

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 19 November 2002
(Morning)

Session 1

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CONTENTS

Tuesday 19 November 2002

	Col.
DELEGATED POWERS SCRUTINY	1085
Proportional Representation (Local Government Elections) (Scotland) Bill: Stage 1	1085
Dog Fouling (Scotland) Bill: Stage 1	1087
Agricultural Holdings (Scotland) Bill: Stage 1	1091
EXECUTIVE RESPONSES	1095
Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (draft)	1095
Civil Legal Aid (Scotland) Regulations 2002 (SSI 2002/494)	1095
DRAFT INSTRUMENTS SUBJECT TO APPROVAL	1097
Scottish Local Government Elections Regulations 2002 (draft)	1097
Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (2nd draft)	1098
Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 (draft)	1098
Cairngorms National Park Elections (Scotland) Order 2003 (draft)	1098
INSTRUMENTS SUBJECT TO ANNULMENT	1100
Plastic Materials and Articles in Contact with Food (Amendment) (Scotland) Regulations 2002 (SSI 2002/498)	1100
Taxi Drivers' Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2002 (SSI 2002/500)	1100

SUBORDINATE LEGISLATION COMMITTEE

32nd 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

Jackie Baillie (Dumbarton) (Lab)

Mr Kenny MacAskill (Lothians) (SNP)

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

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

*attended

WITNESSES

Tricia Marwick (Mid Scotland and Fife) (SNP)

Alyn Smith (Researcher)

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 19 November 2002

(Morning)

[THE CONVENER *opened the meeting at 11:25*]

Delegated Powers Scrutiny

Proportional Representation (Local Government Elections) (Scotland) Bill: Stage 1

The Convener (Ms Margo MacDonald): I welcome everyone to the 32nd meeting in 2002 of the Subordinate Legislation Committee. We have received no apologies. It seems that Gordon Jackson has travel difficulties, but I hope that he will be able to join us later.

The first item is our delegated powers scrutiny of the Proportional Representation (Local Government Elections) (Scotland) Bill. As the bill is a member's bill, we have been joined by its proposer, Tricia Marwick, and her legal adviser, Alyn Smith. Members of the committee will ask questions about the bill, but not about policy as, sadly, that is not within our remit. We take care of the nitty-gritty—the technical bits that can get everybody into terrible trouble if they are not correct.

Murdo Fraser (Mid Scotland and Fife) (Con): I will kick off. We have had a look at the bill and it is fair to say that the committee is generally satisfied with most of its subordinate legislation provisions. I have a technical question. In the explanatory notes to the bill, you refer to paragraph 1(1) of schedule 6 to the Local Government (Scotland) Act 1973, under which the Scottish ministers are required to observe the same rules as the Local Government Boundary Commission for Scotland. However, you do not attempt to amend section 28(2) of the 1973 act to include a reference to section 2 of the bill. Did you consider doing that, or would you consider doing so as the bill proceeds?

Alyn Smith (Researcher): The simple answer is that we considered it but thought that it would not be necessary. If the opinion of the Subordinate Legislation Committee is that including that reference would improve the bill, we will happily take that view on board. Our view was that paragraph 1(1) of schedule 6 to the 1973 act was sufficient. There is an argument that that is

relevant only to the 1973 act. Our view is that, for the purposes of the bill, we did not need to amend section 28(2) of that act. However, if the committee wants us to include that reference, that would be straightforward.

Murdo Fraser: We felt that the belt-and-braces approach would be to include it, but we are not expressing a strong opinion on the matter.

Tricia Marwick (Mid Scotland and Fife) (SNP): We are happy to consider any suggestions that the committee makes. We will be extremely flexible on the question of stage 2 amendments if the committee considers that omitting that reference is a weakness.

The Convener: It is not necessarily a weakness, but the provision would be strengthened if the bill were clearer. The provision has no carry-over effect on any other part of the bill. As per usual, we are not being nit-pickers. Does Brian Fitzpatrick have a question?

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): No. I am all right.

The Convener: I am concerned that the promoters of the bill might not have considered whether there should be a sunset provision. It is normal for members' bills to have such a provision.

Tricia Marwick: We considered that, but we decided to build in maximum flexibility to give the bill as much chance as possible. We did not put in a date because, when we introduced the bill, we were hopeful that it would be enacted in time for the 2003 elections, bearing in mind that when the single transferable vote was introduced in Northern Ireland, it took a bare three months between enactment and the elections. It is quite clear that the timetable has slipped and that it is unlikely that we can get the bill through in time for the 2003 elections. We have tried to build in as much flexibility as possible. We might consider inserting a date at stage 3, but we have not done so yet.

