

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 14 May 2002
(Morning)

Session 1

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SUBORDINATE LEGISLATION COMMITTEE

16th 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)

*Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab)

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

*Gordon Jackson (Glasgow Govan) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

Tommy Sheridan (Glasgow) (SSP)

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 14 May 2002

(Morning)

[THE DEPUTY CONVENER *opened the meeting at 11:15*]

The Deputy Convener (Ian Jenkins): Welcome to the 16th meeting this year of the Subordinate Legislation Committee. I have received no apologies. Before we start on the agenda, I welcome to the meeting Mr Gordon Nabney, who is the Examiner of Statutory Rules in the Northern Ireland Assembly, and Roisin Fleetham, an assistant clerk in the Assembly who deals with primary legislation. They are here to observe our procedures, which are largely similar in function to the Assembly's, but differently organised. Mr Nabney is a walking, one-man subordinate legislation committee. He looks as if he is thriving on it.

Delegated Powers Scrutiny

School Meals (Scotland) Bill

The Deputy Convener: The first item of business is scrutiny of the delegated powers in the School Meals (Scotland) Bill, which has been introduced by Tommy Sheridan. We welcome Tommy to the meeting. As the instigator of the bill, he is entitled to take part in any meetings that deal with it.

We all know the purpose of the bill. What we must do is consider its subordinate legislation provisions. Our legal advice is that there appear to be no real difficulties with the bill's subordinate legislation procedures. However, we might want to ask Tommy why the definition of a nutritious meal is not included in the bill, but is being assigned to subordinate legislation and guidance. The Subordinate Legislation Committee often asks for matters to be included in a bill, when the Executive does not want to go into detail. Therefore, I ask Tommy Sheridan to explain why the definition of a nutritious meal is not included in the bill.

Tommy Sheridan (Glasgow) (SSP): First, I emphasise that the free meal being nutritious is central to the bill. The fact that the bill does not define a nutritious meal should in no way be seen as an attempt to undermine that important aspect. The lack of such a definition is simply a recognition that we do not feel qualified to define a nutritious meal.

Also, we do not want to second-guess the consultation that will result from what we have written in to the bill. The Executive will be required to consult not just nutritional experts, education departments or parents, but pupils as well. We have tried to include in the bill a requirement for specific bodies to be consulted on the definition of a nutritious meal.

If we had included that definition, then frankly, there would have been much debate about whether the protein and fat content of the meals was high enough, et cetera. We would much rather have such debates after we have won the principle of the provision of healthy school meals. The nutritional aspects of the meals can then be worked out in consultation with the relevant bodies that are mentioned in the bill.

The Deputy Convener: Does anyone want to comment on that or ask Tommy questions?

Gordon Jackson (Glasgow Govan) (Lab): I wonder about using regulations to require milk and water to be made available with the nutritious meals. I am concerned only about the technical side of the bill, not about the policy. However, would the requirement to provide milk and water not be included within the nutritious meal requirement?

Tommy Sheridan: We want the requirement to provide milk and water to be a separate provision. The meal being nutritious is one aspect, but we want milk and water to be made available as well. However, we must also take on board cultural, religious and health aspects. For example, a small minority of children is allergic to dairy products and things of that character. Therefore, consultation on such aspects must be part of the whole consultation process.

Gordon Jackson: So the requirement to provide milk and water would be included in regulations.

Tommy Sheridan: Yes.

The Deputy Convener: Is everyone satisfied that those are the only questions that we have for Tommy and that, as the legal advice suggests, no other elements of the subordinate legislation in the bill as drafted worry us?

Murdo Fraser (Mid Scotland and Fife) (Con): I think we can be satisfied with the bill as it stands.

The Deputy Convener: Okay. Thanks, Tommy.

Tommy Sheridan: Thanks very much.

Executive Responses

Marriage (Approval of Places) (Scotland) Regulations 2002 (draft)

The Deputy Convener: We had many questions on the draft regulations for the Executive and it has given us a full response. Without going into detail, we can say that the Executive has supplied the further explanation that we asked for on points 1, 5, 7 and 10 from last week's legal briefing on the draft regulations.

On our points 2, 3, 8 and 9, the Executive has acknowledged that there was defective drafting.

I am sorry, that is my mistake. The Executive acknowledged defective drafting only in respect of point 9, but not in respect of points 2, 3 and 8. Therefore, we still have reservations about drafting and want to draw that to the attention of the lead committee and the Parliament. We might also want to air doubts about the Executive's response to point 4.

Gordon Jackson: I am sorry, convener. Can I have a copy of the regulations? I have all the other documentation, but not the regulations. That is my fault. [*Interruption.*] Sorry, convener. We can go on.

The Deputy Convener: In question 4 to the Executive, we drew its attention to our worries about the vires of regulations 7(4), 15(2)(c) and 17(2), which require a local authority to refuse to grant an approval and entitle it to revoke or suspend an approval if it is satisfied that the applicant is not

"a fit and proper person."

The bill is about the approval of places. We wonder whether it is ultra vires for the regulations to refer to approving people. Perhaps members would like to expand on that point.

Colin Campbell (West of Scotland) (SNP): I do not think that it is our function to pass judgment on individuals who choose to get married or on where they choose to get married. The provision of the approval of persons seems superfluous.

The Deputy Convener: Are there any other comments?

Bill Butler (Glasgow Anniesland) (Lab): I emphasise that the bill's policy was to license places rather than people. This provision seems to be to the contrary, which is rather strange.

