

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 18 March 2008

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

10th 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

THE FOLLOWING ALSO ATTENDED :

Mairi Gibson (Legal Adviser)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 5

Scottish Parliament

Subordinate Legislation Committee

Tuesday 18 March 2008

[THE CONVENER opened the meeting at 14:15]

The Convener (Jamie Stone): I welcome members to the 10th meeting in 2008 of the Subordinate Legislation Committee. We have no apologies. As usual, I ask everyone to turn off their mobile phones and BlackBerrys.

First, we have to look at something from last week's meeting. We considered the Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Amendment Regulations (SSI 2008/55) on 4 and 11 March, and agreed to report the instrument on the basis that the error in the regulations might affect their operation. However, there was a discrepancy between the legal brief and the summary of recommendations, which incorrectly said that the error might affect the validity of the instrument. I mention this today so that a statement can go on the record to clarify that our decision was that the error in the instrument might affect its operation. For the sake of the record, are members content with that?

Members indicated agreement.

Delegated Powers Scrutiny

Judiciary and Courts (Scotland) Bill: Stage 1

14:16

The Convener: We will go through the delegated powers step by step. Following our meeting on 26 February, we wrote to the Scottish Government about a number of the delegated powers in the bill; we have seen the responses.

Section 66(2) is on the default power of the Scottish ministers to carry out the functions of the Scottish Court Service. Do we consider it to be acceptable that the power does not place the Scottish ministers under a duty to revoke the order as soon as they are satisfied that the SCS can perform its function again?

Ian McKee (Lothians) (SNP): I have some concerns about the power, convener. At the moment, the Government is not required to revoke the order once it is satisfied that the SCS can perform its functions again, on the ground that the

SCS might never be able to perform its functions efficiently again. That does not mean that the Government should not be under a duty to revoke the order as soon as the SCS is able to perform its functions. They are two different points. The rare circumstance in which the SCS cannot perform its functions should be dealt with in its own right. We should ask the Government to consider the issue further.

The Convener: We can do that.

Jackson Carlaw (West of Scotland) (Con): I have some sympathy with Ian McKee's point. Parliament will approve the Government's action within 40 days but, that having been done, the Government is then effectively the sole arbiter in determining whether the SCS's affairs are ever again in order. Ian McKee's point that the Government should have a duty to revoke the order is well made. I am slightly concerned that there is no further role for Parliament in this process. The matter could be left in abeyance and not attended to properly because there is no obligation to require that it should be attended to.

The Convener: Are members content to reflect those points in our report?

Members indicated agreement.

The Convener: Are members content to bring that matter to the attention of the lead committee, which might want to ask the Scottish Government to explain whether the Scottish ministers would be likely to retain SCS functions permanently or, given what we have just discussed, whether the transfer of those functions to another statutory body that is independent of the Scottish Government would be more likely?

Members indicated agreement.

The Convener: Are members content to recommend that we ask the Scottish Government to clarify whether it is appropriate for the revocation order to follow the procedure set out in section 67(5) of the bill, monitor any amendments made by the Government in that respect at stage 2 and reconsider the matter, if necessary?

Ian McKee: I think you mean section 66(2), or am I reading the wrong thing?

The Convener: It is section 67(5).

Mairi Gibson (Legal Adviser): Both sections are relevant.

The Convener: Thank you. In that case, it looks as though we have already agreed the final question. Are we content with that?

Gillian Baxendine (Clerk): It is worth reading it out.

The Convener: Are we content to consider any amendments made by the Scottish Government at stage 2 to amend section 66(2) to make it clear that action taken by the Scottish ministers during the period between the order being made and the Parliament choosing to affirm it remain valid, and to reconsider the matter if necessary?

Members indicated agreement.

The Convener: Paragraph 2(5) of schedule 3 contains a power to alter the membership of the SCS. Are we satisfied with the Scottish Government's response, and that suitable safeguards are provided by the requirement to use the affirmative procedure?

Members indicated agreement.

The Convener: That takes us to sections 15(1) and (2), which are about guidance to the Judicial Appointments Board for Scotland. Are we content that any reservations about the fact that the power to be conferred on the Scottish ministers and the Lord President to issue such guidance is to be subject to no parliamentary procedure, are such as not to merit adverse comment at this stage? Do we want to refer the matter to the lead committee for further consideration? We are asking the lead committee to consider the issue, but we will revisit it at stage 2. Are we content with that?

Members indicated agreement.

Scottish Government Responses

14:21

The Convener: After our previous meeting, we wrote to the Scottish Government about six instruments; we have seen the responses. I also refer members to our summary of recommendations.

Leader Grants (Scotland) Regulations 2008 (SSI 2008/66)

The Convener: Are members content to agree the three bullet points on the regulations, as set out in our summary of recommendations?

Members indicated agreement.

