

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 12 March 2002  
*(Morning)*

Session 1

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2002.

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 12 March 2002

Col.

<b>EXECUTIVE RESPONSES</b> .....	821
Bus User Complaints Tribunal Regulations 2002 (draft) .....	821
Loch Lomond and the Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002 (draft) .....	822
Loch Lomond and the Trossachs National Park Elections (Scotland) Order 2002 (draft) .....	822
<b>INSTRUMENTS SUBJECT TO APPROVAL</b> .....	823
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 3) (Scotland) Order 2002 (SSI 2002/80) .....	823
<b>INSTRUMENTS SUBJECT TO ANNULMENT</b> .....	823
Preserved Rights (Transfer to Responsible Authorities) (Scotland) Regulations 2002 (SSI 2002/76) .....	823
Public Finance and Accountability (Scotland) Act 2000 (Economy, efficiency and effectiveness examinations) (Specified bodies etc) Order 2002 (SSI 2002/77) .....	823
Public Finance and Accountability (Scotland) Act 2000 (Access to Documents and Information) (Relevant Persons) Order 2002 (SSI 2002/78) .....	823
Sea Fishing (Enforcement of Community Conservation Measures) (Scotland) Amendment Order 2002 (SSI 2002/81) .....	823
Financial Assistance for Environmental Purposes (Scotland) Order 2002 (SSI 2002/83) .....	824
National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2002 (SSI 2002/85) .....	824
National Health Service (Optical Charges and Payments) and (General Ophthalmic Services) (Scotland) Amendment Regulations 2002 (SSI 2002/86) .....	824
Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Amendment (Scotland) Regulations 2002 (SSI 2002/87) .....	824
Civil Legal Aid (Scotland) Amendment Regulations 2002 (SSI 2002/88) .....	824
Non-Domestic Rate (Scotland) Order 2002 (SSI 2002/89) .....	824
Provision of School Education for Children under School Age (Prescribed Children) (Scotland) Order 2002 (SSI 2002/90) .....	824
Non-Domestic Rates (Lewying) (Scotland) Regulations 2002 (SSI 2002/91) .....	825
Electricity from Non-Fossil Fuel Sources (Locational Flexibility) (Scotland) Order 2002 (SSI 2002/92) .....	825
Electricity from Non-Fossil Fuel Sources (Scotland) Saving Arrangements (Modification) Order 2002 (SSI 2002/93) .....	826
Fossil Fuel Levy (Scotland) Amendment Regulations 2002 (SSI 2002/94) .....	826
Adults with Incapacity (Supervision of Welfare Guardians etc by Local Authorities) (Scotland) Regulations 2002 (SSI 2002/95) .....	826
Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Regulations 2002 (SSI 2002/96) .....	826
Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Regulations 2002 (SSI 2002/97) .....	827
Adults with Incapacity (Non-compliance with Decisions of Welfare Guardians) (Scotland) Regulations 2002 (SSI 2002/98) .....	827
<b>INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY CONTROL</b> .....	828
Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (Orkney) (No 3) (Scotland) Revocation Order 2002 (SSI 2002/82) .....	828
<b>INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT</b> .....	828
School Education (Amendment) (Scotland) Act 2002 (Commencement) Order 2002 (SSI 2002/74) .....	828
Health and Social Care Act 2001 (Commencement No 9) (Scotland) Order 2002 (SSI 2002/75) .....	828
Police and Fire Services (Finance) (Scotland) Act 2001 (Commencement) Order 2002 (SSI 2002/84) ....	828

---

# **SUBORDINATE LEGISLATION COMMITTEE**

## **9<sup>th</sup> Meeting 2002, Session 1**

### **CONVENER**

Ms Margo MacDonald (Lothians) (SNP)

### **DEPUTY CONVENER**

\*Ian Jenkins (Tweeddale, 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 TO THE COMMITTEE**

Alasdair Rankin

### **SENIOR ASSISTANT CLERK**

Steve Farrell

### **ASSISTANT CLERKS**

Joanne Clinton

Alistair Fleming

### **LOCATION**

Committee Room 3

## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 12 March 2002*

*(Morning)*

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

### Executive Responses

**The Deputy Convener (Ian Jenkins):** I welcome everyone to the 9<sup>th</sup> meeting in 2002 of the Subordinate Legislation Committee.

