

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 20 March 2001
(Morning)

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SUBORDINATE LEGISLATION COMMITTEE

10th Meeting 2001, Session 1

CONVENER

Mr Kenny MacAskill (Lothians) (SNP)

DEPUTY CONVENER

*Ian Jenkins (Tweeddale, 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 20 March 2001

(Morning)

[THE DEPUTY CONVENER *opened the meeting at 11:46*]

The Deputy Convener (Ian Jenkins): Welcome to the 10th meeting of the Subordinate Legislation Committee. I have apologies from Kenny MacAskill, David Mundell and Gordon Jackson.

The committee has received helpful responses to all four of the instruments on which it questioned the Executive.

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

The Deputy Convener: The committee drew the Executive's attention to the drafting defects in the regulations. We will draw to the attention of the lead committee and the Parliament that the Executive has supplied the required explanation on the drafting of the powers mentioned in the preamble and that the drafting of the instrument is defective in a couple of respects, which the Executive's response acknowledges. Are we agreed?

Members *indicated agreement.*

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

The Deputy Convener: We received a helpful response on the regulations. We drew the Executive's attention to the need for consolidation. We will inform the lead committee and the Parliament of the Executive's explanation, provided in response to the committee's request for information about progress on consolidation. We are pleased that the Executive is keeping that at the forefront of its intentions.

Ms Margo MacDonald (Lothians) (SNP): I am not suggesting that other regulations are unimportant, but these affect people daily. It is therefore urgent to ensure that the department that

drafts them has sufficient resources. The Executive's response appears to hint that there are insufficient bodies to do the job.

The Deputy Convener: The timing for reporting on the regulations is a wee bit difficult. It may be sufficient to have Margo MacDonald's comment on the record. We cannot ask the Executive further questions at this point.

Ms MacDonald: I am not suggesting that we should return to the Executive. However, other committees are more likely to be exercised by the issue that I raised, because the substance of the matters that they deal with can be affected by the lack of resources among the people who draft and consolidate the regulations.

The Deputy Convener: So we support the provision of resources for civil servants to consolidate legislation.

Ms MacDonald: Yes.

The Deputy Convener: Good.

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

The Deputy Convener: We received a helpful response from the Executive accepting that there are inadequacies in the drafting of the explanatory notes. I suggest that we draw the attention of the lead committee and the Parliament to the regulations.

Members *indicated agreement.*

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

The Deputy Convener: The Executive has acknowledged our comments on the order and has made a good move by putting its hands up, acknowledging that it made a mistake, and correcting it quickly. I suggest that we draw the attention of the lead committee and the Parliament to the instrument on the ground of defective drafting, which was speedily acknowledged and corrected by the Executive.

Members *indicated agreement.*

National Health Service (Pharmaceutical Services) (Scotland) Regulations 2001 (SSI 2001/70)

The Deputy Convener: The first negative instrument makes some minor amendments to the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995. We are advised that there are substantial drafting problems with the regulations, which include issues of definition and cross-referencing. One example is the confusion caused by the insertion of definitions of “charges regulations” and “remission of charges regulations”, although no reference could be found in the regulations to either term. That is an example of the kind of sloppy drafting that is to be found throughout the instrument.

Ms MacDonald: It is sloppy, and we should ask the Executive the reason for that. It may be that changes to the national health service are causing a great deal of drafting and re-drafting. That is a possibility but, on the other hand, there might be another explanation. If that is the case, we should know what it is.

The Deputy Convener: I do not think that we have to go through every issue that has been brought to our attention. It would be best to draw all the points together in a critique of the regulations and to put that before the Executive. A whole heap of items need to be drawn to the Executive's attention so that it can look again at the drafting of the regulations. For example, it is not clear that the parent act allows for certain of the proposals contained in the regulations under the terms of sections 27A and 27B of the enabling act.

Ms MacDonald: When the errors are so basic as to leave the meaning of “additional pharmaceutical services” open to question or debate, that points to a real weakness in the drafting.

The Deputy Convener: We will draw all those points to the Executive's attention and look forward to its response. I am not sure whether we will get as helpful a response as we received the previous time, because we have made quite a few criticisms.

Non-Domestic Rates (Levying) (Scotland) Regulations 2001 (SSI 2001/71)

The Deputy Convener: No points arise on the regulations.

National Health Service (Personal Medical Services) (Scotland) Regulations 2001 (SSI 2001/72)

The Deputy Convener: The instrument contains a few typographical errors and points of interpretation that, although not desperately significant, should be drawn to the Executive's attention. Perhaps, because of the time scale and so on, we can do that by an informal letter.

Ms MacDonald: You get your red pencil out, deputy convener, and send it back to them.

