

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 8 March 2005

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

8th 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 5

Scottish Parliament

Subordinate Legislation Committee

Tuesday 8 March 2005

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

The Convener (Dr Sylvia Jackson): I welcome committee members and those members of the public who are with us this morning to the eighth meeting in 2005 of the Subordinate Legislation Committee. I have received apologies from Murray Tosh, who is on British-Irish Inter-Parliamentary Body business, and from Adam Ingram, who is ill, unfortunately. I think that Gordon Jackson will join us shortly.

Before I start item 1, I would like to mention that there are some minor points under later agenda items, such as typographical errors, that we might not mention as we go through. As a matter of course, however, we will deal with those issues through informal letters to the Scottish Executive, if members agree.

Members indicated agreement.

Delegated Powers Scrutiny

Family Law (Scotland) Bill: Stage 1

10:30

The Convener: The Family Law (Scotland) Bill was introduced only recently and we are dealing with the two provisions, in section 17(3) and section 34, that confer delegated powers. Section 17(3) deals with the parental responsibilities and rights—referred to as PRRs—of unmarried fathers. If I understand correctly, section 17(3) relates to situations where PRRs could be given to unmarried fathers whose child's birth is registered outwith the area that the bill provides for, which is Scotland and the rest of the United Kingdom.

However, it seems from our legal advice and from my reading of the bill that the power is in fact not limited to what is covered by the policy memorandum and to what I have just described; the power could also allow PRRs to be given to, say, unmarried fathers who were not registered on the birth certificate. I ask members for their ideas about that and how we should proceed. The legal advisers have made various suggestions.

Mr Stewart Maxwell (West of Scotland) (SNP): The problem is that the Executive's intention is far from clear. The policy memorandum seems to be clear enough on what the Executive intends but, as you have rightly said, convener, the power is not limited in the way that the policy memorandum suggests.

Given that that is the case, and that we are at the very beginning of the process of scrutinising the bill, which was published within the past week, the best thing would be to seek clarification of the Executive's intention. Is the Executive's intention as it is stated in the policy memorandum, meaning that having an unlimited power in the bill is inappropriate, or does the Executive in fact intend for the power to be very wide, as it seems to have been drafted to be? If that is the case, there needs to be a discussion about whether we think that the subordinate legislation is appropriate. Given that we are so early on in the process, I think that we should simply ask the Executive for clarification.

The Convener: Yes. I gather that we have time to do that. Do we agree on that?

Members indicated agreement.

The Convener: I welcome Gordon Jackson. I said that he would be joining us shortly and his arrival is well timed.

The second delegated power in the bill is in section 34, and concerns the short title and commencement. The only problem is that the section deals not only with the commencement

date, but with transitional or saving provisions. As members may be aware, a commencement date is normally not open to parliamentary intervention, whereas transitional and other provisions are. One of the suggestions that has been made is that, instead of the powers all being put together as one delegated power, they should be separated. I am open to the committee's recommendations.

Christine May (Central Fife) (Lab): I note that a number of options have been put before us. In this instance, given that it is not usual for Scottish statutory instruments dealing with commencement to be subject to scrutiny, the powers should be separated out. Issues may well arise if the powers are combined and we would not want members of the Parliament to be prevented from having an opportunity to address any such issues. Nor do we want to break with precedent and open up the commencement of the bill to such scrutiny.

Mr Maxwell: I agree. Although it might be commendable to reduce the amount of paperwork and the number of SSIs that go through, it is not reasonable, in this case, to give those who might object to the bill a second bite at the cherry through the commencement order. I support what Christine May has said: we should split the powers under two SSIs.

The Convener: So we will go with the first option as presented in our legal advice.

Members indicated agreement.

The Convener: Those were the only two delegated powers in the bill, so there is not too much involvement for the committee.

Draft Instrument Subject to Approval

Non-Domestic Rating (Valuation of Utilities) (Scotland) Revocation Order 2005 (draft)

10:35

The Convener: The legal advisers have identified no substantial points on the order.

Instruments Subject to Annulment

Non-Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Order 2005 (SSI 2005/103)

10:36

The Convener: There are some minor points on the order, which need to be taken up in an informal letter. Basically, however, no substantial points have been identified on the order.

Non-Domestic Rating (Former Agricultural Premises) (Scotland) Order 2005 (SSI 2005/104)

Non-Domestic Rates (Levying) (Scotland) Regulations 2005 (SSI 2005/126)

Non-Domestic Rating (Valuation of Utilities) (Scotland) Order 2005 (SSI 2005/127)

National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2005 (SSI 2005/82)

National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2005 (SSI 2005/84)

The Convener: No points have been identified on the instruments.

