



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# SUBORDINATE LEGISLATION COMMITTEE

Tuesday 8 January 2013

Session 4

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**SUBORDINATE LEGISLATION COMMITTEE**

**1<sup>st</sup> 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 8 January 2013*

[The Convener *opened the meeting at 10:44*]

**Decision on Taking Business in**  
**Private**

**The Convener (Nigel Don):** I welcome members to the first meeting in 2013 of the Subordinate Legislation Committee and wish everybody a happy new year. As always, I ask members to switch off mobile phones.

Item 1 on the agenda is a decision on taking business in private. It is proposed that the committee take in private item 6, which is consideration of the approach to the committee's annual report for the parliamentary year 2012-13. Do members agree to take that item in private?

**Members** *indicated agreement.*

**Instruments subject to**  
**Affirmative Procedure**

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

10:45

**The Convener:** Paragraph 11 of schedule 1 to the order is defectively drafted in that it appears to allow the disclosure of spent convictions in proceedings taken by way of appeal or review against a decision taken by virtue of this order on consideration of a spent alternative to prosecution. However, no decisions can be taken by virtue of the order on consideration of a spent alternative to prosecution. The drafting of the provision is therefore defective in that respect.

Does the committee therefore agree to draw the order to the attention of the Parliament on reporting ground (i)?

**Members** *indicated agreement.*

**The Convener:** The Scottish Government proposes to correct the drafting error at the next available legislative opportunity. Therefore, rather than withdrawing the order and submitting a correct version for approval, the Scottish Government seeks the agreement of the Parliament to approve the order, including the error. While the committee might not consider that ideal, particularly since the order is a consolidation and should start off from the position of not requiring amendment, the committee might be prepared to accept it, given that the inherent defect should give rise to no adverse legal effects.

Do members have any comments on the matter?

**John Scott (Ayr) (Con):** I am disappointed that this consolidation is inadequate from the outset. As I understand it, it would not have been impossible to have made it a good piece of work rather than the piece of work that we have in front of us, which has inherent errors. There is a point of principle here. The committee proposes more and more consolidation, but from the point of view of the end user of that consolidation process it would be sensible if the consolidated product were fit for purpose on its arrival.

**The Convener:** Indeed.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** Like John Scott, I think that consolidation as such does not normally have a timescale attached to it. As it appears in this case that it would be relatively straightforward to

remedy the defect, that should certainly be considered.

However, there is the addition of some new policy initiatives to what is essentially a consolidation instrument. It would be appropriate if the policy committee, when it is considering the order, satisfied itself that the new policy initiatives are driving the necessity for the order to be approved now rather than in what appears to be a matter of a few weeks, once it has been corrected and resubmitted. I would prefer it if the order were withdrawn and resubmitted.

**Hanzala Malik (Glasgow) (Lab):** I agree. At the end of the day, ministers need to be armed with the correct information, particularly when it comes to those who want to use the information. It is important that the information is correct.

I am getting a little anxious about the timeframe for these things. If an error has been picked up it needs to be dealt with swiftly. It is unacceptable to allow time to pass. Instruments should come to us with the corrections in place so that we do not have this ping-pong effect of comings and goings. We need to be more effective and focused in how we are doing this. Perhaps the corrections could have come today and we could have dealt with the order today.

**The Convener:** It is fair to say that the corrections could have come. Members may wish to note that a number of errors in the original legislation have unfortunately been rolled forward into the consolidation, which suggests that the checking process was not as good as it should have been, notwithstanding the amendments that the Government is trying to introduce. If that approach were to be repeated in future, it would undermine the purpose of consolidation.

Am I right in thinking that the committee believes that we should report the order to the lead committee on the basis that we think that it should be got right and that we should also write to the Government to indicate that there seems to be a process fault and that, in our view, it would be sensible for the Government to change its system so that, in future, errors are not consolidated and the necessary checking is done?

**Hanzala Malik:** That would be helpful—thank you, convener. However, I think that it is more important that you receive a response from the Government that assures you—and, through you, us—that that will happen and which tells us what systems will be put in place to ensure that there is no repetition of what has happened here.

**Stewart Stevenson:** I think that the convener made two proposals. He proposed that there should be interaction with the Government—I support that. He also proposed that the lead committee be made aware of our concerns on the

matter so that it can deal with that when the minister appears before it.

**The Convener:** Is the committee happy to support Stewart Stevenson's suggestion that we report to the lead committee and ask it to find out whether there are any time constraints when it consults the minister?

**John Scott:** Essentially, we are proposing to the lead committee that the order be withdrawn.

**The Convener:** That is our suggestion. If the Government minister defends the order on the basis that it has to stick to a timetable, perhaps he can also suggest a timetable for correcting the order.

**John Scott:** It is an affirmative instrument, so it is a serious matter that we are discussing.

**The Convener:** Are we content to leave the matter there?

**Members indicated agreement.**

### **Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 [Draft]**

**The Convener:** There is a drafting error in paragraph 2(9)(a) of schedule 1 to the regulations. It provides that a company is an associated company "of another person" if certain conditions are met. It is clear that the word "person" should be the word "company". Does the committee therefore agree to draw the regulations to the attention of the Parliament on the general reporting ground?

