



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 28 February 2012

Session 4

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SUBORDINATE LEGISLATION COMMITTEE

5th 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 28 February 2012

[The Convener *opened the meeting at 14:37*]

Instruments subject to
Affirmative Procedure

The Convener (Nigel Don): Welcome to the fifth meeting in 2012 of the Subordinate Legislation Committee. I ask members to turn off any mobile phones. We have apologies from Michael McMahon.

Evidence in Civil Partnership and Divorce
Actions (Scotland) Order 2012 [Draft]

Community Care (Personal Care and
Nursing Care) (Scotland) Amendment
Regulations 2012 [Draft]

The committee agreed that no points arose on the instruments.

Instruments subject to Negative
Procedure

Prisons and Young Offenders Institutions
(Scotland) Amendment Rules 2012
(SSI 2012/26)

14:38

The Convener: The rules make provision about visiting committees and provide for a number of amendments to the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (SSI 2011/331), which the Committee considered in October 2011.

The committee may want to note that the amendments in rules 2(10) and (11) address an issue that it raised when it considered the principal rules.

However, there appears to have been a failure to follow proper drafting practice in the amendment rules, as rule 2(14) duplicates precisely the terms of rule 2(13). The Scottish ministers concede that this duplication is a typographical error and propose to correct it by way of correction slip.

Although the error does not appear to affect the operation of the rules, does the committee agree to draw the instrument to the attention of the Parliament on the general reporting ground?

Members *indicated agreement.*

Bus Service Operators Grant (Scotland)
Amendment Regulations 2012
(SSI 2012/33)

The Convener: The regulations extend the provisions for the bus service operators grant to be paid to operators of flexible bus services that are registered as a local, public bus service.

There is a drafting error in the definition of “flexible service” in regulation 2(2)(a). That should have referred to the meaning that is given in regulation 2(2A)(a) of the Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001, rather than the

“meanings given in regulation 2(2A)”.

Although it is not considered likely that this drafting error will affect the operation of the regulations, does the committee agree to draw the regulations to the Parliament’s attention on the general reporting ground?

Members *indicated agreement.*

The Convener: The committee also notes that the response from the Scottish Government does

not indicate that it intends to correct the drafting error by bringing forward an amendment.

Does the committee agree to indicate that the definition of “flexible service” is significant, as it is a central definition for the purposes of the regulations and that the Government should therefore consider bringing forward an amendment to correct the error?

Members *indicated agreement.*

Public Service Vehicles (Registration of Local Services) (Scotland) Amendment Regulations 2012 (SSI 2012/32)

Housing (Scotland) Act 2010 (Consequential Provisions) Order 2012 (SSI 2012/38)

Police Grant and Variation (Scotland) Order 2012 (SSI 2012/49)

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2012 (SSI 2012/50)

Water Services Charges (Billing and Collection) (Scotland) Order 2012 (SSI 2012/53)

The committee agreed that no points arose on the instruments.

Instruments not subject to Parliamentary Procedure

Housing (Scotland) Act 2010 (Commencement No 6, Transitional and Savings Provisions) Order 2012

14:40

The Convener: The order commences the new regime under the Housing (Scotland) Act 2010 for the regulation of social housing. It will come into force on 1 April 2012. The commencement order contains transitional provisions and is therefore something to which the committee will want to give careful consideration.

The drafting of the order appears to be defective in that, in the transitional provision in paragraph 18(f) of schedule 2, the reference to schedule 7 to the Housing (Scotland) Act 2001 should refer to schedule 8.

Does the committee therefore 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 Scottish Government’s undertaking to bring forward an amending commencement order in advance of the coming into force of this order? It will correct the reference to ensure that the transitional provision operates in relation to the intended schedule.

Members *indicated agreement.*

The Convener: Does the committee agree that it is content with the transitional provision made by paragraph 4(2) of schedule 2 but that it would have been useful to its scrutiny if either the explanatory or Executive notes had explained why the transitional arrangement does not require any modification of the effects of section 62(2) and (3) of the Housing (Scotland) Act 2001? An explanation has been provided in the Scottish Government’s response to the committee.

Members *indicated agreement.*

The Convener: As a general observation, does the committee welcome the detail of the explanatory note to the order, which helped the committee to identify the drafting error in schedule 2, and does it also welcome the fact that 40 days have been allowed from the laying of the order to the coming-into-force date, which will allow for the error to be corrected before the provision comes into force?

Members *indicated agreement.*

The Scottish Social Housing Charter

14:42

The Convener: Our legal advisers have raised no points on the charter. Does the committee therefore agree that the charter should not be drawn to the attention of the Parliament?

Members *indicated agreement.*

Public Bodies Act 2011

Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012

14:43

The Convener: The next item of business is consideration of a United Kingdom Government order under section 9 of the UK Public Bodies Act 2011.

