

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 26 February 2002
(Morning)

Session 1

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SUBORDINATE LEGISLATION COMMITTEE

7th 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

WITNESSES

Neal Rafferty (Scottish Executive Enterprise and Lifelong Learning Department)

Linda Sneddon (Office of the Solicitor to the Scottish Executive)

CLERK TO THE COMMITTEE

Alasdair Rankin

SENIOR ASSISTANT CLERK

Steve Farrell

ASSISTANT CLERKS

Joanne Clinton

Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament Subordinate Legislation Committee

Tuesday 26 February 2002

(Morning)

[THE CONVENER *opened the meeting at 11:31*]

The Convener (Ms Margo MacDonald): I welcome everyone to the seventh meeting of the Subordinate Legislation Committee. The agenda that members have in front of them has been changed slightly. Because two Scottish Executive witnesses are here, we will consider the draft Renewables Obligation (Scotland) Order 2002 first.

Draft Instruments Subject to Approval

Renewables Obligation (Scotland) Order 2002 (Draft)

The Convener: We have invited Neal Rafferty and Linda Sneddon today because last week's recess has meant that this is the committee's only opportunity to ask questions on this order. I thank the witnesses for coming.

We would like clarification on a couple of points. Will you explain the differences between this draft order and the equivalent English order? Would you like me to detail the differences?

Neal Rafferty (Scottish Executive Enterprise and Lifelong Learning Department): If you went through the differences that you have identified, that might be more useful than my rambling on about them.

The Convener: Article 2(1) of the English order has a definition of "particulars". Article 2(2) refers to the purposes of the definition of "hydro generating station". In relation to article 2(4), there appears to be a difference between the two orders. We were not sure whether article 4(13) represents a policy change. There also appears to be a difference in relation to article 5(1)(d).

Linda Sneddon (Office of the Solicitor to the Scottish Executive): I will go through some of the technical changes. When we considered the definition of "particulars" in article 2(1), we felt that it was defined in paragraph 2 of schedule 2, although not quite in a way that would fit our usual drafting practice. We could not see the purpose of having the definition. The definition in paragraph 2 is not actually a definition as such: it explains what the particulars are and what a renewables obligation certificate comprises.

The Convener: Please bear with us. The issues are technical.

Linda Sneddon: Absolutely.

The Convener: I have not the faintest idea why you should have decided what you did.

Linda Sneddon: The term "particulars" is not used much in the order, and the particulars are described. My understanding is that the order is likely to be amended, probably in the next six months to a year, to implement further policy. If the committee felt strongly about having the definition included, we could consider making an amendment at that time. The definition was felt to serve no purpose, which is why it was removed, but if the committee feels strongly, we can reconsider that in the next order.

The Convener: That offer seems reasonable, and it gives us six months to recover from this order.

Linda Sneddon: The second order will not be as substantial as the first.

The Convener: That covers article 2(1).

Article 2(2) omits the words:

"For the purposes of the definition of 'hydro generating station'".

Murdo Fraser (Mid Scotland and Fife) (Con): Those words are in the equivalent English order and do not appear in the Scottish order.

Linda Sneddon: We deleted those words because they added nothing. The definition of civil works is technical. The provisions on civil works relate only to hydro generating stations, so it was considered that the words that the convener mentioned added nothing, which is why they were deleted.

The Convener: The committee is concerned that the phrase "generating station" is rather wide and that "hydro generating station" is a bit more specific.

Linda Sneddon: What the order regards as civil works relates only to hydro generating stations and not to any other type of generating station. The order mentions man-made weirs and holding water. Only a hydro generating station deals with water.

The Convener: I believe you.

Linda Sneddon: The wording is specific. Hydro generating stations are mainly in Scotland; only a few are elsewhere.

The Convener: You are saying that because only Scotland has hydro generation and the order is Scottish, the order does not need to say "hydro generation".

Linda Sneddon: We felt that the words added nothing to the definition. We tried to be as precise as possible, so that people know what civil works are. People in the industry will know what civil works are.

The Convener: I am minded to accept that explanation.

We mentioned the omission of article 2(4), but we are not too concerned by that.

