



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 26 May 2015



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**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**18<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 Adam Smith Room (CR5)



## Scottish Parliament

### Delegated Powers and Law Reform Committee

*Tuesday 26 May 2015*

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

### Decision on Taking Business in Private

**The Convener (Nigel Don):** I welcome everyone to the 18th meeting in 2015 of the Delegated Powers and Law Reform Committee, and I ask members to turn off mobile phones.

Under agenda item 1, it is proposed that we take items 8 and 9 in private. Item 8 will allow the committee to consider a draft report on the delegated powers in the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill. Item 9 relates to correspondence from the Minister for Parliamentary Business on future legislation and the role of this committee. Does the committee agree to take items 8 and 9 in private?

**Members** *indicated agreement.*

## Instruments subject to Affirmative Procedure

### Education (School Lunches) (Scotland) Regulations 2015 [Draft]

11:31

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

**Members** *indicated agreement.*

### Registers of Scotland (Voluntary Registration, Amendment of Fees, etc) Order 2015 [Draft]

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

**Members** *indicated agreement.*

### Water Environment and Water Services (Scotland) Act 2003 (Modification of Part 1) Regulations 2015 [Draft]

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

**Members** *indicated agreement.*

### Historic Environment Scotland Act 2014 (Ancillary Provision) Order 2015 [Draft]

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

**Members** *indicated agreement.*

### Scottish Public Services Ombudsman Act 2002 Amendment Order 2015 [Draft]

**The Convener:** No points have been raised by our legal advisers on the instrument. However, members may wish to note that it is to be made before the 40 days for parliamentary scrutiny has elapsed, taking into account the summer recess, which begins on 27 June.

The order in council adds a newly created body—ILF Scotland—to schedule 2 to the Scottish Public Services Ombudsman Act 2002. It gives the Scottish Public Services Ombudsman the power to investigate complaints made against ILF Scotland. ILF Scotland will be operational from 1 July 2015, and it is intended that its complaints procedures will be fully operational as soon as possible thereafter.

The letter from the Scottish Government accompanying the order explains that, in order to ensure that the complaints procedures are fully operational as soon as possible after ILF Scotland begins service delivery, the Government's intention is for the order to be laid before Her Majesty in council on 15 July 2015. Provided that Her Majesty sees fit to make the order, it will come into force the following day.

The letter further explains that, at present, the dates for future Privy Council meetings are unclear and it is therefore desirable that, if possible, the order is laid before Her Majesty on 15 July.

Do members have any comments?

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** On the substance of the order and on the timetable, I recognise the issues and I have nothing really to say. I will just say something, as I have on one or two occasions in the past, about the construction of the order.

The substance of the order is simply to insert paragraph 25ZB, which contains two words "ILF Scotland" and a footnote. For the good drafting of law, I would much prefer it if, when a list is amended, the entire list is incorporated in the order. The fact that the reference is to paragraph 25ZB gives a hint to the changes that have already taken place and the complexities that there might be for people to determine what is on the amended list, which is in a variety of orders and the original legislation.

**The Convener:** Thank you. The point is well made, and not for the first time.

Is the committee otherwise content with the instrument?

**Members indicated agreement.**

## Instruments subject to Negative Procedure

### Rural Development (Scotland) Regulations 2015 (SSI 2015/192)

11:33

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

**Members indicated agreement.**

### Rural Payments (Appeals) (Scotland) Regulations 2015 (SSI 2015/194)

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

**Members indicated agreement.**

## Instruments not subject to Parliamentary Procedure

### Historic Environment Scotland Act 2014 (Commencement No 3) Order 2015 (SSI 2015/196)

11:33

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

**Members indicated agreement.**

## Prisoners (Control of Release) (Scotland) Bill: Stage 1

11:34

**The Convener:** The Cabinet Secretary for Justice has written to me as convener to respond to the committee's concerns on the delegated powers in the Prisoners (Control of Release) (Scotland) Bill.

As members will recall, section 3(2) of the bill provides that the Scottish ministers may by order bring section 1 and 2 of the bill into force on an appointed day, and section 3(3) provides that a commencement order may include transitional, transitory or saving provisions.

The committee raised concerns about the commencement provisions, given that transitional, transitory or saving provisions may be required, which could have a potentially significant effect on certain persons affected by the bill. The committee therefore recommended that the Scottish Government bring forward an appropriate amendment at stage 2 to make a commencement order made under section 3(2) subject to the negative procedure when it contains transitional, transitory or saving provisions.

