



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 3 February 2015



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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**5<sup>th</sup> 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

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

The Sir Alexander Fleming Room (CR3)



## Scottish Parliament

### Delegated Powers and Law Reform Committee

*Tuesday 3 February 2015*

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

### Decision on Taking Business in Private

**The Convener (Nigel Don):** I welcome members to the fifth meeting in 2015 of the Delegated Powers and Law Reform Committee, and I ask that mobile phones be turned off.

Agenda item 1 is a decision on taking business in private. It is proposed that we take items 5 and 6 in private. Item 5 is consideration of a draft report on the Assisted Suicide (Scotland) Bill, and item 6 is consideration of the committee's second quarterly report for the parliamentary year 2014-15.

Do members agree to take those items in private?

**Members** *indicated agreement.*

## Instruments subject to Affirmative Procedure

### Firefighters' Pension Scheme (Consequential Provisions) (Scotland) Regulations 2015 [Draft]

11:31

**The Convener:** Regulation 13 refers to an "upper ... tier ill-health pension". That term is not defined in the regulations or in the Firefighters' Pension Scheme (Scotland) Regulations 2015 (SSI 2015/19), which were laid in Parliament after the regulations under consideration and in respect of which the regulations under consideration make consequential provision. The later regulations refer instead to a "higher tier ill-health pension". The terminology used in the regulations is inconsistent with that used in the regulations in respect of which they make consequential provision, and the term "upper ... tier ill-health pension" that is used in regulation 13 is accordingly unclear.

Does the committee therefore agree to draw the regulations to the Parliament's attention under reporting ground (h), as the meaning of regulation 13 could be clearer?

**Members** *indicated agreement.*

**The Convener:** A further matter has been raised by our legal advisers. The regulations were laid before the Parliament on 14 January 2015. The regulations that contain the new firefighters' pension scheme were subsequently laid on 26 January 2015. The lack of clarity in regulation 13 could have been avoided if the new scheme regulations had been laid prior to, or at the same time as, the regulations under consideration. The commitment that the Minister for Parliamentary Business gave in session 3 to the effect that the Scottish Government would avoid staggering the laying of related instruments when possible has not been met in this case.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** There is a patent error of process here, in that it makes no sense for consequential provisions to be laid before the instrument to which they are consequential is available for consideration. That may or may not have practical implications—it is not possible to determine that at the point at which a consequential provision is considered.

I make my comment in relation to not only the regulations that we are considering but those that make consequential provisions in respect of the national health service pension scheme, police pensions and the teachers' pension scheme. The same point applies to all of them.

It is important that we communicate in an appropriate way with the policy committee so that, if at the point at which it considers the relevant regulations it does not have the regulations to which they are consequential, it should take that into account. We should certainly make sure that the Government is aware of our concerns about our being asked to consider the consequences of something that we do not have before us to assess.

**John Scott (Ayr) (Con):** I support everything that Stewart Stevenson has said. I agree with him absolutely. We are being invited to put the cart before the horse—to put it in agricultural terms—and to consider the consequences of regulations that we do not have. The lead committee might also find itself in that position, and I do not think that that would be a proper position for it to find itself in. We should alert the lead committee to that possibility and make the Government aware of our concern about the failure in process that Stewart Stevenson highlighted.

**The Convener:** Does the committee agree that we should write to the lead committee about the case in question and write to the Minister for Parliamentary Business about the general principle, and that we should also write to the Deputy First Minister, because it was his department that produced the regulations that we are considering?

**Members** *indicated agreement.*

### **National Health Service Pension Scheme (Consequential Provisions) (Scotland) Regulations 2015 [Draft]**

### **Police Pensions (Consequential Provisions) (Scotland) Regulations 2015 [Draft]**

**The Convener:** No formal reporting points have been raised by our legal advisers on either set of regulations but, as with the previous regulations, the committee might consider writing to the Minister for Parliamentary Business, the Deputy First Minister and the lead committee to point out our concerns.

Last session, the Minister for Parliamentary Business gave an undertaking to the committee regarding how packages of instruments would be handled. As has been mentioned, the Scottish Government undertook to try to avoid, when possible, staggering the laying of instruments that cross-refer to one another. The Government also undertook to provide the committee, when possible, with a copy of draft related instruments that are not ready for making. That did not happen with the two sets of regulations under consideration.

The two sets of regulations refer in many places to “the new scheme” regulations for the payment of retirement pensions to or in respect of health workers and members of the Police Service of Scotland, which are yet to be finalised. The regulations also modify how various statutory provisions apply to the new schemes. For example, regulations 14 and 15 of the draft Police Pensions (Consequential Provisions) (Scotland) Regulations 2015 refer to the transitional provisions of the new scheme regulations.

Better planning in the preparation of the regulations could have avoided the potential anomaly of it having to be determined whether consequential provisions are satisfactory prior to the regulations that contain the new pension scheme to which they relate being scrutinised.

The committee previously raised the timing of the laying of packages of instruments with the Minister for Parliamentary Business in relation to the Children’s Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012 (SSI 2012/336) and the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2012 (SSI 2012/325). Those regulations also raised some general issues to do with the programming of subordinate legislation.

Does the committee agree to write to the Minister for Parliamentary Business, the Deputy First Minister and the lead committee to draw their attention to the matters that have been raised in relation to the pension regulations?

**Members** *indicated agreement.*

**John Scott:** Perhaps we should consider mentioning that weakness—“failure” might be too strong a word to use—of process in our annual report, as there is the possibility that it could result in a shambles. We are only seeking to avoid that, so I think that we should highlight the issue wherever we can.

### **Teachers’ Pension Scheme (Consequential Provisions) (Scotland) Regulations 2015 [Draft]**

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

**Members** *indicated agreement.*

### **Land and Buildings Transaction Tax (Sub- sale Development Relief and Multiple Dwellings Relief) (Scotland) Order 2015 [Draft]**

**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

### Plant Health (Scotland) Amendment Order 2015 (SSI 2015/10)

11:38

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

**Members** *indicated agreement.*

### Revenue Scotland (First Planning Period) Order 2015 (SSI 2015/16)

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

**Members** *indicated agreement.*

## Instruments not subject to Parliamentary Procedure

### Marriage and Civil Partnership (Scotland) Act 2014 (Commencement No 4 and Savings Provisions) Order 2015 (SSI 2015/14)

11:38

**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 2) Order 2015 (SSI 2015/17)

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

**Members** *indicated agreement.*

### Revenue Scotland and Tax Powers Act 2014 (Commencement No 3) Order 2015 (SSI 2015/18)

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

**Members** *indicated agreement.*

**The Convener:** That brings us to agenda item 5, and I move the meeting into private.

11:39

*Meeting continued in private until 11:47.*





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