

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 18 December 2007

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

16th 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

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 18 December 2007

[THE CONVENER *opened the meeting at 14:15*]

The Convener (Jamie Stone): I welcome members to the 16th meeting in session 3 of the Subordinate Legislation Committee. I have apologies from Jackson Carlaw. Would members turn off their mobiles and pagers.

Before we go any further, the Minister for Parliamentary Business will not be joining us today because he has other business. I am sure that members understand.

Gil Paterson (West of Scotland) (SNP): Could we contact the minister and arrange a suitable time to meet? We know that the Parliamentary Bureau meets at the same time as the committee, and it might cause the minister and the committee problems if he is unable to come and give evidence. It is important that we hear the minister's views on our inquiry.

The Convener: That is a fair point. We should try to accommodate the minister. The clash between the regular meeting times of the Parliamentary Bureau and the Subordinate Legislation Committee is unfortunate, but we can ask the clerks to look into arranging a meeting at another time that will suit all parties concerned. It would be a great pity if we did not hear from the minister. Would that be all right?

Members indicated agreement.

Delegated Powers Scrutiny

Public Health etc (Scotland) Bill: Stage 1

14:16

The Convener: When I read our legal brief I was impressed by the positive outcome of the dialogue that we have had with the Scottish Government. Members will see from the brief that there have been moves and concessions. Without blowing the committee's trumpet, we are getting quite good at working with the Scottish Government.

We considered the Scottish Government's response to our initial questions on the Public Health etc (Scotland) Bill at last week's meeting, and we agreed to ask three further questions.

On section 12, "Lists of notifiable diseases and notifiable organisms", we sought further justification for the need for an open power to remove diseases and organisms from schedule 1, and we asked whether the Scottish Government would consider restricting the power of removal in a similar way to the power to add to or vary the schedule. As members have no comments on the response from the Scottish Government, do we consider that the application of the duty placed on Scottish ministers under section 1(1) of the bill, to make provision for the purpose of the protection of public health, is sufficient safeguard to ensure that the exercise of the power in section 12(2)(b) will not pose a risk to public health?

Members indicated agreement.

The Convener: On section 19, "Notifiable diseases etc: further provision", we were concerned with the scope of the power in section 19(1)(a)(v) combined with section 19(2), so we sought the Scottish Government's comments on the suggestion that the power could be further narrowed.

Do you consider that the further justification provided by the Scottish Government is reasonable and that the power sought is acceptable? Do you consider it appropriate to allow flexibility to match the notification provisions to public health conditions that emerge over time in order to make provision to protect public health?

Members indicated agreement.

The Convener: On section 98, "Disclosure of information", we asked whether the power could be narrowed because we were concerned about the potential effect on individuals of the sharing of sensitive data. Are we content with the response? Do we consider that the further justification provided by the Scottish Government is reasonable, and that the power to specify additional relevant authorities is acceptable, given the constraints placed on such authorities, and that specification of a body that did not have public health functions would be an abuse of the power under section 98(8)?

Members indicated agreement.

The Convener: That concludes the committee's consideration of the bill.

Glasgow Commonwealth Games Bill: Stage 1

The Convener: Again, I believe that we have had a constructive dialogue on the bill. Let us go through it bit by bit.

Section 1(2), which defines a "Games event", contains a broadly framed power. Are we content to draw the attention of the lead committee to our

dissatisfaction with that, and to indicate that we welcome the Scottish Government's intention to lodge an amendment at stage 2 to narrow the scope of the power to ensure that any games event that is specified by order is connected to the games? The committee will scrutinise the detail of the provision at stage 2 to ensure that it provides for sufficient narrowing of the power. Are we content with that?

Members indicated agreement.

The Convener: Section 2 is on trading regulations. Are we content to draw the lead committee's attention to the long list of points in the summary of recommendations?

Members indicated agreement.

The Convener: Section 10 is on advertising regulations. Are we content to follow the same approach to that taken in relation to the power to make trading regulations?

Members indicated agreement.

The Convener: On section 19, "Use of internet etc", are we content to follow the same approach to that taken in relation to the power to make trading regulations?

Members indicated agreement.

The Convener: On section 21, "Enforcement of Games offences", are members content to draw the attention of the lead committee to our dissatisfaction with the broadly framed power in subsection (1), although we note that the Scottish Government intends to use the power for procedural and not substantive matters?

Members indicated agreement.

The Convener: Are we therefore content to press the Scottish Government to restrict exercise of this power by amending the administrative provisions referred to in sections 22(2)(b) and 31(2)? The committee will scrutinise the detail of the provisions at stage 2 to ensure that the power is narrowed to cover administrative matters. Is that agreed?

Members indicated agreement.

The Convener: On section 47, "Ancillary provision", are we content to report to the lead committee that we are not satisfied with the width of the power in subsection (1), which will have the effect of modifying or disapplying—and thus changing the effect of—the bill or any act; and that we are not satisfied that the Scottish Government has provided sufficient justification for a departure from the presumption in favour of the affirmative procedure in circumstances where a delegated power includes the power to amend or modify primary legislation?

Members indicated agreement.

The Convener: Are we also content to ask the lead committee to probe the Scottish Government at stage 1 for further justification for the use of the power and the use of the negative procedure?

Members indicated agreement.

