

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 6 March 2001  
*(Morning)*

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## SUBORDINATE LEGISLATION COMMITTEE

8<sup>th</sup> 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 6 March 2001*

*(Morning)*

[THE CONVENER *opened the meeting at 11:17*]

#### Highlands and Islands Agricultural Processing and Marketing Grants etc (Scotland) Regulations 2001 (SSI 2001/40)

**The Convener (Mr Kenny MacAskill):** Good morning and welcome to the eighth meeting in 2001 of the Subordinate Legislation Committee.

The committee wrote to the Executive on several matters concerning the regulations, in particular about the lack of an appeal provision. We have received a response and there are comments on that response. Does any member wish to make any points on whether he or she is satisfied with that response to the absence of an appeal provision?

**Bristow Muldoon (Livingston) (Lab):** Perhaps the committee should simply draw the issue of the absence of an appeal procedure to the lead committee's attention. We should also draw to its attention the differences between the 2001 regulations and the 1995 regulations. That would allow the lead committee to take a view on whether it believes the recommendations to be appropriate.

The possibility of a lack of compatibility with the European convention on human rights should also be drawn to the lead committee's attention.

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** The judge and jury are the same as those who administer the scheme in the first place.

**Ms Margo MacDonald (Lothians) (SNP):** I might have picked this up wrongly but I thought that the Executive maintained that its proposals were compatible with the ECHR. If that is the case, we will need to change the ECHR because there appears to be less justice and balance all round in the new as opposed to the old regulations. Why should we follow a standard that is lower than that in previous legislation? That should be challenged. Perhaps a challenge is not up to us, but we should certainly point out to the lead committee that the regulations are not as

good a deal as previously.

**The Convener:** I think that members are agreed. We will draw the matter to the lead committee's attention. Like Bristow Muldoon, I do not know how important the matter is, however, if we draw the problems to the attention of the lead committee, it can decide whether it wishes to make an issue of those problems or whether it can live with them.

#### Scotland Act 1998 (Modification of Schedule 5) Order 2001 (Draft)

**The Convener:** Comments were made on various stylistic matters in the instrument in the committee's legal briefing session. The legal adviser's paper suggests that the committee draws such matters to the Executive's attention by way of a letter. Does anybody wish to comment about style and substance at this juncture? Otherwise, we could simply draw the points of style to the Executive's attention and leave the matter at that.

**Ms MacDonald:** You could ask the minister to parse your letter.

**The Convener:** That is certainly possible.

#### Special Grant Report No 3: Special Grant Report on Grant in Aid of Expenditure on Rail Services in the Strathclyde Passenger Transport Area (SE 2001/74)

**The Convener:** No points arise on the document.

#### Less Favoured Area Support Scheme (Scotland) Regulations 2001 (SSI 2001/50)

**The Convener:** There are some matters arising on the instrument.

**Ian Jenkins:** On the stylistic point, there are a number of typographical errors—the word “less”, for example, is used rather than “fewer”. That is annoying to those of us who are connected with English teaching and have had strict English teachers. I recognise that sometimes use and wont change the way in which the language works; however, the slower the change the better in that case.

**Ms MacDonald:** A well-educated Martian would notice the difference.

**David Mundell (South of Scotland) (Con):**

There should be 100 lines for the minister in question.

**Ms MacDonald:** Exactly. He should stand in the corner.

**The Convener:** There are matters in the instrument that relate to the question of vices.

**Ms MacDonald:** That was an interesting question.

**The Convener:** I assume that the committee can ask the Executive for its views on that question and we can return to it.

The committee should also consider the question of advising applicants of the deadline for submission of applications and should consider regulation 22, which allows an applicant to apply to the Scottish ministers for a review of a determination under regulation 21 within 60 days of that determination. If there is no trigger mechanism as to when or how applicants are to be intimidated, they might not know that the 60 days has started or elapsed.

