



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 1 September 2015

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EDUCATION AND CULTURE COMMITTEE

18th Meeting 2015, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Siobhan McMahon (Central Scotland) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Chic Brodie (South Scotland) (SNP)

*Mark Griffin (Central Scotland) (Lab)

Gordon MacDonald (Edinburgh Pentlands) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Mary Scanlon (Highlands and Islands) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

James Dornan (Glasgow Cathcart) (SNP) (Committee Substitute)

Fiona Hyslop (Cabinet Secretary for Culture, Europe and External Affairs)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Education and Culture Committee

Tuesday 1 September 2015

[The Convener opened the meeting at 10:03]

Subordinate Legislation

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

The Convener (Stewart Maxwell): Good morning and welcome to the 18th meeting in 2015 of the Education and Culture Committee. I remind everyone to ensure that all electronic devices are switched off at all times.

On a personal note, I welcome everyone back after the summer recess, to the last part of our fourth session. I am sure that, between now and May, it will be enjoyable and that there will be plenty of things to keep us busy.

Gordon MacDonald has sent his apologies this morning, and I welcome James Dornan who is his substitute. I also welcome James Brown. James is one of our modern apprentices and has joined the Education and Culture Committee team.

The first item on the agenda is evidence on the draft Public Records (Scotland) Act 2011 (Authorities) Amendment Order 2015. I welcome Fiona Hyslop, the Cabinet Secretary for Culture, Europe and External Affairs, and her supporting officials from the Scottish Government.

After we have taken evidence on the draft order, we will debate the motion in the name of the cabinet secretary. Officials are not permitted to contribute to that formal debate.

I invite the cabinet secretary to make her opening remarks.

Fiona Hyslop (Cabinet Secretary for Culture, Europe and External Affairs): Thank you, convener.

The purpose of the draft order before the committee today is to amend the schedule to the Public Records (Scotland) Act 2011 to ensure that the records of the designated public authorities are managed in accordance with the act.

The schedule lists the designated authorities that are subject to the act's provisions on improving records management. The authorities that are listed must comply with part 1 of the act, which, among other record management

practices, requires that proper arrangements are in place to ensure that records created by, or on behalf of, a named authority are subject to a records management plan that has been agreed by the keeper of the records of Scotland.

The draft order amends the list of designated authorities in the schedule, adding those that have been created or modified, or whose names have been changed, and removing those that have been abolished since the act came into force. It is necessary to update the schedule to ensure the effective management of records under the act.

The keeper consulted and obtained agreement from the public authorities affected by the proposed amendments. The keeper continues to work with the proposed designated authorities to assist their preparations to fulfil the statutory responsibilities incurred by being listed in the schedule.

As detailed in the business and regulatory impact assessment that was undertaken, the financial implications of the draft order will be minimal. The draft order will financially impact only those bodies that do not already have records management arrangements in place. Of course, having such arrangements in place is a requirement of the act. As I said, those bodies have been consulted and are content with their inclusion on the list and the financial impact that that will have. Furthermore, those organisations that already have records management provision will not incur any significant cost as a result of being listed in the schedule to the act.

The draft order will play a vital role in ensuring that the policy objectives of the act are met. By amending the schedule as proposed, we will ensure that all public records created by those authorities are properly managed and safeguarded for future generations.

I am happy to respond to any questions that members of the committee may have.

The Convener: Thank you. Do any members have questions that they wish to put to the cabinet secretary?

Mary Scanlon (Highlands and Islands) (Con): I am also a member of the Public Audit Committee, which had a report on Glasgow Prestwick airport, which is listed in the order. We were told that commercial confidentiality was an obstacle to gaining certain information. However, we are told at paragraph 6 of the keeper's policy note, which is in paper 1, that

"It is in the public interest for the public records of Glasgow Prestwick Airport to be properly managed and safeguarded as evidence of how public money is used."

What difference does the order make in terms of records management, commercial confidentiality

and the role of the Parliament's Public Audit Committee in auditing, scrutinising and examining how public money is spent on Prestwick airport?

Fiona Hyslop: The issue at Prestwick airport should be dealt with by the relevant minister who deals with the management of Prestwick airport. The publication of information is separate to the issue of records management.

I am not sure whether anyone on the committee was involved in taking the 2011 act through Parliament. The public records management system is very important. Members will recall the cases of historical abuse in which it emerged that many different local authorities and bodies did not keep historical records on children. That was the starting point for the creation of the records management system.

Records management means having a plan to keep records, but how those records are then used publicly, such as in relation to freedom of information, is a matter for different bodies, such as the Public Audit Committee or Audit Scotland. If an organisation does not have a records management system in the first place, it would be easy for it not to keep records properly. One of the reasons for the act was to ensure a proper management system that allows organisations to determine what should be kept or not kept. In a digital age, there needs to be an understanding of what is important to particular organisations.

