

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 19 February 2008

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

6th Meeting 2008, 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 6

Scottish Parliament

Subordinate Legislation Committee

Tuesday 19 February 2008

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

Decision on Taking Business in Private

The Convener (Jamie Stone): I open the meeting and welcome everyone to the sixth meeting in 2008 of the Subordinate Legislation Committee. We have no apologies. Gil Paterson is attending the Public Petitions Committee and will join us as soon as he can. I ask everyone to turn off any mobile telephones or BlackBerrys.

I ask members for their agreement to take in private agenda item 7 and all future consideration of the draft report, to which we will return this time next week.

Members *indicated agreement.*

Legislative Consent Memorandum

Pensions Bill

14:16

The Convener: As I do every week, I draw members' attention to the summary of recommendations, which forms our shorthand for the purposes of the record.

Are members content with the powers in the amended Pensions Bill that are conferred on the Scottish ministers to make subordinate legislation, and, if so, to report to the lead committee and Parliament on that basis?

Members *indicated agreement.*

Scottish Government Responses

Bluetongue (Scotland) Order 2008 (SSI 2008/11)

14:16

The Convener: After our meeting on 5 February, we wrote to the Scottish Government about two statutory instruments, and we have now seen its responses.

Members will recall that we have already reported to the lead committee and Parliament on the Bluetongue (Scotland) Order 2008, but we raised a further point in correspondence with the Government. Are we content with the Government's response? If we are still unclear about whether the powers to specify additional measures that are set out in articles 13(5), 14(7) and 15(3) of the order are within the scope of the enabling powers in section 1 of the Animal Health Act 1981, are we content to issue a formal response to the Government on the matter?

We have been here before. For what it is worth, it might be worth putting our thoughts on the record before we send something formal to the Government. We are really doing a tidying-up exercise, but I am in your hands, colleagues.

Ian McKee (Lothians) (SNP): Would it be possible to consider our draft response at our next meeting?

The Convener: We can do that, yes.

Management of Offenders etc (Scotland) Act 2005 (Commencement No 4) Order 2008 (SSI 2008/21)

The Convener: Are we content to draw the order to the attention of the lead committee and Parliament on the ground that, in relation to article 2(1)(b), there is a point of defective drafting in so far as it seeks to commence a provision that has already been commenced in full, although it does not affect the validity or operation of the order?

Members *indicated agreement.*

Draft Instruments Subject to Approval

Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2008 (Draft)

14:18

The Convener: I will not read out the recommendations; they are in the summary of recommendations. Are members content to ask the Scottish Government questions (a) to (d), as set out in that summary?

Members indicated agreement.

Housing Support Grant (Scotland) Order 2008 (Draft)

The committee agreed that no points arose on the instrument.

Draft Guidance Subject to Annulment

Environment Act 1995: The UK Strategy for Radioactive Discharges: Draft Statutory Guidance (SG/2008/13)

14:19

The Convener: Are we content to ask the Scottish Government to confirm how it has complied with the requirements of section 31(4) of the Environment Act 1995; which bodies and persons apart from the Scottish Environment Protection Agency have been consulted prior to the laying of the draft guidance; and if no other bodies or persons have been consulted, what are the reasons for not doing so?

Members indicated agreement.

Instruments Subject to Annulment

National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2008 (SSI 2008/27)

14:19

The Convener: Rather than read out recommendations (a) to (f), I put it to members that we should ask the Scottish Government the questions as set out in the summary of recommendations. Before I raise that question formally with the committee, does anyone want to raise any points on the regulations?

Ian McKee: Regulation 2(1) says that

“pilot scheme” shall be construed in accordance with section 1(1) of the National Health Service (Primary Care) Act 1997”.

However, regulation 2(1) also mentions

“a dentist performing personal dental services in accordance with a pilot under Part I of the National Health Service (Primary Care) Act 1997”.

I wonder whether “pilot scheme” and “pilot” are defined separately in the National Health Service (Primary Care) Act 1997, or whether “a pilot”, to which regulation 2(1) refers on page 4, is exactly the same as “a pilot scheme”, to which the same regulation refers on page 3. Can we ask the Government to inform us of the situation with regard to those definitions?

The Convener: If there are no other points at this time, I ask our legal advisers whether the question can be fine tuned to bring out the point. *[Interruption.]* It has been indicated to me that it can, so we will proceed on that basis.

I read the recommendations with some interest, and it might be worth making the point in passing that there are quite a lot of points to raise about the regulations—members will have noted that. The sheer number of points is slightly concerning. It is uncharacteristic of the good drafting and attention to detail that we have seen hitherto. The regulations seem to be slightly ragged around the edges. Would that be a fair additional point to make, just to mark our concern? We might return to the matter during our discussions in private.

Members indicated agreement.

Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2008 (SSI 2008/29)

The Convener: Are we content to ask the Scottish Government questions (a) to (c), as set out in our summary of recommendations?

Members indicated agreement.

**Discontinuance of Legalised Police Cells
(Scotland) Revocation Rules 2008
(SSI 2008/35)**

The Convener: Are members content to ask the Scottish Government to explain the delay in laying the rules before the Parliament—the instrument was made on 7 February and laid on 12 February—and the breach of the 21-day rule? Are we satisfied with the Scottish Government's explanation for failure to comply with that rule? Are we content to ask the Scottish Government to clarify the vires for making the rules, as set out in the summary of recommendations?

Members indicated agreement.

Ian McKee: Was there not an either/or question in there?

The Convener: No. There were three straightforward questions.

Ian McKee: I am sorry.

The Convener: Are you happy?

Ian McKee: Yes.

The Convener: I am very much in members' hands if I make a slip. Thank heavens for the clerks; they keep me right.

**Home Detention Curfew Licence
(Prescribed Standard Conditions)
(Scotland) Order 2008 (SSI 2008/36)**

The Convener: Are we content to ask the Scottish Government questions (a) to (c), as set out in the summary of recommendations?

Members indicated agreement.

**Housing (Scotland) Act 2001 (Alteration of
Housing Finance Arrangements) Order
2008 (SSI 2008/28)**

**Justice of the Peace Courts (Sheriffdom of
Lothian and Borders) etc Order 2008 (SSI
2008/31)**

**Non-Domestic Rate (Scotland) Order 2008
(SSI 2008/32)**

**Housing Revenue Account General Fund
Contribution Limits (Scotland) Order 2008
(SSI 2008/34)**

The committee agreed that no points arose on the instruments.

The Convener: Members will note from the annex to the summary of recommendations that minor points arise in relation to SSI 2008/27, SSI 2008/28 and SSI 2008/35. Are members content

that they should be raised informally with the Scottish Government?

Members indicated agreement.

The Convener: I thank the members of the public, although we have none, and the official report.

14:25

Meeting continued in private until 15:05.

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