

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 8 January 2002
(Morning)

Session 1

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SUBORDINATE LEGISLATION COMMITTEE

1st Meeting 2002, 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

CLERK

Alasdair Rankin

SENIOR ASSISTANT CLERK

Steve Farrell

ASSISTANT CLERK

Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 8 January 2002

(Morning)

[THE CONVENER *opened the meeting at 11:17*]

The Convener (Ms Margo MacDonald): Welcome to the first meeting in 2002 of the Subordinate Legislation Committee. What number of meeting is this?

Alasdair Rankin (Clerk): This is the first meeting this year.

The Convener: Do we count them only in years?

Alasdair Rankin: We operate on calendar years for these meetings.

The Convener: I thought that it was cumulative. It seems so much more impressive that way.

We have a number of items to deal with on this morning's agenda. However, the meeting will be shorter than it looks on paper.

Draft Instruments Subject to Approval

Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2002 (Draft)

The Convener: There is nothing to note on the regulations, apart from a small typo. We will send an informal letter to the Executive, drawing attention to that small mistake. Is that agreed?

Members indicated agreement.

Instruments Subject to Annulment

Sheep and Goats Spongiform Encephalopathy (Compensation) Amendment (Scotland) Order 2001 (SSI 2001/458)

The Convener: There is nothing to note on the order, but perhaps the clerk could mention in an informal letter to the Executive that it is a well-crafted instrument and that we enjoyed reading the particularly helpful footnotes.

Gordon Jackson (Glasgow Govan) (Lab): Did we?

The Convener: Well, some of us are really into the spongiform stuff.

Police Pensions (Pension Sharing on Divorce) (Scotland) Amendment Regulations 2001 (SSI 2001/459)

The Convener: Once again there is a small typo—a footnote has been wrongly transcribed—which can be dealt with by an informal letter to the Executive.

Local Government Pension Scheme (Scotland) Amendment Regulations 2001 (SSI 2001/460)

The Convener: These regulations are more interesting.

Gordon Jackson: But only marginally.

The Convener: From the point of view of a civil servant, the regulations are interesting. I thought that members might also be interested, because we have the business of considering whether the matter is within our devolved competence.

Gordon Jackson: I have read the regulations and I think that they are within our competence.

The Convener: I have no doubt that members will agree that it is worth, at this stage anyway, asking for just a little more information from the Executive on why it has reasoned that the regulations are within devolved competence. The matter is likely to come up again in the future, so we should note that this might be an area for questioning. Do you agree?

Gordon Jackson: I do. My suspicion is that the legal brief is right and that the primary purpose justification of "We're going down this course" will turn out to be the answer. However, we could in future end up having a case about the regulations. It would then be useful if we could demonstrate that we asked the question about devolved competence. The phrase used in the legal

briefing—on the face of the record—is a good one. Getting the matter on the record would mean that, whatever happens in the future, no one could say, “Well, the Subordinate Legislation Committee did not even notice it.”

The Convener: Yes.

Colin Campbell (West of Scotland) (SNP): It is called watching your back—I mean the committee’s collective back.

Gordon Jackson: There is something in that. We should at least ask the question of the Executive, but I suspect that the answer that we will get will be the primary purpose justification.

The Convener: Which might be perfectly reasonable.

Gordon Jackson: It might be. However, “on the face of the record” is a good phrase on this occasion.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): It is.

The Convener: If we are agreed, that is what we will do. The clerk will contact the Executive to that effect.

Police Pensions (Additional Voluntary Contributions and Increased Benefits) (Pension Sharing) (Scotland) Amendment Regulations 2001 (SSI 2001/461)

The Convener: There is another typo in the regulations, but—again—it can probably be raised informally with the Executive, unless any member wants it to be more formal.

Ian Jenkins: There is a wee point to make regarding the use of the phrase “personal representatives”, because the Scottish tradition would be to use the word “executor”. However, we cannot make much of the matter, as the use of “personal representatives” has been established by precedent.

Colin Campbell: This is part of the on-going death of Scottish vocabulary.

The Convener: I realise that as far as everyday use is concerned, this battle has probably been lost. However, we can at least put a couple of lines in our informal letter to the Executive saying that we note once again such-and-such a thing and regret the loss of these tried and tested Scottish terms.

Gordon Jackson: When, in another context, we used the word “mortgage”, a well-known and perhaps somewhat eccentric Scottish sheriff, who is a friend of mine, sent us huge amounts of stuff complaining about the use of that word. Did you get that too?

