

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 1 October 2002
(Morning)

Session 1

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SUBORDINATE LEGISLATION COMMITTEE

27th 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)

COMMITTEE SUBSTITUTES

Jackie Baillie (Dumbarton) (Lab)

Mr Kenny MacAskill (Lothians) (SNP)

Mr Brian Monteith (Mid Scotland and Fife) (Con)

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

*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 1 October 2002

(Morning)

[THE CONVENER *opened the meeting at 11:26*]

The Convener (Ms Margo MacDonald): Welcome to the 27th meeting in 2002 of the Subordinate Legislation Committee. We have received apologies from several members of the committee as our authority spreads all over the globe. Gordon Jackson is between engagements and probably suffering from jet lag. We expect to receive a fascinating report from him on the conference that he and Alasdair Rankin, the committee clerk, attended in Toronto. Before they went, we discussed what the committee might benefit from hearing about and Alasdair Rankin tells me that there were aspects of the conference that will be of general interest to the committee.

Brian Fitzpatrick is setting the heather on fire at the Labour conference in Blackpool. He is probably defending the private finance initiative as well, but that is up to him.

Ian Jenkins is somewhere in Kashmir. We hope to hear from him again.

Colin Campbell (West of Scotland) (SNP): Is he at a Liberal Democrat conference?

The Convener: Liberals loose in the hills of Kashmir—oh dear, what a worrying thought.

Bill Butler has also sent apologies this morning, as he is unable to make the meeting.

Delegated Powers Scrutiny

Water Environment and Water Services (Scotland) Bill: Stage 1

The Convener: We raised a number of points with the Executive on the bill. We discussed the designation of river basin districts, which is dealt with in section 4(1). We felt that the Parliament or the lead committee might wish to approve a designation in a way that was more positive than that which the Executive suggested. We asked the Executive to indicate precisely how the designation procedure for river basin districts will be conducted.

We noted that section 4(5) places a statutory duty on the Scottish ministers to send a copy of the designation order to the Scottish Environment Protection Agency and wondered why that should be, as there is a similar requirement in section 6(3). We also asked the Executive to review whether it would be desirable to include a provision for prior consultation on any order made in exercise of the power.

The Executive has replied that it intends to consult before any order is laid before the Parliament. It says that that will enable all parties to have their say about where the boundaries of the river basin districts should lie. Given that it has given us the undertaking about consultation, the Executive believes that a statutory provision requiring prior consultation would be unnecessary. We must decide whether we agree with the Executive on that point and inform the lead committee.

Colin Campbell: Do we want to take the Executive's word, or suggest that a provision for prior consultation be included in the bill?

11:30

The Convener: If Gordon Jackson were here, he would ask why the Executive could not simply put the provision in the bill. However, in this case, I am not certain whether that would be necessary.

The reply commits the Executive to undertaking certain actions as regards consultation. It might be that having that commitment on record gives the lead committee something against which to measure how the power is executed, and that that is sufficient.

Colin Campbell: Our summary of the Executive's response says clearly:

"Only once that consultation has taken place will Ministers lay an order before the Parliament."

I suppose that that covers it.

The Convener: Okay. Do we agree to bring our decision to the attention of the lead committee?

Members indicated agreement.

The Convener: We told the Executive that we thought that the designation order should be subject to affirmative resolution rather than subject to annulment. In order to be consistent with our previous advice, we should inform the lead committee that we have always taken the view that orders such as this should be subject to affirmative resolution. Is that agreed?

Members indicated agreement.

The Convener: We asked the Executive about section 10(2)(b), which deals with the content of the river basin management plans, which—God save us—are called RBMPs. We believed that this was one of the most contentious of the delegated powers in the bill.

The problem is that the criteria that are set out in part 1 of schedule 1 only partly reproduce annexe VII of the water framework directive, which section 10 purports to implement. The annexe is specific and lengthy and does not appear to allow for modification. It also contains many more mandatory conditions than are listed in schedule 1 to the bill. Some people might say that it would have been clearer either to list all the conditions contained in the annexe, or to list none.

