

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 28 September 1999
(Morning)

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CONTENTS

Tuesday 28 September 1999

Col.

SCOTTISH DENTAL PRACTICE BOARD AMENDMENT REGULATIONS 1999 (SSI 1999/52)	39
NATIONAL HEALTH SERVICE (GENERAL DENTAL SERVICES) (SCOTLAND) AMENDMENT (No 2) REGULATIONS 1999 (SSI 1999/51)	40
NATIONAL HEALTH SERVICE (SERVICE COMMITTEES AND TRIBUNAL) (SCOTLAND) AMENDMENT REGULATIONS 1999 (SSI 1999/53)	40
NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES) (SCOTLAND) AMENDMENT (No 4) REGULATIONS 1999 (SSI 1999/54)	40
NATIONAL HEALTH SERVICE (GENERAL OPHTHALMIC SERVICES) (SCOTLAND) AMENDMENT (No 2) REGULATIONS 1999 (SSI 1999/55)	40
HEALTH ACT 1999 (FUND-HOLDING PRACTICES) (TRANSFER OF ASSETS, SAVINGS, RIGHTS AND LIABILITIES AND TRANSITIONAL PROVISIONS) (SCOTLAND) ORDER 1999 (SSI 1999/56)	41
ROAD TRAFFIC (PERMITTED PARKING AREA AND SPECIAL PARKING AREA) (CITY OF GLASGOW) DESIGNATION ORDER 1999 (SSI 1999/59)	41
ROAD TRAFFIC (PARKING ADJUDICATORS) (CITY OF GLASGOW) REGULATIONS 1999 (SSI 1999/60)	42
EDUCATIONAL DEVELOPMENT, RESEARCH AND SERVICES (SCOTLAND) GRANT REGULATIONS 1999 (SSI 1999/65)	42
PUBLIC FINANCE AND ACCOUNTABILITY (SCOTLAND) BILL	43

SUBORDINATE LEGISLATION COMMITTEE

6th Meeting

CONVENER :

*Mr Kenny MacAskill (Lothians) (SNP)

COMMITTEE MEMBERS :

*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

*Trish Godman (West Renfrewshire) (Lab)

*Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)

*Bristow Muldoon (Livingston) (Lab)

*David Mundell (South of Scotland) (Con)

*Ian Welsh (Ayr) (Lab)

*attended

COMMITTEE CLERK:

Alasdair Rankin

ASSISTANT CLERKS:

Claire Menzies

Anne Peat

Scottish Parliament Subordinate Legislation Committee

Tuesday 28 September 1999

(Morning)

[THE CONVENER *opened the meeting at 11:16*]

The Convener (Mr Kenny MacAskill): Good morning. We have our full complement. Welcome to visitors, and to a member of the press corps, who has come to see how we structure and run the committee. Without further ado, we will press on with agenda item 1, which concerns the Executive responses.

Scottish Dental Practice Board Amendment Regulations 1999 (SSI 1999/52)

The Convener: We raised our views with the Executive on the drafting intentions and how we felt that matters should be defined and it has tried to explain its position. We have advice from the legal advisers. Does anyone wish to comment on the satisfaction of this matter and what steps we should take regarding it?

David Mundell (South of Scotland) (Con): We should hold with our view and draw to the attention of the Parliament that the regulations should not contain unnecessary provisions. There is no benefit from that.

The Convener: Does the committee agree? That is agreed.

National Health Service (General Dental Services) (Scotland) Amendment (No 2) Regulations 1999 (SSI 1999/51)

National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1999 (SSI 1999/53)

National Health Service (General Medical Services) (Scotland) Amendment (No 4) Regulations 1999 (SSI 1999/54)

National Health Service (General Ophthalmic Services) (Scotland) Amendment (No 2) Regulations 1999 (SSI 1999/55)

The Convener: We will deal with the health service regulations collectively. We flagged up various matters with the Executive last week and have received a response.

Bristow Muldoon (Livingston) (Lab): A number of the regulations have been amended on several occasions. The point we raised with the Executive was that if regulations were being amended, say, more than five times, it might be appropriate for them to be consolidated, for ease of reference for people who are considering the statutory instruments and for the legal profession as a whole. We should include in our report that there should be a general principle that regulations are updated when they have been subject to amendment more than five times.

Given that the Scottish Parliament is only recently established, it may set a ground rule for new Scottish regulations that will be easier for us, and everyone else in the country, to access. We should note in our report the responses from the Executive, which say that it takes on board some of the points that we have made.

Trish Godman (West Renfrewshire) (Lab): Cost has been flagged up but it is more important that the regulations can be read. We should comment on that.

Ian Welsh (Ayr) (Lab): I would like to know what the Executive means by "as soon as practically possible".

The Convener: We can go back to it on that. I agree wholeheartedly with the comments of Bristow, Trish and Ian. I take it that the committee's view is that we will draw our views on consolidation to the attention of the Parliament

and perhaps clarify with the Executive what it means by "as soon as practically possible".

