

# **SUBORDINATE LEGISLATION COMMITTEE**

Wednesday 22 March 2000  
(*Afternoon*)

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## SUBORDINATE LEGISLATION COMMITTEE

10<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

Alistair Fleming

Anne Peat

### LOCATION

Committee Room 3



## Scottish Parliament

### Subordinate Legislation Committee

Wednesday 22 March 2000

(Afternoon)

[THE CONVENER opened the meeting at 18:52]

#### Adults with Incapacity (Scotland) Bill: Stage 2

**The Convener:** The first item on the agenda is delegated powers scrutiny. We have a response from the Executive to the Adults with Incapacity (Scotland) Bill, as amended at stage 2. We note that the Executive has accepted that the procedure for making instruments should be made by order in council. We can be grateful that it has taken that on board.

#### Ethical Standards in Public Life etc (Scotland) Bill

**The Convener:** Various matters have been brought to our attention about the Ethical Standards in Public Life etc (Scotland) Bill.

**Bristow Muldoon (Livingston) (Lab):** The first issue to which I want to draw the committee's attention—and on which we should ask questions of the Executive—is subsection 7(2)(b), relating to the establishment of the standards commission for Scotland. This section allows the commission to have functions given to it by the bill, and it also allows other functions, relating to the conduct of councillors, to be given to it by a direction that is made by a minister. We should ask the Executive whether that would be appropriate to some other form of order, such as a negative resolution similar to that for the extension of functions for the General Teaching Council, which is part of the Standards in Scotland's Schools etc Bill. We should raise that point initially before the Executive.

**The Convener:** Other matters were raised during our legal briefing. Do members want to comment on them?

**Bristow Muldoon:** Section 22 deals with definitions. We should ask the Executive to explain why it intends to have primary legislation amending the range of organisations that may be covered by the bill as part of subsection 22(3). We should ask for an explanation of that procedure before we decide whether we want to accept it.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** The point that Bristow Muldoon makes also applies to subsection 23(3), which allows ministers to make modifications to any enactment by order, as they consider necessary or expedient. That appears to be a Henry VIII-type section, and we should ask the Executive why it is framed to include a Henry VIII power, especially as it seems to apply to a very important matter.

**David Mundell (South of Scotland) (Con):** I agree with Fergus Ewing that a Henry VIII power should be agreed to only with, at the very least, an explanation, and in minimal circumstances.

**The Convener:** We should try to find out why the usual procedure is not being followed concerning the code of conduct for councillors, and why the usual provision for the laying of documents before the Parliament is being permitted. We will seek to raise those points, and I hope that we will receive a positive response.

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

**The Convener:** The next item is Executive responses, and the first matter thereunder is the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 2000. It is suggested that we simply note that there has been clarification in the Executive's response.

**Fergus Ewing:** I noted the response. We have also received from the clerks a useful extract from the meeting of the House of Commons Standing Committee on Delegated Legislation, at which the same point was raised by Sir Robert Smith. That must indicate that the point that I raise is of concern not only to me, but to others in different parties. Trish Godman joined me, in general terms, in asking for this matter to be clarified.

The proposed new section 3A(b) refers to someone being

“connected by residence or otherwise”.

The phrase “or otherwise” is vague, and does not have a specific meaning. We asked what meaning it might have, and the response was that the phrase “or otherwise” is flexible. Well, it is certainly flexible, but that does not answer our question as to what it means. I was interested to note that no specific response appeared to be given in the extract by the Minister for the Arts, Mr Alan Howarth, to Sir Robert Smith. I have studied the extract, and I hope that my study has been sufficiently complete to be accurate.

The fact remains that there might be concern, especially with regard to this cross-border authority, that there should be a demonstrable connection with Scotland in a clear and manifest way, and that the formula that is used in relation to the two other cross-border authorities should be much more specific and exacting. Given the concern of Sir Robert Smith at Westminster, there are sufficient grounds for the Executive to reconsider whether it has the power—which I believe that it does—to be rather more specific.

**The Convener:** Should we draw this matter to the attention of the lead committee, rather than seek a further response from the Executive? If we wanted, we could return to the Executive, but any response would require to be directed to the lead committee. Perhaps we should draw to the attention of that committee the matter that was raised by Fergus Ewing and Trish Godman, together with what was dug out by the clerks regarding that matter at Westminster, and ask it to bring pressure upon the Executive to resolve what is clearly an anomaly.

**David Mundell:** That is the way in which to proceed.

**Fergus Ewing:** I am sure that the Liberals on the committee will be particularly zealous in their pursuit of this matter.

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** As we were at Westminster.

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

**The Convener:** We can simply note with thanks the Executive's response to our query about this order. There was some doubt about the figure, but it has been confirmed as 45.8p. Nothing else was raised when we last considered the order.