**Members indicated agreement.**

## Instruments subject to Negative Procedure

### Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 (SSI 2012/338)

10:52

**The Convener:** The form or meaning of the regulations could be clearer. They amend part 4 of the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992 (SI 1992/1332) by substituting references to “discount” with references to “variation”. However, those provisions are intended to continue to apply to discounts under section 79 of the Local Government Finance Act 1992, and it appears to be doubtful whether, in the context of that part, “variation” can properly extend to include “discount”, standing the drafting of regulation 12, which makes specific reference to

“variation under section 33 of the Local Government in Scotland Act 2003”.

Does the committee agree to draw the regulations to the attention of the Parliament on reporting ground (h), as the meaning could be clearer?

**Members indicated agreement.**

**John Scott:** I am sorry to be so grumpy again, but we seem to have before us another piece of poorly drafted legislation. From my probably inadequate understanding of what is being suggested, we are expecting local authorities to carry on doing what they have been doing because they have aye done it, but the regulations will be of absolutely no help to them in doing what they are expected to do by way of enforcement. The regulations are inadequate in that regard, so the matter should be drawn to the lead committee’s attention. After all, our purpose is to draw attention—vociferously—to inadequacies of drafting, and I would like us to do that on this occasion.

**The Convener:** I think that the committee shares that view. Are we agreed?

**Members indicated agreement.**

### Children’s Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012 (SSI 2012/336)

**The Convener:** No points have been raised on any reporting grounds, but the committee may wish to consider writing to the Minister for Parliamentary Business to highlight a number of matters relating to the Government undertaking

that was given in session 3 concerning the laying of packages of instruments, and to seek comments on how instrument planning could be improved to avoid any adverse effect on scrutiny.

Both this instrument and the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2012 (SSI 2012/325), which were considered by the committee on 18 December 2012, have raised a number of general issues about the programming of subordinate legislation. Better planning in the preparation of SSI 2012/325 could have avoided the need for a separate instrument and the potential anomaly of determining whether consequential provisions are satisfactory prior to approving the super-affirmative instruments to which they relate.

Regulation 4(4) of SSI 2012/336 refers to provisions in the Children’s Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2012, which have not yet been made. Without sight of that further instrument, the Parliament is not able to be wholly clear about the application and effect of regulation 4(4) in the period permitted for scrutiny of these regulations. In this case it would have been preferable to have avoided making the cross-reference as it appears that these regulations could have omitted regulations 4(4) and 4(5), which could then have been added by amendment when the subsequent regulations were made.

Last session, the Minister for Parliamentary Business gave an undertaking to the committee with regard to the handling of packages of instruments, and the Scottish Government undertook to try to avoid where possible staggering the laying of instruments that cross-refer to each other and—again where possible—to provide the committee with a copy of draft related instruments that are not ready for making. That did not happen in this case.

Does the committee agree to write to the Minister for Parliamentary Business regarding this matter and to reinforce the view that we want this to be done properly?

**Members indicated agreement.**

**Council Tax (Exempt Dwellings) (Scotland)  
Amendment Order 2012 (SSI 2012/339)**

**M9/A90/M90 Trunk Road (Humbie Rail  
Bridge to M9 Junction 1a) (Variable Speed  
Limits and Actively Managed Hard  
Shoulder) Regulations 2012 (SSI 2012/343)**

**M9/A9 Trunk Road (Newbridge to  
Winchburgh) (Variable Speed Limits and  
Actively Managed Hard Shoulder)  
Regulations 2012 (SSI 2012/344)**

**Local Government Pension Scheme  
(Miscellaneous Amendments) (Scotland)  
Regulations 2012 (SSI 2012/347)**

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

## Energy Bill

10:57

**The Convener:** Under item 4, the committee is invited to consider the powers to make subordinate legislation conferred on the Scottish ministers in the United Kingdom Energy Bill. A briefing paper has been provided that sets out the bill's relevant aspects and comments on their effect, and the committee is invited to find acceptable the powers in the bill and the procedure to which they are subject.

Does the committee agree to report to the lead committee that it is content with the delegated powers in this bill?

**Members indicated agreement.**

## Freedom of Information (Amendment) (Scotland) Bill: After Stage 2

10:58

**The Convener:** Item 5 is consideration of the delegated powers provisions in the Freedom of Information (Amendment) (Scotland) Bill after stage 2. Members will have noted that the Scottish Government has provided a supplementary delegated powers memorandum and will have seen the briefing paper. Stage 3 consideration of the bill is due to take place on Wednesday 16 January and, given that the deadline for lodging amendments is 4.30 pm on Thursday 10 January, the committee might wish to agree on its conclusions today.

Does the committee agree to report that it is satisfied in principle with the alterations to the consultation requirements prior to the exercise of the powers under section 5(1) of the Freedom of Information (Scotland) Act 2002 made by section 1A of the bill?

**Members indicated agreement.**

**The Convener:** Does the committee agree to report that it is satisfied in principle with the power in section 4 of the bill as amended at stage 2?

**Members indicated agreement.**

**The Convener:** Finally, does the committee agree to report that it is satisfied that the amended power in section 59 of the 2002 act will continue to be subject to the affirmative procedure?

**Members indicated agreement.**

**The Convener:** We now move to item 6, which we will take in private.

10:59

*Meeting continued in private until 11:35.*

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