

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 26 September 2006

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

26th Meeting 2006, 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)

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*Murray Tosh (West of Scotland) (Con)

COMMITTEE SUBSTITUTES

Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

Maureen Macmillan (Highlands and Islands) (Lab)

Ms Maureen Watt (North East Scotland) (SNP)

*attended

CLERK TO THE COMMITTEE

David McLaren

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 6

Scottish Parliament

Subordinate Legislation Committee

Tuesday 26 September 2006

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

Delegated Powers Scrutiny

Aquaculture and Fisheries (Scotland) Bill: Stage 1

The Deputy Convener (Gordon Jackson): This is the 26th meeting of the Subordinate Legislation Committee this year. Sylvia Jackson is still not very well. She will not be back next week either, but she has promised to be back in the convener's chair after the holidays next month. Jamie Stone also apologises.

A couple of weeks ago, we raised some points about the Aquaculture and Fisheries (Scotland) Bill, and we now need to report to the lead committee. We asked the Executive how it intends to exercise the power in section 4(2) to modify the definition of the term "parasite" in section 4(1). That would be done subject to the negative procedure. The Executive has indicated that only two species of parasite are of concern and that amendments to the list in section 4(1) are expected only infrequently. The Executive therefore felt that it would be helpful to name those species in the bill and to include a power to add or omit species from the list as appropriate. The Executive will consult fish farmers and those who have interests in wild fish.

Does that sound okay for the purposes of delegated powers? There are only two known species concerned. The negative procedure seems appropriate. The only question that we might ask is whether there should be a statutory requirement to consult. However, I would not push the matter in this case, bearing in mind the rather unusual nature of the circumstances.

Mr Stewart Maxwell (West of Scotland) (SNP): The Executive has already stated that it will consult. That is fine.

The Deputy Convener: We will trust the Executive.

Section 14 adds new section 2ZB, "Preliminary designation of area: *Gyrodactylus salaris*", to the Diseases of Fish Act 1937. We asked the Executive why it had opted for the procedure

whereby an instrument is laid but is not subject to parliamentary procedure, rather than the 28-day procedure, under which the Parliament would have some control. The Executive has gone for a 30-day option, which is extendable to 60 days.

We have received quite a sensible response. The Executive has told us that the proposed procedure is consistent with other provisions in earlier statutes. It is also linked to the temporary nature of the proposed orders. Furthermore, the 28-day procedure fails to meet the needs of an emergency order within the scheme of the 1937 act. Perhaps vitally, the intention is not to seek to extend such orders beyond 30 days, or 60 days at most.

We asked what happens after that. The Executive explained that, by that time—usually earlier—it would know whether or not a parasite was present and it would therefore introduce an order under the older legislation. That seems a sensible explanation from my point of view.

Mr Kenneth Macintosh (Eastwood) (Lab): I think that we questioned the Executive on this matter last week because of the lack of consistency in such temporary or emergency orders—I am not quite sure of the distinction between the two. I do not have any particular problem with how the power is to be exercised. In many ways, I do not want to replace it with 28-day emergency powers that may be exercised in the same way as those that are used for paralytic shellfish poisoning and so on. That affirmative procedure would be too onerous for the policy.

The bill reveals the difficulty that we have with emergency procedures involving subordinate legislation in general. There seems to be a wild variation between having an overly onerous 28-day affirmative procedure and, in this case, no parliamentary scrutiny whatever. I do not, however, have any particular problems with how the power will work in practice. I am grateful for the Executive's reassurance, although this example certainly shows up the weaknesses in the system.

The Deputy Convener: I agree with that, but this is probably not the instance on which we should go to the barricades.

Murray Tosh (West of Scotland) (Con): If we wished to beat the drum about the recommendations that we have worked up in our review of the regulatory framework, we could choose to make a sacrificial victim of the Aquaculture and Fisheries (Scotland) Bill. Clearly, however, it is not worth doing so.

The Deputy Convener: It is not the best example.

Murray Tosh: The power should go through. However, it highlights many of the issues that we have argued about, and it strengthens our general case for reviewing and overhauling procedures.

The Deputy Convener: Okay—but we will let the matter go in this case.

On sections 19 and 27, we suggested that consequential amendments to the 1937 act were required. That is being done, and we will watch to see that it happens.

