

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 25 November 2003
(Morning)

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

14th 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

THE FOLLOWING ALSO ATTENDED :

Margaret Macdonald (Legal Adviser)

CLERK TO THE COMMITTEE

Alasdair Rankin

ASSISTANT CLERK

Joanne Clinton

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 25 November 2003

(Morning)

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

Executive Responses

Public Finance and Accountability (Scotland) Act 2000 (Access to Documents and Information) (Relevant Persons) Order 2003 (SSI 2003/530)

The Convener (Dr Sylvia Jackson): I welcome colleagues to the 14th meeting this session of the Subordinate Legislation Committee. I have received apologies from Gordon Jackson, who has a medical appointment this morning.

Item 1 on the agenda is Executive responses. The committee asked three questions about the order, the first of which was about the use of the word “includes” in relation to “relevant person”. The wording is such that the order does not appear to specify the relevant persons, when in fact it should do so, as the terms in the enabling act make clear.

What do members think about the Executive’s response to our first question?

Christine May (Central Fife) (Lab): Not much.

The Convener: You are not happy with it.

Alasdair Morgan (South of Scotland) (SNP): I was not convinced by the Executive’s explanation, which was laboured and tortuous. To be frank, I do not think, reading between the lines, that even the person who wrote it was convinced by it.

Mr Stewart Maxwell (West of Scotland) (SNP): In the first line of its answer, the Executive accepts that

“the word ‘includes’ might normally suggest that the category was wider than the persons covered by the inclusion”.

Yes, indeed—so it seems bizarre that the Executive should continue its response by arguing against the point that it has just made.

The Convener: Yes. We have agreed that the enabling power clearly states that the order should specify the relevant persons. We should make that

point clear to the lead committee and to the Parliament.

The committee’s second question on the order related to the breach of the 21-day rule.

Christine May: The Executive was asked to explain why it did not submit a letter to the Presiding Officer to explain the breach of the 21-day rule. The Executive accepts that there was a breach, however it still has not written to the Presiding Officer. Again, we should bring that to the attention of the lead committee.

I think that whoever responded to us was having an off day.

Mr Maxwell: We asked a specific question about the letter to the Presiding Officer, but the Executive’s response ignores that point. Do we have any background information that might explain why that happened?

The Convener: Not as far as I know, and the legal adviser indicates that she has no such information, either.

Mr Maxwell: In that case we should definitely bring the matter to the attention of the lead committee.

The Convener: Do members agree that we should do so?

Members: Yes.

The Convener: The committee’s third question related to the delay between the making of the order and the laying of it before the Parliament. The Executive’s answer was, again, not very satisfactory.

Christine May: The Executive says that there was not a huge delay, but the laying of the order was late. That means that those who will be affected by the order will have less time in which to acquaint themselves with its provisions and make whatever changes are necessary. Again, the matter should be drawn to the lead committee’s attention.

The Convener: Do members agree that the attention of the lead committee and the Parliament should be drawn to the three points that we have raised, on which we have received unsatisfactory answers?

Members indicated agreement.

Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 (SSI 2003/531)

The Convener: Members will remember that our first question on the regulations was about the reference to the year 1999—we thought that that was an error and that the reference should have

been to 1991. The Executive agrees about that. Our second question concerned the meaning of the words, "the present Regulation", and the Executive states that there was a clerical error. Our third question was about the need to clear the statute book. The Executive accepts that point and it will take the next opportunity to do so. That set of responses is in big contrast to the previous set.

Mike Pringle (Edinburgh South) (LD): Do you think that they were both written by the same person?

The Convener: I doubt it.

Mike Pringle: I do not think so.

The Convener: We are happy with the responses, but we should report the questions and responses to the lead committee and the Parliament. Do members agree?

Murray Tosh (West of Scotland) (Con): I have not received any papers, other than the legal briefing paper, so I have not seen the Executive's response. I note from the briefing paper that the Executive has noted our view that it is good practice to clear the statute book. Did it say whether it agrees that that is good practice and whether it does that across the board?