The section 10(2)(b) power seems to confer a wider discretion on the Executive than appears to be authorised by the directive. It might not, though. Perhaps it is just the way that it reads. However, because there is confusion about the matter and because of the way in which the Executive has reproduced the annexe, we asked for an explanation.

In its response, the Executive says that, if all the requirements of the annexe had been listed, it would have been in danger of having to import a long list of definitions of the various defined concepts used. The Executive considers that that level of detail is better left to regulations. I think that that is probably right, but the fact remains that the Executive has not explained why it selected those items that are listed in schedule 1. How did it choose which of the items from annexe VII of the directive to include? That is not necessarily a matter for this committee, as technically the Executive has done nothing wrong. However, the reasons for its choice and the balance that that produces might be of interest to the lead committee. Therefore, we will perhaps draw the matter to the attention of the lead committee and say that it can question the Executive on the balance in the list. It is not a matter for the Subordinate Legislation Committee.

Murdo Fraser (Mid Scotland and Fife) (Con): So we should just mention the matter in our report.

The Convener: Yes.

Murdo Fraser: Fine.

The Convener: It is a European Parliament and Council directive and it will not be the last. The same sort of thing could happen again.

Colin Campbell: Some of the items not listed in schedule 1 might be controversial; that might be a background aspect.

The Convener: You might say that, but I could not possibly do so.

Colin Campbell: No, you could not, because you are the convener.

The Convener: That is right.

Our next question was on section 20(1), on the regulation of controlled activities. We asked the Executive whether it could explain why it did not choose to have just a rule-making power, rather than regulations that specify rules. The Executive replied that it proposes to lodge an amendment at stage 2 to include a mechanism for upgrading the maximum penalty in schedule 2. That is fine. The Executive has agreed with us. There is nothing else on that.

The fourth question that we put to the Executive was on section 22(1), on remedial and restoration measures. We were not clear about how the power in section 22(1) could be used to amend primary legislation. The Executive has thanked us for highlighting the error in the subordinate legislation memorandum and will lodge an amendment at stage 2 to amend section 31. We will wait until we see how the Executive does that before we say anything more about that matter.

Members indicated agreement.

The Convener: Our fifth question for the Executive was on section 23(1), on the charges for water services. Obviously, we start getting interested at this point. Article 9 of the water framework directive appears to allow a considerable amount of discretion to member states. However, charging is potentially controversial and we asked the Executive whether there should be a statutory requirement for prior consultation. That is the sort of thing that the Subordinate Legislation Committee asks the Executive.

The Executive thought about the matter and proposes to lodge an amendment at stage 2 to make any regulations made under section 23(1) subject to a statutory requirement for prior consultation. I would say game, set and match to the Subordinate Legislation Committee.

Colin Campbell: It is good to know that we can effect Executive changes.

The Convener: Yes—excellent. It is good that the Executive decided straight out to make that change.

Our sixth question for the Executive was on section 24(1), on the power to give effect to community obligations. Again, we queried the power. The Executive replied that in view of our comments it will lodge an amendment at stage 2 to make any regulations made under section 24(1) subject to the affirmative procedure.

Colin Campbell: Game, set and match again.

The Convener: That is good.

Our seventh question for the Executive was on section 33(1), on the commencement provision. We asked whether the Executive was satisfied that it had taken sufficient powers for the purpose of a staged commencement, if that were required. The Executive replied that a staged commencement is likely to be required and it reckons that it has sufficient powers. If the Executive is happy, we are happy. That is all on the Water Environment and Water Services (Scotland) Bill.

Members indicated agreement.

Title Conditions (Scotland) Bill: Stage 1

The Convener: The bill forms the second part of the Executive's programme to reform the land law of Scotland. The Abolition of Feudal Tenure etc (Scotland) Act 2000 abolished the feudal system of landholding. The Title Conditions (Scotland) Bill will complete the process by providing a restatement and clarification of the law relating to conditions—known as “real burdens”—that run with the land, independently of ownership. The bill will make it easier to vary or discharge outdated burdens.

You are on, Murdo.

