SUBORDINATE LEGISLATION COMMITTEE

Tuesday 4 December 2001
(*Morning*)

Session 1

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SUBORDINATE LEGISLATION COMMITTEE
34th Meeting 2001, Session 1

CONVENER

*Ms Margo MacDonald (Lothians) (SNP)

DEPUTY CONVENER

*Ian Jenkins (Tweeddale, 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

WITNESSES

Keith Connal (Scottish Executive Freedom of Information Unit)
Stuart Foubister (Office of the Solicitor to the Scottish Executive)

CLERK

Alasdair Rankin

SENIOR ASSISTANT CLERK

Steve Farrell

ASSISTANT CLERKS

Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 4 December 2001

(*Morning*)

[THE CONVENER *opened the meeting at 11:19*]

Delegated Powers Scrutiny

The Convener (Ms Margo MacDonald): Good morning and welcome to the 34th meeting of the Subordinate Legislation Committee in 2001. It seems like only yesterday that we met last. We have received apologies from Bristow Muldoon.

Freedom of Information (Scotland) Bill

The Convener: I am pleased to welcome to the committee Keith Connal and Geoff Owenson from the Scottish Executive freedom of information unit and Stuart Foubister from the office of the solicitor to the Scottish Executive. They are here to answer some of our questions on the Freedom of Information (Scotland) Bill. Would you like to make a brief statement?

Keith Connal (Scottish Executive Freedom of Information Unit): We do not have an opening statement, unless you wish us to invent one on the spot. We are happy to go straight to questions.

The Convener: That suits us fine. We asked whether the exercise of the power contained in 7(1), as read with section 4, ought to be subject to affirmative procedure. We want to find out from you why it is not.

Keith Connal: The committee raised the matter of the difference between section 7 and section 4. Section 4 sets section 7 in context. It is fair to say that there appears to be a degree of inconsistency between section 7(2) and the proposed approval mechanisms for an order under section 4(1)(a) to amend schedule 1, which is the list of Scottish public authorities. The bill proposes that that would be by negative resolution. Section 4(1)(a) may operate in conjunction with section 7(1). In contrast, it is proposed that an order under section 7(2) would be by affirmative resolution. Section 7(1) operates in conjunction with section 4(1), in that an order under the latter may, in addition to adding an entry to schedule 1, limit the application of the freedom of information regime to information of a specified description. The proposed approval mechanism is consistent with that proposed for section 4(1).

Section 7(2) provides for existing entries in schedule 1 to be amended to limit the application of the FOI regime to information of a specified description or to remove or amend any such limitation applied previously. As I have said, the mechanism that has been proposed is by affirmative resolution. Stuart Foubister may wish to comment on the legal technicalities of how we see those sections operating, but that is the basic context.

Section 4(1) is quite straightforward. It is seen as the mechanism by which schedule 1 would be amended in a fairly routine manner when a body has ceased to exist or has changed its name. It is a housekeeping exercise to maintain the schedule and keep the list of public bodies current. The powers in section 7 can be used to limit the application of the FOI regime to information held by a designated Scottish public authority.

Stuart Foubister (Office of the Solicitor to the Scottish Executive): As a bill is built up, the way in which the background, the powers and the appropriate procedures for the statutory instrument powers are developed tends to be a bit piecemeal. Sometimes, at the end of the whole process, we do not pay enough regard to how they fit in with each other and whether what we have done is fully consistent. A procedure that looks appropriate for one bit may not look entirely appropriate when it is measured against another procedure in the bill.

The Convener: Are you happy with the inconsistency, or would you like to tweak the bill a bit?

Stuart Foubister: We should give more consideration to the matter. There is an inconsistency for which there is no huge justification.

The Convener: I am happy with that; are members happy with that?

Gordon Jackson (Glasgow Govan) (Lab): It sounds very fair, if I may say so.

The Convener: Yes—the committee seems delirious.

Keith Connal: I am grateful to the solicitors for committing us to reviewing the procedure.

The Convener: You have the Christmas holiday. No need to worry—you have plenty of time.

Keith Connal: At the end of my brief it says that we are happy to recommend a review. We will do that.

The Convener: Thank you very much.

