

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 4 September 2001
(Morning)

Session 1

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SUBORDINATE LEGISLATION COMMITTEE

23rd 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 4 September 2001

(Morning)

[THE CONVENER *opened the meeting at 11:34*]

Sexual Offences (Procedure and Evidence) (Scotland) Bill

The Convener (Mr Kenny MacAskill): I welcome members to the first meeting after the recess. The first item on the agenda is scrutiny of the delegated powers in the Sexual Offences (Procedure and Evidence) (Scotland) Bill. We have a fair bit of time to consider the bill, but various points have been raised about it, so members may want to make some initial comments. I certainly wondered about the transitional powers and the steps that will be taken to specify what the situation will be for continuing trials. We need some clarification on that point. I suspect that those powers would not be brought in halfway through a trial, but some comment is needed on that question.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): There are also questions about the list of sexual offences and whether that is the right way in which to proceed. It is fair enough to have a list and to amend it by subordinate legislation, but other people may take a different view.

Ms Margo MacDonald (Lothians) (SNP): I am concerned about the use of subordinate legislation for such a sensitive topic, although I agree that that is the most efficient way to amend the list. People may think that we are trying to slip one past them if the list is changed by regulation, rather than after public debate.

The Convener: We can ask the Executive to explain the circumstances in which it anticipates that subordinate legislation will be used. There are powers in prevention of terrorism legislation, for example, in relation to people who refuse to recognise the court. The Executive could clarify when, where and how likely it anticipates the power being used. We will have time to consider the issue at the next meeting.

BSE Monitoring (Scotland) Regulations 2001 (SSI 2001/231)

The Convener: The next item on the agenda is Executive responses.

The 21-day rule has been breached in relation to the regulations. We should also draw the Executive's attention to the requirement to implement European Community obligations timeously. We will do so by informal letter, as we have reported on the instrument and received a response from the Executive.

Adoption of Children from Overseas (Scotland) Regulations 2001 (SSI 2001/236)

The Convener: We will draw to the attention of Parliament and the lead committee the Executive's answers to the clarification that we sought.

Criminal Legal Aid (Scotland) (Prescribed Proceedings) Amendment Regulations 2001 (Draft)

The Convener: Item 3 on the agenda is draft instruments subject to approval. Do members have any comments on the regulations?

Ian Jenkins: There are a couple of technical errors that should be drawn to the attention of the Executive, but other than that, the regulations are fair enough.

The Convener: We will do that by informal letter.

Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No 3) Regulations 2001 (Draft)

The Convener: There is a technical human rights issue if legal aid is withdrawn before assistance by way of representation is available for drug courts, therefore we will seek clarification. The regulations also fail to cite relevant legislation in the preamble.

Fishing Vessels (Decommissioning) (Scotland) Scheme 2001

The Convener: Agenda item 4 is instruments subject to approval.

Given the amount of money that may be involved, it would be appropriate to provide an

appeal mechanism for boat owners. We can ask whether there is to be an appeal mechanism, and if not, why not, because it would not be appropriate for a skipper who feels he has received a raw deal to use judicial review.

David Mundell (South of Scotland) (Con): There is also the issue of whether electronic communications will be welcomed. We should seek clarification on that, as well as draw attention to the gobbledegook in various paragraphs, such as the definition of "sea fish".

The Convener: We will do that. We also require clarification on the selection of applications, as set out in paragraph 5.

Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (Orkney) (No 3) (Scotland) Order 2001 (SSI 2001/255)

Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (East Coast) (Scotland) Order 2001 (SSI 2001/256)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Scotland) Order 2001 (SSI 2001/273)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Order 2001 (SSI 2001/281)

Food Protection (Emergency Prohibitions) (Amnesic, Paralytic and Diarrhetic Shellfish Poisoning) (Orkney) (Scotland) Order 2001 (SSI 2001/282)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 3) (Scotland) Order 2001 (SSI 2001/284)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 4) (Scotland) Order 2001 (SSI 2001/289)

The Convener: No points arise on the orders.

Child Minding and Day Care (Registration and Inspection Fees) Amendment (Scotland) Regulations 2001 (SSI 2001/214)

The Convener: Item 5 on the agenda is instruments subject to annulment.

