

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 1 June 2004
(Morning)

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

19th 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

Bruce Adamson

Joanne Clinton

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 1 June 2004

(Morning)

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

Item in Private

The Convener (Dr Sylvia Jackson): I welcome members to the 19th meeting this year of the Subordinate Legislation Committee. I have received apologies from Gordon Jackson, who is in Dublin with the European and External Relations Committee, and from Stewart Maxwell, who is giving evidence to the Finance Committee about his Prohibition of Smoking in Regulated Areas (Scotland) Bill.

The committee needs to decide whether to consider agenda item 7, which concerns our inquiry into the regulatory framework in Scotland, in private. Is it agreed that we discuss our draft consultation paper in private?

Members *indicated agreement.*

Executive Responses

National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2004 (SSI 2004/217)

10:34

The Convener: We wrote to the Executive about the regulations. Members will see from their papers that we have received a reply that indicates why the Executive took the line that it did. The points that we made related partly to assessment panels. The legal advisers think that there remains a discrepancy in the approach to the drafting of regulation 11 of the original regulations. If members have no further points to make, I suggest that we pass the matter on to the lead committee and the Parliament, together with the response that we received.

Murray Tosh (West of Scotland) (Con): I agree that we should do that. We should also observe in passing that

“this package of legislation illustrates clearly the dangers inherent in over complex and detailed legislation which are so difficult to follow that they become nearly impossible for anyone, even professionals”—

such as our advisers—

“to understand.”

Alasdair Morgan (South of Scotland) (SNP): I could not have put that better myself.

The Convener: No, we could not.

Christine May (Central Fife) (Lab): I agree with that.

The Convener: We are agreed. We will include that in what we pass on to the lead committee and the Parliament.

Framework Guidance on Preparing a National Park Plan (draft) (SE/2004/98)

The Convener: Members will recall that we wrote to the Executive, saying that the draft guidance should have had some indication on it that it was a draft. The Executive has taken that point on board. Are there any other comments?

Murray Tosh: As we have received a positive response from the Executive, I suggest that we would want to build on that. Perhaps we could raise the matter in one of our informal meetings with the Executive so as to ensure that all departments will accept the same spirit and apply the same practice.

The Convener: We could do that at an informal meeting, or by informal letter.

Alasdair Morgan: I do not think that it would be worth writing again.

The Convener: Okay. Let us do as Murray Tosh suggests. We will also pass the Executive's response on to the lead committee and the Parliament. Is that agreed?

Members *indicated agreement.*

Draft Instruments Subject to Approval

Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2004 (draft)

10:36

The Convener: No significant points arise. However, we should note the fact that the draft order contains powers that we have been awaiting for some time, under the Fireworks Act 2003. We should also note that the order allows ministers to approve co-operative housing associations for the purposes of claims for tax relief.

Town and Country Planning (Electronic Communications) (Scotland) Order 2004 (draft)

The Convener: The legal advisers found it very difficult to check the various references contained in the draft order. It is suggested that we ask the Executive to confirm those references, and that we ask the Executive what plans it has, if any, for consolidation of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (SI 1992/223) and the Town and Country Planning (General Development Procedure) (Scotland) Regulations 1992 (SI 1992/224). As members can see from paragraph 29 of the legal brief, those statutory instruments have been amended no fewer than 16 and nine times respectively. Is that agreed?

Members *indicated agreement.*

Christine May: To amend an instrument 16 times before consolidation seems excessive.

The Convener: We should perhaps deal with this particular instance now and, in the spirit of what Murray Tosh has suggested, we should highlight such examples of where consolidation is needed when we meet the Executive.

Alasdair Morgan: The statutory instruments in question are not instruments with which the public would never come into contact. They deal with planning and many people could potentially be affected if they are not able to interpret the

regulations. That makes the matter more important than might otherwise the case.

Christine May: Under the current review of the planning system, which is now out for consultation, it may be that the intention is to take into account all subordinate legislation. However, we have hoped for that in the past, but discovered that it did not happen.

Murray Tosh: It is worth asking about that. We apply a rule of consolidating after five changes are made. Presumably, the Executive does not accept that as gospel, but it knows that that is the standard that we tend to raise; 16 and nine amendments seem to be slightly in excess of that. It would be legitimate to ask whether the Executive intends to consolidate the instruments now, or whether it intends to encompass the changes in the planning bill that we have been told will come within the next couple of years.

The Convener: Are we agreed on that?

