

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 23 October 2001
(*Morning*)

Session 1

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CONTENTS

Tuesday 23 October 2001

Col.

DELEGATED POWERS SCRUTINY	615
Community Care and Health (Scotland) Bill	615
School Education (Amendment) (Scotland) Bill	616
EXECUTIVE RESPONSES	618
Building Standards (Scotland) Amendment Regulations 2001 (SSI 2001/320)	618
Housing (Scotland) Act 2001 (Registered Social Landlords) Order 2001 (SSI 2001/326)	618
INSTRUMENTS SUBJECT TO APPROVAL	619
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 8) (Scotland) Order 2001 (SSI 2001/374)	619
INSTRUMENTS SUBJECT TO ANNULMENT	619
Education and Training (Scotland) Amendment Regulations 2001 (SSI 2001/329)	619
Potatoes Originating in Germany (Notification) (Scotland) Order 2001 (SSI 2001/333)	619
Feeding Stuffs and the Feeding Stuffs (Enforcement) Amendment (Scotland) Regulations 2001 (SSI 2001/334)	620
Fossil Fuel Levy (Scotland) Amendment Regulations 2001 (SSI 2001/335)	620
Wildlife and Countryside Act 1981 (Amendment) (Scotland) Regulations 2001 (SSI 2001/337)	621
Foot-and-Mouth Disease (Marking of Meat, Meat Products, Minced Meat and Meat Preparations) (Scotland) Regulations 2001 (SSI 2001/358)	621
Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No 2) Amendment (No 3) Regulations 2001 (SSI 2001/367)	621
National Health Service (General Dental Services) (Scotland) Amendment (No 2) Regulations 2001 (SSI 2001/368)	621
INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT	622
Housing (Scotland) Act 2001 (Commencement No 1, Transitional Provisions and Savings) Order 2001 (SSI 2001/336)	622
Argyll and Clyde Acute Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/338)	622
Ayrshire and Arran Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/339)	622
Ayrshire and Arran Acute Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/340)	622
Borders General Hospital National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/341)	622
Fife Acute Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/342)	622
Dumfries and Galloway Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/343)	622
Borders Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/344)	622
Dumfries and Galloway Acute and Maternity Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/345)	622
Grampian Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/346)	622
Forth Valley Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/347)	622
Forth Valley Acute Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/348)	623
Fife Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/349)	623
Grampian University Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/350)	623
Greater Glasgow Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/351)	623

Highland Acute Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/352)	623
Highland Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/353)	623
Lomond and Argyll Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/354)	623
Lothian Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/355)	623
Lanarkshire Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/356)	623
Lanarkshire Acute Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/357)	623
Lothian University Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/359)	623
North Glasgow University Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/360)	623
Renfrewshire and Inverclyde Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/361)	623
South Glasgow University Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/362)	624
Tayside Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/363)	624
Tayside University Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/364)	624
West Lothian Healthcare National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/365)	624
Yorkhill National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/366)	624

SUBORDINATE LEGISLATION COMMITTEE

28th Meeting 2001, Session 1

CONVENER

*Ms Margo MacDonald (Lothians) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)

*Colin Campbell (West of Scotland) (SNP)

*Murdo Fraser (Mid Scotland and Fife) (Con)

*Gordon Jackson (Glasgow Govan) (Lab)

*Bristow Muldoon (Livingston) (Lab)

*attended

CLERK

Alasdair Rankin

ASSISTANT CLERKS

Ruth Cooper

Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 23 October 2001

(Morning)

[THE CONVENER *opened the meeting at 11:40*]

The Convener (Ms Margo MacDonald): I welcome everyone to the 28th meeting in 2001 of the Subordinate Legislation Committee. We have a fairly full agenda and we have to dispose of a number of things.

Delegated Powers Scrutiny

Community Care and Health (Scotland) Bill

The Convener: Item 1 is the delegated powers scrutiny of the Community Care and Health (Scotland) Bill. A number of things have arisen regarding the bill. The committee can say, if members agree, that while we appreciate the need for flexibility in legislation such as this and can understand why the Executive has presented the bill in this way, it is almost skeletal in some respects. Therefore, we can ask the Executive whether or not there is sufficient room for democratic scrutiny of, and debate on, the principles of the bill. For example, is social care actually defined in the bill in a way that everyone can understand and that no one would challenge?

Committee members might disagree, but I suggest that we write to the Executive and ask for officials to attend the committee so that we can question them on their intentions and whether or not they are satisfied that the way in which the bill is presented meets the questions that we might want to put to them. Do members agree to that, or would anyone like to add anything?

Bristow Muldoon (Livingston) (Lab): I have absolutely no disagreement with inviting officials along to give an explanation of certain aspects of the bill. I recognise the need in a bill such as this for a degree of flexibility, because there might be, in future years, the need to amend definitions. Having those powers in the bill allows such amendment of definitions without recourse to primary legislation. I have no great concerns about the bill and I am sure that any regulations that emerge with regard to the bill's definitions will be subject to intense democratic scrutiny. However, I am comfortable with officials being invited along to explore some of those issues.

