

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 27 November 2001
(Morning)

Session 1

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2001.

Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now
trading as The Stationery Office Ltd, which is responsible for printing and publishing
Scottish Parliamentary Corporate Body publications.

CONTENTS

Tuesday 27 November 2001

Col.

DELEGATED POWERS SCRUTINY	667
Freedom of Information (Scotland) Bill	667
CODES OF CONDUCT	672
Standards in Public Life Code of Conduct: Councillors' Code (SE/2001/50)	672
Standards in Public Life Code of Conduct: Members' Model Code (SE/2001/51)	672
INSTRUMENTS SUBJECT TO APPROVAL	672
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 13) (Scotland) Order 2001 (SSI 2001/425)	672
INSTRUMENTS SUBJECT TO ANNULMENT	673
Scottish Social Services Council (Consultation on Codes of Practice) Order 2001 (SSI 2001/424)	673
Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No 3) Regulations 2001 (SS1 2001/429)	673
National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2001 (SS1 2001/430)	674

SUBORDINATE LEGISLATION COMMITTEE

33rd 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

SENIOR ASSISTANT CLERK

Steve Farrell

ASSISTANT CLERKS

Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 27 November 2001

(Morning)

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

Delegated Powers Scrutiny

The Convener (Ms Margo MacDonald): I welcome you to the 33rd meeting in 2001 of the Subordinate Legislation Committee—that we should have lived so long.

Freedom of Information (Scotland) Bill

The Convener: The first item on the agenda is scrutiny of the delegated powers in the Freedom of Information (Scotland) Bill at stage 1.

Part 1 of the bill is entitled “Access to information held by Scottish public authorities” and section 4 is entitled “Amendment of schedule 1”. Is there anything in section 4(1) that anyone wants to comment on? We might want to consider further the implications of the use of delegated powers in this instance. There might be a bit of a contradiction in how section 4(1) works with section 7(2).

Colin Campbell (West of Scotland) (SNP): Do we think that section 4(1) should be subject to the affirmative procedure?

The Convener: One of those sections must change to give consistency, but the committee might not agree.

Bristow Muldoon (Livingston) (Lab): Obviously, there should be consistency in the bill, but it seems perfectly appropriate for section 4(1) to be subject to the negative procedure. I imagine that the provision will simply be used in cases where public bodies cease or start to exist, or change their names. In such cases, the negative procedure is perfectly appropriate.

The Convener: I think so. I certainly do not take issue with that view at all, but when we get to section 7(2) we will decide whether we should reconsider whether the negative procedure is appropriate for section 4(1) in the light of what is possible in section 7(2).

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): There seems to be no problem with section 5(1).

The Convener: I agree. There is a requirement for consultation in section 5(1) and we should welcome that. Wherever we see the requirement for consultation popping up in the bill we should welcome it and let the Executive know that.

Section 7 is entitled “Public authorities to which Act has limited application”. Section 7(2) should be read in conjunction with section 4(1). Do you want to say anything on that, Bristow?

Bristow Muldoon: The issue here is that there is a difference between the two sections. Section 4(1) merely defines which public authorities fall within schedule 1. Section 7 defines the limits of the bill’s application to public-private partnerships.

It is appropriate that the section 7(2) power be subject to the affirmative procedure because it is more controversial than the question of which public authorities are listed in schedule 1. That makes for a degree of consistency. The details of each proposed exemption will have to go before Parliament before a decision is made on whether the public authority concerned, or part of it, is exempt from parts of the bill.

The Convener: We have to be careful in our comments to the Executive on the matter. Under section 7, the Executive has the ability to withhold information on the bodies that are covered by section 4.

Bristow Muldoon: Yes, section 7 gives the Executive a power that could exclude certain contracts from the provisions of the bill, but that power would have to be affirmed by Parliament before it could be applied. If a majority of members felt that the Executive was using the power inappropriately, the Executive could be overruled.

