

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 27 April 2004
(*Morning*)

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

14th 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 27 April 2004

(Morning)

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

Delegated Powers Scrutiny

National Health Service Reform (Scotland) Bill: as amended at Stage 2

The Convener (Dr Sylvia Jackson): I welcome members to the 14th meeting of the Subordinate Legislation Committee this year. I have received no apologies.

Item 1 is delegated powers scrutiny of the National Health Service Reform (Scotland) Bill as amended at stage 2. A number of changes have been made to the bill, which introduce or amend delegated powers. The first of them concerns community health partnerships. A new regulation-making power has been added at new section 4B(5)(da) of the National Health Service (Scotland) Act 1978, as inserted by section 2 of the bill as amended. As our legal advice indicates, the big question is why the new power is needed for joint community health partnerships. The provisions in any case appear at new section 4A(1B) of the 1978 act, also as inserted by section 2 of the amended bill.

Alasdair Morgan (South of Scotland) (SNP): I am not quite sure whether that is a big question, but you are right to point out that the provisions in new section 4B(5)(da) of the 1978 act do not seem necessary in view of the provisions already in place under new section 4A(1B). Some explanation should be sought, in case that needlessly complicates things for the future.

The Convener: Is that agreed?

Members indicated agreement.

The Convener: The second point is also on section 2 and community health partnerships. There were Executive amendments to do with the number of such partnerships. It has been suggested that the provisions are unduly prescriptive, that there should be more flexibility, and that those provisions should be moved over to guidance. Are we agreed on that?

Members indicated agreement.

The Convener: The next point relates to the specification of community health partnerships' functions under section 2. It is similar to what we have already discussed in relation to the number of community health partnerships. It is thought that the illustrative list that was provided was too prescriptive and that it should be moved over to guidance. If we agree with that, there remains the point that such guidance is not subject to parliamentary procedure, so I want to ensure that members are happy with that proposal.

Members indicated agreement.

The Convener: Would it be in order for us to make Parliament aware of those two changes, which have resulted in our recommending that the provisions concerned be put instead in guidance—which will not be subject to parliamentary scrutiny?

Members indicated agreement.

Executive Responses

General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004 (SSI 2004/163)

10:38

The Convener: I was spared last week's discussion on the order, having instead been trapped in a ScotRail train for three hours, but I gather that the committee really went to town on it. The legal adviser has made a number of recommendations about changes. First, there is defective drafting at the 10 points that were highlighted in our papers.

Alasdair Morgan: We were concerned that article 8 mentioned the health board giving a general practitioner notice of its intention to remove a person from his list. The other articles, however, mention consulting the GP. In its response, the Executive has said that the substance and the effect is the same. In plain English, consulting and giving notice are not the same. One is aware that both are happening, but consulting involves a greater degree of two-way traffic than simply giving notice.

Mike Pringle (Edinburgh South) (LD): There is no doubt about that—giving notice to and consulting a doctor are not remotely the same. I do not know how the Executive can say that they are the same.

The Convener: We will draw those points to the attention of the lead committee and the Parliament, as recommended in our legal advice.

The ninth point that we made to the Executive concerned the failure to follow proper legislative practice. The 16th point that we made was considered to be a big one by our legal adviser.

Alasdair Morgan: The legal advice is correct in that trying to modify changes made by the Primary Medical Services (Scotland) Act 2004 (Consequential Modifications) Order 2004 (SI 2004/957), which was made under section 104 of the Scotland Act 1998, is clearly outwith the vires of the Scottish Parliament. We have to ask the Executive why it takes the view that that is within devolved competence. The whole point of having vires is that one cannot go against them willy-nilly. However, we all agree that we are dealing with a purely technical matter that does not open wide the floodgates that lead to independence, or hugely broaden the Parliament's power.

Although provisions are made in paragraph 3 of schedule 4 to the Scotland Act 1998 for this Parliament to tread into reserved matters that are

purely consequential or technical, it is surely not beyond the wit of man to come up with some other provision that would be within the vires of the Parliament to allow us to make modifications. At present that can only be done by making yet another order at Westminster, which is clearly undesirable. We should take up the matter as part of our inquiry. Perhaps we should ask the Secretary of State for Scotland or the Advocate General for Scotland for their views on how the anomaly could be addressed.

Christine May (Central Fife) (Lab): Alasdair Morgan makes a good point. We are dealing with two separate issues. The first is how we fix what is wrong. There is provision, albeit slightly dodgy, for sorting what is currently ultra vires—and it must be sorted. The second question is Alasdair Morgan's main point—how do we sort it so that such modifications can be made in future without raising questions of vires? The matter is technical—we have a single United Kingdom national health service and therefore, regulations have to be complementary so that folk can move about and do their work. A way has to be found to sort the matter. If the Scotland Act 1998 needs technical amendment to ensure that it is more difficult for mistakes such as this to happen, that is well and good. If that makes it easier for those who draft the legislation, which applies north and south of the border, let us get it done.

