



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 3 September 2013

Session 4

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DELEGATED POWERS AND LAW REFORM COMMITTEE

22nd Meeting 2013, Session 4

CONVENER

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

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)

*Mike MacKenzie (Highlands and Islands) (SNP)

*Hanzala Malik (Glasgow) (Lab)

*John Pentland (Motherwell and Wishaw) (Lab)

*John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Colin Gilchrist (Legal Adviser)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

Committee Room 5

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 3 September 2013

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Nigel Don): I welcome members to the Delegated Powers and Law Reform Committee's 22nd meeting in 2013 and, as always, I ask them to switch off mobile phones and any other electronic equipment.

It is proposed that the committee takes in private item 7, which is consideration of a draft stage 1 report on the delegated powers in the Tribunals (Scotland) Bill, and item 8, which is consideration of the committee's approach to its scrutiny at stage 1 of the Marriage and Civil Partnership (Scotland) Bill. Do members agree to that?

Members *indicated agreement.*

Instrument subject to Affirmative Procedure

Rosyth International Container Terminal (Harbour Revision) Order 2013 [Draft]

10:01

The committee agreed that no points arose on the instrument.

Instruments subject to Negative Procedure

Council Tax Reduction (Scotland) Amendment (No 2) Regulations 2013 (SSI 2013/218)

Council Tax Reduction (Scotland) Amendment (No 3) Regulations 2013 (SSI 2013/239)

10:01

The Convener: Regulation 9 in Scottish statutory instrument 2013/218 appears to be defectively drafted as it provides that

"The Council Tax Reduction (Scotland) Regulations 2012 ... are amended in accordance with regulations 10 to 16",

when the intention is to so amend the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319). The Scottish Government has acknowledged the error and it laid the Council Tax Reduction (Scotland) Amendment (No 3) Regulations 2013 on 9 August to correct it in time for the regulations coming into force on 1 October 2013.

Does the committee agree to draw SSI 2013/218 to the Parliament's attention on reporting ground (i) as regulation 9 appears to be defectively drafted?

Members *indicated agreement.*

The Convener: Our legal advisers have suggested that both instruments—SSI 2013/218 and SSI 2013/239—raise the question of whether they relate to matters that are reserved by section F1 of part II of schedule 5 to the Scotland Act 1998. As such, the committee may wish to report that the regulations raise a devolution issue.

That matter was also raised in connection with the Council Tax Reduction (Scotland) Amendment Regulations 2013 (SSI 2013/48), the Council Tax Reduction (State Pension Credit) (Scotland) Amendment Regulations 2013 (SSI 2013/49) and the Welfare Reform (Consequential Amendments) (Scotland) (No 3) Regulations 2013 (SSI 2013/142), all of which the committee has previously considered.

As members will recall, the Scottish Government's view is that the principal regulations do not relate to any of the reserved matters that are described in section F1 of part II of schedule 5 to the 1998 act. When the committee considered the principal regulations and the amending regulations, a majority of members preferred the Scottish Government's view. It is for the committee to decide whether it wishes to report the

instruments or whether, as with the Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303) and the amending regulations that were previously considered by the committee, it is content that no devolution issue has been raised.

Do members have any comments?

John Scott (Ayr) (Con): We should follow the legal advice and report the instruments on the ground that they may not be *intra vires* as they appear to relate to matters that are reserved by section F1 of part II of schedule 5 to the Scotland Act 1998.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): The advice that we have received that the regulations may be *ultra vires* is based on the idea that a reduction in the charge should be identified as a benefit, and benefits are a reserved matter. If that were the case, a wide range of other reductions in charges, particularly reductions in council tax charges, would also have to be deemed *ultra vires*. I give as examples the reduction in the council tax charge when there is a single person in the property and reductions that relate to second properties. The lack of any challenge to those reductions on the basis that they are a benefit applies equally in this case. I will continue to adhere to the view that the reduction in the charge is not, in law, a benefit, and therefore I would not wish the committee to report the instruments to the Parliament.

Mike MacKenzie (Highlands and Islands) (SNP): Could our advisers confirm whether the Westminster Government has commented on the issues raised under the suite of related proposals that the committee has previously considered?

