

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 13 May 2008

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

16th Meeting 2008, Session 3

CONVENER

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

DEPUTY CONVENER

*Gil Paterson (West of Scotland) (SNP)

COMMITTEE MEMBERS

Jackie Baillie (Dumbarton) (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:

Judith Morrison (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 13 May 2008

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

The Convener (Jamie Stone): I welcome everyone to the 16th meeting in 2008 of the Subordinate Legislation Committee. We have apologies from Ian McKee. I ask everyone to turn off their mobile phones and BlackBerrys.

I give a particular welcome to Christopher Harvie; it is nice to have you join us as substitute for Ian McKee. Do you have any relevant interests to declare?

Christopher Harvie (Mid Scotland and Fife) (SNP): No.

Delegated Powers Scrutiny

Public Health etc (Scotland) Bill

The Convener: We considered the bill at last week's meeting and wrote to the Government on some issues. We have seen the response.

Section 25 is on supplementary investigatory powers. As members will recall, I lodged on behalf of the committee an amendment to section 25(3), which confers a power on ministers, by regulations, to confer on investigators

"such powers as Ministers consider necessary for the purposes of public health investigations."

I moved the amendment at the Health and Sport Committee meeting on 7 May but subsequently withdrew it on the basis that the minister, Shona Robison, agreed to consider further how to achieve the limitation of the power conferred by section 25(3). I hope that that was all right with the committee, although it is a bit late now. I thought that the minister's move was conciliatory and I said so on the record.

I also spoke to an amendment to section 102 that would provide that, where regulations made under the power conferred by section 102 modify an act of Parliament or the Scottish Parliament, they would be subject to affirmative procedure. The amendment was not moved on the day, as that opportunity will arise on the Health and Sport Committee's third day of consideration of amendments, on 21 May. Ross Finnie was under the impression that I should have moved the amendment, but we corrected him.

So, we have a few things to clear up. On the basis that the Scottish Government is considering the limitation of the power in section 25(3), as Shona Robison offered, it would appear that it will no longer be necessary for me to move the related amendment to section 102 when the time comes. Are members content for the committee to ask the Government for its view on whether adopting affirmative procedure but permitting class 3 procedure in cases of emergency would address both the committee's and the Government's concerns about the recess and the responsibilities of Parliament? Following the outcome of the Government's consideration, the committee might want to consider in advance of stage 3 whether it wishes to lodge any necessary amendments.

Is the committee therefore content that I do not move the amendment to section 102 when the time comes?

Members indicated agreement.

The Convener: Thank you. That will save me from going to the Health and Sport Committee meeting.

Is the committee content to write to the Government to acknowledge the minister's undertaking to give further consideration to limiting the power in section 25(3) and to request that the Government confirms to the committee the outcome of its considerations in good time prior to stage 3?

Members indicated agreement.

The Convener: So, we will follow up the minister's offer by writing to the Government to accept it.

Are we also content to write to the Government to acknowledge the minister's concern about potential delays, particularly during the summer recess, being caused by affirmative procedure being attached to this power, and to ask the Government whether adopting affirmative procedure but permitting class 3 procedure in cases of urgency would address both the committee's and the Government's concerns? That means that an instrument could be made and come into force immediately, which is what the Government would like, but could not continue in force unless it was approved by Parliament within a set period provided in the bill. That follows the model proposed by the Government for section 89, "International Health Regulations", and would allow the Government to act quickly in the event of urgency to make and bring into force an instrument during summer recess. There is a precedent for that model and we believe that it could work. Is that all right?

Members indicated agreement.

The Convener: Section 89 is on the international health regulations, as I have just mentioned. At stage 1, the committee sought information from the Government about any proposals that it might have to amend this very broad power at stage 2 in order to clarify the extent of the power or the proposed method of implementing the IHR. The Government has indicated its desire to ensure consistent implementation of the IHR in relation to its application at points of entry throughout the United Kingdom and it has lodged amendments at stage 2 to ensure consistency with the legislative approach being taken in England and Wales. That appears to meet our concerns. Are we content with the power as amended? The power will be subject to affirmative procedure unless the Scottish ministers consider that regulations need to be made urgently, in which case the class 3 affirmative procedure would apply. Are we content with the procedures that will apply?

Members indicated agreement.

The Convener: Further to concerns expressed by the committee at stage 1 on section 94, "Power to make further provision regarding statutory nuisances", the Government agreed to consider lodging an amendment at stage 2 to make consultation with local authorities a formal requirement before draft regulations are introduced. Last week, we wrote again to the Government about that and I am sure that members will be pleased to note that the Government is proposing to lodge an amendment. Are we therefore content to monitor the amendments lodged by the Government at stage 2 and to revisit the issue in advance of stage 3 if that proves to be necessary? The Government has taken a constructive approach and we should recognise that.

Members indicated agreement.

The Convener: The committee expressed concerns at stage 1 on section 95, "Enforcement of statutory nuisances: fixed penalty notice", which will insert new section 80ZA(11)(e) into the Environmental Protection Act 1990. We had further correspondence with the Government last week and it has committed to lodging two amendments at stage 2 that will provide that each of the powers relating to statutory nuisance under new section 80ZA(11) of the EPA will be subject to affirmative procedure, and that there will be an obligation to consult with bodies or persons

"representative of the interests of local government"

before exercising any of those powers.

Are we content to monitor the amendments lodged by the Government at stage 2 and to revisit the issue in advance of stage 3 if necessary?

Members indicated agreement.

The Convener: On section 98, "Disclosure of information", the Government has lodged an amendment to insert a new subsection that provides that

"Regulations under subsection (8) may modify any enactment (including this Act)."

