

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 21 May 2002
(Morning)

Session 1

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CONTENTS

Tuesday 21 May 2002

Col.

EXECUTIVE RESPONSES	900
Adults with Incapacity (Medical Treatment Certificates) (Scotland) Regulations 2002 (SSI 2002/208)	900
DRAFT EXECUTIVE UNDERTAKING	900
Undertaking by the Scottish Ministers with the consent of Northlink Orkney and Shetland Ferries Ltd (SE 2002/97)	900
DRAFT INSTRUMENTS SUBJECT TO APPROVAL	900
Community Care (Assessment of Needs) (Scotland) Regulations 2002 (draft)	900
Community Care (Personal Care and Nursing Care) (Scotland) Regulations 2002 (draft)	901
Criminal Justice Act 1988 (Offensive Weapons) Amendment (Scotland) Order 2002 (draft)	901
INSTRUMENTS SUBJECT TO APPROVAL	902
Local Government Finance (Scotland) (No 2) Order 2002 (SSI 2002/230)	902
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 4) (Scotland) Order 2002 (SSI 2002/231)	902
INSTRUMENTS SUBJECT TO ANNULMENT	902
Plant Health (Phytophthora ramorum) (Scotland) Order 2002 (SSI 2002/223)	902
National Health Service (Optical Charges and Payments) (Scotland) Amendment (No 2) Regulations 2002 (SSI 2002/224)	904
Dairy Produce Quotas (Scotland) Amendment Regulations 2002 (SSI 2002/228)	904
Community Care and Health (Scotland) Act 2002 (Consequential Amendment) Order 2002 (SSI 2002/233)	904
Meat (Hazard Analysis and Critical Control Point) (Scotland) Regulations 2002 (SSI 2002/234)	904
INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT	906
Disease Control and Animal Movements (Interim Measures) (Scotland) Amendment Order 2002 (SSI 2002/221)	906

SUBORDINATE LEGISLATION

COMMITTEE

17th 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

COMMITTEE SUBSTITUTES

Mr Kenny MacAskill (Lothians) (SNP)

Mr Brian Monteith (Mid Scotland and Fife) (Con)

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

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 21 May 2002

(Morning)

[THE CONVENER opened the meeting at 11:29]

The Convener (Ms Margo MacDonald): I welcome everybody to the 17th meeting this year of the Subordinate Legislation Committee. We have apologies from Gordon Jackson. There are also a couple of intimations. Next week's meeting is on Monday 27 May. Members will remember that we decided on that because the Parliament will be in Aberdeen next week. The week following the Aberdeen experience, the meeting will be on Wednesday 5 June, as the previous day is the jubilee holiday. I did not know that, but now I do. That is good. The meeting will be at the usual time and in the usual place.

Bill Butler (Glasgow Anniesland) (Lab): Is next Monday's meeting at the same time and in the same place?

The Convener: Aye.

Bill Butler: Except that it is on a Monday.

The Convener: That is right. Otherwise, it is the same.

Bill Butler: Thank you.

The Convener: It was going to be an awful lot easier for everyone concerned.

Bill Butler: Absolutely.

11:30

The Convener: The committee substitutes have been agreed by Parliament. The names notified to the committee are: Brian Monteith, from the Conservatives; Mike Rumbles, from the Lib-Dems; and Kenny MacAskill from the Scottish National Party. We do not know whether there are Labour nominations or whether it is felt that, since the committee has three Labour members, they will somehow manage to cover the ground. We will leave that up to the Labour members.

Members indicated agreement.

Executive Responses

Adults with Incapacity (Medical Treatment Certificates) (Scotland) Regulations 2002 (SSI 2002/208)

The Convener: There is a slight doubt about the vires of the regulations—it is not a huge doubt. The committee might be inclined to accept the Executive's position, although we do not necessarily agree with the Executive that it is a necessary inference that all regulations made under the Adults with Incapacity Act 2000, except where expressly stated otherwise, are to be made by Scottish ministers. However, it does seem that that inference would not cause any great problems. Is that agreed?

Members indicated agreement.

Draft Executive Undertaking

Undertaking by the Scottish Ministers with the consent of Northlink Orkney and Shetland Ferries Ltd (SE 2002/97)

The Convener: No points arise on the undertaking.

