

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 7 October 2003
(Morning)

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

9th Meeting 2003, Session 2

CONVENER

*Dr Sylvia Jackson (Stirling) (Lab)

DEPUTY CONVENER

Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Mr Stewart Maxwell (West of Scotland) (SNP)

*Christine May (Central Fife) (Lab)

Alasdair Morgan (South of Scotland) (SNP)

*Mike Pringle (Edinburgh South) (LD)

*Murray Tosh (West of Scotland) (Con)

COMMITTEE SUBSTITUTES

Bruce Crawford (Mid Scotland and Fife) (SNP)

Alex Johnstone (North East Scotland) (Con)

Maureen Macmillan (Highlands and Islands) (Lab)

*attended

CLERK TO THE COMMITTEE

Alasdair Rankin

ASSISTANT CLERKS

Joanne Clinton

Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 7 October 2003

(Morning)

[THE CONVENER *opened the meeting at 10:32*]

Delegated Powers Scrutiny

Prostitution Tolerance Zones (Scotland) Bill: Stage 1

The Convener (Dr Sylvia Jackson): Welcome to the ninth meeting this session of the Subordinate Legislation Committee. We have apologies from Gordon Jackson, who is on an overseas visit with the Commonwealth Parliamentary Association, and from Alasdair Morgan, who is attending a Standards Committee meeting as a substitute member.

Item 1 is scrutiny of the delegated powers in the Prostitution Tolerance Zones (Scotland) Bill at stage 1. As some members will know, the Parliament took evidence on a similar bill last session. A new bill has been submitted, and delegated powers issues arise from section 1, the "Power to designate prostitution tolerance zones" and section 5, "Appeals".

Section 1 is the bill's central provision and gives local authorities the power to designate prostitution tolerance zones. Are members content that that power should be exercised purely at a local level? If not, should the power be altered?

Mike Pringle (Edinburgh South) (LD): I have been in local government and I think that it is entirely appropriate that local government should decide on the zones, because it will be far more aware of where there are likely to be problems.

The Convener: Do other members agree?

Christine May (Central Fife) (Lab): Yes. The alternative would be for local authorities to make a determination that would be subject to confirmation by a minister. However, that is not necessary because the provision of an appeals procedure is an adequate safeguard.

The Convener: Section 5 deals with appeals. When the predecessor Subordinate Legislation Committee dealt with the previous bill, a report was sent to the lead committee, of which I was a member. I am again a member of the lead committee—the Local Government and Transport

Committee—and it will be interesting to see the new bill going through.

A difficulty is foreseen with the interaction between section 5(7) and section 5(8). Section 5(7)(a) states:

"The Scottish Ministers may appoint persons to perform on their behalf—

(a) all of the functions conferred on them by this section".

That could mean all the subsections in section 5, including subsection (8), which states:

"The Scottish Ministers may, by order made by statutory instrument, make further provision about or in connection with appeals under this section".

We feel that that is a drafting issue that should be brought to the attention of the lead committee, as the predecessor Subordinate Legislation Committee did for a similar point on the previous bill. The bill might need amended. Margo MacDonald, who is the bill's promoter, recognises the drafting difficulty and has no problem with our recommendation. Do members agree to bring that drafting point to the attention of the lead committee?

Members indicated agreement.

Executive Responses

National Health Service (General Medical Services) (Scotland) Amendment (No 3) Regulations 2003 (SSI 2003/443)

10:38

The Convener: The Executive has acknowledged our first point about defective drafting. However, the legal adviser feels that the Executive's responses to question 2, on the word "applicable", and question 3, on when the 14-day and seven-day periods begin, is not clear. What are members' views?

Christine May: I agree with the legal adviser.

Mr Stewart Maxwell (West of Scotland) (SNP): The Executive's response to question 3 does not answer the question. The Executive has underlined that the seven days is an "additional" period. However, I do not think that that answers the question of whether the seven days is conjoined to the 14 days. I am keen to bring that to the attention of the lead committee.

The Convener: Question 4 was on whether a reference for a locum had a life span of 15 months. The Executive has provided a satisfactory explanation. Are members happy to refer the four points to the lead committee as indicated?

Members *indicated agreement.*

Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/445)

The Convener: Members will remember that the point was that Aminotriazole appeared as a heading, instead of Amitrole. I am a chemist, but I am unsure whether I pronounced those correctly—I hope that I have. The Executive believes that there should be no difficulty in understanding the regulations, even though the wrong term was used in a heading. Do members have any further points?

Christine May: No. We should formally draw to the attention of the lead committee and the Parliament the point about defective drafting.

Draft Instrument Subject to Approval

Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (draft)

10:40

The Convener: The point that we have to raise on the draft order recurs in relation to a number of other instruments that we are considering this morning. In this case, the order refers to "the Sixth Schedule" and "the Seventh Schedule" instead of "schedule 6" and "schedule 7". That is purely a drafting, or stylistic, issue. The legal adviser would refer to it as a style issue.

Christine May: It is important for the sake of consistency across instruments that the same terminology is employed, so that the people who use or read them do not get confused. People might wonder whether there is some difference between "the Sixth Schedule" and something else called "schedule 6".

