

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 20 June 2000
(Morning)

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2000.

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

Tuesday 20 June 2000

Col.

TRANSPORT (SCOTLAND) BILL	247
TRANSPORT OF ANIMALS (CLEANSING AND DISINFECTION) (SCOTLAND) REGULATIONS 2000 (SSI 2000/167)	249
DISABLED PERSONS (BADGES FOR MOTOR VEHICLES) (SCOTLAND) AMENDMENT REGULATIONS 2000 (SSI 2000/170).....	249
FOOD PROTECTION (EMERGENCY PROHIBITIONS) (PARALYTIC SHELLFISH POISONING) (ORKNEY) (SCOTLAND) ORDER 2000 (SSI 2000/192)	250
POLLUTION PREVENTION AND CONTROL (SCOTLAND) REGULATIONS 2000 (SSI 2000/DRAFT)	250
MEAT (ENHANCED ENFORCEMENT POWERS) (SCOTLAND) REGULATIONS 2000 (SSI 2000/171)	250
LOCH MOIDART, NORTH CHANNEL, SCALLOP SEVERAL FISHERY (SCOTLAND) ORDER 2000 (SSI 2000/173).....	251
CONTAMINATED LAND (SCOTLAND) REGULATIONS 2000 (SSI 2000/178)	251
PLANNING (CONTROL OF MAJOR-ACCIDENT HAZARDS) (SCOTLAND) REGULATIONS 2000 (SSI 2000/179).....	251
ADVICE AND ASSISTANCE (SCOTLAND) AMENDMENT REGULATIONS 2000 (SSI 2000/181).....	251
CIVIL LEGAL AID (SCOTLAND) AMENDMENT REGULATIONS 2000 (SSI 2000/182).....	251
COMMUNITY CARE (DIRECT PAYMENTS) (SCOTLAND) AMENDMENT REGULATIONS 2000 (SSI 2000/183)	252
BOVINES AND BOVINE PRODUCTS (TRADE) AMENDMENT (SCOTLAND) REGULATIONS 2000 (SSI 2000/184).....	252
ENVIRONMENTAL PROTECTION (WASTE RECYCLING PAYMENTS) (SCOTLAND) REGULATIONS 2000 (SSI 2000/185)	252
DEBTORS (SCOTLAND) ACT 1987 (AMENDMENT) REGULATIONS 2000 (SSI 2000/189)	252
NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES) (SCOTLAND) AMENDMENT (NO 2) REGULATIONS 2000 (SSI 2000/190)	252
NATIONAL HEALTH SERVICE (CHOICE OF MEDICAL PRACTITIONER) (SCOTLAND) AMENDMENT REGULATIONS 2000 (SSI 2000/191)	253
PROCEDURE	253

SUBORDINATE LEGISLATION COMMITTEE

21st 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

Ruth Cooper

Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 20 June 2000

(Morning)

[THE CONVENER *opened the meeting at 11:29*]

The Convener (Mr Kenny MacAskill): Good morning. I welcome everyone to the 21st meeting of the Subordinate Legislation Committee. I apologise for the late start, but we do have a heavy work load and there was a substantial legal briefing to get through.

Transport (Scotland) Bill

The Convener: The first item on the agenda is the delegated powers scrutiny of the Transport (Scotland) Bill. We have had the benefit of legal advice on this substantive bill. It might be best to run through the bill from the start, as section 1 has been flagged up as an area on which we might comment or seek some response from the Executive.

Bristow Muldoon (Livingston) (Lab): It might be appropriate to ask the Executive to give some clear examples of areas where they might use the powers under section 1(1) of the bill. Those powers seem fairly broad and we have been advised that the Executive is not completely certain about how it intends to use them.

The other issue that we would want to raise is consultation. Perhaps there is a need to strengthen the requirement for consultation on any joint transport strategy that might be developed through the powers outlined in this section.

The Convener: I subscribe to those views. I have the benefit of being a member of the Transport and the Environment Committee, and if this legislation is an indication that we are heading towards the establishment of transport authorities—of which I am supportive—I am not sure whether the best way to do that is to use negative procedures. I would prefer some indication of the intention behind section 1 of the bill. If we are simply using existing bodies, that is fine; however, the creation of any new bodies should not happen through negative procedure. Will the Executive consider super-affirmative procedure for the creation of, for example, a Highlands and Islands transport authority? Representatives from all parts of Scotland and from that locality in particular will want a more

hands-on approach instead of dealing with matters on a yes or no basis. It would help to have Executive clarification of the two points that Bristow has flagged up.

The committee has raised some concerns about the issue of bus services and matters such as quality partnership and contract schemes. Although I believe that such matters should be left with the local authority, we can flag up to the Executive any members' opinion that those matters should return for the minister's approval. I am open to persuasion on that point.

Trish Godman (West Renfrewshire) (Lab): I think that local authorities should make those decisions.