The Convener: Finally, are we content to inform the Scottish Government that the committee considers that further justification for the use of the power by way of the negative procedure is required in light of the presumption in favour of the affirmative procedure in circumstances where the power includes the power to amend the application and effect of primary legislation, albeit temporarily?

Members indicated agreement.

The Convener: That takes us to section 50, "Repeal". Are members content to inform the Scottish Government that, although the committee appreciates that a fixed time limit on the bill's duration might not be appropriate in light of administrative matters, the committee expects regulations made under the bill to be time limited?

Members indicated agreement.

The Convener: Are we also content to state in our report to the lead committee that we do not consider that regulations made under the bill will be subject to a natural time limitation in the circumstances in which events taking place after the games may be designated as games events?

Members indicated agreement.

The Convener: Are we content to draw the attention of the lead committee and the Scottish Government to the time limitations of regulations made under the London Olympic Games and Paralympic Games Act 2006?

Members indicated agreement.

The Convener: The 2006 act shows that Westminster has already done a job of work; we could perhaps pick up some useful tips that would benefit the Scottish Government.

That concludes the committee's consideration of the bill.

Scottish Government Responses

14:24

The Convener: We wrote to the Scottish Government about five instruments after last week's meeting. Members will have seen the responses.

Water Environment (Drinking Water Protected Areas) (Scotland) Order 2007 (SSI 2007/529)

The Convener: Are we content with the Government's response on the order, and, if so, are we content to report the instrument to the lead committee and Parliament on the ground that an explanation was sought from and provided by the Scottish Government and that we are satisfied with it?

Members indicated agreement.

Seeds (Fees) (Scotland) Regulations 2007 (SSI 2007/536)

The Convener: Are we content to report the regulations to the lead committee and Parliament on the basis that the reference to regulation 4(1) in paragraph 1 of schedule 1 to the regulations is an error, which the Scottish Government has acknowledged and undertaken to correct when the instrument is next amended, and that the provision could have been clearer in that respect?

Members indicated agreement.

The Convener: We spotted a mistake and the Government will put it right.

Fishery Products (Official Controls Charges) (Scotland) Regulations 2007 (SSI 2007/537)

The Convener: Are we content to report the regulations to the lead committee and Parliament on the ground of defective drafting in the definition of "third country import" in regulation 2, such as may impact on the operation of the regulations, which the Government has acknowledged and undertaken to correct at the first opportunity?

Members indicated agreement.

The Convener: That is constructive dialogue again, which is good.

Meat (Official Controls Charges) (Scotland) (No 2) Regulations 2007 (SSI 2007/538)

The Convener: Are we content to report the regulations to the lead committee and Parliament on the grounds that are listed in the summary of recommendations?

Members indicated agreement.

Licensing (Vessels etc) (Scotland) Regulations 2007 (SSI 2007/545)

The Convener: Are we content to report the regulations to the lead committee and Parliament on the ground that the meaning or effect of regulation 3 could be clearer, which may affect the operation of the regulations?

Members indicated agreement.

Draft Instrument Subject to Approval

Emergency Workers (Scotland) Act 2005 (Modification) Order 2008 (Draft)

14:26

The Convener: Are we content to ask the Scottish Government the question that is set out in the summary of recommendations?

Members indicated agreement.

Instruments Subject to Annulment

Infant Formula and Follow-on Formula (Scotland) Regulations 2007 (SSI 2007/549)

14:26

The Convener: Are we content to ask the Scottish Government the questions that are listed in the summary of recommendations and to raise a minor point informally?

Members *indicated agreement.*

Foot-and-Mouth Disease (Export and Movement Restrictions) (Scotland) (No 2) Regulations 2007 (SSI 2007/552)

The Convener: Are members satisfied with the explanation that the Scottish Government has provided for breaching the 21-day rule and the rule 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 the two questions that are listed in the summary of recommendations and to raise minor points informally?

Members *indicated agreement.*

Act of Sederunt (Fees of Sheriff Officers) 2007 (SSI 2007/550)

Sheep and Goats (Identification and Traceability) (Scotland) Amendment Regulations 2007 (SSI 2007/559)

The Convener: Minor points arise on the Act of Sederunt (Fees of Sheriff Officers) 2007 (SSI 2007/550) and the Sheep and Goats (Identification and Traceability) (Scotland) Amendment Regulations 2007—instrument number 55—

Gillian Baxendine (Clerk): It is number 559.

The Convener: I am sorry; I stand corrected. A deliberate trap was put in the convener's brief and he fell into it in true Christopher Robin form.

Are members content with the instruments and to raise minor points informally with the Scottish Government?

Members *indicated agreement.*

Licensing (Fees) (Scotland) Regulations 2007 (SSI 2007/553)

The committee agreed that no points arose on the instrument.

Instruments Not Laid Before the Parliament

Education (Listed Bodies) (Scotland) Order 2007 (SSI 2007/558)

14:28

The committee agreed to raise minor points on the instrument.

Education (Recognised Bodies) (Scotland) Order 2007 (SSI 2007/557)

The committee agreed that no points arose on the instrument.

The Convener: The committee's next meeting will be held on Tuesday 8 January at 2.15. If members have special requirements for where they want papers for that meeting to be sent, please let the clerks know.

I wish everyone—the clerks, our legal team, the official report, our advisers, other parliamentary staff, security people and all of you—a happy Christmas and a prosperous new year.

Meeting closed at 14:29.

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