

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 13 March 2001
(Morning)

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SUBORDINATE LEGISLATION COMMITTEE

9th Meeting 2001, Session 1

CONVENER

*Mr Kenny MacAskill (Lothians) (SNP)

DEPUTY CONVENER

*Ian Jenkins (Tweddale, Ettrick and Lauderdale) (LD)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)
Gordon Jackson (Glasgow Govan) (Lab)
*Ms Margo MacDonald (Lothians) (SNP)
*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 13 March 2001

(Morning)

[THE CONVENER *opened the meeting at 11:24*]

Less Favoured Area Support Scheme (Scotland) Regulations 2001 (SSI 2001/50)

The Convener (Mr Kenny MacAskill): Welcome to the ninth meeting of the Subordinate Legislation Committee in 2001.

The committee raised various points about the regulations with the Executive, some of which have been answered. First we asked what steps would be taken to inform applicants of the deadline for applications for payments under the regulations. The committee is satisfied that the deadline is publicised in the trade and national press.

Questions remain about the vires of regulation 15 and paragraphs 1 to 4 of schedule 6. The committee is also asked to consider whether it is satisfied with the fact that the regulations contain a requirement for the Hill Farming Advisory Committee for Scotland to notify the Scottish ministers of its determination on a review of a decision by the Scottish ministers on the eligibility of a holding, but do not contain a requirement to notify the applicant.

Ms Margo MacDonald (Lothians) (SNP): That seems to be just an omission. To include a requirement to notify the applicant would not affect the legislation in any way, so why do we not ask the Executive again to include such a requirement?

The Convener: We do not have time to go back to the Executive. All we can do is draw the problem to the attention of the lead committee.

Ms MacDonald: The omission is surely an oversight. That is what it appears to be.

The Convener: It certainly seems that way to me. If there is a check to notify the Scottish ministers, there should be a check to advise the applicant. That is not difficult.

Ms MacDonald: Even to send the applicant a copy of the notification to the Scottish ministers and say, "Thought you might be interested" would

do.

The Convener: There are also questions about vires which remain in debate. Given my political perspective, I do not like to push such matters too far—unless they are going beyond human rights legislation. However, the matter has been drawn to our attention, and if it creates the potential for litigation, we should at least pay attention to that. The Executive appears to be satisfied that the regulations are intra vires, but there are conflicting views.

Do we agree to draw the Rural Development Committee's attention to the inadequacy of the provisions for intimation following an unsuccessful application and also to the debate about whether some matters are ultra vires?

Members indicated agreement.

Ms MacDonald: Can we say to the Executive—I am not sure whether we can—that, although we have discussed the regulations and think that the arrangements are a generally sensible example of good governance, we should point out that that was perhaps not the intention of the legislation. The Executive's action does not fall short, but perhaps the legislation might, in the fullness of time, be reconsidered once we have a few more experiences of its being used in that way.

The Convener: Certainly. That is helpful.

Foot-and-Mouth Disease Declaratory (Controlled Area) (Scotland) Order 2001 (SSI 2001/49)

The Convener: Many of the points that we will discuss on the order will relate to the discussion on instruments not laid before Parliament. There are questions as to whether the order should take the form of a statutory instrument. The advice that we have from our legal adviser, from south of the border and from Wales—although Wales does not have the relevant powers—is that the order does not need to take that form.

If the Executive has laid the order in the form of a statutory instrument to be helpful and involve the Parliament, we should welcome that. However, the legal adviser has briefed us that the order does not need to come before the committee. If that has been done to include the Rural Development Committee, the Executive should work out a method of keeping that committee abreast of matters instead of creating additional work for itself by making statutory instruments when it is doubtless extremely busy. Given the complexities of the foot-and-mouth situation, there is no need for the Executive to overburden itself by making a statutory instrument and bringing it to our attention. Although we can see what the Executive

is trying to do, the work appears to be needless.

