



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 2 October 2012

Session 4

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CONTENTS

	Col.
INTERESTS	539
DEPUTY CONVENER	539
INSTRUMENT SUBJECT TO AFFIRMATIVE PROCEDURE	540
Fire (Scotland) Act 2005 (Relevant Premises) Regulations 2012 [Draft].....	540
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE	540
Road Works (Inspection Fees) (Scotland) Amendment Regulations 2012 (SSI 2012/250).....	540
Town and Country Planning (Marine Fish Farming) (Scotland) Amendment Regulations 2012 (SSI 2012/259).....	540
Town and Country Planning (Prescribed Date) (Scotland) Regulations 2012 (SSI 2012/260).....	540
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE	541
Children's Hearings (Scotland) Act 2011 (Commencement No 6) Order 2012 (SSI 2012/252).....	541
Police and Fire Reform (Scotland) Act 2012 (Commencement No 1, Transitional, Transitory and Saving Provisions) Order 2012 (SSI 2012/253).....	541
WATER RESOURCES (SCOTLAND) BILL: STAGE 1	542

SUBORDINATE LEGISLATION COMMITTEE

21st Meeting 2012, Session 4

CONVENER

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

DEPUTY CONVENER

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

COMMITTEE MEMBERS

*Mike MacKenzie (Highlands and Islands) (SNP)

*Hanzala Malik (Glasgow) (Lab)

*Stuart McMillan (West Scotland) (SNP)

*John Pentland (Motherwell and Wishaw) (Lab)

*John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Judith Morrison (Legal Adviser)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 5

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 2 October 2012

[The Convener *opened the meeting at 10:30*]

Interests

The Convener (Nigel Don): I welcome members to the 21st meeting in 2012 of the Subordinate Legislation Committee. As usual, I ask everyone to turn off mobile phones and other electronic equipment.

Item 1 is a declaration of interests. I welcome Stewart Stevenson and Stuart McMillan and invite them, in accordance with section 3 of the code of conduct, to declare any relevant interests. I should also note that I now have a Stewart and a Stuart to add to two Johns.

Stuart McMillan (West Scotland) (SNP): I have no relevant interests to declare, convener.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I have no interests relevant to the committee to declare.

The Convener: Thank you very much indeed. I am grateful to you both.

Deputy Convener

10:31

The Convener: Agenda item 2 is the choice of deputy convener. The Parliament has agreed that members of the Scottish National Party are eligible to be chosen as deputy convener of the Subordinate Legislation Committee. I invite nominations for the position.

Stuart McMillan: I nominate Stewart Stevenson.

Mike MacKenzie (Highlands and Islands) (SNP): I am happy to second that.

Stewart Stevenson was chosen as deputy convener.

The Convener: I congratulate Stewart Stevenson on being elected.

Instrument subject to Affirmative
Procedure

Fire (Scotland) Act 2005 (Relevant
Premises) Regulations 2012 [Draft]

10:31

The committee agreed that no points arose on the instrument.

Instruments subject to Negative
Procedure

Road Works (Inspection Fees) (Scotland)
Amendment Regulations 2012 (SSI
2012/250)

Town and Country Planning (Marine Fish
Farming) (Scotland) Amendment
Regulations 2012 (SSI 2012/259)

Town and Country Planning (Prescribed
Date) (Scotland) Regulations 2012 (SSI
2012/260)

10:32

The committee agreed that no points arose on the instruments.

Instruments not subject to Parliamentary Procedure

**Children's Hearings (Scotland) Act 2011
(Commencement No 6) Order 2012 (SSI
2012/252)**

**Police and Fire Reform (Scotland) Act
2012 (Commencement No 1, Transitional,
Transitory and Saving Provisions) Order
2012 (SSI 2012/253)**

10:32

The Convener: As our legal advisers have raised no points on the instruments, is the committee content with them?

Members *indicated agreement.*

The Convener: Does the committee also welcome the fact that Scottish statutory instrument 2012/252 promptly remedies an omission from the Children's Hearings (Scotland) Act 2011 (Commencement No 5) Order 2012 (SSI 2012/246), on which the committee reported after its meeting on 18 September?

John Scott (Ayr) (Con): Indeed. I—and I am sure the whole committee—appreciate the fact that the issue has been so swiftly and promptly addressed.

The Convener: Indeed.

Water Resources (Scotland) Bill: Stage 1

10:33

The Convener: Agenda item 6 is consideration of the delegated powers in the Water Resources (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 also suggested that these questions be raised in written correspondence. On the basis of the responses received, the committee would expect to consider a draft report at its meeting on 23 October 2012.

Section 2 concerns designated public bodies and allows the Scottish ministers to give "designated bodies" directions on the exercise of the bodies' functions to contribute to delivery of the duty to develop the value of Scotland's water resources. Does the committee agree to ask the Scottish ministers to explain why it is considered appropriate for directions to apply to all functions of designated authorities and why such directions are not expressed as powers to create subordinate legislation, given that such a move would improve transparency, offer the opportunity for scrutiny and impose publication requirements?

Members *indicated agreement.*

The Convener: Section 14 gives the Scottish ministers the power to suspend or revoke an approval for large-scale water abstraction and to prescribe other circumstances in which they might suspend or revoke an approval.

