

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 5 March 2002
(Morning)

Session 1

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CONTENTS

Tuesday 5 March 2002

Col.

DELEGATED POWERS SCRUTINY	813
Tobacco Advertising and Promotion (Scotland) Bill: Stage 1	813
EXECUTIVE RESPONSES	814
Road Traffic (NHS Charges) Amendment (Scotland) Regulations 2002 (SSI 2002/56)	814
Scottish Social Services Council (Appointments, Procedure and Access to the Register) Amendment Regulations 2002 (SSI 2002/60)	814
Race Relations Act 1976 (Statutory Duties) (Scotland) Order 2002 (SSI 2002/62)	814
DRAFT INSTRUMENTS SUBJECT TO APPROVAL	815
Bus User Complaints Tribunal Regulations 2002 (draft)	815
Loch Lomond and the Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002 (draft)	817
Loch Lomond and the Trossachs National Park Elections (Scotland) Order 2002 (draft)	817
INSTRUMENTS SUBJECT TO APPROVAL	818
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Order 2002 (SSI 2002/65)	818
INSTRUMENTS SUBJECT TO ANNULMENT	818
Mobility and Access Committee for Scotland Regulations 2002 (SSI 2002/69)	818
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY CONTROL	818
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 12) (Scotland) Partial Revocation Order 2002 (SSI 2002/66)	818
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Partial Revocation Order 2002 (SSI 2002/67)	818
INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT	819
Standards in Scotland's Schools etc Act 2000 (Commencement No 5) Order 2002 (SSI 2002/72)	819

SUBORDINATE LEGISLATION COMMITTEE

8th 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 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 5 March 2002

(Morning)

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

Delegated Powers Scrutiny

Tobacco Advertising and Promotion (Scotland) Bill: Stage 1

The Convener (Ms Margo MacDonald): I welcome everyone to the 8th meeting in 2002 of the Subordinate Legislation Committee.

The first item on the agenda is to consider the delegated powers in the Tobacco Advertising and Promotion (Scotland) Bill at stage 1. It appears that the committee has no points to make.

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

Murdo Fraser (Mid Scotland and Fife) (Con): The bill is unlike the equivalent English bill, which, I understand, had incorrectly drafted delegated powers.

The Convener: We do not want to be narrow nationalists on this matter.

Murdo Fraser: Far from it.

The Convener: However, the drafting team did a much better job.

Ian Jenkins: North of the border.

The Convener: The committee is not concerned about the bill's delegated powers, as the drafting team got them right. We all know that we have a great deal to say on delegated powers if the drafting team does not get them right.

Ian Jenkins: Political points could be made about the bill, but, as far as subordinate legislation is concerned, the bill seems to be clean and pure.

The Convener: Absolutely. A puff of white smoke for that one.

Executive Responses

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

The Convener: There was a question of whether the regulations complied with proper legislative practice. We asked the Executive why there was not an italic headnote in the regulations. The Executive's response is that the regulations should have had such a headnote. The Executive thanks the committee for that observation and will put the matter right. That is fine.

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

The Convener: There is a question of defective drafting in these regulations, which we must draw to the lead committee's attention. It is simply that a consequential amendment has not been made to a principal regulation. We are not certain that that will make much difference, but we will point out the matter to the lead committee, which will take it from there.

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

The Convener: The different problem with this instrument was that it was gobbledegook. Article 5(5) of the order refers to the monitoring process that is required under the Race Relations Act 1976. We were not sure who was monitoring whom.

Murdo Fraser: I was not sure what article 5(5) was supposed to mean. Having read the Executive's response, I am not much clearer about the matter. Our legal adviser's opinion is that article 5(5) could be clearer. We must report to the lead committee that we are not satisfied with the clarity of the drafting.

The Convener: Yes. It is very convoluted stuff. We will notify the lead committee.

Draft Instruments Subject to Approval

Bus User Complaints Tribunal Regulations 2002 (draft)

The Convener: Let us be grateful for the fact that these are draft regulations, because we must raise eight points on them with the Executive. The regulations are very odd. I will pick out a couple of points.

Clarification is required on the matter of complaints, because there seems to be a difference in the draft regulations between a "relevant complaint" and a "complaint". It is not clear when a complaint is relevant; neither is it clear who can deal with the complaint. The regulations seem to make it possible for the convener alone to determine a case. In addition, the convener appears to be the only person to whom an appeal can be made about the tribunal's decision. That does not seem a clever way of drafting the regulations.

Ian Jenkins: As you say, there are two connected matters, but we can think of them separately. The first is that if a tribunal rules against someone, an appeal can be made only to the tribunal's convener, who would have been involved in the original decision. That procedure seems odd and might be against the provisions of the European convention on human rights, because the convener would have a vested interest in the decision.

The Convener: He might be a perfectly nice convener.

Ian Jenkins: Absolutely.

The Convener: But that provision is just a bit on the cosy side.

Ian Jenkins: It just does not feel right. The second matter concerns drawing relevant complaints to the tribunal's attention. There appears to be no compulsion for the bus companies to make those relevant complaints available to the tribunal. Is that right?

The Convener: I think so. That is what I thought.

