

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 23 September 2008

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

26th 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)

Ross Finnie (West of Scotland) (LD)

Christopher Harvie (Mid Scotland and Fife) (SNP)

Elaine Smith (Coatbridge and Chryston) (Lab)

*attended

CLERK TO THE COMMITTEE

Shelagh McKinlay

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 4

Scottish Parliament

Subordinate Legislation Committee

Tuesday 23 September 2008

[THE CONVENER opened the meeting at 14:15]

Judiciary and Courts (Scotland) Bill

The Convener (Jamie Stone): I welcome everyone to the 26th meeting of the committee in 2008. We have received no apologies. Let us all ensure that our mobile phones and BlackBerrys are turned off—mine is.

It has been confirmed that David McLaren, who was our senior assistant clerk, has left the committee and has gone to the Local Government and Communities Committee. Perhaps we could record our joint thanks to him for all his support, help and hard work.

Agenda item 1 is consideration of the Judiciary and Courts (Scotland) Bill prior to stage 3. We reported on the bill as amended at stage 2 on 12 September. We would not normally consider a bill again after that but, on this occasion, the Scottish Government courts directorate has written to us explaining that the Government proposes to lodge amendments at stage 3 relating to delegated powers. The amendments appear to be a tidying up of the delegated powers following the passage of amendments at stage 2.

Section 38 of the bill inserts new section 12E into the Sheriff Courts (Scotland) Act 1971, giving a power to

“remove a person from the office of sheriff principal, sheriff or part-time sheriff.”

Following consideration of the bill at stage 2, our legal advisers raised an issue informally with the Scottish Government, which has resulted in the Government lodging an amendment to make it clear that article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SI 1999/1096) is modified so that the reference to the period of “21 days” in relation to the delegated power is to be read as a reference to 40 days; and that article 10(3) of the same order is disapplied. Are we content with the proposal to remove that ambiguity?

Members indicated agreement.

The Convener: Section 39 is on the “Meaning of ‘judicial office holder’”. An issue arises as a consequence of the interaction between sections 2 and 39 of the bill, but it does not appear to affect the substance of the delegated power or the procedure that applies. Are we content with the proposal?

Members indicated agreement.

The Convener: We turn now to section 47, “Alteration of boundaries of sheriffdoms”; section 48, “Sheriff court districts and places where sheriff courts are to be held”; and section 54, which is on the “Establishment, constitution etc” of justice of the peace courts. New proposals have been made, returning to the former position that orders under those sections are to be made by the Scottish ministers, rather than being transferred to the Lord President. The Scottish Court Service should be given a formal duty to consult such persons as it considers appropriate as part of the process, and amendments have been lodged to that effect. Are we content with those proposals?

Members indicated agreement.

The Convener: Given that we are content with the Government’s proposals, are we content to note the correspondence?

Members indicated agreement.

Health Boards (Membership and Elections) (Scotland) Bill: Stage 1

14:18

The Convener: Item 2 forms the meat of today's agenda—at least in my opinion. I found the bill to be of considerable interest, having read our legal brief. My first remark is that the bill is pretty skeletal and a great many powers are intended to be given to ministers. They are mostly subject to negative, rather than affirmative procedure. Secondly, you will note the references to Henry VIII powers in the legal brief. The Scottish Government said that the same sort of procedure would be followed for elections to health boards as for those to national park authorities. That is all very well, but as our legal advisers have pointed out, the instruments governing national parks are subject to affirmative procedure. The same thing is not being done in this case.

Finally, if the pilot scheme runs out of time—after seven years—or if it is stopped by the relevant minister, that effectively kills off the original legislation without any reference back to Parliament. In my view, we have some probing questions to ask the Scottish Government.

Jackie Baillie (Dumbarton) (Lab): I agree, convener. The bill is quite thin and there is very little detail in it. That is slightly unusual for Government, although it is not unwelcome. However, a substantial use of delegated powers is proposed and you are right that we should ask the Government further questions.

Issues such as the franchise for elections and how to gather information on the eligibility of 16 to 17-year-olds need to be spelled out in more detail. Questions about prescribing the date of the election and ward boundaries might excite only politicians, but they are issues of substance and one worries about the use of negative procedure, which is perhaps not appropriate. We should ask the Government to explain its thinking.

I spent a lot of time dealing with the early legislation on national parks—Loch Lomond and the Trossachs is Scotland's first national park. You are right, convener, that the national park authorities' election procedure is governed by affirmative rather than negative resolution. If we wish the bill before us to be consistent, we should seek an explanation from the Government.

You raise two more substantial points, convener. First, we note the circumstances under which any minister could remove somebody from office. I understand that the Government wishes to extend the automatic categories, but we are straying into a degree of discretion for ministers under which a

minister could actually remove somebody who has achieved elected office. That is slightly different from a ministerial appointment. We should seek clarification on that.

Secondly, it would be extraordinary if Parliament did not have a further say if the pilot schemes were either to be cancelled or to lapse in some way. I wonder whether the power is appropriate and I think that we should query that with the Government.

The Convener: I will go through the powers one by one. We start with section 1, "Constitution of Health Boards". Section 1(2) inserts into schedule 1 to the National Health Service (Scotland) Act 1978 new paragraph 2(2), which confers a power to

"specify ... the total number of members of the Board, and ... the number of each type of member."

Are we content that the proposed power is acceptable in principle and that it is subject to negative procedure?

Members indicated agreement.

The Convener: Section 1(5) inserts into schedule 1 to the 1978 act new paragraph 10A(2), which contains powers to

"specify the circumstances in which ... an elected member must vacate office".

Section 1(6) inserts a similar power into paragraph 11(a) of schedule 1 to the 1978 act.

