

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 23 April 2002
(Morning)

Session 1

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SUBORDINATE LEGISLATION COMMITTEE

13th 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)

*Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab)

*Murdo Fraser (Mid Scotland and Fife) (Con)

Gordon Jackson (Glasgow Govan) (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 23 April 2002

(Morning)

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

The Convener (Ms Margo MacDonald): Good morning. I welcome everyone to the 13th meeting this year of the Subordinate Legislation Committee. I have received apologies from Gordon Jackson.

I intimate to the committee that the Examiner of Statutory Rules in the Northern Ireland Assembly, Gordon Nabney, is likely to attend our committee meeting of Tuesday 14 May. He is likely to bring with him his clerk, Roisin Fleetham. Members will remember that Gordon Nabney said that he would like to come and see us. We will be pleased to see him. Before the visit takes place, a note will be circulated to members to explain more about Gordon Nabney's job at the Assembly. We look forward to the exchange of information that will result from his visit.

It is now possible for members of the Parliament's committees to appoint substitutes from their parties. I do not know too much about the matter. I do not imagine that there will be huge competition, but members should discuss the matter at party level. Party business managers, who are aware of the new procedure, will expedite the matter.

Executive Responses

Less Favoured Area Support Scheme (Scotland) Regulations 2002 (SSI 2002/139)

The Convener: A good number of points arose on the regulations. We do not need to go through them one by one, but we should send a detailed note to the lead committee and the Parliament about them. In points 1, 2 and 3 of our letter to the Executive, we drew attention to defective drafting. In addition, we raised concern about the vires of the provisions and whether a devolution issue was involved. We also raised the question of the lack of clarity as to the point at which an applicant for the support scheme would be committing a criminal offence or simply not obeying the regulations. We asked for clarity on that point, but we have not received an assurance on it. We should draw that matter to the attention of the lead committee and the Parliament.

Point 6 of our letter raised the question of the unusually limited use of the powers in respect of the provisions for an appeal against ministerial decisions. The regulations specify the number of days inside which an applicant under the scheme has to make an appeal, but nothing is set out about the time limit within which the minister has to reply.

The report to the lead committee and the Parliament should draw out fully all the points that were of concern to the committee. That is because many of the points that were raised with the Executive have not been answered to our satisfaction. Is that agreed?

Members *indicated agreement.*

Police Act 1997 (Criminal Records) (Scotland) Regulations 2002 (SSI 2002/143)

The Convener: We asked the Executive a couple of questions on the regulations. We need to decide whether to draw the Executive's response to the attention of the lead committee and the Parliament.

We asked about the fees that are payable by volunteers for the issue of a certificate. The Executive responded that it does not intend to charge for that. However, the regulations do not say that.

Murdo Fraser (Mid Scotland and Fife) (Con): If the convener reads the Executive response, she will see that the Executive has not said that it will not charge. It has said that it will charge volunteers, but will reimburse the fees.

Colin Campbell (West of Scotland) (SNP): That would seem to be an administratively expensive way of doing business.

The Convener: Apart from that, it is also very confusing. Are fees to be paid or not?

Murdo Fraser: I understand why the Executive has decided to do it that way—it makes sense from the point of view of internal accounting. Perhaps the instrument needs to spell out that there will be no cost to volunteer bodies.

Colin Campbell: Yes.

The Convener: The regulations that apply in England make specific provision to exempt volunteers from having to pay charges. Perhaps the Scottish regulations should do the same thing.

We also asked about fingerprints, which could be taken for identification purposes relating to the issue of a certificate. Once again, the question arises of whether a fee is prescribed. The Executive's response does not make that clear. We should reflect that point in our report. We should draw the attention of the lead committee and the Parliament to those matters.

Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2002 (SSI 2002/147)

The Convener: The Executive has accepted that the explanatory notes to the instrument contain defective drafting. Members will recall that the target figure was increased from 56 per cent to 59 per cent and yet the explanatory note contained a figure of 60 per cent. The Executive said that the mention of 60 per cent in the explanatory note was a mistake. It has owned up. That is fine. We will draw the error to the attention of the lead committee and the Parliament.

Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Scotland) Regulations 2002 (SSI 2002/148)

Food (Peanuts from China) (Emergency Control) (Scotland) Regulations 2002 (SSI 2002/149)

The Convener: Someone who attended last week's meeting as a guest of the committee went out immediately after the meeting and checked the origin of the peanuts that she had purchased from a well-known department store. She found that they were from China. As we went through the instruments last week, it occurred to me that we should study carefully the best-before dates. Indeed, we should do so more carefully than we have done up until now.

There is a question of defective drafting in regulation 4(3) of both regulations, which the Food Standards Agency Scotland has acknowledged. The agency says that it will correct regulation 4(3) at an early opportunity. We asked for an

explanation of the drafting in both regulations. That should be drawn to the attention of the lead committee and the Parliament.

There was also a question as to why powers under section 2(2) of the European Communities Act 1972 were used instead of, as in previous similar orders, the Food Safety Act 1990. I am reading the Food Standards Agency Scotland's response, but I do not understand why it has used the powers under section 2(2).

I am advised that, according to the Food Standards Agency Scotland, section 13 of the Food Safety Act 1990 was not wide enough to enable the provisions. If that is the case, that makes sense and I accept the agency's explanation. I must be confusing that explanation with something else, because it seems fair enough. I hope that I have not misled the committee. We should draw the regulations to the attention of the lead committee and Parliament on the ground that further explanation was required.

Plant Health (Great Britain) Amendment (Scotland) Order 2002 (SSI 2002/164)

The Convener: This is a difficult one. The form of the order was incorrect. We are advised that the instrument, instead of being an order, should have been in the form of regulations. I think that the Executive does not necessarily disagree with us on that matter. The Executive also said that consolidation needs to be done. Members can see from the briefing paper that much consolidation of previous orders needs to be done. We must thank the Executive for saying that it will undertake that consolidation, because it has taken on a pile of work.

The Plant Health Act 1967 does not appear to confer powers to remake or amend orders made under that act. The Executive has said that it should have used the 1967 act. Is that right? Did the Executive use section 2(2) of the European Communities Act 1972?

I am advised that that is the case. The Executive says that it should have used the 1967 act. We think that the Executive is right, so we will be saying, "Yes, we agree with you." Excuse me, I will need to take advice from the legal adviser on the matter.

I am advised that the Executive owned up and said, "We think that we were wrong to use section 2(2). We should have used the Plant Health Act 1967." However, our advice is that, in this instance, the Executive was probably right to use section 2(2) instead of the 1967 act. I think that we should just tell the Executive that. They must decide. We should just say, "We think that you were quite right to do as you did. Thank you very much for attending to the matter as quickly as you

have and agreeing to consolidate the regulations so that the next time they come back we will understand them.”

Scottish Water (Rate of Return) (Scotland) Order 2002 (SSI 2002/165)

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): We felt that some definitions were not terribly clear to the lay person. In essence, the Executive's response is saying, "You are quite right. They were not particularly clear to the lay person, but we know what they mean and that'll be all right on the night."

The Convener: That will be all right. We should say, "Thank you very much. We are glad that you know what they mean." When I read the Executive's response, it seemed reasonable enough. We queried terms with which we were not familiar.

Two points have been raised. There is defective drafting.

Murdo Fraser: The order has a definition of "accounts direction" that should have been removed. The Executive accepts that not doing so was an error.

The Convener: Yes. We will draw that to the attention of the lead committee and the Parliament.

Water Industry (Scotland) Act 2002 (Consequential and Savings Provisions) Order 2002 (SSI 2002/166)

11:30

The Convener: Again, there are questions on defective drafting, as noted in points 1, 2 and 4 of the briefing paper, and there is a failure to follow proper drafting practice, which is dealt with in points 3 and 5. We will just notify the lead committee and the Parliament about this.