The Convener: The committee has had its attention drawn to section 64, which deals with the determination of disputes, appeals and evidence relating to various charging schemes that local authorities might or might not introduce. It has been suggested that we might require to seek clarification to ensure compliance with the European convention on human rights. Perhaps we should simply ask the Executive to confirm what consideration it has given to that matter and whether it is satisfied that no problem exists. There are similar worries about the powers under section 67(2).

We move on to sections 34, 35 and 36 on the powers of Scottish ministers to make grants and the repayments of grants related to fuel duty rebate. The question is whether negative procedure is adequate or whether, as criminal penalties are involved, the exercise of powers should be subject to affirmative procedure.

I am glad that the matter is being addressed, because previously operators might remain unpunished. However, there is an argument that we should be considering an affirmative procedure. We could ask the Executive for its views and for clarification of the circumstances in which the grants would be payable. We could ask the Executive to expand upon the basis on which grants would be paid. The fuel duty rebate scheme will no doubt be addressed in the chamber.

Section 69 relates to bridges and joint boards. The question is whether there should be consultation. I understand that currently, this section relates only to the Forth estuary, although it has been suggested that what is sauce for the goose is sauce for the gander and that there should be similar provision for the Clyde. However, if we are following that route it might be useful to have a consultation period for all parties involved.

On section 78 we need to inquire whether it was intended that an appointed day order should be subject to negative procedure. That needs to be

clarified. Obviously, there will be other matters in the Transport (Scotland) Bill to which we might want to return next week. Are there any other comments?

Bristow Muldoon: That seems fair enough. Perhaps we should note that there was some debate between the adviser to the committee and the Executive officials on the question of which sections fell within the remit of the Subordinate Legislation Committee. We should welcome Margaret Macdonald's work in putting the case that the committee should examine certain aspects of the bill. Furthermore, according to a letter that we received last night, the Executive has accepted the majority of the argument that was being put forward.

The Convener: We can certainly record our thanks.

Transport of Animals (Cleansing and Disinfection) (Scotland) Regulations 2000 (SSI 2000/167)

The Convener: We move on to consider Executive responses. The first item is the Transport of Animals (Cleansing and Disinfection) (Scotland) Regulations 2000. It is unfortunate that the members who were raising those matters are not here. Does anyone wish to comment on the regulations in their absence? One matter related to the issue of a criminal penalty and we pointed out that it was not clear in which circumstances the offence was created. Unfortunately, there appears to be a serious defect in the drafting, which has not been addressed.

Trish Godman: It might be appropriate to flag that up to the European Committee, which has shown an interest in the matter.

The Convener: We can do that in relation to the EU directives.

Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2000 (SSI 2000/170)

The Convener: The second set of regulations relates to disabled persons' badges. We received a response to the vires argument; we had raised doubts. It is suggested that we should simply note for the record that we flagged up the matter, and that we should leave it at that. In due course, we may, or may not, be justified in having pointed out some potential pitfalls.

Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (Orkney) (Scotland) Order 2000 (SSI 2000/192)

The Convener: Shellfish are back before the committee once again, but no points arise on this order.

Pollution Prevention and Control (Scotland) Regulations 2000 (SSI 2000/Draft)

The Convener: We now move on to a draft affirmative instrument. We have a substantial document before us, which, doubtless, will wing its way to another committee. Points were flagged up about this draft instrument. Are there any comments?

Trish Godman: We must ask what provisions are made for an appeal against a decision of the Scottish ministers made under regulation 22(3). It appears that there is no such appeal.

The Convener: There is also a question about whether regulation 22 provides for a decision on appeal by the Scottish ministers to be further appealed to a sheriff. We will flag up that issue and await the response.

Item 5 on the agenda is negative instruments. There is a substantial number of these instruments, many of which appear to have been sitting around the Executive offices. While we have days when we are not overworked, the difficulty is that if these documents all come in at the same time as we are dealing with the Transport (Scotland) Bill, those who brief us will have a substantial work load. We should put on the record our request that the Executive should bear in mind that those who advise us must process such matters within a short period of time. While we have no objection to trying to plough through that work, we cannot properly do our job if those who advise us are overworked and overburdened. It would be better if matters could be progressed at a more level pace.

Meat (Enhanced Enforcement Powers) (Scotland) Regulations 2000 (SSI 2000/171)

The Convener: We are trying to find out whether these regulations will be consolidated. As we have done previously in relation to health matters, it may be that we should ask what attempts will be made in due course to bring

together related regulations for the benefit of those who must take account of them.

**Loch Moidart, North Channel, Scallop
Several Fishery (Scotland) Order 2000
(SSI 2000/173)**

The Convener: No points arise on this order.

**Contaminated Land (Scotland)
Regulations 2000 (SSI 2000/178)**

The Convener: A couple of points were raised on this instrument.