Are we content to ask the Scottish Government the two questions that are set out in the summary of recommendations?

Members indicated agreement.

The Convener: It is very important that we see what the Government comes back with on those points.

Section 2(2) of the bill inserts new schedule 1A, "Health Board elections", to the 1978 act. Paragraph 13 of new schedule 1A confers a power to make "election regulations". A number of issues arise in relation to the delegated power, including whether some of the matters that are covered by it are appropriate for delegation to subordinate legislation as a matter of principle; whether the supplementary powers that have been provided are too broad in scope; whether negative resolution procedure is appropriate; and whether the bill should specifically make additional provision concerning certain matters. Are we content to ask the Scottish Government the 13 questions that are set out in the summary of recommendations?

Members indicated agreement.

The Convener: Section 4(1) relates to the elected members pilot scheme and confers

powers to make a “pilot order”. Are we content to ask the Scottish Government the five questions that are set out in the summary of recommendations?

Members indicated agreement.

The Convener: Section 7 is on “Roll-out”, and subsection (1) confers powers to make a “roll-out order”. Are we content to ask the Scottish Government the four questions that are set out in the summary of recommendations?

Members indicated agreement.

The Convener: Section 11(3) confers the power to appoint the day on which

“Section 8 and the schedule come into force”.

Are we content with the power and with the fact that it is not subject to parliamentary procedure? There appears to be no problem with that.

Members indicated agreement.

The Convener: Paragraph 1 of the schedule to the bill amends paragraph 4 of schedule 1 to the 1978 act and confers a power to prescribe members of committees of health boards for the purposes of remuneration. Are we content with the power and with the fact that it is subject to negative procedure?

Members indicated agreement.

The Convener: That concludes our consideration of the bill at stage 1. Before we move on, I emphasise that those are important questions of substance. We should consider the responses carefully when they arrive. It is vital to get the answers. We are playing with democracy, which is kind of important—it is about real people voting. The rights or wrongs of the bill are not for this committee to discuss at all, however—that is for the subject committee and for discussion in the chamber.

I thank our legal team and the clerks at this point for the very detailed and thoughtful legal brief.

Scottish Government Responses

14:25

The Convener: After our previous meeting on 16 September, we wrote to the Scottish Government about five statutory instruments and we have seen the responses.

Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2008 (SSI 2008/294)

The Convener: Are members content to draw the regulations to the attention of the lead committee and Parliament on the ground that the meaning of regulation 6(2) could be clearer?

Members indicated agreement.

Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008 (SSI 2008/298)

The Convener: Are we satisfied with the Government's response and, if so, are we content to draw the regulations to the attention of the lead committee and Parliament?

Members indicated agreement.

Potatoes Originating in Poland (Notification) (Scotland) Amendment Order 2008 (SSI 2008/299)

The Convener: Here we go again; goodness me.

Are we satisfied with the Government's response and its undertaking to update references to the correct enforcement provisions in the Plant Health (Scotland) Order 2005 (SSI 2005/613) at the next appropriate opportunity and, if so, are we content to draw the order to the attention of the lead committee and Parliament?

Members indicated agreement.

The Convener: Thank you. We can bag that as another example of good work to the mutual benefit of the Parliament and the Scottish Government.

Plant Health (Scotland) Amendment Order 2008 (SSI 2008/300)

The Convener: The parent order was mentioned a moment ago. Are we content to draw the order to the attention of the lead committee and Parliament on the ground that it contains a number of drafting errors, although they do not affect the operation of the order?

Members indicated agreement.

**Dangerous Wild Animals Act 1976
(Modification) (Scotland) Order 2008
(SSI 2008/302)**

The Convener: Are we content to draw the order to the attention of the lead committee and Parliament on the ground that there has been a drafting error in relation to the citation of the enabling powers? A number of issues arise in relation to this delegated power. They include—*[Interruption.]* Oh. I am so sorry. I will get it right.

Are we content to draw the order to the attention of the lead committee and Parliament on the ground that there has been a drafting error in relation to the citation of the enabling powers in the preamble, although not such as to affect the validity or operation of the order?

Members *indicated agreement.*

The Convener: It would help if I got my pages in the correct order, would it not, colleagues?

Ian McKee (Lothians) (SNP): We did not notice.

The Convener: It would have been interesting if I had ploughed on. I thank our clerks for keeping me right.

**Instruments subject
to Annulment**

Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008 (SSI 2008/303)

Special Restrictions on Adoptions from Cambodia (Scotland) Order 2008 (SSI 2008/304)

Special Restrictions on Adoptions from Guatemala (Scotland) Order 2008 (SSI 2008/305)

Adult Support and Protection (Scotland) Act 2007 (Restriction on the Authorisation of Council Officers) Order 2008 (SSI 2008/306)

Restriction of Liberty Order (Scotland) Amendment Regulations 2008 (SSI 2008/307)

14:27

The committee agreed that no points arose on the instruments.

Instruments not laid before the Parliament

Legal Profession and Legal Aid (Scotland) Act 2007 (Commencement No 5) Order 2008 (SSI 2008/311)

14:28

The Convener: Are we content to ask the Scottish Government the question set out in the summary of recommendations?

Members *indicated agreement.*

Housing (Scotland) Act 2006 (Commencement No 6 and Transitional Provision) Order 2008 (SSI 2008/308)

The committee agreed that no points arose on the instrument.

The Convener: Members should note from the annex to the summary of recommendations that minor points arise on SSI 2008/298, SSI 2008/303, SSI 2008/306, SSI 2008/307, SSI 2008/308 and SSI 2008/311. Those points will be raised with the Scottish Government informally.

That concludes our business. I thank everyone for their attendance. We will see each other again on 30 September at the same time.

Meeting closed at 14:29.

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