The Deputy Convener: Apparently, paragraph (4) of the enabling power—section 17E of the National Health Service (Scotland) Act 1978—states that the regulations must include provision for a medical practitioner who has performed or provided personal medical services in accordance with section 17C arrangements to be allowed to return to fund-holding status in certain circumstances. We should ask the Executive whether that provision is still relevant and, if so, how it is reflected in the regulations.

Ms MacDonald: I do not think that there are still any fund-holders.

The Deputy Convener: We should ask the Executive whether the provision is still relevant, because vestigial aspects of fund-holding might remain.

Restriction on Pithing (Scotland) Regulations 2001 (SSI 2001/73)

The Deputy Convener: The regulations implement a European Community obligation and prohibit the slaughter practice known as pithing. Do members have any comments?

Ms MacDonald: We do not want to discuss the practice.

The Deputy Convener: It is a rather horrible procedure that happens at the time of slaughter.

Ms MacDonald: As the instrument will probably interest the European Committee or the Rural Development Committee, we can draw it to their attention.

The Deputy Convener: We also need to explore an issue of vires in relation the implementation of European Commission Decisions.

Ms MacDonald: The European Committee will also be interested in that.

The Deputy Convener: We will ask the Executive when the regulations will come into force; how that timing relates to any community

obligations; and whether the Executive is edging away from how the regulations should be implemented.

Ms MacDonald: Perhaps we should consider the Executive's suggestions against the background of the particular Commission decision.

The Deputy Convener: We will also ask what authority the Executive has for delaying bringing the regulations into force.

Police Grant (Scotland) Order 2001 (SSI 2001/74)

The Deputy Convener: No points arise on the order.

Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2001 (SSI 2001/75)

The Deputy Convener: The regulations prescribe the fees payable to the public guardian for certain matters under the Adults with Incapacity (Scotland) Act 2000.

It is suggested that the committee may care to consider asking the Executive why it has failed to follow the guidance in paragraphs 2.23A, and 2.73 and 2.79 of "Statutory Instrument Practice" in relation to, respectively, the footnote on page 1 and the explanatory note. We might also ask the Executive to what the copying fees prescribed in items 7 and 8 of the schedule refer. Will people be charged for replacement or duplicate certificates in items 3 and 6 of the schedule?

Again, because of the timing, if the committee agrees we will ask those questions by letter and I, or the convener on his return, will approve the responses before the publication of our report.

12:00

Civil Legal Aid (Scotland) Amendment Regulations 2001 (SSI 2001/82)

Gaming Act (Variation of Fees) (Scotland) Order 2001 (SSI 2001/83)

The Deputy Convener: No points arise on the instruments.

Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Amendment Regulations 2001 (SSI 2001/84)

The Deputy Convener: The regulations implement community legislation specifying maximum pesticide levels in crops and food. We received a useful note from the Executive on the background to the regulations. I think that we accept the logic behind them. Does anyone have anything to raise?

Ms MacDonald: No, but the regulations are a good counterpoint to some other examples that we will consider on the question of vires, which can be a very delicate balancing act for the Executive. This instrument has worked—sort of. We will put it into our portfolio of examples of where there might be difficulty in implementing community directives or legislation.

The Deputy Convener: So the Executive should look carefully at how it interacts?

Ms MacDonald: We will try to work out the rationale for the decisions that are being taken in some cases.

The Deputy Convener: Perhaps we should do that in a meeting with civil servants to discuss the interrelationship between European and Scottish legislation. We should put it on record that we would like to hold such a meeting at some point in the future.

Ms MacDonald: Such a meeting would help to clarify things for all of us.

The Deputy Convener: Perhaps we should point out the underlying debate in our report to the lead committee. The question of vires should be drawn to its attention.

Ms MacDonald: I do not know whether the lead committee will be too bothered, but we should be.

The Deputy Convener: It is up to the lead committee once we have drawn that point to its attention.

National Health Service (Choice of Medical Practitioner) (Scotland) Amendment Regulations 2001 (SSI 2001/85)

The Deputy Convener: The regulations extend the arrangements under which a patient may apply to be included in a doctor's list of patients. Some departures from "Statutory Instrument Practice" have been drawn to our attention, particularly relating to the reference to "Directions to Health Boards Concerning Patient Lists (Personal

Medical Services)" in regulation 2. Perhaps we should ask the Executive why, contrary to the usual procedure, the explanatory note does not give details of where one can obtain that publication. We might also ask why section 19 of the parent act, which appears to be a relevant enabling power has not been cited in the preamble.

Specified Risk Material Amendment (No 2) (Scotland) Regulations 2001 (SSI 2001/86)

The Deputy Convener: The regulations are another amendment to the Specified Risk Material Regulations 1997. Several points have been raised in relation to the regulations. Would members like to take us through them?

