

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 16 December 2003
(Morning)

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

17th Meeting 2003, Session 2

CONVENER

*Dr Sylvia Jackson (Stirling) (Lab)

DEPUTY CONVENER

*Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Mr Stewart Maxwell (West of Scotland) (SNP)

*Christine May (Central Fife) (Lab)

*Alasdair Morgan (South of Scotland) (SNP)

*Mike Pringle (Edinburgh South) (LD)

*Murray Tosh (West of Scotland) (Con)

COMMITTEE SUBSTITUTES

Bruce Crawford (Mid Scotland and Fife) (SNP)

Alex Johnstone (North East Scotland) (Con)

Maureen Macmillan (Highlands and Islands) (Lab)

*attended

CLERK TO THE COMMITTEE

Alasdair Rankin

ASSISTANT CLERKS

Joanne Clinton

Catherine Fergusson

LOCATION

Committee Room 1

Scottish Parliament

Subordinate Legislation Committee

Tuesday 16 December 2003

(Morning)

[THE CONVENER opened the meeting at 10:30]

Delegated Powers Scrutiny

Criminal Procedure (Amendment) (Scotland) Bill: Stage 1

The Convener (Dr Sylvia Jackson): I welcome colleagues to the 17th meeting this session of the Subordinate Legislation Committee: the last meeting before Christmas. I have received no apologies this morning; we have a full house.

The first item on the agenda is delegated powers scrutiny of the Criminal Procedure (Amendment) (Scotland) Bill at stage 1. Members will know from their papers that the bill forms part of the Executive's package of reforms to the criminal justice system, which has the overall aim of reforming court procedure and enabling the courts to deal with cases more efficiently. The delegated powers of the bill are our concern, and a considerable number of them have been highlighted in the legal brief. The majority of powers relate to the making of acts of adjournal, and the legal brief points out that there are no matters that need concern us in respect of those. Do members wish to raise any points in relation to the acts of adjournal?

Members: No.

The Convener: We will move on to the substantive points, the first of which relates to section 12 on reluctant witnesses. Although there would seem not to be a general issue about the powers under the section, there appears to be an error that we may wish to discuss. It is highlighted in paragraphs 15 and 16 of our brief. Paragraph 16, which deals with regulations to be made under the Criminal Procedure (Scotland) Act 1995, is the substantive one. It reads:

"The procedural provisions that are to apply to regulations made under section 245A are set out in subsections (13) and (14) of that section but—

interestingly—

"new section 24A(10) applies only subsections (8) to (10)."

We think that that is just an oversight on the Executive's part. Do members have any further issues to raise?

Alasdair Morgan (South of Scotland) (SNP): I think that that was clearly a mistake and I do not think that we will take up your invitation to discuss the matter. It is incredibly complex, and how anyone can make head or tail of it is beyond me.

The Convener: It is agreed that we will write to the Executive about the sections in question.

Mike Pringle (Edinburgh South) (LD): Absolutely.

The Convener: There is a similar error in relation to section 14. As I understand it, if we make the necessary changes to section 14, they will apply to section 12. We will therefore make the same points in relation to section 14.

We move on to section 21, which is familiar to us. It deals with ancillary provision. Members will recall that this relates to a general point that we will discuss informally with the Scottish Executive, relating to the use of the terms "incidental, supplemental, consequential" and similar provision. Are there any other points on that? We are aware of the issue as a general area of concern.

Mr Stewart Maxwell (West of Scotland) (SNP): I think that we have made our points on the matter before, and we do not need to discuss them further today.

The Convener: We pass on to section 22, on commencement and short title.

Alasdair Morgan: The Executive is taking powers under section 22(2) to include further provision along with the commencement order, which would not be subject to any parliamentary scrutiny. Section 21 already gives the Executive wide-ranging powers, which I have complained about on previous occasions, so we might think that it has all the powers that it needs under that section. There is at least the saving grace that the Executive has to come before the Parliament in relation to section 21 provisions, albeit under the negative procedure. Given the powers that will exist under section 21, one wonders why, under section 22, the Executive wants further powers that would avoid parliamentary scrutiny. That does not seem logical or reasonable.

The Convener: Are we agreed that we will write to ask about that point? Shall we include the matter in our forthcoming informal discussion, as it is a general one?

