



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 19 June 2012

Session 4

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SUBORDINATE LEGISLATION COMMITTEE

17th Meeting 2012, Session 4

CONVENER

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

DEPUTY CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

COMMITTEE MEMBERS

*Chic Brodie (South Scotland) (SNP)

*Mike MacKenzie (Highlands and Islands) (SNP)

*Michael McMahon (Uddingston and Bellshill) (Lab)

*John Pentland (Motherwell and Wishaw) (Lab)

*John Scott (Ayr) (Con)

*attended

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 6

Scottish Parliament

Subordinate Legislation Committee

Tuesday 19 June 2012

[The Convener opened the meeting at 14:46]

Instruments subject to Negative Procedure

Wildlife and Countryside Act 1981 (Exceptions to section 14) (Scotland) Order 2012 (SSI 2012/173)

The Convener (Nigel Don): I welcome members to the 17th meeting in 2012 of the Subordinate Legislation Committee and, as usual, ask everyone to turn off their mobile phones.

The order appears to be defectively drafted in two respects. First, there has been a failure effectively to specify whether it is the offence in section 14(1)(a)(i) or (1)(b) of the Wildlife and Countryside Act 1981 that is intended to be disapplied by article 2(1) and part 1 of the schedule to the order. Secondly, it is doubtful whether part 2 of the schedule effectively disapplies the section 14(2) offence in respect of *Spergula arvensis* and *Euphorbia peplus* when it seems that it was intended to do so. Does the committee therefore agree to draw the order to the Parliament's attention on reporting ground (i) as it appears to be defectively drafted?

Members indicated agreement.

The Convener: In so doing, does the committee welcome the Scottish ministers' commitment to lay, before the summer recess, a corrective instrument to amend the order to address the issues identified by the committee in relation to part 2 of the schedule?

Members indicated agreement.

The Convener: Does the committee also agree to call on the Scottish ministers to take the opportunity to address at the same time the point raised in relation to article 2(1) and part 1 of the schedule to the order to resolve the doubt as to the effectiveness of those provisions?

Members indicated agreement.

John Scott (Ayr) (Con): I not only agree but am certain that the Government would be unhappy to produce something less than a full and proper piece of work. Given that it is already amending the order, it should in my view—and, I am sure, in the view of other committee members—take this

opportunity to address the point that you have raised.

The Convener: It is entirely clear that the committee shares that view and I hope that the Government, too, shares it.

Wildlife and Countryside Act 1981 (Keeping and Release and Notification Requirements) (Scotland) Order 2012 (SSI 2012/174)

The Convener: The order appears to be defectively drafted in two respects. First, part 1 of schedule 1 to the order fails effectively to specify the island of Arran as a place where it is an offence to release, or allow to escape from captivity, any animal of the genus *Cervus*—or deer—although the Scottish ministers' policy intention was that the offence should extend to that island.

Secondly, *Telestes souffia* or blageon, *Sander lucioperca* or pike-perch and *Parachondrostoma toxostoma* or toxostome—otherwise known as French nase—have all been reclassified and are now known by those Latin names. However, in part 2 of schedule 1 to the order they are referred to by older Latin names that are no longer used. I trust that members are taking careful notes because there will be a test later.

As the types of fish are specified by reference to their Latin names, it is doubtful whether part 2 effectively specifies those types of fish as invasive animals that it is an offence to keep, have in one's possession or have under one's control and it is accordingly doubtful whether the Scottish ministers have achieved their policy intention of specifying those fish for the purposes of the offence provision. Does the committee therefore agree to draw the order to the Parliament's attention on reporting ground (i) as its drafting appears to be defective?

Members indicated agreement.

Mike MacKenzie (Highlands and Islands) (SNP): I compliment our legal advisers on spotting the inappropriate use of those Latin terms. That is exceptional work.

Members: Hear, hear.

The Convener: There seems to be general agreement with that sentiment, Mr MacKenzie.

Does the committee also welcome the Scottish ministers' commitment to lay before the summer recess a corrective instrument to amend the order to address the issues identified by the committee?

Members indicated agreement.

