



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 26 March 2013

Session 4

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SUBORDINATE LEGISLATION COMMITTEE
11th 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 5

Scottish Parliament

Subordinate Legislation Committee

Tuesday 26 March 2013

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

Instruments subject to Negative Procedure

Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 (SSI 2013/89)

The Convener (Nigel Don): I welcome members to the Subordinate Legislation Committee's 11th meeting in 2013. We have received apologies from Hanzala Malik. I ask members to please turn off mobile phones.

Under agenda item 1, the first instrument subject to negative procedure is SSI 2013/89. 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 recognise that, as a result of the policy that has been adopted, it might be necessary for the instrument to come into force on 1 April 2013 to ensure consistency throughout the United Kingdom, and that its making was dependent on receipt of confirmation from the Home Office of the applicable contribution rates. Accordingly, the committee may consider the failure to be acceptable, having regard to the circumstances in which the Scottish ministers found themselves and the consequences of failing to have the instrument come into force on 1 April.

The committee may also wish to note the statement that the Cabinet Secretary for Finance, Employment and Sustainable Growth made to the Parliament on 28 November 2012 and the reasons that he gave for implementing the increased contribution rates. In his statement, the cabinet secretary set out the consequences that would result, should the instrument not come into force at the same time as the equivalent provisions in the rest of the UK. However, the committee may consider that the Scottish ministers might have provided a more adequate explanation to the Presiding Officer of why it was not possible properly to respect the laying requirements in making the instrument.

Do members have any comments?

John Scott (Ayr) (Con): I agree with what you have said. There was a financial imperative for the

instrument to be laid, but it would have been easier for us to understand that if we were relying on the cabinet secretary's statement instead of the correspondence from the Government, which does not appear to make that case as strongly as it might have. Therefore, we have got to the right place, but perhaps for the wrong reason.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): It appears that, if the 28-day rule had been met, the instrument would have come into force some three weeks later, which, on my recollection of what the cabinet secretary said, might have cost our budget in the broad order of £6 million. Therefore, it is understandable that the 28-day rule has not been met, but it is slightly surprising that the cabinet secretary has not put it in those terms.

The Convener: Indeed. Does the committee agree to draw the instrument to the Parliament's attention on reporting ground (j), as 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?

Members indicated agreement.

The Convener: Does the committee also agree to note the update that the Scottish ministers have provided—which we have spoken about previously—in relation to the consolidation of the Police Pensions Regulations 1987 (SI 1987/257), and does it agree to welcome the news that the Home Office is working on a draft consolidating instrument and the Scottish ministers' commitment to do everything possible to assist with progressing that project?

Members indicated agreement.

National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2013 (SSI 2013/96)

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 2010 act requires. The committee may wish to note the explanation that is given in the letter to the Presiding Officer that the policy is for there to be uniform optical voucher values and supplements throughout the United Kingdom. It may also wish to note that whether voucher and supplement values are increased in any particular year is optional. In this case, it appears that the UK Government decided to increase values for 2013 in late February, which did not allow the necessary Scottish statutory instrument to be laid 28 days in advance of 1 April 2013. The committee may wish to accept that, once that decision was communicated to the Scottish ministers, they did

what they could do to expedite the Scottish regulations.

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

Members *indicated agreement.*

The Convener: Is the committee content with the explanation that the Scottish Government has provided?

Members *indicated agreement.*

Road Traffic (Permitted Parking Area and Special Parking Area) (Fife Council) Designation Order 2013 (SSI 2013/93)

Parking Attendants (Wearing of Uniforms) (Fife Council Parking Area) Regulations 2013 (SSI 2013/94)

Road Traffic (Parking Adjudicators) (Fife Council) Regulations 2013 (SSI 2013/95)

Scottish Fire and Rescue Service (Framework and Appointed Day for Strategic Plan) Order 2013 (SSI 2013/97)

Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2013 (SSI 2013/100)

The committee agreed that no points arose on the instruments.

