



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 10 March 2015

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CONTENTS

	Col.
INSTRUMENTS SUBJECT TO AFFIRMATIVE PROCEDURE	1
Local Government Finance (Scotland) Amendment Order 2015 [Draft]	1
Public Bodies (Joint Working) (Scotland) Act 2015 (Consequential Modifications and Saving) Order 2015 [Draft]	1
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE	2
Support and Assistance of Young People Leaving Care (Scotland) Amendment Regulations 2015 (SSI 2015/62).....	2
Provision of Water and Sewerage Services (Reasonable Cost) (Scotland) Regulations 2015 (SSI 2015/79)	2
Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/80)	2
Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2015 (SSI 2015/81)	2
National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2015 (SSI 2015/86).....	2
Public Bodies (Joint Working) (Integration Joint Board Establishment) (Scotland) Order 2015 (SSI 2015/88)	3
Scottish Road Works Register (Prescribed Fees) Regulations 2015 (SSI 2015/89)	3
National Health Service (Cross-Border Health Care) (Scotland) Amendment Regulations 2015 (SSI 2015/91).....	3
Reservoirs (Panels of Reservoir Engineers: Sections under which Members may be Appointed) (Scotland) Order 2015 (SSI 2015/92)	3
Waste (Recyclate Quality) (Scotland) Regulations 2015 (SSI 2015/101)	3
Professional Standards Authority for Health and Social Care (Fees) Regulations 2015 (SI 2015/400)	4
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE	5
Reservoirs (Scotland) Act 2011 (Commencement No 3 and Transitional Provisions) Order 2015 (SSI 2015/63).....	5
Pollution Prevention and Control Act 1999 (Commencement No 3) (Scotland) Order 2015 (SSI 2015/74)	6
Courts Reform (Scotland) Act 2014 (Commencement No 2, Transitional and Saving Provisions) Order 2015 (SSI 2015/77)	6
Post-16 Education (Scotland) Act 2013 (Commencement No 6) Order 2015 (SSI 2015/82)	7
Act of Adjournal (Criminal Procedure Rules Amendment) (Reporting Restrictions) 2015 (SSI 2015/84)	7
Act of Sederunt (Rules of the Court of Session and Sheriff Court Rules Amendment No 3) (Reporting Restrictions) 2015 (SSI 2015/85)	7
AIR WEAPONS AND LICENSING (SCOTLAND) BILL: STAGE 1	8

DELEGATED POWERS AND LAW REFORM COMMITTEE

9th 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 10 March 2015

[The Convener opened the meeting at 11:31]

Instruments subject to Affirmative Procedure

The Convener (Nigel Don): I welcome members to the ninth meeting in 2015 of the Delegated Powers and Law Reform Committee. We have received apologies from Margaret McCulloch. As always, I ask members to switch off mobile phones, please.

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

The Convener: No points have been raised by our legal advisers on the order, but the committee may wish to note that this instrument was withdrawn and relaid to correct errors identified by our legal advisers.

Is the committee content with the instrument?

Members *indicated agreement.*

Public Bodies (Joint Working) (Scotland) Act 2015 (Consequential Modifications and Saving) Order 2015 [Draft]

The Convener: No points have been raised by our legal advisers on the order, but the committee may wish to note that this instrument was withdrawn and relaid to correct errors identified by our legal advisers.

Is the committee content with the instrument?

Members *indicated agreement.*

Instruments subject to Negative Procedure

Support and Assistance of Young People Leaving Care (Scotland) Amendment Regulations 2015 (SSI 2015/62)

11:32

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

Members *indicated agreement.*

Provision of Water and Sewerage Services (Reasonable Cost) (Scotland) Regulations 2015 (SSI 2015/79)

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

Members *indicated agreement.*

Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/80)

The Convener: No points have been raised by our legal advisers on the instrument. However, the committee may wish to note that SSI 2015/80 makes amendments to the Bankruptcy (Scotland) Regulations 2014 (SSI 2014/225), the Bankruptcy (Applications and Decisions) (Scotland) Regulations 2014 (SSI 2014/226), and the Bankruptcy Fees (Scotland) Regulations 2014 (SSI 2014/227), in view of the committee's reports on those instruments.

