

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 7 May 2002
(Morning)

Session 1

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CONTENTS

Tuesday 7 May 2002

	Col.
EXECUTIVE RESPONSES	885
Valuation and Rating (Exempted Classes) (Scotland) Order 2002 (draft)	885
Home Zones (Scotland) Regulations 2002 (SSI 2002/177)	885
Registration of Fish Farming and Shellfish Farming Businesses Amendment (Scotland) Order 2002 (SSI 2002/193)	885
DRAFT INSTRUMENTS SUBJECT TO APPROVAL	886
Marriage (Approval of Places) (Scotland) Regulations 2002 (draft)	886
Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2002 (draft)	888
Scotland Act 1998 (Modifications of Schedule 5) Order 2002 (draft)	888
INSTRUMENTS SUBJECT TO ANNULMENT	889
Regulation of Investigatory Powers (Source Records) (Scotland) Regulations 2002 (SSI 2002/205)	889
Regulation of Investigatory Powers (Juveniles) (Scotland) Order 2002 (SSI 2002/206)	889
Regulation of Investigatory Powers (Cancellation of Authorisations) (Scotland) Regulations 2002 (SSI 2002/207)	890

SUBORDINATE LEGISLATION COMMITTEE

15th Meeting 2002, 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)

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab)

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

Gordon Jackson (Glasgow Govan) (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 7 May 2002

(Morning)

[THE CONVENER *opened the meeting at 11:20*]

The Convener (Ms Margo MacDonald): We have apologies for absence from Brian Fitzpatrick, Gordon Jackson and Bill Butler.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): They have gone to the unveiling of the statue to Donald Dewar.

The Convener: Of course, they are all Glasgow MSPs. I am sure that it is a very nice statue.

Executive Responses

Valuation and Rating (Exempted Classes) (Scotland) Order 2002 (draft)

The Convener: Are there any comments on the order?

Ian Jenkins: The Executive gave us further information when we asked for it. I suppose that we should tell the lead committee that that happened.

The Convener: It was very full information. We wonder why the Executive hid its light under a bushel, because it talked to everyone it should have about the pipeline at Sullom Voe. We thank the Executive for that.

Home Zones (Scotland) Regulations 2002 (SSI 2002/177)

The Convener: The regulations are a quiet triumph for the Subordinate Legislation Committee.

Ian Jenkins: A palpable hit.

The Convener: The Executive has agreed with us that the regulations have too many defects to be continued as they are, so another instrument will be drafted. We thank the Executive for its prompt attention.

Registration of Fish Farming and Shellfish Farming Businesses Amendment (Scotland) Order 2002 (SSI 2002/193)

The Convener: Members will remember that we thought that there might be defective drafting in

the order. The Executive has agreed and will address the defective drafting by an amending instrument. We noticed that a paragraph appeared in two places and could not see why that should be. The Executive has agreed to sort that out.

Draft Instruments Subject to Approval

Marriage (Approval of Places) (Scotland) Regulations 2002 (draft)

The Convener: The committee appears to want to comment on a lot in the regulations. I would like to begin by commenting on the apparent differences between the draft regulations before us today and those that we had first sight of. There appear to be different definitions of "place". I know that there was much discussion at the lead committee and at this committee about that, so it is a bit of a mystery as to why the definition of a place for a marriage has once again been changed.

Murdo Fraser (Mid Scotland and Fife) (Con): There is a question over the vires of regulation 7(4). The parent act is all about giving authority for specific places, but regulation 7(4) talks about the authorisation of a fit and proper person, which does not seem to come under the remit of the parent act. We must question whether it is competent for the regulations to make that provision.

The Convener: There was a great deal of discussion over the business of whether the authorisation should be of a fit and proper place or a fit and proper person. It is difficult to see why that should suddenly pop up again.

Colin Campbell (West of Scotland) (SNP): Regulation 9 says that an authority must notify an applicant of its decision within seven days, but the regulation does not say how long the authority has to come to a decision. That would seem to be fairly fundamental, given what authorities can get up to when it comes to responding to questions.

The Convener: We have noted that point in relation to several instruments previously. We suggested that a time limit should also be imposed on the authority.

Regulation 15(3) gives people a chance to make representations to a local authority before that authority decides to revoke or suspend an approval. However, regulation 15(3) appears both to enable and require an authority to give an opportunity to the approval holder and other persons to make representations. We could not quite understand that part. Why is there a need for a power to enable the authority to invite

representations? There is no need for a formal power to do that and the purpose of a provision such as that in regulation 15(3) must be to require an authority to invite representations in appropriate circumstances.

