



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 25 March 2014

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DELEGATED POWERS AND LAW REFORM COMMITTEE
11th 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 4

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 25 March 2014

[The Convener opened the meeting at 11:31]

Instruments subject to Affirmative Procedure

Young People's Involvement in Education and Training (Provision of Information) (Scotland) Order 2014 [Draft]

Scotland Act 1998 (Modification of Schedule 5) Order 2014 [Draft]

The Convener (Nigel Don): I welcome members to the 11th meeting in 2014 of the Delegated Powers and Law Reform Committee and ask them to switch off any mobile phones.

No points have been raised by our legal advisers on the draft orders under agenda item 1. Do members have any comments to make?

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I do. It is perfectly proper that we have not been advised that the draft Scotland Act 1998 (Modification of Schedule 5) Order 2014 creates any difficulties but, given that the effect of the order is that, post the passing of the order and at some point in the future—we are not in control of when—amendments will be made to the Food (Scotland) Bill that the Parliament is about to consider, I believe that we should draw the Parliament's attention to the order, so that the Parliament is aware of the likelihood that amendments will be made to the Food (Scotland) Bill on the back of it. That way, relevant committees will be able to consider such amendments, if they require to do so, which have not yet been lodged and which they might not otherwise be aware of. I think that it is in good order to allow our committees to have the maximum amount of notice in considering amendments that may at a future point head their way.

The Convener: That seems perfectly sensible. Do members agree to do that?

Members indicated agreement.

The Convener: Otherwise, is the committee content with the orders?

Members indicated agreement.

Instruments subject to Negative Procedure

Teachers' Superannuation (Scotland) (Miscellaneous Amendments) Regulations 2014 (SSI 2014/69)

11:33

The Convener: There is a minor drafting error in the definition of "short-service serious ill-health grant", which is inserted by regulation 22(a) into the schedule 1 glossary of expressions in the Teachers' Superannuation (Scotland) Regulations 2005 (SSI 2005/393). The definition is

"A grant payable under Regulation E21A",

but the grant is payable under regulation E21.

Does the committee therefore agree to draw the regulations to the attention of the Parliament on the general reporting ground, as they contain a minor drafting error?

Members indicated agreement.

The Convener: Does the committee agree to note, however, that the Scottish Government will correct that minor error by means of an amendment in due course?

Members indicated agreement.

National Health Service (Charges to Overseas Visitors) (Scotland) (Amendment) Regulations 2014 (SSI 2014/70)

The Convener: Regulation 2(5) amends schedule 2 to the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989 (SI 1989/364) in such a way that the schedule does not contain an accurate list of the countries or territories with which the UK has a reciprocal healthcare agreement.

Does the committee agree to draw the regulations to the attention of the Parliament on the general reporting ground, as they contain drafting errors?

Members indicated agreement.

The Convener: Does the committee agree to welcome the commitment given by the Scottish Government to amend schedule 2 at the next available opportunity to remove the entries for Bulgaria, the Czech Republic, the Russian Federation and Sweden?

Members indicated agreement.

Health Professions Council (Registration and Fees) (Amendment) Rules 2013 Order of Council 2014 (SI 2014/532)

The Convener: The order was not laid at least 28 days before it came into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The committee may wish to draw to the attention of the lead committee the Scottish Government's explanation for the breach of the 28-day rule.

The committee may wish to accept that the limited frequency of Privy Council meetings may have an impact on the ability to comply with section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 when orders are made at the council. However, in this instance, it has not been fully explained to the committee why the order could not be laid in sufficient time to comply with section 28(2), beyond the point that the timetable for finalising the order within the Department of Health slipped. The committee may wish to note that the Scottish Government and the Department of Health are liaising with a view to securing that future orders can comply with the rule where possible.

Does the committee agree to draw the order to the Parliament's attention on reporting ground (j), as the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 have not been complied with?

Members indicated agreement.

The Convener: Does the committee also agree to draw the Scottish Government's explanation for the breach of the 28-day rule to the attention of the lead committee?

Members indicated agreement.

National Health Service (Physiotherapist, Podiatrist or Chiropodist Independent Prescribers) (Miscellaneous Amendments) (Scotland) Regulations 2014 (SSI 2014/73)

The committee agreed that no points arose on the instrument.

Historic Environment Scotland Bill: Stage 1

11:37

The Convener: The purpose of item 3 is for the committee to consider the delegated powers in the bill at stage 1. The committee is invited to agree the questions that it wishes to ask the Scottish Government about the delegated powers in the bill. It is suggested that those questions be raised in correspondence. The responses received will help to inform our draft report on the bill.

Section 2 sets out the functions of historic environment Scotland. Section 2(8) provides that, in exercising its functions, historic environment Scotland

"must have regard to any relevant policy or strategy published by the Scottish Ministers."

