

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 2 November 1999
(*Morning*)

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SUBORDINATE LEGISLATION COMMITTEE

9th 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 2 November 1999

(Morning)

[THE CONVENER *opened the meeting at 11:17*]

Lobsters and Crawfish (Prohibition of Fishing and Landing) (Scotland) Order 1999 (SSI 1999/88)

The Convener (Mr Kenny MacAskill): Good morning. The first item on the agenda is Executive responses. Do members have any points that they wish to raise with regard to the order?

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Article 3 of the order prohibits

“fishing for

- (a) a mutilated lobster
- (b) a mutilated crawfish, or
- (c) any lobster or crawfish bearing a V notch.”

We asked the Executive to explain how an offence is committed under this provision, because there is a separate provision that makes it a criminal offence to land fish that fall into those categories. In its response, the Executive argued that fishermen who find that they have those types of fish in their catch can throw them back, and thereby avoid prosecution. The provision is redundant and, as it creates a criminal offence, it should not be present in any statutory instrument.

The Convener: Bristow, do you have a different view on that matter?

Bristow Muldoon (Livingston) (Lab): Personally, I think that the likelihood of prosecutions is probably extremely slim and that fishermen who return fish that had been caught accidentally would not be prosecuted. However, I accept that the point made by Fergus is accurate, as a strictly technical interpretation. There is something not very comfortable about bringing again to the attention of the Executive that this particular part of the order is unnecessary and that it would probably be better if it were deleted.

The Convener: Should we draw to the Executive's attention that we think that that part is superfluous? I do not think that the lead committee will go to the wall over this issue, but that is a matter for them.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): It has just occurred to me that,

presumably, if one were fishing for salmon, the act of fishing would be illegal, whether or not one threw the fish back. The intention is to discourage people from going out to look for these fish. There is a point at which the act of fishing for prohibited species is an offence, as it should be. I think that our position is probably all right.

Bristow Muldoon: In this case, the act of fishing for lobsters is not an offence, as the species is not prohibited. Indeed, the order says that the fishing industry supports these particular regulations. It would be perfectly appropriate to follow the line that Fergus suggested.

My only other comment is that I noticed that the regulation only applies to Scottish or British fishermen and not to fishermen from other parts of the European Union. I do not know what the fishing industry thinks of that, but that is something for the lead committee rather than for this committee.

The Convener: Perhaps we can leave that to the clerks and couch the letter in terms of our thoughts that article 3 is superfluous, although we appreciate the difficulties where there is a general intention to try to prevent certain circumstances arising. [*Interruption.*] It has been pointed out to me that we do not have time to go back to the Executive. We will have to put our comments in our report, which might flag up the issue to the Executive. We can draw to the attention of the Rural Affairs Committee the question of how it may wish to deal with such matters, should there be time available on its agenda.

Organic Aid (Scotland) Amendment Regulations 1999 (SSI 1999/107)

The Convener: We have received a response and we have received a copy of the decision that was not attached before. Is that satisfactory?

Members indicated agreement.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (No 3) (Scotland) Order 1999 (SSI 1999/110)

The Convener: We have received confirmation that the absence of a covering letter to the Presiding Officer was an administrative oversight. Are members happy with that explanation and with the humility shown by the Executive legal officers?

Members indicated agreement.

The Convener: Grand.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Partial Revocation (Scotland) Order 1999 (SSI 1999/114)

The Convener: A couple of matters were flagged up about this order—in particular, on the question of maps. Fergus, do you wish to raise any points?

Fergus Ewing: I recollect that it was initially pointed out by way of advice to the committee that, formerly, maps had been provided in statutory instruments of this kind and that the recent flurry of instruments departed from that practice. The Executive's response is that the maps that would be annexed to the statutory instruments might not be sufficient to define the areas and that maps are supplied to fishermen. The Rural Affairs Committee may want to consult with representatives of fishing organisations on that point.

However, it might be helpful for maps to be provided, particularly for those non-specialists who are interested in these regulations. That does not seem to amount to a huge, additional expense. It is not as if we are suggesting that we follow the House of Commons practice of printing maps on vellum, which, I understand, is required of House of Commons legislation at a cost of some £30,000 extra per year. The House of Commons has voted to perpetuate that as a desirable practice, while the SNP advocates the production of paper rather than vellum maps.

The Convener: Are there any other views on maps?

Bristow Muldoon: The maps are being provided to the fishing industry in any case. I do not think that the maps would add much to our understanding of the orders, so they would be superfluous if we were to ask for them. The cost of a few more photocopies is probably fairly low but, if it adds nothing to the process, I do not see why we need them.