The purpose of the act is to improve the standard of record keeping and to ensure that records are being kept. Thereafter, it would be up to bodies such as the Public Audit Committee and Audit Scotland to determine how to use those records and what they should request. The draft order simply ensures that the right records are kept and that it is understood what records must be kept. That is slightly different from the issue of what then becomes public, although I absolutely understand the point behind the question.

Mary Scanlon: I understand all that; indeed, it goes without saying. Having been here for a wee while, I think that everything that you have said is known and understood by every MSP.

However, the comment that I have already referred to in paragraph 6 of the keeper's policy note about ensuring that

"in the public interest ... public records"

on

"how public money is used"

are "properly managed" seems to imply an improvement in the system of audit and openness, accountability and transparency. I am not asking about what data needs to be kept and what data does not need to be kept—obviously, I understand

all that. I am asking whether the draft order will improve accountability, transparency and scrutiny in relation to the public pound.

Fiona Hyslop: It depends on how the order is used by the bodies that look at such public records.

Mary Scanlon: I would have thought that we would know that.

Fiona Hyslop: The order is all about managing records and making sure that you have records in the first place; it is not about what you do with those records. TS Prestwick HoldCo Ltd, which is otherwise known as Glasgow Prestwick airport, is, as Mary Scanlon has made clear, a publicly owned company. Like David MacBrayne Ltd and Caledonian Marine Assets Ltd, which are already included in the schedule to the 2011 act, it is wholly funded by the Scottish Government; in other words, the situation is similar to the way in which Caledonian MacBrayne has been managed. This is all about properly managing and safeguarding the public interest with regard to public records as evidence of how public money is used. I should also point out that it is named as a public body on the Scottish Government's directory of national devolved public bodies.

I think that this might be an issue for the Public Audit Committee. I understand Mary Scanlon's point, but as far as records management is concerned, the body in question is being treated similarly to David MacBrayne Ltd and Caledonian Marine Assets Ltd.

Mary Scanlon: I know all that. To be fair, I go back to my first question: what difference does this make to the information that we have already?

Fiona Hyslop: If the body is keeping records as it should do, in alignment with the records management system, it will make no difference whatever. Indeed, some of the bodies concerned already comply with the act. All the draft order does is name the bodies that have a legal requirement to keep records to the standard set out in the 2011 act. I understand that a number of bodies and organisations already comply with the act, but the draft order is about the records management system, not what is done with the records after they are managed in the expected way.

Chic Brodie (South Scotland) (SNP): Following on from Mary Scanlon's question, I have met the new board of Prestwick airport—not, I should point out, Glasgow Prestwick airport—and I think that the board's understanding of governance and record keeping is paramount. I am not so concerned about that. However, having sat through consideration of the Land Registration etc (Scotland) Act 2012, I remember that concern

was expressed about the amount of records that were being kept and their use.

First, who will audit the records and ensure that they are okay, that they have been fully compiled and that they cover all the requirements? Secondly, is information technology involved in any of this and, if so, is anyone checking that to ensure that it is fit for purpose? I recall that there were problems with an IT system that, frankly, ran totally out of control and was not being used because people such as surveyors who might have used it did not think that it was fit for purpose.

Fiona Hyslop: I might ask Bruno Longmore to come in on this, but the job of the keeper, as laid out in the 2011 act, is to ensure that the management plan is sufficient to ensure that the required information is being kept and to allow them to determine what is not being kept. The act's initial purpose was to address a situation in which very personal information with regard to children was not being kept, for example by children's homes or other authorities.

Although the National Records of Scotland is a very important body, it is not the job of the keeper of the records to go through the content of the records of every single public body that has a records management plan. What it can do is make sure that the records management plan produced by each organisation is fit for purpose.

Another reason why we brought in the legislation was to ensure that the records were compliant with IT systems—that, in a digital age, good systems were in place. This is about records management systems, as opposed to an audit of content. For different organisations, the content of the records and what they are used for will be dealt with by the variety of different agencies that hold those organisations to account. What they must do is provide evidence—

Chic Brodie: That concerns me, because one of the requirements for full compliance is the involvement of a variety of agencies. My question is very simple: who will audit the organisations to make sure that the information is bona fide and 100 per cent complete?

Fiona Hyslop: That is not the purpose of the legislation and would not be possible. The legislation, as scrutinised by the Parliament and your predecessor committee, was about having a management system to make sure that there was a gold standard for how organisations kept their information. Whether they are education or housing bodies, the police or whatever, they will have their own bodies that scrutinise the detailed content of their records. It would be wholly unrealistic to expect the keeper of the records of Scotland to have the staff capacity to interrogate

the content of the records of every local authority or public institution to test the veracity of the information.

