

# **SUBORDINATE LEGISLATION COMMITTEE**

Monday 27 May 2002  
*(Morning)*

Session 1

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## SUBORDINATE LEGISLATION COMMITTEE

18<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)  
Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab)  
\*Murdo Fraser (Mid Scotland and Fife) (Con)  
\*Gordon Jackson (Glasgow Govan) (Lab)

### COMMITTEE SUBSTITUTES

Mr Kenny MacAskill (Lothians) (SNP)  
Mr Brian Monteith (Mid Scotland and Fife) (Con)  
Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

\*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

Monday 27 May 2002

(Morning)

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

**The Deputy Convener (Ian Jenkins):** Good morning and welcome to the 18<sup>th</sup> meeting this year of the Subordinate Legislation Committee. We have apologies from Margo MacDonald and Brian Fitzpatrick. I remind members that, because of public holidays, next week's meeting will be on Wednesday 5 June in the same place and at the same time.

## Executive Responses

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

**The Deputy Convener:** We asked the Executive four questions on the regulations. The first question was about the fact that the title does not show that the regulations are transitional. The Executive accepts that it might have been helpful for the title to show that. The second question raised the point that what appears to be a substantive provision in relation to a "relevant person" is dealt with only as a definition provision. The Executive disagrees with us because it does not consider the definition of "relevant person" to be a substantive provision. The third question concerned the fact that the regulations' definition of "the 1968 Act" was redundant, which the Executive accepts.

In the fourth question, we expressed our concern that the regulations and the explanatory note are difficult to follow because of how they were drafted. The Executive accepts that we make a fair point, but states that the legislative complexity is to some extent unavoidable. However, we want the Executive to take more care to make at least the explanatory note more user friendly. Does that represent members' views?

**Members indicated agreement.**

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

**The Deputy Convener:** Again, there was a redundant definition. The Executive has accepted that point, to a degree. We can perhaps point that out to the lead committee.

**Members indicated agreement.**

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

**The Deputy Convener:** We made a substantial number of points on the order. I do not think that we need to go through the Executive's responses in detail because the Executive has laid an instrument that overtakes the original order. We will deal with that instrument later in the meeting. The Executive accepts that we correctly identified structural difficulties in the order and has tried to remedy those in the subsequent order.

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

**The Deputy Convener:** There are legal reservations about the order. Would anyone like to deal with those?

**Murdo Fraser (Mid Scotland and Fife) (Con):** We identified what we thought was an unusual or unexpected use of the powers. We do not doubt the good intentions behind that use, but we believe that it sets what may be a dangerous precedent. In its response, the Executive does not accept what we said and does not give us comfort that a precedent is not being set. We must draw the matter to the attention of the lead committee and Parliament.

**The Deputy Convener:** Yes. We were concerned about subordinate legislation being used to reflect back, if not amend, the parent act to which it is supposed to be subordinate. The concern is that, if regulations are made in a particular way, ideas and principles in the parent act could be amended. That might not be particularly significant in this case, but the practice is not quite proper in principle. We should draw that to the attention of the lead committee and Parliament.

**Members indicated agreement.**

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

**The Deputy Convener:** We suggested that it was unsatisfactory for the acronym “TVC” in the regulations to mean both “total viable counts” and “total colony count”. It is clear that that does not affect the operation of the regulations, as both phrases refer to the same thing. However, it is not good practice for a single acronym to be used when there are two different interpretations or applications of that acronym. That point was raised by the Legislation Committee of the National Assembly for Wales when it scrutinised similar regulations. We confirm that we do not think that using an acronym in such a way is good practice.

**Members indicated agreement.**

## **Draft Codes**

### **Draft Code of Recommendations for the Welfare of Livestock: Laying Hens (SE 2002/100)**

### **Draft Code of Recommendations for the Welfare of Livestock: Meat Chickens and Breeding Chickens (SE 2002/101)**

**The Deputy Convener:** The draft codes are not statutory instruments. They set out recommended welfare practices for poultry farming. Our legal advisers spotted a substantial number of typographical and editorial errors in the draft codes. We should perhaps point those out in an informal letter to the Executive so that the draft codes can be amended before publication.

## **Draft Instruments Subject to Approval**

### **Civil Legal Aid (Financial Conditions) (Scotland) (No 2) Regulations 2002 (draft)**

**Colin Campbell (West of Scotland) (SNP):** No points arise on the regulations.

**The Deputy Convener:** There are no points, as Colin Campbell says.

**Gordon Jackson (Glasgow Govan) (Lab):** You were watching again on Saturday night.

**Colin Campbell:** No, I was not.

**The Deputy Convener:** Okay. We should point out, just for the sake of clarity, that the Eurovision

song contest was held on Saturday.

**Murdo Fraser:** How many points did Norway get?

**Colin Campbell:** I do not know. Gordon Jackson would know. He is riveted by Norway's fate.

**Murdo Fraser:** I understand that Norway was not in the contest. Obviously, they were so poor in previous years that they were chopped.

**The Deputy Convener:** Let us move swiftly on.

### **Advice and Assistance (Financial Conditions) (Scotland) (No 2) Regulations 2002 (draft)**

**Bill Butler (Glasgow Anniesland) (Lab):** The regulations seem fine.

**The Deputy Convener:** As Bill Butler says, the regulations seem fine.

### **Welfare of Farmed Animals (Scotland) Amendment Regulations 2002 (draft)**

**The Deputy Convener:** Our legal advisers have pointed out that paragraph 3(b) of new schedule 3D seems to be missing a subparagraph (ii). That may be a typo—it probably is—but it would be as well to point it out at this stage. There are another couple of typos, but those do not merit a big fuss. We will formally mention only the point about the missing subparagraph; we can point out the other items informally.

**Members indicated agreement.**

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

**The Deputy Convener:** The draft order has been laid by the Executive because of our criticism of an earlier draft.

**Colin Campbell:** Should the order not say that it supersedes an earlier draft?

**The Deputy Convener:** Indeed. The Executive has moved well to take on board the points that we made, but the draft's italic heading should mention that this draft supersedes the earlier one. An informal letter would be enough to point out that. Is that okay?

**Members indicated agreement.**

## **Instruments Subject to Annulment**

### **Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2002 (SSI 2002/235)**

**The Deputy Convener:** There do not seem to be any points on which we need to draw the attention of the Parliament and the lead committee.

### **Welfare of Animals (Slaughter or Killing) Amendment (Scotland) Regulations 2002 (SSI 2002/238)**

**The Deputy Convener:** Apart from a small point of form that can be dealt with by an informal letter, no points have been identified on the regulations.

### **National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Amendment Regulations 2002 (SSI 2002/239)**

**The Deputy Convener:** It takes longer to read the title of the regulations than it does to deal with any points that might arise, as in this case none arises.

### **Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2002 (SSI 2002/246)**

**The Deputy Convener:** Again, no points arise.

### **Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2002 (SSI 2002/247)**

**Murdo Fraser:** No points arise.

**The Deputy Convener:** Thank you. A footnote is missing, but we can draw that informally to the attention of the Executive.

**Colin Campbell:** Members will be interested to know that the chairman of the State Duma in Moscow was interested in the committee's work and in its relationship with the Executive's lawyers. The Duma has much difficulty in interpreting law.

**The Deputy Convener:** Thank you. That will be in the *Official Report* as a point of great interest.

*Meeting closed at 11:29.*



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