



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# SUBORDINATE LEGISLATION COMMITTEE

Tuesday 7 May 2013

Session 4

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**SUBORDINATE LEGISLATION COMMITTEE**

**14<sup>th</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

**THE FOLLOWING ALSO PARTICIPATED:**

Judith Morrison (Legal Adviser)

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

Committee Room 4



**Scottish Parliament**  
**Subordinate Legislation**  
**Committee**

*Tuesday 7 May 2013*

[The Convener *opened the meeting at 10:00*]

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

**The Convener (Nigel Don):** I welcome members to the Subordinate Legislation Committee's 14th meeting in 2013 and, as always, ask them to turn off their mobile phones.

Agenda item 1 is a decision on taking business in private. It is proposed that the committee takes items 5 and 6 in private. Item 5 is consideration of the committee's approach to the scrutiny of the delegated powers provisions in the Regulatory Reform (Scotland) Bill and item 6 is consideration of the committee's approach to the scrutiny of instruments that implement the provisions in the Children's Hearings (Scotland) Act 2011. Do members agree to take those items in private?

**Members** *indicated agreement.*

**Instruments subject to Negative**  
**Procedure**

**Police Service of Scotland (Amendment)**  
**(No 2) Regulations 2013 (SSI 2013/125)**

10:00

**The Convener:** The instrument corrects several instances of defective drafting, lack of clarity and drafting errors that the committee identified in the Police Service of Scotland Regulations 2013 (SSI 2013/35), the Police Service of Scotland (Police Cadets) Regulations 2013 (SSI 2013/42), the Police Service of Scotland (Special Constables) Regulations 2013 (SSI 2013/43), the Police Service of Scotland (Conduct) Regulations 2013 (SSI 2013/60) and the Police Service of Scotland (Performance) Regulations 2013 (SSI 2013/61). It makes no other substantive provision.

It is the usual practice of the Scottish ministers to issue corrective instruments free of charge to all known recipients and to include a headnote disclosing that fact. The ministers have not done so in this case. Although ministers have discretion in the matter, the committee may consider that the purpose of the practice is to promote accessibility of legislation and to ensure that end users are not put to additional expense in gaining access to legislation when corrective action is required. The committee may also consider that that principle should be applied when consideration is given to whether a corrective instrument should be issued free of charge. The guiding principle is not whether ministers consider that individual corrections among those that are made are necessary.

In applying that principle to the instrument under consideration, the committee may consider that it is clear that the instrument's primary objective is to correct acknowledged defects. The committee may wish to note, in particular, that amendments were required to SSI 2013/42 in order for it to have the legal effect that the Government intended. The committee previously reported its dissatisfaction with the Scottish Government's decision not to consolidate the Police Cadets (Scotland) Regulations 1968 (SI 1968/208) but to apply them with modifications. The committee considered that that approach hindered access by affected persons to the legislation as it is in force.

In those circumstances, the committee might have expected the Government to mitigate the additional inconvenience to those affected by providing the instrument under consideration to them free of charge. Does the committee therefore agree to draw the instrument to the attention of the Parliament on the general reporting ground?

**Members** *indicated agreement.*

**Late Payment of Commercial Debts  
(Scotland) (No 2) Regulations 2013  
(SSI 2013/131)**

**The Convener:** There has been a failure to lay the instrument at least 28 days before it comes into force, as section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 requires. The committee may wish to find the breach of the 28-day rule acceptable in this case, since it is important to ensure that Scots law properly implements directive 2011/7/EU as quickly as possible.

Does the committee agree to draw the instrument to the attention of the Parliament on reporting ground (j), as there has been a failure to lay it at least 28 days before it comes into force, as section 28(2) of the 2010 act requires?

**Members indicated agreement.**

**Hanzala Malik (Glasgow) (Lab):** We seem to be getting quite a few late instruments. What is the reason for that?

**The Convener:** I think that the reasons vary. Do our legal advisers want to comment on why the instrument under consideration was late in the first place?

**Judith Morrison (Legal Adviser):** I cannot comment on why it was late—that is a matter for the Scottish Government.

In relation to this instrument, as opposed to its predecessor, the Scottish Government decided that it was important to implement European Union law correctly as quickly as possible. That is why the Government has not complied with the 28-day rule.

**Hanzala Malik:** I just flag up a concern that we seem to be getting quite a few late instruments. I do not understand why that is happening repeatedly. Perhaps we could draw that to the attention of someone who manages the process.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** The instrument that we are considering is late because we want it to be late.

**Hanzala Malik:** I am not addressing that instrument specifically.

**Stewart Stevenson:** No, but it is late because it responds to a point that we have previously made. We want it to be late—we would be even more critical if it were not late.

**The Convener:** Indeed. Many of the late instruments that we have received recently have been late because they have responded to a request by us to change something. In addition, it is generally true that late instruments are becoming slightly less frequent—that is what the statistics tell us. However, in principle, we are in

absolute agreement with you—we would like things to be on time.

**Hanzala Malik:** Could we get a figure on that when we do our report?

**The Convener:** Yes, that will come through.

**Hanzala Malik:** Thank you, convener.

**The Convener:** Does the committee agree to find acceptable the explanation that the Scottish Government has given for the failure to lay the instrument at least 28 days before it comes into force?

**Members indicated agreement.**

## Instrument not subject to Parliamentary Procedure

### Freedom of Information (Amendment) (Scotland) Act 2013 (Commencement and Transitional Provision) Order 2013 (SSI 2013/136)

10:05

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

## Aquaculture and Fisheries (Scotland) Bill: After Stage 2

10:06

**The Convener:** Agenda item 4 is consideration of the delegated powers provisions in the Aquaculture and Fisheries (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 draft report and the briefing paper.

Stage 3 consideration of the bill is due to take place on Wednesday 15 May. As the deadline for lodging amendments is 4.30 pm on Thursday 9 May, the committee may wish to agree on its conclusions today.

Does the committee agree to report that it does not need to draw the attention of the Parliament to the new delegated powers provisions in subsections (2) and (4) of section 19A or to the substantially amended powers in section 1(2), which inserts section 4A(5) into the Aquaculture and Fisheries (Scotland) Act 2007; section 3; section 20, which inserts section 46F into the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003; section 22; and section 50, read with section 52(2)?

**Members indicated agreement.**

**The Convener:** Does the committee agree to report that it welcomes the fact that the amendment of the powers in section 3(4) of the bill and in section 20, which inserts section 46F into the 2003 act, implements recommendations that the committee made in its stage 1 report?

**Members indicated agreement.**

**The Convener:** Does the committee also agree to report that it welcomes the fact that the application of the affirmative procedure to the exercise of the powers in section 50 of the bill to charge in connection with fisheries functions, which is achieved by the amendment of section 52(2), implements a recommendation that the committee made in its stage 1 report?

**Members indicated agreement.**

**The Convener:** We now move into private session.

10:08

*Meeting continued in private until 10:56.*





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