



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 16 June 2015

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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
INSTRUMENTS SUBJECT TO AFFIRMATIVE PROCEDURE	2
Public Records (Scotland) Act 2011 (Authorities) Amendment Order 2015 [Draft]	2
Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No 3) Regulations 2015 [Draft].....	2
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE.....	3
Common Agricultural Policy (Direct Payments etc) (Scotland) Amendment Regulations 2015 (SS1 2015/215)	3
Education (Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2015 (SS1 2015/212)	3
All-Scotland Sheriff Court (Sheriff Personal Injury Court) Order 2015 (SSI 2015/213).....	4
Scheduled Monument Consent Procedure (Scotland) Regulations 2015 (SSI 2015/229)	4
Town and Country Planning (Appeals) (Scotland) Amendment Regulations 2015 (SSI 2015/233)	4
Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2015 (SS1 2015/235)	4
Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Amendment Regulations 2015 (SSI 2015/236)	4
Town and Country Planning (Historic Environment Scotland) Amendment Regulations 2015 (SS1 2015/237)	4
Historic Environment Scotland (First Planning Period) Order 2015 (SSI 2015/238).....	5
Historic Environment Scotland Act 2014 (Saving, Transitional and Consequential Provisions) Order 2015 (SSI 2015/239)	5
Planning (Listed Buildings and Conservation Areas) (Urgent Works to Crown Land) (Scotland) Regulations 2015 (SSI 2015/240)	5
Listed Buildings (Notification and Publication) (Scotland) Regulations 2015 (SSI 2015/241)	5
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE.....	6
Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (Commencement) Order 2015 (SS1 2015/242)	6
Vulnerable Witnesses (Scotland) Act 2004 (Commencement No 8) Order 2015 (SSI 2015/244).....	6
COMMUNITY EMPOWERMENT (SCOTLAND) BILL: AFTER STAGE 2	7
AIR WEAPONS AND LICENSING (SCOTLAND) BILL: AFTER STAGE 2	10
MENTAL HEALTH (SCOTLAND) BILL: AFTER STAGE 2	12

DELEGATED POWERS AND LAW REFORM COMMITTEE

21st 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 16 June 2015

[The Convener opened the meeting at 11:15]

Decision on Taking Business in
Private

The Convener (Nigel Don): I welcome members to the 21st meeting in 2015 of the Delegated Powers and Law Reform Committee. As always, I ask members to switch off their mobile phones, please.

Agenda item 1 is a decision on taking business in private. It is proposed that we take in private item 8, which will allow the committee to discuss its approach to the delegated powers provisions in the Inquiries into Deaths (Scotland) Bill at stage 1 with a view to agreeing the contents of a report to the Justice Committee. Does the committee agree to take item 8 in private?

Members *indicated agreement.*

Instruments subject to
Affirmative Procedure

Public Records (Scotland) Act 2011
(Authorities) Amendment Order 2015
[Draft]

11:15

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

Members *indicated agreement.*

Advice and Assistance (Assistance by
Way of Representation) (Scotland)
Amendment (No 3) Regulations 2015
[Draft]

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

Members *indicated agreement.*

Instruments subject to Negative Procedure

Common Agricultural Policy (Direct Payments etc) (Scotland) Amendment Regulations 2015 (SSI 2015/215)

11:16

The Convener: The regulations were laid before Parliament on 28 May 2015 and regulations 1 to 3 came into force on 1 June, which means that the requirement to leave a minimum of 28 days between laying and coming into force was not complied with. Does the committee therefore agree to draw the regulations to the attention of the Parliament under reporting ground (j), as there has been a failure to observe the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010?

Members indicated agreement.

John Scott (Ayr) (Con): This is not necessarily the right point at which to say this, but I accept the Government's explanation as to why it has taken so long to make the regulations. I have to declare an interest in the subject—I accept the Government's explanation, as I know about the hoops that it had to go through to make this happen.

The Convener: Thank you for those comments.

John Scott: It is very welcome that the Government acted as it did.

The Convener: As a matter of process, however, the instrument was made on 26 May and laid on 28 May, creating a two-day gap between the making of the instrument and the laying of it. The Scottish Government has accepted that, in relation to the 28-day rule, which has of course been breached, it would have been an advantage if arrangements had been put in place to lay the instrument forthwith after it was made on 26 May, rather than two days later. Does the committee agree to write to the Government indicating that, when the 28-day rule is breached, it will be expected that, wherever possible, an instrument is laid before the Parliament expeditiously after it has been made?

Members indicated agreement.

Education (Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/212)

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

Members indicated agreement.

