

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 2 November 2004

Session 2

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## SUBORDINATE LEGISLATION COMMITTEE

29<sup>th</sup> 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

### THE FOLLOWING ALSO ATTENDED:

Margaret Macdonald (Legal Adviser)

### CLERK TO THE COMMITTEE

Alasdair Rankin

### ASSISTANT CLERK

Bruce Adamson

### LOCATION

Committee Room 6



# Scottish Parliament

## Subordinate Legislation Committee

*Tuesday 2 November 2004*

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

### Delegated Powers Scrutiny

#### Gaelic Language (Scotland) Bill: Stage 1

**The Convener (Dr Sylvia Jackson):** I welcome members to the 29<sup>th</sup> meeting of the Subordinate Legislation Committee this year. I have received apologies from Christine May, who is not able to be with us this morning.

Item 1 is on the delegated powers provisions of the Gaelic Language (Scotland) Bill at stage 1. I have been told by the clerk that we have plenty of time to consider the powers in the bill. If we have lots of questions, we will have lots of time to go back to the Executive. Members will remember that the Gaelic Language (Scotland) Bill was originally introduced by Mike Russell in session 1, but that it fell because of the 2003 election. It has returned to the Parliament as an Executive bill.

There are a number of points to discuss. The first delegated power comes under section 2, and relates to the national Gaelic language plan. Bòrd na Gàidhlig draws up the language plan, carries out the consultation, makes its submission and then the minister either approves or does not. We must decide whether we think that there should be anything additional to that, in particular whether the national Gaelic language plan should be laid before the Parliament. I am open to members' views.

**Mr Adam Ingram (South of Scotland) (SNP):** What effect does laying the national Gaelic language plan before the Parliament have, in addition to the minister's ability to approve the plan? Is another mechanism available other than simply drawing the attention of the Parliament to the plan?

**The Convener:** Various things can happen. Simply drawing the Parliament's attention to the plan would give more information to the Parliament. Murray Tosh will keep me right here. Secondly, a statutory instrument could be made. In that case, members could vote on it, whether it is a matter of annulling the instrument or whatever. There are various methods by which we could bring the plan to Parliament.

**Mr Ingram:** The national Gaelic language plan is a unique document: it is a blueprint for the development of Gaelic. We might want to do something to heighten the impact of the plan's coming to the Parliament. Perhaps some sort of procedure could be adopted for when the plan is first laid. It could take a different course thereafter.

**The Convener:** That is quite a good point. Are you not sure about it, Gordon?

**Gordon Jackson (Glasgow Govan) (Lab):** At the risk of having my Highland friends beat me over the head with a big stick, I would say that I am not sure and I do not care very much. I mean that almost in a sensible way. I suspect that most of us would not have the ability to form any view on what the bòrd suggests, one way or the other. It will be a difficult one for some members. Others in the Parliament will feel differently, however. That is what I meant when I said that I, personally, do not have much of a view on the matter.

**The Convener:** Adam Ingram is suggesting that, on this first occasion, there could be an opportunity to let MSPs see a little more of the national plan.

**Mr Stewart Maxwell (West of Scotland) (SNP):** On the face of it, that sounds like a sensible suggestion. Given that the language plans will be different every time—new plans will be produced—to have a procedure that involves scrutiny of the original plan only, but not of any subsequent plans, which might be completely different, seems slightly odd. If we are going to look at the first plan, we should look at all of them. If a new plan is submitted, we assume that it will be different in some way and that it should be examined. I do not understand why we would look at the first plan and not at any subsequent ones.

**Mr Ingram:** The first plan is a national development plan for the language. I would not anticipate that it would change very much. I think that a five-year span is proposed before the plan is reviewed, and I would not anticipate that things would change over those first five years.

**Murray Tosh (West of Scotland) (Con):** Observing in passing that the microphones go live whether or not we put our cards in the consoles, I wonder if we could ask our legal adviser whether there is any precedent for a mechanism that involves a procedure for the initial stage or the initial introduction of a plan, with the possibility of subsequent revisions.

**Margaret Macdonald (Legal Adviser):** Yes.

**Murray Tosh:** Could the adviser give us some example of how that works in other contexts? That would inform the discussion.

**Margaret Macdonald:** There certainly is a precedent for that. The legislation on student loans

is one example. The first student loan statutory instrument was made under the affirmative procedure; subsequent amendments to that legislation were made under the negative procedure. In this case, there is currently no procedure at all for the language plan.

**Murray Tosh:** Is there a precedent for providing a procedure for an initial plan without any procedure at all for subsequent revisions?

**Margaret Macdonald:** Such a procedure could be achieved if members wanted, although it would be rather unusual.

**Gordon Jackson:** This is an unusual situation: we are not reviewing subordinate legislation; we are suggesting that we should invent some. Perhaps we can. There would not be anything technically wrong with the bill saying that the first plan had to be approved not just by ministers, but by the Parliament in the form of an instrument laid before it. It could either be stated or implied that subsequent plans would not require that parliamentary approval.

