

SUBORDINATE LEGISLATION COMMITTEE

Monday 5 September 2005

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

23rd 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 Kenneth Macintosh (Eastwood) (Lab)

Mr Stewart Maxwell (West of Scotland) (SNP)

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

SENIOR ASSISTANT CLERK

David McLaren

LOCATION

Committee Room 2

Scottish Parliament

Subordinate Legislation Committee

Monday 5 September 2005

[THE CONVENER *opened the meeting at 10:32*]

Interests

The Convener (Dr Sylvia Jackson): I welcome members to the 23rd meeting in 2005 of the Subordinate Legislation Committee. I imagine that this is the first committee to meet in 2005-06; come to think of it, we are perhaps the first committee to meet every year.

I welcome Ken Macintosh to his first meeting as a new committee member. He has replaced Christine May, who has gone to another committee. We have received apologies from Stewart Maxwell and Mike Pringle, and I believe that Adam Ingram is on his way. At this point, I should also say that our main legal adviser, Margaret Macdonald, is on medical leave at the moment. However, she hopes to be back with us soon.

Now that Ken Macintosh has joined our committee, we need to ask whether he has any relevant interests to declare.

Mr Kenneth Macintosh (Eastwood) (Lab): Thank you, convener. I have no interests to declare.

The Convener: Excellent.

I welcome to the meeting Adam Ingram, who has just joined us.

Draft Instruments Subject to Approval

Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 (draft)

10:33

The Convener: Agenda item 2 is consideration of draft instruments subject to approval. No points arise on the draft order.

Mental Health (Absconding by mentally disordered offenders) (Scotland) Regulations 2005 (draft)

The Convener: Although no substantive points have been identified on the draft regulations, a few minor ones have been raised. Do members agree to raise those points in an informal letter?

Members *indicated agreement.*

Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (draft)

The Convener: As members will see, the next batch of draft orders was withdrawn and relaid over the summer. Quite a lot of work has been done on them over the recess; after all, given that the implementation date for the Mental Health (Care and Treatment) (Scotland) Act 2003 is 5 October, the orders need to be in a reasonable state.

No points that I can see arise on the draft order. Do members have any further points to add?

Murray Tosh (West of Scotland) (Con): I have no points to raise on the draft order, convener, but I am interested in the process by which our advisers took the lead and raised many issues with the Executive, which has responded. I am very happy with that good work.

Will you clarify whether our advisers have a scheme of delegation that requires them to carry out such work in the recess or whether you cleared such an approach? I raise the question not because I am seeking grounds for criticism, but because it strikes me that such an approach is a very useful way of doing business. Indeed, much business of that nature could be done outwith the committee cycle.

The Convener: I gather from the clerk that the points were very technical and that the matters that were highlighted were clearly wrong. As a result, it was decided that, in order to get things done on time, this approach should be taken. However, you have raised a very interesting question.

Murray Tosh: We discuss many technical points such as incorrect indentation or inappropriate commas. Although such matters tend to be dealt with informally, they are nonetheless raised in our briefing paper and we approve the informal letters and ask many technical questions. Presumably, legal advisers wait until the committee agrees to the questions before asking them. Much of that business could be wrapped up if our officials and the Executive officials had a sensible dialogue. Such an approach would leave the committee free to concentrate on more substantive matters instead of having to deal with the routine legalese that we get bogged down in as we move through our agendas.

The Convener: As you know, our review is ongoing. Although that took up some recess time, there was still a bit of time to allow this process to happen. You have raised the issue—

Murray Tosh: I would simply like some thought to be given to how we might streamline our business. I am not looking for a definitive response, convener.

The Convener: Well, yes, but I should point out that, in the background, we have been trying very hard to ensure that we bring this type of process into operation. To be quite honest, what happened in the recess was really a continuation of what we hoped would become a matter of course.

Murray Tosh: I encourage you to develop and expand that scheme of delegated authority. Members would be happy for our officials to be empowered to deal with their Executive counterparts.