### **Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2000 (SSI 2000/Draft)**

**The Convener:** This is a draft affirmative instrument. It has been indicated that there are no matters of a technical nature that would fall within our remit. From past experience, I assume that most solicitors will simply be glad that this is being processed.

19:00

### **Health Technology Board for Scotland Order 2000 (SSI 2000/47)**

**The Convener:** A significant number of difficulties have been brought to our attention regarding this instrument. Does any member wish to comment?

**Bristow Muldoon:** It appears that part II of the schedule, which applies section 15 of the Scotland Act 1998, may be outwith the Scotland Act 1998, which the Scottish Parliament does not have the power to modify. We need to raise that with the Executive.

**The Convener:** I agree with that.

There are two other matters. Article 4(3)(b) twice makes reference to instruments executed on what is described as "his" behalf. We would like an explanation of who that is referring to. There is also no explanatory memorandum attached. We can leave it to the clerks to decide whether they want to raise that with the Executive by letter or through more informal channels.

### **Commissioner for Local Administration in Scotland (Expenses) Regulations 2000 (SSI 2000/48)**

**The Convener:** No matters arise with respect to this instrument.

### **Charities (Exemptions from Accounting Requirements) (Scotland) Amendment Regulations 2000 (SSI 2000/49)**

**The Convener:** The absence of a footnote and a possible error in the explanatory note have been brought to our attention. We can again seek clarification through more informal channels.

### **National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2000 (SSI 2000/50)**

**The Convener:** No points arise with respect to this instrument.

**Commissioner for Local  
Administration in Scotland  
(Designation) Order 2000 (SSI 2000/51)**

**The Convener:** There is a typing error in this instrument. We can bring that to the Executive's attention through the channels that we have opened up.

**Dairy Produce Quotas Amendment  
(Scotland) Regulations 2000  
(SSI 2000/52)**

**Ian Jenkins:** There is no explanatory memorandum with this instrument, and a footnote is missing.

**The Convener:** We will ask the Executive to clarify those matters, just to keep it on its toes.

**Sea Fishing (Enforcement of  
Community Conservation Measures)  
(Scotland) Order (SSI 2000/53)**

**The Convener:** No matters arise with respect to this instrument.

**National Health Service (Clinical  
Negligence and Other Risks Indemnity  
Scheme) (Scotland) Regulations 2000  
(SSI 2000/54)**

**The Convener:** This instrument has caused our legal advisers some exasperation. Do members have any comments?

**David Mundell:** There is a concern about what happens on 1 April, because there are provisions relating only to incidents occurring before and after 1 April. Other than someone jumping out and shouting, "April Fool," it is not clear what will happen on 1 April, but that oversight needs to be highlighted. Neither is it clear what "in accordance with" means in regulation 4(1).

**Ian Jenkins:** There is no explanatory memorandum for these regulations. It has been suggested that part of the instrument is ultra vires.

**The Convener:** It is understood that that point has been identified by the Executive, but we should seek confirmation that the fact that regulation 3(e) is ultra vires will be addressed, draw attention to the fact that there is no explanatory memorandum and ask the Executive for clarification of the words "in accordance with" in regulation 4(1).

**Non-Domestic Rating (Unoccupied  
Property) (Scotland) Amendment  
Regulations 2000 (SSI 2000/55)**

**The Convener:** No points arise in relation to these regulations.

**Valuation for Rating (Decapitalisation  
Rate) (Scotland) Amendment  
Regulations (SSI 2000/56)**

**Fergus Ewing:** The series of regulations that are headed "Rating and Valuation" are accompanied by notes that say that in Scotland non-domestic rates provide around £1.5 billion annually. This may be pedantic, but it would be useful if Executive notes could be precise. The figure of around £1,500 million is imprecise; in fact it is wrong, as in 2000-01, I think that it will be £1,662 million or £1,663 million, which is rather more than £1,500 million. That round figure may be relevant for other purposes, but explanatory memorandums should be precise, as they inform our discussion.

**Ian Jenkins:** There is also a failure to footnote references, which I think is important.

**The Convener:** We will draw that to the attention of the Executive.

**Non-Domestic Rating (Rural Areas and  
Rateable Value Limits) (Scotland)  
Amendment Order 2000 (SSI 2000/57)**

**The Convener:** It is suggested that there may be some complexity concerning compatibility with European Union regulations on state aid. We should ask the Executive whether it is satisfied on that point.

**David Mundell:** Given other difficulties that we have encountered with European measures, it would be prudent to seek that confirmation.

**The Convener:** Forewarned is forearmed.

**David Mundell:** Indeed.

**Valuation for Rating (Plant and  
Machinery) (Scotland) Regulations  
(SSI 2000/58)**

**The Convener:** No matters arise in relation to these regulations.

### **Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 (SSI 2000/59)**

**The Convener:** I do not know where we begin in dealing with concerns about these regulations.

**Bristow Muldoon:** We should draw to the attention of the Executive that we believe that there is a significant omission from these regulations. Although they provide for the legal use of the new disabled persons badges by those who received them from local authorities in England and Wales, they make no provision for anyone who uses such a badge improperly in Scotland. We should draw that to the attention of the Executive before people take advantage of a loophole in the regulations.

