



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 9 February 2016

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DELEGATED POWERS AND LAW REFORM COMMITTEE

6th Meeting 2016, Session 4

CONVENER

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

DEPUTY CONVENER

*John Mason (Glasgow Shettleston) (SNP)

COMMITTEE MEMBERS

*Lesley Brennan (North East Scotland) (Lab)

*John Scott (Ayr) (Con)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 9 February 2016

[The Convener opened the meeting at 11:18]

Instruments subject to Affirmative Procedure

Local Government Finance (Scotland) Order 2016 [Draft]

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

Under agenda item 1, no points have been raised by our legal advisers on the draft Local Government Finance (Scotland) Order 2016. Is the committee content with it?

Members *indicated agreement.*

Instruments subject to Negative Procedure

National Health Service (General Dental Services) (Scotland) Amendment Regulations 2016 (SSI 2016/53)

11:19

The Convener: The regulations contain some drafting errors. First, regulation 2(5) inserts new subparagraphs 1(v) and 1(w) in part IA of schedule 2 to the National Health Service (General Dental Services) (Scotland) Regulations 2010 (SSI 2010/208)—the principal regulations. As subparagraph 1(v) already exists, the new subparagraphs should have been inserted as 1(w) and 1(x).

Secondly, the provisions of part IA of schedule 2 to the principal regulations apply to those persons who apply to join sub-part A of the first part of the dental list in Scotland. Part IA lists matters that are to be included in that application. Sub-part A consists of a list of dentists and bodies corporate that have undertaken to provide general dental services in a health board's area.

Part II of schedule 2 to the principal regulations applies to those persons who apply to join the second part of the dental list. Part II lists matters that are to be included in that application. The second part consists of dentists who are approved by a health board to assist in the provision of general dental services. There is an omission, as the Scottish Government intends that the provisions of new subparagraphs 1(v) and 1(w), to which I have just referred, should have been replicated in part II of schedule 2 to the principal regulations.

The Scottish Government intends to lay an amending instrument early in the next parliamentary session to correct those errors.

Does the committee agree to draw the regulations to the attention of the Parliament on the general reporting ground, as they contain a couple of drafting errors?

Members *indicated agreement.*

Waste Management Licensing (Scotland) Amendment Regulations 2016 (SSI 2016/40)

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

Members *indicated agreement.*

Reservoirs (Scotland) Regulations 2016 (SSI 2016/43)

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

Members *indicated agreement.*

Children and Young People (Scotland) Act 2014 (Relevant Services in relation to Children at Risk of Becoming Looked After etc) Order 2016 (SSI 2016/44)

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

Members *indicated agreement.*

Carbon Accounting Scheme (Scotland) Amendment Regulations 2016 (SSI 2016/46)

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

Members *indicated agreement.*

Public Contracts (Scotland) Amendment Regulations 2016 (SSI 2016/47)

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

Members *indicated agreement.*

Orkney Islands (Landing of Crabs and Lobsters) Order 2016 (SSI 2016/50)

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

Members *indicated agreement.*

Water and Sewerage Services Licences (Cross-Border Applications) (Scotland) Order 2016 (SSI 2016/52)

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 (Submission of Business Plan) Order 2016 (SSI 2016/55)

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

Members *indicated agreement.*

Regulation of Investigatory Powers (Prescription of Ranks and Positions) (Scotland) Order 2016 (SSI 2016/56)

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

Members *indicated agreement.*

Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2016 (SSI 2016/59)

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

Members *indicated agreement.*

Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Amendment Regulations 2016 (SSI 2016/61)

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

Members *indicated agreement.*

Teachers' Superannuation and Pension Scheme (Scotland) Amendment Regulations 2016 (SSI 2016/62)

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

Members *indicated agreement.*

Croft House Grant (Scotland) Regulations 2016 (SSI 2016/63)

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

Members *indicated agreement.*

Registration Services (Fees, etc) (Scotland) Amendment Regulations 2016 (SSI 2016/64)

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

Procurement Reform (Scotland) Act 2014 (Commencement No 3 and Transitional Provisions) Order 2016 (SSI 2016/30)

11:23

The Convener: The order commences, among other provisions, the schedule to the Procurement Reform (Scotland) Act 2014, in so far as it is not already in force. That provision is of no effect, as the schedule has already been brought into force by virtue of a previous order—it was brought into force by SSI 2015/331 on 28 September 2015.

Does the committee therefore agree to draw the order to the attention of the Parliament under the general reporting ground, as it contains a provision of no effect?

