

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 31 August 1999
(Morning)

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SUBORDINATE LEGISLATION COMMITTEE

2nd Meeting

CONVENER :

*Mr Kenny MacAskill (Lothians) (SNP)

COMMITTEE MEMBERS :

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

*Trish Godman (West Renfrewshire) (Lab)

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

*Bristow Muldoon (Livingston) (Lab)

*David Mundell (South of Scotland) (Con)

*Ian Welsh (Ayr) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED :

Mr Robert Brodie (Consultant to the Scottish Parliament's legal advisers)

COMMITTEE CLERK:

Alasdair Rankin

ASSISTANT CLERKS:

Claire Menzies

Anne Peat

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 31 August 1999

(Morning)

[THE CONVENER *opened the meeting at 11:03*]

The Convener (Mr Kenny MacAskill): Good morning, and welcome to this second meeting of the Subordinate Legislation Committee. I remind members of the public that we are happy to have the democratic process viewed, but I make it clear that the purpose of this committee is to consider not policy, but dry and technical matters such as whether legislation is properly drafted and whether it is *vires* or *ultra vires*.

Although we might like to discuss policy issues, we are precluded from doing so. For example, we are discussing amnesic shellfish poisoning, which people may have heard mentioned on “Good Morning Scotland”. We are not in a position to consider the whys and wherefores; we must consider simply whether the legislation that has been or is about to be brought in is appropriate. The purpose of our meeting briefly in private first was to allow us to obtain legal advice. There are two agendas—the main agenda and a supplementary one dealing with revoked orders.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (Scotland) Order 1999 (SSI 1999/25)

The Convener: This is the first item on the main agenda; it is referred to in paragraph 7 on page 2 of the legal briefing. Do members wish to comment on this, following what we heard from Mr Brodie?

Bristow Muldoon (Livingston) (Lab): No.

The Convener: I take it that the order is approved.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Scotland) Order 1999 (SSI 1999/26)

The Convener: Item 2 reflects the west coast position and is basically the same as item 1. Is it approved?

Members: Yes.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (Scotland) Order 1999 (SSI 1999/27)

The Convener: Is this order approved?

Members: Yes.

Scotland Act 1998 (Agency Arrangements) (Specification) Order 1999 (SI 1999/1512)

The Convener: This is referred to in paragraph 9 of the legal briefing. Do we want to ask for clarification on this? Mr Brodie’s note gave us the background, but the committee did not exist when that was being considered.

Bristow Muldoon: We agreed to note the order and some of the exciting functions that Scottish ministers will have.

The Convener: Is the order approved?

Members: Yes.

Environmental Impact Assessment (Scotland) Regulations 1999 (SSI 1999/1)

The Convener: These regulations must be read in conjunction with the explanatory memorandum that was provided by the Executive—the first item on the supplementary agenda. As the clerk, Alasdair Rankin, points out, the matter has been flagged up on page 3 of the legal briefing. Mr Brodie noted a problem with the drafting of the preamble, as mentioned in point 11 of the briefing—I have to say that I did not. Does the committee think that we should draw that to the Executive’s attention?

David Mundell (South of Scotland) (Con): In a helpful way.

Bristow Muldoon: The order breaches the 21-day rule, but I think that we understand why, in these circumstances, the rule has been breached. In future, we would expect to be able to comply with the rule.

The Convener: Is the order approved?

Members: Yes.

Food (Animals and Animal Products From Belgium) (Emergency Control) (Scotland) Order 1999 (SSI 1999/14)

The Convener: This item is referred to in point 12 on page 3 of the legal briefing. Mr Brodie flagged this up for us, pointing out that the order came into force before it was laid before the

Parliament and that there was no explanation of why article 10(1) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SI 1999/1096) was breached. Do we wish to draw this to the Executive's attention?

Bristow Muldoon: That would be appropriate.

David Mundell: It is a serious breach.

The Convener: Perhaps we could note that we are all learning our way at an early stage in the Parliament's life and ask that such omissions be avoided in future.

Trish Godman (West Renfrewshire) (Lab): Can I ask a crazy question? How can the egg white be included but not the egg yolk? That fascinated me. I do not know how it could be done without breaking the egg.

