



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 5 September 2017

Session 5



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE
23rd Meeting 2017, Session 5

CONVENER

*Graham Simpson (Central Scotland) (Con)

DEPUTY CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

COMMITTEE MEMBERS

*Alison Harris (Central Scotland) (Con)

*Monica Lennon (Central Scotland) (Lab)

David Torrance (Kirkcaldy) (SNP)

*attended

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 5 September 2017

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

Interests

The Deputy Convener (Stuart McMillan): Good morning, everyone, and welcome to the Delegated Powers and Law Reform Committee's 23rd meeting in 2017. I remind all present, including members, that mobile phones should be switched off. We have received apologies from David Torrance.

Agenda item 1 is a declaration of interests, in accordance with section 3 of the "Code of Conduct for Members of the Scottish Parliament". I invite Graham Simpson to declare any interests that are relevant to the committee's remit.

Graham Simpson (Central Scotland) (Con): I have no relevant interests to declare.

The Deputy Convener: Thank you.

Convener

10:00

The Deputy Convener: Item 2 is the choice of convener. The Parliament has agreed that only members of the Conservative Party are eligible for nomination as convener of the committee. That being the case, I seek nominations for the position of convener.

Alison Harris (Central Scotland) (Con): I nominate Graham Simpson.

Graham Simpson was chosen as convener.

The Deputy Convener: I congratulate Graham Simpson on his appointment and hand over the chair to him for the remainder of the proceedings.

Decision on Taking Business in Private

10:01

The Convener (Graham Simpson): Under item 3, does the committee agree to take in private item 7, which is consideration of the committee's work programme?

Members *indicated agreement.*

Instruments subject to Negative Procedure

10:02

The Convener: Under item 4, no points have been raised by our legal advisers on the following two instruments.

Energy Performance of Buildings (Scotland) Amendment Regulations 2017 (SSI 2017/225)

National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2017 (SSI 2017/231)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

10:02

The Convener: Under item 5, no points have been raised by our legal advisers on the following five instruments.

Mental Health (Scotland) Act 2015 (Commencement No 5 and Transitional Provisions) Order 2017 (SSI 2017/234 (C 19))

General Teaching Council for Scotland (Legal Assessor) Rules 2017 (SSI 2017/239)

Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) (Amendment) 2017 (SSI 2017/240)

Act of Sederunt (Rules of the Court of Session 1994 and Summary Application Rules 1999 Amendment) (Miscellaneous) (SSI 2017/242)

Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No 3) (Miscellaneous) 2017 (SSI 2017/251)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Gender Representation on Public Boards (Scotland) Bill: Stage 1

10:03

The Convener: Item 6 is consideration of the committee's approach to the scrutiny of the delegated powers in the bill at stage 1. This is an opportunity to identify matters that the committee might wish to raise with the Scottish Government in relation to the delegated powers contained in the bill.

The bill's policy objective is to increase the representation of women on public boards in Scotland. It contains three delegated powers, and it is suggested that the committee raise questions on the powers in section 8, which enables the Scottish ministers to make regulations to modify schedule 1 by adding or removing an entry of a public authority that is caught by the bill's requirements or by varying the description of such an entry, and on section 11(2), which authorises the Scottish ministers to modify the bill when making regulations under section 8.

Regulations that are made under section 8 will be subject to the negative procedure. A useful comparator is the Freedom of Information (Scotland) Act 2002, which provides for a different approach. Section 4 of that act includes a power that allows the Scottish ministers by order to add or remove the public authorities listed in schedule 1 to which the right of access to information applies. Such an order is to be made under the negative procedure, except in particular circumstances in which the affirmative procedure applies by virtue of section 7 of that act. Those circumstances are when regulations list the authority only in relation to information of a specified description.

First, does the committee agree to ask the Scottish Government to explain why it is necessary for section 11(2) of the bill to provide the power to modify the bill as a whole, instead of the power being limited to amending schedule 2 in relation to its application to particular public authorities? In particular, can the Scottish Government provide examples of when it would be necessary for regulations made under section 8 to modify a provision in the bill other than schedules 1 and 2?

Secondly, does the committee agree to ask the Scottish Government whether, bearing in mind the approach taken to the regulation-making powers in sections 4(1) and 7(1) of the Freedom of Information (Scotland) Act 2002, it would be appropriate for regulations made under section 8 of the bill to be subject to the affirmative procedure when those regulations make any provision in the

second column of the table in schedule 1 to exclude certain positions in a public authority from the bill's requirements?

10:06

Meeting continued in private until 10:39.

Thirdly, regardless of whether section 11(2) is limited to making modifications to schedule 2 rather than the bill as a whole, does the committee agree to ask the Scottish Government whether, given that the exercise of such a power in regulations made under section 8 would amend primary legislation, it would be more appropriate for the affirmative procedure to apply?

Members *indicated agreement.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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