

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 22 February 2005

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

6th Meeting 2005, 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

Ruth Cooper

ASSISTANT CLERK

Bruce Adamson

LOCATION

Committee Room 4

Scottish Parliament

Subordinate Legislation Committee

Tuesday 22 February 2005

[THE DEPUTY CONVENER *opened the meeting at 09:49*]

Delegated Powers Scrutiny

Fire (Scotland) Bill: as amended at stage 2

The Deputy Convener (Gordon Jackson): Welcome to the sixth meeting in 2005 of the Subordinate Legislation Committee. Sylvia Jackson is not well. Mike Pringle is in Africa, no doubt for some legitimate reason.

The first item on the agenda is the Fire (Scotland) Bill, as amended at stage 2. Members are well aware of the action that we took on the bill. The bottom line is that the Executive has agreed to lodge stage 3 amendments—indeed, the best way of putting it is to say that the Executive has agreed to do more than we asked it to do. There is no doubt that we did things in what has proved to be the right way. Are members content that, as the Executive has addressed our concerns, we should not move the committee amendment at stage 3? It seems fairly obvious that that was our tactic.

Members indicated agreement.

The Deputy Convener: We are required to report on the bill as amended at stage 2. The timescales demand that the report is issued for publication tonight so that it is published tomorrow, in advance of the stage 3 debate. Members will receive a copy of the draft report this afternoon. I expect that they will pore over it in word-by-word detail. I ask members to let the clerk know of any concerns that they might have.

Members have also received copies of the correspondence from the Executive about further subordinate legislation amendments at stage 3. Do members have any comments on the correspondence?

Murray Tosh (West of Scotland) (Con): It all seems to be in order.

Executive Response

Landfill Allowances Scheme (Scotland) Regulations 2005 (draft)

09:50

The Deputy Convener: Agenda item 2 concerns the draft Landfill Allowances Scheme (Scotland) Regulations 2005. We asked the Executive for clarification on two points, the first of which was the meaning and effect of the definition of “P” in regulations 19(3) and 19(4). I am open to comments from members, but I suggest that we draw the attention of the lead committee and the Parliament to the fact that the Executive response has provided the clarification that we requested. Are members content?

Members indicated agreement.

The Deputy Convener: Adam Ingram has just arrived. If he sits down quickly, he will be able to join in the proceedings before we finish. That said, he will have to be very nimble.

The second point of clarification relates to the question we asked whether, in the definition in regulation 2(1), the European Commission directive was cited correctly. Do members agree that the error falls into the category of a printing error? If so, do members further agree that we should deal with the error in the way that the Executive suggests?

Mr Stewart Maxwell (West of Scotland) (SNP): It is sensible to accept that the error is a printing error. Instead of asking for the instrument to be withdrawn and redrafted, we should allow the Executive to amend the regulation. It seems daft to do otherwise.

The Deputy Convener: Absolutely. If people put their hands up and say that a printing error has been made and that they will fix it, it seems pretty churlish to say anything else. Are members content with that action?

Members indicated agreement.

Instrument Subject to Approval

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Order 2005 (SSI 2005/69)

09:51

The Deputy Convener: Item 3 concerns amnesic shellfish whatnots again. Although no points have been identified on the order, I have no doubt that it will be the subject of debate in the Parliament in due course—these orders always are.

Murray Tosh: But not on the subordinate legislation merits of the case, convener.

The Deputy Convener: Indeed.

Instruments Subject to Annulment

Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2005 (SSI 2005/62)

Water (Prevention of Pollution) (Code of Practice) (Scotland) Order 2005 (SSI 2005/63)

09:51

The Deputy Convener: Item 4 is our consideration of instruments subject to the negative procedure. No points arise in respect of the orders.

Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2005 (SSI 2005/64)

The Deputy Convener: No points arise under the regulations—I am sorry, that is not correct. I am without my glasses today and I am struggling to read my papers. Do members have any comments to make on the regulations?

Murray Tosh: I have no comments as such, but our legal adviser has flagged up a number of issues as worthy of putting to the Executive. I think that we should do so.

