



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 24 June 2014

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DELEGATED POWERS AND LAW REFORM COMMITTEE
22nd 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

The Sir Alexander Fleming Room (CR3)

Scottish Parliament
Delegated Powers and Law Reform Committee

Tuesday 24 June 2014

[The Convener *opened the meeting at 10:30*]

Instruments subject to Affirmative Procedure

Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014 [Draft]

Lanarkshire Colleges Order 2014 [Draft]

The Convener (Nigel Don): I welcome members to the 22nd 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 consideration of two instruments that are subject to affirmative procedure. No points have been raised by our legal advisers on the draft orders, but members will note that the draft Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014 supersedes the draft order that was laid before the Parliament on 19 May, which the committee reported on and found to be acceptable on 27 May. The earlier order has been withdrawn and relaid to cater for certain policy changes.

Is the committee content with the orders?

Members *indicated agreement.*

Instruments subject to Negative Procedure

Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014 (SSI 2014/159)

10:31

The Convener: We come to agenda item 2. A requirement of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with, but in this instance, the committee may wish to accept the reasons that the Scottish Government has provided for the breach of the 28-day rule.

The Scottish Government has explained that the regulations have been prepared and that it is proposed that they be brought into force as quickly as possible in order to transpose urgently into Scots law certain provisions of directive 2012/13/EU on the right to information in criminal proceedings. That follows the rescheduling into 2015 of stage 2 of the Criminal Justice (Scotland) Bill, which originally was to transpose certain provisions of the directive.

Does the committee agree to draw the regulations to the attention of the Parliament on reporting ground (j), because a requirement of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with?

Members *indicated agreement.*

The Convener: Does the committee agree, however, to accept the reasons that the Scottish Government has provided for the breach of requirements?

Members *indicated agreement.*

The Convener: Our legal advisers have raised another matter. Regulation 3(2) provides that a person in police custody must be provided

“as soon as reasonably practicable with such information ... as is necessary to satisfy the requirements of Articles 3 and 4 of the Directive.”

In its response to the committee, the Government has acknowledged that the terms of the directive envisage an element of discretion being exercised in the timing of the provision of the information through the use of a “back-stop provision”. Recital (19) of the preamble to the directive says that the information should be provided

“at the latest before the first official interview of the suspect or accused person by the police or by another competent authority.”

Articles 3.1 and 4.1 of the directive provide that the information should be provided “promptly”.

The committee may wish to draw to the attention of the lead committee the fact that regulation 3 does not make provision for the latest timing, which is referred to in the preamble to the directive. In its response, the Scottish Government has explained that the regulations do not specify a time limit for provision of the information because, as a matter of practice, a suspect will not be interviewed before a letter of rights under article 4 of the directive has been provided to the person.

Does the committee therefore agree to draw the terms of regulation 3(2) and the Scottish Government’s response to the committee, which explains the effect of that paragraph, to the attention of the lead committee?

Members *indicated agreement.*

Local Government Pension Scheme (Scotland) Regulations 2014 (SSI 2014/164)

The Convener: The drafting of regulation 9(3)(b) appears to be defective. Regulation 9(2) provides for pension contribution rates that are referred to in a table that shows bands, earnings range figures and contribution rates. Regulation 9(3)(b) provides that the earnings figures that are set out in that table are

“to be applied to pensions beginning on 1st April 2014”,

but the intention is that they are to be applied from 1 April 2015, which is the date on which the regulations come into force.

Does the committee therefore agree to draw the regulations to the attention of the Parliament under reporting ground (i), on the basis that the drafting of regulation 9(3)(b) appears to be defective?

Members *indicated agreement.*

The Convener: The committee may wish to note that the Scottish Government has undertaken to draw up amending regulations to correct the error. As the error is significant, the committee may wish to suggest that they be brought forward promptly. Do members agree to do that?

Members *indicated agreement.*

Seed (Fees) (Scotland) Regulations 2014 (SSI 2014/167)

Road Traffic (Permitted Parking Area and Special Parking Area) (Inverclyde Council) Designation Order 2014 (SSI 2014/169)

Parking Attendants (Wearing of Uniforms) (Inverclyde Council Parking Area) Regulations 2014 (SSI 2014/170)

Road Traffic (Parking Adjudicators) (Inverclyde Council) Regulations 2014 (SSI 2014/171)

Aquaculture and Fisheries (Scotland) Act 2013 (Specification of Commercially Damaging Species) Order 2014 (SSI 2014/176)

The committee agreed that no points arose on the instruments.

Instrument not subject to Parliamentary Procedure

Bankruptcy and Diligence etc (Scotland) Act 2007 (Commencement No 9 and Savings Amendment) Order 2014 (SSI 2014/173)

10:35

The committee agreed that no points arose on the instrument.

