



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 29 November 2016

Session 5



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE

13th Meeting 2016, Session 5

CONVENER

John Scott (Ayr) (Con)

DEPUTY CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

COMMITTEE MEMBERS

*Alison Harris (Central Scotland) (Con)

*Monica Lennon (Central Scotland) (Lab)

David Torrance (Kirkcaldy) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Annie Wells (Glasgow) (Con) (Committee Substitute)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 29 November 2016

[The Deputy Convener opened the meeting at 10:00]

Interests

The Deputy Convener (Stuart McMillan): Good morning. I welcome members to the Delegated Powers and Law Reform Committee's 13th meeting in session 5. Apologies have been received from the convener, John Scott. I welcome Annie Wells, who is attending as a substitute for him. As this is the first meeting of the committee that she has attended, I invite her, in accordance with section 3 of the code of conduct, to declare any relevant interests.

Annie Wells (Glasgow) (Con): I have no interests that are relevant to the committee. I refer people to my entry in the register of members' interests.

Instruments subject to Negative Procedure

Asset Transfer Request (Procedure) (Scotland) Regulations 2016 (SSI 2016/357)

10:00

The Deputy Convener: The meaning of regulations 12 and 13 could be clearer. Regulation 13(1) could be made clearer to clearly give effect to the policy intention that one or more contact addresses may be determined in accordance with the regulation. Regulations 12 and 13 could be made clearer to clearly give effect to the policy intention that, when a community transfer body sends an electronic communication from an address other than a contact address or addresses contained in an asset transfer request or as subsequently notified in accordance with regulation 13(2), that does not alter the contact address or addresses.

On account of that lack of clarity, does the committee agree to draw the regulations to the Parliament's attention on reporting ground (h)?

Members indicated agreement.

The Deputy Convener: Does the committee also agree to call on the Scottish Government to lay an amending instrument to improve the clarity of regulations 12 and 13 and to ensure that that amending instrument takes effect timeously for the regulations coming into force on 23 January 2017?

Members indicated agreement.

Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358)

The Deputy Convener: The meaning of the regulations could be clearer. Regulation 12(1) could be made clearer to clearly give effect to the policy intention that there is no requirement for the Scottish ministers to appoint a member of their own staff to a review panel. Regulation 18(1) could be made clearer to clearly give effect to the policy intention that one or more contact addresses may be determined in accordance with the regulation. Regulations 18 and 19 could be made clearer to clearly give effect to the policy intention that, when a community transfer body sends an electronic communication from an address other than a contact address or addresses contained in the application for review, or as subsequently notified in accordance with regulation 18(2), that does not alter the contact address or addresses.

Does the committee agree to draw the regulations to the Parliament's attention on

reporting ground (h), on account of that lack of clarity?

Members indicated agreement.

The Deputy Convener: There is also a drafting error in regulation 18(2). The reference to the “Scottish Ministers” should be a reference to the “relevant body”. For that reason, does the committee agree to report the regulations under the general reporting ground, too?

Members indicated agreement.

The Deputy Convener: The Scottish Government has undertaken to rectify regulations 12(1) and 18(2) by laying an amending instrument, which will take effect timeously for the regulations coming into force on 23 January 2017. In light of the undertaking to lay an amending instrument, does the committee agree to call on the Scottish Government to include in that instrument provision to improve the clarity of regulation 18(1) and regulations 18 and 19 taken together?

Members indicated agreement.

Asset Transfer Request (Appeals) (Scotland) Regulations 2016 (SSI 2016/359)

The Deputy Convener: Regulation 16(1) could be made clearer to clearly give effect to the policy intention that one or more contact addresses may be determined in accordance with the regulation. Regulations 16 and 17 could be made clearer to clearly give effect to the policy intention that, when a community transfer body sends an electronic communication from an address other than a contact address or addresses contained in a notice of appeal or as subsequently notified in accordance with regulation 16(2), that does not alter the contact address or addresses.

Does the committee agree to draw the regulations to the Parliament’s attention on reporting ground (h) because of a lack of clarity, for the aforementioned reasons?

Members indicated agreement.

The Deputy Convener: Does the committee also agree to call on the Scottish Government to lay an amending instrument that would improve the clarity of regulations 16 and 17 and ensure that that amending instrument takes effect timeously for the regulations coming into force on 23 January 2017?

Members indicated agreement.

Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016 (SSI 2016/360)

The Deputy Convener: Regulation 5(1) could be made clearer to clearly give effect to the policy

intention that there is no requirement for the Scottish ministers to appoint a member of their own staff to a review panel.