Intensive Support and Monitoring (Scotland) Regulations 2008 (SSI 2008/75)

The Convener: Do members agree that we are satisfied in part with the Scottish Government's responses to questions 1 to 4 and to draw the regulations to the attention of the lead committee and Parliament on that basis?

Members indicated agreement.

Bankruptcy (Scotland) Regulations 2008 (SSI 2008/82)

The Convener: Do members agree to draw the regulations to the attention of the lead committee and Parliament on the grounds set out in the summary of recommendations?

Members indicated agreement.

Pollution Prevention and Control (Designation of Batteries Directive) (Scotland) Order 2008 (SSI 2008/86)

The Convener: Are members satisfied with the Scottish Government's response and do we agree to draw the order to the attention of the lead committee and Parliament on that basis?

Members indicated agreement.

Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008 (SSI 2008/88)

The Convener: Are members satisfied with the Scottish Government's response and do we agree to draw the regulations to the attention of the lead committee and Parliament on that basis?

Members indicated agreement.

National Health Service (Superannuation Scheme, Injury Benefits, Additional Voluntary Contributions and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2008 (SSI 2008/92)

The Convener: Are we satisfied with the Scottish Government's response and do we agree to draw the regulations to the attention of the lead committee and Parliament on that basis?

Members *indicated agreement.*

Instrument Subject to Approval

Local Government Finance (Scotland) Amendment Order 2008 (Draft)

14:22

The committee agreed that no points arose on the instrument.

Draft Instruments Subject to Approval

Mental Health (Cross-border Visits) (Scotland) Regulations 2008 (Draft)

14:23

The Convener: Are members content to ask the Scottish Government to clarify the issues set out in our summary of recommendations?

Members *indicated agreement.*

Victim Notification Scheme (Scotland) Order 2008 (Draft)

The committee agreed that no points arose on the instrument.

Instruments Subject to Annulment

Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2008 (SSI 2008/94)

14:23

The Convener: Are we content to ask the Scottish Government for an explanation of the delay between making the regulations on 26 February 2008 and laying them before Parliament on 7 March 2008?

Members *indicated agreement.*

Horses (Zootechnical Standards) (Scotland) Regulations 2008 (SSI 2008/99)

The Convener: Are members content to ask the Scottish Government the three questions set out in the summary of recommendations?

Members *indicated agreement.*

Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2008 (SSI 2008/101)

The Convener: Are we content to ask the Scottish Government to clarify points (a), (b) and (c) set out in the summary of recommendations, and to ask the Scottish Government what it considers would be the effect of any erroneous references?

Members *indicated agreement.*

Sea Fishing (Control Procedures for Herring, Mackerel and Horse Mackerel) (Scotland) Order 2008 (SSI 2008/102)

The Convener: I had no idea that there was such a thing as a horse mackerel, and I bet committee members did not either, but there we have it.

Are members content to ask the Scottish Government to explain the issue set out in the summary of recommendations?

Members *indicated agreement.*

Enforcement of Fines (Diligence) (Scotland) Regulations 2008 (SSI 2008/104)

The Convener: Some work has been done on the regulations—I will bring in Mairi Gibson.

Mairi Gibson: Having reflected further on the enabling power under which the instrument is made, I now suggest that the questions are not required.

The Convener: Are members content with the instrument?

Members *indicated agreement.*

**Personal Injuries (NHS Charges)
(Amounts) (Scotland) Amendment
Regulations 2008 (SSI 2008/96)**

**Meat Products (Scotland) Amendment
Regulations 2008 (SSI 2008/97)**

**Meat (Official Controls Charges)
(Scotland) Regulations 2008 (SSI 2008/98)**

**Rural Development Contracts
(Rural Priorities) (Scotland) Regulations
2008 (SSI 2008/100)**

**Enforcement of Fines (Seizure and
Disposal of Vehicles) (Scotland)
Regulations 2008 (SSI 2008/103)**

**National Health Service (Charges for
Drugs and Appliances) (Scotland)
Amendment Regulations 2008 (SSI
2008/105)**

The committee agreed that no points arose on the instruments.

The Convener: Members might welcome the fact that SSI 2008/105 amends the National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2008 (SSI 2008/27), in response to points that the committee raised.

**National Health Service (Optical Charges
and Payments) (Scotland) Amendment
Regulations 2008 (SSI 2008/106)**

The Convener: Are members content with the regulations and to refer the principal regulations—the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1998 (SI 1998/642)—to the consolidation working group for consideration?

Members *indicated agreement.*

The Convener: Members will wish to note from the annex to the summary of recommendations that minor points arose on SSI 2008/94, SSI 2008/97, SSI 2008/100, SSI 2008/101, SSI 2008/103 and SSI 2008/111, which will be raised informally with the Scottish Government.

I thank members for their attendance and their contribution. The next meeting will be held on Tuesday 25 March.

Meeting closed at 14:28.

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