The Convener: Yes, it did.

Murray Tosh: So that is in its letter?

The Convener: Yes. May I ask why you did not receive the papers?

Murray Tosh: Presumably they have been sent to my home and would have arrived this morning.

The Convener: We will check that and ensure that that does not happen again.

Mike Pringle: I got mine on Friday.

The Convener: So did I.

Mr Maxwell: So did I.

Mike Pringle: I also received e-mails from Alasdair Rankin at the weekend about the legal brief and other matters.

The Convener: If you check at your end, Murray, we will check too.

Agricultural Holdings (Scotland) Act 2003 (Commencement No 3, Transitional and Savings Provisions) Order 2003 (SSI 2003/548)

The Convener: Members will remember that we wanted to know when the act is expected to be completely in force, given the quantity of commencement orders. Our query related to the provisions on the tenant's right to buy land. We have been told that the provisions will be

implemented around summer 2004, when the necessary infrastructure is in place. Do members agree that we cannot do much more on this one? We will bring the matter to the attention of the Parliament, but there is no lead committee.

Murray Tosh: We asked an interesting question about commencement. As the matter has been raised in relation to the Agricultural Holdings (Scotland) Act 2003, I wonder whether we monitor the implementation of commencement orders in relation to all acts of the Scottish Parliament. Do we keep an eye on that?

The Convener: I do not think that we have done so up to now.

Murray Tosh: In the legal adviser's view, is there any point in doing that? We thought that there was a point in relation to the 2003 act.

The Convener: The legal adviser keeps an eye on the matter; if there are several commencement orders, we would ask the Executive about them.

Murray Tosh: That is what I was asking.

The Convener: So many of us were involved with the 2003 act and knew it intimately that we wondered when it would be completely in force.

Alasdair Morgan: There is a general point that applies to the inquiry that we will discuss later. Is there a website that tells the public whether parts of an act are in force or not? People can log on to the Parliament website, link to Her Majesty's Stationery Office and see the texts of acts that we have passed, but do they have a way of knowing whether an act is in force?

Margaret Macdonald (Legal Adviser): There are commercial databases and citators.

Alasdair Morgan: That is precisely my point.

Margaret Macdonald: There are published statute citators, which can probably be obtained in the Parliament library.

The Convener: Alasdair Morgan's point is that there is nowhere that people can easily get such information.

Alasdair Morgan: Yes. Surely people should be able to find out from somewhere—and for nothing—the dates from which legislation applies, if ignorance of the law is meant not to be an excuse.

The Convener: We could discuss that later, in the context of our proposed regulatory framework inquiry. The clerk will take a note of that point.

Draft Instrument Subject to Approval

Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2003 (draft)

10:40

The Convener: No points of substance were raised by the legal advisers, but we might take up informally a number of small drafting points. Is that agreed?

Members *indicated agreement.*

Christine May: The Executive note and other documents accompanying the draft regulations are probably the longest that I have ever seen.

Instrument Subject to Approval

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 11) (Scotland) Order 2003 (SSI 2003/561)

10:41

The Convener: No points arise on the order.

Instruments Subject to Annulment

Food (Brazil Nuts) (Emergency Control) (Scotland) Amendment Regulations 2003 (SSI 2003/558)

10:41

The Convener: The Executive has made appropriate amending regulations. Our legal advisers have raised one minor point on the regulations, which we could put in an informal letter. It is simply to do with expressing certain numbers in figures and then in words.

Members will be happy to note that the new regulations will be available free of charge for those who bought a copy the original regulations.

Is that agreed?

Members *indicated agreement.*

Prohibition of Keeping or Release of Live Fish (Specified Species) (Scotland) Order 2003 (SSI 2003/560)

The Convener: There is a bit more discussion to be had on this order.

Christine May: I am fascinated to note that asps are the first species listed that may not be kept. Anyone playing the part of Cleopatra may not have an asp—not a live one, anyway. People cannot keep motherless minnows either.

