

JUSTICE 1 COMMITTEE

Wednesday 13 September 2006

Session 2

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JUSTICE 1 COMMITTEE

30th Meeting 2006, Session 2

CONVENER

Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)

Mr Bruce McFee (West of Scotland) (SNP)

*Margaret Mitchell (Central Scotland) (Con)

*Mrs Mary Mulligan (Linlithgow) (Lab)

*Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)

Bill Aitken (Glasgow) (Con)

Karen Gillon (Clydesdale) (Lab)

Mr Jim Wallace (Orkney) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Rhona Brankin (Deputy Minister for Environment and Rural Development)

Richard Frew (Scottish Executive Environment and Rural Affairs Department)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERKS

Euan Donald

Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 6

Scottish Parliament

Justice 1 Committee

Wednesday 13 September 2006

[THE DEPUTY CONVENER *opened the meeting at 09:52*]

Subordinate Legislation

Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2006 (Draft)

The Deputy Convener (Stewart Stevenson): I call the meeting to order and invite colleagues to ensure that their phones and BlackBerrys are suitably silent. I have received apologies from Pauline McNeill, who is speaking to an amendment to the Planning etc (Scotland) Bill at this morning's meeting of the Communities Committee. No other apologies have been received.

I welcome Rhona Brankin, who is the Deputy Minister for Environment and Rural Development, and Richard Frew, who is the head of the Scottish Executive's land reform branch. Before we come to the debate on motion S2M-4734, it is appropriate to give members the chance to seek details on, or clarification of, any technical matters in the draft order. Mr Frew will be able to participate in such discussions, although he will not be able to take part in the formal debate once the motion has been moved.

Do you wish to make any opening remarks, deputy minister?

The Deputy Minister for Environment and Rural Development (Rhona Brankin): Yes. I will try to be brief.

I welcome the opportunity to contribute to the committee's consideration of the draft Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2006. As the convener said, I am accompanied by Richard Frew, who has responsibility in the Executive for the community right to buy in part 2 of the Land Reform (Scotland) Act 2003.

I will explain briefly why the draft order, for which section 33(2) of the 2003 act provides, is required. The committee will be aware from its consideration of the existing Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2004 (SSI 2004/296) that the order is a crucial part of the law on the community right to buy because it defines

land that is excluded from being registered and, therefore, bought under the community right to buy. All land comprising settlements that have a population of more than 10,000 residents remains excluded.

In 2004, my predecessor, Allan Wilson, told the committee that the order would be updated regularly to reflect changes in settlement boundaries and population statistics. In that respect, the draft order simply updates the information in the 2004 order, which the committee approved.

However, the draft order contains two significant presentational changes. First, the body of the order no longer refers to the General Register Office for Scotland's publication, "Scottish Settlements—Urban and Rural Areas in Scotland", as the source of the statistics. The GROS's updating publication, "Mid-2004 Population Estimates for Settlements in Scotland", is merely a background document that has been used to inform the policy. That information is now contained in the Executive note. Secondly, the draft order makes no reference to the population threshold of 10,000. Again, as that figure has been used to inform the policy, the information is contained in the Executive note. We think that people will find that arrangement better and clearer.

The changes result in a simplified order and have no effect on the Executive's policy or on the purpose of the order. The 2003 act does not prescribe that such information should be contained in the order, so the draft order states that excluded settlements are those that are set out in the schedule to the order. I hope that the committee agrees that it is helpful and appropriate that, for interested parties, that information be included in the Executive note.

As the Executive note indicates, if Parliament approves the draft order, the land of two new settlements—Stonehaven and Westhill, by Aberdeen—will be excluded from the right to buy because their population is now above the threshold of 10,000 residents, which means that there will be 55 excluded settlements. In addition, the GROS has renamed five settlements: Ayr/Prestwick is now Ayr; Buckhaven/Kennoway has become Buckhaven; Kirkintilloch/Lenzie has become Kirkintilloch; Blackwood (Cumbernauld) is now just Cumbernauld; and Blantyre/Hamilton is Hamilton. Minor adjustments have been made to some settlement boundaries, mainly to reflect new development or to take on board adjustments that the GROS has made to settlement boundaries.

The draft order continues to provide for designated maps, copies of which we have provided for the clerks. The maps will be made available at the offices of the Scottish Executive

Environment and Rural Affairs Department at Pentland House, at the Executive's library at Saughton House and at local agricultural area offices in areas that contain excluded land. The purpose of that is to allow rural communities to access the maps easily without having to travel to Edinburgh. I understand that the system has worked well to date.

For the reasons that I have outlined, I invite the committee to agree to motion S2M-4734.

The Deputy Convener: I ask you not to move the motion just yet.

Rhona Brankin: That is all I would like to say to the committee at this stage, but I am happy to answer questions.

The Deputy Convener: As my colleagues have no questions, I ask you to confirm that Motherwell does not qualify.