As I said, if it is a matter of keeping Parliament posted, perhaps some interaction between the Executive and the Rural Development Committee would be in everybody's best interests. We do not seek to empire build and see no need for the matters to come to our attention. An analogy has been made with road and traffic orders, which we do not scrutinise.

David Mundell (South of Scotland) (Con): I agree. Resources are extremely stretched. My experience is that efforts must be made to produce guidance on what orders might mean and on the forms that flow from them, rather than producing statutory instruments. It would be better if resources were invested more in front-line activities rather than in just crossing the t's and dotting the i's.

11:30

The Convener: We can say, "Thanks, but no thanks." We see no need to discuss the order. However, it could be drawn to the Rural Development Committee's attention, and perhaps that committee and the Executive could work out a method of keeping abreast of matters. That committee may wish to be aware of the documents that are being laid and the orders that are being promulgated.

Ms MacDonald: Surely that committee can find out about regulation on such an urgent issue. I do not know why we must create more work. However, we will continue to hear about the discontinuance of legalised police cells in Portree.

The Convener: Certainly.

Ms MacDonald: I would hate to think that we would pass that issue up.

David Mundell: You would be safe to go to Portree now, Margo.

Foot-and-Mouth Disease (Amendment) (Scotland) Order 2001 (SSI 2001/52)

The Convener: We asked questions about the order and have received clarification from the Executive. All that we need to do is draw that to the relevant committee's attention.

We also received a response from the Executive regarding grammatical and typographical errors in instruments. We are glad to note that it is endeavouring to achieve the highest possible standards of grammar and typography. We welcome that. We do not wish to be hard on the Executive; we simply try to keep it abreast of how we view matters.

We may save some time on instruments not laid before the Parliament, as they include foot-and-mouth disease declaratory orders. As we said, we do not think that they should be statutory instruments. When typographical matters arise, I understand that a method is in place by which the information that we receive is intimated to the Executive, so we can probably save time and effort.

Ms MacDonald: I may be completely wrong, but have we made a small typographical booboo? Pages 1 and 2 of the pink private paper that the committee received talk about the HFCA, which should be the HFAC.

The Convener: That paper is a briefing, not a matter of parliamentary record.

Ms MacDonald: So long as we do not show people that we make mistakes.

The Convener: That is right. We can hide our mistakes.

National Health Service (General Dental Services) (Scotland) Amendment Regulations 2001 (SSI 2001/57)

The Convener: We will now discuss negative instruments. A footnote in the regulations does not refer to relevant powers when mentioning section 28A of the National Health Service (Scotland) Act 1978. That must be clarified. Regulation 2(1) refers to schedule 2 "of" the principal regulations rather than "to" them. There is a further matter concerning regulation 2, which is drafted in two paragraphs rather than one. As no one has any more comments, we will ask the Executive to comment on those issues.

Export Restrictions (Foot-and-Mouth Disease) Amendment (Scotland) Regulations 2001 (SSI 2001/61)

The Convener: We appreciate what the Executive has done, but it could be argued that it could simply have followed the UK legislation. Even from my political perspective, the urgency of the circumstances means that I would not have stood on ceremony and would have accepted that the actions that require to be taken—whether in Devon, Somerset, Windermere or Dumfries and Galloway—are exactly the same. If it wishes, we have no objection to the Executive using the MAFF regulations straight off the press, so that we do not burden the Executive at this critical time. Do members have a view?

Ms MacDonald: That would be good practice at

the moment, as nobody has provided an alternative to the MAFF regulations. However, we are reaching the stage in the application of the regulations where expert opinion may differ. That is the only thing that I am worried about. Until now, there has been unanimity on how the measures should be applied, but differing opinions may well emerge.

The Convener: The position is that the Executive has waited for the order to come from MAFF and has rejigged it into Scottish regulations.

Bristow Muldoon (Livingston) (Lab): My point is similar to yours, convener. It is a matter of judgment. If the intention is to replicate the MAFF order, it would seem sensible, with appropriate liaison between the Scottish Executive rural affairs department and MAFF, to encourage MAFF to make regulations for the whole country.

