



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 11 June 2013

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DELEGATED POWERS AND LAW REFORM COMMITTEE

19th Meeting 2013, Session 4

CONVENER

*Nigel Don (Angus North and Mearns) (SNP)

DEPUTY CONVENER

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)

*Mike MacKenzie (Highlands and Islands) (SNP)

*Hanzala Malik (Glasgow) (Lab)

John Pentland (Motherwell and Wishaw) (Lab)

*John Scott (Ayr) (Con)

*attended

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

Committee Room 5

Scottish Parliament
Delegated Powers and Law
Reform Committee

Tuesday 11 June 2013

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in
Private

The Convener (Nigel Don): I welcome members to the Delegated Powers and Law Reform Committee's 19th meeting in 2013 and note that this is the first time that we have met under the committee's new name. I ask members to switch off their mobile phones. We have received apologies from John Pentland.

Agenda item 1 is a decision on taking business in private. It is proposed that the committee takes in private item 6, which is consideration of a draft stage 1 report on the delegated powers that are contained in the Landfill Tax (Scotland) Bill. Do members agree to take that item in private?

Members *indicated agreement.*

Instrument subject to Affirmative
Procedure

Registration of Social Workers and Social
Service Workers in Care Services
(Scotland) Regulations 2013 [Draft]

10:01

The Convener: Regulation 9(1) continues the application of the requirements in regulations 4 to 6 of the Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) (No 2) Regulations 2009 (SSI 2009/118) for social workers and social service workers to achieve registration with the Scottish Social Services Council within the period that those regulations provide for to workers who start work before the 2013 regulations come into force on 1 August 2013. Regulation 9(2) of the 2013 regulations provides that an application for registration that is made by such workers under those provisions of the 2009 regulations that is not determined by 1 August 2013

"is to be treated as an application for registration under these Regulations."

Regulations 4 to 7 of the 2013 regulations contain some differences in the application for registration requirements, including differences in relation to the exemptions from registration that apply. Confusion could be caused by the two incompatible directions: the direction that regulations 4 to 6 of the 2009 regulations continue to have effect and the direction that an application under those provisions is to be treated as an application under the provisions of the 2013 regulations.

Does the committee agree to draw the regulations to the attention of the Parliament on reporting ground (h), as the meaning of regulation 9 could be clearer?

Members *indicated agreement.*

Instruments subject to Negative Procedure

Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2013 (SSI 2013/176)

10:02

The Convener: Rule 13(h)(iv) should have been listed as rule 13(1), so that the removal of accumulations of sediment from rivers and so on that that rule permits is authorised only if every aspect of the activity that is listed does not result in pollution of the water environment. As drafted, the prohibition on pollution of the water environment applies only as a condition of the return of the removed sediment to the river, burn or ditch from which it was removed.

The committee may wish to note that the Scottish Government has undertaken to correct the error when the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (SSI 2011/209) are next amended.

John Scott (Ayr) (Con): When you said that rule 13(h)(iv) should have been listed as rule 13(1), did you mean rule 13(i)?

The Convener: I did—well spotted, sir.

John Scott: I do not wish to be nit-picking; I just wanted to avoid any doubt.

The Convener: I am grateful that you picked that up. It demonstrates just how careful folk on the committee are. Nonetheless, I am sure that the official report would have got it right.

Does the committee 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: It was good enough to trip even me up.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I will make an observation in passing. The confusion between “i” and “1” is understandable, because sometimes an “i” in legislation means “1”. If it is used in a sub-subclause, it is numeric, not alphabetic. That is a genuine issue that relates to the rules and structures for drafting, which can lead to misapprehension and error of the kind that we are discussing. I see that our lawyers are nodding, so I am not missing the point.

The Convener: The point is very well made.

Hanzala Malik (Glasgow) (Lab): I totally agree that that is a legal point that causes confusion. I accept what is being said.

The Convener: We have made the point very eloquently.

John Scott: We are grateful for that.

The Convener: Indeed.

Does the committee also agree to note that the Scottish Government has undertaken to correct the error when the 2011 regulations are next amended—although Roman numerals will probably be retained?

Members indicated agreement.

Glasgow Commonwealth Games (Compensation for Enforcement Action) (Scotland) Regulations 2013 (SSI 2013/160)

The committee agreed that no points arose on the instrument.

The Convener: Although our legal advisers have raised no formal points, the committee may wish to highlight a couple of issues to the lead committee. The regulations are to cease to have effect on the repeal day, and ministers are empowered to specify any day after the games have ended as the repeal day.

The regulations contain no provision for how an on-going compensation claim, or one that could still be made in the period that is set out in regulation 4, is to be dealt with. The Scottish Government has indicated that any on-going claims would be taken into account in determining the repeal day and that consideration would be given to whether further legislative provision was required to deal with unresolved claims, but the committee may wish to highlight that issue to the lead committee.

