

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 17 November 2009

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

30th 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)

*Margaret Curran (Glasgow Baillieston) (Lab)

*Bob Doris (Glasgow) (SNP)

*Helen Eadie (Dunfermline East) (Lab)

*Rhoda Grant (Highlands and Islands) (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 5

Scottish Parliament

Subordinate Legislation Committee

Tuesday 17 November 2009

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

Interests

The Deputy Convener (Ian McKee): I welcome members to the 30th meeting of the Subordinate Legislation Committee in 2009. I have apologies from Jamie Stone. I ask members to turn off any mobile phones and so on.

I welcome Margaret Curran as a new member of the committee. In accordance with section 3 of the code of conduct, I invite her to declare any interests that are relevant to the committee's remit.

Margaret Curran (Glasgow Baillieston) (Lab): I am pleased to be here, convener. I refer members to my entry in the register of members' interests.

The Deputy Convener: Thank you.

Decision on Taking Business in Private

14:15

The Deputy Convener: It is proposed that, under item 6, the committee discuss its response to a consultation from the Standards, Procedures and Public Appointments Committee in private. Given the nature of the discussion, it is appropriate to consider that item in private.

Do members agree to consider item 6 in private?

Members indicated agreement.

Legal Services (Scotland) Bill: Stage 1

14:16

The Deputy Convener: The Legal Services (Scotland) Bill was introduced on 30 September. This is our first consideration of the delegated powers provisions in the bill, of which there are a number. I suggest that we deal only with the powers on which our legal advisers have proposed that we might wish to raise questions with the Scottish Government. We will consider the responses to the questions when we discuss a draft report on the bill at our meeting on 1 December. Are members content that we proceed in that way?

Members indicated agreement.

The Deputy Convener: I will deal with the powers in turn. On section 6, "Approval of regulators", given that the exercise of the power in section 6(7) is not restricted to matters of detail or administration but may extend to substantive matters, as reflected by the express inclusion of further criteria for approval and the specification of categories of bodies that may or may not be an approved regulator, we might want the Scottish Government to explain in more detail why affirmative procedure is not more appropriate than negative procedure. Are members content to put that question to the Scottish Government?

Members indicated agreement.

The Deputy Convener: On section 7, "Authorisation to act", the question on section 7(10) is similar to the one that we have just asked. Given that the exercise of the power is not restricted to matters of detail or administration but may extend to substantive matters, as reflected by the express inclusion of further criteria for authorisation, can the Scottish Government explain in more detail why affirmative procedure is not more appropriate than negative procedure? Are members content to put that question to the Scottish Government?

Members indicated agreement.

The Deputy Convener: On section 27, "Guidance on functions", given that the guidance mentioned in section 27(1) may be directed at a particular approved regulator, is it intended that every approved regulator will be consulted in respect of guidance to be issued to a particular regulator, or that only that particular regulator will be consulted, and how is that reflected in section 27(2)? Are members content to put that question to the Scottish Government?

Members indicated agreement.

The Deputy Convener: On section 35, “Step-in by Ministers”, the committee might want to ask the Scottish Government, in relation to section 35(2), whether it considered whether the use of class 3 procedure rather than negative procedure would not address the Scottish ministers’ concerns about the need to take action at short notice and at the same time give the Scottish Parliament an opportunity to consider the action and, if the Parliament considered it appropriate, approve it. Are members content to put that question to the Scottish Government?

Members indicated agreement.

The Deputy Convener: On section 37, “Eligibility criteria”, given that the exercise of the first element power in section 37(6)(a) is not restricted to matters of clarification or technical addition but may extend to substantive matters that could have a material and significant impact on potential licensed providers, on their prospects for meeting the eligibility criteria or on the costs involved in meeting those criteria, the committee might want to ask the Scottish Government to explain in more detail why affirmative procedure is not more appropriate than negative procedure. Are members content to put that question to the Scottish Government?