Bristow Muldoon (Livingston) (Lab): The main question regarding the regulations is why there appears to have been late implementation of community requirements. That question applies to several of the instruments that we have considered today, therefore we should raise it with the Executive.

The Deputy Convener: Yes, the timing of implementation has been a recurring theme that we would like to explore.

Bristow Muldoon: The other significant issue is the definition of the storage time for records. The instrument specifies that records should be kept

"for a period of not less than two years",

but it does not specify what the trigger point for those two years is. We could ask for further definition of that.

The Deputy Convener: That needs to be clear. We could also ask the Executive to explain the purpose of paragraph (4B)(a) of regulation 24, which is not clear.

Ms MacDonald: The regulations require consolidation.

The Deputy Convener: Yes, we can ask about consolidation. Executive officials were previously kind enough to say that they understand the drive towards consolidation, so we can ask about it again.

There is a technical question of whether we are dealing with an order or a regulation. We assume that the Executive note refers to the SRM regulations and not the SRM order, but we will ask officials to confirm that.

Regulation 28 of the principal regulations makes provision regarding the storage of SRM with food. We would like the Executive to explain whether paragraphs (4A) and (4B) of the new regulation 24 will apply in the circumstances provided for in

regulation 28(1) and 28(2).

Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions)(Scotland) Amendment Order 2001 (SSI 2201/87)

The Deputy Convener: The order amends an earlier instrument to take account of the replacement of the Scottish Crime Squad by the operational and intelligence group of the Scottish Drug Enforcement Agency. No points arise on the order.

National Health Service (Optical Charges and Payments)(Scotland) Amendment Regulations 2001 (SSI 2001/88)

The Deputy Convener: There is a slight doubt regarding the vires of regulations 5 and 7, where it is not clear whether the enabling power allows the payments in question to be made by Scottish ministers. The matter must be discussed, but perhaps we can give the Executive the benefit of the doubt on this occasion. Are we agreed?

Members indicated agreement.

Meat (Hygiene and Inspection) (Charges) Amendment (Scotland) Regulations 2001 (SSI 2001/89)

The Deputy Convener: No points arise on the regulations.

Import and Export Restrictions (Foot- and-Mouth Disease) (Scotland) Regulations 2001 (SSI 2001/95)

The Deputy Convener: Because of the urgency of the matter, perhaps we should make any points concerning the regulations in an informal letter. If members have no further points to raise, we will do that. Are members agreed?

Members indicated agreement.

Environmental Protection Act 1990 (Amendment) (Scotland) Regulations 2001 (SSI 2001/99)

The Deputy Convener: Some doubt about the vires of the regulations in relation to the Scotland Act 1998 has been drawn our attention. Does anyone wish to expand on that doubt more fully?

Ms MacDonald: Before very much time has elapsed, we should consider seriously exactly what the vires relationship is between European

obligations, the Scotland Act 1998 and the Scottish Executive. The Scottish Executive is just that—it is an Executive, and must be seen to be doing things. It appears that the timing for dealing with subordinate legislation can be thrown out because of the delineation of powers in the Scotland Act 1998.

Bristow Muldoon: I will raise a different point from those that we discussed earlier. We are talking about whether the ministers are acting within the terms of the Scotland Act 1998 in conferring functions on ministers of the Crown or on UK Government departments. Nonetheless, various considerations have been raised.

The Deputy Convener: The issue has less to do with timing and more with the relationship between the Scottish ministers and ministers of the Crown, and the way in which that relationship works, as laid down in the Scotland Act 1998. The question is whether it is proper for the Scottish ministers to act in the way proposed by the regulations. It is one of those things—it is a wee kink that needs to be examined. Perhaps we should raise the issue in a forum where we would be able to discuss the principles rather than individual statutory instruments. We could also ask the Executive for an explanation of where it stands on the issue.

National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2001 (SSI 2001/100)

The Deputy Convener: No points arise on the regulations.

Foot-and-Mouth Disease (Scotland) (Declaratory and Controlled Area) Amendment Order 2001 (SSI 2001/66)

Foot-and-Mouth Disease (Scotland) (Declaratory and Controlled Area) Amendment (No 2) Order 2001 (SSI 2001/90)

Foot-and-Mouth Disease (Scotland) Declaratory (Amendment) (No 3) Order 2001 (SSI 2001/91)

We now come to instruments not laid before the Parliament and not subject to parliamentary procedure. The declaratory orders amend declaratory orders that came before the committee last week. As they are technically not statutory instruments, we do not need to discuss them.

Defamation Act 1996 (Commencement No 3 and Transitional Provision) (Scotland) Order 2001 (SSI 2001/98)

The Deputy Convener: No points arise on the order.

As there is no further business, I close the meeting.

Meeting closed at 12:13.

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