

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 27 November 2007

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

13th Meeting 2007, Session 3

CONVENER

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

DEPUTY CONVENER

*Gil Paterson (West of Scotland) (SNP)

COMMITTEE MEMBERS

Richard Baker (North East Scotland) (Lab)
Jackson Carlaw (West of Scotland) (Con)
*Helen Eadie (Dunfermline East) (Lab)
*Ian McKee (Lothians) (SNP)
*John Park (Mid Scotland and Fife) (Lab)

COMMITTEE SUBSTITUTES

Bill Aitken (Glasgow) (Con)
Christopher Harvie (Mid Scotland and Fife) (SNP)
Elaine Smith (Coatbridge and Chryston) (Lab)
Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Colin Gilchrist (Legal Adviser)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 4

Scottish Parliament

Subordinate Legislation Committee

Tuesday 27 November 2007

[THE CONVENER opened the meeting at 14:15]

Delegated Powers Scrutiny

Public Health etc (Scotland) Bill: Stage 1

The Convener (Jamie Stone): Good afternoon and welcome to the 13th meeting of the Subordinate Legislation Committee in the third session of the Parliament. I have received apologies from Richard Baker and Jackson Carlaw. As usual, I ask everyone to turn off their mobile phones.

Before we consider the bill, I ask members if they would stay back after the formal part of the meeting. It might be appropriate to spend a few minutes discussing what we heard last week and considering our approach.

I refer members to the summary of recommendations.

This is the first time that the Subordinate Legislation Committee in the third session of the Parliament must consider a bill that contains significant delegated powers. We are all in new territory. With members' permission, I will take us through the bill carefully, because my general impression is that quite wide powers would be delegated to the Scottish ministers. We should also be careful because the bill deals with public health and raises sensitive issues to do with personal information.

On section 3, "Designation of competent persons by health boards", are members content that the power is delegated and that it is subject to the negative procedure?

Members indicated agreement.

The Convener: On section 5, "Designation of competent persons by local authorities", are members content that the power is delegated and that it is subject to the negative procedure?

Members indicated agreement.

The Convener: On section 12, "Lists of notifiable diseases and notifiable organisms", are members content with the power to amend the lists in schedule 1?

Members indicated agreement.

The Convener: Are members content to seek further explanation from the Scottish Government for its claim that the negative procedure would be appropriate, given that speed of action would be required, and to ask the Government to explain its reasons for framing the power to remove diseases and organisms from the scope of the bill without a need for ministers to have assessed the impact on the risk to public health?

Ian McKee (Lothians) (SNP): The committee should draw ministers' attention to the final item in the list of notifiable organisms in part 2 of schedule 1. The term,

"Any other clinically significant pathogen found in blood",

is open to a wide variety of interpretations and could cover socially significant matters. Given that a person who did not co-operate in relation to the list would be subject to criminal procedure, we should ask the Government exactly what it means and whether it is happy with the phrase.

The Convener: Right. We note Ian McKee's comment.

On section 19, "Notifiable diseases etc: further provision", are members content to ask the Scottish Government to justify the width of the power, to explain in what circumstances it envisages exercising the power, and to say whether the scope of the power could be narrower? Does the committee also want to seek justification from the Scottish Government for the use of the negative procedure for such a wide power to amend primary legislation?

Members indicated agreement.

The Convener: Section 25, "Supplementary", is on investigatory powers. Are members content to invite the Scottish Government to provide further justification for the width of the provision, which would allow ministers to confer any power that they considered necessary for a public health investigation, with no apparent restrictions? It is right and proper that we probe that provision.

Members indicated agreement.

The Convener: Given the power to modify any enactment in the course of conferring additional functions by regulations made under section 25(3), are members content to ask the Scottish Government to clarify whether it is intended that such powers could conflict with or undermine the powers that would be conferred by sections 22 to 24?

Members indicated agreement.

The Convener: Are members content to invite the Government to comment on and provide further justification for its approach?

Members indicated agreement.

The Convener: Are members content to seek further justification from the Scottish Government on the appropriateness of the negative procedure for such a wide power to amend primary legislation?

Members indicated agreement.

The Convener: The use of the negative procedure is becoming a theme.

We move on to section 56, "Compensation for voluntary compliance with request", and section 57, "Compensation for persons subject to certain orders". Are members content to ask the Scottish Government to clarify the extent of the powers on compensation and how it envisages that they will be exercised? Are members also content to invite the Scottish Government to consider altering the wording of the provisions, to remove doubt about the extent of the powers?