I do not think that there is anything technically difficult about that. At the moment, it is stated that all the plans must come before the Scottish ministers for approval. We would need only to insert a provision saying that approval of the first plan will be by statutory instrument. If the committee feels that it wants the Parliament to consider the plan under a statutory instrument before it is approved, then it can suggest that.

**The Convener:** Do members agree that we should write back to the Executive and suggest that it should think about the procedure for the first plan that Gordon Jackson has highlighted?

**Gordon Jackson:** We should ask whether the Executive thinks that that is a good idea.

*Members indicated agreement.*

**The Convener:** Section 3(7) concerns the power by regulations to

"make further provision in relation to the content of Gaelic language plans."

The legal advice is that what has been suggested seems to be perfectly okay. Do members agree?

*Members indicated agreement.*

**The Convener:** Section 8 is on

"Guidance, assistance, etc. by the Bòrd".

The issues involved here are similar to those that we discussed in relation to section 2. What are members' views on this section?

**Mr Ingram:** In section 8, the preparation of guidance on public authority language plans is subject to slightly different procedures from the preparation of guidance on the provision of Gaelic

education in section 9. I do not understand why there is that difference. For example, why is there no requirement in section 9 to publish a consultation draft of the guidance, as there is in section 8?

**The Convener:** That is a good point. The matter is covered in paragraph 22 of the legal brief.

Are members happy that the guidance drawn up under sections 8 and 9 will not necessarily come to the Parliament?

**Mr Ingram:** I am quite happy about that.

**Gordon Jackson:** I am prepared to take on board the national language plan having a statutory instrument the first time round, but I would leave people to get on with the rest. I know that we are talking about consultation, but we are talking about a small and intense community, relatively speaking. Everybody with an interest in the matter will put in their oar. We do not need to worry too much about people who are concerned about the Gaelic language not putting their tuppenceworth into the debate.

**The Convener:** Okay. Are members sufficiently happy with what is suggested for sections 8 and 9, and that we should take on board what Adam Ingram said, which relates to what paragraph 22 of the legal brief says about the difference in procedures for the preparation of guidance? We will ask the Executive about that.

*Members indicated agreement.*

**The Convener:** Section 13(2) and section 13(3) concern the power to commence provisions by order. Again, the provisions are considered to be acceptable. Do members agree?

*Members indicated agreement.*

**The Convener:** Paragraph 2(2) of schedule 1 concerns the power by order to vary the size of the bòrd. Again, it would normally be recommended that the exercise of the power be subject to the affirmative procedure. However, the issue seems to be fairly low level. Can we leave the procedure as annulment?

**Mike Pringle (Edinburgh South) (LD):** I would leave it as annulment.

## Executive Responses

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

10:43

**The Convener:** Agenda item 2 is Executive responses. Members will remember that the committee raised two points on the regulations, concerning the seizure and detention of food. The legal adviser is still not terribly happy with the reply and suggests that we should draw the attention of the lead committee and the Parliament to the instrument on the ground of defective drafting.

**Mr Maxwell:** I agree. I was far from convinced by the attempts to differentiate between “detention” and “seizure” and “removal”. There seemed to be confusion. The only advice that we should give is that the Executive should stop digging when it is in a hole. I agree that we should draw the attention of the lead committee and the Parliament to the instrument on the ground of defective drafting.

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

**The Convener:** Similar points apply to these regulations. There has been a failure to follow proper legislative practice, and there is defective drafting with respect to points 2 and 3. Are members happy that we should pass on that information?

*Members indicated agreement.*

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

**The Convener:** The committee asked why article 4 is considered necessary, given section 1B of the Bankruptcy (Scotland) Act 1985, and an explanation has been given. It is suggested that we pass on the explanation, although I think that the legal advisers still have a wee bit of doubt about it. Do members agree that we should pass on that explanation to the lead committee and the Parliament?

*Members indicated agreement.*

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

**The Convener:** It is recommended that the committee may wish to consider drawing the attention of the lead committee and the Parliament to the instrument on the grounds of the failure to

follow proper legislative practice and that its content required explanation. Members will remember that the Executive was asked to explain the purpose of the definition of the word “person” and that the committee asked it for information as to how the Commission decision is to be implemented in respect of wild birds. The point is that if we had had the transposition note, we would have had the necessary information. However, that has now been supplied and is acceptable. We can also pass that information on to the lead committee. Are members happy with that suggestion?

*Members indicated agreement.*

## Draft Instrument Subject to Approval

### Mental Health (Care and Treatment) (Scotland) Act 2003 Modification Order 2004 (draft)

10:45

**The Convener:** Very little has been suggested about the draft instrument. There are no points of substance from the legal adviser. As members have no points to make, the recommendation is that no points arise on the order.

