



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 21 April 2015

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DELEGATED POWERS AND LAW REFORM COMMITTEE

13th 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 Robert Burns Room (CR1)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 21 April 2015

[The Convener opened the meeting at 11:30]

Instrument subject to Affirmative Procedure

Climate Change (Additional Greenhouse Gas) (Scotland) Order 2015 [Draft]

The Convener (Nigel Don): I welcome members to the 13th meeting in 2015 of the Delegated Powers and Law Reform Committee and, as always, I ask members to turn off their mobile phones.

We have one instrument to consider under agenda item 1. No points have been raised by our legal advisers on the draft Climate Change (Additional Greenhouse Gas) (Scotland) Order 2015. Is the committee content with it?

Members indicated agreement.

Instruments subject to Negative Procedure

Firemen's Pension Scheme (Amendment) (Scotland) Order 2015 (SSI 2015/140)

Firefighters' Compensation Scheme and Pension Scheme (Amendment) (Scotland) Order 2015 (SSI 2015/143)

11:31

The Convener: Both orders were laid on 26 March 2015 and came into force on 1 April 2015. The very short period of time between their laying and their coming into force meant that there was no opportunity for them to be scrutinised prior to their coming into force.

Does the committee therefore agree to draw both orders to the attention of the Parliament under reporting ground (j), as they fail to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010?

Members indicated agreement.

The Convener: The committee may consider that, in this case, the breach of the 28-day rule raises a broader issue about the timetabling of instruments that are prepared and laid in parallel with United Kingdom instruments that make similar provision. The committee may consider that there is a clear need for projects of this nature to be planned in a way that allows for the procedural requirements of both Parliaments to be met, and the committee may further consider it to be unsatisfactory that that has not been achieved in the present case.

The committee may wish to welcome the fact that, in recent correspondence with us, the Minister for Parliamentary Business has undertaken to review the processes for laying instruments in such circumstances and to take steps to improve awareness within the UK Government of the challenges involved. The committee may consider that that work should be progressed in early course, in order to avoid similar issues arising in the future.

Two further points have been raised by our legal advisers on SSI 2015/143. Article 11(2)(b)(iii) inserts a reference to regulation 166 of the Firefighters' Pension Scheme (Scotland) Regulations 2015 (SSI 2015/19) into rule 3(2)(c) of part 10 of the schedule to the Firefighters' Compensation Scheme (Scotland) Order 2006 (SSI 2006/338). The correct reference should be to regulation 156 of the 2015 regulations.

Does the committee therefore agree to draw the order to the attention of the Parliament under the general reporting ground?

Members indicated agreement.

The Convener: Article 18, in inserting new paragraph (11) into rule 1 of part 2 of the schedule to the Firefighters' Pension Scheme (Scotland) Order 2007 (SSI 2007/199), is defectively drafted. The new paragraph provides that a person is a provisionally enrolled member of the scheme if the person is

"not eligible to become a provisionally enrolled member pursuant to rule 6C(3) of Part 11"

when it should say "not ineligible". The effect of the error is that the provision does not achieve its policy objective.

Does the committee therefore agree to draw the order to the attention of the Parliament under reporting ground (i), as the drafting appears to be defective?

Members indicated agreement.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I think that the errors in the order are significant and might affect individuals, so I would certainly expect them to be remedied. More to the point, I think that the situation that has arisen illustrates the real danger that is presented when officials of the Scottish Government and the Parliament do not have adequate opportunity to look at such instruments in the run-up to their being laid and implemented. I am given to understand that the error of using the term "not eligible" instead of "not ineligible" comes straight from the UK legislation, which appears to be defective in the same way.

It is not unreasonable that officials in Scotland rely on the professional standards that apply elsewhere, but the compression of the timetable here appears to have led to what can only be described as a boorach. The issue of properly meeting our timetable is not simply a technical issue; it is one that has real-life implications.

We are very much indebted to the legal advice that we as a committee have for bringing the defect to our attention, and I hope that, equally, the UK Government is aware that that defect has been found and looks again at its own legislation. That is of no consequence to us directly, but it would be good practice if it did that. It is also a reason why the UK Government should work with us more robustly to give adequate time for everybody who can check the legislation to do so. Everybody will benefit if that happens, as this case perfectly illustrates.

John Scott (Ayr) (Con): I support Stewart Stevenson in everything that he has said, and I

caution against accepting the work of others when they have made mistakes, notwithstanding their best endeavours. We should therefore have the time to check for ourselves instruments that have been examined elsewhere, but not properly examined, as it turns out in this circumstance.

The Convener: Thank you for those comments. The committee may wish to note that the Scottish Government has undertaken to bring forward a further instrument to correct both errors with retrospective effect.

Housing (Scotland) Act 2006 (Repayment Charge and Discharge) Amendment Order 2015 (SSI 2015/144)

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

Members indicated agreement.

National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2015 (SSI 2015/160)

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

Members indicated agreement.

Welfare of Animals at the Time of Killing (Scotland) Amendment Regulations 2015 (SSI 2015/161)

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

Members indicated agreement.

