



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 10 December 2013



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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**32<sup>nd</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

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

Committee Room 1



## Scottish Parliament

### Delegated Powers and Law Reform Committee

*Tuesday 10 December 2013*

[The Convener opened the meeting at 11:00]

### Decision on Taking Business in Private

**The Convener (Nigel Don):** I welcome members to the 32nd meeting in 2013 of the Delegated Powers and Law Reform Committee. We have received apologies from John Scott. As always, I ask members to turn off mobile phones.

Agenda item 1 is a decision on taking business in private. It is proposed that the committee takes items 7 to 10 in private. Item 7 is consideration of the committee's draft report on the Procurement Reform (Scotland) Bill. Item 8 is consideration of the committee's approach to its consideration of the draft Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014 (SG 2013/261) and Statement of Reasons (SG 2013/262). Item 9 is consideration of a draft of the committee's second quarterly report for the parliamentary year 2013-14. Item 10 is consideration of the Scottish Government's response to the committee's report on instruments that the committee has considered during 2012-13.

Does the committee agree to take those items in private?

**Members** *indicated agreement.*

## Instrument subject to Negative Procedure

### Health Boards (Membership) (Scotland) Regulations 2013 (SSI 2013/334)

11:01

**The Convener:** Regulation 5 revives the Health Boards (Membership and Procedure) (Scotland) Regulations 2001 (SSI 2001/302) as they existed immediately before being amended by the Health Boards (Membership) (Scotland) Regulations 2009 (SSI 2009/302), in respect only of Fife Health Board and Dumfries and Galloway Health Board. An effect of that is the revival of various outdated and repealed provisions on the circumstances in which a health board member is disqualified from being such a member, which are contained in regulation 6 of the 2001 regulations.

The Scottish Government has confirmed that that revival of outdated provisions is intended, in the interests of consistency with the position for the other regional health boards, but the committee may consider that it is not satisfactory in principle that an instrument that is laid in the Parliament should incorporate outdated provisions or omit suitable updating provisions.

Therefore, the committee may wish to welcome the fact that the Scottish Government has undertaken to review and amend the 2001 regulations in the first half of next year, as part of a planned stakeholder engagement to strengthen the governance and accountability arrangements for all health boards in Scotland, and that it will write to health boards before 31 December 2013 to give them notice of the upcoming consultation on updating the regulations.

The committee may also consider that updating regulations should be laid as soon as is practicable, so that suitable provision is made for the circumstances in which a health board member will be disqualified from being a member.

Does the committee agree to draw the regulations to the attention of the Parliament on the general reporting ground?

**Members** *indicated agreement.*

**The Convener:** Does the committee agree to welcome the fact that the Scottish Government has undertaken to review and amend the 2001 regulations in the first half of next year, and that it will write to health boards before 31 December 2013 to give them notice of the upcoming consultation on updating the regulations?

**Members** *indicated agreement.*

## Instruments not subject to Parliamentary Procedure

### Bovine Viral Diarrhoea (Scotland) Amendment (No 2) Order 2013 (SSI 2013/337)

### Defamation Act 2013 (Commencement) (Scotland) Order 2013 (SSI 2013/339)

### Sexual Offences (Scotland) Act 2009 (Commencement No 2) Order 2013 (SSI 2013/341)

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

11:04

**The Convener:** The form or meaning of the definition of “current BVD finding” that article 3(a) inserts in the Bovine Viral Diarrhoea (Scotland) Order 2013 (SSI 2013/3)—the 2013 order—could be clearer when read with the existing definition of “BVD finding” in the 2013 order. The discrepancy between the two definitions results in ambiguities in the provision that is made by the 2013 order as amended by SSI 2013/337.

Does the committee agree to draw the order to the attention of the Parliament on reporting ground (h)?

**Members** *indicated agreement.*

**The Convener:** There is also a patent error in article 17, which amends article 24(1) of the 2013 order. Article 24(1) concerns maintenance by the Scottish ministers of a record of information notified to them under various provisions of that order. Article 17 of the amending order amends article 24(1) to include reference to the four new requirements to notify matters to the Scottish ministers. It incorrectly refers to information notified under article 23D(2)(c), when the intention is clearly to refer to information notified under article 23D(1)(b).