Instruments not subject to Parliamentary Procedure

Act of Sederunt (Sheriff Court Rules) (Lay Representation) 2013 (SSI 2013/91)

10:05

The Convener: Paragraph 5 of the instrument appears to be defectively drafted in that it inserts a new chapter 2A into the Act of Sederunt (Small Claim Rules) 2002 (SSI 2002/133)—the small claim rules. By virtue of the provision in rule 2.1(1)(d) of the small claim rules, lay representation is already permitted in all small claims. However, rule 2A.2(1) applies only to enable lay representation in proceedings in which no other provision that permits a party to be represented before the sheriff by a lay representative is in force. Given that lay representation is permitted in all small claims, it appears that there are no circumstances in which chapter 2A might apply, and its presence can only cause problems. Does the committee agree to draw the instrument to the Parliament's attention on reporting ground (i), as the drafting appears to be defective?

Stewart Stevenson: I note that it is entirely clear from the declaration that is made by prospective lay representatives in paragraph (b) of form A1 in schedule 2 to SSI 2013/91 and elsewhere in that instrument that such people cannot receive any remuneration. That is entirely proper, and it highlights the fact that we are dealing with people who are not legally qualified to appear before the courts, so it is important that the legislation on the matter is as clear and unambiguous as it can be. Therefore, I am happy to support the reference that the convener proposes.

Mike MacKenzie (Highlands and Islands) (SNP): I find the Lord President's explanation somewhat unfortunate—it is convoluted and unconvincing, and I express my disappointment about that.

John Scott: There is some doubt about whether the difficulty with the instrument comes from the Lord President's office, as Mike MacKenzie suggested, or from its interpretation of the Legal Services (Scotland) Act 2010. What is clear is that the proposed change to the small claim rules is not necessarily progress or a step forward. The matter certainly needs to be sorted out, and I urge that we ask the relevant committee—in the strongest possible terms—to note that.

The Convener: Does the committee therefore agree to draw the instrument to the Parliament's

attention on reporting ground (i), as the drafting appears to be defective?

Members indicated agreement.

The Convener: The form or meaning of paragraph 4 of the instrument could be clearer in so far as it inserts a new chapter 2A into the Act of Sederunt (Summary Cause Rules) 2002 (SSI 2002/132)—the summary cause rules. Lay representation is permitted under those rules only at certain hearings, but the interaction with the new chapter 2A is complex. Given that the provisions on lay representation are directed at persons who, by definition, are not legally qualified, it appears that the position on lay representation in summary causes, as amended by chapter 2A, could be clearer. Given that we have indications that the Lord President's office and our lawyers have not been capable of agreeing on the intended meaning, I suspect that those who are not legally qualified have very little chance of understanding it. Does the committee agree to draw the instrument to the Parliament's attention on reporting ground (h), as the meaning could be clearer?

Members indicated agreement.

The Convener: Does the committee also agree to welcome the suggestion that the Sheriff Court Rules Council may propose to the Scottish civil justice council that it undertake a review of all rules on lay representation as part of its wider policy remit once it takes up its functions?

Members indicated agreement.

Children's Hearings (Scotland) Act 2011 (Commencement No 7) Order 2013 (SSI 2013/98)

The committee agreed that no points arose on the instrument.

High Hedges (Scotland) Bill: After Stage 2

10:10

The Convener: Agenda item 3 involves consideration of the delegated powers provisions in the High Hedges (Scotland) Bill after stage 2. Members will have noted that the member in charge 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 Thursday 28 March, which means that the deadline for lodging amendments has passed. However, if no lodging of amendments—even manuscript amendments—is being considered, there is little that we need to add.

Does the committee agree to report that, after stage 2, it does not need to draw the Parliament's attention to the substantially amended powers in section 31, "Guidance", and section 34, "Power to modify meaning of 'high hedge'"?

Members indicated agreement.

The Convener: Does the committee also agree to welcome the fact that section 34 has been amended to address its concerns and the concerns of the lead committee about the scope of the power?

Members indicated agreement.

The Convener: Given that we are agreed on all that, no discussion about amendments is needed.

That brings us to the end of our agenda. The next meeting will be held on Tuesday 16 April.

Meeting closed at 10:11.

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