



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 10 January 2012

Session 4

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SUBORDINATE LEGISLATION COMMITTEE

1st Meeting 2012, Session 4

CONVENER

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

DEPUTY CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

COMMITTEE MEMBERS

*Chic Brodie (South Scotland) (SNP)

*Mike MacKenzie (Highlands and Islands) (SNP)

*Michael McMahon (Uddingston and Bellshill) (Lab)

*John Pentland (Motherwell and Wishaw) (Lab)

*John Scott (Ayr) (Con)

*attended

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 6

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 10 January 2012

[The Convener *opened the meeting at 14:30*]

Interests

The Convener (Nigel Don): Good afternoon and welcome to the first meeting in 2012 of the Subordinate Legislation Committee. I ask members to turn off mobile phones and any other electronic equipment.

Agenda item 1 is a declaration of interests by our new members. I welcome Michael McMahon and John Pentland, who are the new Labour Party members on the committee, and I invite them to make a declaration of interests.

Michael McMahon (Uddingston and Bellshill) (Lab): I have nothing to put on record, other than what is in my entry in the register of members' interests.

John Pentland (Motherwell and Wishaw) (Lab): The only thing that I have to declare is that I am still a councillor with North Lanarkshire Council.

The Convener: Thank you very much indeed.

Decision on Taking Business in
Private

14:31

The Convener: Item 2 is to decide whether to take in private items 6 and 7. Item 6 is consideration of correspondence from the Minister for Parliamentary Business on commencement orders and transitional provisions, and item 7 concerns orders under section 9 of the Public Bodies Act 2011. Do members agree to consider those items in private?

Members *indicated agreement.*

Instruments subject to Negative Procedure

Act of Sederunt (Fees of Sheriff Officers) (No 2) 2011 (SSI 2011/432)

14:31

The Convener: The form or meaning of the definition that is provided for “remote rural area” could be clearer, particularly in its reference to “drive time”. Therefore, does the committee agree to draw the instrument to the attention of the Parliament on reporting ground (h)?

Members *indicated agreement.*

Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011 (SSI 2011/442)

Bus Lane Contraventions (Approved Local Authorities) (Scotland) Order 2011 (SSI 2011/443)

Bus Lanes (Approved Devices) (Scotland) Order 2011 (SSI 2011/444)

Housing (Scotland) Act 2010 (Consequential Amendment) Order 2011 (SSI 2011/445)

Charities References in Documents (Scotland) Amendment Regulations 2011 (SSI 2011/446)

The committee agreed that no points arose on the instruments.

Instruments not subject to Parliamentary Procedure

Act of Sederunt (Fees of Messengers-at-Arms) (No 2) 2011 (SSI 2011/431)

14:33

The Convener: Again, the form or meaning of the definition that is provided for “remote rural area” could be clearer, particularly in its reference to “drive time”. On that basis, does the committee agree to draw the act of sederunt to the attention of the Parliament on reporting ground (h)?

Members *indicated agreement.*

Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No 2) Amendment Order 2011 (SSI 2011/437)

The Convener: There is a drafting error in article 2(1), in which “2011” is omitted from the citation of the Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No 2) Order 2011 (SSI 2011/433), which is amended by this order. Given that it is not considered likely that the error affects the operation of the amendment order, does the committee agree to draw it to the Parliament’s attention on the general reporting ground?

Members *indicated agreement.*

Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No 2) Order 2011 (SSI 2011/433)

Act of Sederunt (Rules of the Court of Session Amendment No 8) (Terrorism Prevention and Investigation Measures) 2011 (SSI 2011/441)

The committee agreed that no points arose on the instruments.

Land Registration etc (Scotland) Bill: Stage 1

14:34

The Convener: The purpose of item 5 is for the committee to consider the delegated powers that are contained in the Land Registration etc (Scotland) Bill. In the context of that consideration, the committee is invited to agree what questions it wishes to raise with the Scottish Government. It is suggested that those questions are raised in written correspondence. On the basis of the responses that it receives, the committee will consider a draft report at its meeting on 24 January 2012.

Our advisers recommend that the committee may wish to ask why it is considered that use of the negative rather than the affirmative procedure represents a suitable level of parliamentary scrutiny of the exercise of the powers in sections 77(4), 80(7) and 91(4), given that specification of the interest rate in each case could have significant financial effects for persons who are entitled to be paid the interest and for the keeper of the registers. Does the committee agree to ask that?

Members indicated agreement.

The Convener: It is further recommended that the committee may wish to ask the Scottish Government questions about the powers under sections 47(5) and 47(6). The delegated powers memorandum explains that use of the affirmative procedure is considered appropriate because the closure of the register of sasines to new deeds is likely to affect various stakeholders.

The committee may wish to ask whether the interests of stakeholders would be better addressed by making provision in section 47 for a requirement to consult the relevant persons, as well as the keeper of the register, before an order was made, and to ask which stakeholders are being referred to. It may also wish to ask whether further clarification could be given of why use of the affirmative rather than the negative procedure is considered to be an appropriate level of scrutiny, given that the scope of the powers is limited to prescribing the relevant dates. Do members agree to ask those questions?

Members indicated agreement.

The Convener: In relation to the power under section 55(4), the delegated powers memorandum explains that use of the affirmative procedure is considered appropriate because the power

“will be of interest to stakeholders and it is important for the running of the system”.

On the other hand, it appears that the power will be used to make technical provision on matters of conveyancing description.

The committee may wish to ask whether the interests of stakeholders would be better addressed by making provision in section 55 for a requirement to consult the relevant persons, as well as the keeper of the register, before making the regulations, and to ask which stakeholders are being referred to. It may also wish to ask whether further clarification could be given of why use of the affirmative rather than the negative procedure is considered the appropriate level of scrutiny, and why the standard of conveyancing description for advance notices could not initially be set out in the bill. Do members agree to ask those questions?

Members indicated agreement.

The Convener: The committee may wish to ask whether it could be explained why the powers in sections 58(6)(b) and 61(1) require to apply to any types of deed and cannot be more narrowly drawn; and, as it appears that the powers are capable of excluding such significant types, with a significant effect on part 4 of the bill, whether the Government could reconsider whether use of the affirmative procedure would be more suitable for scrutinising the exercise of the powers. Do members agree to those questions?

Members indicated agreement.

The Convener: In relation to section 93(2), it appears that the power contained in proposed new section 9E(1)(b) of the Requirements of Writing (Scotland) Act 1995 could be used to prescribe significant matters—for example, requirements for the validity of electronic wills or electronic contracts for land transactions. The committee may wish to ask why it is considered that use of the negative procedure is the appropriate level of parliamentary scrutiny of such regulations, rather than the initial requirements being prescribed in the bill or the affirmative procedure being applied. Do members agree to ask those questions?

Members indicated agreement.

The Convener: Finally, given the significance of the power in section 103 in relation to information to be made available by the keeper and access to any of the keeper's registers, the committee may wish to ask why the provision is framed as a general, discretionary power, instead of providing that an order shall make provision on matters as described by specified headings in connection with such information and access, and to ask why initial provision on those matters could not be made in the bill. Do members agree to ask those questions as well?

Members indicated agreement.

The Convener: Does the committee agree to our raising those questions with the Government in writing?

Members *indicated agreement.*

The Convener: If no one has any comments to make on the bill, that concludes item 5 and I move the meeting into private session.

14:39

Meeting continued in private until 14:54.

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