Housing (Scotland) Bill: After Stage 2

10:35

The Convener: We come to agenda item 4. The committee agreed its report on the bill, as amended at stage 2, at last week's meeting. Since then, a non-Government amendment—amendment 61—has been lodged that would confer a new power on the Scottish ministers to make subordinate legislation.

Members will recall that Scottish Government officials wrote to the clerk on 11 June to advise the committee that the amendment would be lodged and that the Government intends to support it. To allow the committee to scrutinise the amendment, the letter explained the provision's purpose and the reasons why it is proposed that the power be taken. Members have seen that letter and a briefing paper from our legal advisers. Does the committee agree to note the Scottish Government's letter?

Members *indicated agreement.*

The Convener: Is the committee content with amendment 61, in so far as it relates to the committee's remit?

John Scott (Ayr) (Con): This is a further example of late lodging of amendments, which perhaps Mr Stevenson's committee needs to look into. We have talked about the need for explanations for amendments; it turns out that we are content with amendment 61, but if we had not been, difficulties might have arisen. The convener might wish to investigate that with Mr Stevenson's committee—I am afraid that I do not remember its name; is it the standards committee?

The Convener: Yes.

John Scott: I would like the matter to be pursued.

The Convener: With that, is the committee content with amendment 61, in so far as it relates to the committee's remit?

Members *indicated agreement.*

Welfare Funds (Scotland) Bill: Stage 1

10:37

The Convener: Under agenda item 5, the committee will consider the delegated powers in the bill at stage 1. The committee is invited to agree the questions that it wishes to raise with the Scottish Government on the delegated powers in the bill. It is suggested that the questions be raised in written correspondence. The committee will have the opportunity to consider the responses at a future meeting, before considering its draft report.

Subsections (1) and (2) of section 4 provide that regulations may be made to require local authorities to review the decisions that they make under section 2 on use of welfare funds. The regulations may make all decisions subject to review, or set out types of decision that would be subject to review.

The delegated powers memorandum explains that the Scottish Government considers that

“Section 4 is necessary to allow requirements to be placed on local authorities to carry out reviews of decisions in relation to applications for assistance through welfare funds.”

Does the committee agree to ask the Scottish Government to explain why it was considered appropriate to frame section 4(1) as a permissive provision that will allow the Scottish ministers to regulate to require local authority reviews, rather than one that will require regulations that will put the review process in place?

Members indicated agreement.

The Convener: Section 4(2)(a) provides for a choice that ministers “may” implement regulations. The choice is that all decisions under section 2 may be subject to review, or that only certain types of decision may be subject to review. Does the committee agree to ask about that?

Members indicated agreement.

The Convener: Does the committee agree to ask the Scottish Government why the power in section 4(2) is framed as a permissive power that will allow the Scottish ministers to regulate to implement one of the two options, rather than requiring the regulations to provide for one option? Do we agree to ask how it is envisaged that the power would be used and what examples can be given of the decisions that could be made, subject to review or otherwise, and of the circumstances that might be specified in which reviewable types of decision are to be reviewed? Do we also agree to ask why those matters could not be stated

initially in the bill, subject to adjustment in the future by regulation?

Members indicated agreement.

The Convener: Section 7 will enable sections 1 to 6 to be commenced by order. An order made under section 7

“may include incidental, supplementary, consequential, transitional, transitory or saving provision.”

In regard to section 7(3), the committee may consider that it is unusual in a bill of such scope for the commencement powers to include the power to make

“incidental, supplementary, consequential”

provision where the power is exercisable by an order that is laid before the Parliament but is not subject to negative procedure. Does the committee therefore agree to ask the Scottish Government to explain why parliamentary scrutiny by negative procedure is not considered to be appropriate for the exercise of those ancillary powers, and whether it could agree to lodge an amendment at stage 2 of the bill so that negative procedure would be applied in those circumstances?

Members indicated agreement.

Food (Scotland) Bill: Stage 1

10:40

The Convener: Agenda item 6 is consideration of the Scottish Government's response to the committee's stage 1 report on the bill. Members have seen the briefing paper, the Scottish Government's response, and a letter from the Lord Advocate, which he penned yesterday, concerning publication of the Lord Advocate's guidelines. May I have members' comments, please?

John Scott: We should welcome the letter from the Lord Advocate and his willingness to work with the Government on lodging amendments and publishing guidelines. I think that the Government's explanation, as outlined in paragraph 11 of its response, is entirely reasonable. The fact that the power has not been used in recent times is a matter to rejoice over. Nonetheless, having lived through BSE and E coli incidents in the food industry, I know that the ability to make regulations at short notice can be required and, indeed, has been required in the past. The Government's explanation of its desire to retain such a power for such emergencies is therefore entirely reasonable.

The Convener: Thank you, John.

Members have no other comments. Are members content to note the Government's response and, if necessary, to reconsider the bill after stage 2?

Members *indicated agreement.*

The Convener: That completes our agenda. Our next meeting will be on Tuesday 5 August. I look forward to the recess.

Meeting closed at 10:42.

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