



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 12 January 2016



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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**2<sup>nd</sup> Meeting 2016, Session 4**

**CONVENER**

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

**DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

\*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 12 January 2016*

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

### Decision on Taking Business in Private

**The Convener (Nigel Don):** I welcome members to the second meeting in 2016 of the Delegated Powers and Law Reform Committee. As always, I ask members to switch off mobile phones.

I must note that Richard Baker has resigned as an MSP, so we are down to four members; I hope that we will not lose any more members before the parliamentary session is up. On behalf of the committee, I record our grateful thanks to Richard for his diligent work over recent times.

Agenda item 1 is a decision on taking business in private. It is proposed that we take item 6 in private, which will enable us to consider a draft of our second quarterly report for the parliamentary year 2015-16. Does the committee agree to take that item in private?

**Members indicated agreement.**

## Instruments subject to Affirmative Procedure

### Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No 2) Order 2015 (SSI 2015/423)

11:32

**The Convener:** The order could be clearer in two ways.

First, the meaning of paragraph 75 of schedule 8B to the Police Act 1997 as inserted by article 3(8) of the order could be clearer. Schedule 8B lists offences that require to be disclosed in response to an application for higher-level disclosure, subject to the rules that are contained in the Police Act 1997 as amended by the order. Paragraph 75 of that schedule lists

“An offence under section 67(2) and (3) ... of the Medicines Act 1968”

as such an offence.

The Scottish Government has indicated that the policy intention is to list any offence that is committed under section 67(2) and, separately, any offence that is committed under section 67(3), but, if the words in paragraph 75 are given their ordinary meaning, the paragraph appears to list only an offence that is an offence under section 67(2) and section 67(3). Given the terms of those subsections, it is not possible for an offence under one subsection to constitute an offence under the other subsection. Therefore, the wording gives rise to a risk of confusion for lay readers of the order.

Secondly, the meaning of paragraph 81(c) of schedule 8B to the Police Act 1997 as inserted by article 3(8) of the order could be clearer. The policy intention as indicated by the Scottish Government was to delete paragraph 81(c), as it does not contain any offence. The continued inclusion of the paragraph in schedule 8B therefore gives rise to a risk of confusion for lay readers of the order.

Does the committee therefore agree to draw the order to the Parliament's attention under reporting ground (h)?

**Members indicated agreement.**

### Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2016 [Draft]

**The Convener:** The order raises the same issues as SSI 2015/423, so does the committee agree to also draw it to the Parliament's attention under reporting ground (h)?

**Members indicated agreement.**

### **Welfare Funds (Scotland) Regulations 2016 [Draft]**

**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 and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Amendment Regulations 2016 [Draft]**

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

**Members** *indicated agreement.*

### **Scottish Public Services Ombudsman Act 2002 Amendment Order 2016 [Draft]**

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

**Members** *indicated agreement.*

### **Bankruptcy and Debt Advice (Scotland) Act 2014 (Consequential Provisions) Order 2016 [Draft]**

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

**Members** *indicated agreement.*

**The Convener:** The committee may wish to note that the order fulfils the Scottish Government's undertaking to bring forward an order under section 55 of the Bankruptcy and Debt Advice (Scotland) Act 2014. The order is made in consequence of that act, and it amends sections 7(2)(b) and 7(4) of the Bankruptcy (Scotland) Act 1985 to bring those provisions into line with section 16 of the Bankruptcy (Scotland) Bill.

### **Water Environment (Amendment of Part IIA of the Environmental Protection Act 1990: Contaminated Land) (Scotland) Regulations 2016 [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**

#### **Housing (Scotland) Act 2014 (Commencement No 5 and Consequential Provision) Order 2015 (SSI 2015/430)**

11:35

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

**Members** *indicated agreement.*

#### **Management of Offenders etc (Scotland) Act 2005 (Specification of Persons) Amendment Order 2015 (SSI 2015/431)**

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

**Members** *indicated agreement.*

#### **Public Bodies (Joint Working) (Integration Joint Boards and Integration Joint Monitoring Committees) (Scotland) Amendment (No 2) Order 2015 (SSI 2015/432)**

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

**Members** *indicated agreement.*

#### **Food (Scotland) Act 2015 (Consequential Provisions) (No 2) Order 2015 (SSI 2015/433)**

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

**Members** *indicated agreement.*

#### **Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2015 (SSI 2015/435)**

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

**Members** *indicated agreement.*

**Inshore Fishing (Prohibited Methods of Fishing) (Luce Bay) Order 2015 (SSI 2015/436)**

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

**Members** *indicated agreement.*

**South Arran Marine Conservation Order 2015 (SSI 2015/437)**

**The Convener:** No points have been raised by our legal advisers on the order. Do members have any comments on it?

**John Scott (Ayr) (Con):** I have a minor concern about the order, in as much as I have been approached by the Clyde Fishermen's Association on it. Apparently, the Government did not consult every organisation that it should have done, the Clyde Fishermen's Association being one such organisation, although I understand that, the CFA's legal advice notwithstanding, the fact that the CFA was not made aware of the order does not affect its validity.

As I believe that the association's concerns relate to the policy of the order, I suggest that it makes representation to the Rural Affairs, Climate Change and Environment Committee. I think that that is the appropriate committee for the CFA to make known its objections to.

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

Is the committee content with the order?

