

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 24 October 2000
(*Morning*)

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CONTENTS

Tuesday 24 October 2000

Col.

SALMON CONSERVATION (SCOTLAND) BILL.....	317
DISEASES OF FISH (CONTROL) AMENDMENT (SCOTLAND) REGULATIONS 2000 (SSI 2000/330).....	318
REGULATION OF INVESTIGATORY POWERS (NOTIFICATION OF AUTHORISATIONS ETC) (SCOTLAND) ORDER 2000 (SSI 2000/340)	318
FOOD PROTECTION (EMERGENCY PROHIBITIONS) (AMNESIC SHELLFISH POISONING) (WEST COAST) (No 4) (SCOTLAND) ORDER 2000 (SSI 2000/359)	318
FOOD PROTECTION (EMERGENCY PROHIBITIONS) (AMNESIC SHELLFISH POISONING) (EAST COAST) (SCOTLAND) ORDER 2000 (SSI 2000/360)	318
EDUCATION AND TRAINING (SCOTLAND) AMENDMENT REGULATIONS 2000 (SSI 2000/342)	318
REGULATION OF INVESTIGATORY POWERS (PRESCRIPTION OF OFFICES, RANKS AND POSITIONS) (SCOTLAND) ORDER 2000 (SSI 2000/343).....	319
SPECIFIED RISK MATERIAL ORDER AMENDMENT (SCOTLAND) REGULATIONS 2000 (SSI 2000/344).....	320
SPECIFIED RISK MATERIAL AMENDMENT (SCOTLAND) REGULATIONS 2000 (SSI 2000/345).....	320
AGRICULTURAL SUBSIDIES (APPEALS) (SCOTLAND) REGULATIONS 2000 (SSI 2000/347)	320
NATIONAL HEALTH SERVICE (GENERAL DENTAL SERVICES) (SCOTLAND) AMENDMENT (No 2) REGULATIONS 2000 (SSI 2000/352).....	321
BRUCELLOSIS (SCOTLAND) REGULATIONS 2000 (SSI 2000/364)	321
ENZOOTIC BOVINE LEUKOSIS (SCOTLAND) REGULATIONS 2000 (SSI 2000/365)	322
TEACHERS' SUPERANNUATION (SCOTLAND) AMENDMENT REGULATIONS 2000 (SSI 2000/366).....	322
FOOD PROTECTION (EMERGENCY PROHIBITIONS) (AMNESIC SHELLFISH POISONING) (WEST COAST) (No 2) (SCOTLAND) PARTIAL REVOCATION (No 2) ORDER 2000 (SSI 2000/346).....	322
INVESTIGATORY POWERS TRIBUNAL RULES 2000 (SI 2000/2665)	322
LAND REGISTRATION (SCOTLAND) ACT 1979 (COMMENCEMENT No 14) ORDER 2000 (SSI 2000/338).....	322
BORDERS GENERAL HOSPITAL NATIONAL HEALTH SERVICE TRUST (ESTABLISHMENT) AMENDMENT ORDER 2000 (SSI 2000/353).....	323
DUMFRIES AND GALLOWAY ACUTE AND MATERNITY HOSPITALS NATIONAL HEALTH SERVICE TRUST (ESTABLISHMENT) AMENDMENT ORDER 2000 (SSI 2000/354)	323
YORKHILL NATIONAL HEALTH SERVICE TRUST (ESTABLISHMENT) AMENDMENT ORDER 2000 (SSI 2000/355)	323
STANDARDS IN SCOTLAND'S SCHOOLS ETC ACT 2000 (COMMENCEMENT No 3 AND TRANSITIONAL PROVISIONS) ORDER 2000 (SSI 2000/361).....	324

SUBORDINATE LEGISLATION COMMITTEE

29th 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)

*Mr Kenneth Macintosh (Eastwood) (Lab)

Bristow Muldoon (Livingston) (Lab)

*David Mundell (South of Scotland) (Con)

*attended

CLERK TO THE COMMITTEE

Alasdair Rankin

ASSISTANT CLERKS

Ruth Cooper

Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 24 October 2000

(Morning)

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

The Convener (Mr Kenny MacAskill): Welcome to the 29th meeting of the Subordinate Legislation Committee, the first after the October recess.

Salmon Conservation (Scotland) Bill

The Convener: The first item on the agenda is the scrutiny of delegated powers. We have an Executive response to the points that we raised about the Salmon Conservation (Scotland) Bill. We have received some briefing on the matter, and Fergus Ewing sought clarification on a particular point.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): The Executive's response is mildly helpful. However, it includes something more helpful, namely a letter from a third party—Andrew Wallace, the director of the Association of Salmon Fishery Boards. His letter specifies a number of measures that might be taken to protect salmon. I ask the Executive to provide clarification of the first paragraph of the introduction, which says:

"In some cases Government action (e.g. sanction/action to reduce the population of predators) would deliver far greater benefit to the conservation of salmon and sea trout than would application by the DSFBs of the enhanced powers covered within this conservation paper."

