



The Scottish Parliament
Pàrlamaid na h-Alba

SUBORDINATE LEGISLATION COMMITTEE

AGENDA

17th Meeting, 2013 (Session 4)

Tuesday 28 May 2013

The Committee will meet at 10.00 am in Committee Room 5.

1. **Decision on taking business in private:** The Committee will decide whether to take items 6 and 7 in private.
2. **Regulatory Reform (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—
George Burgess, Deputy Director for Environmental Quality, Environmental Quality Division, Joe Brown, Head of Better Regulation and Industry Engagement, Enterprise and Cities Division, and Andy Crawley, Lawyer, Directorate for Legal Services, Scottish Government.
3. **Children's Hearings (Scotland) Act 2011 (Rehabilitation of Offenders) (Transitory Provisions) Order 2013 (SSI/2013/146):** The Committee will take evidence on the Order from—
John McCutcheon, Policy Officer, Children and Families Directorate, Daniel Kleinberg, Team Leader, Youth Justice and Social Care, Gordon McNicoll, Divisional Solicitor, Directorate for Legal Services, and Roddy Flinn, Senior Principal Legal Officer, Directorate for Legal Services, Scottish Government.
4. **Instruments subject to affirmative procedure:** The Committee will consider the following—

 - [Mobile Homes Act 1983 \(Amendment of Schedule 1\) \(Scotland\) Order 2013 \[draft\];](#)
 - [Sexual Offences Act 2003 \(Notification Requirements\) \(Scotland\) Regulations 2013 \[draft\].](#)
5. **Instruments subject to negative procedure:** The Committee will consider the following—

 - [Home Energy Assistance Scheme \(Scotland\) Regulations 2013 \(SSI 2013/148\).](#)

6. **Regulatory Reform (Scotland) Bill:** The Committee will consider the evidence it heard earlier in the meeting.
7. **Children's Hearings (Scotland) Act 2011 (Rehabilitation of Offenders) (Transitory Provisions) Order 2013 (SSI/2013/146):** The Committee will consider the evidence it heard earlier in the meeting.

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The papers for this meeting are as follows—

Agenda Item 2

[Regulatory Reform \(Scotland\) Bill - as introduced](#)

[Regulatory Reform \(Scotland\) Bill - Delegated Powers Memorandum](#)

Briefing Paper (private)

SL/S4/13/17/1 (P)

Agenda Item 3

[Children's Hearings \(Scotland\) Act 2011 \(Rehabilitation of Offenders\) \(Transitory Provisions\) Order 2013 \(SSI 2013/146\)](#)

Briefing Paper (private)

SL/S4/13/17/2 (P)

Agenda Items 4 and 5

Legal Brief (private)

SL/S4/13/17/3 (P)

Agenda Item 4

Instrument Responses

SL/S4/13/17/4

SUBORDINATE LEGISLATION COMMITTEE

17th Meeting, 2013 (Session 4)

Tuesday 28 May 2013

Instrument Responses

INSTRUMENT SUBJECT TO AFFIRMATIVE PROCEDURE

**Mobile Homes Act 1983 (Amendment of Schedule 1) (Scotland) Order 2013
[draft]**

On 16 May 2013, the Scottish Government was asked:

1. The Scottish Government is asked to explain the matters it has taken into account in reaching the view expressed in paragraph 14 of the EIA that the interference with site owners' property rights under Article 1 of the First Protocol to the European Convention on Human Rights is justified in the public interest and is proportionate. Specifically why is it considered proportionate to create a presumption that reviews of the pitch fee will follow changes in the RPI rather than reflect market conditions in relation to the market in mobile homes which is to be adjusted in favour of the occupier by increasing the freedom to sell and gift homes?
2. The Scottish Government is also asked to explain why it considers the different treatment of gypsy and traveller occupiers as a class is justified in accordance with Article 14 of the ECHR.
3. The Scottish Government is asked to explain whether new paragraphs 8(2B) or 9(6) of Schedule 1 is broad enough to prevent the owner from requiring payment of arrears due by the occupier at the time of a sale or gift of a mobile home, and if so, why this is considered proportionate.
4. The Scottish Government is asked whether new paragraph 19 intended to permit a review under that paragraph only if no review has taken place at the "review date" and, if so, is this sufficiently clear.

