



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 18 March 2014

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DELEGATED POWERS AND LAW REFORM COMMITTEE

10th 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 3

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 18 March 2014

[The Convener opened the meeting at 11:30]

Decision on Taking Business in Private

The Convener (Nigel Don): I welcome members to the 10th meeting in 2014 of the Delegated Powers and Law Reform Committee. As ever, I ask members to switch off mobile phones, please.

Under agenda item 1 it is proposed that the committee takes in private items 5, 6 and 7. Item 5 is consideration of the response to the committee's questions on the Disabled Persons' Parking Badges (Scotland) Bill from the member in charge of the bill, in order to inform the committee's report. Item 6 is consideration of our draft report on the Revenue Scotland and Tax Powers Bill. Item 7 is consideration of a paper from the clerk relating to the Standards, Procedures and Public Appointments Committee's inquiry into the procedures for considering legislation.

Does the committee agree to take those items in private?

Members indicated agreement.

Instruments subject to Negative Procedure

Ethical Standards in Public Life etc (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2014 (SSI 2014/50)

11:31

The Convener: The drafting of regulation 4 is defective, as new regulation 4A(2), which is inserted into the Ethical Standards in Public Life etc (Scotland) Act 2000 (Register of Interests) Regulations 2003 (SSI 2003/135), fails to refer to the "proper officer" as the person to whom members of devolved public bodies that are also national park authorities must give a notice of interests.

The committee may consider it to be highly unsatisfactory that the Scottish Government does not intend to correct that error prior to the regulations taking effect. Does the committee therefore agree to draw the regulations to the attention of the Parliament on reporting ground (i) as the drafting in regulation 4 is defective?

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): In this particular case, we should definitely press further. If a member of a national park authority were to fail to undertake their commitment to report to the standards officer and used, as their defence, the absence of a standards officer to whom they could report, in some circumstances such a defence would be perfectly legitimate. In this context, precision of wording is likely to be quite important. I am disappointed that the Government does not see the need to align the language with what is in the relevant primary legislation for national parks, especially as previous secondary legislation appears to have used the correct term.

John Scott (Ayr) (Con): I agree with Stewart Stevenson. At the very least, the error could lead to confusion, but it could lead to a great deal more than confusion. It is a great pity that the Government is not prepared to amend the regulations. This committee has been working particularly hard to encourage better drafting and we would have expected the Government to support that. It appears that, for reasons as yet undefined and perhaps best known only to the Government, it is choosing not to alter an obvious and quite serious mistake.

The Convener: I take it that we agree that we will report regulation 4 as defective.

Members indicated agreement.

The Convener: Does the committee also agree to report that it considers the Government's decision not to amend that error prior to the regulations taking effect to be highly unsatisfactory?

Members indicated agreement.

Town and Country Planning (Hazardous Substances) (Scotland) Amendment Regulations 2014 (SSI 2014/51)

The Convener: Our legal advisers have suggested that the committee may wish to draw the following matter to the attention of the lead committee considering the regulations. The regulations come into force on 29 March 2014. Article 31 of directive 2012/18/EU on the control of major accident hazards involving dangerous substances provides that article 30, which the regulations implement, required to be transposed into domestic law by 14 February 2014. Directive 2012/18/EU was published in July 2012.

The explanation provided by the Scottish Government for the relatively short delay in transposing the European Union requirements is that there were competing resource pressures within the policy department when the regulations were due to be laid. There was also a need to liaise with the Health and Safety Executive and the United Kingdom Administrations on the outcome of consultations on the proposals that precluded a substantially earlier transposition date.

The committee may wish to draw another matter to the attention of the lead committee. Regulation 3 has effect in the situation in which, as a result of the change in the treatment of heavy fuel oil that is effected by the regulations, a person who does not presently need a hazardous substances consent would require consent immediately from 29 March 2014. Regulation 3 provides for a transitional exemption from enforcement procedures for a six-month period, if the conditions for exemption are met, to enable the persons who are affected to make an application for consent.

The committee may consider that the need for the exemption period to operate from 29 March until 28 September 2014 might have been avoided, had the regulations been made sufficiently in advance of 14 February for affected persons to have obtained consent in time for article 30 of directive 2012/18/EU being transposed into Scots law. The need for the exemption period, which provides transitional immunity from prosecution and contravention proceedings, results from the regulations being laid before the Parliament on 27 February, with a coming-into-force date of 29 March, rather than their being planned and co-ordinated to meet the transposition deadline of 14 February.

If members have no comments, does the committee agree to draw those matters to the attention of the lead committee for the regulations?

Members indicated agreement.

