



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Thursday 17 March 2016



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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**13<sup>th</sup> 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 James Clerk Maxwell Room (CR4)



## Scottish Parliament

### Delegated Powers and Law Reform Committee

Thursday 17 March 2016

*[The Convener opened the meeting at 09:30]*

### Decision on Taking Business in Private

**The Convener (Nigel Don):** Welcome to the 13th meeting in 2016 of the Delegated Powers and Law Reform Committee. As always, I ask members to switch off their mobile phones.

It is proposed that the committee take agenda item 5 in private to enable the committee to consider a draft legacy paper. Do we agree to take the item in private?

**Members indicated agreement.**

## Abusive Behaviour and Sexual Harm (Scotland) Bill: After Stage 2

09:30

**The Convener:** This item is for the committee to consider the delegated powers provisions in the Abusive Behaviour and Sexual Harm (Scotland) Bill following stage 2.

Members have before them a briefing on delegated powers in the bill as revised at stage 2 and a letter from the Cabinet Secretary for Justice concerning relevant stage 3 amendments.

At stage 2, a new delegated power was added to section 19(8). Section 19 provides the court that is hearing the matter with powers to vary, renew or discharge a sexual harm prevention order. A hearing must be held in specific circumstances.

The power in subsection (8) enables rules of court to provide for the time limit within which the person against whom the order has effect, the chief constable or the prosecutor—as the case may be—may give notice to the sheriff of their wish for a hearing to take place. Any resulting rules of court would be laid before the Parliament but not subject to further procedure.

Subsections (7) and (8) of section 19, as currently drafted, contain an error. The power has been drafted to relate to the time period for giving notice to a sheriff of a wish for a hearing to be held before the sheriff determines the application. The first line of subsection (7) also refers to “a sheriff”. However, in accordance with subsections (1) and (3) of section 19, the court that hears an application for variation, renewal or discharge of a sexual harm prevention order is the “appropriate court”, which may be either the High Court of Justiciary or a sheriff court, depending on the proceedings.

The committee might wish to note that the Scottish Government has lodged amendments at stage 3 so that subsections (7) and (8) would refer to an application made to, and notice to, the “appropriate court”, instead of to a sheriff court only.

Does the committee agree that the power in section 19(8) is acceptable in principle, and are we content that the rules of court would be laid but not subject to further procedure?

**Members indicated agreement.**

**The Convener:** Does the committee agree to note the error in subsections (7) and (8) and the Scottish Government's stage 3 amendments that will rectify it?

**Members** *indicated agreement.*

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

**Members** *indicated agreement.*

## **Burial and Cremation (Scotland) Bill: After Stage 2**

09:32

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

I wrote to the Scottish Government after our last meeting to set out the committee's concerns on section 66, which contains a revised power allowing the Scottish ministers to make regulations for or in connection with a licensing scheme for funeral directors' businesses.

Given the potential impact that the scheme could have on individuals, the committee considered that matters relating to the licensing of funeral directors' businesses should be set out more fully in the bill. Recognising that that might not be possible due to time constraints, the committee asked the Scottish Government to consider attaching an enhanced affirmative procedure to the power. Yesterday, the Scottish Government lodged an amendment to ensure that an enhanced affirmative procedure will apply to the power.

Do members agree to note and welcome that response from the Scottish Government?

**Members** *indicated agreement.*

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I think that that is an excellent result that indicates that the Government has listened to the concerns of the committee. Throughout the passage of the bill, the committee has made a positive contribution. I am glad that the Government has listened, and I am glad that we have had the first-class advice from our clerks and advisers that has enabled us to achieve this result.

**John Scott (Ayr) (Con):** I agree with everything that Stewart Stevenson has said and I welcome the amendment, which leaves this committee more content with the bill than we were when we were first introduced to it.

**The Convener:** Thank you.

## Annual Report

09:34

**The Convener:** Agenda item 4 is consideration of a draft annual report for the parliamentary year from 11 May 2015 to 23 March 2016. Under rule 12.9 of standing orders, the committee is obliged to report to the Parliament at the end of each parliamentary year on its activities during that year. We have before us a draft annual report for the parliamentary year 2015-16.

Do members have any comments on the draft report?

**Stewart Stevenson:** I just have a very minor comment. I think that the last sentence of paragraph 3 should read, "The bill will be debated at Stage 3 on 22 March 2016", rather than the current wording.

**The Convener:** Indeed. I am sure that that is the standard form of words, and I am sure that we will adopt that.

Do members have any other comments on that item or—given that this is the final item in the public part of what is likely to be our last meeting in the session; we may have one next Tuesday if required, but that seems unlikely—on any other matter?

**John Scott:** I will just say that, notwithstanding the fact that we have been busy, it comes as quite a surprise to me to discover that we have considered 323 statutory instruments in the year, as well as everything else that we have done. I put on record my thanks to our clerks and legal advisers for all the help that we have had in our consideration of those matters.

**Lesley Brennan (North East Scotland) (Lab):** I thank all the committee staff for helping me to get up to speed very quickly. I really appreciate all the effort that has been put into all the reports and the additional support that has been provided, which have been very helpful.

**Stewart Stevenson:** I take the opportunity to contribute to ensure that we have unanimity in our praise for our clerks and advisers, which is hard earned and well deserved.

**The Convener:** Indeed. As the convener, I echo that.

If it is possible for me to embarrass our clerks and legal advisers, I will willingly do so. I do not know whether they are embarrassable—maybe, as people who have advised MSPs for a while, they have ceased being embarrassable—but I think that they are absolutely fab. They have done an extraordinarily good job, not just for the committee but for the Government, in picking up

all sorts of stuff that normal people do not pick up. Their patience is obvious and their skills are, frankly, proverbial. If that embarrasses them, so be it.

Given that this is the final opportunity to do so, I would also like to thank those around us: the official report, those in broadcasting and those who attend to all the technicalities, which seem always to work. We are extremely grateful. I thank our security officers—there is one here who represents all the others—for giving us an environment in which we can hold our discussions.

I also thank Joe FitzPatrick and his predecessors as minister with responsibility for parliamentary business, because there has been a dialogue with the Government. I am sure that Euan Donald, our clerk, would recognise that his counterparts in the Government listen to what he says and that we have a dialogue, which enables many of the changes that we propose to be achieved.

I hope that I have not left anybody out.

Finally, I thank my fellow members for their diligence over the past session. We have been incredibly busy, but the fact that we are a small crew has made it work very well. That has been the case only because members have engaged with the committee's work enormously well. Thank you very much.

**John Scott:** I would like to thank you, convener, for your sympathetic and intelligent convening of the committee over the past five years. I think that you have done a very good job. It is down to you, in large measure, that the committee has worked so well together and has by and large—in fact, almost without exception—spoken with one voice. I think that that is down to your thoughtful and sympathetic convening, so I thank you for your convenership of the committee over the past five years.

**Stewart Stevenson:** Hear, hear.

**The Convener:** Thank you for those kind words.

That brings us to the end of agenda item 4, and I move the meeting into private.

09:39

*Meeting continued in private until 10:09.*





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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