



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 13 September 2016

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 13 September 2016

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DELEGATED POWERS AND LAW REFORM COMMITTEE

4th Meeting 2016, Session 5

CONVENER

*John Scott (Ayr) (Con)

DEPUTY CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

COMMITTEE MEMBERS

*Rachael Hamilton (South Scotland) (Con)

*Monica Lennon (Central Scotland) (Lab)

*David Torrance (Kirkcaldy) (SNP)

*attended

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 13 September 2016

[The Convener opened the meeting at 10:30]

Instruments subject to Affirmative Procedure

First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016 [Draft]

First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Panel) Regulations 2016 [Draft]

First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016 [Draft]

The Convener (John Scott): Good morning everyone. I welcome members of the committee and members of the public to the fourth meeting in session 5 of the Delegated Powers and Law Reform Committee.

Members will know that Elaine Smith MSP has resigned from the committee and we wish her well. I welcome our new member, Monica Lennon, who attended last week as a substitute and has now been appointed a full member of the committee. I welcome her to her first meeting in that capacity.

Agenda item 1 is the consideration of instruments subject to affirmative procedure. The first three instruments that we have before us are part of a package of instruments on the First-tier Tribunal for Scotland. I bring to the committee's attention the fact that these draft regulations were initially laid on 19 August but were withdrawn and relaid on 8 September to address drafting errors that were identified by our legal advisers.

The frequency with which instruments were withdrawn in the latter part of the previous session in particular was of considerable concern to our predecessor committee. I hope that this situation is an isolated incident and does not reflect the continuation of a trend from the previous session. It is simply not satisfactory for instruments laid before the Parliament to be in such a poor condition that they require to be withdrawn.

There are now no points to raise on the three instruments. Is the committee content with them?

Members *indicated agreement.*

First-tier Tribunal for Scotland Housing and Property Chamber and Upper Tribunal for Scotland (Composition) 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 Tribunals (Offences in Relation to Proceedings) 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.*

First-tier Tribunal for Scotland (Chambers) 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.*

First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) 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.*

Prohibited Procedures on Protected Animals (Exemptions) (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.*

Council Tax (Substitution of Proportion) (Scotland) 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.*

Climate Change (Annual Targets) (Scotland) 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.*

Climate Change (Limit on Use of Carbon Units) (Scotland) 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.*

Instruments subject to Negative Procedure

Scottish Tribunals (Time Limits) Regulations 2016 (SSI 2016/231)

10:34

The Convener: Item 2 is consideration of instruments subject to negative procedure. There is a discrepancy between the provision in regulation 2(4) of the regulations and the provision in rule 29(3) of the Upper Tribunal for Scotland rules of procedure as contained in the schedule to the Upper Tribunal (Rules of Procedure) Regulations 2016 (SSI 2016/232).

Rule 29(3) of the Upper Tribunal rules applies where the Upper Tribunal gives its decision orally at a hearing and does not provide written reasons for its decision. The rule provides that a party seeking written reasons must request those reasons within 14 days of the oral decision. It does not require the request for written reasons to be in writing.

Regulation 2(4) provides that, where a decision of the Upper Tribunal is given orally at a hearing and a party requests written reasons in writing within 14 days, the relevant date from which the 30-day period for permission to appeal begins to run is the date on which written reasons were sent. Where written reasons are requested within 14 days, but are not requested in writing, the relevant date is the date of the oral hearing.

The Scottish Government's response acknowledges that there is an anomaly between the two sets of provisions in that the Upper Tribunal rules do not require a request for reasons to be made in writing. The Scottish Government proposes to amend rule 29(3) of the Upper Tribunal rules by amending regulations to come into force on 1 December 2016 to require requests for written reasons to be in writing. The committee notes and welcomes the Scottish Government's intention to amend that rule.

Does the committee wish to draw the regulations to the Parliament's attention under the general reporting ground?

Members *indicated agreement.*

The Convener: Separately, the committee may wish to note that the interaction between provision in the regulations on the time limit for permission to appeal a First-tier Tribunal decision and the period that is required for any review of that decision will not be clear until the Scottish Government brings forward rules of procedure for the First-tier Tribunal.