Is the committee content with the instrument?

Members *indicated agreement.*

Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2015 (SSI 2015/81)

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

Members *indicated agreement.*

National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2015 (SSI 2015/86)

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

Members *indicated agreement.*

**Public Bodies (Joint Working) (Integration
Joint Board Establishment) (Scotland)
Order 2015 (SSI 2015/88)**

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

Members *indicated agreement.*

**Scottish Road Works Register (Prescribed
Fees) Regulations 2015 (SSI 2015/89)**

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

Members *indicated agreement.*

**National Health Service (Cross-Border
Health Care) (Scotland) Amendment
Regulations 2015 (SSI 2015/91)**

The Convener: No points have been raised by our legal advisers on the instrument. However, the committee may wish to draw a matter to the attention of the lead committee for the instrument.

The requirements that the regulations transpose for Scotland should have been transposed by 25 October 2013, which was the date of the coming into force of the National Health Service (Cross-Border Health Care) (Scotland) Regulations 2013. No explanation for the delay is provided in the policy note. Are we agreed to draw the matter to the attention of the lead committee?

Members *indicated agreement.*

The Convener: Is the committee otherwise content with the instrument?

Members *indicated agreement.*

**Reservoirs (Panels of Reservoir
Engineers: Sections under which
Members may be Appointed) (Scotland)
Order 2015 (SSI 2015/92)**

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

Members *indicated agreement.*

**Waste (Recyclate Quality) (Scotland)
Regulations 2015 (SSI 2015/101)**

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

Members *indicated agreement.*

**Professional Standards Authority for
Health and Social Care (Fees) Regulations
2015 (SI 2015/400)**

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

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

Reservoirs (Scotland) Act 2011 (Commencement No 3 and Transitional Provisions) Order 2015 (SSI 2015/63)

11:34

The Convener: The meaning of this instrument could be clearer in the way that section 110(6) of the Reservoirs (Scotland) Act 2011 is commenced, with effect from 1 April 2015.

The Scottish Government does not intend with effect from that date to commence in relation to Crown land the powers of entry exercisable by the Scottish Environment Protection Agency for a purpose specified in paragraphs (b) to (k) of section 91(2), nor to commence the power of entry mentioned in section 93(1).

The Government does intend to commence with effect from that date in relation to Crown land the powers of entry for a purpose specified in section 91(1) and (2)(a) and (l) in section 93(2), so far as it applies where entry is taken for any such purpose. *[Interruption.]*

Let me run that again: the Government does intend to commence with effect from that date in relation to Crown land the powers of entry for a purpose specified in section 91(1) and (2)(a) and (l), and section 93(2) so far as it applies where entry is taken for any such purpose. Thank you for your patience.

The schedule to the order could have more clearly expressed those intentions by making provision in column (3) that section 110(6) of the 2011 act is commenced for those restricted purposes specified in section 91(1) and (2)(a) and (l) and section 93(2) so far as it applies where entry is taken for any such purpose. That would be clearer, given that section 110(6) expressly refers to all the

“powers conferred by section 91 (whether those specified in that section or the ancillary powers referred to in section 93(1) or (2))”

but not all those powers are commenced by the order.

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

Members indicated agreement.

The Convener: I have a suspicion that my inability to read out the explanation rather makes the point.

Pollution Prevention and Control Act 1999 (Commencement No 3) (Scotland) Order 2015 (SSI 2015/74)

The Convener: Sub-paragraph (g)(i) to (iii) of article 2(2) commences the repeal of certain sections of the Environment Act 1995. Sub-paragraphs (h) to (l) of article 2(2) also commence the repeal of certain sections, but they do not make it clear to which act or acts the specified sections belong.

It is intended that sub-paragraphs (h) to (l) should commence the repeal of further sections of the Environment Act 1995, running on from sub-paragraph (g)(i) to (iii). Sub-paragraphs (h) to (l) are therefore incorrectly numbered and should be numbered (g)(iv) to (viii).

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

Members indicated agreement.

