

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 23 November 1999
(Morning)

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SUBORDINATE LEGISLATION COMMITTEE

11th Meeting

CONVENER :

*Mr Kenny MacAskill (Lothians) (SNP)

COMMITTEE MEMBERS :

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

*Trish Godman (West Renfrewshire) (Lab)

Ian Jenkins (Tweddale, 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 23 November 1999

(Morning)

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

The Convener (Mr Kenny MacAskill): We have apologies from Ian Jenkins and Ian Welsh, who are attending another committee.

Abolition of Feudal Tenure etc (Scotland) Bill

The Convener: The first item on the agenda is delegated powers scrutiny. Various bills are before us. The first is the Abolition of Feudal Tenure etc (Scotland) Bill, which is at stage 1.

We have had the benefit of advice and briefing on the aspects that are covered. There is a general point at the start on various matters relating to fees. Does anyone have any comments on that, before we move on to section 5, which affects us?

Members: No.

The Convener: Do members have any points on section 5?

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): On section 5, while the delegation of powers in relation to forms is not inappropriate, there seems to be a lack of an explanation as to why it has been decided to include some forms in the bill, but to leave this particular form to subordinate legislation. It is the form for recording deeds in the Register of Sasines. An explanation from the Executive on that aspect might assist the committee.

The Convener: Certainly. That is also the case on the requirement for prior consultation with the Lord President of the Court of Session. There might be a good reason for that, but it would be worth knowing the reasoning behind it, given the difficulties between conveyancing practitioners and the interpretation put on various matters by High Court judges.

Fergus Ewing: You would think that the Lord President had his hands full enough at the moment with other matters.

The Convener: On section 19, the advice that we have had is that it is appropriate. We thank the

Executive for its helpful comments.

Fergus wants to raise some points on section 20.

Fergus Ewing: Section 20 deals with section 2(1) and (4) of the Conveyancing and Feudal Reform (Scotland) Act 1970, which set out the considerations that govern applications to the Lands Tribunal for Scotland for variation or discharge of land obligations and raise important issues that go to the heart of the Abolition of Feudal Tenure etc (Scotland) Bill. They determine the circumstances in which individuals can go to a court of law and have unfair title conditions struck out. They have been a source of contention over the years.

It is of some surprise to me that the bill has been drafted to give the Executive the power to add, by way of statutory instrument, modifications to those rules that would be deemed appropriate by ministers. That seems to be an excessive use of power, and I would be pleased to receive an explanation from the Executive as to why it believes that statutory instrument powers should be used for such important matters.

David Mundell (South of Scotland) (Con): The drafting of the section is obscure. A more straightforward form of words could be achieved, subject to the answer to Fergus's point.

The Convener: As regards section 25, our advice is that the use of the delegated power and the procedure are appropriate. Similar advice applies to sections 43, 69 and 74.

David Mundell: There is a concern in relation to section 74. The drafting of subsection (3) allows too wide an ability for the Executive to make amendments and, while there might be a reason for that, perhaps it sets a dangerous precedent.

Fergus Ewing: I agree. It seems odd to me that included in these bills should be sections that say that, if the Executive does not pick up on all the previous legislation that needs to be amended or repealed, it can do so later on. That practice—I believe that it is called a Henry VIII clause—should be discouraged.

Bristow Muldoon (Livingston) (Lab): I do not have any objection to such a clause, but I think that we should consider whether the affirmative procedure should be used to carry out any consequential change, as opposed to the negative procedure. That would satisfy me. We could raise that with the Executive.

Adults with Incapacity (Scotland) Bill

The Convener: We will now deal with the Adults with Incapacity (Scotland) Bill.

The first aspect that concerns us relates to section 2(7) and section 9. There are concerns about whether rules are to be specified by a sheriff or in legislation.

Trish Godman (West Renfrewshire) (Lab): We need some more information about that. I am not sure whether it is better that rules are specified by a sheriff or in primary legislation. I would want to know why the Executive had chosen a particular route. There is a contrast between section 2(7) and section 9—the latter deals with guardianship and seems to be tighter. I would like an explanation of that.

The Convener: I share your concerns. As I mentioned earlier, the Children (Scotland) Act 1995 and the Adoption (Scotland) Act 1978 tend to be dealt with by rules of court. That is probably the correct approach, but we need clarification on the logic of that.

Section 5 of the Adults with Incapacity (Scotland) Bill relates to the public guardian. Does Trish want to add to her earlier comments?

Trish Godman: My only point would be to draw attention to the inconsistencies in the use of the word “prescribe”.

The Convener: We could ask the Executive to clarify that, along with the previous points.

