

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 29 June 1999
(Morning)

Meeting 1

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THE OLDEST MEMBER OF THE COMMITTEE:

*Trish Godman (West Renfrew shire) (Lab)

COMMITTEE MEMBERS:

*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

*Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)

*Mr Kenny MacAskill (Lothians) (SNP)

*Bristow Muldoon (Livingston) (Lab)

*David Mundell (South of Scotland) (Con)

*Ian Welsh (Ayr) (Lab)

*attended

COMMITTEE CLERK:

Alasdair Rankin

ASSISTANT CLERKS:

Claire Menzies

Anne Peat

Scottish Parliament

Subordinate Legislation Committee

Tuesday 29 June 1999

(Morning)

[THE OLDEST MEMBER OF THE COMMITTEE *opened the meeting at 10:46*]

Trish Godman (Oldest Member of the Committee): Good morning and welcome. We have a quorum, so I will start the meeting. I have the dubious task of sitting in this chair because I am described as the oldest member of the committee, but I see that you are a rather young bunch, so I do not feel so bad. Have members received a big briefing pack and an agenda for today's meeting?

Members: Yes.

Interests

Trish Godman: The first item on the agenda is the declaration of interests. I remind members:

"Where a member has a registrable interest in respect of which he has lodged a statement . . . which would prejudice or give the appearance of prejudicing his ability to participate in a disinterested manner in proceedings of the Parliament relating to any particular matter, he shall, before otherwise participating in those proceedings, make an oral statement in those proceedings declaring the nature of that registrable interest."

The intention is not to prevent members from taking part, but such interests should be declared. That gobbledegook means that if you have an interest that you feel you should declare, you should do so. I advise you that if you are unsure, it is probably better to declare now, rather than have to comment later. I also remind you that, once the committee is up and running and has business to discuss, if you have an interest you must declare it again. Declaring it today does not excuse you from declaring it at other times.

I invite members to make a declaration of their registered interests if they feel that they are relevant to the remit of this committee.

David Mundell (South of Scotland) (Con): I am an employee of BT Scotland and a member of the Law Society of Scotland.

Bristow Muldoon (Livingston) (Lab): This may be rather tenuous, but given that the remit of this committee includes the byelaws passed by local authorities, I would like to declare that my wife is a local authority councillor.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I am a self-employed solicitor, of Ewing and Co, and the heritable proprietor of the office premises within which the business practises. I am a member of the Federation of Small Businesses, the Scottish Council Development and Industry, the Forum of Private Business, the Law Society of Scotland and the Scottish Law Agents Society—all unpaid.

Ian Welsh (Ayr) (Lab): This may not be relevant, but I will declare it anyway. I am the chief executive and director of Kilmarnock Football Club. I am on a career break, so that post is unremunerated, although some attendant contractual benefits still accrue. My wife is a partner in the law firm Coyle and Welsh, which operates out of Prestwick and Girvan.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): When I declared financial interests I was told that I had to declare that I had been a teacher for three days after the election. I have been a teacher for a long time, but I actually had a salary from 6 to 9 May.

Mr Kenny MacAskill (Lothians) (SNP): Along with my colleagues Mr Mundell and Mr Ewing, I am a member of the Law Society of Scotland. I am a partner in the law firm Erskine MacAskill and Co, which owns premises at 4 Gayfield Square, Edinburgh.

Trish Godman: Given what has been declared, perhaps I should declare, although it is probably totally irrelevant, that I am married to a member of the Westminster Parliament. I do not know whether that means that some of the legislation that comes from Westminster might be a bit dodgy.

Convener

Trish Godman: On a motion from the Parliamentary Bureau, the Parliament has decided that the convener of this committee shall be a member of the Scottish National party. The nominee is Kenny MacAskill. Is the committee pleased to elect Mr MacAskill as its convener?

Kenny MacAskill was elected convener by acclamation.

Remit

The Convener (Mr Kenny MacAskill): Thank you, Trish. We now move on to item 3 on the agenda, which is the remit of the committee and topics for further briefing. You have probably had an opportunity to read the pack that was provided and to consider what our role is.

The first thing that we are required to do is discuss the remit of the committee and any

topics—that will assist us in carrying out our work—on which you wish to be briefed. I have been advised that, although the standing orders provide that committees will not normally have formal meetings during the recess, it will be possible to deal with informal briefings through the recess. That is something that we may wish to consider. The clerks have made two suggestions in particular, which are that the Parliament's legal office and the solicitor's office in the Scottish Office may provide us with appropriate advice. We must discuss what we wish to consider in terms of the content and timing of those briefings. My view, for those who are not of a legal background, is that a bibliography or a lexicon could be part and parcel of the briefing. I am conscious that, although as a legal profession we have attempted to use plain English, there are words and phrases that might be obscure.