The Convener: The list in schedule 1 is indeed extensive.

Alasdair Morgan: The Scottish Adjacent Waters Boundaries Order 1999 (SI 1999/1126) defined the marine boundaries, following the provisions of the Scotland Act 1998. That was one of the issues that caused immense controversy during the Parliament's first session. It is interesting that it has come back and reared its head again. There is an issue about which definition of the boundaries is used and how that affects pre-devolution enactments referring to Scotland. We need to clarify with the Executive what it thinks is going on in this case.

Christine May: Having read the order more closely, I am interested to note that footnote (c) specifies the order that defines the "Waters adjacent to Scotland". If there is a question over which definition of Scotland is used, because the waters in question are different from those in the definition of Scotland under the 1998 act, then—

The Convener: Yes?

Christine May: Then, why? Sorry—I got lost in that sentence.

The Convener: I think that you are asking why the definition of Scotland has been included in the order and whether there a specific reason for that.

Christine May: Yes.

The Convener: Is it agreed that we ask the Executive about that?

Members *indicated agreement.*

Instrument Not Subject to Parliamentary Procedure

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No 3) (Scotland) Revocation Order 2003 (SSI 2003/557)

10:44

The Convener: No points arise on the order.

Instrument Not Laid Before the Parliament

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) Amendment (International Protection of Adults) 2003 (SSI 2003/556)

10:44

The Convener: There is a small point to raise on the lack of a footnote citation, which it is suggested may be put in an informal letter. No points of substance arise, however. Is that agreed?

Members *indicated agreement.*

Proposed Regulatory Framework Inquiry

10:45

The Convener: Item 7 is on our proposed regulatory framework inquiry. The main paper in front of us has been developed by the Scottish Parliament information centre.

Murray Tosh: I apologise for having to leave. I have to attend another meeting.

The Convener: Okay, Murray.

SPICe has summarised the background leading to the proposal for an inquiry, which stems from the previous Subordinate Legislation Committee's legacy paper. The information has been gathered from conferences and from experience that has been gained in various countries, notably Australia and New Zealand. That information could serve as a good basis not only for our regulatory framework inquiry but for later, when we consider drawing up a statutory instruments bill.

What are members' ideas on the information that has been collated? How might we bring the proposed inquiry and the proposed SI bill together over the next two years or so? Members will recall that we discussed a time frame for those two pieces of work at our away day. There is also the matter of a review of chapter 10 of the standing orders. That is a relatively minor piece of work compared to the inquiry and the proposed bill, but we might also bring that in.

Christine May: The first question is whether we should hold a single, large inquiry with a number of parts, one of which leads to the next. I think that that makes sense. The second question is whether we should start that reasonably soon. I think that we should, because it is evident from the amount of legislation currently going through the Parliament that the committee will become busier as technical issues around all that legislation come before us. The next question is whether we should construct our inquiry broadly around the contents of the SPICe briefing paper. I think that the paper is extremely interesting, and that we should do so.

The Convener: We ought to place on record our thanks to SPICe for producing the briefing paper, as it brings together for us a lot of material.

Mr Maxwell: Christine May is quite right to suggest that it is impossible to separate an inquiry into the regulatory framework from the proposed bill and from the possible changes to chapter 10 of standing orders. Although it was previously mooted that we might hold separate inquiries, I think that there is no alternative to enmeshing the three aspects into one large, single piece of work.

The task will be enormous. It will take at least a couple of years, but the three areas are so closely linked that it is difficult to imagine how they could be separated out entirely. I think that we should proceed with the regulatory framework inquiry, but we must view it as the basis for an SI bill, as well as doing the chapter 10 work.

The SPICe paper is very detailed. You mentioned the work concerning Australia and New Zealand, convener; there was also a lot of interesting stuff about Canada. We should do all three things, but I think that they can all roll together.

