



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 23 October 2012

Session 4

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SUBORDINATE LEGISLATION COMMITTEE

22nd Meeting 2012, Session 4

CONVENER

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

DEPUTY CONVENER

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

COMMITTEE MEMBERS

*Mike MacKenzie (Highlands and Islands) (SNP)

*Hanzala Malik (Glasgow) (Lab)

*Stuart McMillan (West Scotland) (SNP)

*John Pentland (Motherwell and Wishaw) (Lab)

John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Graham Crombie (Legal Adviser)

Colin Gilchrist (Legal Adviser)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 4

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 23 October 2012

[The Convener *opened the meeting at 10:37*]

Instrument subject to Approval

The Convener (Nigel Don): I welcome members to the 22nd meeting in 2012 of the Subordinate Legislation Committee. As always, I ask members to turn off any mobile phones and so on. We have received apologies from John Scott.

Fishing Boats (Satellite-tracking Devices) (Scotland) Scheme 2012 (SSI 2012/264)

The committee agreed that no points arose on the instrument.

Instruments subject to
Affirmative Procedure

Glasgow Commonwealth Games Act 2008
(Ticket Touting Offence) (Exceptions for
Use of Internet etc) (Scotland) Regulations
2012 [Draft]

10:37

The Convener: Are there any comments on the regulations?

Stuart McMillan (West Scotland) (SNP): The papers that have been provided to us say that

“The touting offence applies to acts done in or outwith Scotland.”

I am not sure whether the Parliament has the jurisdiction to deal with what is done “outwith Scotland”, so I seek clarification on that.

Colin Gilchrist (Legal Adviser): The provision for application outwith Scotland does not relate to the regulations that the committee is considering. Section 17(5) of the Glasgow Commonwealth Games Act 2008 provides that the ban on ticket touting

“applies to acts done in or outwith Scotland.”

That applies as a matter of Scots law, and for proceedings in the Scottish courts, as a matter of jurisdiction. If we look at regulation 3, we see that it relates to acts of information society service providers

“established in an EEA state”.

Section 17(5) of the 2008 act means that that provision extends to acts that are done in European economic area states, but only as a matter of Scots law and in relation to Scottish proceedings.

Stuart McMillan: I know that it is a different jurisdiction, but was similar legislation put in place to protect the Commonwealth games in Manchester and the Olympics in London from ticket touting outwith the United Kingdom’s borders?

Colin Gilchrist: I am not immediately in a position to confirm the point about the Olympics. There might have been ticket touting provisions in the London Olympic Games and Paralympic Games Act 2006, but I am assuming that because of the provision in the Glasgow Commonwealth Games Act 2008. I am not able to confirm that.

Stuart McMillan: Sure, but you seem to be saying that, under Scots law, it is quite standard to have this type of provision on ticket touting. Is that what I am hearing?

Colin Gilchrist: Express provision has been made in the Glasgow Commonwealth Games Act 2008 for application outwith Scotland.

Stuart McMillan: Okay.

The Convener: Is the provision in the original act rather than in the regulations that are before the committee today?

Colin Gilchrist: Yes.

The Convener: Thank you. Is the committee therefore content with the regulations?

Members *indicated agreement.*

Rent (Scotland) Act 1984 (Premiums) Regulations 2012 [Draft]

The committee agreed that no points arose on the instrument.

Instruments subject to Negative Procedure

Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2012 (SSI 2012/258)

10:41

The Convener: The drafting of the regulations appears to be defective, in that schedule 2 inserts a new schedule 5 into the Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Regulations 2004 (SSI 2004/117). Paragraph 4 of the new schedule 5 purports to make provision about the procedure that local authorities must follow when considering applications for innovation and investment fund grants. It does so by requiring local authorities to ensure that procedures for the invitation of applications, the assessment of applications, and the approval of grants are carried out in accordance with the terms of a specified external document.

That document, however, does not appear to contain any provision to regulate the procedure to be followed by local authorities in considering applications for IIF grants. The document concerns itself with how the Scottish ministers and the Convention of Scottish Local Authorities will deal with applications for IIF grants from local authorities themselves. The lack of specification about how a document for a different purpose is to be given effect in such circumstances casts doubt on whether the regulations make any effective provision for the procedure that is to be followed by local authorities, despite that being its apparent intention.

Do members have any comments?

Mike MacKenzie (Highlands and Islands) (SNP): The committee should ask, in fairly strong terms, for the issue to be clarified, not least because such projects are often partially funded by private borrowing, and we all know that the banks are tightening their lending criteria while also tightening their due diligence. Under those circumstances, I would welcome much greater clarity.

Hanzala Malik (Glasgow) (Lab): I echo those sentiments. I am also interested in getting clarity about shared properties, such as in a close, where clerks of works or agents are used, and the safeguards that are in place to protect people who live there. It would also be interesting to find out whether we are still relying on the local authority to act on behalf of owners who carry out works or whether clerks of works or agents will act on their

behalf. The regulations are not as clear as I would like them to be.

The Convener: Our legal advisers might be able to give us some clues on that question.