Alasdair Rankin: Yes.

Gordon Jackson: His complaint was that “mortgage” is an English legal term, which is the same reason for complaint in this case. That well-known and eccentric sheriff bombarded us with e-mails on the subject.

Colin Campbell: Will we identify him afterwards?

Bristow Muldoon (Livingston) (Lab): He will identify himself.

Gordon Jackson: Yes, he will undoubtedly know to whom I am referring and be proud of my description of him.

The Convener: Do you want to draw the matter to the attention of the Executive? Or do you want to give in to established precedent?

Gordon Jackson: What is the point, again? Remind me what the word is.

Colin Campbell: The word “executor” is being substituted by “personal representatives”. I am an executor—full stop—for somebody who shall remain nameless. Why should we change that word?

The Convener: Yes, I like the word “executor”. It is nice.

Colin Campbell: We all know what that word means. It is ours.

The Convener: We can mention the matter of terminology in our letter to the Executive.

Gordon Jackson: I do not suppose that the Executive will fall over the matter, so I can see no harm in mentioning it.

The Convener: Well, I do not know. It could be the start.

Gordon Jackson: That is the domino theory. Begin with the Executive and who knows where you will end up.

Colin Campbell: If the Executive subscribes to using the Scots language and that kind of thing, then to eliminate willingly such a Scottish term is not right.

The Convener: You are absolutely right. The clerk will write to the Executive stating that we prefer to see the use of Scots terms where they are relevant, understood and cohesive.

Colin Campbell: And normal usage.

The Convener: Right. Eccellente! That is Italian.

Gordon Jackson: I can see that it is going to be one those years.

Colin Campbell: Och no, this is just a wee warm-up.

Legal Aid (Scotland) Act 1986 (Availability of Solicitors) Regulations 2001 (SSI 2001/464)

The Convener: No points arise on the regulations.

National Health Service (Scotland) (Superannuation Scheme and Additional Voluntary Contributions) (Pension Sharing on Divorce) Amendment Regulations 2001 (SSI 2001/465)

The Convener: There are a large number of typos in the regulations and we should write to the Executive to point that out.

Road Traffic (NHS Charges) Amendment (Scotland) Regulations 2001 (SSI 2001/466)

The Convener: We may wish to ask the Executive why there has been no consultation on such a large increase in the maximum charge for treatment—from £10,000 to £30,000. The Executive may say that it does not need to consult on this matter.

Gordon Jackson: I am a huge fan of making the Executive consult, but why is that necessary here? The regulations are designed to make insurers pay. The Executive or the health service thinks that the maximum charge needs to be raised to £30,000 to ensure that that happens, but it is not as if you or I are being asked to pay. Charges to the public are not being increased.

Murdo Fraser (Mid Scotland and Fife) (Con): Ultimately, charges to the public will rise as a result of the regulations. The insurers will pay, but they will also put up their premiums.

Gordon Jackson: The cost of individual premiums is tied in with the cost to the health service. Who would the Executive consult on this measure? If it says that, in order to recover the cost of caring for people who are insured for that purpose, it needs to increase the maximum limit to £30,000, why should it not do that?

The Convener: Normally, if increases in charges of any sort have been effected through regulation, the committee has said that they should be examined.

Gordon Jackson: Generally speaking, I agree with that approach. However, the health service will still have to justify the amount that it charges the insurers. This is not like a fee. We have complained about charges being put up that people have to pay as fees.

The regulations are about charging for treatment that has been given. Insurance companies will not pay unless the health service can justify the

amount charged for. The regulations set a ceiling on that amount. They do not stipulate a flat fee.

The Convener: The insurance companies have not been jumping up and down, so we can take it that the regulations are probably okay.

Children (Scotland) Act 1995 (Commencement No 4) Order 2001 (SSI 2001/475)

Panels of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001 (SSI 2001/476)

Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations 2001 (SSI 2001/477)

Children's Hearings (Legal Representation) (Scotland) Rules 2001 (SSI 2001/478)

The Convener: Some serious redrafting of these instruments may be necessary. If the committee agrees, we will not consider them today, which will give the clerk time to find out from the Executive what it proposes to do. Our legal advice is that the Executive realises that amendments and redrafting are necessary. There are a couple of ways in which that could happen. However, given that we do not face any great time constraint, perhaps the most effective way of dealing with this would be to give the Executive another shot.

