

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 2 March 2004
(Morning)

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

8th 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 2 March 2004

(Morning)

[THE CONVENER *opened the meeting at 10:33*]

Delegated Powers Scrutiny

Tenements (Scotland) Bill: Stage 1

The Convener (Dr Sylvia Jackson): I welcome everyone to this meeting of the Subordinate Legislation Committee.

Item 1 is delegated powers scrutiny of the Tenements (Scotland) Bill at stage 1. We wrote to the Executive about a number of points. The first was on section 4, which is about the depositing of sums of money in excess of a prescribed amount. The Executive proposes to lodge an amendment at stage 2 to remove the specific sums that are set out in rule 3.3 of the tenement management scheme, and which are referred to in section 4(11). The amendment provides for a power for the Scottish ministers to prescribe the sums of money that, if exceeded, would require written notice to be given to each owner and the sums concerned to be deposited in a maintenance account. The power would be subject to the negative procedure.

The legal adviser has presented us with four options in relation to the Executive's proposal. The first option is:

"the power should remain as drafted but its exercise should be subject to affirmative procedure".

The second option is:

"the power should remain as drafted but subject to a restriction to the effect that any changes in the specified sums be limited to changes in the value of money".

Essentially, that is what we were suggesting when we wrote to the Executive. The third option is:

"the proposed redraft be approved as it stands".

The fourth option is:

"the proposed redraft be approved provided that the making of a relevant instrument be expressed as obligatory rather than discretionary."

I need the committee's view on the matter. I am tempted to say that we should stick to our guns on the second option.

Alasdair Morgan (South of Scotland) (SNP): Yes. The Executive's proposal makes matters even worse than they were. At least under the original proposal, only the increase would be subject to the negative procedure; now the initial amount of money is to be subject to the negative procedure as well. I do not think that that is satisfactory at all.

The Convener: Are we agreed on that?

Mike Pringle (Edinburgh South) (LD): Yes. It is bizarre: I had wondered about the Executive's original approach, and now it is changing it completely. I think that it should stick with what was there before.

Mr Stewart Maxwell (West of Scotland) (SNP): Judging from what we have seen plenty of times before in relation to other pieces of proposed legislation, it seems appropriate that we stick to our suggestion.

The Convener: Are we going to write back to the Executive, saying that we have considered its response, that we have come up with four options and that it should reconsider the matter and adopt what we have before us as our second option?

Members: Yes.

The Convener: Section 15 is on the obligation of the owner to insure. Members will recall that the matter concerns a list of the various risks for the reinstatement value of the owner's flat. The Scottish Law Commission suggested that the list should not be included in the primary legislation, because that would be too restrictive. The Executive is saying that there should be a minimal list but, because of the passage of time and because of what the commission is saying about who should be contacted for advice on the matter, it would not be possible to amend the bill to that effect in time for stage 2. The Executive therefore thinks that it would wish to include the list of risks in a statutory instrument. What are the committee's views?

Alasdair Morgan: That is fine.

Christine May (Central Fife) (Lab): I think that we all agree.

The Convener: The Executive is stressing the point that consultation would take place. Is that agreed?

Members indicated agreement.

The Convener: Section 22 is on amendments to the Title Conditions (Scotland) Act 2003. Our points on section 22 are similar to those that we raised on section 4. The same points apply. Is that agreed?

Members indicated agreement.

The Convener: I take it that we are going to wait until we get a response from the Executive on section 4 before we pass all our comments on to the lead committee. There is time for that.

Members *indicated agreement.*

Fire Sprinklers in Residential Premises (Scotland) Bill: Stage 1

The Convener: Item 2 relates to a matter with which I think we all have much sympathy: it is on delegated powers scrutiny of the Fire Sprinklers in Residential Premises (Scotland) Bill at stage 1. The bill provides for the mandatory installation of fire sprinkler systems in certain residential properties in Scotland: specifically, certain houses in multiple occupation—HMOs—and sheltered housing.

There are three delegated powers. The first is in section 10(a), and reflects the approach of the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 (SSI 2000/177), as amended. Section 10(a) allows for exemptions within the category of houses in multiple occupation concerned. Are we agreed on the suggestions that have been made on section 10(a)?

Members *indicated agreement.*

The Convener: There is no cause for concern there. Section 10(b) relates to sheltered housing. It involves the affirmative procedure, and provides for prior consultation. It provides that the requirement to have a fire sprinkler system fitted before a warrant for construction and conversion is granted may be extended to other types of residential property. Are there any problems with that?

