

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 31 October 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 31 October 2000

Col.

SALMON CONSERVATION (SCOTLAND) BILL.....	325
EDUCATION (GRADUATE ENDOWMENT AND STUDENT SUPPORT) (SCOTLAND) BILL.....	326
SPECIFIED RISK MATERIAL ORDER AMENDMENT (SCOTLAND) REGULATIONS 2000 (SSI 2000/344).....	328
SPECIFIED RISK MATERIAL AMENDMENT (SCOTLAND) REGULATIONS 2000 (SSI 2000/345).....	328
AGRICULTURAL SUBSIDIES (APPEALS) (SCOTLAND) REGULATIONS 2000 (SSI 2000/347)	328
NATIONAL HEALTH SERVICE (GENERAL DENTAL SERVICES) (SCOTLAND) AMENDMENT (No 2) REGULATIONS 2000 (SSI 2000/352)	330
BRUCELLOSIS (SCOTLAND) REGULATIONS 2000 (SSI 2000/364)	330
ENZOOTIC BOVINE LEUKOSIS (SCOTLAND) REGULATIONS 2000 (SSI 2000/365)	330
TEACHERS' SUPERANNUATION (SCOTLAND) AMENDMENT REGULATIONS 2000 (SSI 2000/366).....	330
BORDERS GENERAL HOSPITAL NATIONAL HEALTH SERVICE TRUST (ESTABLISHMENT) AMENDMENT ORDER 2000 (SSI 2000/353)	331
DUMFRIES AND GALLOWAY ACUTE AND MATERNITY HOSPITALS NATIONAL HEALTH SERVICE TRUST (ESTABLISHMENT) AMENDMENT ORDER 2000 (SSI 2000/354)	331
YORKHILL NATIONAL HEALTH SERVICE TRUST (ESTABLISHMENT) AMENDMENT ORDER 2000 (SSI 2000/355)....	331
STANDARDS IN SCOTLAND'S SCHOOLS ETC ACT 2000 (COMMENCEMENT No 3 AND TRANSITIONAL PROVISIONS) ORDER 2000 (SSI 2000/361).....	331
FOOD PROTECTION (EMERGENCY PROHIBITIONS) (AMNESIC SHELLFISH POISONING) (EAST COAST) (No 2) (SCOTLAND) ORDER 2000 (SSI 2000/370)	331
WELFARE OF FARMED ANIMALS (SCOTLAND) REGULATIONS 2000 (SSI 2000/DRAFT)	331
BUDGET (SCOTLAND) ACT 2000 (AMENDMENT) (No 2) ORDER 2000 (SSI 2000/DRAFT)	332
GAMING CLUBS (HOURS) (SCOTLAND) REGULATIONS 2000 (SSI 2000/371).....	332
FOOD PROTECTION (EMERGENCY PROHIBITIONS) (AMNESIC SHELLFISH POISONING) (WEST COAST) (No 3) (SCOTLAND) PARTIAL REVOCATION ORDER 2000 (SSI 2000/369).....	332
FOOD PROTECTION (EMERGENCY PROHIBITIONS) (AMNESIC SHELLFISH POISONING) (WEST COAST) (No 3) (SCOTLAND) REVOCATION ORDER 2000 (SSI 2000/372)	332
FOOD PROTECTION (EMERGENCY PROHIBITIONS) (AMNESIC SHELLFISH POISONING) (WEST COAST) (No 2) (SCOTLAND) PARTIAL REVOCATION (No 3) ORDER 2000 (SSI 2000/378).....	332
COMMITTEE REMIT.....	333

SUBORDINATE LEGISLATION COMMITTEE

30th 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)

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 31 October 2000

(Morning)

[THE CONVENER *opened the meeting at 11:21*]

The Convener (Mr Kenny MacAskill): Good morning. Welcome to the 30th meeting of the Subordinate Legislation Committee.