John Mason (Glasgow Shettleston) (SNP): I think that this issue is fundamental. I accept that sometimes in this committee we are dealing with fairly minor errors, but if a provision should be “(g)(iv) to (viii)”, that is quite different from “(h) to (l)”. That is absolutely clear and factual.

I happen to like figures, and figures are involved here: the drafting is either one or the other, and it is currently wrong. While I understand how it happened, I think that we should make a point about it.

The Convener: Does the committee also agree to call on the Scottish Government to correct the error by laying a further instrument?

Members indicated agreement.

John Scott (Ayr) (Con): I agree with John Mason and his concerns. Probably the most elegant way of dealing with the situation is indeed to lay a new instrument, and I would be grateful if the Government would consider that.

Courts Reform (Scotland) Act 2014 (Commencement No 2, Transitional and Saving Provisions) Order 2015 (SSI 2015/77)

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

Members indicated agreement.

**Post-16 Education (Scotland) Act 2013
(Commencement No 6) Order 2015 (SSI
2015/82)**

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

Members *indicated agreement.*

**Act of Adjournal (Criminal Procedure
Rules Amendment) (Reporting
Restrictions) 2015 (SSI 2015/84)**

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

Members *indicated agreement.*

**Act of Sederunt (Rules of the Court of
Session and Sheriff Court Rules
Amendment No 3) (Reporting Restrictions)
2015 (SSI 2015/85)**

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

Members *indicated agreement.*

**Air Weapons and Licensing
(Scotland) Bill: Stage 1**

11:39

The Convener: This item of business is consideration of the Scottish Government's response to the committee's stage 1 report on the bill. Members have seen the briefing paper and the response from the Scottish Government.

The committee may wish to highlight the following matters to the lead committee on the bill.

Section 37(1) enables the Scottish ministers to make further provision by regulation for the purposes of part 1 of the bill. However, the committee's report noted that the powers at sections 4(1), 6(1), 7(2), 13(9), 14(2), 15(1), 17(6) and 18(2) and (4) set out various matters in part 1 of the bill that may be prescribed by regulations.

The committee did not consider the broad, general power in section 37(1) to be necessary, and it recommended that it be removed by amendment at stage 2. The report further recommended that, if the Government considers that further types of provision need to be specified beyond those already set out across sections 4(1) to 37(2), that could be achieved by bringing forward appropriate amendments.

The committee's report also commented on section 76, which confers powers to make ancillary provisions in stand-alone regulations. Under it, the Scottish ministers may make

"incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, any provision of this Act or any provision made under it."

The committee considered the use of the words "or any provision made under it"

to be unusual and that the Government had not provided sufficient justification for this use of additional wording. The committee considered that the scope of the power in section 76 is uncertain, and it recommended that it be removed by amendment at stage 2.

The Government's response to the report indicates that it does not intend to accept the committee's recommendations in relation to the two matters that I have just discussed. Do members have any comments, or are we comfortable to draw the response to the attention of the lead committee?

John Scott: I am content to draw it to the committee's attention, but at the risk of putting my head in a noose I think that the Government's response is quite reasonable. There will perhaps

be a need for broader powers on occasion in terms of the developing situation with airgun licensing.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): This is broadly an issue of policy, and it would be entirely proper to draw it to the attention of the appropriate policy committee for it to consider whether there is a policy need for the powers. I feel slightly uncomfortable with the drafting in its present form, but it may well be that the policy committee concludes otherwise when it looks at it.

The Convener: I think that the general argument is that we are looking at some slightly unusual words and there is no obvious explanation for why they should be there, but plainly that is a matter of policy and I therefore suggest that referring the issue to the lead committee is the appropriate thing to do. If colleagues are comfortable with that, that is what we will do.

Does the committee have any further comments, or shall we just look at what comes back at stage 2—assuming there are any amendments that come to us?

John Scott: I think that this is fundamentally a matter for the policy committee.

John Mason: I am not entirely clear how much this is an issue of policy, as the wording seems to be important and we have not really had an explanation. The approach that we might reconsider the bill after stage 2 is fine.

The Convener: Thank you, colleagues. That draws us to the end of the agenda, so I close the meeting.

Meeting closed at 11:43.

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