Murdo Fraser (Mid Scotland and Fife) (Con): I can see a lot of sense in what has been said, but this is a very important piece of legislation and I think that Parliament will want to have the opportunity to debate the measures in detail. Given that so much is left to delegated powers, there might be a democratic gap that we need to consider. It would be helpful to have the officials along to discuss that.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): I agree that if we get the officials along we can get their thinking on the record. We might then be able to accept something that we might have been in doubt about if we had not asked them. It is a good tactic to ask them to come and talk about the bill. We can decide after that whether we want to make further recommendations.

The Convener: Is there anything else that anyone wants to raise on the bill as presented today, or should we wait until we have the officials in front of us?

Colin Campbell (West of Scotland) (SNP): We should wait until the officials are here.

The Convener: I will ask the clerk to expedite that.

Ian Jenkins: The clerk can give them a flavour of the kind of discussion that we had.

The Convener: Yes, although they can read the committee's report.

Ian Jenkins: Indeed, but there might be more background information than the kind of discussion that we had during the legal briefing.

The Convener: No one is antagonistic, but we are setting standards and precedents in the Parliament, not just for the content, but for the style of legislation. Therefore, it is reasonable that at this juncture in the life of such an important piece of legislation we understand what we are doing in case we are laying down precedents that we might not have anticipated.

School Education (Amendment) (Scotland) Bill

11:45

The Convener: Agenda item 2 is delegated powers scrutiny of the School Education (Amendment) (Scotland) Bill. One or two points arose on the bill, but otherwise everyone will be pleased to hear that it is perfectly straightforward. There is the question—the committee can decide whether it is a minor one—of why two commencement orders are necessary. There are two distinct parts to the bill. One refers to the age at which parents can apply for a primary school

place for their children. The other refers to the proposed new structure for the teaching profession that would see an end to assistant head teachers—painlessly, I have no doubt.

There are two different strands to the bill and we wonder why they will not just commence on royal assent.

Ian Jenkins: I think we should ask what the explanation for that is. It is no particularly big deal, but we should ask the Executive why the provisions will not commence on royal assent.

The Convener: The clerk will arrange that.

Executive Responses

Building Standards (Scotland) Amendment Regulations 2001 (SSI 2001/320)

The Convener: Agenda Item 3 is Executive responses. A couple of questions arise and the committee might feel that the regulations require further explanation. In fact, the clerk informs me that we asked the Executive for an explanation, which it has now supplied.

Where are we? I have lost myself. Excuse me while I look at my marked-up copy of the papers.

Ian Jenkins: We got an explanation from the Executive. I think that we should just draw to the attention of the lead committee that we needed that explanation.

The Convener: I remember what this is about now. Please forgive me. You are absolutely right, Ian. Do members agree that the Executive's explanation should be drawn to the attention of the lead committee?

Members *indicated agreement.*

The Convener: Oh, good. I am glad that you said that.

Housing (Scotland) Act 2001 (Registered Social Landlords) Order 2001 (SSI 2001/326)

The Convener: We should perhaps draw the attention of the lead committee and the Parliament to the Executive's confirmation regarding the commencement of the relevant sections of the parent act, which is the question that we raised. Is there anything else on that?

Ian Jenkins: We could say if we wanted—but I do not think that we should bother—that the Executive was naughty not to give us the information at an earlier date.

The Convener: Does anyone want to do that, or feel that we do not need to do that?

Ian Jenkins: Another matter is the idea of powers anticipating the actual passing of the regulations. We might want to discuss that later when we have a general discussion about ways of introducing legislation. Those are general matters, however, and I do not think that we need to make a big fuss about them. They will be part of the background noise in our discussions with the Executive.

The Convener: Although the same sort of issue crops up in one or two instruments on today's agenda, my personal inclination is not to make a particular point of it.

Ian Jenkins: I agree.

Instruments Subject to Approval

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 8) (Scotland) Order 2001 (SSI 2001/374)

The Convener: I am sorry to say that no points at all arise on the order. Gordon Jackson thought that it was going to be a big deal.

Instruments Subject to Annulment

Education and Training (Scotland) Amendment Regulations 2001 (SSI 2001/329)

The Convener: No Executive note was supplied with the regulations, and the question is whether one should have been.

Murdo Fraser: That is such a minor provision. As there is a note at the end of the instrument, I suggest that any further note is unnecessary.

The Convener: We will simply note that no Executive note was included with the regulations.

Potatoes Originating in Germany (Notification) (Scotland) Order 2001 (SSI 2001/333)

The Convener: This order is of an altogether different ilk. This is another instrument that draws on powers in section 2(2) of the European Communities Act 1972. When I read the order, I was not entirely sure that the Executive could actually make it.

We should ask the Executive to confirm whether, with reference to article 2(3) of the order, the provisions of the principal order referred to in the current order—not the references themselves—are to be construed in accordance with the principal order. The matter is pretty technical, but then everything to do with section 2(2) of the 1972 act is technical.

I do not know whether this point is germane to the discussion, but there is also a misleading footnote on page 1 of the order. I did not understand why it was required to be included in the order. Furthermore, although we might not consider the fact that the order breaches the 21-day rule as important in this case, we must ask whether the Executive has offended the rules of the European Commission. The matter might be relatively serious.

