

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 16 May 2000
(Morning)

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SUBORDINATE LEGISLATION COMMITTEE

16th 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

Kirsty Finlay (Office of the Solicitor to the Scottish Executive)

David Stewart (Scottish Executive Enterprise and Lifelong Learning Department)

Allan Wilson (Scottish Executive Enterprise and Lifelong Learning Department)

CLERK TEAM LEADER

Alasdair Rankin

ASSISTANT CLERKS

Ruth Cooper

Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 16 May 2000

(Morning)

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

Education and Training (Scotland) Bill

The Convener (Mr Kenny MacAskill): Good morning and welcome to the 16th meeting of the Subordinate Legislation Committee.

The first item on the agenda is delegated powers scrutiny of the Education and Training (Scotland) Bill. There are difficulties in turning this around timeously because of the procedural requirements. We welcome representatives of the Scottish Executive and are grateful for their attendance. Please introduce yourselves and make an opening statement.

David Stewart (Scottish Executive Enterprise and Lifelong Learning Department): I am David Stewart of the opportunities for learning division of the enterprise and lifelong learning department. I am accompanied by Allan Wilson, who is the team leader for the bill, Kirsty Finlay, who is the solicitor to the bill, and Elena Groll, who is on the bill team.

In "Partnership for Scotland", ministers pledged to promote lifelong learning through the introduction of individual learning accounts. In "Making it work together", they set a target of opening 100,000 accounts in Scotland by 2002. The overall policy objective is to help people overcome financial barriers to learning and to encourage them to invest in their own learning throughout their lives, with help from the state and, where appropriate, employers.

ILAs will be a membership scheme for people who are aged 18 and over. The first 100,000 account holders will be entitled to £150 to spend on learning, if they commit £25. Thereafter, people will be entitled to a 20 per cent discount on most types of learning, and an 80 per cent discount on courses such as basic computer literacy courses. Employers will be able to claim tax relief on contributions to ILAs.

The bill is enabling legislation to allow Scottish ministers to introduce regulations to pay grants—the financial incentives such as the £150 or discounts—and to set conditions for such grants. The regulations define the circumstances under which someone can become a learning account

holder, and determine what learning is eligible for incentives and what providers are allowed to provide that learning. It is proposed that that be done through a mixture of specific conditions in the regulations and some further delegation to ministers to determine matters. The regulations also specify the administrative arrangements.

Ministers wish to make the detailed arrangements through subordinate rather than primary legislation to allow flexibility to adjust to meet changing needs in Scotland. ILAs are a new and developing policy area, and allowing ministers to specify the detail in regulations will ensure that they can respond quickly to changes in circumstances. For example, the definition of eligible learning might be amended to reflect particular skill needs, or discounts might be targeted at the socially excluded. The use of regulations also avoids putting too much technical and administrative detail in the primary legislation. It is not thought likely that matters that are covered by the regulations will be controversial.

ILAs are being introduced throughout the UK. The legislation that is required is slightly complex because it involves both reserved and devolved powers. Changes to tax relief and national insurance arrangements are in the UK Finance Bill. Provisions in relation to grants and qualifying arrangements are in the Education and Training (Scotland) Bill and in the illustrative regulations. The provision to define a new kind of financial account is in the Westminster Learning and Skills Bill because financial instruments are a reserved matter. It is proposed that the regulation-making powers in the Learning and Skills Bill be devolved to Scottish ministers and the necessary motion has been lodged and considered by the Enterprise and Lifelong Learning Committee.

The plans at present are for implementation across the United Kingdom from September, subject, of course, to decisions by both Parliaments on their respective bills. Because of the differences in summer recesses and parliamentary procedures between Scotland and Westminster, that time scale is likely to require seeking to breach the 21-day rule on laying regulations before Parliament after royal assent. Ministers realise that that is not ideal but it would ensure that people in Scotland can utilise ILAs and benefit from taxation changes on the same date as people can elsewhere in the UK.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): I think that it is recognised that the bill is not very specific. The Enterprise and Lifelong Learning Committee suggested that there could be a clearer definition of people who qualify for individual learning accounts. I understand the Executive's thinking on that point, but certainly the lack of specifics in the bill was a matter for

discussion. I think that you have addressed the point, but other members may wish to pursue it.

The Convener: How do you envisage the framework in future? Presumably, you will bring in subordinate legislation that will specify, as we have seen in the news release that has gone out in Nicol Stephen's name, the categories, the amounts and the percentage. That would seem to be fairly substantial. How often will there be updates? Organisations that are eligible will change and the nature of the organisations may vary.

