

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 18 February 2003
(Morning)

Session 1

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SUBORDINATE LEGISLATION COMMITTEE

7th Meeting 2003, Session 1

CONVENER

*Margo MacDonald (Lothians) (Ind)

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 18 February 2003

(Morning)

[THE CONVENER *opened the meeting at 11:42*]

The Convener (Margo MacDonald): Welcome, everybody, to the seventh meeting this year of the Subordinate Legislation Committee. We have a full agenda this morning, but we should be able to rattle through it—and not simply because Bill Butler is not here. Bill is attending the Health and Community Care Committee and has sent his apologies.

Delegated Powers Scrutiny

Homelessness etc (Scotland) Bill: as amended at Stage 2

The Convener: We raised a couple of issues with the Executive about the bill. We have had a satisfactory reply, certainly from one of its members, and a helpful memorandum.

Section 7 will insert new section 33A in the Housing (Scotland) Act 1987, which provides, in subsection (1), that ministers may by order—through a statutory instrument—suspend the power of local authorities as set out in section 33 of the 1987 act to refer a homelessness application to another local authority with which the applicant has a local connection. That will be a big change in how things work. The committee asked for an explanation of that order-making power and, as a result, two Executive amendments were introduced at stage 2. New subsection 33A(3) states that any order under new section 33 will be subject to the affirmative procedure.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): As things stand, the orders will be subject to the affirmative procedure. However, the Executive has suggested that it might lodge further amendments at stage 3 and we might wonder whether it is intending to use the negative procedure. The Executive has done well to respond positively to the committee's concerns, but the option of using the negative procedure has been talked about before. Am I right in saying that that is the European model of working? I do not know whether we want to make a fuss about that. We do not know what the Executive will do at

stage 3, but we could ask what it is thinking about doing.

The Convener: I think that that would be worth while. I hope that I speak for the committee in saying that the Executive's deciding on whether the affirmative procedure or the negative procedure is used and its being able to switch between procedures are not necessarily practices that we advocate.

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): Or encourage.

The Convener: Right.

Section 8 contains a regulation-making power, which the lead committee added by amendment, to exclude bed-and-breakfast accommodation. Our question is about the definition of bed-and-breakfast accommodation. As the committee has consistently noted, the power to amend a definition by way of subordinate legislation can have a profound effect on a statutory provision's operation. The power in section 8 does not appear to be particularly unreasonable. Do we agree that use of the negative procedure would be all right?

Members indicated agreement.

The Convener: We are advised that it is not certain whether proposed new section 32(5A) of the 1987 act is drafted to have the intended effect. Some doubt remains. Should we mention to the Executive that we query the way in which the provision is drafted? Proposed new section 32(5A) defines bed-and-breakfast accommodation as

"accommodation of such description as may from time to time be prescribed".

If the ministers decided not to make the regulations, they could stymie the intention. Surely the lead committee did not mean that, so perhaps we should draw the matter to the Executive's attention.

Murdo Fraser (Mid Scotland and Fife) (Con): If we have a query about interpretation, it is reasonable to put that in our report.

Executive Responses

Animal By-Products (Identification) Amendment (Scotland) Regulations 2003 (SSI 2003/53)

The Convener: We received a late response to our question about the regulations. Perhaps we should refer the matter to the lead committee, because the Food Standards Agency says that a stain is not a stain and does not affect the characteristics of products. Those of us who wear nice quality suede know that that is untrue. That is a policy question for the lead committee.

Community Care and Health (Scotland) Act 2002 (Transitional Provisions) Order 2003 (SSI 2003/63)

The Convener: I will change the order of the instruments on the agenda to match that in our briefing papers.

We made a couple of points about the instrument.

Colin Campbell (West of Scotland) (SNP): The headnote contains the wrong date. It refers to 28 February, but the correct date is 31 May. The Executive will issue the correction free.

The Convener: The Executive says that that was a typo. The easiest way of dealing with the matter is to treat it as a typo.