Section 35(1) is our old favourite, a power to make “incidental, supplemental, consequential” and what-have-you provisions. We noted that section 35(2) provides a power to modify “any enactment”. We asked—as we would—whether that could allow amendment of the bill once enacted. As members know, we have been over the same course a lot recently. It is good to have it on the record that the Executive has confirmed that it does not intend to use the power to amend the eventual act itself. However, there is a degree of doubt about what the word “enactment” means. Although the Executive has stated its intention, we work on the basis not of the present Executive, but of a future Executive. Do we leave it, or do we want an express provision in the bill to the effect that the term “enactment” does not include the bill itself?

Murray Tosh: Since the Executive has stated that it does not intend to use the power or the wording in that way, we should ask it to put that in the bill, so that the matter is clear. I cannot see why the Executive would not agree to do that.

The Deputy Convener: Nor can I. If the Executive does not think that the power will be used for that, it should remove the ambiguity for the future.

Prostitution (Public Places) (Scotland) Bill: Stage 1

The Deputy Convener: There is only one delegated power in the Prostitution (Public Places) (Scotland) Bill, which has been drafted in plain English, I am told. It is the standard power, in section 4, to commence the act by way of statutory instrument. There is not normally anything odd about that, but it seems a little odd that such an order-making power is needed in the case of this bill, which has only a single purpose and under which no real preparatory work or staged commencement requires to be done. Will we ask the Executive for an explanation as to why it has bothered doing that in this case, or is it not worth it? It is not, is it?

Mr Maxwell: I do not think so. We could argue about it, but it is a small bill, and it will go through

without any particular problem—unless anybody feels differently about it.

Mr Macintosh: Not at all. It is worth noting for the record something that was highlighted in the legal brief—although we need not necessarily bring it to the Executive’s attention—which is that one of the difficulties that lawyers and members of the public have with acts is finding out when they commence. The Executive should be commended for introducing a bill in plain English. Perhaps it could have followed through the logic of that and made it more transparent and accessible by not leaving any ambiguity about when its provisions are to be commenced.

The Deputy Convener: Okay. I get the impression that, although one or two issues are coming up, the targets are not big enough to be useful for our arguments.

Executive Responses

Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) Order 2006 (draft)

10:38

The Deputy Convener: We asked the Executive two questions about the draft order. First, we asked it to explain the vires of paragraph 11 of schedule 1 to the order. Members will have seen the answer to that. The Executive refers to the Scotland Act 1998, the Animals (Scientific Procedures) Act 1986 and the non-reserved area of animal welfare. This is a slightly grey area. Animal welfare is devolved, but the subject matter of the 1986 act is reserved. There could be an argument about it. That said, the order relates to penalties for breaches of animal welfare provisions that are certainly within devolved competence.

In this case, subject to what members think, I suggest that we simply tell the lead committee and the Parliament that we asked for the information and got it.

Members indicated agreement.

The Deputy Convener: No doubt, lawyers could sit on the head of a pin and argue about the vires of the provision, but I do not think that it is worth the gander.

Mr Maxwell: They could do, but—

The Deputy Convener: Why would they want to?

Mr Maxwell: I have thought of a solution. If we had independence, we would not have this problem. Should we mention that?

The Deputy Convener: I have never been keen on independence, but I now realise its importance as a result of dealing with this order. I will possibly have to reconsider my position.

Secondly, we asked the Executive to confirm that the sections of the 2006 act to which the order relates will be brought into force on or before the coming into force of the order. In its response, the Executive has confirmed that all the provisions to which the order relates, except sections 20(1) to 20(3), are to be commenced in the first commencement order under the act, which is due to be made by 6 October, in advance of the order.

The order is subject to the draft affirmative procedure and will come into force on the day after it is made. The timing of the debate on the order is therefore critical, especially as it appears that the relevant commencement order has not been made. If the order comes into force before the

various provisions of the 2006 act, a gap will be left in the legislation that will be amended by the order, which is clearly undesirable.

We should draw the draft order to the attention of the lead committee and the Parliament on the ground that the provisions of the 2006 act that are referred to have yet to be commenced. I assume that the Executive will get them commenced in time. If it does not, we can always say, "We told you about that."

