

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 25 March 2008

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

11th 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 4

Scottish Parliament

Subordinate Legislation Committee

Tuesday 25 March 2008

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

Delegated Powers Scrutiny

Creative Scotland Bill: Stage 1

The Convener (Jamie Stone): I welcome everyone to the 11th meeting of the Subordinate Legislation Committee in 2008. We have received apologies from Helen Eadie; although she might join us later, she probably will not be able to. I ask everyone to turn off their mobile telephones and so on.

This is our first consideration of the Creative Scotland Bill, which establishes a new cultural development body, creative Scotland. It contains a small number of delegated powers.

Colleagues, do we consider the powers in section 5 to issue directions or guidance to be acceptable, or should they be expressed as powers to make subordinate legislation—that is, as order-making powers—either as a whole or in certain respects? Alternatively, we may wish to seek further explanation from the Government as to why it is considered that the powers to issue requirements to creative Scotland on general and specific matters should be exercisable by directions, rather than by statutory instrument.

I crave members' indulgence. Subsection (1) of section 5, "Directions and guidance", states:

"The Scottish Ministers may give Creative Scotland directions (of a general or specific nature) as to the exercise of its functions."

That seems to be fairly broad and far-reaching. Subsection (2) adds:

"But the Scottish Ministers may not give directions so far as relating to artistic or cultural judgement in respect of the exercise of Creative Scotland's functions under section 2(1) or (3), 3(3) or 4(4)."

I will explain the argument that has been forming in my mind. We know that the cultural and artistic stuff has been addressed in this way as a result of the consultation—that is right and proper. Under section 5(1), if—to choose a purely hypothetical example—ministers felt that the National Theatre of Scotland should definitely be located in Perth, rather than being a peripatetic body, that would be outwith the artistic or cultural area, but it would

nevertheless be a rather important matter for the theatre.

I do not know how the committee feels, but I would rather explore the issue, at least at this stage, and ask why the route of a Scottish statutory instrument has not been taken, rather than the route of directions. Using an SSI would at least give Parliament a chance to consider the issues, which might be very important, without necessarily being of an artistic or cultural nature. Using an SSI might be better than a straightforward ministerial direction—possibly, but not necessarily.

Richard Baker (North East Scotland) (Lab):

The matter is worth exploring with the Scottish Government. We could ask why it seeks a power of ministerial direction, rather than using SSIs. What are the comparable pieces of legislation, and have there been similar instances? Have similar bodies been placed in various parts of Scotland by the use of directions, rather than an SSI? How was the National Theatre of Scotland placed in Glasgow?

The Convener: The National Theatre does not have a base; its peripatetic nature was supported by the previous Scottish Executive. There may be a debate to be had about that, but ministers will have powers to determine such things by direction. If such a hypothetical example were to arise, I would be keener for there to be some parliamentary involvement.

Richard Baker: Other bodies have certainly been positioned in Edinburgh, and there is the example of Scottish Natural Heritage moving to Inverness. I do not recall that decision coming before Parliament by means of a statutory instrument. My understanding was that the decision was made by ministerial direction. Is that right?

The Convener: I am not able to answer that question.

Richard Baker: It would be useful to compare other legislation. Perhaps the Scottish Government could supply a comparison with its response to indicate what previous practice has been. You make a good point, convener; such decisions should perhaps come before Parliament for scrutiny. To be fair, I am not sure that the bill marks a departure, but it is worth exploring the general question with the Scottish Government.

Gil Paterson (West of Scotland) (SNP): I have no objections to the route that you are proposing, convener. The normal thing would be for the Government of the day to make a strategic decision and to leave the organisation itself to make the organisational decisions. That is how the Government's proposals look to me. I might be

wrong about that, but I am more than happy to agree to seek further clarification on the matter.

The Convener: Is that the will of the committee?

Members indicated agreement.

The Convener: So we will go with the alternative: we will seek further explanation from the Government.

Are we content with the ancillary powers in section 9, and with their being subject to negative and affirmative procedures?

Members indicated agreement.

The Convener: Also in relation to section 9, are we content to ask the Scottish Government why the draft affirmative procedure should not also apply in the circumstances where the ancillary provisions shall “modify any enactment”—beyond a textual amendment of the eventual act? These are specific, detailed questions.

Members indicated agreement.

The Convener: Are we content with the commencement powers in section 10?

Members indicated agreement.

The Convener: Are we content to ask the Scottish Government, first, why it is considered necessary to frame the powers such that they permit the textual amendment of schedule 1—I refer specifically to paragraph 2(2) of that schedule—and why it is necessary to allow any possible minimum or maximum number of members of creative Scotland to be substituted? Secondly, are we content to ask why it is considered appropriate for the powers to be subject to the negative procedure, given that they permit textual amendment of the eventual act?