Rhona Brankin: I will need to double-check that because I do not know the answer off the top of my head.

Motherwell comprises land that is registrable, so it does not qualify under excluded land.

The Deputy Convener: The implication is that the settlement of Motherwell has a population of fewer than 10,000. Is that true of Motherwell and Wishaw?

Rhona Brankin: I have to be careful about how I respond. Can Richard Frew speak at this stage?

The Deputy Convener: Yes, he can.

Richard Frew (Scottish Executive Environment and Rural Affairs Department): I suppose that the simple answer is that the settlement of Motherwell is not excluded land because, according to the GROS definition, it does not have a population of more than 10,000 people. Therefore, that land is registrable.

The Deputy Convener: Okay. I am not particularly familiar with Motherwell; it just struck me that it might have a larger population. We do not need to consider the matter further if you have examined the situation and are happy that there has not been an omission.

Richard Frew: I do not know whether you want me to explain how settlements are made up.

The Deputy Convener: That might be useful, given that, *prima facie*, Motherwell would appear to be an unusual exception.

Margaret Mitchell (Central Scotland) (Con): That would be helpful.

Richard Frew: Settlements are defined on the basis of population census statistics. The GROS examines postcode units, which are the building

blocks for localities and settlements. The process is relatively straightforward—each postcode unit is given an urban or rural tag, according to the number of people who live in it. The postcode units are grouped together, and all those with urban tags within a certain area are drawn to form the settlement boundary.

Motion moved,

That the Justice 1 Committee recommends that the draft Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2006 be approved.—[*Rhona Brankin.*]

Motion agreed to.

Regulatory Framework Inquiry

10:00

The Deputy Convener: The committee is invited to consider a paper from the clerk. Members may wish to direct themselves at the following questions. First, should the existing procedures be replaced by the proposed Scottish statutory instrument procedure, under which all Scottish statutory instruments, with certain exceptions, would be laid before Parliament? Should there be parallel consideration of instruments by the Subordinate Legislation Committee and the lead committee? Should the Executive be required to provide Parliament every three months with a forward programme of instruments that it plans to make during that period? Should draft instruments that are laid before Parliament be amendable by the Executive, with the agreement of the Subordinate Legislation Committee, to take account of technical changes, without affecting the original timetable for consideration? Those are four of the questions that are posed in the consultation. It is perfectly proper for members to comment on those questions or any others.

Margaret Mitchell: It is probably best to take them one by one and to see whether there is general agreement or anything on which we have reservations.

The Deputy Convener: The consultation questions start at paragraph 9 on page 3. The first question is whether all the existing procedures should be replaced by the proposed Scottish statutory instrument procedure.

Margaret Mitchell: The paper is sensible on the whole. That sounds like a more efficient way of doing things. In terms of the general principle, I am happy to agree.

The Deputy Convener: Is everyone agreed?

Members indicated agreement.

The Deputy Convener: Should there be parallel consideration of instruments by the Subordinate Legislation Committee and the lead committee?

Margaret Mitchell: Again, that seems sensible.

The Deputy Convener: Is everyone agreed?

Members indicated agreement.

The Deputy Convener: Should instruments that are laid in draft form under the general procedure be subject to being disapproved by Parliament within 40 days? Alternatively, should the period be reduced to 30 days? There is a choice.

Mrs Mary Mulligan (Linlithgow) (Lab): Are we talking about working days or calendar days?

The Deputy Convener: It is working days, is it not?

Callum Thomson (Clerk): I think the days would be Monday to Friday. I shall check.

The Deputy Convener: With the summer recess, it would be nonsense to use calendar days, given that there has in effect to be parliamentary action to approve affirmative instruments.

Mike Pringle (Edinburgh South) (LD): Having been, for my sins, on the Subordinate Legislation Committee for a bit, I am almost certain that it is parliamentary days.

The Deputy Convener: On that basis, what comments do members have?

Margaret Mitchell: Is it 40 days at the moment?

The Deputy Convener: Yes—it is 40 days for affirmative instruments.

Margaret Mitchell: If we have more areas to explore, why has 30 days been mentioned? Could Sylvia Jackson speak to us about the Subordinate Legislation Committee's thinking? I am inclined to go with the status quo.

The Deputy Convener: I draw your attention to the next consultation question, which may give insight into the Subordinate Legislation Committee's thinking. It asks:

"Should the Parliament be able to take a motion to disapprove a draft instrument or to annul an instrument for 10 days beyond the 40 day period?"

I assume that, if the period were 30 days, a motion would have to be taken in the 10 days beyond the 30 days, which would therefore fit a sequence. That is my reading of what that committee is trying to do; perhaps that is where it is coming from.

Margaret Mitchell: The proposed arrangements say that, if everyone agreed, a motion could be agreed to earlier than 40 days, so the 10 days seems to be an additional complication. If a motion could be agreed to earlier than after 40 days, why put in the 10-day proviso?

