

SUBORDINATE LEGISLATION COMMITTEE

Wednesday 27 October 1999
(*Afternoon*)

© Parliamentary copyright. Scottish Parliamentary Corporate Body 1999.

Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now
trading as The Stationery Office Ltd, which is responsible for printing and publishing
Scottish Parliamentary Corporate Body publications.

CONTENTS

Wednesday 27 October 1999

	Col.
FOOD PROTECTION (EMERGENCY PROHIBITIONS) (AMNESIC SHELLFISH POISONING) (EAST COAST) (No 3) (SCOTLAND) ORDER 1999 (SSI 1999/110)	47
LOBSTERS AND CRAWFISH (PROHIBITION OF FISHING AND LANDING) (SCOTLAND) ORDER 1999 (SSI 1999/88)	47
ORGANIC AID (SCOTLAND) AMENDMENT REGULATIONS 1999 (SSI 1999/107)	48
ERSKINE BRIDGE (TEMPORARY SUSPENSION OF TOLLS) ORDER 1999 (SSI 1999/116)	48
NATIONAL HEALTH SERVICE (PENALTY CHARGE) (SCOTLAND) REGULATIONS 1999 (SSI 1999/121)	49
EDUCATION (STUDENT LOANS) (SCOTLAND) AMENDMENT REGULATIONS 1999 (SSI 1999/124)	49
FOOD PROTECTION (EMERGENCY PROHIBITIONS) (AMNESIC SHELLFISH POISONING) (WEST COAST) PARTIAL REVOCATION (SCOTLAND) ORDER 1999 (SSI 1999/114)	50
PRESIDING OFFICER (LETTERS)	51

SUBORDINATE LEGISLATION COMMITTEE

8th 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

Wednesday 27 October 1999

(Afternoon)

[THE CONVENER *opened the meeting at 18:16*]

The Convener (Mr Kenny MacAskill): Good evening, ladies and gentlemen. I see that no members of the public are rushing to stay behind at this late hour.

We have had the benefit of our legal briefing, as we have termed it. Without further ado, we will move to the items on the agenda.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (No 3) (Scotland) Order 1999 (SSI 1999/110)

The Convener: We have had some advice on this matter. Are there any points that we wish to take up with the Executive?

David Mundell (South of Scotland) (Con): The Executive should be asked why no letter was submitted to the Presiding Officer, as is required, until it was asked for.

The Convener: Does anyone else wish to comment?

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I second David Mundell's comments. The failure of the Executive to submit letters to the Presiding Officer is becoming a habit. It should be stopped. If it does not stop, one wonders why we are here. I am not suggesting that we follow a policy of three strikes and you are out, much as I would like to, but we should indicate how seriously we regard this repeated breaching of the rules.

The Convener: Item 4 on the agenda concerns letters to the Presiding Officer in a more general context, but it seems that we are already in agreement that we should raise this problem with the Executive.

Lobsters and Crawfish (Prohibition of Fishing and Landing) (Scotland) Order 1999 (SSI 1999/88)

The Convener: In our briefing, various points were raised regarding definitions. Ian, do you wish to comment?

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): No.

David Mundell: This article certainly makes one learn more about shellfish, and about the definitions of various parts thereof. There is a benefit other than the legal one of being in this committee.

The Convener: Colourful images.

David Mundell: Colourful images, yes.

Trish Godman (West Renfrewshire) (Lab): How would we know, once the fish was out, whether it was v-notched or not?

David Mundell: It would be a bit late for the fish as well.

Bristow Muldoon (Livingston) (Lab): The other question that came up in our legal briefing was on the reference to European Community law. It is important for us to raise this issue with the Executive. Where it acts in an area in which the statutory instrument relates to European Community law, there should be a reference to that EC law. Where it is helpful to the understanding of a statutory instrument, an extract or copy of the item concerned would be useful for legal advisers, and also for committee members.

The Convener: On those two points, the European angle and the requirement of a clear definition, people should, if there is to be possible prosecution, at least be expected to know what they should or should not have done.

Organic Aid (Scotland) Amendment Regulations 1999 (SSI 1999/107)

The Convener: This is a brief matter. As Bristow said when discussing the last SSI, the Commission decision is referred to and we should be asking, as a matter of courtesy and to assist ourselves and our advisers, for a copy to be sent along. The legislative drafters will have the copy of the regulations before them when they are making the draft. Is that agreed?

Members indicated agreement.

Erskine Bridge (Temporary Suspension of Tolls) Order 1999 (SSI 1999/116)

The Convener: This order is a possible beanfeast for some. Are there any comments?

We have a legal briefing seeking clarification on the beginning of the order. Is it agreed that we should ask for some confirmation of the definition, with more precise, tighter drafting?

Ian Jenkins: On the timing of the suspension of the tolls, yes.

Trish Godman: I am concerned about the timing of the order. I was with Strathclyde Passenger Transport, and we knew for a long time that this was going to happen. It seemed to me that the order came very late. The whole matter was planned over a number of years, because traffic had to be taken off Great Western Road. I read somewhere—I cannot find it now; I should have highlighted it—that you made a comment, convener, that the order was late in coming. In fact, it is over. We are discussing it today, but the Kingston bridge was closed last weekend: that has the knock-on effect for this order. I wondered why the legal process took so long when we have known what was going to happen for so long. I take Ian's point. The word "within" in article 2(b) is deceptive.

