



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Delegated Powers and Law Reform Committee

**Tuesday 31 January 2017**

**Session 5**



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Pàrlamaid na h-Alba

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**Tuesday 31 January 2017**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>INSTRUMENTS SUBJECT TO AFFIRMATIVE PROCEDURE .....</b>	<b>2</b>
Schools (Consultation) (Scotland) Act 2010 (Modification) Regulations 2017 [Draft] .....	2
Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Amendment Regulations 2017 [Draft] .....	3
National Bus Travel Concession Scheme for Older and Disabled Persons (Scotland) Amendment Order 2017 [Draft].....	3
<b>INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE.....</b>	<b>4</b>
Sale of Nicotine Vapour Products (Prescribed Documents) (Scotland) Regulations 2017 (SSI 2017/13) ..	4
<b>INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE.....</b>	<b>5</b>
Land Reform (Scotland) Act 2016 (Commencement No 5 and Transitory Provisions) Regulations 2017 (SS1 2017/20 (C 3)) .....	5
<b>BUDGET (SCOTLAND) BILL: STAGE 1 .....</b>	<b>6</b>
<b>AIR DEPARTURE TAX (SCOTLAND) BILL: STAGE 1 .....</b>	<b>7</b>
<b>DIGITAL ECONOMY BILL.....</b>	<b>10</b>

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**4<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*John Scott (Ayr) (Con)

**DEPUTY CONVENER**

\*Stuart McMillan (Greenock and Inverclyde) (SNP)

**COMMITTEE MEMBERS**

\*Alison Harris (Central Scotland) (Con)  
Monica Lennon (Central Scotland) (Lab)  
\*David Torrance (Kirkcaldy) (SNP)

\*attended

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

The Adam Smith Room (CR5)



**Scottish Parliament**  
**Delegated Powers and Law**  
**Reform Committee**

*Tuesday 31 January 2017*

*[The Convener opened the meeting at 10:15]*

**Decision on Taking Business in**  
**Private**

**The Convener (John Scott):** Good morning, everyone. I invite you all to turn off your mobile phones, if you have not already done so. I welcome members to the Delegated Powers and Law Reform Committee's fourth meeting in 2017. I note the absence of Monica Lennon, who has sent her apologies for not being able to be with us.

Under agenda item 1, it is proposed that the committee takes in private item 8, which is consideration of correspondence from the committee to the commission on parliamentary reform. Is the committee content to do that?

**Members** *indicated agreement.*

**Instruments subject to**  
**Affirmative Procedure**

**Schools (Consultation) (Scotland) Act**  
**2010 (Modification) Regulations 2017**  
**[Draft]**

10:16

**The Convener:** The regulations seek to amend paragraphs 2 and 3 of schedule 1 to the Schools (Consultation) (Scotland) Act 2010. The amendments are to implement the policy objective that education authorities should not be required to comply with the consultation requirements in the 2010 act if they want to establish new nursery schools or new nursery classes in schools or to relocate existing nursery schools or nursery classes.

When the regulations were laid for consideration by the Parliament and published by the National Archives, neither the regulations nor the 2010 act by virtue of which they are to be made included the definition of "nursery school", which is contained in section 135(1) of the Education (Scotland) Act 1980. That definition will have effect only once the regulations are approved by the Parliament and made on behalf of the Scottish ministers by virtue of section 21(3) of the 2010 act read with section 135(1) of the 1980 act.

In circumstances in which an instrument is laid that inserts a new term or expression into an act, and when the term or expression is considered to properly obtain its definition as a consequence of provisions that are not explained in the instrument, the committee would expect a footnote to be added to the instrument to explain how the term or expression obtains its definition. That could assist the Parliament in its scrutiny of the instrument and readers of the instrument generally in understanding the provisions.

In these short regulations, the definition of "nursery school" is integral to the provisions. Accordingly, does the committee agree to draw the regulations to the Parliament's attention on the general reporting ground, as the definition of "nursery school" should, as I have said, have been explained in the text of the regulations?

