



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 27 January 2015

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**4<sup>th</sup> Meeting 2015, Session 4**

**CONVENER**

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

**DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

\*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 27 January 2015

[The Convener opened the meeting at 10:35]

### Instrument subject to Affirmative Procedure

#### Local Government Finance (Scotland) Order 2015 [Draft]

**The Convener (Nigel Don):** I welcome members to the fourth meeting in 2015 of the Delegated Powers and Law Reform Committee, and I ask that mobile phones be switched off.

No points have been raised by our legal advisers on the draft Local Government Finance (Scotland) Order 2015. Is the committee content with it?

**Members indicated agreement.**

## Instruments subject to Negative Procedure

### Scottish Landfill Tax (Administration) Regulations 2015 (SSI 2015/3)

10:35

**The Convener:** Regulation 24(2)(b)(i) specifies that when a claimant, in relation to the documents that are mentioned in regulation 22 on records required to be kept, fails to comply with section 99(1) of the Revenue Scotland and Tax Powers Act 2014,

“the claimant shall repay to Revenue Scotland the amount of the claim to which the failure to comply relates.”

The committee may consider that the meaning of that regulation could be clearer in that, in order for the provision to be fully operable, it appears that the regulation should further specify what obligation must be complied with in relation to the documents that are mentioned in regulation 22.

Does the committee therefore agree to draw the Parliament’s attention to the regulations on reporting ground (h), as the meaning of regulation 24(2)(b)(i) could be clearer?

**Members indicated agreement.**

**The Convener:** Two further points have been raised by our legal advisers in relation to the regulations. First, regulation 36(2) provides that the weighing of landfill material

“shall be carried out at the time of the disposal,”

and that, for that purpose, the requirements of section 26 of the Landfill Tax (Scotland) Act 2014 as regards the time at which the disposal is treated as made “shall be disregarded.” As section 26 of that act has been repealed by paragraph 10(8) of schedule 4 to the Revenue Scotland and Tax Powers Act 2014, the reference to section 26 is redundant and represents a failure to follow proper drafting practice.

Secondly, regulation 11(7) refers to section 74 of the Revenue Scotland and Tax Powers Act 2014 in relation to the taxpayer’s right to amend a return, and to sections 100 to 103 of that act in relation to defences by Revenue Scotland of unjustified enrichment. There are drafting errors, as those references are incorrect. The references should be to section 83 and to sections 109 to 112.

Does the committee therefore agree to draw the Parliament’s attention to the regulations on the general reporting ground?

**Members indicated agreement.**

**John Scott (Ayr) (Con):** If the Government is to amend regulation 11(7), why does it not take out the redundant reference to section 26 of the Landfill Tax (Scotland) Act 2014 at the same time?

**The Convener:** Indeed. I was about to ask whether the committee agrees to note that the Scottish Government has undertaken to amend the incorrect references in regulation 11(7) before the regulations come into force on 1 April 2015. I suspect that the committee will want to note that, but “Why not fix the other reference while you’re there?” seems a perfectly fair question to ask.

**John Scott:** Absolutely. Sorry to pre-empt you.

**The Convener:** That is all right. I think that we are agreed on all of that.

### **Tweed Regulation Amendment Order 2015 (SSI 2015/11)**

**The Convener:** This order fails to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, because it was laid before the Parliament on 20 January 2015 and will come into force on 31 January 2015, so it does not respect the requirement that at least 28 days should elapse between the laying of an instrument that is subject to the negative procedure and the coming into force of that instrument.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** As you are aware, convener, the order is a slightly unusual piece of legislation in that it has effect in parts of England. Because of the need for regulation on the Tweed basin to be uniform across the basin, the Scottish Parliament legislates for that part of the Tweed that is in England.

Under English processes, we would expect 21 days’ notice to be given, although it does not appear that, legislatively, that would be a requirement in this case. In fact, a mere 11 days’ notice is being provided. In my view, it would be good practice—in a jurisdiction in which a period of 21 days is the norm—for us to apply that period as a matter of preference. We perhaps ought to note that the order meets neither the normal requirements in England nor our own.

**John Scott:** I identify myself completely with what Stewart Stevenson has just said. More important, there is a real risk that people will be put in a position of committing an offence without being aware that they are doing so, given that notice of the change has not been properly circulated in the appropriate timescales. I hope that, should someone inadvertently commit an offence during the introductory period, the Government’s mistake might be taken into consideration.

**The Convener:** I have a suspicion that, given the debate that has taken place about the proposal in the angling fraternity, there will not be very many people who are not aware of it, but the committee is, of course, fully committed to the idea that we should get things done properly. Good timing is essential.

Does the committee agree to draw the order to the Parliament’s attention under reporting ground (j), as it has failed to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010?

**Members indicated agreement.**

**The Convener:** Further to that, the committee may wish to report that it finds the failure to comply with section 28 to be unsatisfactory in the circumstances, as the order creates one new criminal offence and modifies the application of another. Does the committee agree to report accordingly?

**Members indicated agreement.**

### **Local Governance (Scotland) Act 2004 (Remuneration and Severance Payments) Amendment Regulations 2015 (SSI 2015/7)**

**The Convener:** No points have been raised by our legal advisers on the regulations.

**John Mason (Glasgow Shettleston) (SNP):** Just for clarification, is it correct to say that the proposed increase of 1 per cent is the first increase in the maximum remuneration that may be paid to councillors since 2007—in other words, for eight years? That is not a misprint, is it?

