

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 10 February 2009

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

6th Meeting 2009, Session 3

CONVENER

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

DEPUTY CONVENER

*Ian McKee (Lothians) (SNP)

COMMITTEE MEMBERS

*Jackson Carlaw (West of Scotland) (Con)

*Malcolm Chisholm (Edinburgh North and Leith) (Lab)

*Bob Doris (Glasgow) (SNP)

*Helen Eadie (Dunfermline East) (Lab)

*Tom McCabe (Hamilton South) (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 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 10 February 2009

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

Marine and Coastal Access Bill

The Convener (Jamie Stone): I welcome everyone to the sixth meeting of the committee this year. Please switch off all mobiles and BlackBerrys.

Item 1 relates to United Kingdom legislation. We will consider delegated powers in connection with the legislative consent memorandum that has been lodged for the Marine and Coastal Access Bill. I will go through the delegated powers in order. Where we are invited to find powers based on the same type of procedure acceptable, I will group them together in one question.

On clause 63, "Licensable marine activities", do members agree that the delegated power is acceptable in principle and should be subject to affirmative procedure?

Members indicated agreement.

The Convener: Do members agree that we should report concerns about how division of the power between the Scottish ministers and the secretary of state, and their future exercise of the power, may affect the overall transparency of the statutory regime?

Members indicated agreement.

The Convener: On clause 64, "Applications", and clause 66, "Determination of applications", do members agree that the delegated powers, which are subject to negative procedure, are acceptable and that we should report to the Parliament on that basis?

Members indicated agreement.

The Convener: On clause 67, "Inquiries", which relates to the extension of powers under section 210(7B) of the Local Government (Scotland) Act 1973, do members agree that the delegated power, which is subject to no procedure, is acceptable and that we should report to the Parliament on that basis?

Members indicated agreement.

The Convener: I welcome Helen Eadie. Nothing is intended by the seating arrangement.

Helen Eadie (Dunfermline East) (Lab): It is due to my arriving late.

The Convener: On clause 70, "Appeals against licensing decisions", do members agree that the delegated power, which is subject to negative procedure, is acceptable and that we should report to the Parliament on that basis?

Members indicated agreement.

The Convener: On clause 71, "Exemptions specified by order", do members agree that the power is acceptable in principle and should be subject to negative procedure?

Members indicated agreement.

The Convener: Do members agree that we should draw the attention of the lead committee to the relationship between this power and the power under clause 63(3), and to the circumstances in which the Parliament may expect the respective powers to be used?

Members indicated agreement.

The Convener: On clause 90, "Fixed monetary penalties", and clause 92, "Variable monetary penalties", do members agree that the delegated powers, which are subject to affirmative procedure, are acceptable and that we should report to the Parliament on that basis?

Members indicated agreement.

The Convener: On clause 95, "Delegation of functions relating to marine licensing", clause 98, "Register", clause 105, "Appeals against notices", and clause 203, "Orders prohibiting the taking and sale of certain lobsters", do members agree that the delegated powers, which are subject to negative procedure, are acceptable and that we should report to the Parliament on that basis?

Members indicated agreement.

Coroners and Justice Bill

14:18

The Convener: Item 2 is consideration of delegated powers in connection with the Coroners and Justice Bill, which is UK legislation.

On clause 123, "Implementation of E-Commerce and Services directives: penalties", do members agree to bring the amendment to the power exercisable by the Scottish ministers under section 2(2) of the European Communities Act 1972 to the attention of the lead committee, on the ground that it removes the current restrictions on maximum penalties that may be imposed in relation to offences under the exercise of that power?

Members indicated agreement.

The Convener: Do members agree to draw the attention of the lead committee to our view that, where offences are to be created through the exercise of subordinate powers, the maximum penalties applicable should be clearly specified in primary legislation?

Members indicated agreement.

The Convener: On clause 152, "Information sharing", which inserts new sections 50A to 50F into the Data Protection Act 1998, do members agree that the provisions with respect to the power to make information sharing orders are acceptable?

Members indicated agreement.

Borders, Citizenship and Immigration Bill

14:19

The Convener: Item 3 is consideration of delegated powers in connection with the Borders, Citizenship and Immigration Bill, which is UK legislation.

On clause 34, "Power to make supplementary etc provision", do members agree that subsection (5) be brought to the attention of the Justice Committee on two grounds: first, the context in which it has been provided, in consequence of provision made under part 1 of the bill, which relates to reserved matters; and secondly, the absence of any reference to it in the draft legislative consent motion and memorandum, which means that the Scottish Parliament's consent to conferral of the power on the Scottish ministers has not been sought, as is required if the provision is to be proceeded with in accordance with the Sewel convention?

Members indicated agreement.

The Convener: I draw members' attention to the letter from Kenny MacAskill to Bill Aitken, the convener of the Justice Committee, dated 9 February.

Instruments Subject to Approval

Local Government Finance (Scotland) Order 2009

14:21

The committee agreed that no points arose on the instrument.

Local Government Finance Act 1992 (Scotland) Order 2009

The Convener: Are members content with the Local Government Finance Act 1992 (Scotland) Order 2009?

Members *indicated agreement.*

The Convener: Are members also content to note that, subject to its being approved by the Parliament, the order will revoke the Local Government Finance (Scotland) Order 2009?

Members *indicated agreement.*

Budget (Scotland) Acts 2007 and 2008 Amendment Order 2009 (Draft)

The Convener: Are members content with the order as now presented, as a replacement for the order of the same name that was withdrawn by the Scottish Government on 4 February this year?

Members *indicated agreement.*

Victim Statements (Prescribed Courts) (Scotland) Order 2009 (Draft)

The committee agreed that no points arose on the instrument.

Instrument Subject to Annulment

National Health Service (Superannuation Scheme, Pension Scheme and Injury Benefits) (Scotland) Amendment Regulations 2009 (SSI 2009/19)

14:22

The Convener: Three points arise on the regulations. Do members agree to report the regulations to the lead committee and the Parliament on the grounds that, first, regulation 18(b) is defectively drafted; secondly, that regulation 61, as it amends regulation 3.B.5(7) of the National Health Service Pension Scheme (Scotland) Regulations 2008 (SSI 2008/224), is defectively drafted; and finally, that there is a drafting error in regulation 81(b)? It is considered that the third error does not affect the validity or operation of the regulations.

Members *indicated agreement.*

The Convener: I welcome the Government's undertaking to correct the first two errors at an early date. We have pointed out to it the errors of its ways, and it intends to put matters right.

That concludes the meeting. We will meet again at a quarter past 2 on Tuesday 24 February. Thank you for your attendance.

Meeting closed at 14:23.

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