

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 24 April 2001  
(*Morning*)

Session 1

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## SUBORDINATE LEGISLATION COMMITTEE

13<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

### THE FOLLOWING ALSO ATTENDED :

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

### CLERK TO THE COMMITTEE

Alasdair Rankin

### ASSISTANT CLERKS

Ruth Cooper  
Alistair Fleming

### LOCATION

Committee Room 3



## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 24 April 2001*

*(Morning)*

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

**The Convener (Mr Kenny MacAskill):** Good morning. I welcome everyone to our first meeting after the Easter recess.

#### Mortgage Rights (Scotland) Bill

**The Convener:** The first item on the agenda is scrutiny of the delegated powers in the Mortgage Rights (Scotland) Bill as amended at stage 2. We are joined by the bill's proposer, Cathie Craigie. Before the committee discusses the legal briefing that we have received, do you wish to make any comments about the bill's purpose or related matters?

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I thank the committee for dealing so quickly with the matter. The Subordinate Legislation Committee does a wonderful job that often goes unnoticed by the Parliament. Members rely on the committee's ability to ensure that these matters are dealt with.

The Mortgage Rights (Scotland) Bill is before the committee today because it contains a delegated power to allow ministers to amend the notices that are sent to debtors in default. Such amendments should be subject to the negative procedure because that will allow the Executive to take account of changing circumstances in debt advice and the hopefully improved facilities that will be available in future.

The matter came to the Social Justice Committee's attention between stage 1 and stage 2, after the Executive announced its intention to introduce a national debtline. The Social Justice Committee felt that it would be useful to include the debtline number in the notices being sent to defaulters, but existing provisions mean that the debtline would not be set up before the enactment of the bill. We feel that the delegated power would be of benefit and would allow debt advice contained within notices to be improved. I ask the committee to accept the recommendation that the exercise of the power should be subject to the negative procedure.

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** The committee tends to favour the affirmative procedure, as it involves both more scrutiny and a positive decision by the committee and the Parliament. However, the use of the negative procedure in the bill is simply an administrative matter that would make the operation of the bill quicker, easier and more effective. As a result, the use of the negative procedure is perfectly legitimate.

**The Convener:** Although it is not the committee's position to comment on policy, I think that we unanimously support the bill's principles. As far as subordinate legislation is concerned, we have no matters either to raise or to draw to the attention of the lead committee. We can only assist in speeding the bill on its way and wish you good luck with it as it enters the next stage.

#### Foot-and-Mouth Disease (Ascertainment of Value) (Scotland) (No 2) Order 2001 (SSI 2001/121)

**The Convener:** The next item on the agenda is consideration of Executive responses. The Executive has provided a satisfactory explanation for the points that we raised on the order.

#### Liquor Licensing (Fees) (Scotland) Order 2001 (SSI 2001/125)

**The Convener:** We can simply draw the Parliament's attention to the response that we received to our points about the order.

#### Justices of the Peace (Tribunal) (Scotland) Regulations 2001 (Draft)

#### Part-Time Sheriffs (Removal Tribunal) Regulations 2001 (Draft)

**The Convener:** The next item on the agenda is the consideration of draft affirmative instruments. The only point that arises on the regulations is whether there should be any consultation with the Scottish Committee of the Council on Tribunals about these tribunals. That is a matter for either the Justice 1 Committee or the Justice 2 Committee.

**Gordon Jackson (Glasgow Govan) (Lab):** The justices of the peace tribunal would be very specialised—not a day-in, day-out affair. One would like to think that it would meet very rarely, if at all. As the justice aspects of the regulations are right, it is probably taking the matter a bit too far to

force the Executive to consult on that tribunal.

**The Convener:** I am satisfied with that. If either the Justice 1 Committee or the Justice 2 Committee has another view, it will take the matter further. I think that Gordon Jackson's point also applies to the part-time sheriffs regulations.

**Gordon Jackson:** Yes. That tribunal merely deals with the next grade up, as it were.

### **Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2001 (SSI 2001/136)**

**The Convener:** The next item on the agenda is the consideration of negative instruments. No points arise on the act of sederunt.

### **NHS 24 (Scotland) Order 2001 (SSI 2001/137)**

**The Convener:** There is an error in the footnotes to the order, which will be dealt with in the normal manner. Furthermore, the 21-day rule has been breached. Do members have any comments about the explanation for that breach?

