

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 19 January 2010

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

2nd 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 4

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 19 January 2010

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

Decision on Taking Business in
Private

The Convener (Jamie Stone): I welcome everyone to the second meeting of the Subordinate Legislation Committee this year. We have received apologies from Margaret Curran and Jackson Carlaw. As usual, I ask everyone to turn off their mobiles and BlackBerrys.

Agenda item 1 is consideration of whether to take business in private. The proposal is that, under items 6 and 7, we discuss the content of draft reports on the Budget (Scotland) (No 4) Bill and the Tobacco and Primary Medical Services (Scotland) Bill in private. That has been our practice in the past. Are members happy for us to do that today?

Members *indicated agreement.*

Criminal Justice and Licensing
(Scotland) Bill: After Stage 1

14:15

The Convener: We have the Government's response to our stage 1 report on the delegated powers in the Criminal Justice and Licensing (Scotland) Bill. Members will be pleased to note that the Government has agreed to make a number of amendments in response to the committee's recommendations. However, the Government has informed us that it is not minded to follow the committee's recommendations regarding section 18(2)(a)(iii), paragraphs 10(3) and 10(4) of schedule 2, section 82(1)(a) and section 115. We are simply asked to note the response at this stage. We will return to the bill after stage 2, when we will be able to revisit those areas as we consider all the changes that have been made to the powers in the bill during stage 2. Nevertheless, it should be noted that members are free to lodge amendments, should they wish to do so.

Do members have any comments on the response?

Helen Eadie (Dunfermline East) (Lab): We should just digest the response from the Government. We can then lodge amendments if we wish to do so.

The Convener: Okay. Stage 2 consideration is scheduled to start on 2 March. Are members content to note the response, as set out in the paper from the clerk?

Members *indicated agreement.*

Draft Instrument subject to Approval

Health Board Elections (Scotland) Amendment Regulations 2010 (Draft)

14:17

The Convener: I ask the committee to agree to report the following points to the lead committee and the Parliament. First, the effect of regulation 2(4), which amends rule 5 of the schedule to the principal regulations, the Health Board Elections (Scotland) Regulations 2009 (SSI 2009/352), is not to specify how the eligibility of voters is to be established in circumstances in which a person could be entitled by the criteria that are set out in rule 5 to vote in health board elections both in Fife and in Dumfries and Galloway. The implied effect of that paragraph is that a voter may select the one area in which they may vote. If that is the intended policy, it could have been more clearly expressed.

Secondly, there appears to be a doubt whether the offences provisions in paragraphs (2), (3) and (4) of new regulation 5A of the principal regulations, as inserted by regulation 2 of the draft regulations, are *intra vires* given the strong presumption against the creation of offences by subordinate legislation, which is rebuttable only by express provision or clear inference, neither of which appears to be present in this case.

Are those points agreed?

Members *indicated agreement.*

Instruments subject to Annulment

Official Feed and Food Controls (Scotland) Regulations 2009 (SSI 2009/446)

14:18

The Convener: There are two issues with the regulations that we should report to the lead committee and the Parliament. First, do we agree to report that regulations 30(1), 30(2), 38(10) and 46(2)(a) are defectively drafted and that we welcome the Government's commitment to correct the errors before the regulations come into force?

Members *indicated agreement.*

The Convener: Secondly, do we agree to draw it to the Government's attention that regulations 9(4)(d), 15(1) and 18(6)(b) are inconsistent with normal drafting practice in that they do not use gender-neutral language?

Members *indicated agreement.*

Homeless Persons (Provision of Non- permanent Accommodation) (Scotland) Regulations 2010 (SSI 2010/2)

The committee agreed that no points arose on the instrument.

Instruments not laid before the Parliament

**Tuberculosis (Scotland) Amendment
Order 2009 (SSI 2009/445)**

**Act of Sederunt (Child Care and
Maintenance Rules) Amendment (No 2)
2009 (SSI 2009/449)**

**Act of Sederunt (Rules of the Court of
Session Amendment No 9)
(Miscellaneous) 2009 (SSI 2009/450)**

**Wild Birds (Special Protection in Severe
Weather) (Scotland) Order 2010
(SSI 2010/4)**

The Convener: We will now move into private. I thank the official report.

14:20

Meeting continued in private until 14:23.

14:19

The committee agreed that no points arose on the instruments.

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