

SUBORDINATE LEGISLATION COMMITTEE

Thursday 6 October 2005

Session 2

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CONTENTS

Thursday 6 October 2005

Col.

INSTRUMENT SUBJECT TO APPROVAL	1231
Transfer of Rail Functions To The Scottish Ministers Order 2005 (draft)	1231
INSTRUMENTS SUBJECT TO ANNULMENT	1232
Registration of Civil Partnerships (Prescription of Forms, Publicisation and Errors) (Scotland) Regulations 2005 (SSI 2005/458)	1232
Plant Breeders' Rights (Discontinuation of Prior Use Exemption) (Scotland) Order 2005 (SSI 2005/460)	1232
TSE (Scotland) Amendment (No 2) Regulations 2005 (SSI 2005/469)	1232
Bovine Products (Restriction on Placing on the Market) (Scotland) Regulations 2005 (SSI 2005/470) ...	1233
INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT	1234
Mental Health (Care and Treatment) (Scotland) Act 2003 (Commencement No 4) Amendment (No 2) Order 2005 (SSI 2005/459)	1234
Pollution Prevention and Control (Designation of Public Participation Directive) (Scotland) Order 2005 (SSI 2005/461)	1234

SUBORDINATE LEGISLATION COMMITTEE

27th Meeting 2005, 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 Kenneth Macintosh (Eastwood) (Lab)

*Mr Stewart Maxwell (West of Scotland) (SNP)

Mike Pringle (Edinburgh South) (LD)

*Murray Tosh (West of Scotland) (Con)

COMMITTEE SUBSTITUTES

Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

Maureen Macmillan (Highlands and Islands) (Lab)

Stewart Stevenson (Banff and Buchan) (SNP)

*attended

CLERK TO THE COMMITTEE

Ruth Cooper

SENIOR ASSISTANT CLERK

David McLaren

LOCATION

Committee Room 6

Scottish Parliament Subordinate Legislation Committee

Thursday 6 October 2005

[THE CONVENER opened the meeting at 12:48]

Instrument Subject to Approval

Transfer of Rail Functions To The Scottish Ministers Order 2005 (draft)

The Convener (Dr Sylvia Jackson): I open the 27th meeting this year of the Subordinate Legislation Committee. I have received apologies from Mike Pringle and Gordon Jackson.

No particular points arise on the draft order. However, the committee will note that it is the second draft of the order. Errors were identified, and the earlier draft was withdrawn. Are there any further points?

Murray Tosh (West of Scotland) (Con): I have no substantive points to make, but it is worth emphasising the fact that, yet again, the legal briefing has picked up on the benefits that come from having a look at a draft instrument. A point was raised a couple of weeks ago about mental health orders that appeared during the summer. This approach seems to present a useful way for difficulties to be ironed out. We should take this opportunity to put it on record that we think that the Executive should do more of that. It seems to improve the working practices between us.

The Convener: I am sure that that is agreed.

Members indicated agreement.

Instruments Subject to Annulment

Registration of Civil Partnerships (Prescription of Forms, Publicisation and Errors) (Scotland) Regulations 2005 (SSI 2005/458)

Plant Breeders' Rights (Discontinuation of Prior Use Exemption) (Scotland) Order 2005 (SSI 2005/460)

12:49

The Convener: No points arise on the instruments.

TSE (Scotland) Amendment (No 2) Regulations 2005 (SSI 2005/469)

The Convener: The TSE (Scotland) Amendment (No 2) Regulations 2005 (SSI 2005/469) further amend the principal regulations, the TSE (Scotland) Regulations 2002 (SSI 2002/255), which concern the prevention, control and eradication of BSE. The new regulations implement requirements for testing bovine animals aged over 30 months that have been slaughtered for human consumption. Three points have been identified. I will run through them quickly. Members may then add any additional points that they have.

First, we might wish to ask the Executive to explain the scope of the obligation on the Scottish ministers in new regulation 10A(3)(c) of the parent regulations, in particular the persons to whom the "written notification" that is mentioned in that subparagraph ought to be given. Members will note that three people are concerned, but it is not clear who the notice is to go to.

Secondly, we could ask the Executive why the definition of "relevant bovine animal" in new regulation 10A(9)(b) of the parent regulations includes an exception by reference to the Fresh Meat (Beef Control) (No 2) Regulations 1996 (SI 1996/2007), which will be revoked by the time the new instrument is in force. That has been well explained in the legal brief.

