



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 25 June 2013

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DELEGATED POWERS AND LAW REFORM COMMITTEE
21st 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 25 June 2013

[The Convener opened the meeting at 10:03]

Decision on Taking Business in Private

The Convener (Nigel Don): I welcome members to the Delegated Powers and Law Reform Committee's 21st meeting in 2013 and ask them to switch off any mobile phones.

Agenda item 1 is a decision on taking business in private. It is proposed that the committee takes in private item 5, which is consideration of a draft stage 1 report on the delegated powers that are contained in the Regulatory Reform (Scotland) Bill. Do members agree to do that?

Members indicated agreement.

Instrument subject to Negative Procedure

Sale of Alcohol to Children and Young Persons (Scotland) Amendment Regulations 2013 (SSI 2013/199)

10:04

The committee agreed that no points arose on the instrument.

Instruments not subject to Parliamentary Procedure

Act of Adjournal (Criminal Procedure Rules Amendment No 2) (Sexual Offences Act 2003) (Notification Requirements) 2013 (SSI 2013/196)

Act of Adjournal (Criminal Procedure Rules Amendment No 3) (Miscellaneous) 2013 (SSI 2013/198)

10:04

The committee agreed that no points arose on the instruments.

Tribunals (Scotland) Bill: Stage 1

10:04

The Convener: The purpose of item 4 is to consider the delegated powers in the 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 the questions be asked in written correspondence. The responses that are received will help to inform a draft report on the bill, which the committee expects to consider in September.

It is suggested that the same questions could be put to the Scottish Government in relation to sections 19(2) and 22(2). Section 19(1) provides that the first-tier tribunal is to be organised into a number of chambers, having regard to the subject matters that fall within the tribunal's jurisdiction and any other factors that are relevant to the exercise of its functions. Section 19(2) confers power on the Scottish ministers to make provision by regulations in connection with that structure.

Section 22(1) provides that the upper tribunal is to be organised into a number of divisions, having regard to the subject matters that fall within the tribunal's jurisdiction and any other factors that are relevant to the exercise of its functions. Section 22(2) confers power on the Scottish ministers to make provision in connection with that structure.

In relation to sections 19(2) and 22(2), does the committee agree to ask the Scottish Government in what circumstances it is considered that it may be more appropriate for the Lord President or tribunal rules, rather than the Scottish ministers, to determine matters that relate to the structure and allocation of functions in the first-tier tribunal or the upper tribunal? Does the committee agree to ask why it is considered appropriate that provision that ministers make about the structure and allocation of functions in the tribunal will require consultation and will attract a high level of parliamentary scrutiny, but if such provision is made by the Lord President or tribunal rules under delegated authority, no consultation or parliamentary procedure will be required? Do we also agree to ask what limits, if any, are likely to be placed on the delegation of that authority?

Members indicated agreement.

The Convener: It is suggested that the same questions could be put to the Scottish Government in relation to section 35(1), which provides for the Scottish ministers to make provision by regulations for determining the composition of the first-tier tribunal when it is convened to decide a case that falls within its jurisdiction, and section 37(1), which confers power on the Scottish ministers to make provision by regulations for determining the

composition of the upper tribunal when it is convened to decide a case that falls within its jurisdiction.

In relation to those provisions, does the committee agree to ask the Scottish Government in which circumstances it is considered that it may be more appropriate for the president of tribunals or tribunal rules, rather than the Scottish ministers, to determine the composition of the first-tier tribunal or the upper tribunal? Does the committee agree to ask why it is considered appropriate that provision that ministers make about the composition of the tribunal should attract the affirmative procedure, but if such provision is made by the president of tribunals or tribunal rules under delegated authority, no or limited parliamentary scrutiny will be required? Do we also agree to ask what limits, if any, are likely to be placed on the delegation of that authority?

Members indicated agreement.

The Convener: The power in section 38(3)(b) relates to the provisions in the bill that allow the first-tier and upper tribunals to review their own decisions without the need for a full onward appeal. A decision may be reviewed at the tribunal's own instance or, with the tribunal's agreement, at the request of a party in the case.

Does the committee agree to ask the Scottish Government why the power in section 38(3)(b) to—by tribunal rules—exclude those decisions from review decisions of the Scottish tribunals or otherwise restrict the availability of review of them is considered to relate to “technical procedural matters” and to ask why it is considered appropriate that exclusions may be contained in tribunal rules that are not subject to parliamentary procedure other than laying, when the principal exclusions are contained in the bill and may be modified or added to by regulations made by the Scottish ministers?