Health Act 1999 (Fund-Holding Practices) (Transfer of Assets, Savings, Rights and Liabilities and Transitional Provisions) (Scotland) Order 1999 (SSI 1999/56)

The Convener: We have legal advice on our points relating to defective drafting. Although they were answered, there are other aspects of the defective drafting that do not appear to have been adequately dealt with. Does anybody wish to comment on that? Matters are canvassed in the briefing from the legal advisers, which discusses defective drafting in relation to the terminology and definitions and so on.

David Mundell: The drafting remains defective. On that basis, we must draw it to the attention of the Parliament.

The Convener: I agree. Is it the view of the committee that we say that the drafting is defective, irrespective of why the Executive has come to that? Members are agreed.

Road Traffic (Permitted Parking Area and Special Parking Area) (City of Glasgow) Designation Order 1999 (SSI 1999/59)

The Convener: We have a full report from our legal officers in relation to the matters we raised with the Executive on the last occasion. Does anybody have any comments?

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): There has been a full response and acknowledgement of the points that were made by the committee. The committee sought an explanation on three matters. Following the advice we received today, I suggest that the order should be reported to Parliament on the grounds of defective drafting. Its meaning could be clearer, especially in relation to invalid notices.

It should be considered that there has been an unexpectedly narrow use of the powers conferred, particularly in relation to the Executive's response to the second question that we raised, which is why there is no equivalent provision to permit an alleged owner of a vehicle to challenge the enforcement of an invalid parking ticket. In response to that, the Executive referred to existing protection available to those against whom decrees are enforced under the common law and the Debtors (Scotland) Act 1987. It would be helpful if the Executive could explain which existing protection it is referring to as being

available under the common law, and whether in particular it is the remedy of obtaining a suspension and interdict of a charge from the Court of Session. If so, there might be issues that the committee wishes to pursue about the expense of such a remedy in relation to the cost of a parking ticket. It might be around two or three thousand times more expensive to go to the Court of Session than to pay the parking ticket.

Secondly, under the Debtors (Scotland) Act 1987, which powers are they referring to? They might want to look at that again.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): The lead committee might want to look at that as a substantive issue, on the basis that there has been an unexpectedly narrow use of the power.

The Convener: We have managed to express our views on that. Thank you for your contribution, Fergus.

Road Traffic (Parking Adjudicators) (City of Glasgow) Regulations 1999 (SSI 1999/60)

The Convener: There appear to be lacunae here, and difficulties regarding information relating to appeals. Does Fergus wish to comment on this instrument in addition to the last one? Our legal advice suggested that there was a gap in the legislation concerning acknowledgement of the extension of time limits for appeals.

We thought that it was important for appellants to be made aware of the decision to extend the time limit and that they should not merely rely on the good graces and good offices of the people who administer the scheme. The Executive appears to accept that it might be better to include an express provision in the regulations. Do members agree that it might be important and appropriate for us to flag up the matter to the lead committee? That is agreed.

Educational Development, Research and Services (Scotland) Grant Regulations 1999 (SSI 1999/65)

The Convener: We have only one new matter—SSI 1999/65. As this all-singing, all-dancing item of legislation should not cause us any problems, shall we allow the instrument to proceed without any adverse comment? That is agreed.

Public Finance and Accountability (Scotland) Bill

The Convener: Item 3 relates to the Public Finance and Accountability (Scotland) Bill, which is an item that has been carried on from last week. We have had an opportunity to read the Executive's response to our points and, more important, our legal adviser's notes. An issue has been raised about the benefits to the committee for instruments to be laid before Parliament. We had a discussion about this matter in the informal session. Do any members wish to comment on the matter in the open session?

Bristow Muldoon: The committee should suggest to the Executive that it might be desirable to amend section 28(1) of the bill to ensure that commencement orders are laid before the Parliament. That would enable this committee and the lead committees to consider both interim commencement orders or commencement orders within the full provisions of the act.

The committee would also be wise to consider its own standing orders, although that is a more general issue that we might want to examine in the future.

David Mundell: I agree with Bristow. It is important to make the point that if commencement orders are not laid before Parliament, as is constituted in the standing orders, we will not know that they have been brought into effect. That might create a democratic deficit.

The Convener: Okay, we have managed to flag up that issue. We seem to have got through matters speedily.

Trish Godman: Can I raise a point? Section 9(5) of the bill says:

"The Scottish Ministers may lend sums to the Keeper on such terms and conditions as they may determine".

I do not understand why we are lending the Keeper of the Registers of Scotland money. Surely we do not lend money to someone like that.

That section struck me as odd when I read it. Would we lend money to the Keeper of the Registers of Scotland if he had to move because he needed a bigger building? That does not make sense to me.

The Convener: That is a policy matter and would have to be considered by the Finance Committee. I can only assume that as the Registers of Scotland now has agency status, any such money would be short-term, up-front funding. Perhaps we could flag up that point to our colleagues on the appropriate committee.

Trish Godman: It just sounded odd that we would lend money to the Keeper of the Registers

of Scotland.

Ian Jenkins: He might need change for the Coke machine.

Trish Godman: The agency has already booked buildings and I am sure that the Government did not lend money towards that.

The Convener: Thank you very much.

Meeting closed at 11:29.

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