

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 22 January 2002
(*Morning*)

Session 1

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SUBORDINATE LEGISLATION COMMITTEE

3rd Meeting 2002, 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 CLERK

Joanne Clinton

Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 22 January 2002

(Morning)

[THE CONVENER *opened the meeting at 11:24*]

The Convener (Ms Margo MacDonald): Welcome to the third meeting this year of the Subordinate Legislation Committee. We are all present and correct, which is just as well as we have one or two important matters to deal with today.

Delegated Powers Scrutiny

Education (Disability Strategies and Pupils' Records) (Scotland) Bill

The Convener: We raised with the Executive three matters relating to this bill. We are relatively satisfied with the responses to the first two questions but we are not satisfied with the response to the third question. As we have done before, we suggested that consultation would be a good idea and that a duty to consult should be included in the bill. The Executive disagreed with that.

As we can get no further on this matter, I suggest that we draw the response to the attention of the lead committee, which might share our concern that, although our present wonderful Executive is full of warm and lovely people, it is possible that we might get another sort of Executive at some point. Are we agreed to do that?

Gordon Jackson (Glasgow Govan) (Lab): You do sincerity well, Margo.

The Convener: I take it that you second that suggestion, in that case?

Gordon Jackson: Yes.

Members *indicated agreement.*

Budget (Scotland) (No 3) Bill

The Convener: Nothing much arises from this bill. Apart from the fact that standing orders require us to have a debate on the budget, you sometimes have to wonder why we are having this, since you can do it, you know.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): I think that "since you can do it,

you know" might not be easy for the official report staff to report.

The Convener: I will try again. Since the relevant provisions in the budget can be amended by subordinate legislation, one sometimes has to wonder why we bother having a budget bill.

Bristow Muldoon (Livingston) (Lab): If people are unhappy with the subordinate legislation, it can be voted down.

The Convener: I know that that is the theory, Bristow, but I am not at all sure that that would happen in practice. However, there is nothing that we are likely to do about the situation. I just mentioned it in passing.

Land Reform (Scotland) Bill

The Convener: This bill forms part of the Executive's land reform programme and has two main purposes: to create rights of access to land for recreational purposes and to provide for a community right to buy land in rural areas. Part 1 of the bill is concerned with rights of access, part 2 with the community right to buy and part 3 with thecrofting community right to buy land in thecrofting counties.

The bill has involved a huge amount of consultation and a great deal of work has been done on it. At this stage, it might be worth while commenting that a lot of the work that is being done might not have been completely sorted out by the time that the relevant subordinate legislation comes before this committee.

The powers in the bill are extensive and some of the powers that will be exercised through subordinate legislation go right to the heart of the bill. The committee has a duty to consider whether it is appropriate that the powers concerned should be left to subordinate legislation, even that which is dealt with by affirmative resolution.

Murdo Fraser, are you indicating that you agree or disagree with me?

Murdo Fraser (Mid Scotland and Fife) (Con): I am indicating that I agree with you. Sections 4 and 8 give the Executive sweeping powers to amend parts of the bill. For example, section 4 gives the ministers the power to modify any of the provisions of sections 2 and 3. That makes me wonder why the Executive bothered to introduce the bill in the first place. Section 2 deals with the right of responsible access. If the ministers can amend that by subordinate legislation, what is the point in having a great long debate on the provisions that will make up that section?

Gordon Jackson: I say this with a great deal of hesitation, but perhaps we should take evidence on this matter. This bill is certainly the biggest

piece of legislation that the Parliament will deal with in the coming months and I have a funny feeling that it will prove to be the most contentious piece of legislation that we will have dealt with since we got here in 1999.

Most legislation in the Scottish Parliament has turned out to be pretty consensual—although I should point out to Murdo Fraser that I am aware that one or two of our colleagues might not have joined that consensus. Of the two justice committees, the one that I am not on is dealing with the Land Reform (Scotland) Bill, I am delighted to say. If there are provisions that we are unsure of or unhappy about that relate to subordinate legislation, perhaps we should take evidence on the bill.

11:30

The Convener: We have a couple of meetings left before the stage 1 debate, so we could take evidence.

Gordon Jackson: Is the stage 1 debate only a couple of weeks away? I do not think that that is right.

The Convener: I think that, although the debate is a month away, we would have two opportunities to take evidence.

Murdo Fraser: The Justice 2 Committee is still taking evidence.

Gordon Jackson: That committee still has not written its report, so we have time to take evidence.