Will there be an on-going review? Where this committee is coming from is whether there should be any direction that perhaps the initial subordinate legislation should be dealt with in a different way from simply deleting "SCOTVEC" and inserting something else. Do you see any difference in how we should treat those matters?

David Stewart: Under the enabling powers within the bill, the subordinate legislation can be reviewed periodically in the light of the experience of how the various definitions have worked and how ministers might want to target specific groups. The Enterprise and Lifelong Learning Committee has discussed targeting in its consideration. The mechanism of subordinate legislation gives that measure of discretion, subject to negative resolution, by the Parliament. Some matters of greater detail can be dealt with by administrative rules underneath that subordinate legislation. The intention is to get substantive powers in the primary legislation, the scope for the main items of the scheme within subordinate legislation, subject to periodic review, and detailed administrative rules and arrangements underneath that.

Mr Allan Wilson (Scottish Executive Enterprise and Lifelong Learning Department): Ministers envisage reviewing the detail of the regulations within the first year in the light of experience, because this approach is quite new. Once we have had several months' experience, there will be things that would be better changed, so we will review it.

The Convener: Last week on the National Parks (Scotland) Bill and in this bill, we have taken the view that there is good reason why the Executive wants flexibility. There is also good reason why it does not want in years to come to have principal legislation to delete "SCOTVEC" and insert something else, or make a change from £150 to £175.

However, the real meat of this legislation will come with the first regulations that you bring in. If there is to be any form of parliamentary scrutiny, unless there were a super-affirmative procedure that would allow some direct involvement by Parliament, it would not be possible for Parliament

and elected representatives to argue that full-time school courses, perhaps in some rural areas, should be included—for example, if you live in Kinlochbervie, you might be able to access the local school for some courses, but you will not be able to access some other courses because of your geographic location. Will you consider an additional procedure for the initial subordinate legislation that is coming in?

David Stewart: The illustrative regulations were made available both to this committee and to the Enterprise and Lifelong Learning Committee so that any concerns or thoughts about the definitions that were proposed within the illustrative regulations could be considered. That is also why Mr Stephen announced, at the Enterprise and Lifelong Learning Committee last week, the intended definitions in relation to the type of eligible learning and the categories of learning that would be eligible for the higher discount. Again, that information was available to MSPs during the course of the bill. Any points made in the committees or the chamber can be taken into account in revising the regulations and bringing them forward later.

The Convener: We accept that. The difficulty is that unless procedural matters are dealt with, there will be no opportunity for any parliamentary input. We have noticed here that, for example, the Enterprise and Lifelong Learning Committee seems to be raising queries regarding the definition of "qualified person". If that is not within the primary legislation, which clearly it will not be, unless we have a souped-up, advanced consideration for the initial subordinate legislation that fleshes it out, there will not be an opportunity for an MSP or Parliament as a whole to vary the definition of "qualified person".

Last week, on the National Parks (Scotland) Bill, it was indicated, because we do not currently have the procedures, that the Executive members dealing with that would give consideration to some form of super-affirmative procedure as opposed to just the affirmative and negative procedures that we have at the moment. Would you give that the same consideration?

Kirsty Finlay (Office of the Solicitor to the Scottish Executive): I was not aware of that, but we could consider it.

11:30

David Stewart: I am not aware of the procedure that the convener is suggesting. We will go away and consider that.

I am also conscious of the interaction of the timetables of this legislation and the UK legislation. The reason for bringing in those regulations and seeking to put them in breach of

the 21-day rule was that the changes to taxation arrangements on a UK basis would happen in such a way that if the regulations were not brought in during recess, people in Scotland could be disadvantaged in how they could take advantage of the taxation changes. I am not clear whether the super-affirmative procedure that you suggest might impact on that time scale on the taxation issue. With that proviso, we will go away and consider that.

The Convener: I do not think that there is any suggestion that that would happen. The intention of the bill is narrated in Mr Stephen's documentation and clearly laid out in the press release. We are looking to lay down markers as to how the Parliament would have an opportunity to say that it likes this and does not like that without having, as currently would be the case, to leave it to a member to go to a committee to say, "I am moving to annul."