11:30

Alyn Smith: When we introduced the bill, we were aiming for maximum flexibility and thought that we could get the bill through before the 2003 elections, but that is looking less and less likely. I know that member's bills are time limited and I can see why the committee would not want to give the Executive—

There is nothing that says that the bill has to be enacted.

The Convener: We think that the Executive is made up of cuddly, nice people and it is not for us to decide the matter but for you to make a

judgment. We simply asked whether you had considered the reasons behind your decision not to include a sunset provision.

Tricia Marwick: Our judgment was to leave out such a provision in order to allow for maximum flexibility. By the time we get to stage 3, we might well suggest a date.

The Convener: That answers the only questions that we had. I thank you for your attendance. [*Interruption.*] Brian Fitzpatrick wants you to know that he had lots of questions to ask but none of them had anything to do with subordinate legislation. [*Laughter.*] Do not worry, Brian, the chair will protect you.

That was short and sweet. We have received answers to our questions and I think that we should simply report that that is the case.

Dog Fouling (Scotland) Bill: Stage 1

The Convener: We move to the delegated powers provisions in the Dog Fouling (Scotland) Bill. There are a lot of delegated provisions in the bill, as you would expect.

The bill has two principal aims. The first is to amend the existing offence of dog fouling so that the offence consists of failing to clear up after a dog. The second is to establish new enforcement provisions in connection with the offence by enabling local authorities and police officers to issue fixed-penalty notices. We can see where the bulk of the subordinate legislation provisions should properly appear. [*Interruption.*] The next person to make a joke in this committee is out.

Section 3 sets out certain exceptions to the offence of dog fouling and allows the Scottish ministers to amend, remove or add to the list of exceptions by order subject to affirmative procedure. The reason for that power is that flexibility could be required to respond to changes in the use of dogs to assist disabled persons and of working dogs in general. The promoter of the bill, Keith Harding, has accepted that that power could have a significant impact on the effect of the bill, which is why he suggests that any such order would be subject to affirmative procedure.

Section 3 concerns a principle to which we have drawn attention in other bills, which is whether it is appropriate that a delegated power should extend to removing exceptions rather than adding to or amending them.

Brian Fitzpatrick: Is the bill not different because removing the exception will assist its primary purpose? If the exception were removed, all dogs will be caught within the ambit of the bill. The exception would not offend against the bill.

The Convener: So you think that this is an exceptional case because of the particular offence.

Brian Fitzpatrick: HM Customs and Excise officials might be expected to be slightly more well-mannered about their dogs, but an emergency rescue team would have better things to do than run around after their alsatian with a shovel.

The Convener: Okay. So, in this instance—

Brian Fitzpatrick: There is an explicable exception.

The Convener: Section 6(2) deals with the prescription of the form of fixed-penalty notices. Section 6(1) requires that fixed-penalty notices issued under the bill give particulars of the circumstances alleged to constitute the offence. The list in the bill is based on the information that is required in other fixed-penalty notices. Although the bill lists the minimum information that is required in fixed-penalty notices, it does not prescribe a standard form; the order-making power of section 6(2) allows the Scottish ministers to do that. It is anticipated that that power would be used if it were thought desirable for the form of fixed-penalty notices to be the same throughout Scotland. What do members think? According to Keith Harding, the use of negative procedure would be okay because that power would not affect the bill substantially.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): I am inclined to agree.

Bill Butler (Glasgow Annie'sland) (Lab): I think that we could go along with that.

The Convener: Could we? It is a wee bit different from what we say about other legislation.

Brian Fitzpatrick: What can we do, given that Keith Harding is not here? Can we write to him?

The Convener: We can write to him and to the non-Executive bills unit, to ask about the power and the use of the negative procedure. Is that agreed?

Members indicated agreement.

The Convener: Section 9(2) deals with amendment to the percentage of the level 1 fine. Under section 9(2), ministers would be able to vary the level of the fixed penalty. The promoter considers the negative resolution procedure appropriate for that provision.

Murdo Fraser: The power to vary the percentage could have a drastic impact on how seriously the offences are treated.

The Convener: Yes. I have written lots of question marks in my papers about that. The

negative procedure seems entirely reasonable, but its use could mean that the seriousness of the offence—therefore the purpose of the bill—could be affected by the use of that power. At the very least, we must question the use of the power and ask for Keith Harding's response to our concerns. Is that agreed?

Members *indicated agreement.*

Brian Fitzpatrick: There is also the point about the saving provision that any order should not be retrospective. Can we take that up with the member as well?

The Convener: Yes.