The Convener: I can certainly ask them.

Colin Gilchrist (Legal Adviser): We have had no intimation from the Westminster Government in relation to this suite of instruments.

John Pentland (Motherwell and Wishaw) (Lab): I tend to agree with Mr Scott and with the position that he took previously. Although there has been no challenge in the past, I am still not convinced that our legal advisers are wrong on this one. To be consistent, we should ask that the instruments be referred.

John Scott: The fact that there has not been a legal challenge thus far does not mean that there will not be one in future.

The Convener: I entirely accept that.

I think that we have rehearsed the ground and I understand why we have done that. In the interest of consistency, I suggest that we would probably want to stick to what we have done before, there being little point in being inconsistent about it.

Nonetheless, I recognise where colleagues are coming from.

The proposition is that the committee considers that the regulations are *intra vires* and should not be drawn to the Parliament's attention. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

Against

Malik, Hanzala (Glasgow) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scott, John (Ayr) (Con)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0. Therefore, the proposition is agreed to. Thank you for that swift and agreeable discussion.

Specified Products from China (Restriction on First Placing on the Market) (Scotland) Amendment Regulations 2013 (SSI 2013/221)

The Convener: There has been a failure to lay the regulations at least 28 days before they came into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The Scottish Government has explained that the breach of the rule was necessary to ensure the continued integrity of the feed and food chain to prevent products containing unauthorised genetically modified rice from being placed on the market in Scotland and in order to comply with European Union requirements. Accordingly, the committee may wish to be content with the explanation provided.

Does the committee agree to draw the regulations to the Parliament's attention under reporting ground (j) as there has been a failure to comply with the 28-day rule?

Members *indicated agreement.*

The Convener: Does the committee agree to find acceptable the explanation that the Scottish Government has given for the failure to lay the regulations at least 28 days before they came into force?

Members *indicated agreement.*

Landfill (Scotland) Amendment Regulations 2013 (SSI 2013/222)

The Convener: There has been a failure to comply with the 28-day rule in relation to this

instrument, too. The committee may consider that better advance planning of the regulations could have avoided the breach, taking into account that directive 2011/97/EU, which is implemented by the regulations, was published in the *Official Journal of the European Union* in December 2011 and provided until 15 March 2013 for implementation.

The Scottish Government has explained to the committee that the timings of the implementation of the directive and the chosen date of laying the regulations in advance of the date when they came into force have been considered to be an example of appropriate prioritisation of legislation. In view of the timescale for proper implementation of the directive from December 2011 to March 2013, the committee may find that explanation unsatisfactory.

Does the committee agree to draw the regulations to the Parliament's attention under reporting ground (j) as there has been a failure to comply with the 28-day rule?

Members *indicated agreement.*

The Convener: Does the committee also wish to note the Scottish Government's explanation?

Stewart Stevenson: It is appropriate for the committee to draw the issue to the Parliament's attention as we have agreed. However, in doing so, we should recognise that there will be no practical environmental effect one way or the other from the passing of the regulations because they apply to an activity that does not and is not expected to take place in Scotland. Nonetheless, they raise a wider issue in that they appear to be outwith the timescale required under European law. The Government might wish to note the committee's remarks in that regard and find a more substantial reason—other than simply resourcing and administrative convenience—for going outside what is required under European law. In this case, there is no practical effect, but there is a point of principle.

John Scott: I agree with Mr Stevenson. It is not appropriate for the Government to decide that it is appropriate to break the 28-day rule knowingly and without good reason, given the amount of time that was available for the Government to comply with it.

The Convener: Does the committee therefore wish to draw the Scottish Government's explanation for the breach of the 28-day rule to the Parliament's attention as the appropriate way of dealing with that?

Members *indicated agreement.*

Hanzala Malik (Glasgow) (Lab): Is there scope for seeking an explanation? Convener, you will recall that I have commented on time slippage in the past. It seems to be a management issue. If

we ask for an explanation, it might focus people's minds and make them give the appropriate support whenever it is needed to make sure that deadlines are not missed in future. To continually have time slippage and accept it is bad practice.

