



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 23 March 2010

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

10th 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

LOCATION

Committee Room 5

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 23 March 2010

[The Convener *opened the meeting at 13:30*]

Decision on Taking Business in
Private

The Convener (Jamie Stone): I welcome everyone to the 10th meeting in 2010 of the Subordinate Legislation Committee. We have received apologies from Jackson Carlaw and Ian McKee. I remind everyone to turn off their mobile phones and BlackBerrys.

The first item is to decide whether to take agenda items 6 and 7, which are to discuss our draft stage 2 report on the Public Services Reform (Scotland) Bill and our stage 1 report on the Housing (Scotland) Bill, in private. Are we agreed?

Members *indicated agreement.*

Draft Instrument subject to
Approval

Census (Scotland) Order 2010 (Draft)

13:30

The Convener: No points have arisen on the order, but we should note that this is the fourth time that it has been laid. A more thorough consultation with the relevant parties in advance of bringing the order to the Parliament might have achieved consensus, rather than re-laying amended versions of the same order, which is something of a chore for the committee's support team. Are we content with the order?

Members *indicated agreement.*

Helen Eadie (Dunfermline East) (Lab): I agree with your comments, convener.

The Convener: Thank you, Helen.

Instruments subject to Annulment

National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2010 (SSI 2010/86)

13:31

The Convener: Do we agree to report the regulations on the ground of defective drafting, as set out in our summary of recommendations?

Members *indicated agreement.*

Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2010 (SSI 2010/89)

The Convener: Again, do we agree to report the regulations on the ground of defective drafting, as set out in our summary of recommendations?

Members *indicated agreement.*

The Convener: We welcome the Government's promise to lay a corrective instrument to resolve the errors in the regulations prior to their coming into force. That is a good move.

Water Quality (Scotland) Regulations 2010 (SSI 2010/95)

The Convener: Does the committee agree to report that the regulations do not follow normal legislative practice? Although paragraph 2 of schedule 2 to the European Communities Act 1972 provides a choice of draft affirmative or negative procedure, the exercise, under section 2(2) of the 1972 act, of powers that include the amendment of primary legislation and the creation of new offences should normally select draft affirmative procedure as appropriate for parliamentary scrutiny. However, on 2 March, the committee took evidence on the regulations from Roseanna Cunningham, who explained why it is necessary to choose negative procedure in this case. Are we therefore content to report that to the lead committee?

Members *indicated agreement.*

Helen Eadie: I am content, if we add the caveat that it would be helpful if in future the Government supplied a transposition note in a similar situation.

The Convener: That is worthy advice. That is now on the record.

Parking Attendants (Wearing of Uniforms) (Renfrewshire Council Parking Area) Regulations 2010 (SSI 2010/97)

Road Traffic (Parking Adjudicators) (Renfrewshire Council) Regulations 2010 (SSI 2010/98)

Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010 (SSI 2010/100)

Home Energy Assistance Scheme (Scotland) Amendment Regulations 2010 (SSI 2010/110)

The committee agreed that no points arose on the instruments.

Local Government (Allowances and Expenses) (Scotland) Amendment (No 2) Regulations 2010 (SSI 2010/111)

The Convener: The regulations breached the 21-day rule. Are we content with the reasons given for the breach and with the regulations?

Members *indicated agreement.*

Instrument not subject to Parliamentary Procedure

Plant Health (Potatoes) (Scotland) Amendment Order 2010 (SSI 2010/99)

13:33

The committee agreed that no points arose on the instrument.

Children's Hearings (Scotland) Bill: Stage 1

13:33

The Convener: This is our first look at the bill. Today, as usual, we will consider those powers on which our advisers have raised questions; on 20 April we will consider a draft report on all the powers.

Section 10 gives the Scottish ministers the power to change the national convener's functions, and section 17 gives the Scottish ministers the power to change the principal reporter's functions. In view of the fact that the powers conferred in sections 10(1) and 17(1) are broad and potentially significant, do we wish to ask the Scottish Government to further justify the need for them, with reference to examples of circumstances in which they might be used?

Furthermore, we should ask whether the power could be used to alter functions that conflict with the independent status of the national convener and the principal reporter, or that could impact significantly upon that status. Are we agreed?

Members indicated agreement.

The Convener: On section 30, "Safeguarders Panels", does the committee agree to ask the Scottish Government why negative procedure is considered to be appropriate in relation to section 30(2)(g), which is concerned with conferring functions on safeguarders, and which might be viewed as raising different considerations to those administrative, operational or procedural issues with which sections 30(2)(a) to (f) are concerned?

Members indicated agreement.

The Convener: Section 55, "Sections 53 and 54: regulations", is on making further provision in respect of a child who has been removed to or kept in a place of safety. Do we agree to ask the Scottish Government to justify such a broadly stated power as that in section 55(1)? Although the delegated powers memorandum comments on the detailed provision that might be made under the power with reference to notification procedures and so on, could the power be used for wider purposes? If it is intended to use the power for the more narrow purposes that are indicated in the DPM, could the provision not have been drafted in more restricted terms? Do we agree to raise those points?

