



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Delegated Powers and Law Reform Committee

**Tuesday 16 May 2017**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**Tuesday 16 May 2017**

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**16<sup>th</sup> 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 16 May 2017*

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

**Decision on Taking Business in**  
**Private**

**The Convener (John Scott):** Good morning, everyone. I welcome members to the Delegated Powers and Law Reform Committee's 16th meeting in 2017. Under agenda item 1, it is proposed that the committee takes in private item 7, which is consideration of the committee's work programme. Are members content that we do so?

**Members** *indicated agreement.*

**Instruments subject to**  
**Affirmative Procedure**

10:00

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

**Insolvency (Regulation (EU) 2015/848)**  
**(Miscellaneous Amendments) (Scotland)**  
**Regulations 2017 [Draft]**

**Human Trafficking and Exploitation**  
**(Scotland) Act 2015 (Relevant Trafficking**  
**or Exploitation Offences and Relevant UK**  
**Orders) Regulations 2017 [Draft]**

**Criminal Justice (Scotland) Act 2016**  
**(Consequential and Transitional**  
**Provisions) Regulations 2017 [Draft]**

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

**Members** *indicated agreement.*

## Instruments subject to Negative Procedure

### M90/A90 Trunk Road (Admiralty Interchange to Dalmeny) (Variable Speed Limits, Actively Managed Hard Shoulder and Bus Lane) Regulations 2017 (SSI 2017/129)

10:01

**The Convener:** The regulations provide for variable speed limits, a bus lane and an actively managed hard shoulder on various sections of the M90/A90 Edinburgh to Fraserburgh trunk road from Admiralty interchange to Dalmeny.

Regulation 6 applies the Motorways Traffic (Scotland) Regulations 1995 (SI 1995/2507) to the “relevant road” as if they have been modified to provide for an actively managed hard shoulder. The “relevant road” is the M90/A90 Edinburgh to Fraserburgh trunk road from Admiralty interchange to Dalmeny. That will permit the use of an actively managed hard shoulder on the new Queensferry crossing by specified buses in certain circumstances.

Among other things, regulation 6 of SSI 2017/129 modifies the 1995 regulations in their application to the “relevant road” to make provision for how restrictions on stopping and other traffic restrictions apply to an “emergency refuge area”. The definition of that expression in regulation 6(a)(i) appears to be defectively drafted. It is defined as

“a part of the relevant special road”

that meets certain criteria that are set out in heads (a) and (b). The “relevant special road” is not defined by SSI 2017/129, the Road Traffic Regulation Act 1984, by virtue of which SSI 2017/129 is made, or the Motorways Traffic (Scotland) Regulations 1995.

Accordingly, do members agree to draw the regulations to the Parliament’s attention on reporting ground (i), as they appear to be defectively drafted, for the reason that I just outlined?

**Members indicated agreement.**

**The Convener:** The Scottish Government has indicated to the committee that it will keep the possibility of an amendment to correct that drafting error under review when it considers future regulations in this area.

**Monica Lennon (Central Scotland) (Lab):** I take some comfort from the fact that the Scottish Government recognises the drafting error. However, on this occasion, I do not think that it

gives us enough comfort to know that the error will be dealt with at some undefined point in the future. As committee members know, such commitments can sometimes drift on. I would prefer the Government to give a commitment that the matter will be addressed with some urgency.

**The Convener:** You make a good point. I understand that the error could affect the consideration of road traffic offences. As this is a new construction project, the new legislation should be absolutely fit for purpose at the outset.

**Alison Harris (Central Scotland) (Con):** I absolutely concur with Monica Lennon that the error should be corrected urgently. If we leave the matter unattended to, it might affect people’s lives, which is not acceptable.

**The Convener:** In that case, I will make a suggestion. Regulation 6 makes provision for the actively managed hard shoulder on the new Queensferry crossing, which is a development of major significance. Does the committee agree that the error should be corrected by amendment as soon as possible and that we should invite the Government to do so?

**Members indicated agreement.**

### Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No 2) Regulations 2017 (SSI 2017/149)

**The Convener:** The regulations were originally laid before Parliament on 21 April 2017. Members will recall that, at its meeting on 9 May 2017, the committee agreed to draw them to the Parliament’s attention because they appeared to be defectively drafted. The regulations that are before us, which were laid before Parliament on 10 May 2017, correct those defective-drafting errors. They will come into force on 31 May 2017, apart from regulation 2, which will come into force on 1 June 2017.

