

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 26 October 2004

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

28th Meeting 2004, Session 2

CONVENER

*Dr Sylvia Jackson (Stirling) (Lab)

DEPUTY CONVENER

*Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Mr Adam Ingram (South of Scotland) (SNP)

*Mr Stewart Maxwell (West of Scotland) (SNP)

*Christine May (Central Fife) (Lab)

Mike Pringle (Edinburgh South) (LD)

Murray Tosh (West of Scotland) (Con)

COMMITTEE SUBSTITUTES

Alex Johnstone (North East Scotland) (Con)

Maureen Macmillan (Highlands and Islands) (Lab)

Stewart Stevenson (Banff and Buchan) (SNP)

*attended

CLERK TO THE COMMITTEE

Alasdair Rankin

ASSISTANT CLERK

Bruce Adamson

LOCATION

Committee Room 6

Scottish Parliament

Subordinate Legislation Committee

Tuesday 26 October 2004

[THE CONVENER *opened the meeting at 10:30*]

The Convener (Dr Sylvia Jackson): Welcome to the 28th meeting of the Subordinate Legislation Committee this year. I have received apologies from Mike Pringle. I gather that Gordon Jackson is stuck on the motorway, so he has sent his apologies in case he does not get here. Murray Tosh is in another meeting, but he hopes to get here later. I welcome Stewart Maxwell and Christine May to the meeting.

Draft Instrument Subject to Approval

Abolition of Feudal Tenure etc (Scotland) Act 2000 (Consequential Provisions) Order 2004 (draft)

10:31

The Convener: No points of substance have been raised on the draft order, although our legal advisers have made one minor comment regarding the footnotes. I suggest that we send that comment to the Executive in an informal letter.

Members *indicated agreement.*

Instruments Subject to Approval

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (East
Coast) (Scotland) Order 2004 (SSI
2004/435)**

**Food Protection (Emergency Prohibitions)
(Diarrhetic Shellfish Poisoning)
(East Coast) (No 3) (Scotland) Order 2004
(SSI 2004/436)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 12) (Scotland) Order
2004 (SSI 2004/447)**

10:31

The Convener: There are three amnesic shellfish poisoning orders before us: Scottish statutory instruments 2004/435, 2004/436 and 2004/437. No points arise on the orders.

Christine May (Central Fife) (Lab): Just for the record, SSI 2004/436 concerns diarrhetic shellfish poisoning, rather than amnesic shellfish poisoning.

The Convener: Thank you very much.

Mr Stewart Maxwell (West of Scotland) (SNP): And I think that you said SSI 2004/437; it is actually 2004/447.

The Convener: I am very pleased to see that the committee is picking up on all my points this morning. It is interesting that there is that jump in the numbers there.

Instruments Subject to Annulment

Building (Procedure) (Scotland) Regulations 2004 (SSI 2004/428)

10:32

The Convener: No points of substance have been identified on the regulations, but there is a minor point about their vires.

The legal advisers have raised a further point that concerns the heading of schedule 1 and the reference to that schedule in the "Arrangement of Regulations". The reference should be to "regulation 4(1)(a)", not "regulation 4(1)(A)". We will put both those points in an informal letter, if members are agreeable to that.

Members indicated agreement.

Mental Health (Advance Statements) (Prescribed Class of Persons) (Scotland) (No 2) Regulations 2004 (SSI 2004/429)

Mental Health (Patient Representation) (Prescribed Persons) (Scotland) (No 2) Regulations 2004 (SSI 2004/430)

The Convener: No points of substance have been identified. The two sets of regulations replace both the Mental Health (Advance Statements) (Prescribed Class of Persons) (Scotland) Regulations 2004 (SSI 2004/387) and the Mental Health (Patient Representation) (Prescribed Persons) (Scotland) Regulations 2004 (SSI 2004/388), which were made to come into force three days before the relevant substantive powers were commenced. The Executive agreed with the committee that that raised doubts as to whether the instruments were *intra vires*. The Executive therefore decided to revoke and remake the instruments to put the legal position beyond doubt. Is that agreed?

Members indicated agreement.

