

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 28 March 2000
(Morning)

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SUBORDINATE LEGISLATION COMMITTEE

11th Meeting 2000, Session 1

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 Renfrew shire) (Lab)

*Bristow Muldoon (Livingston) (Lab)

David Mundell (South of Scotland) (Con)

*attended

WITNESSES

Mr David Cassidy (Solicitors Office of the Scottish
Executive)

Ms Ailsa McLaggan (Solicitors Office of the Scottish
Executive)

CLERK TEAM LEADER

Alasdair Rankin

ASSISTANT CLERKS

Alistair Fleming

Anne Peat

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 28 March 2000

(Morning)

[THE CONVENER *opened the meeting at 11:18*]

The Convener (Mr Kenny MacAskill): Good morning. I welcome everyone to the 11th meeting this year of the Subordinate Legislation Committee. We have received apologies from David Mundell, who is in Brussels, and Ian Jenkins.

Ethical Standards in Public Life etc (Scotland) Bill

The Convener: The first item on the agenda is delegated powers scrutiny. It has been suggested that it would make more sense to postpone scrutiny of the Ethical Standards in Public Life etc (Scotland) Bill until next week, as we are awaiting some Executive responses.

Adults with Incapacity (Scotland) Bill: Stage 2

The Convener: The second part of this agenda item is scrutiny of the Adults with Incapacity (Scotland) Bill, as amended at stage 2. Although there has been only a short delay on this matter because of the tight time scale and criteria, we have had the benefit of a briefing on the Executive's amendments and it appears that they are necessary and appropriate. We have no further comment to make.

Health Technology Board for Scotland Order 2000 (SSI 2000/47)

The Convener: The next item on the agenda is consideration of Executive responses. The first instrument is the Health Technology Board for Scotland Order 2000, for which we have received a response and a legal briefing. There seems to be some question whether aspects of the legislation are ultra vires, in particular the attempted subversion of the use of section 15(1) of the Scotland Act 1998. That matter has not been properly addressed and the recommendation is to draw that point to the lead committee's attention.

National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000 (SSI 2000/54)

The Convener: Are there any comments on the second instrument?

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): We should report to Parliament the fact that the Executive has accepted our point that the instrument overlooks—surprisingly, given the significance of the day—the possibility that medical negligence might occur on 1 April and will amend the regulations accordingly.

Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2000 (SSI 2000/55)

The Convener: I believe that Fergus Ewing raised concerns about this instrument. Have you been satisfied by the Executive's response?

Fergus Ewing: I would like to have been satisfied by the response; unfortunately, I am not. The Executive stated that its estimate of £1.5 billion from non-domestic rates is a projection; however, although I accept the Executive's point that projections cannot be absolutely precise, there still seems to be a surprising lack of precision about this figure.

I invite the Executive to consider the relevant pages in the two most recent versions of "Serving Scotland's Needs", both of which predict the rating revenue to the nearest million pounds. In this instrument, the Executive has predicted the revenue only to the nearest £500 million. Given the extraordinary importance and political sensitivity of the matter, such a discrepancy requires further explanation. I remain unsatisfied about why the Executive has departed from the methodology of projection used in "Serving Scotland's Needs" and would be grateful for further comment on the matter.

Trish Godman (West Renfrewshire) (Lab): I agree with Fergus that we should ask about the methodology. Given that one group can produce more detailed projections, perhaps one method is right and the other wrong. Do we have time to do that?

The Convener: The short answer is no.

Trish Godman: So we draw the matter to the attention of the lead committee and the Parliament instead.

Bristow Muldoon (Livingston) (Lab): Although I accept Fergus Ewing's point that more accurate figures are available, we should not delay the

instrument because of the explanatory note. The note provides only a context for the amount of non-domestic rates. I would have far preferred the figures to be more accurate; however, we could draw that point to the Executive's attention without delaying the orders.

The Convener: Are members agreed to let the instrument proceed to the lead committee, while drawing due attention to the points that members have raised?

Members indicated agreement.

Valuation for Rating (Decapitalisation Rate) (Scotland) Amendment Regulations (SSI 2000/56)

Non-Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Amendment Order 2000 (SSI 2000/57)

Valuation for Rating (Plant and Machinery) (Scotland) Regulations (SSI 2000/58)

The Convener: Apart from Fergus Ewing's point about the lack of precision of the projections of revenue raised by non-domestic rates, which also applies to these orders, no other matters arise on these instruments.

Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 (SSI 2000/59)

The Convener: We commented at length on this instrument at the previous meeting. We raised three points with the Executive about this instrument, and the Executive has acknowledged that the first two points have highlighted problems, in particular the fact that the legislation contains a fairly fundamental drafting error. However, our legal advisers do not accept the Executive's statement that it has resolved the third point that we raised.

Fergus Ewing: Our legal advisers identified the problem that this instrument is an example of legislation by reference. It amends a previous enactment only at the date when the instrument is made. The difficulty is that, if the enactment is subsequently amended following the date of the instrument, the amended enactment will not be affected by the instrument. I think that I understand that myself, convener, so I hope that I have described it in a reasonably coherent way.

