

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 29 May 2001
(Morning)

Session 1

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SUBORDINATE LEGISLATION COMMITTEE

18th Meeting 2001, Session 1

CONVENER

*Mr Kenny MacAskill (Lothians) (SNP)

DEPUTY CONVENER

*Ian Jenkins (Tw eeddale, 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

WITNESSES

Roddy Macdonald (Scottish Executive Health Department)
Lynda Towers (Office of the Solicitor to the Scottish Executive)

CLERK TO THE COMMITTEE

Alasdair Rankin

ASSISTANT CLERKS

Ruth Cooper
Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 29 May 2001

(Morning)

[THE CONVENER opened the meeting at 11:26]

The Convener (Mr Kenny MacAskill): Good morning and welcome to the 18th meeting of the Subordinate Legislation Committee. We have apologies from David Mundell, Margo MacDonald and Gordon Jackson.

Regulation of Care (Scotland) Bill

The Convener: Agenda item 1 is the scrutiny of delegated powers in the Regulation of Care (Scotland) Bill, as amended at stage 2. As the stage 3 debate will take place later this week and our report will require to be made for that, we are having Executive witnesses now.

Good morning to our witnesses. Thank you for coming. I will let you get settled into your seats. Our questions should not take too long, but as the stage 3 debate will take place later this week and we must make our report soon, we felt it best to take oral evidence rather than seek clarification through correspondence in the normal way. We can hereafter report immediately to Parliament.

Perhaps you could introduce yourselves and make any preliminary points before the committee raises the points from its legal briefing.

Lynda Towers (Office of the Solicitor to the Scottish Executive): I am the bill's solicitor. My colleague, Roddy Macdonald, is from the bill team.

We will deal with one preliminary matter, which the committee raised. Section 7A refers to sections 24(4)(b) and 24(6) as being exceptions. I spoke to the draftsman this morning and we accept that that is an error. He is consulting the parliamentary authorities on whether that can be dealt with as a typing matter. If it cannot, the bill will have to be amended, but it is too late to lodge an amendment for stage 3, so we undertake to introduce an amendment in the first available and appropriate amending piece of legislation that deals with such matters.

The Convener: That saves us from asking you to clarify one point. Do members wish to raise other points?

Bristow Muldoon (Livingston) (Lab): Following comments by the committee, the

Executive amended section 5 to place a duty on, rather than give a power to, Scottish ministers to publish national care standards. The committee is interested in a further issue. Section 5 does not define how the standards are to be published. Will they be published as subordinate legislation, or in another form? We would like to explore that issue. How does the Executive intend to publish the national care standards?

Lynda Towers: The national care standards are not intended to be published as subordinate legislation, but some aspects of them may be included in subordinate legislation that is made under section 24. Various committees continue to discuss various aspects of the care standards, so we are not yet in a position to say what will be in the standards.

The Executive's position is that the wording change from "may" to "shall" does not change the argument that it presented when we gave evidence to this committee before. If the committee is concerned about whether it will see the care standards, I can say that the practical effect will be that the committee will have an opportunity to comment on the care standards.

Bristow Muldoon: That was my major concern—not so much whether this committee would have that opportunity, but the Health and Community Care Committee. I will take it as read that you mean appropriate committees.

Lynda Towers: Both committees will have that opportunity.

11:30

Roddy Macdonald (Scottish Executive Health Department): We discussed consultation on the care standards when we last gave evidence to the committee. Consultation has been a major element of the work of the national care standards committee. The Executive is committed to consultation on the care standards. That has been a key part of the way in which the standards have been developed and will be a key part of how they are implemented.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): May I ask a question that may not fall within the committee's remit? As I looked through the bill, I saw that section 3 offered Scottish ministers the possibility of amending the definition of care service. I presume that such an amendment would be made by subordinate legislation.

Lynda Towers: It would. Following what the committee said when we last met it, such an amendment will be made by an order that is subject not to the negative procedure, but to affirmation. The provision is drafted with a view to

amendments adding to or removing from the definition, depending on how circumstances change.

Ian Jenkins: Would private ambulance services, for example, be the kind of thing that might be added?

Lynda Towers: If it were deemed appropriate, such services could be added later by subordinate legislation that the Parliament would scrutinise.

The Convener: Section 24(9B) specifies that an offence under the regulations will attract a fine of up to level 5 on the standard scale. It has been flagged up to the committee that some offences might be relatively minor. We appreciate that judicial discretion is involved, but the possibility exists to specify that some offences should attract a lower fine. Is there any reason for choosing the method in the bill and leaving it to court circulars to decide what view should be taken on offences of different magnitudes? Is there an alternative way of differentiating offences that are more and less serious?

Lynda Towers: It was felt appropriate to leave the matter to the courts to decide, in accordance with judicial discretion. That makes the legislation relatively straightforward.

Ian Jenkins: Section 24(10) was changed in accordance with our suggestion about consultation. That strengthens the provision and we welcome that. However, the wording remains open-ended. The bill says that the Scottish ministers shall consult anyone they consider appropriate. I have no particular objection to that, but the Executive has decided not to try to list consultees.

Lynda Towers: It was felt that if the document was to be dynamic and reflect the appropriate players—carers and those cared for—it would be appropriate to leave that wording, subject perhaps to questions of direction. It was felt inappropriate to set out the names of the consultees in primary legislation.