Members indicated agreement.

The Convener: Section 48(1) provides that a decision of the Scottish tribunals against which there is a right of appeal under another enactment is an excluded decision, to which the provisions for review and appeal that are set out in chapter 1 of part 6 do not apply. Section 48(2) confers a power on the Scottish ministers, by regulations, to make exceptions to that general rule.

Does the committee agree to ask the Scottish Government, when the transfer-in power under section 27(2) is exercised in a way that leaves any existing appeal rights in relation to a listed tribunal intact, so that section 48(1) applies to exclude decisions that are subject to those appeal rights from review or appeal under section 38, 41 or 43, whether the power in section 48(2) enables provision to be made to the effect that those

decisions are to be subject to review or appeal under section 38, 41 or 43?

Members indicated agreement.

The Convener: If that is the case, does the committee agree to ask the Scottish Government to explain why it is considered appropriate that the power in section 48(2) should be subject to the negative procedure when the section 27(2) power is subject to the affirmative procedure?

Members indicated agreement.

The Convener: Does the committee agree to ask the Scottish Government to explain whether, in the circumstances that have been described, there is intended to be a choice between the appeal right under the existing legislation and the appeal right under the bill and, if that is not the case, to say which power will be used to specify which of the appeal rights is to apply?

Members indicated agreement.

The Convener: Section 56(1) provides that the first-tier and upper tribunals may be convened at any place in Scotland to hear cases or for any other purpose that relates to their functions. Section 56(2) states that that is subject to any provision that is made by tribunal rules

“as to the question of where in Scotland the Scottish Tribunals are to be convened.”

In relation to section 56(2), does the committee agree to seek clarification of why it has been considered appropriate that the Court of Session may in the tribunal rules make provision

“as to the question of where in Scotland the Scottish Tribunals are to be convened”

and why it is appropriate that that power is not subject to parliamentary procedure?

Members indicated agreement.

The Convener: Section 68 enables the president of tribunals to issue directions

“as to the practice and procedure to be followed in proceedings”

in the Scottish tribunals. They may include instructions or guidance on the application or interpretation of the law and the manner of making a decision in a case. Does the committee agree to ask the Scottish Government to clarify why that section does not require practice directions that may be issued under it to be published and what the intentions are in relation to publication?

Members indicated agreement.

The Convener: Section 74(1) confers a power on the Scottish ministers, by regulations, to make

“such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with”

the bill. The provision that the power to make ancillary regulations can be exercised

“for the purposes of or in connection with”

the bill differs from, for example, the ancillary powers provision in section 45 of the Regulatory Reform (Scotland) Bill, which requires the ancillary powers to be

“for the purposes of, in consequence of, or for giving full effect to”

any provision of the bill. It seems that ancillary matters might have a connection with the bill provisions but not be in consequence of or give full effect to them. Therefore, section 74 appears to propose a broader scope for the ancillary powers than is more usual. Does the committee agree to ask the Scottish Government why a different formulation of the ancillary powers is proposed for the Tribunals (Scotland) Bill?

Hanzala Malik (Glasgow) (Lab): I just wonder about the wording of that last sentence, in which we are invited to ask why the ancillary powers are different. I am not sure whether that is how we should put the question, unless the legal advisers are comfortable with that.

The Convener: Our advice is that the second formulation is more usual. As the Government has provided no explanation for using the other one, we should probably ask the question why at this stage. If, as we hope, the Government provides a sufficiently good answer, that will avoid our having to ask why it thinks that the formulation that it has come up with is a good one, because it will have told us.

Hanzala Malik: Okay.

The Convener: Does the committee agree to ask the question?

Members indicated agreement.

The Convener: Paragraph 14 of schedule 7 provides for a power of ministers to

“determine the terms and conditions on which a member of Scottish Tribunals holds the position”,

except as provided for in the bill. Paragraph 2 of schedule 2 confers the power to provide by regulations for other terms and conditions of appointment of members of Scottish tribunals other than judicial members, apart from the terms that are specified in schedule 7. Does the committee agree to ask the Scottish Government why that power is necessary or appropriate and why it is appropriate for it to be exercisable in the form of a determination and for it not to be subject to parliamentary procedure or a requirement for publication?

Members indicated agreement.

The Convener: That concludes item 4.

10:14

Meeting continued in private until 10:30.

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