

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 9 March 2004
(*Morning*)

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

9th 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 9 March 2004

(Morning)

[THE CONVENER *opened the meeting at 10:35*]

Item in Private

The Convener (Dr Sylvia Jackson): I welcome members to the ninth meeting of the Subordinate Legislation Committee in 2004.

Item 1 on the agenda is consideration of whether to take item 7 in private. Item 7 is consideration of candidates for appointment to the post of adviser to the inquiry into the regulatory framework in Scotland. Is it agreed that we take item 7 in private?

Members indicated agreement.

Delegated Powers Scrutiny

Tenements (Scotland) Bill: Stage 1

10:36

The Convener: Item 2 is delegated powers scrutiny. Members will remember that we asked the Scottish Executive several questions about the Tenements (Scotland) Bill at stage 1. Members have the answers that we received, together with the legal advice.

I suggest that, given the answers that we have received on section 4(11) and section 22, we will not get be able to get much more information than we have received in the response. The information is useful in that we hope that the Executive will take on board the concerns that we raised and we hope that that will come back to us at stage 2.

Members indicated agreement.

Executive Responses

Debt Arrangement Scheme (Scotland) Regulations 2004 (draft)

10:37

The Convener: We raised several points on the regulations and I will summarise most of the issues. First, there is still some concern about the definitions of terms and phrases used in the regulations—the legal advice is detailed. I note that the legal advice makes the point strongly that these are not easy regulations to draft. It is easy to scrutinise the regulations in detail and think about points to raise, but I am assured that they are quite difficult to draft. Secondly, the committee raised a significant point about the appeal procedure, in question 6 to the Executive. Thirdly, we feel quite strongly about sanctions.

Christine May (Central Fife) (Lab): There is a general point to make, which is that while the regulations place a large number of duties on money advisers, payment distributors and debtors there are very few sanctions, if any, for breach of those duties. For example, regulation 7(2) uses the phrase

“ceased to act”

and requires the debtor to notify the debt arrangement scheme administrator of that happening. Regulation 43 is cited as the complying regulation for regulation 7(2), but legal advice tells us that it is not necessarily relevant.

There is a general point about duties and sanctions and the detail in the regulations that would give effect to them.

The Convener: Does anyone want to comment on the appeal procedure?

Alasdair Morgan (South of Scotland) (SNP): It is clear that the revocation of the person's accreditation—I think that that is the correct word—is effectively depriving them of the right to carry on their business, which is against the European convention on human rights. The Executive, in its response, states that there is recourse to judicial review. However, that is only on a point of law and not on the merits of the case. I think that the ECHR would say that you have to be able to appeal the merits of the case. There must be some provision for that.

The Convener: Are there any other points about definitions or phrases, or are we quite happy to list for the Parliament and the lead committee the various examples that are in front of us?

Christine May: There is one “what if” question, which relates to how the matter of advice being

available free of charge is dealt with. The Executive's response says that it does not envisage any occasion when advice will not be available free of charge. "What if there is such an occasion?" is still a good question to ask. A slight change to the wording of the draft regulations could help make thinking clearer. We should also make the general point that a lot of expertise on debt advice and money advice is already out there.

This is perhaps straying into the realms of policy, but it is relevant for the purposes of our scrutiny of the draft regulations. We would hope that the lead committee might wish to recommend in its report that the advice and expertise out there be used in conjunction with the regulations. That way, it could be ascertained where they are defective, where they need amended and where they need strengthened. As you have pointed out, convener, it is difficult to anticipate all the circumstances and difficulties that might arise—and they will—when we have a first pass at such draft regulations. It is perhaps in order to suggest to the lead committee that such a recommendation might be part of its report.

Alasdair Morgan: There are several definitional points. Perhaps the most glaringly obvious one is in regulation 7(4), which says:

"A money adviser shall assist the debtor to appoint a replacement adviser where that first adviser has ceased to act by reason of the resignation, or revocation ... of that first adviser."

Apart from the trainspotter point that, if

"that first adviser has ceased to act by reason of ... revocation",

he is no longer a money adviser, in which case the regulation would not apply to him, there is also a practical point that if the money adviser has had their ability to practise revoked, they would be very unlikely to be willing or even capable of assisting the debtor to do anything. There are question marks over that paragraph and over other points in the draft regulations.

The Convener: Do you have any points to raise, Mike?

Mike Pringle (Edinburgh South) (LD): No.

The Convener: Murray?

Murray Tosh (West of Scotland) (Con): No—I think that all the recommendations have been very well argued.

The Convener: They have indeed. The recommendation is that we draw to the attention of the lead committee and the Parliament the points that the legal adviser has raised with us, which are listed as grounds (a) to (e) in the legal brief. They include legislative practice not being kept to,

defective drafting and so on. We shall also highlight the examples that the legal adviser has given us, particularly with regard to the definitions and difficulties that might arise.

