



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

HEALTH AND SPORT COMMITTEE

Tuesday 19 June 2012

Session 4

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HEALTH AND SPORT COMMITTEE
20th Meeting 2012, Session 4

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Jim Eadie (Edinburgh Southern) (SNP)

*Richard Lyle (Central Scotland) (SNP)

*Fiona McLeod (Strathkelvin and Bearsden) (SNP)

*Nanette Milne (North East Scotland) (Con)

*Gil Paterson (Clydebank and Milngavie) (SNP)

*Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*Drew Smith (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Chad Dawtry (Scottish Government)

John St Clair (Scottish Government)

CLERK TO THE COMMITTEE

Douglas Wands

LOCATION

Committee Room 2

Scottish Parliament

Health and Sport Committee

Tuesday 19 June 2012

[The Convener *opened the meeting at 10:09*]

Decision on Taking Business in Private

The Convener (Duncan McNeil): Good morning and welcome to the 20th meeting of the Health and Sport Committee in 2012. I remind everyone present that mobile phones and BlackBerrys should be turned off, as they can interfere with the sound system.

Agenda item 1 is to decide whether to take in private item 4, under which the committee will consider its approach to its draft budget scrutiny 2013-14. Do members agree to take that item in private?

Members *indicated agreement.*

Subordinate Legislation

10:10

The Convener: The committee was to have taken evidence next on the National Health Service Superannuation Scheme etc (Miscellaneous Amendments) (Scotland) Regulations 2012 (SSI 2012/163) but, unfortunately, Mr John St Clair, a senior principal legal officer with the Scottish Government, is not available at this time, as scheduled. I propose that we try to get the item in at some point in the meeting, but I intend to move on to the next item.

Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2012 (SSI 2012/164)

Adults with Incapacity (Requirements for Signing Medical Treatment Certificates) (Scotland) Amendment Regulations 2012 (SSI 2012/170)

National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Amendment Regulations 2012 (SSI 2012/171)

The Convener: Next we will consider three Scottish statutory instruments. Members have received a cover note that sets out their purpose. The Subordinate Legislation Committee has not drawn them to the Parliament's attention.

As members have no comments to make on the instruments, do they agree that we do not wish to make any recommendations on them?

Members *indicated agreement.*

The Convener: We will now move to item 4, which we previously agreed to take in private.

10:11

Meeting continued in private.

12:05

Meeting continued in public.

National Health Service Superannuation Scheme etc (Miscellaneous Amendments) (Scotland) Regulations 2012 (SSI 2012/163)

The Convener: We return to the evidence on SSI 2012/163. The Subordinate Legislation Committee has drawn the regulations to the attention of the Parliament on two reporting grounds. The first is that the drafting appears to be defective, and the second is the general reporting

ground. We have invited officials to appear before the committee to explain the defects.

I welcome Chad Dawtry, director of policy strategy and development in the Scottish Public Pensions Agency, and John St Clair, a senior principal legal officer with the Scottish Government. I invite the officials to make some brief opening remarks on the regulations and comment on the concerns raised by the Subordinate Legislation Committee.

Chad Dawtry (Scottish Government): I start by offering apologies to the convener and the committee for the delay in giving our evidence today. I am afraid that there was a delay in coming from another venue. Again, I apologise.

I understand that the committee is clear about the purpose of the regulations and that the issues are two drafting issues, one of which is a drafting error in regulation 10, for which I offer our apologies. We are redoubling our efforts to make sure that such errors do not slip through the net in future. My understanding is that the Subordinate Legislation Committee and the Health and Sport Committee accept that that error will be dealt with through a printing correction.

The other point is about the drafting of regulation 28. The Subordinate Legislation Committee is concerned that it might not be entirely clear when that regulation is to be introduced. I will ask John St Clair to deal with that matter.