The delegated powers memorandum that accompanies the bill does not explain why that power, or its form, is proposed. Ministers have other powers under section 12 to direct or issue guidance to historic environment Scotland about the exercise of its functions. Specifically, under section 12(4)(b), historic environment Scotland must

"have regard to guidance issued by the Scottish Ministers in relation to the exercise of its functions."

Does the committee agree to ask for an explanation of the purposes of the power in section 2(8) to issue

"any relevant policy or strategy"

to which

"Historic Environment Scotland must have regard"

in exercising its functions, how the power could be exercised and why it is needed beyond the powers of direction and guidance, and in particular the requirement for historic environment Scotland to

"have regard to any guidance issued ... in relation to the exercise of its functions"

that it is proposed be conferred on ministers by section 12?

Members indicated agreement.

The Convener: Section 3(1) allows ministers to delegate functions relating to "properties in care" to "Historic Environment Scotland" or "any other person" considered appropriate and to set out the detailed arrangements in respect of how those functions are to be exercised.

The power excludes any function of subordinate legislation. Section 3(5) provides that, where the function relates to the

“making or receiving of charges of any kind, any revenue received as a result of the ... function is revenue of the person to whom the function is delegated unless provision to the contrary is made in the delegation.”

Any delegation under section 3(1) does not affect

“the ability of the Scottish Ministers to exercise the function,”

or

“their responsibility for that function.”

A delegation must be written but can be varied or revoked.

Section 3(8) defines “property in care” as:

“(a) any heritable property which is of historical, archaeological, architectural or cultural significance or interest, and

(b) which is owned or occupied by, under the guardianship of, or otherwise under the management and control of the Scottish Ministers.”

Section 7(1) allows ministers similarly to delegate functions relating to collections of objects that are in ministers’ management and control to historic environment Scotland, or to any other person, and to set out the detailed arrangements in respect of how such functions are to be exercised. A delegation can be made in relation to

“a particular collection, a group of collections or all collections,”

or

“a particular object in a collection or a group of objects.”

The committee may therefore agree to ask for explanation of the following matters in relation to the powers of delegation in sections 3(1) and 7(1).

Why is it considered that the exercise of the specific powers in sections 3(5) and 7(4), in relation to who would receive the revenue received as a result of the exercise of a function delegated by the Scottish ministers, should not be subject to the approval of, or another form of scrutiny by, the Parliament?

Could the possible financial effects of the powers in sections 3(5) and 7(4) be explained?

Given the significance of the powers in section 3(1)(b) and 7(1)(b) that permit “any other person” or persons that ministers consider to be appropriate to be delegated functions in relation to properties in care or collections, would it be more appropriate for the determination of such persons to be made by an order that is subject to scrutiny by the Parliament? If so, what scrutiny procedure would be considered suitable for the exercise of the power?

Why is there no provision in the sections for the publication of any written delegation of functions, nor provision for a copy to be laid in the Parliament?

Which properties are included currently in the definition of “properties in care” in section 3(8), apart from the historic sites that are in the care of Historic Scotland?

Does the committee agree to ask those five questions?

Members indicated agreement.

The Convener: Section 8(7)(a) allows the Scottish ministers to set the period that historic environment Scotland’s first corporate plan will cover. The corporate plan will set out historic environment Scotland’s main objectives, the outcomes that would demonstrate achievement of those objectives, and the activities that historic environment Scotland expects to undertake.

As for the similar power in section 11(7)(a) of the Revenue Scotland and Tax Powers Bill in connection with the corporate plan of revenue Scotland, in relation to the power in section 8(7)(a), the committee could accept that a first planning period of three years is intended and that that period might need to be less. However, it might consider that the Scottish Government should provide a good reason why the power requires to be drawn to allow for a period of more than three years to be specified, or otherwise why the power should be limited to an appropriate maximum period.

Does the committee agree to ask the Scottish Government for an explanation of the matter and why the power is not more narrowly framed, given the stated policy intention?

Members indicated agreement.

The Convener: Section 12(1) provides that ministers may give historic environment Scotland binding directions

“(of a general or specific nature) about the exercise of its functions.”

Directions cannot be given about

“the exercise of its functions in relation to ... any particular historic property”

as defined in section 12(8), any “collection or object,” or

“the making of grants or loans under section 10.”

Directions could be given in relation to the exercise of functions which historic environment Scotland has by a delegation under sections 3 and 7.

Section 12(4) provides that historic environment Scotland must

“have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.”

The delegated powers memorandum offers no explanation for how those powers could be used.

Does the committee therefore agree to ask the Scottish Government, in relation to the powers of direction and guidance on the exercise of historic environment Scotland's functions in section 12, what the purposes of the powers are and how they could be used, and why the exclusions in sections 12(2) and 12(3) are appropriate?

Members *indicated agreement.*

The Convener: That completes another long list of questions that we need to ask because the answers are not in the delegated powers memorandum. That is a subject to which we will return.

I close the meeting with news that the next meeting of the committee will be next week.

Meeting closed at 11:43.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

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