



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 17 September 2013

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DELEGATED POWERS AND LAW REFORM COMMITTEE
24th 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)

*Richard Baker (North East Scotland) (Lab)

*Mike MacKenzie (Highlands and Islands) (SNP)

*Margaret McCulloch (Central Scotland) (Lab)

*John Scott (Ayr) (Con)

*attended

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

Committee Room 3

Scottish Parliament
Delegated Powers and Law
Reform Committee

Tuesday 17 September 2013

[The Convener *opened the meeting at 10:02*]

Interests

The Convener (Nigel Don): I welcome members to the 24th meeting in 2013 of the Delegated Powers and Law Reform Committee and ask them to turn off mobile phones.

I welcome Richard Baker back to the committee after an absence of a number of years and, in accordance with section 3 of the code of conduct, invite him to declare any relevant interests.

Richard Baker (North East Scotland) (Lab): I always declare that I am a member of the trade union Unite; I have no other interests to declare.

The Convener: Thank you very much.

Instrument subject to Affirmative
Procedure

Protected Trust Deeds (Scotland)
Regulations 2013 [Draft]

10:03

The committee agreed that no points arose on the instrument.

Instruments subject to Negative
Procedure

Home Energy Assistance Scheme
(Scotland) Amendment Regulations 2013
(SSI 2013/253)

Fish Labelling (Scotland) Regulations 2013
(SSI 2013/256)

Glasgow Commonwealth Games
(Enforcement Officers) Regulations 2013
(SSI 2013/258)

Glasgow Commonwealth Games (Games
Locations) Order 2013 (SSI 2013/259)

10:03

The committee agreed that no points arose on the instruments.

Instruments not subject to Parliamentary Procedure

Act of Sederunt (Rules of the Court of Session Amendment No 5) (Miscellaneous) 2013 (SSI 2013/238)

10:04

The Convener: There appears to be doubt about whether the instrument is intra vires, in so far as the new rule 41.57(2)(a) that is inserted by paragraph 2 provides that permission shall not be granted on an application to the court in relation to a decision of the Upper Tribunal, as referred to in rule 41.57(1), unless the court considers that

“the proposed appeal from the decision would raise some important point of ... practice”.

That provision is of doubtful vires, because the scope of the enabling power to make rules of court in section 13(6A) of the Tribunals, Courts and Enforcement Act 2007 is restricted to circumstances in which the court considers that the proposed appeal would raise some important point of principle and not of practice.

Does the committee therefore agree to draw the instrument to the attention of the Parliament on reporting ground (e), as there appears to be doubt about whether the instrument is intra vires?

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Looking at the 2007 act, the section that is referred to is one in which the United Kingdom Parliament has legislated without making reference to Scotland, and that appears to be part of the source of the difficulty.

I welcome the fact that the Lord President has acknowledged that there is a difficulty with what is currently before us, and I certainly think that we should do what is proposed. On this occasion, we are dealing with one of those obscure corners of law in which, for whatever reason, there appears to be a defect.

The Convener: Indeed.

The committee might want to note that the Lord President's private office has acknowledged the error and has undertaken to rectify the matter promptly by laying an amending instrument.

Is the committee happy to report that and to note the Lord President's proposed actions?

Members indicated agreement.

The Convener: A further point has been raised by our legal advisers. There is a minor drafting error in new rule 104.5(1), as inserted by paragraph 3 of the instrument, which refers to the parties that are mentioned in rule 104.3(4)(b) to

(d), whereas the relevant parties are mentioned in rule 104.3(6)(b) to (d).

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

Members indicated agreement.

The Convener: I think that whichever of our legal colleagues was eagle-eyed enough to notice that deserves a mention in dispatches.

Does the committee agree to note that the Lord President's private office has undertaken to rectify the matter promptly by laying an amending instrument?

Members indicated agreement.