The regulations breach the 21-day rule. I do not know whether we are satisfied with that. The regulations increase fees, but the instrument is not out of order. Our comments on the instrument are minor, given what we will be saying about other instruments.

I wonder, given what we heard previously about the National Audit Office, whether it is possible to be clearer about how we cost things. Registration and inspection fees are important, especially in this city, given the current difficulty that we have with one outstanding case, as are the difficulties that childminders face, albeit rightly, in registering. Are there any other comments?

Ms MacDonald: It is a very bureaucratic piece of legislation, but as you pointed out convener, it is pointy-end stuff that affects people's pockets. The instrument could be clearer.

On the breach of the 21-day rule, practically every instrument that is before us today has breached the 21-day rule. We should not just say to the Executive that it has done so in this case, we should ask why it is happening in almost every case. What is the reason? Is it seasonal?

The Convener: We have always made the point that we view instruments on foot-and-mouth disease as exceptional, but that situation is lessening now, so we can raise the breach of the 21-day rule in an overarching letter.

Nursing Homes Registration (Scotland) Amendment Regulations 2001 (SSI 2001/215)

The Convener: These regulations also hike fees substantially. I am not against that, if it benefits the public.

Bill Butler (Glasgow Anniesland) (Lab): We should ask about the discrepancy between the figure quoted in the Executive note and the actual increase.

The Convener: Yes. The figure of 10 per cent may simply have followed on from the Child Minding and Day Care (Registration and Inspection Fees) Amendment (Scotland) Regulations 2001 (SSI 2001/214).

We also will seek clarification on the fee for the annual continuation of registration, which is payable on the registration date, and whether that means that two payments will have to be made on first signing up.

Nurse Agencies (Increase of Licence Fees) (Scotland) Regulations 2001 (SSI 2001/216)

The Convener: The instrument increases fees, and there has been a breach of the 21-day rule. I am not averse to increases in fees, if a service is provided in the best interests of the public. However, clarification on how the figures are arrived at would be useful. For example, are they based on an audit of what it costs to process licences? Ensuring that licences are properly scrutinised is in the public interest.

David Mundell: Especially as the increases are several thousand per cent. There may be an explanation, but we cannot go from £4.20 to £175 without being proffered one, especially as there was a 33-year period without any rise at all.

Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2001 (SSI 2001/244)

The Convener: The order is revoked.

Town and Country Planning (General Development Procedure) (Scotland) Amendment Order 2001 (SSI 2001/245)

The Convener: Various points have been raised, such as the breach of the 21-day rule.

David Mundell: We should seek clarification from the Executive that it is clear on the devolved competence of the order, because a number of pieces of UK legislation, such as the Telecommunications Act 1984, grant powers to providers of services on a UK basis. Of course, the provision of those services is a reserved matter. I presume that that work has been done, but in order that we can be satisfied, we should receive clarification.

Ms MacDonald: Is the committee's remit such that we can ask only for an explanation, or can we ask for alternatives?

11:45

The Convener: We can flag up a potential problem and ask the Executive for an explanation. If we are not satisfied, we can put our views, along with the Executive's response, to the relevant lead committee or to the Parliament. That allows the lead committee or the Parliament to judge which view they are minded to accept—our view or that of the Executive. If and when Parliament approves the order, it would be for others, if they had doubts, to test the instrument in the court by way of litigation.

Ian Jenkins: Although the order comes under planning legislation, there are health implications and, as that is a devolved issue, clarification is required.

Bristow Muldoon (Livingston) (Lab): The issue is one on which the Transport and the Environment Committee produced an extensive report. The question of devolved competence was considered. Given that the Transport and the Environment Committee flagged up the issue, the order will have been drafted carefully to take devolved competence into account. At this stage, however, we can fairly ask the Executive for information on that question.

The Convener: We will see what is the Executive's response. We should also ask the Executive about its plans for consolidation of the principal instrument, as this is its fifth amendment.

Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Amendment Regulations 2001 (SSI 2001/248)

The Convener: As in previous instances where drafting errors have been made, we will ask the Executive if it has made arrangements for the instrument to be made available free of charge to people who purchased the original, defective instrument.

Plant Health (Great Britain) Amendment (Scotland) Order 2001 (SSI 2001/249)

The Convener: We will seek clarification about the delay of four months beyond the date set by the European Commission. The delay may result from pressure of work in the relevant department, but we should have an explanation for it.

**Sea Fish (Specified Sea Areas)
(Regulation of Nets and Other Fishing
Gear) (Scotland) Amendment Order
2001 (SSI 2001/250)**

The Convener: We should check whether the Executive has obtained all necessary clearances from the European Commission.

Ian Jenkins: We should also point out that the Executive has repeated an error that we pointed out to it.

The Convener: The Executive has compounded its error by repeating it.

**Public Service Vehicles (Registration
of Local Services) (Scotland)
Amendment Regulations 2001
(SSI 2001/251)**

The Convener: We should put on record that the Executive has done everything promptly and correctly. Given that on other occasions we criticise the Executive, we should note that we are grateful for the Executive's actions on this occasion.

**Beef Labelling (Enforcement)
(Scotland) Regulations 2001
(SSI 2001/252)**

The Convener: No points arise on the regulations.

**Products of Animal Origin (Import and
Export) Amendment (Scotland)
Regulations 2001 (SSI 2001/257)**

The Convener: The regulations extend the powers of authorised officers, which is of considerable public concern. We should flag up that issue to the lead committee. However, the lead committee might also take the view that more powers for more people is in the public interest.

Ms MacDonald: Yes, but the Executive should be made aware that it is not to set a precedent with these regulations, which deal with the situation that exists at present.

Ian Jenkins: I am delighted to see regulations coming into force to regulate imports as it is important to establish food standards. However, human rights issues are also involved, and those cannot be ignored. The regulations are a positive move in policy terms—

The Convener: We are not able to comment on policy; we leave that to the lead committee.

Ian Jenkins: Sure.

**Foot-and-Mouth Disease (Control of
Vaccination) (Scotland) Regulations
2001 (SSI 2001/261)**

The Convener: The regulations breach the 21-day rule and delay compliance with European Council directives. In addition, the regulations contain a typographical error that can be dealt with in the normal manner.

Ian Jenkins: The regulations also contain an error in the explanatory notes, which refer to an order that does not exist. We should ask the Executive whether the word "animal" is missing from the name of that order and whether it should read "Specified Animal Pathogens Order 1998".

**Town and Country Planning (General
Permitted Development) (Scotland)
Amendment (No 2) Order 2001
(SSI 2001/266)**

The Convener: The order breaches the 21-day rule and the question of vires also applies. The Executive has corrected a typographical error, but the order contains a further error in the definition of listed buildings, which will cause difficulty for those involved in interpreting the legislation.

David Mundell: There is also the reserved matter of telecommunications and wireless telegraphy. Consistent to what was said in relation to the previous order, we should seek reassurance from the Executive that it has checked the implications that arise from that issue.

The Convener: We will do that.

Ian Jenkins: If the Executive includes in an order a reference to a publication such as "The Inventory of Gardens and Designed Landscapes in Scotland", it should make clear where a copy of the publication can be found.

**Home Energy Efficiency Scheme
Amendment (Scotland) Regulations
2001 (SSI 2001/267)**

The Convener: The question of vires arises again.

Bristow Muldoon: We should ask the Executive whether it has the powers to make the instrument, as we are advised that the powers involved fall under social security, which is a reserved matter.

We should seek clarification of the powers under which the Executive is making the order.

The Convener: We should make clear that we do not want to be difficult or to deprive people of useful funding. However, the worst scenario would be finding that the order was ultra vires and the situation falling about people's ears. We are advised that the order could be processed under the Scotland Act 1998 or under another piece of legislation.

The definition of "spouse" also needs to be addressed; indeed, that is one of a panoply of issues that require to be addressed.

Ms MacDonald: Is not the definition of "spouse" or "partner" a matter for the lead committee?