Do members wish to comment on the committee's remit? I appreciate that, unlike other committees, we do not have a particular policy direction and members may not have vested interests or particular paths that they wish to follow.

David Mundell: I would certainly find it helpful if we could set out some examples of what we might be involved in doing—the sort of agenda that we would regularly have. I confess that I am not totally clear on the role of subordinate legislation in the process.

Bristow Muldoon: I agree that it would be useful to have the legal background to the remit. In particular, I want to explore the relationship that this committee will have with the UK Parliament, especially in devolved areas. In addition to that, what relationship will we need to have with legislation passed through Europe? We cannot, like many other committees, sit here and say that this is the committee that will grab the attention of the people of Scotland, but we have an important role. We must ensure that where ministers pass legislation by statutory instrument they do not act beyond their powers. We are the gatekeepers. It will be useful for us to understand the remit fully, and the powers that we have to refer issues back to the Parliament.

Ian Jenkins: This is not a very sexy committee but it becomes important if we get things wrong—it is not so important if we get them right.

The Convener: That is right. This committee is the first port of call. I have been a practising solicitor for 20 years, and I have never sought to flag up the importance of legislation, but there are important things to ensure that we get it right in terms of vires and the practical operation of the committee.

From discussions with the clerks I understand

that officials from the parliamentary legal office and the solicitor's office would be prepared to attend meetings of this committee. Perhaps we could consider that. It might be useful for one or both of those bodies to go over a dummy run of legislation that previously has been done by a UK committee to let us know what we should be looking out for. We will also need to be guided on our relationship with the UK and with Europe.

On the content and timing of briefings, the committee clerks will arrange a timetable. It is not an interest to be declared, but I will be on holiday in the second and third weeks of July.

Does anyone have views on other sources of informal briefings? There are the pressure groups, but they may not be appropriate for this organisation. The only people who have lobbied me have been individual sheriffs, who have suggested matters that have to be watched out for. I do not know what sources of input there are other than the parliamentary legal office and the solicitor's office. We could ask those two bodies for examples and for briefing on our relationship with the UK and with Europe. If people would like us to approach any other organisations for briefing at this stage, we can do so. Otherwise, we can just suck it and see.

Trish Godman (West Renfrewshire) (Lab): I have a question that may be relevant—I suppose we are all saying that this morning. The Immigration and Asylum Bill is going through the UK Parliament. That bill will not be changed before Thursday. As has already been commented on in the Parliament, the bill will affect a number of acts here quite dramatically: the Social Work (Scotland) Act 1968; the Housing (Scotland) Act 1987; the Mental Health (Scotland) Act 1984; and the Children (Scotland) Act 1995. It will particularly affect section 12 of the Social Work (Scotland) Act 1968. What will the position of the UK Parliament be after 1 July, when we will be legally responsible for those acts, among other things? Will the UK Parliament be able to pass legislation after 1 July that affect acts for which we are responsible? If it does so, can we then decide to "undo" what it has done?

The Convener: The excellent advice that I have received is that we can seek legal advice on that. I lodged a parliamentary question on detention. I was initially advised that the matter was ultra vires because immigration is a reserved power, but when I pointed out that the method of detention was within the remit of the Scottish Prison Service, the question was accepted.

We may want to raise the interaction of Scottish and UK legislation with the Scottish Office. Presumably, further subordinate legislation will spring out in due course from the amended legislation, over which we have no control or

influence at present. We could ask for briefing on that, so that Scottish Office officials could come forewarned and forearmed with a description of how the interaction will work.

Trish Godman: You mentioned, convener, that you are going on holiday; it is probably better that we are all together to receive briefings.

11:00

The Convener: I second you on that, Trish. We will have to work together, so rather than receiving individual briefings, it would be better to see how we interact. It is better to receive training on any subject, such as on computers for those such as me who are technically challenged, in conjunction with others, as appropriate points are raised by others.

David Mundell: What will the meeting cycle be? Will it be determined by the legislative programme? Will the committee meet as regularly as other committees?

The Convener: I apologise: I should have touched on that. My understanding is that the anticipated influx of legislation will be such that a weekly meeting will be appropriate. It may be that some meetings will be light and others will be fairly full, but if we do not stick to a weekly cycle, we might find ourselves with a pile of documents and a full weight of legislation to which we would be unable to give worthy consideration. Unless there are opposing views from members of the committee, we should meet weekly. Meetings will be in our timetables. We will have a cycle of meetings, and will know what is coming and have an opportunity to consider it.

