



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 9 June 2015



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**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**20<sup>th</sup> 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 Adam Smith Room (CR5)



## **Scottish Parliament**

### **Delegated Powers and Law Reform Committee**

*Tuesday 9 June 2015*

*[The Convener opened the meeting at 11:31]*

### **Decision on Taking Business in Private**

**The Convener (Nigel Don):** I welcome members to the 20th meeting in 2015 of the Delegated Powers and Law Reform Committee. As always, I ask members to switch off their mobile phones.

Agenda item 1 is a decision on taking business in private. It is proposed that we take item 4, which is consideration of a draft report on the Education (Scotland) Bill at stage 1, in private. Do members agree?

**Members indicated agreement.**

## **Instruments subject to Negative Procedure**

### **Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Regulations 2015 (SSI 2015/202)**

11:32

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

**Members indicated agreement.**

### **University of the West of Scotland (Amendment of the University of Paisley (Scotland) Order of Council 1993) Order of Council 2015 (SSI 2015/209)**

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

**Members indicated agreement.**

### **Financial Assistance for Environmental Purposes (Scotland) Order 2015 (SSI 2015/210)**

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

**Members indicated agreement.**

### **Water Environment (River Basin Management Planning etc) (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/211)**

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

**Members indicated agreement.**

### **Environmental Liability (Scotland) Amendment Regulations 2015 (SSI 2015/214)**

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

**Members indicated agreement.**

**Debt Arrangement Scheme (Scotland)  
Amendment Regulations 2015 (SSI  
2015/216)**

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

**Members** *indicated agreement.*

**Property Factors (Registration) (Scotland)  
Amendment Regulations 2015 (SSI  
2015/217)**

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

**Members** *indicated agreement.*

**Building (Scotland) Amendment  
Regulations 2015 (SSI 2015/218)**

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

**Members** *indicated agreement.*

**National Health Service (Optical Charges  
and Payments and General Ophthalmic  
Services) (Scotland) Amendment  
Regulations 2015 (SSI 2015/219)**

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

**Members** *indicated agreement.*

**Public Bodies (Joint Working) (Integration  
Joint Board Establishment) (Scotland)  
Amendment Order 2015 (SSI 2015/222)**

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

**Members** *indicated agreement.*

**Protection of Vulnerable Groups  
(Scotland) Act 2007 (Fees for Scheme  
Membership and Disclosure Requests)  
Amendment Regulations 2015 (SSI  
2015/223)**

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

**Members** *indicated agreement.*

**Scottish Courts and Tribunals Service  
(Administrative Support) (Specified  
Persons) Order 2015 (SSI 2015/224)**

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

**Members** *indicated agreement.*

**Scottish Sentencing Council (Procedure  
for Appointment of Members) Regulations  
2015 (SSI 2015/225)**

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

**Members** *indicated agreement.*

**Late Payment of Commercial Debts  
(Scotland) Regulations 2015 (SSI 2015/226)**

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

**Members** *indicated agreement.*

**Health and Care Professions Council  
(Registration and Fees) (Amendment) (No  
2) Rules Order of Council 2015 (SI  
2015/1337)**

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

**Members** *indicated agreement.*

## Community Empowerment (Scotland) Bill: After Stage 2

11:34

**The Convener:** Agenda item 3 is consideration of the delegated powers provisions in the Community Empowerment (Scotland) Bill after stage 2. The committee will have noted that the Scottish Government has provided a supplementary delegated powers memorandum and members will have seen the briefing paper.

Stage 3 consideration of the bill is due to take place on Wednesday 17 June, which is next week. The committee should therefore agree its conclusions today.

A number of the comments that the committee made at stage 1 were addressed through amendments at stage 2, but the committee might wish to raise points on four delegated powers provisions.

First, new section 97D of the Land Reform (Scotland) Act 2003, as inserted by section 48 of the bill, sets out the types of legal entity that may be a "Part 3A community body" and therefore eligible to make an application to buy abandoned or neglected land under new part 3A of the 2003 act. That section has been amended at stage 2 and a power has been conferred on the Scottish ministers to specify in regulations additional types of entity that may be a part 3A community body.