The Convener: Absolutely.

Mr Macintosh: I raised the same point in the discussion before the meeting formally began. I served on the Subordinate Legislation Committee a couple of years ago, and I am very encouraged to find that this approach has been taken. It represents a big improvement and shows the importance of dialogue between the committee and the Executive.

I suspect that this comes down to the Executive. Perhaps we should send it a little reminder highlighting the benefits to it of having what is effectively an extra layer of scrutiny. It is all about the Executive's timetabling; indeed, it is quite a serious issue when it comes to parliamentary timekeeping in general. After all, we all know of examples of pieces of legislation or other parliamentary business that we have been hard-pressed to find the time to consider or have felt pressured in considering. In this case, the fact that the clerks have had the chance to consider the matter over the recess has clearly been beneficial not only to the committee but to the Executive.

The Convener: As I said, we have been trying to pursue this matter.

Murray Tosh: It is a sobering thought that, having left the Subordinate Legislation Committee, one can come back.

Mr Macintosh: I can assure you that it was not a punishment; it was my own choice.

Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005 (draft)

The Convener: As with the previous draft instrument, the draft regulations were withdrawn and relaid. No further points arise on the regulations.

Mental Health (Definition of Specified Person: Correspondence) (Scotland) Regulations 2005 (draft)

The Convener: Do members have any points to raise on the draft regulations?

Murray Tosh: The legal briefing contains a very interesting explanation of the vires of the regulations. However, I am sad to say that it must remain a mystery to the wider readership that follows the committee's proceedings.

The Convener: Do members agree that no points arise on the draft regulations?

Members indicated agreement.

Mental Health (Safety and Security) (Scotland) Regulations 2005 (draft)

The Convener: Although no specific points have been raised on the draft regulations, we should note that they were withdrawn and relaid. Are members agreed that no further points arise on the regulations?

Members indicated agreement.

Mental Health (Use of Telephones) (Scotland) Regulations 2005 (draft)

The Convener: A number of minor drafting points have been raised on the draft regulations. However, they can be dealt with in an informal letter. Are members agreed?

Members indicated agreement.

**Public Appointments and Public Bodies
etc (Scotland) Act 2003 (Amendment of
Specified Authorities) Order 2005 (draft)**

**Public Appointments and Public Bodies
etc (Scotland) Act 2003 (Treatment of
Office or Body as Specified Authority)
Order 2005 (draft)**

The Convener: A similar issue applies to both orders: it is felt that the explanatory notes to each order could be a little more informative. Do we agree to make the relevant points in an informal letter?

Members *indicated agreement.*

Instruments Subject to Approval

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 5) (Scotland) Order 2005
(SSI 2005/379)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 6) (Scotland) Order 2005
(SSI 2005/384)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 7) (Scotland) Order 2005
(SSI 2005/391)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 8) (Scotland) Order 2005
(SSI 2005/410)**

**Food Protection (Emergency Prohibitions)
(Paralytic Shellfish Poisoning) (East
Coast) (Scotland) Order 2005 (SSI
2005/415)**

10:40

The Convener: Do any points arise on the pro forma orders?

Gordon Jackson (Glasgow Govan) (Lab): No. They are fine.

The Convener: That is agreed.

Instruments Subject to Annulment

Mental Health (Compulsion orders— documents and reports to be submitted to the Tribunal) (Scotland) Regulations 2005 (SSI 2005/365)

10:41

The Convener: We can raise a few minor points about the regulations in an informal letter. Do members have any substantive points?

Gordon Jackson: No.

The Convener: That is agreed.

Mental Health (Compulsory treatment orders—documents and reports to be submitted to the Tribunal) (Scotland) Regulations 2005 (SSI 2005/366)

The Convener: We can raise minor points about footnotes in an informal letter. Do members have any substantive points?

Gordon Jackson: No.

The Convener: That is agreed.

