

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 4 November 2003  
*(Morning)*

Session 2

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## SUBORDINATE LEGISLATION COMMITTEE

11<sup>th</sup> 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

Alistair Fleming

### LOCATION

Committee Room 3



## Scottish Parliament

### Subordinate Legislation Committee

Tuesday 4 November 2003

(Morning)

[THE DEPUTY CONVENER *opened the meeting at 10:33*]

### Delegated Powers Scrutiny

#### National Health Service Reform (Scotland) Bill: Stage 1

**The Deputy Convener (Gordon Jackson):** I commence and welcome everyone to the 11<sup>th</sup> meeting of the Subordinate Legislation Committee this session. I am in the chair today because our convener is off far away on parliamentary business. She is in Dublin, and sends her apologies.

The first item concerns the National Health Service Reform (Scotland) Bill. We have to consider the Executive's responses to the points that we raised, and we raised three in particular. The first was to do with the use of illustrative lists. It seems that they are used in certain pieces of legislation but not in others. The Executive has responded by saying that it does not always like there being illustrative lists, because they might become prescriptive. There might be a slight problem there as regards consistency between various pieces of legislation.

**Alasdair Morgan (South of Scotland) (SNP):** I share that view. The Executive may be right to point out that an illustrative list might effectively become a prescriptive list, but it is not being consistent. Why does it think that illustrative lists are all right in this instance? Is it saying that it is happy for illustrative lists to become prescriptive lists in this instance? I do not think that the Executive has answered the contradiction that we pointed out in our letter. I think that we should make a note to that effect in our report.

**The Deputy Convener:** As I take it that there would be no point in our writing back to the Executive on that point, we can include in our report to the lead committee the fact that we have noted the point and think that the inconsistency between different pieces of legislation in this regard is an issue worth pursuing. Are we happy with that?

**Members:** Yes.

**Christine May (Central Fife) (Lab):** I do not think that we would get a different answer if we wrote back again. We might as well let the lead committee take the matter up.

**The Deputy Convener:** The second matter that we raised in relation to the bill concerned community health partnerships. As members will recall from last week's meeting, the longer we discussed the matter, the less clear we were about it. The question concerns the interaction between schemes for establishing community health partnerships under new section 4A(1) of the National Health Service (Scotland) Act 1978, which is introduced under section 2 of the bill, and the regulations made by the Scottish ministers under new section 4A(5). The Executive's answer tells us that we have perhaps not really understood the matter properly. That might or might not be right. We have been told not to confuse regulations that Scottish ministers make with the establishment of individual partnerships, which is done locally following detailed consultation. The question is whether we should comment on the lack of consultation on the regulations that are made by ministers.

**Christine May:** Given the fact that regulations can be changed at any time, it would be useful to suggest that there should be consultation with appropriate bodies on any changes. That would allow for such changes to be implemented through local decisions more easily than would be the case if there were no consultation.

**Murray Tosh (West of Scotland) (Con):** The Health Committee might be more interested in the framework for regulations than the detail of regulation, which we agreed last week would be more a matter of local than of parliamentary concern. The Health Committee might be involved at the draft stage, so that it could comment on the regulations before they are put through the machinery.

**The Deputy Convener:** The legal adviser has pointed out that the regulations will be subject to the negative procedure, so we might consider whether they ought to be subject to the affirmative procedure instead, given the concerns that you have raised, Murray.

**Christine May:** That is a good point.

**Murray Tosh:** I am not sure whether it is germane to our interest, but the Health Committee might be asked to consider whether it wishes the regulations to be dealt with under the affirmative procedure instead.

**The Deputy Convener:** In our report to the lead committee, we might point these two matters out. First, the Health Committee might wish to consider whether the affirmative, rather than the negative, procedure ought to be used. Secondly, it might

wish to consider, for the reasons that we have mentioned, whether there ought to be some consultation on the overarching, more important regulations. Are we happy with that?

**Members** *indicated agreement.*

**The Deputy Convener:** The final matter that we raised on the bill, under section 8, was on ancillary provision. Members will recall that a series of words are used to allow changes to be made on supplemental matters, as the Executive calls them. We were not happy with the use of the word supplemental, as we felt that it gave a very wide provision, and that everything that could properly be done by regulations was included under other words. We have received an answer, which effectively says that we are worrying about nothing. The Executive says that the use of such words is a common way to do things, which need not give rise to any disquiet. That might or might not satisfy members.

**Alasdair Morgan:** In its response, the Executive says that the use of such words is common, but there is a difference between common and universal. I do not think that the Executive has addressed the question of why the word supplemental is included in some bills, but not in others. In a report published last year, the Delegated Powers and Regulatory Reform Committee of the House of Lords said that some justification for the inclusion of a particular form of wording should be given in the explanatory notes accompanying a bill. We need an explanation in each case as to why the word supplemental is necessary, other than it simply being used as a way for the Executive to cover its back in case something crops up if it has not done its job properly in the first place.

**The Deputy Convener:** I tend to the view that, unless one can show a reason for including such a word, it should not be included. I am not sure how other members feel, but that is my general view of how legislation should work.

**Mr Stewart Maxwell (West of Scotland) (SNP):** The Executive has accepted that many of the words that are used overlap. If the words overlap, it is difficult to understand what the words other than supplemental do not cover.