Brucellosis (Scotland) Amendment Order 2014 (SSI 2014/63)

The Convener: The order inserts article 7(9), which provides that the maximum period of imprisonment that can be imposed on conviction is six months, into the Brucellosis (Scotland) Order 2009 (SSI 2009/232). However, paragraph 1(1)(d) of schedule 2 to the European Communities Act 1972 provides that the maximum period of imprisonment that can be imposed in the circumstances to which the order applies is three months.

Does the committee agree to draw the order to the attention of the Parliament on ground (e), as the maximum penalty that is specified in article 7(9), which it inserts into the Brucellosis (Scotland) Order 2009, is not intra vires the enabling power?

Members indicated agreement.

The Convener: The Scottish Government accepts that an error has been made in the permitted penalty limits and has laid an order that will correct the provision before the associated offence comes into force on 1 April 2014.

Brucellosis (Scotland) Amendment (No 2) Order 2014 (SSI 2014/72)

The Convener: We now come to that amendment order. It has been drawn to the attention of the committee because the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 have not been complied with.

However, in the circumstances, the committee may wish to welcome the breach of the 28-day rule, as the Government has taken prompt action to ensure that the error in the penalties that are provided for by SSI 2014/63, which we have just considered, is corrected before it comes into force on 1 April 2014.

Does the committee agree to draw the order to the attention of the Parliament on ground (j), as the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 have not been complied with?

Members indicated agreement.

John Scott: Earlier, I criticised the Government, but I think that this is an example of how the Government should behave. I very much welcome the fact that it is taking the action that has been described, which is what we would expect.

The Convener: Indeed. Nonetheless, I think that we would want to report formally in the way that I suggested to ensure that our statistics are consistent.

Does the committee agree, however, that the breach of the 28-day rule was appropriate in the circumstances, as it will ensure that the error in the penalties that are provided for by SSI 2014/63 is corrected before it comes into force on 1 April 2014?

Members indicated agreement.

Police Service of Scotland (Conduct) Regulations 2014 (SSI 2014/68)

The Convener: Regulation 7 provides that a constable may be legally represented in any misconduct or appeal hearing. However, the effect of regulation 25(8)(b) is that legal representation at an appeal hearing will be subject to the discretion of the person who determines the appeal and that, as such, it may be refused in cases other than those in which disciplinary action that constitutes demotion in rank or dismissal has been ordered.

Does the committee therefore agree to draw the regulations to the attention of the Parliament on reporting ground (h), as the form or meaning of regulation 7 could be clearer?

Members indicated agreement.

The Convener: A further matter has been raised by our legal advisers. The lead committee may wish to consider whether the exercise of the right of a constable to object to the appointment of an assessor, a solicitor or an advocate to advise at a misconduct hearing, which is to be exercised within three working days of receipt of the misconduct form that must be sent under regulation 15(2), is or could be frustrated by the fact that the appointment of such persons is not a matter of which the constable is required to be given notice in the misconduct form under regulation 15(3).

Does the committee therefore agree to draw regulations 15 and 16 to the attention of the lead committee?

Members indicated agreement.

CRC Energy Efficiency Scheme (Amendment) Order 2014 (SI 2014/502)

The Convener: The requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 have not been complied with but, in this case, the committee may wish to find the reason for non-compliance to be acceptable, as it is the result of a decision to include an additional policy in the carbon reduction commitment scheme, adequate notice of which

appears to have been given to participants. It is, of course, desirable that the scheme should be implemented uniformly throughout the UK at the beginning of its next phase, on 1 April 2014.

Does the committee agree to draw the order to the attention of the Parliament on ground (j), as the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 have not been complied with?

Members indicated agreement.

The Convener: Does the committee agree, however, to report that it finds the reason for non-compliance to be acceptable in this case?

Members indicated agreement.

Instrument not subject to Parliamentary Procedure

Tuberculosis (Scotland) Amendment Order 2014 (SSI 2014/71)

11:41

The committee agreed that no points arose on the instrument.

**Defective and Dangerous
Buildings (Recovery of
Expenses) (Scotland) Bill: Stage
1**

The Convener: Thank you. That brings us to the end of agenda item 4 and I now move the meeting into private.

11:42

Meeting continued in private until 12:02.

11:41

The Convener: Item 4 is consideration of the response from the member in charge of the bill to the committee's stage 1 report on the bill. Members have seen the briefing paper and the response from David Stewart MSP.

Do members have any comments?

Stewart Stevenson: We should simply welcome David Stewart's helpful and constructive response to the committee's report.

John Scott: I agree.

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

Members *indicated agreement.*

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