Members *indicated agreement.*

Instruments Subject to Approval

Farm Business Development (Scotland) Amendment Scheme 2004 (SSI 2004/236)

10:39

The Convener: No points arise on the scheme.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 3) (Scotland) Order 2004 (SSI 2004/237)

The Convener: Are there any points to raise?

Murray Tosh: I wondered whether the acronym for the Food and Environment Protection Act 1985—FEPA—ought to be written in the upper case rather than the lower, as it is written in the legal brief.

The Convener: Possibly.

Instruments Subject to Annulment

Crofting Community Body Form of Application for Consent to Buy Croft Land etc and Notice of Minister's Decision (Scotland) Regulations 2004 (SSI 2004/224)

10:40

The Convener: These regulations, and the following instruments on the right to buy, were made under the Land Reform (Scotland) Act 2003. As members can see from the legal brief, the situation is a mess. Although none of the instruments is lengthy, they appear to be so badly drafted and to contain so many errors that the time involved in scrutinising them has been quite disproportionate.

There is concern over whether the Crofting Community Body Form of Application for Consent to Buy Croft Land etc and Notice of Minister's Decision (Scotland) Regulations 2004 (SSI 2004/224) are ultra vires. The regulations are untidy, misleading and difficult for people to deal with. There is a huge number of points to be made and I wondered whether the committee should make some general points and then include the specific points in a letter to the Executive. I am open to suggestions.

Christine May: There is a huge number of instruments to discuss and the time that has been available to us to examine them has been limited. I understand that some members of staff worked until midnight to try to make sense of the instruments; that is an unacceptable burden to put on staff. There might be other errors that have not yet been identified. Perhaps the Executive will consider revisiting the instruments with a view to issuing a completely new set as soon as possible.

The Convener: We can certainly ask that the Executive does that. Do you agree Murray?

Murray Tosh: I do. Ordinarily we pick up lots of minor points and put them into informal letters to the Executive, and the legal briefing questions whether we should do things formally or informally. However, this is flagship legislation and because so many of our points need to be raised formally, we should raise them all formally on this occasion. We should make the point that legislation that is so important should have come to the committee in a fit-for-purpose state and it should not be subject to bouncing backwards and forwards between the committee and the Executive until we get it right. It is not right that something that is so significant to the Parliament should have emerged in such a half-baked way.

Alasdair Morgan: I agree.

The Convener: In that case, let us work out what we are going to do. Our first general point is that we are going to raise all the points with the Executive in a formal letter and, as Murray Tosh said, because this is flagship legislation, tell the Executive that we want it to revisit the regulations. If the Executive does not do that, it will be worth listing all the points that have been made in the legal brief so that they can be remedied.

Christine May: We will have to do both because we are obliged to comment on the legislation as it is presented to us, regardless of whether or not the Executive takes on board our request to revisit the legislation. However, as well as those general points, are we going to raise the specific points from each regulation?

The Convener: Yes.

Christine May: Thank you.

The Convener: So, as far as the Crofting Community Body Form of Application for Consent to Buy Croft Land etc and Notice of Minister's Decision (Scotland) Regulations 2004 (SSI 2004/224) is concerned, we will raise with the Executive all the issues that have been raised in the legal brief. Some parts of the regulations are misleading and interpretation and definition have to be addressed.

Murray Tosh: How do we put our concerns on the record? Normally we would specify them during the course of a meeting and there is an awful lot in the legal brief that would have to be read into the *Official Report*. How might we do that?

The Convener: Because our comments will be listed and sent to the Executive, they will appear in the committee's report.

Murray Tosh: So our comments and the Executive's response becomes part of the public record.

The Convener: Absolutely.

Crofting Community Right to Buy (Grant Towards Compensation Liability) (Scotland) Regulations 2004 (SSI 2004/225)

The Convener: Our legal advisers have crystallised all their comments into three main areas. I suggest that we put those to the Executive. Is that agreed?

Members indicated agreement.

**Crofting Community Right to Buy
(Compensation) (Scotland) Order 2004
(SSI 2004/226)**

The Convener: The legal advisers list five questions. Is it agreed to put those questions to the Executive?

Members indicated agreement.

**Crofting Community Right to Buy (Ballot)
(Scotland) Regulations 2004 (SSI 2004/227)**

The Convener: There are slightly more questions for the Executive on these regulations. Are they agreed?

Members indicated agreement.

**Community Right to Buy (Ballot)
(Scotland) Regulations 2004 (SSI 2004/228)**

The Convener: We have the same issues with these regulations as we have with the Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004 (SSI 2004/227), and will refer those issue to the Executive for comment, if that is agreed.

Members indicated agreement.