**Members** *indicated agreement.*

**The Convener:** No points have been raised by our legal advisers on the following two instruments.

**Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Amendment Regulations 2017 [Draft]**

**National Bus Travel Concession Scheme for Older and Disabled Persons (Scotland) Amendment Order 2017 [Draft]**

**The Convener:** Is the committee content with the instruments?

**Members** *indicated agreement.*

**Instruments subject to Negative Procedure**

**Sale of Nicotine Vapour Products (Prescribed Documents) (Scotland) Regulations 2017 (SSI 2017/13)**

10:18

**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

### Land Reform (Scotland) Act 2016 (Commencement No 5 and Transitory Provisions) Regulations 2017 (SSI 2017/20 (C 3))

10:19

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

**Members** *indicated agreement.*

## Budget (Scotland) Bill: Stage 1

10:19

**The Convener:** The purpose of this item is for the committee to consider the delegated power in the Budget (Scotland) Bill at stage 1. The bill confers one power on the Scottish ministers to make subordinate legislation. More specifically, section 7 provides that the Scottish ministers may by regulations amend the amounts that are specified in sections 4(2) and 4(3) and schedules 1 to 3. As the delegated powers memorandum explains, the power in section 7 is necessary to permit the Scottish ministers to amend the bill to take account of inevitable changes to Government spending plans during the financial year. Such powers are a standard part of the budget process and are periodically exercised by the Government in the spring, summer and autumn.

Does the committee agree that it is content with the delegated power that the bill confers on the Scottish ministers and the procedure to which that power is subject?

**Members** *indicated agreement.*

## Air Departure Tax (Scotland) Bill: Stage 1

10:21

**The Convener:** The next item is consideration of the delegated powers in the Air Departure Tax (Scotland) Bill. The bill makes provision for an air departure tax, which is to be charged on the carriage of chargeable passengers on chargeable aircraft by air from airports in Scotland. Eight sections of the bill confer delegated powers, two of which are standard ancillary and commencement powers. However, we may wish to ask questions on four of the powers as provided for in sections 7, 8, 10 and 34.

Section 7 defines standard class travel for the purposes of the bill, which includes consideration of the size of the seat pitch for a passenger's seat. Subsection (2) defines seat pitch with reference to the distance between the passenger's seat and the seat that is immediately in front of or behind it. If there is no seat immediately in front of or behind the relevant seat, the seat pitch is to be determined with regard to any guidance issued by Revenue Scotland.

Does the committee agree to ask the Scottish Government why it considers it appropriate for provision regarding the definition of seat pitch to be made in guidance issued by Revenue Scotland, as opposed to being contained in subordinate legislation? Does the committee also agree to ask the Scottish Government to indicate the type of provision that it is expected that Revenue Scotland might make in exercise of the power?

*Members indicated agreement.*

**The Convener:** Section 7(3) provides that

"Whether a class of travel is the only, or the most basic, class of travel available on a flight is to be determined with regard to any guidance issued by Revenue Scotland".

Does the committee agree to ask the Scottish Government why it considers it appropriate for provision regarding determination of the class of travel to be made in guidance issued by Revenue Scotland, as opposed to being contained in subordinate legislation? Does the committee also agree to ask the Scottish Government to indicate the type of provision that it is expected that Revenue Scotland might make in exercise of the power?

*Members indicated agreement.*

**The Convener:** Section 8(1) confers power on the Scottish ministers to make provision concerning who a chargeable passenger is, who a non-chargeable passenger is, which aircraft are

chargeable aircraft and which aircraft are non-chargeable aircraft. The terms "chargeable passenger" and "chargeable aircraft" are defined in sections 2 and 3. Accordingly, the power enables ministers to amend the definitions in the bill by regulations and to create definitions of "non-chargeable passenger" and "non-chargeable aircraft". Subsection (2) provides that regulations made under section 8 may add, change or remove any exemption from being a chargeable passenger or chargeable aircraft and may also add, change or remove any provision that defines or otherwise explains a term or definition in the bill.