Genetically Modified Food (Scotland) Regulations 2004 (SSI 2004/432)

The Convener: There are a few points to raise on the regulations. The committee might wish to ask the Executive why section 9(7) of the Food Safety Act 1990, as applied by regulation 6 of the regulations, does not provide that operators are to bear the expense of the detention of food under section 9(3) of the act when the detention provisions of section 9(3) appear identical to those under section 9(2). That can be clearly seen in the regulations. The Executive might also be asked to

explain why section 9(7) refers to the "detention" of food, whereas sections 9(2) and 9(3) make no such reference, but instead refer only to the seizure and removal of food.

There is not necessarily any reason why we should not have different regulations from the English, but the committee will note from paragraph 17 of the legal brief that there are some differences with the equivalent English regulations, the Genetically Modified Food (England) Regulations 2004 (SI 2004/2335). We wonder whether those might be re-examined, just to check that it is okay. Do members have any further points about those matters?

I welcome Gordon Jackson, who has got out of his traffic jam.

Gordon Jackson (Glasgow Govan) (Lab): I am sorry that I am late. There was a tailback of about 6 miles at one point.

The Convener: We heard it was 8 miles.

Gordon Jackson: Even by the standards of the M8, it was worse than usual.

The Convener: Are there any further points on the regulations?

Mr Maxwell: I agree with what you have said, but I want to highlight one point, which appears in paragraph 20 of our legal brief:

"Footnote (c) on page 4 refers to the amendment of S.I. 1997/1335 by S.I. 1999/3182."

The brief makes the point well:

"the latter instrument extends to England only".

Citing amendments to instruments that do not have any effect in Scotland will clearly cause confusion to users of the regulations. We should highlight that to the Executive. It does not have any effect in itself, but it might cause confusion among users of the regulations, who will then try to find out whether or not the Novel Foods and Novel Food Ingredients (Amendment) (England) Regulations 1999 (SI 1999/3182) apply to them. It is important that such mistakes are not made.

The Convener: Absolutely. We will include that point in our comments. There are also questions of late implementation and of a failure to cite the consultation requirement under article 9 of EC regulation 178/2002. Is it agreed that we put those points to the Executive?

Members indicated agreement.

The Convener: I welcome Adam Ingram, who has just joined the meeting.

Mr Adam Ingram (South of Scotland) (SNP): I notice that you have commented on the lack of mention of the consultation process in relation to several statutory instruments. Could you tell me a

little bit about that? The matter has caused concern in the past, but the committee's raising it does not seem to be achieving anything.

The Convener: That is one of several issues that we continually take up with the Scottish Executive. As I recall, our most recent decision was to arrange another meeting in the not too distant future so as to get a progress report on the various issues that we have raised. You have just mentioned consultation; there are also the matters of transposition notes and consolidation. As you are new to the committee Adam, it might be helpful if I were to get Alasdair Rankin, the clerk, to give you a list of the on-going issues.

Mr Ingram: That would be helpful, thank you convener.

The Convener: That is no problem. We agree on the points relating to the Genetically Modified Food (Scotland) Regulations 2004 (SSI 2004/432).

Genetically Modified Animal Feed (Scotland) Regulations 2004 (SSI 2004/433)

The Convener: We might consider asking for an explanation as to why regulation 7(2)(h), on page 4, spells out the title of the current regulations in full, whereas subparagraphs (b) to (f) of regulation 7(2) refer simply to "these Regulations". That is just a tidying-up point.

Perhaps more important, there is a point about regulations 10(1) and 10(2). Members will have read the legal brief's comments on this matter. It relates to a change in the statutory time limit involved. The legal advisers are questioning whether that is in fact required for offences that are triable either way—either summarily or on indictment. Does that seem confusing to you, too, Gordon?

Gordon Jackson: I have no problem with asking the Executive for its explanation of that. As always, there might be one. I am a great believer in just asking the first time and then telling the Executive that it is wrong once we have received the answer.

The Convener: The legal advisers have mentioned some recurring points, which have come up on previous, related instruments. Do we agree to put those points to the Executive?

Members indicated agreement.

