



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 4 November 2014



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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**30<sup>th</sup> 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 Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Delegated Powers and Law Reform Committee

*Tuesday 4 November 2014*

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

### Decision on Taking Business in Private

**The Convener (Nigel Don):** I welcome members to the 30th meeting in 2014 of the Delegated Powers and Law Reform Committee and, as always, ask that mobile phones be switched off. We have apologies from Margaret McCulloch.

Agenda item 1 is a decision on taking business in private. It is proposed that we take in private item 8, which is consideration of a draft report on the instruments considered during the first quarter of the parliamentary year 2014-15. Does the committee agree to take item 8 in private?

**Members** *indicated agreement.*

**The Convener:** Members will note that, in line with previous decisions of the committee, items 6 and 7 will also be taken in private.

## Instruments subject to Affirmative Procedure

### Public Bodies (Joint Working) (Scotland) Act 2014 (Modifications) Order 2014 [Draft]

10:31

**The Convener:** Article 2(6) inserts the new text immediately after the phrase “section 1(4)(d)” in section 59(d) of the Public Bodies (Joint Working) (Scotland) Act 2014, rather than inserting it expressly on a new line or as a new subparagraph. The committee may consider that in this instance the amendment of the primary legislation could cause confusion to the reader.

Does the committee agree to draw the order to the attention of the Parliament on reporting ground (h), as the form or meaning of the amendment to section 59(d) of the 2014 act that is made in article 2(6) of the order could be clearer?

**Members** *indicated agreement.*

### Land Register of Scotland (Automated Registration) etc Regulations 2014 [Draft]

**The Convener:** No points have been raised by our legal advisers on the regulations. Is the committee content with them?

**Members** *indicated agreement.*

## Instrument subject to Negative Procedure

### Act of Sederunt (Commissary Business) (Amendment) 2014 (SSI 2014/265)

10:32

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

## Instruments not subject to Parliamentary Procedure

### United Nations Sanctions (Revocations) Order 2014 (SI 2014/2711)

10:32

**The Convener:** No points have been raised by our legal advisers on the order. Is the committee content with it?

**Members** *indicated agreement.*

### Landfill Tax (Scotland) Act 2014 (Commencement No 1) Order 2014 (SSI 2014/277)

**The Convener:** No points have been raised by our legal advisers on the order. Is the committee content with it?

**Members** *indicated agreement.*

### Land and Buildings Transaction Tax (Scotland) Act 2013 (Commencement No 1) Order 2014 (SSI 2014/279)

**The Convener:** No points have been raised by our legal advisers on the order. Is the committee content with it?

**Members** *indicated agreement.*

## **Prisoners (Control of Release) (Scotland) Bill: Stage 1**

10:35

*Meeting continued in private until 11:30.*

10:33

**The Convener:** The purpose of agenda item 5 is for the committee to consider the delegated powers in the Prisoners (Control of Release) (Scotland) Bill at stage 1. The committee is invited to agree the questions that it wishes to raise with the Scottish Government on the delegated powers in the bill. It is suggested that those questions be raised in written correspondence. The committee will have an opportunity to consider the responses at a future meeting before a draft report is considered.

Section 3(2) provides that the Scottish ministers may by order bring sections 1 and 2 of the bill into force on an appointed day. Section 3(3) provides that a commencement order may include transitional, transitory or saving provision. The delegated powers memorandum states that an example of how the power might be used would be to disapply the application of the provisions in section 1 to any offenders sentenced before the day of commencement. Paragraph 37 of the policy memorandum states:

“The reforms will not affect prisoners serving sentences at the time the relevant provisions are brought into force.”

Given that statement, does the committee therefore agree to ask the Scottish Government why it is appropriate that provision to that effect is not made on the face of the bill but is better left to provision by order under section 3(3); and how, alternatively, the power might be exercised?

The exercise of the power in section 3(3) may have substantive effects on certain individuals, because it could further define which prisoners will be affected by section 1 in particular, but also section 2. Does the committee agree to ask the Scottish Government to explain why neither the negative procedure nor the affirmative procedure would be appropriate for the parliamentary scrutiny of this power, or whether it could agree to lodge an amendment at stage 2 to adjust the procedure—and, accordingly, if a higher level of scrutiny ought to apply, whether through the negative or the affirmative procedure, how the Scottish Government would assess which higher level would be appropriate?

**Members** *indicated agreement.*

**The Convener:** That completes item 5 and I move the meeting into private.





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