Members indicated agreement.

The Convener: We will have a look at the Government’s response at our meeting of 22 April.

Scottish Government Responses

14:21

The Convener: After our meeting on 18 March, we wrote to the Scottish Government about five statutory instruments, and we have now seen the responses.

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

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

Members indicated agreement.

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

The Convener: If we are satisfied with the Scottish Government’s response on the delay between making and laying the instrument, shall we draw the regulations to the attention of the lead committee and Parliament on that basis?

Members indicated agreement.

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

The Convener: If we are satisfied with the Scottish Government’s response in part—that is, in relation to our points (a) to (c)—shall we draw the regulations to the attention of the lead committee and Parliament on that basis?

Members indicated agreement.

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

The Convener: Are we content to draw the order to the attention of the lead committee and Parliament on the basis that it contains drafting errors, which have, in fairness, been acknowledged by the Scottish Government? The errors are not such as would affect the operation of the order, but the Government has undertaken to correct them at the next suitable opportunity.

Members indicated agreement.

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

The Convener: Are we content to draw the order to the attention of the lead committee and Parliament on the ground that it raises a devolution issue?

Members *indicated agreement.*

**Instruments Subject
to Annulment**

**Police (Special Constables) (Scotland)
Regulations 2008 (SSI 2008/117)**

14:23

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

Members *indicated agreement.*

The Convener: An additional question is contained in paragraph 91 of the legal brief. It was omitted from the summary of recommendations.

Are we content to ask the Scottish Government to explain the intended scale of sanctions that is set out in regulation 22(2), for the purpose of identifying the alternative sanctions—if any—that the chief constable may impose under regulation 23(5)(c)?

Members *indicated agreement.*

**Home Detention Curfew Licence
(Prescribed Standard Conditions)
(Scotland) (No 2) Order 2008
(SSI 2008/125)**

The Convener: Some may recall the order. Are we satisfied with the reasons provided by the Scottish Government for the breach of the 21-day rule, and are we content to report to the Parliament accordingly?

Members *indicated agreement.*

**Act of Sederunt (Fees of Shorthand
Writers in the Sheriff Court) (Amendment)
2008 (SSI 2008/118)**

The committee agreed that no points arose on the instrument.

Instruments Not Laid Before the Parliament

**Bankruptcy and Diligence etc (Scotland)
Act 2007 (Commencement No 3, Savings
and Transitions) Order 2008
(SSI 2008/115)**

14:25

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.*

**Act of Sederunt (Sheriff Court Rules
Amendment) (Diligence) 2008
(SSI 2008/121)**

The Convener: Are we content to ask the Lord President's office the question set out in the summary of recommendations?

Members *indicated agreement.*

**Act of Sederunt (Rules of the Court of
Session Amendment No 4)
(Miscellaneous) 2008 (SSI 2008/123)**

The Convener: Are we content to ask the Lord President's office questions (a) and (b) as set out in the summary of recommendations?

Members *indicated agreement.*

**Act of Sederunt (Summary Applications,
Statutory Applications and Appeals etc
Rules) Amendment (Adult Support and
Protection (Scotland) Act 2007) 2008
(SSI 2008/111)**

**Scottish Commission for Human Rights
Act 2006 (Commencement No 2) Order
2008 (SSI 2008/112)**

**Adult Support and Protection (Scotland)
Act 2007 (Commencement No 2 and
Transitional Provisions) Amendment
Order 2008 (SSI 2008/116)**

**Act of Sederunt (Sheriff Court Bankruptcy
Rules) 2008 (SSI 2008/119)**

**Act of Sederunt (Rules of the Court of
Session Amendment No 2) (Fees of
Shorthand Writers) 2008 (SSI 2008/120)**

**Act of Sederunt (Rules of the Court of
Session Amendment No 3) (Bankruptcy
and Diligence etc (Scotland) Act 2007)
2008 (SSI 2008/122)**

**Home Detention Curfew Licence
(Prescribed Standard Conditions)
(Scotland) Revocation Order 2008
(SSI 2008/124)**

The committee agreed that no points arose on the instruments.

The Convener: Finally, we should note from the summary of recommendations that minor points arise on SSI 2008/111, SSI 2008/115, SSI 2008/117, SSI 2008/119, SSI 2008/121, SSI 2008/122, SSI 2008/123, and SSI 2008/125. The points will be raised with the Scottish Government informally.

Meeting closed at 14:28.

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