The Convener: We should draw that point to the attention of the lead committee and find out what the Executive proposes to do between now and then so that it does not face embarrassment at another committee.

Local Authorities' Traffic Orders (Exemption for Disabled Persons) (Scotland) Regulations 2000 (SSI 2000/60)

The Convener: We raised the point that a wrong reference was contained in this instrument. Although matters have not been satisfactorily resolved, the instrument should simply be referred to the lead committee with the preceding order.

Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) (Scotland) Regulations 2000 (SSI 2000/62)

The Convener: The next part of this agenda item is consideration of the Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) (Scotland) Regulations 2000. I ask Ms Ailsa McLaggan and Mr David Cassidy from the Solicitors Office of the Scottish Executive to join us.

The committee appreciates the difficulties that have been caused by the ill health of one of your members and that you might not be able to answer our questions in whole or in part. The simplest way to approach this inquiry would be to ask whether you have any comments about our letter of 23 March, which raised the committee's various points about the instrument.

Ms Ailsa McLaggan (Solicitors Office of the Scottish Executive): First, I should apologise for the fact that there has been no written response to the committee's letter. As you said, there have been difficulties and the drafting solicitor is off sick today. Nevertheless, we hope that we can cover some of the committee's points.

We accept the committee's points in paragraphs 5 and 6 about some of the provisions dealing with the Welfare of Animals (Slaughter or Killing) Regulations 1995 in schedule 8 of the instrument. Unfortunately, there is some confusion about the transfer of functions to the Food Standards Agency in that respect, and we will introduce an amending instrument to correct that.

However, paragraph 11 of schedule 1 of the Welfare of Animals (Slaughter or Killing) Regulations 1995 concerns appeal provisions which will not affect the instrument and the

functions of the Food Standards Agency when it comes into being next week.

Fergus Ewing: You have said that you accept the points made in paragraphs 5 and 6. Do you mean paragraphs 5 and 6 of our letter to you of 23 March?

Ms McLaggan: Yes.

Fergus Ewing: Can you go through the other paragraphs? Presumably you do not believe that the points that are made there affect the validity of the instrument?

Ms McLaggan: They certainly do not affect the validity of the instrument. If we were bringing forward amending provisions in relation to the Welfare of Animals (Slaughter or Killing) Regulations 1995, we would take the opportunity to tidy up some of the points that are raised in paragraphs 2, 3 and 7 of the letter. We do not feel that any amendment is necessary to deal with port health authorities, which are discussed in paragraph 4 of the letter.

Trish Godman: When you talk about tidying up the regulations, does that mean that you agree with the points that are made in the letter?

Ms McLaggan: In paragraph 2 of part IV, which deals with egg marketing regulations, it would have been tidier to have included a reference to the Scottish ministers. Similarly, in part IV of schedule 4, which deals with the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, the reference should be to "it" rather than to "him".

Trish Godman: What about paragraph 4 of the letter?

11:30

Ms McLaggan: It is correct to say that there are no port health authorities in Scotland. The Food (Pistachios from Iran) (Emergency Control) Order 1997 that is being amended in schedule 7 contains a definition of a port health authority in the interpretation section of the regulations, which states that a port health authority includes a port local authority, which is the relevant term for Scotland. We think that fits in with the regulations as they are currently drafted.

Trish Godman: Would that be mentioned in an explanatory note?

Ms McLaggan: We could consider that.

Trish Godman: I am thinking about what will happen when the regulations are referred to another committee that will not be able to have the dialogue that we are having here and that might, therefore, pick up the point about there being no port health authorities in Scotland.

Fergus Ewing: If you were to tidy up the point about port health authorities including port local authorities, would you do that in an amending instrument?

Mr David Cassidy (Solicitors Office of the Scottish Executive): I am not sure that we are in a position this morning to take a view on the need for an amendment to the reference to port health authorities. As I understand it, we are making a consequential amendment to an instrument that stands outside the principal instrument. The instrument that we are amending includes a definition of port health authority that includes port local authority, which is the relevant Scottish body. It may be that on further consideration of the matter, prompted by the committee's letter, we will take the view that clarification of that is needed. However, at the moment we regard the amendment as fine.

Ailsa McLaggan has already referred to the main point of substance that was made in the committee's letter. We recognise the other points that have been made and are grateful to the committee for bringing them to our attention. We take the view that they represent untidiness in the instrument and we will take the opportunity to address them in the proposed amendment that is necessary in consequence of the repeal provision.

Fergus Ewing: Would it be possible to include the definition of port health authority as including port local authority in the interpretation section of these regulations or any amending regulations?

Mr Cassidy: We are dealing with an amendment that is being made in a schedule to the Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) (Scotland) Regulations 2000 and that amends another instrument to which that refers. We are not dealing with the interpretation section of the substantive provisions of the amending instrument. This would be an unusual place to locate such an interpretation section.

The Convener: That is accepted. If there is to be an amendment, do you have any comments on the first part of the letter? I appreciate that neither of you was involved in the drafting of this instrument and that its phrasing may to some extent be a matter of style or choice, but is it possible that in the amendment you would seek to make the language of the instrument less convoluted?