Members indicated agreement.

The Convener: On section 68, "Notice on occupier or owner of infected etc premises or things", are members content that the power is delegated and that it is subject to the negative procedure?

Members indicated agreement.

The Convener: On section 71, "Power of local authority to disinfect etc premises or things", are members content that the power is delegated and that it is subject to the negative procedure?

Members indicated agreement.

The Convener: Section 89, "International Health Regulations", would confer very broad powers on the Scottish ministers. A full explanation is necessary. Are members content to seek further clarification from the Scottish Government on its intentions for the delivery of international health regulations and on how the powers would be exercised? Are members also content to ask about proposals to amend the provision at stage 2? We might get a useful snapshot of the Government's intentions.

Members indicated agreement.

The Convener: On section 90, "Provision of information on the effects on health of sunbed use", are members content that the power is delegated and that it is subject to negative procedure?

Members indicated agreement.

The Convener: We no longer have experts on sunbeds in the Scottish Parliament.

On section 91, "Insect nuisance", are members content to ask the Scottish Government to provide further justification for the inclusion and scope of the power, given the broader power in section 94,

and to ask about the adoption of the negative procedure to amend primary legislation?

Members indicated agreement.

The Convener: On section 94, "Power to make further provision regarding statutory nuisances", are members content to ask the Scottish Government to explain why it would take such a wide power and in what circumstances the power would be used? In other words, how far does the Government want to go?

Members indicated agreement.

The Convener: Are members content to seek the Scottish Government's views on limitations to which the use of the power would be subject?

Members indicated agreement.

The Convener: Given the statutory duties imposed on local authorities under part III of the Environmental Protection Act 1990, are members content to ask the Scottish Government whether procedural requirements, for example on consultation with local authorities and the need to have regard to their views, would be appropriate in the exercise of the power to extend the law of statutory nuisance?

Members indicated agreement.

The Convener: Section 95, "Enforcement of statutory nuisances: fixed penalty notice" jumped out at me. Are members content to consider whether the power to modify the period for payment of the fixed penalty—14 days—should be subject to the higher level of parliamentary scrutiny that is afforded by the affirmative procedure? Should we invite the Scottish Government to restrict the exercise of the provision to the extension of the period for payment, thereby retaining a minimum period for payment in the bill? We could either call for use of the affirmative procedure or suggest the restriction of the provision, or we could do both.

John Park (Mid Scotland and Fife) (Lab): We should ask the Government what suits it.

The Convener: Yes. Do you agree that we need to be reassured on the potential for the period for payment to be reduced from 14 days, which might raise human rights issues?

Members indicated agreement.

The Convener: On section 98, "Disclosure of information", are members content to ask the Scottish Government which bodies it anticipates that it might add to the list of relevant authorities?

Members indicated agreement.

The Convener: Are members content to ask the Scottish Government to comment on whether it would be in order to restrict the power, for

example by limiting the types of persons or bodies that could be added to the list, or to subject the power to the higher level of scrutiny that is afforded by affirmative procedure?

Members indicated agreement.

The Convener: Are members content with the provision in section 102, "Regulations and orders"?

Members indicated agreement.

The Convener: Are members content with the power in section 108, "Short title and commencement", and that it is not subject to parliamentary scrutiny?

Members indicated agreement.

The Convener: Before we leave consideration of the bill, I point out that we will consider the Government's responses in two weeks' time. We will have to pay fairly close attention to them, given what we have said already.

There we are; that was our first stab at a bill.

Legislative Consent Memorandum

Climate Change Bill

14:25

The Convener: Again, this is the first time in session 3 that the committee has considered a legislative consent motion. Given that the lead committee will consider the legislative consent motion next Tuesday, we do not have time to raise any issues with the Scottish Government directly. We need to report any issues that we do raise to the lead committee today.

Let us go through the delegated powers. On clause 36, "Trading schemes", are members content to invite the lead committee to raise with the Scottish Government the absence of justification and reasons for enabling different trading schemes to operate in different parts of the United Kingdom; the way in which the provision is proposed to be used for Scotland; and how it is intended that regulations made under the bill will interact with the proposed Scottish climate change bill?

Ian McKee: In your opinion, convener, does the first question lead us to stray from our scrutiny role and into the political field? No doubt the Government's response will be political.

The Convener: Are there any other comments?

Helen Eadie (Dunfermline East) (Lab): That is a reasonable point; I agree with Ian McKee.

The Convener: Colin Gilchrist might want to say something on that.

