DELEGATED POWERS AND LAW REFORM COMMITTEE

AGENDA

17th Meeting, 2017 (Session 5)

Tuesday 23 May 2017

The Committee will meet at 10.00 am in the Adam Smith Room (CR5).

1. **Instruments subject to affirmative procedure:** The Committee will consider the following—

   - Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Amendment Regulations 2017 [draft];
   - Mental Health (Absconding) (Miscellaneous Amendments) (Scotland) Regulations 2017 [draft];
   - Mental Health (Cross-border Visits) (Scotland) Amendment Regulations 2017 [draft].

2. **Instruments subject to negative procedure:** The Committee will consider the following—

   - Road Works (Qualifications of Operatives and Supervisors) (Scotland) Regulations 2017 (SSI 2017/147);
   - First-tier Tribunal for Scotland (Oaths) Regulations 2017 (SSI 2017/148);
   - Act of Sederunt (Fees of Sheriff Officers) (Amendment) 2017 (SSI 2017/153);

3. **Instruments not subject to any parliamentary procedure:** The Committee will consider the following—

   - Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Miscellaneous) 2017 (SSI 2017/144);
   - Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No.2) (Human Trafficking and Exploitation) 2017 (SSI 2017/145);
   - Carers (Scotland) Act 2016 (Commencement No.2 and Savings Provision) Regulations 2017 (SSI 2017/152 (C.12));
   - Act of Sederunt (Sheriff Court Rules Amendment) (Miscellaneous) 2017 (SSI 2017/154).
4. **Wild Animals in Travelling Circuses (Scotland) Bill:** The Committee will consider its approach to the delegated powers provisions in this Bill at Stage 1.

5. **Annual report:** The Committee will consider a draft annual report for the parliamentary year from 12 May 2016 to 11 May 2017.

The papers for this meeting are as follows—

**Agenda Items 1, 2 and 3**

Briefing on Instruments (private)  
DPLR/S5/17/17/1(P)

**Agenda Item 3**

Instrument Responses  
DPLR/S5/17/17/2

**Agenda Item 4**

*Wild Animals in Travelling Circuses (Scotland) Bill - as introduced*

*Wild Animals in Travelling Circuses (Scotland) Bill - Delegated Powers Memorandum*

Briefing Paper (private)  
DPLR/S5/17/17/3(P)

**Agenda Item 5**

Draft Annual Report 2016-17 (private)  
DPLR/S5/17/17/4(P)
Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Miscellaneous) 2017 (SSI 2017/144)

On 10 May 2017, the Lord President’s Private Office was asked:

Paragraph 2(8)(a)(i) omits various words from Form 5.2 (form of record of proceedings at judicial examination) in the Appendix to the Criminal Procedure Rules 1996. It appears that in that Form, underneath those words to be omitted, there are signing details: “(Signed) Sheriff Clerk”.

(a) Is it also intended therefore to omit those signing details?

(b) If so, is any corrective action proposed? Otherwise please explain why it is correct that those signing details should remain in the Form.

The Lord President’s Private Office responded as follows:

Question (a)

We are grateful to the Committee for bringing this point to our attention. It was intended that the signing details be omitted from the form.

Question (b)

We are content to undertake to remove the signing details at the next appropriate opportunity. We observe that no legal effect flows from the inclusion of the signing details, that rule 1.3 of the Criminal Procedure Rules 1996 permits the signing details to be omitted as a matter of practice, and that Form 5.2 is a form used solely by the court.
On 12 May 2017, the Lord President's Private Office was asked:

Form 64.2 refers throughout to the “offender”, as the person who is to be made subject to a Trafficking and Exploitation Prevention Order under section 17 of the Human Trafficking and Exploitation (Scotland) Act 2015.

Section 17 of that Act provides that a Trafficking and Exploitation Prevention Order may be made against an adult who is (a) convicted of a relevant trafficking or exploitation offence; (b) acquitted of such an offence by reason of the special defence of mental disorder or (c) found to be unfit for trial by reason of incapacity and the court determines that the adult has done the act constituting the offence.

Is the reference to “offender” in Form 64.2 considered to be appropriate, given that section 17 may apply equally to an offender or to a person acquitted of a relevant offence or found unfit for trial? If not, is any corrective action proposed?

The Lord President’s Private Office responded as follows:

We thank the Committee for raising this issue.

In this case we consider “offender” the best word to summarise the class of individual in question. Section 17(1) of the 2015 Act specifies three categories of individual. Paragraph (a) is an adult convict, paragraph (b) is an adult who has been acquitted under section 51A of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) and paragraph (c) is an adult found unfit for trial but whom the court has determined the adult has committed the offence.

Therefore in relation to paragraphs (a) and (c) it is clear that the adult in question is an “offender” – this is consistent with section 307(1) of the 1995 Act which defines “offence” as meaning any act, attempt or omission punishable by law rather than by reference to conviction. As regards paragraph (b), section 51A of the 1995 Act provides that the person is “not criminally responsible for conduct constituting an offence, … if the person was at the time of the conduct unable by reason of mental disorder to appreciate the nature or wrongfulness of the conduct”. Further, section 57(4)(a) of the 1995 Act makes provision for disposal of section 51A cases and provides that in applying disposal powers elsewhere in the 1995 Act “offender” is to be construed as including a person in section 51A. We would also highlight the terms of section 19(2) of the 2015 Act which itself defines “relevant offender” as meaning, among others, the three categories of person mentioned in section 17(1).

Taken together, we consider that “offender” is an appropriate reference in Form 64.2 because it is consistent with the drafting in both the 2015 and 1995 Acts and, separately, because it is a legitimate shorthand for the purposes of a form which might otherwise become unwieldy. We do not therefore propose to take any action.

We acknowledge that an alternative drafting approach on a similar point was taken in the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Miscellaneous) 2017. While we do not regard either instrument as defectively drafted on this point, we will be discussing consistency in approach at our next drafters’ meeting.