

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 4 November 2008

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

30th Meeting 2008, Session 3

CONVENER

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

DEPUTY CONVENER

*Gil Paterson (West of Scotland) (SNP)

COMMITTEE MEMBERS

Jackson Carlaw (West of Scotland) (Con)
*Malcolm Chisholm (Edinburgh North and Leith) (Lab)
Helen Eadie (Dunfermline East) (Lab)
*Tom McCabe (Hamilton South) (Lab)
*Ian McKee (Lothians) (SNP)

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 6

Scottish Parliament

Subordinate Legislation Committee

Tuesday 4 November 2008

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

Decision on Taking Business in Private

The Convener (Jamie Stone): I welcome everyone to the 30th meeting in 2008 of the Subordinate Legislation Committee. I extend a particular welcome to Eric Brown, who has joined the legal team. Eric is an advocate. He is very welcome.

We have received apologies from Jackson Carlaw. Will everyone please turn off their BlackBerrys and mobiles?

Under agenda item 1, we must decide whether to go into private session for item 9, which is consideration of our areas of questioning on the Health Boards (Membership and Elections) (Scotland) Bill. That will give us the opportunity to think about things and decide on what we want to do. Is that agreed?

Members indicated agreement.

Sexual Offences (Scotland) Bill: Stage 1

14:17

The Convener: This is our final consideration of the bill at stage 1. Last week, we took evidence from officials on the powers that are conferred by sections 29 and 32. Today, I will ask the committee to agree the terms in which we want to report to the lead committee.

Section 29 confers the power to specify relevant offences for the purposes of section 29(2). Are we content to report in the terms that are set out in the summary of recommendations?

Members indicated agreement.

The Convener: Section 30 confers the power to prescribe the form of notice of alternative verdicts. At our meeting on Tuesday 9 September, we considered whether that power was acceptable, as well as its not being subject to parliamentary procedure. Are we content to report accordingly?

Members indicated agreement.

The Convener: Section 32 confers the power to amend the definition of what constitutes a position of trust in respect of the offence of "sexual abuse of trust" at section 31. Are we content to report in the terms that are set out in the summary of recommendations?

Members indicated agreement.

The Convener: Section 35 confers the power to specify circumstances that are to be regarded as constituting the provision of care services for the purpose of the offence of

"sexual abuse of trust of a mentally disordered person."

In light of the Scottish Government's response, at our meeting on Tuesday 9 September, we considered that power to be acceptable, as is the fact that it is subject to the negative procedure. Can we report accordingly?

Members indicated agreement.

The Convener: Section 38 confers the power to prescribe the form of notice of alternative verdicts. Again, at our meeting on Tuesday 9 September, we agreed that that power is acceptable, as is the fact that it will not be subject to parliamentary procedure. Are we content to report accordingly?

Members indicated agreement.

The Convener: I thank you.

Section 42 confers the power to prescribe the period of notice of defence to an offence under section 42(1). At the same meeting on 9 September, we agreed that the power is

acceptable, as is the fact that it is not subject to parliamentary procedure. Are we happy to report accordingly?

Members indicated agreement.

The Convener: Section 43 confers the power to prescribe the period of notice of defence to an offence under section 43(2)(b). At the meeting on Tuesday 9 September, we agreed that that power is acceptable, as is the fact that it is not subject to parliamentary procedure. Are we happy to report accordingly?

Members indicated agreement.

The Convener: On section 45, "Ancillary provision", at the committee's meeting on Tuesday 7 October, we confirmed that we are content to welcome the Government's response, and to consider the proposed amendments at stage 2. Are we content to report that?

Members indicated agreement.

The Convener: We are almost there.

On section 46, "Orders", at the committee's meeting on Tuesday 9 September, we determined that the power conferred is acceptable. Are we content to report accordingly?

Members indicated agreement.

The Convener: At our meeting on 9 September, we decided that the power contained in section 49, "Short title and commencement", is acceptable, as is the fact that it is not subject to parliamentary procedure. Can we report that accordingly?

Members indicated agreement.

Flood Risk Management (Scotland) Bill: Stage 1

14:20

The Convener: We must go through agenda item 3 carefully. This is our first consideration of the bill at stage 1.

The bill was introduced on 29 September 2008. The Government has lodged a delegated powers memorandum for consideration. Many provisions in the bill delegate power to make subordinate legislation, as members will have read in our legal brief. In addition, there are delegated powers that are not powers to make subordinate legislation, but which confer power on Scottish ministers to provide directions and guidance on particular matters.

The committee is asked to make a large number of decisions today, so I will group together provisions and refer members at all times to the summary of recommendations.

Are members content to write to the Government in the terms that are set out in the summary of recommendations in relation to the following: section 1(3)(a)(ii); section 1(3)(b)(ii); section 1(3)(c)(ii); section 1(3)(d)(ii); section 2(1); section 5(c); section 9(2); section 10(1)(a); section 29(6); section 44(1); section 52(4); section 12ZA of the Reservoirs Act 1975, which will be inserted by section 77; section 82(1); and paragraph 13 of schedule 2?

Members indicated agreement.

The Convener: Are we content to ask the Government to consider making the delegated powers in the following sections subject to a requirement to consult the Scottish Environment Protection Agency before they are exercised: section 13; section 14; section 16; sections 18(4), 18(5) and 18(6); and section 23(2)?

