



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 13 May 2014

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DELEGATED POWERS AND LAW REFORM COMMITTEE
16th Meeting 2014, Session 4

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

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 13 May 2014

[The Convener opened the meeting at 11:30]

Instrument subject to Affirmative Procedure

Health Care and Associated Professions (Indemnity Arrangements) Order 2014 [Draft]

The Convener (Nigel Don): I welcome members to the 16th meeting in 2014 of the Delegated Powers and Law Reform Committee and, as always, ask them to switch off any mobile phones.

Agenda item 1 is an instrument subject to affirmative procedure.

The committee agreed that no points arose on the instrument.

Instruments subject to Negative Procedure

Firefighters' Compensation Scheme (Scotland) Amendment Order 2014 (SSI 2014/109)

11:30

The Convener: We come to agenda item 2. The word "his" was included in paragraph 11(c) of the schedule in error. The word should have been omitted, as the order is otherwise drafted in gender-neutral terms. Does the committee therefore agree to draw the order to the attention of the Parliament on the general reporting ground, as it contains a minor drafting error?

Members indicated agreement.

The Convener: The committee may wish to note, however, that the Scottish Government has undertaken to amend the provision when the Firefighters' Compensation Scheme (Scotland) Order 2006 (SSI 2006/338) is next amended for other purposes.

Does the committee agree to note that?

Members indicated agreement.

Firefighters' Pension Scheme (Scotland) Amendment (No 2) Order 2014 (SSI 2014/110)

The Convener: Paragraph 1(a)(iv) of the schedule inserts a definition of the term "initial date" into rule 2(1) of part 1 of schedule 1 to the Firefighters' Pension Scheme (Scotland) Order 2007 (SSI 2007/199), which I will refer to as the 2007 order. The "initial date" is defined as 1 April 2014.

The order then inserts new rule 5A into part 11 of schedule 1 to the 2007 order. Rule 5A(4) provides that, within two months of the initial date, the Scottish Fire and Rescue Service shall use all reasonable endeavours to notify eligible employees and former employees of the service who may be entitled to join the scheme that they may be so entitled.

The Scottish Government has explained that the policy intention is to give the Scottish Fire and Rescue Service two months from the date of commencement of the order to comply with the duty. The definition of "initial date" as 1 April 2014 therefore renders paragraph 1(a)(iv) of the schedule to the order defective, as the order does not come into force until 23 May 2014.

Does the committee therefore agree to draw the order to the attention of the Parliament under

reporting ground (i), as paragraph 1(a)(iv) of the schedule is defectively drafted?

Members *indicated agreement.*

The Convener: The following, more minor drafting errors have been highlighted by our legal advisers. Paragraph 10 of the schedule to the order inserts new rule 6A into part 11 of schedule 1 to the 2007 order. Paragraphs (2)(a), (4), (5) and (6) of rule 6A contain references that are not gender neutral. Similar references appear in new rule 6B(7) as inserted into part 11 of schedule 1 to the 2007 order and in paragraphs (5) and (6)(b) of new rule 18 as inserted by paragraph 11 of the order into part 12 of schedule 1 to the 2007 order.

The references to “Part 14” in paragraph 12 of the schedule to the order should be to “Part 13”. Paragraph 1(a)(vii) of the schedule to the order is superfluous and should be omitted. The order fails to revoke the definition of “the Scheme Actuary”, which is intended to be replaced by the definition of “Scheme Actuary” that is inserted into rule 2 of part 1 of schedule 1 to the 2007 order by paragraph 1(a)(xi) of the schedule to the order. The reference to “rule 5(13)” in new rule 11A in part 12 of schedule 1 to the 2007 order should be to “rule 5A(13) of Part 11”.

Does the committee therefore agree to draw the order to the attention of the Parliament under the general reporting ground, as it contains drafting errors?

Members *indicated agreement.*

The Convener: The committee may wish to note that the Scottish Government has agreed to lay an amending order, which will correct the errors identified with the order prior to its commencement on 23 May 2014.

Does the committee agree to note that?

Members *indicated agreement.*

John Scott (Ayr) (Con): I welcome the fact that the Government has agreed to lay an amending order that will correct the errors, but I am a bit disappointed about the overall level of drafting of instruments. I am sorry to say that the word that springs to mind is “sloppy”. After the assurances that we were given by the minister, Joe FitzPatrick, in that regard, I am surprised that there has been such a failure at Scottish Government level and at drafting level, with the result that an instrument of this quality has been laid.

The Convener: I am sure that the committee whole-heartedly agrees with your comments and that the Government will note them.

Children’s Hearings (Scotland) Act 2011 (Modification of Subordinate Legislation) Order 2014 (SSI 2014/112)

The Convener: The order contains a drafting error in paragraph 2(3) of the schedule, which provides for the substitution of text in paragraph 6 of schedule 4 to the Looked After Children (Scotland) Regulations 2009 (SSI 2009/210). The text has already been substituted by virtue of paragraph 11(16)(b) of schedule 1 to the Children’s Hearings (Scotland) Act 2011 (Modification of Subordinate Legislation) Order 2013 (SSI 2013/147).

The committee may wish to note that the Scottish Government considers that, given that duplication of provision, paragraph 2(3) of the schedule has no practical effect and has indicated that, in light of that, it has no plans to rectify the error by laying an amendment. However, the legal advisers suggest that the committee may consider that paragraph 2(3) is a superfluous and confusing provision, and so the error should be rectified if an opportunity arises to amend the order for other purposes.

I entirely agree with that. Those of us who have studied the law do not want to find it in two different places. That just does not help.

Does the committee therefore agree to draw the order to the attention of the Parliament under the general reporting ground?

Members *indicated agreement.*

Firemen’s Pension Scheme (Amendment No 2) (Scotland) Order 2014 (SSI 2014/108)

National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2014 (SSI 2014/115)

The committee agreed that no points arose on the instruments.

Instruments not subject to Parliamentary Procedure

**Victims and Witnesses (Scotland) Act 2014
(Commencement No 1) Order 2014 (SSI
2014/117)**

**Marriage and Civil Partnership (Scotland)
Act 2014 (Commencement No 1) Order
2014 (SSI 2014/121)**

11:36

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

Revenue Scotland and Tax Powers Bill: Stage 1

11:37

The Convener: Agenda item 4 is consideration of the Scottish Government's response to the committee's stage 1 report on the Revenue Scotland and Tax Powers Bill. Members have seen the briefing paper and the response from the Scottish Government.

Do members have any comments?

John Scott: I welcome the fact that the Government will not extend the corporate plan beyond three years and that at stage 2 it intends to amend section 54. The remaining piece of work, on penalties, is obviously still in progress. I have no doubt that we will hear what the Government proposes in due course.

The Convener: Indeed. Are we content to note what we have before us and to look forward to what is to come?

Members *indicated agreement.*

The Convener: If necessary, of course, we can reconsider the bill after stage 2.

11:38

Meeting continued in private until 11:40.

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