Draft Instruments Subject to Approval

Community Care (Assessment of Needs) (Scotland) Regulations 2002 (draft)

The Convener: A number of points arise. First, the title of the regulations does not indicate the transitional nature of the provisions. We can ask the Executive why that is the case. In addition, what look to be substantive provisions in relation to a "relevant person" have not been dealt with as such, except in regulation 1(2), which is a definition provision. Perhaps we might ask for an explanation of that.

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): Agreed.

The Convener: A definition of the term "the 1968 Act" has been included in regulation 1(2), although the term is defined in the parent act. On a number of occasions, we have said that we do not—

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): That seems a bit redundant.

The Convener: Yes. We do not need definitions in both layers of legislation.

A question of vires also arises, but as it relates to an order coming up later in the agenda—the Community Care and Health (Scotland) Act 2002 (Consequential Amendment) Order 2002 (SSI 2002/233)—perhaps we should discuss the issue of vires in detail when we get to that order.

The regulations are also difficult to follow. We have said in the past that when regulations apply directly to a consumer they should be in easily understandable language. As these regulations apply to elderly people and all the rest of it, we could mention to the Executive that we do not think that the explanatory note is at all easy to follow.

Those points will be intimated to the Executive. If there is nothing else on that, we will move on.

Members indicated agreement.

Community Care (Personal Care and Nursing Care) (Scotland) Regulations 2002 (draft)

The Convener: Again, there are questions of definition. Regulation 1(2) defines the terms “the 1968 Act” and “the 1984 Act”, both of which are defined in the enabling act. The committee has said previously that it is not regarded as good drafting practice to define in subordinate legislation a term that is already defined in a parent act. Perhaps we can ask for an explanation from the Executive for that.

Members indicated agreement.

Criminal Justice Act 1988 (Offensive Weapons) Amendment (Scotland) Order 2002 (draft)

The Convener: There is a mistake in the preamble that is probably just a typo, because it refers to the “Criminal Justice Act 1998”, whereas the act to which the order refers is the Criminal Justice Act 1988. That does not seem to be a big deal, but we should note it anyway and ask the Executive to verify that that is the case.

There might have been questions arising out of EU legislation on free trade. However, I do not think that that is the most important thing for the committee to consider. We must consider whether or not the Executive has gone about implementing its policy in a way that corresponds correctly with the technical standards directive of the EU. Does anyone else want to say anything about the order? It is about knives. The Executive has said that it does not want any knives manufactured, and there is an argument as to whether or not it can actually do that and whether or not that is an amendment.

Ian Jenkins: It is clear from the Executive’s note that it has looked carefully at the technical

standards directive and decided that it is not contravening that directive. When considering the technicalities of the manufacture of knives, such as the length of the blade and so on, there are certain things that can easily be put down on paper, but others are more difficult to describe. For example, a penknife that looks like a lipstick is not easy to describe in terms of technical standards. We should just draw the Executive’s attention to that slight difficulty or awkwardness.

There is also a problem about the extent of the provision. It is a Scotland-only order. Perhaps there should be some sort of extent provision in the order.

The Convener: It is worth while asking why that is not included in the order.

Brian Fitzpatrick: I think that that is obvious, given that the order amends a Great Britain act. I echo what Ian Jenkins says. I strongly support the Executive’s reasons for rejecting the suggestion that the directive applies. The Executive is to be commended for taking action. If the European Commission or anyone else wants to step up the argument for free trade in disguised knives or the like, let them do it.

The Convener: That is what I like to hear—a good dose of Euro-scepticism.

Brian Fitzpatrick: I do not think that it was that.

The Convener: That is what it sounded like to me, but perhaps not.

Is there anything else?

Brian Fitzpatrick: That is quite enough.

Instruments Subject to Approval

Local Government Finance (Scotland) (No 2) Order 2002 (SSI 2002/230)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 4) (Scotland) Order 2002 (SSI 2002/231)

The Convener: No points arise on the orders.

Instruments Subject to Annulment

Plant Health (Phytophthora ramorum) (Scotland) Order 2002 (SSI 2002/223)

The Convener: I will not vacate the chair at this point, but I will ask Ian Jenkins if he will speak to the plant health order, as he knows how to say the title of the order.

Ian Jenkins: Ms MacDonald is in doubt about how to pronounce a word in the title of the Plant Health (*Phytophthora ramorum*) (Scotland) Order 2002 (SSI 2002/223). We had some discussion about how to pronounce that, but we will not go into the reasons why I pronounced it as I did rather than in any other way.