Members: No.

The Convener: Section 11 is on ancillary provision and is to make incidental, transitional and other ancillary provisions for the purposes of the bill or in consequence of any order made under section 10. Any order made under section 11 may modify any enactment, instrument or document. We have come across such terms before. Are there any problems with that?

Members: No.

Executive Responses

Civil Legal Aid (Scotland) Amendment Regulations 2004 (SSI 2004/50)

10:40

The Convener: We move on to item 3, on Executive responses. Members will remember that we asked the Executive about citing as enabling powers section 17(2B) and section 42 of the Legal Aid (Scotland) Act 1986. Members will see that the legal adviser is still not happy and does not accept the Executive's arguments regarding the relevance of section 17(2B). What is the way forward on the regulations? The Executive is saying that it does not think that there was a need to cite the sections, but our legal advice is that that would have been useful.

Mr Maxwell: I agree that it would have been useful. The Executive has cited the use in the preamble to the regulations of the words:

"and of all other powers enabling them in that behalf".

I accept that that catch-all phrase does indeed catch all, but it seems inappropriate to use only such a phrase. It seems entirely appropriate that the Executive should cite all the enabling powers. If section 17(2B) is such a power, it should be cited, as has happened elsewhere. We should write back to the Executive and say that we do not accept its response and that section 17(2B) should have been cited.

Christine May: I was going to say the same thing. If we do not have time to write back to the Executive we should report the matter to the lead committee and the Parliament.

The Convener: I gather that we do not have time to write back to the Executive, so we will just have to report the matter to the lead committee and the Parliament.

The second point that our legal advice mentions is the inconsistency between the regulations and the Executive note. There is an explanation from the Executive, which we will pass on to the lead committee and the Parliament. Is that agreed?

Members *indicated agreement.*

Private Hire Vehicles (Carriage of Guide Dogs etc) Act 2002 (Commencement No 1) (Scotland) Order 2004 (SSI 2004/57)

The Convener: It is the legal adviser's view that there is a slight problem, particularly for the user, with using the UK "Statutory Instrument Practice", given that there is a separate Scottish manual, which the Executive has prepared, on how we deal with commencement orders. Members have

read through the legal advice and will see that the legal adviser thinks that the issue could be considered further. What are members' views?

Alasdair Morgan: I am not entirely clear. I am only a conditional supporter of devolution, but I thought that the settlement means that we do things differently in Scotland, as the Executive and Government ministers tell us constantly. The Executive's response is right in the sense that it is following the Scottish guidance in terms of the numbering of instruments. The only question is whether the two sets of guidance should accord more with each other. One could argue that point either way. It is quite clear from the insertion of the word "(Scotland)" in the order that it is in a separate numbering series. One could argue the point just as one could argue whether calling the monarch Elizabeth I or Elizabeth II is confusing.

Christine May: I tend to consider such matters from the starting point of whether the user would find the instrument confusing. I accept Alasdair Morgan's point that the issue probably is not relevant, other than for the saddest anoraks, but we have a duty to the sad anoraks as well as to ordinary people with lives. There should be consistency and best practice should always be followed, especially if it helps to clarify where an instrument sits in the scheme of legislation. However, I am not prepared to divide the committee on the issue. I genuinely think that it is worth pursuing in the interests of clarity.

10:45

The Convener: Given Alasdair Morgan's point and the fact that there is Scottishness, if you like, in the approach that we should take, but that there might be confusion from the users' point of view, we could ask the Executive whether it considers that there is any way that we can marry the two sets of guidance to bring more clarity.

Murray Tosh (West of Scotland) (Con): Given that we like labels, such as Henry VIII powers, perhaps we could refer to Elizabeth I or Elizabeth II clauses from now on. To balance the English-Scottish angle, we could even have James I clauses or, if people prefer, James VI clauses.

Alasdair Morgan: Indeed. Whether people are confused depends on where they are coming from. I cannot remember what the number of the order would have been if it had been numbered in a UK series.

The Convener: It would have been number 2.

Alasdair Morgan: Let us say for the sake of argument that we had another order that was a "(Commencement No 5) (Scotland) Order", would that mean that someone would be looking for commencement orders for Scotland numbered 1

to 4? There is scope for confusion no matter which way we approach the issue.

Christine May: That is why we are seeking clarification.

