



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 26 November 2013



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**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**30<sup>th</sup> Meeting 2013, 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

**THE FOLLOWING ALSO PARTICIPATED:**

Bruce Crawford (Stirling) (SNP) (Committee Substitute)

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

Committee Room 4



**Scottish Parliament**  
**Delegated Powers and Law**  
**Reform Committee**

*Tuesday 26 November 2013*

[The Deputy Convener *opened the meeting at*  
*11:02*]

**Draft Document subject to**  
**Approval**

**Model Code of Conduct for Members of**  
**Devolved Public Bodies [Draft] (SG**  
**2013/250)**

**The Deputy Convener (Stuart McMillan):**  
 Good morning. I welcome members to the 30th meeting in 2013 of the Delegated Powers and Law Reform Committee and ask them to switch off their mobile phones and any other electronic devices. Apologies have been received from Nigel Don and I welcome Bruce Crawford, who I understand is attending as his substitute.

Agenda item 1 is consideration of a draft document subject to approval—the draft Model Code of Conduct for Members of Devolved Public Bodies.

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

**Draft Document subject to Rule**  
**10.5 of Standing Orders**

**Land Reform (Scotland) 2003**  
**(Modification) Order 2013—Statutory**  
**Guidance (SG 2013/254)**

11:02

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

## Draft Instrument not subject to Parliamentary Procedure

### Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014 [Draft] (SG 2013/219)

11:03

**The Deputy Convener:** Our legal advisers have raised some points on the order. In particular, the meaning of the term “prison records” as it is used in articles 2(2) and 2(3), which insert new sections 7(5), 7A(6) and 7B(5) in the Prisons (Scotland) Act 1989, could be made clearer by defining the term.

In addition, those provisions confer functions on Her Majesty’s chief inspector of prisons, prison monitors and lay monitors in relation to the inspection of “prison records”. It is not clear whether the term covers records that are located within prisons and those that are located outwith them, nor whether the meaning that is intended is the same, irrespective of the person who exercises the function of inspecting records. The meaning of “prison records”, as the term applies for the purposes of remand centres and young offenders institutions—by virtue of article 2(7)—could also be made clearer.

The Scottish Government has undertaken to consider that lack of clarity before the order is finally laid before the Parliament for approval.

Does the committee agree to draw the draft order to the attention of the Parliament on reporting ground (h), as its meaning could be clearer? Does it also agree to note that the Scottish Government has undertaken to consider the matter before the order is finally laid before the Parliament for approval?

**Members indicated agreement.**

**The Deputy Convener:** The order also contains some drafting errors. First, in amending schedule 5 to the Public Services Reform (Scotland) Act 2010, article 3(2)(c) inserts a reference to prison monitors in the wrong place. Secondly, paragraphs 8(2)(a) and (b) in part 1 of the schedule contain an error. The provisions amend schedule 1 to the Public Records (Scotland) Act 2011 to insert reference to lay monitors and prison monitors who are appointed under section 7(3) of the Prisons (Scotland) Act 1989, when they should refer to sections 7A(1) and 7B(1) of that act. Thirdly, the consequential amendments in paragraphs 3(5) and 3(6) and 6(2) and 6(3) of part 1 of the schedule, which amend provisions of the Criminal Justice and Public Order Act 1994 and the Crime and Punishment (Scotland) Act 1997, should be omitted.

The Scottish Government has undertaken to correct the errors when the order is finally laid before the Parliament.

Does the committee agree to draw the draft order to the attention of the Parliament on the general reporting ground, as it contains some drafting errors, and does it also agree to note that the Scottish Government has undertaken to correct the errors before the order is finally laid before the Parliament for approval?

**Members indicated agreement.**

**The Deputy Convener:** Furthermore, the committee is invited to welcome the fact that a comprehensive version of the proposed explanatory document has been relaid. The document now contains further details of how the Scottish Government considers that the draft order implements the various requirements of the Public Services Reform (Scotland) Act 2010.

Does the committee agree to welcome that?

**Members indicated agreement.**

**The Deputy Convener:** Finally, the committee is invited to note that, in article 1, the draft order does not propose a date when the provisions would come into force. That will be required in the order that is finally laid. Does the committee agree to note that?