The Convener: Oh, yes. Please let us hear the reasons. It is something to do with polysyllabic words, is it not?

Ian Jenkins: Yes.

The Convener: And the penny—or is it the penultimate—

Ian Jenkins: No.

The Convener: The antepenultimate syllable—

Ian Jenkins: The antepenultimate syllable is where the stress should come as a rule, but it is a rule to which there are many exceptions and which I get wrong on many occasions.

The Convener: We think that we might not ask the Executive about that. Although we are laughing the order is not funny—it is about the rhododendrons. I was out last night after I had read the order, just checking the rhodies, but the committee will be pleased to hear that there were only wee black beasties on them, so I think that they are perfectly okay.

The order breaches the 21-day rule, but I absolutely agree with the Executive—as Brian Fitzpatrick will be pleased to hear—that it is a serious matter and had to be attended to immediately. Ten points to the Executive for breaking the 21-day rule.

Brian Fitzpatrick: Is it only certain species of oak in the USA that are infected, or is the anxiety that certain species of oak in the UK might be infected?

The Convener: It is nice of you to be as insular as that about our oaks, but we do not know and we are not asking the Executive about that either.

Ian Jenkins: They are not the ones that they are going to bring in for the new Parliament building, are they?

Murdo Fraser (Mid Scotland and Fife) (Con): Those are from Germany.

Ian Jenkins: Yes, but they are American red oaks.

The Convener: They are American red oaks, but their cousins came from Scotland, so that is okay.

Ian Jenkins: They are not bringing them in now, are they?

The Convener: We do not know whose oaks are coming in, but please do not let us get into that at the moment.

National Health Service (Optical Charges and Payments) (Scotland) Amendment (No 2) Regulations 2002 (SSI 2002/224)

The Convener: No points arise on the regulations.

Dairy Produce Quotas (Scotland) Amendment Regulations 2002 (SSI 2002/228)

Bill Butler: There is a typo in the regulations.

The Convener: Yes, there is a small typo where it says “2001”, but should read “2002”. Apart from that, the regulations are fine.

Community Care and Health (Scotland) Act 2002 (Consequential Amendment) Order 2002 (SSI 2002/233)

The Convener: The order may not be fine, because it may not be a consequential amendment. The committee obviously has no remit as regards the efficacy of the policy, but we would say in passing that we entirely agree with the policy. We think that it makes sense for the Executive to have moved quickly to fill the gap that may have arisen between the old policy and the new one, since that will obviously affect people immediately. However, there are legal questions about whether such an order is the way to do that. Are there any comments?

Brian Fitzpatrick: In the circumstances, I am minded to accept the Executive’s explanation as to the use of the enabling power in the order. In general, such use might be deprecated, but I do not think that this is a case in which we need go further than simply to note the matter at this stage.

Bill Butler: Perhaps we could also ask whether it is an exceptional use of the enabling power, given the peculiar circumstances, and ask for assurances that it will not be used routinely.

The Convener: That is reasonable. By doing that, the committee will be acting as a watchdog, just as it should.

Brian Fitzpatrick: I am content with that.

The Convener: Thank you. That is agreed.

Meat (Hazard Analysis and Critical Control Point) (Scotland) Regulations 2002 (SSI 2002/234)

The Convener: It seems that the Welsh committee that is equivalent to our Subordinate

Legislation Committee asked why, in schedule 17C, TVC is referred to as meaning both “total viable counts” and “total colony count”.

Brian Fitzpatrick: I suggest that we ape the Welsh.

The Convener: In this matter only?

Brian Fitzpatrick: Yes.

The Convener: I have never been keen on leeks myself. However, in this matter only we shall do as they have done. We must ask the Executive about the confusion over those two definitions. Is that agreed?

Members *indicated agreement.*

Instruments Not Laid Before the Parliament

Disease Control and Animal Movements (Interim Measures) (Scotland) Amendment Order 2002 (SSI 2002/221)

The Convener: Nul points, but we must congratulate the committee at this stage. I remember that, a few weeks back, we got into quite an argument about ear tags for goats. Well, the Executive has indeed clarified which goats shall have ear tags, on which ears, how many ear tags and for how long. We thank the Executive for that most sincerely.

Meeting closed at 11:44.

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