Regulations 15(3)(b) and 15(4) refer to "the hearing", but the regulations make no relevant provision for hearings, such as by whom they are to be heard and under which circumstances. There is doubt as to the intention of those paragraphs and we should seek clarification.

Paragraph 7 of the schedule appears to require as a condition that

"The arrangements made by the approval holder for each civil marriage ceremony must meet with the prior written approval of the district registrar of the registration district in which the approved place is situated."

That seems a little de trop. If a place has already been granted approval, people should not have to ask for permission for every marriage that takes place there. What is the intention? There is also a question as to the vires of the paragraph.

Murdo Fraser: There is also a question about paragraph 6 of the schedule, which says:

"No food or drink may be sold or dispensed or consumed in any approved place"

within an hour of the ceremony taking place. How could that be enforced?

The Convener: That would be practically impossible to enforce. The provision is also daft and intrusive. I know that it is not our job to comment on the policy, but the intention of the legislation is to make it possible to hold marriages outwith traditional and conventional places of worship. Is it right that we lay down conditions as to whether it should be a dry wedding or the colour of the flowers? We must ask whether that is an unusual or unexpected use of the powers.

Colin Campbell: I think that it is.

The Convener: Yes, we think so. We must ask the Executive whether it agrees.

Ian Jenkins: There is a running difficulty with terminology. At some points the regulations refer to local authorities and at others to local registration authorities. Although those are often the same, they could be different. Perhaps that should be looked at.

The Convener: I do not understand the purpose of the reference in regulation 1(2) to

"land covered with water in so far as within the jurisdiction of the registration district".

We should ask the Executive what that might be.

Ian Jenkins: A big puddle?

Colin Campbell: A loch?

The Convener: There are several questions on the regulations that we should put to the Executive.

There is a question whether regulation 13(4) is necessary because the point seems to be covered earlier in the regulations.

11:30

Ian Jenkins: We should gather together the points that have been drawn to our attention and put them to the Executive in a letter.

The Convener: Yes. Is that agreed?

Members indicated agreement.

Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2002 (draft)

The Convener: The first draft order provides for the executive devolution of powers to provide financial assistance for shipping services between the Highlands and Islands of Scotland and Northern Ireland. The order has been made so that a subsidy for a ferry service from Campbeltown to Ballycastle can be tendered.

Colin Campbell: Good.

The Convener: May God bless all who sail in her.

Scotland Act 1998 (Modifications of Schedule 5) Order 2002 (draft)

The Convener: The second draft order amends schedule 5 to the Scotland Act 1998 to the effect that the promotion and construction of railways within Scotland is now a devolved matter. That is called pass the parcel.

Colin Campbell: It is not a parcel that one would turn down.

Ian Jenkins: I look forward to the new Borders railway.

Colin Campbell: Following the Glasgow airport link, of course.

The Convener: The order does not say anything about paying for the railways, Ian.

Instruments Subject to Annulment

Regulation of Investigatory Powers (Source Records) (Scotland) Regulations 2002 (SSI 2002/205)

Regulation of Investigatory Powers (Juveniles) (Scotland) Order 2002 (SSI 2002/206)

The Convener: The instruments are very interesting, although not to the Subordinate Legislation Committee. They relate to what the quiet men and women do who work behind the scenes.

Murdo Fraser: They are called undercover operatives.

The Convener: Spooks.

There are a few typos, but nothing serious. No points arise in relation to the instruments.

Regulation of Investigatory Powers (Cancellation of Authorisations) (Scotland) Regulations 2002 (SSI 2002/207)

The Convener: Are these regulations about phone tapping?

Colin Campbell: Yes. The proper term is covert human intelligence sources. That is like when I phone down to the garage and get put through to an office in Glasgow that takes all British Government calls.

The Convener: Is that right?

Colin Campbell: It has happened twice.

Murdo Fraser: You are a dangerous man, Colin.

Colin Campbell: I am, although I may not seem dangerous.

The Convener: It does not sound as though the spook service is very dangerous either.

We have reached the end of the agenda. I regret that I will not see you next week. However, I leave you in the capable hands of my lieutenant, Ian Jenkins.

Meeting closed at 11:33.

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