The Scottish Government responded as follows:

1. In reaching the view expressed in paragraph 14 of the EIA, the Scottish Government has considered the demands of the general interest of the community and the protection of individuals' fundamental rights including the balance to be struck between the property rights of the occupier and the site owner.

The Scottish Government is aware of evidence that the requirement for owner approval to assignation has enabled some owners to block sales unfairly and to harass or pressure residents into selling at unduly low prices should the resident wish to move off park. Without the ability to assign the right to station the mobile home on the same plot of land, the ability to sell the mobile home can be severely restricted. In some cases sale is impossible as the "mobile home" is in practice difficult to move and only has significant value at its location. The Scottish

Government is therefore satisfied that a social need exists to justify the removal of the implied term requiring site owner consent to assignation.

If an owner's right to approve the assignation is in existence by virtue of an existing agreement and is in itself a possession for the purpose of Article 1 of the First Protocol (A1P1) to the European Convention on Human Rights then the Scottish Government considers that the removal of a right to approve does not present an excessive burden on that site owner. As long as the new occupier pays the site fees and complies with the site rules it is unlikely to matter to the site owner who lives on the pitch, so any A1P1 rights the owner has are largely unaffected.

Whilst paragraphs 8 and 9 of Schedule 1, as amended and substituted, will remove the requirement for the site owner to approve the person to whom the assignation of the site agreement is made, the site owner will still be able to require the payment of commission for approving the resale up to a maximum commission rate which is currently set at 10% of the sale price by virtue of the Mobile Homes (Commissions) Order 1983 (S.I. 1983/748).

The increased freedom to sell and gift the mobile home and assign the agreement will not affect any obligations to pay pitch fees. The initial level of pitch fee is agreed with the site owner and this too will remain unaffected by this Order. What is being adjusted is the mechanism for making changes to the pitch fee. Pitch fees are designed to enable site owners to maintain and provide services on site and where required to the pitches. The presumption set out in new paragraph 23(1)(a) that the pitch fee will follow changes in the RPI is only a presumption which can be disregarded if it is unreasonable when taking into account the matters specified in new paragraph 22(1). The provisions are designed to ensure that the site owner will continue to recover the costs of existing services and also to recoup the costs of any improvements carried out. At the same they balance the interests of the occupiers by ensuring that the pitch fee only reflects the costs of improvements which are for the benefit of the occupiers.

2. The Order has been framed to reflect the distinctive requirements of the gypsy and traveller occupiers on local authority and registered social landlord sites. For example, in relation to these sites the Scottish Government is aware that sometimes gypsies and travellers rent and occupy accommodation provided by local authorities and registered social landlords. The terms of new paragraphs 8 and 9 of Schedule 1 (on assignation and gifts of mobile homes and pitches) are of little relevance to this community, as they either do not own caravans or their caravans are usually of a type which can be sold and gifted relatively easily, because these caravans are mobile. The mobility of persons in this community means that the ability to assign the site agreement on a local authority or registered social landlord site is of little importance.

3. The new paragraphs 8(2B) and 9(6) of Schedule 1 refer to payment to be made "in connection with" the sale or gift respectively of the mobile home and the assignation of the related site agreement. The Scottish Government does not consider that the payment of arrears due by the occupier is "in connection with" the sale or gift and related and assignation, or gift and assignation. The occupier's obligations are set out in new paragraph 24 and are unaffected by a sale or gift of this type. The duty to pay remains with whoever was liable to pay at the particular

time, and the site owner's legal remedies to recover money due is not altered by sale or gift of the mobile home.

4. The intention is that new paragraph 19 will permit a review of a pitch fee under that paragraph only if no review has taken place at the "review date". The Scottish Government accepts that this intention could have been stated more clearly. However it is highly unlikely that a site owner would seek more than one annual pitch review, as little is likely to have changed so significantly that it would alter the review outcome. It is unlikely that the occupier would agree to a second review in the same year and contractual terms might in any event be relevant if a site owner attempted such review. Any dispute would be dealt with by a court and the terms that courts can imply into agreements (under Part 2 of Schedule 1) continue to include that there will be annual review. If the Scottish Government is presented with any evidence after the Order comes into force that there are difficulties as a consequence of reviews being undertaken more often than annually then it will consider amending paragraph 19.