The Convener: In that case, do we just need to say that for the powers in section 4 to be subject to the affirmative procedure would be neater, more consistent, better understood and more watertight?

Bristow Muldoon: I do not think so. The way I read section 4 is that, if the bill were in force now and, for example, the three water authorities become Scottish Water in six months’ time, the power would be used to delete the three existing water authorities from the schedule and add Scottish Water. That is not a controversial power, and the negative procedure is appropriate. The question of whether we allow individual PPPs to be exempt from parts of the bill is potentially more controversial and the affirmative procedure therefore seems more appropriate.

Murdo Fraser (Mid Scotland and Fife) (Con): I am inclined to agree with Bristow Muldoon. Public authorities come and go. They are often wound up; they merge and are reconstituted. To use the affirmative procedure would clog up parliamentary

time whenever schedule 1 was to be changed. That is unnecessary.

Ian Jenkins: The legal adviser indicated that there is a difficulty with the two procedures working together. Section 7 seems to make affirmative and negative procedures coincide in a way that might not be stylistically good.

I am inclined to agree with what Bristow Muldoon and Murdo Fraser said. The objections that have been raised are to do with drafting and constitutional niceties, but in practice I do not think that section 7 will be a problem if it works as is intended.

A suggestion was made that we might have officials to talk about the matter next week.

The Convener: I was going to mention that suggestion. We can ask questions about the matter if we decide that we want officials to come to the committee.

We will rattle through the bill. If we come across one or two other problems, we will decide to ask officials.

Under section 9(4), the Scottish ministers have powers to make regulations setting out the fee structure in accordance with which charges may be made for the provision of information under the bill.

Murdo Fraser: The section contains no requirement on ministers to consult before making regulations. Perhaps that should be included.

The Convener: We do not need to argue with anyone about that—we just suggest that we think that the requirement should be included. That would be in line with other parts of the bill, in which there are requirements to consult.

No points arise on section 10(4), which enables the Scottish ministers to vary by regulations the period within which a Scottish public authority must comply with a request for information. Those regulations would also be subject to the affirmative procedure.

Section 12 enables Scottish ministers to make regulations that specify an upper cost threshold for complying with applications for information.

Colin Campbell: Perhaps section 12 should contain a requirement for prior consultation on any regulations that are made.

11:30

The Convener: Yes. The regulations would be subject to the negative procedure. It is recommended that we suggest the belt-and-braces affirmative procedure instead. I like the idea that, wherever money is involved, the affirmative procedure should be used. That is a

rule of thumb.

Section 13 concerns fees for disclosure in certain circumstances. There might be something odd about the section, in that it allows local authorities to decide in favour of releasing information in cases in which they do not have to. However, they will not be able to set their own fees. That is a bit odd, but there is nothing wrong with it.

Section 20(7) provides that the Scottish ministers may make regulations to vary the time scale within which an applicant can request a Scottish public authority to review its original response to a request for information. No points arise on that section.

Section 21(6) makes a similar provision to that in section 20. It provides that the Scottish ministers may make regulations varying the time scale within which a Scottish public authority must undertake a review of its response to a request for information. No points arise on that section.

Section 23 obliges public authorities to adopt schemes for the publication of information by the authority. Section 24 authorises the Scottish information commissioner to prepare model publication schemes that authorities may, but are not obliged, to adopt. The sections give the information commissioner powers, but he has to let Parliament know the reasons for what he does. Are we content with the powers as drafted?

Members indicated agreement.

The Convener: Part 4 of the bill is about enforcement. Section 47(6) provides that the Scottish ministers may make regulations to vary the time limits within which the Scottish information commissioner must reach a decision on an appeal. No points arise on the section.

Part 5 of the bill concerns historical records. Under section 59(1), the Scottish ministers may vary by order the period in section 57(1) after which a record becomes a historical record. They may also vary the periods in section 58(2) that determine when certain exemptions fall away and no longer need to be considered. Such an order would be subject to the affirmative procedure. That takes care of the fact that there will always be differences of opinion as to when history is dead and buried and when it should definitely be dug up.