The Deputy Convener: The bill was passed by Parliament on the basis that its policy was the approval of places. This provision seems to be unusual and possibly ultra vires.

Gordon Jackson: Who is the applicant to which the regulations refer? Who applies? Is it people who want to get married? Or could it be the owner of premises?

The Deputy Convener: It might be the owner of premises. I think that that might be right.

Colin Campbell: It is perhaps a case of doubt being cast on the integrity of the owner of premises or on their record.

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): In case they are a bad person.

Gordon Jackson: Who applies? If I want to get married, do I apply for a place to get married? Do I apply if I own a place where I think that people would like get married—such as the top of Ben Nevis?

Murdo Fraser: It is both. If you owned a country house hotel and you regularly had weddings, you would be the applicant. However, if you wanted to get married on Arthur's Seat, you would apply for a one-off licence.

Gordon Jackson: There must be a case for being able to knock back an application in the former situation. If some rascal decides to buy somewhere that he can market as a marrying place, why would the local authority not be entitled to knock him back if he is somebody who should not be let into that market?

The Deputy Convener: Regulation 2 talks about applicants. Regulation 2(1) says:

"An application for a period approval may, following the procedures set out in regulation 3, be made to the authority by any person."

Regulation 2(2) says:

"An application for a temporary approval may, following the procedures set out in regulation 4, be made to the authority by either of the parties to an intended civil marriage in respect of any place which at the time of the application does not have a period approval, other than one that will expire before the date of the intended civil marriage."

Gordon Jackson: That means that somebody can say, "That looks like a nice place for folk to have weddings in. I'll buy it, apply for a period licence, and put an advert in *The Herald* saying: 'How would you like to get married here?'" If they are not a good person to get into that market—

The Deputy Convener: Who is to decide whether they are a good person?

Gordon Jackson: Who decides anything? People apply for licences all the time. They apply for pub licences, shotgun licenses and public entertainment licences. There is always a provision that says that the licensing authority does not have to license people if it does not consider them to be fit and proper.

Murdo Fraser: The point is that there is no provision in the parent act for the approval of persons, only for the approval of places.

The Deputy Convener: That is correct. The enabling act talks about place. We will draw to the attention of the lead committee and the Parliament our doubts about the vires and leave it to them to deal with. That is the procedure that we should follow.

Gordon Jackson: Presumably, if somebody applied and was knocked back on the basis of the regulations, they could make an application to the courts that the power was ultra vires. Good luck to them.

The Deputy Convener: There are provisions for appeals in the Marriage (Scotland) Act 2002.

We will consider point 6 briefly. It concerns poor drafting in relation to regulation 13(4). The legal advice on that is that we should draw it to the attention of the lead committee.

Point 11 concerns paragraph 6 of the schedule. That is also a matter that we can draw to the attention of the lead committee and the Parliament. The provision is not terribly clear. It deals with food and drink in the area of and at the time of the wedding. There is a restriction on the availability of food and drink at and around the place and time of the wedding. Does anybody have anything further to say on that?

Brian Fitzpatrick: Apart from the fact that it is terribly Scottish?

Murdo Fraser: The point is that, if somebody gets approval for a wedding in a public park, for example, and people are out picnicking, how on earth can they get married if they have to wait for an hour until after people have finished their picnics?

11:30

Gordon Jackson: I was in San Diego at new year. People get married all the time in the park and on the beachfront. We walked about and saw weddings. They were quite big weddings—40 or 50 people. People just come out, pop up a canopy, set out the chairs and get a wee band. The minister was there. People were getting married on a big esplanade or in a public park in La Jolla, which is just up from San Diego. I went up to people who were watching and asked how often it happens. They said that it happens three or four times every weekend. We stood and watched them.

Colin Campbell: Do people eat chips round about them?

Gordon Jackson: Absolutely. People go about their normal lives. The weddings were proper

ones, with the full gear and the whole set-up. It was wonderful because it was really friendly and looked nice. It can be done.

Brian Fitzpatrick: Will it transfer to Girvan?

The Deputy Convener: In legal terms, we may feel that paragraph 6 of the schedule is an unexpected or unusual use of the enabling power as applied to a place in the open air. The Executive's intention is clearly to try to maintain some sort of solemnity and dignity, but perhaps it is a triumph of hope over experience.

We will draw that to the attention of the lead committee.

Instruments Subject to Annulment

Adults with Incapacity (Medical Treatment Certificates) (Scotland) Regulations 2002 (SSI 2002/208)

The Deputy Convener: The enabling power for the regulations does not specify who is to make the regulations to which that power refers. We may want to consider asking the Executive whether it has anything to add to its previous observations on that point, as such issues have already arisen on other instruments made under the Adults with Incapacity (Scotland) Act 2000. Section 87(1) of that act defines "prescribed" to mean prescribed by regulations, but neither that section nor section 47(5), which is the enabling power for the regulations, states directly who should make the regulations. That is problematic.

We will ask the Executive whether it wants to say anything. I suspect that it will just come back with the same comments that it has made on other instruments under the parent act, but we should draw that to the Executive's attention.

Registration of Fish Farming and Shellfish Farming Businesses Amendment (No 2) (Scotland) Order 2002 (SSI 2002/220)

The Deputy Convener: No points arise on the order.

Instruments Not Subject to Parliamentary Control

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 3) (Scotland) Revocation Order 2002 (SSI 2002/218)

The Deputy Convener: The instrument is a revocation order under the Food and Environment Protection Act 1985. It is in the normal form and no points arise on the order.

Meeting closed at 11:33.

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