

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 4 July 2000  
(*Afternoon*)

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# CONTENTS

Tuesday 4 July 2000

	Col.
BAIL, JUDICIAL APPOINTMENTS ETC (SCOTLAND) BILL.....	267
POLICE PENSIONS (SCOTLAND) AMENDMENT REGULATIONS 2000 (SSI 2000/193).....	268
EDUCATION (STUDENT LOANS) (SCOTLAND) REGULATIONS 2000 (SSI 2000/200).....	269
SEED POTATOES (SCOTLAND) REGULATIONS 2000 (SSI 2000/201).....	269
NATIONAL HEALTH SERVICE (PROFESSIONS SUPPLEMENTARY TO MEDICINE) (SCOTLAND) AMENDMENT REGULATIONS 2000 (SSI 2000/202).....	270
PROCESSED CEREAL-BASED FOODS AND BABY FOODS FOR INFANTS AND YOUNG CHILDREN AMENDMENT (SCOTLAND) REGULATIONS 2000 (SSI 2000/214).....	270
SUCKLER COW PREMIUM AMENDMENT (SCOTLAND) REGULATIONS 2000 (SSI 2000/215).....	270
ANIMALS AND ANIMAL PRODUCTS (IMPORT AND EXPORT) (SCOTLAND) REGULATIONS 2000 (SSI 2000/216).....	271
INFANT FORMULA AND FOLLOW-ON FORMULA AMENDMENT (SCOTLAND) REGULATIONS 2000 (SSI 2000/217).....	271
ANNUAL REPORT.....	271

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## SUBORDINATE LEGISLATION COMMITTEE

23<sup>rd</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 Renfrew shire) (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 4



## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 4 July 2000*

*(Afternoon)*

[THE CONVENER *opened the meeting at 14:15*]

**The Convener (Mr Kenny MacAskill):** Good afternoon. There are no visitors in the public gallery today, so we shall begin the 23<sup>rd</sup> meeting of 2000. The first item of business is to consider whether we should take item 5 on the agenda—consideration of our draft annual report—in private. We mentioned that briefly at the pre-meeting, and I see no reason why we should not discuss it in public, unless members are otherwise minded. We discussed it last week and there is a revised draft for consideration this week, but I do not think that any problems are anticipated. Unless any members are otherwise minded, we shall leave that item on the agenda for the public part of the meeting.

### Bail, Judicial Appointments etc (Scotland) Bill

**The Convener:** The second item on the agenda is delegated powers scrutiny of the provisions of the Bail, Judicial Appointments etc (Scotland) Bill, as amended at stage 2. The only difficulty is that, although we will make comments on the amended bill today, the stage 3 debate is to take place tomorrow, so there is little that we can do. However, it seems that there are no matters of great significance to discuss, as we appear to be in agreement with the Executive. Are there any comments?

**David Mundell (South of Scotland) (Con):** It is important to say that the time scale for the bill is far from satisfactory. Although we have noted what has happened on this occasion, it does not set a good precedent for future operation of the Parliament or its committees.

**Trish Godman (West Renfrewshire) (Lab):** What would happen if there were any serious problems? It is worth asking about that, as it could happen that the committee might throw up some serious issues.

**The Convener:** I understand that we would have to make individual statements during tomorrow's debate, but there is little that we could do. Even processing our report would be virtually impossible in the time allowed. We are here as the

eyes and ears of the Parliament. We are not here to consider policy; we are here on a non-partisan basis. People expect us to do our job. If we do not do it, matters could just sail through committees or through the Parliament.

As has often been pointed out, we are a unicameral Parliament, and we have to get things right first time round. If we get it wrong tomorrow, that is it. We will have to live with the consequences of our actions. I therefore suggest that we put on record the fact that, although there is no problem this time, we believe that at least a week should be allowed for us to make a report to other members of Parliament that we are satisfied with the bill.

We appreciate that we are up against the wire in this case, as the recess is fast approaching, but we should draw to the Executive's attention our view that it is not in anybody's interests to work to such a tight time scale. It is not in the interests of the committee, nor is it in the interests of ministers, as we are here to provide a system of checks and balances. If we were not here, ministers would have to pay the price. Neither is it in the interests of Parliament for us to fail to do our job properly.

We shall therefore put on record the fact that we are not satisfied that this is the best way to address legislation. We shall write to the Executive and, as part of our consideration of procedures, we can decide whether the system can be formalised.

**Trish Godman:** I agree with that view.

### Police Pensions (Scotland) Amendment Regulations 2000 (SSI 2000/193)

**The Convener:** The next item is Executive responses, the first of which is to our comments on SSI 2000/193. We drew two matters to the attention of ministers. First, we questioned the omission of the words,

"in the case of a woman",

from one of the paragraphs of the instrument. Secondly, we asked about plans for consolidation. The response clarifies matters to some extent and explains why the instrument is fairly convoluted. It also points out that this order is the 19<sup>th</sup> amendment to the original regulations.

With many years as a lawyer in consistorial practice behind me, I know that almost every cited case of any significance to do with pensions has involved two police officers. Given their value and the resources available, police pensions are a big thing for litigation. I suggest that we should thank the Executive for its response and draw the

attention of Parliament to the matter. Is that agreed?