**Community Right to Buy (Compensation)
(Scotland) Regulations 2004 (SSI 2004/229)**

The Convener: There are three main matters in the regulations that we will raise with the Executive.

Members indicated agreement.

**Community Right to Buy (Register of
Community Interests in Land Charges)
(Scotland) Regulations 2004 (SSI 2004/230)**

The Convener: It is suggested that we consider asking for an explanation of what is comprised in item 4 of the schedule.

Murray Tosh: A couple of points are flagged up that are suggestions rather than challenges. It might be reasonable to raise those points informally because they are not really criticisms of the regulations. They are detailed in paragraphs 100 and 101 of the legal brief.

The Convener: We will put those points in an informal letter. Is that agreed?

Members indicated agreement.

**Community Right to Buy (Specification of
Plans) (Scotland) Regulations 2004
(SSI 2004/231)**

The Convener: We will ask the Executive to explain the purposes and vires of regulation 3.

There is also a minor point of detail mentioned in paragraph 105 of the legal brief, but that does not appear to be important enough for an informal letter, so we will leave that one.

Members indicated agreement.

**Community Right to Buy (Forms)
(Scotland) Regulations 2004 (SSI 2004/233)**

The Convener: No points of substance have been identified on the regulations, but we might want to consider asking the Executive for its views on the content of the forms and the drafting of, for example, regulation 3, which is

“rather odd and again the drafter has chosen to adopt yet another different approach to the interpretation provision”

in defining “schedule”. We have a few comments to include.

Murray Tosh: We might also make the stylistic point raised in paragraph 111 of the briefing.

Members indicated agreement.

The Convener: That brings us to the end of the list of right-to-buy instruments. As there are no further points, we will move on.

**St Mary's Music School (Aided Places)
(Scotland) Amendment Regulations 2004
(SSI 2004/238)**

The Convener: Although there are no points of substance on the regulations, Christine May is bursting to speak.

Christine May: I note that our brief indicates that although the legal advisers found no points of substance, the Executive might want to consider the removal of spent instruments. I thought that that was particularly appropriate, given the subject of the regulations.

The Convener: Indeed. However, as clarified in paragraph 114 of the legal brief, the issue is more generally about getting rid of some of the dead wood as we go along.

Christine May: Like clarinets.

The Convener: That suggestion might be made by way of an informal letter, as suggested. Is that agreed?

Members indicated agreement.

**Education (Assisted Places) (Scotland)
Amendment Regulations 2004
(SSI 2004/239)**

The Convener: No points have been raised, although paragraph 117 of the legal brief suggests a point that we might want to raise in an informal letter. Is that agreed?

Members indicated agreement.

Kava-kava in Food (Scotland) Amendment Regulations 2004 (SSI 2004/244)

The Convener: No points of substance have been raised but there are some drafting issues that could be raised in an informal letter. Members will have seen them in paragraph 122 of the legal brief. Are there any further points?

Christine May: I wonder what sort of substance kava-kava is.

The Convener: I gather that you should not ask too much about it.

Murray Tosh: I understood that it was a species native to Fife.

The Convener: We thought it was New Zealand.

Christine May: Is it not fizzy wine?

The Convener: Is it agreed that we send the Executive an informal letter about the point made in paragraph 122 of the legal brief?

Members *indicated agreement.*

Horticultural Produce (Community Grading Rules) (Scotland) Revocation Regulations 2004 (SSI 2004/245)

The Convener: There is a lot of interesting information in the legal brief but there are no points of substance to be made on the regulations.

Victim Statements (Prescribed Offences) (Scotland) Amendment Order 2004 (SSI 2004/246)

The Convener: The order is a correcting instrument but it is suggested that we might want to ask the Executive to explain the reference in article 2(a) to paragraph 5(d) of the schedule to the Victim Statements (Prescribed Offences) (Scotland) Order 2003 (SSI 2003/441), which paragraph does not appear to exist.

Are there any further points?

Alasdair Morgan: Given that the substance of this correcting order amounts to only half a page, it is especially bad that the Executive has managed to include a mistake in it. There seems to have been very little attention to detail.

Instruments Not Laid Before the Parliament

Public Appointments and Public Bodies etc (Scotland) Act 2003 (Commencement No 3) Order 2004 (SSI 2004/232)

10:50

The Convener: No points arise on the order.

Criminal Justice (Scotland) Act 2003 (Commencement No 4) Order 2004 (SSI 2004/240)

The Convener: No points arise on the order.

We now move into private session for item 7.

10:50

Meeting continued in private until 10:55.

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