Murdo Fraser: The Executive did not agree with our suggestion that there might be a problem with definitions, but that might nonetheless be worth putting in our report to the lead committee.

The Convener: We queried terms such as "medical practitioner" and "medical list", but the Executive did not agree that the reader would be confused.

Ian Jenkins: The drafting might technically be incorrect, but it does not affect the instrument's validity.

The Convener: We did not say that. We said that people would have difficulty in working out what the Executive meant. The Executive says that they will not and we say that they will.

Colin Campbell: If we have difficulty, other people might have difficulty.

Brian Fitzpatrick: Speak for yourself.

The Convener: Okay. The committee will note that the drafting could have been better.

National Health Service (General Medical Services Supplementary Lists) (Scotland) Regulations 2003 (SSI 2003/64)

Ian Jenkins: We put 13 points to the Executive last week. The Executive has acknowledged defective drafting on a substantial number of points.

The Convener: That covers six of our points.

Ian Jenkins: The Executive has acknowledged that its meaning could be clearer in relation to four points that we made.

The Convener: That makes 10 points. Three are outstanding—what happened to them?

Ian Jenkins: We will draw to the attention of the Parliament and the lead committee an unusual or unexpected use of powers. We also think that the Executive's powers over one matter are a wee bit limited. I do not know whether we need to go into huge detail, as our report to the lead committee will make matters clear.

Colin Campbell: Is there a course for defective drafters?

The Convener: Our question about criminal convictions is important.

Brian Fitzpatrick: Does the system operate like that for the General Teaching Council, in that courts throughout the United Kingdom are expected to report automatically to a professional body for a listed profession? I can see why that might not apply outwith the UK, because Juan in Barcelona might not know that the General Medical Council or the GTC exists.

The Convener: He should know that now, but never mind.

Brian Fitzpatrick: I am sure that he does. Let us think of someone in Ulan Bator.

The Convener: Do we want to know anybody there?

Brian Fitzpatrick: If he has a doctor who is committing murder, we might want to know him.

Colin Campbell: We need to know, if that doctor wants a job here.

Brian Fitzpatrick: Was what I described the rationale? It is easy enough to comprehend the situation where the regime applies, because UK courts will do what they are required to do, but non-UK courts are not part of the regime.

The Convener: The matter is important and we should ask the Executive about it.

Brian Fitzpatrick: The fact that we do not know the answer suggests that we should ask the Executive.

The Convener: We will ask the Executive, but the lead committee might be interested in reviewing the policy.

Brian Fitzpatrick: The lead committee might be interested in the fact that we do not know the answer and might want to find out the answer.

The Convener: We must ask the Executive when it will consolidate the regulations, because there are so many that it is becoming difficult for anyone to decide what they mean. There are about seven different laws involved, I think, although I am not certain about that.

Brian Fitzpatrick: The consolidation would probably make the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill look like a fish cake.

Domestic Water and Sewerage Charges (Reduction) (Scotland) Regulations 2003 (SSI 2003/65)

Ian Jenkins: The Executive sent us an untrue copy of the regulations.

The Convener: That is bad.

Ian Jenkins: That was not good practice.

The Convener: It makes people suspect other things.

Ian Jenkins: I think that it was an accident.

The Convener: They are all accidents.

Murdo Fraser: We made a point about some wording that makes no sense. We need to say in our report that the drafting does not follow proper legislative practice.

The Convener: The wording does not affect the outcome for the consumer, but it does not follow good practice.

Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2003 (SSI 2003/56)

Sea Fishing (Restriction on Days at Sea) (Scotland) Amendment Order 2003 (SSI 2003/66)

Colin Campbell: The Executive acknowledges that there was defective drafting in the original order. We might like to bring that to the attention of the lead committee.

The Convener: Yes. We raised three points with the Executive on the original order.

