



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 3 December 2013

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**31<sup>st</sup> Meeting 2013, Session 3**

**CONVENER**

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

**DEPUTY CONVENER**

\*Stuart McMillan (West Scotland) (SNP)

**COMMITTEE MEMBERS**

\*Richard Baker (North East Scotland) (Lab)  
\*Mike MacKenzie (Highlands and Islands) (SNP)  
\*Margaret McCulloch (Central Scotland) (Lab)  
\*John Scott (Ayr) (Con)  
\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

Committee Room 5



## Scottish Parliament

### Delegated Powers and Law Reform Committee

*Tuesday 3 December 2013*

[The Convener *opened the meeting at 11:30*]

#### Decision on Taking Business in Private

**The Convener (Nigel Don):** I welcome members to the 31st meeting in 2013 of the Delegated Powers and Law Reform Committee. As always, I ask members to switch off mobile phones.

It is proposed that the committee takes items 6 and 7 in private. Item 6 is consideration of the committee's draft report on the Procurement Reform (Scotland) Bill and item 7 is consideration of a paper on the committee's scrutiny role. Does the committee agree to take those items in private?

**Members** *indicated agreement.*

## Instruments subject to Negative Procedure

### Water Environment (Shellfish Water Protected Areas: Environmental Objectives etc) (Scotland) Regulations 2013 (SSI 2013/325)

11:30

**The Convener:** Regulations 8 and 9 make reference to "relevant enactments". The Scottish Government has confirmed that the expression "relevant enactments" in regulation 9 is intended to impose duties on the Scottish ministers and the Scottish Environment Protection Agency when they exercise their functions under "relevant enactments" by reference to a specific technical definition found in section 2(8) of the Water Environment and Water Services (Scotland) Act 2003 and the Water Environment (Relevant Enactments and Designation of Responsible Authorities and Functions) (Scotland) Order 2011 (SSI 2011/368). Those functions include functions under part 1 of the 2003 act. The Government relies on a general rule of interpretation to attract that meaning rather than explicitly setting it out in the regulations.

By contrast, the Government intends the expression

"in exercise of powers conferred by the Act"—

that is, the 2003 act

"or any other relevant enactment"

in regulation 8 not to be restricted by the list of relevant enactments that is set out in SSI 2011/368, which, along with part 1 of the 2003 act, make up the "relevant enactments". The use of the term in regulation 8 involves its ordinary, non-specific meaning of any enactment that is relevant. Again, however, the regulations do not explicitly provide for that.

The committee might consider that, where an expression is, or two closely related expressions are, intended to take different meanings within an instrument, that should be clearly and explicitly expressed. Does the committee agree to draw the regulations to the Parliament's attention under reporting ground (h), as the meaning of the regulations could be clearer?

**Members** *indicated agreement.*

**Mike MacKenzie (Highlands and Islands) (SNP):** I would be willing to accept the Government's explanation were it the case that legislation was only ever intended to be read by lawyers and members of the legal profession. However, it is an important principle that

legislation should be accessible to and comprehensible by laypeople, so the committee should always strive for clarity and impress on the lead committee and the Government that they should do the same.

**The Convener:** Indeed. I think that the committee is absolutely inclined to agree with you there. What is meant should be explicit in the regulations unless it is clear that some statutory interpretation applies.

**Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013 (SSI 2013/323)**

**Water Environment (Shellfish Water Protected Areas: Designation) (Scotland) Order 2013 (SSI 2013/324)**

**Food Safety, Food Hygiene and Official Controls (Sprouting Seeds) (Scotland) Regulations 2013 (SSI 2013/333)**

**Adoption (Recognition of Overseas Adoptions) (Scotland) Amendment Regulations 2013 (SSI 2013/335)**

**Food (Miscellaneous Amendments) (Scotland) Regulations 2013 (SSI 2013/336)**

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

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

### **Long Leases (Scotland) Act 2012 (Commencement No 1) Order 2013 (SSI 2013/322)**

11:34

**The Convener:** The order commenced paragraphs 3(2) to 3(4) of the schedule to the Long Leases (Scotland) Act 2012 on 28 November 2013. The provisions amend the Title Conditions (Scotland) Act 2003. However, the order did not bring into force paragraph 3(1), which provides that the 2003 act is to be amended in accordance with that paragraph, on the same date. Instead, the order commences paragraph 3(1) on 21 February 2014.

Although such drafting is not considered defective, the commencement of paragraph 3(1) on 28 November 2013 would have been appropriate in order to exclude any doubt as to whether the commencement of paragraphs 3(2) to 3(4) could be properly interpreted as amending the 2003 act with effect from that date.

The Scottish Government has committed to reviewing its drafting guidance in light of the repetition of this error, which previously occurred in relation to the Post-16 Education (Scotland) Act 2013 (Commencement No 1) Order 2013 (SSI 2013/281).

Does the committee agree to draw the order to the attention of the Parliament under the general reporting ground, as it failed to commence paragraph 3(1) of the schedule to the Long Leases (Scotland) Act 2012 on 28 November 2013?

**Members** *indicated agreement.*

**The Convener:** Does the committee agree to welcome the Scottish Government's commitment to review its drafting guidance in light of the repetition of that error?

**Members** *indicated agreement.*

**John Scott (Ayr) (Con):** I very much welcome the Government's commitment to reviewing its guidance on drafting procedure, given that it is not the first time that the same mistake has happened. I would have thought that that would be the first thing that those who do the drafting would check, given that an instrument has been sent back to them before.

**The Convener:** Thank you for those comments.

## Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill: Stage 1

11:36

**The Convener:** Under item 4 the committee will consider the delegated powers in the bill at stage 1. In considering the bill, the committee is invited to agree the questions that it wishes to raise with the member in charge on the delegated powers in the bill. It is suggested that those questions be raised in written correspondence. The responses received will help to inform a draft report on the bill, which the committee will consider at a later date.

The bill inserts into the Building (Scotland) Act 2003 new schedule 5A, which specifies the content of both charging orders and discharges of charging orders. The schedule provides that a charging order must contain certain information, including the postal address of the building to be charged, the name and address of the local authority making the order, the repayment amount, and the amount of the annual instalment due under the order.

New section 46A(2) of the 2003 act provides that, unless otherwise required by an order made under section 46A(3), a charging order is to be in such form as the local authority may determine to give effect to, and state the information required by, schedule 5A. Section 46A(3) provides that the Scottish ministers may by order specify the form that charging orders and discharges of charging orders are to take.

Does the committee agree to ask the member in charge for further explanation as to the manner in which this power is to be exercised and, in particular, whether it is expected that ministers will use the power to amend the terms of new schedule 5A to the Building (Scotland) Act 2003, and why, if it is expected that the power will be used to make textual amendments to primary legislation, the negative procedure is considered to afford the appropriate level of scrutiny over the exercise of that power?

**Members indicated agreement.**

## Victims and Witnesses (Scotland) Bill: After Stage 2

11:38

**The Convener:** Item 5 is consideration of the delegated powers in the bill after stage 2. Members will have noted that the Scottish Government has provided a supplementary delegated powers memorandum, and will have seen the briefing paper. Stage 3 consideration of the bill is due to take place on Thursday 12 December, and the deadline for lodging amendments is 4.30 on Friday 6 December. The committee may therefore wish to agree its conclusions today.

Does the committee agree to report that it is content with the provisions amended at stage 2 that insert or substantially alter the provisions conferring powers to make subordinate legislation?

**Members indicated agreement.**

11:39

*Meeting continued in private until 12:13.*





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