

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 3 June 2008

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

19th 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 GAVE EVIDENCE:

Molly Robertson (Scottish Government Health and Wellbeing Directorate)

Joyce Whytock Policy Leader (Scottish Government Health and Wellbeing Directorate)

CLERK TO THE COMMITTEE

Shelagh McKinlay

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 4

Scottish Parliament

Subordinate Legislation Committee

Tuesday 3 June 2008

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

Delegated Powers Scrutiny

Public Health etc (Scotland) Bill: As Amended at Stage 2

The Convener (Jamie Stone): Welcome to the 19th meeting of the Subordinate Legislation Committee this year. We have received apologies from John Park. As usual, I remind everyone present to turn off mobile phones and BlackBerrys.

I welcome the Scottish Government officials to the meeting. We have with us Molly Robertson, the Public Health etc (Scotland) Bill team leader; Joyce Whytock, policy leader on the bill; and Kirsty McGrath and Stella Smith from the Scottish Government legal directorate. They are here primarily to answer questions on section 90D of the bill, on the medical use of sunbeds, but I understand that they are happy to remain here until we have completed our consideration of the bill. The officials have indicated that they would like to make an opening statement to the committee.

Joyce Whytock (Scottish Government Health and Wellbeing Directorate): It may be helpful if I set out the rationale for the provision and make it clear that in the short term we do not envisage making regulations under the power in section 90D. Although the amendment that inserted the section in the bill was lodged by Kenneth Macintosh, the Scottish Government supports his aims and wishes to ensure that the legislation is effective and works in practice.

The medical use provision was included in the bill because there are instances in which ultraviolet rays are used for genuine medical conditions. The legislation is obviously not intended to restrict such treatment in any way. We are confident that the definitions of “sunbed” and “sunbed premises” in the bill as drafted will capture all existing commercial sunbed premises and effectively exempt UV treatments that are given on medical grounds and undertaken in a hospital or on other national health service premises. However, it is not clear whether medical use of sunbeds takes place outwith NHS settings—for example, in private clinics. If that

happens, there might be a problem, because the medical use of sunbeds in return for payment would come within the ambit of the bill, which is not the policy intention. It is necessary for Scottish ministers to have a power to exempt specific types of premises from the bill, should there prove to be a problem in practice.

There are concerns that sunbed operators or manufacturers may try to circumvent the legislation in the future by manufacturing or offering medical devices, rather than sunbeds, that produce tanning of the skin. I am sure that the committee will agree that it is prudent for the Scottish ministers to ensure that the legislation is future proofed to guard against that possibility. That is why a power was taken to make regulations to adjust the definition of “sunbed” in the bill.

The policy intention is that any regulations that are made under the power will, in practice, be technical regulations that are designed to tighten rather than to relax controls over sunbeds or to allow genuine medical use to continue. For that reason, it was felt that the negative procedure was appropriate. However, the Scottish Government has noted the committee's concerns and appreciates that, in theory at least, the power is a broad one. In light of that, the Scottish ministers have reconsidered their position on the parliamentary procedures that should be used to scrutinise any regulations that are made under section 90D of the bill and they are now content that any such regulations should be made using affirmative procedure. They will lodge an amendment at stage 3 to that effect, which will ensure that there is an appropriate level of parliamentary scrutiny of any regulations; we hope that that will allay the committee's concerns.

The Convener: Thank you. I remind colleagues that we must consider today whether to lodge amendments for stage 3 of the bill, because all amendments must be lodged by Friday.

We considered the bill prior to stage 2 on 6 and 13 May and agreed to lodge amendments in relation to sections 25(3) and 102. Members will recall that during stage 2 proceedings I withdrew the former and did not move the latter amendment, on the basis of an assurance from the Minister for Public Health that she would give further consideration to our concerns. Members have seen the Government's response, in which it agrees that the exercise of the power in section 25(3) should always be subject to parliamentary approval. That constructive outcome is to be welcomed and is to the credit of the committee and of the Government.

Today we will consider each of the remaining delegated powers about which we had concerns and look at new delegated powers that have been

inserted in the bill by stage 2 amendments. I direct colleagues to the supplementary legal brief and correspondence with ministers.

I refer the committee to section 25, "Supplementary", which relates to investigatory powers. Are members content with the delegated power in section 25(3) and that it should normally be subject to affirmative procedure, and in an emergency to class 3 affirmative procedure?

Members indicated agreement.

The Convener: I refer members to the main legal brief. On section 66, "Applications and appeals", are members content with the change to the delegated power in section 32 of the Sheriff Courts (Scotland) Act 1971 and that the power should be subject to no parliamentary procedure?

Members indicated agreement.

