



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 24 September 2013

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DELEGATED POWERS AND LAW REFORM COMMITTEE

25th 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 5

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 24 September 2013

[The Convener *opened the meeting at 11:30*]

Decision on Taking Business in Private

The Convener (Nigel Don): Good morning, everybody. I welcome members to the 25th meeting in 2013 of the Delegated Powers and Law Reform Committee and, as always, ask them to switch off mobile phones.

Agenda item 1 is a decision on taking business in private. It is proposed that the committee takes in private item 8, which is consideration of a draft report on the delegated powers in the Public Bodies (Joint Working) (Scotland) Bill at stage 1. Does the committee agree to take that item in private?

Members *indicated agreement.*

Instrument subject to Affirmative Procedure

Glasgow Commonwealth Games (Trading and Advertising) (Scotland) Regulations 2013 [Draft]

11:30

The committee agreed that no points arose on the instrument.

Instruments subject to Negative Procedure

Personal Licence (Training) (Scotland) Regulations 2013 (SSI 2013/261)

11:31

The Convener: The form or meaning of the instrument could be clearer in that subparagraphs (a) and (b) of regulation 2(2) duplicate the terms of paragraphs (a) and (b) of section 87(1) of the Licensing (Scotland) Act 2005. That duplication is unnecessary and, as it cannot competently be done under the powers that are available to ministers, falls to be ignored in terms of legal effect. The unnecessary inclusion of those provisions is therefore of possible detriment to the clarity of the instrument in the context of its interaction with the parent statute.

Does the committee therefore agree to draw the instrument to the attention of the Parliament on reporting ground (h), as its form or meaning could be clearer?

Members *indicated agreement.*

John Scott (Ayr) (Con): At best, the provisions are untidy, although they could be described as something worse than that.

The Convener: I am grateful for your comment. The point is well made.

A further point has been raised in relation to the instrument. Regulation 2(2), which prescribes the training requirement that is to be met by personal licence holders, appears to have been made by an unusual or unexpected use of the enabling powers. It appears to sub-delegate, in part, the function of prescribing the training requirement for personal licence holders by providing that the training requirement is to complete a course that has been accredited by the Scottish ministers without providing further specification of which courses are accredited for that purpose, or how the process of accreditation is to work.

Does the committee therefore agree to draw the instrument to the attention of the Parliament on reporting ground (g), as it appears to have been made by an unusual or unexpected use of the enabling powers?

Members *indicated agreement.*

Overhead Lines (Exemption) (Scotland) Regulations 2013 (SSI 2013/264)

Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Amendment Regulations 2013 (SSI 2013/265)

Angus College (Transfer and Closure) (Scotland) Order 2013 (SSI 2013/267)

Banff and Buchan College of Further Education (Transfer and Closure) (Scotland) Order 2013 (SSI 2013/268)

Cumbernauld College (Transfer and Closure) (Scotland) Order 2013 (SSI 2013/269)

John Wheatley College and Stow College (Transfer and Closure) (Scotland) Order 2013 (SSI 2013/270)

The committee agreed that no points arose on the instruments.

Instruments not subject to Parliamentary Procedure

Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (Commencement No 2) Order 2013 (SSI 2013/262)

11:33

The Convener: SSI 2013/262 appears to be defective in that it brings section 20 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 into force when that was not the policy intention. Were it brought into force at this point, section 20 would not operate correctly, as other provisions require to be brought into force to accompany it and those provisions are not commenced by the order.

The committee may wish to note that the Scottish Government has laid SSI 2013/271, to which we will come next, which will correct the defect in SSI 2013/262 before it comes into force. Nevertheless, does the committee agree to report SSI 2013/262 to the Parliament under reporting ground (i), as the drafting appears to be defective?

Members *indicated agreement.*

Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (Commencement No 2) Amendment Order 2013 (SSI 2013/271)

The committee agreed that no points arose on the instrument.

The Convener: The committee may wish to note that the order corrects the defect in SSI 2013/262.

Landfill Tax (Scotland) Bill: Stage 1

11:35

The Convener: Agenda item 5 is consideration of the Scottish Government's response to the committee's stage 1 report on the Landfill Tax (Scotland) Bill. Members have seen the briefing paper and the response from the Scottish Government.

Do members have any comments? Are we content to note the response and, if necessary, to reconsider the bill after stage 2?

Members *indicated agreement.*

Criminal Justice (Scotland) Bill: Stage 1

11:35

The Convener: Under agenda item 6 we consider the delegated powers in the Criminal Justice (Scotland) Bill at stage 1.

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 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 33(5)(a) of the bill defines the term “mental disorder” by reference to section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003. Although the Scottish ministers will—under section 34(1)(a) of the bill—have the power to amend section 33(1)(c), there is no power to modify the definition of “mental disorder” in section 33(5)(a). “Mental disorder” is a defined term that appears only in section 33(1)(c). The committee may consider that it could become necessary to alter that definition in the future—for example, in the event that changes are made to the Mental Health (Care and Treatment) (Scotland) Act 2003 definition, by reference to which the term is defined in the bill.

