

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 3 September 2002  
*(Morning)*

Session 1

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## SUBORDINATE LEGISLATION COMMITTEE

### 23<sup>rd</sup> 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)

#### 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

*Tuesday 3 September 2002*

*(Morning)*

[THE CONVENER *opened the meeting at 11:33*]

**The Convener (Ms Margo MacDonald):** I welcome everyone to the 23<sup>rd</sup> meeting in 2002 of the Subordinate Legislation Committee.

We have received notification from Brian Fitzpatrick that he may be late for the meeting. That is the only intimation, so we will start on the agenda.

### Delegated Powers Scrutiny

#### Local Government in Scotland Bill: Stage 1

**The Convener:** A great number of instruments are on the agenda today as well as scrutiny of the Local Government in Scotland Bill, which is at stage 1. We want to put a number of questions to the Executive on the bill. Those questions are outlined in members' papers. I suggest that we write to the Executive to detail our questions on the bill. Depending on the answers, we will decide whether we want to hear witnesses next week to further expand on them. Is that an acceptable way of dealing with the matter?

**Members indicated agreement.**

**The Convener:** Does any member particularly want to raise any points on the Local Government in Scotland Bill?

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** A couple of Henry VIII powers are taken, but both of them are subject to the affirmative procedure. That is the kind of thing that we object to in principle, but if the powers are subject to the affirmative procedure we accept that that lessens the worry that we have.

There is also a wee point about the definition of well-being in the bill, which I think is broad in purpose and which the Executive wants to be able to extend if it sees the need to do so. We need to ask the Executive about the points to which the legal adviser has drawn our attention.

**The Convener:** One of the points that the Executive will consider is the feasibility of the provisions for community planning in section 17,

on which we have a number of questions. As Ian Jenkins said, we want the Executive to define well-being. That alone would be worth having a witness for. Are members quite happy that we should take the questions that they have in their papers to the Executive?

**Members indicated agreement.**

**The Convener:** That covers the bill.

### Draft Instruments Subject to Approval

#### Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) (Amendment) Order 2002 (draft)

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

#### Scottish Public Services Ombudsman Act 2002 (Amendment) Order 2002 (draft)

**Colin Campbell (West of Scotland) (SNP):** This is all right.

## Instruments Subject to Approval

**The Convener:** A whole load of instruments are subject to approval. We may have been on holiday, but the folk who look after the shellfish have not.

**Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 5) (Scotland) Order 2002 (SSI 2002/306)**

**Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 6) (Scotland) Order 2002 (SSI 2002/307)**

**Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 7) (Scotland) Order 2002 (SSI 2002/332)**

**Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 8) (Scotland) Order 2002 (SSI 2002/333)**

**Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (Scotland) Order 2002 (SSI 2002/345)**

**Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 9) (Scotland) Order 2002 (SSI 2002/350)**

**Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No 2) (Scotland) Order 2002 (SSI 2002/353)**

**Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 10) (Scotland) Order 2002 (SSI 2002/357)**

**Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 11) (Scotland) Order 2002 (SSI 2002/388)**

**Colin Campbell:** These are all in order.

**Gordon Jackson (Glasgow Govan) (Lab):** It seems as though shellfish spend their lives in a permanent state of emergency.

**The Convener:** Yes.

**Gordon Jackson:** It is hard being a shellfish.

## Instruments Subject to Annulment

**Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) (Scotland) Regulations 2002 (SSI 2002/300)**

**Murdo Fraser (Mid Scotland and Fife) (Con):** No points arise.

**Adults with Incapacity (Specified Medical Treatments) (Scotland) Amendment Regulations 2002 (SSI 2002/302)**

**Colin Campbell:** No points arise.

**National Waiting Times Centre Board (Scotland) Order 2002 (SSI 2002/305)**

**The Convener:** There are typos in the order.

**Ian Jenkins:** But there are no points of substance.

**Local Government Pension Scheme (Scotland) Amendment Regulations 2002 (SSI 2002/311)**

**Colin Campbell:** This is okay too.

**The Convener:** I do not know. In regulation 1 the word "regulations" should commence with a capital letter.

**Scottish Secure Tenants (Compensation for Improvements) Regulations 2002 (SSI 2002/312)**

**Scottish Secure Tenancies (Abandoned Property) Order 2002 (SSI 2002/313)**

**Scottish Secure Tenancies (Exceptions) Regulations 2002 (SSI 2002/314)**

**Short Scottish Secure Tenancies (Notices) Regulations 2002 (SSI 2002/315)**

**Scottish Secure Tenants (Right to Repair) Regulations 2002 (SSI 2002/316)**

**Housing (Right to Buy) (Houses Liable to Demolition) (Scotland) Order 2002 (SSI 2002/317)**

**Housing (Scotland) Act 2001 (Scottish Secure Tenancy etc) Order 2002 (SSI 2002/318)**

**Short Scottish Secure Tenancies (Proceedings for Possession) Regulations 2002 (SSI 2002/319)**

**Scottish Secure Tenancies (Proceedings for Possession) Regulations 2002 (SSI 2002/320)**

**The Convener:** Now we are on to the nitty-gritty. There is a host of instruments in this clutch and a number of questions of vires. Regulations might have been drafted the wrong way round. The intention might be okay and, at the end of the day, the regulations might be all right, but the drafting is not particularly good. Once again I suggest that we use the same procedure that we used earlier and ask the Executive for its comments on the instruments that we are concerned about.