Salmon Conservation (Scotland) Bill

The Convener: We deal first with the scrutiny of delegated powers. We have a response from the Executive to the points that were raised about the Salmon Conservation (Scotland) Bill. Fergus Ewing raised the principal concerns at the previous meeting. Are you satisfied with the response, Fergus?

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): The response of 26 October is factually informative; in it the Executive refers to section 16 of the Wildlife and Countryside Act 1981 and to the Conservation of Seals Act 1970, but there is an inherent contradiction. On the one hand the purpose of the bill is to take measures necessary to conserve salmon and sea trout, but the letter from the director of the Association of Salmon Fisheries Boards to the rural affairs department, dated August 2000, which the Executive also gave to the committee, makes it plain that the type of measures that it might be best to take might not be within the compass of the bill. That begs the question as to why, if the Executive wants to achieve a purpose, it is not listening to the body, evidence from which it has seen fit to produce to the committee.

The director of the Association of Salmon Fisheries Boards drew attention to the point that he made by underlining it in the letter to which the Executive kindly referred us. Could we highlight to the lead committee that the director of the Association of Salmon Fisheries Boards has drawn attention to the fact that other action, possibly in relation to birds or seals, might be required as an alternative or in addition to the methods that fall within the compass of the bill?

Bristow Muldoon (Livingston) (Lab): I take Fergus Ewing's point in some respects. However, it is an issue for the lead committee rather than for the Subordinate Legislation Committee.

I do not think that the effectiveness of measures

used to promote the salmon population falls within our remit. If Fergus Ewing is concerned about that issue, he might want to raise it with his colleagues who are on the appropriate lead committee; I am not sure whether that is the Rural Affairs Committee.

The Convener: It is the Rural Affairs Committee, which is meeting imminently. All that we can do is draw those points to its attention. That takes on board Bristow Muldoon's point that we should flag up the points that have been raised in the correspondence and the answers that we have received. As he said, it is for the lead committee to take a decision.

Education (Graduate Endowment and Student Support) (Scotland) Bill

The Convener: We are under less of a time constraint on the bill. Does anyone have preliminary comments on it?

David Mundell (South of Scotland) (Con): I am very unhappy about the bill. Previously we have accepted the need to have brief bills that rely on regulation, but that is increasingly becoming the norm. In general, provisions should be contained within the body of a bill. Setting them out so extensively in regulations, some of which—as the Executive's memorandum exhibits—have not yet been crystallised, should be the exception.

Given the time scale that we have, I think we should request that the Executive come before the committee to explain why the bill is proceeding on this basis and to assure us that it is not moving towards a general policy of proceeding with bills that contain the minimum of substance. If this continues we will get two-line bills that say, "The Scottish ministers may make regulations". That might make this committee's job easier, but it is not an approach that is to be recommended.

Bristow Muldoon: I am comfortable with that suggestion.

The only issue on which I would disagree with David Mundell is that it would make our job a lot more difficult if everything was done by regulation, because we would have piles of regulations to get through every week.

Section 1(2)(b) of the bill, to which members have primarily been referring, seems extremely broad. I want an explanation from the Executive as to what it has in mind and to know whether it could be defined more tightly.

At £1.10 from the Stationery Office for two pages of A4, I do not think that the bill will make the bestseller list.

Fergus Ewing: I agree with the request that we

invite civil servants to come to the committee to explain what the bill means and why the powers are drafted so widely.

A more basic point is the title of the bill: the Education (Graduate Endowment and Student Support) (Scotland) Bill. As far as I know, Governments do not have the power to change the ordinary meaning of words, so that the word night has the meaning of the word day, or black means white. That seems to be what is being done in the bill. The word "endowment" means that a benefit has been conferred upon somebody when, in fact, what has been conferred is a debt, or arguably a tax, but certainly not a benefit. The bill is struggling with the fundamental contradiction of its title.

I do not believe that the matter is outwith our compass, because we must consider ambiguity and instances when the meaning is not clear. The word "endowment", which is referred to throughout the bill, seems to be taken to mean the exact opposite of its dictionary definition. It would be helpful to receive some legal guidance on interpretation, which—as the convener will know—has been closely examined over the years; specifically, the extent to which the meaning of a word as defined in various dictionaries is binding on Governments or Executives or whether dictionary meanings can be inverted, subverted and discarded.

