



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Delegated Powers and Law Reform Committee

**Tuesday 20 June 2017**

**Session 5**



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Pàrlamaid na h-Alba

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**21<sup>st</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

**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 20 June 2017*

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

**Decision on Taking Business in  
Private**

**The Deputy Convener (Stuart McMillan):** Good morning, everyone, and welcome to the Delegated Powers and Law Reform Committee's 21st meeting in 2017. We have received apologies from our convener, John Scott, and from Alison Harris. I welcome Annie Wells, who is attending as a substitute member for John Scott.

**Annie Wells (Glasgow) (Con):** Good morning.

**The Deputy Convener:** Under agenda item 1, it is proposed that the committee should take in private item 7, which is consideration of the delegated powers provisions in the Forestry and Land Management (Scotland) Bill. Does the committee agree to take that item in private?

**Members** *indicated agreement.*

**Instruments subject to  
Affirmative Procedure**

**Advice and Assistance (Proceedings for  
Recovery of Documents) (Scotland)  
Regulations 2017 [Draft]**

10:00

**The Deputy 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

### Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/180)

10:01

**The Deputy Convener:** The purpose of the regulations is to make a number of amendments to seven sets of regulations on student fees, allowances, loans and bursaries.

Our legal advisers have identified an issue in relation to the drafting of new paragraph (4)(b)(i) of regulation 2 of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (SSI 2006/333), which is inserted by regulation 3(b) of SSI 2017/180, in that it could be clearer. In particular, it could be clearer that the words “that person” in the final line of subparagraph (b)(i) in the 2006 regulations are intended to refer to the person who will be undertaking a course of study rather than to that person’s parents or guardians or any other person who has parental responsibility or care of them when they are a child. Multiple references to “a person”, “that person”, “any person” and “any other person” in subparagraph (b)(i) affect the clarity of the provision. Accordingly, does the committee agree to draw the regulations to the Parliament’s attention under reporting ground (h), for the reason that I just outlined?

*Members indicated agreement.*

**The Deputy Convener:** In addition, the provision of a more detailed policy note or further supporting documentation to explain in full the policy intention that underlies the provision would have assisted the committee in its scrutiny of the regulations.

Given that the regulations make detailed technical amendments to the eligibility criteria for student support and tuition fee loans, in part in response to a judgment of the United Kingdom Supreme Court that upheld a challenge on human rights grounds to the existing eligibility criteria that apply under the equivalent England and Wales regulations, does the committee agree to express its disappointment that fuller supporting documentation or an impact assessment was not supplied and to express its concern that a consultation was not considered necessary?

*Members indicated agreement.*

**The Deputy Convener:** Furthermore, our legal advisers have identified that the regulations contain four drafting errors. First, the word “the” is omitted from the beginning of subparagraph (b)(ii)

of new regulation 2(4) of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006, which is inserted by regulation 3(b) of SSI 2017/180. Secondly, in new paragraph (9)(a) of regulation 2 of the 2006 regulations, which is inserted by regulation 3(c) of SSI 2017/180, and in new paragraph (8)(a) of regulation 2 of the Education (Student Loans) (Scotland) Regulations 2007 (SSI 2007/154), which is inserted by regulation 16(b) of SSI 2017/180, the references to “paragraph 2(4)(b)” should be references to “regulation 2(4)(b)”. Thirdly, in regulation 10(b) of SSI 2017/180, in the reference to “(5)(b)” and “(6)(a)(iii) and (b)” of schedule 1 to the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 (SSI 2007/151), the parentheses around “5” and “6” should be deleted. Fourthly, the reference to “regulation 2(3) and (4)” in regulation 22 of SSI 2017/180 should be to “regulation 2(2) and (3)”.

Does the committee therefore agree to draw the regulations to the Parliament’s attention under the general reporting ground, on account of the drafting errors that I just outlined?

*Members indicated agreement.*

**The Deputy Convener:** Nonetheless, does the committee agree to welcome the Scottish Government’s commitment to amend those provisions the next time it makes regulations on student support?

*Members indicated agreement.*

### Welfare Reform (Consequential Amendments) (Scotland) Regulations 2017 (SSI 2017/182)

**The Deputy Convener:** The purpose of the regulations is to introduce a maximum earned income threshold for entitlement to free school lunches and free early learning and childcare for two-year-old children in circumstances in which the child or the child’s parent is in receipt of universal credit.

