

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 27 March 2001  
*(Morning)*

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## SUBORDINATE LEGISLATION COMMITTEE

11<sup>th</sup> Meeting 2001, Session 1

### CONVENER

\*Mr Kenny MacAskill (Lothians) (SNP)

### DEPUTY CONVENER

\*Ian Jenkins (Tweeddale, 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 27 March 2001*

*(Morning)*

[THE CONVENER *opened the meeting at 11:22*]

**The Convener (Mr Kenny MacAskill):** I welcome everyone to the 11<sup>th</sup> meeting of the Subordinate Legislation Committee in 2001. We have received apologies from Gordon Jackson, who has a clash of committee meetings.

#### National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2001 (SSI 2001/70)

**The Convener:** First we consider Executive responses. Various points were raised on the instrument at the previous meeting, which I did not attend. Does the Executive's response satisfy the committee members who raised points last week?

**Ms Margo MacDonald (Lothians) (SNP):** It might be an idea to write to the Executive again saying that, although we appreciate the fact that it has taken some of our comments into consideration, we are not satisfied that the question of consolidation has been properly addressed. The Executive is getting into very dangerous territory with so many generations of subordinate legislation.

**The Convener:** It has been suggested that we send a general letter to the Executive about the consolidation of NHS regulations. This is the second or third time since its inception that the committee has raised points about consolidation. As was pointed out in the legal briefing, we have yet to consider any consolidated regulations.

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** Defective drafting in the instrument has been drawn to our attention; we should seek an explanation of that continuing problem. Furthermore, some vires issues must be raised. Finally, as Margo MacDonald said, we should draw the attention of the Parliament and the lead committee to the need for consolidation, particularly in light of the multiple definitions in the regulations. We should highlight such sloppiness in our response.

**The Convener:** Given the subject matter, definitions are obviously important. We will draw

that point to the lead committee's attention, as the time scale requires the regulations to be sent there, and write a general letter to the Executive on consolidation.

#### National Health Service (Personal Medical Services) (Scotland) Regulations 2001 (SSI 2001/72)

**The Convener:** Various points regarding the instrument were raised at last week's meeting.

**Ian Jenkins:** Although the Executive's response is helpful, it might not have been required if a particular footnote had not been omitted in the first place. That said, we should draw the instrument to the attention of the lead committee.

**The Convener:** That seems sensible.

#### Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2001 (SSI 2001/75)

**The Convener:** The regulations have caused serious problems. As I said, I was not here last week; however, it appears that, despite the points that members raised, some problems remain.

**Ian Jenkins:** There is still some question about who can make regulations. It is not clear from the Adults with Incapacity (Scotland) Act 2000 whether Scottish ministers or the public guardian have that power. A reading of the *Official Report* of earlier debates suggests that it was expected that Scottish ministers would make the regulations, which might be enough to validate them. However, we should still draw the point to the Executive's attention.

**The Convener:** Although the issue might not be as highly sensitive as that of the sexual offenders register, with which we had problems, we should at least flag up a potential problem, even with primary legislation.

**Ian Jenkins:** It has also been suggested that the drafters have played a bit fast and loose with "Statutory Instrument Practice" in their explanatory note. We should watch that carefully; SIP provides guidance on good practice and should be followed where possible and appropriate.

#### National Health Service (Choice of Medical Practitioner) (Scotland) Amendment Regulations 2001 (SSI 2001/85)

**The Convener:** Various points that were raised on the regulations last week have been

acknowledged by the Executive. The regulations contain some defective drafting. We can also draw the attention of the lead committee to additional information that the health department supplied, following our previous letter.

### **Specified Risk Material Amendment (No 2) (Scotland) Regulations 2001 (SSI 2001/86)**

**The Convener:** Again, various points were raised on the regulations last week. Do members who attended the previous meeting have any comments? The Executive seems to have answered some points and not others.

**Ms MacDonald:** Can we politely tell the Executive that its answer is not full enough?

**Bristow Muldoon (Livingston) (Lab):** Furthermore, the response does not answer clearly the question about keeping records for two years. Perhaps we should draw that point to the lead committee's attention, as it will be talking to the people in the industry who will be required to keep records.

