



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 13 March 2012

Session 4

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SUBORDINATE LEGISLATION COMMITTEE

7th 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)

COMMITTEE SUBSTITUTES

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con)

Margaret McCulloch (Central Scotland) (Lab)

*attended

THE FOLLOWING GAVE EVIDENCE:

Marco Biagi (Edinburgh Central) (SNP) (Committee Substitute)
Judith Morrison (Legal Adviser)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 5

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 13 March 2012

[The Convener *opened the meeting at 14:38*]

Decision on Taking Business in
Private

The Convener (Nigel Don): I welcome members to the seventh meeting in 2012 of the Subordinate Legislation Committee. As usual, I ask members to switch off mobile phones. We have received apologies from James Dornan and Michael McMahon. I welcome Marco Biagi, who is attending the meeting as a substitute.

Agenda item 1 is a decision on taking business in private. It is proposed that the committee take in private item 5, which is consideration of our approach to the consolidation of Scottish statutory instruments. Do we agree to do that?

Members *indicated agreement.*

Instruments subject to
Affirmative Procedure

Scottish Secure Tenancies (Repossession
Orders) (Maximum Period) Order 2012
[Draft]

14:39

The Convener: Although the order appears to prescribe a maximum period of six months within which an order for recovery of possession may have effect, that is dependent on decree being extracted promptly. Any delay in extracting decree by the landlord will have the effect of postponing the last day on which the order may have effect against the tenant.

Does the committee therefore agree to refer the order to the lead committee so that it can consider its practical effect? Although that is not a formal reporting matter, the lead committee may wish to consider it further. In doing so, we should note that that will not form part of the committee's annual statistical report on SSIs.

Members *indicated agreement.*

Scottish Secure Tenancies (Proceedings
for Possession) (Pre-Action
Requirements) Order 2012 [Draft]

The Convener: There are five matters in respect of which the committee may wish to draw the order to the attention of the Parliament on reporting ground (h), because its meaning could be clearer in five respects. Clarity is important, as the order is intended to set out steps that landlords of Scottish secure tenancies must demonstrate that they have taken before they can bring proceedings to recover possession of their property in cases in which the tenant has not paid the rent or other sums that are due.

First, the meaning of

"illustrative indication of legal expenses"

in article 2(2) could be clearer. From the terms of article 2(1)(b)(ii), it appears that the intention is that tenants should be made aware of the expenses that a landlord will be able to recover from them, should the landlord be successful in obtaining an order for recovery of possession. However, the landlord's recoverable, or judicial, expenses are a subset of their legal expenses as a whole.

Secondly, it is not clear what a landlord must do in order to "encourage" a tenant to take a certain course of action for the purposes of articles 4(1)(b) and 5(1). Although the Scottish Government indicates that that is a lesser standard than

obliging a landlord to “require” a tenant to do something, the ordinary meaning of the word “encourage” suggests more than requesting that the tenant do something, and it is not clear what that entails.

Thirdly, it is not clear whether it is for the landlord or the tenant to ascertain whether a particular debt advice agency is an “appropriate debt advice agency” for the purposes of article 4(1)(c).

Fourthly, it is not clear, for the purposes of article 5(1), who “relevant housing benefit staff” are, or even who employs those staff. That is of particular significance, given that, under the provision, tenants are to be encouraged to waive their usual right to confidentiality so that these unascertained persons may discuss the detail of housing benefit applications with landlords.

Finally, under article 5(1), written authority will require to be addressed to the local authority, as data controller, in order to be effective. In respect of the references in article 5(1) to “relevant housing benefit staff”, it is not clear that that is what is intended, although it does not appear that the wording of article 5(1) expressly precludes the possibility that a landlord could obtain effective written authority.

Does the committee agree to draw the order to the attention of the Parliament on reporting ground (h) in respect of those five matters?

Members *indicated agreement.*

Chic Brodie (South Scotland) (SNP): I have some questions about clarity. The use of words such as “illustrative”, “appropriate” and “relevant” seems to leave the order wide open to interpretation. I am particularly concerned about the reference that article 4(1)(c) of the order makes to the landlord advising the tenant to seek assistance from an “appropriate debt advice agency”, which is addressed in recommended action 1(c) of the legal briefing.

What guidance is available to the appropriate committee or the Government to clarify what “appropriate” means in that case? I am concerned that what might be an appropriate debt advice agency for the landlord might not be an appropriate debt advice agency for the tenant. In the current financial environment, I believe that that opens a door that I do not want to go through.

The Convener: John Scott may have a similar question.

John Scott (Ayr) (Con): I have similar concerns about the second and fourth points, which relate to the use of the word “encourage” and the phrase “relevant housing benefit staff”. The convener has read into the record what those concerns are, and I endorse his doing so.

