



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 4 March 2014

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**8<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

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

**DEPUTY CONVENER**

\*Stuart McMillan (West Scotland) (SNP)

**COMMITTEE MEMBERS**

\*Richard Baker (North East Scotland) (Lab)

\*Mike MacKenzie (Highlands and Islands) (SNP)

\*Margaret McCulloch (Central Scotland) (Lab)

\*John Scott (Ayr) (Con)

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

\*attended

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

Committee Room 5



## Scottish Parliament

### Delegated Powers and Law Reform Committee

*Tuesday 4 March 2014*

[The Convener *opened the meeting at 11:00*]

### Decision on Taking Business in Private

**The Convener (Nigel Don):** I welcome members to the eighth meeting in 2014 of the Delegated Powers and Law Reform Committee. I ask members to switch off mobile phones, please.

Does the committee agree to take in private item 5, which is consideration of a draft of the committee's third quarterly report, and item 6, which is consideration of our approach to the draft Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014?

**Members** *indicated agreement.*

**The Convener:** Thank you.

## Instruments subject to Affirmative Procedure

### Local Government Finance (Scotland) Amendment Order 2014 [Draft]

### Social Care (Self-directed Support) (Scotland) Act 2013 (Consequential and Saving Provisions) Order 2014 [Draft]

11:00

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

**The Convener:** With regard to the latter draft order, the committee may wish to note that the Scottish Government has offered to correct errors in the preamble in a final version to be laid once the substance is approved by the Parliament under the affirmative procedure. Are members content to note that?

**Members** *indicated agreement.*

## Instruments subject to Negative Procedure

### Council Tax Reduction (Scotland) Amendment Regulations 2014 (SSI 2014/35)

11:01

**The Convener:** Our legal advisers have suggested that the regulations raise the question whether they relate to matters that are reserved under section F1 of part II of schedule 5 to the Scotland Act 1998. As such, the committee may wish to report that the regulations raise a devolution issue. The matter was also raised in connection with the Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303) and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319), which I will refer to as the principal regulations.

The Scottish Government's view is that the principal regulations do not relate to any of the reserved matters described in section F1 of part II of schedule 5 to the Scotland Act 1998 and, therefore, that no devolution issue is raised. Do members have any comments?

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** The regulations reduce charges for certain categories of people. That is something with which we are extremely familiar, and it has never been subject to the suggestion that it is a tax. The provision in head F of part II of schedule 5 to the Scotland Act 1998 relates to taxation.

If we were to agree that the regulations are indeed potentially ultra vires, we would, by reading across, have to do the same in relation to single occupancy, for which there is a reduction in council tax, and many other things. I propose that, in line with our previous practice, we do not report the regulations to the Parliament.

**John Scott (Ayr) (Con):** I believe that our legal advisers' advice is correct, that the regulations do indeed raise a devolution issue and that there is doubt whether they are within vires, as they may relate to matters that are reserved by section F1 of part II of schedule 5 to the Scotland Act 1998. I therefore want the objection to be upheld.

**Richard Baker (North East Scotland) (Lab):** I support the recommendation that we draw the matter to the Parliament's attention, but I confirm that the sum total of what we seek to do is to draw the Parliament's attention to the legal advice that the committee has received.

**The Convener:** Does anybody else want to comment? This is familiar territory, as Stewart Stevenson indicated.

If I heard Stewart Stevenson aright, the proposition is that the regulations are intra vires and that we do not follow our legal advisers' advice. Unless anybody has anything else to say, we will simply vote on the matter, as we have done before.

The proposition is that the regulations are intra vires. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Don, Nigel (Angus North and Mearns) (SNP)  
McMillan, Stuart (West Scotland) (SNP)  
MacKenzie, Mike (Highlands and Islands) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

**Against**

Baker, Richard (North East Scotland) (Lab)  
McCulloch, Margaret (Central Scotland) (Lab)  
Scott, John (Ayr) (Con)

**The Convener:** The result of the division is: For 4, Against 3, Abstentions 0. The proposition is agreed to.

As members will be aware, we have consistently agreed that such regulations are intra vires and that we should not report them. However, members' views are on the record, of course.

### Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2014 (SSI 2014/31)

### Council Tax (Discounts) (Scotland) Amendment Order 2014 (SSI 2014/37)

### National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2014 (SSI 2014/38)

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

**The Convener:** Although no formal points have been raised on SSI 2014/38, it amends the National Assistance (Assessment of Resources) Regulations 1992 (SI 1992/2977), which have now been amended more than 15 times. The Government gave a commitment to update the committee on its plans for the consolidation of the 1992 regulations last year, after the committee wrote to it about the issue following our consideration of the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2013 (SSI 2013/41).

In response to a query from our legal advisers about that commitment, the Government has explained its intention to consolidate the 1992 regulations by 2017, following a spending review in 2016 and in line with any legislative changes

that are required as a result of the residential task force set up by the Scottish ministers and the Convention of Scottish Local Authorities to review the shape and design of the provision of residential care.

The committee may wish to consider whether it is satisfied with the response and whether it wishes to pursue the matter through written correspondence with the Scottish Government. Does the committee agree to write again to the Scottish Government about the matter on the basis that the explanation is hardly 100 per cent satisfactory?

**Members** *indicated agreement.*

**Home Energy Assistance Scheme  
(Scotland) Amendment Regulations 2014  
(SSI 2014/40)**

**Land Registration etc (Scotland) Act 2012  
(Commencement No 2 and Transitional  
Provisions) Order 2014 (SSI 2014/41)**

**HIV Testing Kits and Services Revocation  
(Scotland) Regulations 2014 (SSI 2014/42)**

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

## **Tribunals (Scotland) Bill: After Stage 2**

11:07

**The Convener:** This item of business 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; they will also have seen the briefing paper.

Stage 3 consideration of the bill is due to take place on Tuesday 11 March. As the deadline for lodging amendments is 4.30 pm on Wednesday 5 March, the committee may wish to agree its conclusions today.

The power in new section 61A(1) allows the Scottish ministers to create offences and penalties in connection with proceedings before the Scottish tribunals. Provision may be made making it an offence to give

“a false statement in an application in a case,”

to fail to attend or to give evidence before a tribunal, or to alter, conceal or destroy, or fail to produce

“something that is required to be produced”

in tribunal

“proceedings in accordance with Tribunal Rules”.

The power does not specify any maximum as regards the penalties that ministers may impose when exercising their power to create offences of that kind. The supplementary delegated powers memorandum provides no explanation as to why ministers require the power to set the maximum penalty rather than have that specified in the bill.

Previously, the committee has taken a strong line on the conferral on ministers of powers to set penalties for offences. The committee has taken the view that it is for the Parliament to determine what the maximum penalty should be and that the matter should not be delegated to ministers.

Given the limit on our time, the legal advisers contacted the Scottish Government to remind it of the committee's view that maximum penalties should be set by the Parliament and to ask for an explanation as to why an unlimited power was being sought. In response to the query, the Government has agreed to lodge an amendment at stage 3 that will clearly set out in the bill the maximum penalties that can be imposed. The proposed maxima are: on summary conviction, imprisonment of up to 12 months, a fine not exceeding the statutory maximum or both; and, on conviction on indictment, imprisonment for a time

not exceeding two years, a fine or both. Do members have any comments?

**John Scott:** I welcome the Government's proposal to lodge an amendment at stage 3 to address the matter that we have drawn to its attention.

**The Convener:** Does the committee agree to welcome the Scottish Government's commitment to lodge an amendment at stage 3 that will set the maximum penalty that may be imposed in relation to offences created by section 61A of the bill?

**Members** *indicated agreement.*

**The Convener:** Section 70 was amended at stage 2 to deal with concerns raised by the Justice Committee regarding consultation on instruments that impose fees and charges in new situations. Specifically, the Justice Committee considered that the consultation requirement should be mandatory and that users and stakeholders of the tribunal concerned should be consulted.

The amendment made at stage 2 is more limited than that in two respects. First, the duty to consult exists only to the extent that ministers consider it appropriate and, secondly, the persons who have to be consulted are

"persons having an interest in the operation and business of the Scottish Tribunals".

That may not necessarily include individual users of a particular tribunal.

Does the committee agree to draw the power in section 70(1) to the attention of the Parliament, and to report that it is content with the other provisions in the bill that were amended at stage 2 to insert or substantially alter provisions conferring powers to make subordinate legislation?

**Members** *indicated agreement.*

**The Convener:** That concludes the public part of the meeting; I move the meeting into private.

11:11

*Meeting continued in private until 11:30.*



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