



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 22 January 2013

Session 4

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SUBORDINATE LEGISLATION COMMITTEE
3rd Meeting 2013, Session 4

CONVENER

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

DEPUTY CONVENER

Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

COMMITTEE MEMBERS

*Jim Eadie (Edinburgh Southern) (SNP)

*Mike MacKenzie (Highlands and Islands) (SNP)

*Hanzala Malik (Glasgow) (Lab)

*John Pentland (Motherwell and Wishaw) (Lab)

*John Scott (Ayr) (Con)

*attended

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

Committee Room 6

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 22 January 2013

[The Convener *opened the meeting at 10:57*]

Instrument subject to Affirmative
Procedure

Rehabilitation of Offenders Act 1974
(Exclusions and Exceptions) (Scotland)
Order 2013 [Draft]

The Convener (Nigel Don): I welcome members to the third meeting in 2013 of the Subordinate Legislation Committee. As always, I ask members to turn off mobile phones. We have received apologies from Stewart Stevenson MSP.

No points have been raised by our legal advisers on the draft Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013. Is the committee content with it?

Members indicated agreement.

Instruments subject to Negative
Procedure

Non-Domestic Rates (Levying) (Scotland)
(No 3) Regulations 2012 (SSI 2012/353)

10:57

The Convener: The drafting of paragraph (2) of regulation 6 appears to be defective. It states:

“Nothing in paragraph (2) shall affect the continuing operation of the Non-Domestic Rates (Levying) (Scotland) Regulations 2012 as regards any day prior to 1st April 2013.”

It requires to refer to paragraph (1) for the savings provision properly to have effect. Does the committee agree to draw the regulations to the attention of the Parliament on reporting ground (i), as the drafting is clearly defective?

Members indicated agreement.

The Convener: Does the committee agree to note that the Scottish Government has undertaken to lay amending regulations, which are to come into force on 31 March 2013, to correct the error prior to the regulations coming into force?

Members indicated agreement.

John Scott (Ayr) (Con): I welcome the Government's intention to amend the regulations timeously.

Scottish Administration (Offices) Order
2012 (SI 2012/3073)

General Pharmaceutical Council
(Amendment of Miscellaneous Provisions)
Rules Order of Council 2012 (SI 2012/3171)

Police Act 1997 (Criminal Records)
(Scotland) Amendment Regulations 2012
(SSI 2012/354)

Sports Grounds and Sporting Events
(Designation) (Scotland) Amendment
Order 2013 (SSI 2013/4)

Plant Health (Scotland) Amendment Order
2013 (SSI 2013/5)

Restriction of Liberty Order etc (Scotland)
Regulations 2013 (SSI 2013/6)

The committee agreed that no points arose on the instruments.

Instrument not subject to Parliamentary Procedure

National Library of Scotland Act 2012 (Commencement) Order 2013 (SSI 2013/1)

10:59

The Convener: Our legal advisers have raised no points on the order. Do members have any comments on it? Are we content with it?

Members *indicated agreement.*

Post-16 Education (Scotland) Bill: Stage 1

11:00

The Convener: The purpose of this item is for the committee to consider the delegated powers in the Post-16 Education (Scotland) Bill. In considering the bill, the committee is invited to agree the questions that it wishes to raise with the Scottish Government on the delegated powers in the bill. It is suggested that those questions be raised in written correspondence. On the basis of the responses that are received, the committee would expect to consider a draft report at its meeting on 5 February.

Section 4 enables the Scottish ministers to make an order that prescribes the upper limit on tuition fees that are chargeable to students from the rest of the United Kingdom in respect of higher education courses. Given the reliance that is placed on the fact that fees will not exceed those that are chargeable elsewhere in the United Kingdom, does the committee agree to ask the Scottish Government to explain what level of parliamentary scrutiny applies when higher education fees are set by the relevant rule-making authorities in each part of the UK; and, further to that, why—given that in Scotland, under section 9 of the Further and Higher Education (Scotland) Act 2005, the setting of fees for higher education courses is subject to a form of super-affirmative procedure—the negative procedure is considered to be appropriate when the maximum fees that are payable by students from the rest of the UK are set?

Members *indicated agreement.*

The Convener: Section 7 of the bill substitutes the existing section 24 of the Further and Higher Education (Scotland) Act 1992 with a new section 24. At present, section 24 enables the Scottish ministers to remove members of a college's board of management for mismanagement of the affairs of the board. The replacement section 24 specifies additional circumstances in which the ministers may remove board members.