You will have read in the briefing that there are time constraints: 20 days, 40 days, and so on. If we get out of kilter, we will find ourselves up against the wire and having to discuss things, even though we have a full agenda. My own view, and the advice of the clerks, is that we should meet weekly. If that means that on some occasions—perhaps initially—our work load is not particularly heavy, so be it: we can adjourn earlier and get on with other parliamentary business.

Fergus Ewing: On the role of the committee, I suppose that we are going to suck it and see, but my view is that we will be a clearing house for statutory instruments, which will come to us and then go on to other substantive committees. Perhaps the clerks could give us some idea of what volume of subordinate legislation will come to us from Europe between now and resumption in September, how that legislation will be dealt with and what briefing we will receive on the substantive issues of the legislation. I am aware that some regulations, certainly on farming, have caused grave hardship because of the inflexibility

with which the rules are enforced—often against farmers. We would be derelict in our duties if we did not try to anticipate such mantraps. Is there a case for meeting before Parliament resumes?

Secondly, on consultation, when we perform the role of clearing house, it may occur to us that there are a number of bodies that should be consulted, especially on draft statutory instruments, rather than those that are already in force. For example, retailing and, perhaps, small business would have an interest in any statutory instrument about the storage capacity of fridges. What role will we and, more particularly, the clerks play in approaching the intellectual question of to whom we should send information to ensure that those whose interests will be affected by any statutory instrument or proposed statutory instrument will have the chance to be consulted?

The Convener: Subordinate legislation will not come here, but will go directly to the European Committee, which, apparently, is meeting in July. Any MSP is free to attend that committee's meetings.

As convener, I briefly canvassed the anticipated volume of work. It will probably be best dealt with at an informal briefing with the parliamentary legal office and the solicitor's office. They can give us an idea of what legislation is coming, how it is going to be processed and the likely cycle of troughs and mountains that may come over the next few months.

I do not think that it is appropriate to say too much about how much work we can anticipate—they had only estimated on what had gone before—but if we meet during the recess, we can, in addition to the other points that we have raised, again ask them how much work we can anticipate and whether they can give an indication of the likely agenda over the forthcoming period. While we cannot control their legislative process, we can ask them to ensure that, after the first informal meeting, matters are put through here on a commonsense basis so that we do not suddenly get landed with a 20-day timetable. That is a matter for them.

Will the committee be content if I arrange for a briefing programme, taking into account the points made? I will ask the civil servants detailed to this committee to liaise individually with members, because we all have different holiday constraints. The point that it will be appropriate to meet collectively rather than individually or in sections was well made by Trish.

Are there any other points that members wish to raise?

I appreciate that other committees have overrun their allotted time and it is only 6 minutes past 11, but that is down to the nature of this committee.

Like others, I am conscious that it is good to be technical and detailed. There will be a lot of hard work and, although it may seem as dry as dust, I can only say—having worked in litigation for 20 years—that it is extremely important. If we get it wrong and do not flag up a problem, then a committee dealing with an important point on the rights of detained immigrants, or whatever, may not get it right. If that committee does not get it right, then somewhere down the line individuals will have to deal with it.

Although we will not have the joy of considering the meaty political issues, we can attend committee meetings on those later. There is nothing to stop members of this committee—who are perhaps pre-warned and pre-armed—going along to other committees that we sit on, or have an interest in, to raise points about which we have been forewarned. To some extent we will have an advantage over our colleagues.

As my briefing sheet correctly points out, there will be a substantial amount of work to do in scrutinising the Executive's output of subordinate legislation and in satisfying ourselves as to the quality and accuracy of the subordinate legislation laid before the Parliament. I am confident that we will press on with that.

The only other point that I canvassed with the secretariat is that I am aware that other

committees have the power to co-opt. That may not be something that we would necessarily consider in this committee but, as I indicated, I was stopped in the street by sheriffs who have known me for many years who pointed out some interests that they have.

It may be that, although we have timetable constraints, there will be particular aspects of legislation about which either we may want people to come and speak to us about the practicalities, or we may want to discover their views by writing to them and flagging up the issues of interest to them. For example, on civil and criminal justice there may be issues not about the political meat of it, but about how it is organised in practice.

I would like this committee to bring on board at an early stage the organisations and individuals who may end up processing the legislation. The political aspects of it need to go to an individual committee, but if we forewarn those people and organisations, they can either react to us if they think that a problem is going to arise, or consider at an early stage matters that will go to other committees.

I draw the meeting to a close faster than any other committee that has met so far, and look forward to meeting all the members again during the summer recess.

Meeting closed at 11:10.

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