



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 9 December 2014

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DELEGATED POWERS AND LAW REFORM COMMITTEE

35th 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 James Clerk Maxwell Room (CR4)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 9 December 2014

[The Convener opened the meeting at 11:30]

Instruments subject to Affirmative Procedure

Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2015 [Draft]

European Protection Order (Scotland) Regulations 2014 [Draft]

The Convener (Nigel Don): Good morning, everyone. I welcome members to the 35th meeting in 2014 of the Delegated Powers and Law Reform Committee. As always, I ask members to switch off mobile phones.

Under agenda item 1, we have two sets of regulations to consider. No points have been raised by our legal advisers on either set of regulations. Is the committee content with them?

Members indicated agreement.

Instruments subject to Negative Procedure

Conservation of Salmon (Annual Close Time and Catch and Release) (Scotland) Regulations 2014 (SSI 2014/327)

11:31

The Convener: The schedule sets out the various dates during which salmon fishing is permitted in each salmon fishery district. Entry 50, which relates to the Urr district, states that rod and line fishing is permitted during the dates

“10th September to [31st October] [29th November]”.

The Scottish Government has confirmed that the intended date is 30 November and that the reference to “[31st October] [29th November]” was made in error.

Does the committee agree to draw the regulations to the Parliament's attention on reporting ground (i), as entry 50 of the schedule appears to be defectively drafted?

Members indicated agreement.

The Convener: Does the committee agree to note, however, that the Scottish Government has undertaken to amend the provision in due course?

Members indicated agreement.

Charities Accounts (Scotland) Amendment (No 2) Regulations 2014 (SSI 2014/335)

The Convener: The Charities Accounts (Scotland) Amendment Regulations 2014 (SSI 2014/295) were considered by the committee at its meeting on 25 November 2014, when it was agreed to draw the attention of the Parliament to certain minor inaccuracies in respect of the names and dates of publication of the various statements of recommended practice for accounting and reporting by charities—known as SORPs—that are referred to in those regulations. SSI 2014/335 revokes SSI 2014/295 and gives the correct names and dates of publication of the various SORPs.

There has been a failure to observe the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. As the regulations will come into force on 1 January 2015, the requirement to leave a minimum of 28 days—excluding recess dates—between laying and coming into force has not been complied with, but the committee may wish to find the breach acceptable in this instance, because the Scottish Government is seeking to make corrections to

satisfy the committee's report on the previous regulations.

Does the committee agree to draw the regulations to the Parliament's attention on reporting ground (j), as there has been a breach of the 28-day rule?

Members *indicated agreement.*

The Convener: Does the committee agree to report, however, that it finds the breach of the rule to be acceptable in this instance?

Members *indicated agreement.*

Civil Jurisdiction and Judgments (Protection Measures) (Scotland) Regulations 2014 (SSI 2014/333)

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

Members *indicated agreement.*

Plant Health (Import Inspection Fees) (Scotland) Regulations 2014 (SSI 2014/338)

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

Members *indicated agreement.*

Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014 (SSI 2014/339)

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

Members *indicated agreement.*

Assisted Suicide (Scotland) Bill: Stage 1

11:33

The Convener: The purpose of agenda item 3 is for the committee to consider the delegated powers in the Assisted Suicide (Scotland) Bill at stage 1. The committee is invited to agree the questions that it wishes to raise with the member in charge, Patrick Harvie MSP, on the delegated powers in the bill. It is suggested that those questions are raised in written correspondence. The committee will have the opportunity to consider the responses at a future meeting before it agrees a draft report on the bill.

Section 23 provides that the Scottish ministers may issue directions about how licensed facilitators are to act, and licensing authorities are required to make their "best endeavours" to ensure that those directions are complied with by licensed facilitators. Licensing authorities must have regard to any guidance that is issued by the Scottish ministers, and any such directions or guidance must be published.

In relation to the powers to issue directions and guidance that are contained in section 23, does the committee agree to ask the member in charge for an explanation of how those powers may be used; what matters the directions and guidance could cover and why that would be more appropriate than those matters being contained in regulations made under section 22; and why it is appropriate that licensing authorities should be required to make their "best endeavours" to ensure that directions are complied with by licensed facilitators?

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am certainly content with the questions that it is proposed that we ask, but I suggest that we should ask a further couple of questions in relation to section 23, which is on directions and guidance for facilitators and licensing authorities.

There is no parliamentary procedure associated with the directions and guidance that section 23 provides for. I think that we should ask the proposer of the bill why that is the case, because if facilitators—who will be performing quite a novel role—must have regard to the directions that are issued, it would appear that there should be a process at least of laying them before Parliament and perhaps also of their gaining Parliament's approval. We should ask the proposer of the bill why such a provision has not been considered and included in the bill.

The Convener: Thank you. Do members have any other comments?

Meeting closed at 11:38.

John Mason (Glasgow Shettleston) (SNP): I support our asking the proposed questions. I am not enthusiastic about the bill as a whole and, in some ways, I find it strange that we are starting to get into the detail before we have debated the general principles of the bill.

Be that as it may, I am concerned about the fact that directions and guidance could mean quite a lot. In other controversial areas such as abortion, over the years the practice seems to have drifted away from what was originally intended, and I would want to be sure that a fairly firm line would be taken in directions and guidance in, for example, supervising the licensing authorities and the licensed facilitators over time.

I am also concerned about the use of the phrase “best endeavours” because, as far as I am aware, other legislation and regulations either have to be applied or do not have to be applied. It seems to me that the use of the phrase “best endeavours” would almost let anyone off with anything.

The Convener: I think that our advice is that “best endeavours” is probably not a legal term, so we are with you on that.

John Scott (Ayr) (Con): Although I utterly oppose the bill in principle, I agree that, if it is to go beyond the stage that it is currently at, the regulations must be very tight and very accurate and that there should be no room for dubiety when it comes to interpretation. The use of the phrase “best endeavours” is simply not good enough. In addition, I have to say that I find the term “facilitators” almost Orwellian or Kafkaesque in concept—it is particularly unattractive.

The Convener: Your comments are noted.

I take it that members approve of the three questions that I suggested that we ask. We will also ask Stewart Stevenson’s question.

Stewart Stevenson: I clarify that I was suggesting that we ask separately about directions for facilitators and guidance for licensing authorities.

The Convener: So, in effect, you are suggesting that we ask two questions.

Stewart Stevenson: Correct.

The Convener: Thank you for clarifying that.

Are members happy that we ask all those questions?

Members *indicated agreement.*

The Convener: Super—thank you very much indeed.

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