**Ian Jenkins:** There is also the question of how the implementation of European Community regulations sits with section 57(2) of the Scotland Act 1998. We will seek more information about that at a future meeting with officials.

**The Convener:** The instrument has been drafted in a way that raises mutually contradictory matters. All that we can do is draw the lead committee's attention to the difficulties that we have noticed—particularly the problems with the two-year period for record-keeping—and the failure to consolidate the regulations, given that these regulations represent the seventh substantive amendment to the principal regulations. We will see how the lead committee weighs up the importance of accepting or rejecting the instrument.

### **Environmental Protection Act 1990 (Amendment) (Scotland) Regulations 2001 (SSI 2001/99)**

**The Convener:** The instrument raises a vires issue in relation to section 57(2) of the Scotland Act 1998, which the Executive has not answered satisfactorily. Just because something might be beneficial, that does not make it legal. We cannot simply wish things into existence.

**Ms MacDonald:** Consolidation seems to be the order of the day. Is anyone keeping a wee note of the number of times that we have raised the vires issue, even since I have been a member of the

committee? Every week, we find one or two examples of the ambiguity sewn into the Scotland Act 1998. Perhaps such ambiguity was a good idea before we had seen the lie of the land; however, now that we are beginning to see it, should not our statutory instruments become legal?

**The Convener:** We will be writing a general letter to the Executive on NHS matters and we are trying to arrange a meeting with the rural affairs department. We will shortly be able to meet representatives of the relevant departments face to face and ask them such questions.

**Bristow Muldoon:** I agree with that approach. We need to sit down with the drafters of statutory instruments and discuss some of our concerns about the question of vires. As you said, convener, no one is disputing that the aims of various regulations are sound, but we must ensure that the regulations are legal if they are to stand up in court.

### **National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2001 (SSI 2001/67)**

11:30

**The Convener:** We now consider instruments subject to the negative procedure. Various points have been raised on the instrument. Apparently this is the 22<sup>nd</sup> set of amendments to the principal regulations, and we should expect some response from the Executive on that point. Furthermore, there are various typos, missing footnotes and problems with the inconsistent use of words. It would also be interesting to find out from the Executive how the dead can make applications for refunds. I can understand how someone could make an application "on behalf of" a dead person, but how can an application be made "by" a dead person? Perhaps the Executive is privy to some new-found scientific investigations that we are not.

**Ms MacDonald:** It's the cloning.

**The Convener:** The instrument also appears to breach the 21-day rule. We can draw the Executive's attention to a variety of issues. Perhaps we could invite the Executive along to the committee to answer some questions, although I am not sure that that is necessary.

**Ms MacDonald:** How much time does the Executive have to get it right?

**The Convener:** It has another 10 days, so we will have to consider a response next week. I would be more inclined to write to the Executive,

rather than inviting its representatives along. Some of the points are fairly general, but the problem has been compounded because the errors are all in the one instrument. It is the number, rather than the nature of our points that is of concern. However, if members are otherwise minded, we could invite the Executive along.

**Ian Jenkins:** I think that potential witnesses' time would be better spent in the office.

**Ms MacDonald:** Ian Jenkins would have to give them a lesson in basic grammar. Look at all the mistakes in the regulations.

**The Convener:** That point has been well made.

### **National Health Service (Dental Charges) (Scotland) Amendment Regulations 2001 (SSI 2001/69)**

**The Convener:** The Executive has said that the regulations breach the 21-day rule to keep in step with England, which brings its regulations into force on 1 April 2001. I thought that health was a devolved matter, however, and although I can see some merit in trans-UK harmony, does it really matter whether the two sets of regulations come into force simultaneously, instead of Scotland's abiding by the 21-day rule? Perhaps we should seek an explanation.

**Ian Jenkins:** We should do that.

### **Miscellaneous Food Additives (Amendment) (Scotland) Regulations 2001 (SSI 2001/103)**

**The Convener:** The Executive has given lack of resources as the reason for the delay in making the regulations. As the directive in question was not made until October 2000, I am minded to accept the Executive's open and upfront explanation, although I am not sure how other members feel. However, similar points might be raised about later instruments, as was highlighted in our legal briefing. That said, if members are agreed, we could simply acknowledge the response and let the lead committee know that we are grateful that the Executive has flagged up the issue and that we recognise the pressure that it is under—the regulations are presumably dealt with by the department that is dealing with foot-and-mouth disease matters.

