

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 1 February 2000
(Morning)

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SUBORDINATE LEGISLATION COMMITTEE

4th Meeting (Committee Room 3)

CONVENER :

*Mr Kenny MacAskill (Lothians) (SNP)

DEPUTY CONVENER:

*Ian Jenkins (Tw eeddale, Ettrick and Lauderdale) (LD)

COMMITTEE MEMBERS:

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

Trish Godman (West Renfrewshire) (Lab)

*Bristow Muldoon (Livingston) (Lab)

*David Mundell (South of Scotland) (Con)

*attended

CLERK TEAM LEADER :

Alasdair Rankin

ASSISTANT CLERKS:

Claire Menzies

Anne Peat

Scottish Parliament

Subordinate Legislation Committee

Tuesday 1 February 2000

(Morning)

[THE CONVENER *opened the meeting at 11:14*]

The Convener (Mr Kenny MacAskill): Good morning—I think we are ready to roll. This meeting should be brief.

Executive Responses

The Convener: The committee sought, and has obtained, a response from the Executive to various points that we raised on the Census (Scotland) Order 2000. The advice that the committee has been given is simply that we draw Parliament's attention to the Executive's response, as the information that we sought has been made available. Is that agreed to?

Members: Yes.

The Convener: The second instrument on which the committee commented and requested a response from the Executive is the Seeds (Fees) (Scotland) Regulations 2000 (SSI 2000/1). Again the committee has been advised to draw Parliament's attention to the Executive's response, as the information that we sought has been provided. Does any member wish to add anything?

Members *indicated disagreement.*

Small Claims (Scotland) Amendment Order 2000 (SSI 2000/Draft)

The Convener: We will now move on to consideration of draft affirmative instruments. The Law Society of Scotland has raised various points with me and perhaps with other members regarding this instrument. It appears, however, that those points relate to matters of policy rather than matters in which the committee has jurisdiction. In such cases, despite the fact that I am a member of the Law Society of Scotland, there is nothing that I or the committee can do that would be of assistance to the society.

David Mundell (South of Scotland) (Con): It is worth saying that the changes that have been made to the financial limits included in the instrument are substantial and have been a long time in coming. Perhaps reviews of such

instruments should take place more regularly. I mention that particularly with regard to the fact that those limits have recently been out of step with the limits that apply in England and Wales. Such differences are unhelpful.

The Convener: I agree fully—that point is well made. I have already made representations on that to colleagues on the Justice and Home Affairs Committee.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): The order includes an increase to the maximum sum that can be claimed as a small claim. The previous order dates from 1988 and the Debtors (Scotland) Act 1987 was enacted contemporaneously with that order. Many limits that are included in that act are analogous with the limits in the small claims order we are discussing, to which changes are being made. I say that specifically in relation to poinding and warrant sales. If the limits in the order are being reviewed, it seems odd that the financial limits in an act that was passed at the same time should not also be reviewed.

Bristow Muldoon (Livingston) (Lab): Some of Fergus Ewing's comments might be relevant, but they relate more to issues of policy and, as such, are not for this committee to deal with.

The Convener: The committee has received an eight-page brief from the Law Society of Scotland about witness lists, rights of appeal and various other matters. The issue is a matter of policy for the Scottish courts administration and the Justice and Home Affairs Committee. It would be difficult—with the best will in the world—to find a means whereby this committee could prise the issue open. That will, no doubt, be flagged up by the Law Society in the Justice and Home Affairs Committee.

Sheriff Courts (Scotland) Act 1971 (Privative Jurisdiction and Summary Cause) Order 2000 (SSI 2000/Draft)

The Convener: The next instrument that the committee must consider is, to some extent, related to the previous one. It is worth taking on board David Mundell's point on financial limits, as the limits in this instrument have also been increased substantially. The European convention on human rights has been examined in relation to the instrument, but it appears that there is little that the committee can do because of its remit. The changes are the result of a policy decision that was made in another committee.

