

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 19 December 2006

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

36th Meeting 2006, Session 2

CONVENER

*Dr Sylvia Jackson (Stirling) (Lab)

DEPUTY CONVENER

*Mr Kenneth Macintosh (Eastwood) (Lab)

COMMITTEE MEMBERS

*Janis Hughes (Glasgow Rutherglen) (Lab)

*Mr Adam Ingram (South of Scotland) (SNP)

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

*Euan Robson (Roxburgh and Berwickshire) (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

Ruth Cooper

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 6

Scottish Parliament

Subordinate Legislation Committee

Tuesday 19 December 2006

[THE CONVENER opened the meeting at 10:33]

Legislative Consent Memorandum

Tribunals, Courts and Enforcement Bill

The Convener (Dr Sylvia Jackson): I welcome members to the 36th meeting in 2006 of the Subordinate Legislation Committee. As I have no apologies, I expect that Adam Ingram will come along shortly.

Under rule 9B.3.6 of standing orders, this committee considers powers to make subordinate legislation that are conferred on Scottish ministers by United Kingdom bills. Today we have the Tribunals, Courts and Enforcement Bill before us.

There is just one delegated power that we must consider. Section 42, as read with paragraph 26(2) in part 4 of schedule 7 to the bill, enables Scottish ministers to list by order the names of tribunals that will be supervised by the new administrative justice and tribunals council, which is to be established by the bill and which will replace the Council on Tribunals. The order-making power will be subject to the negative procedure. It appears that there are no legal problems with the power, or with the negative procedure that has been chosen. Are members content with the power?

Members: Yes.

The Convener: We are not obliged to consider the power under standing orders. I am sorry, it is Christmas spirit; we are obliged to consider the power. I meant to say that we do not have to report it formally to the lead committee. I suggest that the clerk to this committee alerts the clerk to the lead committee that we have no legal concerns about the power. Is that okay?

Members indicated agreement.

Executive Responses

Home Energy Efficiency Scheme (Scotland) Regulations 2006 (SSI 2006/570)

10:34

The Convener: We asked the Executive five questions about the regulations. Do members have any comments on the Executive's response?

Mr Kenneth Macintosh (Eastwood) (Lab): Our legal advisers seem to be concerned about the appeal mechanism, particularly in light of a recent European Court of Human Rights ruling. However, I think that it was suggested last week that there could be an appeal against the European judgment. It is worth drawing the attention of the Parliament to the matter.

The Convener: I think that paragraphs 15 and 16 of the legal brief refer to the point that you have raised. Is that correct?

Mr Macintosh: Yes. It is about giving the contractors, or the people who are delegated to implement the energy efficiency scheme, powers to refuse or turn down applications. If they have that power, how independent is the appeal mechanism against those decisions?

The Convener: That is certainly the most important point that has been raised about the regulations. Did you want to raise any other points?

Mr Macintosh: No.

The Convener: Further information was requested from and supplied by the Executive on the meaning of "withdrawn" in regulation 4(2). That was the first point that we raised. The explanation that we got back seems to be okay. On the second and third points that we raised, the position regarding appeals under the regulations remains unclear, and that could raise a devolution issue. Our fourth point was that the regulations fail to follow proper legislative practice and our fifth point was that the form or meaning of the regulations could be clearer.

I suggest that we draw those points to the attention of the lead committee and Parliament. Is that agreed?

Members indicated agreement.

Scottish Charity Appeals Panel Rules 2006 (SSI 2006/571)

The Convener: We put three questions to the Executive on the rules. I refer to paragraph 37 of the legal brief in particular. The big issue seems to

be to do with the vires, especially of rule 10, and the point has not really been answered.

Mr Stewart Maxwell (West of Scotland) (SNP): I agree. In commenting on the instrument, the legal brief suggests

“that there is a doubt as to whether it is intra vires”.

If the power is not in the Charities and Trustee Investment (Scotland) Act 2005—the parent act—I would wish to put that more strongly; there is more than a doubt about it. If the power is not in the parent act it is not there, no matter how desirable that power might be. We should make that clear in our report.

