



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 7 February 2017

Session 5



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE
5th Meeting 2017, 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

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 7 February 2017

[The Convener opened the meeting at 10:48]

Decision on Taking Business in Private

The Convener (John Scott): I welcome members to the Delegated Powers and Law Reform Committee's fifth meeting in 2017. Under agenda item 1, it is proposed that the committee takes items 7 and 8 in private. Item 7 provides the opportunity to scrutinise the delegated powers provisions in the Railway Policing (Scotland) Bill and item 8 is consideration of the committee's correspondence to the commission on parliamentary reform. Does the committee agree to take those items in private?

Members *indicated agreement.*

Instruments subject to Approval

Scottish Landfill Tax (Standard Rate and Lower Rate) Order 2017 (SSI 2017/23)

10:49

The Convener: The order is subject to the provisional affirmative procedure. Use of the provisional affirmative procedure is common in United Kingdom tax legislation, but it is relatively uncommon in legislation that is enacted by the Scottish Parliament. The form of provisional affirmative procedure that is to be used for the purposes of the order is set out in section 41(3) of the parent statute—the Landfill Tax (Scotland) Act 2014.

Under that procedure, the order must be laid before the Scottish Parliament and will cease to have effect unless it is affirmed by resolution of the Parliament within 28 days of being made. That 28-day period does not take account of periods of dissolution or recess of more than four days. It is worth observing that the order was made on 26 January and that the Parliament will be in recess from 11 February up to and including 19 February.

No points have been raised by our legal advisers on the order. Is the committee content with it?

Members *indicated agreement.*

Instruments subject to Affirmative Procedure

10:50

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

**Judiciary and Courts (Scotland) Act 2008
(Scottish Land Court) Order 2017 [Draft]**

**Continuing Care (Scotland) Amendment
Order 2017 [Draft]**

**National Health Service (Scotland) Act
1978 (Independent Clinic) Amendment
Order 2017 [Draft]**

**Scottish Fiscal Commission (Modification
of Functions) Regulations 2017 [Draft]**

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments subject to Negative Procedure

**Non-Domestic Rates (Rural Areas)
(Scotland) Regulations 2017 (SSI 2017/22)**

10:51

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

10:51

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

Health (Tobacco, Nicotine etc and Care) (Scotland) Act 2016 (Commencement No 1) Regulations 2017 (SSI 2017/12 (C 2))

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Temporary Exclusion Orders) 2017 (SSI 2017/26)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Draft Instruments subject to Approval

Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 [Draft]

10:52

The Convener: Under agenda item 6, we will consider the draft Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017, which is document SG/2017/8, and the proposed explanatory document, which is SG/2017/9. The draft order has been initially laid under a super-affirmative procedure, which means that it is required to go through pre-legislative scrutiny that involves a formal consultation period of 60 days before the Parliament will be asked to agree to it.

The draft order seeks to amend the Insolvency Act 1986, the Bankruptcy (Scotland) Act 2016 and the Public Services Reform (Insolvency) (Scotland) Order 2016 (SSI 2016/141). Its purposes are to modernise certain aspects of Scottish corporate insolvency law to bring them into line with the position in England and Wales; to promote the on-going operation and rescue of viable businesses that are subject to personal insolvency proceedings; and to apply certain aspects of the 2016 order to the winding-up of a company that was under way when that order came into force, as opposed to those aspects applying only to a new winding-up.

The explanatory document that was laid with the draft order sets out the background to it, the policy objectives and the effect of the various provisions. Four points that arose from the draft order were raised with the Scottish Government. As a result, the Scottish Government has undertaken to update some aspects of the explanatory document.

Does the committee therefore agree not to draw the instrument to the Parliament's attention but to welcome the Scottish Government's agreement to update the proposed explanatory document in the following respects: to explain in further detail why the Scottish ministers consider that article 6 of the draft order does not prevent any person from continuing to exercise any right or freedom that that person might reasonably expect to continue to exercise, in accordance with sections 18(2)(e) and 27(1)(d)(i) of the Public Services Reform (Scotland) Act 2010; and to explain why articles 6 to 8 of the draft order reduce a burden within the meaning of section 17(2)(c) of the 2010 act—that is, an obstacle to best regulatory practice—in accordance with section 27(1)(d)(ii) of that act?

Members indicated agreement.

10:56

The Convener: Does the committee also agree to encourage the Scottish Government to update the explanation that the explanatory document provides in relation to articles 3 and 4 of the draft order so that it refers specifically to paragraph 10 of schedule 8 to the Insolvency Act 1986, as that would assist readers of the explanatory document to understand more fully the basis on which the powers and duties of liquidation committees are defined in rules that are made under section 411 of that act?

Meeting continued in private until 11:16.

Members indicated agreement.

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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