Does the committee agree to ask the Scottish Government to explain why it is considered necessary to expand on the original powers to remove board members in section 24 of the 1992 act to the extent that is set out in the substituted section; the basis for reaching that conclusion; and the basis for concluding that the negative procedure continues to be the appropriate level of parliamentary scrutiny, given the substantial expansion of the powers in question and the resulting impact on the independence of boards of management and their members?

Members indicated agreement.

John Scott: I agree. As I understand it, what is proposed is quite a radical extension of the existing powers. I emphasise the point that we need a very strong justification for the increased scope of the powers.

Hanzala Malik (Glasgow) (Lab): I agree with that sentiment. The independence of boards is important, particularly as colleges amalgamate and the number of colleges in Scotland overall is reduced. I am keen to find out why the Government needs the proposed additional powers.

The Convener: Section 12 will insert new section 23N into the 2005 act. It appears to be closely modelled on the replacement section 24 of the 1992 act, which we just agreed to ask the Scottish Government for further explanation of, and it is applicable to the regional boards. Any variations appear merely to reflect the differing functions of the colleges and the regional boards.

Does the committee agree to await any explanation that is offered by the Scottish ministers in response to the previous question before forming a view on the power?

Members indicated agreement.

The Convener: The bill will insert into the 2005 act a new schedule 2A, which specifies the regional strategic bodies. Section 8(1) will insert section 7B, which will give the Scottish ministers powers to modify the schedule. Section 13 will insert into the 2005 act a new section 23O, which makes supplemental provision about the establishment and abolition of regional boards.

Does the committee agree to ask the Scottish Government to clarify the level of parliamentary procedure that is intended to apply to the power, given that the effect of section 34 of the 2005 act is to make it subject to the negative procedure, when the delegated powers memorandum indicates that the affirmative procedure is applicable; to explain whether, standing the analogy with the procedure that is applicable to orders under section 7(1) of that act, it is intended that the appropriate procedure is the one that is applicable to section 7(1) as it stands, or section 7(1) as prospectively amended by paragraph 6(20) of the schedule to the bill; and to say what steps it proposes to take to ensure that the bill adequately reflects its policy intentions in respect of the parliamentary procedure that is applicable to the power?

Members indicated agreement.

John Scott: I agree. We need clarification about the circumstances in which affirmative and negative procedures will be used. It is far from impossible that I might have missed the point, but

the circumstances in which one procedure or the other will be applied, who will decide that and whether the Parliament will be able to scrutinise such matters are not immediately clear to me.

The Convener: The plan is that, through these questions, we will invite the Government to provide some explanation.

Schedule 2B to the 2005 act, which is inserted by section 11(2) of the bill, provides for regional boards' constitution, functions and administrative arrangements. Paragraph 18(1) of the schedule confers on the Scottish ministers a power to modify the schedule—with the exception of paragraph 2, which relates to the status of boards—

“by varying, adding to or removing any of its provisions relating to a regional board's constitution, functions or administrative arrangements.”

Does the committee agree to ask the Scottish Government whether it is in a position to explain why the negative procedure is appropriate, given that the power modifies primary legislation and that the committee does not consider the reference to the procedure applicable under the Further and Higher Education (Scotland) Act 1992 to be conclusive, especially as no powers in the 1992 act appear to be subject to affirmative procedure and as it is now more than 20 years since the act was considered by the UK Parliament and the approach to the delegation of powers appears to have altered since then?

John Scott: As these powers to amend primary legislation through the negative procedure are very wide, the Scottish Government needs to justify its approach. The approach might have been normal in 1992, but we are a new Parliament with new procedures and therefore need better justification than we have received.

The Convener: The question reflects what is now our principled position that affirmative procedure should be used for amendments to the text of primary legislation.

John Scott: Absolutely.

The Convener: Let us see what explanation the Government gives us.

Unlike all the powers that have been previously discussed, section 15 is an integral part of the bill, rather than an amendment to the 1992 or 2005 act. It enables the Scottish ministers to make subordinate legislation requiring any person

“to provide information the person holds about a young person to Skills Development Scotland Co. Limited for the purposes of enabling or assisting”

Skills Development Scotland

“to monitor that young person’s involvement in education or training ... to provide advice or support as regards that young person’s education or training”

or

“to exercise any of its other functions in relation to that young person.”