Linda Sneddon: We omitted that paragraph to follow Scottish practice. Such a provision is not considered one that we should put in Scottish statutory instruments.

The Convener: I am advised that, in this instance, the omission does not matter, but we are pernickety, and sometimes such an omission matters. That is why we drew it to your attention.

Linda Sneddon: It is accepted that, sometimes, such a provision is important. However, it would have made no difference to the order, because it does not refer to schedules outwith itself. If we produce an amendment order, the situation may be different.

The Convener: We were not sure whether article 4(13) in the English order was omitted from the Scottish order because of a policy change.

Neal Rafferty: The Department of Trade and Industry added articles 4(13) and 5(1)(d) to the England and Wales order after we had laid our order. In England and Wales and in Scotland, we worked from a draft that we had identified as the final version. We proceeded to work with that; our colleagues in the DTI proceeded to amend it. Articles 4(13) and 5(1)(d) are examples of what they did.

Article 4(13) does not add anything that was not in the order or was not taken care of by article 4(12)(a)—I beg your pardon. Article 5(1)(d) is taken care of by article 4(12)(a). Article 5(1)(d) allows the Office of Gas and Electricity Markets to freeze meter readings from renewables stations.

The Convener: I am also trying to juggle two orders. You have my sympathy for what has happened.

Linda Sneddon: The DTI raised queries with us and we were suddenly left in a situation. The additions to the England and Wales order may add clarity for people who work in the system, because they provide separate definitions, but we think that article 4(12)(a) covers the intention, so there is no practical difference. We will consider that when the amendment order is produced, when we are likely to include those provisions.

The practical effect for the industry is that no ROCs or SROCs will be issued until six months after the order comes into force. We cannot guarantee it, but we may have amended the order by that time. Article 4(12)(a) will allow us to instruct Ofgem to act in the same manner as it would if articles 4(13) and 5(1)(d) were included, although perhaps the position is less clear. We can operate the system as it is. At the next opportunity to bring it into line, we will fix it so that there is no doubt that the treatment in Scotland is the same as that in England.

The Convener: We put on record our sympathy for you. The committee hopes that such a problem does not recur. If it does, you must tell somebody about it.

Linda Sneddon: We have made our feelings clear to the DTI.

Neal Rafferty: We have done that in the most diplomatic terms.

The Convener: We have no time to go into the matter either. I accept what you say about the mop-up operation, but article 5(1)(d) of the England and Wales order seems to come perilously close to policy making. I thank you for your explanation, and we look forward to seeing whether there will be an amendment order.

11:45

Neal Rafferty: Just for clarification, ROCs will not be issued until four months after the order comes into force as intended on 1 April, subject to parliamentary approval. As a result, we have plenty of time to make amendments. All the DTI has done—very helpfully—is to clarify the measures that our order will introduce; its revisions do not make any material change nor do they add anything that we did not already have. They simply bring matters out into the open and add a little clarity. Once we introduce amendments—which is likely to happen in the coming months—we will update our own order to ensure that it carries the same clarity.

The Convener: I am sure that people in the industry will be glad about that. We certainly are. However, we have another wee question for you. Will you clarify the meaning of the words “aspects” and “respects” in paragraph 7 of schedule 2? It looks as though it is a wee typo.

Linda Sneddon: It is a wee typo. As the committee has brought the matter to our attention, we seek its consent to deal with the matter when the draft order comes back to us, if passed by Parliament. If it is not possible to change the word “aspects” to “respects” through a manuscript amendment, we will seek to make that change through the amendment order.

The Convener: So you are sticking with the word “respects”.

Linda Sneddon: As that is the word in the English order, we will stick with it here.

The Convener: We have no further questions. Thank you very much; your responses have been most illuminating.

Neal Rafferty: It is an easy order to shed light on.

Delegated Powers Scrutiny

Scottish Qualifications Authority Bill: Stage 1

The Convener: We return to the published agenda. Everyone knows the background to the SQA bill, which makes new arrangements for the appointment of members to the board of the Scottish Qualifications Authority. It also provides for Scottish ministers to make regulations to create an advisory council of stakeholders and to make regulations about the procedures of the SQA board, including provision for a representative of the Scottish Executive to attend board meetings.