Bristow Muldoon: I must take issue with Fergus Ewing's comments. He may want to make a political point about the way in which the funding of student finance is going—I am sure that we will debate that in the chamber in due course—but, on the definition of endowment, there clearly are beneficiaries of the scheme; the beneficiaries are the future generations of students who will receive funding as a result of those endowments. Anyone who takes out an endowment is paying money into a scheme or a charity or whatever in order that other people can benefit from it, so Fergus's points about dictionary definitions are spurious and he should stick to making the political point in the appropriate arena.

11:30

David Mundell: On a more general point, did not we discuss whether a word was required to have its ordinary meaning, and that that was an issue that we could raise? We discussed the issue not necessarily in the political context, but we did discuss it. It would save a lot of definitions and legal time if the word "endowment" was deleted and the word "tax" was substituted. Without straying into that, we can look at words, although it may not be appropriate to do so on this occasion.

The Convener: We can leave the tautological

debate for another day, but we can invite the Executive to address us on the lack of firm proposals and on the number of matters that are left to regulation. We may also ask whether a super affirmative procedure will be considered and the matter dealt with at a later date.

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

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

The Convener: We now deal with Executive responses. The first two orders are the Specified Risk Material Order Amendment (Scotland) Regulations 2000 (SSI 2000/344) and the Specified Risk Material Amendment (Scotland) Regulations 2000 (SSI 2000/345). We raised issues and requested a table of derivations and consolidation of the legislation. We can draw the table of derivations to the attention of the lead committee, and we can also welcome the intention to consolidate in due course. I do not think that members wish to comment further; there were just those two points.

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

The Convener: A considerable number of issues were raised regarding appeals. Are there any comments?

Fergus Ewing: I examined the Executive's response to the main point that was raised, which was about the lack of a specified procedure requiring notification of the right of appeal. As I understand it, the Executive referred to an intention to distribute leaflets, which is irrelevant, and an intention to intimate decisions by recorded delivery letter, which will be the normal method, and sometimes by hand delivery. That may shore up potential problems about whether the 60-day period has been met by an appellant. Recorded delivery is notoriously problematic, especially where the recipient of the recorded delivery package lives in a remote part of Scotland. If he is not there, or cannot be found by the postman, the package has to be collected from a local post office, which in some instances may be 150 miles away.

The lack of a specified procedure is a problem, perhaps mostly for the officials in local Scottish Executive rural affairs department offices, who are

likely to be blamed for any inconsistencies or problems. It is a shame that the Executive has not taken the opportunity presented by this important instrument, which has long been awaited by farmers and crofters, to include in it a specified written procedure, akin to those setting out the ordinary court rules in acts of sederunt. Unless the Executive provides for a written procedure that is clear and understood by everybody, it will be shoring up serious problems and probably compounding unfairnesses that these rules are in part meant to address. I hope that the Executive will think again on the matter.

I am at a loss to see why it has been decided that the new tribunal should not be listed in schedule 1 of the Tribunals and Inquiries Act 1992—unless it is because the Executive does not want the matter to fall within the ambit of the Scottish committee of the council on tribunals. That would suggest that, for some reason, the Executive wants to deny the desirable role of scrutineer to the Scottish committee.

The Convener: Does anyone else want to comment?

I agree with the points made by Fergus Ewing. Regulations should be easily understandable by the practitioner, who may be consulted regarding a possible appeal. If the regulation does not say what the mechanism for appeal is and what the specified dates are, it will be difficult for anyone—layman or lawyer—to work out what action they should take and when. If the matter is outwith the remit of a tribunal, it is not governed by sheriff court rules; the person appealing against an organisation might have to telephone that organisation to find out what must be done in order to appeal. That is not acceptable. The matter should be referred to the lead committee.