The Convener: I agree that we should take evidence. I am just trying to work out what the timetable would be for us to do so. The clerk has informed me that we have time to take evidence in relation to the bill.

Some provisions in the bill allow the possibility of core intentions of the bill being, if not subverted, circumvented by subordinate legislation. If that is the case, it is our duty to point it out. The Executive may have a reason for taking the approach that it has. It could have amended primary legislation but has chosen not to do so. We should ask why not.

Are we taking evidence on all parts of the bill?

Colin Campbell (West of Scotland) (SNP): Perhaps we should concentrate on the sections that appear to give the ministers too much power.

Gordon Jackson: If we have Executive witnesses before us, I am sure that we can identify the areas at that point.

The Convener: It would be fair to let them know whether we will deal with the whole bill or concentrate on certain aspects.

Bristow Muldoon: I am sure that the clerk could write a letter informing them of the main points about which we are concerned. That would allow the witnesses to prepare for the meeting.

The Convener: Are we agreed to follow that course of action?

Members indicated agreement.

Draft Instruments Subject to Approval

Forth Estuary Transport Authority Order 2002 (Draft)

The Convener: Next we come to this week's deliberate mistake, the Forth Estuary Transport Authority Order 2002 (Draft), which should, of course, refer to the Firth of Forth.

Gordon Jackson: Sorry?

The Convener: I am making the point that we should call the nearby body of water by its correct name, rather than calling it the Forth estuary.

Gordon Jackson: I think that you need to get out more, Margo.

The Convener: These small things are important.

Gordon Jackson: As the song says,

"These foolish things remind me of you".

The Convener: The Executive's use of the word estuary is a deliberate mistake. I am sure that the fact that some parts of the order raise serious questions of vires is not a deliberate mistake. Perhaps the Executive has been over-ambitious in attempting to cover amendments to three or four acts, some of which are now redundant, in one instrument. It is possible that the Executive has not pulled that off. The powers in the order include powers to set tolls. They allow the new authority to take on many of the attributes of a local authority. It is important legislation and there are serious questions that we should raise with the Executive.

Murdo Fraser: We need to write to the Executive and ask it to explain what provisions it considers to provide the vires for the sections about which we are concerned, of which there are a number.

Colin Campbell: Such as article 6 and schedule 1.

Murdo Fraser: Yes.

Colin Campbell: We are also concerned about paragraph 2 of schedule 3.

The Convener: Paragraph 2 of schedule 3

concerns the creation of a criminal offence. We are raising serious questions about important stuff, Gordon.

Does the committee agree to write to the Executive about the vires of various provisions in the order, minor points of drafting and the citation of enabling powers?

Members *indicated agreement.*

Instruments Subject to Annulment

Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002 (SSI 2002/6)

The Convener: The instrument is another biggie. We have identified 20 points on the regulations to raise with the Executive. I do not propose to raise them all now.

The regulations are interesting and important. They concern in part the legal rights of those who own farms that straddle the border and affect the legal remedies that are open to those farmers. That becomes tricky because of their rights under European legislation. The Executive has not managed to get the regulations right. The Scotland Act 1998 makes specific provision, for example in section 93, to deal with matters such as the extra-territorial powers that Scottish ministers might need to exercise. Why is that provision not utilised?

Bristow Muldoon: It is devolution in reverse. We are starting to take over.

The Convener: That seems a reasonable idea. I hope that your party bosses note that you suggested it.

Bristow Muldoon: I was only making an observation. I was not commenting on whether the approach was wise.

The Convener: There are serious questions on the regulations that we want to raise with the Executive. Although much of the instrument is perfectly straightforward, there are a number of problems.

I can see that Gordon Jackson is not in the least worried about the rights of English farmers.

Does the committee agree to write to the Executive, pointing out that we are not happy with a great number of aspects of the regulations and would like further explanation on them?

Members *indicated agreement.*

Instruments Not Subject to Parliamentary Control

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 9) (Scotland) Revocation Order 2002 (SSI 2002/9)

The Convener: We are back to the shellfish.

Gordon Jackson: I have missed the shellfish. They have been away for a while.

The Convener: They are just waiting.

Colin Campbell: The instrument is a revocation order.

The Convener: The committee will be happy to know that no points arise on the order.

Instruments Not Laid Before the Parliament

Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (SSI 2002/7)

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

Ian Jenkins: There are a couple of linguistic points, but there is nothing substantial.

The Convener: There is a minor error of style and a minor typo.

Meeting closed at 11:40.

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