Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) any—
   (i) subordinate legislation laid before the Parliament;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1;

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Chic Brodie
Nigel Don (Convener)
Committee Clerking Team:

Clerk to the Committee
Irene Fleming

Assistant Clerk
Rob Littlejohn

Support Manager
Daren Pratt
Subordinate Legislation Committee

23rd Report, 2012 (Session 4)

Subordinate Legislation

The Committee reports to the Parliament as follows—

1. At its meeting on 8 May 2012, the Committee agreed to draw the attention of the Parliament to the following instrument—

   Snares (Training) (Scotland) Order 2012 (SSI 2012/124).

2. The Committee’s recommendations in relation to that instrument are set out below.

3. The instruments that the Committee determined that it did not need to draw the Parliament’s attention to are set out at the end of this report.
4. The purpose of this instrument is to make provision for training in relation to the setting of snares. In particular, the Order designates a list of bodies as “approved bodies” for the purpose of delivering that training.

5. The Order is subject to negative parliamentary procedure, and is due to come into force on 4 June 2012.

6. In considering the instrument, the Committee asked the Scottish Government for clarification of certain points. The correspondence is reproduced in Appendix 1.

7. The Order designates the “Scottish Gamekeepers Association” as a body approved for the purposes of providing training under the new scheme. However, that organisation consists of two parts: the Scottish Gamekeepers Association and the Scottish Gamekeepers Association Charitable Trust. Although the Order designates only the former body, footnote (d) on page 3 makes reference to both the Scottish Gamekeepers Association and the Scottish Gamekeepers Association Charitable Trust.

8. The Committee therefore asked the Scottish Government for clarification as to which of these two bodies was intended to be the approved body for the purposes of the Order. The Scottish Government confirmed in its response that the Scottish Gamekeepers Association Charitable Trust is the organisation that is intended to provide the training in relation to the setting of snares under the new scheme.

9. The Scottish Ministers consider that the designation of the Scottish Gamekeepers Association in the Schedule, when read together with footnote (d) on page 3 of the Order, clearly indicates that the Scottish Gamekeepers Association Charitable Trust is also designated for the purposes of providing training.

10. The Scottish Gamekeepers Association Charitable Trust is a separate legal entity from the Scottish Gamekeepers Association. It is a separate company and it has separate legal personality. On that basis, and regardless of the practical manner in which the organisation operates, the Committee does not consider that it is possible to read the reference to the Scottish Gamekeepers Association so as to include by implication the Scottish Gamekeepers Association Charitable Trust.

11. This Order forms part of a scheme. When the scheme comes fully into force, persons who set snares despite not having an identification number because they do not hold a valid training certificate (issued by an approved body designated by this Order) will be at risk of prosecution. The Committee accordingly considers that it is particularly important that all those affected are clear as to which bodies are designated as approved for the purposes of providing training.
12. It accordingly appears to the Committee that the Order – so far as it was intended to designate the Scottish Gamekeepers Association Charitable Trust – is defectively drafted as it instead designates the Scottish Gamekeepers Association, which is in law a separate body. However, the Order does validly designate the Scottish Gamekeepers Association as an approved body. The Committee therefore takes the view that it would be open to that body, if it wished to do so, to provide training and to issue training certificates for the purposes of the Order.

13. The Scottish Government has undertaken to amend the reference to the Scottish Gamekeepers Association at such time in the future as it comes to add other organisations to the list of approved bodies for the purposes of providing training. While the Committee welcomes this commitment, it considers that the Scottish Government ought to take corrective action before the prohibition on unregistered persons setting snares comes into force on 1 January 2013.

14. The Committee therefore draws this instrument to the attention of the Parliament under reporting ground (i) as its drafting appears to be defective.

15. The instrument designates the Scottish Gamekeepers Association (registered company number SC386843) as an approved training body for the purposes of section 11A of the Wildlife and Countryside Act 1981. A training certificate is required from an approved body before a person can be registered with the Chief Constable to lawfully set snares.