Colin Gilchrist (Legal Adviser): I agree that to look at policy reasons in relation to the distinction between Scottish and United Kingdom trading schemes would be to stray into a substantial matter of policy.

The Convener: Should we err on the side of caution and leave the question out at this stage?

Colin Gilchrist: We would have expected the legislative consent memorandum to indicate the justification and reasons for the various regulation-making powers.

The Convener: Shall we ask that question then?

Helen Eadie: That is the point that I was going to make.

Ian McKee: In a sense, I do not mind. However, reading the background, it seems to me that the relevant national authorities have the power to set up trading schemes, so surely it is within their

rights to set up different ones, otherwise we would have a UK-wide trading scheme. It might be regarded as foolish to have a different scheme, but that is a policy matter. We are here to discuss whether something is allowable and, from the background that we have been given, it seems that the different trading schemes are allowable. Whether or not they are a good idea is a policy matter. I see no point in asking the question because the answer seems to be cut and dried. However, if the committee feels that it wants to ask the question, I would not go to the stake over it.

The Convener: Would you accept that, in writing to the lead committee, we could insert your caveat to cover ourselves? Would that be all right?

Ian McKee: If that is the committee's will, yes, but I do not think that it is necessary.

The Convener: I am open to colleagues' opinions.

Helen Eadie: Ian McKee's point is quite reasonable, but we are not talking about the policy aspect so much as why the justification is not included in the legislative consent memorandum. It is important to highlight that point, so I would go with the legal adviser's recommendation that we draw it to the lead committee's attention.

The Convener: Are members content with that?

Members indicated agreement.

The Convener: The recommendations on clause 38 and schedule 2, "Matters that may or must be provided for in regulations", are listed in our summary of recommendations. Rather than read them all out, I ask whether members are content to make the two recommendations?

Members indicated agreement.

The Convener: Are members content that no points have been raised on clause 40, "Procedure for making regulations"?

Members indicated agreement.

The Convener: Are members content that no points have been identified on clause 41 and schedule 3, "Further provisions about regulations"?

Members indicated agreement.

The Convener: Are members content with the recommendation on clause 42 and schedule 4, "Information", listed in our summary?

Members indicated agreement.

The Convener: Are members content that no points have been raised on clause 46, "Power to make consequential provision"?

Members indicated agreement.

The Convener: On clause 33, "Powers to give guidance", are members content to invite the lead committee to consider whether further explanation could be sought on why guidance under clause 36 requires in all cases to be issued jointly by the national authorities, including in relation to functions in Scotland of the proposed United Kingdom committee on climate change that might concern devolved matters?

Members indicated agreement.

The Convener: On clause 34, "Powers to give directions", are members content to invite the lead committee to consider whether an explanation should be sought on why directions under the clause require to be issued jointly by the national authorities, including in relation to functions in Scotland of the committee on climate change that might concern devolved matters?

Members indicated agreement.

The Convener: Are members content that no points have been raised on clause 43, "Powers to give guidance"?

Members indicated agreement.

The Convener: On clause 44, "Powers to give directions", are members content to invite the lead committee to consider whether the Scottish Government should explain the reasons for this power and how it is proposed that it be used?

Members indicated agreement.

Scottish Government Response

Bee Diseases and Pests Control (Scotland) Order 2007 (SSI 2007/506)

14:32

The Convener: Following last week's meeting, we wrote to the Government about the order. Are members content with the Scottish Government's response and to draw the order to the attention of Parliament and the lead committee on the ground that an explanation was provided in relation to articles 17 and 18?

Members *indicated agreement.*

Draft Guidance Subject to Approval

Environmental Protection Act 1990: Part IIA Contaminated Land The Radioactive Contaminated Land (Scotland) Regulations 2007 Draft Statutory Guidance (SE/2007/168)

14:32

The Convener: Are members content to ask the Scottish Government to explain the delay between the coming into force of the Radioactive Contaminated Land (Scotland) Regulations 2007 (SSI 2007/179) on 30 October 2007 and the laying of the draft guidance on 16 November 2007, as the guidance cannot now be made earlier than 8 January 2008?

Are members also content to ask why paragraph 8 of the introduction to the draft guidance states that the statutory guidance applies only to the Scottish Environment Protection Agency, when it appears that chapter A of annex 3, "Statutory Guidance", relates to local authorities' functions in terms of section 78A of the Environmental Protection Act 1990? In other words, the power is rather wider than one would first think. Are members content for us to go that route?

Members *indicated agreement.*

The Convener: There are also a number of minor points that can be raised informally with the Scottish Government.