The Convener: That is policy, but we could draw the matter to the attention of the Rural Affairs Committee.

Animal Feedingstuffs From Belgium (Control) (Scotland) Regulations 1999 (SSI 1999/15)

The Convener: This item is the same as the previous one. Should we agree to flag up the same point?

Members: Yes.

Plant Health (Amendment) (Scotland) Order 1999 (SSI 1999/22)

The Convener: A typographical error has been flagged up here, but that is something that we should let go by. If we send too many letters, we will undermine the weight of what we write.

We now move on to the supplementary agenda. We have dealt with item 1, which is the explanatory memorandum on the environmental impact assessment order.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (No.2) Order 1999 (SSI 1999/3)

The Convener: This order and the following items were flagged up by Mr Brodie in the context of article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SI 1999/1096). Again, I presume that this is something that the committee would wish to be addressed, taking into account that we are at an early stage and that we appreciate that the Executive is perhaps not used to these matters. We would ask in future that the

terms of article 10(2) be adhered to.

Members: Yes.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Scotland) Order 1999 (SSI 1999/7)

The Convener: This order is in the same category as the preceding one. As these orders are being revoked, I do not know whether we want to comment on them. It appears that there were difficulties in drawing up this legislation in a hurry; it is not for us to be overcritical of the Executive's attempts to sort out matters to the benefit of everybody.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (No. 2) (Scotland) Order 1999 (SSI 1999/13)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (No. 3) (Scotland) Order 1999 (SSI 1999/18)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (No. 4) (Scotland) Order 1999 (SSI 1999/23)

The Convener: All these orders relate to shellfish poisoning matters and are covered in paragraphs 5, 6 and 7 of the legal briefing. We touched on them earlier. Can I take it that there is nothing on which we want to make any adverse comment?

Bristow Muldoon: I do not think that we want to make any adverse comment, but the explanatory letter attached to SSI 1999/23—order No. 4—mentions proposals to amend the Food and Environmental Protection Act 1985. We might wish to ask how that is to be done and over what time scale.

The Convener: Thank you for that. Can we leave that for the clerk, Alasdair Rankin, to raise, either in one consolidated letter or in several? Presumably this will not be the end of the shellfish orders.

Other Business

The Convener: That seems to conclude the business agenda. Alasdair has kindly prepared a proposed agenda for future meetings. Ian Jenkins flagged up that the timing of the meeting is a problem for him. We have the parameters of

Tuesday morning in which to work. As I said previously, I am happy to come and go with the wishes of the committee, as I live close to the Parliament.

11:15

It is perhaps unfortunate that the two people who wanted the later start are the two who have sent their apologies. Perhaps Ian Welsh will want to canvass that point with Ian Jenkins and with Fergus. I do not know how others feel, but I am happy to come and go. We should perhaps strike a balance among ourselves in deciding whether we start slightly earlier.

Ian Welsh (Ayr) (Lab): Earlier suits me. I travel for two hours. I know that the two who are not here also have to travel, but meeting at this time would render a good deal of the day inoperable for me because of the travelling back and forth. I understand the problems of Ian and Fergus, but mine are similar. If I get here earlier I miss the traffic—that happens both ways. Perhaps we can agree that some of the meetings should be earlier and some at this time. Either way, it would help.

The Convener: How do other members feel about that?

Trish Godman: The meetings are always on Tuesday mornings.

The Convener: Yes, apart from two on a Monday. I am willing to go along with a variable time on a Tuesday.

David Mundell: I was also in favour of meeting at 11 am, as we did today. I would not be happy to meet before 10 am because I do not want to be committed to being in Edinburgh on a Monday night, as I would have to be to guarantee being here.

The Convener: Can I suggest that you, Ian, have a word with the other Ian and with Fergus to try to strike a balance. I am flexible, and rather than our putting the matter to a vote and causing disgruntlement, you may be able to come to a working arrangement.

The half-hour of informal briefing seemed a bit tight this week. What do you think, Bob? You are the expert.

