue. No business or regulatory impact assessment has been made of the proposed levy. The budget was passed on 8 February and the regulations have come before the committee within two weeks of that, but there has been no separate debate in the Parliament. The regulations will be implemented one week after the final version is delivered. There is no provision whatever for those on whom the tax will be levied to make plans or to raise concerns about its technicalities.

I am concerned that those who will be impacted on—the retailers who will have to implement the legislation and their staff, who have been represented by the Union of Shop, Distributive and Allied Workers, which has expressed its concerns—have had no chance to see the regulations debated, to be consulted on them, or to raise any issues. I will not get into whether we should have the levy—there are other committees that can debate that. Although the Parliament has approved it, I do not believe that this tax should be implemented using the negative procedure.

The Convener: Does anyone else have any comments to make?

John Scott (Ayr) (Con): I will speak in support of Michael McMahon. In truth, I had not thought about the matter before, but I share his concern about the process and what I understand to be a lack of consultation and think that it is probably right to raise the matter. As Mr McMahon said, no one is disputing that the Parliament passed the measure, but I share his concern about the implementation process.

The Convener: My understanding is that this is simply the working out of a decision of the Parliament that we are implementing. That is where we are, but you have put your points clearly on the record.

John Scott: Is there any precedent for tax-raising powers being implemented in this way? If so, I am happy to withdraw my remarks.

The Convener: I am certainly not in a position to comment on that.

Judith Morrison (Legal Adviser): All I can say is that Scottish statutory instrument 2012/28 does very similar things to an instrument that was considered last year.

Chic Brodie (South Scotland) (SNP): What happened last year?

Judith Morrison: No motion to annul was lodged.

Chic Brodie: So there is a precedent. We are not talking about policy here.

The Convener: No. Clearly, that is what was done. Am I right in concluding that there is no motion to annul before us?

Michael McMahon: Yes.

The Convener: So there is nothing to vote on.

Michael McMahon: Thank you, though, for giving me the opportunity to speak, convener.

The Convener: Your points have been made and understood. That is appreciated.

Chic Brodie: In our legal brief, it says in the third paragraph of the "Background" section:

"The Regulations provide for a reduction in rates, on a sliding scale."

That is fine. However, the brief then refers to

"the cumulative value of a business's properties".

Should that not be "cumulative rateable value"?

Judith Morrison: That is correct.

Chic Brodie: It was just a question of clarification.

The Convener: We move on to the next instrument.

Non-Domestic Rates (Levying) (Scotland) (No 2) Regulations 2012 (SSI 2012/29)

The Convener: Do members have any points on the regulations?

Michael McMahon: I will not rehearse the arguments that I made with regard to the previous instrument. All that I will say is that I have the same concerns about these regulations.

The Convener: I expected as much. Does Mr Scott wish to reiterate his point?

John Scott: Given that a precedent for this has come to light, I do not wish to say any more on the matter.

The Convener: In that case, we will leave the matter there. I point out that the legal advisers have raised no legal issues on either SSI 2012/28 or SSI 2012/29.

Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment Order 2012 (SSI 2012/30)

Home Energy Assistance Scheme (Scotland) Amendment Regulations 2012 (SSI 2012/34)

Potatoes Originating in Egypt (Scotland) Amendment Regulations 2012 (SSI 2012/37)

The committee agreed that no points arose on the instruments.

Instruments not subject to Parliamentary Procedure

Public Records (Scotland) Act 2011 (Commencement No 1) Order 2012 (SSI 2012/21)

14:38

The Convener: The commencement order brings into force certain provisions of part 1 of the Public Records (Scotland) Act 2011. In its response to the committee, the Scottish Government has agreed that there is a drafting error in the order, which does not make provision for the commencement of the schedule, even though that is intended. The Scottish Government undertook to lay an amending order to correct this order in advance of the commencement date of 24 February. SSI 2012/42, which the committee will consider shortly, is the amending order that makes that correction.

As the drafting of the order appears to be defective, does the committee agree to draw the order to the Parliament's attention on reporting ground (i)?

Members *indicated agreement.*

The Convener: In doing so, does the committee welcome the making of the amending order, SSI 2012/42, which has been brought forward to remedy the error?

John Scott: I very much welcome the swift correction and wonder whether it will set a precedent.

The Convener: Such a swift response is very welcome. Once again, it reiterates the desirability of having time to sort things out and the fact that if things come too late they might not get sorted.

Patient Rights (Scotland) Act 2011 (Commencement) Order 2012 (SSI 2012/35)

Public Records (Scotland) Act 2011 (Commencement No 1) Amendment Order 2012 (SSI 2012/42)

The committee agreed that no points arose on the instruments.

The Convener: That brings us to agenda item 4. We will now move into private session.

14:40

Meeting continued in private until 14:50.

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