Does the committee agree to ask the Scottish Government why, given the stated position in the delegated powers memorandum that ministers will wish to impose the duties under this section on

“persons who are providing education and training to young persons”,

it is necessary to frame them more widely to allow it to impose them on any person; and whether, given the breadth of the power and the possibility of its being used at some point in the future in a manner other than that which is apparently intended, it would not be more appropriate to ensure that such an order is subject to greater parliamentary scrutiny by way of the affirmative procedure?

Members *indicated agreement.*

The Convener: Section 15(5) is intended to enable the Scottish ministers to modify section 15 to replace references to Skills Development Scotland with references to any other person. It appears that it is also intended to allow them to update section 15 to reflect changes in name, for example, where the person referred to remains the same, but has changed their name. Does the committee agree to ask the Scottish Government why it considers that the power in section 15(5) may be used to effect a change of name, given that a change of name does not involve any change in legal personality and so there is no “other person” to substitute for references to “Skills Development Scotland Co. Limited”; whether the power in section 15(5) is intended to be exercisable more than once and, if so, whether that means that the power is capable of modifying the reference to “Skills Development Scotland Co. Limited” within the power itself; and whether, if that is indeed the intended effect, that is sufficiently clear from the drafting?

Members *indicated agreement.*

The Convener: Section 15(7) contains a bespoke ancillary powers provision in addition to the standalone power in section 17 and enables the Scottish ministers, in making an order under section 15(1) or 15(5), to include

“such supplementary, incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.”

Does the committee agree to ask the Scottish Government why it is considered necessary to seek bespoke ancillary powers provision for the purposes of section 15, when it appears to the

committee that adequate provision for ancillary powers has already been made in section 17 and that those powers could also be exercised in an instrument made under section 15?

John Scott: It seems a bit of an excessive belt-and-braces approach if the power has already been put in.

The Convener: Let us ask the question and see what reply we get.

Members will be happy to note that that brings us to the end of agenda item 4.

Forth Road Bridge Bill: Stage 1

11:10

The Convener: Item 5 is consideration of the delegated powers in the Forth Road Bridge Bill. Members will have seen the delegated powers memorandum and the briefing paper and I point out that, unless amendments that affect the delegated powers provisions are made to the bill at stage 2, the committee will not consider it again.

Does the committee agree to report that it is content with the power in section 5 allowing the Scottish ministers to revoke byelaws made by the Forth Estuary Transport Authority under the Forth Estuary Transport Authority Order 2002 (SSI 2002/178) by extending their existing power to make traffic regulation orders under section 1 of the Road Traffic Regulation Act 1984 and for such orders neither to be required to be laid before the Parliament nor to be subject to any parliamentary procedure in terms of section 30(4) of the Interpretation and Legislative Reform (Scotland) Act 2010?

Members *indicated agreement.*

The Convener: If that is the last time that I have to say “Forth Estuary Transport Authority”, I will be very happy.

Does the committee agree to report that it is content with the power in section 7 allowing the Scottish ministers to commence the provisions in the bill—except for those in sections 6, 7 and 8, which will come into force the day after royal assent—and for that power to be subject to the default laying requirement in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010?

Members *indicated agreement.*

Budget (Scotland) (No 2) Bill: Stage 1

11:12

The Convener: Item 6 is consideration of the Budget (Scotland) (No 2) Bill. The bill confers one delegated power, which is set out in section 7 and makes provision for budget revision orders. It is subject to the affirmative procedure. In the context of the Parliament, it is absolutely standard stuff. Do we agree to report to the Parliament that we are content with the delegation of the power and that the affirmative procedure is acceptable?

Members *indicated agreement.*

Proposed Government Bills (Referendum)

The Convener: Thank you very much. At this point, I close the meeting.

Meeting closed at 11:13.

11:12

The Convener: Item 7 is on proposed Government bills. Members will have received a note from the clerk and correspondence from the Referendum (Scotland) Bill Committee on the timetable for the scrutiny of proposed Government bills. That committee has invited our views on the timetable and has asked for a response by Friday 25 January.

Do members have any comments or are we simply happy to recognise the necessity of the timetable that has been provided?

John Scott: As far as one can see, this is the way to go ahead. Let us just get on with it.

The Convener: Are members content with that?

Members *indicated agreement.*

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