

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 2 February 2010

Session 3

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Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
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SUBORDINATE LEGISLATION COMMITTEE

4th 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

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 6

Scottish Parliament

Subordinate Legislation Committee

Tuesday 2 February 2010

[THE DEPUTY CONVENER *opened the meeting at 14:15*]

Decision on Taking Business in Private

The Deputy Convener (Ian McKee): I welcome members to the Subordinate Legislation Committee's fourth meeting in 2010. We have apologies from Jamie Stone and Rhoda Grant. I ask members to turn off mobile phones, BlackBerrys and other such devices.

Under agenda item 1, it is proposed that at item 8, the committee discuss in private its draft report on the Home Owner and Debtor Protection (Scotland) Bill. Do members agree to consider that item in private?

Members *indicated agreement.*

Public Services Reform (Scotland) Bill: Stage 1

14:15

The Deputy Convener: Members have seen the Scottish Government's response to our stage 1 report on the delegated powers in the Public Services Reform (Scotland) Bill. It is unfortunate that the response was received on Friday, after stage 2 had started. This is the first time that the Government has not responded to points that the committee has raised in a stage 1 report before stage 2 has commenced. It might, therefore, be reasonable to ask the Minister for Parliamentary Business to establish the reasons for that oversight, so that it does not happen again. Are members content for us to write to him to that effect?

Members *indicated agreement.*

The Deputy Convener: Members will note that the Government has agreed to lodge some amendments in response to our recommendations, but a number of issues are outstanding. We are asked simply to note the Government's response. We will return to the bill after stage 2, when we can revisit the issues and all other changes that are made to the powers in the bill at stage 2, which will continue until 2 March. As members have no comments on the response, are they content to note the response, as set out in the paper by the clerk?

Members *indicated agreement.*

Crofting Reform (Scotland) Bill: Stage 1

14:17

The Deputy Convener: We move to item 3. I declare an interest: my wife and I jointly own a croft.

We are taking our first look at the Crofting Reform (Scotland) Bill at stage 1. The bill contains several delegated powers provisions. I suggest that we deal only with the powers on which our legal advisers have proposed that we might wish to ask the Scottish Government questions. It is proposed that we consider the Government's response to points that are raised today at our meeting on 23 February, when we will also consider our stage 1 report. Are members content to proceed in that way?

Members indicated agreement.

The Deputy Convener: Section 2(2) provides a power to confer functions on, remove functions from or otherwise modify functions of the crofting commission. As section 10(1) of the Public Services Reform (Scotland) Bill contains an almost identical power—albeit one whose application is more comprehensive—we could ask the Scottish Government why the power in section 2(2) of the Crofting Reform (Scotland) Bill is needed. We could also ask what difference in substance, if any, exists between the power in that section and the power in section 10 of the Public Services Reform (Scotland) Bill. Do we agree to ask those questions?

Members indicated agreement.

The Deputy Convener: A number of questions are proposed on section 15(5), which provides a power to prescribe circumstances when there is to be no entitlement to indemnity from the keeper in relation to the crofting register.

As section 12(3) of the Registration (Scotland) Act 1979 provides an extensive and detailed list of circumstances in which there is to be no entitlement to indemnity from the keeper under section 12 of that act, the Scottish Government is asked to explain why the bill cannot list all the possible circumstances in which a person may not be entitled to an indemnity.

Given that section 12(3) of the 1979 act provides an extensive and detailed list of circumstances in which there is to be no entitlement to indemnity, the Scottish Government is asked why subordinate rather than primary legislation is considered necessary for that purpose under the bill.

The exercise of the power in the bill will remove substantive rights for which the bill provides, so on what basis does the Scottish Government consider that the

“power concerns a point of procedure”?

Having regard to the substantive effect of the exercise of the power, does the Scottish Government accept that affirmative procedure would be more appropriate?

Are members content to ask the Scottish Government those questions?

Members indicated agreement.

The Deputy Convener: Section 16(1) contains a power to make rules for the crofting register. We should ask whether the Scottish Government intends that power to be restricted to administrative and procedural—as opposed to substantive—matters and, if so, why it is not expressed in terms that restrict its exercise to that extent. Is that agreed?

Members indicated agreement.

The Deputy Convener: Paragraph 2(2)(d) of schedule 1 relates to the crofting commission's power to charge in respect of its functions. We could ask whether the Scottish Government intends to consult the Crofting Commission, the crofting community and the public at large in advance of making regulations under paragraph 2(2)(d) of schedule 1 and, if so, whether it considers that a requirement to consult could be provided for in the bill. Is that agreed?

Members indicated agreement.

The Deputy Convener: Paragraph 7(1) of schedule 1 contains the power to make provision for the election of members to the commission. With reference to that power, we could ask whether the Scottish Government considered whether key elements of the system for elections, including franchise and any provision for offences, should be specified in primary legislation. Is that agreed?

Members indicated agreement.

The Deputy Convener: We will consider the Government's response to those questions at our meeting on 23 February.

Correspondence

14:21

The Deputy Convener: Agenda item 4 is consideration of Scottish Government correspondence. Members have seen the letter from the Minister for Environment regarding the transposition into national law of the European drinking water directive. The minister's letter explains that the Scottish Government proposes to introduce to the Parliament legislative measures that are necessary to comply with a reasoned opinion from the European Commission. The Government intends to use a single Scottish statutory instrument, which has been given the working title, "The Water Quality (Scotland) Regulations 2010", and has decided that it will be subject to negative rather than affirmative procedure.

We are invited to consider how we wish to respond to the minister's letter. The options that are available to the committee include inviting the minister to give oral evidence to explain in more detail the circumstances of the case and the reasons for the choice of negative procedure; awaiting the laying of the instrument and then inviting the minister to appear before us to give evidence; or acknowledging the letter and considering the instrument in the normal manner once it has been laid.

Do members have any comments on the letter? How would members like to proceed?

Helen Eadie (Dunfermline East) (Lab): I would like us to hear from the minister prior to the instrument being laid. That would be helpful to the minister and to us, in that it might allow us to influence the shaping of the instrument prior to its laying.

The Deputy Convener: As there are no further comments, do members agree with Helen Eadie's suggestion?

Members indicated agreement.

Instrument subject to Approval

Local Government Finance (Scotland) Order 2010

14:23

The committee agreed that no points arose on the instrument.

Instruments subject to Annulment

Snares (Scotland) Order 2010 (SSI 2010/8)

14:23

The Deputy Convener: Does the committee agree to report that there is a drafting error in article 6 of the order, in that the words "having been" are duplicated? It should be noted that, although the error is unlikely to affect the operation of the order, the meaning of the provision would be clearer if it were amended. Is the committee content to draw attention to the error?

Members indicated agreement.

Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2010 (SSI 2010/9)

Water Services Charges (Billing and Collection) (Scotland) Order 2010 (SSI 2010/10)

Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) etc Amendment Order 2010 (SSI 2010/15)

The committee agreed that no points arose on the instruments.

Instruments not laid before the Parliament

Act of Sederunt (Registration Appeal Court) 2010 (SSI 2010/7)

Act of Sederunt (Rules of the Court of Session Amendment) (Transfer of Functions of the Asylum and Immigration Tribunal Order 2010) 2010 (SSI 2010/16)

14:24

The committee agreed that no points arose on the instruments.

14:24

Meeting continued in private until 14:26.

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