Mental Health (Conflict of Interest) (Scotland) (No 2) Regulations 2005 (SSI 2005/380)

The Convener: We can raise minor points about footnotes via an informal letter. Do members have any substantive points?

Gordon Jackson: No.

The Convener: That is agreed.

Mental Health (Removal Order) (Scotland) Regulations 2005 (SSI 2005/381)

The Convener: We have two minor points to put in an informal letter. Are there other points?

Murray Tosh: I have a general question on the series of regulations that we have just considered. I take it that we did not address those issues with the Executive in the summer because they are only minor matters that would not raise the question of re-laying the regulations.

The Convener: That is right. I am also told that the regulations are not subject to a deadline such as that for the instruments that we dealt with earlier, which was 5 October.

Teachers' Superannuation (Scotland) Regulations 2005 (SSI 2005/393)

The Convener: The committee may wish to note that the Executive has now met its undertaking to consolidate the principal regulations and various amending regulations. Do members have any points?

Mr Macintosh: As with the two orders on public appointments, I did not find the explanatory note to the regulations very informative or detailed. However, I then noted that the Executive note expanded on it. I believe that the Executive has published that note and put it on the web, so it is available to all, unlike notes in the past. That is to be noted and commended.

The Convener: I think that we all welcome the fact that the note is on the web.

Gordon Jackson: Welcomed.

The Convener: That is welcomed by all.

Murray Tosh: Paragraph 53 of our legal briefing advises us of the requirement for Treasury consent. Is Treasury consent necessary for the consolidation, the substantive changes to the scheme or both?

The Convener: I am told that it is required for both.

Murray Tosh: Could the legal adviser briefly give us a sense of why that is necessary? I appreciate that the legal briefing says that the requirement is in the Scotland Act 1998, but what is the rationale for Treasury consent in the circumstance of the regulations?

The Convener: We will return to that in a second when the legal adviser has checked that out.

Murray Tosh: I am happy for the legal adviser to come back to us. The matter is just something that I do not recall encountering.

The Convener: The legal adviser suggests that, to give you the fullest explanation, we could return to the subject next week. We have time to do that, which would be no problem.

Murray Tosh: I am not suggesting in any sense that approval of the instrument would be conditional on that. The question is simply for information and an indication of the instruments on which that point arises. [*Interruption.*]

The Convener: We will suspend the meeting for a few minutes because of sound difficulties.

10:44

Meeting suspended.

10:46

On resuming—

The Convener: Do we agree that the information for which Murray Tosh asked in relation to paragraph 53 of our legal briefing, which will be circulated to members for next week's meeting, does not affect our agreement to the regulations?

Members indicated agreement.

Mental Health (Specified Persons' Correspondence) (Scotland) Regulations 2005 (SSI 2005/408)

The Convener: Members may wish to consider asking the Executive to explain why the term "specified person" is defined in regulation 2, given its definition in the parent act, the Mental Health (Care and Treatment) (Scotland) Act 2003—normally, a term that has been so defined is not defined again—whereas the term "relevant item" in regulation 5(2) is not defined. Do we agree to ask that?

Murray Tosh: Yes; I am happy with that. I do not wish to labour the point that I made earlier, but the regulations provide a good example of the question that I instanced. The committee's authority is not needed to raise a fairly standard question about definitions in acts.

I do not know what the timescales were or how long the regulations have been kicking around, but I think that our back-up staff could usefully pursue such issues without needing committee approval first. I do not think that the committee has ever refused to ask a question that legal advisers recommended. It would probably help the timescales that we work in if people could approach the Executive faster with such inquiries. That is simply an observation, given what you said about the continuing review.

The Convener: Adam Ingram is nodding, too, so we all agree to such an approach, if it would speed the process. There seems no reason not to take that approach with minor matters. Is that agreed?

Members indicated agreement.

The Convener: Members are happy to raise the points about the regulations informally with the Executive and to have them cleared up.

