



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 19 May 2015

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**17<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 19 May 2015

[The Convener opened the meeting at 11:42]

#### Decision on Taking Business in Private

**The Convener (Nigel Don):** I welcome members to the 17th meeting in 2015 of the Delegated Powers and Law Reform Committee. As always, I ask everyone to switch off mobile phones. We have received apologies from Margaret McCulloch.

Agenda item 1 is a decision on taking business in private. Do members agree to take item 5 in private to allow the committee to consider further delegated powers provision in the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill at stage 1?

**Members indicated agreement.**

## Instruments subject to Negative Procedure

### Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 (SSI 2015/181)

11:42

**The Convener:** Regulation 21(3) and paragraph 19 of schedule 2 contain a definition provision that, where expressions appear both in that regulation or that schedule and in the Seveso III directive (2012/18/EU), they have the same meaning as used in the directive. However, although that defines “major accident” for the purpose of those provisions in the instrument, a similar definition is omitted for the purposes of the references to “major accident” in regulation 6(2)(d)(vi) and (vii). Does the committee agree to draw the regulations to the Parliament’s attention on the general reporting ground on account of a drafting error?

**Members indicated agreement.**

**The Convener:** The Scottish Government does not propose to take any corrective action to remedy that discrepancy within the provisions, but the committee may consider it undesirable that a definition provision that is intended to apply to two regulations in and a schedule to the instrument is omitted for the purposes of one of those regulations. Does the committee agree to invite the Scottish Government to rectify that discrepancy by an amendment as soon as practicable?

**Members indicated agreement.**

### Town and Country Planning (Hazardous Substances Inquiry Session Procedure) (Scotland) Rules 2015 (SSI 2015/182)

**The Convener:** There are three drafting errors in these rules. First, in rule 4(1), it appears that “which” is omitted between “effect” and “must”. Secondly, paragraph 3 of the schedule includes the line:

“the persons entitled to appear at the inquiry session is restricted to”.

Thirdly, in the definition of “appointed representative” in paragraph 10(1) of the schedule, the word “appointed” is omitted between “person” and “to”.

The Scottish Government has undertaken to lay an amending instrument as soon as practicable to correct the errors. Does the committee agree to draw the instrument to the Parliament’s attention on the general reporting ground as it contains patent drafting errors?

**Members indicated agreement.**

### Scottish Tax Tribunals (Time Limits and Rules of Procedure) Regulations 2015 (SSI 2015/184)

11:45

**The Convener:** Our legal advisers have suggested two matters for consideration in these regulations, the first of which concerns an apparently unusual or unexpected use of the powers in the parent statute.

In schedule 1 of the instrument, rule 5(3)(a) confers power on the first-tier tax tribunal to extend or shorten the time for complying with the 30-day time limit for permission to appeal to the upper tax tribunal as specified in regulation 3(2). In schedule 2, a similar power is conferred on the upper tax tribunal to modify the time limits for permission to appeal to that tribunal or to the Court of Session as specified in regulations 3(2) and 4(2).

Regulations 3(2) and 4(2) are made by the Scottish ministers in exercise of the powers conferred by section 39 of the Revenue Scotland and Tax Powers Act 2014 to specify a time limit within which the permission to appeal must be sought. In relation to the powers that on the bill's enactment were conferred by section 39, the Scottish Government's delegated powers memorandum to the 2014 bill stated:

"The time limit for applying for permission to appeal is a procedural matter and it is, therefore, considered, to be more appropriate to set out the requirements in subordinate *legislation* rather than on the face of the Bill. It is, however, considered to be of such importance that it should be set out in regulations made by the Scottish Ministers rather than left to Tribunals rules."

Accordingly, the committee might consider it an unusual or unexpected use of the powers conferred by the parent statute to provide in the rules of procedure for the first-tier tax tribunal and the upper tax tribunal that the tribunals may by direction and at any time extend or shorten the time limits for proceedings as specified in regulations 3(2) and 4(2).