The Convener: There is no harm in our seeking a bit more clarification. We could then pursue the matter more informally, as we have with other matters.

Mr Maxwell: That is fine.

The Convener: Before we disintegrate totally, I suggest that we seek more information on whether we can make things clearer for the user. There might not be any way to do that.

Draft Instrument Subject to Approval

Debt Arrangement Scheme (Scotland) Regulations 2004 (draft)

10:48

The Convener: We come to item 4. I gather from the legal advice that this is a difficult statutory instrument and that there are a number of substantial problems with it. The legal adviser has suggested 14 questions that we should ask the Executive, as well as minor points to make in an informal letter. Do members want to discuss any particular question?

Alasdair Morgan: These are the first regulations made under the Debt Arrangement and Attachment (Scotland) Act 2002, so it is perhaps not surprising that the Executive has not got everything right.

I refer to question 7 in the legal advice. Regulation 11(2)(a) states that a money adviser shall not charge a fee to a debtor unless the adviser has informed the debtor

“that money advice is available without any fee or payment”.

Does that mean that, in effect, a money adviser can say to a debtor, “Money advice is available without any fee or payment, but I am going to charge you”?

The Convener: Our legal adviser thinks so.

Alasdair Morgan: That means that if that debtor wanted advice free they would have to go somewhere else.

The Convener: Yes.

Alasdair Morgan: Right; excellent.

Mike Pringle: I agree with Alasdair Morgan that the regulation seems a little strange. Presumably, anybody to whom one goes for advice is going to say, “Yes, you can get it free, but not from me.” Someone could end up going to 25 different people for advice.

The Convener: Yes. The other point in the legal advice is that it is not clear what is to happen if no money advice is available free of charge.

Mike Pringle: Exactly.

Alasdair Morgan: I do not know whether that is a policy matter. I presume that the situation must be the same with legal aid.

The Convener: Yes, but the point is that the way that the regulation is drafted means that it is

not clear what is to happen if no advice is available free of charge.

Alasdair Morgan: Is money aid going to be available?

Mike Pringle: The regulation needs to be clarified.

The Convener: We have a number of questions to ask. I suggest that we write to the Executive with them and reconsider the issues when we get a response. Is that agreed?

Members indicated agreement.

Instruments Subject to Annulment

National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Amendment Regulations 2004 (SSI 2004/62)

10:50

The Convener: The regulations are on the national health service superannuation scheme. No points of substance arose, but a number of minor and drafting points have been listed in our papers. As there are quite a few of them, I suggest that we deal with them in an informal letter to the Executive. Are we agreed?

Members indicated agreement.

National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2004 (SSI 2004/66)

The Convener: No major points arise on the regulations. Do we agree to write informally to the Executive to list the minor and drafting errors that have been found?

Members indicated agreement.

Domestic Water and Sewerage Charges (Reduction) (Scotland) Regulations 2004 (SSI 2004/68)

The Convener: The regulations increase the threshold for the reduction of water and sewerage charges for the period 1 April 2004 to 31 March 2005 under the transitional water and sewerage charges reduction scheme. The regulations follow the same style as similar regulations made in previous years, with the substitution of £240 for the relevant threshold figure. The formula that is set out in the regulations might intrigue members—I was tempted to work it out myself.

Our legal adviser wants to highlight the fact that regulation 1 contains a number of unnecessary definitions of terms that are already defined in the parent act, such as “charges scheme” and “Scottish Water”. Does the committee agree to write to the Executive informally on that point and on the other minor points that have been raised?

Members indicated agreement.

Less Favoured Area Support Scheme (Scotland) Regulations 2004 (SSI 2004/70)

The Convener: We have four points to raise with the Executive on the regulations. Our legal

adviser believes that the most important point relates to the question of whether regulation 14(3) should be extended to include powers of entry for the purposes of enforcing regulation 16(d).

Do we agree to write to the Executive to ask for an explanation of the four points?

Members indicated agreement.

The Convener: Do we agree to write a further informal letter to the Executive to raise the minor points that have been raised by the legal adviser and the errors that have been detected in the footnotes?

Members indicated agreement.

Instruments Not Subject to Parliamentary Procedure

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 4) (Scotland) Partial Revocation (No 2) Order 2004 (SSI 2004/65)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 4) (Scotland) Partial Revocation (No 3) Order 2004 (SSI 2004/69)

10:52

The Convener: No points have been identified on the orders.

I thank members for their attendance.

Meeting closed at 10:53.

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