Part 7 concerns miscellaneous and supplemental powers. Section 62(3) will enable the Scottish ministers to make regulations to implement the Aarhus convention. There are no comments to make on the section.

Section 63(1) enables the Scottish ministers, by order subject to the affirmative procedure, to repeal or amend a relevant enactment if it appears

that the enactment is capable of preventing a Scottish public authority from disclosing information.

Now we come to the nub of the matter. The committee may feel that the best procedure to follow would be to invite someone from the Executive to come to the committee next week so that we can ask them how the power is intended to be used.

Murdo Fraser: The point is substantial. The section gives the Scottish ministers powers to repeal primary legislation by subordinate legislation. That may be inappropriate.

The Convener: We cannot understand that provision. It is a bad idea. We do not understand why it is in the bill. We will invite someone from the Executive to come next week.

Ian Jenkins: I think that the logic of the provision is to ensure that other legislation that looks as if it might obstruct freedom of information is not allowed to do so. It is a way of making information available that might be withheld under other legislation. However, it is a big power to allow to be passed without some scrutiny. By questioning officials, we might get something on the record about how the Executive envisages that the power will work. If that information is not ultimately in the bill, it will be in the *Official Report*.

The Convener: We will invite Executive officials to come and explain section 63 and the possible contradiction between sections 4 and 7. Are we agreed?

Members indicated agreement.

The Convener: Section 72 relates to commencement. No points arise on the section.

Part 6 concerns codes of practice. We should welcome the fact that codes of practice are to be issued.

Members indicated agreement.

Codes of Conduct

Standards in Public Life Code of Conduct: Councillors' Code (SE/2001/50)

The Convener: No points arise on the code.

Standards in Public Life Code of Conduct: Members' Model Code (SE/2001/51)

The Convener: The code is for quango people. As Bristow Muldoon pointed out, the firm intention might have been that the code of conduct for members of public bodies should be exactly the same as the code of conduct for members of local authorities.

Bristow Muldoon: I was a member of the Local Government Committee at the time that the Ethical Standards in Public Life etc (Scotland) Act 2000 was drawn up. There was a strong desire that consistent standards should apply to people working in local authorities and people operating in other public bodies, such as quangos.

Under section 2(6) of the act, there is a power for ministers to make a distinction between which parts of the code are mandatory and which parts are optional for people working in other public bodies. The Executive has not defined which parts of the draft code of conduct are mandatory and which parts are discretionary. We should ask the Executive to clarify that point. The intention may be that the whole code is mandatory, but we need clarification on whether that is the case.

The Convener: I agree. The clerk will write to the Executive to seek clarification of that.

There are typographical errors in the code, which we can mention in passing.

Instruments Subject to Approval

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 13) (Scotland) Order 2001 (SSI 2001/425)

The Convener: We have forgetful shellfish again. No points arise on the order.

Instruments Subject to Annulment

Scottish Social Services Council (Consultation on Codes of Practice) Order 2001 (SSI 2001/424)

The Convener: There appear to be some superfluous definitions, particularly that of the "SQA qualification" in article 1(2) of the order. Those can be drawn to the Executive's attention in a letter. There are no other substantive points that we want to draw to the Executive's attention.

Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No 3) Regulations 2001 (SSI 2001/429)

The Convener: The points on the regulations are a bit more substantial. There are questions of English and definition. The terms "export" and "dispatch" are used in regulations 16 and 20(1), but it might be sensible to use only the word "dispatch".

Ian Jenkins: We would like clarification of whether the Executive thinks that there is a difference between the terms and of what that difference is. If there is no difference, the Executive could use one word or the other.

The Convener: I was just going to use a red pencil and strike out the word "export". However, if you wish to ask the Executive, we will do so.

Colin Campbell: Ian Jenkins was an English teacher.