**The Deputy Convener:** Indeed.

**Mr Maxwell:** Perhaps we need to ask the Executive for a rock-solid example of what would fall under supplemental and would not be covered by any other word.

**The Deputy Convener:** The alternative to that is intimating to the lead committee in our report that we cannot find and have not been given a reason for the word's use, about which we are concerned. The lead committee could think about

whether it is happy with the word, given that no example of when it is needed has been provided to us. Would that cover matters?

**Members** *indicated agreement.*

**The Deputy Convener:** I think that Murray Tosh has a more general point in mind.

**Murray Tosh:** Our first and third questions to the Executive bring out two strategic issues. Question 1 is about the use of an illustrative list and question 3 is about the use of the word supplemental. Those questions raise issues that are not particular to the bill and which arise in relation to other legislation. We should flag up those matters as concerns that we would like to pursue with the Executive in future briefings, so that we can establish good and consistent practice.

**The Deputy Convener:** The clerk will flag that up.

## Executive Response

### Civil Legal Aid (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/486)

10:41

**The Deputy Convener:** Members will see from their papers that we asked for and were given clarification on a matter that relates to the regulations. Would it be appropriate to do what we normally do and simply draw that clarification to the attention of the lead committee and the Parliament?

**Members** *indicated agreement.*

## Draft Instrument Subject to Approval

### Budget (Scotland) Act 2003 Amendment (No 2) Order 2003 (draft)

10:42

**The Deputy Convener:** Our legal advisers have identified no points on the order. As members have no points to make, we will move on.

## Instrument Subject to Approval

### Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No 4) (Scotland) Order 2003 (SSI 2003/501)

10:42

**The Deputy Convener:** The order is in the customary form and we have identified no points to make on it.

## Instruments Subject to Annulment

### Horticultural Produce (Community Grading Rules) (Scotland) Regulations 2003 (SSI 2003/502)

10:43

**The Deputy Convener:** We have been given a helpful and full explanation of the regulations, but we have not noted anything to comment on. Is that agreed?

**Members** *indicated agreement.*

### Road Traffic Act 1991 (Special Parking Area) (Scotland) Order 2003 (SSI 2003/508)

**The Deputy Convener:** I think that the next instrument is the Scottish Legal Aid Board (Employment of Solicitors to Provide Criminal Legal Assistance) Amendment Regulations 2003 (SSI 2003/511). [*Interruption.*] Have I missed an instrument? My papers are out of order. The next instrument on the agenda is the Road Traffic Act 1991 (Special Parking Area) (Scotland) Order 2003 (SSI 2003/508), but it is not next in members' papers—that was done to catch me out because I am an amateur in the chair. Members must pass over the regulations to find the order, but having done that, they will find that the order is not nearly as exciting as they thought that it would be, because no points of substance have been identified on the order.

### Road Works (Sharing of Costs of Works) (Scotland) Regulations 2003 (SSI 2003/509)

**The Deputy Convener:** No points on the regulations have been identified.

### Scottish Legal Aid Board (Employment of Solicitors to Provide Criminal Legal Assistance) Amendment Regulations 2003 (SSI 2003/511)

**The Deputy Convener:** It has been pointed out that we might want to ask the Executive to clarify further what, if any, consultation was undertaken. There has been a slight problem in the past with regulations that concern the legal profession, because consultation has not been undertaken at various local levels, so I see nothing wrong with at least asking the Executive to confirm what it has or has not done.

**Alasdair Morgan:** This is an issue on which we will take your guidance.

**The Deputy Convener:** I am not sure whether I need to declare an interest; if I do, I declare my interest.

**Christine May:** You are not suggesting that those in the legal establishment are an argumentative bunch.

**The Deputy Convener:** Absolutely not. However, there would be nothing wrong in our asking for that clarification.

**Murray Tosh:** The regulations raise a general issue. The Executive has provided a wonderfully sniffy note that says:

“The Executive does not normally conduct public consultation on detailed secondary legislation on legal aid.”

That is a very Olympian pronouncement. However, as we have been told that the Executive always consults before it produces subordinate legislation, we should ask whether any other derogations from the word “always” exist. We should try to get at the key thinking and ensure that practice is consistent in the Executive. I would like that matter to be dealt with.

**The Deputy Convener:** You suggest that the issue of when the Executive does and does not consult should be part of our agenda for a future Executive briefing.

**Murray Tosh:** I think so.

#### **Road Works (Reinstatement) (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/512)**

**The Deputy Convener:** No points on the regulations have been identified, but we may wish to consider whether we are satisfied with the explanatory note and whether to raise that with the Executive formally or in an informal letter. The explanatory note is not particularly enlightening and reproduces a previous explanatory note. Just giving the Executive a wee letter might do, but I am happy if anyone wants to take the matter further.

**Mike Pringle (Edinburgh South) (LD):** That is fine.

**The Deputy Convener:** We are content.

#### **Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Amendment (No 2) Order 2003 (SSI 2003/514)**

**The Deputy Convener:** We have identified no difficulties with the order.

**Christine May:** Did members read the order? It refers to areas “from 57° North latitude”.

**The Deputy Convener:** I read every word. That concludes the meeting.

*Meeting closed at 10:46.*



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