We have apologies from the convener, Margo MacDonald, who has business elsewhere today.

#### Bus User Complaints Tribunal Regulations 2002 (draft)

**The Deputy Convener:** We asked the Executive nine questions and we have had responses. Members will remember that we were worried about regulation 9 and the appeals procedure whereby the convener, who might have been part of the initial tribunal, would be the ultimate referee. We felt that that was a bit incestuous and problematic. We worried whether regulation 9 was compatible with article 6 of the European convention on human rights. The Executive's response suggests that it believes that the arrangement is compatible, but we still have some doubts.

**Murdo Fraser (Mid Scotland and Fife) (Con):** We need to draw the regulations to the attention of the lead committee and the Parliament. That is because we are still concerned about the unusual or unexpected use of the power in regulation 9, which is the point that we made to the Executive. A number of the other regulations contain defective drafting. We should ask the clerks to write to the Parliament and the lead committee to draw those matters to their attention.

**The Deputy Convener:** As Murdo has suggested, we will refer the point about regulation 9 to the lead committee and the Parliament.

**Colin Campbell (West of Scotland) (SNP):** Several of the regulations are drafted defectively and the meaning of regulation 14 could be clearer.

**The Deputy Convener:** That is right. There are questions about the "total number of complaints", to which regulation 14 refers, and whether the provisions of regulation 14(b) reflect the

Executive's intention. We will refer those matters to the Parliament and the lead committee.

There is also defective drafting in regulation 3. There are words in the regulation that do not add anything to its meaning, and that is not good legislative practice. We can also draw that to the attention of the lead committee.

#### Loch Lomond and the Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002 (draft)

**The Deputy Convener:** We asked the Executive for clarification of one provision in the order. We asked why article 15(2)(d) defined a crofter in terms of the Crofters (Scotland) Act 1955 and the Crofters (Scotland) Act 1961. Both of those acts have been repealed and consolidated in sections 3 and 47(10) of the Crofters (Scotland) Act 1993. The definition in the order therefore refers to legislation that was repealed some time ago.

It might therefore be right for the committee to draw the attention of the lead committee and the Parliament to article 15(2)(d) of the order on the ground that, in referring for definitions to acts that have long since been repealed, the order appears to be drafted defectively.

**Colin Campbell:** That seems eminently sensible.

#### Loch Lomond and the Trossachs National Park Elections (Scotland) Order 2002 (draft)

**The Deputy Convener:** We raised one point with the Executive. We asked why the exclusion of criminals from standing for election applies only to those convicted in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic. The Executive indicates that the provision follows established practice in local government legislation. The issue has been questioned before by the Subordinate Legislation Committee's corresponding Westminster committee. However, it is established practice. The committee should draw the attention of the lead committee and the Parliament to the Executive's satisfactory explanation.

## **Instruments Subject to Approval**

### **Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 3) (Scotland) Order 2002 (SSI 2002/80)**

**The Deputy Convener:** No points arise on the order.

## **Instruments Subject to Annulment**

### **Preserved Rights (Transfer to Responsible Authorities) (Scotland) Regulations 2002 (SSI 2002/76)**

**Murdo Fraser:** There is a missing footnote. There should be a reference either in the preamble or in a footnote to how the enabling powers have been devolved to the Scottish ministers. That does not appear.

**The Deputy Convener:** How should we proceed? Should we ask the Executive to explain that omission?

**Murdo Fraser:** Yes. We should write to the Executive and ask for an explanation.

**The Deputy Convener:** That is fine.

I welcome Gordon Jackson and Bill Butler to the committee. I am sorry, but we started a wee bit sharp today.

