



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 24 February 2015

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**Tuesday 24 February 2015**

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**7<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 24 February 2015*

*[The Convener opened the meeting at 11:30]*

#### Instruments subject to Affirmative Procedure

**The Convener (Nigel Don):** I welcome members to the seventh meeting in 2015 of the Delegated Powers and Law Reform Committee. As always, I ask that mobile phones be switched off. We have received apologies from John Scott.

##### Revenue Scotland and Tax Powers Act (Reimbursement Arrangements) Regulations 2015 [Draft]

**The Convener:** The committee may wish to note that these regulations and the following two instruments relating to the Revenue Scotland and Tax Powers Act 2014 replace earlier drafts that were laid before Parliament on 2 February. Those instruments were withdrawn by the Scottish Government following correspondence with the committee's legal advisers, whom we thank accordingly.

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 (Record Keeping) 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 (Interest on Unpaid Tax and Interest Rates in General) 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.*

#### National Bus Travel Concession Scheme for Older and Disabled Persons (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.*

#### Scottish Landfill Tax (Administration) Amendment 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.*

#### Community Care (Personal Care and Nursing Care) (Scotland) Amendment 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.*

## Instruments subject to Negative Procedure

### Council Tax Reduction (Scotland) Amendment Regulations 2015 (SSI 2015/46)

11:31

**The Convener:** Our legal advisers have suggested that the regulations raise a question about whether they relate to matters that are reserved by section F1 of part 2 of schedule 5 to the Scotland Act 1998 and that, as such, the committee may wish to report them as raising a devolution issue.

The matter has been raised several times before in connection with previous instruments that have amended the Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303) and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319), which I will refer to as the principal regulations. Each time, our legal advisers were of the same view—that a devolution issue had been raised.

The Scottish Government's view is that the principal regulations do not relate to any of the reserved matters that are described in section F1 of part 2 of schedule 5 to the Scotland Act 1998, so no devolution issue is raised. The Government's view has remained the same each time that the committee has considered the issue in relation to the principal regulations and amending regulations. Each time that the committee considered the issue in relation to the principal regulations and amending regulations, a majority of committee members preferred the Scottish Government's view.

Do members have any comments?

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** This all hangs on a difference of views that lawyers have about what constitutes a benefit. The Government lawyers hold the view that, when one reduces the amount that one is taking away from someone, that is not in itself a benefit. The committee's lawyers have a different view.

As in the previous cases, because of the wider implications that accepting that a reduction of a charge or a tax would be a benefit might have for other parts of public policy, I accept the Government's view that such a reduction does not constitute a benefit and therefore is not caught by section F1 of part 2 of schedule 5 to the Scotland Act 1998. That being the case, I recommend that we do not draw the regulations to the attention of Parliament.

**Margaret McCulloch (Central Scotland) (Lab):** I am of the opposite opinion. We have a legal team that is here to advise us, and I think that we should take its advice that the regulations may raise a devolution issue. Therefore, I think that we should draw them to the attention of Parliament.

**John Mason (Glasgow Shettleston) (SNP):** This is the first time that I have faced this issue, although I realise that the committee has considered it previously. I accept that there is some uncertainty about the legal definition of a benefit, but the reality is that the Government's position has not been challenged up till now. I presume that anyone who had a serious interest in challenging it could have done so. Although that could still happen, it seems unlikely.

**The Convener:** On the basis of Stewart Stevenson's comments, the proposition is that the committee considers that the regulations do not raise a devolution issue and should not be drawn to the attention of Parliament—we will do it that way round, as Stewart Stevenson got there first. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Don, Nigel (Angus North and Mearns) (SNP)  
Mason, John (Glasgow Shettleston) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

**Against**

McCulloch, Margaret (Central Scotland) (Lab)

**The Convener:** The result of the division is: For 3, Against 1, Abstentions 0. Therefore, the proposition is agreed to and we will not draw the regulations to the attention of Parliament.

