

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 13 November 2001
(Morning)

Session 1

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SUBORDINATE LEGISLATION COMMITTEE

31st Meeting 2001, Session 1

CONVENER

*Ms Margo MacDonald (Lothians) (SNP)

DEPUTY CONVENER

*Ian Jenkins (Tw eeddale, Ettrick and Lauderdale) (LD)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)

*Colin Campbell (West of Scotland) (SNP)

*Murdo Fraser (Mid Scotland and Fife) (Con)

Gordon Jackson (Glasgow Govan) (Lab)

*Bristow Muldoon (Livingston) (Lab)

*attended

CLERK

Alasdair Rankin

SENIOR ASSISTANT CLERK

Steve Farrell

ASSISTANT CLERKS

Ruth Cooper

Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 13 November 2001

(Morning)

[THE CONVENER *opened the meeting at 11:21*]

Delegated Powers Scrutiny

The Convener (Ms Margo MacDonald): Good morning and welcome to the 31st meeting in 2001 of the Subordinate Legislation Committee.

Community Care and Health (Scotland) Bill

The Convener: Item 1 concerns scrutiny of the delegated powers in the Community Care and Health (Scotland) Bill.

The committee raised several points with the Executive and we have received a letter from the Deputy Minister for Health and Community Care, Malcolm Chisholm, which states that the points raised were entirely relevant. He draws attention to the fact that there might have been a misunderstanding between the committee and the officials whom we questioned. We are grateful that the minister has written to us in such straightforward terms. Our thanks will be included in our report.

The minister has undertaken to lodge an appropriate amendment at stage 2.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): I am pleased that the minister has generously acknowledged that mistakes were made. I hope that that will improve our relationship.

Water Industry (Scotland) Bill

The Convener: We raised four points in relation to the delegated powers in the Water Industry (Scotland) Bill.

The committee might find that the Executive's response to those points is satisfactory in general. However, the main point that we raised was that we believed that a clearer explanation of the intention of the bill could be included in the bill. We might want to suggest to the Executive that that is not quite right yet.

Murdo Fraser (Mid Scotland and Fife) (Con): We could leave that to the lead committee.

Bristow Muldoon (Livingston) (Lab): That would be appropriate. We should draw to that committee's attention our questions and comments and the response from the Executive. That would enable all of that to be included in the consideration of the bill.

The Convener: Section 15(1) of the bill allows the Scottish ministers to specify by order the information that must be included in the register of enforcement notices. We felt that that power was a bit wide. The Executive's response is that it is considering lodging an amendment at stage 2. Do we agree that that should happen?

Members indicated agreement.

The Convener: I am sure that the Executive will be pleased to hear that.

There is another strange bit in section 24(1). The Executive seems to be making work for itself. The committee thinks that it is appropriate that the power in section 24(1) should be exercisable by statutory instrument, but that there is no need for the bill to specify the particular procedure to which the instrument will be subject. As I said, perhaps this is one instrument too many; it is not required.

Ian Jenkins: We could have a statutory instrument, but without the parliamentary procedure. The Executive has decided to do it in a different way. The committee thinks that it might be more elegant to do it the other way, but it is fine.

The Convener: We have made our point about inelegance, but presumably we do not want to take it any further.

Members indicated agreement.

The Convener: Under section 54(1), we asked for more information on the content of the proposed regulations on setting and collecting charges. Perhaps we could draw that to the attention of the lead committee.

Members indicated agreement.

Fur Farming (Prohibition) (Scotland) Bill

The Convener: The convener has to confess to total ignorance about the measure. I have not got a clue what the Executive's response to our query is trying to get at. I would be delighted if anyone could enlighten me.

I realise that Westminster is dealing with fur farming regulations and it might well be that the Executive has decided to fall into line with that. However, there is a time difference between the English regulations coming into force and when the Scottish regulations would come into force. The Executive seems to have tried to regularise that. I do not understand why, because there are

no fur farms in Scotland. If any of you are thinking of setting up a fur farm, do it now.

Colin Campbell (West of Scotland) (SNP): The legislation is possibly pre-emptive against the possibility that someone might decide to set up a fur farm.

The Convener: Belt, braces and safety pins.

Murdo Fraser: Someone could set one up and then claim compensation when it is shut down. Now there is a money-making idea.

Colin Campbell: I would expect that coming from you.

The Convener: We are not meant to come up with ideas, money-making or otherwise.

Ian Jenkins: So your reaction to this is "Whit fur"?

The Convener: Does anyone want to press the point, or should we note the fact that this will happen?

Bill Butler (Glasgow Anniesland) (Lab): We should just note the fact that this will happen.

Colin Campbell: I do not think we should get ourselves excited about it.

