

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 30 March 2004
(Morning)

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

12th 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

Bruce Adamson

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 30 March 2004

(Morning)

[THE DEPUTY CONVENER *opened the meeting at 10:31*]

Delegated Powers Scrutiny

Education (Additional Support for Learning) (Scotland) Bill: as amended at Stage 2

The Deputy Convener (Gordon Jackson): Good morning. I open the Subordinate Legislation Committee's 12th meeting this year. Sylvia Jackson, the committee's convener, is still off sick, and Christine May is not with us because of a family illness. All the other committee members are present.

At stage 2 of the Education (Additional Support for Learning) (Scotland) Bill, the Executive lodged four amendments to delegated powers in the bill. The Education Committee's convener lodged two such amendments that the Executive opposed.

Section 9(9) of the bill provides a power to make further provision about co-ordinated support plans by regulations. I suggest that the provision contains nothing much to concern us.

Members indicated agreement.

The Deputy Convener: Section 14A and related section 27(5) were introduced by amendments from the Education Committee's convener to which that committee agreed. They will give further powers to the Scottish ministers. Perhaps I do not understand the situation entirely, but this seems to be one of the rare occasions on which the Executive has been offered more power and has said that it does not want it, yet others have insisted that it should have that power. What do members make of that?

Alasdair Morgan (South of Scotland) (SNP): Section 14A is a Henry VIII power, because it gives the Scottish ministers the power to extend the categories in the bill for making a reference to a tribunal. The committee would not normally wish ministers to have such a power and it is strange that the Education Committee insisted that ministers should have it against their wish.

The Deputy Convener: Although that is our position, the subject is in some ways a policy

matter, so all that we can do is draw it to the lead committee's attention. However, the members of the lead committee are the people who agreed to the amendment, so one assumes that they know about it. I am not sure what we can do other than say that we are a little surprised.

Alasdair Morgan: The bill will not return to that committee, as stage 3 is dealt with by the whole Parliament. I presume that one of us can make the point forcefully in the stage 3 debate.

The Deputy Convener: We will have to draw lots for that fantastic opportunity. I am sure that one of us will make the point.

Murray Tosh (West of Scotland) (Con): I suggest that the deputy convener is the most appropriate person to be given that duty. I have every trust in his ability and judgment to undertake it.

The Deputy Convener: With a bit of luck, I will understand the point by that time.

The situation is unusual. We will point out to the Parliament that we do not normally want such powers to be provided and that we agree with the Executive about how we normally view such powers.

Subsections (1), (2A) to (2E), (3) and (7) of section 23 concern a code of practice. Do we have anything to say about them?

Mike Pringle (Edinburgh South) (LD): No. The provisions are fine.

The Deputy Convener: Section 25 makes ancillary provision and gives rise to no difficulty. No difficulty arises from subsections (4) and (5) of section 27, which concern laying regulations before Parliament. We might want simply to welcome the amendment of that section.

Executive Responses

Special Waste Amendment (Scotland) Regulations 2004 (SSI 2004/112)

10:34

The Deputy Convener: Under item 2 we have a load of Executive responses. Do members have any comments on the regulations?

Alasdair Morgan: The Executive has admitted its mistake in the regulations and will produce amending regulations.

The Deputy Convener: We will draw the lead committee's attention to the defective drafting, which the Executive has acknowledged.

National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004 (SSI 2004/114)

The Deputy Convener: Do members have any comments on the regulations?

Murray Tosh: We can agree to the recommendations in our briefing paper.

Alasdair Morgan: The regulations do not deal with people who are convicted outside the United Kingdom, but the Executive is aware of and says that it will deal with the issue.

The Deputy Convener: We will simply draw that to the attention of the lead committee and the Parliament.

National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 (SSI 2004/115)

The Deputy Convener: We raised with the Executive the failure to follow proper legislative practice. The Executive's answer was that to do anything other than what it has done would be repetitive. One is tempted to say that that never stopped the Executive in the past. We find the answer a little odd and will draw it to the attention of the lead committee and the Parliament. We will also draw to the lead committee's attention several other matters that concern an apparent retrospective effect that the parent act does not authorise. Is the committee content to do that?

Members indicated agreement.

Alasdair Morgan: That was an admirable summation.

National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004 (SSI 2004/116)

The Deputy Convener: Do members have any comments on the regulations?

Mr Stewart Maxwell (West of Scotland) (SNP): The regulations provide more of the same—more defective drafting. We raised some minor points, many of which the Executive has acknowledged. We will do the same as before and refer those points to the lead committee.

The Deputy Convener: Okay.

Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Regulations 2004 (SSI 2004/117)

The Deputy Convener: The regulations contain defective drafting, which we will draw to the lead committee's attention.

Murray Tosh: Agreed.

Dairy Produce Quotas (Scotland) Amendment Regulations 2004 (SSI 2004/118)

The Deputy Convener: Nothing different arises on the regulations. They contain a bit of defective drafting and a failure to follow normal legislative practice. We asked the Executive for further information, which it has supplied. We will send the whole package of comments to the lead committee and the Parliament.

National Health Service (Tribunal) (Scotland) Amendment Regulations 2004 (SSI 2004/122)

The Deputy Convener: This is another occasion on which we will tell the lead committee and the Parliament that the Executive failed to follow proper legislative practice.