As far as we can see, the use of delegated powers in the bill seems entirely appropriate. We do not need to draw anything to the attention of the lead committee or the Parliament.

Marriage (Scotland) Bill: Stage 2

The Convener: Well, you win some, you lose some.

We raised a number of points with the Executive on the Marriage (Scotland) Bill. For example, we asked it to include a definition of the word “place” in the bill. I do not know why it has not agreed with our entirely reasonable and utterly desirable suggestion, but it has not changed its position at all on the matter.

It is also a bit disappointing that the bill still does not contain the requirement on the part of the Registrar General for Scotland to issue guidance. Furthermore, there is no statutory requirement for consultation on any changes. We thought it was a little mean to miss that out.

However, the procedure for making regulations has already been agreed. We know that the Government will include a right of appeal in the bill, as a stage 3 amendment to that effect has been lodged. When the Local Government Committee told Euan Robson to do that, he said okay.

Do members have any comments other than to welcome the fact that an amendment has been lodged at stage 3?

Bill Butler (Glasgow Anniesland) (Lab): You have covered the salient points, convener.

Executive Responses

Housing Support Grant (Scotland) Order 2002 (Draft)

The Convener: We asked the Executive whether the order complies with proper drafting practice. However, that does not affect its substance.

Murdo Fraser: We should draw the Executive's response to the attention of the lead committee and the Parliament.

Pig Industry Restructuring (Capital Grant) (Scotland) Scheme 2002 (SSI 2002/43)

Pig Industry Restructuring (Non-Capital Grant) (Scotland) Scheme 2002 (SSI 2002/44)

Colin Campbell (West of Scotland) (SNP): We should draw the instruments to the lead committee's attention on the grounds that we required the clarification of some points, which the Executive has now provided.

The Convener: That seems reasonable.

Food and Animal Feedingstuffs (Products of Animal Origin from China) (Control) (Scotland) Regulations 2002 (SSI 2002/36)

The Convener: We raised a question about the timing of the regulations. However, it was entirely understandable, as the Executive had to move very quickly on the matter. As a result, I do not think that we need to take issue with anything in the Executive's response.

Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2002 (SSI 2002/45)

Colin Campbell: The Executive has owned up to the fact that the explanatory note contained defective drafting. Should we draw that to the attention of the lead committee, or should we not bother?

The Convener: We might as well tell the lead committee about it.

Sheep and Goats Movement (Interim Measures) (Scotland) Order 2002 (SSI 2002/38)

The Convener: I got terribly upset by this order. The Executive's response must be drawn to the attention of the lead committee. The Executive has acknowledged that the order contained defective drafting and has undertaken to fix that. However, the important issue is the number of tags that

goats could have in their ears. Much to my horror, I have discovered that goats can have four—*[Interruption.]* Gordon, come in. We have reached the really sad bit in the proceedings.

Gordon Jackson (Glasgow Govan) (Lab): Do not blame me for being late—blame ScotRail.

Murdo Fraser: Were there sheep or goats on the line?

Gordon Jackson: It was a signalling failure, or so they say. I was sitting on the train, missing you all terribly.

The Convener: But you got here for the good bit of the meeting.

Gordon Jackson: Why? Is there tea coming?

The Convener: No. We are discussing the issue of ear tags for goats, which exercised the committee's mind.

Colin Campbell: It is why you got into politics, Gordon.

The Convener: We have received an answer from the Executive on this matter. In the case where an article 3(1) movement tag would be the fourth official tag applied because three tags are already in place—one of which is a replacement ear tag—the application of a movement tag would not be allowed. We must thank the Executive for that.

Bill Butler: It makes the matter an awful lot clearer, convener.

The Convener: The Executive has been very decent about the matter, and will introduce amending regulations. We must welcome that response.

Draft Instruments Subject to Approval

Water Undertakings (Rateable Values) (Scotland) Variation Order 2002 (Draft)

The Convener: No points arise on the order.