John Scott: On a slightly different subject, I note that the Government has agreed to consider consolidating the regulations, and I would welcome that. I am sure that colleagues would welcome it too, given that the regulations have been amended nine times. I am trying to finish the discussion on a positive note.

The Convener: Indeed, and I take it that members will welcome that. We have raised the issue many times and it would be good to see that happen.

Football Banning Orders (Regulated Football Matches) (Scotland) Order 2013 (SSI 2013/228)

The Convener: There has been a failure to comply with the 28-day rule. However, the committee might be content that the breach of the rule was necessary to update the definition of "regulated football matches" in section 55(3) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 to include pre-season football matches at which one or both of the participating teams represents a club that is a member of the Scottish Professional Football League. The committee might therefore be content with the explanation that the Government has provided.

Does the committee agree to draw the order to the Parliament's attention under reporting ground (j) as there has been a failure to comply with the 28-day rule?

Members *indicated agreement.*

The Convener: Does the committee agree to find the Scottish Government's explanation for the failure to lay the order at least 28 days before it came into force acceptable?

Members *indicated agreement.*

Sports Grounds and Sporting Events (Designation) (Scotland) Amendment (No 2) Order 2013 (SSI 2013/229)

The Convener: There has again been a failure to comply with the 28-day rule. However, the committee might be content that the breach of the rule was necessary to bring the order into force to ensure that pre-season football matches that were played by members of the Scottish Professional Football League were subject to the terms of the Sports Grounds and Sporting Events (Designation) (Scotland) Order 2010 (SSI 2010/199) as they would have been prior to the

change of the league name. The committee might therefore be content with the explanation that the Scottish Government has provided.

Does the committee agree to draw the order to the Parliament's attention under reporting ground (j) as there has been a failure to comply with the 28-day rule?

Members *indicated agreement.*

The Convener: Does the committee agree to find the Scottish Government's explanation acceptable?

Members *indicated agreement.*

**Public Health etc (Scotland) Act 2008
(Sunbed) Amendment Regulations 2013
(SSI 2013/201)**

**Sale of Tobacco (Prescribed Documents)
(Scotland) Regulations 2013 (SSI 2013/202)**

**Vulnerable Witnesses (Giving evidence in
relation to the determination of Children's
Hearing grounds: Authentication of Prior
Statements) (Scotland) Regulations 2013
(SSI 2013/215)**

**Contaminants in Food (Scotland)
Regulations 2013 (SSI 2013/217)**

The committee agreed that no points arose on the instruments.

**Instrument not subject to
Parliamentary Procedure**

**Criminal Justice and Licensing (Scotland)
Act 2010 (Commencement No 11 and
Saving Provision) Order 2013 (SSI
2013/214)**

10:15

The committee agreed that no points arose on the instrument.

**Public Bodies (Joint Working)
(Scotland) Bill: Stage 1**

10:15

The Convener: Item 5 is consideration of the delegated powers in the Public Bodies (Joint Working) (Scotland) Bill at stage 1. The committee is invited to agree the questions that it wishes to raise in written correspondence with the Scottish Government on the bill's delegated powers, and the responses that are received will help to inform a draft report on the bill that the committee will consider at a later date.

Section 1(3)(e) provides for the power to prescribe by regulations

"information about such ... matters as may be prescribed"

for inclusion in an integration plan. Does the committee agree to ask the Scottish Government to provide some examples of the information and matters that could be prescribed for inclusion in an integration plan and to ask why the power has been drawn to permit any matters to be prescribed about which prescribed information would need to be included in a plan without provision that such matters should relate to the matters that the plan will set out in accordance with section 1(3)(a) to (d)?

Members *indicated agreement.*

The Convener: Given that the regulations under section 1(6)(a) and (b) are intended to prescribe the range of functions of local authorities and health boards that either

"must, may or may not be delegated under an integration plan",

does the committee agree to ask the Scottish Government to explain why it is appropriate for section 1(6) to provide that Scottish ministers have the discretion, rather than a requirement, to make the regulations?

Members *indicated agreement.*

The Convener: The bill neither expressly amends nor refers to section 56 of the Local Government (Scotland) Act 1973, subsections (6) and (6A) of which provide that a local authority's functions in respect of setting amounts of council tax, borrowing money, approving annual investment strategies or reports and determining applications for planning permission for certain classes of property shall be discharged only by that authority. Under section 56(7) of the 1973 act,

"a local authority shall not make arrangements ... for the discharge for any of their functions under the Animal Health Act 1981 by any other local authority."

