



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 15 November 2011

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SUBORDINATE LEGISLATION COMMITTEE

11th 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 15 November 2011

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

Instrument subject to Affirmative Procedure

Climate Change (Limit on Carbon Units) (Scotland) Order 2011 [Draft]

The Convener (Nigel Don): I welcome members to the 11th meeting of the Subordinate Legislation Committee in the fourth session of the Scottish Parliament and ask them to turn off their mobile phones.

The committee agreed that no points arose on the instrument.

Instruments subject to Negative Procedure

Double Jeopardy (Scotland) Act 2011 (Commencement and Transitional Provisions) Order 2011 (SSI 2011/365)

14:31

The Convener: The legal brief recommends that the meaning of article 5 of the order could be more clearly expressed. Article 5 modifies the statutory rules on disclosure of evidence to the defence in relation to applications for a retrial under the Double Jeopardy (Scotland) Act 2011 when the original trial took place before 28 November 2011. The relevant rules exempt the prosecutor from being required to disclose evidence that has already been disclosed to the respondent. It is intended that article 5 modifies those rules by providing that the exemption from disclosure for a second time will apply only when not disclosing the evidence again would be consistent with the respondent getting a fair trial.

The combination of words indicating exemption from action with words indicating that there is a requirement for action makes the effect of the provision unclear and inhibits the transparency of the application of an important rule of criminal procedure. Do members have any comments on that?

It seems to me that it would have been easier to have written article 5 in a more understandable way than the way in which it has been written, so I entirely agree with our legal advisers, and I take it that the committee does, too.

Mike MacKenzie (Highlands and Islands) (SNP): Absolutely.

The Convener: Does the committee agree to draw the order to the Parliament's attention on reporting ground (h), that the meaning could be better expressed?

Members indicated agreement.

Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Amendment Regulations 2011 (SSI 2011/376)

The Convener: The legal brief identifies that there has been a failure to follow proper drafting practice, as section 28 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 has not been cited as an enabling power in the preamble. However, that does not appear to affect the validity or operation of the instrument, as the words

"and all other powers enabling them to do so"

may be construed in such a way as to include reference to that section.

Does the committee agree to draw the regulations to the Parliament's attention on the general reporting ground?

Members indicated agreement.

Enzootic Bovine Leukosis (Scotland) Amendment Regulations 2011 (SSI 2011/390)

The committee agreed that no points arose on the instrument.

Instruments not subject to Parliamentary Procedure

Act of Sederunt (Rules of the Court of Session Amendment No 6) (Miscellaneous) 2011 (SSI 2011/385)

14:33

*The committee agreed that no points arose on
the instrument.*

Guidance subject to Affirmative Procedure

Scottish Natural Heritage Code of Practice on Deer Management (SG 2011/242)

14:34

*The committee agreed that no points arose on
the instrument.*

John Scott (Ayr) (Con): I am content with the instrument; indeed, in the light of my experience with the Wildlife and Natural Environment (Scotland) Bill in the last session of Parliament, I welcome it. I am pleased to see the code of practice coming into force.

The Convener: Thank you very much, Mr Scott.

I intimate that our next meeting will be on Tuesday 22 November.

Meeting closed at 14:34.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

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