Ian Jenkins: The Executive has been quite gracious in acknowledging the points that we made.

The Convener: Yes.

Water and Sewerage Charges (Exemption) (Scotland) Regulations 2002 (SSI 2002/167)

The Convener: We raised three points on the regulations with the Executive. We were not sure whether we were touching on policy.

Ian Jenkins: We felt that if people made even a slight mistake in filling in their forms, there appeared to be a total loss of subsidy, which would be a dangerous thing. We thought that that was too strict. However, the Executive has pointed

out that people can resubmit their application under regulation 8. An error might, therefore, hold things up a bit, but it would not prevent people from getting their subsidy.

The Convener: We said that no distinction was drawn between a possible simple misunderstanding and a wilful attempt to defraud. However, if someone has to resubmit, that distinction does not matter.

Question 2 of the briefing paper concerns the explanatory note, which was defectively drafted. The explanatory note says that the regulations are made under sections 40 and 68(2) of the Water Industry (Scotland) Act 2002. However, the preamble states that the regulations are made under section 40 alone. We asked the Executive why section 68(2) has not been cited as an enabling power in the regulations. The Executive says that the regulations do not refer to section 68(2) because the Executive did not use that power. Section 68(2) is a general "sweeper" power that permits instruments under substantive power to contain, among other things, incidental and supplementary provisions. We probably agree with the Executive that citing section 68(2) is not strictly necessary.

The committee also asked the Executive to justify the vires of the degree of sub-delegation to Scottish Water in regulation 8(b). The Executive has given us a well-researched and thoughtful response. It must have been referring to Bennion's "Statutory Interpretation", which, I am told, is something that we must all read.

Murdo Fraser: Convener, I think that you should read it and précis it for the rest of us.

The Convener: Yes, okay.

Colin Campbell: On an A4 sheet.

The Convener: Seemingly, Bennion's "Statutory Interpretation" is the answer to everything. I really must ask for it for Christmas. Right. There is nothing more on the regulations, other than that we should draw them to the attention of the lead committee and the Parliament.

Instruments Subject to Annulment

Loch Ewe, Isle of Ewe, Wester Ross, Scallops Several Fishery (Variation) Order 2002 (SSI 2002/185)

The Convener: We have not come across this sort of thing before. We should ask the Executive why there is no reference to article 2(6) of the order in either the explanatory note or the Executive note, given the reservation in paragraph 2(3) of part 1 of schedule 5 to the Scotland Act 1998, which provides the authorisation for article 2(6). There are other small items that we may wish to ask about.

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): We should proceed as suggested.

The Convener: No, there is more to this. Since this is about small business—*[Interruption.]* Brian, honestly, we will get through this quickly, but these scallops are important.

Brian Fitzpatrick: I am just trying to suppress—

The Convener: Are you trying to work out what it is about?

Brian Fitzpatrick: No, I am just trying to suppress my admiration.

The Convener: The order is about people who are involved with a small business venture that grows scallops. They have to get permission to do that. The question arises, if they have permission to do that under the order, what happens if they die?

Colin Campbell: In this case, the person is Mrs Jane Hardman or Grant.

Ian Jenkins: A few weeks ago, we were interested in an instrument that named individuals. This order provides another example of that, but in this case it names an individual who has a license under the order. It occurred to me that if an individual is named in an order, what happens if they die suddenly? I am sure that there is an explanation; I just wonder what it is, because it is unusual for an individual to be named as the sole person with the right to the fishery. I am sure that the matter can be dealt with legally; it just occurred to me that this is an interesting point.

The Convener: There are one or two matters that we may want to inquire about, although they are obscure. The order removes a reference to the granting of consent by the Crown Estate commissioners, in the Loch Ewe, Isle of Ewe, Wester Ross, Scallops Several Fishery Order 1997 (SI 1997/830)—the 2002 order is an amending order. We should ask why that is the case, because it is important.