The Convener: On section 90, "Prohibition on allowing use of sunbeds by persons under 18", are members content with the delegated power in section 90(4)(c) and that it should be subject to negative procedure?

Members indicated agreement.

The Convener: On section 90A, "Prohibition on sale or hire of sunbeds to persons under 18", are members content with the delegated power in section 90A(5)(c) and that it should be subject to negative procedure?

Members indicated agreement.

The Convener: Our guests from the Scottish Government are here today to discuss section 90D, "Medical use of sunbeds". We had some questions to put to officials on the provision and may yet do so. Having heard Joyce Whytock's statement, do members wish to proceed with that line of questioning?

Jackson Carlaw (West of Scotland) (Con): I am content with the response that we have received.

Jackie Baillie (Dumbarton) (Lab): The response was helpful, because it signalled a change of approach by the Government, which is always welcome. For information, could you describe the potential use of sunbeds in settings other than sunbed premises and private clinics? Have you done any scoping of the issue, or is the provision based on fear of the unknown?

Joyce Whytock: We have not had the opportunity to do any scoping. I was at a meeting with Kenneth Macintosh and Professor Colin Munro, who expressed concerns about how ingenious some people might be in trying to overcome the legislation. The provision seeks to take into account those concerns.

Jackie Baillie: You will recognise that the scope of the power that ministers wanted the Parliament to confer on them was so broad as to be slightly troubling to the committee. However, I welcome the Government's change of heart.

The Convener: Members have indicated that they have no further questions. Is the committee content to monitor the situation as stage 3 amendments are lodged?

Members indicated agreement.

The Convener: The officials are welcome to stay with us for the remainder of our consideration of the bill.

Ian McKee (Lothians) (SNP): Is it in order for me to put a question about section 102(2A) to the Government team?

The Convener: I have no objection, if officials are content to respond to it.

Ian McKee: You have accepted the obligation to consult before making regulations under the power in section 102(2A). We thought that it might be a good idea to specify in the bill that ministers will consult the committee before proceeding. Is that a reasonable request for us to make of you?

The Convener: We want ministers to consult the Parliament, rather than the committee.

Molly Robertson (Scottish Government Health and Wellbeing Directorate): We do not wish to include in the bill a commitment to consult parliamentary committees, but we have approached the minister about the issue. She is content to make a commitment to consult parliamentary committees should regulations be made under that section. It is not usual to include in the bill a requirement to consult parliamentary committees.

Ian McKee: I should have asked whether the minister would consult the Health and Sport Committee; not both committees.

The Convener: Is Ian McKee content with that answer?

Ian McKee: Yes.

The Convener: We will monitor the situation.

On section 90E, "Duty to provide information to sunbed users", are members content with the delegated power and that it is subject to negative procedure?

Members indicated agreement.

The Convener: On section 90F, "Duty to display information notice", are members content with the delegated power and that it is subject to negative procedure?

Members indicated agreement.

The Convener: On section 90K, “Fixed penalties for offences under section 90, 90C, 90E or 90F”, are members content with the delegated power in section 90K(11) and that it is subject to affirmative procedure?

Members indicated agreement.

The Convener: On section 91, “Insect nuisance”, are members content with the amendment to the delegated power imposing a duty to consult and that the power is subject to affirmative procedure?

Members indicated agreement.

The Convener: On section 94, “Power to make further provision regarding statutory nuisances”, are members content to welcome the amendment to the delegated power imposing a duty on the Scottish ministers to consult local authority associations and other persons, where practicable, in advance of making regulations under this delegated power; and that the power is subject to affirmative procedure?

Members indicated agreement.

The Convener: On section 95, “Enforcement of statutory nuisances: fixed penalty notice”, which inserts new section 80ZA(11)(e) into the Environmental Protection Act 1990, are members content with the delegated power and that it is subject to affirmative procedure?

Members indicated agreement.

The Convener: On section 101A, “Form of applications etc”, are members content with the delegated power and that it is subject to negative procedure?

Members indicated agreement.

The Convener: On section 102, “Regulations and orders”, are members content with the amendment to section 102, which prescribes the parliamentary procedure to apply to regulations and orders made under the bill, imposing a duty on the Scottish ministers to consult before making any regulations?

Members indicated agreement.

The Convener: Thank you. That concludes our consideration of the bill at this stage. I thank the officials from the Scottish Government for taking the time and trouble to join us today.

Judiciary and Courts (Scotland) Bill

The Convener: We considered and reported on the bill at stage 1. We raised some issues to which the Government has now responded, and members have seen the responses, which are referred to in the summary of recommendations. In section 66, “Default power”, subsection (2) confers

powers on the Scottish ministers to carry out the functions of the Scottish Court Service. Are members content to note the further response from the Scottish Government on the issues raised by the committee in relation to section 66(2) and that the response relates in part to policy and in part to issues that we referred to the lead committee for its consideration in our stage 1 report?