There is a bit of duplication between regulation 3(3) and regulation 25. It might be an idea to have an explanation of that.

The Convener: We can ask for that.

Do we wish to ask again why a provision relating to the recovery of costs has been included? I think that we decided before that we did not need it.

Murdo Fraser: That is right. The words, "as a debt" appear in regulation 21(2). They are superfluous and might give rise to the suggestion that if they do not appear, costs cannot be recovered in the future. Those words should be removed and we should ask the Executive not to use such words in future.

The Convener: We will write to the Executive about those points.

National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2001 (SSI 2001/430)

The Convener: There are points on which we require explanation.

The real biggy is the assumption in regulation 3(3) that all chemists are men. Some of the chaps in the committee might not have noticed that point.

Colin Campbell: Most of the chemists whom I have come across happen to have been women.

Bristow Muldoon: Are we talking about chemists or pharmacists?

Ian Jenkins: Margaret Thatcher was a chemist, but is she a woman?

Bill Butler (Glasgow Anniesland) (Lab): That is too philosophical for this time of the morning.

The Convener: Mrs Thatcher was a research chemist. Everyone on the floor of the House of Commons knew it and called her, "sir".

Perhaps we could ask for regulation 3(3) to be redrafted in gender-neutral terms.

We had already drawn the Executive's attention to regulation 8, which refers both to the "sum prescribed" and the "prescribed sum". The Executive thinks that it has changed the wording, but it has not.

Colin Campbell: Why does the Executive not just stick to using the same phrase?

The Convener: Regulation 8 refers to pre-payment certificates. People have to be able to understand the regulation, which confuses the matter of when the pre-payment certificates are operational. We have to ask the Executive to clarify that.

We could also ask why the Executive did not split regulation 8 into two or three bite-sized bits.

Colin Campbell: That would allow easy comprehension for committees and citizens.

The Convener: Particular care has to be taken over any regulations that are at the pointy end of legislation. They have to be easily understood and these regulations are not.

There is perhaps a mistake in schedule 4. The reference to SI 1993/552 ought to read as a reference to SI 1993/522.

Murdo Fraser: There should be special brownie points for whoever spotted that.

The Convener: You know me. I have an eye for detail and a head for figures.

Colin Campbell: That is why we are all on the committee.

Alasdair Rankin (Clerk): There are one or two points on the Protection of Wild Mammals (Scotland) Bill.

The Convener: Look at the faces lighting up.

Alasdair Rankin: I can deal with most of the points by talking to committee members later. As it is a members' bill, the committee might have a slight problem because three subordinate legislation amendments are being lodged at stage 2. One of those is an Executive commencement order. If those get agreed to, we might have to have members in as witnesses to explain why those provisions are in the bill.

Ian Jenkins: Is that because the bill is not an Executive bill? We will not have the background notes before us.

Alasdair Rankin: The committee will not have the benefit of the usual policy memorandum. The Executive would usually provide such a memorandum. The non-Executive bills unit has not been involved in the bill.

The committee has the option to invite members whose amendments are successful to explain the purpose of their amendments.

The Convener: That is the only way that we will understand the purpose of the amendments, although both the potential witnesses are lawyers, so we still might not understand. I warn members that we have that delight in store. Unless other business—

Bristow Muldoon: So it is Fergus Ewing and who else?

The Convener: It might not come to pass: we are not absolutely certain exactly what will happen to the bill, because some of the leading figures in the proposed legislation might be otherwise engaged from this afternoon onwards. We are not sure what will happen, but it will be an interesting experience. Just think: all those wee foxes might live.

Colin Campbell: A bit longer.

The Convener: Or are they more likely to die? No—they never get caught.

That brings today's meeting to an end.

Meeting closed at 11:45.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Tuesday 4 December 2001

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75

Special issue price: £5

Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF1 2BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation
Helpline may be able to assist with additional information
on publications of or about the Scottish Parliament,
their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers