

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 20 April 2004
(Morning)

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

13th Meeting 2004, 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

Bruce Adamson

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 20 April 2004

(Morning)

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

Delegated Powers Scrutiny

Criminal Procedure (Amendment) (Scotland) Bill: as amended at Stage 2

The Deputy Convener (Gordon Jackson): Welcome to the 13th meeting this year of the Subordinate Legislation Committee. We have received two apologies: Murray Tosh is in Cork and Sylvia Jackson is stuck on a train.

We are to look at the delegated powers in the Criminal Procedure (Amendment) (Scotland) Bill as amended at stage 2. I suspect that, as a practising member of the Faculty of Advocates, I technically have an interest in the bill. If I do, then I declare it now—although I do not think that there is much in the bill that would interest me very much in that capacity.

The first powers to which our attention is drawn are those under section 10A, which introduces new section 81 to the Criminal Procedure (Scotland) Act 1995. New section 81 is to do with procedures for when a trial diet does not proceed, and new section 81(7) is on the form of notice that applies to that. Are there any comments on that? It is not a matter that need detain the committee, I think.

Members indicated agreement.

The Deputy Convener: Section 12A inserts new section 72G into the 1995 act. It is to do with details relating to court procedure, and it makes sense to deal with it in the way that is proposed.

Members indicated agreement.

The Deputy Convener: Section 12 introduces new section 90B(8A), which deals with a procedure as to how reluctant witnesses are to be dealt with. Are there any comments on those provisions?

Christine May (Central Fife) (Lab): We are happy with them.

Mike Pringle (Edinburgh South) (LD): We are quite happy with them—they are fine.

The Deputy Convener: Happiness is abounding this morning.

Section 14 is on bail conditions, and on something called remote monitoring. In the past, we have found that such matters have been dealt with in an over-complex way. Do we have any comments to make now?

Christine May: No—we welcome the new draft.

Nature Conservation (Scotland) Bill: as amended at Stage 2

The Deputy Convener: The committee will recollect that we were generally content with the delegated powers in the bill. However, a number of amendments were made at stage 2, and therefore the bill has had to come back to us so that we can consider the changes. The Executive has given us a memorandum explaining the background to some of the changes, and we need to consider other amendments.

The first amendment was to sections 22(1) and 22(4), which were on the power to prescribe the content of the register of sites of special scientific interest. Are there any comments on that?

Alasdair Morgan (South of Scotland) (SNP): I do not think that there is anything in those sections, or indeed in the rest of the bill, that need detain us.

The Deputy Convener: Splendid—thank you. The only other matters that we need to consider relate to section 42, and a change to paragraphs 11B and 17(aa) of schedule 6. Do I take it that Mr Morgan has the mind of the committee and that we do not need to be detained on any of that?

Members indicated agreement.

Executive Responses

Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 (draft)

10:34

The Deputy Convener: We move on to Executive responses. We raised certain matters under the draft regulations. It has been suggested that we might feel able simply to draw the attention of the lead committee and the Parliament to the draft regulations, on the ground that their meaning could have been clearer. We could also point out the clarification that we have been given. Do we need to do any more on the draft regulations?

Members: No.

General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004 (SSI 2004/142)

The Deputy Convener: Do we wish to do anything under the order, having got the Executive's response?

Christine May: We should simply draw what has happened with the order to the attention of the lead committee and the Parliament.

The Deputy Convener: Yes, we will draw that to their attention.

Organic Aid (Scotland) Regulations 2004 (SSI 2004/143)

The Deputy Convener: The Executive has acknowledged and moved to correct two defects in the regulations that we pointed out. We will simply draw the matter to the attention of the lead committee and the Parliament.

Members *indicated agreement.*

Instruments Subject to Annulment

Local Authorities Etc (Allowances) (Scotland) Amendment Regulations 2004 (SSI 2004/146)

Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2004 (SSI 2004/149)

Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court) (Amendment) 2004 (SSI 2004/152)

Mental Health Tribunal for Scotland (Disqualification) Regulations 2004 (SSI 2004/154)

Mental Health Tribunal for Scotland (Appointment of President) Regulations 2004 (SSI 2004/155)

10:35

The Deputy Convener: No points arise on the instruments.

Primary Medical Services (Sale of Goodwill and Restrictions on Subcontracting) (Scotland) Regulations 2004 (SSI 2004/162)

The Deputy Convener: Somebody say something.

Christine May: The regulations breach the 21-day rule—as do a number of the other instruments. However, the excuse that has been given, which was that the results of national negotiations and discussions were being awaited, was reasonable.

The Deputy Convener: An informal letter will deal with that.

General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004 (SSI 2004/163)

The Deputy Convener: Are there any comments on the order?

Christine May: You might be sorry that you asked, given the number that could be made.

Mike Pringle: In my experience, this is probably the worst instrument that has come to our attention.

The Deputy Convener: What are we going to do about the order? Twenty different points needing clarification from the Executive have been pointed out to us.

Christine May: There are 20 substantive points detailed in the legal brief.

Mike Pringle: And then there are about another 150 minor points.

The Deputy Convener: We could do one or two things. We could go through the points now, or we could take them as read, send them all to the Executive and then deal with them when they come back.

Mr Stewart Maxwell (West of Scotland) (SNP): We should write to the Executive formally on the 20 substantive points, also pointing out the more minor points in our letter. There are about four and a half pages of mistakes listed in our legal brief. Frankly, that is an unacceptable level of error.

The Deputy Convener: I totally agree. However, rather than talking all those points on to the record now, we will wait until the responses come back to us next week.

Mike Pringle: I congratulate the people who found all those errors, but the problem is that, despite what I am sure were their best efforts, they might not have found all of them. It is like proofreading, as I was saying before the meeting: the fourth person proofreading something might still find mistakes. It would not surprise me at all if one or two points have been missed. Given the huge number of mistakes that have been found, it would be understandable if that were the case.

The Deputy Convener: The committee will give the impression that we are not exactly over the moon about the level of mistakes in the order. We would like pretty clear answers on what we are raising.

Mike Pringle: On what went wrong.

National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/166)

The Deputy Convener: There are one or two things that could be raised.

Christine May: Four points are raised by the legal brief: the breach of the 21-day rule; the discrepancy between the explanatory note and the substantive provisions of the regulations; the timing of the commencement of regulation 2(4); and the making of formal amendments to the punctuation of the principal regulations. The last of those might not seem particularly serious, but it is nonetheless worth drawing the Executive's attention to those matters.

The Deputy Convener: If the fourth point was the only one, we might deal with it in a different way, but we should raise the four points with the Executive.

Mr Maxwell: Point (c) on that list, on the timing of the commencement of a provision, seems rather bizarre. All the other provisions take effect on 6 April—why should one be commenced on 1 April? I believe that, although that has been pointed out to the Executive, it has decided to stick with that inconsistent date. We should pursue that with the Executive again. It does not seem sensible to commence most of the provisions on 6 April and one provision on 1 April.

Christine May: Doing so would mean that ancillary provisions relating to the "relevant child" would come into force on 1 April, before the substantive provision.

National Health Service (Optical Charges and Payments) (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/168)

Christine May: There is a breach of the 21-day rule, but I think that we will accept it.

The Deputy Convener: Okay—we accept that in this situation.

National Health Service (General Ophthalmic Services) (Scotland) Amendment (No 3) Regulations 2004 (SSI 2004/169)

Mike Pringle: The comments that we made on the previous regulations also apply to these regulations.

The Deputy Convener: It is the same point—we have accepted a similar breach before.

Organic Aid (Scotland) Amendment Regulations 2004 (SSI 2004/174)

The Deputy Convener: Nothing has been identified on the regulations.

Christine May: We should congratulate the Executive for putting right the breach of the 21-day rule so quickly.

The Deputy Convener: Indeed.

Instruments Not Subject to Parliamentary Procedure

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Scotland) Revocation Order 2004 (SSI 2004/159)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 6) (Scotland) Order 2003 Revocation Order 2004 (SSI 2004/177)

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Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 11) (Scotland) Order 2003 Revocation Order 2004 (SSI 2004/181)

10:39

The Deputy Convener: I will take the five food protection regulations en bloc on the basis that they are pro-forma revocation orders and we have identified nothing unusual or noteworthy.

Mr Maxwell: We raised previously the issue of maps being attached or not attached to revocation and partial revocation orders. I believe that we wrote to the Executive on that. Have we had a response? I notice that there are maps with these orders.

The Deputy Convener: There are maps.

Mr Maxwell: Yes, but in the past the provision of maps has been inconsistent.

The Deputy Convener: The Executive has not responded to our formal letter.

Christine May: However, it has put the maps in with the orders.

Instruments Not Laid Before the Parliament

Public Appointments and Public Bodies etc (Scotland) Act 2003 (Commencement No 5) Order 2004 (SSI 2004/148)

Act of Sederunt (Rules of the Court of Session Amendment No 2) (Fees of Shorthand Writers) 2004 (SSI 2004/150)

Act of Sederunt (Rules of the Court of Session Amendment No 3) (Fees of Solicitors) 2004 (SSI 2004/151)

Mental Health (Care and Treatment) (Scotland) Act 2003 (Commencement No 2) Order 2004 (SSI 2004/153)

10:40

The Deputy Convener: No points arise on the instruments.

Liquor Licensing (Fees) (Scotland) Order 2004 (SSI 2004/157)

The Deputy Convener: Does anyone have any points to raise on the order?

Alasdair Morgan: Part I of the schedule to the order refers to a paragraph in schedule 4 to the Licensing (Scotland) Act 1976, which paragraph was repealed by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. I wonder what the Executive is trying to do there.

The Deputy Convener: If anything. We will write to the Executive and ask it to clarify those points.

Crime (International Co-operation) Act 2003 (Commencement No 1) (Scotland) Order 2004 (SSI 2004/175)

Crime and Punishment (Scotland) Act 1997 (Commencement No 6 and Savings) Order 2004 (SSI 2004/176)

The Deputy Convener: No points arise on the orders.

Meeting closed at 10:41.

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