Ian Jenkins: We asked the Executive about the requirement for a logbook to be submitted, which appeared to be a wee bit unfair. However, that measure is to ensure compliance with the regulations. The Executive's explanation justifies

the measure because what appeared to be an illogical requirement is, in fact, logical.

Brian Fitzpatrick: It is a fairness measure, actually.

The Convener: Yes. A similar issue arises in relation to an instrument that we will consider later. The committee had to ask about the matter because at first reading it looked suspicious.

Ian Jenkins: The Executive also gives a response to our third question, which was whether the amended order should be issued free of charge. It looks a bit picky and mean not to issue the amended order free of charge.

The Convener: It is very mean.

Ian Jenkins: The Executive says that the amended order does more than just correct errors in the original order, so the amended order will not be free of charge.

The Convener: I have marked that section in my copy of the legal briefing with exclamation marks. I just think that the Executive should show more understanding of the fishermen.

Brian Fitzpatrick: All the instruments are on the web, however.

The Convener: Fishermen do not have time to go on the web.

Brian Fitzpatrick: Well, they do now.

The Convener: Oh.

Colin Campbell: He will wish that he had not said that.

Brian Fitzpatrick: Is the order not about unused fishing days?

Colin Campbell: Yes.

Brian Fitzpatrick: I am genuinely sure that folk will be poring over it.

The Convener: Aye, but they are out looking for work, Brian.

Right, let us pass quickly on.

Community Care and Health (Scotland) Act 2002 (Commencement No 2) Order 2003 (SSI 2003/62)

The Convener: On the Community Care and Health (Scotland) Act 2002 (Commencement No 2) Order 2003, we wanted the Executive to clarify a matter similar to the one that we have just discussed in relation to the days at sea. We wanted to ensure that there was no unfairness. Our question was whether there would be any retrospection. The Executive has said that there will not be.

Draft Instruments Subject to Approval

SFGS Farmland Premium Scheme 2003 (draft)

The Convener: The first instrument subject to approval is the draft SFGS Farmland Premium Scheme 2003. I did not shorten the title—one of our queries to the Executive is why the word “Scotland” does not appear somewhere in the title and why there is no explanation of what “SFGS” means. We should also ask the Executive whether the approval of the European Commission has been obtained for the scheme.

Brian Fitzpatrick: I do not want to sound unpatriotic, but with what other forestry grant scheme or farmland premium scheme would we be dealing—a Bosnian one? I just do not understand why we are the only country—

The Convener: I will tell you why—there are many United Kingdom regulations on this subject and, if an instrument applies only in Scotland, it might be advisable just to stick in the word “Scotland” every now and then.

Brian Fitzpatrick: As long as we get reciprocity, so that the English stick in the word “England”—but they never do.

The Convener: That is like the Football Association and the Scottish Football Association. Do we need to go back to first principles on the issue, Brian?

Brian Fitzpatrick: We do not need to repatriate the cringe.

Colin Campbell: We do not have a cringe; it is an assertion.

The Convener: This is not about the cringe.

Ian Jenkins: If you looked up the adoption act on the internet, you would find the Adoption Act 1976. However, the equivalent Scottish act is the Adoption (Scotland) Act 1978. That is the truth of the matter. If you looked on the web, you could get the wrong act.

The Convener: Och, Jenkins is good.

Ian Jenkins: Acts and instruments of the Scottish Parliament must be distinguished from their UK equivalents.

Brian Fitzpatrick: Could we get an adoption (Südtirol) act?

Colin Campbell: If you want to adopt in Südtirol. There is much adoption from Russia, if you are interested.

Brian Fitzpatrick: Okay, I am sorry. I am in a minority of one on the matter.

Ian Jenkins: I agree with you, but it just annoys me when an inference—

The Convener: I wonder whether I could bring the committee to order. We are not discussing adoptions from Russia.

Colin Campbell: Apart from the point about indicating that the instrument is Scottish, the acronym SFGS is meaningless as it stands. Never mind the word “Scottish”—the words “forestry grant scheme” should be used.

