



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 3 March 2015

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DELEGATED POWERS AND LAW REFORM COMMITTEE

8th Meeting 2015, Session 4

CONVENER

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

DEPUTY CONVENER

*John Mason (Glasgow Shettleston) (SNP)

COMMITTEE MEMBERS

*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 Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 3 March 2015

[The Convener opened the meeting at 11:31]

Instruments subject to Affirmative Procedure

The Convener (Nigel Don): I welcome members to the eighth meeting in 2015 of the Delegated Powers and Law Reform Committee, and I welcome the British Sign Language interpreters, who are here especially for one of the items on this morning's agenda. As always, I ask members to turn off mobile phones.

Continuing Care (Scotland) Order 2015 [Draft]

Aftercare (Eligible Needs) (Scotland) Order 2015 [Draft]

Post-16 Education (Scotland) Act 2013 (Modification of Legislation) Order 2015 [Draft]

Common Financial Tool etc (Scotland) Amendment Regulations 2015 [Draft]

Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No 2) Regulations 2015 [Draft]

Courts Reform (Scotland) Act 2014 (Consequential Provisions) Order 2015 [Draft]

Single Use Carrier Bags Charge (Fixed Penalty Notices and Amendment) (Scotland) Regulations 2015 [Draft]

The Convener: No points have been raised by our legal advisers on the instruments, but the committee may wish to note a matter that has been raised in relation to their laying. As each of the above instruments is subject to the affirmative procedure, under standing orders the lead committee has a period of 40 days from the instrument being laid to report on whether it is recommending that it be approved. The 40th day for these instruments is 30 March; they are then

intended to come into force on either 31 March or 1 April.

Therefore, little or no time has been allowed by the Government for obtaining a parliamentary resolution if the lead committee were to take the full time that is permitted by standing orders. As a result, the lead committee will be required to report sooner than the period that is allowed by standing orders in order for the Government's planned timetable to be capable of being fulfilled.

Scottish Landfill Tax (Exemption Certificates) Order 2015 [Draft]

The Convener: A similar issue has arisen in relation to the draft Scottish Landfill Tax (Exemption Certificates) Order 2015. Although no formal points have been raised by our legal advisers, the committee may wish to note that, in this case, the 40th day postdates the date on which the order comes into force. In this case, therefore, less time has been allowed by the Government for the lead committee to report, prior to the order coming into force, than standing orders permit. The lead committee will be required to report sooner than the period that is allowed by standing orders in order for the Government's planned timetable to be capable of being fulfilled.

It is of course possible for the Government to seek a parliamentary resolution more quickly than standing orders allow, but the committee may consider that it would at least have been courteous for the Government to have informed the Parliament that that was the case and to have explained why it was the case.

Do members have any comments?

Members: No.

The Convener: The committee may also wish to note that the Single Use Carrier Bags Charge (Fixed Penalty Notices and Amendment) (Scotland) Regulations 2015 were initially laid on 19 February 2015 and were subsequently withdrawn and relaid on 24 February to correct a typographical error that was highlighted by our legal advisers.

The laying issue that I have highlighted aside, is the committee content with all the aforementioned instruments?

Members *indicated agreement.*

General Medical Council (Fitness to Practise and Overarching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015 [Draft]

The Convener: No points have been raised by our legal advisers on the order. Is the committee content with it?

Members *indicated agreement.*

The Convener: The committee may wish to note that the draft General Medical Council (Fitness to Practise and Overarching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015 was first considered by the committee on 17 February and no points were drawn to the attention of Parliament. However, following comment from the Joint Committee on Statutory Instruments at Westminster, the order was withdrawn and relaid on 23 February 2015 to adjust a minor matter.

Health Care and Associated Professions (Knowledge of English) Order 2015 [Draft]

The Convener: No points have been raised by our legal advisers on the order. Is the committee content with it?

Members *indicated agreement.*

The Convener: The committee may wish to note that the draft Health Care and Associated Professions (Knowledge of English) Order 2015 replaces an earlier draft that was laid before the Scottish Parliament on 4 February, but which was withdrawn by the Scottish Government following correspondence with the committee's legal advisers. Similarly, the order was withdrawn from Westminster by the Department of Health. The relaid version corrects those errors, as well as a few minor points that were also identified by the committee's legal advisers.

Health and Care Professions (Public Health Specialists and Miscellaneous Amendments) Order 2015 [Draft]

The Convener: No points have been raised by our legal advisers on the order. Is the committee content with it?

Members *indicated agreement.*

Instruments subject to Negative Procedure

Public Bodies (Joint Working) (Integration Joint Boards and Integration Joint Monitoring Committees) (Amendment) (Scotland) Order 2015 (SSI 2015/66)

11:38

The Convener: No points have been raised by our legal advisers on the order. Is the committee content with it?

Members *indicated agreement.*

The Convener: The committee may wish to note that the order corrects a number of drafting errors and inconsistencies to which the committee drew the Parliament's attention when it considered SSI 2014/285 and SSI 2014/281.

Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Amendment Order 2015 (SSI 2015/71)

The Convener: No points have been raised by our legal advisers on the order. Is the committee content with it?

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

Children and Young People (Scotland) Act 2014 (Commencement No 7) Order 2015 (SSI 2015/61)

11:39

The Convener: No points have been raised by our legal advisers on the order. Is the committee content with it?

Members *indicated agreement.*

Environmental Protection Act 1990 (Commencement No 20) (Scotland) Order 2015 (SSI 2015/72)

The Convener: No points have been raised by our legal advisers on the order. Is the committee content with it?

Members *indicated agreement.*

Environment Act 1995 (Commencement No 24) (Scotland) Order 2015 (SSI 2015/73)

The Convener: No points have been raised by our legal advisers on the order. Is the committee content with it?