As a consequence of the Scottish Government correcting the drafting errors that the committee identified, the regulations do not respect the requirement that at least 28 days should elapse between the laying of an instrument that is subject to the negative procedure and its coming into force. Accordingly, does the committee agree to draw the regulations to Parliament’s attention under reporting ground (j) because they fail to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010?

**Members indicated agreement.**

**The Convener:** However, does the committee agree to find the failure to comply with section 28 of the 2010 act to be acceptable in the

circumstances, as the regulations correct timeously defects that the committee identified in the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017 (SSI 2017/120)?

**Members** *indicated agreement.*

**The Convener:** Furthermore, in accordance with the committee's objective of reducing the number of outstanding instruments that need to be amended wherever possible, does the committee agree to welcome the Scottish Government's prompt bringing forward of an amended instrument?

**Members** *indicated agreement.*

**Academic Awards and Distinctions  
(University of the Highlands and Islands)  
(Scotland) Order of Council 2017 (SSI  
2017/146)**

**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**

**Human Trafficking and Exploitation  
(Scotland) Act 2015 (Commencement No 3  
and Transitional Provisions) Regulations  
2017 (SSI 2017/140 (C 11))**

10:08

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

**Members** *indicated agreement.*

## **Air Departure Tax (Scotland) Bill: Stage 1**

**The Convener:** Does the committee agree to note the Scottish Government's position on section 10(2)?

**Members** *indicated agreement.*

10:09

**The Convener:** Item 5 is consideration of the Scottish Government's response to the committee's recommendations at stage 1 of the Air Departure Tax (Scotland) Bill.

Members will recall that the committee recommended that the Scottish Government should lodge amendments to the bill at stage 2 in two areas. First, the committee recommended that the Scottish Government should lodge amendments that make detailed provision for exemptions from the definitions of "chargeable passenger" and "chargeable aircraft", as that would afford Parliament the best opportunity for full and effective scrutiny of a significant aspect of the bill's policy.

Secondly, the committee recommended that the Scottish Government should consider lodging an appropriate amendment at stage 2 to more closely align the power in section 10(2) with its stated policy intention of enabling the Scottish ministers to make provision relating to the core structure of the air departure tax, as provided for in section 9, which does not relate to tax bands or tax rate amounts.

The Scottish Government has responded to the Finance and Constitution Committee and, in so doing, it has responded to this committee's recommendations. The Scottish Government has advised that it will lodge amendments at stage 2 that provide for passenger and aircraft exemptions. The response further notes that the Scottish Government is exploring issues concerning the introduction of an air departure tax exemption for passengers who fly from Highlands and Islands airports.

However, the Scottish Government has advised that section 10(2) as drafted, when it is read in context with sections 10(1) and 10(3), is consistent with the policy intention of providing a secondary legislation power to make provision relating to the structure of the tax beyond defining tax bands and setting tax rate amounts. Therefore, the Scottish Government does not plan to lodge an amendment at stage 2 to that provision.

Accordingly, does the committee agree to welcome the Scottish Government's intention to lodge amendments that make detailed provision for exemptions from the definitions of "chargeable passenger" and "chargeable aircraft"?

**Members** *indicated agreement.*



## **Railway Policing (Scotland) Bill: Stage 1**

10:12

*Meeting continued in private until 10:30.*

10:11

**The Convener:** Item 6 is consideration of the Scottish Government's response to the committee's recommendation at stage 1 of the Railway Policing (Scotland) Bill. The committee recommended that the power in new section 85C(1) of the Police and Fire Reform (Scotland) Act 2012, as inserted by section 1 of the bill, should be amended at stage 2 so that it is subject to the affirmative procedure. The Scottish Government has responded to the stage 1 report of the Justice Committee, as lead committee on the bill, and, in so doing, it has agreed to this committee's recommendation.

Accordingly, does the committee agree to welcome the Scottish Government's intention to lodge an amendment at stage 2 to make the power in new section 85C(1) of the 2012 act, as inserted by section 1 of the bill, subject to the affirmative procedure?

**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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