The Deputy Convener: For the record, I will read them out so that they form part of the *Official Report* of the meeting.

With reference to regulation 15(a), we will ask the Executive to clarify that the code of good agricultural practice and not the order approving the code is relevant for the purposes of part 1 of schedule 2.

Also with reference to regulation 15(a), we will ask whether the Executive's intention is that only those parts of the code that apply to water pollution are relevant and not the other parts of the code that relate to air and soil pollution but that are excluded from the Water (Prevention of Pollution) (Code of Practice) (Scotland) Order 2005 (SSI 2005/63) because there is no statutory requirement that they be formally approved.

In relation to regulation 13, which introduces new regulation 24(4), we will ask whether the Executive's intention is that the requirement to notify determinations by recorded delivery should apply in relation to notifications to the Scottish ministers, as well as to applicants.

It all sounds pretty technical to me, but those are the matters that have been flagged up for our

attention. It is probably right that we should follow our normal practice and ask the Executive to respond to our concerns. That will sort things out one way or another.

Murray Tosh: Is the convener also happy to raise the points that are flagged up about the drafting of regulation 3(a)(i)?

The Deputy Convener: Yes, we will do that by way of an informal letter. Are members content that we seek clarification on the main issues and pursue the other matter by way of an informal letter?

Members indicated agreement.

Possession of Pesticides (Scotland) Order 2005 (SSI 2005/66)

The Deputy Convener: A number of points have been identified on the order.

Murray Tosh: The convener might want to read the points into the record.

The Deputy Convener: Okay. We will ask the Executive whether in its view the order constitutes a new technical standard within the meaning of directive 98/34/EC and, if so, to confirm that the order has been notified to the Commission as required by that directive. We will also ask the Executive to confirm that the requirements of section 26(4) of the enabling Wildlife and Countryside Act 1981 have been complied with and to explain why a statement to that effect has not been included in the preamble to the order, as required by the guidance on the drafting of statutory instruments. Again, the points sound technical, but they are the sorts of things on which we usually get an answer that confirms the issues one way or another.

Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2005 (SSI 2005/67)

The Deputy Convener: No points arise on the order.

Food (Pistachios from Iran) (Emergency Control) (Scotland) Amendment Regulations 2005 (SSI 2005/70)

The Deputy Convener: Some people may not know that we get pistachios from Iran, but there we are. No points arise on the regulations.

Instruments Not Subject to Parliamentary Procedure

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No 3) (Scotland) Order 2004 Revocation Order 2005 (SSI 2005/56)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Nos 5 and 9) (Scotland) Orders 2004 Partial Revocation Order 2005 (SSI 2005/68)

09:55

The Deputy Convener: There are a couple more orders to do with shellfish and their amnesia. No points arise on the orders.

Murray Tosh: They are revocation orders and will probably raise no policy issues either.

Food Protection (Emergency Prohibitions) (Radioactivity in Sheep) Partial Revocation (Scotland) Order 2005 (SSI 2005/71)

The Deputy Convener: The order is to do with radioactivity in sheep—the things that we learn. No points arise on it.

Instruments Not Laid Before the Parliament

Act of Sederunt (Registration Appeal Court) 2005 (SSI 2005/59)

09:55

The Deputy Convener: No points arise on the act of sederunt.

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) Amendment (Land Reform (Scotland) Act 2003) 2005 (SSI 2005/61)

The Deputy Convener: There is a minor drafting point, which we should raise by informal letter.

Annual Close Time (Esk Salmon Fishery District) Order 2005 (SSI 2005/72)

The Deputy Convener: We could ask the Executive why the explanatory note for the order refers to only one close time, although the Esk Salmon Fishery Designation Order 1988 (SI 1988/994) prescribed two such periods.

Murray Tosh: That seems to be a fair question.

The Deputy Convener: The legal adviser wishes to say something to me. [*Interruption.*] Is there anything else, gentlemen?

Murray Tosh: I am sure that we just missed the most interesting part of the meeting, convener.

The Deputy Convener: So endeth the lesson.

Meeting closed at 09:56.

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