



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 15 March 2016

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DELEGATED POWERS AND LAW REFORM COMMITTEE
12th 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

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 15 March 2016

[The Convener opened the meeting at 10:49]

Decision on Taking Business in Private

The Convener (Nigel Don): Good morning. I welcome members to the 12th meeting in 2016 of the Delegated Powers and Law Reform Committee. As always, I ask members to switch off mobile phones, please.

Agenda item 1 is a decision on taking business in private. It is proposed that the committee takes item 4 in private. This will enable the committee to consider a draft of its third quarterly report for the parliamentary year 2015-16. Does the committee agree to take item 4 in private?

Members indicated agreement.

Burial and Cremation (Scotland) Bill: After Stage 2

10:50

The Convener: This item is for the committee to consider the delegated powers provisions in the Burial and Cremation (Scotland) Bill following stage 2.

After stage 2, there are a number of new and substantially revised delegated powers in the bill. The majority of the changes reflect the committee's comments at stage 1, and the committee may wish to welcome those changes.

Section 66 contains a revised power allowing the Scottish ministers to make regulations for or in connection with a licensing scheme for funeral directors' businesses. The revised power takes on board the committee's comments at stage 1 by clarifying that the scheme will apply to the funeral directors' businesses rather than their premises.

At stage 1 the committee also considered that licensing schemes ought, as a matter of principle, to be set out in primary legislation rather than delegated entirely to regulations. In relation to that issue, the provisions are unchanged after stage 2. Such a licensing scheme could significantly impact on funeral directors, but it is not possible to assess the impact at present, as the bill delegates the making of regulations about the licensing scheme to subordinate legislation.

Does the committee agree that matters relating to the licensing of funeral directors' businesses should be set out more fully on the face of the bill, given their significance?

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): One of the very important parts of the bill comes on the back of public concern over disposal of ashes from babies and others. If we are going to tackle this sensitive issue—and the whole issue of burials and cremations is sensitive—I think that we need to have the maximum parliamentary consideration. I think that the Government should certainly be asked to do a wee bit more. In any event, I think that it is important that we put on the record that the development of a licensing scheme needs to have the fullest possible parliamentary scrutiny, by whatever means it is achieved.

John Mason (Glasgow Shettleston) (SNP): I agree with that. It is encouraging that there have been quite a lot of amendments to the bill that take on board some of the other concerns we had. However, this seems to be the main area in which we had concerns but amendments have not been made. Ideally, I would like to see everything—or as much as possible—on the face of the bill. Given

the timescales, that may be difficult, but that would certainly be my desire.

John Scott (Ayr) (Con): I concur with my colleagues. I too would like to see as much of the legislation as possible on the face of the bill; I do not want to see regulations when they can be avoided. I very much welcome the effort the Government has made in putting stuff—sorry, I am at a loss for words this morning—on the face of the bill. I will leave it at that.

Lesley Brennan (North East Scotland) (Lab): It is important to note that the Government's change from applying the scheme to the funeral directors' premises to their businesses is a welcome one. On the power, I think that I would be more comfortable with an enhanced form of affirmative procedure.

The Convener: I get the impression that colleagues are with me in saying that we need to encourage the Government to set down as much on the face of the bill as it can. Recognising the timetables we are now operating on, that may be unrealistic.

I am wondering whether we should encourage the Government to see an enhanced form of procedure as appropriate for the regulations when they come forward, given that they are going to be close to the kinds of things we would like to see on the statute anyway—and that has, by definition, an enhanced form of consultation.

Clearly, I could write to the Government. At this late stage, I am not sure that that would be terribly helpful, but maybe I should do so. We could lodge an amendment that sets out an enhanced form of affirmative procedure for the regulations so that, at the very least, there is one to be debated. That would avoid running the risk of being, as it were, timed out.

Stewart Stevenson: By whatever means it can be achieved, it would be useful for there to be an amendment before Parliament at stage 3, whether it is lodged by the Government or by the convener in the name of the committee, so that the matters that are giving us concern can be addressed.