Fergus Ewing: Can we ask the Executive to supply an explanation? There seems to have been an unexpectedly limited exercise of powers in relation to this matter.

The Convener: I agree that clarification should be sought, although I do not know whether we have the time to deal with it ourselves or whether the response could be brought to the attention of the lead committee.

Fergus Ewing: If we do not get a satisfactory explanation, the practical problems raised today mean that it might be useful to ask the civil servants to come and give us more information. Perhaps we could review that option when we get the further explanation.

The Convener: We do not have time to deal with the matter. We will have to leave it with the lead committee, who will receive the Executive response and take on board the points that we have raised.

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

The Convener: There was a clear drafting error in the regulation, which has been acknowledged. We have had a favourable response regarding consolidation. We will draw that to the attention of the lead committee.

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

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

The Convener: Various matters were raised regarding statutory maximum and summary matters. The tautology in the matter of the summary or statutory maximum has been acknowledged. I think that the extent of the penalties is best left to the lead committee. That might or might not satisfy those who are involved in whether summary penalties are adequate. I suggest that we simply pass the information to the lead committee.

David Mundell: That would be appropriate.

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

The Convener: The delay in receiving the response on the regulation was understandable. We look forward to examining consolidated regulations in due course. We will pass the matter on to our colleague with a vested interest in it on his return.

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: Matters were clarified in relation to the regulations.

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

The Convener: Matters were raised in relation to the regulation and a satisfactory response was given. We can draw that to the attention of the lead committee.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (No 2) (Scotland) Order 2000 (SSI 2000/370)

The Convener: We now come to the consideration of affirmative instruments. No points arise in relation to the instrument.

Welfare of Farmed Animals (Scotland) Regulations 2000 (SSI 2000/draft)

The Convener: It is suggested that we might ask about the delay in the implementation of Council directive 98/58/EC and the fact that no commencement date has been given.

Fergus Ewing: We have been advised that the regulations also contain a small degree of gold plating. I believe that means that the regulations go slightly further in Scots law than incorporation of the EU regulations, as is necessary under the directive, requires. We might refer the point to the lead committee, which might consider whether gold plating—a controversial topic—is appropriate and necessary in this case.

David Mundell: The regulations highlight the point that simple souls who thought that they knew

what a pig or some other seemingly ordinary thing was, are wrong and that such things require lengthy definitions. That emphasises the degree to which regulation is self-serving.

Fergus Ewing: I thought that Tories knew all about pigs.

David Mundell: Oh, convener.

The Convener: That is rather near the line.

Bristow Muldoon: They are all just snouts in the trough.

David Mundell: Convener, I feel that I am being picked upon. In respect of my colleagues, the term battery cage springs to mind.

Budget (Scotland) Act 2000 (Amendment) (No 2) Order 2000 (SSI 2000/draft)

The Convener: Apart from the absence of a note, no points arise in relation to the instrument. The regulations seem fairly self-explanatory. Do members think that we should seek a note?

Fergus Ewing: Why not?

The Convener: We will ask the Executive to comment on the absence of the note.

Gaming Clubs (Hours) (Scotland) Regulations 2000 (SSI 2000/371)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 3) (Scotland) Partial Revocation Order 2000 (SSI 2000/369)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 3) (Scotland) Revocation Order 2000 (SSI 2000/372)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Partial Revocation (No 3) Order 2000 (SSI 2000/378)

The Convener: No points arise under the instruments.

Committee Remit

The Convener: The final item is the proposed change to the committee remit. The clerk has set out three options, which can be put to the Executive and the Procedures Committee. Two proposals come from the Executive and one is from the committee.

David Mundell: I suggest that we follow option C, convener.

Bristow Muldoon: I agree.

The Convener: Option C is that the Subordinate Legislation Committee should consider and report on

“whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation”.

That appears to be clearer and more succinct than the Executive’s proposals. However, the legal effect is the same.

Meeting closed at 11:43.

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:

Tuesday 7 November 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 CF1 2BZ
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