



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Thursday 10 March 2016

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DELEGATED POWERS AND LAW REFORM COMMITTEE
11th Meeting 2016, Session 4

CONVENER

*Nigel Don (Angus North and Mearns) (SNP)

DEPUTY CONVENER

*John Mason (Glasgow Shettleston) (SNP)

COMMITTEE MEMBERS

*Lesley Brennan (North East Scotland) (Lab)

*John Scott (Ayr) (Con)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Delegated Powers and Law Reform Committee

Thursday 10 March 2016

[The Convener opened the meeting at 13:38]

Land Reform (Scotland) Bill: After Stage 2

The Convener (Nigel Don): I welcome members to the 11th meeting in 2016 of the Delegated Powers and Law Reform Committee. As always, I ask members to switch off mobile phones, please.

Agenda item 1 is consideration of the delegated powers provisions in the Land Reform (Scotland) Bill as amended at stage 2.

Section 89A, which was added to the bill at stage 2, adds a new section 32B to the Agricultural Holdings (Scotland) Act 1991. Proposed new section 32B provides:

“The Scottish Ministers may by regulations make further provision about the ... individuals who are new entrants to, or who are progressing in, farming”.

The power is subject to the negative procedure.

Part 10 of the bill as amended creates a new process whereby tenants of 1991 act tenancies may assign their tenancies to new entrants or those who are progressing in farming in circumstances where the landlord does not wish to accept a tenant's notice of intention to relinquish the 1991 act tenancy. The new process for relinquishment could impact upon the rights and duties of parties to existing 1991 act leases in a significant way. Accordingly, the definition of the group of persons who are

“new entrants to, or who are progressing in, farming for the purposes”

of the new process is fundamental to the scope and application of that new process in practice. The committee may wish to draw the power to the attention of the Parliament on the basis that the affirmative procedure would appear to represent a more appropriate level of parliamentary scrutiny, given the significance of the power and its centrality to the new scheme of relinquishment of 1991 act tenancies.

Does the committee wish to draw the power in proposed new section 32B of the 1991 act, as inserted by section 89A of the bill, to the attention of the Parliament on the basis that it would be

more appropriate for the power to be subject to the affirmative procedure?

Members indicated agreement.

The Convener: Does the committee agree to report that it is content with the remaining delegated powers provisions and the procedure to which they are subject in the bill?

Members indicated agreement.

John Scott (Ayr) (Con): I am led to believe that Jim Hume has lodged an amendment that seeks to change the procedure to the affirmative procedure. The committee should be supportive of or, indeed, support that amendment—both mean the same thing, essentially.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): It is quite proper that the committee makes comment broadly in the terms that John Scott suggests. It would be as well for me to indicate that I shall listen to the minister's response to Jim Hume's amendment before concluding how, as an individual MSP, I will treat it when it comes before Parliament at stage 3.

John Mason (Glasgow Shettleston) (SNP): I agree with both comments, especially that of Stewart Stevenson. We might have considered lodging an amendment ourselves if one had not been lodged already, and I would have been happy with that. Therefore, in principle, I support the amendment. However, as always, one wants to listen to the arguments on both sides.

Lesley Brennan (North East Scotland) (Lab): Given the guidance that we have on the change of procedure from negative to affirmative, and being mindful that if an amendment had not been lodged the committee would quite likely be lodging its own, I would be supportive of Jim Hume's amendment. I would hope that the committee would be supportive of it, too.

The Convener: Members around you have clearly indicated—and I agree with them—that the power should be subject to the affirmative procedure. I concur with the general view that we want to hear what the Government minister has to say when the amendment is being dealt with before deciding which way to vote, because only then will we have the full argument. The committee has quite clearly laid out its view, which I think is unanimous. As we see it now, the power should be subject to the affirmative procedure. Are members content with that?

Members indicated agreement.

The Convener: Agenda item 2 is for the committee to consider correspondence received from the Scottish Government on expected amendments to part 3 of the Land (Reform) Scotland Bill.

At its meeting on 8 March, the committee agreed to write to the Scottish Government on an expected delegated power to create a public register of information about people who have a controlling interest in land. The Scottish Government had identified that the delegated power would be subject to an enhanced form of affirmative procedure on the first time that it is used.

The committee wrote to express concern and suggested that the enhanced affirmative procedure should be used every time, unless subsequent regulations could be limited to minor amendments. The minister has confirmed that an enhanced affirmative procedure would apply to the power only on the first time that it is used, and that subsequent uses would be subject to the affirmative procedure.

Do members have any comments?

John Scott: I welcome that apparent change of heart by the minister, if I have understood the position correctly. I am pleased to see that subsequent uses of the delegated power will be subject to the affirmative procedure.

The Convener: The committee may wish to note that the Scottish Government lodged amendments to make the power subject to the enhanced affirmative procedure in light of the committee's efforts and concerns.

The committee may also wish to note that the enhanced affirmative procedure will apply only to the first exercise of the power and that there is no requirement for that procedure to be used in subsequent exercises of it. However, provision is made for consultation to be carried out on future uses of the power, and subsequent exercises of it will be subject to the affirmative procedure, as John Scott has just indicated. As that represents a reduced level of scrutiny for future exercises of the power, the committee would expect that such future uses would be focused on minor and technical amendments and would not significantly alter the policy that was set out in the original regulations.

Does the committee agree that I should reiterate those remarks on its behalf in the context of the debate on the amendments in question? Is the committee otherwise content to note the amendments?

Members *indicated agreement.*

The Convener: Does the committee agree to consider the stage 3 amendments to the delegated power in section 36 of the bill at its meeting on Tuesday?

Members *indicated agreement.*

Instruments subject to Negative Procedure

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2016 (SSI 2016/131)

13:45

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

Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No 2) (Serious Crime Prevention Orders) 2016 (SSI 2016/137)

13:45

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

Members *indicated agreement.*

Private Housing (Tenancies) (Scotland) Bill: Before Stage 3

13:46

The Convener: The purpose of agenda item 5 is for the committee to consider the Scottish Government's correspondence on the delegated power in section 30(2) of the Private Housing (Tenancies) (Scotland) Bill, which allows the Scottish ministers to designate a "rent pressure zone".

At our meeting on 8 March, the committee agreed that I would write to the Scottish Government on its behalf to outline its recommendation that the power should be subject to the provisional affirmative procedure rather than the negative procedure after a rent pressure zone has been designated. The committee also agreed that, pending the response from the Scottish Government, the convener could lodge an amendment to fulfil that recommendation.

Today, the Minister for Housing and Welfare has written to the committee to indicate that she proposes to lodge an amendment at stage 3 that will ensure that all regulations that are made under section 30 of the bill will be subject to the affirmative procedure. In light of that response, is the committee content with the proposed amendment to section 30 of the bill at stage 3?

Stewart Stevenson: I think that we have made very substantial progress on the matter, and I very much welcome the fact that the Government has lifted the idea of the negative procedure being used. I welcome what is to happen.

John Scott: I endorse everything that Stewart Stevenson said. I welcome the Government taking the action that we sought, and I am very grateful to it for doing so.

The Convener: It is clear that the committee is content with what is now proposed.

Meeting closed at 13:47.

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