**Members indicated agreement.**

## Instruments subject to Affirmative Procedure

**Health Boards (Membership and Elections)  
(Scotland) Order 2013 [Draft]**

**Freedom of Information (Scotland) Act  
2002 (Historical Periods) Order 2013  
[Draft]**

**Land Reform (Scotland) Act 2003  
(Modification) Order 2013 [Draft]**

11:07

**The Deputy Convener:** No points have been raised by our legal advisers on the instruments, but in relation to the draft Health Boards (Membership and Elections) (Scotland) Order 2013, the committee may wish to note that the explanatory note and the policy note do not provide clarity as regards the purpose and effect of article 3 of the order, which has significance in making provision for certain subsections of the Health Boards (Membership and Elections) (Scotland) Act 2009 to continue to have effect in the Fife and Dumfries and Galloway health board areas, despite the order revoking the pilot arrangements for health board elections in those areas. An explanation for article 3 in the note would have been useful to readers and for scrutiny of the order. Do members have any comments?

**Members:** No.

**The Deputy Convener:** That aside, is the committee content with the instruments?

**Members** *indicated agreement.*

## Instruments subject to Negative Procedure

**Adoption (Recognition of Overseas  
Adoptions) (Scotland) Regulations 2013  
(SSI 2013/310)**

11:08

**The Deputy Convener:** Our legal advisers have raised some points about the regulations, the policy intention of which is that adoptions that are effected under the law of countries or territories that were not specified in the Adoption (Designation of Overseas Adoptions) Order 1973 (SI 1973/19) and which are specified in the schedule to the regulations will be recognised as overseas adoptions only if they were effected there on or after 3 January 2014. The regulations do not specify whether all adoptions effected under the law of such countries will be recognised from 3 January 2014 regardless of when they were effected, or whether only those that are effected once the instrument is in force will be recognised.

The Scottish Government accepts that, as currently drafted, the regulations do not make the policy intention clear and, in its response to the committee, it undertook to make an amendment to the regulations to clarify the policy prior to the instrument coming into force on 3 January 2014. That instrument was laid on Friday and it will be considered by the committee at a later date.

Members may wish to comment separately on the broader issue of quality control that the matter raises, but I propose that we deal first with the narrower issue of our scrutiny of the individual instrument. I will give members the opportunity to comment on the wider issue separately, if they wish.

Does the committee agree to draw the regulations to the attention of the Parliament under reporting ground (h), as their meaning could be clearer?

**Members** *indicated agreement.*

**Bruce Crawford (Stirling) (SNP):** Can we also note the Government's commitment to take prompt corrective action?

**The Deputy Convener:** That is question 2. Does the committee wish to welcome the Scottish Government's prompt action to address that concern before the regulations come into force?

**Members** *indicated agreement.*

**Bruce Crawford:** I am sorry that I was so premature.

**Richard Baker (North East Scotland) (Lab):** You were ahead of the curve.

**Bruce Crawford:** It just shows that I read the committee papers.

**The Deputy Convener:** Returning to the broader issue that I mentioned, the committee has previously written to the Scottish Government about the supporting information that the Parliament requires to ensure that it can carry out proper scrutiny of instruments that involve the transition from one regime to another. It is important that the policy note makes it clear how the Government will treat cases that occurred prior to the change after the change takes place. In this case, further information was required from the Government to understand how existing adoptions from newly recognised countries would be dealt with in Scotland once the regulations came into force. The regulations could have been read in two different ways, which could have resulted in confusion about the status of such adoptions in Scotland.

Do members have any comments?

**John Scott (Ayr) (Con):** Given that mistakes have been made in the past, and that the committee, the Parliament and the Government have been criticised in this area by the courts, I am disappointed that there again appears to be a lack of quality control in the drafting of such instruments. I would have thought that the Government would have wanted to address that, so I am disappointed that such inadequacy has appeared again.

Like Bruce Crawford, I very much welcome the Government's intention to correct the problem, but given the criticism to which we have been subject in the past, we need to get on top of the problem.

