

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 8 February 2000
(Morning)

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SUBORDINATE LEGISLATION COMMITTEE

5th Meeting 2000, Session 1

CONVENER

*Mr Kenny MacAskill (Lothians) (SNP)

DEPUTY CONVENER

*Ian Jenkins (Tweeddale, 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

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 8 February 2000

(Morning)

[THE CONVENER *opened the meeting at 11:16*]

Executive Response

The Convener (Mr Kenny MacAskill): The first item on the agenda is the Executive's response to the points that we raised last week on the Act of Adjournal (Criminal Procedure Rules Amendment No 4) (Drug Treatment and Testing Orders) 1999 (SSI 1999/191). We have received a response from the Lord President's office on the numerous matters that we raised.

We have been advised, however, that there are still matters that we might not be satisfied with. As the instrument will not go before a parliamentary committee, we can, if we so wish, return to the Lord President's office with our further concerns.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Perhaps we should seek further comment from the Lord President's office and ask for further consideration to be given to the matter, for the following reasons. On the testing requirement, section 234C(5) of the Criminal Procedure (Scotland) Act 1995 states that

"the testing requirement shall specify for each month the minimum number of occasions on which samples are to be provided".

That provision is mandatory, whereas the Act of Adjournal states that the offender shall provide

"for the purpose of ascertaining whether he has any drug in his body such samples, of such description, at such times, in such circumstances, as the treatment provider may determine".

The Act of Adjournal does not refer to the specific requirements set out in the 1995 act.

Our legal advice includes a detailed exposition of why it is felt that the committee's original view is perhaps to be preferred and that the response possibly confuses treatment with testing. Our attention has been drawn to the possible importance of the matter, given that failure to comply with the drug treatment and testing orders carries a criminal sanction. The desire for clarity is therefore paramount.

For those reasons, perhaps the detailed arguments that we had the benefit of considering

earlier might usefully be considered afresh by the Lord President's office.

The Convener: Is it agreed that we note our on-going concern and that, in view of the fact that we are unable to take the matter elsewhere in the Parliament, we register our on-going worry that problems might be looming?

Members *indicated agreement.*

Food (Animal Products from Belgium) (Emergency Control) (Scotland) Order 2000 (SSI 2000/15)

Animal Feedingstuffs from Belgium (Control) (Scotland) Regulations 2000 (SSI 2000/16)

The Convener: The next agenda item concerns negative instruments. There are no points arising from SSI 2000/15 and SSI 2000/16, so unless any member is otherwise minded, we need take no further action on those instruments.

Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Scotland) Order 2000 (SSI 2000/20)

The Convener: The third negative instrument on the agenda is SSI 2000/20, on which a minor point was raised. Does anyone wish to take that point further, in relation to the European convention on human rights, for example? It is of no great significance—should we make no further comment, as with the other two negative instruments?

David Mundell (South of Scotland) (Con): I do not think that we need to comment.

The Convener: Thank you.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) Partial Revocation (No 2) (Scotland) Order 2000 (SSI 2000/17)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) Revocation (Scotland) Order 2000 (SSI 2000/18)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (No 3) Revocation (Scotland) Order 2000 (SSI 2000/19)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 3) Partial Revocation (Scotland) Order 2000 (SSI 2000/21)

The Convener: The next agenda item concerns instruments not subject to parliamentary control, from which I do not think that any points arise. We need not take any action on those instruments.

Delegated Legislation

The Convener: We move on to delegated legislation—under the Standards in Scotland's Schools etc Bill—which we considered earlier in private and which we will also deal with next week. Do members have any points to raise?

Bristow Muldoon (Livingston) (Lab): We might want to mention an issue concerning section 4, although it is not delegated to us directly. In section 4, ministers are given the power to set

“national priorities in education”

for Scotland

“after consulting the education authorities”.

Education authorities are the only specifically mentioned body. My concern relates to the fact that no provision is made for committees of this Parliament, or any other specified bodies, to be consulted on such priorities. Further, there is no parliamentary procedure by which such priorities would be subject to any scrutiny by Parliament.

While I acknowledge that that concern is not formally within our remit, I think that it would be appropriate for the convener to raise those issues with the Executive. Perhaps he should also draw them to the attention of the Procedures

Committee, to ascertain whether our remit should be amended to enable us to consider such issues. It might also be appropriate for the convener to draw our concern to the attention of the Education, Culture and Sport Committee, so that when it considers the bill, it can take a view on whether a wider group of bodies should be defined as necessary consultees for national priorities in education and on whether there should be a defined parliamentary procedure for publishing such priorities.

The Convener: I agree. We heard from our legal advisers that the House of Lords takes a broader view of the subordinate legislation that comes before it. Perhaps this is just a teething problem for the Scottish Parliament, but it seems that some problems might arise. I agree with the course of action that Bristow has suggested and, if everyone agrees, that is how we will deal with section 4.

Does Fergus have a comment on section 50?

Fergus Ewing: Section 50 confers a power on Scottish ministers to require the General Teaching Council to establish committees. It might be worth while asking the Executive to explain—in a little more detail than is provided in the explanatory notes—the purpose of including that provision. Paragraph 121 of the explanatory notes states that under

“the 1965 Act the GTC are empowered to appoint whatever committees they think are necessary”.

Under the bill, the GTC might, for example, have to appoint a disciplinary committee, the majority of whose members were teachers. The bill seems to stipulate, largely, the membership of committees.

The explanatory notes do not make it clear why the Executive thinks it necessary for ministers to have powers, first, to require other committees to be formed and secondly, to specify who should sit on those committees. What will those committees be and what is their purpose? What exactly does the Executive envisage and why has it included those powers? Has the Executive consulted the GTC or other interested bodies? I do not know the answers to those questions, but given that the primary legislation requires the GTC to set up certain committees, such as the disciplinary committee, it seems odd that such wide powers should be applied to other committees, yet the bill includes no reference to, or explanation of, the role and function of those other committees.

I hope that I am not ruffling any feathers—as you know, convener, that would never be my purpose—but we should be told.

The Convener: Section 56 was also flagged up. Does anyone want to comment on that?

David Mundell: The Executive may well have a

rationale for section 56 in its present form, but we should proceed on the basis that such Henry VIII clauses should be avoided unless there is a reasonable justification for them. We should ask the Executive to justify its rationale.

The Convener: I agree with that.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): The explanatory notes give a broad drift of where the Executive is going on this, but while I do not think that section 56 is a sinister plot, it is perfectly reasonable to ask the question.

The Convener: Okay.

Fergus Ewing: I want to raise one further matter. I am not sure whether we have considered the national parks enabling bill yet, but I believe that a draft bill was published in the consultation paper. It was drawn to my attention at the weekend that interested members of the public in my constituency have been unable to get hold of that consultation paper because it is out of print.

The consultation period might expire while people who want a copy of the paper—some of whom live within the proposed national parks—are being told that they must get the document on the internet. Within Badenoch and Strathspey, it appears that people do not have access to the website in question. I wanted to take this opportunity to express my concern that my constituents are being disfranchised and might not be able to respond within the consultation period. I also wanted to ask the Executive why it has not published sufficient consultation papers; I find the shortage surprising, given that the matter is of great public interest in my constituency and elsewhere.

The Convener: Thank you. We are assured that the Presiding Officer reads our *Official Reports*; doubtless he will read today's report and take cognisance of that point.

That brings the meeting to a close.

Meeting closed at 11:27.

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