John St Clair (Scottish Government): The approach that we normally take in dealing with the concerns of the Subordinate Legislation Committee is to look carefully at the points that it has raised. If there is any real doubt about a matter, we offer to put it beyond doubt at the first opportunity. We have looked at the regulation several times since the Subordinate Legislation Committee raised its point and we think that, on a reasonable and close reading of the regulation, the timing of the effect of the regulation is not really in doubt.

Perhaps I could talk the committee through the way in which we see the regulation. If, after I have done so, the committee still has doubts about the drafting, we will reserve the position of offering an amendment at the earliest possible opportunity. However, we think that it is all right.

Regulation 1(3) says that various regulations, including regulation 27,

“have effect from 1st April 2008”.

As the committee knows, we have power under the Superannuation Act 1972 to make our amendments retrospective for the various reasons that are necessary under pension regulations. Regulation 27 says:

“The National Health Service (Scotland) (Injury Benefits) Regulations 1998(1) are amended in accordance with this Part.”

There is really only one other amendment to regulations in that part, which is the amendment that is made in regulation 28, so we interpret that to mean that those two amendments are retrospective, in accordance with regulation 1(3). Under regulation 1(6), regulation 29 expressly has effect from 11 August 2011. The amendments other than that are from the first date, so regulation 27 more or less sweeps up regulation 28 to that date.

I would be interested to know how the regulations could not be read in that way but, as I say, we are open to real concerns and would, if the committee thought it appropriate, change the drafting.

The Convener: Thank you, Mr St Clair. Do members have any questions?

Richard Lyle (Central Scotland) (SNP): Convener, before the committee discusses the issue, I should declare that I receive a small pension from the national health service, having previously worked with out-of-hours doctors.

The Convener: Did you just wish to make a declaration?

Richard Lyle: Yes.

The Convener: Do you wish to ask a question?

Richard Lyle: No. I am happy with the explanation that has been given.

Bob Doris (Glasgow) (SNP): Mr St Clair, I am conscious that you are a busy gentleman and that perceived drafting inconsistencies tie up your time, too. As I used to be the deputy convener of the Subordinate Legislation Committee, I take a keen interest in ensuring that regulations and other statutory instruments are drafted consistently, irrespective of whether they are competent and give effect to the desired policy intent.

Given that regulation 27 directly signposts that regulation 28 will come in from 1 April 2008, I am reassured that it will not interfere with the policy intent. However, in relation to consistency in drafting, as regulation 1 specifically says that regulation 27 applies retrospectively to 1 April 2008, would it not have been easier just to include regulation 28? The drafting inconsistency has brought you to the committee and taken up your time, our time and the Subordinate Legislation Committee’s time. Although you have reassured me that the regulations are valid and competent, I contend that they do not follow best drafting practice.

John St Clair: I accept completely that the regulations could have been more felicitously

drafted. We are conscious that, if they had been, we might not have had to go in for the type of close reading that is necessary to make the regulations crystal clear to you. Personally, I am keen on making drafting as user friendly as possible. That is a policy of the Scottish Government legal directorate. However, because persons are concentrating on the letter of the law, they sometimes forget the importance of the user. In this case, that might have been because the regulations are complicated. Fortunately, the users of such instruments are usually not the public, but a small coterie of people who know what is meant by them anyway. However, that is no excuse for the infelicity.

Nanette Milne (North East Scotland) (Con): In the interests of consistency, I should declare that I, too, am in receipt of a very small NHS pension.

In general, I find legal language difficult, but I agree with Bob Doris's comments and accept the explanation that has been given. To me, regulation 1(3) would read much more sensibly and easily if it said at the end, "27 and 28 have effect from 1 April 2008."

John St Clair: I agree. In some ways, the drafting has been done in a slightly old-fashioned way, which is a minimalist approach. I have always been uncomfortable with that. However, that is what we have. I am pretty sure that the approach works, and nobody is suggesting that it does not, but I would prefer to have a more user-friendly method. We will try to reach that high standard in future.

The Convener: As members have no more questions, I thank our witnesses for attending.

Meeting closed at 12:15.

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