Mental Welfare Commission for Scotland (Procedure and Delegation of Functions) Regulations 2005 (SSI 2005/411)

The Convener: The issue is whether the word "may" in paragraph 1(2) of the schedule to the regulations should be "shall". The word is used in relation to circumstances when the Mental Welfare

Commission for Scotland's convener may call a meeting of the commission. The drafting could be deliberate, but it is unclear whether the calling of a meeting is meant to be mandatory when some conditions are met. Do we agree to ask about that?

Members indicated agreement.

Mental Health (Fee Payable to Designated Medical Practitioners) (Scotland) (No 2) Regulations 2005 (SSI 2005/412)

The Convener: Do members have any substantive points on the regulations?

Murray Tosh: No.

The Convener: We are agreed.

Mental Health (Period for Appeal) Regulations 2005 (SSI 2005/416)

The Convener: Did anybody notice that "Scotland" is not in the title?

Murray Tosh: I did not, but I wonder why our legal briefing suggests asking rather than telling the Executive about that.

The Convener: That is another example of what we have discussed. Do we agree to raise that point?

Members indicated agreement.

Mental Health (Care and Treatment) (Scotland) Act 2003 (Code of Practice) Order 2005 (SSI 2005/417)

The Convener: No substantive points arise on the order, but does the committee agree to raise by informal letter the minor drafting point that is mentioned in the legal briefing? The same point that Murray Tosh made earlier could be made.

Members indicated agreement.

Instruments Not Subject to Parliamentary Procedure

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 4) (Scotland) Revocation
Order 2005 (SSI 2005/360)**

10:50

The Convener: No points arise on the order.

**Regulation of Scallop Dredges (Scotland)
Order 2005 (SSI 2005/371)**

The Convener: It appears that the order imposes technical standards, but there is no indication as to whether it has been notified to the European Commission under the technical standards directive.

Murray Tosh: We need to ask the Executive about the matter.

The Convener: Excellent. We will write to the Executive.

Do members wish to make any other points? There is a minor drafting point with which we could deal via an informal letter. Do members agree?

Members *indicated agreement.*

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 5) (Scotland) Revocation
Order 2005 (SSI 2005/406)**

The Convener: The order revokes the previous emergency order. I see Murray Tosh smiling.

Mr Macintosh: The committee is incredibly efficient.

The Convener: I know. We introduce an order and then revoke it. We all know that this has been an issue.

Murray Tosh: I am sure that my party colleagues will suggest next week that the shellfish orders to which we agreed earlier today should be revoked.

The Convener: I am sure that David Davidson would agree.

Instruments Not Laid Before the Parliament

**Mental Health (Care and Treatment)
(Scotland) Act 2003 (Commencement No
4) Amendment Order 2005 (SSI 2005/375)**

**Act of Sederunt (Registration Appeal
Court) (No 2) 2005 (SSI 2005/382)**

**Fire (Scotland) Act 2005 (Commencement
No 2) Order 2005 (SSI 2005/392)**

10:51

The Convener: Do members agree that no substantive points arise on the instruments?

Members *indicated agreement.*

Work Programme

10:52

The Convener: Agenda item 7 is the committee's work programme, copies of which are included with members' papers. We promised that we would provide the programme to members and that it would be updated and circulated on a weekly basis. Do members agree that the programme should be published on the committee's website?

Members *indicated agreement.*

The Convener: Members have no problems with that.

Members will note that there will be a particularly important committee meeting on 27 September—there will be a round-table evidence session on our inquiry, as well as our first session on the Human Tissue (Scotland) Bill at stage 1. There will therefore be a lot of business that day. The meeting is important and your country needs you to attend.

Members should also note that the meeting on 6 October will be a lunch time meeting.

Murray Tosh: Will it be at 12.30?

The Convener: We do not know yet, but we will provide weekly updates of the programme to members.

As members have no other points to make, I thank colleagues for their contributions and close the meeting.

Meeting closed at 10:53.

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