As the Government acknowledges in its delegated powers memorandum, the concepts of the chargeable passenger and chargeable aircraft are key to determining the basis on which liability for ADT will arise. Does the committee therefore agree to ask the Government why it is considered appropriate in section 8(1) to take a power to make provision concerning who a non-chargeable passenger is and which aircraft are non-chargeable aircraft and to create exemptions from being a chargeable passenger or chargeable aircraft, rather than to make provision for such matters in the bill?

*Members indicated agreement.*

**The Convener:** Section 10(2) enables the Scottish ministers, by regulations, to

"make other provision concerning the structure of the tax"—that is, provision other than defining tax bands and setting the amount of tax for each tax rate as required by section 10(1). Does the committee agree to ask the Scottish Government to explain how the power in section 10(2) is intended to be used and why it is considered to be an appropriate delegation of power?

*Members indicated agreement.*

**The Convener:** The power that is proposed in section 34(1) would enable the Scottish ministers to change any provision in the bill, once enacted, that concerns the payment, collection and management of ADT, other than a provision that sets out the circumstances that give rise to liability for the tax. That is a wide power to modify the detailed provisions on payment, collection and management that appear in the bill. The delegated powers memorandum states that

"Once ADT is in operation it may be necessary to make changes to how the tax is administered, for example in light of Revenue Scotland's operational experience of collecting and managing the tax".

Does the committee agree to ask the Scottish Government to provide further justification for taking such a wide power to alter the detailed machinery that has been set out in the bill? Does the committee also agree to ask for examples of



the changes that might be made in exercise of the power?

**Members** *indicated agreement.*

## Digital Economy Bill

10:28

**The Convener:** Item 7 is consideration of the Digital Economy Bill legislative consent memorandum. The bill is a United Kingdom Parliament bill that was introduced in the House of Commons in July 2016. It contains a wide range of measures, including measures to provide a broadband universal service obligation for the UK, to grant additional powers to Ofcom in respect of information provision and to grant powers to share data between public authorities. The bill confers a few powers on the Scottish ministers.

The committee has been afforded very little time—this meeting—to scrutinise the powers in the bill and particularly to scrutinise the broad and complex powers that part 5 proposes to confer on the Scottish ministers. To meet agreed timescales, the committee is asked to agree its conclusions on the LCM today.

It is worth noting that the House of Lords Delegated Powers and Regulatory Reform Committee published its 13th report of session 2016-17 on the powers that are contained in parts 5 to 7 of the bill, which we may wish to bring to the attention of the Scottish Parliament's Rural Economy and Connectivity Committee, which is the lead committee for the LCM.

10:30

In part 5, clauses 30(2), 30(6), 38(2)(a), 38(2)(c) and 38(3) include powers that are conferred on the Scottish ministers to make regulations to specify persons who may disclose information in relation to public service delivery and to specify objectives for which information may be disclosed. Does the committee agree to draw to the attention of the Rural Economy and Connectivity Committee the conclusions that are in paragraphs 24 to 27 of the House of Lords report? They were as follows:

“the authorities or descriptions of authorities who are to be ‘specified persons’ should be listed on the face of the Bill; and ... Ministers should not have power to add any public authority, or description of authority, but only those authorities engaged in the provision of the types of public service specified in the Bill. Only in these circumstances would we regard as appropriate a Henry VIII power allowing Ministers to amend the list in the Bill, recommended above, by affirmative procedure regulations ... It also follows that Ministers should not have power to specify very generalised objectives under clause 30(6) ... They should instead be required to specify closely delineated objectives which can be properly scrutinised by Parliament.”

The House of Lords committee also said:

“We are also deeply concerned about the power to prescribe as a ‘specified person’ a person ‘providing services to a public authority’ (see clause 30(3)(b)) ... We

recommend that clause 30(3)(b) should be removed from the Bill, unless the Government can explain to the satisfaction of the House why it is needed and what safeguards are in place to prevent its misuse.”