The Convener: Brian, it is rude not to explain to a reader what the letters “SFGS” mean when they are first used.

Brian Fitzpatrick: I accept that.

The Convener: Good.

Brian Fitzpatrick: We have found a via media.

Ian Jenkins: Absolutely. If the instrument said “Scottish Forestry Grant Scheme”, it would not need to use the word “Scotland” in its title. I accept that.

Brian Fitzpatrick: The issue is a bugbear of mine.

Ian Jenkins: I agree with you. I hate the FA being the FA and—

The Convener: Let it be noted that the committee came to an agreement.

Colin Campbell: On a via media—a middle way.

Brian Fitzpatrick: A line that I always used about devolution is that, in terms of home affairs and justice, it would see the end of the law reform (miscellaneous provisions) (Scotland) acts, but it has not.

Colin Campbell: Tradition is a good thing.

The Convener: As your First Minister said, devolution has been a big disappointment—right?

12:00

Brian Fitzpatrick: I do not remember that.

Colin Campbell: You would not.

Brian Fitzpatrick: He said that the Holyrood building had been a big disappointment.

Colin Campbell: The bill did not go far enough.

Brian Fitzpatrick: I am sure that Margo thinks that the building goes too far.

The Convener: I think that it is the best thing since—

Brian Fitzpatrick: Right, I am sorry. Perhaps we should get back to the instrument.

Colin Campbell: I thought that you said “the bill”.

The Convener: Let us get back to this—

Colin Campbell: This piece of Scottish legislation.

The Convener: In addition to querying the instrument’s title, we must ask the Executive about other matters. Paragraph 5(5) of the scheme provides that Scottish ministers

“shall not approve an application”

in certain circumstances, but paragraph 5(6) provides that ministers

“shall refuse to approve an application”.

Which approach does the Executive want to take?

Colin Campbell: They are probably equally offensive to an applicant.

The Convener: We should ask the Executive for an explanation of why there are a couple of approaches to the drafting of what ministers should and should not be able to do.

Brian Fitzpatrick: Are the circumstances that set paragraph 5(6) in train different from the ones that set paragraph 5(5) in train?

The Convener: I do not know.

Brian Fitzpatrick: If they are the same, it is bizarre that there are different draftings.

The Convener: I think that the circumstances for paragraph 5(6) are the same as those for paragraph 5(5), so it seems odd that different drafting approaches are used.

Brian Fitzpatrick: To call it bizarre is probably a bit extreme, but I agree that the drafting is rather odd.

Murdo Fraser: Several definitions in the instrument’s interpretation paragraph—such as the definition of “agricultural business”—border on being substantive. Perhaps the definitions could be dealt with in substantive paragraphs rather than in the interpretation provision.

The Convener: That is an important point.

Brian Fitzpatrick: Another relevant example is the definition of “holding”.

The Convener: Yes. Another example is the definition of “severely disadvantaged land”. We will ask the Executive to note that we think that the drafting could be improved.

Members indicated agreement.

The Convener: There are also typos, grammatical errors and all the rest of it, but they can be dealt with in an informal letter.

General Commissioners of Income Tax (Expenses) (Scotland) Regulations 2003 (draft)

The Convener: There are no points on the regulations.

Landfill (Scotland) Regulations 2003 (draft)

The Convener: The next instrument is the draft Landfill (Scotland)—sorry, Brian—Regulations 2003. An interesting point is that regulation 14(6) imposes a time limit of seven days for an operator to notify the Scottish Environment Protection Agency that waste has not been accepted at a landfill. If an operator does not do that, they can be fined a huge amount of money or be sent to jail for six months. The time limit of seven days for compliance seems a bit short.

Ian Jenkins: Apparently, the equivalent England and Wales regulations have a more generous time scale.

Brian Fitzpatrick: I take it that the regulations are for dealing with operators who are baddies. The point is that we would want to know as soon as possible that waste had not been accepted, in case the operator dumped it into a river or in a lay-by.