**David Mundell:** It would undermine the use of disabled persons badges if people were permitted to use them without meeting any qualifying criteria.

**Fergus Ewing:** It would also frustrate the blue meanies.

**The Convener:** We will put that point to the Executive. We will also seek clarification about the conditions that will apply to the display of badges.

**David Mundell:** Are we satisfied that Scottish badges can be used elsewhere in the UK?

**The Convener:** We are satisfied that that is the case, but not that the reciprocal arrangements are in force as they are currently constituted.

### **Local Authorities' Traffic Orders (Exemption for Disabled Persons) (Scotland) Regulations 2000 (SSI 2000/60)**

**The Convener:** To some extent, these regulations follow on from the previous ones. We may seek explanation from the Executive regarding the purpose of the reference in the preamble to section 134(1) of the Road Traffic Regulation Act 1984, given paragraph 2.23(a) of the "Statutory Instrument Practice", and why "relevant position" is defined in regulation 3 with reference to the Badges Regulations, instead of being defined in full.

Given that those two instruments overlap, they may be considered contemporaneously and all matters may be resolved. Is the committee agreed?

**Members indicated agreement.**

### **Meat (Hygiene and Inspection) (Charges) Amendment (Scotland) Regulations 2000 (SSI 2000/61)**

**The Convener:** There are no matters arising from these regulations.

### **Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) (Scotland) Regulations 2000 (SSI 2000/62)**

**The Convener:** Substantial matters have arisen from these regulations. Do members want to comment?

**Ian Jenkins:** The list is so long that we should just refer the Executive to the comments that were made in the legal briefing, and to the defects in the drafting, some of which lie in the choice of words, in the use of capital letters and in typographical errors. Some of the defects are bizarre, such as the unnecessary inclusion in the bill of the fact that there are no port health authorities in Scotland. Perhaps the Executive knows better, but the whole thing seems to be unnecessarily complicated and long-winded.

**David Mundell:** That point is well made. Any ordinary person who attempted to make any sense of this document would be at a complete loss. In the immediate future we will be considering the specific issues, but we must also consider how we can make legislation more accessible to members of the public who will be affected by it. A document such as this is almost incomprehensible, other than to the experts in such matters.

**Ian Jenkins:** One of the issues that arose on our visit to Wales was the care that must be taken in Wales over the use of plain language. At one stage, plain English was mentioned, but it became clear that plain Welsh was meant as well—one was not translated from the other. The whole area of linguistic clarity became a highlight in their deliberations.

**The Convener:** The point was well made that there are numerous errors, including some of fact, which require amendment. We ask the clerks to respond along the lines of the brief that we have been given.



### **Police Grant (Scotland) Order 2000 (SSI 2000/73)**

**The Convener:** No matters have arisen in relation to the Police Grant (Scotland) Order 2000.

**David Mundell:** It is worth making a point about the volume of instruments that have been produced. During one week recently, only one instrument was produced, but this week an enormous volume of instruments have been produced, which the Executive must have produced for the year-end in March.

Now that the parliamentary process is in place, the Executive should be encouraged to plan better, so that the volume of documentation that comes before this committee, which is not generated by the parliamentary process, but by the Executive, is more evenly spread, so that proper consideration can be given to it. Our support staff, who are to be commended on the work that they have done, given the volume of documentation that has been produced in such a short period, should have a proper opportunity to play their part.

**The Convener:** I think that all members will concur heartily with that, not for themselves—although we are not happy to plough through the documentation when timetables are set by others—but because it is not fair on the staff in the clerking service and the legal advisers who have to examine it at short notice. The Executive should endeavour not to repeat the situation next year, and should try to ensure a smoother flow of instruments.

### **Special Grant Report No 3—Grant in Aid of Expenditure on Rail Services in the Strathclyde Passenger Transport Area (SE/2000/33)**

**The Convener:** The final item on the agenda is special grant report 3, reporting on grant aid of expenditure on rail services in the Strathclyde Passenger Transport area.

We should express our thanks to Mr Rennie and Mr Smart from the Executive's transport division, whose expertise has not been required. We are sorry for any inconvenience to which they were put. If we had had any questions, we would have been obliged to them for being here, as it would have saved us time and trouble. Thankfully—to some extent—no questions have arisen.

I have been reminded that I should have asked whether there were any points arising on the Police Grant (Scotland) Order 2000. That is the final matter to be considered under negative instruments. Can we confirm that no points have arisen on that?

**Members** *indicated agreement.*

**The Convener:** I thank everybody for attending at this late hour.

*Meeting closed at 19:15.*



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