

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 1 September 2009

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

22nd 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

Douglas Wands

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 1 September 2009

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

Marine (Scotland) Bill: Stage 1

The Convener (Jamie Stone): I welcome everyone to the 22nd meeting of the Subordinate Legislation Committee in 2009. I hope that everyone has had a good break. It was well deserved.

We have received apologies from three members: Jackson Carlaw, Helen Eadie and Bob Doris. I welcome Douglas Wands, who is sitting beside me, to his new position as our clerk. We are also joined by Stephen Fricker, who is joining us as the committee's support manager. Let us turn off all our mobiles and BlackBerrys.

The first agenda item is the Marine (Scotland) Bill. We will consider the responses to a number of questions that we raised at our last meeting before the summer recess. We must report to the lead committee at the end of this week, in time for its consideration of the bill with the minister in charge next week. Before we go through the responses, I thank our legal advisers for the legal brief, which is very informative.

Section 17(3) contains powers to amend section 17(1) so as to add or remove any activity from the list of licensable marine activities. Are we content to draw the power to the attention of the lead committee and to inform that committee that the new power to add activities to the regime is unqualified and does not specify any criteria on the basis of which the Scottish Government may determine that a particular activity should be added to or removed from the list?

Members indicated agreement.

The Convener: Section 20(7) contains a power to make further provision as to the procedure to be followed in connection with applications for and the grant of licences. Are we content to consider that the proposed power is acceptable in principle and that negative procedure is appropriate?

Members indicated agreement.

The Convener: We had already decided about section 21(2), but there was a little bit of wrong information about it—that is why we are where we are with it today. It contains a power to prescribe, under section 210(7B) of the Local Government

(Scotland) Act 1973, the standard daily amount which may be recovered in respect of an inquiry in relation to marine licences. Are we content to consider that the proposed power is acceptable in principle and that no procedure is appropriate in this case?

Members indicated agreement.

The Convener: Section 24(1) contains a power to specify activities that will not need a marine licence. Are we content to draw the attention of the lead committee to the Government's control of consultation prior to the exercise of the power, and to inform the lead committee that the power does not specify any criteria on the basis of which the Scottish Government may determine that a particular activity should be specified as not requiring a licence or not requiring a licence if specified conditions are satisfied?

Members indicated agreement.

The Convener: Section 25(1) provides for a power to allow licensable marine activities that fall below a specified threshold of environmental impact to be registered rather than licensed. Are we content to consider that the proposed power is acceptable in principle and that affirmative procedure is appropriate in this case?

Members indicated agreement.

The Convener: We come now to section 29(1), which contains a power to make provision for any person who applies for a marine licence to appeal against a decision made under section 22; and section 52(1), which contains a power to make provision for any person to whom a notice listed in section 52(2) is issued to appeal against that notice. Are we content to inform the lead committee that, notwithstanding the powers to make provision for appeals under sections 29(1) and 52(1), no substantive provision with respect to appeals is made in the bill, and to express to the lead committee our view that we expect the fundamental elements of an appeal procedure to appear in the bill?

Members indicated agreement.

The Convener: Section 37(1) contains a power to make provision about the imposition of fixed monetary penalties in relation to offences under part 3, and section 39(1) contains a power to make provision about the imposition of variable monetary penalties in relation to offences under part 3. Are we content to consider that the proposed powers are acceptable in principle and that it is right to use affirmative procedure in this case?

Members indicated agreement.

The Convener: Section 54(3) contains a power to provide that marine fish farming is not to

constitute “development”. I am sure that we have all read the provisions a few times—I certainly have.

Are we content to draw it to the attention of the lead committee that the effect of the power will be to permit local authorities to determine whether, in respect of their area, marine fish farming is to be in the terrestrial planning regime or the marine licensing regime? We might also wish to draw to the attention of the lead committee our view that the exercise of the power on an area-by-area basis could result in a lack of uniformity across the country, which might give rise to considerable confusion, as different criteria for development could apply from one area to another, with different procedural rules and rights of appeal. We are saying quite a bit there. Are members content with that?

Members indicated agreement.

The Convener: We will see what comes back.

Section 58(1) provides a power to designate any area of the Scottish marine protection area as a nature conservation marine protected area, a demonstration and research marine protected area or a historic marine protected area. Section 64 provides a power to amend or revoke a designation order under section 58. Are we content that it is appropriate for those proposed powers in relation to marine protected areas to be exercised by the Scottish ministers as an administrative process, rather than by statutory instrument?

Members indicated agreement.

The Convener: On section 74(1), are we content that the proposed power to make marine conservation orders—MCOs—is acceptable in principle and that negative procedure is appropriate?