I have read out that extract because the words "far greater benefit" are underlined—and indeed are the only words to have been underlined in a very detailed and helpful letter. Presumably the Executive supplied the letter because of the helpful detail that it contains.

Do the powers under the bill include powers which might be sought because they are more desirable and useful—for example, the power to control a population of predators? If such powers are available, which predators might be controlled? Furthermore, if those powers can be used to control a population of predators, would such a situation lead to technical conflicts and inconsistencies with other legislation that controls measures on some predators, notably seals?

David Mundell (South of Scotland) (Con): It might also be helpful to find out whether salmon legislation is being consolidated. I hope that that issue will return to the priority list, as other priorities seem to have put it to one side. As we have said before, legislation should be generally comprehensible to those who are required to act under it.

Diseases of Fish (Control) Amendment (Scotland) Regulations 2000 (SSI 2000/330)

The Convener: The second item on the agenda is the consideration of Executive responses. I think that we can accept the Executive response to our points on the regulations.

Regulation of Investigatory Powers (Notification of Authorisations etc) (Scotland) Order 2000 (SSI 2000/340)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 4) (Scotland) Order 2000 (SSI 2000/359)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (Scotland) Order 2000 (SSI 2000/360)

The Convener: The next item on the agenda is the consideration of affirmative instruments. No points arise under the instruments.

Education and Training (Scotland) Amendment Regulations 2000 (SSI 2000/342)

The Convener: The fourth item on the agenda is the consideration of negative instruments. Do members have any comments on the instrument?

Fergus Ewing: I want to draw a matter to the attention of the Enterprise and Lifelong Learning Committee. I understand that the purpose of the regulations is to cure a previous error which included in the principal regulations a power to sub-delegate that was incompetent. In curing that error, the Executive seems to have gone much further than its aim as set out by Nicol Stephen at columns 880 to 881 of the *Official Report* of the stage 2 debate in the Enterprise and Lifelong

Learning Committee on what was the Education and Training (Scotland) Bill. In that debate, the minister indicated that the regulations were intended to prevent discrimination against people living in rural Scotland who are unable to participate in and benefit from individual learning accounts because of additional travelling, subsistence or child care costs.

A pilot scheme applies in several areas including Mallaig and the small isles, Kilmallie and Invergarry, Claggan and Glen Spean, Ardnamurchan and Morvern, Caol, Fort William North, Fort William South and Glencoe. In introducing the scheme, at no stage did the minister say that the provisions would be restricted to those who were receiving the benefits specified in proposed paragraph (3A)(a). People who do not receive income support, housing benefit or council tax benefit because they are only slightly above the threshold will still suffer the discrimination of having to pay extra travel costs, subsistence costs or child care expenses. When the minister hinted that the concession was to be made—in response to an amendment that I lodged—he gave no indication that only those on the lowest incomes would qualify.

The regulations allow the pilot scheme to proceed in Lochaber and in the Borders. The basis of the pilot scheme has been drawn into question by the inclusion of proposed paragraph (3A)(a), which was not mentioned previously. That matter should be flagged up to the Enterprise and Lifelong Learning Committee.

I am surprised that the 21-day rule was not breached. Correcting an admitted mistake is of sufficient importance to merit a breach. That would have allowed the regulations to have been brought into force earlier so that the pilot scheme could proceed, even in its diluted form.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): The substance of Fergus Ewing's point is outside our remit. However, it is all right to flag it up to the Enterprise and Lifelong Learning Committee as a matter that he wishes to draw to its attention.

The Convener: We shall leave that matter to the lead committee to do as it sees fit.

Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Order 2000 (SSI 2000/343)

The Convener: No points arise on the order.

Specified Risk Material Order Amendment (Scotland) Regulations 2000 (SSI 2000/344)

The Convener: A couple of matters arise on the regulations. They have minor typos.

Ian Jenkins: Another matter concerns the complexity of the regulations and drawing together all the bits and pieces to which they allude. If our legal advisers found the regulations difficult, I imagine that the lay person would have extreme difficulty. We might ask the Executive to comment on the possibility of submitting a table of derivations where legislation implements a European Community obligation in Scotland, particularly in complex cases.

The Convener: That seems reasonable.

Specified Risk Material Amendment (Scotland) Regulations 2000 (SSI 2000/345)

The Convener: The regulations have some minor typos. The Executive could also consider submitting a relevant table of derivations. We will raise those points with the Executive and ask it about consolidating the legislation.

Agricultural Subsidies (Appeals) (Scotland) Regulations 2000 (SSI 2000/347)

The Convener: One matter arises on the regulations, regarding the right of appeal.