Fergus Ewing: If the rationale of this statutory instrument is that people in Glasgow should be entitled to traverse the Clyde by a toll-free bridge, they are setting an interesting precedent for people in Skye, so I am delighted with this statutory instrument. [*Laughter.*]

The Convener: Without usurping the Executive, it seems to me that if it is considering introducing legislation on road pricing or congestion charging, getting the definitions right at the outset on something which is only transient and temporary would be sound advice to its legislative drafters before they progress to anything else. Is that agreed?

David Mundell: It might be worth making the general point about how important explanatory notes are. Many members may rely on explanatory notes to a large extent. It is important, therefore, that they are as clear and concise as possible.

The Convener: Thank you, David. I missed that, although it was in our legal briefing, so we will raise that matter as well.

National Health Service (Penalty Charge) (Scotland) Regulations 1999 (SSI 1999/121)

The Convener: Our legal briefing advises that this SSI is tickety-boo. We will leave the policy arguments for elsewhere on another day.

Education (Student Loans) (Scotland) Amendment Regulations 1999 (SSI 1999/124)

The Convener: Are there any comments on SSI 1999/124?

Fergus Ewing: This again appears to be a transgression of the 21-day rule. That is becoming something of a habit. The regulations came into

force on the day that they were laid before Parliament. The reason given for the failure to comply with the 21-day rule was a desire to ensure that Scottish domiciled students were able to benefit from the changes introduced by the regulations as early as possible in the current academic year. That is all well and good and laudable. It is also stated that the amending regulations have already been put in place in England and Wales. That begs the question of why the Executive was not on the ball and why this was done late. We should be told, as a certain journalist used to say.

The Convener: It is agreed that we will raise that with the Executive.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) Partial Revocation (Scotland) Order 1999 (SSI 1999/114)

The Convener: Again, there seems to be a potential drafting problem with various parts of this order. Is it the intention of article 3 to disapply all the prohibitions in article 6 and, if so, what is the purpose of article 3(b)? Is it agreed that we should seek clarification of this?

Ian Jenkins: We used to get maps apparently. One does not want to lose 6,000 square miles of the North sea.

Trish Godman: Yes, we need maps.

Fergus Ewing: I am happy to second that. It is an excellent point raised by the Liberal party. I am glad that it has come on board on the 6,000 square miles issue.

The Convener: I had not focused on that but, given that this is going to people in a trade who operate from charts, it appears that the geographical description is important. Given that this is coming through Her Majesty's Stationery Office, the acquisition of Ordnance Survey maps is not of particular difficulty. In a purchase of a house, we would tack on a clear, defined description.

Ian Jenkins: We may not need the map, but it should be available.

Bristow Muldoon: There is a precise definition in the schedule of the areas that are covered. I presume that fishermen would be able to use that information. The convener may want to get clarification on this issue, but if the information that is already supplied is sufficient for the people in the industry, that is what is crucial.

The Convener: Perhaps we should raise with the Executive that we note that maps are not provided, which has been done historically. We

should ask what the reasoning is behind that and whether it is satisfied that concerned individuals will have fair and accurate knowledge as to the geographical area referred to.

Presiding Officer (Letters)

The Convener: We discussed this matter in the pre-meeting briefing, during which we had flagged up difficulties. In the spirit of constructively criticising the Executive, we can leave it to Alasdair Rankin, as clerk of this committee, to see whether sufficient recognition can be given to us. We should also make clear that we wish to receive matters to be brought to our attention electronically, if that is the quickest way to do it. As we said earlier, letters to the Presiding Officer are significant and can be vital.

We will see whether informal channels can be used to deal with those matters rather than having to deal with them formally by instructing, advising and requesting people to come before the committee. Is that agreed?

David Mundell: Yes.

Bristow Muldoon: I want to raise a question on the letter from the Executive. In paragraph 3, it is stated that in relation to the provision of letters under article 10 of SI 1999/1096, there is not a timetable defined within that article. If that is the case, we may wish to seek to amend that. If it is the case that you must send a letter, but it does not matter whether you send it this year or next year, that seems to be a bit of an open goal.

The Convener: Yes, it certainly does. Should we seek clarification by asking Alasdair to discuss matters with the Executive? If we are not clear on that, that may be an issue that we have to raise. The Procedures Committee may have to examine that as well, as it is not satisfactory.

Thank you for attending at this time of day. Sorry for the inconvenience of having to rejig our schedule.

Meeting closed at 18:31.

Members who would like a printed copy of the Official Report to be forwarded to them should give notice at the Document Supply Centre.

Members who would like a copy of the bound volume should also give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the bound volume should mark them clearly in the daily edition, and send it to the Official Report, Parliamentary Headquarters, George IV Bridge, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 5 November 1999

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5

Annual subscriptions: £640

BOUND VOLUMES OF DEBATES are issued periodically during the session.

Single copies: £70

Standing orders will be accepted at the Document Supply Centre.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £2.50

Special issue price: £5

Annual subscriptions: £82.50

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £2.50

Annual subscriptions: £80

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 0171 242 6393 Fax 0171 242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 01232 238451 Fax 01232 235401
The Stationery Office Oriol Bookshop,
18-19 High Street, Cardiff CF1 2BZ
Tel 01222 395548 Fax 01222 384347

The Stationery Office Scottish Parliament Documentation
Helpline may be able to assist with additional information
on publications of or about the Scottish Parliament,
their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers