

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 14 September 1999
(Morning)

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SUBORDINATE LEGISLATION COMMITTEE

4th 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

COMMITTEE CLERK:

Alasdair Rankin

ASSISTANT CLERKS:

Claire Menzies

Anne Peat

Scottish Parliament

Subordinate Legislation Committee

Tuesday 14 September 1999

(Morning)

[THE CONVENER *opened the meeting at 11:15*]

The Convener (Mr Kenny MacAskill): Good morning, ladies and gentlemen. Welcome to this public meeting of the Subordinate Legislation Committee. I should indicate at the outset that we intend to change the agenda so that matters can be dealt with appropriately. As we will now address Executive responses first, items 4 and 5 will be taken before items 1, 2 and 3.

Food (Animals and Animal Products from Belgium) (Emergency Control) (No 2) (Scotland) Order 1999 (SSI 1999/32)

Animal Feedingstuffs from Belgium (Control) (No 2) (Scotland) Regulations 1999 (SSI 1999/33)

The Convener: Let us begin with item 4. We have an Executive response to these two pieces of subordinate legislation. The letters have been commented on and we have had the benefit of advice from our lawyers. It has been flagged up that the response is not all that it should be, given the serious representations that we made and our view on the implications with regard to retrospectivity and penal sanctions.

There are various options available. Obviously, it is possible to request another Executive response, but the time scale makes that difficult. Do members have a view on how we should proceed?

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): I suggest that we bring the instruments to the attention of the Parliament and of the lead committee. We should say that we are not happy with the situation and that they should look at it.

The Convener: I support that. The other options available to us—a further written response and oral evidence—are not appropriate because of the time scale. In view of the seriousness with which last week we as a committee regarded this issue—the instruments may affect only a limited number of individuals, but the consequences could be serious—we should seek to lay down a marker for how we wish to see such matters dealt with.

Accordingly, as Ian said, we should bring this to the attention of the Parliament and of the lead committee. Is that the committee's view?

David Mundell (South of Scotland) (Con): I agree with that. In this initial period, it is important that we take a hard line on these issues, to ensure that errors do not become endemic. We must make it clear that we want best practice. That is the way in which we should proceed.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I agree with what Ian Jenkins and David Mundell have said. It might be appropriate to consider inviting the Executive to make an explanatory statement in the business bulletin, for the benefit not just of the members of this committee but of all members of the Parliament. That will make members aware of the dangers of retrospective legislation and familiar with the issues that we, by virtue of being on this committee, have had to grapple with over the past few weeks. That would serve the Parliament well and might ensure that there is no repetition of what has occurred in this case.

The Convener: Is that acceptable to you, Alasdair, as committee clerk? We want to ensure that Parliament realises why we take a serious view of this matter, and that we are not simply being truculent for the sake of it.

Alasdair Rankin (Committee Clerk): I could raise that with the business team in the chamber office.

The Convener: Certainly.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) Revocation (Scotland) Order 1999 (SSI 1999/41)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No 2) (Scotland) Order 1999 (SSI 1999/42)

The Convener: The position on these orders is much the same as before. The response from the Executive is similar to that which was dealt with in item 4. Do we want to take similar action?

Ian Jenkins: I suggest that we do the same thing. I hope that this is a bedding-down process, and that we will not need to take this action more than once.

The Convener: I am sure that we can ask the clerk to write that we do this more in sorrow than in anger, and to make clear how seriously we think this should be viewed by Parliament and by the Executive.

Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 (SSI 1999/43)

The Convener: We move to item 1 on the agenda. Fergus, you had some concerns about this matter.

Fergus Ewing: I understand from our legal advisers that this statutory instrument was made under section 2(2) of the European Communities Act 1972, and that the due date for implementation of the relevant European directive has long since passed. The Minister for Rural Affairs has indicated that there has been an unacceptable delay in laying the instrument before the Parliament, which is a matter for concern. We should find out why the delay arose in this case.