## Instrument Subject to Annulment

### Feeding Stuffs (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/458)

10:46

**The Convener:** Again, no points have been identified on the regulations, but there is an issue to do with consolidation and late implementation. Do members want to raise any issues?

**Mike Pringle:** No problems.

**The Convener:** Members will note that the principal regulations have now been amended seven times.

**Gordon Jackson:** Perhaps we should point that out to the Executive. Is it thinking about doing something about that?

**The Convener:** I have previously suggested to the clerk that perhaps we need to itemise the amendments that go through the committee. The matter has been brought to our attention. When we next discuss various issues with the Executive, perhaps we can get a timeframe for addressing the consolidation.

**Murray Tosh:** It would be useful for us to have a tracking system that allowed us to monitor the outstanding work load.

**The Convener:** Absolutely.

**Mike Pringle:** Perhaps we could also ask the Executive what it intends to do. Is it going to employ somebody to try to bring things into line?

**The Convener:** The letter that members have recently received from the Scottish Executive—you should all have received it in your mail—goes over most of the significant points that we raised with it and includes what it is trying to do about consolidation. To follow what Murray Tosh said, when we discuss the matter further with the Executive, perhaps we should consider the matter in a much more workmanlike manner so that we can follow it through.

**Murray Tosh:** Will that letter be on the agenda in the near future? We might want to discuss some issues on the record. The letter refers to a better form of tracking. We might simply want to buy into the Executive's tracking if it can reflect the number of times that instruments have been modified. If we can agree a target for the revision of orders, what the Executive will do might satisfy our needs and prevent our doing any additional work. We might want to put that to the Executive.

**The Convener:** Yes. Exactly.

**Mike Pringle:** We should discuss the letter at some point, as there are strange references and strange statements in it that we need to explore.

**The Convener:** Do members agree that we should put that on the agenda for next week?

**Members indicated agreement.**

**The Convener:** We will also take on board Murray Tosh's point.

## Instrument Not Laid Before the Parliament

### Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) Amendment (Antisocial Behaviour etc (Scotland) Act 2004) 2004 (SSI 2004/455)

10:49

**The Convener:** There are no points of substance on the instrument, but three minor points have been listed in the legal briefing, which can obviously be taken up in an informal letter. Do members agree?

**Members indicated agreement.**



## Private Bills

10:50

**The Convener:** Item 6 is on subordinate legislation provisions in private bills. Members have been sent a note that outlines the committee's position with reference to the Scotland Act 1998, and in relation to private bills and how they operate. We also have letters from the Edinburgh Tram (Line One) Bill Committee and the Edinburgh Tram (Line Two) Bill Committee asking us to consider whether the Subordinate Legislation Committee would examine the subordinate legislation provisions within those two private bills.

I am looking for members' comments on the paper from the clerk. The main recommendation is in paragraph 9.

**Mike Pringle:** Alasdair Rankin is quite right and we should adopt his recommendation.

In my experience as an MSP, when people are being chosen for private bill committees, a fairly strict line is taken. I think that following the paper's recommendations will allow the Parliament to examine that strict line and decide whether we need to take as strict a line in future as we have done in the past. I was asked to be on the Waverley Railway (Scotland) Bill Committee but there was a very insignificant incident when I was a councillor that prevented me from legally being on a committee for the Borders railway. I thought that that was ridiculous, so if we follow the paper's recommendations, we can examine that situation in some detail, and I would welcome that.

**The Convener:** It is suggested that the committee considers the subordinate legislation aspects of private bills. We would be providing additional information that would then go to the Parliament for all members to use.

We asked our legal adviser about the risk of challenge; the feeling was that it would be minimal because we would be acting as witnesses rather than as decision makers. We would just be advising Parliament.

Are there any other comments?

**Murray Tosh:** The paper is well argued and it sets out the issues clearly. Although I agree with Mike Pringle that we should accept the paper's recommendation, it is clear that we have identified a bit of a lacuna in parliamentary procedures because it was never anticipated that private bills would need subordinate legislation. However, the tram line bills are private bills—and there will be more like them—that are more in the nature of public bills. They might have to be private bills because of who the promoters are, but they will be serving public priorities and be heavily supported

by the Executive. All aspects of such bills ought to be properly scrutinised. I cannot see who would scrutinise the subordinate legislation provisions other than this committee, backed by its clerks and advisers. The recommendation that we should undertake the scrutiny is spot on.

**The Convener:** Are we agreed that we will go with the clerk's recommendation that we take up subordinate legislation scrutiny for such bills?

**Members indicated agreement.**

**The Convener:** In that case, I thank members for attending.

*Meeting closed at 10:54.*



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