Water Environment (Drinking Water Protected Areas) (Scotland) Order 2005 (SSI 2005/88)

The Convener: No points have been identified on the Water Environment (Drinking Water Protected Areas) (Scotland) Order 2005 (SAS 2005/88). Is the "SAS" in our papers correct?

Mr Maxwell: What does SAS stand for?

The Convener: That should in fact read "SSI". I thought that that was unusual.

Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2005 (SSI 2005/90)

The Convener: The order provides for the enforcement in Scotland of European Community measures restricting fishing for cod and sole for the purpose of conserving stocks. The order breaches the 21-day rule. The Executive has provided a letter to the Presiding Officer, setting

out the reasons for that, which I think we would all agree are reasonable.

Article 24(1)(b), on page 11 of the order, refers to a

“landing in a designated port”.

Christine May: This is not the first time that we have come across the issue of what the Executive means by “designated port”. There is a likelihood of confusion in this instance, so I think we should ask the Executive about the matter again.

Members indicated agreement.

The Convener: That is what the legal advisers have highlighted, especially given that failure to comply with the article is a criminal offence.

Article 35 revokes the equivalent order made last year, the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2004 (SSI 2004/44), as amended by the Sea Fishing (Restriction on Days at Sea) (Scotland) Amendment Order 2004 (SSI 2004/81). SSI 2004/44, like SSI 2005/90 before us, made amendments to the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000 (SSI 2000/7). However, the amendments made under article 25 of the order before us do not wholly replace the amendments made by the earlier orders. The legal advisers are somewhat concerned about that. We should be asking the Executive whether the revocation that is effected by article 35 also revokes the amendments made to SSI 2000/7 by SSI 2004/44 and SSI 2004/81 and, if so, whether that was the intention.

Christine May: You should definitely ask that question, convener.

The Convener: We are all agreed.

Mr Maxwell: There was also a point about one of the paragraphs of article 33 not being numbered correctly.

The Convener: That is correct. The first paragraph of article 33 is not numbered. Well done.

Dairy Produce Quotas (Scotland) Regulations 2005 (SSI 2005/91)

The Convener: No points arise on the regulations.

Plastic Materials and Articles in Contact with Food Amendment (Scotland) Regulations 2005 (SSI 2005/92)

The Convener: I think that the points that arise in relation to these regulations are similar to those that arise in relation to the Colours in Food Amendment (Scotland) Regulations 2005 (SSI 2005/94), which will be considered later. Would

anybody like to comment on the regulations, or should I just go through the legal advisers' points?

Christine May: In order not to disappoint committee members or Executive staff, I begin by saying that there is, yet again, no transposition note. Nor is there a transposition note for SSI 2005/94. This is something on which it is worth keeping up the pressure on the Executive. I know its view; nevertheless, I remain fixed in my view that there should be a transposition note.

The Convener: I recommend that we add those regulations to the list of examples that we are keeping as part of our inquiry. Are you suggesting that we should also send an informal letter to the Executive, or should we just leave it at the moment and treat it as part of the on-going issue?

Christine May: This is the first instrument without a transposition note that we have had before us for some time, is it not? My colleagues are frowning; perhaps it is not. However, I would rather that we raised the issue with the Executive. I am prepared to make a complete pain of myself on this one.

More important, the regulations are similar to those that have already been introduced in England and there has been some transposition of the English regulations to Scotland. Unfortunately, the preamble does not refer to the requirement to consult that is imposed by article 9 of regulation EC 178/2002. The preamble also fails to refer to the domestic consultation requirement in section 48(4) of the Food Safety Act 1990, which is contrary to guidance. The English regulations refer to the EC requirement. It is possible that that reference was removed and that the Executive failed to notice that it should have been included in these regulations. I think that we should ask whether that was the Executive's intention.

The Convener: There are two points. The first of those—Gordon! I am going into teacher mode, now.

Gordon Jackson (Glasgow Govan) (Lab): Stop talking at the back of the class.

The Convener: The first point is on the missing transposition note. We will add the regulations to the list of examples for our inquiry and we will write an informal letter to the Executive to highlight the issue. The second point is to do with the failure to refer to the requirement to consult and whether the Executive intended the preamble to be expressed in that way. I am sure that it did not, but we will ask that question. Is that agreed?

Members indicated agreement.