Instruments not subject to Parliamentary Procedure

Act of Adjournal (Criminal Procedure Rules Amendment No 2) (European Protection Orders) 2015 (SSI 2015/121)

11:37

The Convener: Paragraph (b) of form 61.6–B in the schedule to the instrument appears to be defectively drafted. Paragraph (b) specifies the incorrect maximum penalties on summary conviction that are applicable for an offence under section 234A(4) of the Criminal Procedure (Scotland) Act 1995 as modified by section 254D(2).

Paragraph (b) should have specified the maximum penalties as 12 months' imprisonment or a fine not exceeding the statutory maximum or both, instead of three months' imprisonment or a fine not exceeding level 5 on the standard scale or both.

Does the committee therefore agree to draw the instrument to the attention of the Parliament under reporting ground (i), as it appears to be defectively drafted?

Members indicated agreement.

The Convener: A further point has been raised on the instrument by our legal advisers. There is a minor drafting error in the new rule 61.9(1) of the Criminal Procedure Rules 1996, as inserted by paragraph 2(2) of the instrument. Rule 61.9(1) provides that the rule applies when the court has to send information to the competent authority of an issuing state under, among other provisions, rule 61.3(4), but that should refer to rule 61.3(3).

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 Lord President's private office has confirmed that the errors will be corrected by laying an amending instrument before Parliament at the earliest possible opportunity. Given that the instrument came into force on 1 April, the committee may consider that the amendment should be laid quickly.

Act of Sederunt (Rules of the Court of Session and Sheriff Court Bankruptcy Rules Amendment) (Bankruptcy and Debt Advice (Scotland) Act 2014) 2015 (SSI 2015/119)

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

Members indicated agreement.

The Convener: The committee may wish to note that, in response to questions raised by our legal advisers on the instrument, the Lord President's private office has explained that it intends to review its approach to citing and referring to rules of court in acts of sederunt and acts of adjournal, with a view to adopting a standardised approach. The Lord President's private office hopes to be able to communicate its revised approach to citation and references to the committee in the near future.

Housing (Scotland) Act 2014 (Commencement No 2) Order 2015 (SSI 2015/122)

The Convener: No points have been raised by our legal advisers on the order. The committee may wish to note, however, that the Scottish Government intended within the order to commence section 89 of the Housing (Scotland) Act 2014. The order commenced sections 85—in so far as its provisions were not already in force—87, 88 and 90 to 92 of the 2014 act on 1 April 2015. Those sections make a number of amendments to existing legislation and effect largely administrative changes in the area of private housing conditions.

The omitted section 89 relates to maintenance plans under the Housing (Scotland) Act 2006 and operates to change the way in which such maintenance plans must be registered. The fact that section 89 is not commenced by the order does not affect the operation of the provisions that are commenced by the order.

The Scottish Government has confirmed that section 89 will be included in the next commencement order to be made under the Housing (Scotland) Act 2014. Until then, the current arrangements for the registration of maintenance plans will remain in place.

In noting that, does the committee agree to report that it is otherwise content with the order?

Members indicated agreement.

Scottish Elections (Reduction of Voting Age) Bill: Stage 1

11:41

The Convener: The purpose of this item is for the committee to consider the delegated powers in the Scottish Elections (Reduction of Voting Age) Bill at stage 1. Members will have seen the delegated powers memorandum and the briefing paper.

Section 9E of the Representation of the People Act 1983 requires registration officers to invite persons to apply for registration in the electoral register if they are not currently registered but the officer believes that they may be entitled to be registered. Section 4(1) of the Scottish Elections (Reduction of Voting Age) Bill confers a power on the Scottish ministers to make provision about invitations to be given to persons under the age of 16 in relation to the registration of local government electors.

Does the committee agree to report that it finds that power to be acceptable in principle and that it is content that it is subject to the affirmative procedure?

Members indicated agreement.

The Convener: Sections 12 to 14 of the bill set out the limited circumstances in which details of entries in the local government electoral register relating to under-16s may be published, disclosed or shared.

Section 14(2) provides a non-exclusive list of examples of what might be done with the power. The list includes authorising or requiring the supply of information to specified persons, specifying the purposes for which such information may be used, prohibiting further supply of information, and prohibitions on the supply of copies of the full register.

Does the committee agree to report that it finds that power to be acceptable in principle and that it is content that it is subject to the affirmative procedure?

Members indicated agreement.

The Convener: Section 17 of the bill permits regulations to make the full range of ancillary provision: incidental, supplemental, consequential, transitional, transitory or saving provisions. Ministers may make such provision if they consider it necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision in the bill.

Does the committee agree to report that it finds that power to be acceptable in principle and that it

is content that it is subject to the affirmative procedure when primary legislation is amended but otherwise to the negative procedure?

Members indicated agreement.

The Convener: Given that no issues have been raised in relation to those powers, and that we do not wish to raise any questions with the Scottish Government, are we agreed to report that the committee is content with the delegated powers provisions in the bill at stage 1?

Members indicated agreement.

Human Trafficking and Exploitation (Scotland) Bill: Stage 1

11:43

The Convener: This item of business is consideration of the response from the Scottish Government to the committee's stage 1 report on the Human Trafficking and Exploitation (Scotland) Bill. Members have seen the briefing paper and the response from the Government.

If members have no comments, are we content to note the response and, if necessary, to reconsider the bill after stage 2?

Members indicated agreement.

The Convener: That completes our agenda today. Our next meeting will be next Tuesday.

Meeting closed at 11:44.

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