The cabinet secretary has since written, agreeing to amend the bill to respond to the committee's concerns. Specifically, he has lodged amendments to put the transitional and saving provision for the coming into force of section 1 on the face of the bill, thereby allowing Parliament an opportunity to scrutinise the provisions.

Do members have any comments or observations to make?

**John Scott (Ayr) (Con):** I welcome the cabinet secretary's change of heart, which is all to the good. I am pleased that we stuck to our guns. I think that it was you, convener, who raised the issue in debate, and I thank you for doing so on behalf of the committee.

**The Convener:** If members have no other comments, do members agree to note the response and welcome the fact that, in light of the committee's report, the Cabinet Secretary for Justice has lodged amendments that put the transitional provisions on the face of the bill?

**Members indicated agreement.**

## Pensions Instruments

11:36

**The Convener:** This item concerns the committee's consideration of pensions instruments and correspondence received from the Scottish Government in relation to them.

At its meeting on 28 April, the committee reported on the following instruments: the Firefighters' Pension Schemes (Amendment) (Scotland) Regulations 2015 (SSI 2015/141) and the Police Pension Scheme (Scotland) Regulations 2015 (SSI 2015/142). In so doing, the committee raised concerns about the number of errors in the instruments and, with that in mind, the quality control process applied to them.

The Deputy First Minister has written to the committee to respond to the concerns, and he has committed to correcting the errors identified by the committee in the firefighter regulations. The response also makes a commitment to improve the quality control process. Do members have any comments?

**Stewart Stevenson:** I welcome the fact that the Deputy First Minister appears to share our concerns and is responding in an appropriate way. That will encourage the committee to continue with its desire for perfection rather than the disorder of this particular set of instruments.

**John Scott:** I endorse what Stewart Stevenson has said, and I welcome the Deputy First Minister's acknowledgement of our concerns, which were raised with no objective in mind other than that we want all instruments to be constructed with the best quality drafting. Manifestly, that was not the case in this situation.

**The Convener:** Indeed. Thank you.

## Public Services Reform (Scotland) Act 2010 (Part 2 Extension) Order 2015

11:38

**The Convener:** At its meeting on 12 May, the committee raised concerns about the absence of consultation on the Public Services Reform (Scotland) Act 2010 (Part 2 Extension) Order 2015.

The order was drawn to the Parliament's attention under the general reporting ground. The committee was not satisfied with the justification offered by the Scottish Government for not having consulted, and we consequently agreed to write to the Deputy First Minister on this matter.

The Deputy First Minister has now responded to our concerns, and members have a copy of his letter. Do members have any comments?

**John Mason (Glasgow Shettleston) (SNP):** As well as discussing the order at this committee, I was at the Finance Committee when we discussed it with the Deputy First Minister. I have to say that I am not completely satisfied with the arguments; the Government just seems to have held firm to the points that it was putting forward previously, which I do not think answer the points that we raised.

Specifically, paragraph 5 of the Deputy First Minister's letter suggests that a consultation would not have made a difference to the order. I accept that it would not have made any difference to anything internal in the order, but it might have made a difference to whether the order came forward in the first place. The issue was controversial when the Public Services Reform (Scotland) Bill was discussed, and it would have been interesting to hear what some of the outside bodies thought—whether they have been reassured by what has happened in the past five years, or whether they still have concerns. I do not feel that that was a strong argument against a consultation.

Secondly, paragraph 6 refers to other public bodies. In the past, such bodies have been prepared to state their opinion on the public record despite the fact that they are subject to ministerial control. Again, therefore, I do not think that the Government makes a particularly good argument. I remain unsatisfied, although I did not vote against the order at the Finance Committee.

**John Scott:** I agree with John Mason. I adhere to my view of last week that the Government should consult when it has been set out that it will do so, and I am concerned about the precedent that this move sets for the future. Is the

Government now going to decide when it will consult? Notwithstanding the reasons provided in the letter, I think that an uncomfortable precedent has been set that the Government will decide when it will consult and when it will just say how something is going to be because there is no point in consulting. That puts us on a very slippery slope.

**The Convener:** Thank you for those comments, which I am sure will be read by the appropriate authorities.

That completes item 7, at which point I move the meeting into private.

11:41

*Meeting continued in private until 12:05.*

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