All-Scotland Sheriff Court (Sheriff Personal Injury Court) Order 2015 (SSI 2015/213)

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

Members indicated agreement.

Scheduled Monument Consent Procedure (Scotland) Regulations 2015 (SSI 2015/229)

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

Members indicated agreement.

Town and Country Planning (Appeals) (Scotland) Amendment Regulations 2015 (SSI 2015/233)

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

Members indicated agreement.

Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2015 (SSI 2015/235)

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

Members indicated agreement.

Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Amendment Regulations 2015 (SSI 2015/236)

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

Members indicated agreement.

Town and Country Planning (Historic Environment Scotland) Amendment Regulations 2015 (SSI 2015/237)

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

Members indicated agreement.

Historic Environment Scotland (First Planning Period) Order 2015 (SSI 2015/238)

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

Members *indicated agreement.*

Historic Environment Scotland Act 2014 (Saving, Transitional and Consequential Provisions) Order 2015 (SSI 2015/239)

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

Members *indicated agreement.*

Planning (Listed Buildings and Conservation Areas) (Urgent Works to Crown Land) (Scotland) Regulations 2015 (SSI 2015/240)

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

Members *indicated agreement.*

Listed Buildings (Notification and Publication) (Scotland) Regulations 2015 (SSI 2015/241)

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

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (Commencement) Order 2015 (SSI 2015/242)

11:19

The Convener: Given the committee's consideration of the Legal Writings (Counterparts and Delivery) (Scotland) Bill, members will be pleased to note that this instrument commences on 1 July 2015 the remaining parts of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 that are currently not in force.

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

Members *indicated agreement.*

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): The committee is extremely pleased that the not insubstantial work that we did on the Legal Writings (Counterparts and Delivery) (Scotland) Bill is being delivered, and it is of course content to see the legislation pass into effect.

John Scott: I support what Stewart Stevenson said. The Legal Writings (Counterparts and Delivery) (Scotland) Bill is the first bill that the committee has had passed into legislation, and it is very much to be welcomed that we managed to do that successfully.

Vulnerable Witnesses (Scotland) Act 2004 (Commencement No 8) Order 2015 (SSI 2015/244)

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

11:20

The Convener: Agenda item 5 is consideration of the delegated powers provisions in the Community Empowerment (Scotland) Bill as modified by stage 2 amendments.

Stage 3 consideration of the bill is due to take place tomorrow, so the committee should agree any conclusions today. Stage 3 amendments have been lodged in five areas that might be of particular interest to the committee.

The first group of amendments of relevance to the committee concerns part 1 of the bill on the national outcomes. In its stage 1 report, the committee was concerned that Parliament was to have no role in scrutinising those outcomes. The bill was amended at stage 2 to the effect that the national outcomes were to be prescribed in regulations and subject to parliamentary scrutiny through a super-affirmative procedure. Provision was also made at stage 2 for Parliament to be consulted—in accordance with rule 17.5 of standing orders—on draft national outcomes for a 40-day period.

Amendments 27 and 34 propose to remove the requirement for the national outcomes to be set out in regulations, but the Scottish Government is not proposing to remove the requirement for Parliament to be consulted in advance of the outcomes being determined. That would allow the lead committee and the Parliament as a whole to consider and report on the draft national outcomes.

Do members have any comments on the amendments on the national outcomes?

Stewart Stevenson: It is very much to be welcomed that the Government has responded to the committee's concerns about the bill as laid. I think that we are likely to feel that the proposals that are before Parliament for it to agree to or reject tomorrow should be agreed to. I wish the amendments that will be considered tomorrow bon voyage and I welcome the fact that they reflect our previous consideration.

John Scott: I welcome the national outcomes amendments, as they provide what was sought. They mean that Parliament will have the ability to have an input, which is to be welcomed.

The Convener: Amendments 42 and 43 seek to replace section 24A of the bill, which was inserted at stage 2, and to provide a power to make provision in regulations for reviews and appeals in relation to decision notices and participation

requests under part 3. The power would, among other things, allow the Scottish ministers to determine to whom appeals may be made, as well as the time limits that would apply in relation to such appeals. The power is subject to the negative procedure.

I see that members have no comments to make on that.

Amendment 4 provides for a regulation-making power to specify smaller areas or localities that community planning areas must be divided into for the purposes of outcome comparison. The power is subject to the negative procedure. Do members have any comments on that?

Stewart Stevenson: I very much welcome the fact that such flexibility is to be built in. Many councils that cover large territorial areas—Highland Council and Aberdeenshire Council are obvious examples—have area-based management in their internal operations; they have a whole series of area committees. That reflects the fact that localities are often rather smaller than the council area. It is good that such flexibility is to be provided, and we should welcome that. It looks as if the drafting of amendment 4 meets the appropriate needs.