I presume, therefore, that the committee should ask the Executive to comment about what rights people will be given as to being advised of deadlines for submission of applications and, if an application is unsuccessful, for the determination of review.

**Ian Jenkins:** If the committee does not mind, we could put our concerns about grammar at the end of the letter. The other matters are much more important—the grammatical concerns simply came first in the paper.

**The Convener:** We could deal with grammar in the letter. Alternatively, we could use a more general and overarching method and refer to those concerns as one example of matters that we think are not appropriately dealt with.

**Ian Jenkins:** The instruments in question are important. We do not want to appear to be frivolous about them in any way.

**David Mundell:** The grammar point is important. The committee has dealt with numerous issues concerning grammar over the months. That takes up time and effort. If grammar were right in the first place, such time and effort would not be required. While the matter has to be seen in proportion, it is worth flagging up and identifying as important in the committee's view.

**The Convener:** I think that that is right and is in the interests of those drafting and of the general public. If minor matters are not correct, sloppiness can permeate into more important items of legislation. We should ensure that style is addressed, whether in primary legislation of extreme significance or in a minor regulation. If someone is sloppy in drafting, it is very difficult for

that person to get out of the habit.

**David Mundell:** It is called zero tolerance.

**The Convener:** In grammar, it is called tautology.

### **Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (Orkney) (Scotland) Revocation Order 2001 (SSI 2001/53)**

**The Convener:** The order is not subject to parliamentary control. I think that a plan has now been produced and the matter has been adequately dealt with. No points arise.

### **Diseases of Animals (Approved Disinfectants) Amendment (Scotland) Order 2001 (SSI 2001/45)**

**The Convener:** The legal adviser's paper suggests that there are two minor points that can be dealt with by way of a letter in the normal way.

### **Foot-and-Mouth Disease Declaratory (Controlled Area) (Scotland) Order 2001 (SSI 2001/49)**

**The Convener:** The committee had a discussion and briefing regarding the status and standing of the order.

**Ian Jenkins:** There is a technicality. The order seems to be an administrative order. Could we ask the Executive for an explanation of its authority for making the instrument in the form of a statutory instrument? I refer to section 1 of the Statutory Instruments Act 1946.

**The Convener:** That would not be unduly difficult in view of the serious circumstances in the agricultural sector. We should ensure that matters are right.

In the committee's private legal briefing, we were of the view that we might be prepared to turn a blind eye to some deficiencies that we would have checked previously, given the urgency of the situation. As long as matters are clear and will not cause problems further down the line, we could clarify that matter with the Executive.

**Foot-and-Mouth Disease (Amendment)  
(Scotland) Order 2001 (SSI 2001/52)**

**The Convener:** Matters arise in relation to the order. We should ensure that no significant problems return to haunt an industry that has enough problems and that we do not fail to address such problems.

As long as the Executive is satisfied that matters are addressed, the questions of why section 2 of the Animal Health Act 1981 is not referred to in the preamble, why article 35B refers to “declarations” rather than “regulations” and why there is an absence of an Executive note, may be regarded as a result of work being done in a hurry. If that is the case, I think that we can forgive the Executive. We should perhaps clarify that the other matters will not cause problems in respect of the enforcement of the regulations.

**Nurses, Midwives and Health Visitors  
(Professional Conduct) (Amendment)  
Rules 2001 Approval (Scotland) Order  
2001 (SSI 2001/54)**

**The Convener:** A question of style and drafting arose. To be fair to the Executive, the order was drafted by the UK Central Council for Nursing, Midwifery and Health Visiting, which is outwith the Executive’s control, but perhaps we should draw the question to the Executive’s attention. The Executive can draw it to the attention of those involved in drafting.

It appears that there are several related matters concerning such orders that are drafted by outside sources. If we are to provide directions and steer to the Executive, it should be taken as read that other organisations that do their own drafting or through private clubs of solicitors should abide by the same rules and guidance. Are we agreed?

**Members** *indicated agreement.*

*Meeting closed at 11:29.*





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