



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 18 February 2014

Tuesday 18 February 2014

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1301
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE.....	1302
Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2014 (SSI 2014/26)	1302
Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2014 (SSI 2014/23).....	1302
Non-Domestic Rate (Scotland) Order 2014 (SSI 2014/28)	1303
Non-Domestic Rates (Levying) (Scotland) Regulations 2014 (SSI 2014/30)	1303
Protection of Vulnerable Groups (Scotland) Act 2007 (Miscellaneous Provisions) Amendment Order 2014 (SSI 2014/33)	1303
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE.....	1304
Lands Tribunal for Scotland Amendment (Fees) Rules 2014 (SSI 2014/24)	1304
Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) (Amendment) 2014 (SSI 2014/29)	1304
Social Care (Self-directed Support) (Scotland) Act 2013 (Commencement, Transitional and Saving Provisions) Order 2014 (SSI 2014/32)	1304
Prisons (Interference with Wireless Telegraphy) Act 2012 (Commencement) (Scotland) Order 2014 (SSI 2014/34).....	1304
PUBLIC BODIES (JOINT WORKING) (SCOTLAND) BILL: AFTER STAGE 2	1305
CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL: AFTER STAGE 2.....	1306

DELEGATED POWERS AND LAW REFORM COMMITTEE

6th 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 18 February 2014

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

Decision on Taking Business in Private

The Convener (Nigel Don): I welcome members to the Delegated Powers and Law Reform Committee's sixth meeting in 2014 and I ask members to switch off their mobile phones.

Agenda item 1 is a decision on taking business in private. Does the committee agree to take item 6 in private, which will allow us to further consider the delegated powers provisions in the Housing (Scotland) Bill, to inform the drafting of the committee's report on the bill at stage 1?

Members indicated agreement.

Instruments subject to Negative Procedure

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2014 (SSI 2014/26)

11:31

The Convener: Our legal advisers have raised a number of points on the instrument. No saving or transitional provision is made for the visiting committees for Aberdeen and Peterhead prisons, which are being wound up, to allow them to complete their investigations into on-going complaints and to report for the period from 1 April 2013 to 26 February 2014. Does the committee agree to draw the matter to the lead committee's attention?

Members indicated agreement.

The Convener: The committee may also wish to write to the Justice Committee and the Scottish Government to draw it to their attention that, similarly, no saving or transitional provision is made in the proposed draft order to abolish visiting committees and replace them with lay prison monitors—the proposed draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014. Does the committee agree so to write?

Members indicated agreement.

The Convener: The requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 have not been complied with. The committee may consider that failure in communication and planning in the Scottish Prison Service is the reason for non-compliance with the 28-day rule. Mindful of such failures, does the committee agree to draw the instrument to the Parliament's attention under reporting ground (j), as it breaches the 28-day rule, and in doing so to report that it finds the failure to be completely unsatisfactory?

Members indicated agreement.

Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2014 (SSI 2014/23)

The committee agreed that no points arose on the instrument.

The Convener: The committee may wish to note that a wholly new set of regulations—the proposed draft Local Government Pension Scheme (Scotland) Regulations 2014—has been consulted on. That could be welcomed, as the Local Government Pension Scheme

(Administration) (Scotland) Regulations 2008 (SSI 2008/228) and the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (SSI 2008/230) appear to be in need of consolidation. Does the committee agree to welcome that development?

Members *indicated agreement.*

Non-Domestic Rate (Scotland) Order 2014 (SSI 2014/28)

Non-Domestic Rates (Levying) (Scotland) Regulations 2014 (SSI 2014/30)

Protection of Vulnerable Groups (Scotland) Act 2007 (Miscellaneous Provisions) Amendment Order 2014 (SSI 2014/33)

The committee agreed that no points arose on the instruments.

The Convener: In relation to SSI 2014/33, does the committee agree to note the late transposition of directive 2011/93/EU, as the obligations that it imposes will not have been enforceable in domestic law between the transposition date and the date when the order comes into force?