Does the committee therefore agree to draw the order to the attention of the Parliament under the general reporting ground, as there is a patent error in article 17, which amends article 24(1) of the 2013 order?

**Members** *indicated agreement.*

**The Convener:** The committee may wish to note that the Scottish Government has undertaken to lay an amending instrument to remedy both those matters. It is intended that the amending provisions will come into force on 1 January 2014, together with the provisions in the order.

Does the committee agree to note that the Scottish Government has undertaken to lay an amending instrument to remedy both matters?

**Members** *indicated agreement.*

## Landfill Tax (Scotland) Bill: After Stage 2

11:06

**The Convener:** Agenda item 4 is consideration of the delegated powers provisions in the Landfill Tax (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.

Stage 3 consideration of the bill is due to take place on Tuesday 17 December. As the deadline for lodging amendments is 4.30 tomorrow, 11 December, the committee may wish to agree its conclusions today.

Does the committee agree to report that it is content in principle with the amended powers in sections 11(1), 13(4) and 17(1) of the bill and with the parliamentary procedures to which those powers are to be subject?

**Members indicated agreement.**

**The Convener:** Section 35 permits the tax authority to delegate the exercise of any of its functions under the bill to the Scottish Environment Protection Agency. In its report at stage 1, the committee strongly recommended that the delegation of functions to SEPA should be published. That recommendation was adopted by the Finance Committee. The point has not been addressed at stage 2, but the Scottish Government has committed to reviewing the matter in the context of the forthcoming revenue Scotland and tax powers bill.

Does the committee therefore agree to consider the matter afresh when the revenue Scotland and tax powers bill comes before the committee for stage 1 scrutiny?

**Members indicated agreement.**

## Bankruptcy and Debt Advice (Scotland) Bill: Stage 1

11:07

**The Convener:** Agenda item 5 is consideration of the Scottish Government's response to the committee's stage 1 report on the Bankruptcy and Debt Advice (Scotland) Bill. Members have seen the briefing paper and the response from the Scottish Government.

If members have no comments, are we content to note the response and, if necessary, to reconsider the bill after stage 2?

**Members indicated agreement.**

## **Regulatory Reform (Scotland) Bill: After Stage 2**

11:08

**The Convener:** Agenda item 6 is consideration of correspondence that the Scottish Government has received in relation to the Regulatory Reform (Scotland) Bill. Members have seen the briefing paper and the correspondence from the Scottish Government.

The proposed powers in section 10 and schedule 2 to the bill will allow the Scottish ministers to define and regulate new “environmental activities”. In its stage 1 report on the bill, the committee noted that it is proposed that regulations that are made under section 10 and schedule 2 will be subject to the negative procedure in all cases, except when they propose to textually amend an act.

The committee expressed some concerns about whether the procedures that are proposed in relation to the powers in section 10 and schedule 2 would provide for full and adequate scrutiny of the regulations in all cases. It recommended that the Scottish Government should fully consider in advance of stage 2 in which circumstances the exercise of powers would be more appropriately scrutinised by means of the affirmative procedure rather than the negative procedure.

Having considered the committee’s concerns, the Scottish Government has indicated that it does not consider it appropriate that any regulations that are made under section 10 should be subject to the affirmative procedure. However, in response to the committee’s concerns, the Government has proposed that ministers could provide periodic reports on the operation of part 2 of the bill as enacted, with emphasis being placed on the environmental provisions that it contains. The Government considers that such reports would give the Parliament and the Government the opportunity to scrutinise the operation of the bill as enacted and, in particular, the operation of the environmental powers, with a view to determining whether further procedural provisions were required.

If members have no comments, do we agree to welcome the Scottish Government’s proposal that ministers provide periodic reports on part 2 of the bill as enacted?

**Members** *indicated agreement.*

**The Convener:** Does the committee agree to write to the Scottish Government to recommend that the production of such reports should be made a requirement that is set out on the face of the bill?

**Members** *indicated agreement.*

**The Convener:** That completes agenda item 6 and brings us to the end of the public part of the meeting.

11:10

*Meeting continued in private until 11:56.*



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