Graham Crombie (Legal Adviser): I might be of some assistance to the committee. My understanding of the partnership support for regeneration grants under schedule 2 of the regulations is that they seem to be targeted primarily towards providing, but also towards improving, repairing and adapting subjects to provide housing that is for sale for owner-occupation.

I am not entirely sure whether those grants would necessarily be apt to cover the situation that committee members appear to have in mind. I agree that it is not entirely clear, though, exactly how the grants will operate, but it strikes me that perhaps they might be aimed at a slightly different target. That is my understanding of the matter.

10:45

The Convener: That perhaps makes the point that, if the procedure is not laid down in the way in which we are expecting to find it, it is difficult to know quite what it might cover.

Hanzala Malik: That is exactly the point that I am trying to make. The clarity is missing. It needs to be a little more focused, if that is at all possible.

The Convener: Does the committee agree to draw the regulations to the attention of the Parliament on reporting ground (i), as the drafting appears to be defective?

Members indicated agreement.

The Convener: That is our view, and I am sure that the Government will feel the need to respond.

Secondly, the form or meaning of the regulations could be clearer. Schedule 1 inserts a replacement schedule 2 into the Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Regulations 2004. Paragraph 4(g) of the replacement schedule 2 purports to provide procedures to be followed by a local authority in considering applications for partnership support for regeneration grants. However, the provision requires that the applicant has, or is able to obtain, control of the development site. As such, it appears instead to be a criterion for eligibility and so the meaning of the regulations would be clearer—and the internal form of the regulations being amended more closely respected—had that provision been contained in part 2 of the schedule, which prescribes the classes of persons who are eligible to apply for grants of this type, instead of

appearing in part 3 in the guise of a procedural requirement.

That would appear to be just one more area of uncertainty and lack of clarity. Does the committee therefore also agree to draw the regulations to the attention of the Parliament on reporting ground (h), as the formal meaning could be clearer?

Members indicated agreement.

Graham Crombie: I will make a point of clarification. There might have been some confusion about what I said most recently. I think that the question that was asked dealt with schedule 5 IIF grants rather than schedule 2 PSR grants. I apologise for that confusion.

In these circumstances, IIF grants, which were the subject of the first question that the committee was asked to consider, are open only to registered social landlords and their subsidiaries, so it is hard to see how that sort of grant would ever apply to the private development-type situation that appeared to be being contemplated.

The Convener: Perhaps the situation is not quite as unclear as we thought.

Graham Crombie: Perhaps not. The issue is with procedure rather than with eligibility. That is the suggestion.

Hanzala Malik: I still maintain that there is insufficient clarity. There might be instances in which someone has a social landlord, but there might also be private owners within that development. How would those people be affected? Would they be at risk of having to find the full costs or would they be allowed to take part in that scheme? The document does not make that clear.

The Convener: Those questions will be drawn to the attention of the subject committee, apart from anything else.

Plant Health (Scotland) Amendment Order 2012 (SSI 2012/266)

The committee agreed that no points arose on the instrument.

Instruments not subject to Parliamentary Procedure

**Glasgow Commonwealth Games Act 2008
(Commencement No 3) Order 2012 (SSI
2012/261)**

**Food Protection (Emergency Prohibitions)
(Radioactivity in Sheep) and the Export of
Sheep (Prohibition) Revocation (Scotland)
Order 2012 (SSI 2012/263)**

**Land Registration etc (Scotland) Act 2012
(Commencement No 1) Order 2012 (SSI
2012/265)**

**Private Rented Housing (Scotland) Act
2011 (Commencement No 4) Order 2012
(SSI 2012/267)**

10:48

The committee agreed that no points arose on the instruments.

Scottish Civil Justice Council and Criminal Legal Assistance Bill: Stage 1

10:49

The Convener: Under item 5, we will consider the Scottish Government's response to the committee's stage 1 report on the bill. Members will have seen the briefing paper and the Scottish Government's response to the issues that the committee raised.

Unless amendments are made to the bill at stage 2 that affect the delegated powers provisions, the committee will not consider it again.

Are we content to note the response and, if necessary, reconsider the bill after stage 2?

Members indicated agreement.

Local Government Finance (Unoccupied Properties etc) (Scotland) Bill: After Stage 2

10:50

The Convener: Item 6 concerns consideration of the delegated powers provisions in the bill after stage 2.

Members will have noted that the Scottish Government has provided a revised delegated powers memorandum and will have seen the briefing paper and draft report.

Stage 3 is due to take place on Wednesday 31 October. The deadline for lodging amendments is 4.30 pm this Thursday. The committee may therefore wish to agree its conclusions today.

Are there any comments? No? The draft report will be admirably short. Does the committee welcome that the amendments to the delegated powers that are made by section 2(2A) and (3) implement the committee's recommendation in its report at stage 1 that the bill should state a maximum level of permitted council tax increase in relation to unoccupied dwellings, beyond which any levels specified in the regulations could not go?

Members indicated agreement.

The Convener: Do members 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 25 October?

Members indicated agreement.

The Convener: That concludes our business. Our next meeting will be held next Tuesday.

Meeting closed at 10:51.

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