Only if the stage is reached—not only in this situation, but in other situations concerning animal welfare or disease—at which different measures need to be introduced in different parts of the country would it be appropriate to go our own, different way.

David Mundell: Foot-and-mouth does not recognise geographic boundaries. Cumbria, on the border with Dumfries and Galloway, is the worst affected area in England. Neighbouring farms that straddle the border are affected. It is sensible to follow the suggested course of action, unless there is a specific Scottish dimension.

The Convener: We will draw that view to the attention of the Scottish Executive to see whether we can lighten its burden.

National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2001 (SSI 2001/62)

The Convener: The only point that we have to address—which arose a few months ago—is that this appears to be the 11th or 12th such regulation. Will there be consolidation at any stage? We have previously been led to believe that consolidation of NHS instruments was being considered.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): We talked about the principle of consolidation for ease of future reference. We have flagged this up before, and a wee bit of nudging in that direction again will not go wrong.

Discontinuance of Legalised Police Cells (Portree) Rules 2001 (SSI 2001/64)

The Convener: No points arise on the rules, but Margo MacDonald has something to say.

Ms MacDonald: This instrument has gripped me, but I am prepared to let it go.

Adults with Incapacity (Certificates from Medical Practitioners) (Accounts and Funds) (Scotland) Regulations 2001 (SSI 2001/76)

The Convener: There is a typographical error in the regulations and it is suggested that we deal with it by letter.

Adults with Incapacity (Supervision of Welfare Attorneys by Local Authorities) (Scotland) Regulations 2001 (SSI 2001/77)

The Convener: No matters arise on the regulations.

Adults with Incapacity (Countersignatories of Applications for Authority to Intromit) (Scotland) Regulations 2001 (SSI 2001/78)

The Convener: There is an unnecessary reference to the parent act, and a failure to narrate matters properly in the explanatory note, which can be dealt with in the normal fashion.

Adults with Incapacity (Evidence in Relation to Dispensing with Intimation or Notification) (Scotland) Regulations 2001 (SSI 2001/79)

The Convener: It is suggested that we ask the Executive to explain the reference to section 11(2) of the parent act.

Adults with Incapacity (Certificates in Relation to Powers of Attorney) (Scotland) Regulations 2001 (SSI 2001/80)

The Convener: There is an error in the footnote, which we can draw to the attention of the Executive in the usual fashion.

Diseases of Animals (Approved Disinfectants) Amendment (No 2) (Scotland) Order 2001 (SSI 2001/51)

The Convener: We now discuss instruments not laid before Parliament. No points arise on the order.

Foot-and-Mouth Disease (Amendment) (No 2) (Scotland) Order 2001 (SSI 2001/55)

The Convener: This is the first of the foot-and-mouth orders. We were advised that the requested amendments would have to be dealt with by a statutory instrument.

Ian Jenkins: The Executive has made the amendments, but one of them is incomplete. We should draw that to the Executive's attention.

Foot-and-Mouth Disease (Scotland) Declaratory Order 2001 (SSI 2001/56)

Foot-and-Mouth Disease (Scotland) Declaratory (No 2) Order 2001 (SSI 2001/59)

Foot-and-Mouth Disease (Scotland) Declaratory Amendment Order 2001 (SSI 2001/63)

Foot-and-Mouth Disease (Scotland) Declaratory (Amendment No 2) Order 2001 (SSI 2001/65)

The Convener: The orders were dealt with previously, on the basis that they do not fall within our remit. While we understand why they have been put before us, we would be better using our time on other matters.

Foot-and-Mouth Disease Declaratory (Controlled Area) (Scotland) (No 2) Order 2001 (SSI 2001/60)

The Convener: The order also does not fall within our remit; even if it did, there are no points to make.

National Health Service (Primary Care) Act 1997 (Commencement No 7) (Scotland) Order 2001 (SSI 2001/58)

Adults with Incapacity (Scotland) Act 2000 (Commencement No 1) Order 2001 (SSI 2001/81)

The Convener: No points arise on the orders.

Meeting closed at 11:40.

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