

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 16 January 2001
(Morning)

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CONTENTS

Tuesday 16 January 2001

	Col.
DECLARATION OF INTERESTS	401
HOUSING (SCOTLAND) BILL	402
BIRTHS, DEATHS, MARRIAGES AND DIVORCES (FEES) (SCOTLAND) AMENDMENT REGULATIONS 2000 (SSI 2000/447)	402
AGRICULTURAL BUSINESS DEVELOPMENT SCHEME (SCOTLAND) REGULATIONS 2000 (SSI 2000/448)	402
FEEDING STUFFS (SCOTLAND) REGULATIONS 2000 (SSI 2000/453)	403
YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999 (COMMENCEMENT No 6) (SCOTLAND) ORDER 2000 (SSI 2000/445)	403
SEXUAL OFFENCES (AMENDMENT) ACT 2000 (COMMENCEMENT No 2) (SCOTLAND) ORDER 2000 (SSI 2000/452)	404
NUMBER OF INNER HOUSE JUDGES (VARIATION) ORDER 2001 (SSI 2001/DRAFT)	405
LEGAL AID (SCOTLAND) ACT 1986 AMENDMENT REGULATIONS 2001 (SSI 2001/DRAFT)	405
ADVICE AND ASSISTANCE (ASSISTANCE BY WAY OF REPRESENTATION) (SCOTLAND) AMENDMENT (No 2) REGULATIONS 2001 (SSI 2001/DRAFT)	405
SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION) (No 2) ORDER 2000 (SI 2000/3250)	405
CATTLE (IDENTIFICATION OF OLDER ANIMALS) (SCOTLAND) REGULATIONS 2001 (SSI 2001/1)	406
SPECIFIED RISK MATERIAL AMENDMENT (SCOTLAND) REGULATIONS 2001 (SSI 2001/3)	406
SPECIFIED RISK MATERIAL ORDER AMENDMENT (SCOTLAND) REGULATIONS 2001 (SSI 2001/4)	406
NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) AMENDMENT (SCOTLAND) REGULATIONS 2001 (SSI 2001/6)	406

SUBORDINATE LEGISLATION COMMITTEE

2nd MEETING 2001, SESSION 1

CONVENER

*Mr Kenny MacAskill (Lothians) (SNP)

DEPUTY CONVENER

*Ian Jenkins (Tw eeddale, Ettrick and Lauderdale) (LD)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)
*Gordon Jackson (Glasgow Govan) (Lab)
*Ms Margo MacDonald (Lothians) (SNP)
*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 16 January 2001

(Morning)

[THE CONVENER *opened the meeting at 11:49*]

The Convener (Mr Kenny MacAskill): Good morning. I welcome everyone to the second meeting in 2001 of the Subordinate Legislation Committee.

Declaration of Interests

The Convener: The first item on the agenda deals with the declaration of new members' interests. We have three new members and I will simply ask each in turn to declare any relevant interests.

Gordon Jackson (Glasgow Govan) (Lab): I am not sure what I am meant to declare, but I should mention that I am still a member of the Faculty of Advocates and therefore have a monetary interest in legal matters and in particular in the workings of the Scottish Legal Aid Board and legal aid regulations. In fact, such regulations rarely apply to me, but, strictly speaking, I have an interest in those matters.

Ms Margo MacDonald (Lothians) (SNP): I do not think that I have any interests to declare, apart from the fact that one of my daughters is a lawyer and the other is a policewoman.

Bill Butler (Glasgow Anniesland) (Lab): I do not think that I have any interests to declare either, apart from the fact that I am still a serving councillor with responsibilities in the area of housing.

Housing (Scotland) Bill

The Convener: We discussed the Housing (Scotland) Bill during the legal briefing. Our agreed position is that we want to raise a number of points and that we would welcome an opportunity to interview witnesses from the Executive—and in particular the Executive's lawyers—in order to clarify various points such as the intention behind certain sections of the bill and the direction in which the Executive wants to take matters.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): We could give the Executive a flavour of the discussion that we had so that it is aware of the territory that we will be asking about.

The Convener: We will write to the Executive politely, asking representatives to come to the committee and indicating the points that we are likely to want to discuss with them next week.

David Mundell (South of Scotland) (Con): We should indicate that we are happy to see a bill that runs to almost 100 pages in length, which is more in line with our thinking on having the principal provisions in the bill rather than in regulations.

The Convener: I am sure that we can do that.

Births, Deaths, Marriages and Divorces (Fees) (Scotland) Amendment Regulations 2000 (SSI 2000/447)

The Convener: We wrote to the Executive about a delay in the laying of the regulations. Our concern has been acknowledged. We simply require to draw that fact to the attention of the Parliament. Is that agreed?

Members *indicated agreement.*

Agricultural Business Development Scheme (Scotland) Regulations 2000 (SSI 2000/448)

The Convener: We raised two matters relating to the regulations. One was to do with the absence of a right of appeal and the other was to do with powers of entry. We received a response, which we discussed during our legal briefing. Does anybody want to comment on the Executive's response with regard to the report that we will make to Parliament?

Gordon Jackson: Is this the Feeding Stuffs (Scotland) Regulations 2000?

The Convener: No, this is the Agricultural Business Development Scheme (Scotland) Regulations 2000.

Gordon Jackson: My apologies. I lost concentration.

David Mundell: I think that it would be appropriate to draw the attention of the lead committee and the Parliament to the issues that we have raised and the responses that we have received.

