



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 28 January 2014

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**Tuesday 28 January 2014**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1265</b>
<b>INSTRUMENT SUBJECT TO AFFIRMATIVE PROCEDURE .....</b>	<b>1265</b>
Local Government Finance (Scotland) Order 2014 [Draft].....	1265
<b>INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE.....</b>	<b>1266</b>
Infant Formula and Follow-on Formula (Scotland) Amendment Regulations 2014 (SSI 2014/12) .....	1266
Discontinuance of Aberdeen and Peterhead Prisons (Scotland) Order 2014 (SSI 2014/13) .....	1266
<b>BUDGET (SCOTLAND) (NO 3) BILL: STAGE 1 .....</b>	<b>1266</b>
<b>MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL: AFTER STAGE 2.....</b>	<b>1267</b>
<b>PROCUREMENT REFORM (SCOTLAND) BILL: STAGE 1 .....</b>	<b>1270</b>

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**4<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

\*Nigel Don (Angus North and Mearns) (SNP)

**DEPUTY CONVENER**

\*Stuart McMillan (West Scotland) (SNP)

**COMMITTEE MEMBERS**

\*Richard Baker (North East Scotland) (Lab)

\*Mike MacKenzie (Highlands and Islands) (SNP)

\*Margaret McCulloch (Central Scotland) (Lab)

\*John Scott (Ayr) (Con)

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

\*attended

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

Committee Room 5



## Scottish Parliament

### Delegated Powers and Law Reform Committee

*Tuesday 28 January 2014*

[The Convener *opened the meeting at 10:42*]

#### Decision on Taking Business in Private

**The Convener (Nigel Don):** I welcome members to the fourth meeting in 2014 of the Delegated Powers and Law Reform Committee, and as always, ask members to switch off mobile phones.

Agenda item 1 is a decision on taking items 7 and 8 in private. Item 7 is consideration of the committee's draft report on the draft Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014, and item 8 is consideration of a paper by the clerk that relates to the Standards, Procedures and Public Appointments Committee's inquiry into the procedures for considering legislation. Does the committee agree to take items 7 and 8 in private?

**Members** *indicated agreement.*

#### Instrument subject to Affirmative Procedure

##### Local Government Finance (Scotland) Order 2014 [Draft]

10:42

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

**Members** *indicated agreement.*

## Instruments subject to Negative Procedure

### Infant Formula and Follow-on Formula (Scotland) Amendment Regulations 2014 (SSI 2014/12)

10:43

**The Convener:** No points have been raised by our legal advisers on the regulations. Is the committee content with them?

**Members** *indicated agreement.*

### Discontinuance of Aberdeen and Peterhead Prisons (Scotland) Order 2014 (SSI 2014/13)

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

**Members** *indicated agreement.*

### Budget (Scotland) (No 3) Bill: Stage 1

10:43

**The Convener:** We come to agenda item 4. The bill sets out in section 7 one delegated power, which makes provision for budget revision orders. The power is subject to affirmative procedure. Does the committee agree to report to the Parliament that it is satisfied with the exercise of the power in section 7 and that affirmative procedure is acceptable?

**Members** *indicated agreement.*

## Marriage and Civil Partnership (Scotland) Bill: After Stage 2

10:44

**The Convener:** Under agenda item 5 we will consider the delegated powers provisions in the bill after stage 2.

Members will have noted that the Scottish Government has provided a supplementary delegated powers memorandum and they will have seen the briefing paper.

Stage 3 consideration of the bill is due to take place on Tuesday 4 February. The deadline for lodging amendments is 4.30 on 29 January, which is this Wednesday. The committee may therefore wish to agree its conclusions today.

Paragraph 6 of schedule 2 to the bill inserts new section 5D into the Gender Recognition Act 2004, which I will hereafter refer to as the 2004 act. Section 5D confers power on the Scottish ministers to introduce a more streamlined process for civil partners to change their civil partnership to a marriage and obtain the full gender recognition certificate. In its stage 1 report, the committee recommended that provision should be made in the bill but, if that was not possible, that orders made under that power should be laid in draft before the Parliament for consultation and then be subject to affirmative procedure.