**Ian Jenkins:** If we put our concerns in writing and we are not satisfied, or the legal advisers feel that there is still ground to go over, we could ask witnesses to come to a later meeting.

**The Convener:** The Scottish Secure Tenants (Right to Repair) Regulations 2002 (SSI 2002/316), for example, is a legal document. In the middle of it, the words "short Scottish secure tenancy" suddenly appear, but they do not appear anywhere in the parent act. There are important points to raise. We can wrap them up in a letter to the Executive. Is that agreed?

*Members indicated agreement.*

**Environmental Impact Assessment (Scotland) Amendment Regulations 2002 (SSI 2002/324)**

**The Convener:** We might want to ask the Executive for clarification on the regulations. Regulation 2(3) requires the insertion of the new regulation 28A. Regulation 28A(8) requires the substitution of the words "section 47" in regulation 16(1), but regulation 16(1) appears to refer to both sections 46 and 47.

**Ian Jenkins:** That is not very clear. We can ask the Executive to make it clear.

**The Convener:** Okay.

**Common Agricultural Policy (Wine) (Scotland) Regulations 2002 (SSI 2002/325)**

**The Convener:** Here is this week's wee Euro treat. Before anybody gets excited, I point out that Scotland does not provide the growing conditions for wine grapes.

**Colin Campbell:** That does not surprise me.

**Murdo Fraser:** With a bit of global warming, Scotland might provide the conditions in 10 years' time. That is a possibility.

**The Convener:** That is some rationale for spending public money on discussing the regulations. The manner in which EC—perhaps that should be EU—provisions have been referred to is somewhat confusing. Some provisions have been described in regulation 2. It would have been more reader friendly to list all the relevant provisions in one schedule. The committee might want to raise that point with the Executive. We can mention it to the Executive, but, to be frank, it does not really concern us all that much. I read the regulations and they would have made members go blind. They are in very small print, which we should perhaps mention as well.

**Ian Jenkins:** One important point is that regulation 11(2) does not appear to make sense. Whatever else we might say about the regulations, it is important that they should make sense to those who are reading them.

**The Convener:** I read the regulations and words seemed to be missing. We can ask the Executive what it meant the regulations to say.

**Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment No 3) 2002 (SSI 2002/328)**

**The Convener:** The instrument breaches the 21-day rule, but we understand why.

**Late Payment of Commercial Debts (Scotland) Regulations 2002 (SSI 2002/335)**

**Colin Campbell:** No points arise.

**Late Payment of Commercial Debts (Rate of Interest) (Scotland) Order 2002 (SSI 2002/336)**

**The Convener:** The order raises an interesting point about whether it is possible to sub-delegate in the way that it sets out.

**Murdo Fraser:** You are right, convener. The enabling act states that ministers may prescribe a rate. The order does not prescribe a rate. It states that the rate will be 8 per cent above the rate that the monetary policy committee of the Bank of England sets. That is sub-delegation, which I believe is not permitted under the parent act.

11:45

**The Convener:** We must point that out to the Executive and ask for an explanation.

**Contaminants in Food (Scotland)  
Amendment Regulations 2002  
(SSI 2002/349)**

**Colin Campbell:** No points arise on the regulations.

**Food and Animal Feedingstuffs  
(Products of Animal Origin from China)  
(Emergency Control) (Scotland)  
Amendment Regulations 2002  
(SSI 2002/356)**

**The Convener:** The regulations allow the import of

“certain specified products from China to re-commence”.

What could those products be? I know that that is not part of our job, but I would be interested to know.

**Ian Jenkins:** It could be practically anything—aphrodisiacs and so on.

**The Convener:** I wondered about it because there is a lot of talk about Chinese medicine and the things that are used in Chinese medicine. However, no other points arise on the regulations.

**A9 Trunk Road (Ballinluig) (Temporary  
50mph Speed Limit) (Continuation) Order  
2002 (SSI 2002/371)**

**The Convener:** Some members of the committee may think that it would have been helpful if a copy of the instrument to be extended could have been supplied with the order. I do not drive, so it would not have done me much good anyway. No other points arise on the order.

**Sports Grounds and Sporting Events  
(Designation) (Scotland) Amendment  
Order 2002 (SSI 2002/382)**

**The Convener:** The order is interesting. Why does Harlaw Park, Inverurie need to be upgraded to the sort of ground where people are not allowed to take in their cairrie-oot? Is it because the Highland league teams are going to play there?

**Colin Campbell:** Maybe there have been problems at such places.

**The Convener:** Problems in Inverurie with drink? I do not think so.

**Colin Campbell:** I do not know. It was not an accusation.

**Registration of Births, Deaths and  
Marriages (Fees) (Scotland) Order 2002  
(SSI 2002/389)**

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

**Births, Deaths, Marriages and Divorces  
(Fees) (Scotland) Amendment Regulations  
2002 (SSI 2002/390)**

**The Convener:** There is a fairly big jump in the percentage increase, but as it does not amount to much money, we should let it lie. No other points arise.