Ms McLaggan: We cannot take a view on that at the moment. The amendments that we are proposing are minor and would not allow us to restructure the instrument. We note the committee's point that the language is complicated; that will be taken on board for future reference.

Fergus Ewing: Are you satisfied that the instrument contains no errors other than those to which we drew your attention in our letter of 23 March?

Mr Cassidy: We cannot say this morning that we are satisfied that that is the case, but we will take the opportunity to look for any other errors in the instrument.

The Convener: I suggest that we allow the instrument to proceed to the lead committee with the advice that we have received and our view that some matters have been clarified. It will be for the lead committee to ascertain what amendments are made. I thank our witnesses for their attendance.

**Local Government Pension Scheme
(Management and Investment of
Funds) (Scotland) Amendment
Regulations 2000 (SSI 2000/74)**

**Local Government (Discretionary
Payments and Injury Benefits)
(Scotland) Amendment Regulations
2000 (SSI 2000/77)**

**National Lottery etc Act 1993
(Amendment of Section 23) (Scotland)
Order 2000 (SSI 2000/78)**

The Convener: No points arise with respect to the above orders.

**National Health Service (Travelling
Expenses and Remission of Charges)
(Scotland) Amendment Regulations
2000 (SSI 2000/79)**

The Convener: During our pre-meeting issues were raised regarding this instrument. Would anyone like to comment on the difficulties that we have noted?

Trish Godman: First, there is no explanatory memorandum accompanying the instrument. Secondly, there is some uncertainty about the definition of “family” in the instrument. We would like to ask the Executive about the meaning of the reference to part IV of the Immigration and Asylum Act 1999 that is contained in regulation 4(n) as inserted by regulation 3 of this instrument. It seems rather odd to me that we should give asylum seekers vouchers for some things but money to travel to hospital. I am not saying that they should not get money for that purpose—

rather that the Executive needs to sort out the other bit. That has nothing to do with this committee, but I take every opportunity to mention it.

Fergus Ewing: It is also curious that there appears to be a definition of “family” in the principal regulations. One wonders whether that includes a reference to marriage. If so, it could be helpful to the Executive in other areas.

Trish Godman: He is doing what I do.

The Convener: We can have a referendum on it.

We will draw those points to the attention of the lead committee.

**National Assistance (Sums for
Personal Requirements) (Scotland)
Regulations 2000 (SSI 2000/80)**

The Convener: No points arise with respect to this instrument.

**Crab Claws (Prohibition of Landing)
Revocation (Scotland) Order 2000 (SSI
2000/81)**

The Convener: Are there any comments on this instrument?

Trish Godman: We need to point out to the Executive that there is no map attached to this instrument.

**Genetically Modified and Novel Foods
(Labelling) (Scotland) Regulations
2000 (SSI 2000/83)**

The Convener: There are some minor typing errors in this instrument that can be dealt with in the usual manner.

**Scotland Act 1998 (Agency
Arrangements) (Specification) Order
2000 (SI 2000/745)**

The Convener: No points arise with respect to this instrument.

Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2000 (SSI 2000/65)

Act of Sederunt (Rules of the Court of Session Amendment) (Miscellaneous) (SSI 2000/66)

The Convener: No points arise with respect to the above instruments.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) Partial Revocation (No 6) (Scotland) Order 2000 (SSI 2000/75)

The Convener: We will ask the Executive why, given previous undertakings, it has failed to provide a map with this order.

Valuation Timetable (Scotland) Amendment Order 2000 (SSI 2000/76)

The Convener: Are there any comments on this instrument?

Fergus Ewing: The explanatory note to this order indicates that it amends the date by which an appeal against a rateable value must be lodged. It seems to suggest that the deadline has been brought forward from 15 December to 30 September. My understanding was that the Executive's policy was the opposite of that, namely, that it wanted to extend the period within which an appeal could be lodged, rather than to shorten it, which appears to be the effect of this instrument.

I hope that I am not speaking out of turn or from an imperfect reading of the instrument, but the note seems to conflict with my understanding, from reading the press, of the Executive's policy of allowing ratepayers a longer period within which to lodge an appeal. Perhaps that is a matter for the lead committee.

Trish Godman: I read the explanatory note the other way. It states:

"At present the date is the later of two dates, one of which is 15th December in the year of revaluation. This Order substitutes for that date a reference to 30th September in that year."

Fergus Ewing: This is the revaluation year. If both dates are in that year and 30 September is being substituted for 15 December, the period for appeal must be being shortened.

The Convener: We can seek an Executive response on how the instrument is to be interpreted.

Fergus Ewing: Would it be in order to bring this problem to the Executive's attention?

Trish Godman: If what the Executive has told us in the past is correct, the explanatory note may be wrong.

The Convener: It is open to us to seek clarification. Before we send our report to the lead committee, we will ask the Executive to confirm that the situation is as it seems to intend.

Undersized Whiting (Revocation) (Scotland) Order 2000 (SSI 2000/82)

The Convener: No points arise with respect to this instrument, apart from the fact that it was headed up wrongly. We will bring that to the attention of the Executive.

That brings the proceedings to a close. Thank you for your attendance.

Meeting closed at 11:43.

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