Members indicated agreement.

Primary Medical Services (Scotland) Bill: as amended at Stage 2

The Convener: Item 2 is delegated powers scrutiny of the Primary Medical Services (Scotland) Bill prior to stage 3 consideration. We have just received a second supplementary memorandum on the bill from the Executive. I am aware that members have not had much time to look at it, but I see that all members have a copy. Although having received this material does not mean that we have a formal role in feeding into the stage 3 debate this Thursday, it is useful for us to have the memorandum. There is no reason why we cannot act individually on the matter on Thursday. I was not terribly happy about the lack of background on why the Executive has lodged the two stage 3 amendments that are described in the memorandum. Background would have been useful.

The first part of the memorandum relates to section 4 and the insertion of new section 17O(3) into the National Health Service (Scotland) Act 1978. We did have some discussion around that at stage 1, but I invite members' comments.

Alasdair Morgan: In paragraphs 5 and 6 of its memorandum, the Executive does offer some explanation as to why the amendment has been lodged. It does not seem to be unreasonable, apart from the fact that it is difficult to receive something on the day that we are supposed to scrutinise it, especially when it refers to complex legislation. All that one can say is that it seems okay—but who knows?

The Convener: The provisions relate to dispute resolution and cannot go any wider than that. Having said that, it is only the negative procedure that has been applied to the provision.

Mr Maxwell: To make a general point, it seems strange that, while the Executive can introduce new delegated powers at stage 3, the Subordinate Legislation Committee has no formal role in scrutinising them. All that we are doing is having a look at the powers and having a bit of a chat about them. It seems strange that the committee has no formal role.

Christine May (Central Fife) (Lab): Is there any indication that the amendments might have come about as the result of discussion at the Health Committee? If so, it would have been useful to know what the substance of that discussion was. I wonder if we might get an opportunity to find that out in advance of the all-day stage 3 debate on Thursday. That would help the committee if one of us wished to speak about the matter in the chamber.

The Convener: Yes, that would be helpful. As I said, we need background information if we get

anything like this memorandum. We will be able to obtain the relevant information through the clerk.

Christine May: Is any member of this committee a member of the Health Committee?

The Convener: I do not think so. The information that we will obtain from the clerks will be useful for Thursday's debate.

Murray Tosh (West of Scotland) (Con): It is difficult to know what we are supposed to do about the matter. It is all very well to say that we could raise it on Thursday. That is true, but to what purpose would that be? We have not had time to get any briefing on the provisions from our own advisers, who presumably got the memorandum only shortly before we did. Will we be in a position to say on Thursday—shock, horror—that the amendments should not be approved if there is anything in them with which we do not agree, or that is flawed or inconsistent with other provisions in the bill? Our adviser regularly finds such inconsistencies in other legislation, and there is no possibility at this point that anyone armed with the Executive's amendments 9 and 10 will be in a position to lodge amendments to those amendments, as the deadline for accepting them will have passed.

Although I welcome the fact that the Executive has sent a memorandum on the amendments, it certainly has not sent it in time for the committee to do anything purposeful or constructive with it. The only way that we could intervene would be if we lodged a manuscript amendment and the Presiding Officer accepted it late in the day. However, it puts a lot of pressure on our legal advisers to ask them to spot anything at this stage, and to ask members to lodge a manuscript amendment. It all raises a general point about time scales rather than the conduct of subordinate legislation.

The Convener: We also need to get the information that Christine May was talking about before we can lodge a manuscript amendment.

Gordon Jackson (Glasgow Govan) (Lab): I do not disagree with what Murray Tosh says, but I am assuming that we can get a legal briefing sometime during the next day or so. Can we?

The Convener: Yes.

Gordon Jackson: If we have that, we can at least make a noise if there is something really horrible in the amendments. Most members could not do such things without the help of the legal briefing anyway. I know that I could not.

Mike Pringle: I could not.

Gordon Jackson: We need the legal briefing to tell us what is the point or problem.

Murray Tosh: However, it would put additional pressure on our legal support to ask them to come up with the information, circulate it, and then explain it to us in a short time.

The Convener: Absolutely.