Chic Brodie: Random audit does not involve large numbers of staff. Even if it were outsourced, you could still have a random audit that made sure that the records were correct and the process was right.

Fiona Hyslop: That is what the audit and compliance systems of the relevant professional bodies for the various organisations will do. You cannot expect the records management system to interrogate the information. It is a records management system; it is not a records interrogation system.

The Convener: Thank you very much, cabinet secretary.

We now move on to agenda item 2, which is the formal debate on the instrument. I invite the cabinet secretary to move motion S4M-13600.

Motion moved,

That the Education and Culture Committee recommends that the Public Records (Scotland) Act 2011 (Authorities) Amendment Order 2015 [draft] be approved.—[*Fiona Hyslop.*]

Motion agreed to.

The Convener: I suspend the meeting briefly to allow the cabinet secretary and her officials to leave.

10:17

Meeting suspended.

10:18

On resuming—

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

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

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St Mary's Music School (Aided Places) (Scotland) Regulations 2015 (SSI 2015/248)

The Convener: Agenda item 3 is consideration of the various pieces of subordinate legislation listed on the agenda. Do members have any comments on the instruments?

Mary Scanlon: The only comment I have, as a signed-up member of the awkward squad, is that we keep being told of failures to comply with the 28-day rule. For example, in relation to the St Mary's Music School (Aided Places) (Scotland) Regulations 2015, paragraph 19 on page 5 of paper 2 states that

"The Scottish Government has provided a letter to the Presiding Officer".

That is fair enough, but why is that letter not provided to the committee on the grounds of openness and transparency, so that we are aware of why the Government cannot comply? That might be helpful for future consideration.

The Convener: It is in the annex. The last sentence of paragraph 19 reads:

"The correspondence is reproduced at Annexe C."

Mary Scanlon: Where is annex C?

The Convener: The paper says that the annexes are online. They are not reproduced otherwise.

Mary Scanlon: Oh, the letter is online. It is not here.

The Convener: It has not been printed, but it is available online. The paper says that the annexes are available online, if you wish to look at them.

Mary Scanlon: I realised that the letter was not included in our papers.

The Convener: You are quite right that it is not in the printed papers.

Mary Scanlon: I am not that exercised that I want to go online to look for it, but I think that it would be helpful in future if we saw the annexes. I cannot imagine that they are weighty documents.

The Convener: The problem is that neither the clerks nor I would know which annexes members would be particularly interested in, and we could end up with a lot of them. The decision that has been taken is that it is easier just to point to the online copy, rather than to print out multiple copies—

Mary Scanlon: To be fair, I think that in this case there is only one relating to this bundle of instruments. Such letters have been sent in the past and I think that, if there is a common reason for not complying, it would be helpful for the committee to know.

The Convener: I am not disagreeing. However, there are a number of annexes—there are more than one. I take the point on board, but I just want to make sure that everyone is aware that the annexes are online and available to view if members have any questions or wish to look at them.

Are there any other points?

Chic Brodie: This is not a big issue, but I bring it up as a result of my time on the Delegated Powers and Law Reform Committee. Paragraph 12 of paper 2 says:

“The Scottish Government has acknowledged that the instrument contains an error, but does not propose to amend it.”

It goes on to say that the Delegated Powers and Law Reform Committee recognises that

“the error is minor in nature however as a matter of good drafting practice, it considers that the error should be corrected when a suitable opportunity next arises.”

Time after time after time in the Delegated Powers and Law Reform Committee, we asked that whoever was drafting legislation should make sure that it was absolutely correct, so that there was no doubt or misinterpretation should we get into a question over meaning. I want to put on the record a plea that we send the message that we expect the highest standards in the legislation presented to us.

The Convener: That has been an issue going back all the time that I have been an MSP, and it is a fair point to make; it has been raised numerous times. On this occasion, I think that the drafting error is very minor, but I accept the point of principle.

Chic Brodie: The next time it will be less minor—more major.

The Convener: I accept the principle. If the committee wishes, I would be happy for us to write to the Government.

Chic Brodie: I think that you will find that the convener of the Delegated Powers and Law Reform Committee is very sympathetic to that view of how legislation is drafted.

The Convener: Do you wish a letter to be written to the Government?

Chic Brodie: No.

The Convener: The point is made about trying to ensure the accuracy of instruments; it is on the record.

As there are no other points from members, does the committee agree to make no recommendation to the Parliament on the instruments?

Members *indicated agreement.*

The Convener: The committee has previously agreed to discuss the next agenda items in private. I therefore now close the meeting to the public.

10:22

Meeting continued in private until 12:34.

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