SUBORDINATE LEGISLATION COMMITTEE

AGENDA

18th Meeting, 2004 (Session 2)

Tuesday 25th May, 2004

The Committee will meet at 10:30am in Committee Room 3, Committee Chambers, Edinburgh.

1. **Items in private:** The Committee will decide whether to consider agenda items 10 and 11 in private.

2. **Delegated powers scrutiny:** The Committee will further consider the delegated powers provisions in the following Bill—

   the Prohibition of Smoking in Regulated Areas (Scotland) Bill at Stage 1,

   and will take evidence from Stewart Maxwell MSP, the member in charge of the Bill.

3. **Delegated powers scrutiny:** The Committee will consider the response from the Executive to points raised on the following Bill—

   the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill at Stage 1.

4. **Executive responses:** The Committee will consider the responses from the Scottish Executive to points raised on the following—

   the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2004, *(SSI 2004/209)*

   the Primary Medical Services (Consequential and Ancillary Amendments) (Scotland) Order 2004, *(SSI 2004/212)*.

5. **Draft instruments subject to approval:** The Committee will consider the following—

   the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2004, *(draft)*
the Advice and Assistance (Financial Limit) (Scotland) Amendment Regulations 2004, (draft).

6. **Instruments subject to approval:** The Committee will consider the following—


7. **Instruments subject to annulment:** The Committee will consider the following—

   the National Health Service (General Medical Services Contracts) (Scotland) Amendment Regulations 2004, (SSI 2004/215)

   the National Health Service (Primary Medical Services Performers Lists) (Scotland) Amendment Regulations 2004, (SSI 2004/216)

   the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2004, (SSI 2004/217)

   the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment (No. 2) Regulations 2004, (SSI 2004/220)

   the General Medical Services and the General Medical Services and Section 17C Agreements (Transitional and Other Ancillary Provisions Orders) (Scotland) Amendment Order 2004, (SSI 2004/223).

8. **Instruments not laid before the Parliament:** The Committee consider the following—


9. **Guidance subject to annulment:** The Committee will consider the following—


10. **Inquiry into the regulatory framework in Scotland:** The Committee will consider a draft report regarding the recent visit to Westminster.

11. **Inquiry into the regulatory framework in Scotland:** The Committee will consider a draft consultation document.

Alasdair Rankin
Clerk to the Committee
Tel: 0131 348 5212
The following papers are attached for this meeting:

**Agenda Items 2-9**

Legal Brief (for members only) – to follow  SL/S2/04/18/1

**Agenda Item 3**

Executive Response  SL/S2/04/18/2

**Agenda Item 4**

Executive Response  SL/S2/04/18/3

**Agenda Items 5-9**

Copies of instruments and Guidance (circulated to Committee members only)

**Agenda Item 10**

Draft Report (for members only)  SL/S2/04/18/4

**Agenda Item 11**

Draft Consultation Document (for members only)  SL/S2/04/18/5

**Papers circulated for information:**

Minutes of 17th meeting, 2004 (Session 2)  SL/S2/04/17/M
1. On 17 May the Committee asked the Executive for further explanation of the following matters –

Section 4(2)  Power to prescribe by regulations the class of person that will be defined as a “prescribed person”

The Committee notes that subsection (5)(a) of this section specifies circumstances in which a proprietor and any proposed teacher may not be considered a “proper person” for the purposes of those roles. Two of those circumstances relate to earlier disqualifications either under the 1980 Act or under the Protection of Children (Scotland) Act 2003. A third circumstance is if they fall into the category of “prescribed person” which the Scottish Ministers may by regulations prescribe.

The Committee notes this to be a new power which appears to it to be so wide that affirmative procedure would be more appropriate. The Committee therefore asks the Executive for further justification of the negative procedure proposed in the Bill.

2. Also, it appears to the Committee that there are arguments that there should be a statutory requirement on the Executive to consult before exercise of the power. The Committee invites the Executive to respond on that point, as well.

The Scottish Executive responds as follows:

First question

1. The power concerned has been provided for within the Bill to cover any future decision to further define the persons who Scottish Ministers would not consider to be “proper persons” in terms of subsection (5)(a). Circumstances may conceivably arise at some future date where, for example, this regulatory power could be used to take account of minor consequential changes arising from other legislation which created a new category of person, which it was considered should be reflected also within this legislation. It would also be valuable were Scottish Ministers to decide for example to impose a particular standard for teachers within independent schools, requiring registration with the General Teaching Council of Scotland. The section as a whole is intended to assist transparency, in clarifying so far as possible, upon the face of the Bill, the categories of person who would be regarded as “proper persons”.

However, it is anticipated that use of this power would be made infrequently, and in limited circumstances such as those outlined above, only. There is no question of this provision being used to discriminate against wider sections of the community. The concern is to ensure that persons teaching and acting as proprietors are of appropriate “propriety”.

Given the foregoing, the use of negative procedure is considered to represent the appropriate approach here, affording Parliament a proportionate opportunity to provide input to the process, and reflects the limited circumstances in which the power would be exercised. It is considered that it would be undesirable to require Parliament to debate all Regulations no matter how minor the provisions.

*Second question*

2. The Executive would wish to reassure the Committee that, in accordance with Executive policy, it would conduct appropriate consultation in relation to any regulations to be made under this power. It does not consider that there are specific reasons in this case to go further and impose a statutory duty to consult.