Members indicated agreement.

The Convener: Are members also content to monitor any amendments to section 66 made by the Scottish Government at stage 2 of the bill, as undertaken in its response in connection with, first, applying negative procedure to an order revoking an order made under section 66(2) and, secondly, making it clear that any action taken by the Scottish ministers during a period between the order being made and the Parliament choosing not to affirm it, shall remain valid; and, finally, to reconsider those matters after stage 2 if necessary?

Members indicated agreement.

The Convener: Sections 15(1) and 15(2) are on guidance to the Judicial Appointments Board for Scotland. Are members content to note the further response from the Scottish Government on the issues that the committee raised in relation to sections 15(1) and 15(2); to note that the response on those matters relates to the issues in our stage 1 report that were referred to the lead committee for consideration; to note that as a result of the Justice Committee’s stage 1 report, the Government has undertaken to lodge amendments at stage 2 to the effect that the Justice Committee shall be able to scrutinise the guidance in draft and that ministers should consult the Lord President and the JAB, and the Lord President should consult the Scottish ministers and the JAB, on the draft guidance before it is laid in the Parliament; to monitor any such amendments lodged at stage 2; and to reconsider those matters after stage 2 if necessary?

Members indicated agreement.

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

Offences (Aggravation by Prejudice) (Scotland) Bill: Stage 1

14:30

The Convener: The bill is a member’s bill proposed by Patrick Harvie MSP and we are considering it at stage 1. The bill contains but one delegated power, which is the commencement provision at section 3. On section 3, “Commencement and short title”, are members

content to ask the member in charge to clarify whether there is any intention or prospect of sections 1 and 2 requiring to be commenced on different days; and whether reliance is being placed on schedule 1, paragraph 3(c) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc of Acts of the Scottish Parliament) Order 1999 (SI 1999/1379)?

Members indicated agreement.

The Convener: Do members consider the commencement order powers in section 3 acceptable in principle, and if so, are members content that the commencement power is not subject to parliamentary procedure, in line with usual practice?

Members indicated agreement.

The Convener: Are members content to note that, in line with normal drafting practice, the bill does not specify how many days are required between making the commencement order or orders and the appointed day or days, and are they content to ask the member in charge to confirm that a suitable minimum period will be left for the purposes of allowing sufficient notice of commencement to those potentially affected by the bill?

Members indicated agreement.

The Convener: Very good. We will consider Patrick Harvie's response to those points at our meeting on 17 June, two weeks hence. That concludes our consideration of the bill.

Scottish Government Responses

14:31

The Convener: After our previous meeting on 27 May, we wrote to the Scottish Government about two Scottish statutory instruments. Members have seen the responses.

Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2008 (Draft)

The Convener: Are members satisfied with the Scottish Government's response on the use and citation of the enabling powers, and if so, to draw the order to the attention of the lead committee and Parliament on that basis?

Members indicated agreement.

Mobility and Access Committee for Scotland Revocation Regulations 2008 (SSI 2008/187)

The Convener: Are members satisfied with the Scottish Government's response and, if so, to welcome the undertaking to remove the obsolete references at the next relevant legislative opportunity, and to draw the regulations to the attention of the lead committee and Parliament accordingly?

Members indicated agreement.

The Convener: All good work done.

Instruments Subject to Annulment

Feed (Hygiene and Enforcement) (Scotland) Amendment Regulations 2008 (SSI 2008/201)

14:32

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

Members *indicated agreement.*

Licensing (Transitional Provisions) (Scotland) Order 2008 (SSI 2008/194)

Strategic Development Planning Authority Designation (No 1) (Scotland) Order 2008 (SSI 2008/195)

Strategic Development Planning Authority Designation (No 2) (Scotland) Order 2008 (SSI 2008/196)

Strategic Development Planning Authority Designation (No 3) (Scotland) Order 2008 (SSI 2008/197)

Strategic Development Planning Authority Designation (No 4) (Scotland) Order 2008 (SSI 2008/198)

National Scenic Areas (Scotland) Regulations 2008 (SSI 2008/202)

Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2008 (SSI 2008/203)

The committee agreed that no points arose on the instruments.

The Convener: We would usually raise any minor points informally with the Scottish Government, but members will note that none arise.

It remains only for me to thank members for their participation and to tell them that the next meeting of the committee will be held—surprise, surprise—on Tuesday 10 June at 2.15 pm in a committee room of which we will be advised. We expect to consider a large number of instruments—it will be quite a workload because that thing called the recess is rushing towards us.

Meeting closed at 14:34.

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