

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 3 October 2000
(Morning)

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SUBORDINATE LEGISLATION COMMITTEE **28th 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)

*Mr Kenneth Macintosh (Eastwood) (Lab)

*Bristow Muldoon (Livingston) (Lab)

*David Mundell (South of Scotland) (Con)

*attended

CLERK TO THE COMMITTEE

Alasdair Rankin

ASSISTANT CLERKS

Ruth Cooper

Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 3 October 2000

(Morning)

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

The Convener (Mr Kenny MacAskill): Welcome to the 28th meeting of the Subordinate Legislation Committee. I do not know whether Trish Godman is coming, and we have received apologies from Ian Jenkins.

Salmon Conservation (Scotland) Bill

The Convener: The first item on the agenda is scrutiny of the delegated powers in the Salmon Conservation (Scotland) Bill, on which we have received an extensive legal briefing. Do members have any comments?

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I accept the invitation to kick off, convener. Our legal advisers made the point that the measures to conserve salmon which the bill seeks to introduce are not immediately obvious, nor is it clear how those measures would work. We would welcome clarity on that. Although the policy memorandum refers to various conservation methods, the bill as introduced does not say which methods will be pursued; indeed, it might simply mean a more liberal regime for specifying annual close times.

David Mundell (South of Scotland) (Con): We have previously raised a general point about bills that appear to leave almost everything to subordinate legislation. Unless there are extenuating circumstances, that is not the direction in which legislation should be going. As Fergus Ewing pointed out, once the bill is passed, it will not be abundantly clear to anyone who reads it how salmon will be conserved in Scotland.

Bristow Muldoon (Livingston) (Lab): Although proceeding by subordinate legislation is appropriate in this case, I do not object to the Executive providing greater clarity on the powers that it would expect to use.

The principal change that the bill introduces is that ministers will be able to initiate subordinate legislation, instead of waiting for the district salmon fishery boards to apply to them, as the Salmon Act 1986 stipulated. It is entirely appropriate for ministers to use their powers to bring an early close to the season or to restrict

types of bait and lure if there is evidence that salmon stocks are depleted. It would not be a sensible use of parliamentary time to use primary legislation to introduce such measures. However, although I am comfortable with the general principle of using delegated legislation in this instance, I am also quite comfortable with asking for greater clarity on some points.

Furthermore, we should seek clarity on new section 10A(4) under section 1 of the bill, which says:

“Scottish Ministers shall have regard to any representations made to them by any person having an interest in fishing for or taking salmon, or in the environment.”

Perhaps we should ask the Executive which bodies or organisations

“Scottish ministers shall have regard to”

before they make regulations.

Fergus Ewing: I have two more brief points. New section 10A(5) under section 1 of the bill seems to be intended as a long-stop provision. The powers under the bill would be used as a long stop only where existing powers are inadequate. From a very limited trawl, it seems that the existing powers are under section 6(4) of the Salmon Act 1986, which says that regulations can be introduced at the promotion of a district salmon fishery board or of two riparian owners. Is the bill intended only as a long-stop provision if adequate conservation measures are not promoted through the existing channels?

Secondly, the provisions in new section 10A(4) under section 1 of the bill seem rather vague and ambiguous. Although I have never fished for salmon in my life, I certainly have an interest in doing so before my life is over. As a result, I will have a right to sue under the terms of the bill. I also have an interest in the environment and, frankly, do not know anyone who does not. Does the Executive intend that everyone should be able to make representations to which the ministers must have regard; or do ministers intend to listen only to some groups or voluntary organisations? Much more clarity would be appreciated. A legal duty is imposed upon ministers, and the extent of that duty and to whom it is owed must be made plain.

The Convener: In the spirit of consensus that we hope will prevail during the committee's meeting with Executive officials that follows this one, I suggest that we write to the Executive and say that although legislation of this nature usually raises concerns because of its all-encompassing powers, we seek clarification about the possible scenarios that are expected and the possible actions that will be taken. From other forms of legislation that come before us, we are aware of

the necessity to act quickly without taking the matter to the chamber.

We should also seek clarification of the additional powers of enforcement, entry, search and arrest in new section 10B(2) under section 1 of the bill. Given that people often raise concerns about members of the Special Air Service Regiment guarding fishing rights in the north of Scotland and so on, we should ask about the exact nature of the additional powers and who will have them, and see what response we receive.

David Mundell: For example, the Executive would not want water bailiffs who were also councillors.

**Act of Sederunt (Rules of the Court of Session Amendment No 4)
(Applications under s1 of the Administration of Justice (Scotland) Act 1972) 2000 (SSI 2000/319)**

The Convener: The next item on the agenda is the consideration of Executive responses. We raised various points on the instrument at the previous meeting. Are members satisfied with the responses to their questions?

Mr Kenneth Macintosh (Eastwood) (Lab): No. In fact, the Executive response has actually confirmed my worst fears about how and why the subordinate legislation has been drawn up. We should draw the legislation to the attention of the Parliament, as it might have ramifications for other legal areas. People might think that it provides a good example to follow, when it does not.

David Mundell: I agree with Kenneth Macintosh. We should make it clear that we do not want to see the legislation again without a further, more detailed explanation of its purpose. I hope that people do not incorporate such a provision as a matter of style when drafting legislation in future, because it has far-reaching consequences.

The Convener: I agree. The Executive is in danger of putting into the instrument a provision that should be common sense, or in a code of practice, not binding. We can at least lay down markers and flag up the issue, even if we can do little beyond that.

Fergus Ewing: I was extremely puzzled by the legal advice to the committee that the case of *Universal Thermosensors v Hibben*, as reported on page 860 of the 1992 "Weekly Law Reports", provides authority for the proposition that a female should attend with a male commissioner when a woman is alone on the premises, to avoid any alarm to the woman. How can the commissioner know before arriving whether the woman will be alone? When the commissioner discovers that the

woman is alone, must he send for someone else and hang around until that person arrives before he can pass over an envelope, for example?

David Mundell: The commissioner might already have alarmed the woman when he ascertained that she was alone.

Fergus Ewing: I am indebted to my learned junior for that point.

The proposition is odd and seems to be a triumph of chauvinism over common sense. I hope that the Court of Session might be persuaded to think of an amendment to the rules, as it was hinted at.

Diseases of Fish (Control) Amendment (Scotland) Regulations 2000 (SSI 2000/330)

The Convener: A copy of the scheme to which the regulations refer is not provided with the regulations and is not easily accessible. We will ask the Executive where copies of the scheme may be obtained.

Fergus Ewing: The regulations are important, so one wishes to be certain that they have no flaws and that there is no difficulty with them.

National Health Service Trusts (Originating Capital) (Scotland) Amendment Order 2000 (SSI 2000/337)

The Convener: The final item on the agenda concerns an instrument that is not laid before the Parliament. No points arise on the order.

That brings us to the end of the public session, although the committee has an informal meeting with Scottish Executive officials presently.

Meeting closed at 11:26.

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