The Convener: The legislation will go to the lead committee. We can address problems that arise from the definition in the order and errors in the drafting. The question whether the definition should be extended to include brothers and sisters is a policy matter.

Ms MacDonald: I am not suggesting that we should do that, but we have difficulties in coming to grips with some of the Executive's definitions. If this is the Executive's best shot, the lead committee should consider the definitions that are contained in the regulations.

The Convener: The lead committee will have to do that. We can flag up the difficulties as we see them. We act as the eyes and ears of the Parliament, but it is for the lead committee to decide whether it considers definitions to be correct. We can seek clarification on drafting errors. We can also alert the lead committee to inconsistencies that we have found, although that would bring us into policy matters.

David Mundell: We should check whether the Executive intended to convey a meaning that we have not grasped, or whether its choice of a word was an accident. We should also query whether, in regulation 16(3), "work" should read "works". It is legitimate for us to highlight those issues.

The Convener: We should also query whether, under regulation 17, "tenant" is meant to include sub-tenants and, if so, from which landlord consent is to be obtained. As with other instruments, we should check whether applications can be made in electronic form as well as in writing. We need to seek clarification on whether the Executive intended for people to claim grants under parts I and II of the regulations. In addition to those points, we can point out typographical errors. The significant issue is the question of vires.

Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No 2) Amendment (No 2) Regulations 2001 (SSI 2001/271)

The Convener: No points arise on the regulations.

Processed Animal Protein (Scotland) Regulations 2001 (SSI 2001/276)

Ms MacDonald: Regulation 8 provides for the suspension or withdrawal of an approval of the use of premises for the production of certain animal proteins for feeding to farmed animals. There should be a right of appeal, as suspension or withdrawal would affect people's livelihoods and businesses.

Ian Jenkins: The regulations also contain a fairly serious drafting defect. They seem to do exactly the opposite of what one thinks they should do, which complicates the issue. We ought to draw the Executive's attention to regulation 12(1).

The Convener: In regulation 10(3)(d), words are repeated—the Executive should also deal with that.

Specified Risk Material Amendment (No 3) (Scotland) Regulations 2001 (SSI 2001/288)

The Convener: These are consolidating regulations. A question arises as to whether the regulations should refer to the Food Standards Agency. We can deal with the matter by letter.

Teachers' Superannuation (Scotland) Amendment Regulations 2001 (SSI 2001/291)

The Convener: A minor matter in respect of a reference can be dealt with by letter.

Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Amendment Regulations 2001 (SSI 2001/292)

The Convener: No points arise on the regulations.

**United Nations (International Tribunal)
(Former Yugoslavia) (Amendment)
Order 2001 (SI 2001/2563)**

The Convener: Agenda item 6 is instruments not subject to parliamentary control. We can deal with a minor typographical matter by letter.

**Specified Risk Material Amendment
(Scotland) Order 2001 (SSI 2001/287)**

The Convener: No points of substance arise on the order.

**Registered Establishments (Fees)
(Scotland) Order 2001 (SSI 2001/253)**

The Convener: Agenda item 7 is instruments not laid before the Parliament. We can seek an explanation for the substantial increase in fees. No other points arise.

**Convention Rights (Compliance)
(Scotland) Act 2001 (Commencement)
Order 2001 (SSI 2001/274)**

The Convener: No points arise on the order.

That concludes today's business. This is my final Subordinate Legislation Committee meeting and I thank past and present committee members for their assistance. I also thank the staff who have worked with the committee, in particular Alasdair Rankin and Margaret Macdonald. I could not have functioned without them and am grateful for their assistance. Indeed, it is an honour and a privilege to have worked with them.

The committee might not be the most glamorous in the Parliament, but it is important. I wish it well in the future.

David Mundell: As one of the original members of the committee, I thank the convener for the way in which he has convened the committee. He has always been fair and even-handed. I also thank him for his record-breaking attempts to get through the work. He has done so sometimes in less than three minutes, which takes something—particularly when he has done all the talking on the committee's behalf. The committee has appreciated his work.

Ian Jenkins: I endorse what David Mundell said.

The Convener: I wish committee members well. We will meet again in the chamber.

Meeting closed at 11:59.

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