Our advice on section 8(2) was that we should note that. On section 11, it was suggested that we note that there is provision for the operation of the bill including the delegated powers under it to be governed by codes of practice, and that we agree that those powers are appropriate. Similarly, it was suggested that we note section 13(3)(c) and section 14(3)(c) as before.

That brings us to section 25(1), paragraphs (c) and (f), section 35, subsections (2) and (9), section 44(3) and section 51(3)(a), which we note as before. Points have been raised about a possible oversight in regard to section 34(3) and section 38(1)(e). Does anyone want to comment on that?

Trish Godman: It is suggested that a power be included to allow amendments to be made to section 38 to reflect changes made by regulation under section 34. The Executive must consider that.

The Convener: I would concur with that.

On section 37(3), section 39(1)(d) and section 39(3), we are looking for an explanation as to why it was thought necessary to prescribe the sums in regulations if they can be varied by supervisory bodies.

We have no real comments on sections 45 and 48.

We might want further details on section 58 and how matters will work in practice.

Trish Godman: That is not absolutely clear. We need more information on how it will work in practice.

The Convener: Section 78 deals with matters that have caused problems in other bills.

We move on to schedule 1(2) and schedule 6, paragraphs 2, 4 and 7. Are there any comments on them?

Trish Godman: The appointing of a safeguarder can be left to the rules of court. The Executive must be asked why it considers that the functions of the safeguarder should be prescribed by rules of court, rather than set out in the bill or regulations made by Scottish ministers. I am not clear about the thinking on that.

11:30

David Mundell: I agree with what Trish has said.

The Convener: I share those concerns. It appears to me that something as specific as the functions is best dealt with clearly and should be properly defined.

Public Finance and Accountability (Scotland) Bill

The Convener: That takes us on to the Public Finance and Accountability (Scotland) Bill, as amended at stage 2. I think that Fergus flagged up some cause for concern.

Fergus Ewing: Section 24 contains a classic Henry VIII power to amend primary legislation by way of subordinate legislation. That is done under the section heading, “Modification of enactments”. While I understand that the Executive feels that it might not have identified all possible or necessary amendments or repeals, it seems that the power described under subsection (2) is of a rather sweeping nature. I wonder whether the Executive plans to include such a subsection in every bill that comes before Parliament. It seems to set a bad precedent. I await with interest the explanation of the subsection.

Bristow Muldoon: I might share Fergus’s concern if the negative procedure were being proposed. I am reassured by section 25(2A), which requires that any order under section 24 will be subject to the affirmative procedure. Therefore, any use of the act by ministers would be subject to scrutiny by Parliament. I do not share Fergus’s concern on the point that he raised.

The Convener: The matter will be for the lead

committee: perhaps we should ask it to clarify why it is being dealt with in this way, and whether the affirmative procedure is an adequate safeguard. Would that satisfy you, Fergus?

Fergus Ewing: That seems to be a sensible suggestion.

The Convener: Okay. Is that fine by you, Bristow?

Bristow Muldoon: That is fine by me.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No. 4) (Scotland) Order 1999 (SSI 1999/143)

The Convener: That takes us to instruments under the affirmative procedure, of which there is only one: the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No. 4) (Scotland) Order 1999. Everything appears to be in order, and there appears to be nothing to comment on. Is that agreed?

David Mundell: I think that the map should be noted as a positive development. Is it to be made available to the other committees—although it is not to be made available with the bill?

Alasdair Rankin (Committee Clerk): Yes, it is.

David Mundell: That is positive.

Fergus Ewing: Is that you congratulating the Executive, David?

David Mundell: No, I was congratulating the clerk.

Fergus Ewing: In that case, I agree.

Council Tax (Exempt Dwellings) (Scotland) Amendment (No. 2) Order 1999 (SSI 1999/140)

The Convener: We now come to an instrument under the negative procedure: the Council Tax (Exempt Dwellings) (Scotland) Amendment (No. 2) Order 1999. It has been drawn to our attention that the order was not laid until 10 days after it was made. We should seek an explanation.

Trish Godman: Yes.

Fergus Ewing: I support Trish.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) Partial Revocation (No. 2) (Scotland) Order 1999 (SSI 1999/141)

The Convener: That takes us to an instrument that is not subject to parliamentary procedure: the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) Partial Revocation (No. 2) (Scotland) Order 1999. There appears to have been a delay of one week with the order, but there is nothing else apart from that. Is the delay a matter that we want to raise?

Trish Godman: What is the difference between 10 days and seven days? If we are highlighting one delay, in regard to the council tax order, perhaps we should highlight this one. It might be worth adding it to your letter.

Correspondence

The Convener: The final item on the agenda is the letter from the Minister for Parliament. We are awaiting further responses on a number of matters, and I think that we should simply agree to hold the item until our next meeting.

Members: Yes.

Meeting closed at 11:33.

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