**Members** *indicated agreement.*

**Waste (Meaning of Recovery) (Miscellaneous Amendments) (Scotland) Order 2015 (SSI 2015/438)**

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

**Members** *indicated agreement.*

**Management of Offenders etc (Scotland) Act 2005 (Commencement No 8 and Consequential Provisions) Order 2015 (SSI 2015/397)**

**The Convener:** Our legal advisers have noted that SSI 2015/431 and the Management of Offenders etc (Scotland) Act 2005 (Commencement No 8) Order 2015 (SSI 2015/429) replace the provisions of the Management of Offenders etc (Scotland) Act 2005 (Commencement No 8 and Consequential Provisions) Order 2015 (SSI 2015/397). In relation to that order, the Scottish Government confirmed

to the committee that, in its view, it is of no legal effect, and the Government undertook to lay the corrective instruments.

The Scottish Government has confirmed with the National Archives of Scotland that SSI 2015/397 will not be printed as a Scottish statutory instrument and that it no longer appears on [www.legislation.gov.uk](http://www.legislation.gov.uk). The committee may wish to note that those steps have been taken in highly unusual circumstances in which, subsequent to the laying of an instrument that has purportedly been made by the Scottish ministers, they have publicised the fact that the entire instrument is of no legal effect. The committee has also reported to the Parliament that there is doubt about whether the order is *intra vires*, and it has not been laid for approval by the Parliament.

The committee may also wish to note that the normal practice is to expressly revoke provisions to remove them from the statute book. Although the Government has taken steps with the intention of causing readers less confusion, it appears that some confusion may still arise. For example, stakeholders with an interest in the instruments may read the Parliament's *Official Report* of the consideration of SSI 2015/397, or they may read legal resources beyond [legislation.gov.uk](http://legislation.gov.uk) that might possibly have retained a record of the instrument.

Do members have any comments?

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** In your remarks, convener, you said that the instrument had not been laid for the approval of Parliament. I take a different view. It has appeared in the *Business Bulletin* and, at that point in parliamentary process terms, it has been accepted by the chamber desk and put in the *Business Bulletin*, and it therefore should be regarded as having been laid.

I am perfectly content with the explanations that have been provided that, because it has been agreed by the Government that laid the order that it is *ultra vires* and therefore has no legal effect, the legal aspects of the order concerned are adequately dealt with. I welcome the fact that no printed or otherwise published version will appear in the archives.

However, that still leaves open the question of parliamentary process. The order having been laid, there is no formal recognition by the Parliament that that laying should not have any future effect—in effect that the laying should be undone because the order could not properly be laid.

There are a couple of ways in which that could be dealt with. It could be dealt with by the Parliament simply passing a motion agreeing that the order be unlaid, or it could be reported in the

*Business Bulletin* that the previous report of the laying of the order had no effect and therefore the order should be regarded as not having been laid in the first place.

Those are matters of process, and it may well be that the committee should write to the Standards, Procedures and Public Appointments Committee to ask it to consider whether the disposal of the instrument, which has been laid but could not properly and legally be laid, has actually been completed in a satisfactory way. I suggest that we do that.

**John Scott:** I support Stewart Stevenson in what he says. For completeness, there should be a way of, as it were, unlaying instruments. Given that this is essentially an untidy and inelegant situation in which we find ourselves, it would be wise to refer it to the SPPA Committee and have it consider the matter as soon as possible, so that it can be tidied up before the end of the session.

**The Convener:** Clearly, the committee is agreed that that is what we should try to do. I suggest that we might also refer the matter back to the Government and ask it to consider whether there is anything else that it could sensibly do.

I agree with Stewart Stevenson. I said that the order had not been laid for approval, which would have been the process of bringing it to the Parliament again. There is absolutely no doubt among our legal advisers that it has been laid before the Parliament. That part of the process has been done, and it is that part that undoubtedly needs to be undone if the matter is to be tidied up completely.

Referring the matter to the SPPA Committee to consider in short order would appear to be the way forward.

**Members indicated agreement.**

## **Instruments not subject to Parliamentary Procedure**

### **Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Sheriff Appeal Court) 2015 (SSI 2015/419)**

11:43

**The Convener:** The instrument contains two drafting errors.

The first drafting error is in paragraph 4(2)(a), which amends rule 72(3) of the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988, where the reference to “sheriff principal” should have been omitted in rule 72(3)(b). Secondly, paragraph 12(3)(a)(iv) substitutes a new paragraph (10) of rule 23.1, on appeals, of the Act of Sederunt (Small Claim Rules) 2002. The provision should have substituted a new paragraph (9). The Lord President’s private office has confirmed that those provisions will be corrected within a further instrument, to be laid in due course.

Does the committee agree to draw the instrument to the attention of the Parliament on the general reporting ground?

**Members indicated agreement.**

**John Scott:** How soon is “in due course” likely to be?

**The Convener:** I think that the answer is when another suitable instrument comes forward. That probably does not take us very far.

**John Scott:** Okay.

**The Convener:** Does the committee agree that we want the corrections to be brought forward as soon as is reasonably practicable because we do not like the statute book to be untidy?

**John Scott:** Yes. That is the point that I am trying to make: we would welcome the correction of the errors as soon as possible.

**Members indicated agreement.**

### **Management of Offenders etc (Scotland) Act 2005 (Commencement No 8) Order 2015 (SSI 2015/429)**

**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 Adjournal (Criminal Procedure  
Rules Amendment No 6) (Special  
Measures in the Justice of the Peace  
Court) 2015 (SSI 2015/443)**

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

**Members** *indicated agreement.*

**Apologies (Scotland) Bill: After  
Stage 2**

11:45

**The Convener:** Members are invited to consider the delegated powers contained in the Apologies (Scotland) Bill, as amended at stage 2.

The stage 3 debate will take place on Tuesday 19 January and therefore members should agree their conclusions today. It is proposed that members may wish to find the two substantially amended delegated powers to be acceptable.

Does the committee agree to report that it is content with the delegated powers in the bill that have been substantially amended at stage 2?

**Members** *indicated agreement.*

11:45

*Meeting continued in private until 11:53.*



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