Members indicated agreement.

The Convener: On section 77(1), are we content that the proposed power to make an urgent marine conservation order is acceptable in principle and that negative procedure is appropriate? We might also wish to comment that we think that section 77(2)(a) is unnecessary. Will we draw attention to that?

Members indicated agreement.

The Convener: On section 77(6), are we content that the proposed power to make an urgent continuation order is acceptable in principle and that negative procedure is appropriate?

Members indicated agreement.

The Convener: Finally, we come to section 144(1), which is on ancillary provision. Are we content to find that the powers are acceptable in

principle, but to comment in our report that, in our opinion, the different elements of ancillary powers provision should be justified separately and on a case-by-case basis by the Scottish Government in the context of each bill?

Members indicated agreement.

The Convener: I am bound to say that, looking over the bill, it could have been a little tighter and not quite so sloppy. That is the point that we wish to make.

That completes our consideration of the bill.

Instruments Subject to Annulment

Civil Jurisdiction (Application to Offshore Renewable Energy Installations etc) Order 2009 (SI 2009/1743)

14:22

The Convener: There are two questions on the order. First, are we content to report that we are satisfied with the further information that we have received from the Government?

Members indicated agreement.

The Convener: They have done us proud.

Secondly, are we content to report that we are content with the explanation that has been provided for the failure to comply with article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SI 1999/1096), which is otherwise known as the 21-day rule?

Members indicated agreement.

Meat (Official Controls Charges) (Scotland) Regulations 2009 (SSI 2009/262)

The Convener: Are we content to report that we have received a satisfactory response from the Scottish Government and to note that additional guidance on the methodology for charging will be published, which will provide further transparency on the matter?

Members indicated agreement.

Feed (Hygiene and Enforcement) (Scotland) Amendment Regulations 2009 (SSI 2009/263)

The Convener: I have two questions on the regulations. First, are we content to report the regulations on the ground that they could be clearer on the limitations of the enforcement powers that are available to officers who are authorised by the Food Standards Agency, given that regulations 17, 22 and 24 appear automatically to empower all authorised officers to enforce all specified feed law, whereas agency officers may exercise functions only in relation to certain provisions?

Members indicated agreement.

The Convener: Secondly, are we content to report that the functions that are conferred on the Scottish ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2006 (SI 2006/304) are relevant in this

case—because the enforcement responsibilities under the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 (SSI 2005/608) have been completely restated in relation to all feed regulated, including those responsibilities that were added by the Feed (Hygiene and Enforcement) (Scotland) Amendment Regulations 2008 (SSI 2008/201)—and that therefore there has been a failure to follow normal drafting practice in omitting reference to SI 2006/304 in the footnote on the enabling power?

Members indicated agreement.

The Convener: That is technical, but we need to mention it.

Ethical Standards in Public Life etc (Scotland) Act 2000 (Devolved Public Bodies) Order 2009 (SSI 2009/286)

The Convener: Are we content to report that, in light of further information that we have received from the Scottish Government on the production of draft codes by the bodies listed in the order, we find it to be satisfactory?

Members indicated agreement.

National Health Service (Optical Charges and Payments) (Scotland) Amendment (No 2) Regulations 2009 (SSI 2009/288)

The Convener: A bit of backdating is going on here—I suspect that there is not a lot that we can do about it. First, are we content to bring to the attention of the lead committee and the Parliament inserted regulation 8(2A), in so far as the provision might be seen to purport to have retrospective effect, where the parent statute confers no express authority so to provide? Secondly, do we accept the explanation provided for the breach of the 21-day rule and are we content to report accordingly to the lead committee and the Parliament?

Members indicated agreement.

The Convener: The deputy convener is looking quizzical.

Ian McKee (Lothians) (SNP): We are in a bit of a “Yes Minister” situation in relation to the point about the provision’s retrospective effect.

The Convener: The point has been made on the record, with the able assistance of your good self.

Criminal Jurisdiction (Application to Offshore Renewable Energy Installations etc) Order 2009 (SI 2009/1739)

Debt Arrangement Scheme (Scotland) Revocation Regulations 2009 (SSI 2009/258)

Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2009 (SSI 2009/273)

Licensing (Scotland) Act 2005 (Transitional Provisions) Order 2009 (SSI 2009/277)

The Convener: Are we content to report that we are satisfied with the explanation provided for the failure to comply with the 21-day rule, and that we are content with the instruments?

Members indicated agreement.

Ethical Standards in Public Life etc (Scotland) Act 2000 (Codes of Conduct for Members of certain Scottish Public Authorities) Amendment Order 2009 (SSI 2009/287)

Looked After Children (Scotland) Amendment Regulations 2009 (SSI 2009/290)

The committee agreed that no points arose on the instruments.

