

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 30 September 2008

Session 3

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CONTENTS

Tuesday 30 September 2008

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REGULATORY FRAMEWORK INQUIRY	369
SCOTTISH GOVERNMENT RESPONSE	370
Legal Profession and Legal Aid (Scotland) Act 2007 (Commencement No 5) Order 2008 (SSI 2008/311)	370
INSTRUMENTS SUBJECT TO ANNULMENT	371
Energy Performance of Buildings (Scotland) Regulations 2008 (SSI 2008/309)	371
Inshore Fishing (Prohibition on Fishing) (Lamlash Bay) (Scotland) Order 2008 (SSI 2008/317)	371
Building (Scotland) Amendment Regulations 2008 (SSI 2008/310)	372
National Health Service (Recognition of Health Service Bodies) (Scotland) Order 2008 (SSI 2008/315)	372
Mental Health (Certificates for Medical Treatment) (Scotland) Amendment Regulations 2008 (SSI 2008/316)	372
INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT	373
National Health Service (Functions of the Common Services Agency) (Scotland) Order 2008 (SSI 2008/312)	373
Homelessness etc (Scotland) Act 2003 (Commencement No 3) Order 2008 (SSI 2008/313)	373
Adult Support and Protection (Scotland) Act 2007 (Commencement No 3 and Related Amendments) Order 2008 (SSI 2008/314)	373

SUBORDINATE LEGISLATION COMMITTEE

27th 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 30 September 2008

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

Regulatory Framework Inquiry

The Convener (Jamie Stone): I welcome everyone to the 27th meeting in 2008 of the Subordinate Legislation Committee. We have received apologies from Gil Paterson, Jackie Baillie and John Park. I ask everyone to turn off any mobile phones, BlackBerrys and so on.

We have all read the regulatory framework inquiry paper, which I thank our team for producing. It seems to be a fair record of what we talked about on our away day. It lists several recommendations on the forthcoming legislative reform bill and recommendations from the Subordinate Legislation Committee's 12th report of 2008, "Inquiry into the Regulatory Framework in Scotland", which were the subject of further discussion at official level over the summer. We then had our away day and here we are today.

No-one has any comments at this stage, but we have to make a number of decisions. I will take the committee through the questions one by one.

Are members agreed that the committee should write to the Minister for Parliamentary Business, noting and welcoming the Government's commitment to introducing the bill and also noting that the committee will, of course, scrutinise the bill carefully?

Members indicated agreement.

The Convener: Are we agreed that proposals for a process for the post-legislative scrutiny of Scottish statutory instruments should be discussed more widely within the Parliament, and particularly that they should be shared with other subject committees through the Conveners Group?

Members indicated agreement.

The Convener: Are we also agreed to pursue the option of strengthening the scrutiny of compliance with the 21-day rule, rather than introducing a new category of emergency procedure?

Members indicated agreement.

The Convener: Do we agree to invite the Minister for Parliamentary Business to give

evidence following publication of the draft bill, and to amend the wording of recommendation 12 for the purposes of future discussion?

Members indicated agreement.

The Convener: Finally, are we agreed that we will not pursue the case for a system of conditional annulment, to note that further discussions will be held about a system to enable minor technical changes to be made to instruments, and to publish an annual report to detail the progress made by the Scottish Government against commitments and other issues and trends relevant to the work of the committee?

Members indicated agreement.

Scottish Government Response

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

14:17

The Convener: After our meeting on 23 September, we asked the Scottish Government about the order, and we have seen the response. Are members content to draw the order to the attention of the lead committee and Parliament on the ground that article 2 contains an error?

Members indicated agreement.

Instruments Subject to Annulment

Energy Performance of Buildings (Scotland) Regulations 2008 (SSI 2008/309)

14:18

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

Members *indicated agreement.*

Inshore Fishing (Prohibition on Fishing) (Lamlash Bay) (Scotland) Order 2008 (SSI 2008/317)

The Convener: First, are we content to ask the Scottish Government to confirm that the area described in article 2(1) of the order is within Scottish inshore waters as defined in section 9(1) of the Inshore Fishing (Scotland) Act 1984? Are we satisfied with the reason given for why it was necessary not to comply with the 21-day rule?

Ian McKee (Lothians) (SNP): The reason given was that it was to prevent fishermen from overfishing the area. Does that fall within the Subordinate Legislation Committee's remit or within the lead committee's remit?

The Convener: It is for the committee to scrutinise the reason within its powers and then report it to the lead committee, which can take up the issue if it sees fit. Are you happy with that?

Ian McKee: Yes. I just wondered whether we should say whether we were satisfied, as the reason that was given seems to be a matter that is more for the lead committee than for us. If we decide that the reason given for the decision not to comply with the 21-day rule is not within the competence of our committee but within that of the lead committee, should we agree or disagree with the reason or just present the question to the lead committee?

The Convener: We are in danger of straying into matters that lie outwith our competence. We could just note the point, which would mean that it is put out there, if you like.

Ian McKee: I suggest that we note the reason given and pass the order on to the lead committee.

Helen Eadie (Dunfermline East) (Lab): I would like to reflect on that for a moment. It would not be unreasonable for us to ask the Government the question. The matter is important to the Government and to people throughout Scotland's fishing industry. It might be helpful to get the

Government to confirm that the terms of the order are clear enough. It would not be unreasonable to write to the Government and ask it that question.

The Convener: Surely that is covered by the question that I suggest that we ask the Scottish Government. That question is extant.

Helen Eadie: Yes, but I am just making it clear for the audience. We have seen our papers but our audience might not realise that.

The Convener: Thank you for that; it is very worth while.

As members know, I will not be here next week. Gil Paterson will convene the meeting and the committee will discuss the order again. What Helen Eadie did was useful for the public record.

Jackson Carlaw (West of Scotland) (Con): I am going to be very boring and exercise a hopelessly unhelpful point. I take it that the order is not setting a precedent that it is perfectly okay for the Government to indulge in a degree of subterfuge in the event that it thinks that the public might exploit a particular piece of legislation, and that it could apply that principle generally. Can the Government decide that it is better not to tell the public that something is going to happen? Is that a legitimate excuse for a general principle?

The Convener: You have just told them, Mr Carlaw. You can look forward to next week's meeting with great interest. Perhaps it is as well that I shall not be here.

Jackson Carlaw: That is sort of what the Government's reason says, as far as I can see.

Building (Scotland) Amendment Regulations 2008 (SSI 2008/310)

National Health Service (Recognition of Health Service Bodies) (Scotland) Order 2008 (SSI 2008/315)

Mental Health (Certificates for Medical Treatment) (Scotland) Amendment Regulations 2008 (SSI 2008/316)

The committee agreed that no points arose on the instruments.

Instruments not laid before the Parliament

**National Health Service (Functions of the
Common Services Agency) (Scotland)
Order 2008 (SSI 2008/312)**

**Homelessness etc (Scotland) Act 2003
(Commencement No 3) Order 2008
(SSI 2008/313)**

**Adult Support and Protection (Scotland)
Act 2007 (Commencement No 3 and
Related Amendments) Order 2008
(SSI 2008/314)**

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

The Convener: Members should note from the annex to the summary of recommendations that minor points arise in relation to SSI 2008/309, SSI 2008/310, SSI 2008/312, SSI 2008/313, SSI 2008/314, SSI 2008/315 and SSI 2008/317. Those points will be raised informally with the Scottish Government.

The committee—but without me—will meet next week on Tuesday 7 October at 2.15.

Meeting closed at 14:23.

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