Bristow Muldoon (Livingston) (Lab): I agree with the point about the independence of an appeal. However, is it not the case that, other than on points of law, the procedure under the regulations is not dissimilar to that of an industrial tribunal? In an industrial tribunal, when someone disputes the interpretation of facts, is not that referred to the tribunal for potential review, as opposed to being referred to an independent appeal? My point is that I suspect that the cases

with which an industrial tribunal deals are generally more serious than those with which a bus user complaints tribunal would deal.

I am not overly concerned about the matter, but I agree with the point that it would be better to have an independent appeal system.

The Convener: I do not think that the committee should determine whether more weight should be given to a bus user's complaint than to an employee appealing against something in their employment contract. We cannot make that sort of decision, but we can decide whether the regulations' provisions are reasonable. Judicial review would be available, but the committee's attitude is that that is not satisfactory because one can appeal only on a point of law.

Bristow Muldoon: I am comfortable with the general point that an independent appeals process would be better—all I am saying is that similar examples exist.

The Convener: In a way, you are betwixt and between on the issue. You said that there might be a parallel with industrial tribunals. What does the convener of an industrial tribunal do if an appeal is made against his tribunal's decision?

Bristow Muldoon: My understanding is that members of the tribunal may review the evidence, rather than the convener on his own. I think that the three members of the tribunal would review the evidence.

The Convener: We spoke about the issue and thought it a bit cosy that the draft regulations say that the tribunal will have three members, but do not say that two or so members must make a decision. It could be argued that one member—the convener—could make a decision and that an appeal could be made only to the convener. We think that that is a flaw and would like the Executive to reconsider the matter. An industrial tribunal is not the same—as you say, an appeal is made to members of the tribunal rather than to the convener.

Bristow Muldoon: I think that it is up to the convener to accept a case for review.

The Convener: That might be true, but that is different. The legal briefing mentions the possibility that an appeal can be made only to the person who may have made the decision.

Bristow Muldoon: I do not disagree with the general point.

The Convener: I am glad about that. I was worried—I thought that there would be a vote. I hoped not—that would have been vulgar.

Ian Jenkins: In line with the legal advice, we should refer the matter back to the Executive for its comments.

The Convener: We will ask the Executive how it envisages the regulations working. We were confused—or rather, intrigued—by them.

Ian Jenkins: These are draft regulations and there is an opportunity for the Executive to clarify matters and explain things to us.

Loch Lomond and the Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002 (draft)

The Convener: Our advice is that the order is beautifully drafted and crafted. However, I have one small comment—I would hate anybody to think that we entirely approved of it. Article 15(2)(d), defines “crofter” in terms of two acts that have been repealed and consolidated. It is odd that that definition should be used instead of the definition in the more up-to-date act. However, that makes no difference to the substance of the order.

Murdo Fraser: It is fair to say that this is a beautifully drafted order. An attractive and colourful map is attached to it.

The Convener: The map is lovely. I had a wee look at it and thought that the presentation was good. It fair restores faith, does it not, Murdo?

Murdo Fraser: It does.

Loch Lomond and the Trossachs National Park Elections (Scotland) Order 2002 (draft)

The Convener: The order is odd. It mentions those who should be excluded from standing for elections by virtue of having served a jail sentence in the UK, the Channel Islands, the Isle of Man or the Irish Republic, but does not include jail sentences served anywhere else. Bristow, do you know why there is such differentiation?

Bristow Muldoon: I can see no logical reason for it. I do not know whether the order sets any other limits on who can stand in the national park elections. I presume that any citizen of the European Union—if not from further beyond—is eligible for election. Therefore, I do not know why anyone who is convicted of an offence within the European Union at least is not disqualified—that seems logical. However, I do not know the limits that apply to those seeking election to the board. We might want to clarify the matter.

The Convener: We will ask for clarification from the Executive by informal letter.

Instruments Subject to Approval

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Order 2002 (SSI 2002/65)

11:30

The Convener: Members will be pleased to hear that no points arise on the order.

Instruments Subject to Annulment

Mobility and Access Committee for Scotland Regulations 2002 (SSI 2002/69)

The Convener: There is a grammatical error in the regulations. If we gave marks out of 10, the regulations could be Norway. We should mention nicely to the Executive that the committee was not exactly offended by the grammar, but that we noticed it.

Ian Jenkins: There is an inelegance rather than an error.

Bill Butler (Glasgow Anniesland) (Lab): It is an infelicity.

The Convener: Can you spell that?

Bill Butler: Yes, I can.

Instruments Not Subject to Parliamentary Control

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 12) (Scotland) Partial Revocation Order 2002 (SSI 2002/66)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Partial Revocation Order 2002 (SSI 2002/67)

Bill Butler: Everything seems in order in the orders.

The Convener: Absolutely. Do you know what is going to be done to scallops? We will discuss it later. It is terrible—they are going to take the orange bits off.

Instruments Not Laid Before the Parliament

Standards in Scotland's Schools etc Act 2000 (Commencement No 5) Order 2002 (SSI 2002/72)

The Convener: There is a wee omission in the preamble, but that does not affect the substance of the order. We will send an informal letter to the Executive to draw that to its attention.

Ian Jenkins: It could be mentioned in the passing that it is perhaps not great practice that a large number of commencement orders are associated with the act.

The Convener: You are right. The committee has previously said that a large number of commencement orders is perhaps not the best way of doing things. We will mention that, but not make a big deal of it.

I thank members of the committee for attending the meeting. We will see you next week.

Meeting closed at 11:33.

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