### Non-Domestic Rates (Levying) (Scotland) Amendment Regulations 2015 (SSI 2015/49)

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

**Members** *indicated agreement.*

### Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2015 (SSI 2015/50)

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

**Members** *indicated agreement.*

**Common Agricultural Policy (Direct Payments etc) (Scotland) Regulations 2015 (SSI 2015/58)**

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

**Members** *indicated agreement.*

**Local Government Pension Scheme (Governance) (Scotland) Regulations 2015 (SSI 2015/60)**

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

**Members** *indicated agreement.*

**National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2015 (SSI 2015/64)**

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

**Members** *indicated agreement.*

**National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2015 (SSI 2015/65)**

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

**Members** *indicated agreement.*

**Scottish Administration (Offices) Order 2015 (SI 2015/200)**

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

**Members** *indicated agreement.*

**Instruments not subject to Parliamentary Procedure**

**Valuation Timetable (Scotland) Amendment Order 2015 (SSI 2015/51)**

11:36

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

**Members** *indicated agreement.*

**Regulatory Reform (Scotland) Act 2014 (Commencement No 2 and Transitional Provision) Order 2015 (SSI 2015/52)**

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

**Members** *indicated agreement.*

**Local Government Finance Act 1992 (Commencement No 11) Order 2015 (SSI 2015/59)**

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

**Members** *indicated agreement.*

## Prisoners (Control of Release) (Scotland) Bill: Stage 1

11:36

**The Convener:** Agenda item 4 is consideration of the Scottish Government's response to the committee's stage 1 report on the Prisoners (Control of Release) (Scotland) Bill. Members have seen the briefing paper and the response from the Scottish Government.

Do members have any comments?

**John Mason:** When we discussed the issue previously, I certainly felt—and I think that most of the committee felt—that it was quite a serious one. It is a bit disappointing that there seems to have been absolutely no give on the part of the Government.

I wonder where we should go now; I do not think that we should drop the matter completely. I stand to be corrected, but I think that the bill is at quite an early stage, so we have not had the stage 1 debate. Perhaps the issue could be raised in that debate.

**Margaret McCulloch:** I support John Mason's suggestion.

**Stewart Stevenson:** I, too, suggest that the convener could express the committee's view that the Government should look at the matter again, if the opportunity arises during the stage 1 debate. Failing that, any other member of the committee who participates in that debate could do so.

**The Convener:** Thank you, colleagues. We are unanimous in our view that we do not want to drop the matter, as it might give rise to significant issues. I hear what the committee says. If I get such an opportunity, I will take it; others might be able to do so. We will just have to see how the stage 1 debate goes—who gets to speak is not within our gift.

Are members comfortable with that approach?

**Members indicated agreement.**

**The Convener:** Are we content to note the response and, if necessary, to reconsider the bill after stage 2?

**Members indicated agreement.**

## Welfare Funds (Scotland) Bill: After Stage 2

11:38

**The Convener:** Agenda item 5 is consideration of the delegated powers provisions in the Welfare Funds (Scotland) Bill after stage 2. The committee will have noted that the Scottish Government has provided a supplementary delegated powers memorandum, and members will have seen the briefing paper.

Stage 3 consideration of the bill is due to take place on Tuesday 3 March. As the deadline for lodging amendments is 4.30 pm tomorrow, the committee may wish to agree on its conclusions today.

The committee may wish to note that the amendments to the bill's powers that have been made in sections 4(2C), 4(5), 5(1) and 7(3) implement recommendations that were made in the committee's report at stage 1.

Does the committee agree to report that it is content with the provisions in the bill that have been amended at stage 2 to insert or substantially alter provisions conferring powers to make subordinate legislation or any other delegated power?

**Members indicated agreement.**

**The Convener:** That completes the agenda. Our next meeting will be next week.

*Meeting closed at 11:39.*



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