Mike Pringle (Edinburgh South) (LD): There is also a typo.

The Convener: Yes, that is a minor issue that we will highlight with the others. Thank you, Mike.

**Criminal Legal Aid (Fixed Payments)
(Scotland) Amendment Regulations 2005
(SSI 2005/93)**

The Convener: This is the 10th set of amendments to the principal regulations, so we could legitimately send a letter saying that it is time for consolidation. Are we agreed?

Members *indicated agreement.*

Mike Pringle: It is probably past time for consolidation.

The Convener: I gather that the regulations are getting quite complex now, as so many amendments have been made to them.

**Colours in Food Amendment (Scotland)
Regulations 2005 (SSI 2005/94)**

The Convener: Christine May referred to the fact that there is no transposition note to the regulations. We might also ask the Executive for an explanation of the failure to refer to the requirement to consult.

Christine May: We are asking the same questions as for SSI 2005/92.

The Convener: Absolutely. Is that agreed?

Members *indicated agreement.*

**National Health Service (General Dental
Services) (Scotland) Amendment
Regulations 2005 (SSI 2005/95)**

**Regulation of Care (Excepted Services)
(Scotland) Regulations 2002 Partial
Revocation Regulations 2005 (SSI 2005/96)**

**Regulation of Care (Fees) (Scotland) Order
2005 (SSI 2005/97)**

**Regulation of Care (Scotland) Act 2001
(Transitional Provisions) Order 2005
(SSI 2005/98)**

**Births, Deaths, Marriages and Divorces
(Fees) (Scotland) Amendment Regulations
2005 (SSI 2005/100)**

**Pollution Prevention and Control
(Scotland) Amendment Regulations 2005
(SSI 2005/101)**

**Representation of the People (Variation of
Limits of Candidates' Local Government
Election Expenses) (Scotland) Order 2005
(SSI 2005/102)**

**Valuation (Stud Farms) (Scotland) Order
2005 (SSI 2005/105)**

The Convener: No points arise on the instruments.

**Antisocial Behaviour (Fixed Penalty
Offence) (Prescribed Area) (Scotland)
Regulations 2005 (SSI 2005/106)**

10:45

Mr Maxwell: A minor point arises on the regulations, although I am advised that it does not change their legal effect. The regulations refer to Perthshire and Kinross Council, which is incorrect: it should be Perth and Kinross Council. It is perhaps worth recording that in our informal letter to the Executive. The use of incorrect titles for local government has come up as an issue before, so it is perhaps worth mentioning.

The Convener: I think so. Is that agreed?

Members *indicated agreement.*

**Police Grant (Scotland) Order 2005
(SSI 2005/107)**

The Convener: No points arise on the order.

Health Boards (Membership and Procedure) (Scotland) Amendment Regulations 2005 (SSI 2005/108)

The Convener: No points arise on the regulations. Our legal advisers praised this instrument, which appears to have been drafted with particular care and attention to detail. We must give praise where praise is due.

Christine May: Hear, hear.

Gordon Jackson: Perhaps we could have an award for the regulations of the month. We could have a ceremony and a dinner.

The Convener: The regulations have been tailored absolutely to the Scottish context.

Christine May: Including the remote tables.

Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Amendment Regulations 2005 (SSI 2005/109)

The Convener: I am sure that this is where my chemistry background comes in useful. No points arise on the regulations.

Instrument Not Subject to Parliamentary Procedure

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 7) (Scotland) Order 2004 Partial Revocation Order 2005 (SSI 2005/89)

10:47

The Convener: No points arise on the order.

Instrument Not Laid Before the Parliament

Diseases of Animals (Approved Disinfectants) Amendment (Scotland) Order 2005 (SSI 2005/99)

10:47

The Convener: No points arise on the order.

A large number of instruments have been laid before us on which no points of substance have arisen. It is noted—especially by our legal advisers—that there has been an improvement in the quality of the instruments. We ought to send the Executive an informal letter making that statement. Nevertheless, we have had a large number of statutory instruments to deal with. In total, 47 were lodged, although we have considered today only the 27 that needed to be looked at. That increase is probably because we are approaching the Easter recess, so there are still scheduling questions that we might raise with the Executive.

Mr Maxwell: That is a fair point to make. I am disappointed by this Labour-led Executive's boom-and-bust policy on the issue.

The Convener: I could not possibly agree with that, Stewart.

An informal letter making those two points to the Executive will suffice.

Thank you very much. We will meet again next week.

Meeting closed at 10:48.

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