Murdo Fraser: The bill is vitally important for our property lawyers and anybody who owns property, although it may appear to be esoteric. I think that the committee should say that it is welcome that, unlike so much of the legislation that is generated by the Executive and comes our way, there is little in the bill that is to be dealt with by subordinate legislation. The matters that are to be dealt with by subordinate legislation tend to be technical matters that are properly dealt with by such legislation. All the important matters of substance are in the bill. That is a welcome development. The bill is a model bill from that point of view.

The Convener: Just out of interest, is it an old-fashioned bill?

Murdo Fraser: That depends on whether you take the view that having skeletal bills in which everything is dependent on subordinate legislation is a modern development.

The Convener: Oh, we know that that is modern, but is it advisable? Most of the time the Subordinate Legislation Committee says no. Therefore, we welcome the bill. Does the committee have any concerns about the bill?

Murdo Fraser: There is just one point of concern, on section 37(6). That subsection deals with conservation burdens, which is a technical point. However, it might be worth going back to the Executive on section 37(6), which gives power to the Executive to determine that a body shall cease to be a conservation body. Given that the Executive has an implied power to amend or revoke the regulations, we wonder why the power in section 37(6) is necessary.

The Convener: We will ask the Executive. Is there anything more?

Murdo Fraser: Apart from that, the use of delegated powers appears to be acceptable.

The Convener: Right. We will move on now to the stuff that we love.

Draft Codes

Codes of Recommendations for the Welfare of Livestock: Animal Health and Biosecurity (SE/2002/273)

The Convener: The codes reflect the recommendations of a number of reports on infectious diseases in livestock and lessons learned from the recent foot-and-mouth outbreak. The codes are intended to promote heightened animal disease surveillance and biosecurity measures on farms. This is the stuff of good administration.

Murdo Fraser: It is.

The Convener: There are a number of typos, which of course cannot pass without comment. The Executive might be good at keeping bugs off the farm, but can it spell?

Murdo Fraser: There is also a missing reference in annexe A.

The Convener: Is it a possible or a definite missing reference? We do not know. We had better query the Executive about it.

Instruments Subject to Annulment

Scottish Secure Tenancies (Exceptions) Amendment Regulations 2002 (SSI 2002/434)

Colin Campbell: No points arise on the regulations.

The Convener: The regulations have been made to come into force on the same day as the defective instrument and therefore break the 21-day rule. However, the Executive has moved swiftly to correct the mistake and, in the circumstances, I do not think that we ought to take the Executive to task over that.

National Health Service (General Medical Services) (Scotland) Amendment Regulations 2002 (SSI 2002/438)

Colin Campbell: No points arise on the regulations.

The Convener: The regulations add to the list of substances that are not to be supplied or prescribed by general practitioners under the NHS. I hope that that does not mean pills. Do the regulations mention the products that are to be added to the list?

Murdo Fraser: The products are mentioned in the regulations.

The Convener: What are they?

Murdo Fraser: Cow & Gate Nutriprem 2 and Farley's Premcare are to be deleted from the list.

The Convener: These are interesting regulations.

Murdo Fraser: Other unpronounceable products are to be added.

The Convener: As long as Mogadon is still available, that is okay.

Instruments Not Laid Before the Parliament

Land Registration (Scotland) Act 1979 (Commencement No 16) Order 2002 (SSI 2002/432)

11:45

The Convener: There is a question of whether we should draw the Executive's attention to a matter.

Murdo Fraser: The Land Registration (Scotland) Act 1979 is now fully in force across the whole country. All the remaining counties have been included. Perhaps the Executive should have said in the explanatory note that the act is now operational in every county in Scotland.

The Convener: No points of substance arise on the order, but we could tell the Executive what you suggest in an informal letter. What does an informal letter mean—that we do not have to put a stamp on it?

Alasdair Rankin (Clerk): If the committee mentions something informally to the Executive, that means that the point is a minor one to which the committee will not return.

Housing (Scotland) Act 2001 (Commencement No 6 and Amendment) Order 2002 (SSI 2002/433)

Colin Campbell: No points arise on the order.

Freedom of Information (Scotland) Act 2002 (Commencement No 1) Order 2002 (SSI 2002/437)

Murdo Fraser: No points arise on the order.

The Convener: That brings us to the end of the meeting. Members are free to go, but I expect them to be back in their places at the same time next week.

Meeting closed at 11:47.

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