

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 3 April 2001
(Morning)

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SUBORDINATE LEGISLATION COMMITTEE

12th 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 3 April 2001

(Morning)

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

The Deputy Convener (Ian Jenkins): I welcome everyone to the 12th meeting of the Subordinate Legislation Committee. I have apologies from the convener, Kenny MacAskill.

National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2001 (SSI 2001/67)

The Deputy Convener: Our first item of business is the consideration of Executive responses. The committee raised many points on the regulations, particularly on the issue of consolidation. The Executive has said that it regrets that it has not yet been able to consolidate the principal regulations, and that it will do so as soon as is reasonably possible. We should therefore draw the attention of the lead committee and the Parliament to the need for consolidation of the regulations.

Ms Margo MacDonald (Lothians) (SNP): We are beginning to understand that the system is under a fair amount of pressure. I am sure that it is not a matter of people being careless about, or not paying attention to, the need for consolidation. When we draw the matter to the lead committee's attention, perhaps we should also suggest that it asks those in the department responsible to clarify the phrase "as soon as is reasonably possible". That sounds rather open-ended to me. We are asking the health department either to rewrite or to consolidate all the instruments that we receive from it. I do not know whether the pressure of work in that department is reasonable or unreasonable; however, the lead committee should find out what is meant by a reasonable time, and the priorities concerning the consolidation of the regulations.

The Deputy Convener: The committee has agreed that it wants to speak to the Executive about the principle and practice of consolidation.

Ms MacDonald: So we do not need to tell the lead committee anything.

The Deputy Convener: It is only fair to tell the

lead committee about the points arising from the regulations. However, we must explore issues such as the pressure on the system with the Executive.

Bristow Muldoon (Livingston) (Lab): As this is the 22nd set of amendments to the principal regulations, people are bound to find it difficult to follow the other amendments that have been made. As a result, it is only fair to ask the department when it intends consolidating the regulations.

The Deputy Convener: We can do that.

The committee also raised a point concerning the definition of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 1988. As those regulations are referred to only once in the principal regulations in the terms defined, namely in the amendments effected by the current regulations, and are otherwise referred to in full, we asked why that provision was considered necessary.

The Executive agreed that it would not have been appropriate to include a definition where the term was referred to just once in the regulations; however, the Executive notes that there are three references to the term, in regulations 8(10)(b), 8(14)(b)(ii) and 8(14)(c)(i) of the principal regulations. Although it is doubtful whether that constitutes defective drafting, such difficulties make clear the need for quick consolidation, otherwise the whole thing becomes a jigsaw. That reinforces the points made by Margo MacDonald and Bristow Muldoon.

The third point that we raised on the regulations concerned a missing footnote, which the Executive has recognised. Although we have pointed out that defective drafting to the lead committee, it does not affect the substance of the instrument very much.

The fourth point focused on how the new paragraphs in regulation 8 of the principal regulations interact with regulation 8(6) as amended. We should draw the attention of the Parliament and the lead committee to the department's explanation.

The fifth point raised an issue of defective drafting, to which we should draw the attention of the lead committee. The sixth point is also a matter of defective drafting, as the regulations would allow people who are dead to make applications. Do members have any comments about that?

Ms MacDonald: It has been corrected.

The Deputy Convener: Indeed. We will draw the lead committee's attention to that fact.

The seventh point centres on another whole

twist and turn in the instrument which creates confusion with regulation 4(2) and new regulations 8(7), 8(12) and 8(13) to 8(15). There is real difficulty understanding what is going on. We should consider drawing the lead committee's attention to the fact that the meaning of the provision remains obscure. We are making a big play about the importance of the consolidation and clarification of these regulations, not just for the committee, but for the public.

Ms MacDonald: The regulations should be accessible, and they are anything but.

The Deputy Convener: The instrument also breaches the 21-day rule. As members of the public who are affected should have some forewarning of such regulations, breaching that rule is not a good idea. I am sure that the Executive does not do that lightly. The committee has already stressed the need to make regulations in good time. We worry that the Executive might be waiting for the UK Government to make the regulations for England so that Scotland can follow in behind. Although that might not affect the substance of the instrument, it makes the timetable for scrutiny tighter for the Scottish Parliament. We should point out to the Executive that we are not terribly happy with the situation.

National Health Service (Dental Charges) (Scotland) Amendment Regulations 2001 (SSI 2001/69)

The Deputy Convener: The regulations again breach the 21-day rule. The Executive apologises, and assures the committee that it did not do so lightly. However, as with the previous instrument, we should express some unease that the practice is becoming a bit too common.

Feeding Stuffs (Sampling and Analysis) Amendment (Scotland) Regulations 2001 (SSI 2001/104)

The Deputy Convener: We asked the Executive about the late implementation of European Community obligations in relation to the instrument. The committee is particularly concerned about how the Scotland Act 1998 interacts with European Community law. We should draw the attention of the lead committee and the Parliament to the Executive's response and record our doubts about the vires of the instrument as far as the terms of the Scotland Act 1998 are concerned. However, as we have agreed to discuss the general issue with Executive representatives, we do not wish to obstruct individual instruments at this stage.

