

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 23 November 2004

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

32nd Meeting 2004, Session 2

CONVENER

*Dr Sylvia Jackson (Stirling) (Lab)

DEPUTY CONVENER

Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

Mr Adam Ingram (South of Scotland) (SNP)
Mr Stewart Maxwell (West of Scotland) (SNP)
*Christine May (Central Fife) (Lab)
*Mike Pringle (Edinburgh South) (LD)
*Murray Tosh (West of Scotland) (Con)

COMMITTEE SUBSTITUTES

Alex Johnstone (North East Scotland) (Con)
Maureen Macmillan (Highlands and Islands) (Lab)
Stewart Stevenson (Banff and Buchan) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Margaret Macdonald (Legal Adviser)

CLERK TO THE COMMITTEE

Ruth Cooper

ASSISTANT CLERK

Bruce Adamson

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 23 November 2004

[THE CONVENER *opened the meeting at 10:37*]

The Convener (Dr Sylvia Jackson): I welcome members to the 32nd meeting this year of the Subordinate Legislation Committee. I have received apologies from Adam Ingram. Unfortunately, Stewart Maxwell is presently having, or has had, an operation. He will be away for a few weeks. In his place will be Stewart Stevenson, the Scottish National Party's substitute member, who may join us later in the meeting.

Delegated Powers Scrutiny

Edinburgh Tram (Line One) Bill: Preliminary Stage

Edinburgh Tram (Line Two) Bill: Preliminary Stage

The Convener: Item 1 is delegated powers scrutiny of the Edinburgh Tram (Line One) Bill at the preliminary stage. Members will recall that everything applying to that bill also applies to the Edinburgh Tram (Line Two) Bill.

We raised three points and sent our queries to the promoter. The first matter relates to section 39, and concerns the fact that the power to extend the time limit for compulsory acquisition is unlimited. We thought that there should be a time limit to that power, and that the affirmative procedure should apply.

In reply, the promoter states that, although they were following the same principles that applied under the City of Edinburgh (Guided Busways) Order Confirmation Act 1998, they understood what we are saying. The promoter is now suggesting that the period for compulsory acquisition should not be extended beyond 15 years and has also taken on board the idea of using the affirmative procedure. Is that sufficient, in the committee's view?

Murray Tosh (West of Scotland) (Con): Yes, I think so.

Mike Pringle (Edinburgh South) (LD): I think so, too.

Murray Tosh: The legal brief asked whether we wanted to reconsider the affirmative procedure. However, we do not have any details of what land

the promoter proposes to acquire. The power is significant. If it is extended, whoever is charged with seeking that extension should be required to justify it. It is wholly appropriate that the affirmative procedure be used for that.

The Convener: The second point concerned section 44(3), and related to the amendments that could be made to the level of penalty fares. We did not feel that it was very clear whether it was the fixed amount of £40 or the multiplier of 10 times the maximum fare that could be changed. Having received the answer, the legal advisers are still not clear about what exactly the promoter intends to do. It is suggested that we might write back to the promoter to say that we need the power to be better drafted, but I am happy to hear members' views.

Mike Pringle: That would be entirely appropriate. I do not think that the promoter has understood the question. Perhaps we should ask it again, because it has not addressed the question and the response is not satisfactory. As our legal advice states, it will be difficult to draft an order in exercise of the power if the promoter intends to raise the multiplier and the amount. It would be much more sensible to have one fixed point and then revolve around it. We have to write back to the promoter.

The Convener: Okay. The promoter agreed to amend the bill to provide that an order in exercise of the power be subject to the affirmative procedure.

Mike Pringle: That is fine.

The Convener: Our final point was that sections 63(2) and 79(2) appeared to overlap. The promoter has taken that on board and has said that it will address it. Given that our points relate to a private bill, a report will go to the Parliament and we will write to the promoter and the Edinburgh Tram (Line One) Bill Committee and the Edinburgh Tram (Line Two) Bill Committee teams. Is that agreed?

Members indicated agreement.