You must allow some sort of interaction, not in each and every piece of subordinate legislation that will come in in years to come—as I say, to make a change from £150 to £175—but on the principal subordinate legislation that will flesh it out. We are just seeing whether there can be greater democratic scrutiny. We have formed the view that those things should only be used sparingly. It is perhaps ironic, or unfortunate, that this has happened on two consecutive weeks. In both the National Parks (Scotland) Bill and this bill, we understand where you are coming from, but we are trying to allow some interaction when it is fleshed out.

I understand that you are willing to take that on board. I do not think that it would have any effect upon the timetable with regard to taxation or other matters, because this would be further down the line. We also accept that it will have to be subject to a variation of parliamentary procedures, but that is a direction in which the committee would be keen to go, so that a super-affirmative procedure is available for matters such as this where enabling legislation comes in with a skeleton. Thus, Parliament would have an opportunity to beef up the regulations—because to some extent we do not comment on policy in this committee—rather than to accept or reject them, which in many instances it does not want to do.

David Mundell (South of Scotland) (Con): Kenny MacAskill summed that up well. We are keen that individual members are not placed in the position of having to reject or accept the entire thing when they have legitimate concerns about individual items, whether it be scuba diving or "Computers for the Terrified". Trish Godman will perhaps subscribe to that.

That would make everyone feel much more comfortable with this sort of framework bill,

because if a member of the public picked up this bill, it would not tell them anything. While everyone wants to work as smoothly as possible procedurally, it is important that individual members can feel confident that they could make a contribution in relation to the regulations without having to vote them down.

The other point in relation to what you are saying about the 21-day rule is that I think that makes it doubly important to do what you say that you are doing. We must ensure that there is as much discussion as possible about the regulations before they are published.

Mr Wilson: We have already been involved in quite a bit of consultation about the development of ILAs. We are also continuing to meet the groups concerned so that they are aware of the way in which our thoughts are developing and we are in touch with their views. When we bring forward the proposals for the regulations, many people will have had some input. I realise that that input will not come from Parliament directly, but we will have gone through that process.

David Mundell: That is a very helpful process. One of the things that the committee is concerned about is the consultation that has been carried out before the creation of regulations. In that respect, you are setting a helpful precedent.

The Convener: Thank you for taking the time to come and give evidence to the committee.

What is the general consensus? The only matter that we might want to raise is whether a super-affirmative procedure might be appropriate. We will ask the Executive to consider that as it did in relation to the National Parks (Scotland) Bill. We appreciate the Executive's point of view and that point has been flagged up in the report from the Enterprise and Lifelong Learning Committee.

Is that agreed?

Members indicated agreement.

European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (SSI 2000/121)

The Convener: The second item on the agenda is SSI 2000/121, on which we raised various matters that had been flagged up by the Law Society of Scotland. We have had a fairly full response from the Executive on that matter.

I note that my pager has not gone off, so the Dean of the Faculty of Advocates either has not been contacted or has nothing to say. The advice that we have had is that the Law Society had a valid point, which has been answered to some extent by the Executive. However, there is still a

difficulty surrounding the clarity of the regulations.

We might draw the attention of the lead committee to the fact that the Law Society has raised that problem and an explanation has been given, although it takes a focused reading of the Executive's response to understand that explanation. Some consideration might be given to redrafting the order or simplifying the terminology so that we do not have to rely on the expert opinion of the Dean of the Faculty of Advocates.

Bristow Muldoon (Livingston) (Lab): Some people might find it surprising that lawyers object to the law being too complex.

David Mundell: Only when it is about them.

Smoke Control Areas (Authorised Fuels) (Amendment) (Scotland) Regulations 2000 (SSI 2000/129)

The Convener: The third item on the agenda is the consideration of negative instruments. The only matter that was raised on the first instrument is whether any consideration is given to consolidation.

Trish Godman (West Renfrewshire) (Lab): We should ask the Executive, yet again, if it has any plans for consolidation.

The Convener: We will do so.

Foods for Special Medical Purposes (Scotland) Regulations 2000 (SSI 2000/130)

Colours in Food (Amendment) (Scotland) Regulations 2000 (SSI 2000/131)

The Convener: No points arise in relation to the above instruments.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Scotland) Partial Revocation (No 8) Order 2000 (SSI 2000/127)

Food Protection (Emergency Prohibitions) (Oil and Chemical Pollution of Fish) (No 2) Order 1993 Revocation (Scotland) Order 2000 (SSI 2000/132)

The Convener: The last two instruments are not subject to parliamentary control. No points arise in relation to them.

That brings us to the end of the agenda and the meeting. Thank you.

Meeting closed at 11:39.

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