**The Deputy Convener:** Do members agree with that?

*Members indicated agreement.*

**The Deputy Convener:** Given that further information was required, do members agree to write to the Scottish Government to remind it of its commitment to provide clear policy notes on such matters?

*Members indicated agreement.*

**The Deputy Convener:** Given that we are mindful of the concerns that were raised previously, and given that a corrective instrument has been necessary in the context of transitional changes to the law of adoption, do members agree to seek further reassurance in writing from the Government about the adequacy of its quality control mechanisms for the drafting of instruments?

*Members indicated agreement.*

**Flood Risk Management (Designated Responsible Authorities) (Scotland) Order 2013 (SSI 2013/314)**

**Litter (Fixed Penalties) (Scotland) Order 2013 (SSI 2013/315)**

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**Seed (Scotland) (Miscellaneous Amendments) Regulations 2013 (SSI 2013/326)**

**National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Amendment Regulations 2013 (SSI 2013/327)**

**The Deputy Convener:** No points have been raised by our legal advisers on the instruments, but members will have seen the written submission that the committee has received from the Law Society of Scotland in relation to SSI 2013/320. Do members have any comments on the submission?

**Members:** No.

**The Deputy Convener:** Is the committee content with the instruments?

*Members indicated agreement.*

**John Scott:** I am particularly pleased to see that the tomato has now been properly renamed in SSI 2013/326.

**Bruce Crawford:** It is good to see such enthusiasm on this historic day. *[Laughter.]*



## **Instruments not subject to Parliamentary Procedure**

**Act of Sederunt (Rules of the Court of  
Session Amendment No 7)  
(Miscellaneous) 2013 (SSI 2013/317)**

**Pollution Prevention and Control  
(Designation of Energy Efficiency  
Directive) (Scotland) Order 2013 (SSI  
2013/321)**

11:14

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

## **Marriage and Civil Partnership (Scotland) Bill: After Stage 1**

11:15

**The Deputy Convener:** Agenda item 7 is consideration of the Scottish Government's response to the committee's stage 1 report on the Marriage and Civil Partnership (Scotland) Bill. Members have seen the briefing paper and the response from the Scottish Government. Do members have any comments?

**Members:** No.

**The Deputy Convener:** Are we content to note the response and, if necessary, to reconsider the bill after stage 2?

**Members** *indicated agreement.*

## **Public Bodies (Joint Working) (Scotland) Bill: Stage 1**

11:16

**The Deputy Convener:** This item of business is consideration of the Scottish Government's response to the committee's stage 1 report on the Public Bodies (Joint Working) (Scotland) Bill. Members have seen the briefing paper and the response from the Scottish Government. Do members have any comments?

**Members:** No.

**The Deputy Convener:** Are members content to note the response and, if necessary, to reconsider the bill after stage 2?

**Members** *indicated agreement.*

## **Children and Young People (Scotland) Bill: After Stage 1**

11:16

**The Deputy Convener:** Agenda item 9 is consideration of the Scottish Government's response to the committee's stage 1 report on the Children and Young People (Scotland) Bill. Members have seen the briefing paper and the response from the Scottish Government. Do members have any comments?

**Members:** No.

**The Deputy Convener:** The committee will note from the Scottish Government's response that it is considering giving the Scottish ministers the flexibility to extend Scotland's adoption register in future to allow it to cover other forms of permanence care planning for children, in addition to adoption. If, however, the Scottish Government concludes that the register should be restricted to adoption, the committee may consider that amendments should be lodged at stage 2 to narrow the breadth of the power.

Does the committee therefore agree to write to the Minister for Children and Young People to ask her to inform the committee of what the Scottish Government proposes once its consideration of the issue is complete, in order to allow the committee to form a view on whether its concerns in relation to the power have been addressed?

**Members** *indicated agreement.*

**John Scott:** I think that that is the appropriate thing to do.

**The Deputy Convener:** Thank you.

That brings us to the end of the meeting. The date of our next meeting will be Tuesday 3 December.

*Meeting closed at 11:17.*

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

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e-format first available  
ISBN 978-1-78392-198-0

Revised e-format available  
ISBN 978-1-78392-212-3