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

Lands Tribunal for Scotland Amendment (Fees) Rules 2014 (SSI 2014/24)

Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) (Amendment) 2014 (SSI 2014/29)

Social Care (Self-directed Support) (Scotland) Act 2013 (Commencement, Transitional and Saving Provisions) Order 2014 (SSI 2014/32)

Prisons (Interference with Wireless Telegraphy) Act 2012 (Commencement) (Scotland) Order 2014 (SSI 2014/34)

11:34

The committee agreed that no points arose on the instruments.

Public Bodies (Joint Working) (Scotland) Bill: After Stage 2

11:35

The Convener: Item 4 is consideration of the delegated powers provisions in the Public Bodies (Joint Working) (Scotland) 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. Members should also note the correspondence from the Scottish Government advising the committee of amendments to be lodged at stage 3 with regard to delegated powers provisions in the bill. Stage 3 consideration of the bill is due to take place on Tuesday 25 February. The deadline for lodging amendments is 4.30 pm on Wednesday 19 February. The committee may therefore wish to agree on its conclusions today.

Does the committee agree to note that the Scottish Government intends to bring forward an amendment at stage 3 to provide that the powers conferred by sections 1(4C) and (4D) would be subject to the affirmative procedure, and to report that it is content with that proposal?

Members indicated agreement.

The Convener: Does the committee agree to report that it is content with the provisions in the bill that have been amended at stage 2 to insert or substantially alter provisions conferring powers to make subordinate legislation?

Members indicated agreement.

Children and Young People (Scotland) Bill: After Stage 2

11:36

The Convener: Item 5 is the Children and Young People (Scotland) Bill. As members will recall, the committee agreed its report on the Children and Young People (Scotland) Bill as amended at stage 2 at last week's meeting. The committee asked the Scottish Government to respond to concerns raised by the committee in its report. Members have seen the Scottish Government's response. Do members have any comments to make?

John Scott (Ayr) (Con): I have a concern that, given the proposals and the withdrawals that have been made, the bill may not be fully compliant with the European convention on human rights. I know that we have the Government's assurance that it intends to consult widely, but there is, on my part at any rate, an underlying concern. Given the recent history on ECHR compliance, I would like to make certain that all the i's are dotted and the t's are crossed at this stage, if that is possible.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): It is pretty clear that the bill itself appears to be ECHR compliant. The issue arises in relation to powers that could be exercised under the bill. Of course, that is probably quite common to bills, because it is always possible to draft powers that might step outside the ECHR. Of course, the committee will have the opportunity to consider secondary legislation as it is brought forward.

The Convener: Do other members have any comments? I am in your hands as to how we might proceed on this.

Stewart Stevenson: I propose that we simply accept it as it is and be grateful for the changes that have already been made.

Richard Baker (North East Scotland) (Lab): On the issue of compliance, what has already been highlighted by the committee is the importance of ministers consulting on regulations that are to be brought forward. Of course, the committee will have another chance to scrutinise the regulations when they come before us, and that process of consultation and scrutiny will be important. More generally, I think that our consideration of these proposals has shown the difficulty that can be caused by the short timescale between stages 2 and 3 of the bill process. I think that it is well worth our flagging up that issue again to ministers.

John Scott: I endorse that comment about the timescales being perhaps too short to allow us to

fully assess and understand all the implications. That may need to be addressed in greater depth at a future date.

The Convener: Indeed. I think that that point is well understood. I think that we have made it already.

Stewart Stevenson: I have just a very brief point. It might be useful if our clerks ensure that the Standards, Procedures and Public Appointments Committee clerks are aware of this specific example, rather than simply the general case, which I think is probably understood already.

The Convener: Okay. On balance, is the committee content to note the Scottish Government's response and await the subordinate legislation, whenever it comes through?

Members *indicated agreement.*

The Convener: That completes item 5 and brings us to item 6, which will be taken in private.

11:39

Meeting continued in private until 11:59.

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

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by APS Group Scotland.

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

For details of documents available to
order in hard copy format, please contact:
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

e-format first available
ISBN 978-1-78392-754-8

Revised e-format available
ISBN 978-1-78392-771-5

Printed in Scotland by APS Group Scotland