Members indicated agreement.

The Convener: Section 128(5) is on the right of a child or relevant person to require a review. Do we agree to ask the Scottish Government why it is not considered to be possible to specify in the bill

a different review period for a compulsory supervision order containing a secure accommodation authorisation? If, as the DPM indicates, the intention is for such a period to be shortened in the case of a compulsory supervision order containing a secure accommodation authorisation, shall we ask the Scottish Government why section 128(5) does not refer to a shorter period, even if the particular period is not specified?

Members indicated agreement.

The Convener: I welcome Dr Ian McKee. I submitted your apologies, but you are with us now.

On section 143, "Compulsory supervision orders etc: further provision", do we agree to ask the Scottish Government to further justify the need for the power in section 143(1) with reference to examples of circumstances in which it might be used? We might also ask why regulations under section 143(1) should be subject to negative procedure in all cases, and whether some matters could be dealt with under the proposed power in section 143(1) that could be important enough to warrant being subject to affirmative procedure. Is that agreed?

Members indicated agreement.

The Convener: On section 144, "Movement restriction conditions: regulations etc", we might wish to ask the Scottish Government for its view on the breadth of the power proposed in section 144(1). Could the regulations made under that power be used to set out restrictions that could be imposed as part of a movement restriction condition in terms such that affirmative procedure would be more appropriate than negative procedure? Do we agree to raise those points?

Members indicated agreement.

The Convener: Do we agree to ask the Scottish Government whether the power in section 146(1), "Secure accommodation: placement in other circumstances", could be used to deal with matters that go beyond those of an administrative, technical or procedural nature and that relate more directly to the circumstances in which a child can be placed in secure accommodation, so that affirmative procedure might be appropriate? Is it not the case that some matters for which provision might be made under section 146(2), such as the giving of reasons for decisions and the review of decisions, could be of greater consequence than others, so that the use of negative procedure in all instances might not necessarily be appropriate?

Does the committee agree to ask those questions?

Members indicated agreement.

The Convener: The committee might want to probe the breadth of the power proposed in section 147, "Secure accommodation: placement in other circumstances". In particular, shall we ask whether, given its general nature and the potential for it to be used in relation to a significant range of issues around children in secure accommodation, the exercise of the power should be subject to affirmative procedure?

Members indicated agreement.

The Convener: Does the committee wish to ask the Scottish Government why regulations made under section 170, "Children's hearings: procedural rules", should be subject to negative procedure in all cases? Are there matters that could be dealt with under the power proposed in section 170 that could warrant being subject to affirmative procedure, having regard to the nature, range and importance of some of the issues that regulations made under section 170 might cover? For example, are issues that might be dealt with under sections 170(2)(d) to (f) and (h) and (k), to the extent that they might deal with substantive rights, likely to be of particular interest to the Parliament? Does the committee agree to raise those points?

Members indicated agreement.

The Convener: Section 189 contains the power to make such supplementary, incidental or consequential provision as is considered appropriate for the purposes of, in consequence of or for giving full effect to any provision of the bill. Do we agree to ask the Scottish Government whether, given the high level of political interest in the subject matter of the bill, the use of affirmative procedure under the section should be extended to cover the full range of matters to which subsection (1) refers? Given that some matters that are dealt with by way of supplementary, incidental or consequential provision could be of considerable significance, would not affirmative procedure provide a more appropriate level of scrutiny? Do we agree to ask that?

Members indicated agreement.

The Convener: We are almost there, colleagues.

Section 191(2) provides the power to commence provisions of the bill. Do we agree to ask the Scottish Government whether an order that is made under section 191 and which also makes ancillary provision by virtue of section 181(2) should be subject to parliamentary procedure in the manner that is provided for in sections 189 and 190, as appropriate? Do we also agree to ask why a distinction is made in the parliamentary procedure that depends on whether ancillary provision is being made on a stand-alone basis with reference to the powers in section 189

or 190 or, in the context of commencement, by reference to section 191?

Members *indicated agreement.*

The Convener: Shall we seek clarification as to why the Scottish Government's view is that the direction-making powers in sections 13 and 22 should not be subject to some form of parliamentary scrutiny, given that each power of direction could be used to make significant provision about the carrying out of the functions of children's hearings Scotland or the Scottish Children's Reporter Administration? Do we agree to ask whether those provisions should be recast in the form of a power in favour of the Scottish ministers to make provision on the carrying out of functions?

Members *indicated agreement.*

The Convener: We will consider the responses to those questions and the rest of the delegated powers at our meeting on 20 April, which is after the Easter recess.

We agreed earlier to go into private, so I thank the official report and anyone else who has been good enough to attend the meeting.

13:41

Meeting continued in private until 13:46.

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