Renewables Obligation (Scotland) Order 2002 (Draft)

The Convener: We have dealt earlier with this order. We must put on record our appreciation of the willingness of the two Executive representatives, Linda Sneddon and Neal Rafferty, to explain matters as well as they did. The points were technical, but I think that I understood them by the time that we finished. The witnesses said that they would keep us posted, as the Executive will probably amend the regulations.

Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Amendment Order 2002 (Draft)

Electricity Lands and Generators (Rateable Values) (Scotland) Variation Order 2002 (Draft)

The Convener: No points arise on either order.

Special Grant Reports

Special Grant Report No 1—Special Grant for Scotland Asylum Seeker Assistance: Report by the Scottish Ministers (SE 2002/52)

The Convener: No points arise on this report, which brings the rates for dependants into line with the reimbursement rates south of the border.

Instruments Subject to Approval

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Scotland) Order 2002 (SSI 2002/49)

The Convener: No points arise on the order, which is the first this year on amnesic shellfish. I am always pleased about such orders.

Bill Butler: It is about that time of year.

Instruments Subject to Annulment

Domestic Water and Sewerage Charges (Reduction) (Scotland) Regulations 2002 (SSI 2002/47)

The Convener: No points arise on the instrument.

Notification of Marketing of Food for Particular Nutritional Uses (Scotland) Regulations 2002 (SSI 2002/50)

The Convener: I believe that an Executive note on these regulations has just come in. However, we might want to ask the Executive to explain the late implementation of the directive on which the regulations are based.

This is the only time that we have a chance to look at the regulations, so in our report to the Executive we must say that this is perhaps another example—in principle, anyway—of the quality of the committee's scrutiny being restricted. To be perfectly honest, I do not think that there is much to note in the regulations, but our view that they do not set a good precedent should be in our report.

Colin Campbell: We should not be forced to work in a compressed time scale.

Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2002 (SSI 2002/51)

Ethical Standards in Public Life etc (Scotland) Act 2000 (Stipulated Time Limit) Order 2002 (SSI 2002/55)

The Convener: No points arise on either instrument.

Road Traffic (NHS Charges) Amendment (Scotland) Regulations 2002 (SSI 2002/56)

The Convener: Aha! I should have stuck to my guns on this matter.

Gordon Jackson: What?

The Convener: There was a mistake in the regulations as originally published. The amended regulations must now be published. In keeping with what we have done in the past, we should ask the Executive whether people who purchased the original regulations will be charged for the amended regulations.

Murdo Fraser: If the regulations are to be free, we should ask why no headnote states that.

Gordon Jackson: Who does buy the regulations? I am not being funny. Is it not just big organisations such as insurance companies that do so?

The Convener: What have you got against insurance companies?

Gordon Jackson: Nothing. I just wonder who we are worrying about. I am curious.

The Convener: It is a point of principle. If the Executive makes a mistake, somebody else should not pick up the tab.

Gordon Jackson: I just wonder who buys such regulations.

The Convener: I would have thought that the regulations might be bought not only by insurers, but by couples with policies and so on.

Gordon Jackson: It works both ways. If nobody buys the regulations, the Executive cannot complain about giving them away for free. It will not matter one way or the other.

The Convener: The interesting thing about this instrument is that we originally raised concerns on the matter of consultation.

Gordon Jackson: You were right to do so.

The Convener: Someone in England subsequently decided to challenge the equivalent English regulations on the matter of consultation. Where there is a reasonable expectation of consultation being required or where consultation has taken place before, the Executive can be held to be in default if it does not have consultation. I seem to remember that we talked about that matter in a general way, but then we let it go.

Colin Campbell: We did.

The Convener: Now Westminster must deal with the matter in the equivalent English regulations. The absence of a statutory obligation to consult does not mean that an instrument cannot be challenged on that ground. I thought that Gordon Jackson would be interested in that matter.

Colin Campbell: He is still suffering from post-traumatic stress caused by ScotRail.

The Convener: The regulations also breach the 21-day rule, but that is okay because it is sensible to keep the regulations in line with what is happening south of the border.

Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2002 (SSI 2002/58)

The Convener: No points arise on the instrument, so you can come up the Clyde in your fishing boat.

Gordon Jackson: With a banana skin, in my case.

