

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 29 October 2002
(Morning)

Session 1

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SUBORDINATE LEGISLATION COMMITTEE

29th 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 29 October 2002

(Morning)

[THE CONVENER *opened the meeting at 11:33*]

The Convener (Ms Margo MacDonald): I welcome everyone to the 29th meeting in 2002 of the Subordinate Legislation Committee. We have received apologies from Murdo Fraser, who is doing something in the constituency. He did not say what he was doing—sooking up to somebody no doubt, as that is what we all do.

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): In whose constituency is he doing something?

The Convener: He has one, but I do not know what it is called. Is it Fife? You are not sounding very new Labour today, Brian.

Colin Campbell (West of Scotland) (SNP): Fife is a regional constituency.

Brian Fitzpatrick: I have never been a fan of proportional representation.

The Convener: We must pursue this matter later.

Brian Fitzpatrick: At a subordinate meeting.

The Convener: We might have a lot in common on that, but we will stick to the agenda as it is.

Delegated Powers Scrutiny

Protection of Children (Scotland) Bill: Stage 1

The Convener: The committee drew the points that we made on the bill to the Executive's attention and the response means that we do not want to pursue them any further. Are we agreed?

Members indicated agreement.

Mental Health (Scotland) Bill: Stage 1

The Convener: The bill is big and, I am told, the most important bill that the Parliament has considered so far. Because of that, because the committee will want to raise a number of questions concerning the European convention on human rights, apart from anything else, and because there has been such controversy about the medical treatment of those with mental illness, we should summarise our questions on aspects of the bill, ask the Executive for its answers and indicate that we want to take evidence.

Are we agreed?

Members indicated agreement.

Brian Fitzpatrick: Will the evidence be from the Executive?

The Convener: Yes.

Gordon Jackson (Glasgow Govan) (Lab): Is the plan that we will have the Executive's written answers this week so that we can consider them over the weekend and decide what issues we still want to pursue? There will almost certainly be issues, but we will see them over the weekend. Is that correct?

The Convener: The Executive has indicated that it appreciates that there are issues, given the nature of the bill. The plan is that we will have for weekend study the answers from the Executive to the points that we put to it.

Gordon Jackson: Do we anticipate that we will tell the Executive before Tuesday what we will ask about, or will the Executive officials just have to come prepared for anything?

The Convener: I think that we will tell the Executive. The bill is too serious to try to go for bear traps. We just want to discuss with the Executive its reasoning and any questions and reservations that we may have.

Gordon Jackson: Will there be a mechanism whereby we let the Executive know—or let you know and you let the Executive know—before Tuesday what issues we have identified?

The Convener: You can let me know, I will let the clerk know, and he will let the Executive know.

Gordon Jackson: Should we try to do that by Monday?

The Convener: Yes.

Brian Fitzpatrick: Is Gordon Jackson suggesting a series of interrogatories?

Gordon Jackson: We will write to the Executive with perhaps 40 questions and it will give us as many answers from which we might then identify half a dozen issues. We just want to tell the Executive which areas we want to discuss. The committee members undertake to flag up by Monday the issues that we think should be raised. We will arrive at some consensus and the clerk can tell the Executive which issues we will raise.

The Convener: I have already made a rough selection, but members may well have other issues.

Gordon Jackson: That is helpful.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): A lot of the issues are about principles such as how much scrutiny there should be and whether measures should be in the bill. There is a pattern to the questions that we are likely to ask. That will become clear to the Executive, which probably knows the kind of territory that we will explore.

The Convener: I will ask the clerks to inform the Executive of the issues that we will raise.

Executive Responses

Products of Animal Origin (Third Country Imports) (Scotland) Regulations 2002 (SSI 2002/445)

The Convener: The committee should draw the attention of the lead committee and the Parliament to the regulations for a couple of reasons. First, the reason that the Executive advanced for the breach of the 21-day rule was, in this case, honest, if novel: the officials concerned were on holiday. That is not a good enough reason, so we will mention it in passing. We understand that everybody needs holidays, but bovine problems go on. There is also defective drafting on some points, which the Executive has acknowledged in part.

Do we agree to draw that to the attention of the lead committee and the Parliament?

Members indicated agreement.

Ian Jenkins: The Executive has also promised to make amendments as soon as possible in the light of our comments. That is good.

Draft Instruments Subject to Approval

Legal Aid (Scotland) Act 1986 Amendment Regulations 2002 (draft)

Bill Butler (Glasgow Anniesland) (Lab): The regulations are fine.

Instruments Subject to Approval

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 13) (Scotland) Order 2002 (SSI 2002/465)

The Convener: We are back to amnesic shellfish poisoning. There is no map with the order.

Colin Campbell: Is that an accident or a new precedent?

The Convener: The Executive thinks that members have already committed to memory the maps that we have had with every other such order that has been before us. However, if we do not know what the map looks like by now, we will ask the Executive to ensure that the next such order has an accompanying map. Will that do?

