



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 25 February 2014

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DELEGATED POWERS AND LAW REFORM COMMITTEE

7th 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

THE FOLLOWING ALSO PARTICIPATED:

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

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

Committee Room 6

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 25 February 2014

[The Convener *opened the meeting at 10:30*]

Decision on Taking Business in Private

The Convener (Nigel Don): I welcome members to the seventh meeting in 2014 of the Delegated Powers and Law Reform Committee, and as always, ask members to switch off mobile phones—I will obey that instruction myself.

Apologies have been received from Stuart McMillan and Richard Baker. I welcome Bruce Crawford as a substitute for Stuart McMillan.

Bruce Crawford (Stirling) (SNP): Thank you.

The Convener: Under agenda item 1 it is proposed that the committee take in private item 6, which is consideration of a draft report on the delegated powers provisions in the Housing (Scotland) Bill at stage 1. Is the committee content to take item 6 in private?

Members *indicated agreement.*

Instruments subject to Affirmative Procedure

Budget (Scotland) Act 2013 Amendment Order 2014 [Draft]

Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2014 [Draft]

Patient Rights (Treatment Time Guarantee) (Scotland) Amendment Regulations 2014 [Draft]

Renewables Obligation (Scotland) Amendment Order 2014 [Draft]

10:30

The committee agreed that no points arose on the instruments.

The Convener: The committee may wish to note that the last of the instruments implements a commitment that was previously given by the Scottish Government to correct an error in the Renewables Obligation (Scotland) Amendment Order 2013 (SSI 2013/116).

Instruments subject to Negative Procedure

Self-directed Support (Direct Payments) (Scotland) Regulations 2014 (SSI 2014/25)

National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2014 (SSI 2014/39)

10:31

The committee agreed that no points arose on the instruments.

Disabled Persons' Parking Badges (Scotland) Bill: Stage 1

10:32

The Convener: We come to agenda item 4, under which the committee will consider the delegated powers in the bill at stage 1.

The committee is invited to agree the questions on the bill's delegated powers that it wishes to ask the member in charge of the bill. It is suggested that those questions are raised in correspondence. The responses will help to inform our draft report on the bill and the committee will have an opportunity to consider the responses at a future meeting, before the draft report is considered.

Section 1 of the bill amends section 21(1A)(b) of the Chronically Sick and Disabled Persons Act 1970 to provide that the form of a blue badge that is issued by a local authority in Scotland must "fulfil any requirements" that are specified, in regulations or administratively, by the Scottish ministers. That will allow some elements of the specification to be published in subordinate legislation and some to be set administratively.

The bill will amend section 21 of the 1970 act to provide that the form of a badge must meet any requirements that are prescribed by regulations

"or otherwise specified by the Scottish Ministers".

The power in the bill is broad enough to allow the Scottish ministers to specify the requirements of the badge entirely administratively, without publishing any details as to the form of the badge in regulations. That would seem to be contrary to the policy intention that non-sensitive features of the badge should be published in regulations so as to keep such information freely available in the public domain.

Does the committee agree to ask the member in charge why he has decided not to draw that power more narrowly, so as to specify generally what requirements are to continue to be prescribed in regulations and what features may be set administratively, and, given that the policy intention is explained in the delegated powers memorandum as including that non-sensitive features of the badge should be published in regulations, why the power is drawn broadly enough to enable the whole specification of the badge requirements administratively, if desired?

Members *indicated agreement.*

The Convener: Section 6 allows the Scottish ministers to make regulations that require local authorities to review, on request, a decision not to award a badge on the ground that a person is not eligible for one. Eligibility depends on being a

disabled person of a description prescribed in regulations. The regulations will specify who may apply for a review and the manner in which the application is to be made. They may also provide for the procedure that an authority has to follow when conducting a review. Under section 6(3)

"Regulations ... may provide that the review requirement ... does not apply to a decision that a person is not a disabled person of a description ... prescribed under ... the Chronically Sick and Disabled Persons Act 1970 and ... specified in the regulations."

The power to exclude certain decisions from review is a wide power that cuts across all decisions on eligibility, yet the delegated powers memorandum does not explain what it will be used for.

Does the committee agree to ask the member in charge to explain what the power in section 6(3) of the bill is intended to achieve and, if the power could be used to impose further eligibility criteria for applicants, why that is considered proportionate?

Members *indicated agreement.*

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I want to put on record something in relation to our access to other legislation.

The bill is substantially about amending the Chronically Sick and Disabled Persons Act 1970 and the Road Traffic Regulation Act 1984. It is worth making the point that the normal source of legislation that has already been passed is www.legislation.gov.uk, which is managed by the United Kingdom Government. Neither of those acts is up to date on that website and the sections to which the Disabled Persons' Parking Badges (Scotland) Bill refers are not present. Therefore, it is substantially difficult for those of us who sit at the end of an electronic wire at the weekend preparing for the committee meeting to know what the effect of the bill would be.

I felt that it would be useful to put on the record that it would be substantially helpful if the UK Government kept up to date the published record of legislation that is available to the members of this Parliament.