Let us move to section 12. We have asked whether the affirmative procedure might be

preferable, because if costs were set too low the principle of the bill might be undermined. I am informed that the Justice 1 Committee, which is the lead committee, has also expressed concern about this issue.

Keith Connal: We appreciate the concerns that have been raised. Section 12 allows what could be called a disproportionate cost threshold to be set by order. In a sense, it operates in conjunction with the fees scheme that may be set out under section 9. The Executive has already indicated what the structure of the fees regime under section 9 and the likely upper threshold under section 12 will be. As you say, convener, the Justice 1 Committee has already raised this issue. It will be considered closely during the passage of the bill, when the structure under section 9 and the proposed upper threshold under section 12 will be made known. Because of that, ministers are not at the moment inclined to use the affirmative procedure.

Gordon Jackson: There is a difficulty with that. Problems never arise the first time, but most of us like to think ahead. The first time amounts are set, everything will be watched carefully. Obviously, during the passage of the bill, ministers will have to stand up in the chamber and state what the amounts will be. However, the power to make regulations will continue thereafter. The money threshold is an important mechanism of the bill. It is not, to use the expression that was used before, a matter of housekeeping. A Government—not this superb, excellent and wonderful Government, but a wicked Government of the future—could use the threshold to knacker the thing. The mechanism could be important and it seems too serious an issue not to be dealt with in the most open and transparent legislative way possible. No one is suggesting that there will be problems the first time, because it will be monitored carefully, but people are worried about the use of regulations five, 10 or 15 years down the track. Being able to change the threshold would be a way of totally manipulating the bill.

The Convener: Also, there is no requirement for prior consultation, so a really wicked Government would be able to dodge the issue in two ways, if it wanted to. At the very least, you must have one or t'other—you have to have affirmative resolution or you have to have prior consultation written into the bill.

Gordon Jackson: This is an important matter. I can hear Murdo Fraser, who is not a political ally of mine, muttering in agreement. This is too important to be left.

Murdo Fraser (Mid Scotland and Fife) (Con): Yes. I concur.

Keith Connal: We are content to acknowledge the concerns and the strength of feeling that you are expressing—if not about the present arrangements for establishing limits, certainly about the future arrangements. We will pass those views on to ministers.

The Convener: Because the bill is such an important piece of legislation and because the principle that we have raised goes to the heart of making the bill worth the paper it is printed on, we will keep our eye on this.

Colin Campbell (West of Scotland) (SNP): We have to send a fairly strong message.

The Convener: Oh, I think that the message has got through, Colin.

Gordon Jackson: Fixing the financial threshold is theoretically a way to manipulate the principle of the bill, if you wanted.

The Convener: I would not want to and I am sure that you would not either, Gordon. Somebody might, however.

Sections 9(4), 12 and 21(6) deal with consultation. Does anyone want to say anything about that?

Colin Campbell: I wonder whether sections 9(4), 12 and 21(6) ought to include a formal requirement to consult.

11:30

Stuart Foubister: I must admit that I am not a huge fan of bills that require the Scottish ministers simply to consult as they see fit. That is not terribly productive as, if they want to consult, they will. However, perhaps the committee thinks that a particular body or group of people should be named in the bill.

The Convener: I would have thought that, in relation to freedom of information, certain bodies should be consulted.

Stuart Foubister: I do not know whether there are any bodies that the committee feels should be named in the bill as the ones that should be consulted before all others. Given the number of public authorities, a requirement to consult all of them might be rather onerous.

Gordon Jackson: A difficulty in naming bodies is that, 10 or 15 years down the line, a body that we named might not be all that relevant. I take the point that, as a lawyer like me, you do not like the vagueness of not naming bodies. The financial limit is important. If a requirement to consult is included in the bill, the Government will be obliged at least to ask around on the subject. I know that that sounds vague, but an obligation to ask around might be better than no obligation at all.

The Convener: Strenuous efforts must be made

to ensure that the process by which changes are made is as transparent as possible. I do not know how that could be written into the bill—thankfully, that is not our job—but we think that it should be.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): We tend not to like open-ended provisions in bills. On other occasions, we have asked for detailed lists instead, but in this case we recognise the difficulty.