The Convener: Judicial review is not meant to be a final right of appeal. In my view, judicial review has always been the option that would be taken in a situation in which there was no appeal. If we can get it right from the outset, it would be better to set a method by which people can appeal, rather than be left with the catch-all mechanism of having a judicial review. A judicial review might be easier than other methods of appeal within the court system, but it is nevertheless expensive and complicated. A method outwith the court system would be better.

The Executive cannot have it both ways: if something is sufficiently serious to merit having powers of entry into houses that are adjacent to the business property and so on, it should also merit there being a right of appeal. I suggest that we flag up our concern that the balance might be out of kilter and that some method of appeal should be considered.

Bill Butler: That seems perfectly reasonable.

The Convener: We can leave it to the lead committee—presumably the Rural Development Committee—to take on board our points.

Feeding Stuffs (Scotland) Regulations 2000 (SSI 2000/453)

The Convener: We have had no response to our comments on the regulations. I do not know whether we are expecting a response, but I presume that we can simply indicate that we look forward to dealing with the matter next week.

Youth Justice and Criminal Evidence Act 1999 (Commencement No 6) (Scotland) Order 2000 (SSI 2000/445)

The Convener: There was a delay in the laying of the order. The response suggests that that was our fault for having been closed over the Christmas period. I think that the holidays that we took at Christmas were probably the same public holidays that others took, including Executive officials. It therefore seems to me rather disingenuous for the Executive to say that the fault is ours because we were not open for business when it was not open for business either. However, there is probably no point in getting

involved in a name-calling and mud-throwing exercise. We shall simply draw the order to the attention of the Parliament on the ground that there was unjustifiable delay in its submission.

Sexual Offences (Amendment) Act 2000 (Commencement No 2) (Scotland) Order 2000 (SSI 2000/452)

The Convener: The order caused us considerable concern and we had a lengthy discussion about it during the legal briefing.

Gordon Jackson: I have read the Executive's response to our concerns about the instrument. It is not impressive. I do not have the ability to say whether it is wrong—time alone will tell if that is the case.

Our legal adviser has provided a summary of the Executive's response, which reads:

"Provisions of the type contained in section 7, including subsection (2), are provisions of Acts which support the substantive provisions of the Act".

We are not given any basis as to why what is in section 7(2) would simply support the substantive provisions. It says "provisions of the type", but we have not had the type of provision that we find in section 7(2). I am not entirely clear what type, group or category section 7(2) is being lumped in with. We have not dealt with a pre-devolution statute in this way before.

The provision does not become the same type of provision as section 7(3) simply because it happens to be next door to section 7(3). Would it be the same type of provision as section 6(3) if it were beside that? Lumping section 7(2) in a section with other provisions does not make it the same type of provision.

We should not accept the Executive's response. The least that we should do is spell out to the Executive the reasons why we still have questions. Our legal adviser has presented the problems to us and I would like the Executive to think about them again. I must stress that I want that to happen not because I am looking for a stick with which to beat the Executive but because we are dealing with a serious criminal matter. If people are charged with serious crimes under the act but the act is thrown out in its entirety because it was never commenced, there will be a serious problem. The issue is more difficult and serious than is indicated by the somewhat glib answer that we got from the Executive.

David Mundell: I agree with Gordon Jackson. The point is serious and a paragraph is not an adequate response. We should go back to the Executive to restate our concerns and make it clear that if those concerns are not satisfied, we

will have to highlight the matter to the Parliament.

The Convener: It would be fair to say that our legal advisers have taken a second opinion from senior sources who remain concerned. The points that have been made by members today are correct. The matter involves serious criminal issues and is sensitive. We should point out that we are not satisfied with the response and that, unless the Executive can be more fulsome and persuasive, we might have to draw Parliament's attention to the matter. We have the opportunity to write to the Executive and consider its response next week; the consensus seems to be that we should flag up our continuing concern and the fact that we are not satisfied by the response. Is that agreed?

Members *indicated agreement.*

Number of Inner House Judges (Variation) Order 2001 (SSI 2001/Draft)

Legal Aid (Scotland) Act 1986 Amendment Regulations 2001 (SSI 2001/Draft)

The Convener: No points arise on the instruments.

Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No 2) Regulations 2001 (SSI 2001/Draft)

12:00

The Convener: Our legal adviser has queried whether a footnote should refer to various points. That is all that has been drawn to our attention.

Scotland Act 1998 (Agency Arrangements) (Specification) (No 2) Order 2000 (SI 2000/3250)

The Convener: The only matter that was raised in the note from the legal adviser was whether the order should be accompanied by a memorandum. Although the order is succinct, it seems to be important in relation to how we monitor pollution and so on. A memorandum might be of interest to some people, especially those from environmental lobbying and pressure groups who are, doubtless, awaiting the order's arrival with interest.

David Mundell: The title of the instrument does not make it clear what it does. A memorandum would be helpful in that regard.

The Convener: That is a good point.

Cattle (Identification of Older Animals) (Scotland) Regulations 2001 (SSI 2001/1)

The Convener: Various points were raised in relation to the regulations. A number of the instruments referred to in the text of the regulations appear to have been amended but no note of that fact is given in the footnotes. Our legal adviser queried why reference is made to level 5 on the standard scale rather than to the statutory maximum. There was also a question about the power of Scottish ministers to confer functions to a minister of the Crown. I might not necessarily have any qualms about that, but we might want to get some clarification of the efficacy of the procedure, given the potential legal pitfalls.

Specified Risk Material Amendment (Scotland) Regulations 2001 (SSI 2001/3)

Specified Risk Material Order Amendment (Scotland) Regulations 2001 (SSI 2001/4)

National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2001 (SSI 2001/6)

The Convener: No points arise on the regulations.

I thank members for their attendance.

Meeting closed at 12:02.

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