



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 18 June 2013



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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**20<sup>th</sup> Meeting 2013, Session 4**

**CONVENER**

\*Nigel Don (Angus North and Mearns) (SNP)

**DEPUTY CONVENER**

\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

**COMMITTEE MEMBERS**

\*Christian Allard (North East Scotland) (SNP)  
\*Mike MacKenzie (Highlands and Islands) (SNP)  
\*Hanzala Malik (Glasgow) (Lab)  
\*John Pentland (Motherwell and Wishaw) (Lab)  
\*John Scott (Ayr) (Con)

\*attended

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

Committee Room 4



## Scottish Parliament

### Delegated Powers and Law Reform Committee

*Tuesday 18 June 2013*

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

### Instrument subject to Affirmative Procedure

#### Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2013 [Draft]

**The Convener (Nigel Don):** I welcome members to the Delegated Powers and Law Reform Committee's 20th meeting in 2013 and, as always, I ask them to switch off mobile phones.

*The committee agreed that no points arose on the instrument.*

## Instruments subject to Negative Procedure

### National Library of Scotland Act 2012 (Consequential Modifications) Order 2013 (SSI 2013/169)

10:01

**The Convener:** In making changes to requirements that are set out in the Scottish Statutory Instruments Regulations 2011 (SSI 2011/195), the order erroneously refers to those requirements as being contained in regulation 11(1)(b) of the 2011 regulations when, in fact, they are set out in regulation 11(2)(b). Although the error is fairly minor, it arises in the operative part of a short instrument. The Scottish Government considers that the point can be addressed by way of a correction slip.

Does the committee agree to draw the instrument to the attention of the Parliament under the general reporting ground, as it contains a drafting error?

**Members** *indicated agreement.*

### European Union (Amendments in respect of the Accession of Croatia) (Scotland) Regulations 2013 (SSI 2013/177)

**The Convener:** The amendments that paragraph 11 of the schedule makes to the St Mary's Music School (Aided Places) (Scotland) Regulations 2001 (SSI 2001/223) should also amend the definition of "European Economic Area" in paragraph 1(1) of schedule 1 to the 2001 regulations and the reference to the "EEA Agreement" in paragraph 3(2) of that schedule, to reflect the removal of the definition of "EEA Agreement". The committee may wish to note that the Scottish Government has given a commitment to correct those errors when the 2001 regulations are next amended, which is scheduled to happen in March or April 2014.

Does the committee agree to draw the instrument to the attention of the Parliament under the general reporting ground, as it contains minor drafting errors?

**Members** *indicated agreement.*

**The Convener:** Does the committee also agree to note that the Scottish Government has given a commitment to correct those errors when the 2001 regulations are next amended?

**Members** *indicated agreement.*

**James Watt College (Transfer and Closure) (Scotland) Order 2013 (SSI 2013/181)**

**The Convener:** The meaning of article 3(3) could be clearer in providing for the transfer to and vesting in the Ayr College board and the Clydebank College board “jointly and severally” of certain property and rights. It is unclear what is meant by the term “jointly and severally” in the context of its intended application to interest in property and to other rights, so it is difficult to predict what effect, if any, that might have on the order’s operation, although it is possible that it might affect its operation so far as the provision in question is concerned.

Does the committee agree to draw the instrument to the attention of the Parliament under reporting ground (h), as the meaning of article 3(3) could be clearer?

**John Scott (Ayr) (Con):** Of course, I agree to that, but I must declare a constituency interest, as the order affects Ayr College, which is in the heart of my constituency. I want all pieces of legislation, but particularly this one, to be properly drafted.

The order needs to be more clearly drafted, as it appears not to be possible to hold assets—as opposed to liabilities—“jointly and severally” under Scots law, and the term is used repeatedly. I would like matters to be clearer so that, from the outset, there is no doubt.

The briefing note that we have been provided with suggests that a court might make a reasonable interpretation of what is intended in relation to the transfer of assets, but I would not wish Ayr College—or any other organisation—to be put to the expense of having to go to court to obtain a definition when a clear definition could be provided in the first place, at this stage. I hope that the issue will be addressed.

**The Convener:** Do members agree to draw the instrument to the attention of the Parliament?

**Members indicated agreement.**

**Sea Fishing (Illegal, Unreported and Unregulated Fishing) (Scotland) Order 2013 (SSI 2013/189)**

**The Convener:** The meaning of the extent provision in article 1(2) could be clearer. The provision contains two contradictory statements. It says that the order is to extend

“to Scotland and the Scottish zone only and insofar as it extends beyond Scotland and the Scottish zone it does so only as a matter of Scots law.”