Stuart Foubister: The formulation that goes, "The Scottish ministers shall consult whomever they think appropriate," is not unknown. It could be argued that that formulation should be used in relation to almost any regulation-making power.

The Convener: I thought that it did appear in relation to almost any regulation-making power.

Stuart Foubister: It does not appear as a matter of course but, as I say, it is not unknown.

Gordon Jackson: Including that formulation means that, if it cannot be demonstrated that a consultation process has taken place, the regulations are knackered.

Stuart Foubister: It creates a duty at least to consider whether there are people whom the Executive should consult.

Gordon Jackson: The Executive would need to produce a statement detailing its thinking on consultation if the regulation is to work.

Stuart Foubister: Generally, a formulation that requires the Scottish ministers to consult whomever they think fit could, strictly speaking, allow the ministers to say that, having thought about it long and hard, they did not think that there was a need for consultation.

The Convener: I want to ask a genuine question to which I do not know the answer. Is there a requirement to consult in any food safety legislation?

Stuart Foubister: The Food Standards Act 1999 probably contains that requirement. It is not an unknown formulation.

Gordon Jackson: It is hard to see what harm putting that obligation on the Government would do. I know that that is not a very good thing for a lawyer to say.

Stuart Foubister: I accept that point, but in that case the words could simply be included in every regulation-making power that is included in a bill.

Gordon Jackson: We might want to place an obligation on the Government to consult in certain cases to highlight how crucial a regulation is and to emphasise that it is not just a housekeeping regulation—in this case, for example, the level at which the threshold is fixed is vital to the working of the bill. I am not suggesting that every housekeeping regulation should be made subject to consultation, but in this case that might be a good idea, to emphasise that it is not a housekeeping regulation but one that makes the bill either knackered or workable.

The Convener: Would the witnesses like the committee to provide a written note that pulls together our thoughts?

Stuart Foubister: Yes, if the committee would find that useful. However, I think that we have caught your feelings quite clearly. We can take matters away and discuss them with ministers.

The Convener: We move on to section 63(1), which, as members will recall from last week, confers a very wide power.

Gordon Jackson: I am sorry, convener, but I am not up to speed on section 63, as I was not present last week. Can the witnesses give me a hypothetical idea of how the section would work in practice, so that I can see what it is trying to do?

Keith Connal: We got the sense that members are looking for an understanding of the intention behind the provision before they form a view on whether the approval mechanisms are appropriate.

The legislation behind the Scottish Legal Aid Board and the Scottish Criminal Cases Review Commission, for example, builds in statutory bars in relation to how they treat information that is provided to them. The statutory bars on disclosure are strict to protect those bodies' processes of internal deliberation on cases. That is a bad example to take if we are considering repealing statutory bars.

Gordon Jackson: Is such legislation common? I know that the SLAB has a statutory bar on disclosure—sometimes I wish it would disclose less information, but there it is. Does much legislation contain statutory bars on disclosure?

Stuart Foubister: Such legislation is relatively common. I am aware of a fair amount of statutory bars in the environmental field, in which the bars are by no means complete. However, there are free-standing bars on the disclosure of commercial secrets or information whose disclosure would be contrary to the interests of national security.

We have not undertaken a complete trawl through the statute book, but we have not identified anything yet that we are clear should be repealed or amended. We believe that we require this flexibility as the regime beds down so that we are able to restrict or remove prohibitions that would stop the regime working properly.

Murdo Fraser: Is an important point of principle not involved, as you are seeking to amend primary

legislation through secondary legislation? Usually, when a bill is used to repeal earlier enactments, it simply lists those enactments. Why has that not been done in this case?

Gordon Jackson: They have not found any such enactments yet.

Stuart Foubister: Yes—we have not yet found any enactments that need to be repealed. We want to be guided by experience as the regime develops. We do not think that existing bars stop the disclosure of information that should be disclosed under the freedom of information regime. However, hand on heart, we would hate to say that there are no bars that stop the disclosure of information that should be disclosed and that we will never come across any in future.

Gordon Jackson: The bars that you have found tend to be those that will continue to exist under the Freedom of Information (Scotland) Bill, such as those that exist for commercial reasons or reasons of national security.