**Bristow Muldoon (Livingston) (Lab):** Although under normal circumstances we would expect the Executive to comply with the 21-day rule, a comprehensive reassessment of all the public bodies in Scotland is currently under way. I can understand why the Executive would want to be absolutely sure about committing to the introduction of another public body, quango or whatever and therefore I accept its explanation.

**The Convener:** I am minded to accept that view. Indeed, we are grateful that the Executive has clarified the matter at the outset.

### **National Assistance (Assessment of Resources) Amendment (No 3) (Scotland) Regulations 2001 (SSI 2001/138)**

**The Convener:** A point that has been raised on the regulations is whether, along with the italic headnote, the explanatory note should indicate that the regulations replace preceding defective regulations. All that we are looking for is some consistency to assist those who regularly deal with these matters. Although any change will cause problems, consistency will mean that the nature of those changes becomes a minor detail. Should we simply ask in writing for clarification of why the italic headnote has been used or should we raise the matter with the Executive when we meet it?

**David Mundell (South of Scotland) (Con):** It would be appropriate to raise the matter during our meeting with the Executive.

**The Convener:** Although the regulations also breach the 21-day rule, the reasons for the breach have been explained.

Perhaps we should simply flag up to the Executive that we will raise my earlier point at a subsequent meeting.

**Ian Jenkins:** On another minor point, a footnote is missing.

**The Convener:** An informal letter can cover that point.

### **Fisheries and Aquaculture Structures (Grants) (Scotland) Regulations 2001 (SSI 2001/140)**

**The Convener:** As for these regulations, we require some clarification about how regulation 6(1) relates to regulation 15. Furthermore, an appeal procedure appears to be absent as far as regulation 14 is concerned. That seems to be a matter of consistency; a judicial review is more litigation of last resort than a method of appeal. Although the Executive might have good reason for not including an appeal procedure, we should ask whether such an absence has any implications under the European convention on human rights.

### **Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) Amendment (No 3) Regulations 2001 (SSI 2001/141)**

### **Welfare of Animals (Slaughter or Killing) Amendment (Scotland) Regulations 2001 (SSI 2001/145)**

### **Teachers' Superannuation (Pension Sharing on Divorce) (Scotland) Regulations 2001 (SSI 2001/152)**

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

**Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Revocation Order 2001 (SSI 2001/134)**

**The Convener:** The next item on the agenda is the consideration of instruments not subject to parliamentary control. We can deal with the minor typographical point in the order by informal letter.

**Foot-and-Mouth Disease (Ascertainment of Value) (Scotland) (No 3) Order 2001 (SSI 2001/130)**

**The Convener:** Some points have been raised on the order.

**Ian Jenkins:** The order contains a provision that any dispute in valuation should be made "in writing" to the Scottish ministers. Other orders have allowed people to use electronic means. Perhaps it is worth asking the Executive why this order does not seem to give such permission.

**The Convener:** As the Government should be leading the drive towards e-commerce, we should seek some clarification on that point, even though it might be a minor matter.

We should also ask the Executive why the explanatory note does not give more indication of how the instrument changes the valuation procedure. However, that can be done by informal letter.

**Transport (Scotland) Act 2001 (Commencement No 1, Transitional Provisions and Savings) Order 2001 (SSI 2001/132)**

**The Convener:** The explanatory note is again not very helpful. However, that is not a matter of substance and we can raise it by informal letter.

**Act of Sederunt (Rules of the Court of Session Amendment No 3) (Fees of Shorthand Writers) 2001 (SSI 2001/135)**

**The Convener:** No points arise on the act of sederunt.

**Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) Amendment (Adults with Incapacity) 2001 (SSI 2001/142)**

**The Convener:** No points arise on the act of sederunt.

**Gordon Jackson:** I quite enjoyed reading the act. The Parliament handled the Adults with Incapacity (Scotland) Act 2000 well, and it is quite encouraging to see the flesh finally going on to the bones and the legislation working in practice.

**Act of Sederunt (Child Support Rules) Amendment 2001 (SSI 2001/143)**

**The Convener:** The act contains a small typo that we will deal with in the normal way.

**Act of Sederunt (Ordinary Cause Rules) Amendment (European Matrimonial and Parental Responsibility Jurisdiction and Judgments) 2001 (SSI 2001/144)**

**Western Isles Salmon Fishery District Designation Order 2001 (SSI 2001/151)**

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

*Meeting closed at 11:27.*





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