The Convener: Yes.

Brian Fitzpatrick: So there might be a good explanation for the seven-day time limit.

Colin Campbell: Your explanation is probably right.

The Convener: We will have to ask the Executive to clarify that.

Ian Jenkins: I think that Brian gave the explanation.

The Convener: We must ask the Executive for an explanation, because some companies operate on both sides of the border. There are different penalties in England and Wales.

Brian Fitzpatrick: It would make economic sense for the operators to head south.

The Convener: Perhaps we will not bother asking the Executive for an explanation, in that case.

Brian Fitzpatrick: The regulations could stop operators dumping waste in lay-bys—who knows?

The Convener: Paragraphs 1(3)(a) and 1(3)(c) of schedule 5 make provision in relation to the situation where an operator has given notice to SEPA that waste will not be accepted for disposal after 16 July 2002. Again, will that provision have retrospective effect? The equivalent provisions south of the border came into effect in June 2002. I think that the regulations are about us catching up.

Brian Fitzpatrick: We should ask the Executive.

The Convener: Right.

Paragraph 3(8) of schedule 6 refers to regulations 23(1) and 23(2). That is probably a straight mistake, and ought to refer to regulations 23(1) and 23(5). There is also an issue about the different legal systems north and south of the border, in that no provision is made in regulations 19(3) and 19(4) in respect of partnerships, as is customary in Scottish regulations of this kind. We should ask about that.

Members *indicated agreement.*

The Convener: There are also typos.

Road Traffic (Vehicle Emissions) (Fixed Penalty) (Scotland) Regulations 2003 (draft)

The Convener: We may want to ask for an explanation of the regulations. For example, why does regulation 5 refer to “designated authority” when the term used elsewhere in the regulations is “designated local authority”? That may not be all that big a thing, but the next issue is interesting. Regulation 6(1)(a) refers to a vehicle “about to pass through ... the area of that local authority”

for the purposes of the regulations. How would the local authority know?

Colin Campbell: If you were on the M8 leaving Hillington in a westward direction, you would pass out of Glasgow and into Renfrewshire and, being in that lane, you would have no option going west other than to continue in that direction or crash.

Brian Fitzpatrick: Or perform an illegal U-turn.

Colin Campbell: A highly dangerous and very illegal U-turn. There are certain roads on which you are committed.

Brian Fitzpatrick: The M80 spur is another.

The Convener: Is there a motorway equivalent of railway anoraks?

Colin Campbell: No, I am not in that category.

The Convener: All the same, we are very grateful.

Brian Fitzpatrick: The M80 goes from Glasgow into North Lanarkshire into whatever it is.

The Convener: Aye, but you can get off to go to the pictures.

Brian Fitzpatrick: You can always get off to go to the pictures. You can go to the pictures to get off as well.

The Convener: We may have spotted what the Executive means, but we will ask about it anyway.

Ian Jenkins: You can stand at the county border and, if a car is coming towards you, you can stop it as soon as it is in. You can fine the driver, test the vehicle's emissions and say, “You are baddies.” If they have just come out of the county, surely you can do the same thing. You cannot tell 100 miles away that they are about to—

Colin Campbell: But it is a strange thing to try to define.

The Convener: Suppose they stopped. We will just ask.

Brian Fitzpatrick: This takes us back to, “I wasn't driving my car while drunk. I just happened to have six cans of cider in the back and I was having a wee lie down.”

The Convener: Is the committee minded to ask the Executive about those points?

Members *indicated agreement.*

The Convener: Why in regulation 20(7) are there two references to notices under paragraph (5), when paragraph (5) does not appear to relate to notices?

Brian Fitzpatrick: Perhaps an explanation is required.

The Convener: Aye, just a wee mistake there.

Instruments Subject to Annulment

National Health Service Superannuation Scheme (Scotland) Amendment Regulations 2003 (SSI 2003/55)

Murdo Fraser: There is confusion over the commencement date. Regulation 1(1)(b) says that it is 5 April 2003, but the explanatory notes say that it is 1 April.