Stuart Foubister: The bill's approach recognises the individual prohibitions independently. You are right—even if an individual prohibition in another act were repealed, the general prohibitions would catch at least some of the information.

Gordon Jackson: The examples that you have found are blocked, but you might come across others in future.

What happens if there is a conflict? Let us imagine that you do not have the power that is proposed in section 63 and that you do not repeal a prohibition that exists in a separate piece of legislation—that is, a prohibition on revealing something that would not come under the exemptions in the bill. You would then have two pieces of legislation, one of which says, "Tell them it," and the other of which says, "Don't tell them it". What would happen in that situation?

Stuart Foubister: That is catered for. Section 26 of the bill says:

"Information is exempt information if its disclosure by a Scottish public authority … is prohibited by or under an enactment".

The individual prohibition wins out.

Gordon Jackson: That means that it is important that you have the power to remove or restrict prohibitions. I am in favour of that. The power is important.

The Convener: Use of the power is subject to affirmative procedure. We note that it is not altogether sleight of hand or under the counter. However, the committee has come across the principle of amending primary legislation by subordinate legislation before and has said that it is not too keen on it.

Gordon Jackson: The power would not really do that. The changes would be made by listing the acts to be amended in statute. The bill would automatically do it if we had found them in time. The power is there to cover the possibility that, three months down the road, we will find the odd piece of legislation that needs to be amended. If they had been found now, they would just be repealed in a schedule.

Stuart Foubister: There is an element of that in the power, but there is also an element of wanting to see how the freedom of information regime works. Any power that we are taking under the bill is a power to liberalise the disclosure of information. It is to remove or restrict an existing prohibition. If the Executive were asked to make a decision once and for all at the point of the bill's enactment, a stricter view would be taken now and we would not have the flexibility to liberalise at a later date.

The Convener: That is an irony for us.

Ian Jenkins: I judge that most of us are in favour of freedom of information. It is ironic that we are arguing against a power that would allow access to information. We are not actually arguing—I am convinced by what the witnesses are saying, to be honest. Like Gordon Jackson, I am inclined to accept the power, which I did not like on paper.

Gordon Jackson: It seems to me that the power is on the side of the angels against the existing powers, which could be used sinisterly.

Ian Jenkins: Those existing powers are in the primary legislation for substantially decent reasons. They are not there to hide information. There are reasons why certain information should not be available. However, a point may come at which those powers get in the way of the more important duty to provide freedom of information. I am inclined to go with the bill.

Keith Connal: I add by way of further context that it is common in other countries when introducing a freedom of information act to include such a provision. That is not to justify the approach in its own right. It is introduced partly for the reason that Stuart Foubister has outlined: to give the flexibility to adjust, after considering how the freedom of information act operates, some older statutory bars that might work against the principles of freedom of information. Part of that process is a review of statutory bars. That involves looking proactively through the statute book, examining the statutory bars that may be in it and identifying those that are candidates for repeal or amendment. That is the common approach, rather than to try to do all that up front, reach a final determination on everything, pass the freedom of

information act and not have the power. The freedom of information regime would only be as good as it was on the day that the act was passed.

Gordon Jackson: The power might never be used, but it can be used only to give more freedom of information. It cannot be used to give less.

The Convener: We can agree that the power is an anomaly and that the committee is minded to accept the witnesses' explanation. Unless there is anything else that anyone wants to raise, I thank you for attending this morning. We hope that you have a nice Christmas and that you do not need to take home too much paperwork.

Ian Jenkins: The spirit in which you have come has been very good. You have been willing to be up front with us.

11:45

Gordon Jackson: I wish to raise a procedural point. The committee feels strongly that the financial limit should not be open to being messed about. I do not know how we get that across. The point is not one of our 95 million wee tweaks—we really care about it.

The Convener: I have discussed with the clerk what we can do. The first thing is to stress that we think that the financial limit is central to the integrity and efficacy of the bill. Do we want to stress anything else in our note to the Executive?

Gordon Jackson: I simply want that point to be made strongly.

The Convener: We will do that.