Secondly, the committee might wish to draw the attention of the subject committee considering the regulations to a further aspect of rule 5(3)(a) in schedules 1 and 2. The rules also confer power on the first-tier tax tribunal and the upper tax tribunal to extend or shorten the time for complying with any matter of practice or procedure specified by the president of the tax tribunals under section 57 of the 2014 act. The power to vary procedural time limits in proceedings before the tax tribunals would apply even when a direction by the president could provide that a time limit specified in his direction must be adhered to.

Does the committee agree to draw the regulations to the Parliament's attention under reporting ground (g) in light of the unusual and unexpected use of the powers conferred by the parent statute?

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** The Government asserts that the time to appeal is a matter of procedure. In one sense, that is correct—it is all about changing the tribunal's procedures—but it is not clear to me that there is equity in shortening the appeal period. I can perfectly understand why the Government might wish through these regulations to hand to the tribunal the power to lengthen the period for appeal—indeed, one can imagine a whole series of circumstances in which the ends of justice would be served by lengthening the period and allowing people who might be out of the country for a month, for example, to register—but it is the nature of appeals that the two parties concerned are not in agreement about what the solution should be. I therefore find it difficult to imagine how the ends of justice are served by shortening the period of appeal for someone who is aggrieved and wants to appeal.

The point for the committee is not the policy one that I have just outlined, although, for the sake of illustration, I note that in legal terms the regulations will give the tribunal the power to shorten the period of appeal to, say, three minutes. I am not sure that such a process is proper. Moreover, given that this is a negative instrument, there is a very good chance that it might pass without discussion and debate.

We should encourage the appropriate policy committee to look at the use of these regulations to allow the tribunal to shorten the period of appeal. It can, of course, look at anything it likes, but that is the issue that is causing me concern, and I think that the policy committee in question should examine it. After all, the Government has proffered no explanation as to why it is proper to allow the tribunal to shorten the appeal period or how that might or might not adversely or beneficially affect the parties to any appeal.

**John Scott (Ayr) (Con):** I add my support for what Stewart Stevenson just said. Although the example that he uses of shortening the time of appeal to three minutes is extreme, it would be helpful if the Government were to provide us with reasons, examples or sets of circumstances in which the requirement to shorten such an appeal process might be of benefit to anyone. It is far from clear. I even wonder whether it would be European convention on human rights compliant to deny someone their rights, which are clearly stated but apparently can be changed almost at whim.

**The Convener:** I am sure that the courts would not do things like that, but the point has been eloquently made.

Do we agree to report the regulations to the Parliament and draw them to the attention of the Finance Committee?

**Members** *indicated agreement.*

### **Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/185)**

**The Convener:** Regulation 6 of the Less Favoured Area Support Scheme (Scotland) Regulations 2010 (SSI 2010/273), as substituted by regulation 7 of these regulations, could be made clearer to applicants in that the European Union requirements that are specified in regulation 6(2)(b) and (3)(b) are to be read as if references to transferor were references to transferee and vice versa, as required by other EU requirements that are not specifically referred to in those regulations.

**John Scott:** I must first declare an interest as an active farmer.

I appreciate that this is perhaps a policy matter, but I am particularly concerned about the section a legal brief that is headed "Purpose" and the third bullet point in the second paragraph, which says:

"The principal changes are as follows: ...

Provision of a process for the reduction of the maximum payment rates where the financial resources available are insufficient to make LFASS payments within the annual budget of £65.5m".

That is a pretty major discretionary power, which would have a material impact on applicants' entitlement under the scheme. It should be drawn to the attention of the policy committee because I am not sure that it is appropriate that such a change should be introduced by a negative instrument. I would have thought that, for such a major change, it would have been reasonable to use an affirmative instrument, unless I am missing the point.