The Convener: Indeed. As a chiding to those who may not have been diligent enough to look it up, that might be useful, but it makes the general point that, if we cannot actually get at the legislation, it is not effective law. We have said that before and I guess that we will say it again.

Stewart Stevenson: Of course, I can go to the Scottish Parliament information centre after the meeting and remedy that defect, but it inhibits one's good preparation for meetings, which is not good order.

John Scott (Ayr) (Con): Not overly to criticise the UK Parliament, I want to ascertain that our Parliament has its own house absolutely in order and that every website is up to date. Perhaps Mr Stevenson could inform us about that.

The Convener: I suggest that we not get into a debate along those lines. Mr Scott's point is fairly made; nonetheless, the point that we should make is that the general public—of whom we happen to be members in this context—should have access to the current law. Perhaps that is the point with which we could stay.

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

10:37

The Convener: As members will recall, the committee agreed its report on the Public Bodies (Joint Working) (Scotland) Bill as amended at stage 2 at last week's meeting. Further to that, the Scottish Government has written to the committee advising it of amendments that it has lodged at stage 3 that relate to delegated powers and explaining the purpose of those amendments.

Members have seen the correspondence from the Scottish Government and we have just had a briefing. I invite them to comment on what is before us.

Stewart Stevenson: There is a simple shortcoming in the information that is before the committee in relation to section 46 and the amendment that allows the Scottish ministers to form companies and bodies corporate. Such an amendment being lodged at stage 3 clearly suggests that something has arisen in the ministers' consideration of the bill that has caused them to introduce the measure, but there is nothing before us that helps me to understand the reason behind that.

It is a power to cover future events as yet unknown, so I can understand the general point, but it would be helpful to the Parliament if we understood the specific reason that the minister had for lodging the amendment. We can see its effect and the process by which the measure would be implemented. I have no concerns about either of those points but, without knowing the reason why the amendment was lodged, there is a shortcoming in our ability to understand it properly.

John Scott: I agree utterly with what Stewart Stevenson says on this occasion. I am concerned that the measure is being introduced at stage 3 without the normal parliamentary scrutiny that one would expect. I appreciate that there may be policy issues here, but nonetheless the power is far reaching, as I understand it, and we should have had more information than we currently have to enable us to evaluate the intention.

Bruce Crawford: I agree that we should have more information, although I am not sure that the power is as far reaching as members might imagine. I remember having the same discussion when the bill that formed Scottish Water was considered. At that time, I challenged the then Labour and Liberal Executive on whether the use of the term "body corporate" was necessarily about the formation of companies. Allan Wilson, who was then the minister, quite rightly told me

that it can be about forming joint ventures with other public bodies and not just outside organisations. The step that the Government is taking is not unusual, although I agree that the committee should have had more information about the intent and purpose.

John Scott: I appreciate that. I remember that Bruce Crawford and I sat on that bill committee together, and I note that there is a precedent, as he reminded us. However, stage 3 of the Public Bodies (Joint Working) (Scotland) Bill will take place this afternoon. It is simply not good enough that we have not had more of an explanation.

Convener, perhaps you will wish to take part in this afternoon's debate, to elicit the information from the Government minister. I do not know; it is, of course, a matter for you.

The Convener: Clearly, it is a matter for the committee, and if the committee is concerned, it is probably appropriate that the convener takes part and expresses the committee's concerns. However, I would like to hear all members' views. I am conscious that Mike MacKenzie may want to say something.

Mike MacKenzie (Highlands and Islands) (SNP): I have a general point to make about the timing. The power might be entirely benign or even beneficial—it might be something that we would welcome—but the timeframe does not allow us to explore it. In general terms, we ought to try to devise a means of avoiding this situation.

The Convener: Yes. Of course, we have mentioned the issue several times in the past few weeks. We still have the convener of the appropriate committee listening in, and I am sure that he will explore that.

I am in the committee's hands as to what we should do this afternoon. The obvious thought is that I, on your behalf, should raise the issue at the appropriate point, when amendment 86 is called. I would simply ask the Government whether it can say any more about the purpose for which the power is there and note that, if there is a serious policy behind it, we might have expected that the negative procedure would not be used.

Stewart Stevenson: Just for clarity, convener, I agree that you should use the phrase "on behalf of the committee". It is important that we agree that you will be speaking not as an individual but on behalf of the committee.

The Convener: Yes. That would reflect this morning's discussion.

Stewart Stevenson: That is fine. I just wanted us to be clear about that.

John Scott: I have every confidence in you, convener.

The Convener: I do not want to over-egg this, but is there anything else that we need to say, or has everything that is appropriate been said? I think that it has.

John Scott: We are perhaps the least important part of the process, but I note that the committee that is responsible for the bill, those who gave evidence on it and others who scrutinised it during the consultation are not aware of the power. We are at the end of the chain, but many others who might have wished to comment have not been able to do so.

The Convener: Right. I think that I know what I have to do. Thank you for that.

10:43

Meeting continued in private until 10:52.

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e-format first available
ISBN 978-1-78392-818-7

Revised e-format available
ISBN 978-1-78392-832-3