Thirdly, we could ask the Executive about the meaning of paragraph 12 of new schedule 1A. In particular, we would like to know what is meant by the term "correct test" in that provision. It would appear that it is not needed.

Members indicated agreement.

The Convener: I welcome Adam Ingram to the committee. Do you want to raise any further points?

Mr Adam Ingram (South of Scotland) (SNP): No.

Murray Tosh: There are also some minor points, which we would want to raise informally.

The Convener: Thank you for reminding me of those, Murray.

Mr Kenneth Macintosh (Eastwood) (Lab): On the minor points, I saw that the Executive used the term “gold plating” in its note. That is not an explanatory note, and I do not think that it forms part of the official publications. However, the term “gold plating” is an odd term to use. It is a rather transient or topical term. It is slang, rather than—

Murray Tosh: It is useful that the Executive recognises that, however, and the risk that it poses.

Mr Macintosh: I doubt whether the term “gold plating” would be recognisable to all people.

The Convener: Okay. We can certainly take that point on board.

I welcome Stewart Maxwell to the meeting.

Murray Tosh: We are almost finished.

Bovine Products (Restriction on Placing on the Market) (Scotland) Regulations 2005 (SSI 2005/470)

The Convener: No substantive points arise on the regulations. There were, however, some minor points, which we can raise by informal letter. Is that agreed?

Members indicated agreement.

Instruments Not Laid Before the Parliament

Mental Health (Care and Treatment) (Scotland) Act 2003 (Commencement No 4) Amendment (No 2) Order 2005 (SSI 2005/459)

Pollution Prevention and Control (Designation of Public Participation Directive) (Scotland) Order 2005 (SSI 2005/461)

12:53

The Convener: The first instrument not laid before the Parliament is the Mental Health (Care and Treatment) (Scotland) Act 2003 (Commencement No 4) Amendment (No 2) Order 2005 (SSI 2005/459).

No particular points arise on that order, but an issue has come up that has been raised previously. It is to do with co-decisions of the European Council and European Parliament. It relates to whether—and I have underlined this in my briefing—*[Interruption.]* Yes, I am on SSI 2005/461. Is that okay? I know that I do veer off sometimes.

The issue is whether the enabling power can be used for co-decisions, or whether it should be used only in relation to the Council. We have written about the matter previously. We received an answer back, which, if I remember correctly, said that the enabling power was wide enough to allow for directives coming from co-decisions. It may well be that, if we write again, we will get a similar answer. I seek members' advice on the matter.

Murray Tosh: We might want to keep nagging away at the issue for as long as there is any doubt about the vires.

Mr Stewart Maxwell (West of Scotland) (SNP): I agree with Murray Tosh. There is also an issue of consistency here. If we raise something once but do not raise it when it comes up again, that would seem rather inconsistent. I think that we should write to the Executive on the matter.

The Convener: The clerk has very ably told me that I did in fact jump ahead, which I should not have done. We were meant to be considering SSI 2005/459. No points arise on that order. I did not say that I had moved on to SSI 2005/461. I am sorry about that.

Murray Tosh: But you did explain that you veer about. We know and accept that, convener.

The Convener: Right—we are fully with it.

Is it agreed that we write a letter to the Executive, asking about that point again?

Members *indicated agreement.*

The Convener: Just to go back, were there any points relating to SSI 2005/459? Members will have read the legal brief. The explanations that have been provided seem reasonable. There was a policy matter that was felt to be absent from the order, and there was a desire to go back on the issue. The commencement has been stopped for the moment.

Mr Ingram: There were unintended consequences from the interruption of the order.

The Convener: Yes, that is right. The explanation seemed reasonable, and there was a letter on the matter.

Mr Macintosh: I was quite happy to read the explanation.

Mr Ingram: Yes, it was very good.

Mr Macintosh: The requirement for primary legislation was mentioned.

The Convener: So we are okay with the order.

Members *indicated agreement.*

The Convener: The committee's next meeting will be on Tuesday 25 October, when we will once again take evidence for phase 2 of our regulatory framework inquiry.

I thank the committee for meeting at this rather odd hour.

Meeting closed at 12:56.

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