

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 12 January 2010

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

1st Meeting 2010, 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 6

Scottish Parliament

Subordinate Legislation Committee

Tuesday 12 January 2010

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

Equality Bill

The Convener (Jamie Stone): Welcome to the first meeting in 2010 of the Subordinate Legislation Committee. I wish everyone a slightly belated happy new year.

We have apologies from Margaret Curran and Rhoda Grant. Could everyone remember to switch off their mobile phones and BlackBerrys? I say that every week.

We will consider for our interest the legislative consent memorandum that has been lodged in relation to the United Kingdom Equality Bill. We have to report on two powers. The first—the power to amend section 1—is in clauses 2(4), 2(8) and 2(9). Does the committee agree to report to Parliament that it appears that the delegated powers require to be used in clause 2 to engage the application of the duty for Scotland in order to meet the legislative timetable in the Westminster Parliament? Do we agree to question whether that is a proper use of delegated powers, especially given that the Scottish Parliament has no opportunity to amend the scope of the powers conferred on the Scottish ministers that are within legislative competence and which are inherently restricted in their application by the position adopted in relation to England?

Does the committee also agree that it is not clear why the duty cannot be applied to devolved functions of authorities that have functions in relation to Scotland and outside Scotland, since Scottish ministers' powers do not extend to such authorities by virtue of clause 2(5)(a), and the powers of ministers of the Crown do not extend to devolved functions by virtue of clause 2(3)?

Do we also agree to report to Parliament that the committee considers that, given the policy significance of the extension of the proposed socioeconomic duty to Scottish public authorities, regulations under clauses 2(4), 2(8) or 2(9) should be subject to affirmative procedure and not, as currently drafted, negative procedure? Finally, are we happy to note that the availability of those powers depends on commencement of the powers by order of the minister of the Crown?

Are we content to report those issues, as I have read them out, to the lead committee and Parliament?

Members *indicated agreement.*

The Convener: On clause 37, “Adjustments to common parts in Scotland”, do we agree to report that the committee is content with the power in clause 37(1) in principle, and that it is subject to affirmative procedure?

Members *indicated agreement.*

Alcohol etc (Scotland) Bill: Stage 1

14:17

The Convener: The second agenda item is of interest to the Parliament and members of other committees, and we must stick to the rules on our function.

There are a number of delegated powers in the bill. At this point, we would normally write to the Government with any questions and consider the Government's response at a subsequent meeting before finalising our stage 1 report. However, we have time available to hear first-hand from officials before making our recommendations. In particular, the committee might want to take oral evidence on the reason why the initial minimum price per unit of alcohol will be set through delegated powers rather than being put into the bill. It might be more productive for us to take oral evidence for our consideration of the delegated powers rather than trading questions and answers with the Scottish Government, because the answers are sometimes not as full as they might be. What are members' views on that? I have expressed my thoughts.

Helen Eadie (Dunfermline East) (Lab): I agree with you.

Jackson Carlaw (West of Scotland) (Con): I also agree.

The Convener: Okay. Do we agree to invite officials to give oral evidence on the bill at our meeting of 26 January?

Members *indicated agreement.*

The Convener: Splendid. We can now leap forward quite quickly on the agenda.

Instruments subject to Approval

**Loch Ryan Port (Harbour Empowerment)
Order 2009 (Draft)**

**Public Appointments and Public Bodies
etc (Scotland) Act 2003 (Amendment of
Specified Authorities) Order 2010 (Draft)**

14:18

The Convener: Members with good memories will recognise an old friend in the Loch Ryan order.

The committee agreed that no points arose on the instruments.

Instruments subject to Annulment

Food Enzymes (Scotland) Regulations 2009 (SSI 2009/435)

14:19

The Convener: Does the committee agree to report that an explanation was sought from and provided by the Scottish Government, in relation to the conduct that amounts to an offence as of 20 January 2010 with reference to European Commission regulation 1332/2008, with which we are satisfied?

Members *indicated agreement.*

Food Additives (Scotland) Regulations 2009 (SSI 2009/436)

The Convener: Do members agree to report that an explanation was sought from and provided by the Scottish Government on the meaning and effect of

“an appropriate mixture of (b) and (c)”

in regulation 4(d)?

Do members also agree to report that the Government response clarifies that the effect of regulation 4(d) is to implement directly the requirement in article 2(8) of directive 94/36/EC on colours for use in foodstuffs, but that the response does not clarify how in practice persons requiring to mark meat are to establish what an “appropriate” or “inappropriate” mixture of the colours E133 brilliant blue and E129 allura red is, to comply with regulation 4(d)?

Members *indicated agreement.*

The Convener: Reds and blues all the way. That is odd, coming from a Liberal.

Food Supplements, Vitamins, Minerals and Other Substances (Scotland) Regulations 2009 (SSI 2009/438)

The Convener: Our advisers have raised a number of issues on the regulations that are in the summary of recommendations. Do members agree to report those to the lead committee?

Members *indicated agreement.*

The Convener: There was also a breach of the 21-day rule. Are members content with the explanation given by the Government for the 21-day rule not having been complied with?

Members *indicated agreement.*

Public Contracts and Utilities Contracts (Scotland) Amendment (Amendment) Regulations 2009 (SSI 2009/439)

The Convener: These regulations also breached the 21-day rule. Does the committee accept the explanation offered by the Scottish Government for the 21-day rule not having been complied with?

Members *indicated agreement.*

INSPIRE (Scotland) Regulations 2009 (SSI 2009/440)

The Convener: This is yet another breach of the 21-day rule. We understand why it was necessary to fulfil an undertaking given to the European Commission, but it appears that the circumstances that gave rise to the breach were of the Government’s own making. Do we agree to report that, while we accept that an explanation has been provided for the necessity of the breach and therefore that the requirements of the transitional order have been fulfilled, it is unsatisfactory that it was the Scottish Government’s approach to implementation that led to the need to breach the Parliament’s rule? The Government has been hoist with its own petard.

It is not a satisfactory explanation for the breach of the rule that the timing of laying the Scottish regulations to implement EC directive 2007/2, which were laid late, depended on the completion and laying of the regulations for the remainder of the UK. When the Scottish Government is preparing a timetable for and delivering implementing regulations, it should take full account of the rules that afford sufficient time for Parliamentary scrutiny. Do members agree to report the regulations in those terms?

Members *indicated agreement.*

The Convener: A number of reporting grounds in relation to the regulations are detailed in the summary of recommendations. Do members also agree to report the regulations on those grounds?

Members *indicated agreement.*

Food (Jelly Mini-Cups) (Emergency Control) (Scotland) Regulations 2009 (SSI 2009/437)

Angus Council Area and Dundee City Council Area (Fithiebank) Boundaries Amendment Order 2009 (SSI 2009/442)

Shetland Islands Regulated Fishery (Scotland) Order 2009 (SSI 2009/443)

Inshore Fishing (Prohibition of Fishing for Cockles) (Western Isles) (Scotland) Order 2009 (SSI 2009/444)

Action Programme for Nitrate Vulnerable Zones (Scotland) Amendment Regulations 2009 (SSI 2009/447)

Scottish Criminal Cases Review Commission (Permitted Disclosure of Information) Order 2009 (SSI 2009/448)

The committee agreed that no points arose on the instruments.

Guidance subject to Approval

Scottish Government Code of Practice for the Welfare of Dogs (SG 2009/279)

Scottish Government Code of Practice for the Welfare of Cats (SG 2009/280)

The committee agreed that no points arose on the codes of practice.

Meeting closed at 14:24.

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