



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 4 June 2013

Session 4

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SUBORDINATE LEGISLATION COMMITTEE

18th Meeting 2013, Session 4

CONVENER

Nigel Don (Angus North and Mearns) (SNP)

DEPUTY CONVENER

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (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 3

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 4 June 2013

[The Deputy Convener *opened the meeting at 10:05*]

Instruments subject to
Affirmative Procedure

Debt Arrangement Scheme (Scotland)
Amendment Regulations 2013 [Draft]

Public Services Reform (Functions of the
Common Services Agency for the Scottish
Health Service) (Scotland) Order 2013
[Draft]

The Deputy Convener (Stewart Stevenson): I welcome members to the Subordinate Legislation Committee's 18th meeting in 2013 and ask them to switch off phones. We have received apologies from Nigel Don, who has business elsewhere.

The committee agreed that no points arose on the instruments.

The Deputy Convener: Members will recall that the committee took evidence from Scottish Government officials on the consultation draft of the public services reform order at its meeting on 19 March. The committee asked a number of questions about whether the Scottish Government had satisfied the tests for modifying the functions of the Common Services Agency through an order as opposed to primary legislation.

Additional information that is included in the explanatory document that accompanies that order demonstrates that the Scottish Government has considered the concerns that the committee raised. Further to that, members may wish to note that the drafting error that the committee identified when it considered the consultation draft has been corrected.

Instruments subject to Negative
Procedure

Children's Hearings (Scotland) Act 2011
(Rehabilitation of Offenders) (Transitory
Provisions) Order 2013 (SSI 2013/146)

10:06

The Deputy Convener: Members will recall that the committee took evidence from Scottish Government officials on the order at last week's meeting. The evidence session focused on the competence problem that has arisen with the implementation of the Children's Hearings (Scotland) Act 2011 in so far as it interacts with the Rehabilitation of Offenders Act 1974. Our focus today is on whether the order should be reported to Parliament on any formal reporting grounds.

Article 2(4)(a)(ii) of the order modifies the effect of section 5(3) of the 1974 act to apply it to cases in which there is the discharge

"by a children's hearing or, as the case may be, by the sheriff of the referral of a child's case to a children's hearing"

under section 94(2)(b) or 114(3)(b) of the 2011 act.

The Scottish Government has confirmed that the reference to those provisions of the 2011 act has no effect, as none of the outcomes that are possible under those provisions engages the rehabilitation scheme that is set out in the 1974 act. It has also undertaken to amend the order to remove the reference to those provisions at the next opportunity.

The committee may consider that, in a highly complex instrument, those erroneous references could confuse people who operate the order's provisions or could lead to other detrimental effects. The committee may therefore wish the Scottish Government to make a corrective amendment as soon as possible, to avoid that occurring.

John Scott (Ayr) (Con): I agree. We should insist on a corrective amendment being made as soon as possible. There has already been too much confusion about this legislation, and I think that, as a committee—almost as a point of principle—we should do anything that we can to reduce that confusion by getting the correction made as soon as possible.

The Deputy Convener: Does the committee agree to draw the order to the attention of Parliament on the general reporting ground, as certain provisions in article 2(4)(a)(ii) have no effect?

Members indicated agreement.

The Deputy Convener: Does the committee also agree to recommend that the Scottish Government makes a corrective amendment as soon as possible?

Members indicated agreement.

Children's Hearings (Scotland) Act 2011 (Transitional, Savings and Supplementary Provisions) Order 2013 (SSI 2013/150)

The Deputy Convener: The meaning of the order could be clearer in relation to a number of matters.

The meaning of article 2(5) could be clearer in two respects. First, the provision purports to apply to "any enactment", when the Scottish Government has confirmed that it is intended to apply only to enactments other than those that are set out in article 2(2), for which different provision is made in article 2(1).

Secondly, the Scottish Government has confirmed that the intention that underlies article 2(5) is to make a general saving of other enactments as they apply before the order's commencement date to "relevant proceedings" that are in progress on the order's commencement date. Some such enactments will be repealed or modified on the order's commencement date, by virtue of provision that is made in other legislation that implements the Children's Hearings (Scotland) Act 2011.

The meaning of article 2(5) could be clearer to implement the Scottish Government's intention. On one interpretation, it purports to prevent any enactment that might be passed during the period until the "relevant proceedings" have concluded from modifying or repealing any existing enactment that applies to the proceedings. That period might end on a date later than the order's commencement date. The order cannot entrench the position to prevent change by such a later enactment.