The Convener: The papers suggested certain exciting possibilities. We should also remember that, at our away day, we suggested holding a conference here, at which we could try to draw together some of the ideas that we will be developing with regard to an SI bill. We might wish to decide soon exactly when we want to hold that conference, which will obviously take quite a bit of time to organise. It would be worth while, however.

Alasdair Morgan: I agree with that. I assume that we are talking about a committee bill.

The Convener: Yes.

Alasdair Morgan: What are the current arrangements for committee bills? I was involved with a committee bill during the first session of the Parliament and the non-Executive bills unit dealt with it. Is that still what happens?

The Convener: Yes.

Alasdair Morgan: At what stage do we get involved in bidding for NEBU's time and resources?

The Convener: We can flag it up to NEBU very early on and once we get to our draft report, we can focus on getting time slots. We will be flagging it up quite early, so it is important for the committee to get to the stage of setting the terms of reference and outlining the time scale for the inquiry and the chapter 10 review, so that we can alert people. Alasdair Morgan made an important point about the SI bill being a committee bill, so it is important that we tell as many people as possible what we are doing. There is also an obvious link with the Procedures Committee and other bodies.

Christine May: The technical aspects of legislation rarely set the heather on fire; regulation annoys most people, if they show an interest in it at all. Nevertheless, I take it that the committee is willing to go through what the Parliament has to do to make things work in Scotland, with a view to informing the public and businesses at an earlier stage of proposals that might affect them, reducing the number of hoops that people have to jump through, putting legislation into as plain an English

as possible, and making sure that the regulatory agencies that enforce the legislation do so in a way that causes the least disruption to public life and to business. If that is not what the inquiry is about then there is no point in our doing it.

The Convener: I hope that Alasdair Rankin was taking notes—although it will certainly be in the *Official Report*—because that will fit nicely into the context and the terms of reference for the proposed bill and the regulatory framework.

Christine May: I also believe that this work resonates with that of the Enterprise and Culture Committee on the nature of the constraints on business, particularly small and medium-sized enterprises.

The Convener: Okay. After Christmas—doing it before might be a bit of a rush—we can come back with the terms of reference, a time frame and suggestions for a possible adviser for the inquiry.

Christine May: Would it not be possible to take a first pass at it before Christmas?

The Convener: Perhaps there would be time to prepare a rough draft, yes. It will be as comprehensive as possible, but it will be a broad overview, rather than detailed. Are we agreed?

Members indicated agreement.

The Convener: I thank SPICe for the scoping paper; it was very helpful.

Food Standards Agency Scotland

10:53

The Convener: The final item on the agenda is a letter that we have received from the Food Standards Agency Scotland. Members will recall that representatives of the FSAS gave evidence to the committee and that one of the issues discussed was that the FSAS staff needed more training and development. Much of the letter is about the progress of that and how helpful the office of the solicitor to the Scottish Executive has been in helping the FSAS to move forward. Are there any comments on the letter?

Mr Maxwell: The FSAS has certainly addressed some of our points. I was concerned about comments made during the evidence that we received; a lot of that discussion was about whether people were being properly and adequately trained, and whether they were aware of the differences between Westminster and Holyrood timetables. The letter addresses many of those points and I thank the FSAS for detailing its efforts in training. Although several other matters were raised during the evidence session, if any of them arise again, we should tackle them at that point. We have had a fairly detailed response on the training.

The Convener: The letter particularly mentions training in UK and European legislation, which was a big issue.

Christine May: I have a point that goes back to what we were saying when we were talking about the remit for our inquiry. The training is all focused internally, as it should be, because it is focused on the technical regulations that surround the work of the FSAS. There is very little focus on the consumers of the regulations, if you like. We might want to flag up the impact of the work that is done on those who have to live by it.

The Convener: That might also be a point that we should feed into our inquiry.

Christine May: That is my point exactly.

The Convener: We all agree that that is a big issue, do we not?

Members: Yes.

The Convener: As there are no other points, I close the meeting.

Meeting closed at 10:56.

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