Water Environment and Water Services (Scotland) Act 2003 (Commencement No 9) Order 2013 (SSI 2013/252)

Marine Navigation Act 2013 (Commencement) (Scotland) Order 2013 (SSI 2013/254)

Glasgow Commonwealth Games Act 2008 (Commencement No 4) Order 2013 (SSI 2013/260)

The committee agreed that no points arose on the instruments.

Bankruptcy and Debt Advice (Scotland) Bill: Stage 1

10:08

The Convener: The purpose of agenda item 5 is for the committee to consider the delegated powers in the Bankruptcy and Debt Advice (Scotland) Bill at stage 1. In considering the bill, the committee is invited to agree the questions that it wishes to raise with the Scottish Government on the delegated powers in the bill. It is suggested that, as usual, those questions are raised in written correspondence. The responses that are received will help to inform a draft report on the bill, which the committee will consider at a later date.

Section 3 inserts a new section 5D into the Bankruptcy (Scotland) Act 1985. The power that is proposed would establish through regulations a common financial tool, which would be used to assess an appropriate amount of a living debtor's income to be paid to a trustee after the sequestration of the debtor's estate. That is known as the debtor's contribution. Various requirements of the common financial tool are set out in new section 5D. For example, the common financial tool must ensure that an amount is allowed for any obligation that the debtor has to pay child support maintenance. Otherwise, the power to prescribe the method of calculation is extremely broad.

A similar power to prescribe the method of assessing the amount of a debtor's assets, income, liabilities and expenditure in relation to the debt arrangement scheme is also added to section 7(2) of the Debt Arrangement and Attachment (Scotland) Act 2002.

The power in section 5D is to be subject to the affirmative procedure, because the Scottish Government recognises the broad application of the common financial tool and because it will make significant determinations in relation to the liabilities and entitlement of the debtor. However, the power in section 7(2) of the 2002 act is subject to the negative procedure, as that is the current procedure that applies to regulations under that act.

The committee may wish to note that the Scottish Government has conceded the principle that the power in proposed section 7(2)(bd) of the 2002 act is significant in its effect and that its subject matter could be controversial. When it considered the matter from first principles, the Scottish Government chose the affirmative procedure for the equivalent power in section 5D. The committee may also wish to observe that the first time that powers to make provision in relation to debt payment programmes was exercised

under the 2002 act, it was subject to the affirmative procedure.

Does the committee agree to ask the Scottish Government for further justification for the choice of negative procedure for the new power that is conferred by proposed section 7(2)(bd) of the 2002 act?

Members indicated agreement.

The Convener: New sections 32A to 32G of the 1985 act, which are inserted by section 4 of the bill, make provision for debtor contribution orders. The power in section 32D(5) allows the Scottish ministers to make provision about the instructions to be provided to employers to deduct the debtor's contribution from earnings.

The power is extremely broad, in that it enables any provision to be made that relates to instructions to make deductions from earnings, including the consequences for employers of failure to comply, which need not be merely administrative and which, therefore, might, in principle, include some sanction.

Does the committee therefore wish to ask the Scottish Government for further justification for the selection of negative procedure as an appropriate level of scrutiny?

Members indicated agreement.

The Convener: Does the committee also agree to ask the Government to explain what consequences or sanctions could be imposed under the power?

Members indicated agreement.

Anti-social Behaviour, Crime and Policing Bill

The Convener: That completes the agenda. Our next meeting will be held next Tuesday, 24 September.

Meeting closed at 10:12.

10:11

The Convener: Agenda item 6 is on the Anti-social Behaviour, Crime and Policing Bill, which is UK Parliament legislation. Under this item, the committee is invited to consider the powers to make subordinate legislation that the bill confers on the Scottish ministers. A briefing paper has been provided that sets out the relevant aspects of the bill and comments on their effect.

As members have no comments, does the committee agree to report to the lead committee that it is content with the delegated powers in the bill?

Members *indicated agreement.*

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