Members indicated agreement.

The Convener: Are we content that the delegated powers in the following sections are acceptable in principle, and that they are subject to the negative procedure: section 8(1)(b); section 9(4)(a)(iii); section 11; section 15; section 18(1)(b)(iv); section 18(8)(a); section 19(2)(f); section 22; section 23(5)(b); section 35(1); section 48(2); section 52(2)(b); section 53(7); paragraph 1(1)(f)(vii) of schedule 2; and paragraph 14(1) of schedule 2?

Members indicated agreement.

Gil Paterson (West of Scotland) (SNP): I dare you to repeat that.

The Convener: I will not. I beg the committee not to ask me to do so; this is testing your convener.

I draw members' attention to section 86(1). The summary of recommendations refers to the power it confers being subject to the negative procedure but, as it is a commencement power, it is not subject to any parliamentary procedure. Are members therefore content that the delegated power in section 86(1) is acceptable in principle, and that it is not subject to any parliamentary procedure?

Members indicated agreement.

The Convener: Are we content that the proposed delegated powers, which are to issue directions, in the following sections, are acceptable in principle: section 26; section 27; section 28; section 30; section 31; section 33; section 54; and section 65?

Members indicated agreement.

Education (Additional Support for Learning) (Scotland) Bill: Stage 1

14:24

The Convener: This is our first consideration of the bill at stage 1.

Section 7 confers the power to make rules in respect of tribunal practice and procedure. Are we content that the amendment to the existing rule-making power that is proposed in section 7(a) is acceptable in principle and that it is subject to negative procedure?

Members indicated agreement.

The Convener: Are we content that the amendment to the existing rule-making power that is proposed in section 7(b) is acceptable in principle and that it is subject to negative procedure?

Members indicated agreement.

The Convener: Are we content that the proposed power in section 8, "Ancillary provision", is acceptable in principle and that it is to be subject to affirmative procedure in the case of textual amendment of an act and negative procedure otherwise?

Members indicated agreement.

The Convener: Are we content that the delegated power in section 10, "Short title and commencement", is acceptable and that it is not subject to parliamentary procedure?

Members indicated agreement.

Energy Bill

14:25

The Convener: That moves us on neatly to agenda item 5: consideration of the Energy Bill, which is United Kingdom Parliament legislation. Members will recall that the bill has already been the subject of a legislative consent memorandum in the Scottish Parliament, which agreed that the carbon storage provisions in part 1 should extend to Scotland.

A supplementary legislative consent motion has now been lodged in relation to the bill. The text of the motion and legislative consent memorandum is set out in the paper that accompanies this item. A supplementary LCM is required because amendments to the Energy Bill tabled at Westminster confer functions on the Scottish ministers to make subordinate legislation in the form of renewables obligation orders and, under rule 9B.3.6 of standing orders, if the subject of a memorandum contains provisions that confer on the Scottish ministers powers to make subordinate legislation, this committee must consider the provisions and report to the lead committee. Therefore, we are asked to determine whether we are content with the powers that are conferred on the Scottish ministers as a matter of principle, with regard to scope and to the parliamentary procedure provided.

I have three questions for members on amendments 1 to 28 to clause 37 of the bill, "The renewables obligation". Are we content that the power delegated to the Scottish ministers is acceptable in principle?

Members indicated agreement.

The Convener: Are we content that the application of affirmative procedure to renewables obligation orders is acceptable?

Members indicated agreement.

The Convener: Are we satisfied with the scope of the power to make a renewables obligation?

Members indicated agreement.

Instrument Subject to Annulment

Pesticides (Maximum Residue Levels) (Scotland) Regulations 2008 (SSI 2008/342)

14:27

The Convener: We have but one instrument subject to annulment.

The committee agreed that no points arose on the instrument.

Instrument not laid before the Parliament

Act of Sederunt (Rules of the Court of Session Amendment No 5) (Miscellaneous) 2008 (SSI 2008/349)

14:27

The Convener: We have just been made aware that a separate but related instrument has recently been made and will come to the committee for consideration. In this instance, there would be great merit in considering the forthcoming instrument and this one together. Therefore, I propose that we defer consideration of the act of sederunt to a future meeting. Are members content to defer it?

Members indicated agreement.

Correspondence

14:28

The Convener: Agenda item 8 relates to correspondence with the Minister for Parliamentary Business. At our meeting on 30 September, we considered a paper on discussions that had taken place at official level over the summer recess on issues arising from the committee's 12th report in 2008, "Inquiry into the Regulatory Framework", and the Scottish Government's proposal to introduce a legislative reform bill. We agreed to write to the Minister for Parliamentary Business setting out our views on possible powers in the bill and seeking further information on it and the timing of its introduction.

The minister has responded; we have all seen his reply—and my initial letter—which is helpful and positive in tone. If members have no comments on the reply, does the committee agree to note it and that discussions between the committee clerks, its legal advisers and Scottish Government officials should continue?

Members *indicated agreement.*

The Convener: The discussions have been productive in the past and I am sure that there will be more productive work in the future.

We agreed to take item 9 in private.

14:29

Meeting continued in private until 14:37.

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