Robert Gordon University (Transfer and Closure) (Scotland) Order 2006 (SSI 2006/461)

The Deputy Convener: The closure of the university seems to be working well because we cannot get anybody up there to tell us anything.

We asked the Executive about article 5(3) of the order and whether transitional provisions are needed in relation to on-going matters at the date of transfer to the reconstituted university. The Executive has said that the university is responsible for drafting the order and that it has sought a reply from the university, but no one is in.

The committee must report on the order by 2 October—the day before our next meeting—in order to report within the 20 days that we are allowed. The Executive has undertaken to respond directly to the lead committee in time for its meeting on 3 October. I suppose that we could let it do that. However, we should point out that we are a little upset that we have not received the information that we requested. On the other hand, I assume that the lead committee will have the information in time.

Mr Maxwell: The purpose of the Subordinate Legislation Committee in the procedure is to report to the lead committee. It is rather upsetting—to use your word, convener—that we cannot do so because we have not received the requested response from the Executive.

Environmental Noise (Scotland) Regulations 2006 (SSI 2006/465)

The Deputy Convener: We asked the Executive to explain the reasons for the late implementation of the European Union directive, which member states should have implemented on 18 July 2004. To be fair, the Executive's detailed response states that transposing the directive was particularly complex and technical. We should draw the regulations to the attention of the lead committee and the Parliament, and tell them what the problem has been and that the delay is regrettable, but that things have been explained.

**Race Relations Act 1976 (Statutory Duties)
(Scotland) Amendment Order 2006
(SSI 2006/467)**

The Deputy Convener: We asked the Executive to confirm that, where necessary, the bodies to which the order refers have been added to the list of bodies in schedule 1A to the Race Relations Act 1976. That has been confirmed. We shall draw the attention of the lead committee and the Parliament to the order on the ground that further information was requested from and supplied by the Executive.

**Local Government Pension Scheme
(Scotland) Amendment (No 2) Regulations
2006 (SSI 2006/468)**

The Deputy Convener: The regulations are the fifth substantive amendment to the principal regulations. We asked the Executive—as we always do in such cases—whether it has any plans for consolidation. It has explained that the new local government pension scheme is currently being progressed and therefore it does not consider it appropriate to consolidate the principal regulations at this time. However, it is keeping the need for such consolidation under review. We shall draw that information to the attention of the Parliament and the lead committee.

**Draft Instrument Subject
to Approval**

**Social Work Inspections (Scotland)
Regulations 2006 (draft)**

10:44

The Deputy Convener: No points arise on the regulations.

Instrument Subject to Annulment

**Local Governance (Scotland) Act 2004
(Severance Payments) Regulations 2006
(SSI 2006/471)**

10:45

The Deputy Convener: There are three questions that we might want to ask the Executive about the regulations. First, we might want to ask it to explain the purpose and effect of the words

“before the date of the next ordinary election to be held”

in regulation 3(1). Secondly, we might want to ask it to explain the purpose and effect of the reference to the date of making an application in regulation 6(3) and the three-week time limit that is specified in that paragraph; in particular, we could ask how it is proposed to verify that the time limit has been complied with. Thirdly, we could ask it to explain the purpose and effect of regulation 6(10). Does the reference to January 2007 refer to the publication of the names of applicants or to applications that are made during January 2007? We might also wish to ask what arrangements there will be for the publication of the names of those who have exercised rights under regulation 6(3) to make late application.

There might be simple and straightforward answers to those questions, but those questions have been flagged up to us and we will therefore ask them and await answers.

Instruments Not Laid Before the Parliament

**Local Electoral Administration and
Registration Services (Scotland) Act 2006
(Commencement No 1 and Transitional
Provision) Order 2006 (SSI 2006/469)**

10:46

The Deputy Convener: No points arise on the order.

**Local Governance (Scotland) Act 2004
(Commencement No 3) Order 2006
(SSI 2006/470)**

The Deputy Convener: No substantive points arise on the order. However, there is a minor point that we can raise informally.

Clackmannanshire (Electoral Arrangements) Order 2006 (SSI 2006/472)

The Deputy Convener: No points arise on the order.

The committee will next meet on Tuesday 3 October.

Meeting closed at 10:46.

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