The Convener: So you think that, instead of saying that there is doubt, we should say that there is serious concern.

Mr Maxwell: I will leave the wording to you, convener, but I think that it should be slightly stronger than doubt. As I said, if the power is not there, it is not there.

The Convener: First, there is concern as to whether rule 10 is intra vires. Secondly, the formal meaning of rule 24 could be clearer. Thirdly, we asked for more information about rule 18(5), which was supplied to us.

We will pass those points on to the lead committee and Parliament. Is that agreed?

Members indicated agreement.

Conservation of Salmon (Collection of Statistics) (Scotland) Regulations 2006 (SSI 2006/572)

The Convener: We put two questions to the Executive. One was about the representations that had been made in respect of the regulations. We asked about that, and details have been provided to the committee. There was certainly one objection, and the Executive has explained how it considered it.

Mr Maxwell: It would have been helpful if the information about those representations had been contained in the Executive note.

The Convener: Yes; there was one representation and one objection, so why could that not have been said before? That is the important thing. Perhaps we should report that in stronger terms, on the ground of failure to follow proper legislative practice. It would have been useful if the details of representations had been included in the Executive note.

We could also report a failure to follow proper legislative practice by way of lack of reference to section 38(4)(b) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003—

the parent act—being adhered to. Are those points agreed?

Members indicated agreement.

Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006 (SSI 2006/582)

The Convener: We asked five questions of the Executive. If members have no comments I will point out that the important points relate to the defective drafting of regulations 14(5) and 28(3)(a). The Executive has undertaken to amend that drafting and I am sure that we are happy about that.

On our point about reports and advice, further information was requested from the Executive and we have received that.

Further information was requested from and supplied by the Executive about the delay in implementing the environmental impact assessment directive as it applies to restructuring rural land holdings. Members will recall that we wanted elaboration on that point. Are members happy with the response?

Members indicated agreement.

The Convener: The final point is that the transposition note does not cover the implementation of the habitats directive, so there has been a failure to follow proper legislative practice.

Are we agreed that we should report on those points?

Members indicated agreement.

The Convener: I welcome Adam Ingram to the meeting. I also welcome Euan Robson; I am sorry that I did not do that when you came into the room.

Draft Instruments Subject to Approval

Farm Woodland Premium Schemes and SFGS Farmland Premium Scheme Amendment (Scotland) Scheme 2007 (draft)

10:42

The Convener: No points arise on the draft scheme, but members will note that the Executive withdrew and relaid it because drafting errors were identified. Are there any further points?

Members: No.

Scottish Local Government Elections Order 2007 (draft)

The Convener: Members will note that the draft order will revoke the Scottish Local Government Elections Rules 2002 (SSI 2002/457) and the Scottish Local Government Elections Amendment Rules 2002 (SSI 2002/522) and that it will provide for the local government elections to be held in May 2007, and thereafter. No substantive points have arisen on the order, but there is a minor point, and Stewart Maxwell has indicated that he has further points to make.

Mr Maxwell: Yes, I have a couple of minor points to raise first and then one that is slightly more important, which we should raise formally rather than informally.

There is clearly an apostrophe missing from article 4(2), on page 11 of the order; it should read "candidate's" instead of the plural. That is just an informal point.

In articles 12(3)(b) and 12(3)(c), "name" should be "names" in both cases.

The Convener: Stewart, can we go back to article 4(2) for a moment? Do you mean that there should be an apostrophe before the s in "candidates"?

Mr Maxwell: I believe so, yes.

The Convener: Right. Let us move on to your next point.

Mr Maxwell: In articles 12(3)(b) and 12(3)(c), where it says

"give notice of the name of the persons",

I think that it should read "names".

The Convener: Should that be "names"? The legal adviser is nodding her head. And the same thing applies to article 12(3)(c).

Mr Maxwell: Yes. My more substantive point is about the second form on page 37 of the order. Part (a) says:

"and my electoral number is ... (see note 3)".