The Convener: We will ask the Executive to clarify that.

Brian Fitzpatrick: I thought that it was 5 April. Do they think that we are fools?

Colin Campbell: Do not tempt providence.

The Convener: Regulation 9 adds a new paragraph (4A) to regulation M2 of the principal regulations.

Brian Fitzpatrick: That paragraph qualifies the effect of paragraphs (2) and (3) of regulation M2.

The Convener: No consequential amendments have been made to paragraph (3) to include a reference to paragraph (4A). I think that we will just ask the Executive to explain the apparent mistake.

Ian Jenkins: The matter has not been fully followed through.

The Convener: The same applies to regulation 16(4), which inserts a new paragraph 2B into schedule 1 to the principal regulations. We will ask the Executive to clarify the matter.

Brian Fitzpatrick: Two conditions are mentioned, but which is meant?

The Convener: I do not know.

Colin Campbell: Under regulation 19(2), proposed new paragraph 9A(2), as drafted, is almost impossible to follow.

Brian Fitzpatrick: What does it say?

Murdo Fraser: It is about locum practitioners.

Colin Campbell: Is it intended to have the same effect as paragraph (4A) of regulation C3, as inserted by regulation 5(c)? If so, why has the same drafting approach not been adopted?

Ian Jenkins: What do you think?

Colin Campbell: When I read the legal briefing on the train, I thought that the matter was quite complex.

The Convener: I presume that we are running into difficulties because—

Brian Fitzpatrick: Anything that has C3(4A) in big letters is a dog's dinner.

The Convener: This is the seventh set of amendments of the principal regulations. We could suggest to the Executive that it should consider consolidation as a matter of urgency.

Brian Fitzpatrick: I would be slightly cautious about doing so, given that there are burnt fingers. Consolidation will not be straightforward.

Murdo Fraser: We are talking about regulations rather than bills. A committee will not have to deal with them.

Brian Fitzpatrick: Subject to that helpful proviso, we could do what is suggested.

The Convener: We will do so.

Registration of Foreign Adoptions (Scotland) Regulations 2003 (SSI 2003/67)

The Convener: The committee might raise with the Executive the wording of regulation 4(4).

Ian Jenkins: In the light of recent developments in the context of the European convention on human rights, we must consider regulation 6(2), which refers to "adoptive father and mother" at subparagraphs (f), (g) and (h), rather than to "adoptive parents", which would include same-sex adoptive couples. Although adoption by same-sex couples is not yet allowed in the United Kingdom—

The Convener: It will not be UK legislation.

Ian Jenkins: Indeed. The instrument applies to adoptions in all the convention countries, some of which allow same-sex couples to adopt. The wording could probably be changed to be more inclusive.

The Convener: I would be interested to hear the Executive's comments on that. I think that legislation in Scotland on who can adopt a child is different from the proposed legislation south of the border and is certainly different from that in a number of the convention countries. We can ask whether the Executive meant what is said.

National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2003 (SSI 2003/69)

Colin Campbell: No points arise on the regulations.

Road Traffic (Permitted Parking Area and Special Parking Area) (Aberdeen City Council) Designation Order 2003 (SSI 2003/70)

The Convener: Here we go again. Members will be glad to know that Ken Livingstone and his officials will have nothing to do with the uniforms that the mob of parking attendants in Perth and Kinross will wear. On the other hand, the same mistake has been made as that which was made with the Perth and Kinross order, which members may remember. There was an argument about designation, and we think that a similar issue arises with this order. The committee should ask the Executive to clarify the designation of the Aberdeen city local government area.

Quite a lot of points arise on the order, some of which I followed without difficulty, although I did not follow others.

Ian Jenkins: One of the points is that the order excludes roads within the area for which Aberdeen City Council is not the traffic authority. I presume that that means trunk roads, but it may mean unadopted roads. The question is how somebody who falls foul of the order would know that. The answer is clear to me, but the question might need to be asked for the proper functioning of the regulations.