Marriage (Scotland) Bill

The Convener: We should write to the Executive to ask why it has chosen to produce such a skeletal bill. Once again, the bill is absolutely minimal. When I read the bill I realised—and if I realised it, anybody will—that the definition of what constitutes a place lacks precision.

The explanatory notes and the guidance from the registrar general are at pains to say that marriage is a terribly serious business and that they want a seemly way of allowing civil ceremonies to take place. However, the bill is only a couple of pages long and leaves a lot to the imagination and to subordinate legislation. We should write to the Executive and ask why it chose to produce the bill in this manner—we need an explanation. Is that agreed?

Members *indicated agreement*.

Executive Responses

Standards in Public Life Code of Conduct: Members' Model Code (SE 2001/51)

The Convener: We talked about the model code at the previous meeting. The problem is that there is not a clear statement of whether the provisions are discretionary or mandatory. Does anybody have anything to say?

Ian Jenkins: It appears that the provisions in the model code are supposed to be discretionary, but that is not stated clearly. The matter is left in limbo when it should be more clearly stated.

The Convener: The matter is probably on the borderline between our work and that of the lead committee, which must decide whether the presentation impacts on the substance of the code. I think that it does, and that we should draw the attention of the lead committee and the Parliament to the code. Is that agreed?

Members *indicated agreement*.

Scottish Social Services Council (Consultation on Codes of Practice) Order 2001 (SSI 2001/424)

The Convener: The order does not contain the definition of the phrase "SQA qualification" that was established by the Education (Scotland) Act 1996. To find out what that phrase means one must hunt through a lot of legislation. That is the type of thing that the Joint Committee on Statutory Instruments has said is bad drafting. Perhaps we should draw the Executive's attention to that. It is called unnecessary referential drafting, which I think means that we have to go and look up lots of things.

We also asked about the definition of "Scottish Qualifications Authority" and so on. The Executive may have a reason that we can accept on that point.

We have said that we will draw the attention of the lead committee and the Parliament to the instrument on the ground that the drafting approach required explanation.

Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No 3) Regulations 2001 (SSI 2001/429)

The Convener: Four questions were raised about the regulations.

Ian Jenkins: They amount to pointing out bits of inelegant drafting.

The Convener: The Executive has already made amending regulations, which is all to the good.

Murdo Fraser: The Executive has not, however, dealt with the fourth point, about money being recoverable "as a debt".

The Convener: That matter has arisen before. Should we talk to the Executive about it at some point?

Murdo Fraser: It is a legal nonsense to say:

"The wording "as a debt" is used deliberately and serves a practical purpose".

It serves no practical purpose whatsoever and we should tell the Executive that.

The Convener: We can tell the Executive that, or we can ask it to come and have it out with us at a committee meeting. Which would members prefer?

Gordon Jackson: What is the practical purpose of the words "as a debt"?

Murdo Fraser: There is no purpose.

The Convener: There is none.

Gordon Jackson: It is already a debt.

Murdo Fraser: Indeed, a sum of money that is owed is a debt. The wording is wholly unnecessary.

Gordon Jackson: I would like to know why the Executive believes that the phrase serves a practical purpose.

The Convener: Since this is not the first time that the phrase has come up, shall we invite someone from the Executive to come and tell us about it in the new year?

Gordon Jackson: Someone should tell us what it means.

The Convener: Right. We might raise some similar points at that time. We could point out that two or three drafting points keep arising and that, rather than writing to the Executive every week, it would be better to address them.

Gordon Jackson: I am trying to think of a situation where money could be owed to somebody and there was no debt.

The Convener: Please do not. We would have to sit here until next week.

National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2001 (SSI 2001/430)

The Convener: We move to the regulations on charges for drugs.

Gordon Jackson: Do not forget that sinister word, "appliances".

The Convener: Once again, the regulations have defective drafting. The third and fourth points of our letter to the Executive have been acknowledged. The failure to follow proper drafting practice noted in the first and third points has been partly acknowledged by the Executive. The Executive has acknowledged some points, for example that on regulation 3(3) and the use of gender-neutral terms. The Executive has agreed that all those men are not gender neutral and has apologised.

Gordon Jackson: What men?

The Convener: Chemists. You missed the good bits last week, Gordon.