The committee may wish to note that parts 2 and 3 of the 2003 act contain similar powers to the power that has been inserted in new section 97D(1)(b). Those powers are subject to the affirmative procedure, but the power in new section 97D(1)(b) is subject to the negative procedure. For consistency, the committee may wish to raise that with the Scottish Government.

Does the committee agree to call on the Scottish Government to amend the bill so that the power in new section 97D(1)(b) of the 2003 act is subject to the affirmative procedure?

**Members indicated agreement.**

**The Convener:** Secondly, new section 62C(2) of the bill, as inserted at stage 2, provides that the Scottish ministers may by regulations modify the meaning of

"Scottish Professional Football League Club"

in section 62C(1). That power is subject to the negative procedure. The committee may consider that the power to modify the meaning of

"Scottish Professional Football League Club"

is a significant power that is relevant to the scope and application of new part 5B of the bill and

which might appear to merit the higher level of parliamentary scrutiny that is afforded by the affirmative procedure.

Does the committee therefore agree to call on the Scottish Government to amend the power in section 62C(2) of the bill at stage 3 so that it is subject to the affirmative procedure?

**Members indicated agreement.**

**John Mason (Glasgow Shettleston) (SNP):** I thought that the term "Scottish Professional Football League Club" was self-explanatory and did not need a definition, but if a definition is necessary, I accept that the power to modify it should be subject to the affirmative procedure.

**The Convener:** Thirdly, sections 62E, 62F, 62I, 62K and 62P use the words "prescribe" or "prescribed", and it appears that the intention of those provisions of new part 5B of the bill is to confer a number of delegated powers. However, the committee will wish to note that the use of the words "prescribe" or "prescribed" alone is insufficient to confer a delegated power and that, when such terms are used in legislation, they are normally accompanied by an interpretative provision that specifies on whom the powers are conferred and what form the subordinate legislation that is made in their exercise is intended to take.

Does the committee agree to call on the Scottish Government to amend the bill at stage 3 in order that sections 62E, 62F, 62I, 62K and 62P are fully cast as powers to make subordinate legislation that are subject to the negative procedure and to clarify—by defining the terms "prescribe" and "prescribed", or by such other means as it considers appropriate—on whom the powers are conferred and what form the subordinate legislation that is made in their exercise is intended to take?

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** In view of the ambiguity that you have highlighted, it is unfortunate that the Government uses the phrase

"such other body as the Scottish Ministers may prescribe"

in section 62E(1)(e). It seems passing strange that we need go back only to section 62C(2), "Meaning of 'Scottish Professional Football League club'", to find the more normal phrasing,

"The Scottish Ministers may by regulations modify the meaning of football club in subsection (1)."

It seems strange to use that more regularly used phrasing and then to use terms that are not defined.

Although I am content with what it is proposed that we say, I suggest that, if ministers do not lodge appropriate amendments at stage 3, the

committee should delegate to the convener and deputy convener the power to lodge in the name of the committee amendments that will substitute “the Scottish Ministers may prescribe”

with words to the effect that the Scottish ministers may act in the way proposed “by regulations”, which is the more normal form of words. I expect that the Government will respond to our previous comments on the subject but, as we will not meet before the deadline for the submission of amendments, I think that it might be useful for us to empower the convener and deputy convener to lodge amendments, if necessary, because the phrasing that is used in the sections identified appears to be a rather cack-handed way to describe what, in policy terms, seems to be quite a reasonable thing to want to do.

