



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 20 September 2016

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE

5th 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 20 September 2016

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (John Scott): I welcome everyone to the Delegated Powers and Law Reform Committee's fifth meeting in session 5 and I invite members to turn off their mobile phones.

Agenda item 1 is a decision on taking business in private. Do members agree to take in private item 5, which provides an opportunity for the committee to discuss its work programme?

Members indicated agreement.

Instruments subject to Affirmative Procedure

Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016 [Draft]

10:01

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

Members indicated agreement.

Legal Aid (Scotland) Act 1986 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.

Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 (Fixed Penalty Notices) 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 (Variation for Unoccupied Dwellings) (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.

Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of Scottish Fiscal Commission as Specified Authority) 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.

Representation of the People (Postal Voting for Local Government Elections) (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.*

Instruments subject to Negative Procedure

Children's Services Planning (Specified Date) (Scotland) Order 2016 (SSI 2016/255)

10:02

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

Members *indicated agreement.*

Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2016 (SSI 2016/257)

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

Members *indicated agreement.*

Representation of the People (Variation of Limit of Candidates' Local Government Election Expenses) (Scotland) Order 2016 (SSI 2016/263)

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

Members *indicated agreement.*

General Dental Council (Fitness to Practise) (Amendment) Rules Order of Council 2016 (SSI 2016/902)

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

Act of Sederunt (Lay Representation for Non-Natural Persons) 2016 (SSI 2016/243)

10:03

The Convener: Section 97 of the Courts Reform (Scotland) Act 2014 sets out the matters on which a court must be satisfied before it may grant permission for a lay representative to conduct proceedings on behalf of a non-natural person. Section 97(3) provides that the court must be satisfied that, among other things,

“the lay representative is a suitable person to conduct ... proceedings”.

Section 97(4) provides that, for such purposes, a lay representative is a suitable person to conduct proceedings if, again among other things,

“the lay representative does not have a personal interest”—

as defined in section 97(5)—

“in the subject matter of the proceedings.”

On the other hand, the form that is in the instrument includes a declaration that is to be made by the prospective lay representative that, among other things, they do

“not have a personal interest, within the meaning of section 97(5) ... in the outcome of the case.”

The Lord President’s private office considers that there is no difference in effect between the two formulations of having a personal interest

“in the subject matter of the proceedings”

and having a personal interest

“in the outcome of the case.”

It considers the two formulations to be synonymous ways of describing the same parliamentary intent—that is, that a representative should not have a personal interest in the case.

Our legal advisers suggest that we could consider that a user of the legislation would not necessarily take the wording in the act and the wording in the form to be synonymous with each other. We might therefore consider that the difference in wording between the form and the act has the scope to cause confusion for the user of the legislation, who might question why different words have been used and whether any difference in meaning is intended. That scope for confusion would be removed if the wording of the form echoed that of the act.

The committee could consider that the difference in wording between the form and the act has led to a lack of clarity, in that the meaning of

the declaration in the form could be clearer when read in light of the wording in the act. Does the committee wish to draw the instrument to the Parliament’s attention under reporting ground (h), as the meaning of the form that is set out in the schedule to the instrument could be clearer?

Members *indicated agreement.*

Children and Young People (Scotland) Act 2014 (Commencement No 12 and Saving Provision) Order 2016 (SSI 2016/254 (C 22))

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) Act 2016 (Commencement and Transitory Provision) Regulations 2016 (SSI 2016/256 (C 23))

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

Members *indicated agreement.*

Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 (Commencement) Regulations 2016 (SSI 2016/259 (C 24))

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

Members *indicated agreement.*

Community Justice (Scotland) Act 2016 (Commencement No 1 and Transitional Provision) Regulations 2016 (SSI 2016/262 (C 25))

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: We should congratulate the Government on laying so many instruments among which there is only one with which we are finding fault. That is to be applauded and welcomed.

That concludes the committee’s public business.

10:08

Meeting continued in private until 10:23.

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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