



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 2 December 2014



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**CONTENTS**

	<b>Col.</b>
<b>INTERESTS.....</b>	<b>1</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>2</b>
<b>INSTRUMENT SUBJECT TO AFFIRMATIVE PROCEDURE .....</b>	<b>2</b>
Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014 [Draft] .....	2
<b>INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE.....</b>	<b>3</b>
Marriage Between Persons of Different Sexes (Prescribed Bodies) (Scotland) Regulations 2014 (SS1 2014/304) .....	3
Food Information (Scotland) Regulations 2014 (SSI 2014/312) .....	3
Children and Young People (Scotland) Act 2014 (Ancillary Provision) (No 2) Order 2014 (SS1 2014/315) .....	6
Smoke Control Areas (Exempted Fireplaces) (Scotland) Order 2014 (SSI 2014/316) .....	6
Smoke Control Areas (Authorised Fuels) (Scotland) Regulations 2014 (SSI 2014/317) .....	6
Education (Disapplication of section 53B) (Scotland) Regulations 2014 (SSI 2014/318) .....	6
Environmental Regulation (Relevant Offences) (Scotland) Order 2014 (SSI 2014/319) .....	6
Controlled Waste (Fixed Penalty Notices) (Scotland) Order 2014 (SSI 2014/320) .....	6
Litter (Fixed Penalty Notices) (Scotland) Order 2014 (SSI 2014/321) .....	6
Environmental Regulation (Liability where Activity Carried Out by Arrangement with Another) (Scotland) Order 2014 (SSI 2014/323) .....	7
Environmental Regulation (Significant Environmental Harm) (Scotland) Order 2014 (SSI 2014/324) .....	7
Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014 (SSI 2014/325) .....	7
Public Bodies (Joint Working) (Content of Performance Reports) (Scotland) Regulations 2014 (SS1 2014/326) .....	7
<b>INSTRUMENT NOT SUBJECT TO PARLIAMENTARY PROCEDURE .....</b>	<b>8</b>
Children and Young People (Scotland) Act 2014 (Commencement No 4) Order 2014 (SSI 2014/314) .....	8
<b>WELFARE FUNDS (SCOTLAND) BILL .....</b>	<b>8</b>
<b>FOOD (SCOTLAND) BILL: AFTER STAGE 2 .....</b>	<b>9</b>
<b>MODERN SLAVERY BILL.....</b>	<b>10</b>

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**34<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)

\*John Mason (Glasgow Shettleston) (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 Sir Alexander Fleming Room (CR3)



## Scottish Parliament

### Delegated Powers and Law Reform Committee

*Tuesday 2 December 2014*

*[The Convener opened the meeting at 11:30]*

### Interests

**The Convener (Nigel Don):** I welcome members to the 34th meeting in 2014 of the Delegated Powers and Law Reform Committee. As always, I ask members to switch off mobile phones, please.

Agenda item 1 is a declaration of interests. I welcome John Mason to the committee and, in accordance with section 3 of the code of conduct, invite him to declare any relevant interests.

**John Mason (Glasgow Shettleston) (SNP):** I am very happy to join the committee. I do not think that there is anything in particular that I need to mention at this stage.

**The Convener:** Thank you.

I am sure that members would want to join me in noting Mike MacKenzie's elevation to higher things, whichever committee he has gone to—I am sorry but I cannot remember which it is. I am sure that we have enjoyed our time with him on the committee. He certainly made a contribution. In particular, I recognise his very interesting contribution to the debate last week on the Legal Writings (Counterparts and Delivery) (Scotland) Bill, which—I think it would be fair to say—we all enjoyed.

## Decision on Taking Business in Private

11:31

**The Convener:** Agenda item 2 is a decision on taking business in private. It is proposed that we take items 9 and 10 in private. Item 9 is consideration of a draft report on the Serious Crime Bill, which is United Kingdom Parliament legislation, and item 10 is consideration of a draft report on the Prisoners (Control of Release) (Scotland) Bill. Does the committee agree to take items 9 and 10 in private?

**Members indicated agreement.**

## Instrument subject to Affirmative Procedure

### Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014 [Draft]

11:31

**The Convener:** No points have been raised by our legal advisers on the instrument. However, the committee may wish to note that this is an amended version of the draft order and that it addresses concerns that were raised by the committee's legal advisers on the original draft. Is the committee content with the instrument?

**Members indicated agreement.**

## Instruments subject to Negative Procedure

### Marriage Between Persons of Different Sexes (Prescribed Bodies) (Scotland) Regulations 2014 (SSI 2014/304)

11:32

**The Convener:** Regulation 2 states:

"The bodies prescribed for the purposes of 8(1)(a)(ii) of the Marriage (Scotland) Act 1977 are listed in the Schedule",

which omits the word "section". Does the committee therefore agree to draw the regulations to the attention of the Parliament on the general reporting ground, as they contain a minor drafting error?