Trish Godman: We should ask the Executive to confirm that the commencement order for Scotland has been made and to provide a copy of that order to the committee. We should also ask the Executive why, in the circumstances, it takes the view that the regulations are within devolved competence.

The Convener: We will take up those issues with the Executive.

**Planning (Control of Major-Accident
Hazards) (Scotland) Regulations 2000
(SSI 2000/179)**

The Convener: No matters arise on this instrument.

**Advice and Assistance (Scotland)
Amendment Regulations 2000
(SSI 2000/181)**

The Convener: Explanatory notes should have a clear purpose—that of advising those who speed-read regulations. While we have the benefit of legal advice and background notes, we should draw to the Executive's attention that the explanatory note is for the benefit of those who do not have that advice.

**Civil Legal Aid (Scotland) Amendment
Regulations 2000 (SSI 2000/182)**

The Convener: The same point about the purpose and importance of the explanatory notes also arises with these regulations.

**Community Care (Direct Payments)
(Scotland) Amendment Regulations
2000 (SSI 2000/183)**

**Bovines and Bovine Products (Trade)
Amendment (Scotland) Regulations
2000 (SSI 2000/184)**

**Environmental Protection (Waste
Recycling Payments) (Scotland)
Regulations 2000 (SSI 2000/185)**

The Convener: No points arise on any of the above regulations.

**Debtors (Scotland) Act 1987
(Amendment) Regulations 2000
(SSI 2000/189)**

The Convener: These regulations concern microwaves. Do any members wish to comment?

Bristow Muldoon: We have no particular problem with the instrument as it is, but we might wish to obtain clarification as to why microwave ovens are being included as an example of an item of domestic equipment, separate from equipment used for cooking. Would equipment used for cooking not also cover microwaves?

The Convener: I am happy with that request for clarification.

11:45

**National Health Service (General
Medical Services) (Scotland)
Amendment (No 2) Regulations 2000
(SSI 2000/190)**

The Convener: We received a note that representations had been made by the Executive, which was trying to make progress with consolidation. There were specific difficulties, and we should perhaps note that we are grateful to the Executive for drawing to our attention the fact that it is trying to progress matters.

**National Health Service (Choice of
Medical Practitioner) (Scotland)
Amendment Regulations 2000
(SSI 2000/191)**

The Convener: No points arise on the above instrument.

Procedure

The Convener: The final item on the agenda is subordinate legislation procedure. I asked that this matter be put on the agenda because of the circumstances that had arisen with the progress of the National Parks (Scotland) Bill and with the fact that this committee previously drew attention to the possibility that a super-affirmative procedure be considered. In view of the time scale, I lodged an amendment in my name seeking to introduce a super-affirmative procedure. Unfortunately, it was rejected by the Rural Affairs Committee at stage 2 of the bill. It is my intention to resubmit an amendment for stage 3.

It is not for this committee to make any formal recommendation regarding any amendment to the bill, but I simply wish to say for the record that I am wearing a Subordinate Legislation Committee hat in lodging my amendment, not a party political hat. The purpose is to provide greater scrutiny for individual representatives in this Parliament and a greater mechanism for some control over a matter which will, I think, have an effect on a considerable number of people. It will be for individuals to decide whether to support the amendment or otherwise, but I would prefer it to be quite clear how this came about and where I am coming from. If people wish to make any comments on the matter, I am happy to take them on board.

We are trying to progress super-affirmative procedure. We have raised it with the Procedures Committee. Even today, I have touched on the fact that I may take this view with regard to the Transport (Scotland) Bill. If we were to embark, for example, on transport authority status, at least for the Highlands and Islands, I would think that that would merit super-affirmative procedure rather than a simple affirmative or negative resolution.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): Do you know why your amendment was rejected by the Rural Affairs Committee?

The Convener: I was unable to attend its meeting because the Transport and the Environment Committee was sitting contemporaneously. I think that, basically, the committee got mixed up—representations were made by the Minister for Transport and the Environment regarding Executive amendments to

the same section of the bill. It was assumed that its amendments would deal with the matters that we had addressed. In fact, our amendment did not prejudice the purpose of the Executive's amendments; it was trying to increase the period of consultation, something which we had flagged up. I am only surmising, but my guess is that the Rural Affairs Committee members thought that our amendment would strike down those of the Executive, and that they were taking cognisance of that.

I will reiterate our position. I would be surprised if members of the Rural Affairs Committee, if they understood what we were trying to do, would not wish to take a more hands-on approach with regard to what they could or could not do in months to come.

Meeting closed at 11:49.

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:

Wednesday 28 June 2000

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

Meetings of the Parliament annual subscriptions: £500

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: £3.75

Special issue price: £5

Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

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 020 7242 6393 Fax 020 7242 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 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriol Bookshop,
18-19 High Street, Cardiff CF12BZ
Tel 029 2039 5548 Fax 029 2038 4347

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