

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 3 February 2004
(Morning)

Session 2

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CONTENTS

Tuesday 3 February 2004

Col.

DELEGATED POWERS SCRUTINY	305
Budget (Scotland) Bill: Stage 1	305
EXECUTIVE RESPONSES	306
Welfare of Animals (Slaughter or Killing) Amendment (Scotland) Regulations 2004 (SSI 2004/13)	306
DRAFT INSTRUMENTS SUBJECT TO APPROVAL	306
Budget (Scotland) Act 2003 Amendment Order 2004 (Draft)	306
INSTRUMENTS SUBJECT TO APPROVAL	306
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Scotland) Order 2004 (SSI 2004/21)	306
INSTRUMENTS SUBJECT TO ANNULMENT	307
National Health Service (Transfer of Property between Health Boards) (Scotland) Regulations 2004 (SSI 2004/15)	307
National Health Service (Borrowing and Loans from Endowments) (Scotland) Regulations 2004 (SSI 2004/16)	309
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE	310
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (No 4) (Scotland) Order 2003 Revocation Order 2004 (SSI 2004/19)	310
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Order 2003 Revocation Order 2004 (SSI 2004/22)	310

SUBORDINATE LEGISLATION COMMITTEE

5th Meeting 2004, 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

Catherine Fergusson

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 3 February 2004

(Morning)

[THE CONVENER *opened the meeting at 10:30*]

Delegated Powers Scrutiny

Budget (Scotland) Bill: Stage 1

The Convener (Dr Sylvia Jackson): Welcome to the 5th meeting in 2004 of the Subordinate Legislation Committee.

The first item on the agenda is on stage 1 of the Budget (Scotland) Bill for the financial year 2004-05. As is customary, the bill contains one delegated power, which will allow ministers, by order, to make adjustments. The order is subject to the affirmative procedure. As section 7 of the bill follows the normal form, we are advised that we can approve the power. Is that agreed?

Members *indicated agreement.*

Executive Responses

Welfare of Animals (Slaughter or Killing) Amendment (Scotland) Regulations 2004 (SSI 2004/13)

10:31

The Convener: We move on to item 2. Members will remember that we wrote to the Executive to ask whether the reference to licence in the regulations covers both types of licence mentioned in schedule 1 to the Welfare of Animals (Slaughter or Killing) Regulations 1995 (SI 1995/731). We are now informed that it does. Our legal advice suggests that although the regulations could be clearer about the two types of licence, they are okay.

Mr Stewart Maxwell (West of Scotland) (SNP): I accept what the Executive is saying and I understand that the regulations apply to both types of licence. However, the fact that we had to ask the question is proof enough that there was confusion for anyone reading the regulations. It is worth drawing that to the attention of the lead committee.

The Convener: I recommend that we draw the matter to the attention of both the lead committee and the Parliament. Is that agreed?

Members *indicated agreement.*

Draft Instruments Subject to Approval

Budget (Scotland) Act 2003 Amendment Order 2004 (Draft)

10:32

The Convener: The order makes further adjustments to the Budget (Scotland) Act 2003. No points arise on it.

Instruments Subject to Approval

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Scotland) Order 2004 (SSI 2004/21)

10:32

The Convener: No points arise.

Instruments Subject to Annulment

National Health Service (Transfer of Property between Health Boards) (Scotland) Regulations 2004 (SSI 2004/15)

10:33

The Convener: Our legal advice has identified a number of points, the first of which relates to definitions. The term “the Act” is used only once in the regulations, and the term “Trust property” is defined in the enabling power. Why do the two terms have to be defined again in the regulations?

The second point that our legal advice makes is on regulation 2(a)(v), which refers to the date of transfer of property. We really need to know what is meant by the phrase:

“if that has been specified”.

Where and how is the date to be specified?

The final point is on regulation 2(b), in which references are made to the “specified date”. We need to know to which date the first “specified date” refers. I think that it refers to the date of the transfer back of property, rather than the date of the original transfer, but that is not clear. At the end of regulation 2(b) is the somewhat obscure phrase:

“and the conditions of the transfer have been complied with.”

Mr Maxwell: I think that you are probably right that the “specified date” refers to the transfer-back date. However, the point is similar to the one that I raised on the Welfare of Animals (Slaughter or Killing) Amendment (Scotland) Regulations 2004 (SSI 2004/13): a lack of clarity in phrases in regulations seems to be a recurring theme. We are getting generalities rather than specifics, which leaves room for manoeuvre or confusion. Perhaps we should raise that general point.