Regulations 4(2)(a) and 4(2)(b) specify the deadlines for sending a notice of claim. It appears from regulations 4(2) and 4(4)(b) that identification and provision of the date on which the damage occurred are, in all cases, an essential requirement. Provision is not made for what is to happen when the date on which the damage occurred is not identifiable and cannot be provided. That is, of course, a policy issue that the committee may wish to highlight to the lead committee.

Hanzala Malik: There are a number of issues with the regulations, one of which is that giving an exact date is not always possible. For example, if someone reported a lost item to the police, they would say that it was lost or stolen between this date and that date. In such a situation, people cannot give an exact date.

Another issue is that claims might be made when a claim has already been made. I am not sure how clear the relevant provision is, so perhaps the lead committee could look at that.

The Convener: Indeed.

Does the committee agree to draw the matters that have been raised in relation to the regulations to the attention of the lead committee, while not reporting the instrument formally?

Members *indicated agreement.*

Town and Country Planning (Appeals) (Scotland) Regulations 2013 (SSI 2013/156)

Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (SSI 2013/157)

National Health Service (Superannuation Scheme and Pension Scheme) (Scotland) Amendment (No 2) Regulations 2013 (SSI 2013/168)

Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2013 (SSI 2013/170)

Animal Health (Miscellaneous Amendments) (Scotland) Order 2013 (SSI 2013/173)

National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013 (SSI 2013/174)

The committee agreed that no points arose on the instruments.

The Convener: Although our legal advisers have raised no points on SSI 2013/174, the committee may wish to note that the regulations consolidate the provisions of the National Health Service Pension Scheme (Scotland) Regulations 2008 (SSI 2008/224). It might be appropriate to be grateful that we have had a bit of consolidation.

Requirements for Community Learning and Development (Scotland) Regulations 2013 (SSI 2013/175)

Dangerous Dogs (Fees) (Scotland) Order 2013 (SSI 2013/178)

Anniesland College and Langside College (Transfer and Closure) (Scotland) Order 2013 (SSI 2013/180)

Kilmarnock College (Transfer and Closure) (Scotland) Order 2013 (SSI 2013/182)

Reid Kerr College (Transfer and Closure) (Scotland) Order 2013 (SSI 2013/183)

Police Reform (Pensions Amendments) (Scotland) Regulations 2013 (SSI 2013/184)

Firemen's Pension Scheme (Amendment) (Scotland) (No 2) Order 2013 (SSI 2013/185)

Fire Reform (Pensions Amendments) (Scotland) Order 2013 (SSI 2013/186)

Plant Health (Scotland) Amendment (No 2) Order 2013 (SSI 2013/187)

Mobile Homes (Written Statement) (Scotland) Regulations 2013 (SSI 2013/188)

National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2013 (SSI 2013/191)

The committee agreed that no points arose on the instruments.

Instruments not subject to Parliamentary Procedure

Act of Sederunt (Rules of the Court of Session Amendment No 4) (Miscellaneous) 2013 (SSI 2013/162)

10:10

The Convener: Paragraph 7 saves the rules of the Court of Session as they applied prior to 24 June 2013 for the purposes of appeals under section 51 of the Children (Scotland) Act 1995—appeals relating to children’s hearings—that are commenced but not determined before 24 June. It also saves those rules in relation to any further rights of appeal that follow on from such appeals.

It is not clear from paragraph 7 whether the saving is intended to apply only to appeals to the Court of Session that are made from an appeal to the sheriff or sheriff principal under section 51 before 24 June or whether it is also intended to apply to appeals to the Court of Session that are made from an application to the sheriff or sheriff principal under section 51 before that date. Accordingly, the drafting could be clearer in giving effect to the intention.

Does the committee agree to draw the instrument to the attention of the Parliament on reporting ground (h), as the meaning of paragraph 7 could be clearer?

Members *indicated agreement.*

Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No 3) 2013 (SSI 2013/171)

The committee agreed that no points arose on the instrument.

The Convener: Although our legal advisers have raised no points, the committee may wish to note that the convention that instruments be laid 10 to 14 days prior to the first coming into force date has not been observed. The result is that the committee has not had the opportunity to scrutinise the instrument prior to the first coming into force date.

Act of Sederunt (Children’s Hearings (Scotland) Act 2011) (Miscellaneous Amendments) 2013 (SSI 2013/172)

Children’s Hearings (Scotland) Act 2011 (Commencement No 8) Order 2013 (SSI 2013/190)

The committee agreed that no points arose on the instruments.

Victims and Witnesses (Scotland) Bill: Stage 1

10:12

The Convener: Agenda item 5 is consideration of the Scottish Government’s response to the committee’s stage 1 report on the Victims and Witnesses (Scotland) Bill. Members will have seen the briefing paper and the response. Do members have any comments? Are we content to note the response and, if necessary, to consider the bill again after stage 2?

Members *indicated agreement.*

The Convener: Thank you very much.

That brings us to item 6, which we will take in private.

10:13

Meeting continued in private until 10:31.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

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