



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 24 November 2015

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DELEGATED POWERS AND LAW REFORM COMMITTEE
33rd Meeting 2015, Session 4

CONVENER

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

DEPUTY CONVENER

*John Mason (Glasgow Shettleston) (SNP)

COMMITTEE MEMBERS

*Richard Baker (North East 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 24 November 2015

[The Convener opened the meeting at 10:03]

Instruments subject to Affirmative Procedure

Scottish Parliament (Elections etc) Order 2015 [Draft]

The Convener (Nigel Don): I welcome members to the 33rd meeting in 2015 of the Delegated Powers and Law Reform Committee. As always, I ask members to switch off their mobile phones.

Under agenda item 1, we have three affirmative instruments to consider. No points have been raised by our legal advisers on the draft Scottish Parliament (Elections etc) Order 2015. Is the committee content with it?

Members *indicated agreement.*

Budget (Scotland) Act 2015 Amendment 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.*

Victims' Rights (Scotland) 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

Energy Performance of Buildings (Scotland) Amendment Regulations 2015 (SSI 2015/386)

10:03

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

Members *indicated agreement.*

Act of Sederunt (Fees of Solicitors in the Sheriff Appeal Court) 2015 (SSI 2015/387)

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

Air Weapons and Licensing (Scotland) Act 2015 (Commencement No 1) Order 2015 (SSI 2015/382)

10:04

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

Members *indicated agreement.*

Bankruptcy (Scotland) Bill: Stage 1

10:04

The Convener: The purpose of agenda item 4 is for the committee to consider whether the consolidation in parts 5 to 8 of the Bankruptcy (Scotland) Bill correctly restates the enactments that are being consolidated and whether the consolidation is clear, coherent and consistent. The committee is invited to agree the questions that it wishes to raise with the drafter of the bill in written correspondence.

Section 78(5) deals with the exercise by the trustee of any power that is conferred on the trustee by the bill

“in respect of any heritable estate vested in the trustee by virtue of that person’s appointment”.

Does the committee agree to ask the drafter to consider whether replacing the words “that person’s” with the words “the trustee’s” in section 78(5) would enhance the clarity of the provision?

Members *indicated agreement.*

The Convener: Section 78(11) contains the phrase

“a copy of the application being served on the trustee.”

Does the committee agree to ask the drafter to consider whether making explicit the requirement in section 78(11) for the applicant to serve a copy of the application on the trustee would aid the clarity of the provision?

Members *indicated agreement.*

The Convener: There are two sections in the bill in which words from the Bankruptcy (Scotland) Act 1985 as amended are not restated. Does the committee agree to ask the drafter why the words

“whether or not the bank is aware of the sequestration”

in section 32(6) of the 1985 act are not restated in section 86(8) of the bill; and why the word “substantial” in section 32(7) of the 1985 act is not restated in section 87(1) of the bill?

Members *indicated agreement.*

The Convener: The word “or” appears at the end of section 89(2)(c) of the bill but does not appear in the equivalent section of the 1985 act. Does the committee agree to ask the drafter why the word “or” has been included at the end of section 89(2)(c) of the bill and what effect that is considered to have on the meaning of the provision?

Members *indicated agreement.*

The Convener: It appears that a bracket is missing from the end of section 89(3). Does the committee agree to draw that point to the drafter's attention?

Members indicated agreement.

The Convener: It appears that the word "payment" in section 96(5) should be "payments". Does the committee agree to draw that to the drafter's attention?

Members indicated agreement.

The Convener: Does the committee agree to ask the drafter why the term "the recovery provisions" is defined in section 103 rather than in section 101, in which the term is first used?

Members indicated agreement.

The Convener: It appears that the word "arrangements" in section 103(2)(c) should be "arrangement". Does the committee agree to draw that point to the drafter's attention?

Members indicated agreement.

The Convener: Section 103(4) separates paragraphs (a) and (b) with an "or". Section 103(4) is derived from section 36C(4) of the 1985 act. Section 36C(4) of the 1985 act does not separate paragraphs (a) and (b) with an "or". The same issue applies in section 106(4) of the bill.

Does the committee agree to ask the drafter why paragraphs (a) and (b) of sections 103(4) and 106(4) are separated by an "or" when that is not the case in the equivalent sections of the 1985 act; and what effect that is considered to have on the meaning of the provisions?

Members indicated agreement.

The Convener: Section 106(7) of the bill defines "the recovery provisions" in the context of that section as sections 98, 99, 100, 105 and 106 of the bill, but the phrase "the recovery provisions" is also used as a defined term in section 103(7) of the bill to refer to sections 101, 102 and 103 of the bill.

Does the committee agree to ask the drafter why in sections 106(7) and 103(7) it is considered appropriate to use the term "the recovery provisions" to refer to different sections of the bill?

Members indicated agreement.

The Convener: Agenda item 5 also relates to the Bankruptcy (Scotland) Bill, but this item of business is for the committee to consider the drafter's response to the committee's questions on the consolidation in parts 1 to 4 of the bill. The committee has seen the drafter's comments. Do members have any comments?

There being none, are we content to note the response and to raise any issues that arise at next week's evidence session with the Scottish Government and the Scottish Law Commission?

Members indicated agreement.

The Convener: Our next meeting will be next Tuesday.

Meeting closed at 10:08.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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