Members indicated agreement.

The Deputy Convener: The issue in section 52, “More about investors”, is the same as before—that is, affirmative versus negative. Given that the exercise of the power in section 52(2) is not restricted to matters that are administrative or of technical detail but may extend to substantive matters, as reflected by the express inclusion of requirements on licensed providers and the modification of definitions in section 52(4), can the Scottish Government explain in more detail why affirmative procedure is not more appropriate than negative procedure? Are members content to put that question to the Scottish Government?

Members indicated agreement.

The Deputy Convener: On section 74, “Certification of bodies”, we might wish to ask whether affirmative procedure is more appropriate. Given that the exercise of the power in section 74(7) is not restricted to matters of detail or administration but may extend to substantive matters, as reflected by the express inclusion of further criteria for certification and the specification of categories of bodies that may or may not be an approving body, can the Scottish Government explain in more detail why affirmative procedure is not more appropriate than negative procedure? Are members content to put that question to the Scottish Government?

Members indicated agreement.

The Deputy Convener: On section 81, “Ministerial intervention”, we might wish to ask the Scottish Government to comment on its reasons for taking the power in section 81(4) and for the choice of procedure. The power is not mentioned in the delegated powers memorandum. The information is required so that the committee is fully informed before reaching a view on the power. Are members content to put that question to the Scottish Government?

Members indicated agreement.

The Deputy Convener: With regard to the very wide scope of the power in section 81(5), the committee may wish to ask the Scottish Government to explain more fully the need for this reserve power to create further regulatory safeguards. In particular, the committee may wish to ask whether powers such as those in sections 74(7), 75(2)(f), 81(4) and 83 are not sufficient, and for the Government to provide examples of circumstances in which the power might be used. Are members content to put those questions to the Scottish Government?

Members indicated agreement.

The Deputy Convener: Should we seek further clarification from the Scottish Government as to the circumstances in which the power in section 92, “Council membership”, might be used? In particular, we might want to seek information as to what provision is currently made in relation to determining numbers or criteria for non-solicitor members, and how it might therefore be determined that the Law Society of Scotland’s actions are to be deemed inadequate, so as to necessitate the use of this regulation-making power. Are members content to put that question to the Scottish Government?

Members indicated agreement.

The Deputy Convener: On paragraphs 2(2) and 11(2) in schedule 4, “Financial Penalties”, can the Scottish Government provide further explanation why it is not considered appropriate to have a ceiling on the maximum penalty specified in the bill? Are members content to put that question to the Scottish Government?

Members indicated agreement.

The Deputy Convener: Can the Scottish Government explain in more detail why the maximum penalty and the rate of interest are not matters that should be considered and determined by Parliament under affirmative procedure? Are members content to put that question to the Scottish Government?

Members indicated agreement.

The Deputy Convener: No issues have been raised on the other powers in the bill. As members

have no other questions that they wish to raise with the Government, we will await the Government's response and dispose of all the powers at our meeting on 1 December.

Instruments subject to Annulment

Glasgow City Council Area and North Lanarkshire Council Area (Cardowan by Steps) Boundaries Amendment Order 2009 (SSI 2009/368)

14:23

The Deputy Convener: Agenda item 4 is instruments subject to annulment. There has been considerable correspondence with the Government this week on a number of instruments. Rather than read out all the recommendations, I may refer to the summary paper for the more lengthy or complex recommendations, unless members have any objections.

Are members content with the recommendation that is proposed in the summary of recommendations for this order?

Members *indicated agreement.*

Railway Closures (Exclusion) Scotland Order 2009 (SSI 2009/371)

The Deputy Convener: Is the committee content to report that the order contains a drafting error, in that the definition of the Railways Act 2005 in the preamble is of no legislative effect? No definition was required, since the 2005 act is referred to once only. It should be noted that the error is unlikely to affect the validity or the operation of the instrument. Are members content?

