



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 20 January 2015

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DELEGATED POWERS AND LAW REFORM COMMITTEE
3rd Meeting 2015, Session 4

CONVENER

*Nigel Don (Angus North and Mearns) (SNP)

DEPUTY CONVENER

*John Mason (Glasgow Shettleston) (SNP)

COMMITTEE MEMBERS

*Margaret McCulloch (Central Scotland) (Lab)

*John Scott (Ayr) (Con)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Fergus Ewing (Minister for Business, Energy and Tourism)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 20 January 2015

[The Convener opened the meeting at 10:31]

Decision on Taking Business in Private

The Convener (Nigel Don): Good morning. I welcome members to the third meeting in 2015 of the Delegated Powers and Law Reform Committee. As always, I ask everyone to turn off mobile phones, please.

Under agenda item 1, it is proposed that we decide to take items 11, 12 and 13 in private. Item 11 is consideration of the Scottish Government's response to the committee's stage 1 report on the Community Empowerment (Scotland) Bill, item 12 is further consideration of the delegated powers provisions in the Assisted Suicide (Scotland) Bill, and item 13 is consideration of a draft report on the Air Weapons and Licensing (Scotland) Bill. Does the committee agree to take those items in private?

Members *indicated agreement.*

Legal Writings (Counterparts and Delivery) (Scotland) Bill: Stage 2

10:32

The Convener: Agenda item 2 is formal stage 2 proceedings of the Legal Writings (Counterparts and Delivery) (Scotland) Bill. I welcome the Minister for Business, Energy and Tourism, who is accompanied by Ria Phillips from the civil law reform unit and Neil MacLeod from the solicitors constitutional and civil law division of the Scottish Government.

We have no amendments to deal with, but under standing orders we are obliged to consider each section and the long title of the bill and to agree to each formally. Before we do that, I invite the minister to make any comments that he wishes to make.

The Minister for Business, Energy and Tourism (Fergus Ewing): I have no comments, convener.

The Convener: Do members have any questions or comments?

Members: No.

The Convener: We will take the sections in order and then the long title. Standing orders allow us to put a single question when groups of sections are to be considered consecutively.

Sections 1 to 7 agreed to.

Long title agreed to.

The Convener: That completes stage 2 consideration of the bill. I thank the minister and his staff for coming along, and I thank members of the Scottish Law Commission for coming to witness this historic day. That is where we have got to—I look forward to stage 3.

Fergus Ewing: I look forward to more meetings like this. *[Laughter.]*

The Convener: Thank you, minister.

I suspend the meeting briefly to enable the minister and his staff to leave.

10:34

Meeting suspended.

10:34

*On resuming—***Guidance subject to Approval****Scottish Regulators' Strategic Code of Practice (SG 2015/10)**

The Convener: Welcome back. No points have been raised by our legal advisers on the redrafted code of practice. The committee might wish to notice that it addresses concerns that we reported in relation to the previous draft, SG 2014/236, which we considered on 25 November.

Does the committee agree to note that and to report that it is content with the code of practice?

Members *indicated agreement.*

Instrument subject to Affirmative Procedure**Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2015 [Draft]**

10:35

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

Members *indicated agreement.*

Instruments subject to Negative Procedure**Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014 (SSI 2014/377)**

10:35

The Convener: Articles 3 and 4 of the order do not implement the Scottish Government's intention to additionally make transitional provision for contracts for land transactions that were entered into on 1 May 2012. Does the committee therefore agree to draw the order to the Parliament's attention on reporting ground (i) as the drafting of articles 3 and 4 appears to be defective?

Members *indicated agreement.*

The Convener: Does the committee agree to note, however, that the Scottish Government has undertaken to correct that by laying an amending instrument that will come into force on 1 April 2015—the same day as the order?

Members *indicated agreement.*

Land and Buildings Transaction Tax (Administration) (Scotland) Regulations 2014 (SSI 2014/375)

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

Members *indicated agreement.*

Civil Jurisdiction and Judgments (Amendment) (Scotland) Regulations 2015 (SSI 2015/1)

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

Members *indicated agreement.*

Instrument not subject to Parliamentary Procedure

Act of Sederunt (Sheriff Court Adoption Rules Amendment) 2015 (SSI 2015/5)

10:36

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

Members *indicated agreement.*

Budget (Scotland) (No 4) Bill

10:36

The Convener: The one delegated power that the bill confers is set out in section 7, which makes provision for budget revision regulations. The power is subject to the affirmative procedure. Does the committee agree to report that it is satisfied with the power in section 7 and that its exercise is subject to the affirmative procedure?

