



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 13 September 2011

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SUBORDINATE LEGISLATION COMMITTEE

4th Meeting 2011, Session 4

CONVENER

*Nigel Don (Angus North and Mearns) (SNP)

DEPUTY CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

COMMITTEE MEMBERS

*Chic Brodie (South Scotland) (SNP)

*Kezia Dugdale (Lothian) (Lab)

*Mike MacKenzie (Highlands and Islands) (SNP)

*John Scott (Ayr) (Con)

*Drew Smith (Glasgow) (Lab)

*attended

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 6

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 13 September 2011

[The Convener *opened the meeting at 14:30*]

Decision on Taking Business in
Private

The Convener (Nigel Don): I welcome members to the fourth meeting in session 4 of the Subordinate Legislation Committee. As usual, I ask members to turn off their mobile phones and not just to put them on silent, because they affect our electric system.

Item 1 is a decision on whether to take in private item 5, which is consideration of a legislative consent memorandum. Do members agree to take item 5 in private?

Members *indicated agreement.*

Instruments subject to
Affirmative Procedure

Climate Change (Annual Targets)
(Scotland) Order 2011 [Draft]

Public Services Reform (Scotland) Act
2010 (Consequential Modifications) (No 2)
Order 2011 [Draft]

14:30

The committee agreed that no points arose on the instruments.

Instruments subject to Negative Procedure

Food Additives (Scotland) Amendment (No 2) Regulations 2011 (SSI 2011/305)

14:31

The Convener: As members will note from the legal brief, the regulations were not laid before the Scottish Parliament before they came into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. Given the breach of section 28(2), does the committee agree to draw the regulations to the Parliament's attention on reporting ground (j)?

Members *indicated agreement.*

The Convener: Members may wish to note the explanation provided by the Food Standards Agency for failing to lay the instrument 28 days before it came into force. The FSA said that the approach taken was necessary in order to comply with article 2 of European Commission directive 2011/3/EU and to ensure the same coming-into-force date as the rest of the jurisdictions in the United Kingdom, with a view to ensuring consistency. Is the committee happy to accept that explanation?

Drew Smith (Glasgow) (Lab): In our annual reporting procedure, do we list what we have reported on in terms of the responsible authority, which in this case was the Food Standards Agency? It might be interesting to know whether certain responsible authorities are giving us more grounds for reporting.

The Convener: I am advised that it would come under the Government department that sponsored the instrument, rather than the FSA or any other agency.

Good afternoon, Mr Scott. It is wonderful to see you.

It is always open to the committee to point out to the Government that a particular organisation or drafting section is giving us problems. It is probably something that we would do informally. If we picked up something like that, I suggest that we would point it out to the Government quite quickly.

Although the FSA has provided an explanation, it appears to demonstrate that the FSA had forgotten that a recess was coming up. I have a sneaking feeling that it could have laid the regulations within the 28 days had it decided that it wanted to. The fact that it was consulting at the time would not have prevented it from doing what it should have done. We should note that, and

remind the Government that there are reasons for the 28-day rule. There will sometimes be good excuses, but this does not seem like a terribly good one to me. Is the committee happy to accept that suggestion?

John Scott (Ayr) (Con): Convener, forgive me, you have probably already covered this point, but I note that this is the sixth occasion on which the principal regulations have been amended.

The Convener: We are on the instrument previous to the one that you are looking at. We are on the Food Additives (Scotland) Amendment (No 2) Regulations 2011.

John Scott: Forgive me.

The Convener: Are we content with those thoughts on the regulations?

Members *indicated agreement.*

Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2011 (SSI 2011/311)

The Convener: No points arise on the regulations but, as John Scott was just about to say, the committee may wish to note that this is the sixth occasion on which the principal regulations have been amended. The Government has registered that fact and has suggested that it will consolidate the regulations. We should welcome that and acknowledge that it establishes a good principle to which, I imagine, we will return. Is the committee content with the regulations?

Members *indicated agreement.*

Work Programme

14:35

The Convener: Item 4 concerns the committee's work programme. Members will recall that we discussed it at an earlier meeting so, to some extent, what follows consolidates and homologates what we did then. The purpose is to consider issues on the committee's work programme and working practices that were raised at the committee's business planning meeting. In particular, we are invited to agree our approach on consolidation and correction slips.

On consolidation, the committee is invited to direct the clerks to undertake a comparative study into models of consolidation in other legislatures and to write to the Scottish Government to understand better why there has been little impetus for consolidation and why the pilot exercise in the third session proved to be limited. We will discuss that first and talk about correction slips in just a moment. Does anyone have anything further to say about consolidation?

James Dornan (Glasgow Cathcart) (SNP): We had a fairly full discussion about it at our business planning meeting. The consensus was clear when we came out of that meeting.

The Convener: Are we happy that the clerks talk to officials and that we get to understand the situation better before we say anything further?

Members indicated agreement.

The Convener: The committee is invited to direct the clerks to draw up arrangements for it to consider for monitoring the printing and publication of correction slips. We spoke about that earlier and that was the agreed way forward. If we ask the clerks to do that, we can see where it gets to.

Chic Brodie (South Scotland) (SNP): That is fine. As James Dornan said on consolidation, we discussed that at the business planning day.

My concern reflects what I said last week: those who are responsible must understand that we will not just rubber stamp stuff. It is incumbent upon them, whoever they are, to ensure that due process is followed. Otherwise, we are wasting our time.

I am concerned about the what and I am now also concerned about the who.

The Convener: In the first instance, I am with you. Our job is to ensure the highest possible standards of drafting in the instruments that come to us.

Chic Brodie: If it is a wee bit sloppy, it will continue to be sloppy and the whole process will be sloppy.

John Scott: In the previous parliamentary session the Rural Affairs and Environment Committee was on the receiving end of many statutory instruments, some of which, in the earlier part of the session, were not at all well drafted. The committee took the unprecedented step of refusing to accept an instrument and it must be said that the quality of drafting improved markedly thereafter.

It is an enormous chore for committees to receive screeds of paperwork along with statutory instruments because something is improperly drafted. This committee should take a strong line on seeking to improve the quality of drafting wherever it can. I am sure that you have covered that already.

The Convener: Thank you, sir. On the basis of last week's meeting, we can say that we have already started.

On correction slips, it is important that the citizen is able to get hold of the right law once it has been made. We need to ensure that those systems work well, and we encourage the clerks to explore how well they are working.

That brings us to the end of item 4. Item 5 is in private.

14:40

Meeting continued in private until 14:48.

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