Yesterday evening I studied these regulations in some detail. I wonder—given that there has been a delay of two years—whether a further 21 days, which might have allowed some consultation, would have made a great deal of difference. Could the Executive advise this committee what consultation there has been with bodies that have an interest in, for example, the definition of “relevant projects”? Such bodies may well quibble with the thresholds of 2 and 5 hectares set out in schedule 2 and, indeed, with some of powers—which can be described as draconian—laid down in regulations 6(2) and 7(5).

Has the Executive consulted with the National Farmers Union, the Timber Growers Association and timber merchants organisations? Has there been consultation with the Law Society of Scotland on the provisions in paragraph 19, which give the Court of Session exclusive jurisdiction over whether a copse of trees is a relevant project? The Law Society may feel that we would have to wait several hundred years before a crofter went to the Court of Session to litigate in such a matter, and ask why sheriff courts have not been given jurisdiction.

I do not want to stray into the substantive elements of these regulations, but I have flagged up a few areas in which some consultation would have been important.

Bristow Muldoon (Livingston) (Lab): I endorse the first half of Fergus’s contribution, in which he drew attention to our concern that there has been a substantive delay in the laying of these regulations.

This is the second time in a couple of weeks that we have considered European legislation for which the date on which we were supposed to have met our obligations and enacted them into law had long since passed. It is appropriate that we ask for an explanation of that delay. If it were

to await the Scottish Parliament coming into being and being able to express a view, it would seem illogical for the regulations to have been laid only three days before they come into force, which is what happened on this occasion. We are, therefore, due an explanation of why the time between the laying of the regulations and their coming into force was so short. If it was to allow this Parliament to express a view on them, how was that possible within such a short time scale?

David Mundell: I would also like an explanation of the phrase “presentationally important” to describe why the regulations came into force in Scotland and in England and Wales on the same date. As I understand it, that is not a requirement. Perhaps the European Committee would also like that explained.

The Convener: That is a good point.

Further to the advice that we have had from the lawyers, Fergus and Bristow have suggested that we request an explanation of why there has been a delay in the laying of the regulations. We want clarification of the time limits that are referred to in the regulations, an explanation of the purpose of regulation 2(3)(b), which appears to reproduce regulation 25(9), and clarification of various minor drafting points, which we are entitled to seek. That relates to regulations 5(1), 7(1) and 7(8). We will also pursue the point that David raised.

Before we move on to the next item, are there any other comments on these regulations?

Trish Godman (West Renfrewshire) (Lab): Will you also take up the point about consultation?

The Convener: Yes. I apologise for failing to mention that.

Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 1999 (SSI 1999/48)

The Convener: These regulations caused us some concern in the pre-meeting, in which we discussed the limitations on our remit. Although we are not permitted to consider policy, as a sifting committee we are required to flag up matters that may cause problems. Each of us has been e-mailed by the Law Society about a substantial problem that could arise as a result of these regulations. Do members have any comments?

David Mundell: I have a point to make about the revised definition of the start date of a trial. Dates and time limits are at the heart of the Scottish criminal legal system. It is fair and appropriate that we ask that these regulations be fully considered with that in mind, so that there are no unforeseen knock-on effects; for example, witnesses failing to appear at trials. We should

seek specific reassurance on that point.

The Convener: I agree with David. We would be neglecting our duties if, as the responsible committee of the Parliament, we did not flag up a potential problem. This may be a genuine error, or it may be something that the Executive has considered and is intent on pursuing. The Executive is entitled to do that, but if there has been a genuine error, we would be in dereliction of duty if we did not signal that to the Executive and, at the same time, draw it to the attention of the lead committee. If we do not, there is a danger that the lead committee will simply nod the regulations through. We should try to alert our colleagues elsewhere of problems.

We were unsure whether the new provisions would apply to work in progress. We may be able to seek clarification about when they will be viewed as having commenced and how they will affect people who are making a claim under the regulations.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Order 1999 (SSI 1999/50)

The Convener: Consideration of this order is the final item on the agenda. Legal advice is that no particular problems arise and that we as a committee should be satisfied with the order. The lead committee should be left to consider policy implications. If members have no comments, we will simply note that. Members are agreed. That brings the meeting to a conclusion. Thank you.

Meeting closed at 11:29.

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