The Convener: Amendments 174 to 176 empower the Scottish ministers to make regulations facilitating supporter involvement in the decisions of football clubs and supported ownership of football clubs, while subsequent amendments remove the current part 5B regarding the right of supporters trusts to buy Scottish Professional Football League clubs. The new power is subject to the affirmative procedure, and various parties must be consulted before regulations are made.

Do members have any comments?

John Mason (Glasgow Shettleston) (SNP): This is probably a step in the right direction, because there was a danger of a rush to legislation. Ministers will have quite wide powers—after all, we are now talking about all football clubs, not just the 42 SPFL clubs—but I accept that a lot of consultation will need to be gone through before anything actually happens. That seems positive, and the fact that the power is subject to the affirmative procedure is positive, too.

The Convener: Members will wish to note that, following last week's meeting, I have lodged amendments on the committee's behalf to deal with its specific concern about the construction of a number of the delegated powers in part 5B as inserted at stage 2. The removal of part 5B would address many of the committee's concerns about the delegated powers in this part, including its concerns about the construction of those powers.

Finally, amendment 103 removes the regulation-making power in section 69A regarding the size of allotments. Last week, the committee called on the Scottish Government to clarify how this power was to interact with the requirements on allotment size set out in section 68. Do members have any comments?

John Mason: It is certainly positive that we have more clarity, as that was our main concern. The area is reasonably controversial, because people were nervous that local authorities would forcibly reduce the size of allotments, and the fact that we now have more clarity and that it appears that this will happen only if people ask for a smaller allotment is a move in a positive direction.

Stewart Stevenson: I welcome the fact that the convener lodged five amendments in the committee's name, even though it is a slightly unusual approach to take. I am equally pleased that the Government has responded to and addressed the points that would otherwise have been covered by amendments and, in particular, that the detail on how it would introduce the secondary legislation to address the issues that we were looking at is spelt out at substantial length. Indeed, that might be a useful model for dealing with such matters in future.

The Convener: If members have no more comments on the Community Empowerment (Scotland) Bill, which will obviously exercise us at length tomorrow afternoon, we will move on.

Air Weapons and Licensing (Scotland) Bill: After Stage 2

11:27

The Convener: Agenda item 6 is consideration of the delegated powers provisions in the Air Weapons and Licensing (Scotland) Bill as amended at stage 2. As our conclusions will form the basis of a report from the committee in advance of the stage 3 debate, which is scheduled for Thursday 25 June, we should agree those conclusions today.

Members will have noted that the Scottish Government has provided a supplementary delegated powers memorandum and will also have seen the briefing paper. There is one delegated power in particular that the committee might wish to comment on.

Section 66C inserts into the Civic Government (Scotland) Act 1982 new section 37A, which provides a new regulation-making power to enable ministers to make provision specifying circumstances in which the entire metal dealer licensing and regulation regime set out in sections 28 to 37 of the 1982 act, including the amendments and new provisions, are not to apply. That also extends to the power to disapply the new and amended provisions in the bill on metal dealer licensing. As a result, the power is widely drawn.

Given the scope of the power, does the committee agree to call on the Scottish Government to consider amending the bill at stage 3 to ensure that the power in section 66C, which inserts new section 37A into the 1982 act, is subject to the affirmative rather than the negative procedure?

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.

John Scott: I would also like to put on record my welcome for the much-needed amendment to the commencement powers in section 78 and the fact that the provision on personal licences will be implemented the day after royal assent. Quite a number of my constituents were going to be affected by the previous provision.

Margaret McCulloch (Central Scotland) (Lab): I agree. This move will make a big

difference to people who at the moment would not be able to reapply for a licence-holder's certificate.

The Convener: Indeed.

Mental Health (Scotland) Bill: After Stage 2

11:30

The Convener: Agenda item 7 is to consider the delegated powers provisions in the Mental Health (Scotland) Bill as amended at stage 2. The stage 3 debate on the bill will take place on Wednesday 24 June. The committee should therefore agree its conclusions today so that they can be captured in a report prior to that debate.

Members will have noted that the Scottish Government has provided a supplementary delegated powers memorandum, and they will have seen the briefing paper.

It is proposed that members may wish to find all the new or amended delegated powers acceptable. Does the committee agree to report that it is content with the provisions in the bill that have been amended at stage 2 to insert or substantially alter provisions that confer powers to make subordinate legislation and other delegated powers?

Members *indicated agreement.*

The Convener: We will now move into private session.

11:30

Meeting continued in private until 11:35.

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