**Members** *indicated agreement.*

### **Feeding Stuffs (Sampling and Analysis) Amendment (Scotland) Regulations 2001 (SSI 2001/104)**

**The Convener:** The issue of late implementation also applies to these regulations. How do members feel about that?

**Ms MacDonald:** It is the general issue. When late implementation of European directives keeps happening, we must ask why such a pattern is emerging. Most of the time, that might not make a huge difference; however, rules is rules, so we should find out why we are breaking them.

**The Convener:** Unless any member is otherwise minded, we will do that.

### **National Assistance (Assessment of Resources) Amendment (No 2) (Scotland) Regulations 2001 (SSI 2001/105)**

**The Convener:** The Executive has drawn our attention to its drafting error in the regulations. Do members have any comments? I suppose that it is useful to be informed.

**Ian Jenkins:** I commend the Executive for putting up its hands and admitting an error before we spotted it. It shows that it is taking our points about drafting seriously, which is welcome.

**The Convener:** We will want to know what the Executive will do about the situation. Furthermore, the issue of consolidation has again been mentioned and we will raise it with the Executive.

### **Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) Amendment Regulations 2001 (SSI 2001/112)**

**Ian Jenkins:** We should write to the Executive about the minor points that have been raised about the regulations.

**The Convener:** The regulations are about to expire. However, we have already mentioned our flexibility about these matters, given the crisis.

### **Domestic Water and Sewerage Charges (Reduction) (Scotland) Regulations 2001 (SSI 2001/114)**

**The Convener:** These regulations also breach the 21-day rule.

**Ms MacDonald:** That is more serious in this

case, as the regulations involve people directly in their homes. I wonder why no one has realised the immediate importance of the regulations for the people affected? Although there are understandable reasons for breaches of the 21-day rule in some of the other instruments, there seems to be no good reason for such a breach here.

**Ian Jenkins:** I thought that the explanation for the breach was quite reasonable.

**Ms MacDonald:** Why?

**Ian Jenkins:** It is not really worth getting into a debate over this particular matter, but Margo MacDonald is quite correct to say that some instruments should stick to the 21-day rule.

**The Convener:** We will advise the Executive of our general dissatisfaction and leave the lead committee to take a particular view.

### **Valuation for Rating (Plant and Machinery) (Scotland) Amendment Regulations 2001 (SSI 2001/115)**

**The Convener:** Does the committee feel that any further explanation of the reasons behind the regulations' breach of the 21-day rule is warranted? Should we simply ask the Executive to clarify why there has been such a breach?

**Ms MacDonald:** Yes.

**The Convener:** That will keep the Executive on its toes.

**Ms MacDonald:** Although the substance of the instrument might seem esoteric, it might mean quite a lot to a small business.

**David Mundell (South of Scotland) (Con):** We should also ask for confirmation of whether the instrument complies with state aid rules.

### **Act of Sederunt (Rules of the Court of Session Amendment No 2) (Assistance In Investigations Undertaken by European Commission Into Certain Prohibited Practices and Abuses) 2001 (SSI 2001/92)**

**The Convener:** We now consider instruments not laid before Parliament. We can write to the Executive about the various typographical matters that have been drawn to our attention.

### **Act of Sederunt (Rules of the Court of Session Amendment No 1) (Procedure for Offers to Make Amends) 2001 (SSI 2001/93)**

### **Foot-and-Mouth Disease (Amendment) (No 3) (Scotland) Order 2001 (SSI 2001/101)**

### **Standards in Scotland's Schools etc Act 2000 (Commencement No 4) Order 2001 (SSI 2001/102)**

### **Ethical Standards in Public Life etc (Scotland) Act 2000 (Commencement No 1) Order 2001 (SSI 2001/113)**

### **Salmon Conservation (Scotland) Act 2001 (Commencement) Order 2001 (SSI 2001/116)**

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

*Meeting closed at 11:43.*



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