SCOTTISH EXECUTIVE EDUCATION DEPARTMENT
SUBORDINATE LEGISLATION COMMITTEE

18th Meeting, 2004 (Session 2)

Tuesday, 25th May 2004

Executive Responses

- the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2004, (SSI 2004/209)

- the Primary Medical Services (Consequential and Ancillary Amendments) (Scotland) Order 2004, (SSI 2004/212)
THE SEA FISHING (ENFORCEMENT OF COMMUNITY QUOTA AND THIRD COUNTRY FISHING MEASURES) (SCOTLAND) ORDER 2004 (SSI 2004/209)

1. On 17th May the Subordinate Legislation Committee considered the above instrument and requested an explanation of the following matters-

“The Committee notes that article 4(1) appears to allow derogation in certain circumstances from the requirement on the buyer of fish to weigh the fish in the presence of a British sea-fishery officer. The Committee asks whether the derogation is in respect of the whole obligation or simply the requirement for the presence of a British sea-fishery officer.

The Committee asks the Executive why the savings provision in article 15(2) was thought to be necessary when the position appears to be covered adequately by section 16(1) of the Interpretation Act 1978.”

The Scottish Executive responds as follows:

First Question

1. The derogation in article 4(1) of the Order is in respect of the obligation to weigh the fish in the presence of a British sea-fishery officer only.

2. Paragraph 12 of Annex IV to Council Regulation 2287/2003 provides for an obligation on buyers and holders to weigh fish. Sub paragraph 8 of paragraph 12 of Annex IV provides that the competent authorities of a Member State shall ensure that landings of more than 10 tonnes of herring, mackerel or horse mackerel are weighed in the presence of a controller. In implementation of that, article 4(1) of the Order provides that where over 10 tonnes of herring, mackerel or horse mackerel are landed in Scotland, buyers or holders of fish must weigh the fish in the presence of a British sea-fishery officer unless the buyer or holder has arranged for some other person or organisation to act as the controller for the purposes of sub paragraph 8 of paragraph 12 of Annex IV to Council Regulation 2287/2003. In that case the details of the arrangement and the buyers or holders who are party to it must be notified to the Scottish Ministers.

Second Question

3. The Executive accepts that section 16(1) of the Interpretation Act 1978 makes provision for general savings provisions.

4. Notwithstanding the provision made in the Interpretation Act 1978, in this instance the Executive included an express savings provision in the instrument to make it absolutely clear to those affected by the legislation that despite the repeal of the 2003 Order by S.S.I. 2004/209 a relevant offence under the 2003 Order can continue to be enforced and prosecuted and penalties can be imposed in respect of such an offence.
THE PRIMARY MEDICAL SERVICES (CONSEQUENTIAL AND ANCILLARY AMENDMENTS) (SCOTLAND) ORDER 2004, (SSI 2004/212)

On 17th May 2004 the Committee requested an explanation of the following matters:-

1. “The Committee asks the Executive to justify the inclusion of the amendments contained in paragraphs 1 and 5 of Schedule 1. These amendments appear to relate to matters that are reserved under Schedule 5 to the Scotland Act 1998. The Committee asks the Executive whether it considers that the provisions of paragraph 3 of Schedule 4 to that Act provide sufficient vires.”

The Scottish Executive explains that it considers that the provisions of paragraph 3 of Schedule 4 to the Scotland Act 1998 provide sufficient vires. The Executive is aware that the instruments amended in paragraphs 1 and 5 of Schedule 1 are made under powers contained in the Medicines Act 1968, the subject matter of which is reserved under Section J4 of Schedule 5 to the Scotland Act. In both cases, however, the modifications in paragraphs 1 and 5 relate to provisions in those instruments which referred to general medical services under Part II of the National Health Service (Scotland) Act 1978 (“the 1978 Act”), or the performance of personal medical services in connection with a pilot scheme under the National Health Service (Primary Care) Act 1997 (“the 1997 Act”). The Primary Medical Services (Scotland) Act 2004 (“the 2004 Act”) makes provision for the abolition of both general medical services under Part II of the 1978 Act and personal medical services under the 1997 Act and to replace them with primary medical services under Part I of the 1978 Act.

*Prima facie* the modifications in paragraphs 1 and 5 may amend “the law on reserved matters” within the meaning of paragraph 2 of Schedule 4 to the Scotland Act but that paragraph is disapplied by paragraph 3(1) of Schedule 4 because:

(a) the modifications are clearly consequential upon these provisions in the 2004 Act; and

(b) those modifications do not have a greater effect on reserved matters than is necessary to give effect to the purpose of the provisions in the 2004 Act.

2. “The Committee asks the Executive why paragraph 78 of Schedule 1 to SI 2002/2469 was included in Schedule 2 as this provision appears to have no relevance to Scotland and in any case would be caught (in so far as competent) by the revocation of SI 1998/665.”

The Executive does not consider that paragraph 78 of Schedule 1 to 2002/2469 would be caught (in so far as competent) by the revocation of SI 1998/665. The Executive explains that paragraph 78 of Schedule 1 to SI 2002/2469 was included in Schedule 2 as it amended regulation 4 of S.I. 1998/646 with the same extent as that regulation. It therefore amended regulation 4 of SI 1998/646 as a matter of Scots law. With the revocation of regulation 4 of SI 1998/665 in Schedule 2 the Executive considered it was expedient also to revoke the provision that amended that regulation as a matter of Scots law, rather than leave an otiose provision on the statute book in Scotland.

SCOTTISH EXECUTIVE HEALTH DEPARTMENT