Scottish Social Services Council (Appointments, Procedure and Access to the Register) Amendment Regulations 2002 (SSI 2002/60)

The Convener: A point arises that requires a question to the Executive. Perhaps we should seek clarification on how regulation 11(3)—which has not been amended—is to have effect, in view of the amendments that the instrument makes on fees and allowances for members of the Scottish social services council. The matter is important as the instrument changes how folk are paid their allowances and expenses. Do members agree that we should seek clarification from the Executive?

Members indicated agreement.

Sweeteners in Food Amendment (Scotland) Regulations 2002 (SSI 2002/61)

12:00

The Convener: This instrument is the one for weight-watchers everywhere. The Executive has done an enormous amount of work on this instrument, I am happy to say. I found the instrument helpful because it tells one exactly to what products sucralose can be added, such as

"Essoblaten ... brown beers of the 'oud bruin' type ... Feinkostsalat."

Colin Campbell: That is useful.

The Convener: It is one of the best Executive notes that I have ever seen—it is excellent. I congratulate the Executive on the regulations. I shall take them to WeightWatchers, so we can see what change the regulations will make to the nation's diet. The matter is as important as the earlier issue of the sheep and goats. On behalf of the committee, I thank the Executive for its highly informative and helpful note on the regulations.

Race Relations Act 1976 (Statutory Duties) (Scotland) Order 2002 (SSI 2002/62)

The Convener: Do members have comments on the order?

Colin Campbell: It is not clear from article 5(5)(a) whether article 5 is to apply to staff who are employed by education authorities.

The Convener: That is an important matter, on which we must get clarification. The Executive was helpful, but we did not get the instrument until 20 February. Perhaps we should not complain too much when we see the volume of work that the Executive has been involved in on the instrument.

Children's Hearings (Legal Representation) (Scotland) Rules 2002 (SSI 2002/63)

The Convener: No points arise.

Gordon Jackson: A Norway point.

The Convener: Nul points.

Gordon Jackson: From now on, we shall call such instruments Norways. We cannot tell them apart.

Bill Butler: That is unfair. They should be called Finlands.

Gordon Jackson: It will be a new legal term in Scotland. From now on, a statutory instrument on which no points arise will be called a Finland or a Norway.

The Convener: Do I need to put that to a vote?

Colin Campbell: No.

Food (Star Anise from Third Countries) (Emergency Control) (Scotland) Order 2002 (SSI 2002/64)

The Convener: No points arise on the instrument.

Scotland Act 1998 (Agency Arrangements) (Specification) Order 2002 (SI 2002/261)

The Convener: No points arise on the instrument, which is technically correct, but I am aware that a policy issue has been raised, which I want the committee to draw to the attention of the Transport and the Environment Committee. The matter concerns trading emissions and whether a substantial point might be debated on how one should evaluate what should be traded north and south of the border.

That matter can be debated, but not by this committee. As we will be making the general point that this committee's scrutiny is an integral part of parliamentary policy making, it is worth while saying to the Executive that we have noted the instrument and, as far as we are concerned, it is technically correct, but that the Transport and the Environment Committee might want to consider the matter. Is that agreed?

Members indicated agreement.

Instruments Not Subject to Parliamentary Control

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 14) (Scotland) Revocation Order 2002 (SSI 2002/48)

Food Protection (Emergency Prohibitions) (Diarrhetic Shellfish Poisoning) (Orkney) (Scotland) Revocation Order 2002 (SSI 2002/57)

The Convener: Oh, the poor souls.

Colin Campbell: Diarrhetic shellfish?

The Convener: Yes, but in Orkney only.

Colin Campbell: The instruments are in the usual form, so no points arise.

The Convener: Yes.

Instruments Not Laid Before the Parliament

Nurses, Midwives and Health Visitors (Professional Conduct) (Amendment) Rules 2002 Approval (Scotland) Order 2002 (SSI 2002/59)

The Convener: No points arise on this instrument—another Norway. I thank members for their attendance. I will see them in the same place at the same time next week, barring goats, sheep, dogs and the like.

Bill Butler: I look forward to that.

Colin Campbell: It certainly gets the adrenaline going, does not it?

Meeting closed at 12:08.

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