However, the Government has not amended the procedure applicable to the exercise of the power, which remains subject to negative procedure. In this case however, the power is restricted to adding or taking away bodies included in the definition of relevant authorities that are permitted to share information for the purposes of the protection of public health. On that basis, are we content with the amendment of the power and that it is subject to negative procedure?

Members indicated agreement.

Scottish Register of Tartans Bill: Stage 1

The Convener: We took a look at the bill at our meeting two weeks ago and wrote to the member in charge. We have seen his responses.

Are we content with the powers available under section 14, "Fees"?

Members indicated agreement.

The Convener: On section 16, "Ancillary provision", does the committee consider that the response from the member in charge, Jamie McGrigor, provides acceptable justification to depart from the preference that we have previously expressed for the draft affirmative procedure to apply where power is taken to amend primary legislation?

Members indicated agreement.

The Convener: That concludes our consideration of the bill at stage 1.

Scottish Government Responses

14:23

The Convener: After our meeting on 6 May, we wrote to the Scottish Government about three Scottish statutory instruments, and we have seen the responses.

Advice and Assistance (Limits, Conditions and Representation) (Scotland) Regulations 2008 (Draft)

The Convener: We pointed out an error in the regulations and, as a result, the Government has decided to withdraw the regulations and lay new ones. We will consider the new regulations later during the meeting, but we need to dispose of these.

In relation to the committee's question (a) to the Government, is the committee content to draw the instrument to the attention of the lead committee and Parliament on the ground set out in the summary of recommendations, that the reference in regulation 2(2)(c)(ii) to section 302ZA of the Criminal Procedure (Scotland) Act 1995 rather than to section 303ZA of the Criminal Procedure (Scotland) Act 1995 is an error that has been acknowledged by the Government? Also, in relation to question (b), are we satisfied with the Government's explanation and, if so, that we should report accordingly?

Members indicated agreement.

Further and Higher Education (Scotland) Act 1992 Amendment Order 2008 (Draft)

The Convener: We should note that our legal advisers have been informed that the Government intends to withdraw and relay the order, given our comments on it last week. With the committee's agreement, we should welcome that and perhaps take the opportunity to encourage the Government to take that approach more often by fixing issues at the time rather than at some point in future. It seems that a flexible and constructive approach has been taken, which is surely encouraging as it makes our work seem rather worth while. We might even say that the Government is helped when we head off these things, as it were, before they get anywhere near the pass. I was told before the meeting that the new order will be laid next week.

Are members content to draw the order to the attention of the lead committee and the Parliament on the grounds set out in the summary of recommendations?

Members indicated agreement.

Transmissible Spongiform Encephalopathies (Scotland) Amendment Regulations 2008 (SSI 2008/166)

The Convener: Are we satisfied with the Scottish Government's response on the three bullet points set out in the summary of recommendations and, if so, are we content to report to the lead committee and the Parliament accordingly? Further, the summary of recommendations highlights that paragraph 21 of new schedule 6 to the principal regulations refers to seven definitions—of Commission regulations 1664/2006 and 1665/2006; Council regulation 1791/2006; and Commission regulations 1243/2007, 1244/2007, 1245/2007 and 1246/2007. Are we also content, therefore, to draw the regulations to the attention of the lead committee and the Parliament on the ground that paragraph 21 of new schedule 6 fails to follow normal drafting practice by including superfluous definitions, although they are not considered to have any effect on the validity or operation of the instrument?

Members indicated agreement.

Draft Instruments Subject to Approval

**Advice and Assistance (Limits, Conditions
and Representation) (Scotland)
Regulations 2008 (Draft)**

**Scotland Act 1998 (Transfer of Functions
to the Scottish Ministers etc) Order 2008
(Draft)**

14:26

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

Instrument Subject to Annulment

**Guar Gum (Restriction on First Placing on
the Market) (Scotland) Regulations 2008
(SSI 2008/176)**

14:27

The Convener: Are we satisfied with the explanation provided by the Government for the breach of the 21-day rule and content to ask the Scottish Government the question that is set out in the summary of recommendations?

Members indicated agreement.

Instrument Not Laid Before the Parliament

Schools (Health Promotion and Nutrition) (Scotland) Act 2007 (Commencement No 2) Order 2008 (SSI 2008/171)

14:27

The committee agreed that no points arose on the instrument.

The Convener: Finally, we need to be absolutely correct about one thing before we finish our consideration of legislation. Before we move on to agenda item 7, I want to return to Mr McGrigor's Scottish Register of Tartans Bill. The legal adviser wants to clarify a point.

Judith Morrison (Legal Adviser): I want to be clear on what the committee's view is on section 16 of the Scottish Register of Tartans Bill. The committee was asked whether it was content that acceptable justification has been provided for the departure from normal practice that draft affirmative procedure should apply where power is taken to amend primary legislation. Members will recall that a point of distinction was made between textual amendments and mere modifications. Are members content that modifications may be subject to the negative procedure but that we should stick to our previous view on textual amendments?

Members indicated agreement.

Judith Morrison: Thank you very much.

The Convener: We need to be kept right by our advisers. Thank you.

Annual Report

14:29

The Convener: Agenda item 7 is our annual report for 2007-08. The draft report is presented in the standard format that is used for all committee annual reports. Do members have any comments on the draft report? We could revisit it next week if we felt like doing so. Are members happy with the report?

Helen Eadie (Dunfermline East) (Lab): We can accept the annual report as drafted, given that a standard format is used for all such reports. The report provides a fair summary.

The Convener: We can go ahead and publish it.

I remind members that our next meeting will be at 2.15 pm on Monday—I say to Chris Harvie that I assume that Ian McKee will be back by then—to allow some of us to travel to Westminster for meetings next Tuesday. Therefore, we will receive our committee papers on Thursday instead of Friday.

Meeting closed at 14:30.

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