Brian Fitzpatrick: It would seem a bit rotten if someone did not get their road taken over but found it included. That would add insult to injury.

The Convener: We will ask the Executive the six questions that have been suggested.

The sixth question refers to paragraph 6 of schedule 2, which modifies section 82 of the Road Traffic Act 1991 but does not modify subsection (6) to change the reference to a "Minister of the Crown" to "the Scottish Ministers". Unless it does that, the order cannot be expedited. That is rather important.

Road Traffic (Parking Adjudicators) (Aberdeen City Council) Regulations 2003 (SSI 2003/71)

12:15

Colin Campbell: The regulations have not been drafted in gender-neutral terms. Should they be?

The Convener: Aye. That can be fixed easily. There are also a couple of substantive points.

Although section 82(6) of the Road Traffic Act 1991 has not been modified by SSI 2003/70, the instrument has been made in the form of an SSI that is subject to annulment—

Brian Fitzpatrick: It sounds like a hotchpotch. If you are saying that we should send this back to the Executive, I agree that that would be advisable.

Murdo Fraser: There is another point on regulation 4, which makes no provision for informing an appellant of the outcome of a request for an extension of the time limit for appealing. We raised the matter previously, when we dealt with the regulations for Edinburgh and Glasgow and Perth and Kinross.

The Convener: The Executive does not appear to have changed its way of dealing with that issue.

Parking Attendants (Wearing of Uniforms) (Aberdeen City Council Parking Area) Regulations 2003 (SSI 2003/72)

The Convener: It appears that the minister has undertaken to decide what the parking attendants can wear to work; however, that should be a matter for Aberdeen City Council. We are straying into a policy area.

Brian Fitzpatrick: However, the Executive has an interest in ensuring that parking attendants do not look like policemen, for example.

Murdo Fraser: I hate to contradict you, convener, but you are wrong. The regulations state that the local authority will determine the uniforms. It is just the explanatory note that says that the decision will be made by the ministers.

The Convener: Oh, is that what it is?

Murdo Fraser: There is some confusion in the instrument.

The Convener: That shows my poor reading of it. Thank you, Murdo.

Murdo Fraser: That is quite all right.

Taxi Drivers' Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2002 (SSI 2003/73)

Brian Fitzpatrick: I am experiencing a strange sense of déjà vu.

Colin Campbell: We have talked before about the kinds of jackets that the dogs wear.

The Convener: We discussed whether guide dogs and hearing dogs could be trained by one charity but wear a jacket with the name of another charity on it.

Murdo Fraser: We dealt with similar provisions before, but there is no indication in the explanatory note of why a second instrument has come before us. It would be useful to know that.

The Convener: Yes. We will ask the Executive why the regulations have come back to us.

Brian Fitzpatrick: Is there some deep magic behind the matter? I am not sure what the differences are between the two instruments.

Ian Jenkins: That is part of our question.

Brian Fitzpatrick: The issue is sensitive. I would not want people to be challenged about—

Colin Campbell: Who trained their dog—

Brian Fitzpatrick: Or about what jacket their dog is wearing. That might create problems for the person with the dog.

The Convener: From the point of view of taxi drivers, the regulations will give some derogation from carrying such dogs.

Brian Fitzpatrick: We want people who have such dogs to be out and about and to be able to use taxis in the same way as you or I use them. The last thing that we should do is put obstacles in their path such as challenges from taxi drivers based on the fact that the dog does not have the right jacket. I am not being facetious.

The Convener: None of us is being facetious; we are all mystified about why the regulations that we discussed have been replaced. We do not understand, so we will ask the Executive.

Ian Jenkins: I presume that the present regulations are supposed to be an improvement, but the explanatory note does not say what was wrong with the previous regulations, why they had to be improved or what has been changed. The note should make that clear, but it does not. We also need clarification of the definition of “assistance dog” in regulation 2(2) and the point about the jackets that the dogs must wear. We need an explanation on paper that goes behind the regulations.