**Members indicated agreement.**

**The Convener:** Does the committee agree to note, however, that the minor error will be corrected when the regulations are next amended for another reason?

**Members indicated agreement.**

### Food Information (Scotland) Regulations 2014 (SSI 2014/312)

**The Convener:** It has been suggested that the meaning of the instrument could be clearer.

First, the form or meaning of regulation 5(5) could be clearer. It does not clearly give effect to the policy intention that the provisions of the regulation should apply where the relevant ingredient or processing aid is itself a substance or product listed in annex II of European Union regulation 1169/2011 on the provision of food information to consumers.

Secondly, the form or meaning of paragraph 2(a)(iii) of schedule 5 to the instrument could be clearer. That paragraph substitutes the text

"(b) an indication of its maximum alcoholic strength in required form 1, 2 or 3"

in column 2 of the entry relating to the description "low alcohol" in part I of schedule 8 to the Food Labelling Regulations 1996. The text that should be substituted is

"(b) the drink is marked or labelled with an indication of its maximum alcoholic strength in required form 1, 2 or 3."

Accordingly, paragraph 2(a)(iii) of schedule 5 does not clearly give effect to the policy intention.

Does the committee therefore agree to draw the instrument to the Parliament's attention under reporting ground (h), as its meaning could be clearer?

**Members indicated agreement.**

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** May I make some observations?

**The Convener:** Please do.

**Stewart Stevenson:** There is a wider issue in respect of clarity. Although I think that it is likely that the instrument is legally clear in other respects, I think that it is, like many complicated amendments, likely to be practically unclear. I am specifically looking at schedule 5, which starts on page 22 of the regulations and continues to page 29. It will amend probably more than a dozen other pieces of secondary legislation—I have not counted them. I am sure that the secondary legislation that it will amend will include secondary legislation that has been amended many times.

There is a genuine practical difficulty in establishing the current state of, to choose one instrument at random, the Food (Lot Marking) Regulations 1996, which are nearly 20 years old. They have been amended many times and, of course, unlike primary legislation, secondary legislation is not updated as amendments are made, once it has been published on the legislation.gov.uk website. Therefore, there is nowhere that a member of the public or even someone in the industry can go to see what the current regulations look like.

I suggest that the Government consider one of a range of options. One option would be consolidation of much-amended secondary legislation so that it is published in total and one starts afresh with the complete regulations. It could also consider whether the process by which primary legislation is updated on legislation.gov.uk as amendments are made should apply to secondary legislation. Alternatively, legislation.gov.uk could at least contain a list of the instruments that amend instruments even if there is no consolidated instrument.

If somebody were to try to find out all the amendments that have been made to the piece of secondary legislation that I picked at random, they would have to look through nearly 20 years' worth of legislation to try to find them and the odds are that they would miss one. That is an unsatisfactory way in which to deal with complex pieces of secondary legislation.

**John Scott (Ayr) (Con):** I back up what Stewart Stevenson said. People from the food industry have highlighted to me concerns that, because of the obscure nature of the regulations, many people in the industry will not be aware of what is going on. I am not sure in whose gift it lies to publicise the regulations better. However, the amendments that they make are possibly quite far reaching and many of the industry bodies are not entirely aware of them.

**The Convener:** Thank you for those comments. I take it that the rest of the committee is in agreement with them.

The regulations also contain some minor drafting errors.

First, regulation 2(3) provides that a reference to certain European Union provisions in a “regulation” listed in paragraph (4) is a reference to that EU provision as amended from time to time. It should instead provide that a reference to certain EU provisions in a “provision of the Regulations” listed in paragraph (4) is a reference to that EU provision as amended from time to time.

Secondly, in part 1 of schedule 3, in the entry relating to

“Article 18(1) (list of ingredient requirements)”,

the reference in column 2 to “regulation (8)” should be to “regulation 8”.

Thirdly, part 1 of schedule 4 purports to revoke certain provisions of the Miscellaneous Food Additives (Amendment) Regulations 1999. However, those regulations were revoked in full in 2013 in so far as they extended to Scotland and, accordingly, the purported revocation is of no effect.

Finally, paragraph 15(b) of schedule 5 to the instrument inserts a definition of “Regulation 1169/2011” in the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No 2) Regulations 2007. However, the definition is unnecessary, as regulation 1169/2011 is not referred to in those regulations.

Does the committee agree to draw the instrument to the Parliament’s attention under the general reporting ground, as it contains minor drafting errors?