Given that section 1 of the bill does not provide for any exclusion of those significant functions in the 1973 act from the powers to prescribe the functions that may be delegated in terms of an integration plan and agreed to be set out in a plan, does the committee agree to ask the Scottish Government to confirm, in relation to the scope of the powers, whether there is any intention to affect the operation of section 56(6), (6A) and (7) of the 1973 act? If not, could the bill be amended at stage 2 to ensure that “integration functions” could never extend to those functions?

Members indicated agreement.

The Convener: The committee might also consider that paragraph 12 of the delegated powers memorandum does not satisfactorily explain why the negative procedure rather than the affirmative or super-affirmative procedure provides a more appropriate level of scrutiny of the powers in section 1(6). The powers are significant, as the regulations provide for the range of functions that

“must, may or may not be delegated under an integration plan”.

Does the committee agree to ask the Scottish Government to explain that further?

Members indicated agreement.

The Convener: Section 12(1) provides that the Scottish ministers may by order make provision about various aspects of joint integration boards.

Does the committee agree to ask the Scottish Government why the power needs to be drawn widely to permit any provisions by order about, and so to determine, the membership of integration joint boards and why it could not be drawn more narrowly, to contain provision for the permissible number of members of a joint board—for instance, by stating a minimum or maximum number of members within which parameters an order could specify the number of members of a particular board—and also to contain provision for who may be a member, given that any joint boards will be public authorities that will either undertake or direct the carrying out of functions delegated by the constituent local authorities and health boards?

Members indicated agreement.

The Convener: Section 12(3) provides that the Scottish ministers may, by scheme, make provision about the transfer to an integration joint board of staff, property, rights, liabilities or obligations of a local authority or a health board.

The delegated powers memorandum explains that, as a matter of policy, it is envisaged that any integration joint board established under the bill will not necessarily require to employ staff, that the

delivery of functions is likely to be carried out by the constituent local authorities and health board, and that the option of direct employment of staff by a joint board is included as a safeguard, if locally agreed arrangements fail to work.

Does the committee agree to ask the Scottish Government to explain: the reasons for taking the power and the circumstances in which the power might be used to transfer staff, property and so on to an integration joint board; why it is necessary for the power to include the transfer of property, rights, liabilities or obligations as well as staff, when the similar power proposed in section 15 in relation to the other integration models between a local authority and health board is restricted to the transfer of staff; and why it has been considered appropriate that the exercise of the power should not be subject to parliamentary scrutiny, nor provision made for publication of a scheme, nor that it should be made in the form of a Scottish statutory instrument?

Members indicated agreement.

The Convener: Section 15 provides a power for ministers to make a scheme for the transfer of staff from a person who is to delegate functions under the possible integration models between local authorities and health boards, except for the corporate body model.

Does the committee agree to ask the Scottish Government to explain the reasons for taking the power and the circumstances in which it might be used to transfer staff between a local authority and a health board, and why it has been considered appropriate that the exercise of the power should not be subject to parliamentary scrutiny, nor provision made for the publication of a scheme, nor that it should be made in the form of a Scottish statutory instrument?

Members indicated agreement.

The Convener: Section 16(1) provides that the Scottish ministers may by order make provision about the establishment, membership, and proceedings of integration joint monitoring committees and any other matter relating to the operation of integration joint monitoring committees that the Scottish ministers think fit.

Does the committee agree to ask the Scottish Government why the power need be drawn so widely to permit any provisions by order about, and so to determine, the membership of integration joint monitoring committees, and why it could not be drawn more narrowly to contain provision for the permissible number of members of such a committee—for instance, by stating a minimum or maximum number of members, within which parameters an order could specify the number of members of a particular committee—and provision for who may be a member, given

that any such committees will be public authorities, which will monitor the carrying out of integration functions for the area of a local authority?

Members indicated agreement.

