

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 3 October 2006

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

27th Meeting 2006, 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)

*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*Murray Tosh (West of Scotland) (Con)

COMMITTEE SUBSTITUTES

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

Maureen Macmillan (Highlands and Islands) (Lab)

Ms Maureen Watt (North East Scotland) (SNP)

*attended

CLERK TO THE COMMITTEE

David McLaren

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 3 October 2006

[THE DEPUTY CONVENER *opened the meeting at 10:30*]

Item in Private

The Deputy Convener (Gordon Jackson): Welcome to the 27th meeting in 2006 of the Subordinate Legislation Committee. Sylvia Jackson is still apologetic.

I assume that we will take agenda item 8 in private because that is our discussion on further written evidence in the regulatory framework inquiry.

Members *indicated agreement.*

Delegated Powers Scrutiny

Schools (Health Promotion and Nutrition) (Scotland) Bill: Stage 1

The Deputy Convener: We considered the bill two weeks ago and asked the Executive for its comments on the desirability of amending the laying power to clarify that, where the first sets of regulations applying to the two different types of school are made, both would be subject to the affirmative procedure. We also asked for the Executive's comments on the use of the open procedure in relation to subsequent exercising of the power.

The Executive confirmed what I suspect we thought, which is that it has no intention of making separate sets of regulations. It added that if, for whatever reason, two sets of regulations were needed for the different types of school, the same general nutritional requirements would apply.

On the second point, the Executive is reluctant, as a matter of policy, to extend the use of the open procedure, citing the fact that it is rarely used. The Executive remains of the view that using the affirmative procedure on the first exercise of the power and using the negative procedure thereafter is an appropriate balance.

The power to specify nutritional requirements is relatively narrow and perhaps it is not the same as other powers presently subject to an open procedure, but we could recommend that procedure if we feel strongly about it.

Are we content with the Executive's response? Are we also content that subjecting only the first set of regulations to the affirmative procedure would on balance provide sufficient scrutiny? I think that we probably are.

Mr Stewart Maxwell (West of Scotland) (SNP): Yes; the Executive's explanation of when it would use the open procedure was quite helpful

The Deputy Convener: It is on the record that the Executive will not allow one set of school kids to be better fed than another. Presumably that is all that we need here.

Commissioner for Older People (Scotland) Bill: Stage 1

The Deputy Convener: Coincidentally, the bill was introduced by Alex Neil—there we go—and contains only one delegated power.

Paragraph 6(3) of schedule 1 provides that the commissioner may charge for such "chargeable services" as ministers may specify by order subject to the negative procedure.

The delegated powers memorandum explains that the main purpose of that provision is to allow for flexibility, because only when the commissioner is in post can a decision be made on services that should be chargeable. The power will allow ministers to add or remove services that might be useful in future circumstances. The negative procedure seems okay for that.

Members *indicated agreement.*

Executive Response

Local Governance (Scotland) Act 2004 (Severance Payments) Regulations 2006 (SSI 2006/471)

10:33

The Deputy Convener: We put three questions to the Executive on the regulations.

On our first point in relation to the purpose and effect of the words in regulation 3, the Executive acknowledges that they might not strictly be required but that they are helpful to the reader. It might not be considered good drafting practice to include unnecessary provisions in legislation, although it does not invalidate the regulations in this case.

I suppose that we could draw all that to the attention of the usual suspects on the ground of failure to follow proper legislative practice and just leave it at that.

Members *indicated agreement.*

The Deputy Convener: Secondly, we asked about the purpose and effect of the reference to the date of making an application, and about the three-week time limit specified in regulation 6(3). The Executive has explained that the purpose of the provision is to allow leeway in the submitting of applications to take account of exceptional circumstances. However, the circumstances do appear to be strange, particularly the reference to the three-week period. The regulations appear to draw a distinction between the making of an application and the submission of that application, and it may be that those activities are getting somewhat confused. It could well be that if there is anything in that, it is for the lead committee to delve into. We will just tell the lead committee and the Parliament what has happened.

Finally, we asked for an explanation of the purpose and effect of the reference to January 2007 in regulation 6(10), and of the arrangements for the publication of the names of those who have exercised their right to make a late application.

Regulation 6(10) could well be interpreted in the manner intended, although the provision is somewhat ambiguous. I suppose that all that we can do is draw the provision to the attention of the lead committee and Parliament on the ground that further information was requested from and supplied by the Executive. We could then point out the defective drafting of regulation 6(10), while also pointing out that it does not affect the validity of the regulations.

Instrument Subject to Annulment

Plant Health (Scotland) Amendment Order 2006 (SSI 2006/474)

10:36

The Deputy Convener: No points arise on the order, but there are several minor points that we can raise informally. It is worth noting that amendments made by articles 2(9) and 2(10) of the order rectify mistakes that we identified in our consideration of the principal order—the Plant Health (Scotland) Order 2005 (SSI 2005/613)—in 2005.

Order Subject to Special Parliamentary Procedure

East Dunbartonshire Council (Lenzie Moss, Lenzie) Compulsory Purchase Order No 1 2002 (SE 2006/162)

10:36

The Deputy Convener: This is an odd one.

No points arise on the order. Members will recollect that this is only the second order that we have considered which is subject to special parliamentary procedure. It involves a compulsory purchase order that is advertised by ministers and is subject to notices served on interested parties so that objections can be made. No objections have been made, therefore the order is subject to the negative procedure.

Murray Tosh (West of Scotland) (Con): It is interesting that the subjects of the order are persons unknown. In that context, it is not surprising that there have been no objections.

Instrument Not Laid Before the Parliament

Tobacco Advertising and Promotion Act 2002 (Commencement No 10) (Scotland) Order 2006 (SSI 2006/473)

10:37

The Deputy Convener: A minor point arises that we can raise informally.

10:37

Meeting continued in private until 10:47.

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