The Convener: I will clarify our legal advice. We will write to the promoter first and perhaps get more information back before we write to the committees and report to the Parliament.

Executive Responses

Plant Health (*Phytophthora ramorum*) (Scotland) Order 2004 (SSI 2004/488)

10:41

The Convener: The committee will remember that we raised two points on the order. Our legal advice suggests that both points need to be drawn to the attention of the lead committee and the Parliament on the ground of defective drafting. Paragraph 27 of the legal advice states:

"It will ... be for the lead committee to decide the urgency with which an amending instrument is required although it is suggested that given that failure to comply with article 5 is a criminal offence, it may not be entirely satisfactory to leave the matter entirely to administrative discretion in the meantime."

It is important that we make that point to the lead committee. Do members want to emphasise other points?

Mike Pringle: No, that is fine.

Tenements (Scotland) Act 2004 (Notice of Potential Liability for Costs) Amendment Order 2004 (SSI 2004/490)

The Convener: Members will remember that we were concerned about the order, because there could be a two-week period in which a person could move into a new property and would not be provided with a list of future renovations. I do not know what the committee thinks about the Executive's response, but I do not think it got to the nitty-gritty of what we said was the big difficulty. I got the impression from the letter that new owners would have been liable anyway and therefore the point that we raised is not such a big issue. Nevertheless, given that the heading to the notice is "Notice of potential liability for costs", I would have thought that it was important that as many as possible of the potential costs be on the notice.

Christine May (Central Fife) (Lab): I was not here last week, but given how difficult it is to get information in the period between agreeing purchase and moving into a property, the law should make it perfectly clear that any purchaser moving into a house with potential liability is entitled to the relevant information. The order should therefore be drafted in such a way that purchasers can get the information that they need.

The Convener: I gather that if we wrote to the lead committee explaining the difficulty, there would still be time for it to be rectified.

Christine May: Good.

Mike Pringle: The legal advice states:

"The Executive did not consider that there was sufficient urgency to support a breach of the 21 day rule."

That has probably not stopped it in the past. This is a case where it should breach the 21-day rule in order to rectify the situation.

The Convener: I am told that it would be helpful if our letter to the lead committee could state specifically what needs to be done in relation to amending the commencement of the order. Is that agreed?

Members indicated agreement.

Murray Tosh: We will be as specific as we can be.

Tenements (Scotland) Act 2004 (Commencement No 1) Order 2004 (SSI 2004/487)

10:45

The Convener: The legal advice suggests that we draw the order to the Parliament's attention on the ground that it was made in the form of a statutory instrument when, arguably, the enabling act did not authorise that at the time. We discussed how that arose last week. In our discussions with the Executive we also asked whether the error might be picked up by the new tracking system or other monitoring systems. I gather that the tracking system might not pick up such errors, but the checking that should be done should pick them up, so I hope that this will not happen again.

Murray Tosh: This is not a pressing matter, but perhaps at some stage we could get a briefing on how the tracking system and the checklist system will work, so that we are better aware of what hoops the Executive sets itself to jump through.

The Convener: Yes. I should say that we have a new clerk with us this morning. Unfortunately, Alasdair Rankin, who was anyway going to move to another committee shortly, has had a slight accident with his bicycle. We send him all our best wishes.

As you know, after our previous meeting Alasdair Rankin corresponded with the Executive, which was going to write back to us about certain points. Perhaps the present clerk could check what is happening with that. If the two points that we wanted answered are not included in a letter from the Executive, we will ask again.

Murray Tosh: Having said that we have a new clerk, are you going to name her for the record, convener?

Ruth Cooper (Clerk): My name is Ruth Cooper.

Murray Tosh: Welcome to the committee. Can we expect that when the current clerk is

transferred to another post, you will be his successor?

Ruth Cooper: Yes.

Murray Tosh: Thank you.

The Convener: Thank you for interrogating the clerk, Murray.

Murray Tosh: It is always nice to get clerks and advisers on the record.

The Convener: I have worked with Ruth Cooper before, so I know that we will be well serviced with her on the committee.

