



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 31 March 2015

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DELEGATED POWERS AND LAW REFORM COMMITTEE

12th 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 David Livingstone Room (CR6)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 31 March 2015

[The Convener opened the meeting at 11:30]

Instruments not subject to Parliamentary Procedure

Act of Sederunt (Fitness for Judicial Office Tribunal Rules) 2015 (SSI 2015/120)

The Convener (Nigel Don): I welcome members to the 12th meeting in 2015 of the Delegated Powers and Law Reform Committee, and I ask that any mobile phones be switched off.

No points have been raised by our legal advisers on SSI 2015/120. Is the committee content with it?

Members indicated agreement.

Pollution Prevention and Control Act 1999 (Commencement No 4 and Amendment) (Scotland) Order 2015 (SSI 2015/139)

The Convener: No points have been raised by our legal advisers on SSI 2015/139. Is the committee content with it?

Members indicated agreement.

The Convener: The committee may wish to note that SSI 2015/139 corrects an error in the principal order—the Pollution Prevention and Control Act 1999 (Commencement No 3) (Scotland) Order 2015 (SSI 2015/74)—that was reported by the committee following its consideration of that order on 10 March. The correction will be made before the principal order comes into force on 1 April 2015, which is tomorrow.

Carers (Scotland) Bill: Stage 1

11:31

The Convener: The purpose of agenda item 2 is for the committee to consider the delegated powers in the Carers (Scotland) Bill at stage 1. The committee is invited to agree the questions that it wishes to raise with the Scottish Government on the delegated powers in the bill. It is suggested that those questions be raised in written correspondence. The committee will have the opportunity to consider the responses at a future meeting before the draft report is considered.

Section 1(1) defines what is meant by “carer” for the purposes of the bill. Section 1(2)(b) provides that the section 1(1) definition does not apply in circumstances in which care is or would be provided

“under or by virtue of a contract, or ... as voluntary work.”

When care is provided in those circumstances, the bill does not apply.

Section 1(3) provides that the Scottish ministers may make regulations that provide that “contract” does or does not include

“agreements of a kind specified in the regulations.”

The regulations may permit a relevant authority to disregard section 1(2)(b)

“where the authority considers that the relationship between the carer and the cared-for person is such that it would be appropriate to do so.”

The power in section 1(3) appears to be significant, as it permits the Scottish ministers to make regulations that could considerably expand or restrict the reach of the bill’s provisions, depending on the manner in which it is exercised.

Does the committee therefore agree to ask the Scottish Government for further justification of the choice of the negative procedure for the exercise of the power in section 1(3) and for an explanation of why the affirmative procedure is not considered to be more appropriate for that power, given the effect that its exercise might have on the applicability of the bill to particular groups of carers?

Members indicated agreement.

The Convener: Section 4 concerns the meaning of the term “personal outcomes”. Section 4(1) provides that “personal outcomes” means

“outcomes which would, if achieved, enable carers to provide or continue to provide care for cared-for persons.”

Section 4(2) provides that the Scottish ministers “may by regulations make further provision about personal outcomes, including provision about ... which outcomes

may be personal outcomes ... and the matters to which a relevant authority is to have regard in considering which outcomes may be personal outcomes.”

Does the committee agree to ask the Scottish Government whether the drafting of the power in section 4(2) is considered to be sufficiently clear, on the basis that it appears to contemplate both the Scottish ministers and relevant authorities determining which outcomes may be personal outcomes; to explain further the relationship between sections 4(2)(a) and 4(2)(b); and to provide clarification of the respective roles of the Scottish ministers and relevant authorities in relation to the power?

Members *indicated agreement.*

John Scott (Ayr) (Con): I think that it is very important that not just Government and local authorities but individuals have a right to determine what are personal outcomes, rather than have it imposed on them that something will or will not be a reasonable personal outcome. A good opportunity ought to be provided for the individual to have tailor-made personal outcomes, and I hope that that is part of the legislation.

The Convener: I have no doubt that the Government will want to make sure that that is part of the process. What we are looking for is clarity on where that would be specified.

The committee may wish to welcome the level of detail and the number of examples that are provided in the delegated powers memorandum that accompanies the bill. The inclusion of such information in delegated powers memoranda is extremely helpful to the committee.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I found the structure that is consistently used in the DPM to be particularly helpful. In each case, it describes the provision, gives the reason for taking the power and then has a section entitled “Choice of procedure”. I thought that that was a good way of structuring the discussion. I do not recall having seen that structure used in other DPMs, and I encourage the author of the memorandum to share it with their colleagues.

The Convener: The committee and its advisers would probably endorse that. Thank you for that comment.

That completes agenda item 2.

11:35

Meeting continued in private until 11:36.

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