The Convener: Paragraph 5 of schedule 1 and paragraph 5 of schedule 2 allow regulations to be made which are subject to the negative procedure. Why was that procedure chosen over the affirmative procedure, given the matters involved?

Lynda Towers: The procedure was not changed during stage 2 and follows the normal process for appointments. Changes are being made to the structure of the boards because the appropriateness of the numbers on all boards that are being created has been considered. It was felt that the original balance of membership was inappropriate to the envisaged result. Similar future amendments will be dealt with under the negative procedure.

The Convener: We have covered all the matters on which we wanted clarification. I thank the witnesses for attending.

The discussion was brief; Lynda Towers's initial comment took one point out of our sails. The witnesses acknowledged the difficulty in section 7A. I do not know how the committee feels about the response on publication and notification of the national care standards that are made under section 5.

Bristow Muldoon: I am comfortable with the response, as parliamentary committees are intended to have a role in framing those standards. It gives credit to our legal advice that the Executive took the first point on board without argument.

The Convener: I agree. We cannot ask for more. If the care standards will be scrutinised by this committee and the lead committee, that is as good as it will get. I have no criticism about that.

I do not know whether the Executive can lodge an amendment between now and the start of stage 3. I am not sure of the procedure. I am curious about whether an emergency procedure exists for extending the time limit for lodging amendments. The Executive has acknowledged an oversight and it would be rather daft to proceed with the debate on Thursday when we know that the bill has a clear flaw. I hope that standing orders can deal with that, or be rejigged to sort it out.

Ian Jenkins: The witnesses seemed fairly pessimistic about the possibility of lodging an amendment.

Bristow Muldoon: Perhaps we should refer the matter to the Procedures Committee. When a technical and non-controversial amendment is proposed, a procedure could be introduced to allow such amendments to be lodged even at a late stage.

Ian Jenkins: The trouble is that we never know when an amendment will be uncontroversial.

Bristow Muldoon: Sure. However, allowing the amendment to be lodged might give members an opportunity to debate it.

The Convener: Such an amendment could be lodged with the Parliamentary Bureau's agreement, for example. That is a good point to flag up to the Procedures Committee. Proceeding on Thursday with a bill that, two days before the debate, we know is fundamentally flawed because an amendment cannot be lodged seems a bit daft.

If the amendment is controversial, people should have the right to veto it, but if the amendment is uncontroversial, Parliament is progressing with a flawed bill and might use up judicial time or

members' time in sorting it out. Perhaps we could simply draw the Procedures Committee's attention to the situation and ask whether the issue can be considered. How would Ian Jenkins feel about such amendments being lodged with the consent of all parties?

Ian Jenkins: I accept that we should find out whether such amendments can be lodged, but I imagine that someone might complain and be uncomfortable about an amendment that was slipped in at the last minute. However, if the amendment to the bill that we are discussing can be lodged, it should be, as that would save everyone much trouble.

The Convener: There must be a way of describing amendments to correct typographical or other nonsensical errors that are clear flaws, rather than amendments to introduce new provisions, with which we would probably all be unhappy.

I was satisfied with the answer that we received on the reference to the standard scale in section 24. I am perfectly happy to leave it to the sheriffs' discretion to differentiate matters. I do not doubt that information on that will be circulated to sheriffs.

How did you feel about the answer that you received about consultation on regulations, Ian? The Executive seems to be fairly forthcoming.

Ian Jenkins: Absolutely. I asked the question just to obtain a statement from the witnesses.

The Convener: I am probably satisfied with paragraph 5 of schedule 1 and paragraph 5 of schedule 2. If they follow the procedure that is followed elsewhere, we cannot quibble that the procedure is negative rather than affirmative.

We have no points to raise, apart from the matter that the Executive officials mentioned at the outset, which we will also remit to the Procedures Committee. We will intimate that to the Parliament.

Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 2001 (Draft)

The Convener: Agenda item 2 deals with a draft instrument that is subject to approval. No points arise on the order.

Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No 2) Regulations 2001 (SSI 2001/186)

The Convener: Agenda item 3 is instruments that are subject to annulment.

The regulations raise some typographical matters that we will deal with in the normal way.

Sex Offenders (Notification Requirements) (Prescribed Police Stations) (Scotland) (No 2) Regulations 2001 (SSI 2001/190)

The Convener: We congratulate the Executive on its work on the regulations, on which no points arise.

Rendering (Fluid Treatment) (Scotland) Order 2001 (SSI 2001/189)

The Convener: Agenda item 4 is instruments that were not laid before the Parliament.

The order contains a typographical error. We will seek clarification on whether the order has been notified to the European Community and whether a belt-and-braces procedure been adopted with regard to the sanction for breaching the order. It is normal for such orders to reflect section 72 of the Animal Health Act 1981, although that may not be necessary, given the terms of section 73 of that act. My understanding is that it is probably not necessary for section 72 to be reflected, but we could ask the Executive whether it feels that a belt-and-braces procedure should be adopted.

Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (Commencement) Order 2001 (SSI 2001/191)

The Convener: No points arise on the order, but Bill Butler and I will no doubt have other comments to make on it in the Enterprise and Lifelong Learning Committee. I will refrain from congratulating the Executive too much on its drafting of the order until I have considered its contents. Does Bill want to make any points?

Bill Butler (Glasgow Annie'sland) (Lab): Not at this stage. I will follow your lead, convener—in this committee.

The Convener: Thank you very much.

Meeting closed at 11:42.

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