The Convener: Section 22(1)(a) enables an integration joint board to direct the local authorities or the health board that have delegated functions to it in accordance with an integration plan to carry out a function on its behalf. Section 22(1)(b) enables a local authority or health board that has had functions delegated to it in accordance with an integration plan to direct the local authority or health board that delegated the function to it to carry out the functions on its behalf.

In relation to the power to make directions under sections 22(1) to (7), does the committee agree to ask the Scottish Government to explain: the reasons for taking the power and the circumstances in which directions could be used; why it has been considered that it is appropriate to exercise the power in the form of written directions, rather than in a form of subordinate legislation such as an order; and whether it is intended that the directions would be published on being made and, if so, whether that should be provided for?

Members indicated agreement.

The Convener: Section 36(3) provides that, in consequence of the replacement of an integration plan by a new plan, the Scottish ministers may by scheme make such provision about the transfer of staff, property, rights, liabilities or obligations of an integration joint board, a local authority or a health board as they consider necessary.

Does the committee agree to ask the Scottish Government to explain: the reasons for taking this power and the circumstances in which it might be used to transfer staff, property and so on upon a new integration plan being substituted under section 35; why it has been considered appropriate that the exercise of this power should not be subject to parliamentary scrutiny, nor that provision should be made for publication of a scheme, nor that it should be made in the form of a Scottish statutory instrument; why section 19 applies where by virtue of section 12(3) or 15(1) a scheme is made for staff transfer to set out the effects on contracts of employment, but does not apply when the power in section 36(3) is exercised; and why it is considered appropriate that the power in section 15 enables schemes about the transfer of staff only where an integration plan sets out one of the three integration models apart from the model where an integration joint board is established, and yet the power in section 36(3) extends to making provision about transfer of staff, property, rights, liabilities or obligations when a new integration

plan setting out one of those models is substituted under section 35? That was a question.

Members indicated agreement.

The Convener: Section 39(2)(a) to (e) lists five default powers that the Scottish ministers may exercise where a local authority and a health board fail before the day prescribed under section 7 to submit an integration plan for approval by them.

It appears that the functions of a local authority and a health board that may be specified under section 39(2)(a) on default to be delegated to an integration joint board are not limited by the prescription of functions by regulations under section 1(6). Section 1(6) relates to the prescription of functions that must, may or may not be delegated under an integration plan. Section 39(2) applies where such a plan has not been submitted for approval.

Does the committee therefore agree to seek clarification from the Scottish Government as to whether that is the intended position?

Hanzala Malik: Why is this only about health boards working with local authorities? Why is it not about local authorities working with local authorities as well?

The Convener: My advice from the clerk is that that is a very interesting question, but it is a question for the lead committee. At the end of the day, it is a policy question; there is no mention of delegated powers in it. I must encourage you to ask that question of the lead committee.

Hanzala Malik: Can I not ask it here?

The Convener: No, simply because it is probably not within our powers to put it.

Hanzala Malik: We are asking a series of questions. I just wonder why we are limiting ourselves to the national health service and not including local authorities. I would be grateful if this committee could ask. We are simply asking a question and saying that there is perhaps an opportunity that we have not explored.

The Convener: I think that may be a fair question. I will take comments from other members.

Stewart Stevenson: Could Hanzala Malik perhaps explain that a little further? I am really not sure what question is being asked. If the question that I am hearing is, "Why are there not delegated powers to allow local authorities to create joint authorities?", I suspect that I know the answer, which is that the powers already exist. However, I am not sure that that is the question that is being asked. I find it difficult to take a position because I am not quite sure what question is being asked.

The Convener: I think that is the question as I hear it. I think that Hanzala Malik is asking why we are talking only about the integration of local authorities and health boards that are contiguous before they start and why we could not have local authorities joining up with local authorities, which by definition would be neighbouring, in such a way that they could provide joint services. We can think of circumstances in which that would be helpful—indeed, it does happen and such services probably already exist.

Stewart Stevenson's point might well be a fair one: that power already exists.

Hanzala Malik: I am not sure that it does. That is why I asked the question. We are focusing on two areas: local authorities and the NHS. The convener has alluded to what I was thinking about. Sometimes there are clusters or hubs and it may well be beneficial for local authorities to be clubbing together in that way.

