



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 26 October 2010

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SUBORDINATE LEGISLATION COMMITTEE

28th Meeting 2010, Session 3

CONVENER

*Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

DEPUTY CONVENER

*Ian McKee (Lothians) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow) (SNP)

*Helen Eadie (Dunfermline East) (Lab)

*Rhoda Grant (Highlands and Islands) (Lab)

*Alex Johnstone (North East Scotland) (Con)

Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Bill Aitken (Glasgow) (Con)

Ross Finnie (West of Scotland) (LD)

Karen Gillon (Clydesdale) (Lab)

Christopher Harvie (Mid Scotland and Fife) (SNP)

*attended

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 6

Scottish Parliament Subordinate Legislation Committee

Tuesday 26 October 2010

[The Convener *opened the meeting at 14:15*]

Decision on Taking Business in Private

The Convener (Jamie Stone): I welcome everyone to the 28th meeting in 2010 of the Subordinate Legislation Committee. We have received apologies from Elaine Smith.

Can everyone please turn off their mobile phones and BlackBerrys?

The first item on the agenda is a decision to take business in private. It is proposed that we take item 9, which is a discussion on a draft report on the Property Factors (Scotland) Bill, in private. Are we agreed?

Members *indicated agreement.*

Draft Instruments subject to Approval

**Regulation of Investigatory Powers
(Scotland) Amendment Order 2010 (Draft)**

**Protection of Vulnerable Groups
(Scotland) Act 2007 (Miscellaneous
Provisions) Order 2010 (Draft)**

14:15

The committee agreed that no points arose on the instruments.

Instruments subject to Annulment

**Animals and Animal Products (Import and
Export) (Scotland) Amendment
Regulations 2010 (SSI 2010/343)**

14:15

The Convener: The committee may wish to report the amendment regulations on the general ground, in that the Government has failed to follow proper drafting practice. We do not dispute that the effect of the amendment regulations is to make ambulatory the references to the new European Union provisions inserted by them into the principal regulations. However, in making new ambulatory references by virtue of the amendment regulations, whether achieved by a gloss or not, the power in paragraph 1A of schedule 2 to the European Communities Act 1972 must have been exercised by the amendment regulations. Accordingly, it would have been proper practice to refer to that in the preamble and to explain whether the necessity or expediency tests were considered to be satisfied in this case. That is necessary to assist parliamentary scrutiny of the reason for making ambulatory references. Does the committee agree to report on the amendment regulations in those terms?

Members *indicated agreement.*

**Protection of Vulnerable Groups
(Scotland) Act 2007 (Corresponding
Disqualifications) Order 2010 (SSI
2010/346)**

**East Dunbartonshire Council Area and
Glasgow City Council Area (Princes Gate
and Greenacres by Robroyston)
Boundaries Alteration Order (SSI
2010/353)**

**Foodstuffs Suitable for People Intolerant
to Gluten (Scotland) Regulations 2010 (SSI
2010/355)**

**Mental Welfare Commission for Scotland
(Qualifications, Training and Experience of
Medical Visitors) Regulations 2010 (SSI
2010/356)**

The committee agreed that no points arose on the instruments.

Instruments not laid before the Parliament

**Act of Sederunt (Sheriff Court Rules)
(Equality Act 2010) 2010 (SSI 2010/340)**

**Sexual Offences (Scotland) Act 2009
(Commencement No 1) and the Criminal
Justice and Licensing (Scotland) Act 2010
(Commencement No 4) Order 2010 (SSI
2010/357)**

14:17

The Convener: No points have been raised on the instruments, but the committee might wish to welcome the point that the amendments to the sheriff court rules in SSI 2010/340 take a new approach in drafting the relevant provisions in gender-neutral terms. With that noted, is the committee agreed to note that no points were raised on the instruments?

Members *indicated agreement.*

Palliative Care (Scotland) Bill: Stage 1

14:17

The Convener: The bill is a member's bill, and there is no requirement for the member in charge to produce a delegated powers memorandum.

We are, however, required to consider and report on all proposed delegated powers. There are just two such powers in the bill and our advisers have kindly provided us with a briefing on them.

The proposed new section 48B(3) of the National Health Service (Scotland) Act 1978, "Reports to the Scottish Parliament", confers on the Scottish ministers the power to modify the terms of schedule 9A (1) indicators. Unusually—it is possibly a historic first—the committee is being asked to downgrade that power from affirmative to negative procedure. There we are; that made you all sit up.

Do members agree to report that negative procedure would be the most appropriate in this case? Are we content with the powers to be conferred by the proposed new sections 48B(4), (5) and (6) of the National Health Service (Scotland) Act 1978?

Members *indicated agreement.*

Damages (Scotland) Bill: Stage 1

14:18

The Convener: Our team of advisers has suggested that the committee ask for clarification of a minor point from our colleague Bill Butler, who is the member in charge of the bill.

Section 18(1) is on transitional provisions. Does the committee agree to ask Bill Butler to clarify the intended meaning and scope of the phrase

“an enactment contained in an Act”

where it appears in section 18(4), and its intended application to the bill? Given the fact that the reference describes those circumstances in which an order under section 18(1) is to be subject to affirmative procedure, and is therefore of particular importance, could it be clarified by, for example, making reference to “any enactment (including this Act)”? Is that agreed?

Members *indicated agreement.*

The Convener: We will consider Bill Butler’s response and a draft report at our meeting on 9 November, which is a fortnight hence.

Housing (Scotland) Bill: After Stage 2

14:19

The Convener: The Government has provided the committee with a supplementary delegated powers memorandum for the bill. Our team of advisers has not raised any questions on the altered powers. Are we therefore content with the amended powers?

Members *indicated agreement.*

Domestic Abuse (Scotland) Bill: Stage 1

14:20

The Convener: Before we move on to item 8, as it is her bill, I need to ask Rhoda Grant to leave us in peace for a moment—perhaps I should rephrase that. We will see you back for the final agenda item.

It should now be clear that the Domestic Abuse (Scotland) Bill is also a member's bill.

There is one power in the bill and another matter in relation to which it might have been anticipated that a power would have been provided, and our advisers have provided us with a briefing that covers those matters. They have suggested that the committee should seek further information from Rhoda Grant, the member in charge of the bill, on section 4, "Meaning of 'domestic abuse'" and the power in section 4(3) to modify the terms of section 4(1). In light of the legal effect of the exercise of the power to extend the categories of relationship to which the bill's remedies can apply, we should ask why it is considered that negative procedure provides a sufficient level of scrutiny. Do we agree to ask that question?

Members indicated agreement.

The Convener: The second question is about ancillary powers. There is no power to make transitional, transitory or savings provisions. Given that the bill will create new criminal offences in relation to extant protection orders, and will make provision for the availability of legal aid in certain types of proceedings, do we agree to ask Rhoda Grant whether it would be appropriate to have the power to make such provisions?

Members indicated agreement.

The Convener: I am sorry about that; we have to keep things formal. As Rhoda Grant is on the committee, we could have asked her directly, but we have followed the correct procedure. We will look at her response at our meeting next week. It might be quicker than that, but it is in the hands of our team; we shall see.

Rhoda Grant can rejoin the committee, and we will continue in private.

14:21

Meeting continued in private until 14:22.

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