



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 12 March 2013

Session 4

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SUBORDINATE LEGISLATION COMMITTEE

9th 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 3

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 12 March 2013

[The Convener *opened the meeting at 10:33*]

Instrument subject to Affirmative
Procedure

The Convener (Nigel Don): I welcome members to the ninth meeting in 2013 of the Subordinate Legislation Committee. We have received apologies from Stewart Stevenson and Jim Eadie. I welcome Bruce Crawford. I register my apologies to John Scott for not putting his apologies for last week's meeting on the record, which I should have done.

Welfare Reform (Consequential
Amendments) (Scotland) (No 2)
Regulations 2013 [Draft]

The committee agreed that no points arose on the instrument.

Instruments subject to Negative
Procedure

Police Service of Scotland (Performance)
Regulations 2013 (SSI 2013/61)

10:34

The Convener: Regulation 21 provides that when the chief constable considers it necessary for the purpose of determining an appeal, he or she

“may fix an appeal hearing for the purpose of affording the opportunity of making oral representations to—

(a) the appellant; and

(b) the chairing constable.”

In certain circumstances, therefore, the chairing constable may elect to make oral representations when an appeal hearing has been fixed.

However, regulation 22(1) provides that the chief constable must determine the appeal on the basis of the things that are listed in subparagraphs (a) to (e). Although regulation 22(1)(d) specifies as one of those things any representations that are made by the appellant at the appeal hearing, no provision is made in respect of representations by the chairing constable. The Scottish ministers accept that, as a result, the chief constable cannot take into account the chairing constable's representations, although the chairing constable has a right, under regulation 21(1), to make them.

The effect of those two regulations is that although the chief constable is to afford the opportunity of making oral representations to the appellant and the chairing constable, he or she may take into account only those of the appellant in reaching a decision.

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

Members indicated agreement.

The Convener: In doing so, does the committee agree to note the intention of the Scottish ministers to amend regulation 22(1) to permit the representations of the chairing constable to be taken into account?

Members indicated agreement.

Police Appeals Tribunals (Scotland) Rules
2013 (SSI 2013/63)

The Convener: Paragraph 1(1) of schedule 3 to the Police and Fire Reform (Scotland) Act 2012 provides that a police appeals tribunal is to consist

of three members, one of whom is to be appointed to chair the tribunal. Rule 15(6) purports to enable the tribunal to conduct a hearing while it is differently constituted, in the absence of a member other than the chair, in certain circumstances.

The Scottish ministers consider that that provision is a supplementary provision and that it has been made under the power that is conferred by section 125(1)(b) of the 2012 act. It appears that it would have been preferable had matters concerning the constitution of police appeals tribunals been addressed through a modification of the provision that is contained in paragraph 1(1) of schedule 3 to the 2012 act. Accordingly, it appears that what is proposed represents an unusual or unexpected use of the powers that are conferred by section 125 of the 2012 act.

Does the committee agree to draw the instrument to the attention of the Parliament on reporting ground (g), in that the rules have been made by what appears to be an unusual or unexpected use of the powers that are conferred by the parent statute?

Members indicated agreement.

Public Transport Users' Committee for Scotland (Removal of Functions) Order 2013 (SSI 2013/79)

The Convener: The order removes the functions that are conferred on the Public Transport Users Committee for Scotland by article 4 of the Public Transport Users' Committee for Scotland Order 2006 (SSI 2006/250). Those functions concern the determination of complaints.

No provision is made in the order as regards complaints that are on-going when those functions are removed, with the apparent result that the Public Transport Users Committee will no longer be able to deal with those complaints, despite the fact that they have not been completed. The lead committee may wish to consider whether it thinks that to be appropriate. Although this is not a formal reporting matter, the lead committee may wish to consider it further.

On that basis, does the committee agree to refer the practical effect of the order to the lead committee?

Members indicated agreement.

Hanzala Malik (Glasgow) (Lab): Could I suggest that that committee considers how the functions that are to be removed from the Public Transport Users Committee will be replaced and what responsibilities, if any, the organisation will have in that regard?

The Convener: I am sure that those thoughts will naturally occur to it. You might want to bring

them to the committee's attention through your colleagues.

Welfare Reform (Consequential Amendments) (Scotland) Regulations 2013 (SSI 2013/65)

The Convener: Regulations 5(2), 5(4)(b) and 9(3)(d) refer to other provisions in the Social Security (Personal Independence Payment) Regulations 2013 (SI 2013/377) and the Personal Independence Payment (Transitional Provisions) Regulations 2013 (SI 2013/387), which had not been made on the date on which SSI 2013/65 was made, but which have now been made and published.

As the committee has made clear previously, in applying proper legislative practice such references to instruments that have yet to be made should be avoided where at all possible. However, in this instance the committee may wish to accept that the cross-references in question needed to be made as a result of the requirement to comply with the 28-day rule between the laying of the regulations and the date on which they come into force, and to implement an undertaking that was given to the Welfare Reform Committee to lay the regulations by 27 February.

Is the committee content not to draw the regulations to the attention of the Parliament?

Members indicated agreement.

The Convener: Does the committee agree that although, in this instance, it accepts the need for such cross-references, it remains of the view that, as a matter of proper legislative practice, cross-references to instruments that have yet to be made should be avoided where at all possible?

Members indicated agreement.

Road Traffic (Permitted Parking Area and Special Parking Area) (East Renfrewshire Council) Designation Order 2013 (SSI 2013/67)

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Sale of Tobacco (Display of Tobacco Products and Prices etc) (Scotland) Regulations 2013 (SSI 2013/85)

Police Federation (Scotland) Regulations 2013 (SSI 2013/86)

Council Tax (Information-sharing in relation to Council Tax Reduction) (Scotland) Regulations 2013 (SSI 2013/87)

The committee agreed that no points arose on the instruments.

Instrument not subject to Parliamentary Procedure

Private Rented Housing (Scotland) Act 2011 (Commencement No 6 and Savings Provisions) Order 2013 (SSI 2013/82)

10:41

The committee agreed that no points arose on the instrument.

The Convener: Our next meeting will be held next Tuesday, as previously discussed.

Meeting closed at 10:41.

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