Instruments Subject to Annulment

Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007/513)

14:33

The Convener: Are members content to ask the Scottish Government to clarify the meaning of the phrase "similar in nature" in relation to its use in regulation 2(b)(ii); and to clarify the meaning of the word "inferring", in relation to its use in paragraph 1 of the schedule to the regulations? Are we happy with that?

Members *indicated agreement.*

The Convener: With regards to the schedule, are members content to ask the Government whether the acts referred to in paragraphs 3, 4, 8 and 13 are repealed; whether in paragraph 29(a), reference should be to paragraph 5 of schedule 6 to the Electricity Act 1998; whether, in paragraph 29(b), paragraph 8 of schedule 6 to the Electricity Act 1998, in so far as it creates an offence, has been repealed; and to explain the reasons for not footnoting references to the statutory provisions referred to in the schedule?

Helen Eadie: Just so that you know that we are listening, convener, you just said 1998 twice, but that is okay; we will let you off. I think you meant to say "Electricity Act 1989".

The Convener: Did I really?

Helen Eadie: You did.

The Convener: Thank you for that. I shall go to the opticians.

Gil Paterson (West of Scotland) (SNP): You must have seen your life flashing by your eyes, convener.

Helen Eadie: I just wanted to prove that we were listening.

The Convener: There is always one swot in the class.

Foot-and-Mouth Disease (Export and Movement Restrictions) (Scotland) Regulations 2007 (SSI 2007/518)

The Convener: Are members satisfied with the explanation provided by the Scottish Government for the breach of both the 21-day rule and the rule that says that instruments should be laid before the Parliament before they come into force?

Members *indicated agreement.*

The Convener: Are members content to ask the Scottish Government to explain how paragraph 8 of article 1 of the Commission decision has been transposed in these regulations; to explain why regulations 10(2)(d)(ii)(aa) and 11(1)(a) refer to a condition that the slaughterhouse is not located in Surrey; and whether the cross-reference in regulation 14(4)(c) should refer to regulation 7 rather than regulation 4?

Members indicated agreement.

Zootechnical Standards Amendment (Scotland) Regulations 2007 (SSI 2007/521)

The Convener: There does not seem to be much about animals or animal health in the regulations. Are members content to ask the Scottish Government for an explanation why the regulations are within the powers of the Scottish ministers, given that section C8 of part II of schedule 5 to the Scotland Act 1998 reserves technical standards and requirements in relation to products in pursuance of an obligation under Community law, subject to certain exceptions as listed in section C8?

Members indicated agreement.

Official Feed and Food Controls (Scotland) Regulations 2007 (SSI 2007/522)

The Convener: Are members content to ask the questions that are listed in our summary of recommendations?

Members indicated agreement.

Seed Potatoes (Fees) (Scotland) Amendment Regulations 2007 (SSI 2007/520)

The committee agreed to raise minor points on the instrument.

Local Government Pension Scheme (Scotland) Amendment Regulations 2007 (SSI 2007/514)

The committee agreed that no points arose on the instrument.

The Convener: I ask members to note that this is the 10th occasion on which the Local Government Pension Scheme (Scotland) Regulations 1998 (SI 1998/366) have been amended and the fifth time that the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998 (SI 1998/2888) have been amended. Do members wish to refer these regulations to the consolidation working group as candidates for consolidation?

Members indicated agreement.

The Convener: I am sorry if I repeat myself every week.

John Park: Are the amendments to the regulations required because the law has changed in another area?

The Convener: That may be the case.

John Park: Let us see what the Government says.

Public Health (Ships) (Scotland) Amendment Regulations 2007 (SSI 2007/515)

Transport and Works (Scotland) Act 2007 (Consequential and Transitional Provisions) Order 2007 (SSI 2007/517)

The committee agreed that no points arose on the instruments.

Instruments Not Laid Before the Parliament

Meeting closed at 14:39.

Water Environment and Water Services (Scotland) Act 2003 (Commencement No 6) Order 2007 (SSI 2007/512)

14:38

*The committee agreed to raise minor points on
the instrument.*

Transport and Works (Scotland) Act 2007 (Commencement) Order 2007 (SSI 2007/516)

Animal Welfare Act 2006 (Commencement No 1) (Scotland) Order 2007 (SSI 2007/519)

*The committee agreed that no points arose on
the instruments.*

The Convener: I remind members that we will
next meet on Tuesday 4 December at 2.15 pm. In
closing the meeting, I ask that members stay
behind so that we can have a short chat about
what we heard last week.

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