The committee does not draw that matter to the Parliament's attention in respect of its reporting grounds, but does the committee wish to indicate to laying authorities that, where two instruments cross-refer to each other or otherwise make provision that is dependent on provision to be made in another instrument, it would be extremely helpful to the committee if both instruments could be laid before Parliament at the same time or otherwise made available to the committee?

Members *indicated agreement.*

Council Tax Reduction (Scotland) Amendment (No 2) Regulations 2016 (SSI 2016/253)

The Convener: Our legal advisers consider that the regulations raise a devolution issue, as they may relate to matters that are reserved by section F1 of part II of schedule 5 to the Scotland Act 1998. The regulations raise a devolution issue for the same reasons as were set out in the legal advisers' recommendations on the Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303) and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319).

It appears to our legal advisers that the regulations further the implementation of the schemes established by the Council Tax Reduction (Scotland) Regulations 2012 and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012. In particular, that is done in two ways.

First, there is an uprating of an amount of child allowance that is used in those principal regulations in the calculation of council tax reduction that a claimant is entitled to receive. Secondly, further provision for reduction is made in respect of households that live in higher-band houses but with a weekly net income below a specified level, where the council tax rate for a property is within the tax bands E to H. Those amendments are consistent with the original purpose of the principal regulations.

It is recognised that the Scottish Government takes a contrary view.

Do members have any comments?

Stuart McMillan (Greenock and Inverclyde) (SNP): I assume that the Scottish Government will have had legal advice to allow it to come to a contrary view to that of the committee advisers.

The Convener: I dare say. Notwithstanding, we have our legal advisers, too, and it is not unknown for Scottish Government legal advice to differ from the legal advice given to this committee. This is one such example. It has often been the case—I think it is recorded in our statistics that this has

happened something like 75 per cent of the time—that the Scottish Government has accepted the advice of the legal advisers to this committee. However, in this case it has chosen not to.

Stuart McMillan: This is not the first time that this situation has arisen on this particular set of regulations.

The Convener: It is not. There has been a division in the committee since the first regulations were introduced in 2012 or 2013—I cannot remember which. You are right in what you say.

If no one else wishes to say anything, we will proceed. Does the committee wish to draw the regulations to the attention of Parliament on reporting ground (f), on the basis that they raise a devolution issue?

Members: No.

The Convener: In that case, I will put a proposition to the committee. The proposition is that the committee considers that the regulations raise a devolution issue and should be drawn to the attention of the Parliament on that basis. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Hamilton, Rachael (South Scotland) (Con)
Lennon, Monica (Central Scotland) (Lab)
Scott, John (Ayr) (Con)

Against

McMillan, Stuart (Greenock and Inverclyde) (SNP)
Torrance, David (Kirkcaldy) (SNP)

The Convener: The result of the division is: For 3, Against 2, Abstentions 0.

The proposition is agreed to and we will draw the regulations to the attention of the Parliament on reporting ground (f).

Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 (SSI 2016/232)

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

Members *indicated agreement.*

Road Traffic (Permitted Parking Area and Special Parking Area) (Highland Council) Designation Order 2016 (SSI 2016/245)

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

Members *indicated agreement.*

**Parking Attendants (Wearing of Uniforms)
(Highland Council Parking Area)
Regulations 2016 (SSI 2016/246)**

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

Members *indicated agreement.*

**Road Traffic (Parking Adjudicators)
(Highland Council) Regulations 2016 (SSI
2016/247)**

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

Members *indicated agreement.*

**Scottish Fire and Rescue Service
(Framework) Order 2016 (SSI 2016/249)**

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

Members *indicated agreement.*

**Water Environment (Shellfish Water
Protected Areas: Designation) (Scotland)
Order 2016 (SSI 2016/251)**

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
Procedure**

**Act of Sederunt (Registration Appeal
Court) 2016 (SSI 2016/241)**

10:43

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 (Rules of the Court of
Session 1994 and Sheriff Court Rules
Amendment) (No 3) (Miscellaneous) 2016
(SSI 2016/242)**

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 (Fitness Assessment
Tribunal Rules) 2016 (SSI 2016/244)**

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

Members *indicated agreement.*

**Land Reform (Scotland) Act 2016
(Commencement No 2 and Transitory
Provisions) Regulations 2016 (SSI
2016/250 (C 21))**

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: Thank you. That concludes the business for today.

Meeting closed at 10:44.

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.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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