Colin Campbell: That is fine.

Instruments Subject to Annulment

Bovines and Bovine Products (Trade) Amendment (Scotland) Regulations 2002 (SSI 2002/449)

The Convener: A question of asterisks arose on the regulations. The schedule to the regulations, which inserted new schedules 1, 2 and 3 into the principal regulations, seemed to have missing footnotes. The headings for the second and third columns in each inserted schedule had an asterisk, but with no explanation as to what that symbol meant. The principal regulations contain a footnote that says:

“ * To be completed in respect of each approval”.

The committee suggested that perhaps a similar footnote should have been included in the amendment regulations.

The Executive advises that each of the regulations in the principal regulations that refers to schedules 1, 2 and 3 makes it clear that the requirements of columns 2 and 3 in the schedules have to be met. In practice, during the approval process, the Executive requests the information in relation to columns 2 and 3 of the respective schedules from the applicant. That request is made by providing forms based upon the respective schedules and accompanied by guidance notes on how to complete the forms.

Does everybody follow me so far?

Brian Fitzpatrick: I was waiting for Reggie Perrin to come through the door. [*Laughter.*]

The Convener: We are laughing about it, but the presence of the asterisk is misleading. It is incumbent on us to draw the instrument to the attention of the lead committee and the Parliament. Are we agreed?

Members indicated agreement.

Brian Fitzpatrick: Was the asterisk unsupported?

The Convener: I think that it had inverted commas round it.

Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (Scotland) Regulations 2002 (SSI 2002/450)

The Convener: The Executive has acknowledged the defective drafting. We should simply draw the regulations to the attention of the lead committee and the Parliament. The Executive has said that it will introduce an amending instrument to delete the references to section 6 of

the Road Traffic Regulation Act 1984 in regulations 6 and 7. That appears to dispose of the matter satisfactorily.

Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2002 (SSI 2002/451)

The Convener: No points arise on the instrument. However, it is interesting that the regulations relate to

“disabled person's badges issued in Northern Ireland or any member State”.

In this instance, Northern Ireland gets to issue its own badge, but we do not get to do that. That is a shame.

Brian Fitzpatrick: Northern Ireland has always had separate social security provisions.

The Convener: Och, you are being so pedantic. I feel that a saltire would be nice.

Brian Fitzpatrick: If you want to march down the streets of Northern Ireland with a saltire, far be it from me to stop you.

Scottish Local Government Elections Rules 2002 (SSI 2002/457)

The Convener: The rules contain a serious error. There are four points on which we might consider asking the Executive for clarification. Rule 31(1)(b) provides for a voter

“who declares orally an ability to read”.

Gordon Jackson: That produces a wonderful vision of the conversation: “Can you read?” “I can read.” “Well read, then.”

The Convener: We assume that that is a mistake and that the paragraph should read “inability”. We should clarify that.

Another matter is the question why schedule 3(4) purports to add a new paragraph (5) to rule 21 when that rule has only three paragraphs. That is another wee mistake.

Colin Campbell: The drafter was overexcited.

The Convener: A further matter is the question why schedule 3(17) makes reference to the words “counting of votes” in rule 37 when the phrase that is actually used in that rule is “counting of the votes”.

Ian Jenkins: I would not get wildly upset about that, but never mind.

Colin Campbell: We would want to ensure that the relevant votes are counted, rather than votes in general.

Brian Fitzpatrick: I suppose that there have been some elections in which votes have been

counted, but not the votes that should have been.

The Convener: Yes, but that was in Chicago. [*Interruption.*] Brian Fitzpatrick is indicating that he was not thinking about Chicago at all. I wonder where else that could have happened.

Another matter is the question why schedule 1, which revokes the 1986 rules and some amending rules from 1999, omits the amending rules from 1990, that is, the Scottish Local Elections Amendment Rules 1990 (SI 1990/262).

Those are substantive mistakes, so we must ask the Executive to note our comments.

**Combined Police Area Amalgamation
Schemes 1995 Amendment (No 2)
(Scotland) Order 2002 (SSI 2002/458)**

**Scottish Public Services Ombudsman Act
2002 (Transitory and Transitional
Provisions) Order 2002 (SSI 2002/469)**

The Convener: No points arise in relation to these instruments.

**Instruments not Laid
Before the Parliament**

**Act of Adjournal (Criminal Procedure
Rules Amendment No 3) (Sexual Offences
(Procedure and Evidence) (Scotland) Act
2002) 2002 (SSI 2002/454)**

**Scottish Public Services Ombudsman Act
2002 (Commencement and Revocation of
Transitory and Transitional Provisions)
Order 2002 (SSI 2002/467)**

The Convener: No points arise in relation to these instruments.

I thank you all for your attendance and advise you not to take on too much this weekend as you will have a lot of reading to do.

Meeting closed at 11:48.

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