The Convener: Given that the Executive must have a reason for changing the previous regulations, it would be better if we knew what that reason was.

Schools (Scotland) Code Amendment Regulations 2003 (SSI 2003/75)

The Convener: No points arise on the regulations.

Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2003 (SSI 2003/79)

The Convener: My heart sank when I saw the order because I thought that it was about haaf nets. However, it is about scallop dredges.

Murdo Fraser: We know all about haaf nets.

The Convener: Yes, but do you know anything about scallop dredges? Do you know what is meant by “specified *Pecten maximus*”?

Colin Campbell: Big pecten.

Murdo Fraser: That is the problem: there is no definition of “specified *Pecten maximus*”.

The Convener: Brian, can you help?

Brian Fitzpatrick: My knowledge of scallops is entirely incidental.

The Convener: They are lovely with a twist of black pepper and a little lime juice.

Brian Fitzpatrick: I suspect that these ones are not.

The Convener: There is no definition of the term, so we will ask the Executive about that. We must also ask why a reference to a British sea-fishery officer pops up in relation to a contravention of the order within British fishery limits.

Colin Campbell: Yes. The Scottish Fisheries Protection Agency operates in the area concerned.

The Convener: It is a bit mysterious, so we will ask about it.

Ian Jenkins: We think that the word “specified” in the definition of scallop dredge should be “species”. The definition should state: “used or intended for the purpose of fishing for king scallops of the species *pecten maximus*.”

Colin Campbell: There is a typo.

The Convener: There you go.

Murdo Fraser: That is clever.

Colin Campbell: That is the value of thorough reading.

Instruments Not Laid Before the Parliament

Ethical Standards in Public Life etc (Scotland) Act 2000 (Commencement No 3) Order 2003 (SSI 2003/74)

The Convener: Some minor points arise in relation to the instrument. They can be dealt with in an informal letter.

Representation of the People (Variation of Limits of Candidates' Local Government Election Expenses) (Scotland) Order 2003 (SSI 2003/76)

Murdo Fraser: No points arise in relation to the instrument.

Brian Fitzpatrick: Apart from the promiscuous apostrophe.

The Convener: Exactly.

Colin Campbell: Is that a grocer's apostrophe?

The Convener: The apostrophe is in the wrong place.

Tobacco Advertising and Promotion Act 2002 (Commencement No 4) (Scotland) (Amendment and Transitional Provisions) Order 2003 (SSI 2003/80)

The Convener: The next instrument for consideration is the Tobacco Advertising and Promotion Act 2002 (Commencement No 4) (Scotland)—again—(Amendment and Transitional Provisions) Order 2003 (SSI 2003/80).

Brian Fitzpatrick: We can take the use of the word "Scotland" in the title of instruments as read.

The Convener: Brian, do you understand the instrument?

Brian Fitzpatrick: I do.

The Convener: You may deal with it.

Brian Fitzpatrick: I am fine with the instrument.

The Convener: Are you saying that you would not bother asking the Executive any questions about it?

Brian Fitzpatrick: Mutatis mutandis, we are back in territory that the clerk took us into previously. Do you not agree?

The Convener: Is there some doubt about whether the minister has the power to make these provisions?

Brian Fitzpatrick: We should seek an explanation. It would be bonkers for the Executive not to commence subsection (3).

The Convener: I inform members that the committee has been invited to strut its stuff on the Lesley Riddoch programme. We shall do so in the best possible taste. I ask members to agree to allow me to have discussions with the programme's producers about suitable ways of best informing the audience of the committee's work.

Brian Fitzpatrick: I devolve my proxy vote on the arrangements to the convener.

The Convener: No one is getting out of this.

Brian Fitzpatrick: I was talking about the arrangements for the programme.

The Convener: I thank members for their attendance. See you next week.

Meeting closed at 12:28.

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