

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 14 March 2000  
*(Morning)*

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## SUBORDINATE LEGISLATION COMMITTEE

9<sup>th</sup> Meeting 2000, Session 1

### CONVENER

\*Mr Kenny MacAskill (Lothians) (SNP)

### DEPUTY CONVENER

\*Ian Jenkins (Tw eeddale, Ettrick and Lauderdale) (LD)

### COMMITTEE MEMBERS

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

\*Trish Godman (West Renfrewshire) (Lab)

Bristow Muldoon (Livingston) (Lab)

David Mundell (South of Scotland) (Con)

\*attended

### CLERK TEAM LEADER

Alasdair Rankin

### ASSISTANT CLERKS

Claire Menzies

Anne Peat

### LOCATION

Committee Room 3



## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 14 March 2000*

*(Morning)*

[THE CONVENER *opened the meeting at 11:15*]

**The Convener (Mr Kenny MacAskill):** Good morning. Although we have received apologies from Bristow Muldoon and David Mundell, we can press on as we are quorate.

### Adults with Incapacity (Scotland) Bill

**The Convener:** The first item on the agenda is the delegated powers scrutiny of the Adults with Incapacity (Scotland) Bill as amended at stage 2, which we will also get next week. We have received a lengthy brief on the bill and are thankful for the Executive's consideration of our various points.

However, a further point has been raised about paragraph 11 of schedule 2A of the bill, which allows Scottish ministers to make regulations for certain authorities to comply with obligations that might arise under the European convention on human rights. Our legal advice points out that the practice adopted by the Executive of using ordinary statutory instruments for such regulations is unusual, and is comparable to provisions for the enforcement of maintenance orders.

Having had considerable experience of private practice before this Parliament began, I am aware of the practice of enforcing maintenance orders. Perhaps we should ask the Executive why it is proceeding by way of statutory instrument instead of the normal method. Although there might be some good reason for that, it might be helpful, in the light of the European convention on human rights and other matters, to have some co-ordination about progressing these matters. Presumably such issues will raise their heads in years to come.

**Trish Godman (West Renfrewshire) (Lab):** I agree. If the Executive has good reasons for taking this approach, it should tell us what they are.

**The Convener:** Do members agree to flag the matter up with the Executive and await its response? As I said, we are grateful for its co-operation so far.

**Members indicated agreement.**

## Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 2000 (SSI 2000/Draft)

### Advice and Assistance (Financial Conditions) (Scotland) Regulations 2000 (SSI 2000/Draft)

### Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2000 (SSI 2000/Draft)

**The Convener:** The second item on the agenda is consideration of draft affirmative instruments. I think that Fergus Ewing had a point about the Scotland Act 1998 (Cross-Border Authorities) (Adaptation of Functions etc) Order 2000.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Yes, convener. Perhaps the Executive could give further thought and direction to this committee about the meaning of the phrase "or otherwise" in paragraph 4(1) of the order. It appears that, in relation to the cross-border authority of the National Heritage Memorial Fund, the Prime Minister is under obligation to consult Scottish ministers before he appoints

"(a) the chairman of the Trustees, and

(b) any person under this section on the ground that he is connected by residence or otherwise with Scotland".

How is someone connected with Scotland other than by residence? That could mean just about anything. Does a visit to a certain part of Sutherland or Perthshire, the presence of a Highland granny or absentee ownership of a few thousand acres allow an applicant to qualify for an appointment?

The committee will understand that I am just speculating. However, one should contrast that rather vague provision with the provision in this instrument that applies to the British Library Board or the Theatres Trust, where members must

"have special knowledge of Scotland".

That is a much clearer test, as applicants can presumably be quizzed on such knowledge. In comparison, the phrase "or otherwise" seems hopelessly vague, and perhaps the Executive can help us with the matter.

**The Convener:** The point is well made.

**Trish Godman:** I absolutely agree with Fergus Ewing. If we remember that anyone with a Scottish granny can play football for Scotland, we need clarification on the matter.

**The Convener:** Our legal briefing indicates that adjustments to the Advice and Assistance

(Financial Conditions) (Scotland) Regulations 2000 merely take into account inflation increases, which will doubtless be welcomed by recipients and lawyers. However, no points arise for the committee on the instrument.

A similar position holds for the Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2000. No legal points arise for the committee.

**Non-Domestic Rate (Scotland) Order 2000 (SSI 2000/39)**

**National Health Service (Dental Charges) (Scotland) Amendment Regulations 2000 (SSI 2000/44)**

**National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2000 (SSI 2000/45)**

**Public Finance and Accountability (Scotland) Act 2000 (Transitional, Transitory and Saving Provisions) (No 2) Order 2000 (SSI 2000/46)**

**The Convener:** The third item on the agenda is consideration of negative instruments. I think that, notwithstanding the endeavours of our legal adviser, Fergus Ewing wanted to raise a point about the Non-Domestic Rate (Scotland) Order 2000.

**Fergus Ewing:** I hoped beyond hope that, of all the statutory instruments coming before this committee, this particular order might have contained a fatal flaw. Sadly, I am advised that that is not the case. However, I ask the Executive to check whether it has made an error in setting a rate of 45.8p, which is curiously larger than the English rate. I realise that this committee is probably not responsible for that matter, and raise the point more in hope than in expectation.

**The Convener:** I am sure that we can oblige Fergus, and we await the Executive's response with interest.

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** Fergus, as ever, sails very close to the wind.

**The Convener:** As for the other three negative instruments under consideration, our legal advice is that no matters arise.

**Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) Partial Revocation (No 5) (Scotland) Order 2000 (SSI 2000/36)**

**Health Act 1999 (Commencement No 7) (Scotland) Order 2000 (SSI 2000/38 (C.2))**

**The Convener:** The fourth item on the agenda is consideration of instruments not subject to parliamentary control. Our legal advice is that no matters arise on both orders.

That concludes our business. Next week, we will meet on a Wednesday for a change.

*Meeting closed at 11:22.*

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