



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 17 February 2015

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DELEGATED POWERS AND LAW REFORM COMMITTEE

6th 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 David Livingstone Room (CR6)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 17 February 2015

[The Convener opened the meeting at 11:32]

Decision on Taking Business in Private

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

Under agenda item 1, it is proposed that we take items 6 and 7 in private. Item 6 is consideration of a draft report on the Human Trafficking and Exploitation (Scotland) Bill, and item 7 is consideration of a paper from the clerk on public engagement.

Does the committee agree to take those items in private?

Members *indicated agreement.*

Instrument subject to Approval

Scottish Landfill Tax (Qualifying Material) Order 2015 (SSI 2015/45)

11:33

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 Affirmative Procedure

Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc) Order 2015 [Draft]

11:33

The Convener: The committee may consider that article 5 of the order could be clearer in describing the extent of the functions to be exercisable by the Scottish ministers concurrently with the secretary of state as regards Scotland.

Article 5(3)(a) appears to confer on the Scottish ministers any of the provisions that are set out in schedule 2 to the Representation of the People Act 1983, subject to the limiting factors that are described elsewhere in that article, but article 5(3)(b) specifically confers on the Scottish ministers only the provisions in certain paragraphs of schedule 2. It is therefore not clear whether only the more limited scope of article 5(3)(b) applies.

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

Members indicated agreement.

The Convener: The committee may wish to note that the Scottish Government does not consider that drafting to present a problem for the order's practical application or to prevent the Government from achieving the overarching policy objective in the event that the Scottish Parliament were to exercise the additional legislative competence that the order would confer if it were made.

Does the committee agree to note that?

Members indicated agreement.

John Scott (Ayr) (Con): Is that all that we intend to say?

The Convener: There is another issue. As members are aware, there is a difference between the form in which the Scottish ministers make subordinate legislation and the form that ministers of the Crown use, and there is a need to make provision to reflect that fact when pre-existing functions are shared with the Scottish ministers.

We noted that the most recent transfer of functions order made express provision for that point to make it clear. The order that we are considering today takes a different and more complex approach in that it relies on more general rules of interpretation. Although that approach can

achieve the same result, we might take the view that it is less easy to follow.

Does the committee agree that consistency and simplicity of drafting would be more helpful to readers and that we would encourage such an approach to be adopted for future orders?

Members indicated agreement.

John Scott: It is apparent that there is an inherent contradiction between article 5(3)(a) and article 5(3)(b). Even if the order is fit for purpose, one would hope that it will be tidied up subsequently.

Scotland Act 1998 (Modification of Schedule 5) Order 2015 [Draft]

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

Members indicated agreement.

General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015 [Draft]

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

Members indicated agreement.

Charity Test (Specified Bodies) and the Protection of Charities Assets (Exemption) (Scotland) Amendment Order 2015 [Draft]

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

Members indicated agreement.

Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) Amendment Order 2015 [Draft]

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

Members indicated agreement.

Scottish Tax Tribunals (Voting and Offences etc) Regulations 2015 [Draft]

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

Members indicated agreement.

**Revenue Scotland and Tax Powers Act
(Postponement of Tax Pending a Review
or Appeal) Regulations 2015 [Draft]**

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

Members *indicated agreement.*

**European Protection Order (Scotland)
Regulations 2015 [Draft]**

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

Members *indicated agreement.*

**Budget (Scotland) Act 2014 Amendment
Order 2015 [Draft]**

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

Members *indicated agreement.*

**Land and Buildings Transaction Tax (Tax
Rates and Tax Bands) (Scotland) Order
2015 [Draft]**

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

Members *indicated agreement.*

**Scottish Landfill Tax (Standard Rate and
Lower Rate) Order 2015 [Draft]**

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**

**Firefighters' Pension Scheme (Scotland)
Regulations 2015 (SSI 2015/19)**

11:37

The Convener: Chapter 1 of part 8 of the regulations uses the phrase “the scheme employer” in several places. The term “the scheme employer” is not defined in the regulations. The correct phrase is “the authority”, which is defined in regulation 3 as the Scottish Fire and Rescue Service. The use of the term “the scheme employer” could be confused with the term “the scheme manager”, which is defined in regulation 3 as the Scottish ministers.

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

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am perfectly prepared to support that recommendation, but it is perhaps worth noting that, when the Government accepts that the drafting of an instrument is inaccurate or has an error of one sort or another in it, it should at the very least commit to correct it at the next convenient opportunity.

On this occasion, such an offer has not been made. It would be useful for the Government to be made aware, through the *Official Report* of this meeting, that we would wish it to make such an offer. That would not mean that the error in question would necessarily ever be fixed, but it would at least be a proper acknowledgement that it would be worth fixing if an opportunity arose. I hope that the Government would note that.

The Convener: Do colleagues agree?

John Scott: I agree utterly. The position is the same with SSI 2015/38—

The Convener: To which we are just about to come.

John Scott: In that case, I will speak to it when we get there.

John Mason (Glasgow Shettleston) (SNP): I totally agree that the terms “authority”, “scheme employer” and “scheme manager” should be properly defined and that that is the ideal way of doing things, but I do not really think that “employer” and “manager” are words that are likely to be confused by most people.

The Convener: I accept that, but why leave the banana skin around?

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

Members *indicated agreement.*

**Revenue Scotland and Tax Powers Act
(Privileged Communications) Regulations
2015 (SSI 2015/38)**

The Convener: Regulation 5(8) requires an application to the tribunal to be made

“no later than twenty working days of the date after”

notification is given by Revenue Scotland of the documents that it requires to be produced. The regulation is intended to require such an application to be made no later than 20 working days “after the date of” that notification. Obviously, the words “of” and “after” have been accidentally transposed.

Does the committee agree to draw the regulations to the attention of the Parliament on the general reporting ground, as regulation 5(8) contains a patent drafting error?

Members *indicated agreement.*

John Scott: Yes, I agree. I am disappointed that, as was the case with SSI 2015/19, the Government has not made an offer to amend the regulations at the earliest opportunity. Hitherto, that has been the normal custom and practice, so I am disappointed that such an offer has not been made. I think that it should be made—what is the point of the committee if such advice as we wish to give is ignored and the mess that has been created, albeit inadvertently, remains?

**Little Loch Broom Scallops Several
Fishery Order 2015 (SSI 2015/28)**

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

Members *indicated agreement.*

**Loch Ewe, Isle of Ewe, Wester Ross,
Scallops Several Fishery Order 2015 (SSI
2015/30)**

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

Members *indicated agreement.*

**Health and Care Professions Council
(Registration and Fees) (Amendment)
Rules Order of Council 2015 (SI 2015/93)**

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

Members *indicated agreement.*

**Revenue Scotland and Tax Powers Act
(Fees for Payment) Regulations 2015 (SSI
2015/36)**

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

Members *indicated agreement.*

**Revenue Scotland and Tax Powers Act
(Involved Third Party) Order 2015 (SSI
2015/37)**

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

Members *indicated agreement.*

**Non-Domestic Rate (Scotland) Order 2015
(SSI 2015/47)**

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

Members *indicated agreement.*

**Fish Labelling (Scotland) Amendment
Regulations 2015 (SSI 2015/48)**

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

Members *indicated agreement.*

**Scottish Courts and Tribunals Service
(Procedure for Appointment of Members)
Regulations 2015 (SSI 2015/53)**

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

Act of Sederunt (Rules of the Court of Session Amendment) (Regulation (EU) No 1215/2012) 2015 (SSI 2015/26)

11:42

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

Members *indicated agreement.*

Historic Environment Scotland Act 2014 (Commencement No 2) Order 2015 (SSI 2015/31)

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

Members *indicated agreement.*

Act of Sederunt (Rules of the Court of Session Amendment No 2) (Regulatory Reform (Scotland) Act 2014) 2015 (SSI 2015/35)

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

Members *indicated agreement.*

Reservoirs (Scotland) Act 2011 (Commencement No 2) Order 2015 (SSI 2015/43)

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

Members *indicated agreement.*

Public Bodies (Joint Working) (Scotland) Act 2014 (Commencement No 2) Amendment Order 2015 (SSI 2015/44)

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

Members *indicated agreement.*

Bankruptcy and Debt Advice (Scotland) Act 2014 (Commencement No 2, Savings and Transitionals) Amendment Order 2015 (SSI 2015/54)

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

Members *indicated agreement.*

The Convener: I move the meeting into private.

11:43

Meeting continued in private until 12:09.

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