10:30

Stewart Stevenson: The reason why I responded in the way that I did is that Aberdeen City Council and Aberdeenshire Council already do a great deal of that. I am not trying to shut down the question entirely, but I am very familiar with my own area and I cannot identify from my knowledge of one of the local authorities in my constituency what powers are currently lacking, because there is considerable joint working and there are joint arrangements.

The Convener: The powers that we have to consider are the delegated powers within the scope of the bill as it is before us. If it is restricted in the way in which I think it is, we cannot ask that question in the context of the report because that is not in the bill. However, the question is perfectly decent and I am sure that the member will want to explore it outside this committee. The subject committee might want to consider whether all the options that should be available are available, but that is outside our remit, certainly within the context of this particular set of questions.

Hanzala Malik: Okay. I will perhaps take that up with the lead committee.

The Convener: Contrary to the exercise of the powers under section 1(6), which it is proposed will be subject to the negative procedure, it is not proposed that the exercise of ministerial powers under section 39(2)(a), (d) and (e) to specify the functions to be delegated to an integration joint board and other matters be subject to parliamentary scrutiny. The specification of those matters by ministers does not require to be made in a Scottish statutory instrument and nor is there provision for publication or consultation requirements prior to the specification. Does the

committee therefore agree to seek an explanation as to why that difference of approach to the powers in section 1(6) and those in section 39(2) has been considered appropriate?

Members indicated agreement.

The Convener: Section 39(2)(c) provides that, on the failure of a local authority and health board to submit an integration plan for approval, the ministers may require the authority and health board to delegate the specified functions to the joint board before the day that is prescribed by regulations.

Does the committee agree to ask the Scottish Government to clarify whether that provision is intended to be a power to prescribe a day that is separate from the power in section 9(3) or whether it is intended only to refer to that power; whether that could be clearer, given that sections 39(1) and 9(1) state that the sections apply to different circumstances and it appears that the prescribed day is not defined in the bill; and, if section 39(2)(c) is intended to be a separate power, to explain the reasons for taking the power and why it is considered appropriate that its exercise is subject to the negative procedure?

Members indicated agreement.

The Convener: Section 40 enables ministers to give binding, written directions to a health board, local authority or an integration joint board.

Does the committee agree to ask the Scottish Government to provide a full explanation of the reasons for taking those powers, which could be applied generally across a range of functions as well as to specific delegated functions, how the power to direct could be used, and the choice of direction as the appropriate procedure; and to explain in what circumstances that could introduce powers of direction by the Scottish Government over functions that are currently not subject to such powers or to direction by another authority, and why that would be appropriate?

Members indicated agreement.

The Convener: Section 52(2) provides that the provisions of the act other than the general provisions in sections 49, 50, 52 and 53 will come into force on such day as the Scottish ministers may by order appoint.

Does the committee agree to ask the Scottish Government whether it is agreed that the effect of section 49 of the bill, read with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010, is that it is proposed that a commencement order under section 52(2) would be laid in the Parliament and would be scrutinised by this committee?

Members indicated agreement.

The Convener: Section 49 proposes that an order that makes transitional, transitory or savings provisions for the purposes of or in connection with the coming into force of the bill is subject to the negative procedure, except where textual amendment of an act is proposed. However, section 49 also proposes that a commencement order that is made under section 52(2) and that contains transitory or transitional provision or savings would be laid but would not be subject to further procedure. That appears to be inconsistent, as the parliamentary procedure will depend on whether the Government chooses to make a commencement order or a separate order under section 50(1)(b). Does the committee agree to ask the Scottish Government to consider that further?

Members *indicated agreement.*

Scottish Independence Referendum Bill: Stage 1

10:35

The Convener: Item 6 is consideration of the Scottish Government's response to the committee's stage 1 report on the Scottish Independence Referendum Bill. Members will have seen the briefing paper and the response from the Scottish Government. If there are no comments, are members content to note the response and, if necessary, to reconsider the bill after stage 2?

Members *indicated agreement.*

John Scott: I am content and welcome the fact that the Scottish Government has taken cognisance of our previous comments.

The Convener: Thank you. We will now move into private session.

10:35

Meeting continued in private until 11:13.

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