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

The Convener: We raised four points on the regulations. The Executive has conceded that the regulations are defectively drafted, and proposes to lay amending regulations as soon as possible. We should be fairly content with that.

Members indicated agreement.

The Convener: There is a wee comment in the legal advice about the breaching of the 21-day rule. We are quite happy with the reason for that on this occasion.

Christine May: The committee might wish to note formally that we were very content with how the matter was dealt with.

The Convener: Yes. We will draw the attention of the lead committee and the Parliament to the two points that the legal adviser has identified. 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: The issue here was about the numbering system for commencement orders. We wrote to the Executive to ask about how orders commencing UK acts of Parliament for Scotland are numbered, and about whether there should be a separate numbering series for such orders. It would appear from what we have heard from the Executive that that is what it is proposing. Indeed, that was Alasdair Morgan's proposal at the previous meeting. I hope that I have summarised that adequately. Are we in agreement that that numbering series would get over some of the difficulties of using a common system for two jurisdictions?

Alasdair Morgan: Very much so.

The Convener: I thought that you would say that. In future discussions with the Scottish Executive, we might wish to check how the training is progressing on the use of the two different numbering systems. We have been told that the new "Scottish Statutory Instrument Practice"—known as the Scottish SIP—is now in draft form, but will be coming on stream. Although the commencement order in front of us has been numbered as part of a Scottish series, the most recent training would seem to have indicated that that scheme should not be used at the moment.

We might want to check on that. Is that agreed?

Members *indicated agreement.*

Draft Instrument Subject to Approval

Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (draft)

10:45

The Convener: The draft order makes a number of amendments to primary legislation. Its provisions would normally have been contained in the bill, had there been enough time. As members will have read from the Executive note, that was not the case, because the regulations were drafted to get to the various committees concerned in order to be discussed. That is the explanation that has been given.

Aside from that, no points of substance have been identified on the draft order.

Instruments Subject to Annulment

Road Traffic (NHS Charges) Amendment (Scotland) Regulations 2004 (SSI 2004/76)

10:46

The Convener: The legal adviser has provided us with a lot of history about the context of the regulations, which is important when it comes to the consultation process. There are no points of substance on the regulations.

Sea Fishing (Restriction on Days at Sea) (Scotland) Amendment Order 2004 (SSI 2004/81)

The Convener: The order makes a number of amendments to correct the drafting defects of the instrument that was before us previously. The new order is most welcome. As is customary in such situations, the new order is being made available to the recipients of the principal order free of charge.

Although the legal adviser has identified no points of substance on the order, there is an issue around the definition of a “designated port”. I gather that the legal adviser has already raised the matter informally with the Executive. I wonder whether we should also raise the matter by means of an informal letter to the Executive, to ensure that we have that down on paper.

Christine May: For completeness, I think that we should do so. I would also like to put on record the fact that there was no transposition note with the order. We are advised that, in this instance, one would have been very helpful in improving the clarity of the instrument and our ease of understanding. I would like that to be mentioned to the Executive, too.

The Convener: I seek the committee’s guidance. I do not know what more we can do about the issue of transposition notes.

Mike Pringle: We should simply bring it to the Executive’s attention every time one is missing—

Christine May: —until either they or we give up.

The Convener: We should include the issue in our list for discussion with Executive officials the next time that we meet them. We can say that there have been a given number of occasions when we have not had transposition notes.

Alasdair Morgan: One other point has just occurred to me, although I am not sure whether it will be possible for this to be clarified. I am not clear as to what extent the order will actually be a

working document—perhaps not at sea, but it may well be in ports—but it strikes me that some of the amendments that the order makes involve fairly detailed substitutions of little bits of the previous instrument. Although the order has been issued free—for which I am sure everyone is tremendously grateful—people really have to read the original instrument in conjunction with the new one. Is there any way in which it is possible—legally possible, even—to publish an amended, consolidated instrument, with the amendments incorporated into the original? It is clear that that would be far easier for laymen—or fishermen—to understand.

The Convener: I think that we should raise that very good point, because it is important that we try to make statutory instruments as clear as possible for whoever will use them. We will mention consolidation in our letter. [*Interruption.*] Our legal adviser tells me that some departments already publish a consolidated version of instruments on their websites. Given the importance of the order in question, we will ask if that can be done in this case.

Christine May: If we return to the draft Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004, that is something that I would save up to take to my desert island to read. I would marry it up against the original acts and put in the changes. It is very difficult to have to go back and forth between two documents. Alasdair Morgan makes a good point.

The Convener: Instead of making that point just in relation to the sea fishing order, perhaps we will make it a general point. Is that agreed?

Members *indicated agreement.*

Instrument Not Subject to Parliamentary Procedure

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 3) (Scotland) Order 2003 Revocation Order 2004 (SSI 2004/79)

10:50

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

Members *indicated agreement.*

The Convener: We will deal with item 7 in private. If any members of the public are present, I ask them to leave.

10:51

Meeting continued in private until 11:00.

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