Ian Jenkins: The breach of the 21-day rule is

clearly a precautionary measure and as such it is only reasonable. A more serious problem is whether the order has been cleared by the Commission. We should therefore ask the Executive whether that has been done.

A wee drafting matter is the footnote on page 1, which refers to all sorts of different regulations and bits and pieces.

The Convener: I will put that point under the heading "Cruelty to committee members".

Ian Jenkins: I do not know whether other members have looked up all the references, but we have been assured that the matter is very complicated and therefore not terribly helpful. That should be avoided.

The Convener: The legal adviser has also sent me a plea on this matter. She has almost recovered from the experience.

The committee will also be glad to know that notice of the order must be published in the *Edinburgh Gazette* as well as being laid before Parliament. However, the nub of the matter is whether the Executive has cleared the order with the Commission, which we will ask it in a letter.

Feeding Stuffs and the Feeding Stuffs (Enforcement) Amendment (Scotland) Regulations 2001 (SSI 2001/334)

The Convener: There might be a question of vires on the regulations. For our own understanding, we should ask the Executive which regulations under section 2(2) of the European Communities Act 1972 provides the vires for these regulations.

Ian Jenkins: I think that the issue might be the other way round, convener. The question is for which regulations section 2(2) of the 1972 act provides the vires. The point is a bit technical.

The Convener: We will send a wee friendly letter to the Executive asking it to clarify the matter.

The other issue is how paragraph 22(g) of schedule 4 of the regulations relates to the principal regulations. However, that is just another case of asking the Executive to clarify things.

Fossil Fuel Levy (Scotland) Amendment Regulations 2001 (SSI 2001/335)

The Convener: Like two or three of the instruments this morning, the regulations contain a small typo. However, in such cases, the committee either mentions the matter informally or sometimes sends an informal letter.

Once again, there has been a breach of the 21-day rule. However, as no member is jumping up

and down in anger, I can assume only that we find the explanation for the breach reasonable.

**Wildlife and Countryside Act 1981
(Amendment) (Scotland) Regulations 2001
(SSI 2001/337)**

The Convener: Do members have any comments on the regulations?

Colin Campbell: I believe that the regulations have been described as a model of their kind.

The Convener: They are a pleasure to read. We will be kind to furry animals and the people who draft the regulations.

**Foot-and-Mouth Disease (Marking of Meat, Meat Products, Minced Meat and Meat Preparations) (Scotland) Regulations 2001
(SSI 2001/358)**

Ian Jenkins: It is a load of mince. [*Laughter.*]

The Convener: Yes, but the regulations are fine. No points need concern us.

**Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No 2) Amendment (No 3) Regulations 2001
(SSI 2001/367)**

The Convener: No points arise on the regulations.

National Health Service (General Dental Services) (Scotland) Amendment (No 2) Regulations 2001 (SSI 2001/368)

The Convener: We might require some explanation from the Executive about several points that arise on the regulations.

Ian Jenkins: There appears to be a wrong footnote on page 1 of the regulations and the references to paragraphs (2) and (3) in new regulation 5A(3) do not seem to be right.

Colin Campbell: We will ask the Executive to explain those points.

Instruments Not Laid Before the Parliament

**Housing (Scotland) Act 2001
(Commencement No 1, Transitional Provisions and Savings) Order 2001
(SSI 2001/336)**

The Convener: No points arise on the order.

Argyll and Clyde Acute Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/338)

Ayrshire and Arran Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/339)

**Ayrshire and Arran Acute Hospitals National Health Service Trust (Establishment) Amendment Order 2001
(SSI 2001/340)**

Borders General Hospital National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/341)

Fife Acute Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/342)

**Dumfries and Galloway Primary Care National Health Service Trust (Establishment) Amendment Order 2001
(SSI 2001/343)**

Borders Primary Care National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/344)

Dumfries and Galloway Acute and Maternity Hospitals National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/345)

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Yorkhill National Health Service Trust (Establishment) Amendment Order 2001 (SSI 2001/366)

Ian Jenkins: You have to read out the titles of all those orders, convener. [*Laughter.*]

The Convener: No. The question is whether this is the best way to present the orders, as they all seem to be exactly the same. Do members have any comments?

Murdo Fraser: As the provision is straightforward, there is no reason why the Executive could not have amalgamated the orders. There might also have been a cost saving in doing so.

The Convener: Can we not add that question to the foot of our letter? If the officials are going to be here next week, can we not ask them about this matter? [*Interruption.*] I have been advised that the officials who will be here next week will be different people altogether.

Colin Campbell: This is probably the traditional method of presenting such orders. Perhaps it is time that someone suggested a more effective, efficient and less time-consuming way.

The Convener: First, we will write to the Executive and ask it why the orders have been presented in this way. If we are satisfied with the explanation, that is fair enough.

Ian Jenkins: No points arise on the orders themselves.

The Convener: As far as we can work out, they seem fine. We will simply include another point about definition in the letter that the clerk sends to the Executive.

Meeting closed at 12:01.

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