Do we agree to draw it to ministers' attention that the effect of prescribing additional grounds under this power is to confer a right upon ministers to suspend or remove rights? Such rights might be extremely important in practical terms to industry or individuals; I also note that this is a significant feature of the approval regime. Do we also agree to ask the Scottish Government whether, in light of that, the affirmative procedure might provide a more suitable level of parliamentary scrutiny?

Members *indicated agreement.*

The Convener: Sections 19(4), 31, 34 and 46 all raise the same issue. The impact of water abstraction on the water environment is controlled under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (SSI 2011/209), which implement the requirements of the European Union water framework directive. As it is expected that the controlled activities regulations regime will need to be amended, replaced or supplemented in the future, provision has been made to allow the Scottish ministers to modify those parts of the bill or provisions inserted

by it that refer to controlled activities regulations as may be necessary or expedient to reflect changes made. Any modifications would be subject to the negative procedure. Given that section 20 of the Water Environment and Water Services (Scotland) Act 2003 already exists as a power to modify the bill and given that the power is subject to the affirmative procedure, it is not clear why these powers are required when sufficient powers already appear to exist and are subject to a higher level of scrutiny.

Does the committee therefore agree to ask the Scottish ministers why the existing power in section 20 of the 2003 act to modify or replace the controlled activity regulations is not sufficient for their purposes, especially given that it permits the modification of primary legislation in consequence of the exercise of the power so far as ministers "consider necessary or expedient"?

Members indicated agreement.

The Convener: Does the committee also agree to ask the Scottish Government to comment on why it is considered that the negative procedure is sufficient when the existing power is subject to the affirmative procedure?

John Scott: I think that that is a very important question, convener.

The Convener: Thank you, John. Are we agreed?

Members indicated agreement.

The Convener: Section 49 allows the Scottish ministers to

"make ... supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with this Act."

Such regulations are affirmative if they textually amend primary legislation; otherwise they are subject to the negative procedure. Given the breadth of such powers, do members agree to ask the Scottish Government why it has selected negative procedure as the appropriate level of scrutiny for regulations making supplementary provision that does not textually amend primary legislation?

Members indicated agreement.

The Convener: Given that by its nature supplementary provision concerns matters that are untested in the Parliament, do members also agree to ask the Scottish Government why a more detailed level of parliamentary scrutiny is not appropriate for provision that does not necessarily amend primary legislation?

Members indicated agreement.

The Convener: Finally, section 51 allows the Scottish ministers to bring the act into force by order except for those general provisions that come into force on the day after royal assent. Such an order is not subject to any procedure but must be laid before the Parliament. An order can include

"transitional, transitory or saving provision".

Given the committee's particular interest in ensuring full scrutiny of transitional provisions, it is perhaps worth exploring with the Scottish Government whether the omission of any qualifying words in relation to the

"transitional, transitory or saving provision"

powers included in section 51 means that they might be used to make provision that is not connected to the commencement of provisions by the order.

Hanzala Malik (Glasgow) (Lab): On a point of clarification, convener, I imagine that there will be a time period before royal assent is given to the legislation. What will happen with regard to the execution of the legislation in that period?

The Convener: I invite the legal adviser to respond to that question.

Judith Morrison (Legal Adviser): Nothing will happen. The bill does not become an act until it receives royal assent.

Hanzala Malik: Surely the whole point of an act is that we have greater accountability and I wonder whether the timetabling can be triggered in a meaningful way. It would not be meaningful if there happened to be a long time period between a bill's being passed and its being given royal assent; indeed, such a situation could be open to abuse.

The Convener: First, for centuries now, the established practice in these islands has been that no bill is law until it receives royal assent. I am sure that that situation is not about to change.

Secondly, royal assent is not usually delayed. It simply happens at the next opportunity, which is a matter of weeks.

Stewart Stevenson: Four weeks.

The Convener: Okay. Finally, most modern legislation contains a commencement provision as a result of which certain bits often do not start until after royal assent is given and once the Government has provided for all the administrative details necessary to ensure that, when they come into force, they actually work. Delay is inherent in everything that we do, but nothing becomes law until royal assent is given.

Hanzala Malik: That is helpful, convener. I am comfortable with the suggestion that royal assent takes four weeks.

Stewart Stevenson: I do not think that it has ever happened, but the only thing that can interfere with that is the procedure for a second, revising stage 3. After the Parliament has completed its processes for a piece of legislation, it might determine that it was actually ultra vires. That would have to be fixed in a second stage 3.

The Convener: Let us hope that we can avoid that.

Stewart Stevenson: As far as I recall, it has never happened.

John Scott: Might the minimum pricing legislation not have set a precedent in that respect?

Stewart Stevenson: No, because it has already been given royal assent. It is all about where the legislation has reached in the sequence.

The Convener: I wonder whether I can direct members to the current agenda.

Do members agree to explore the issue—which I mentioned some time ago—further with the Scottish Government?

Members indicated agreement.

The Convener: Finally, does the committee agree to raise in writing all the questions that have been agreed to this morning?

Members indicated agreement.

The Convener: That brings us to the end of the agenda. As there is no other business, I close the meeting.

Meeting closed at 10:42.

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