**Members indicated agreement.**

**The Convener:** Does the committee agree to note that the Scottish Government has undertaken to amend all but the errors in regulation 2(3) at the first appropriate opportunity?

**Members indicated agreement.**

**The Convener:** Given that the Scottish Government accepts that including references to the schedules of the instrument as well as to the regulations would have made the intention in regulation 2(3) clearer, does the committee agree to suggest that the Scottish Government might wish to take the same opportunity to amend the remaining error?

**Members indicated agreement.**

## **Children and Young People (Scotland) Act 2014 (Ancillary Provision) (No 2) Order 2014 (SSI 2014/315)**

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

**Members indicated agreement.**

## **Smoke Control Areas (Exempted Fireplaces) (Scotland) Order 2014 (SSI 2014/316)**

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

**Members indicated agreement.**

## **Smoke Control Areas (Authorised Fuels) (Scotland) Regulations 2014 (SSI 2014/317)**

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

**Members indicated agreement.**

## **Education (Disapplication of section 53B) (Scotland) Regulations 2014 (SSI 2014/318)**

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

**Members indicated agreement.**

## **Environmental Regulation (Relevant Offences) (Scotland) Order 2014 (SSI 2014/319)**

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

**Members indicated agreement.**

## **Controlled Waste (Fixed Penalty Notices) (Scotland) Order 2014 (SSI 2014/320)**

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

**Members indicated agreement.**

## **Litter (Fixed Penalty Notices) (Scotland) Order 2014 (SSI 2014/321)**

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

**Members indicated agreement.**

**Environmental Regulation  
(Liability where Activity Carried Out by  
Arrangement with Another) (Scotland)  
Order 2014 (SSI 2014/323)**

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

**Members** *indicated agreement.*

**Environmental Regulation  
(Significant Environmental Harm)  
(Scotland) Order 2014 (SSI 2014/324)**

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

**Members** *indicated agreement.*

**Common Agricultural Policy  
(Cross-Compliance) (Scotland)  
Regulations 2014 (SSI 2014/325)**

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

**Members** *indicated agreement.*

**Public Bodies (Joint Working)  
(Content of Performance Reports)  
(Scotland) Regulations 2014 (SSI 2014/326)**

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

**Members** *indicated agreement.*

**Instrument not subject to  
Parliamentary Procedure**

**Children and Young People (Scotland) Act  
2014 (Commencement No 4) Order 2014  
(SSI 2014/314)**

11:40

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

**Members** *indicated agreement.*

**Welfare Funds (Scotland) Bill**

11:41

**The Convener:** Item 6 is consideration of the Scottish Government's response to the committee's stage 1 report on the Welfare Funds (Scotland) Bill.

Members have seen the briefing paper and the response from the Scottish Government. Do members have any comments?

**Stewart Stevenson:** I am content with the response.

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

**Members** *indicated agreement.*



## Food (Scotland) Bill: After Stage 2

11:41

**The Convener:** Item 7 is consideration of the delegated powers provisions in the Food (Scotland) Bill after stage 2.

Members will have noted that the Scottish Government has provided a supplementary delegated powers memorandum, and they will have seen the briefing paper. Stage 3 consideration of the bill is due to take place on Tuesday 9 December. The committee should therefore agree its conclusions today.

The committee may note that the power in section 48(3), as amended, prevents the amendment of sections 37 and 44 in a way that removes the discharge of criminal liability provided for by those sections, but only in circumstances where an individual has been served with both a compliance notice and a fixed-penalty notice and has complied with both.

The committee may consider that the power as amended leaves open the possibility that the power in section 48(3) could still be used to remove the discharge of criminal liability in section 37 or section 44 in circumstances where a person has been issued with only one administrative sanction. The committee may wish to call on the Scottish Government to consider a further amendment to the bill at stage 3 so as to remove that possibility.

Does the committee agree accordingly to draw the provision in section 48(3), as amended at stage 2, to the attention of Parliament?

**Members indicated agreement.**

**The Convener:** Does the committee agree to report that it is content with the other provisions in the bill that have been amended at stage 2 to insert or substantially alter provisions conferring powers to make subordinate legislation and other delegated powers?

**Members indicated agreement.**

## Modern Slavery Bill

11:43

**The Convener:** Item 8 is the Modern Slavery Bill, which is United Kingdom Parliament legislation. The committee is invited to consider the powers to make subordinate legislation that are conferred on the Scottish ministers in the bill. A briefing paper has been provided; it sets out the relevant aspects of the bill and comments on their effect.

Does the committee agree to report to the lead committee that it is content with the delegated powers conferred on the Scottish ministers in the bill and with the procedures to which they are subject?

**Members indicated agreement.**

11:43

*Meeting continued in private until 11:49.*



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