**The Convener:** I suggest that the major point that you have made is one for the Rural Affairs, Climate Change and Environment Committee, and I invite you to take it to it. I am sure that the members of that committee will be very interested in your comments, for all sorts of obvious reasons.

**John Scott:** Absolutely. Thank you, convener.

**The Convener:** Does the committee wish to draw the amendment regulations to the Parliament's attention under reporting ground (h) as the meaning of regulation 7, which is our immediate concern, could be clearer?

**Members** *indicated agreement.*

### **Carbon Accounting Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/189)**

**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

### Scottish Tax Tribunals (Conduct and Fitness Assessment Tribunal) Rules 2015 (SSI 2015/187)

11:53

**The Convener:** Paragraph 22(1) of schedule 2 to the Revenue Scotland and Tax Powers Act 2014 provides that the Scottish ministers may make rules for the purposes of, or in connection with, the investigation and determination of any matter concerning the conduct of members of the Scottish tax tribunals, and the review of any such determination. That power is relied on to make provision in rule 13 of the conduct rules to the effect that, following receipt of a report determining a conduct matter in relation to the president of the tax tribunals, the Scottish ministers may give the president formal advice, a formal warning or a reprimand.

Conduct matters are dealt with in paragraphs 21 to 23 of schedule 2 to the 2014 act, while disciplinary matters such as reprimands, warnings and suspension of members are dealt with in paragraphs 24 to 26. By virtue of paragraph 20(2) of schedule 2, paragraphs 21 to 23 apply expressly to the president's position, but the 2014 act itself is silent on the application of paragraphs 24 to 26 to the same position. Accordingly it would appear that the provisions in the act concerning disciplinary action, which follow on from an investigation and recommendation in accordance with the conduct rules, do not expressly apply to the president.

As such, the use of the power in paragraph 22(1) of schedule 2 to the act to make provision enabling the Scottish ministers to take disciplinary action in relation to the president appears to be inconsistent with other provisions made in the act.

The committee may therefore consider that there appears to be an unusual or unexpected use of the power in paragraph 22(1) of schedule 2, to provide in the conduct rules that the Scottish ministers, following receipt of a report determining a conduct matter in relation to the president, may give the president formal advice, a formal warning or a reprimand.

As rule 13(8), when read with rule 13(7)(b) of the Scottish Tax Tribunals (Conduct) Rules 2015 in schedule 1 to the instrument, has been made by what appears to be an unusual or unexpected use of the powers conferred by the parent statute, does the committee agree to draw the instrument to the attention of the Parliament on the committee's reporting ground (g)?

**Members indicated agreement.**

**The Convener:** There is also a minor drafting error in rule 12(6) of the conduct rules. Rule 12(6) does not expressly provide for rule 11(4) to apply to an interview under rule 12(5)(c)—review by disciplinary judge—as it applies to an interview conducted under rule 11(1)(c), which is on procedure and conduct of an investigation. The Scottish Government acknowledges that rule 11(4) should have been applied in the context of an interview under rule 12.

Does the committee also agree to draw the instrument to the attention of the Parliament on the general reporting ground, in respect of that minor drafting error, and invite the Scottish Government to rectify the error as soon as is practicable?

**Members indicated agreement.**

### Forth Road Bridge Act 2013 (Commencement) Order 2015 (SSI 2015/190)

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

**Members indicated agreement.**

## Annual Report

11:56

**The Convener:** Agenda item 4 is consideration of a draft annual report covering 11 May 2014 to 10 May 2015.

Under rule 12.9 of the standing orders, the committee is obliged to report to the Parliament at the end of each parliamentary year on its activities during that year. We have before us a draft annual report for the parliamentary year 2014-15. The report is due to be published next month to coincide with the publication of all other committee annual reports.

Are members content with the contents of the report?

**Members indicated agreement.**

**The Convener:** I move the meeting into private for agenda item 5.

11:57

*Meeting continued in private until 12:06.*



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