Mr Robert Brodie (Consultant to the Scottish Parliament's Legal Advisers): Various general points had to be discussed, but there could be occasions when there are more statutory instruments. Members will certainly need a full half-hour normally. Three quarters of an hour might be better—three quarters is safe and there is no rush, whereas in the half-hour that we had there was a learning curve both on my side and on the members' side.

Ian Welsh: What is the rationale for meeting on the Monday afternoons?

The Convener: There is a trip to London to see the Joint Committee on Statutory Instruments. That committee meets on 26 October—a Tuesday—so Alasdair and I will be unavailable then. There is a parliamentary holiday on 30 November—accordingly that Tuesday is not available. The difficulty is that other committees are timetabled for Wednesdays. I would be reluctant to meet on a Wednesday evening, which is when the committee of conveners meets, and meeting on Monday is probably preferable to meeting on Friday.

Ian Welsh: I would prefer not to meet on a Monday or a Friday, which are constituency work time for me. However, if it is in extremis, fair enough.

The Convener: You can take it, Ian, that we will not regularly meet on Mondays. We are doing so only because two particular Tuesdays are not available.

Trish Godman: I am with Ian on that: we should be in our constituencies on Mondays and Fridays, but I accept that meetings will occasionally have to take place then, as long as we get plenty of notice.

The Convener: Shall we extend the pre-meeting?

Trish Godman: To three quarters of an hour.

Bristow Muldoon: We should reconsider our start time at the next meeting, when we should reconvene at 10.30 am with an 11.15 am public start.

The Convener: I do not expect other Tuesdays to give rise to similar problems; it is just that the London meeting and St Andrew's day fall on a Tuesday. We are boxed in by the parliamentary committee timetable.

Is there any other business?

Members: No.

The Convener: Are you happy, Bob, about the legal briefing note? Will it come out with the papers in future, or will it be available on the morning?

Mr Brodie: Ideally, the committee should have it the night before so that, if members arrive in Edinburgh on a Tuesday morning, they have a chance to read it—members were reading it today. We will have half an hour to go through it, or slightly longer. We should aim to get it to members by Monday evening, but I suspect that it would be impractical for the note to be sent out to members on the Friday, because things change. Members should expect to receive it sometime on the Monday or Tuesday morning.

Trish Godman: That is great.

The Convener: Shall we discuss the timing of meetings—the number of days in which documents can be laid—or are we leaving that for another meeting?

Ian Welsh: I would like to reserve an opportunity to come back to how the papers are prepared for us. I have found getting to grips with what they are about pretty heavy going. Part of the question is how the papers are presented to us. It is important that we establish what is user-friendly for members. I am not saying that the paper is not user-friendly, but we deserve the right to say that we would prefer to have information packaged in a way that facilitates our understanding of the issues.

Trish Godman: I found the explanatory notes helpful, although a couple of them claimed not to be the explanatory note for a particular order, which confused me—I will learn as I go along.

The Convener: I do not know whether the agenda could show for each item whether there is a note or no note. Would that be too complicated to tie up with the legal advisers, Alasdair?

Alasdair Rankin (Committee Clerk): We can certainly examine that possibility, although there will in some cases be extreme time pressure. We can work with that, by and large.

The Convener: Everyone was scribbling things down and going back through the papers—that was not anyone's fault. If the agenda mentioned where to look, it would be easier for all members.

Mr Brodie: This meeting has examined things that happened during the recess. Once the Parliament is up and running, the timing will be better. A number of the statutory instruments that we examined today were revoked. That is one of the reasons why we had the two agendas. It would clearly be in everyone's interest if the agenda and the notes went together. No one would suggest that today's arrangements have been ideal, but things will improve.

The Convener: When I first saw the Environmental Impact Assessment (Scotland) Regulations 1999, I took one look at the document and thought, "No, thank you." I sent it to the Royal Institution of Chartered Surveyors, which kindly responded within 24 hours on the basis that everything was hunky-dory. I mention that as an aside and as an idea that members might want to examine—if you send regulations to the appropriate governing organisation, they will, in some instances, do your scanning for you.

Meeting closed at 11:23.

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