The Convener: There are two points. The first is to highlight the seriousness of the matter to the lead committee by making the point in bold that something must be done. The example that we have had is the Primary Medical Services (Scotland) Act 2004 (Consequential Modifications) Order 2004 (SI 2004/957), made under the Scotland Act 1998.

Secondly, we might add that we are looking at the issue as part of the inquiry, but we must ensure that the matter is added to the material that we are accumulating for the inquiry. Are we agreed?

Members indicated agreement.

Christine May: When we get documents from the Executive, they are certified as true copies. However, in its comments to us the Executive accepts that the copy we received last week might not have been a true copy. That is not good enough. The committee is part of the legislative programme of Parliament and if such documents are certified as true copies then they should be true copies. The Executive needs to take considerably more care over the documents that are sent to us.

The Convener: Are we agreed?

Members indicated agreement.

The Convener: The final point is that we should draw to the attention of the lead committee—in bold—the generally unsatisfactory nature of the order.

Members *indicated agreement.*

National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/166)

The Convener: We are advised to draw the attention of the lead committee and the Parliament to the regulations on the ground of defective drafting, which has been acknowledged by the Executive, and to make the point about amending the explanatory note to ensure that it reflects the contents of the regulations. Are we agreed?

Members *indicated agreement.*

Liquor Licensing (Fees) (Scotland) Order 2004 (SSI 2004/157)

The Convener: Again we are advised to draw the attention of the lead committee and the Parliament to the order on the ground of defective drafting. Are we agreed?

Members *indicated agreement.*

Instruments Subject to Annulment

Food (Jelly Mini-Cups) (Emergency Control) (Scotland) Regulations 2004 (SSI 2004/187)

10:45

The Convener: There has been some discussion about what jelly mini-cups are, but no points arise on the regulations. Are there further comments?

Christine May: We should move on swiftly.

Gordon Jackson (Glasgow Govan) (Lab): Every so often I think that spoof instruments are placed on the agenda to see whether we are awake. I have a feeling that this might be one of them.

Christine May: Do you think that we should ask for examples to be presented to the committee?

The Convener: It was recommended that we might have some practical examples of jelly mini-cups.

Home Energy Efficiency Scheme Amendment (Scotland) Regulations 2004 (SSI 2004/188)

The Convener: I gather from legal advice that the English and Welsh equivalent regulations have been looked at and that they are in much better shape. We need to ensure that the principal regulations are consolidated because, after various changes, they are now in a bit of a mess. I suggest that we write to the Executive to say that it is essential that we take action now. At the same time we should ask whether there is adequate resourcing for consolidation.

Mr Stewart Maxwell (West of Scotland) (SNP): Perhaps we should raise that point in our inquiry. It is clear that there is a case for the regulations to be consolidated. That has been achieved with similar regulations elsewhere, which begs the question why that cannot be achieved in Scotland. A lack of resources is an obvious answer.

The Convener: We will phrase our letter in that way.

Mr Maxwell: I highlight the fact that the original report of the then Subordinate Legislation Committee was made in 2001 and it appears that the Executive gave the impression that consolidation was imminent. My definition of imminent would be fewer than three years.

The Convener: I agree. Will we add that point to our letter?

Members *indicated agreement.*

Instruments Not Subject to Parliamentary Procedure

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Revocation Order 2004 (SSI 2004/192)

10:48

The Convener: No points arise on the order.

Procedures Committee Inquiry

10:48

The Convener: We move to consider the Procedures Committee inquiry into the timescales and stages of bills. Three points have been raised. The first is about the length of time between stages 2 and 3. On one occasion, we had only one meeting between the two stages in order to discuss the bill and we must decide whether we want to ensure that we have two meetings.

The second point regards amendments at stage 3, and whether we should formalise the understanding that we are given notice of such amendments.

The third point is about the provision of Executive memoranda. They are useful to us, but sometimes we receive them rather late. The suggestion is that, because of their importance, we create a more formal mechanism for the provision of memoranda to us, and also for the provision of a memorandum as it is amended through the bill's progress. I believe that Christine May has a fourth idea.

Christine May: Yes. It reflects something that you said earlier and is about the level of resource that is available to the Executive to carry out this work. As I have said, the committee is an essential part of the Parliament's legislative process. If there is insufficient resource available to the Executive to carry out the detailed work that is required, it is more difficult for the Executive to work to timescales. There has been some evidence of that in our receiving defective drafting and in material coming to us late on in the process. It is worth raising that issue in this context, so that it is in the Parliament's ken through the Procedures Committee's inquiry as well as through the work that we are doing.

The Convener: I think that we are all agreed on that.

Members *indicated agreement.*

Annual Report

10:51

The Convener: The committee's annual report is absolutely first rate. I thank Alasdair Rankin very much for drafting it. As members have no additional points to make, is the report agreed?

Members *indicated agreement.*

The Convener: I thank committee members for their attendance today.

Meeting closed at 10:51.

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