Do we want to do anything other than draw the regulations to the attention of the lead committee and the Parliament? In the legal briefing, there is an important point about pre-payment certificates. Amendments and regulations were drawn together that could have been split up to make them much more user-friendly. Unfortunately, that will not change, but we could draw the matter to the attention of the lead committee and the Parliament.

Instruments Subject to Annulment

Local Government (Exemption from Competition) (Scotland) Amendment Order 2001 (SSI 2001/431)

The Convener: No points arise on the order.

Local Government Act 1988 (Competition) (Scotland) Amendment Regulations 2001 (SSI 2001/432)

Ian Jenkins: The instrument has been replaced, so we do not need to consider it further.

The Convener: Excellent. We will send the Executive a bunch of flowers for replacing it so quickly.

Smoke Control Areas (Authorised Fuels) (Scotland) Regulations 2001 (SSI 2001/433)

The Convener: The Executive has chosen to consolidate. Once again, we should thank it for doing so timeously.

Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment (No 3) Regulations 2001 (SSI 2001/435)

Ian Jenkins: Regulations such as these do the ordinary person's head in.

The Convener: Absolutely. Would you care to speak for the ordinary man?

Ian Jenkins: The matter is confusing to the ordinary person, but the details are no doubt needed. Our legal advisers spotted one or two errors that had better be corrected. We could ask the Executive to explain the reference in regulation 2(3)(c), about which I will not go into detail.

Colin Campbell: Go on.

The Convener: Regulation 2(3)(c) refers to $0.02^{(37)(39)}$ when I think it ought to refer to $0.05^{(37)(39)}$.

Ian Jenkins: We could also ask why the directives in schedule 1 are not listed in a tabular form.

The Convener: That relates to presentation. Gordon Jackson is reading from a need-to-know perspective.

Gordon Jackson: Is the suggestion to delete $0.02^{(37)(39)}$ and put the same figure back in?

Ian Jenkins: Your figures are wrong.

Murdo Fraser: The figures are different.

Gordon Jackson: So the figures in the brackets are different.

The Convener: He cannot see the small figures.

Gordon Jackson: What does that mean? More importantly, do we care?

The Convener: We really care. That is why we will ask the Executive to explain its efforts in regulation 2(3)(c). We must do so—the regulations concern pesticides, which are bad.

Gordon Jackson: While you are at it, I am worried about Jerusalem artichokes.

Ian Jenkins: At the Liberal Democrat bazaar on Saturday, I was sold a lot of Jerusalem artichokes on the basis that they would cure my diabetes.

The Convener: Did you check the pesticide levels?

Gordon Jackson: They said, "Here is a Liberal coming. Let's sell him some."

Ian Jenkins: They were forced upon me.

National Health Service (Superannuation Scheme, Injury Benefits and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2001 (SSI 2001/437)

The Convener: There is quite a lot on the regulations in the legal briefing. Should we ask the Executive to explain its drafting approach? Amendments to three sets of regulations were incorporated in the same instrument, but it appears that there are no provisions common to each set. Also, why are the references to the three sets of regulations that are contained in regulations 2 to 4 divorced from the relevant amending regulations? There are a number of bizarre things about the drafting.

Murdo Fraser: Regulations 2, 3 and 4 are completely unnecessary.

The Convener: Right. We will write to the Executive asking for an explanation of those apparently anomalous things.

Murdo Fraser: Regulation 15 removes, or inserts, a comma.

The Convener: Yes. I noticed the commas. The Executive decided that that was not good drafting practice.

Murdo Fraser: The solicitors are underemployed.

The Convener: On the other hand, perhaps they cannot work their PCs.

Murdo Fraser: We are not talking about our solicitors, but the drafters.

Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2001 (SSI 2001/438)

The Convener: No points arise on the act of sederunt.

Act of Sederunt (Fees of Sheriff Officers) 2001 (SSI 2001/439)

The Convener: No points arise on the act of sederunt.

12:00

Beef Special Premium (Scotland) Regulations 2001 (SSI 2001/445)

The Convener: The regulations concern the suckler cow premium. Does any member wish to address that subject?

Colin Campbell: It is rather odd that there is no protection against self-incrimination in relation to regulation 18.