### **Public Finance and Accountability (Scotland) Act 2000 (Economy, efficiency and effectiveness examinations) (Specified bodies etc) Order 2002 (SSI 2002/77)**

**Bill Butler (Glasgow Anniesland) (Lab):** The order seems fine.

**The Deputy Convener:** Yes. No points arise.

### **Public Finance and Accountability (Scotland) Act 2000 (Access to Documents and Information) (Relevant Persons) Order 2002 (SSI 2002/78)**

**The Deputy Convener:** Again, no points arise on the order.

### **Sea Fishing (Enforcement of Community Conservation Measures) (Scotland) Amendment Order 2002 (SSI 2002/81)**

**The Deputy Convener:** We have found a small typo in a footnote, but otherwise the order is in order.

### **Financial Assistance for Environmental Purposes (Scotland) Order 2002 (SSI 2002/83)**

**The Deputy Convener:** No points are identified for action on the order.

### **National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2002 (SSI 2002/85)**

**Bill Butler:** The regulations are fine.

**The Deputy Convener:** Thank you. When I read that title, I wonder what it is all about.

### **National Health Service (Optical Charges and Payments) and (General Ophthalmic Services) (Scotland) Amendment Regulations 2002 (SSI 2002/86)**

**Colin Campbell:** There are no points.

**The Deputy Convener:** Mr Campbell tells us that there are no points.

### **Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Amendment (Scotland) Regulations 2002 (SSI 2002/87)**

### **Civil Legal Aid (Scotland) Amendment Regulations 2002 (SSI 2002/88)**

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

### **Non-Domestic Rate (Scotland) Order 2002 (SSI 2002/89)**

**The Deputy Convener:** No points have been noted on the order, but we could suggest to the Executive, by informal letter, that future orders should indicate the previous rate in the explanatory note or a footnote.

**Colin Campbell:** The previous rate was 47p in the pound. The proposed rate is 47.8p in the pound.

**The Deputy Convener:** That is nicely on the record. Thank you, Colin.

### **Provision of School Education for Children under School Age (Prescribed Children) (Scotland) Order 2002 (SSI 2002/90)**

**The Deputy Convener:** Points arise on the order, which we might want to put to the Executive.

**Murdo Fraser:** The definition of "starting point" in article 1(2) is unclear. We need to ask the

Executive for clarification.

**The Deputy Convener:** The matter concerns when a youngster's pre-school education can start. There is a question of whether a point is a specific moment in time or whether it can be defined widely as a school term. The definition is not clear. We need to ask the Executive to clarify the order.

There is also a wee problem about the definition of "prescribed" in sections 1(1A) and 1(1B) of the Education (Scotland) Act 1980—the parent act—which is clarified by section 135(1) of that act. The order appears to have omitted a footnote reference to that effect.

**Bill Butler:** Article 2(2)(i) needs a wee bit of clarification. I presume that the date "31<sup>st</sup> December" in article 2(2)(i) is 31 December of the school year that is referred to in that subparagraph. The Executive could confirm whether that is that case.

**The Deputy Convener:** The order needs a wee bit of tightening up in that regard. Members seem to have no further points, so that is all. It is fair to say that the Executive note is clear, but that the order requires a bit of looking at.

### **Non-Domestic Rates (Levy) (Scotland) Regulations 2002 (SSI 2002/91)**

**The Deputy Convener:** We wonder why there is a strange reference to "the 2000 regulations" in regulation 2, as that phrase does not appear to feature anywhere else in the regulations. Perhaps we can ask the Executive to explain the purpose of the reference. Is that okay?

*Members indicated agreement.*

### **Electricity from Non-Fossil Fuel Sources (Locational Flexibility) (Scotland) Order 2002 (SSI 2002/92)**

**The Deputy Convener:** Mr Campbell might have a point to raise on the order.

**Colin Campbell:** We might ask the Executive to explain the purpose of the definition of "Scotland" in article 1(2). That definition might be intended to apply to the proposed amendment, by article 2(2) of the order, of section 33 of the Electricity Act 1989, so that the amendments' definition of "Scotland" is the same as that of the Scotland Act 1998. If that is the case, a textual amendment should be made to section 33 of the 1989 act.

**The Deputy Convener:** We understand the legal difficulty of defining "Scotland".

**Colin Campbell:** I do not have any difficulty in defining "Scotland"—or Scotland's waters—but lawyers might have.

**The Deputy Convener:** You can come next week with a wee essay about the matter. However, on this occasion, we want to ask the Executive about the order's definition of "Scotland". Is that all?

