

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 15 September 2009

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

24th 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 4

Scottish Parliament

Subordinate Legislation Committee

Tuesday 15 September 2009

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

Interpretation and Legislative Reform (Scotland) Bill: Stage 1

The Convener (Jamie Stone): I welcome everyone to the 24th meeting this year of the Subordinate Legislation Committee. I have received no apologies; we have a full house. I ask everyone to turn off their mobile phones and so on.

Item 1 is consideration of the delegated powers in parts 4 and 5 of the Interpretation and Legislative Reform (Scotland) Bill. We are reporting to the Standards, Procedures and Public Appointments Committee, to which I will refer in future as the SPPA committee, for its interest as the secondary committee before it reports back to us. We will consider the other delegated powers in the bill at our meeting next week, which I shall not be at—I am grateful to Ian McKee for agreeing to chair it.

On section 47, “Pre-consolidation modifications of enactment”, the committee might wish to highlight to the SPPA committee concerns as to the width of the power in section 47(1). Those concerns are: the power is available in respect of all subject matter, but some areas of the law may be considered too sensitive to permit substantive policy changes to be fast-tracked in that way; the threshold that must be met before the power is available to ministers is loose and subjective; further consideration should be given to the potential for changes to the common law in the course of codification; and interaction between a Scottish instrument and a Westminster bill raises issues of control of the process.

We might also highlight to the SPPA committee our concern as to the proposed level of scrutiny, and express our view that if the power is approved by Parliament in this or an amended form, consideration should be given to increasing the level of scrutiny by use of the super-affirmative procedure. Is that agreed?

Members indicated agreement.

The Convener: Part 5 of the bill relates to orders that are subject to special parliamentary procedure. Does the committee agree that it has

no concerns to highlight to the SPPA committee on delegated powers in relation to part 5, but that we will reconsider part 5 once the SPPA committee has reported back to us on its consideration?

Members indicated agreement.

Control of Dogs (Scotland) Bill: Stage 1

14:17

The Convener: Item 2 is consideration of the delegated powers in the Control of Dogs (Scotland) Bill, which is Christine Grahame's bill.

Section 2(7) contains a power to amend the content of a dog control notice, including by adding requirements or examples of steps to be taken. Does the committee agree to seek clarification, having regard to the final sentence of paragraph 7 of the delegated powers memorandum, as to whether the power in section 2(7)(a) to amend any paragraph of section 2(1) could not be used so as effectively to remove a requirement contained therein—notwithstanding the power in section 2(7)(b), which refers simply to the amendment of section 2(1) by adding a further requirement?

Members indicated agreement.

The Convener: Do we agree that the proposed power under section 2(10) to prescribe a form for a dog control notice is acceptable in principle and that it should be subject to negative procedure?

Members indicated agreement.

The Convener: Section 4(4) contains a power to permit the sharing of and access to information held by a local authority as regards any dog control notice served by that local authority. Do we agree that the proposed power under section 4(4) is acceptable in principle and that it should be subject to affirmative procedure?

Members indicated agreement.

The Convener: Section 8 contains a power to

“provide ... for the establishment, maintenance, operation and control”

of a Scottish dog control database and for the appointment of a database manager. Do we agree to seek further clarification with regard to the power taken under section 8, with reference to the purpose of the database and the effect of an entry being made on it?

Members indicated agreement.

The Convener: The committee might wish to probe the breadth of the general order-making provision in section 8(1). Notwithstanding the fact that paragraph 19 of the delegated powers memorandum indicates that the power under section 8 is concerned with matters of a technical and detailed nature and is more closely related to the operation rather than the principles of the bill, we should ask whether the power in section 8(1) could not, having regard to the provision that it

makes for the operation of a database, be used for purposes extending significantly beyond the nature of what is detailed in section 8(3). We should agree to seek confirmation that that power cannot be used to make provision as to the effect of the database and the effect of being included in it. Do members agree to do that?

Members indicated agreement.

The Convener: Do we agree that the proposed power under section 11 to prescribe procedure in applications to discharge disqualification by rules of court is acceptable in principle and that it should not be subject to any parliamentary procedure?

Members indicated agreement.

Draft Instrument subject to Approval

Health Board Elections (Scotland) Regulations 2009 (Draft)

14:20

The Convener: Do we agree to report to the lead committee and the Parliament that the Scottish Government's response has not assisted us in establishing how, as a matter of law, the eligibility of voters is to be established in circumstances where a person could be entitled, under the criteria set out in rule 5 of the schedule to the regulations, to vote in both Fife health board and Dumfries and Galloway health board elections, and that the meaning and effect of the regulations could be clearer in that respect?

Members indicated agreement.

The Convener: I think that that would be helpful to the Government.

Do we also agree to report that failure to make specific provision for such circumstances and leaving the matter to the discretion of individual returning officers is considered an unusual exercise of the power, given that the Health Boards (Membership and Elections) (Scotland) Act 2009 anticipated that criteria for eligibility would be set in the regulations rather than in guidance, and approved by Parliament?

Members indicated agreement.

Instruments subject to Annulment

Health Boards (Membership) (Scotland) Regulations 2009 (SSI 2009/302)

14:21

The Convener: Do we agree to report that drafting errors have been identified in the definitions of "elected members" and "Health Board election" in regulation 2; in the amendments made to the Health Boards (Membership and Procedure) (Scotland) Regulations 2001 (SSI 2001/302) by paragraph 1(1)(b) of the schedule; and in regulation 6(1) of the 2001 regulations as substituted by paragraph 1(4) of the schedule? It is not considered that the drafting errors would affect the validity or operation of the regulations. Do we agree to report those errors?

Members indicated agreement.

Sea Fishing (Enforcement of Community Control Measures) (Scotland) Amendment Order 2009 (SSI 2009/304)

Plant Health (Import Inspection Fees) (Scotland) Amendment (No 2) Regulations 2009 (SSI 2009/305)

Seed Potatoes (Fees) (Scotland) Regulations 2009 (SSI 2009/306)

National Health Service (Discipline Committees) (Scotland) Amendment Regulations 2009 (SSI 2009/308)

Limited Liability Partnerships (Scotland) Amendment Regulations 2009 (SSI 2009/310)

Judiciary and Courts (Scotland) Act 2008 (Transitional Provision) Order 2009 (SSI 2009/311)

The committee agreed that no points arose on the instruments.

The Convener: The next meeting will be held on Tuesday 22 September at 2.15 pm. I apologise that I will not be joining you, but Dr Ian McKee will ably chair the meeting.

Meeting closed at 14:23.

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Wednesday 23 September 2009

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