**Public Finance and Accountability
(Scotland) Act 2000 (Transitional,
Transitory and Saving Provisions)
(No 1) Order 2000 (SSI 2000/11)**

The Convener: During our briefing, the need to refer to the instrument as No 1 was questioned. Are there any points, apart from that rather flippant but well-made one, to be made?

David Mundell: Let us hope that we do not have to have No 11 in due course.

**Act of Adjournment (Criminal Procedure
Rules Amendment No 4) (Drug
Treatment and Testing Orders) 1999
(SSI 1999/191)**

The Convener: We now consider instruments that are not subject to parliamentary control, the first of which is the Act of Adjournment (Criminal Procedure Rules Amendment No 4) (Drug Treatment and Testing Orders) 1999 (SSI 1999/191). We have received advice about possible difficulties relating to section 234(c) of the Criminal Procedure (Scotland) Act 1995. It is possible that matters are not in order and that there are vices difficulties. We should seek clarification. It appears that if people are to be tested, that will affect their earliest possible date of release and the classification of prison that they go to. We should ensure that if this measure goes ahead, it does so properly.

Members indicated agreement.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): There are uncertainties that we should avoid if we can.

**Act of Sederunt (Rules of the Court of
Session Amendment No 9) (Finance
Act 1999) 1999 (SSI 1999/192)**

The Convener: The next item is the Act of Sederunt (Rules of the Court of Session Amendment No 9) (Finance Act 1999) 1999 (SSI 1999/192). Some minor typographical matters have been pointed out, but nothing else has arisen. Are members happy with that?

Members indicated agreement.

**Food Protection (Emergency
Prohibitions) (Amnesic Shellfish
Poisoning) (West Coast) Partial
Revocation (Scotland) Order 2000
(SSI 2000/13)**

The Convener: Next we have the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) Partial Revocation (Scotland) Order 2000 (SSI 2000/13). No new points have arisen on this order, as they have probably been exhausted on previous occasions.

**Public Finance and Accountability
(Scotland) Act 2000 (Commencement)
Order 2000 (SSI 2000/10(C.1))**

The Convener: No points have arisen on the Public Finance and Accountability (Scotland) Act 2000 (Commencement) Order 2000 (SSI 2000/10(C.1)).

Delegated Legislation

The Convener: The last item on the agenda is delegated legislation. Although matters have proceeded apace elsewhere in the Parliament, we have continued to consider the Budget (Scotland) Bill. It does not appear that we need to flag anything up.

Fergus Ewing: It might be helpful to make reference to section 6 of the bill, which concerns delegated powers. I gather that it may not have been the subject of extensive debate, deliberation or consideration in committee, yet it appears to be of the Henry VIII species—it allows the amendment of primary legislation by subordinate legislation. The powers under section 6 allow the budget to be changed in every single respect, which seems remarkable. Every single figure may be changed. That means that ministers have powers that any dictator would take for granted. Although one would not want to describe the Executive in that way, we should make note of the fact that such powers exist.

Bristow Muldoon: We are dealing with the budget for the Scottish Executive for a full year, so it is perfectly reasonable that such powers for ministers to amend legislation should exist. I do not think that dictators have to lay before Parliament proposals on how they wish to spend money, in the way that is defined under section 6(2) of the bill. I do not imagine that many dictators have been subject to such scrutiny.

Ian Jenkins: Nevertheless, we should flag it up and let the lead committee have a think about it.

David Mundell: I agree with Ian. We want it to be clear that a conscious decision has been made to proceed on that basis, rather than for it appear that things have been accepted on the nod.

The Convener: We should draw the Finance Committee's attention to the fact that that Henry VIII power is there, and let it decide what it wants to do—for example, whether it wants to discuss the matter with the minister. I do not think, Bristow, that anything further than that is being suggested. We should leave the debating to the Finance Committee. Is that all right?

Bristow Muldoon: Yes.

The Convener: That brings our meeting to a conclusion.

Meeting closed at 11:25.

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