



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 17 January 2017

Session 5



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE
2nd Meeting 2017, Session 5

CONVENER

*John Scott (Ayr) (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 17 January 2017

[The Convener opened the meeting at 10:00]

**Decision on Taking Business in
Private**

The Convener (John Scott): Good morning, everyone, and welcome to the Delegated Powers and Law Reform Committee's second meeting of 2017. I invite members to turn off their mobile phones, if they have not already done so.

It is proposed that the committee take in private item 5, which is consideration of a draft report on the Limitation (Childhood Abuse) (Scotland) Bill. Does the committee agree to consider item 5 in private?

Members *indicated agreement.*

**Instruments subject to
Affirmative Procedure**

**Stop and Search Code of Practice
(Appointed Day) (Scotland) Regulations
2017 [Draft]**

10:01

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

Members *indicated agreement.*

Instruments subject to Negative Procedure

Seed (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/434)

10:01

The Convener: The regulations implement Commission directives 2016/11 and 2016/317 and Commission decision 2016/320. Among other things, the regulations amend the Seed (Licensing and Enforcement etc) (Scotland) Regulations 2016 (SSI 2016/68) to correct drafting errors that were identified by our predecessor committee on 23 February 2016.

The meaning of regulation 8(3) of SSI 2016/434 could be clearer in so far as it amends regulation 15(2) of SSI 2016/68 to include the words

“the person refused a licence”

when no formal decision will have been taken to refuse the licence. Accordingly, does the committee agree to draw SSI 2016/434 to the Parliament’s attention under reporting ground (h)?

Members indicated agreement.

The Convener: The Scottish Government has given an undertaking to further amend regulation 15(2) of SSI 2016/68 at the next available opportunity to make the provision clearer. Does the committee agree to welcome that undertaking?

Members indicated agreement.

The Convener: At the same time, does the committee agree to note that it is not wholly satisfactory that a further amending instrument is required to correct regulation 15(2) of SSI 2016/68, when regulation 8(3) of SSI 2016/434 sought to amend the defective drafting in relation to regulation 15(2) that the committee highlighted, and that the amendment in regulation 8(3) of SSI 2016/434 was not made before SSI 2016/68 came into force on 1 July 2016, although the committee encouraged the Scottish Government to do it before then?

Members indicated agreement.

Licensing of Relevant Permanent Sites (Scotland) Regulations 2016 (SSI 2016/433)

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

Members indicated agreement.

Railway Policing (Scotland) Bill: Stage 1

10:04

The Convener: Agenda item 4 allows the committee to consider its approach to the scrutiny of the delegated powers in the Railway Policing (Scotland) Bill at stage 1. Specifically, it provides an opportunity to identify matters that the committee might wish to raise with the Scottish Government in relation to the delegated powers that the bill contains.

The bill’s policy objective is to pave the way for integrating railway policing for Scotland into the Police Service of Scotland, which the bill does by providing Police Scotland and the Scottish Police Authority with new powers in relation to railway policing and by removing existing powers in relation to railway policing in Scotland from the British Transport Police and the British Transport Police Authority.

The bill contains three delegated powers, two of which are standard ancillary and commencement powers. In relation to the power in proposed new section 85C of the Police and Fire Reform (Scotland) Act 2012, which is inserted by section 1 of the bill, the committee is invited to agree to raise the following three questions.

First, the power in new section 85C of the 2012 act, which is inserted by section 1 of the bill, allows the Scottish ministers to impose a period within which a railway policing agreement—RPA—must be entered into by a railway operator specified in regulations. The equivalent power in section 34 of the Railways and Transport Safety Act 2003 does not allow the secretary of state to impose such a time period. Given that the general approach in the bill appears to be to reflect the existing model that is set out in the 2003 act for police services agreements, does the committee agree to invite the Government to explain why it is considered necessary to enhance the existing power in the proposed way and what problem that is intended to address?

Members indicated agreement.

The Convener: Secondly, section 34(2) of the 2003 act provides that a railway services provider who is required by subordinate legislation to enter into a police services agreement and who provides railway services without entering into an agreement commits an offence. If they are guilty, they are liable to a fine. That provision is not reflected in the power that is set out in section 1 of the bill. The lack of any sanctions in the bill appears in effect to render the power in section 1 without teeth, since there is no incentive for a

specific railway operator to comply with any requirement that is set out in regulations.

Does the committee agree to invite the Government to explain why a different approach has been taken and, in the absence of sanctions, how it is intended to procure the co-operation of specific railway operators in complying with the requirement to enter into an RPA?

Members *indicated agreement.*

The Convener: Thirdly, the Scottish Government's delegated powers memorandum suggests that the choice of the negative parliamentary procedure is appropriate for the power in question, as the initial exercise of the power is likely to broadly maintain the current arrangements for mandatory policing agreements for railway operators in Scotland, and any subsequent exercise of the power is likely to reflect changes of an administrative nature. Although the committee accepts that there might be circumstances in which the power is exercised in response to purely administrative changes that relate to specific railway operators, it does not consider that the power is purely administrative in nature.

The committee notes that the requirement for specific railway operators to enter into RPAs with the Scottish Police Authority is fundamental to the operation of the new model for Scotland and, therefore, to the delivery of the bill's policy intention. Similarly, the requirement for operators to enter into RPAs will impose on those operators an on-going contractual obligation, which in turn will have an impact on how their businesses are managed and financed. Further, while the committee notes the Scottish Government's intention to exercise the power initially in a way that broadly maintains the current arrangements, it considers that it would be open to the Scottish Government to exercise the power differently—for example, to introduce a modified railway policing model north of the border. For those reasons, it appears to the committee that the exercise of the power is integral to the delivery of the policy intention and has the potential to fundamentally affect stakeholder interests under the new model.

The delegated powers memorandum also suggests that the negative procedure is appropriate because the power might require to be exercised relatively expeditiously to respond to changing circumstances. Although the committee accepts that certain administrative changes in relation to specific operators might require to be addressed relatively quickly through exercise of the power, it does not consider that that alone justifies the choice of the negative procedure for a power that is not of a purely administrative nature. Other bespoke procedures exist for such a power that requires to be exercised expeditiously but

which also merits an enhanced level of parliamentary scrutiny.

In the light of those concerns, the committee considers that the use of the negative procedure could not provide sufficient parliamentary scrutiny. Does the committee agree to invite the Government to consider providing for the use of the affirmative procedure instead?

Members *indicated agreement.*

The Convener: Thank you very much. That concludes the public part of the meeting.

10:11

Meeting continued in private until 10:19.

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.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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