John Mason (Glasgow Shettleston) (SNP): I think that this is unfortunate. I take the point that, legally, the provision has no effect, but I think that there is scope for confusion for the ordinary reader about whether the schedule came into force on 28 September 2015—which is indeed when it came into force—or whether it is to come into force on 18 April this year, as the order that we are considering would appear to suggest.

I feel that there should be some way of that being officially noted, to clarify matters for the public eye because, depending on which piece of legislation someone looks at first, they could be confused about whether the schedule was to come into force on 18 April this year or whether it came into force on 28 September last year.

The Convener: That is a perfectly fair point. I simply make the point that the order brings in other provisions, which do come into force in April, so it is not the case that the entire instrument is redundant.

John Scott (Ayr) (Con): I support what John Mason has said.

Is there anything that the Government can easily and reasonably do to clarify the situation, not for the experienced reader but for the layperson, to make it more easily accessible to those who might wish to look at it?

The Convener: Indeed. The question is now on the record, and we will draw it to the Parliament's attention. The Government might consider how it might be able to amend the record that people will consult, in order to get them to the right answer.

Are we agreed to report in those terms?

Members indicated agreement.

Reservoirs (Scotland) Act 2011 (Commencement No 5 and Transitional Provision) Order 2016 (SSI 2016/42)

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

Members indicated agreement.

Children and Young People (Scotland) Act 2014 (Commencement No 11) Order 2016 (SSI 2016/60)

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

11:25

The Convener: This item is to allow the committee to consider the Scottish Government's response to its stage 1 report on the Bankruptcy (Scotland) Bill. It is expected that the committee will consider stage 2 on 23 February.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): First, I welcome the response from the Minister for Business, Energy and Tourism, which accepts what the committee has said. I raise the relatively small point that there will be some printing changes, which—I am given informally to understand—relate only to punctuation.

When such printing changes are made—even though there is no decision for us to make, and I accept that that is the case—it would be helpful if we had a very brief response from the Government noting that they are going to be made and giving a broad description of what they are. That would mean that, if changes occur that have unexpected effect or if people notice them, it can be seen where they have come from.

I have not encountered printing changes at this stage of the passage of a piece of legislation before. Although I am perfectly comfortable about them, I am being my usual pernickety self about process.

John Scott: I support what Stewart Stevenson has said. It might be worth the minister referring to the point in the stage 3 debate or elsewhere, to reinforce the view that, while the amendments that have been made are to punctuation, there is no policy intention to change any of the meanings that might appear to have been changed.

It would be helpful to have on the record that the previous acts should be the point of reference for the proper meaning, notwithstanding the changes of punctuation.

The Convener: My understanding is that we have not yet seen the changes that have been proposed, so we cannot comment on whether they are punctuation only, although that is clearly the expectation.

I had at one point suggested that we have an amendment that took out all the particular bits of punctuation, but our processes do not allow that because the changes have to be brought forward at the correct point of every bill. It would be madness to have amendments for dots and commas, but we will have to see whether we can sort this out.

I share the expressed view that we should somewhere have in black and white what has been changed, even if it is not formally approved within the process.

John Scott: There is no question but that a change in punctuation can change the meaning of a piece of legislation. Although I am sure that the Government will have taken all precautions not to change the meaning by inserting punctuation where before there was different punctuation or none, it would be good to have on the record that it has addressed that thought.

The Convener: It is interesting to note that, in principle, punctuation is not supposed to be capable of changing legislation, but there may be occasions when it does.

Stewart Stevenson: I was just going to make that point. I understand that punctuation must be ignored when reading legislation, in the same way that the headings are not part of the legislation and add nothing to the meaning. That is my understanding, but I am not a lawyer, and I will always defer to those who give me legal advice.

John Scott: I am happy to be corrected on that. If I have raised a spurious point, then so be it.

The Convener: I do not think that you have raised a spurious point. There might be occasions when punctuation inadvertently changes legislation. Without the punctuation there is more than one meaning, and there might be more than one meaning with the punctuation. The courts might have to sort that out.

John Mason: I will be slightly more positive. I think that the Government's response is very positive and that it is an endorsement of the committee's work. Although there are clearly lots of ways that the bill could have been structured, I think that we are all now agreed that restructuring the bill at this stage is not a good idea. The Government has taken on board the point about abbreviations and the comments that we made about the use of the words "forthwith" and "or". I think that that is a positive response.

The Convener: I am sure that the Government will have noted our observations about the minor printing changes. Are we content to note the response from the Government?

Members indicated agreement.

The Convener: Thank you very much. That completes the agenda.

Meeting closed at 11:31.

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