



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# SUBORDINATE LEGISLATION COMMITTEE

Tuesday 29 January 2013

Session 4

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**Tuesday 29 January 2013**

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**SUBORDINATE LEGISLATION COMMITTEE**

**4<sup>th</sup> Meeting 2013, Session 4**

**CONVENER**

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

**DEPUTY CONVENER**

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

**COMMITTEE MEMBERS**

\*Jim Eadie (Edinburgh Southern) (SNP)

\*Mike MacKenzie (Highlands and Islands) (SNP)

Hanzala Malik (Glasgow) (Lab)

\*John Pentland (Motherwell and Wishaw) (Lab)

\*John Scott (Ayr) (Con)

\*attended

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

Committee Room 4



**Scottish Parliament**  
**Subordinate Legislation**  
**Committee**

*Tuesday 29 January 2013*

[The Convener *opened the meeting at 10:40*]

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

**The Convener (Nigel Don):** I welcome members to the fourth meeting in 2013 of the Subordinate Legislation Committee. As always, I ask members to turn off mobile phones. We have received apologies from Hanzala Malik.

Agenda item 1 is a decision on taking business in private. It is proposed that the committee takes in private item 8, so that we can receive an update on issues that have been discussed recently with the Scottish Government. Are members content that we do so?

**Members indicated agreement.**

**Instrument subject to Affirmative**  
**Procedure**

**Local Government Finance (Scotland)**  
**Order 2013 [Draft]**

10:40

*The committee agreed that no points arose on the instrument.*

**Instruments subject to Negative**  
**Procedure**

**Scottish Road Works Register (Prescribed**  
**Fees) Regulations 2013 (SSI 2013/8)**

**Less Favoured Area Support Scheme**  
**(Scotland) Amendment Regulations 2013**  
**(SSI 2013/9)**

10:41

*The committee agreed that no points arose on the instruments.*

**Instrument not subject to**  
**Parliamentary Procedure**

**Bovine Viral Diarrhoea (Scotland) Order**  
**2013 (SSI 2013/3)**

10:41

**The Convener:** The drafting of the order appears to be defective. Articles 9 to 12 purport to place requirements on a keeper of a breeding bovine animal that is not part of a herd to take and submit to approved laboratories samples to test for bovine viral diarrhoea virus. However, article 11(2) specifies sampling requirements only in relation to breeding herds. Accordingly, the order does not implement the policy intention that sampling requirements should also be specified for animals that are not part of herds.

Does the committee agree to draw the order to the attention of the Parliament on reporting ground (i), as the drafting appears to be defective?

**Members indicated agreement.**

**John Scott (Ayr) (Con):** I declare an interest in this regard and say how very important it is that such testing is done. I welcome the Government's intention to amend the order forthwith.

**The Convener:** That was my next point. Does the committee agree to note that the Scottish Government has laid an amending instrument to remedy the defective drafting? Those provisions will come into force on 9 February 2013, together with the provisions in the order.

**Members indicated agreement.**

## Land and Buildings Transaction Tax (Scotland) Bill: Stage 1

10:42

**The Convener:** We move on to agenda item 5, the purpose of which is for the committee to consider the delegated powers in the Land and Buildings Transaction Tax (Scotland) Bill. In considering the bill, the committee is invited to agree the questions that it wishes to raise with the Scottish Government on the delegated powers in the bill. It is suggested that those questions be raised in written correspondence. On the basis of the responses that are received, the committee would expect to consider a draft report at its meeting on 19 February.

Section 24 provides the mechanism by which the tax bands and the percentage tax rate for each band will be set. There are no limits on how the tax bands and tax rates may be set beyond the limited requirements that are set out in section 24 that they be progressive rates and that there be at least two bands in addition to the nil rate band. The power has the potential to significantly affect the raising of revenue whenever it is exercised and not just on the first occasion.

Does the committee agree to raise with the Scottish Government concerns about whether the negative procedure provides an adequate level of parliamentary scrutiny of the exercise of the power subsequent to its first exercise?

**Members indicated agreement.**

**The Convener:** Section 47 seeks to confer power on the Scottish ministers to provide for qualifying transfers of interests in residential property holdings companies to be treated as land transactions and to be chargeable transactions.

Does the committee agree to ask the Scottish Government when it intends to produce a draft of its proposed regulations, and why—when it is clear from the delegated powers memorandum that the power permits a wide range of approaches to the application of land and buildings transaction tax to residential property holdings companies, which could impact significantly on the operation of the tax regime—the affirmative procedure would not provide a more appropriate level of scrutiny in all cases?

Does the committee also agree to ask the Scottish Government to explain the circumstances in which it would be possible to make provision for the application of land and buildings transaction tax without making textual amendments to primary legislation and, therefore, without engaging the affirmative procedure?

**Members indicated agreement.**

10:45

**The Convener:** Section 55 will confer on the Scottish ministers a duty to make regulations that provide for the application of the bill as enacted in relation to leases.