Members *indicated agreement.*

Public Bodies Act Consent Memorandum

Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015 [Draft]

10:37

The Convener: The draft order is a United Kingdom Government order under the UK Public Bodies Act 2011. The Scottish Parliament's consent is required to make an order under part 1 of the 2011 act where such an order makes provision that would be within the legislative competence of the Scottish Parliament. The Delegated Powers and Law Reform Committee considers and reports on such orders under the same grounds as instruments that are laid before the Parliament.

No points have been raised by our legal advisers on the order. Does the committee agree to report that it is content with it?

Members *indicated agreement.*

Serious Crime Bill

10:37

The Convener: The committee is invited to consider the powers to make subordinate legislation that are conferred on the Scottish ministers by the bill, which is UK Parliament legislation. The committee may then report to the lead committee on the provisions. The briefing paper that has been provided sets out the relevant aspects of the bill and comments on their effect.

An amendment to the bill that was tabled on 8 January proposes a new clause 11. That clause would enable the Scottish ministers by regulations to confer on sheriff courts a power to make a telecommunications restriction order, which requires a communications provider to take the action that is specified in the order for the purpose of preventing or restricting the use of communication devices by persons who are detained in prisons or young offenders institutions.

It is suggested that the committee may wish to find the power that is proposed in the new clause 11 acceptable in principle and to be content that the power is subject to the affirmative procedure. However, the committee may wish to draw the terms of the proposed power to the attention of the lead committee as, first, it enables the Scottish ministers to create offences for breach of telecommunications restriction orders without specifying the maximum penalty that may be imposed for any offences created and, secondly, there is an apparent discrepancy between the scope of the power and the stated policy intention in the supplementary legislative consent memorandum.

Does the committee agree to report to the lead committee accordingly?

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Colleagues may recall that the Tribunals (Scotland) Bill introduced a similar provision that did not provide for a limit on the penalty that could be imposed. The committee indicated that it was uncomfortable that secondary legislation should have that effect. Similarly, we should invite the Government to consider whether it should provide a much more substantial explanation of what it plans and/or a provision to make sure that there is a limit on the penalty that can be imposed, however large that limit might be, rather than it being an unlimited penalty.

John Scott (Ayr) (Con): I agree absolutely with Stewart Stevenson. I suppose that the fact that no maximum penalty is specified might reflect the possible content of a call and the potential significance of calls that are made from prison. That is perhaps why no limit on the penalty is

specified. However, I agree with Stewart Stevenson that we need an explanation; there might be a reasonable explanation.

The Convener: Indeed.

On that basis, does the committee agree to report to the lead committee in the terms that I suggested?

Members indicated agreement.

Small Business, Enterprise and Employment Bill

10:41

The Convener: Agenda item 10 is consideration of the Small Business, Enterprise and Employment Bill, which is also UK Parliament legislation. It confers powers to make subordinate legislation on the Scottish ministers.

A briefing paper has been provided, which suggests that the committee could seek a written explanation of matters relating to clauses 149 to 151 of the bill and on a proposed new clause. The committee would consider the response at next week's meeting, with the intention of agreeing a draft report.

Clauses 149 to 151 and a proposed new clause will provide the Treasury and the Scottish ministers with powers to make regulations that would require a public sector employee or office-holder who received an exit payment as a result of leaving work or the relevant office to return the payment or a proportion of it. That would apply when they returned to be an employee or contractor of a public sector authority as prescribed in the regulations, or a holder of a public sector office so prescribed.

Those regulations would have significance. For example, they would prescribe the public sector authorities and office-holders in respect of which they would apply, which exit payments would be within the scope of the repayment requirements and which exemptions from the requirements would be available.

Does the committee agree to ask the Scottish Government why it has been considered appropriate that regulations that are made by the Scottish ministers under clause 149 of the bill should be subject to scrutiny by the Parliament under the negative rather than the affirmative procedure?

John Mason (Glasgow Shettleston) (SNP): I think that this is quite an important issue. The powers in question appear to be quite wide ranging. The sums involved when someone leaves one post and enters another are sometimes quite considerable, and they often attract quite a lot of media attention, so it would be good to get an explanation of why the negative procedure is to be used rather than the affirmative.

The Convener: Am I right in thinking that the committee is happy that we seek such an explanation?

Members *indicated agreement.*

Stewart Stevenson: Similarly—although the sums of money are probably rather less than those to which John Mason has just referred—we do not appear to have been given an explanation of why parliamentarians who leave office and then return to office will be caught by the proposals, but ministers who leave office and then return to office will not be caught. I think that it would be useful for an explanation to be given of why that distinction is being made.

The Convener: Thank you for those comments.

That completes agenda item 10, and we now move into private.

10:43

Meeting continued in private until 11:23.

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