Our legal advisers have identified that the regulations have been made by what appears to be an unusual or unexpected use of the powers that are conferred by the parent statute. The regulations are made under powers that are conferred by sections 1 and 3 of the Welfare Reform (Further Provision) (Scotland) Act 2012. Those powers enable consequential amendments to be made to subordinate legislation as a result of the introduction of universal credit by part 1 of the Welfare Reform Act 2012.

However, regulation 2 amends provisions in the Education (School Lunches) (Scotland) Regulations 2009 (SSI 2009/178) that were made under powers that are contained in paragraphs (a)

and (b) of section 53(3) of the Education (Scotland) Act 1980, and regulation 3 amends provisions in the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014 (SSI 2014/196) that were made under powers to make an order that are contained in section 47(2)(c) of the Children and Young People (Scotland) Act 2014.

It would have been a usual and expected use of powers for the Scottish Government to have selected the powers that are contained in the 1980 act and the 2014 act to make the provisions of SSI 2017/182, rather than the powers that are contained in the 2012 act. If the Scottish Government had chosen to use the powers in section 47(2)(c) of the 2014 act to make the provisions that are contained in regulation 3, the Parliament would have been enabled to consider the amendments to the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014 with the higher scrutiny level that the affirmative procedure allows. The choice to use the powers in the 2012 act downgrades the scrutiny procedure for the consideration of regulation 3 to the negative procedure. The use of the powers in the 2014 act would also have involved laying a separate order in draft.

As for regulation 2 of SSI 2017/182, the use of the powers that are contained in the 2012 act rather than those in the 1980 act appears to have had no different effect.

Accordingly, does the committee agree to draw the regulations to the Parliament's attention on reporting ground (g), for the reasons that I outlined?

**Members indicated agreement.**

### **Building (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/188)**

**The Deputy Convener:** The regulations amend the Building (Scotland) Regulations 2004 (SSI 2004/406), the Building (Procedure) (Scotland) Regulations 2004 (SSI 2004/428), the Building (Fees) (Scotland) Regulations (SSI 2004/508) and the Building (Forms) (Scotland) Regulations 2005 (SSI 2005/172).

Regulation 2(3) of SSI 2017/188 inserts into the Building (Procedure) (Scotland) Regulations 2004 new regulation 2A, which sets out the criteria that are to be met before a document can be sent by electronic communication. One such criterion is that the document must be

“legible in all material respects”.

That expression is defined in paragraph (7) of new regulation 2A. Our legal advisers have identified that the word “sent” has been omitted from the definition.

Accordingly, does the committee agree to draw the regulations to the Parliament's attention on the general reporting ground in respect of that drafting error?

**Members indicated agreement.**

**The Deputy Convener:** Does the committee also agree to welcome the fact that the Scottish Government has acknowledged the error and has indicated that an amending instrument will be laid this week to correct it?

**Members indicated agreement.**

### **Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017 (SSI 2017/177)**

**The Deputy 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

10:09

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

### **Community Empowerment (Scotland) Act 2015 (Commencement No 8) Order 2017 (SSI 2017/192 (C 16))**

### **Lobbying (Scotland) Act 2016 (Commencement No 1) Regulations 2017 (SSI 2017/201 (C 18))**

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

**Members** *indicated agreement.*

## Air Departure Tax (Scotland) Bill: Stage 2

10:10

**The Deputy Convener:** Agenda item 5 is consideration of the Air Departure Tax (Scotland) Bill at stage 2. In its stage 1 report, the committee recommended that the Scottish Government should lodge amendments at stage 2 to make detailed provision for exemptions from the definitions of “chargeable passenger” and “chargeable aircraft”, as that would afford Parliament the best opportunity for effective scrutiny of that significant aspect of the bill’s policy.

At stage 2, the Scottish Government lodged amendments that mean that detailed provision is now made for chargeable passengers and exemptions at sections 2A to 2E of the bill and for chargeable aircraft and exemptions at sections 3A and 3B. Accordingly, does the committee agree to welcome the stage 2 amendments, which meet the terms of the committee’s recommendations?

**Members** *indicated agreement.*



## **Railway Policing (Scotland) Bill: Stage 2**

10:11

**The Deputy Convener:** Agenda item 6 is consideration of the Railway Policing (Scotland) Bill at stage 2. In its stage 1 report, the committee recommended that the power in new section 85C(1) should be amended at stage 2 to be subject to the affirmative procedure. The Scottish Government accepted that recommendation and lodged amendments at stage 2 to give effect to it. Accordingly, does the committee agree to welcome the stage 2 amendments, which meet the terms of the committee's recommendations?

**Members** *indicated agreement.*

**The Deputy Convener:** That ends the public part of the meeting.

10:11

*Meeting continued in private until 10:13.*



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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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