



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 24 March 2015



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**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**11<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 24 March 2015*

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

### Decisions on Taking Business in Private

**The Convener (Nigel Don):** Good morning. I welcome members to the 11th meeting in 2015 of the Delegated Powers and Law Reform Committee, and I ask that mobile phones be switched off.

Agenda item 1 is a decision on taking business in private. It is proposed that we take in private item 5, which is further consideration of the delegated powers provisions in the British Sign Language (Scotland) Bill. Do members agree to do that?

**Members indicated agreement.**

**The Convener:** Does the committee also agree to take any future consideration of its stage 1 report on the bill in private?

**Members indicated agreement.**

## Instruments subject to Negative Procedure

### Crofting Counties Agricultural Grants (Scotland) Variation Scheme 2015 (SSI 2015/105)

11:31

**The Convener:** The instrument inserts into the principal scheme a definition of "Commission Delegated Regulation 640/2014" that is not required. Does the committee therefore agree to draw the instrument to the attention of the Parliament under the general reporting ground, as it contains a minor drafting error?

**Members indicated agreement.**

**The Convener:** The committee may wish to note that the Scottish Government has undertaken to remove that reference on the next occasion on which the principal scheme is amended.

### Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2015 (SSI 2015/113)

**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

### Land and Buildings Transaction Tax (Scotland) Act 2013 (Commencement No 2) Order 2015 (SSI 2015/108)

11:32

**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 3 and Transitional Provisions) Order 2015 (SSI 2015/109)

**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 4) Order 2015 (SSI 2015/110)

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

**Members** *indicated agreement.*

### Certification of Death (Scotland) Act 2011 (Commencement No 2) Order 2015 (SSI 2015/115)

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

**Members** *indicated agreement.*

### Tribunals (Scotland) Act 2014 (Commencement No 2) Order 2015 (SSI 2015/116)

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

**Members** *indicated agreement.*

## Assisted Suicide (Scotland) Bill: Stage 1

11:33

**The Convener:** Agenda item 4 is consideration of the response from the member in charge of the Assisted Suicide (Scotland) Bill to the committee's stage 1 report on the bill. Members have seen the briefing paper and the response from Patrick Harvie MSP.

Do members have any comments?

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I welcome the response from the member in charge of the bill in relation to the phrase "best endeavours", which the committee previously commented on. I think that the process that he proposes, whereby he will look to amend the bill at stage 2 to create

"an obligation on licensing authorities to immediately alert facilitators to any directions",

is welcome. He suggests that that obligation will be accompanied by

"an obligation on facilitators to comply with any directions to which they are alerted."

As far as I am aware, the whole business of directions being given that affect people who are not a public authority or part of a public authority is a little unusual. It is important that the process works in relation to any legislation, but it is particularly important that it works in relation to the bill, as it may affect the life—or lack thereof—of the people who are affected by it in the future.

Therefore, in process terms, I think that there is one further step that Patrick Harvie might care to think about introducing—a requirement on licensed facilitators, when they are advised of any new directions or changes to existing directions, to acknowledge to the authority that they are aware of those changes. That would close the loop, which is particularly important in a context in which the facilitators are individuals who are not part of a public authority and the whole issue is a matter of life and death.

I think that it would be useful for us to write to the lead committee or the member in charge of the bill in those terms, if other members of the committee see things in the same way as I do.

**The Convener:** Thank you for that observation. It occurs to me that a duty might need to be imposed on the licensing authority to do something if the loop has not been closed, which begs the question who would police that. Nonetheless, you make a fair point.

Do members have any other comments?

**John Mason (Glasgow Shettleston) (SNP):** I broadly agree with Stewart Stevenson, but I feel that the whole tone of the proposals seems to be that the licensing authority will do the minimum. I accept that there has to be a minimum that it will do, but I feel that in other areas in which licences are issued—ranging from taxes to illegal fishing—the licensing authority might be a bit more proactive in dealing with things. However, we are where we are. If we at least raise the issue, that is acceptable.

**The Convener:** It is suggested that we write to the lead committee in the terms that Stewart Stevenson proposed. Is the committee content that we do that?

*Members indicated agreement.*

**John Scott (Ayr) (Con):** It might be a bit late in the day to say this, but I am still not certain that Patrick Harvie's response is adequate in dealing with our concerns about the term "best endeavours". I would like us to highlight to the policy committee that concerns exist about his view that the meaning of "best endeavours" is sufficiently clear. I am not certain that it is sufficiently clear.

**The Convener:** We have the option to do two things: to point out your concern and to point out how it might be addressed through the variation in wording that the member in charge of the bill has suggested in his response to us.

**Stewart Stevenson:** I based my remarks on the understanding that the member in charge of the bill intends to remove the reference to "best endeavours" and

"to re-cast it as an obligation on licensing authorities".

It is my understanding that it is intended that the phrase "best endeavours" will be removed at stage 2, but I may or may not be correct.

**John Scott:** Thank you for that.

**The Convener:** We need to be clear that Patrick Harvie is suggesting that there are alternative routes that could be followed; I am not sure that he is necessarily saying that he will definitely remove the phrase "best endeavours". I think that we need to work on the basis that that might not happen and to make our own suggestions.

We will write about those two issues. Are there any other issues that members want to comment on that were covered in the response, or that were perhaps not covered in the response? This is probably our last opportunity as a committee to contribute to consideration of the bill at this stage.

**Margaret McCulloch (Central Scotland) (Lab):** In relation to the proposal that the facilitator should acknowledge the changes that have been

made, can we ensure that he must confirm that he will follow those changes? There is not much point in the facilitator acknowledging that he has read the changes unless we get confirmation that he will adhere to them.

**The Convener:** I suggest that the facilitator will have no option other than to adhere to them, because it is suggested that he will be duty-bound to comply. Therefore, it is unnecessary to say that he must comply with the changes because, as a facilitator, he will already have agreed that that is what he will do.

However, that begs the question what will happen if a facilitator fails to comply, how the loop is to be closed and how the matter will be policed and audited. I am sure that those are issues that the policy committee is considering in great detail.

**Margaret McCulloch:** My other concern was about how we ensure that the facilitator follows the rules and guidelines.

**The Convener:** That is a very fair question.

I will put together a letter that I hope will cover all those points.

Are members happy to note the response and to write to the lead committee in the terms that we have discussed?

*Members indicated agreement.*

**The Convener:** That concludes item 4. We come to item 5, which we will take in private.

11:39

*Meeting continued in private until 11:51.*





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