**Members** *indicated agreement.*

### **Education (Student Loans) (Scotland) Regulations 2000 (SSI 2000/200)**

**The Convener:** The next Executive response explains the problems that we highlighted in relation to the explanatory note for this instrument. I suggest that we should simply draw the instrument to the attention of Parliament.

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** The Executive has apologised for the oversight.

**The Convener:** Perhaps we should thank the Executive for its frankness in admitting that the explanatory note could have been more helpful. Having said that, we should still draw the instrument to the attention of Parliament. Is that agreed?

**Members** *indicated agreement.*

### **Seed Potatoes (Scotland) Regulations 2000 (SSI 2000/201)**

**The Convener:** We raised numerous matters with the Executive in relation to this instrument. Unfortunately, the response does not seem at all satisfactory.

**Ian Jenkins:** There seems to be a lot of confusion about the sanctions that can be imposed and enforced if the conditions are breached. It seems that there is defective drafting throughout the order. It is difficult to put it into words, but the legal briefing note makes clear that there are areas of defective drafting and explains the problems in great detail.

There is a suggestion that regulation 20 is ultra vires and not within the competence of the Executive. I suggest that the committee should draw the attention of the Parliament to that.

**The Convener:** We remain unsatisfied about regulation 3(6)(b), although we are satisfied by the Executive's response to our queries about regulations 6 and 7. We were also unsatisfied about regulation 9(1) and, as Ian Jenkins says, regulation 20 appears to be outwith the powers of the Executive. We shall draw those points to the attention of Parliament.

### **National Health Service (Professions Supplementary to Medicine) (Scotland) Amendment Regulations 2000 (SSI 2000/202)**

**The Convener:** We drew matters to the attention of the Executive in relation to this instrument, and it has acknowledged that there was a drafting error. We shall simply draw that to the attention of Parliament.

### **Processed Cereal-based Foods and Baby Foods for Infants and Young Children Amendment (Scotland) Regulations 2000 (SSI 2000/214)**

**The Convener:** Item 4 is consideration of negative instruments, the first of which is SSI 2000/214.

**Ian Jenkins:** There was a delay in the Executive putting that instrument before us. It was made months ago, and to lay it before us now that we are busy with legislative stuff is, in my opinion, inconsiderate.

**The Convener:** It is certainly inconsiderate to those who advise us. We shall ask the Executive to clarify why that has occurred.

**Trish Godman:** Yes, I think that we should do that.

**The Convener:** That is agreed.

### **Suckler Cow Premium Amendment (Scotland) Regulations 2000 (SSI 2000/215)**

**The Convener:** There appears to be a breach of the 21-day rule on this instrument, although an explanation is given for that. Do members consider the explanation acceptable?

**Trish Godman:** It is probably acceptable, but we should ask whether the Executive has any plans for consolidation, as this is the sixth amendment. Six amendments may not be many by the Executive's standards, but I think that we should ask about it.

**Ian Jenkins:** That is not as bad as having 19 amendments, as happened with one of the instruments that we considered earlier.

**The Convener:** As Trish Godman suggests, we shall ask the Executive about consolidation. That is agreed.

### **Animals and Animal Products (Import and Export) (Scotland) Regulations 2000 (SSI 2000/216)**

**The Convener:** Various points arise in relation to this instrument with regard to whether there should be a right of appeal in cases of contravention of provisions. None of those points seems to have been addressed.

It would appear that one could contravene the provisions because one was not aware of them. There is a lack of clarity about regulation 33(1). Nor does there appear to be any sanction for breach of a condition of declaration under regulation 27. Regulation 28 makes reference to a right of appeal, but there does not appear to be any provision for appeals in the regulations and the explanatory note is inadequate.

I think that this is a minor drafting matter, and we can ask the Executive to address those problems. Is that agreed?

**Members** *indicated agreement.*

### **Infant Formula and Follow-on Formula Amendment (Scotland) Regulations 2000 (SSI 2000/217)**

**The Convener:** This is the final negative instrument for consideration today. The same points that arose in relation to the Processed Cereal-based Foods and Baby Foods for Infants and Young Children Amendment (Scotland) Regulations 2000 arise in relation to this order. It is a question of timing. However, we agreed to ask the Executive for an explanation in the case of that instrument, so I suggest that we choose not to do anything in relation to this one, unless members are otherwise minded. Is that agreed?

**Members** *indicated agreement.*

## **Annual Report**

**The Convener:** The annual report has been redrafted since we commented on it last week. Are there any further comments?

**David Mundell:** Had I been here last week, I would have said that I thought that what is now the second-last paragraph should be the first paragraph, simply because it states the volume of work that the committee has had to deal with. When people read reports, they often read only the first paragraph. It is worth noting the volume of work that the committee has handled. Reordering the paragraphs would place more emphasis on that, but that is merely a presentational point.

**The Convener:** I have no objections to that. It is simply a matter of cutting and pasting, which, I have to admit, is still beyond my computer skills. If it is simply a presentational change and there are no problems with the general outline of the report, we can do that.

**David Mundell:** As this is our last meeting before the recess, I suggest that we publicly thank the clerks and our legal adviser, Margaret Macdonald, for all their work throughout the year.

**The Convener:** I heartily endorse that vote of thanks, which brings our meeting to a conclusion.

*Meeting closed at 14:27.*



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