Does the committee agree to ask the Scottish Government when it intends to produce a draft of its proposed regulations or to publish proposed amendments to the bill that would replace the power in question, and why—when it is clear from the delegated powers memorandum that the power concerns important issues of policy that are also of significance to consultees—the affirmative procedure would not provide a more appropriate level of scrutiny in all cases?

Does the committee also agree to ask the Scottish Government to explain the circumstances in which it would be possible to make provision for the application of land and buildings transaction tax to leases without making textual amendments to primary legislation and, therefore, without engaging the affirmative procedure?

**Members indicated agreement.**

**The Convener:** Section 67(1) contains an ancillary power that is not referred to in the delegated powers memorandum, as it is not a free-standing power. It is parasitic on any other power that is conferred by the bill, so it will be subject to the procedure that applies to the primary power to which it attaches. It will allow the exercise of the power in question to make different provision for different cases or descriptions of case, or for different purposes. More significantly, it will allow ministers to make the full range of ancillary powers, including supplementary provision, when they exercise any other power in the bill.

Does the committee agree to ask the Scottish Government to justify the need for ancillary powers to be available for all powers under the bill, given the standalone provision in section 66, which could be combined with the primary power in any event?

**Members indicated agreement.**

**The Convener:** Does the committee agree to ask the Scottish Government to explain why the full range of ancillary powers in section 67(1)(b) is also applied to the power to commence the bill, given that section 69(2) separately allows that power to make transitional, transitory and saving provision; and, if that is intended, why that is the case?

**Members indicated agreement.**

**The Convener:** Schedule 9 sets out the relief that is available in relation to chargeable transactions that are entered into in pursuance of

the crofting community right to buy, which is the right that is exercisable by a crofting community body under part 3 of the Land Reform (Scotland) Act 2003.

Does the committee agree to seek further information about the proposed use of the power in paragraph 3 of schedule 9, the effect that it might have on the land and buildings transaction tax regime as a whole or on the market for the transactions concerned, and whether the power might be considered by consultees to be controversial, depending on how it is exercised?

**Members indicated agreement.**

**The Convener:** Schedule 11 sets out relief for certain transactions in connection with the reconstruction and acquisition of companies. The power in paragraph 6(3) will enable ministers to prescribe the proportion of relief in a similar manner to that set out in relation to the crofting community right to buy.

Does the committee agree to seek further information about the proposed use of the power in paragraph 6(3) of schedule 11, the effect that it might have on the land and buildings transaction tax regime as a whole or on the market for the transactions concerned, and whether the power might be considered by consultees to be controversial, depending on how it is exercised?

**Members indicated agreement.**

**The Convener:** Schedule 16 provides that certain transfers involving public bodies that are in the process of statutory reorganisation are exempt from charge. The power in paragraph 2 allows for additional types of transaction involving public bodies to be exempt from charge.

Does the committee agree to ask the Scottish Government why the power would allow additional reliefs to be set out in subordinate legislation when, by amending schedule 16 directly, all the reliefs could be retained in the bill as enacted?

Does the committee also agree to ask the Scottish Government to explain why, when the power permits the specification of new transactions that are to be exempt, the power is described as being "technical and administrative" rather than as concerning the principle of when a transaction should be liable to tax?

**Members indicated agreement.**

**The Convener:** Do members wish to raise any further issues on the powers in the bill?

**Members:** No.

## Public Service Pensions Bill

10:49

**The Convener:** Under agenda item 6, the committee is invited to consider the powers to make subordinate legislation that are conferred on the Scottish ministers in the Public Service Pensions Bill. A briefing paper has been provided that sets out the relevant aspects of the bill and comments on their effect.

As the bill confers functions to make subordinate legislation on the Scottish ministers, it is clear that standing order rule 9B.3.6 requires the committee to consider such powers. Whether the committee wishes to report matters to the lead committee is left to its discretion. If members are content with the power, they might consider it unnecessary to issue a formal report to that effect.

Does the committee agree to find the power that is to be conferred on the Scottish ministers to be acceptable in principle? Is the committee content with the level of scrutiny that applies to the power?

**Members indicated agreement.**

**The Convener:** Is the committee content that no formal report to that effect is necessary?

**Members indicated agreement.**

## Scottish Law Commission Reports

10:50

**The Convener:** Agenda item 7 is on the evidence that I gave on behalf of the committee to the Standards, Procedures and Public Appointments Committee on the implementation of Scottish Law Commission reports.

Members have before them a note from the clerk and a copy of the *Official Report* of the meeting. The Standards, Procedures and Public Appointments Committee will consider the issue further at its meeting on 31 January, so any further comments that members might wish to feed into that committee should be agreed on today.

Do members have any comments?

**Members:** No.

**The Convener:** Am I entitled to take the view that members are content with what I said?

**Members** *indicated agreement.*

**The Convener:** We will see what the Standards, Procedures and Public Appointments Committee comes back with.

We move into private for agenda item 8.

10:51

*Meeting continued in private until 11:14.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

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