**Murdo Fraser:** Yes.

### **Electricity from Non-Fossil Fuel Sources (Scotland) Saving Arrangements (Modification) Order 2002 (SSI 2002/93)**

**Colin Campbell:** The order refers to a supply successor company in the masculine gender, which seems a bit quaint.

**The Deputy Convener:** Yes, as in "Scottish Power: he very good company."

We might draw to the Executive's attention, in an informal letter, the order's odd use of the masculine pronoun, but the matter is not hugely important.

### **Fossil Fuel Levy (Scotland) Amendment Regulations 2002 (SSI 2002/94)**

11:30

**The Deputy Convener:** No points arise, but full marks are given for an exceptionally clear explanatory note.

**Gordon Jackson (Glasgow Govan) (Lab):** We all enjoyed it.

### **Adults with Incapacity (Supervision of Welfare Guardians etc by Local Authorities) (Scotland) Regulations 2002 (SSI 2002/95)**

**The Deputy Convener:** The instrument is one of a cluster that concerns adults with incapacity. We have a wee question about the vires of regulation 4. It is not obvious that section 86(2) of the parent act—the Adults with Incapacity (Scotland) Act 2000—is sufficient for the purpose. Regulation 4 revokes regulations that were made under other powers. We might ask the Executive to explain the vires of the provision, which should have referred to the parent act.

### **Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Regulations 2002 (SSI 2002/96)**

**The Deputy Convener:** A couple of minor points arise that could be dealt with by an informal letter to the Executive. Do members have comments?

**Colin Campbell:** The word "Scotland" is missing from the reference to the Adults with Incapacity (Scotland) Act 2000 in the explanatory note. We

should draw that to the Executive's attention.

**The Deputy Convener:** That is becoming a theme.

**Colin Campbell:** Yes, it could be today's theme.

**The Deputy Convener:** Absolutely. The omission of the word "Scotland" from the regulations is one of the minor points.

**Gordon Jackson:** There is also the problem of the huge number of forms. There is only a page and a half of regulations, but an inch-thick number of forms. An index that told one where to find which form would be useful. It is not as if there are only three forms; I have not counted them, but there is a serious lot of paperwork involved. Indexing that might be helpful.

**The Deputy Convener:** Are you referring to an index for the Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Regulations 2002 (SSI 2002/97)?

**Gordon Jackson:** I am referring to both SSI 2002/96 and to SSI 2002/97.

#### **Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Regulations 2002 (SSI 2002/97)**

**The Deputy Convener:** Gordon Jackson's comment about the previous instrument also applies to this one. We can mention indexing in an informal letter to the Executive.

#### **Adults with Incapacity (Non-compliance with Decisions of Welfare Guardians) (Scotland) Regulations 2002 (SSI 2002/98)**

**The Deputy Convener:** The regulations were presented to us with a schedule missing.

**Colin Campbell:** Perhaps we could write informally to the Executive to remind it that copies of instruments must be correct in every detail—coming from a committee that contains three members who were involved in education, that might be suitable.

**Murdo Fraser:** To be fair to the Executive, it gave us a revised instrument with the schedule correctly attached.

**Colin Campbell:** Did it? That is all right.

**Murdo Fraser:** However, I think that the Executive gave us the schedule only after being told that it was missing.

**Colin Campbell:** After it had had its knuckles rapped.

**The Deputy Convener:** Yes. There might have been indications that that was necessary. The schedule duly arrived.

## **Instruments Not Subject to Parliamentary Control**

### **Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (Orkney) (No 3) (Scotland) Revocation Order 2002 (SSI 2002/82)**

**The Deputy Convener:** No points arise on the order.

## **Instruments Not Laid Before the Parliament**

### **School Education (Amendment) (Scotland) Act 2002 (Commencement) Order 2002 (SSI 2002/74)**

**Colin Campbell:** No points arise on the order, but there is a very good Executive note.

**The Deputy Convener:** As Colin Campbell says, no points arise, but the Executive note is helpful.

### **Health and Social Care Act 2001 (Commencement No 9) (Scotland) Order 2002 (SSI 2002/75)**

### **Police and Fire Services (Finance) (Scotland) Act 2001 (Commencement) Order 2002 (SSI 2002/84)**

**The Deputy Convener:** No points arise on either of the orders.

Unless members have any comments on the orders or any other business, that concludes the meeting.

*Meeting closed at 11:36.*



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 19 March 2002**

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