Ian Jenkins: It is important that applicants are kept fully aware of all their rights, of when decisions have been made and of the timetables within which appeals must be made. Yesterday, I attended a meeting about the ombudsman. One case that was raised as an exemplar involved a farmer who had lost subsidy because he had not been given the proper information. Similarly, people affected by the regulations that we are discussing must be kept up to date about their rights. Otherwise, the system will fall into disrepute.

Fergus Ewing: Should not there be an obligation to notify the grant recipient or applicant of any decision? That applies particularly to the first of the three stages that the regulations will introduce, which provides a 60-day period within which a request for review must be made. I imagine that questions will arise about when the 60-day period begins. The date might cause hardship and will certainly cause many disputes and much wasted time. It should be absolutely

clear when the 60-day period begins. It should begin when the decision is notified to the applicant. If the starting date is the date on which the decision is made and the applicant is not notified of the decision until later, the 60-day period is eroded.

The lack of clarity in the provisions could be a source of problems. I wonder whether the Executive could describe its practice and clarify its intentions on notification. Are applicants notified of decisions by recorded delivery, e-mail, or other means, such as personal visits? Does the Executive consider that the issue requires an amendment to the regulations or, at the least, a clear statement of practice to be issued by the local offices of the Scottish Executive rural affairs department to all applicants who may wish to avail themselves of the benefits?

Regulation 9 could be construed as making rules for an inquiry within the meaning of the Tribunals and Inquiries Act 1992. In such circumstances, the Scottish committee of the Council on Tribunals should be consulted. It is also a rule of practice that the preamble to the instrument should refer to the fact of that consultation. Has that committee been consulted? If not, will it be consulted, and should it be consulted?

The Convener: All those matters seem perfectly appropriate. We will take them to the Executive and see what it says.

National Health Service (General Dental Services) (Scotland) Amendment (No 2) Regulations 2000 (SSI 2000/352)

The Convener: I do not know whether the problem with the regulations can be classified as a typo. There is certainly a difficulty with Roman numerals. The regulations refer to entry XI in column 1 of the table in regulation 22(1) of the National Health Service (General Dental Services) (Scotland) Regulations 1996, but they should refer to entry IX. We require an explanation of that, together with information about whether any progress has been made towards consolidation.

Brucellosis (Scotland) Regulations 2000 (SSI 2000/364)

David Mundell: Offences for breach of the regulations are triable only summarily, so we should ask the Executive why regulation 23(2) provides for a fine

“not exceeding the statutory maximum.”

The Convener: I would welcome clarification of that point and of whether the Executive feels that, given the possible dangers to public health, the level of fine is appropriate. I appreciate that the current situation might always have been the case; however, we can but see.

Enzootic Bovine Leukosis (Scotland) Regulations 2000 (SSI 2000/365)

The Convener: The same matters about terminology that we raised about the previous instrument also apply to these regulations.

Teachers' Superannuation (Scotland) Amendment Regulations 2000 (SSI 2000/366)

11:30

Ian Jenkins: I should declare an interest, as I am due to receive money from such a scheme within a few months.

As the regulations have clearly been amended over the many years that I was a teacher, it would be good if the legislation could be consolidated.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Partial Revocation (No 2) Order 2000 (SSI 2000/346)

Investigatory Powers Tribunal Rules 2000 (SI 2000/2665)

The Convener: The next item on the agenda is the consideration of instruments not subject to parliamentary control. No points arise on the instruments.

Land Registration (Scotland) Act 1979 (Commencement No 14) Order 2000 (SSI 2000/338)

The Convener: The sixth item on the agenda is the consideration of instruments not laid before the Parliament. No points arise on the instrument.

**Borders General Hospital National
Health Service Trust (Establishment)
Amendment Order 2000 (SSI 2000/353)**

**Dumfries and Galloway Acute and
Maternity Hospitals National Health
Service Trust (Establishment)
Amendment Order 2000 (SSI 2000/354)**

**Yorkhill National Health Service Trust
(Establishment) Amendment Order
2000 (SSI 2000/355)**

The Convener: The same point applies to all three instruments. The Executive preamble fails to cite section 105(6) of the Interpretation Act 1978 as an enabling power. We will seek clarification from the Executive about the current position on the matter.

**Standards in Scotland's Schools etc
Act 2000 (Commencement No 3 and
Transitional Provisions) Order 2000
(SSI 2000/361)**

The Convener: Apart from some typos in the instrument, I do not think that any other matters arise.

Fergus Ewing: As I read the instrument, I wondered whether any sections of the Standards in Scotland's Schools Act etc 2000 are not in force. I see that the order is headed "Commencement No 3", which suggests that there have been two previous ones. As the order appears to bring in most of the sections of the act, we could seek clarification from the Executive on whether any remaining sections are not yet in force.

The Convener: We can do that. I think that that concludes our agenda.

Meeting closed at 11:32.

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