



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 4 October 2016

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 4 October 2016

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DELEGATED POWERS AND LAW REFORM COMMITTEE
7th 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

THE FOLLOWING ALSO PARTICIPATED:

George Adam (Paisley) (SNP) (Committee Substitute)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 4 October 2016

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (John Scott): I welcome members to the Delegated Powers and Law Reform Committee's seventh meeting in session 5. We have received apologies from David Torrance, who is unable to attend, and we are pleased to welcome George Adam, who is attending as a substitute member.

It is proposed that the committee take in private item 5, which will be an opportunity for the committee to consider its approach to considering Scottish statutory instruments that arise from the Bankruptcy (Scotland) Act 2016. Is the committee content to consider that item in private?

Members *indicated agreement.*

Instruments subject to Affirmative Procedure

Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 [Draft]

10:00

The Convener: Article 4(1) of the order appears to be defectively drafted. It makes transitional provision that the several modifications of primary and secondary legislation that are set out in schedule 1, other than those in paragraph 7, do not apply to small claims in the sheriff court. The reference to paragraph 7 is an error, because the Scottish Government intends the modifications that are contained in paragraph 8 to apply to small claims. Those in paragraph 7 should not so apply.

The error was drawn to the Scottish Government's attention and it proposes to correct the error in the minister's signing copy, should the Parliament affirm the draft order. However, our legal briefing suggests that the error in the transitional provision is neither highly self-evident nor insignificant. In addition, the draft order has been published on www.legislation.gov.uk.

The committee could report that the draft order should be withdrawn and relaid in the correct terms for approval by the Parliament. Alternatively, if re-laying the order raises a difficulty, the Scottish Government could consider laying an amending order to correct the error in time for the order's coming into force on 28 November.

Do members have any comments? There being none, does the committee wish to draw the order to the Parliament's attention on reporting ground (i), as article 4(1) appears to be defectively drafted?

Members *indicated agreement.*

The Convener: Does the committee wish to accept the recommendation in our legal briefing that we call on the Scottish Government to withdraw and re-lay the draft order in the correct terms for approval by the Parliament?

Members *indicated agreement.*

Budget (Scotland) Act 2016 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

Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2016 (SSI 2016/290)

10:03

The Convener: Regulation 2(2)(c) contains a drafting error. New regulation 5(2)(ba) of the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (SI 1989/1490) as inserted by regulation 2(2)(c) of SSI 2016/290 defines a simple procedure case with reference to section 72(3) of the Courts Reform (Scotland) Act 2014, but section 72(3) of that act does not contain a definition of a simple procedure case—rather, it lists types of proceedings that

“may only be brought subject to simple procedure”.

The definition of “simple procedure case” is found instead in section 72(9) of the 2014 act.

The committee notes that the Scottish Government intends to amend the definition of “simple procedure case” in the 1989 regulations some time in advance of the date on which the remaining provisions of the 2014 act that relate to simple procedure come into force. That date is expected to be no earlier than September 2017.

In addition, there is a drafting error in paragraph 2 of the table of civil legal aid fees in new schedule 2A to the 1989 regulations, as inserted by regulation 2(3) of SSI 2016/290 and the schedule to that instrument. The entry in paragraph 2 sets a fee for the time that a solicitor or a solicitor’s clerk spends

“in carrying out work other than that prescribed in paragraphs ... 3 to 6”

of the table. The reference should be to work other than that prescribed in paragraphs 3 to 7.

The Scottish Government intends to correct the error by correction slip but, as the error does not appear to be self-evident, the committee could call on the Scottish Government to correct it by amending instrument.

Do members have any comments? There being none, does the committee wish to draw the Parliament’s attention to the regulations under the general reporting ground?

Members *indicated agreement.*

The Convener: Does the committee wish to note that the first error is to be corrected by the laying of an amending instrument?

Members *indicated agreement.*

The Convener: Does the committee wish to call on the Scottish Government to correct the second error by the laying of an amending instrument rather than by way of a correction slip?

Members *indicated agreement.*

Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment (No 2) Regulations 2016 (SSI 2016/264)

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

**Private Housing (Tenancies) (Scotland)
Act 2016 (Commencement No 1)
Regulations 2016 (SSI 2016/298 (C 28))**

10:07

The Convener: SSI 2016/298 is not subject to any parliamentary procedure. Is the committee content with it?

Members *indicated agreement.*

The Convener: Excellent—thank you very much. That concludes the committee's public business.

10:07

Meeting continued in private until 10:15.

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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