Members indicated agreement.

Criminal Legal Aid (Fixed Payments) (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/126)

The Deputy Convener: I must say that I like the first three words of the title of the regulations better than the two words that follow them—I suppose that I should declare an interest. We will point out minor matters about the regulations to the lead committee and the Parliament.

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (West
Coast) (No 4) (Scotland) Order 2003
Revocation Order 2004 (SSI 2004/124)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (West
Coast) (No 6) (Scotland) Order 2003 Partial
Revocation Order 2004 (SSI 2004/125)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (West
Coast) (No 10) (Scotland) Order 2003
Revocation Order 2004 (SSI 2004/129)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (Orkney)
(No 2) (Scotland) Order 2003 Revocation
Order 2004 (SSI 2004/130)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (West
Coast) (No 5) (Scotland) Order 2003
Revocation Order 2004 (SSI 2004/131)**

The Deputy Convener: We have a bundle of instruments on food protection that is made up of our old friends, the amnesic shellfish orders. Members may recollect that a question was asked about maps. What is our position?

Alasdair Morgan: The Executive has offered to supply sketch maps if necessary. If an order with which a sketch map was provided is totally revoked, a second map is not required to accompany the revocation order. However, a map needs to accompany a partial revocation order, because only the whole area will be outlined in the map with the original order. Sometimes such maps are not detailed, but they would still be useful.

Mike Pringle: I often find it almost impossible to decipher the relevant areas.

The Deputy Convener: The Executive has offered to supply sketch maps with revocation orders. We must consider whether we will ask the Executive to supply sketch maps with all the orders or only with the partial revocation order. We have said that such maps are needed only with partial revocation orders. If a whole order is being revoked, people do not need to see the relevant area again.

Mr Maxwell: Of the five orders, only one is a partial revocation order.

The Deputy Convener: Murray Tosh has doubts about the proposal.

Murray Tosh: Given the sheer number of such instruments, one wonders if there is sometimes

scope for confusion about which orders have been revoked. It would be in the interests of whoever reads these things for maps always to be made available. If a map has been produced for the initial order, it cannot be difficult, complex or particularly expensive to reproduce it for the revocation.

The Deputy Convener: I can see that. There are so many revocations that, without maps, people need to be very careful to identify the area to which each applies. On reflection, I would go with that.

Mike Pringle: Murray Tosh makes a good point—and he actually reads the maps.

Alasdair Morgan: I think that the scallop fishermen are very keen to see the maps.

Mike Pringle: Are they?

Mr Maxwell: I am sure that they are.

Draft Instruments Subject to Approval

Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 (draft)

10:40

The Deputy Convener: The phrase “invalidly made” appears throughout the regulations. We might ask the Executive precisely what is meant by that. It might be obvious, or it might not, but it would be nice to get clarification of that. The expression “or on behalf of” is also used, as well as references to applicants themselves. However, there are a couple of instances where it is not used. We would like to know whether that is deliberate, or whether there have simply been a couple of omissions of the phrase. Aside from asking the Executive about those two points, I am not sure whether there are any other comments to make on the draft regulations.

Mr Maxwell: There is a large number of typographical errors.

The Deputy Convener: Indeed. We will point those out.

Sexual Offences Act 2003 (Travel Notification Requirements) (Scotland) Regulations 2004 (draft)

The Deputy Convener: No points arise on the draft regulations.

Instruments Subject to Annulment

Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Amendment Regulations 2004 (SSI 2004/134)

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2004 (SSI 2004/137)

10:41

The Deputy Convener: No points arise on the regulations.

General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004 (SSI 2004/142)

The Deputy Convener: There are a couple of matters to raise on the order. We might wish to ask the Executive to explain the reference to the “1992 Regulations” under article 20(2), and to confirm that the reference to “person’s”—a sort of semi-plural—should be “person” in articles 3(3)(b) and 4(3)(b). There are no points apart from that.

Organic Aid (Scotland) Regulations 2004 (SSI 2004/143)

The Deputy Convener: I think that we might have some points to raise on these regulations.

Murray Tosh: Why do we not ask the questions that it is suggested we might usefully pursue with the Executive?

The Deputy Convener: Yes. The legal advisers have suggested a number of questions involving references that need explained. We will ask the Executive for clarification. Is that okay?

Members *indicated agreement.*

Tobacco Advertising and Promotion (Point of Sale) (Scotland) Regulations 2004 (SSI 2004/144)

The Deputy Convener: No points arise on the regulations.

Instruments Not Subject to Parliamentary Procedure

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (West
Coast) (No 8) (Scotland) Order 2003
Revocation Order 2004 (SSI 2004/135)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (West
Coast) (No 11) (Scotland) Order 2003
Partial Revocation Order 2004
(SSI 2004/139)**

10:43

The Deputy Convener: Finally, we come to item 5: instruments not subject to parliamentary procedure. We have a couple more of the amnesic shellfish thingies. No points have been identified on the pro-forma revocation orders.

Instruments Not Laid Before the Parliament

**Sexual Offences Act 2003
(Commencement) (Scotland) Order 2004
(SSI 2004/138)**

10:43

The Deputy Convener: Having said “finally”, it turns out that I was only joking—item 6 is over the page on the agenda. However, no points have been identified on the order.

On that cheery note, I thank members very much.

Meeting closed at 10:43.

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