National Assistance (Assessment of Resources) Amendment (No 2) (Scotland) Regulations 2001 (SSI 2001/105)

The Deputy Convener: We raised several points on the regulations. In particular, we felt that the regulations contained a drafting error as they provide for the commencement of a regulation that does not exist. However, the Executive spotted the error, and intends to correct it by revoking the regulations before they come into force and making new ones. In the meantime, we draw the lead committee's attention to the defective drafting, which has been acknowledged by the Executive. There will be no harm done if the instrument is remade correctly.

The second point that we raised again concerns consolidation. Margo MacDonald would no doubt wish us to reinforce the fact that the regulations are of interest to the man in the street and therefore deserve attention. We draw the attention of the lead committee and the Parliament to the Executive's response on that point. Our other points were merely technical matters which will be corrected in the new instrument.

Valuation for Rating (Plant and Machinery) (Scotland) Amendment Regulations 2001 (SSI 2001/115)

The Deputy Convener: The Executive's response was full and helpful. I do not know whether anyone wants to comment. We asked for an explanation of the Executive's breach of the 21-day rule and for clarification of whether the exemption from rating of an additional class of plant and machinery that was contained in the regulations complied with any relevant rules on state aid.

The Executive gave a full account. The debate is interesting. Perhaps we should accept the excuse for breaching the 21-day rule as reasonable in the circumstances, as the issues were discussed in the Executive. The information on state aid is useful. However, it is up to the European Commission, not member states, to decide whether a payment is a state aid. We could refer the regulations to the Parliament on the ground that they required further explanation, which the Executive supplied.

**Sea Fishing (Enforcement of
Community Quota and Third Country
Fishing Measures) (Scotland) Order
2001 (SSI 2001/117)**

11:30

The Deputy Convener: We move on to instruments subject to the negative procedure. The order is routine. Such orders are made annually to take account of decisions of the European Community's fisheries council. We have noticed one or two typos. Given the shortage of time, it would be reasonable to draw the typos to the Executive's attention by an informal letter.

**National Health Service (General
Medical Services) (Scotland)
Amendment Regulations 2001
(SSI 2001/119)**

The Deputy Convener: The regulations remove some proprietary drugs from the list of drugs that doctors are not to supply or prescribe. We have been advised that no points arise on the regulations.

David Mundell (South of Scotland) (Con): It is worth noting the timing of the intimation to us of the regulations and the order that we have just considered. They were not made available to us in time for inclusion on the previous meeting's agenda. In this case, no issues arise, but if we had wanted to raise issues, it would have been difficult to communicate them to the Executive or to call witnesses to interview. We should tell the Executive that, unless overriding reasons of urgency exist, it should do what it can to dovetail with the committee's timing requirements.

The Deputy Convener: We would be happy to do that. We take the position that timetabling should be organised to allow us to consider instruments and make points to which the Executive can respond in time, without calling civil servants for questioning. As no points arose on the regulations or the order, we did not call witnesses. We would have been within our rights to do so, although that would not have been the best procedure. We will make the suggested point.

**Import and Export Restrictions (Foot-
and-Mouth Disease) (Scotland)
Amendment (No 2) Regulations 2001
(SSI 2001/127)**

The Deputy Convener: The regulations make further amendments that relate to restrictions that

have been imposed as a result of the foot-and-mouth outbreak. The situation is constantly changing, and I understand that the regulations have already been overtaken by a third set of amendment regulations. Nevertheless, we are pleased to note that the Executive has taken on board the additional points that we raised on the first issue of the regulations.

A point has been drawn to our attention about the time of signature in the italic heading on the regulations. We understand that in the Welsh Assembly the time of signature is inserted on the front of an instrument, which could be useful to ensure that no retrospection is involved. It is a matter of style, not substance, but it should be considered by the Executive in remaking the regulations.

**Foot-and-Mouth Disease
(Ascertainment of Value) (Scotland)
Order 2001 (SSI 2001/120)**

**Foot-and-Mouth Disease
(Ascertainment of Value) (Scotland)
(No 2) Order 2001 (SSI 2001/121)**

The Deputy Convener: The orders have not been laid before Parliament. Once again, they are to do with foot-and-mouth disease—they provide for the valuation of animals that are slaughtered as a result of the current outbreak of the disease. The former instrument contains an error that has been corrected by the latter. The schedule has been amended to include cull cattle.

The Welsh Assembly's Legislation Committee drew to the attention of draftsmen the question of whether the definition of cull cattle was confined to clean cattle. We should consider whether we wish to raise a similar point with the Scottish Executive. Nobody wishes to be obstructive in these matters, but there is a need for clarity. We could mention it with the intention of being helpful. Once again, a point arises about the time of signature.

The orders are changing all the time—they are on shifting sand—and they can be refined as each falls and the next one takes its place. Helpful suggestions such as this one should not be considered as criticisms, but as points of information that might be taken on board.

**Liquor Licensing (Fees) (Scotland)
Order 2001 (SSI 2001/125)**

The Deputy Convener: The order increases the fees payable in respect of matters relating to liquor licensing. Are there any questions?

Bristow Muldoon: Part 1 of the schedule to the Liquor Licensing (Fees) (Scotland) Order 1997 (SI 1997/1721) contains the item

“Sunday opening (unaccompanied by application for new licence or renewal)”

which is not included in the current order. We could ask whether that omission is deliberate or accidental.

The Deputy Convener: Indeed. The omission may be an accident, or deliberate for some reason, but we can ask for an explanation—and no doubt we will get one.

That brings us to the end of the agenda, so I close the meeting.

Meeting closed at 11.38.

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