Maximum Number of Judges (Transitional Provision) (Scotland) Order 2009 (SSI 2009/291)

The Convener: Are we content to report that we are satisfied with the explanation provided for the failure to comply with article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SI 1999/1096)—in other words, the 21-day rule?

Members indicated agreement.

Instruments not laid before the Parliament

Management of Offenders etc (Scotland) Act 2005 (Commencement No 6) Order 2009 (SSI 2009/240)

14:28

The Convener: Are we content to report to the Parliament that the order was defectively drafted, in so far as it failed to commence section 10(2)(b) of the Management of Offenders etc (Scotland) Act 2005 for the purposes of section 10(1)(e) of the act as commenced, and that the matter has been satisfactorily resolved by the Management of Offenders etc (Scotland) Act 2005 (Commencement No 7) Order 2009 (SSI 2009/269)?

Members indicated agreement.

Lands Tribunal for Scotland Amendment Rules 2009 (SSI 2009/259)

The Convener: Are we content to report that we are satisfied with the explanation that the Scottish Government has provided for the delay in submitting the rules to the Parliament and that it has confirmed their date of publication?

Members indicated agreement.

Lands Tribunal for Scotland Amendment (Fees) Rules 2009 (SSI 2009/260)

The Convener: Are we content to report that we are satisfied with the Scottish Government's explanation for the delay in submitting the rules to the Parliament and that it has confirmed their date of publication?

Members indicated agreement.

Act of Sederunt (Rules of the Court of Session Amendment No 7) (Adoption and Children (Scotland) Act 2007) 2009 (SSI 2009/283)

14:30

The Convener: The first question that we asked concerned the vires for inserted rules 67.12(3)(a) and 67.38(3)(a). Are we satisfied with the response from the Lord President's private office, in so far as reliance is placed on section 108(1) of the Adoption and Children (Scotland) Act 2007?

Members indicated agreement.

The Convener: With regard to our second, third and fourth questions, which concerned,

respectively, inserted rules 67.16(1)(a), 67.17(b)(iii) and 67.36(6), inserted rule 67.34(4), and inserted rule 67.35(6), do we welcome the indication given that the typographical errors will be corrected when the opportunity arises?

Members indicated agreement.

The Convener: There will be a short examination after the meeting, to ascertain whether members have remembered what I read out.

Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009 (SSI 2009/284)

The Convener: The first question that we asked concerned the vires for rules 12(3)(a) and 44(3)(a). Are we content to report that we find the response from the Lord President's private office satisfactory, in so far as reliance is placed on section 108(1) of the Adoption and Children (Scotland) Act 2007?

Our second question concerned whether the schedule to the instrument should have been drafted in gender neuter terms. Are we content to note that an explanation has been given, although we encourage the use of gender neutral drafting by the Lord President's private office when the opportunity presents itself?

Members indicated agreement.

Ian McKee: Did you say "gender neutered" the first time, convener?

The Convener: If I did, it is most unfortunate—and it was merely an error.

Act of Sederunt (Ordinary Cause Rules Amendment) (Personal Injuries Actions) 2009 (SSI 2009/285)

The Convener: We have two questions about the act of sederunt. First, are we content to bring it to the attention of the Parliament on the ground that the intention and effect of rule 36.E1(5) are not clear, and to inform the Parliament that the committee has, however, found the explanation provided by the Lord President's private office to be satisfactory?

Members indicated agreement.

The Convener: Secondly, are we content to draw the act of sederunt to the attention of the Parliament on the ground that although—unusually—there is a reference in paragraph 2(7) to a part of the ordinary cause rules that has been revoked, we agree with the Lord President's private office that the reference is not likely to affect the operation of the provision?

Members indicated agreement.

Adoption and Children (Scotland) Act 2007 (Commencement No 4, Transitional and Savings Provisions) Order 2009 (SSI 2009/267)

Management of Offenders etc (Scotland) Act 2005 (Commencement No 7) Order 2009 (SSI 2009/269)

Local Government in Scotland Act 2003 (Commencement No 4) Order 2009 (SSI 2009/275)

Act of Sederunt (Lands Valuation Appeal Court) 2009 (SSI 2009/295)

The committee agreed that no points arose on the instruments.

Decision on Taking Business in Private

14:33

The Convener: The next item is to decide whether to hold our discussion next week about our approach to oral evidence on the Interpretation and Legislative Reform (Scotland) Bill in private. I take it that we agree on that.

Members indicated agreement.

Meeting closed at 14:34.

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