Members *indicated agreement.*

Feed (Specified Undesirable Substances) (Scotland) Regulations 2009 (SSI 2009/373)

The Deputy Convener: Is the committee agreed that the Scottish Government has provided a satisfactory response in relation to the question raised about whether the instrument's purpose falls under powers exercisable by the Scottish ministers, and to report accordingly to the lead committee and to the Parliament?

Members *indicated agreement.*

Food Labelling (Declaration of Allergens) (Scotland) Regulations 2009 (SSI 2009/374)

The Deputy Convener: Do we agree to draw the regulations to the attention of the Parliament and the lead committee on the ground that there has been a delay of almost six months in

correcting an incompatibility between Scots criminal law and European Community law?

Members indicated agreement.

**Protection of Vulnerable Groups
(Scotland) Act 2007 (Transitory Provisions
in Consequence of the Safeguarding
Vulnerable Groups (Northern Ireland)
Order 2007) Order 2009 (SSI 2009/375)**

The Deputy Convener: Do we agree to bring the order to the attention of the lead committee and the Parliament on the basis that the form or meaning of article 3, which provides for modification of the Police Act 1997, could have been made clearer? I should point out that when the question whether an instrument makes a textual amendment determines the parliamentary procedure that applies, the committee considers that the form of modification that is adopted should be made absolutely clear. Are we agreed?

Members indicated agreement.

**Rural Payments (Appeals) (Scotland)
Regulations 2009 (SSI 2009/376)**

The Deputy Convener: We are likely to be satisfied with the response for the regulations. Are we happy to agree to the proposal in the summary of recommendations?

Members indicated agreement.

**Planning (Control of Major–Accident
Hazards) (Scotland) Regulations 2009
(SSI 2009/378)**

The Deputy Convener: Is the committee content to report to the lead committee the recommendations as set out in the summary of recommendations?

Members indicated agreement.

**Act of Sederunt (Fees of Sheriff Officers)
(Diligence) 2009 (SSI 2009/379)**

The Deputy Convener: Does the committee agree to welcome the indication that the drafting error to the reference made to item 5(c) will be addressed at the next available opportunity?

Members indicated agreement.

The Deputy Convener: Do we agree to report the act of sederunt to the Parliament on the basis that its meaning could be clearer, there being an inconsistency between paragraph 3(2), which provides for the insertion of item 5(c) in the table of fees, and paragraph 4, which states that item 5 in the table of fees is omitted? The error is not likely to have an effect on the operation of the instrument. Are we happy with that?

Members indicated agreement.

The Deputy Convener: Finally, in relation to the breach of the 21-day rule, are we satisfied with the explanation given by the Lord President's private office for the failure to comply with article 10(2) of the Scotland Act (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SSI 1999/1096)?

Members indicated agreement.

**Home Energy Assistance Scheme
(Scotland) Amendment Regulations 2009
(SSI 2009/392)**

The committee agreed that no points arose on the instrument.

Instruments not laid before the Parliament

Bankruptcy and Diligence etc (Scotland) Act 2007 (Commencement No 5 and Transitional) Order 2009 (SSI 2009/369)

14:27

The Deputy Convener: The Scottish Government has acknowledged that the commencement position with respect to certain provisions would have been clearer to the reader if full reliance had been placed on the effect of article 3(3) when drafting the entries 10(c) and 16(c) of the schedule. Otherwise, we are content with the instrument. Is that agreed?

Members *indicated agreement.*

Act of Sederunt (Rules of the Court of Session Amendment No 8) (Motions Procedure) 2009 (SSI 2009/387)

Flood Risk Management (Scotland) Act 2009 (Commencement No 1 and Transitional and Savings Provisions) Order 2009 (SSI 2009/393)

The committee agreed that no points arose on the instruments.

The Deputy Convener: I declare the public part of the meeting closed.

14:28

Meeting continued in private until 14:41.

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