The Convener: Are there any other views before we decide what we shall ask the Executive to do?

Ian Jenkins: It was suggested that the provision of maps might delay an order that is concerned with public health. That would be a bad thing. Nevertheless, by the time the matter gets to the lead committee, that committee should have access to a map even if we do not need one.

The Convener: If that is the case, it would be best to ask for maps at the outset. I do not know whether there would be consensus on leaving the matter to the judgment and discretion of the

Executive, but I think that, in principle, we would like a map to be provided where possible, bearing in mind urgency and cost. Would that satisfy you, Fergus, or would you prefer to make the provision of maps mandatory?

Fergus Ewing: As a man who is well known for seeking compromise wherever it can be found, I am quite happy to agree to the compromise that you have proposed, convener. It sounds reasonable.

The Convener: If that is agreed, I shall move on speedily.

Erskine Bridge (Temporary Suspension of Tolls) Order 1999 (SSI 1999/116)

The Convener: I do not know whether we accept the spirit of this response. Does anyone have any views? I know that we have taken the Executive to task before, but we do not want to be too officious or obtuse.

Bristow Muldoon: It is a satisfactory response.

The Convener: Is that agreed?

Members indicated agreement.

Fergus Ewing: We are looking forward to the Skye bridge (suspension of tolls) order, but perhaps we will have to wait a little longer.

Bristow Muldoon: Is the order going forward to the Transport and the Environment Committee?

The Convener: Yes.

Education (Student Loans) (Scotland) Amendment Regulations 1999 (SSI 1999/124)

The Convener: We seem to have received a full explanation of this order from the Executive. Are we satisfied with that?

Members indicated agreement.

Scotland Act 1998 (Transitory and Transitional Provisions) (Appropriations) Amendment Order 1999 (1999/draft)

The Convener: We now come to the affirmative instruments. This is a draft order and we have been advised that it is a larger document than we would usually be asked to deal with. Are we satisfied with this provision?

Members indicated agreement.

Maximum Number of Judges (Scotland) Order 1999 (1999/draft)

The Convener: This is also a draft order. Again, we have been advised that amendments have been made and matters rectified. Because of the urgency of the situation, the matter is on the agenda for business in Parliament on Thursday 11 November. We are therefore dealing with it speedily. Is it agreed that the order contains nothing that we need to draw to the attention of Parliament, as it will be going directly there rather than to a committee?

Members indicated agreement.

Bristow Muldoon: We all recognise the extreme importance of the measure, given the number of Scottish judges who will be otherwise committed for a considerable time.

The Convener: As a personal friend of the agent for the alleged Lockerbie bombers, I ought to declare an interest. I do so now.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (North Coast) (Scotland) Order 1999 (SSI 1999/125)

The Convener: This order raises the question of maps, which we covered earlier. Do we agree to leave that as part of the general notation that will be drawn to the attention of others?

Members indicated agreement.

Thurso College (Change of Name) (Scotland) Order 1999 (SSI 1999/126)

The Convener: We will now deal with the negative instruments. I do not think that any points arise from this order.

Plant Health (Scotland) Amendment (No 2) Order 1999 (SSI 1999/129)

The Convener: I understand that our legal advisers have had previous experience of this order. We have raised the question of consolidation in amendments before. Do we want to inquire whether consolidation is to be considered?

Trish Godman (West Renfrewshire) (Lab): We should. Also, would it be worth while to ask the Executive if it has a timetable or if it plans to revise the principal order, which, according to paragraph 14 of the legal adviser's notes, is pretty messy?

Fergus Ewing: It seems that the principal order, the Plant Health (Great Britain) Order 1993, is described in the notes as

"one of the worst pieces of legislation on the statute book . . . badly drafted, opaque, riddled with inconsistencies"

and notes that it is often impossible to operate the order sensibly. That is not a vote of confidence and the Executive should take the advice of the legal adviser seriously.

The Convener: We will follow the recommendation of Fergus and Trish and draw that to the attention of the Executive.

Wafer Scottish Seal Directions 1999 (SSI 1999/130)

The Convener: The legal adviser has noted that there is some superfluity in this order. Will we draw the Executive's attention to the fact that parts of this order might be unnecessary, given that primary legislation already deals with the same matters?

Members indicated agreement.

The Convener: That brings the meeting to a conclusion. Thank you for your attendance.

Meeting closed at 11:31.

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