No indication is given of how the reader is to reconcile those two statements. Normal practice would indicate that the first statement was

qualified by the second. The committee may wish to note that the Scottish Government has agreed to clarify the drafting in a future instrument.

Does the committee agree to draw the instrument to the attention of the Parliament under reporting ground (h), as the meaning of the extent provision in article 1(2) could be clearer?

**Members indicated agreement.**

**The Convener:** Does the committee also agree to note that the Scottish Government has agreed to clarify the drafting in a future instrument?

**Members indicated agreement.**

**Adam Smith College, Fife (Transfer and Closure) Order 2013 (SSI 2013/179)**

*The committee agreed that no points arose on the instrument.*

## Instrument not subject to Parliamentary Procedure

### Children's Hearings (Scotland) Act 2011 (Commencement No 9) Order 2013 (SSI 2013/195)

10:06

*The committee agreed that no points arose on the instrument.*

## Post-16 Education (Scotland) Bill: After Stage 2

10:06

**The Convener:** Agenda item 4 is consideration of the delegated powers provisions in the bill after stage 2. Members will have noted that the Scottish Government has provided a supplementary delegated powers memorandum and will have seen the draft report and the briefing paper.

Stage 3 consideration of the bill is due to take place on Wednesday 26 June. As the deadline for lodging amendments is 4.30 pm on Thursday 20 June—this Thursday—the committee may wish to agree on its conclusions today.

The committee may wish to note that, as with the power in section 15(1), the exercise of the power in section 15(2A) appears likely to engage the rights under article 8 of the European convention on human rights of the persons whose personal data is shared through an order under that section.

Does the committee agree to report that the exercise of that power should be subject to the affirmative procedure, to ensure adequate parliamentary scrutiny of its use?

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** Given that the bill provides for the use of the affirmative procedure, I am not quite sure what the intention is of saying that the power “should be” subject to the affirmative procedure. In that sense, paragraphs 11 and 12 of the draft report that is before us should be transposed. That would ensure that our remarks about the operation of the power are made in the context of our having recognised that the use of the affirmative procedure is already provided for.

**John Scott:** If we are to do that—others might disagree, as I am not sure that I have considered this properly—we should perhaps substitute “however” for “therefore” in what is currently paragraph 11.

**Stewart Stevenson:** Yes.

**The Convener:** Okay.

Notwithstanding that the use of the affirmative procedure is already provided for, does the committee agree to report that, when it considers any subordinate legislation that is made under the power, it will wish to be reassured that adequate consideration has been given to the convention rights—in particular, those under article 8—and that, to the extent that article 8 is engaged, any interference is capable of being objectively justified and is proportionate?

**Members** *indicated agreement.*

**The Convener:** Are members comfortable with the suggestion that we change the order of the paragraphs and modify the wording accordingly?

**Members** *indicated agreement.*

**The Convener:** We will do that.

Does the committee agree to report that it welcomes the fact that various amendments to the delegated powers provisions that were agreed at stage 2 implement recommendations in the committee's stage 1 report?

**Members** *indicated agreement.*

**The Convener:** Does the committee agree to report that it is otherwise content with the powers in the bill as amended at stage 2?

**Members** *indicated agreement.*

## **Land and Buildings Transaction Tax (Scotland) Bill: After Stage 2**

10:10

**The Convener:** Agenda item 5 is consideration of the delegated powers provisions in the bill after stage 2. Members will have noted that the Scottish Government has provided a supplementary delegated powers memorandum and will have seen the briefing paper.

Stage 3 consideration of the bill is due to take place on Tuesday 25 June. The deadline for lodging amendments is 4.30 pm on Wednesday 19 June, which is tomorrow, so the committee may wish to agree on its conclusions today.

Does the committee agree to report that it recommends that the powers under section 51A and paragraph 7(2) of schedule 18A should be subject to the affirmative procedure in all cases?

**Members** *indicated agreement.*

**The Convener:** Does the committee also agree to note that the Scottish Government has agreed to lodge amendments to that effect at stage 3 and to report that it is otherwise content with the powers in the bill as amended at stage 2?

**Members** *indicated agreement.*

**The Convener:** That brings us to the end of the agenda. Our next meeting will be on Tuesday 25 June.

*Meeting closed at 10:11.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

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