Instruments Subject to Approval

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 10) (Scotland) Order 2001 (SSI 2001/406)

The Convener: No points arise on the order.

Instruments Subject to Annulment

Northern College of Education (Closure) (Scotland) Order 2001 (SSI 2001/407)

The Convener: The committee might have questions for the Executive about the Northern College of Education order. Murdo Fraser seems to understand all about it.

Murdo Fraser: I will start and someone else can come in.

In the definitions section, Aberdeen University is defined as the University of Aberdeen, and Dundee University is defined as the University of Dundee. Those definitions seem to be completely pointless. Why the wording "University of Aberdeen" and "University of Dundee" could not have been used throughout the order is beyond me. I would simplify it and remove the need for a definition.

The Convener: We are agreed on that.

Colin Campbell: We do not need to define the obvious.

The Convener: No. That is what happens when you send people on drafting courses.

Is there anything else?

11:30

Murdo Fraser: The staff are mentioned in articles 4(1)(b) and 4(2)(b), which come under the heading

"Transfer of property, rights, liabilities and obligations".

That might be an inappropriate heading for staff. The staff contracts could be classed as property, rights, liabilities or obligations. However, to use that heading for the staff themselves might be inappropriate, if not offensive. We must ask the Executive to look at that wording.

The Convener: That might be just a typo although it does not seem that someone could have forgotten to put in the word "contracts". It seems feudal.

Murdo Fraser: The way that the sentence is worded, the word "contracts" could not be inserted. It would have to be jiggled about a bit.

The Convener: We will draw that to the attention of the Executive and say that we think that is an odd way to describe staff.

We move on to article 5. Someone might know what it is about, but it might also be an example of bad drafting practice. There is a reference to

"non-recurrent grant under any earlier regulations"

and there is no reference to what that might be. We just do not know what that means. Do we say that to the Executive in those words—we do not know what it means?

Bill Butler: We just say that we are seeking clarification.

The Convener: Article 7 of the order provides for the governing body to be dissolved. Are we satisfied that the way in which the body would be dissolved is clear enough or do we need an explanation?

Colin Campbell: Do you mean that we need an explanation on whether winding up means that the body should have completed the process of winding up before it is dissolved, or whether dissolution includes the winding up?

Murdo Fraser: Is not the question whether the enabling power, section 47(6) of the Further and Higher Education (Scotland) Act 1992, permits simultaneous winding up and dissolution?

The Convener: We can ask.

Ian Jenkins: I want to ask about the articles dealing with the vesting date. Articles 4(1)(b) and 4(2)(b) both mention a vesting date, but the term “vesting date” is not defined. The vesting date might be 1 December 2001, but it is not defined as such and it should be absolutely clear. There are provisions for actions prior to the vesting date, so we need to know what that date is.

Murdo Fraser: There is another point that the order does not address, which perhaps it should. That is the question of any pre-emption rights in heritable property. The transfer of the assets and liabilities might require a transfer of heritable property. If there are pre-emption rights in the heritable property that might cause difficulty. I understand that such potential difficulties have been dealt with by specific provision in an order, but I note that there is no such provision in this order. Perhaps we should draw that to the Executive's attention.

The Convener: We would need to ask whether that would be required in the current situation.

Murdo Fraser: It may be that the Executive has looked into that.

The Convener: And decided that there are none.

Murdo Fraser: We need to flag it up.

The Convener: Is there anything else that we should take up with the Executive?

Ian Jenkins: What about the phrase

“non-recurrent grant under any earlier regulations”?

The Convener: We do not know what that means and will ask the Executive.

Murdo Fraser: Some unnecessary amendments are listed in footnote b on the first page and footnote b on the fourth page. We should ask the Executive for an explanation of why they are cited.

Diligence against Earnings (Variation) (Scotland) Regulations 2001 (SSI 2001/408)

The Convener: No points arise on the regulations.

Ian Jenkins: I am quite happy that they should go through.

Fish Health Amendment (Scotland) Regulations 2001 (SSI 2001/409)

The Convener: Here is an important one. There is a minor typing error, which can be corrected.

Murdo Fraser: More good news for the people of Gigha.

Ian Jenkins: That is good news.

Colin Campbell: Yes.

Ian Jenkins: No points arise on the instrument.

The Convener: That is us.

Bristow Muldoon: For the record, I should have mentioned Gordon Jackson's apologies.

The Convener: Abject apologies. You missed yourself yesterday.

Bristow Muldoon: I was at a very interesting meeting.

The Convener: We have cracked the secrets—we now know what subordinate legislation is about.

Bill Butler: Sorry, convener. I was at several interesting meetings.

The Convener: I realise that you have other fish to fry.

Colin Campbell: Healthy fish.

The Convener: However, there will be notes on our away day.

Meeting closed at 11:37.

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