If the minister recommends to Parliament that the amendment not be agreed to and that is the position that Parliament takes, at least the opportunity will have been created for the record to carry a very clear statement of intent on what the Government plans to do in this area. I think that the lodging of an amendment—whatever source it comes from—would be helpful in achieving that.

John Mason: We are very tight for time, but I would be inclined to suggest that, in the first instance, we write to the Government and encourage it to lodge an amendment. However,

the reality is that we have already suggested that and the Government has lodged other amendments but not the one that we are asking for, so I suppose that I am not wildly optimistic.

We should write a letter first and be ready to follow that up with an amendment of our own if we think that nothing is happening.

The Convener: It is worth putting on the record my understanding that, following the usual convention, the Government needs to have lodged any amendment by 4.30 this afternoon. On one level, that is plenty of time, but it is not much time if it is starting from scratch. Equally, I have until 4.30 tomorrow afternoon to lodge an amendment in the committee's name, which I would be very happy to do.

Lesley Brennan: I would welcome you communicating with the Government on the issue, convener. If it is not willing to lodge a suitable amendment, I would be comfortable with you lodging, on behalf of the committee, an amendment that provides for an enhanced form of affirmative procedure. We do not want to end up with a second-best outcome just because of the time constraints that we are under.

The Convener: We all seem to be in the same place. I do not want to try to draft the relevant form of words now—it will be for those around me to do that, on reflection. I will simply read a form of words that members might agree is the principle on which we want to operate.

John Mason: Can I just clarify that you are outlining the principle rather than the actual text of an amendment?

The Convener: Yes, I am outlining the principle rather than the text of an amendment, which I will definitely leave to those who are skilled at that kind of thing.

In order to enable Parliament to properly scrutinise and influence the development of the proposals, the committee would welcome an enhanced form of affirmative procedure that includes: first, a requirement for there to be consultation on draft regulations; secondly, a requirement for the consultation responses to be had regard to and the draft regulations modified as appropriate; and, thirdly, a requirement for a summary of the consultation responses to be published along with any changes to the draft regulations and the reasons for making those changes prior to the final draft regulations being laid before Parliament.

Does that feel like the basis on which we could operate?

Members indicated agreement.

The Convener: It sounds as though the committee is unanimously of the view that that is what I should try to do. As a matter of good grace, we will alert the Government to the fact that we are going to do that. I will make sure that the committee has drafted and lodged an amendment in our name by 4.30 tomorrow if nothing else appears to pre-empt that. Are members comfortable with that?

Members *indicated agreement.*

The Convener: Does the committee also agree to report that it is content with the remaining new or substantially revised delegated powers after stage 2?

Members *indicated agreement.*

Land Reform (Scotland) Bill: Before Stage 3

10:58

The Convener: Agenda item 3 is for the committee to consider the correspondence that has been received from the Scottish Government on its stage 3 amendments to part 3 of the Land Reform (Scotland) Bill. The Scottish Government has written to the committee to describe its amendments to section 36 of the bill, which change one delegated power and create one new delegated power.

Is the committee content with the proposed delegated powers in section 36 of the bill?

Members *indicated agreement.*

The Convener: Members will also note that this morning we have seen for the first time amendment 140, in the name of Richard Lochhead, which seeks to modify section 89A. It relates to land valuations, and the regulations for which it provides seem to be subject to the affirmative procedure, as the committee had desired.

Do members have any comments, or are we comfortable to acknowledge that?

Stewart Stevenson: I simply think that it is appropriate to welcome the lodging of that manuscript amendment and the Presiding Officer's acceptance of it. That is helpful and is the proper response to this committee's deliberations and inputs.

The Convener: Is the committee content with the proposed delegated power?

Members *indicated agreement.*

The Convener: That completes agenda item 3, and I move the meeting into private.

10:59

Meeting continued in private until 11:09.

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