Members *indicated agreement.*

British Sign Language (Scotland) Bill: Stage 1

11:39

The Convener: Agenda item 4 is consideration of the British Sign Language (Scotland) Bill. In examining a bill, the Delegated Powers and Law Reform Committee considers matters such as whether in the bill overall the right balance has been struck between primary legislation and delegated powers; whether the delegated powers are properly drafted; and whether a delegated power is subject to the appropriate form of parliamentary procedure.

The committee also considers provisions in the bill that provide the power to do something purely administratively, for example by direction or guidance, and assesses whether they should be subject to parliamentary procedure. It is not within the committee's remit to consider the policy merits of a bill or the policy merits of the powers that it delegates.

The committee is asked to agree any questions that it may wish to ask the member in charge of the bill, Mark Griffin MSP, on the delegated powers in the bill. It is suggested that those questions be put to the member in writing. The responses that are received will be used to help inform the committee's report on the bill, which we will consider at a later date.

The member in charge of the bill has produced a delegated powers memorandum, which provides information on the subordinate legislation in the bill. The memorandum is available in both English and British Sign Language on the Parliament's website.

Section 3 of the bill sets out the responsibilities of local authorities in relation to the preparation of authority plans and gives details of what authority plans must contain. Section 3(4)(b) sets out several matters to which an authority is to have regard in preparing its plan. They include, in section 3(4)(b)(v),

"such guidance, relevant to the preparation (or revision) of Authority Plans, as may be issued by the Scottish Ministers."

The power to issue guidance is not explained in the delegated powers memorandum, as it is not a power to make subordinate legislation.

Does the committee agree to ask the member in charge of the bill to explain why the power to issue guidance is being taken; to provide examples of the provision that is likely to be made in any guidance that is issued; to explain why it is appropriate for the power to be exercised by way of guidance rather than subordinate legislation;

and to indicate the form in which the guidance is likely to be issued and the manner of its publication?

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I think that it is clear that the power to issue guidance that is taken in the bill is a consequence of the bill providing that bodies must take account of guidance from Governments rather than a directly expressed intent. On that basis, we should perhaps simplify what we ask for by way of explanation by not asking why the power is being taken. Instead, we should focus on the use that is likely to be made of any such power and how it might be exercised.

The bill is welcome. Our interest in it is in how guidance may influence the way in which, if the bill is passed by Parliament, it will be implemented.

The Convener: Do members have any other comments?

John Mason (Glasgow Shettleston) (SNP): Will it be possible for the member in charge of the bill to answer all the questions, or will some of them have to be referred on to the Government?

The Convener: I am sure that the answer to that is that some of them will have to be referred on to the Government, which will be much more familiar with what ministers can and should do.

In the context of Stewart Stevenson's comment, I am wondering whether we might simply ask why the power to issue guidance is being taken and how it is expected to be used.

11:45

Margaret McCulloch (Central Scotland) (Lab): Why do we not ask Mark Griffin to appear before the committee to explain matters instead of writing to him?

The Convener: We normally ask people to write to us in the first instance. That is the simplest way forward. If there were to be an issue once we have a written response, we could ask the member in charge of the bill to appear before us.

John Scott (Ayr) (Con): I am quite happy with the form of words that our legal advisers have provided.

Stewart Stevenson: If it is helpful to say so, I certainly do not intend to push the point that I raised. I have made it on the record, so it can be read by the member.

The Convener: On that basis, we will stick with the original form of words. Thank you.

Section 4 sets out the responsibilities of listed authorities with regard to the publication of authority plans, including the timescales for such publication. Broadly speaking, authority plans are

to be published as soon as reasonably practicable after publication of the corresponding national plan. The national plan and authority plans are to be prepared in each session of the Parliament.

Section 4(6) provides that, in publishing an authority plan or a revised plan, a listed authority is to have regard to any guidance that is issued by the Scottish ministers concerning publication. Again, an explanation of that power has not been included in the delegated powers memorandum.

Does the committee therefore agree to ask the member in charge to explain why the power to issue guidance is being taken; to give examples of the provision that is likely to be made in any guidance that is issued; to explain why it is appropriate for the power to be exercised by way of guidance rather than subordinate legislation; and to indicate the form in which the guidance is likely to be issued and the manner of its publication?

I suggest to the committee that the previous discussion probably applies.

Members indicated agreement.

“Report on instruments considered in 2013-14”

11:47

The Convener: Agenda item 5 gives us the opportunity to consider the Scottish Government’s response to our report on the instruments that the committee considered during 2013-14. The correspondence also responds to further issues that were raised in the committee’s oral evidence session with the Minister for Parliamentary Business that took place on 16 December last year.

Members will have seen the correspondence from the Minister for Parliamentary Business. Are there any comments?

Stewart Stevenson: The part of the minister’s response that I particularly welcome is the part that relates to consolidation. He draws to our attention the fact that there were 10 consolidations in the reporting year and that

“more would be laid in the current year.”

I encourage the minister to keep up the good work and to find additional resources to do even more, should that be possible.

John Scott: Having only just seen the letter, which I have read very quickly, I support what Stewart Stevenson said. I note the minister’s positive tone in endeavouring to address the sensible and reasonable points that the committee made, and I welcome that approach.

The Convener: Thank you for those welcoming words.

Does the committee agree to note the correspondence?

Members indicated agreement.

The Convener: I am much obliged—thank you very much.

That brings us to the end of the agenda. Our next meeting will be next Tuesday.

Meeting closed at 11:48.

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e-format first available
ISBN 978-1-78568-055-7

Revised e-format available
ISBN 978-1-78568-072-4