Individually, the five instances of lack of clarity are not significant, but if one considers all five of them together—particularly the second and fourth instances—one has to wonder whether the Government should not go back to the drawing board and redraft the order. I am certainly no draftsman, so it is self-evident that I could not do any better, but we have to ask whether the order is fit for purpose.

The Convener: I think that that is a question for others to answer.

I wonder whether our legal adviser, Judith Morrison, can comment on Chic Brodie’s point about the use of such words in statute.

Judith Morrison (Legal Adviser): Yes, I can do that. The Scottish Government has accepted that there is some potential uncertainty about who is to be the judge of what is an “appropriate debt advice agency”. It has advised that its intention is that it is for tenants to choose for themselves which advice agency to consult, although landlords should be able to advise them of those that they may wish to approach. Statutory guidance will be produced to accompany the scheme. In that guidance, the Government will give further advice on how the provision is to be interpreted.

14:45

Chic Brodie: We talk about registering landlords, but is there an argument for registering appropriate debt service agencies? Again, I know that that would be a decision for the appropriate committee. What would be considered to be a bona fide agency?

The Convener: I suggest that the answer to that question necessarily lies with a policy committee, so we can fairly address the question to them. However, it is not a question that we can hope to answer.

Chic Brodie: Okay. I ask whether we can just raise that question with the committee concerned and ask it to have a look at the issue.

The Convener: Thank you.

I note that there is an apparent policy intention, as disclosed by the Scottish ministers’ response to question 5, that landlords may seek a preliminary indication of the outcome of a housing benefit application from the persons charged with determining the application, notwithstanding the fact that to give such an indication appears to involve prejudging the application. Of course, there is a general point of law in there.

Does the committee agree to refer the practical effect of the order to the lead committee? Although

that last point is not a formal reporting matter, the lead committee may wish to consider it further.

Members *indicated agreement.*

Instruments subject to Negative Procedure

Teachers' Superannuation (Scotland) Amendment Regulations 2012 (SSI 2012/70)

14:46

The Convener: It is not clear that the words "and ending 31st March 2012"

are inserted after "1st April 2007" in regulation C3 of the principal regulations. That was caused by a series of punctuation and paragraphing errors in regulation 3, which the Scottish Government has acknowledged and proposes to resolve by correction slip. Does the committee agree to draw the Parliament's attention to the regulations on the general reporting ground because they contain a drafting error?

Members *indicated agreement.*

Police Pensions (Contributions) Amendment (Scotland) Regulations 2012 (SSI 2012/71)

The Convener: There are drafting errors in the regulations. First, there is an error in regulation 2(2), where it inserts the first line of regulation G2(1) of the Police Pensions Regulations 1987. The reference to a "regular police officer" should refer to "regular policeman", as that is the term defined by schedule A to the 1987 regulations. Secondly, there is an error in regulation 2(2), which substitutes a new regulation G2 into the 1987 regulations. It refers in three places to regulation G2A, which does not exist. Thirdly, regulation 3(2) refers in three places to regulation 7A of the Police Pensions (Scotland) Regulations 2007, but regulation 7A does not exist.

Does the committee agree to draw the regulations to the attention of the Parliament on the general reporting ground on account of those three drafting errors?

John Scott: Yes. However, I think that we should also draw to the lead committee's attention the need for consolidation of the legislation, because we have been informed that it has been amended by some 26 instruments, not all of which are necessarily clear or even available. I am not entirely sure whether that is the case, but nonetheless it certainly makes it difficult for those who are to amend the regulations the next time, because almost inevitably they will require to be amended again. If ever there was a need for consolidation, this has to be it.

The Convener: And if ever there was evidence of the need for consolidation, it might well have been the errors that I have just had to work my way through. If the draftsman has failed to notice which regulations are there, one has a huge amount of sympathy. This is not the first time that the pensions regulations have been mentioned; I mentioned them at the Justice Committee a year or two back, at least. I think that we have an obvious candidate for consolidation and I am sure that people will be thinking about it.

Does the committee nonetheless welcome the fact that the Scottish Government has undertaken to correct the errors by means of an amending instrument?

Members *indicated agreement.*

A720 Edinburgh City Bypass and M8 (Hermiston Junction) (Speed Limit) Regulations 2012 (SSI 2012/62)

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Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2012 (SSI 2012/76)

The committee agreed that no points arose on the instruments.

**Instruments not subject to
Parliamentary Procedure**

14:51

Meeting continued in private until 15:15.

**Bovine Viral Diarrhoea (Scotland) Order
2012 (SSI 2012/78)**

14:50

*The committee agreed that no points arose on
the instrument.*

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