Trade in Animals and Related Products (Scotland) Regulations 2012 (SSI 2012/177)

The Convener: The regulations are defectively drafted in the following respects.

First, regulation 33 makes it an offence to fail to comply with regulation 25(5), which enables declarations to be amended, when it was intended that regulation 33 should make it an offence to fail to comply with the prohibition on bringing any animal or product into Scotland in breach of a declaration set out in regulation 25(4).

Secondly, regulation 33 provides for a “reasonable excuse” defence to the offence of signing a certificate that one knew to be false when that defence was not intended to be available.

Thirdly, paragraph 1 of schedule 4 inserts new article 18A into the Bluetongue (Scotland) Order 2008 (SSI 2008/11). It is intended that any person who fails to comply with new article 18A(1) or a notice served under new article 18A(2) will be guilty of an offence. However, new article 18A is drafted in such a way that it omits to provide for such offences.

Does the committee therefore agree to draw the regulations to the Parliament’s attention on ground (i) as its drafting appears to be defective?

Members indicated agreement.

The Convener: Furthermore, regulation 33 makes it an offence to fail to comply with regulation 23(3)(b), which requires an importer of a product that has been refused entry by a third country to

“destroy the consignment as animal by-products”.

The committee considers that such a requirement is insufficiently precise to be acceptable as the basis for imposing criminal liability for non-compliance. Do members agree to draw the regulations to the Parliament’s attention on ground (h) as the regulations could be clearer?

Members indicated agreement.

The Convener: In so doing, does the committee welcome the Scottish Government’s undertaking to correct those matters by way of an amending instrument by 1 July 2012, when the regulations come into force?

Members indicated agreement.

The Convener: Given that the Government has committed to making a corrective instrument, does the committee agree to recommend that the Government take the opportunity to address at the same time the point raised in question 1(d) to the Government on the subject matter of the offence in paragraph 5(2) of schedule 2 and regulation 33

and the minor typographical error identified in the annex?

Members indicated agreement.

African Horse Sickness (Scotland) Order 2012 (SSI 2012/178)

The Convener: Articles 17(5), 18(9) and 19(3)(b) delegate power to the Scottish ministers to impose any other measures relating to the control of African horse sickness in certain circumstances, without specifying the range of measures and the persons on whom they could be imposed. Articles 9(11) and 10(10) delegate similar powers to the chief veterinary officer. The committee may consider that, in the absence of express provision to delegate the ability to prescribe further control measures of this kind, these provisions are of doubtful vires. Does the committee agree to draw the order to the Parliament’s attention on ground (e) as there appears to be a doubt whether the order is intra vires?

Members indicated agreement.

Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 (SSI 2012/180)

Energy Performance of Buildings (Scotland) Amendment Regulations 2012 (SSI 2012/190)

The committee agreed that no points arose on the instruments.

Instruments not subject to Parliamentary Procedure

**Wildlife and Natural Environment
(Scotland) Act 2011 (Commencement No 4,
Savings and Transitional Provisions)
Order 2012 (SSI 2012/175)**

**Act of Adjournal (Criminal Procedure
Rules Amendment No 2) (Miscellaneous)
2012 (SSI 2012/187)**

**Energy Act 2011 (Commencement No 1)
(Scotland) Order 2012 (SSI 2012/191)**

**Water Services etc (Scotland) Act 2005
(Commencement No 6) Order 2012 (SSI
2012/192)**

14:54

The committee agreed that no points arose on the instruments.

Police and Fire Reform (Scotland) Bill: After Stage 2

14:55

The Convener: Agenda item 3 is consideration of the delegated powers provisions in the bill after stage 2. Members will have seen the briefing paper and the supplementary delegated powers memorandum that the Scottish Government has produced. As stage 3 of the bill is due to take place on Wednesday 27 June and the deadline for lodging amendments is therefore 4.30 pm on Thursday 21 June, the committee may wish to agree its conclusions today.

If members have no comments, does the committee agree that a report be produced setting out the committee's conclusions on the bill for publication before the deadline for stage 3 amendments on Thursday 21 June?

Members *indicated agreement.*

The Convener: That brings us to the end of our agenda. Our next meeting will be on Tuesday 26 June.

Meeting closed at 14:56.

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