International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) (Revocation) Regulations 2004 (SSI 2004/437)

The Convener: No points of substance arise on the regulations, but members will remember the history of these regulations. We were very

unhappy about an instrument that raised issues relating to the vices of legislating to appoint the Lord Advocate as the person to enforce orders of the International Criminal Court in Scotland, and we made representations directly to the Justice 1 Committee. These regulations revoke that instrument, so we await with interest what happens next.

Do members have any other points to raise?

Members indicated disagreement.

Genetically Modified Organisms (Traceability and Labelling) (Scotland) Regulations 2004 (SSI 2004/438)

The Convener: No points of substance arise on the regulations, but the legal advisers have given us some information about enforcement and the prosecution of offences. Do members wish to add anything?

Members indicated disagreement.

Genetically Modified Organisms (Deliberate Release) (Scotland) Amendment Regulations 2004 (SSI 2004/439)

The Convener: No points of substance arise on the regulations, but questions arise again over the omission of a reference to article 9 of EC regulation 178/2002, and over the late implementation of EC legislation.

Plant Health (Great Britain) Amendment (Scotland) Order 2004 (SSI 2004/440)

The Convener: Members will note with interest that consolidation of plant health legislation is being worked on. I gather that it should come to fruition in March; I am sure we will look forward to that.

Gordon Jackson: Bringing plant health consolidation to fruition? I take it that you did not mean that pun, convener. I take it that it was an accident.

The Convener: Yes, it was. Are there any other points?

Members indicated disagreement.

Debt Arrangement and Attachment (Scotland) Act 2002 (Transfer of Functions to the Accountant in Bankruptcy) Order 2004 (SSI 2004/448)

The Convener: I think that Stewart Maxwell wanted to raise some points on the order.

Mr Maxwell: Our legal advice lays out clearly that we should ask the Executive why article 4 is

considered necessary given the existence of section 1B of the Bankruptcy (Scotland) Act 1985. It seems confusing; I am certainly confused as to why on earth the Executive has bothered with the article. There is no obvious explanation, in the order or anywhere else. As far as I can see, it makes no sense. However, as Gordon Jackson would say, perhaps we should just ask the Executive, and perhaps get an answer.

Paragraph 51 of the legal adviser's notes is correct to say that making specific provision runs the risk of casting doubt on a general provision. That is especially true in this kind of case, so we really need to know the Executive's thinking behind the order.

The Convener: Christine May has apologised for having to go to another meeting but, if here, she would have said that transposition notes were an on-going issue—which links in with what Adam Ingram said. From our legal advice, I gather that there is confusion over whether we are talking about wild birds in general or only wild birds in captivity. Oh. Sorry.

Mr Maxwell: We are on the Debt Arrangement and Attachment (Scotland) Act 2002. As far as I am aware, wild birds are not involved.

The Convener: I am sorry; I had jumped ahead.

Do we all agree with the recommendations on the order?

Members *indicated agreement.*

Avian Influenza (Survey Powers) (Scotland) Regulations 2004 (SSI 2004/453)

The Convener: All right, now we really will move on to the Avian Influenza (Survey Powers) (Scotland) Regulations 2004 (SSI 2004/453). An issue arose over the definition of the word "person"; and, on transposition notes, confusion arose over whether we were talking about wild birds in general or only those in captivity. Transposition notes are an on-going issue.

Do members wish to make any points?

Members *indicated disagreement.*

Instrument Not Subject to Parliamentary Procedure

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Irish Sea) (Scotland) Revocation Order 2004 (SSI 2004/446)

10:43

The Convener: No points have been raised on the order.

Instruments Not Laid Before the Parliament

Act of Adjournal (Criminal Procedure Rules Amendment No 4) (Criminal Procedure (Amendment) (Scotland) Act 2004) 2004 (SSI 2004/434)

10:44

The Convener: Our legal advisers have listed a number of errors in the act of adjournal and I suggest that we inform the Executive.

Members *indicated agreement.*

Criminal Justice (Scotland) Act 2003 (Commencement No 5) Order 2004 (SSI 2004/451)

The Convener: No points have been raised on order. Do members wish to make any further points?

Members: No.

The Convener: I thank members for their attendance.

Meeting closed at 10:44.

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