Gordon Jackson: Regulation 2 of the Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations 2001 (SSI/2001/477) states:

"the Sheriff Principal' means the Sheriff Principal or the Sheriff's Principal".

I live in a world of sheriffs principal, but I do not know what that means. I find it fascinating.

The Convener: Our legal adviser is indicating that she knows what it means.

Gordon Jackson: It is good that somebody knows what it means.

The Convener: We are fortunate that that person advises the committee. The Executive has already agreed informally to reconsider the instruments.

Gordon Jackson: After the meeting I will ask our legal adviser what the sentence that I quoted means.

The Convener: Do members agree to consider the instruments again next week?

Members *indicated agreement.*

The Convener: One or two changes are outlined in the briefing paper that has been issued to members. However, given that the instruments are likely to be amended, there is no sense in going through those just now.

**Rural Diversification Programme
(Scotland) Amendment Regulations 2001
(SSI 2001/484)**

11:30

The Convener: There are a couple of technical defects in the letter to the Presiding Officer that accompanies the regulations, which has been circulated to members. We should mention informally to the Executive that that letter was not in the correct form.

**Instruments Not Subject to
Parliamentary Control**

**Food Protection (Emergency Prohibitions)
(Paralytic Shellfish Poisoning) (East
Coast) (Scotland) Revocation Order 2001
(SSI 2001/462)**

**Food Protection (Emergency Prohibitions)
(Amnesic, Paralytic and Diarrhetic
Shellfish Poisoning) (Orkney) (Scotland)
Partial Revocation Order 2001
(SSI 2001/463)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 13) (Scotland)
Revocation Order 2001 (SSI 2001/468)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 9) (Scotland) Partial
Revocation Order 2001 (SSI 2001/469)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 11) (Scotland)
Revocation Order 2001 (SSI 2001/470)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 10) (Scotland)
Revocation Order 2001 (SSI 2001/471)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 6) (Scotland) Order 2001
Revocation Order 2001 (SSI 2001/472)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 4) (Scotland) Partial
Revocation Order 2001 (SSI 2001/473)**

The Convener: No points arise on any of the orders.

Instruments Not Laid Before the Parliament

International Criminal Court (Scotland) Act 2001 (Commencement) Order 2001 (SSI 2001/456)

The Convener: No points arise on the order.

Housing (Scotland) Act 2001 (Commencement No 3, Transitional Provisions and Savings) Order 2001 (SSI 2001/467)

Ethical Standards in Public Life etc (Scotland) Act 2000 (Commencement No 2 and Transitional Provisions) Order 2001 (SSI 2001/474)

The Convener: These two orders are in some ways contrasting and reveal an inconsistency of approach. The Housing (Scotland) Act 2001 (Commencement No 3, Transitional Provisions and Savings) Order 2001 (SSI 2001/467) provides no information about commencement, whereas the Ethical Standards in Public Life etc (Scotland) Act 2000 (Commencement No 2 and Transitional Provisions) Order 2001 (SSI 2001/474) does. Does the committee wish to raise that issue with the Executive?

Gordon Jackson: Can you explain what you mean, convener?

The Convener: The Housing (Scotland) Act 2001 (Commencement No 3, Transitional Provisions and Savings) Order 2001 (SSI 2001/467) does not explain the content of the provisions commenced and how and when it will work, whereas the Ethical Standards in Public Life etc (Scotland) Act 2000 (Commencement No 2 and Transitional Provisions) Order 2001 (SSI 2001/474) explains those matters fully. I do not know whether it is nit-picking to say that a more consistent approach might be in order.

Bristow Muldoon: Are you saying that there should be a description of the provisions commenced, rather than just a reference to the relevant sections and schedules of the Housing (Scotland) Act 2001?

The Convener: Yes.

Gordon Jackson: I see that now. Why should the Executive not provide that information?

Murdo Fraser: It is customary for instruments to include a description of the contents of the provisions commenced, and we should ask the Executive why it has not provided one in this case.

The Convener: We will do that.

The only point that arises in respect of the Ethical Standards in Public Life etc (Scotland) Act 2000 (Commencement No 2 and Transitional Provisions) Order 2001 (SSI 2001/474) is a small typo.

I thank members for their attendance. We may have a mammoth agenda for next week's meeting.

Meeting closed at 11:34.

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