**The Convener:** I am not qualified to comment, but give me a moment. [*Interruption.*] The answer to your question is that no one can immediately tell you whether that is the case.

**John Mason:** That seems an incredibly small increase after a period of eight years, but I accept that that is not our decision.

**The Convener:** Indeed. Our committee is not about such matters of substance, but that was an interesting observation.

Is the committee content with the regulations?

**Members indicated agreement.**

### **Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2015 (SSI 2015/9)**

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

**Members indicated agreement.**

## Instruments not subject to Parliamentary Procedure

### Disabled Persons' Parking Badges (Scotland) Act 2014 (Commencement) Order 2015 (SSI 2015/8)

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.*

### Courts Reform (Scotland) Act 2014 (Commencement No 1) Order 2015 (SSI 2015/12)

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

**Members** *indicated agreement.*

## Human Trafficking and Exploitation (Scotland) Bill: Stage 1

10:43

**The Convener:** The purpose of agenda item 4 is to consider the delegated powers in the Human Trafficking and Exploitation (Scotland) 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 those questions are raised in written correspondence. The committee will have the opportunity to consider the responses at a future meeting before the draft report is considered.

Section 8 of the bill requires the Scottish ministers to secure for an adult, during the relevant period,

“such support and assistance as they consider necessary given the adult’s needs”

in circumstances in which there are reasonable grounds to believe that that person is a victim of an offence of human trafficking.

The power in section 8(2)(b)(i) enables the Scottish ministers to prescribe in regulations an end date to the relevant period during which they are required to secure support and assistance for an adult whom they have reasonable grounds to believe is a victim of an offence of human trafficking.

Does the committee agree to ask the Scottish Government to explain further why, given the significance of the provision, it is considered appropriate that it should be subject to the negative procedure?

**Members** *indicated agreement.*

**The Convener:** Section 38(1) of the bill confers on the Scottish ministers the power to make

“such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, any provision made by or under this Act.”

The words “or under” appear to expand the scope of the ancillary powers to enable the making of free-standing ancillary provision for the purposes of, or in connection with, provision that is made in subordinate legislation that is made under the act.

Does the committee agree to ask the Scottish Government to explain why that form of wording has been chosen for the bill and what its effect is considered to be?

**Members** *indicated agreement.*

## Small Business, Enterprise and Employment Bill

10:45

**The Convener:** The purpose of agenda item 5 is to consider the powers to make subordinate legislation that the Small Business, Enterprise and Employment Bill—which is a piece of United Kingdom Parliament legislation—confers on the Scottish ministers.

Members will recall that we considered the bill last week and agreed to write to the Scottish Government for an explanation in relation to the powers in clauses 149 to 151 and a proposed new clause. The relevant amendments containing those powers were tabled in the House of Lords on 7 January 2015.

The clauses in question will provide the Treasury and the Scottish ministers with powers to make regulations that would require a public sector employee or office-holder who received an exit payment as a result of leaving work or the relevant office to return the payment or a proportion of it.

Given the potential significance of the powers, the committee asked the Scottish Government why it was considered appropriate that regulations that are made by the Scottish ministers under clause 149 of the bill should be subject to the negative rather than the affirmative procedure.

The committee may consider that the Government's response does not provide a sufficient explanation of why the negative procedure is considered appropriate.

**Stewart Stevenson:** It strikes me that, on this occasion, the use of the negative procedure may make some sense. It is not clear that the requirements that we would normally expect to be present that would lead us to say that the affirmative procedure should be used are present. The powers in question appear to relate to a matter of detail rather than a matter of creating legislation. It is a fine distinction, but I am not clear that we should particularly object to the use of the negative procedure in this case.

**The Convener:** The proposal is that we should suggest to the Government via the lead committee that it should reconsider the use of the negative procedure.

**Stewart Stevenson:** I would propose otherwise. I suggest that, while we should draw the matter to the lead committee's attention, we should make no recommendation about changing the procedure that is used.

**John Scott:** That would possibly be the point, but the lead committee might want to look at the issue again and, with its deeper insights into the problem, come to a view.

**The Convener:** In effect, we have a proposal.

**John Mason:** I have a lot of sympathy with the idea that the affirmative procedure should be used, because I feel that the area with which such regulations would deal is such a sensitive one. It is an area that is of considerable interest to the public, and it is one in which there have been problems in the past. I presume that that is why the relevant provision is being brought in. Therefore, I lean towards the use of the affirmative procedure.

**The Convener:** It is clear that there are differences of opinion on the issue, but it is certainly not one on which we should have a vote—I will not even suggest that. Perhaps we should simply report to the lead committee that we are concerned that the use of the affirmative procedure is not proposed and that we are not entirely convinced by the Government's response. We could suggest that the lead committee might like to consider the matter from a policy point of view, because that is what it is about, whereas our concern is with process. Would members be comfortable with that?

**Members indicated agreement.**

**The Convener:** We will find a form of words. That is not quite what we normally do, but let us address the matter in that way.

That takes us to the end of the agenda. Thank you all very much.

*Meeting closed at 10:48.*



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