**The Convener:** Thank you for that comment.

This raises the issue of how we should operate in dealing with amendments when we are very close to stage 3. I suspect that the Government would not have chosen to proceed in this way. As Stewart Stevenson rightly points out, if we wait until next Tuesday’s meeting, we will be able only to lodge manuscript amendments, which is unsatisfactory because it puts the onus on Presiding Officers and the Government to agree with us. If there was some mechanism for us to look at the Government’s stage 3 amendments, which I gather are expected to be lodged tomorrow, we would be able to lodge formal amendments in the name of the committee, rather than having to lodge manuscript amendments at the last minute.

I do not know whether members have any views on how we should tackle that. In the first instance, I should ask our clerk whether it is acceptable and reasonable for the committee to delegate to the deputy convener and me the power to lodge amendments on behalf of the committee.

**Euan Donald (Clerk):** That is possible.

**The Convener:** So that is a perfectly legitimate thing to do.

**John Scott (Ayr) (Con):** I am more than happy to support the proposal that you and the deputy convener lodge a manuscript amendment, if required, to clear up the slightly anomalous situation in which we find ourselves.

We are back in the position that we have found ourselves in on previous occasions. There is too little time between stage 2 and stage 3 to consider the effects of stage 2 and what amendments might be required at stage 3, notwithstanding the assurances that we have had from Government ministers and others that such situations would be avoided at all costs in the future.

**The Convener:** It has been a while since stage 2 of the bill, but a lot of the proposed changes have taken a while to think about. I have discussed the principle of stage 3 amendments being lodged rather late in the day on the record with the Standards, Procedures and Public Appointments Committee. That is another issue for another day, but it has already been looked at.

**Stewart Stevenson:** I make it clear that my proposal relates to formal amendments that would form part of the *Business Bulletin* rather than manuscript amendments. Manuscript amendments are another possibility, but my proposal is about empowering the convener and deputy convener to lodge proper amendments.

**The Convener:** Anyone who is listening might be wondering what on earth we are doing. If we see the Government’s stage 3 amendments tomorrow, when is the deadline for lodging amendments?

**Euan Donald:** The deadline is Thursday.

**The Convener:** If the deputy convener and I could agree on an amendment with the help of our clerks and advisers, we could lodge it by Thursday, in which case it would be a formal amendment rather than a manuscript amendment. Anything that we did after that would have to take the form of a manuscript amendment.

**John Scott:** That is absolutely fine by me. My position was essentially a fallback if there was insufficient time to do what you suggest.

**The Convener:** Equally, we would still be in a position to lodge a manuscript amendment next week, albeit that, as I understand it, whether that amendment would be accepted would be at the Presiding Officer’s discretion.

The committee has agreed to empower the deputy convener and me to lodge amendments on the committee’s behalf. I come back to the original question: does the committee agree to call on the Scottish Government to amend the bill at stage 3 to deal with the point that I put on the record?

**Members indicated agreement.**

**The Convener:** Fourthly, new section 69A of the bill requires the Scottish ministers to make regulations

“for or in connection with the size or sizes of an allotment (but without affecting section 68(1)(d)).”

Section 68(1)(d) defines “allotment” for the purposes of part 7 of the bill as, among other things, land that

“meets one of the requirements as to size set out in subsections (2) and (3).”

The committee may consider that it is not clear what provision the regulations that are made



under section 69A are intended to make or how any such regulations could make provision about the size of allotments without affecting the requirements for the size of an allotment that are specifically set out in the bill.

Does the committee therefore agree to call on the Scottish Government to amend the bill at stage 3 to clarify the manner in which the power in section 69A regarding allotment size is intended to operate?

**John Mason:** It is an important issue, and I completely agree that we should seek clarification. I know that it is a controversial area, because constituents have been in touch with me about it. We really need clarity.

**The Convener:** Does the committee agree to take the action proposed?

**Members** *indicated agreement.*

**The Convener:** Does the committee agree to report that it is content with the other provisions in the bill that have been amended at stage 2 to insert or substantially alter provisions conferring powers to make subordinate legislation and other delegated powers?

**Members** *indicated agreement.*

**The Convener:** That completes item 3, so I move the meeting into private.

11:45

*Meeting continued in private until 11:52.*



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