Note 3, which is over the page, is about something entirely different; it is nothing to do with people's electoral numbers.

The Convener: It should say "note 5".

Mr Maxwell: I think that it should say "note 5", but rather than guessing that that is the case, we should write to the Executive and ask for an explanation. I do not think that that reference should be to "note 3". That is a slightly more serious mistake.

The Convener: Okay. Is there anything else?

Mr Maxwell: No, that is it.

The Convener: That is worth a gold star. Well done.

Mr Maxwell: Given how thick this draft order is, there are bound to be more mistakes in it. I know that the legal team received the order only on Thursday, so it is almost inevitable that there will be several typos in it.

Murray Tosh (West of Scotland) (Con): On a related issue, convener, I am aware that the draft regulations for councillors' remuneration are in the hands of the local authorities. I assume that there is a copy somewhere in the system and that it will come to us.

The Convener: We have not seen it yet, but we can check.

I am not sure whether we should say that there are minor typos in the order that need to be altered.

Mr Maxwell: The points on pages 11 and 14 are probably just minor typos that could be mentioned in an informal letter. However, we should write more formally to the Executive about the mistake on the form on page 37.

The Convener: That is fine. Are we all agreed?

Members indicated agreement.

Draft Instrument Subject to Annulment

Forestry Commission Byelaws 1982 Revocation (Scotland) Byelaws 2007 (draft)

10:46

The Convener: The byelaws are subject to the rarely used draft negative procedure. No points have arisen. Is there anything further to mention?

Members: No.

Instrument Subject to Annulment

Sheep and Goats (Identification and Traceability) (Scotland) Amendment (No 2) Regulations 2006 (SSI 2006/594)

10:47

The Convener: The regulations appeared on last week's agenda, but there were several defects in them, so they were withdrawn and relaid. I have no points to raise. Do members have anything to raise?

Euan Robson (Roxburgh and Berwickshire) (LD): I have a very small point indeed. I do not quite understand the third last paragraph of the explanatory note; perhaps I have misunderstood it. It says that if an animal's identification

"has been removed or lost or become illegible it must be replaced by the keeper at the holder of destination".

It should say "holding of destination".

The Convener: We will check that. Well done. Do you want the second gold star, Euan?

Euan Robson: Some of us wish to separate the sheep from the goats.

The Convener: That remark was to be expected.

Euan Robson: The tagging of sheep and goats is a serious constituency issue.

The Convener: The issue is serious in my constituency too.

Mr Maxwell: Then why did you not pick up that point, convener?

The Convener: I am obviously not as good as Euan.

Euan Robson: I did warn you that it was a minute point, convener.

Instruments Not Laid Before the Parliament

Registration Services (Attestation and Authentication) (Scotland) Regulations 2006 (SSI 2006/597)

10:48

The Convener: I have no substantive points, but there is a minor point that we can raise informally. Do members have anything else?

Members: No.

Registration of Births, Still-births, Deaths and Marriages (Prescription of Forms and Errors) (Scotland) Regulations 2006 (SSI 2006/598)

The Convener: The regulations have been deferred until further information is available. There is no parliamentary procedure for the regulations but they are coming back to the committee.

Water Services etc (Scotland) Act 2005 (Commencement No 5) Order 2006 (SSI 2006/599)

The Convener: There are no substantive points on the order, but this is the fifth commencement order to be made. Do we want to ask how many more there will be? I know that they cannot all be done together, but this is the fifth one and more will come. Shall we write to ask what the position is with regard to the commencements?

Members *indicated agreement.*

Fees in the Registers of Scotland Amendment Order 2006 (SSI 2006/600)

The Convener: No points arise on the order.

Before we go into private, I want to put on record the committee's thanks to Iain Jamieson. This is his last meeting with us. We thank him for all the help that we have received from him, over many months, on the ups and downs of our regulatory framework inquiry report. Thank you.

10:50

Meeting continued in private until 11:46.

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