**Education (Disability Strategies)  
(Scotland) Regulations 2002 (SSI 2002/391)**

**The Convener:** The regulations raise several questions that we might want to take up with the Executive.

**Ian Jenkins:** Under the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002, the period of an accessibility strategy must be a period prescribed by regulations, but the regulations simply provide for a period of “up to three years”. That is imprecise and does not echo the intention of the act. There is a similar point in relation to the start dates of strategies: the dates in the regulations are more nebulous than one would have expected given the wording of the act.

**The Convener:** We must tie the Executive down on such things because that relates to the direct provision of service.

**Ian Jenkins:** We can ask why the Executive has chosen to approach the regulations in that way.

Regulation 3 deals with the availability of strategies in different formats, including “large print”. It is a technicality, but “large print” is writing, which is the starting point for the regulation; the inclusion of “large print” as an “alternative form” for the strategy seems superfluous.

**The Convener:** Guidance will be issued with the regulations.

**Ian Jenkins:** No damage has been done, but the thinking seems flawed.

**The Convener:** I draw the committee's attention to regulation 3(h), which is straightforward sub-delegation for which there is no authority in the enabling act. We must raise all those questions with the Executive.



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

**Food Protection (Emergency Prohibitions)  
(Amnesic Shellfish Poisoning)  
(West Coast) (No 5) (Scotland) Partial  
Revocation Order 2002 (SSI 2002/383)**

**Food Protection (Emergency Prohibitions)  
(Amnesic Shellfish Poisoning)  
(West Coast) (No 8) (Scotland) Revocation  
Order 2002 (SSI 2002/384)**

**The Convener:** I thought that we had done this, but I see that the instruments are revocation orders. No points arise on the orders.

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

**Act of Sederunt (Rules of the Court of  
Session Amendment) (Fees of Solicitors,  
Shorthand Writers and Witnesses) 2002  
(SSI 2002/301)**

**The Convener:** There is a wee typo, so we will send a polite letter pointing it out.

**Housing (Scotland) Act 2001  
(Commencement No 5, Transitional  
Provisions and Savings) Order 2002  
(SSI 2002/321)**

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

**Right to Purchase (Application Form)  
(Scotland) Order 2002 (SSI 2002/322)**

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

**Colin Campbell:** There is a wee typo in the footnote.

**Late Payment of Commercial Debts  
(Interest) Act 1998 (Commencement No 6)  
(Scotland) Order 2002 (SSI 2002/337)**

**The Convener:** Given the terms of section 17(2) of the Late Payment of Commercial Debts (Interest) Act 1998, the parent act, it is questionable why the order has been made in the form of a statutory instrument. The order partially implements a European directive and a similar order has been made in respect of England, Wales and Northern Ireland—perhaps that is the answer. On the other hand, a document is only a statutory instrument if the enabling act says that it is and in this case the enabling act does not say that. We should ask the Executive if it can explain to us why it has chosen the form of a statutory instrument. Is that agreed?

**Members** *indicated agreement.*

**Act of Sederunt (Lands Valuation Appeal  
Court) 2002 (SSI 2002/340)**

**The Convener:** No points arise on the act of sederunt.

**Scottish Qualifications Authority Act 2002  
(Commencement No 1) Order 2002  
(SSI 2002/355)**

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

**Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 (Commencement) Order 2002 (SSI 2002/367)**

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

**Disease Control (Interim Measures) (Scotland) Amendment Order 2002 (SSI 2002/369)**

**The Convener:** The order is very important. It removes camelids and elephants from the movement control provisions.

**Murdo Fraser:** What is a camelid?

**The Convener:** I think that it is a dromedary or something.

**Colin Campbell:** The order also says that we do not have to wear wellies any more, as long as we have robust footwear.

**The Convener:** Does that apply to camelids or elephants?

**Murdo Fraser:** Except if one meets a bull.

**The Convener:** That order was just going to go by on the nod.

**Bill Butler:** Yes it was, convener.

**The Convener:** The instrument appears to be in order—provided we bring our wellies.

**Act of Adjournal (Criminal Appeals) 2002 (SSI 2002/387)**

**The Convener:** No points arise on the act of adjournal.

We have dealt with all the statutory instruments and Brian Fitzpatrick has missed it—he has missed my sweeties, too.

## Conferences

**The Convener:** I ask for the committee's agreement to ask the Parliamentary Bureau and the conveners of the Parliament's committees for permission for one member of the Subordinate Legislation Committee to attend the subordinate legislation conference in Toronto. The conference is on the topic of an end to red tape, which is an agenda that I would defend. It would be worth while for a member to attend and learn from the conference. By now we should also be able to contribute something to the conference, given that we are a new legislature that is supposedly committed to decreasing the amount of red tape.

**Colin Campbell:** Look at the pile of papers that we have had to deal with today.

**The Convener:** Today was a bad example. Do members agree that I should ask for permission for a member to attend the conference?

**Members indicated agreement.**

*Meeting closed at 11:54.*

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