The meaning of article 2(1) could be clearer. It provides that the reference to the Legal Aid (Scotland) (Children) Regulations 1997 (SI 1997/690) that is made in article 2(2)(d) is subject to

"the following provisions of this Order".

Those provisions include paragraphs (1) and (2)(a) of article 27, which revoke the 1997 regulations. Confusion could be caused by the two incompatible directions—the direction that the 1997 regulations continue to have effect and the direction that they are revoked. It could have been made clearer that the revocation is intended to be subject to the provision in article 2, which saves

the application of the 1997 regulations to proceedings that are in progress under the Children (Scotland) Act 1995 as at the order's commencement date.

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

Members indicated agreement.

John Scott: I endorse that, because we have two incompatible directions. I appreciate that we use gentle legal language, but it is little short of ridiculous to have two incompatible directions. That should have been picked up.

The Deputy Convener: Right. The *Official Report* will, of course, contain those comments.

Animal Health (Miscellaneous Fees and Amendments) (Scotland) Regulations 2013 (SSI 2013/151)

The Deputy Convener: The references to "EU collection centre", "EU quarantine centre" and "EU storage centre" should be to "EC collection centre", "EC quarantine centre" and "EC storage centre", to reflect the services that are provided under the Bovine Semen (Scotland) Regulations 2007 (SSI 2007/330) in respect of which fees are to be charged. That lack of clarity is unlikely to cause confusion, and the committee may wish to note that the Scottish Government will amend those references to provide clarity at the next available opportunity.

Does the committee agree to draw the instrument to the attention of the Parliament under the general reporting ground, as it contains minor drafting errors?

Members indicated agreement.

The Deputy Convener: Does the committee also agree to note that the Scottish Government intends to amend the incorrect references at the next available opportunity?

Members indicated agreement.

**Sheriff Court Districts Amendment Order
2013 (SSI 2013/152)**

**Justice of the Peace Courts (Scotland)
Amendment Order 2013 (SSI 2013/153)**

**Town and Country Planning (Control of
Advertisements) (Scotland) Amendment
Regulations 2013 (SSI 2013/154)**

**Town and Country Planning (Development
Management Procedure) (Scotland)
Regulations 2013 (SSI 2013/155)**

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

The Deputy Convener: Although no formal points have been raised in relation to SSI 2013/153, the committee may wish to highlight a potential policy issue to the lead committee. As justice of the peace courts and sheriff courts have different sentencing powers, a higher sentence could be imposed on persons whose cases are transferred from a justice of the peace court that is closing to a sheriff court if they are convicted or sentenced after the transfer.

Mike MacKenzie (Highlands and Islands) (SNP): We should be grateful to our advisers for highlighting that point, and I hope that the Justice Committee takes note.

The Deputy Convener: In that context, does the committee agree to draw the matter that has been raised in relation to SSI 2013/153 to the attention of the lead committee, while not formally reporting the instrument?

Members *indicated agreement.*

**Instruments not subject to
Parliamentary Procedure**

**Certification of Death (Scotland) Act 2011
(Commencement No 1) Order 2013 (SSI
2013/159)**

**Act of Sederunt (Lands Valuation Appeal
Court) 2013 (SSI 2013/161)**

**Water Resources (Scotland) Act 2013
(Commencement No 1) Order 2013 (SSI
2013/163)**

10:15

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

The Deputy Convener: Before I close the meeting, I ask members to please note that this is the final meeting at which the committee will be known as the Subordinate Legislation Committee. Following Parliament's agreement to the recommendations of the Standards, Procedures and Public Appointments Committee as contained in its second report of 2013, this committee will, from tomorrow, be known as the delegated powers and law reform committee.

Our next meeting will be held on Tuesday 11 June.

John Scott: I understand that the new snappy name will not mean a change in the committee, but it appears to mean the end of the Subordinate Legislation Committee, and I think that we should put it on record that the committee has served Parliament well over the past 14 or so years. I am not quite sure what more one should say, other than to give thanks to the members who have convened the committee, the people who have clerked it and the members who have supported it over those years.

The Deputy Convener: I am sure that the committee would find it easy to agree with that. Is that the case?

Members *indicated agreement.*

The Deputy Convener: I close this meeting of the Subordinate Legislation Committee.

Meeting closed at 10:17.

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