Christine May: Murray Tosh has made a valid point and perhaps the committee could take it up on a separate occasion. However, there is an issue in front of the committee. There is a debate on Thursday and I imagine that it will be impossible to present a committee view on the amendments, so we are going to have to represent our individual views in as consensual a way as we can manage. That is unfortunate because even if those individual views agree they do not necessarily carry the same weight as a committee view articulated by the convener.

The Convener: I suggest that, if we can get the background to the amendments from the Health Committee through our clerk, and if we can get the legal brief from our legal adviser by tomorrow, we could have an informal meeting if it looks as if there is anything significant to discuss. Would that be useful?

Members indicated agreement.

The Convener: There is a similar point to be made about the second amendment that is mentioned on page 2 of the Executive's memorandum because we do not know the background to it. The amendment is concerned with the sale of goodwill and making that unlawful. We wonder whether human rights issues might be involved.

Mike Pringle: I have some considerable concern about the amendment. Goodwill cannot be defined and it is up to the two parties involved to decide on its value. It is a strange concept for the bill to seek to take away the right to sell goodwill at all. We should consider that because anyone who is selling a business has a right to decide whether their business has a goodwill element, and they have the right to sell it if it does. To take away that right from doctors seems very strange.

Alasdair Morgan: To move away from the policy point that Mike Pringle might just have been making, the explanation for amendment 12 is totally unsatisfactory. At least the Executive made a stab at an explanation for amendments 9 and 10; that was made easier by the fact that the amendments deal with an entire subsection that will be inserted into the 1978 act. However, amendment 12 is proposing to make changes to various bits of that act, so unless we have the 1978 act and the bill in front of us, it is impossible to understand what is going on.

The Convener: Yes.

We accept that the amendments detailed in parts II and III of the Executive's memorandum are intended as tidying-up amendments and we are reasonably happy with the advice that we have received on those. We will try to get as much information on the amendments in part I of the memorandum out to members as soon as we can.

Mr Maxwell: On amendment 12, which seeks to amend section 35 of the 1978 act, I agree with many of the points that have already been made. However, the power that would be conferred if amendment 12 is accepted seems to be quite wide-ranging. Although the explanation says that the power would

"allow Ministers to prescribe the circumstances in which sale of goodwill ... will be unlawful",

it goes on to say that the power

"also allows them to prescribe that it will be unlawful in all circumstances."

The power could range from narrow to wide. It is unsatisfactory that we do not have the background to the amendment.

The Convener: It is very difficult to get into it at all; I agree.

Murray Tosh: It also raises the issue for the committee whether, in the wider use of the power, the negative procedure would be a fair way for the Parliament to allow the regulations to be applied.

The Convener: Yes; it is negative procedure.

We shall see how far we can get with the background to amendments 9 and 10 and Alasdair Rankin will email that to members. We hope that that background will place the amendments in the context of discussions in the Health Committee and of comments that the Subordinate Legislation Committee made earlier. We are fairly certain that we discussed the issues that are involved in amendments 9 and 10 and the amendments could come out of something that we raised.

Executive Response

End-of-Life Vehicles (Storage and Treatment) (Scotland) Regulations 2003 (SSI 2003/593)

10:45

The Convener: The Executive agrees that it made the error that we pointed out and that it should remove the reference to 100 vehicles and insert 400.

We also have to draw the regulations to the attention of the lead committee and the Parliament, and mention the defective drafting that has been acknowledged by the Executive.

Instrument Subject to Annulment

Miscellaneous Food Additives Amendment (Scotland) (No 2) Regulations 2003 (SSI 2003/599)

10:46

The Convener: No points arise on the regulations.

Instrument Not Subject to Parliamentary Procedure

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 7) (Scotland) Revocation Order 2003 (SSI 2003/598)

10:47

The Convener: No points arise on the order.

Instruments Not Laid Before the Parliament

Regulation of Care (Scotland) Act 2001 (Commencement No 4) Order 2003 (SSI 2003/596)

Lothian University Hospitals National Health Service Trust (Dissolution) Order 2003 (SSI 2003/597)

Pollution Prevention and Control (Designation of Solvent Emissions Directive) (Scotland) Order 2003 (SSI 2003/600)

Act of Sederunt (Taking of Evidence in the European Community) 2003 (SSI 2003/601)

10:48

The Convener: No points arise on the instruments.

Meeting closed at 10:48.

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