



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 6 November 2012

Session 4

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SUBORDINATE LEGISLATION COMMITTEE

24th Meeting 2012, 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

THE FOLLOWING ALSO PARTICIPATED:

Bruce Crawford (Stirling) (SNP) (Committee Substitute)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

Committee Room 6

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 6 November 2012

[The Convener *opened the meeting at 10:36*]

Interests

The Convener (Nigel Don): I welcome members to the 24th meeting in 2012 of the Subordinate Legislation Committee. As always, I ask members to turn off mobile phones et cetera.

We have received apologies from Jim Eadie. Agenda item 1 gives me the opportunity to welcome to the committee, as his substitute, Bruce Crawford MSP. In accordance with section 3 of the code of conduct, I invite Bruce to declare any relevant interests.

Bruce Crawford (Stirling) (SNP): I have no relevant interests to declare. Thank you for asking me to come along.

The Convener: Thank you very much indeed.

Instruments subject to
Affirmative Procedure

Scotland Act 1998 (Modification of
Schedule 5) Order 2013 [Draft]

10:36

The Convener: It is my great pleasure to introduce the draft Scotland Act 1998 (Modification of Schedule 5) Order 2013, which is a direct consequence of the Edinburgh agreement. It is the first step in the legislative process to allow a referendum on Scotland's constitutional future. Any recommendations that we make on the order will be referred to the Referendum (Scotland) Bill Committee, which I believe meets this coming Thursday. Given the unusual nature of the order, does anyone have any comments that they would like to make? No one does.

No points have been raised on the order by our legal advisers. Is the committee content with it?

Members *indicated agreement.*

Homelessness (Abolition of Priority Need
Test) (Scotland) Order 2012 [Draft]

Housing Support Services
(Homelessness) (Scotland) Regulations
2012 [Draft]

Scottish Local Government Elections
Amendment (No 2) Order 2012 [Draft]

The committee agreed that no points arose on the instruments.

Instruments subject to Negative Procedure

Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2012 (SSI 2012/276)

10:37

The Convener: There is a drafting error in regulation 12, where it inserts regulation 3A(g) of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 (SI 1989/1491). Regulation 3A(g) refers to

“an offence under section 1 of the 1998 Act (causing death by dangerous driving)”,

when it is intended to refer to the Road Traffic Act 1998.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): No—

The Convener: It is the Road Traffic Act 1988—you see how easy it is to mix up the dates.

Does the committee therefore agree to draw the regulations to the attention of the Parliament on the general reporting ground?

Members indicated agreement.

The Convener: At the same time, does the committee welcome the fact that the Scottish Government has undertaken to bring forward an amending instrument as soon as possible to correct that error?

Members indicated agreement.

John Scott (Ayr) (Con): I particularly welcome that fact. It is important that we welcome it when the Government and others immediately offer to amend legislation that is incorrect.

INSPIRE (Scotland) Amendment Regulations 2012 (SSI 2012/284)

Town and Country Planning (General Permitted Development) (Fish Farming) (Scotland) Amendment (No 2) Order 2012 (SSI 2012/285)

Road Works (Maintenance) (Scotland) Amendment Regulations 2012 (SSI 2012/286)

The committee agreed that no points arose on the instruments.

Instruments not subject to Parliamentary Procedure

Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No 3) 2012 (SSI 2012/271)

10:39

The Convener: The reference to satisfaction of the condition in section 23A(5)(c) in paragraph 6 of form 59 is unnecessary, as the conditions in question can relate only to a grant, giving or renewal other than one given by an officer of a local authority. No persons other than such officers are currently treated as “relevant persons” in Scotland.

Does the committee therefore agree to draw the act of sederunt to the attention of the Parliament under the general reporting ground, as it contains a minor drafting error?

Members indicated agreement.

Act of Sederunt (Actions for removing from heritable property) (Amendment) 2012 (SSI 2012/273)

The Convener: Paragraph 2(2) purports to amend “rule 3” of the Act of Sederunt (Actions for removing from heritable property) 2012 (SSI 2012/136), and paragraphs 1(b), 5(a) and 7(a) within it. The references should instead be to paragraph 3 and to subparagraphs (1)(b), (5)(a) and (7)(a). That represents a failure to follow proper drafting practice, and the resultant lack of clarity creates a risk of confusion for the end users of the act of sederunt about exactly which provisions are being referred to.

Does the committee therefore agree to draw the act of sederunt to the attention of the Parliament under the general reporting ground?

Members indicated agreement.

The Convener: Does the committee also welcome the fact that the Lord President’s private office proposes to correct the issue in a forthcoming instrument?

Members indicated agreement.

Act of Sederunt (Rules of the Court of Session Amendment No 5) (Miscellaneous) 2012 (SSI 2012/275)

The Convener: Paragraph 3(3) inserts into the rules of the Court of Session a new rule 55.2D(5) that erroneously refers to an application “by notice” rather than an application “by motion”.

In addition, paragraph 3(5) inserts new rules 55.5B and 55.5C. However, there is no rule 55.5A, so those provisions ought to have been numbered 55.5A and 55.5B. Accordingly, there has been a failure to follow proper drafting practice, which risks causing confusion to the end users of the rules.

Does the committee therefore agree to draw the act of sederunt to the attention of the Parliament on the general reporting ground in respect of those two matters?

Members *indicated agreement.*

The Convener: As before, does the committee also welcome the fact that the Lord President's private office has agreed to correct those errors in a forthcoming instrument?

Members *indicated agreement.*

**Wildlife and Natural Environment
(Scotland) Act 2011 (Commencement No
2) Amendment (No 2) Order 2012 (SSI
2012/281)**

The committee agreed that no points arose on the instrument.

The Convener: That gets us through the agenda. Our next meeting will be held on Tuesday 13 November.

Meeting closed at 10:42.

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