10:45

Amendments that were made at stage 2 provide for consultation on a draft order, but do not require the order to be laid before the Parliament at that stage. It is then subject to the affirmative procedure. That falls short of the committee's recommendation and would not require the Government to have regard to or respond to any responses to the consultation before commencing the affirmative procedure.

Similar issues arise in relation to a new power inserted by paragraph 11C of schedule 2, which inserts new section 3C(5)(b)(ii) into the 2004 act. The power allows the Scottish ministers to prescribe which treatments for gender dysphoria would qualify certain transgender persons to obtain a change of gender recognition certificate. Again, the exercise of that power involves consultation on a draft order before the affirmative procedure, but does not engage the Parliament at that stage or require the Government to have regard to the consultation responses.

The committee may consider that placing those additional requirements on the face of the bill would be beneficial, as it would give the Parliament the opportunity to scrutinise the

Government's proposals and influence the draft affirmative order that is subsequently laid before the Parliament.

Do members have any comments?

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** The committee has previously made observations on the process to be adopted for such proposals. I understand that the Government has not made any comment on those observations, nor responded by seeking to make any change. On that basis, we should adhere to what we previously said and draw that to the attention of the Parliament in those terms.

**Margaret McCulloch (Central Scotland) (Lab):** Where exactly are we? I have lost which page of the submission I should be looking at.

**The Convener:** We are being asked to respond to paragraphs 55 and 77 of paper DPLR/S4/14/4/3(P).

**John Scott (Ayr) (Con):** I support Stewart Stevenson. We have taken a view on the matter before and we should invite the Government at the very least to justify its position on not agreeing to the suggestions that we made in good faith. All that we seek is a further layer of scrutiny and, in matters of such importance, that is not unreasonable. We have the example of the Agricultural Holdings (Scotland) Act 2003, which has led to—I can put this in no other way—huge amounts of grief. Furthermore, we would not leave the Marriage and Civil Partnership (Scotland) Bill open to challenge. If the process that we suggest be put in place helps to avoid such a challenge at some later date, that would be a sensible way to proceed.

**Margaret McCulloch:** As convener of the Equal Opportunities Committee, I should make it clear that we took evidence from the Cabinet Secretary for Health and Wellbeing on the proposals for making the regulations. We were content with the Scottish Government's proposals, so it is important that I place the Equal Opportunities Committee's position on the record.

**Stewart Stevenson:** Just to be clear, my substantial concern is simply that the Government has not provided a response to underpin how it proposes to proceed. The Government has the opportunity to correct that omission during the stage 3 proceedings or earlier, or to respond by making amendments. I do not point to any particular response.

**The Convener:** Given members' different views, I want the committee's view on how to proceed.

**Richard Baker (North East Scotland) (Lab):** Stewart Stevenson has brought us to a good conclusion on the matter. It is perfectly right that,

as a committee, we pursued the issues of how the regulation is made and whether to use the super-affirmative procedure. It is also perfectly right that we seek a response without coming to a conclusion that would potentially contradict the position that the other committee that Margaret McCulloch sits on has reached. Therefore, it is right to press the case without binding ourselves to any specific conclusion before the final decisions are made and stage 3 takes place.

**The Convener:** In that case, we either need to produce a wee report or I need to write a letter.

**Richard Baker:** Yes.

**The Convener:** We will follow the appropriate process and ask the Government why it has drawn the conclusion that it has, rather than merely note what it has left in the bill. Do members agree?

**Members** *indicated agreement.*

**The Convener:** It is recommended that the committee be content with all the other provisions in the bill—those that we have not just discussed—that were amended at stage 2 to insert or substantially alter provisions conferring powers to make subordinate legislation. Do members agree?

**Members** *indicated agreement.*

## **Procurement Reform (Scotland) Bill: Stage 1**

10:51

**The Convener:** Under agenda item 6 we will consider the Scottish Government's response to the committee's stage 1 report on the bill. Members have seen the briefing paper and the response from the Scottish Government. As members have no comments, are we content to note the response and, if necessary, reconsider the bill after stage 2?

**Members** *indicated agreement.*

10:51

*Meeting continued in private until 11:17.*





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