



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Thursday 25 September 2014

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DELEGATED POWERS AND LAW REFORM COMMITTEE
26th 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

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Thursday 25 September 2014

[The Convener opened the meeting at 10:01]

Instrument subject to Negative Procedure

Teachers' Pension Scheme (Scotland) Regulations 2014 (SSI 2014/217)

The Convener (Nigel Don): I welcome members to the 26th meeting in 2014 of the Delegated Powers and Law Reform Committee and ask that any mobile phones be switched off. We have received apologies from Margaret McCulloch, who is at another committee.

Several points have been raised by our legal advisers on the Teachers' Pension Scheme (Scotland) Regulations 2014 (SSI 2014/217). First, there has been an unjustifiable delay in laying the regulations before the Parliament, as they were made on 1 August but laid only on 7 August. Does the committee therefore agree to report the regulations under reporting ground (d), as there has been an unjustifiable delay in laying them?

Members indicated agreement.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I agree that we should do that, but I would like to put on record that there is some uncertainty in my mind—and, perhaps, in the minds of others—about the effectiveness of the joint working between the Westminster Administration and the Administration in Scotland.

The Minister for Parliamentary Business seems to have accepted some responsibility for what has happened. I would like to be clear about where the responsibility for instruments for the making of which there is a shared responsibility stands, and I would like a shared commitment to be made at some point in the future to improving the process. I am not particularly interested in examining the detail of how the scheduling got where it is, but I am interested in a joint statement being made, perhaps by someone in the Scotland Office and the Minister for Parliamentary Business, that the Scottish and UK Governments will work together to make the process work better in the future.

John Scott (Ayr) (Con): I share Stewart Stevenson's views, but I add that it appears that this is the third time that such circumstances have arisen. There has been almost a breakdown of

satisfactory communication links between the two Administrations on three occasions, and we need to find a way of resolving the situation, because I understand that a great deal more pension legislation might be about to come through. We want to get the system between the two Administrations working in a way that is fit for purpose because, at the moment, demonstrably, it is not.

The Convener: I am grateful for those comments.

Although the delay does not affect the validity of the regulations, it amounts to a failure to comply with the laying requirement in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 that instruments must be laid as soon as practicable after they are made.

Does the committee therefore agree to report the regulations under reporting ground (j), as they breach that laying requirement?

Members indicated agreement.

The Convener: Furthermore, the drafting of the regulations appears to be defective in that there are 10 errors that the Scottish Government has acknowledged to be errors. The committee may consider that those errors may impede the intended operation of the regulations or fail to give effect to the policy intention.

Does the committee therefore agree to report the regulations under reporting ground (i), as their drafting appears to be defective?

Members indicated agreement.

John Scott: Forgive me for saying so, convener, but I think that the drafting of the regulations is a little poorer than defective. I think that it is barely workmanlike. The regulations are not remotely fit for purpose, as is indicated by their proposed revocation and the laying of a new set of regulations in their place. I am extremely dismayed about the waste of our legal team's valuable time in having to review regulations that are not fit for purpose and the waste of our time in considering regulations that will immediately be revoked.

The Convener: That gives me an opportunity to observe, for the sake of the record, that this morning we received a letter from the Minister for Parliamentary Business, Joe FitzPatrick, in which he confirms:

"It would be our intention to lay a new order by revoking the instrument and replacing it with a new and corrected version at the earliest possible convenience.

The timing of the laying of the new order is not completely within the control of Scottish Ministers. The new version, and the accompanying revocation order, will require the consent of the Lords Commissioners of Treasury. I have asked my officials to explore how quickly

this can be progressed, and to ensure that your officials are kept informed of progress.”

I am grateful to the minister for those comments, but it is worth observing that we have to go through the process of considering and reporting on regulations that have been laid and which need to be reported on.

We have agreed that the drafting of the regulations is defective. There are two other provisions the meaning of which could be clearer. The Scottish Government appears to accept that there is a lack of clarity in respect of one of those provisions and has undertaken to consider the drafting of the other.

Does the committee agree to report the regulations under reporting ground (h), as there are two provisions the meaning of which could be clearer?

Members indicated agreement.

The Convener: There are a further 17 errors, including patent and other drafting errors, which on balance do not appear to impede delivery of the policy intention, but which the committee may wish to report under the general reporting ground. Does the committee agree to do so?

Members indicated agreement.

The Convener: That gives me the opportunity to concur with John Scott’s view that, on the whole, the regulations appear to be not fit for purpose, and I suspect that the committee would want to concur.

The committee may wish to note that the Scottish Government has expressed its gratitude to the committee for picking up the many errors in the regulations and has apologised for its failure to do so. The committee may consider that, although it notes the explanation that is given in the Scottish Government’s response, it is highly unsatisfactory for the regulations to have been laid before the Parliament in their present form. The committee’s role is not to act as a substitute for internal checking by the relevant Scottish Government department. Given that the regulations do not come into force until 1 December 2014, and that some parts of them do not come into force until 1 April next year, there appears to have been no urgent need to lay them in their present form. Rather, it appears that sufficient time would have been available for the regulations to undergo thorough checking and quality control processes before laying, and I am sure that we all hope that the Government will ensure that that happens in the future.

I have already noted that the regulations are to be revoked, so it looks as though the damage will be removed.

Stewart Stevenson: I noted your use of the word “hope”. I think that it is almost the case that we should say to the Government that things are required to improve.

The Convener: Indeed.

As members have no further comments, that brings us to the end of the only agenda item and, therefore, to the end of the meeting. Thank you for your time.

Meeting closed at 10:08.

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