The Deputy Convener: Margaret Mitchell suggested that Sylvia Jackson come to talk to us. I draw her attention to the fact that the deadline for responses to the consultation is Friday next week: if we were to hear from her, we would have to do so next week.

Mike Pringle: Surely we could receive a written response from Sylvia Jackson. If every committee asked her to visit, she would be busy.

The Deputy Convener: We will ask the question in writing, because it is straightforward.

Margaret Mitchell: I would like more details of the thinking behind the 30-day proposal.

The Deputy Convener: We understand that. We are not taking a view on the question at the moment.

Do we have a view on question 4, which is about an additional 10 days?

Mike Pringle: We can reach a view on that when we have the answer to question 3.

The Deputy Convener: Okay—I am content with that. I suspect that we support the proposal in question 5, which asks whether the Executive should be required to provide a forward programme every three months.

Mike Pringle: Will the Executive be able to do that?

The Deputy Convener: That is for the Executive to concern itself with.

Mike Pringle: The idea is good.

The Deputy Convener: Question 6 asks:

“Should the SLC be able to recommend to the Parliament that an instrument is annulled or that a draft instrument is disapproved ... only on the ground that there are serious doubts about the legal validity of the instrument?”

Margaret Mitchell: My initial reaction is that that is unduly restrictive, so I would like comments on the measure.

Mike Pringle: When I was a member of the Subordinate Legislation Committee, we often asked whether instruments were legal and we had to obtain legal opinions. I am happy if we want to ask about the proposal, but perhaps that is where it comes from.

The Deputy Convener: The proposal would restrict the Subordinate Legislation Committee to recommending annulment or disapproval only when an instrument was legally flawed. I would be uncomfortable with that.

Mike Pringle: So would I.

Margaret Mitchell: Absolutely.

Mrs Mulligan: I was going to make the point that the question uses the word “only”. Does Mike Pringle have insight into other grounds on which the committee could make a recommendation? What other issues have arisen that we would remove from operation by agreeing to the proposal?

Mike Pringle: All sorts of issues arose, such as wording, drafting, inference from what was said and lack of clarity about whether an instrument said what it should say. The legality question arose often, but I would be uncomfortable with adopting the proposal in question 6.

The Deputy Convener: Therefore, if an instrument is legally valid but totally incomprehensible, the Subordinate Legislation

Committee should be able to recommend rejection.

Mike Pringle: That is correct. Another reason could be issues of drafting.

The Deputy Convener: We are fairly clear about that.

Question 7 asks:

“Should a draft instrument laid before the Parliament be able to be amended by the Executive, with the agreement of the SLC, to take account of technical changes”

without changing the timetable?

Margaret Mitchell: That is sensible.

The Deputy Convener: I see nodding heads around the table.

Question 8 asks:

“Should emergency instruments be subject to the exceptional procedure?”

I suspect that we say that they should.

Margaret Mitchell: That sounds okay in principle, but I would like a little more information about the situation that is envisaged.

The Deputy Convener: That is a reasonable question to ask. The second part of question 8, which concerns how emergency instruments would be defined, is the key.

Question 9 asks:

“Should the exceptional procedure be confined to emergency and other instruments of an urgent nature?”

I am not clear about the distinction between “emergency” and “urgent” instruments.

Margaret Mitchell: The distinction needs to be made clear.

Mike Pringle: I did not know what the distinction meant.

Mrs Mulligan: A little more clarification would help.

The Deputy Convener: The question comes back to what emergency instruments are. If that definition covers urgent instruments, the complication is unnecessary.

Question 10 asks:

“Should consolidation instruments be subject to the modified general procedure under which the lead Committee will not be entitled to consider ‘pure’ consolidations and only substantive amendments in a ‘rolling’ consolidation?”

Margaret Mitchell: That sounds fairly vague. I would like clarification of the thinking behind the proposal.

Mike Pringle: Has Mary Mulligan never been a member of the Subordinate Legislation Committee? Consolidation is a huge issue.

Mrs Mulligan: I had to move or not move motions.

Mike Pringle: That is true—so you did.

The Deputy Convener: The remaining few questions are, essentially, technical. Is it fair simply to ask the Subordinate Legislation Committee to show us more of its thinking on those subjects, which are more for it to consider than for us?

Members *indicated agreement.*

Margaret Mitchell: I am happy with that.

The Deputy Convener: Any conclusions that we reach that lead to our inputting a response will have to be dealt with at our meeting on Wednesday next week.

That was the final agenda item. Our next meeting will be on Wednesday 20 September, when the committee will consider the Scottish Commissioner for Human Rights Bill at stage 2. What is the deadline for amendments?

Callum Thomson: The deadline is noon this Friday.

Meeting closed at 10:11.

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