The Convener: Yes. The word “specified” needs to be defined, because it is unclear. I take your point.

Alasdair Morgan (South of Scotland) (SNP): If those problems did not exist, others might be considered to be of less importance. The fact that the health board has to notify ministers whether the property has returned as a condition of transfer means that there is circularity in the regulations. I do not think that that is necessarily hugely important, but coupled with everything else that is wrong, it represents a problem.

Murray Tosh (West of Scotland) (Con): Paragraph 8 of the legal briefing indicates that our advisers tried to straighten out some of those

points through informal contact with the Executive. Has a response to those representations been received?

The Convener: With reference to these regulations and to the National Health Service (Borrowing and Loans from Endowments) (Scotland) Regulations 2004 (SSI 2004/16), which we will come on to next, the Executive is willing to consider the points that our advisers made. It is willing to make a lot of changes to the borrowing and loans regulations, but it wanted to see whether the committee had any more points to raise before it made amendments.

Murray Tosh: So the Executive does not mind being kicked all round the committee. It strikes me that while our back-up team is trying to straighten out points, we are demonstrating pretty good faith with the Executive. It is surprising that it does not take advantage of that more consistently or thoroughly.

The Convener: To be fair to the Executive, I must point out that it has taken on board a lot of the points from our legal advisers. It just wanted us to have a chance to discuss the regulations before it made amendments. I will try to be fair if I can.

I welcome Gordon Jackson to the committee.

Christine May (Central Fife) (Lab): On the point that Murray Tosh made, part of the difficulty is that the length of time between our receiving the papers initially, getting the feedback from our legal advisers and getting the opportunity to suggest changes is not long enough to allow us to get amended regulations from the Executive.

Murray Tosh: My comments were prompted more by the wording of the briefing note than by its intention. Paragraph 8 ends with the comment:

“to date no response has been received.”

That led me to think that a response had been expected. I was simply trying to underline for the record the point that we were trying to head off these issues at the pass. On aggregate, the people who are responsible for the instruments might be a wee bit embarrassed by the committee's consistent and persistent criticism of their best efforts. We are trying to help.

The Convener: We have had a response from the Executive since the legal briefing was produced, so you are quite right to raise that point.

Do we agree that the points should be relayed to the drafting team, which we hope will make the necessary changes?

Members indicated agreement.

National Health Service (Borrowing and Loans from Endowments) (Scotland) Regulations 2004 (SSI 2004/16)

The Convener: We move on to the second set of regulations under item 5. There has been substantial informal contact between the Executive and our legal advisers. The defects that are set out in paragraph 17 of our legal briefing highlight the differences between the regulations and the explanatory note. It is unclear whether the regulations cover borrowing under both section 7(3) and section 7(4) of the Public Appointments and Public Bodies etc (Scotland) Act 2003. We would have to read the act to consider that in detail. There are also minor errors, but the main points relate to sections 7(3) and 7(4).

Alasdair Morgan: Does section 7(3) cover normal borrowing, and does section 7(4) cover borrowing from other health boards?

The Convener: As I understand it, section 7(4) is to do with loans from other health boards

Alasdair Morgan: Whereas section 7(3) is on loans in the commercial market.

The Convener: Section 7(3) is on borrowing from endowments. Section 7(4) is on loans from other health boards.

Alasdair Morgan: I am not quite clear what the difference is between loans and borrowing. I thought that they were much the same thing.

The Convener: That is the point that the legal advice makes as well. Regulation 2 seems to relate to borrowing under section 7(3), but when we read the act we can see that it should relate also to section 7(4).

Alasdair Morgan: It is clearly a point of substance. The intention of regulation 2 is to limit borrowing under section 7(3) and section 7(4) to £100,000, but in effect it does not do so, which is serious. Given the financial state of most health boards, I cannot imagine that many of them will have a spare £100,000 to lend to another board. However, the regulations should reflect ministers' intentions.

The Convener: The explanatory notes do not make those issues clear. The Executive has accepted that section 7(4) is not dealt with adequately in certain respects.

Are we agreed that the drafting team should have another go at amending the regulations?

Members *indicated agreement.*

The Convener: We can return to the issue once we get the regulations back.

Instruments Not Subject to Parliamentary Procedure

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (No 4) (Scotland) Order 2003 Revocation Order 2004 (SSI 2004/19)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Order 2003 Revocation Order 2004 (SSI 2004/22)

10:40

The Convener: No points have been identified on these pro forma orders.

Meeting closed at 10:41.

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