Little Loch Broom Scallops Several Fishery Order 2002 (SSI 2002/186)

The Convener: The order is fine.

Colin Campbell: It is the same as the previous order—it mentions one guy.

Road Traffic (Permitted Parking Area and Special Parking Area) (City of Glasgow) Designation Amendment Order 2002 (SSI 2002/187)

Road Traffic (Permitted Parking Area and Special Parking Area) (City of Edinburgh) Designation Amendment Order 2002 (SSI 2002/188)

The Convener: I do not drive, so these do not concern me.

Murdo Fraser: I do, and I park in Edinburgh frequently.

Brian Fitzpatrick: Do you park on the right?

Murdo Fraser: Usually.

There is nothing wrong with the orders—they are in order—but the explanatory notes are less than clear. It is impossible to tell from the orders and the notes what they are designed to do. All that the orders say is that they make a

“modification ... with regard to when a penalty charge is payable.”

It would be helpful if the orders told us what they seek to achieve.

The Convener: It is part of the rules, is it not, that the explanatory note should say what the instrument is about. In this case, we have defective drafting of the explanatory notes.

Murdo Fraser: Yes.

Colin Campbell: They are vague; they are not explicit.

The Convener: I did not have a clue what they meant.

Bill Butler (Glasgow Anniesland) (Lab): They are not as clear as they should be.

The Convener: We will draw that to the attention of the Executive and the lead committee. We will ask why neither the explanatory notes nor the Executive notes comply with the requirement to be written in understandable English.

Adults with Incapacity (Ethics Committee) (Scotland) Regulations 2002 (SSI 2002/190)

The Convener: Apart from a small typo, the regulations are fine.

**Artificial Insemination of Cattle
(Animal Health) (Scotland) Amendment
Regulations 2002 (SSI 2002/191)**

Brian Fitzpatrick: The regulations are fine.

**National Health Service
(General Dental Services) (Scotland)
Amendment Regulations 2002
(SSI 2002/192)**

The Convener: No points arise on the regulations.

**Instruments Not Subject to
Parliamentary Control**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (West
Coast) (No 2) (Scotland) Order 2001
Revocation Order 2002 (SSI 2002/182)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 2) (Scotland) Revocation
Order 2002 (SSI 2002/183)**

The Convener: It is the shellfish again, God bless them.

Colin Campbell: We welcome the revocations.

**Instruments Not Laid Before the
Parliament**

**Marriage (Scotland) Act 2002
(Commencement) Order 2002
(SSI 2002/184)**

The Convener: Oh, here is the Marriage (Scotland) Act 2002 (Commencement) Order 2002. The Executive must have worked out where marriages can take place.

Brian Fitzpatrick: Had the act commenced earlier, my sister-in-law's wedding could have taken place as planned.

The Convener: Do you want us to send a formal letter or an informal letter to the Executive?

Murdo Fraser: Is that a criticism of the Executive?

Brian Fitzpatrick: She is now having a humanist service, preceded by a civil marriage, because she could not have her marriage service where she wanted to have it. I add that to show that sometimes we want to make progress.

The Convener: Brian, we are delighted, but what do you want us to do about it?

Brian Fitzpatrick: I just thought that it would be a nice note on which to end.

The Convener: Do you feel better now that you have said that?

Brian Fitzpatrick: I do, and I will point my sister-in-law to the *Official Report*.

Colin Campbell: And he will too.

The Convener: So the Marriage (Scotland) Act 2002 (Commencement) Order 2002 is passed, signed, sealed and delivered.

Brian Fitzpatrick: And Andrea can get married.

**Adults with Incapacity (Scotland) Act 2000
(Commencement No 2) Order 2002
(SSI 2002/189)**

The Convener: No points arise on the order.

Thank you for your attendance.

Meeting closed at 11:42.

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