Instruments Subject to Annulment

Civil Legal Aid (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/491)

10:48

The Convener: No points arise on the regulations. Is that agreed?

Members *indicated agreement.*

Advice and Assistance (Scotland) Amendment (No 3) Regulations 2004 (SSI 2004/492)

The Convener: No points arise on the regulations. Is that agreed?

Members *indicated agreement.*

Legal Aid (Scotland) Act 1986 Amendment Regulations 2004 (SSI 2004/493)

The Convener: No points arise on the regulations. Is that agreed?

Members *indicated agreement.*

Draft Guidance Subject to Annulment

Scottish Environment Protection Agency (SEPA) and Sustainable Development, Statutory Guidance to SEPA made under Section 31 of the Environment Act 1995 (SE/2004/257)

10:49

The Convener: We now to come item 4. No big points arise. The only point that has been raised is about the reference to “prorogation”, which is not a term that we use, and the need to insert the term “recess”. In fact, the quicker that that is done, the better, as the recess period has implications for the orders. Is the committee agreed that that recommendation is acted on?

Murray Tosh: For the sake of the record can we ask what mechanism is available—I suppose that it would be the House of Commons—to amend the legislation in question? Perhaps our legal adviser could advise the committee on that.

Margaret Macdonald (Legal Adviser): It would be a consequential modification order under the Scotland Act 1998.

Murray Tosh: That is a relatively straightforward procedure.

Margaret Macdonald: Yes, fairly straightforward. I do not know how long it would take.

The Convener: Our legal advice is that we suggest that that is put in motion and that the matter should not just be left. Are we agreed on that?

Members indicated agreement.

Instruments Not Laid Before the Parliament

Asylum and Immigration (Treatment of Claimants etc) Act 2004 (Commencement) (Scotland) Order 2004 (SSI 2004/494)

10:51

The Convener: No substantial points have been identified in respect of the order. However, there is a typo in the title of the order: a comma is missing after the word “claimants”. We can draw that to the Executive’s attention in an informal letter. Is that agreed?

Members indicated agreement.

Nature Conservation (Scotland) Act 2004 (Commencement No 2) Order 2004 (SSI 2004/495)

The Convener: No points have been identified on the order.

Regulatory Framework Inquiry

10:51

The Convener: The sixth item on the agenda is our inquiry into the regulatory framework in Scotland. Members have received a copy of our submission to the Conveners Group in relation to our sending representatives to a delegated legislation conference in Canberra. I have received an invitation for us to deliver a paper at that conference, which will outline what we are doing as part of our review. Do members have any comments on the paper that is to be submitted to the Conveners Group?

Mike Pringle: No, the paper is fine. I understand, convener, that you had a discussion on the matter with members of the Welsh Assembly. Apparently, some of them are going too—is that right?

The Convener: Yes. Welsh Assembly representatives will go for almost exactly the same period of time for which we will go. I met the Local Government and Public Services Committee of the Welsh Assembly, on which there are two or three members of the Welsh equivalent to the Subordinate Legislation Committee. They were very interested in the modifications that we are thinking of making, and it will be interesting to work with them, not only here, but out there. We will listen with interest to their paper.

Mike Pringle: If the Welsh Assembly is going to the conference, there should be no doubt that the Scottish Parliament should send a delegation, as we are the more important legislative body. It seems to me that people are nitpicking about the costs. I hope that the Conveners Group agrees to our attending the conference, especially in view of the fact that other devolved legislatures are going.

The Convener: We certainly hope that that will be the case. We have tried. We recognise this as an important piece of work, and Australia and New Zealand are at the forefront of what is going on. As well as attending the conference—which will be interesting in itself—and hearing from the delegates there, we will meet various representatives from different legislatures and academics with whom we wanted to make contact when we made our previous submission to the Conveners Group. Although the visit will be cramped and not as good as what we had planned before, I hope that we will get a lot of valuable information from it. Our legal adviser will be going with us.

Is that agreed?

Members *indicated agreement.*

The Convener: I thank colleagues for attending the meeting today. We will see you again next week.

Meeting closed at 10:55.

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