The Convener: No other points arise, although I gather that there is a small typing error in the draft order, which we can deal with in an informal letter.

Members *indicated agreement.*

Instruments Subject to Annulment

National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Regulations 2003 (SSI 2003/460)

10:41

The Convener: We move swiftly on to item 4. Fire away, Christine.

Christine May: The first line of regulation 2 says:

“unless the context otherwise requires”.

I understand that in session 1 the committee waged ceaseless war on what is termed “unnecessary verbiage”. We should do the same. We have identified nine points to raise on the regulations. Such regulations can be confusing enough, and they can be difficult to work through, even though we are dealing with a consolidation in this case. We should report that that wording is unnecessary.

Regulation 2, when defining “date of claim”, refers to “an appropriate office”, which is not defined anywhere. That needs to be explained. The same regulation refers to “the Secretary of State”, which raises a devolution issue. We should ask whether or not the Executive intended that reference.

Mike Pringle: On the matter of people being accompanied on medical grounds, the circumstance of the person being a child is referred to in one context, but not in another. That has to be made clear. It is a bit of a mix up.

The Convener: It is quite a mess. As I said, we have nine points to raise on the regulations. If members agree, we will refer them to the Executive for explanation. Is that agreed?

Members indicated agreement.

Collagen and Gelatine (Intra-Community Trade) (Scotland) Revocation Regulations 2003 (SSI 2003/466)

The Convener: Although no points of substance arise on the regulations, there is an issue about the “Made” entry in the instrument’s italicised heading, which simply refers to “30th September 2003”. The regulations came into force at 11:00 hours on that date. It would have been helpful to have had an indication in the “Made” entry as to when the Deputy Minister for Health and

Community Care signed the regulations. Is that agreed?

Members indicated agreement.

Feeding Stuffs (Scotland) Amendment (No 3) Regulations 2003 (SSI 2003/474)

The Convener: No points arise on the regulations.

Christine May: We might ask whether there are proposals to consolidate, as the regulations constitute a fifth amendment to the legislation in this area.

The Convener: As we are getting hot on consolidation matters, is it agreed that we ask about that?

Members indicated agreement.

Protection of Animals (Anaesthetics) (Scotland) Amendment Order 2003 (SSI 2003/476)

10:45

Mike Pringle: It is perhaps because I am a townie, not somebody from the countryside, but I cannot believe that any animal is castrated without anaesthetic, whatever age it is.

Murray Tosh (West of Scotland) (Con): It is elastic bands that they usually use.

Mike Pringle: That might not be painful, but—

Murray Tosh: I have no idea.

The Convener: Without getting into details, I remind the committee that we are not concerned with the policy issues, but only with the legal aspects of delegated powers.

There are two points to raise. The first is that the order breaches the 21-day rule. An explanation of the delay in making the order is given. The second point is to seek explanation why, in article 2 and in the explanatory note, reference is made to “the First Schedule”, rather than “schedule 1”. That is similar to the issue that we raised on the draft Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003. Is that agreed?

Members indicated agreement.

Mr Maxwell: Could I ask that we also raise the issue concerning footnote (a) to the order? I have read it several times, but it seems to be irrelevant, as it largely relates to Wales. I do not see the point of it, and we should perhaps ask why the footnote is there at all.

The Convener: We will ask the Executive about that.

Christine May: It is nice to know about Wales, but Scotland would be nicer.

The Convener: There is a further point about the explanatory note, the last two sentences of which do not seem to be necessary. We could mention that in an informal letter.

Members *indicated agreement.*

Instruments Not Laid Before the Parliament

Act of Adjournal (Criminal Procedure Rules Amendment No 2) (Miscellaneous) 2003 (SSI 2003/468)

10:46

The Convener: We come to item 5. We have a letter relating to the act of adjournal from the private office of the Lord President. The first issue was whether ministers had been consulted. There was a further issue in relation to the enabling power, in particular section 305(3) of the Criminal Procedure (Scotland) Act 1995.

We are reliably informed that ministers had, in fact, been consulted. Bruce Beveridge, legal secretary to the Lord President, argues that section 305(3) of the 1995 act does not apply in this instance. I gather that the matter can be argued either way, but the legal adviser is content that the main issue was one of ministers' being consulted. Is that agreed?

Members *indicated agreement.*

The Convener: There are also a couple of minor drafting errors in the act of adjournal that we can mention in our informal letter—which is gathering momentum.

Criminal Justice (Scotland) Act 2003 (Commencement No 3 and Revocation) Order 2003 (SSI 2003/475)

The Convener: I am not aware of any particular points on the order.

Christine May: The Executive has agreed to include an italicised headnote to say that the new order, which replaces the previous commencement order, which contained an error, will be available free of charge.

The Convener: On this occasion, there was some liaison between our legal adviser and the relevant people in the Executive, so the matter was dealt with quite quickly. That is to be encouraged.

Freedom of Information (Scotland) Act 2002 (Commencement No 2) Order 2003 (SSI 2003/477)

The Convener: No points have been identified on the order. Is that agreed?

Members *indicated agreement.*

The Convener: I thank you for your attendance and I wish you a nice recess.

Meeting closed at 10:49.

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