16. However, it appears that it is the intention that training of the type mentioned in the Order is to be provided by the associated but distinct company the Scottish Gamekeepers Association Charitable Trust (registered company number SC386844), and that it was intended that the latter body be designated by the Order.

17. The Committee considers that the charitable trust has not been designated as an approved body as it is not properly listed in the Schedule to the Order. To that extent, the Committee considers the instrument to be defectively drafted.

18. The Committee also notes that the prohibition on unregistered persons setting snares does not come into force until 1 January 2013 and that there is therefore time to rectify this matter. It further notes that the Government has given a commitment to do so without specifying when that will occur. The Committee encourages the Scottish Government to take corrective action before that date.
NO POINTS RAISED

19. At its meeting on 8 May 2012, the Committee also considered the following instruments and determined that it did not need to draw the attention of the Parliament to any instrument on any grounds within its remit:

**Education and Culture Committee**
Education (Provision of Information as to Schools) (Scotland) Revocation Regulations 2012 (SSI 2012/129)

**Finance Committee**
Official Statistics (Scotland) Amendment Order 2012 [draft]

**Health and Sport Committee**
Food Additives (Scotland) Amendment Regulations 2012 (SSI 2012/119)

**Infrastructure and Capital Investment Committee**
Property Factors (Code of Conduct) (Scotland) Order 2012 [draft]

**Justice Committee**
Bankruptcy Fees etc. (Scotland) Regulations 2012 (SSI 2012/118)
Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2012 (SSI 2012/125)
Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Miscellaneous) 2012 (SSI 2012/126)

**Local Government and Regeneration Committee**
Planning etc. (Scotland) Act 2006 (National Parks) (Consequential Provisions) Order 2012 (SSI 2012/117)
Town and Country Planning (General Permitted Development) (Fish Farming) (Scotland) Amendment Order 2012 (SSI 2012/131)

**Rural Affairs, Climate Change and Environment Committee**
Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No. 3) Order 2012 (SSI 2012/116)
APPENDIX 1

Snares (Training) (Scotland) Order 2012 (SSI 2012/124)

On 11 April 2012, the Scottish Government was asked:

The Scottish Gamekeepers Association is listed as an approved body in the Schedule to the Order. However, footnote (d) describes it as comprising two “parts”, a company limited by guarantee and a charitable trust. According to Companies House, two companies limited by guarantee exist: the Scottish Gamekeepers Association (No.SC386343) and the Scottish Gamekeepers Association Charitable Trust (No.SC386344). The Scottish Government is asked:

a. to explain which of these bodies is the approved body for the purposes of the Order, and whether it considers the reference to “Scottish Gamekeepers Association” to be sufficiently clear, given that the footnote reference refers to both companies;

b. why the Order states that the Scottish charity number of the Scottish Gamekeepers Charitable Trust is SC386344, when that is instead its registered company number, and how it intends to correct this error.

The Scottish Government responded as follows:

a. The approved body for the purposes of the Order is the “Scottish Gamekeepers Association”. The footnote makes it clear that this entry refers to both the company of that name (company no. SC386843) and also the associated “Scottish Gamekeepers Association Charitable Trust”, (company no. SC386844), which provides the approved training. The Scottish Government therefore considers it sufficiently clear that the provision of training by the associated “Scottish Gamekeepers Association Charitable Trust” is also approved for the purposes of the Order.

b. It is unfortunate that the footnote refers to the Scottish Gamekeepers Charitable Trust’s “charity number” as opposed to correctly referring to the “registered company number”. However, the Scottish Government consider that the error is not so grave as to merit a correction slip at this time. The footnote refers to the correct company number and there can be no doubt that it includes a reference to the charitable arm of the Scottish Gamekeepers Association.

The Scottish Government would add that it is likely that other bodies will seek to become approved bodies under the Snares (Training) (Scotland) Order 2012 and at that time, these bodies will require to be added to the Schedule to the Order. The Scottish Government undertakes to amend the reference to the Scottish Gamekeepers Association at that time so as to allay any concerns over clarity.
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