As members will see from the briefing paper, section 9 of the 2011 act requires the consent of the Scottish Parliament to any order that would be within its legislative competence. The Subordinate Legislation Committee will consider and report on such orders on the same grounds as any other order laid before the Parliament.

The procedure for such orders is a pilot approach. The Standards, Procedures and Public Appointments Committee will consider the procedure, and members will have an opportunity to comment on its operation before a permanent approach is agreed.

The order abolishes the National Endowment for Science, Technology and the Arts, which will be reconstituted in the charity sector to continue its work. The UK Department for Business, Innovation and Skills considers that the specific matters in relation to which NESTA exercises its functions are not generally reserved. The body's removal therefore falls within this Parliament's competence, and its consent is therefore required before the order can be made.

Our legal advisers have pointed out a minor drafting error in the amendment to section 430(1) of the Income Tax Act 2007, as provided for in the schedule to the order, which removes the word "and" that precedes paragraph (c), when it should not. Do members agree to report the order on the general reporting ground, as it contains a minor drafting error?

Members *indicated agreement.*

The Convener: Do members have any comments about the process for dealing with such orders under the UK Public Bodies Act 2011?

Members: No.

The Convener: It seems straightforward enough.

Police and Fire Reform (Scotland) Bill: Stage 1

14:45

The Convener: Agenda item 6 is consideration of the delegated powers in the Police and Fire Reform (Scotland) 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 that are received, the committee can expect to consider a draft report at its meeting on 13 March 2012.

Section 84(1)(b) provides the Scottish ministers with the power to specify the type of goods and services that the Scottish police authority may provide to any other public body or office-holder. Does the committee agree to ask the Scottish Government to explain the circumstances in which it envisages using that power and, in particular, what types of goods and services the authority might be authorised to supply, and what descriptions of persons the authority might be authorised to make such a supply to?

Members indicated agreement.

The Convener: Section 84(3)(b) provides the Scottish ministers with the power to specify the type of goods and services that the police service may provide to any other public body or office-holder. Does the committee agree to ask the Scottish Government to explain the circumstances in which it envisages using this power and, in particular what types of goods and services the authority might be authorised to make arrangements for the police service to supply; and what descriptions of persons the authority might be authorised to make arrangements for the police service to provide such a supply to?

Members indicated agreement.

The Convener: Section 120(1)(b) provides the Scottish ministers with bolt-on powers to make ancillary provision in relation to the exercise of all powers to make orders, regulations and rules. Does the committee agree to ask the Scottish Government to explain why that power is required in addition to the separate standalone powers to make ancillary provision that are provided in sections 121 and 122 and the further power to make transitional, transitory or saving provision in connection with commencement under section 124?

Members indicated agreement.

The Convener: This is very familiar territory. Does the Committee agree to ask the Government to explain why it is considered that the negative

procedure is a sufficient level of parliamentary scrutiny for supplementary, incidental or consequential provision?

Members indicated agreement.

The Convener: Section 121 enables the Scottish ministers to make such ancillary provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision that is made by or under the bill. Does the committee agree to ask the Scottish Government to explain what further supplementary, incidental or consequential provision might be required under the power in section 121?

Members indicated agreement.

The Convener: Section 122(1) enables the Scottish ministers to make transitional, transitory and savings provisions in connection with the coming into force of any provision of the bill. Does the committee agree to ask the Scottish Government to explain what further transitional, transitory or saving provision might be required under the power in section 122, and to explain why it is considered appropriate that that be subject to negative procedure, even if it modifies primary legislation?

Members indicated agreement.

The Convener: The powers in paragraphs 11(1), 16(1) and 17 of schedule 4 and in paragraphs 3, 5 and 6 of schedule 5 make provision for the making of staff and property transfer schemes in respect of the Scottish police authority and the Scottish fire and rescue service. Does the committee agree to ask the Scottish Government to confirm that the schemes that are made under those powers are not intended to be Scottish statutory instruments and, if so, to explain why it is considered appropriate to make significant provision of that nature in an instrument that is not subject to the publication and laying requirements that apply to a Scottish statutory instrument?

Members indicated agreement.

The Convener: Sections 5(1) and 116 confer on the Scottish ministers the power to give directions to, respectively, the Scottish police authority and the Scottish fire and rescue service. Directions that are made under those powers will have to be published by the Scottish ministers and must be laid before the Parliament, although they are not subject to any further parliamentary scrutiny. Does the committee agree to ask the Scottish Government in what circumstances it envisages exercising its direction-making powers and the matters to which that exercise might relate?

Members indicated agreement.

The Convener: Does the committee also agree to ask whether directions may be made that conflict with subordinate legislation that is made under other powers in the bill and whether, in that scenario, the directions or the subordinate legislation would prevail?

Members *indicated agreement.*

The Convener: Does the committee agree to raise all those questions in writing?

Members *indicated agreement.*

The Convener: That brings us to the end of the agenda. Our next meeting will be on Tuesday 6 March.

Meeting closed at 14:50.

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