Regulation 18(1) could be made clearer to clearly give effect to the policy intention that one or more contact addresses may be determined in accordance with the regulation.

Regulations 18 and 19 could be made clearer to clearly give effect to the policy intention that, when a community transfer body sends an electronic communication from an address other than a contact address or addresses contained in a notice of appeal or application, or as subsequently notified in accordance with regulation 18(2), that does not alter the contact address or addresses.

On account of that lack of clarity, does the committee agree to draw the instrument to the Parliament’s attention on reporting ground (h)?

Members indicated agreement.

The Deputy Convener: There is a drafting error in rule 4(2)(a) in the schedule. The reference to a

“notice in writing from the review panel person”

should omit the word “person”. With that in mind, does the committee agree to draw the instrument to the Parliament’s attention on the general reporting ground?

Members indicated agreement.

The Deputy Convener: The Scottish Government has undertaken to rectify the above matters, apart from those in relation to regulations 18 and 19, by laying an amending instrument. That will take effect timeously for the regulations coming into force on 23 January 2017.

In light of the undertaking to lay an amending instrument, does the committee agree to call on the Scottish Government to include in that instrument provision to improve the clarity of regulations 18 and 19?

Members indicated agreement.

Community Empowerment (Registers of Land) (Scotland) Regulations 2016 (SSI 2016/362)

The Deputy Convener: There is an anomaly in relation to the numbering of sub-paragraphs (d)(i) and (d)(ii) of regulation 2(1). Those sub-paragraphs should be included under a separate sub-paragraph (e), with the numbering in the remaining sub-paragraphs in regulation 2(1) updated accordingly.

Given that anomaly, does the committee agree to draw the instrument to the Parliament’s attention on reporting ground (h), as the form of regulation 2 could be clearer?

Members indicated agreement.

The Deputy Convener: The regulations also contain drafting errors. Sub-paragraph (g) of regulation 2(1) incorrectly refers to the

“Police and Fire (Scotland) Act 2012”,

when it should refer to the “Police and Fire Reform (Scotland) Act 2012”. Similarly, sub-paragraph (i) of regulation 2(1) incorrectly refers to the

“Land Registration (Scotland) Act 2012”,

when it should refer to the “Land Registration etc (Scotland) Act 2012”.

On account of those errors, does the committee agree to draw the regulations to the Parliament’s attention on the general reporting ground?

Members indicated agreement.

The Deputy Convener: Does the committee agree to welcome the undertaking by the Scottish Government to lay a further instrument to clarify the provisions in respect of all three of those points, which is to take effect before the regulations come into force on 23 January 2017?

Members indicated agreement.

Land Reform (Scotland) Act 2016 (Consequential and Saving Provisions) Regulations 2016 (SSI 2016/366)

The Deputy Convener: When the estate of a deceased person contains two or more interests as tenant under a lease of an agricultural tenancy, the saving provision in regulations 3(1)(c) and 3(2) could implement more clearly the policy intention that it applies only in respect of an interest or interests that have not been bequeathed by will or other testamentary writing, even though there may be a bequest of another interest or interests.

Accordingly, does the committee agree to draw the regulations to the Parliament’s attention on reporting ground (h), as the meaning of regulations 3(1)(c) and 3(2) could be clearer?

Members indicated agreement.

The Deputy Convener: Does the committee agree to welcome the Scottish Government’s urgent laying of a further instrument to clarify the provisions?

Members indicated agreement.

The Deputy Convener: No points have been raised by our legal advisers on the following two instruments.

Air Quality Standards (Scotland) Amendment Regulations 2016 (SSI 2016/376)

Land Reform (Scotland) Act 2016 (Consequential and Saving Provisions) Amendment Regulations 2016 (SSI 2016/389)

The Deputy Convener: Is the committee content with the instruments?

Members indicated agreement.

Instruments not subject to Parliamentary Procedure

10:10

The Deputy Convener: No points have been raised by our legal advisers on the following two instruments.

Community Empowerment (Scotland) Act 2015 (Commencement No 4 and Transitory Provision) Order 2016 (SSI 2016/363 (C 32))

Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (Commencement No 2, Transitional and Transitory Provision) Regulations 2016 (SSI 2016/370 (C 34))

The Deputy Convener: Is the committee content with the instruments?

Members *indicated agreement.*

The Deputy Convener: Our next meeting will be on Tuesday 6 December, when we will again consider Scottish statutory instruments.

Meeting closed at 10:11.

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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