Is the committee agreed on those points?

**Members indicated agreement.**

**The Convener:** In part 5, clauses 31(4), 38(2)(b), 38(2)(c) and 38(3) include powers that are conferred on the Scottish ministers to make regulations to amend the list of permitted recipients of information from specified persons for use in connection with fuel poverty support schemes. Those clauses also amend the second condition that must be met for the disclosure of information to gas and electricity suppliers for fuel poverty purposes. Does the committee agree to draw to the attention of the Rural Economy and Connectivity Committee the conclusions that are in paragraphs 32 and 33 of the House of Lords report? They were as follows:

“As regards the power to add new persons or descriptions of persons in subsection (1), the memorandum explains that it is needed so as to enable ‘the list to be kept up-to-date with the persons that are required to deliver fuel poverty support or to administer, monitor and enforce the scheme’. We recommend that the power, which is drafted in very broad terms, should be amended so as to reflect the narrow policy intention set out in the memorandum.

The power to amend subsection (3) is also an open-ended one. It is justified in the memorandum on the basis that it would ‘enable the fuel poverty schemes to be updated should the statutory framework for the existing schemes change, or new frameworks for support schemes be created’. We consider that this power too should be amended in order to reflect that narrow policy intention.”

Are members agreed on those two points?

**Members indicated agreement.**

**The Convener:** In part 5, clauses 41(4) and 48(2) include a power to make regulations to specify persons who may disclose information in relation to debt that is owed to the public sector. Does the committee agree to draw to the attention of the Rural Economy and Connectivity Committee the conclusions that were in paragraph 59 of the House of Lords report? They were as follows:

“the public authorities should be listed on the face of the Bill, as we do not consider it appropriate for Ministers to have the power to decide by delegated legislation which authorities should be entitled to disclose or receive information under this potentially far-reaching and broadly-drafted gateway ... Ministers should not have power to add any public authority, or description of authority, but only those authorities which they can show, by reference to particular criteria specified in the Bill, have difficulty in recovering debt. Only in these circumstances would we regard as appropriate a Henry VIII power allowing Ministers to amend the list in the Bill, recommended above, by affirmative procedure regulations; and ... the power to prescribe a person who provides services to a public authority as a ‘specified person’ should be removed from the Bill, unless the Government can provide a convincing

explanation for its inclusion which, we note, is entirely absent from the memorandum.”

Does the committee agree to those points?

**Members indicated agreement.**

**The Convener:** In part 5, clauses 49(5) and 56(2) include a power that is conferred on the Scottish ministers to make regulations to specify persons who may disclose information in relation to tackling fraud against the public sector. Does the committee agree to draw to the attention of the Rural Economy and Connectivity Committee the conclusions that were in paragraph 77 of the House of Lords report? They were as follows:

“the public authorities entitled to disclose or receive information under clause 49 should be listed on the face of the Bill ... Ministers should not have the power to add any public authority, or description of authority, but only authorities which they can show, by reference to particular criteria specified in the Bill, are involved in taking action in connection with fraud against a public authority. Only in these circumstances would we regard as appropriate a Henry VIII power allowing Ministers to amend the list in the Bill, recommended above, by affirmative procedure regulations; and ... the power to prescribe a person who provides services to a public authority as a ‘specified person’ should be removed from the Bill, unless the Government can provide a convincing explanation for its inclusion.”

Does the committee agree to those points?

**Members indicated agreement.**

**The Convener:** Does the committee agree to draw to the Rural Economy and Connectivity Committee’s attention three further delegated powers provisions that are not powers to make subordinate legislation conferred on the Scottish ministers, as contained in annex B to the LCM, but which are other delegated powers in the bill that affect Scotland?

**Members indicated agreement.**

**The Convener:** In addition, does the committee agree to highlight in our report our concerns about the very limited time that the committee has had to consider the LCM?

**Members indicated agreement.**

**The Convener:** That concludes the public part of the meeting.

10:38

*Meeting continued in private until 10:49.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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