The Convener: For the cows?

We are joking, but in any regulations that require information to be given, it is important that they include protection against self-incrimination.

Gordon Jackson: I am not sure that that is correct.

The Convener: What? Is that not usually the case?

Gordon Jackson: There was a recent road traffic case in which the question of people having to give their name was raised. The court held that that was self-incrimination, which is illegal under the European convention on human rights. The name of the case escapes me, but the Privy Council overturned it, saying that it is okay for a person to give their name—Brown or whatever—in a road traffic case. I am not sure whether that ruling impacts on the regulations.

The Convener: That is another reason for us to ask the Executive about that.

Gordon Jackson: By all means, we should ask.

The Convener: That is fine, if that is the reason. It means that the Executive is absolutely up to date with the Brown case.

Murdo Fraser: A similar case was apparently appealed in Strasbourg. I believe that we are awaiting the outcome of that case.

The Convener: That makes it all the more necessary for us to ask for an explanation.

Gordon Jackson: Fine.

Colin Campbell: I am glad that I raised that point.

The Convener: We are proud that you did so.

Gordon Jackson: In the past, self-incrimination has been a difficult legal question in Scotland.

Colin Campbell: I am sure that it has.

Gordon Jackson: It will be interesting to hear what the Executive has to say.

The Convener: An informal letter will cover the minor mistakes, including the typos, but we must ask the Executive about self-incrimination and about the reference to Commission Regulation (EC) No 2801/1997 in the definition of Commission Regulation 3887/1992, which is on page 3 of the regulations.

Ian Jenkins: Further to that, there is also the question about the derivation of regulation 3B of the Suckler Cow Premium (Scotland) Regulations 1993, as it does not appear to be SI 1194/1528 as stated in the footnote to the regulations.

The Convener: Right. The regulations are consolidated regulations. Perhaps that is where the difficulty lies. I am not sure, but we can ask.

We should also ask why the definitions of community legislation that are contained in regulation 2(1) were not consigned to a schedule in a more user-friendly form. That is the $64,000 question.

There does not appear to be a right of appeal. However, that might be because the scheme has been running for a while throughout Great Britain. Perhaps the Executive thinks that no right of appeal is needed because it has a track record to look at.

There is nothing else to raise on the regulations. We will write a letter to the Executive asking them about the issue of self-incrimination and for the definitions in regulation 2(1) to be in a schedule in a more user-friendly form—which the committee would greatly appreciate.

Local Government Act 1988 (Competition) (Scotland) Amendment (No 2) Regulations 2001 (SSI 2001/446)

The Convener: No points arise on the regulations.

Community Care (Direct Payments) (Scotland) Amendment Regulations 2001 (SSI 2001/447)

The Convener: Does anyone want to comment on the regulations?

Murdo Fraser: The explanatory note is rather poor.

Colin Campbell: We could ask the Executive for an explanation for that.

The Convener: The Executive note gives a helpful exposition of the effect of the regulation. However, the regulation is unintelligible to the ordinary reader. As time goes on we will need to decide just how much of a point we want to make on the issue of clarity for lay people.

Instruments not Subject to Parliamentary Control

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Partial Revocation Order 2001 (SSI 2001/434)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Scotland) Order 2001 Revocation Order 2001 (SSI 2001/442)

Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (East Coast) (No 2) (Scotland) Revocation Order 2001 (SSI 2001/443)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 3) (Scotland) Revocation Order 2001 (SSI 2001/444)

The Convener: No points arise on the orders.

Instruments not Laid Before the Parliament

Act of Sederunt (Fees of Messengers-At-Arms) 2001 (SSI 2001/440)

Act of Sederunt (Rules of the Court of Session Amendment No 5) (Fees of Solicitors) 2001 (SSI 2001/441)

The Convener: No points arise on the acts of sederunt. I must find out about this stuff.

Murdo Fraser: We are all in favour of giving more money to solicitors.

Colin Campbell: Speak for yourself.

The Convener: It seems that we are giving money out. The first act of sederunt gives money to messengers-at-arms.

There is nothing else on the agenda. I thank you for your attendance and will see you next week.

Meeting closed at 12:07.

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