Does the committee therefore agree to ask the Scottish Government whether it considers it necessary to take a power to amend the definition of the term “mental disorder” in section 33(5)(a) of the bill; and, if it does not, how it would propose to amend that definition in the future, should it become necessary to do so—for example, when it exercises the power to amend section 33(1)(c)?

Members indicated agreement.

The Convener: Sections 83 and 84 of the bill provide, respectively, for the general aggravation of an offence by its having a connection with people trafficking activity and the aggravation of a specific people trafficking offence by the abuse of a public position. In both cases, the court must take the aggravation into account in determining the appropriate sentence and, in circumstances in which the sentence that is imposed is different from the one that would have been imposed had the offence not been aggravated, it must state the extent of, and the reasons for, that difference.

Subsections (1) to (3) of section 85 of the bill respectively define the terms “a people trafficking offence”, “a public official” and “an international organisation” for the purposes of sections 83 and 84. Section 85(4) grants power to the Scottish

ministers to modify subsections (1) to (3) of section 85 by regulations. Section 85(5) provides that those regulations are to be subject to the negative procedure.

Does the committee agree to ask the Scottish Government why the power in section 85(4) of the bill is drawn in such wide terms? In particular, the committee may wish to seek an explanation of why the power does not include greater specification of the manner in which the provisions in primary legislation to which it refers may be modified.

Members indicated agreement.

The Convener: Does the committee also agree to ask the Scottish Government whether it considers that the affirmative procedure may afford the Parliament a more appropriate level of scrutiny over the exercise of the power, considering that it enables the Scottish ministers to make textual amendments to primary legislation?

Members indicated agreement.

The Convener: Section 86(1) of the bill inserts new sections 288H to 288K into the Criminal Procedure (Scotland) Act 1995. The new provisions allow the court to determine that a detained person is to participate in specified court hearings by use of a live television link. In making such a determination, the court is to have regard to any representations that the parties have made on the issue of participation via television link, as well as the interests of justice.

New section 288J(1), as inserted by section 86(1) of the bill, provides that the Lord Justice General may, by directions, specify types of hearing in which a detained person may participate by live television link. Such directions may specify types of hearing by reference to the venues at which they take place, particular places of detention or categories of cases or proceedings to which they relate. Does the committee agree to ask the Scottish Government why it is considered appropriate for the power in section 86(1) of the bill to be exercisable by directions that will not be subject to any level of parliamentary scrutiny?

Members indicated agreement.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am certainly content to ask the Government that question. However, we should also ask the Government whether, if it concludes that there should be no parliamentary process—we are, after all, talking about rules of court—it should consider some provision to ensure that the directions are at the very least published and available for scrutiny.

The Convener: Is the committee content with that suggestion?

Members *indicated agreement.*

The Convener: Part 6 of the bill establishes the Police Negotiating Board for Scotland. It is being set up in response to the UK Government's forthcoming abolition of the Police Negotiating Board, which operates on a UK-wide basis and makes representations to the UK and Scottish Governments in respect of police hours of duty, leave, pay and allowances, pensions and uniforms.

Section 87 of the bill inserts a new schedule 2A into the Police and Fire Reform (Scotland) Act 2012 to make provision for the new PNBS's status, chairing and membership, disqualification and remuneration and expenses. Under paragraph 4(1) of new schedule 2A, it will be for the Scottish ministers to prepare the PNBS's constitution and, under paragraph 4(2), the constitution must regulate the procedure for the PNBS to reach agreement on its representations to the Scottish ministers. Paragraph 4(3) lists a number of matters to which the PNBS's constitution, as prepared by the Scottish ministers, may refer, including membership, internal organisation and procedures. As the power to prescribe the PNBS's constitution is not to be exercisable through the making of subordinate legislation, the constitution, once prepared, will not be subject to parliamentary scrutiny of any kind. Does the committee agree to ask the Scottish Government why it is considered appropriate that the power to prepare the PNBS's constitution is not to be exercisable through the making of subordinate legislation and therefore subject to parliamentary scrutiny?

Members *indicated agreement.*

The Convener: Does the committee also agree to ask the Scottish Government how it intends that power to be exercised and what matters, in addition to those already prescribed in new schedule 2A to the Police and Fire Reform (Scotland) Act 2012, are to be addressed in the PNBS's constitution?

Members *indicated agreement.*

Water Bill

11:42

The Convener: Agenda item 7 is consideration of the Water Bill, which is UK legislation. 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 bill's relevant aspects 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.*

The Convener: Thank you very much.

11:43

Meeting continued in private until 11:50.

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