Colin Campbell (West of Scotland) (SNP): I should probably know this, although I may have missed something, but who pays the fine—the dog exerciser or the dog owner?

The Convener: I hope that you have not found a deliberate mistake.

Murdo Fraser: The person who is in charge of the dog would pay the fine.

The Convener: Do you mean the person who is in charge of the dog at the time of the offence?

Murdo Fraser: I believe so, yes.

The Convener: There is also a list of exceptions, which includes people who use dogs in the course of their work.

Colin Campbell: I am not trying to be difficult, but what would happen if an eight-year-old were out with the dog?

The Convener: We must ask about that. The point that Brian Fitzpatrick raised might also have implications, so we will ask the member concerned for answers to our queries.

Section 10 deals with amendment to the percentage of increase of the level 1 fine.

Murdo Fraser: The same point applies as applied to section 9. We should make that point again.

The Convener: Section 15(2), which relates to the period of paying, seems okay.

Brian Fitzpatrick: It is an administrative provision.

The Convener: Yes. Have we disposed of the doggy do-dos? Good gracious, that was quick.

Brian Fitzpatrick: I think that the child about whom Colin Campbell was concerned would be covered in part by section 1(3), which states:

"For the purposes of this section ... a person who habitually has possession of a dog shall be taken to be in charge of the dog at any time".

Mum or dad would have habitual possession.

Bill Butler: Not necessarily. Someone might exercise the dog on behalf of mum or dad, perhaps if mum or dad were disabled.

Brian Fitzpatrick: I do not mean that that would always be the case.

Bill Butler: Even a young person might have habitual possession.

The Convener: I see what you mean. Mum or dad cannot be held responsible for someone who exercises a dog while they are confined to bed for a few months.

Murdo Fraser: What if someone were to buy their 12-year-old son a puppy for his birthday? In that situation, the dog would belong to the son, who would be fined every time somebody had to scoop up after his dog.

The Convener: We could send him up a chimney to really punish him.

Bill Butler: Colin Campbell's point is well made. We must get that issue sorted out.

Colin Campbell: Yes. What would happen if a child were given a puppy for Christmas?

Brian Fitzpatrick: We know not to give puppies for Christmas.

Murdo Fraser: I said birthday; that is an important distinction.

Brian Fitzpatrick: A dog is for life, not just for Christmas.

The Convener: Have we had enough puppy dog stories?

Bill Butler: Yes—more than enough.

The Convener: We will raise the questions in all seriousness with the member concerned. I am informed that the lead committee took evidence on the point that Colin Campbell raised, so perhaps we should draw the lead committee's attention to the fact that we are querying the matter with the non-Executive bill's unit. I am making a policy judgment, but I think that the bill will be popular with the public. We are nit-picking a bit, but we should get the bill right.

Brian Fitzpatrick: As my wife is a member of the provisional wing of mothers against dog mess, I agree.

The Convener: I have great sympathy with your wife because I have 10 grandchildren. I never used to bother about such matters, but I do now.

Agricultural Holdings (Scotland) Bill: Stage 1

The Convener: The next item is the Agricultural Holdings (Scotland) Bill. Fortunately, we have an expert on the bill with us. Perhaps Murdo Fraser would like to lead on the issue.

Murdo Fraser: I would be delighted.

The Convener: Section 17(3)(b) relates to the irritancy of a lease—I have never heard of that—and good husbandry. The section ensures that, under a new limited duration tenancy or short limited duration tenancy, a landlord cannot treat the undertaking of certain conservation activities by the tenant as being in breach of a requirement for good husbandry, which otherwise would enable the landlord to irritate the lease. Irritating means terminating the lease because of a breach of contract by the tenant. Does that refer to growing things that we would not expect people to grow in a given area?

Murdo Fraser: Typically, under an agricultural holding, the tenant is obliged to maintain good husbandry of the land. In other words, he must use it for agricultural purposes. With the growing trend towards conservation and set-aside rules and so on, a tenant might now decide to leave field margins unploughed. Technically, under the current law, that could have been viewed as a breach of the husbandry rules, which would give rise to a right of irritancy on the part of the landlord. Section 17(3) seeks to amend that provision to say that that will no longer be in breach of the rules, which seems a perfectly sensible updating of the law.

11:45

Colin Campbell: It is just as well. There could be legislation to require uncultivated areas to be left around the outside edge of fields to encourage wildlife.

The Convener: Is that right?

Colin Campbell: It was one of the first things I came across when I read all the stuff on the train when I first came to the committee.

The Convener: Well, you knew that the information would come in useful some day. It has impressed all of us.

We feel that the power outlined in section 24(3) is okay.

What about section 24(7), which deals with the registration of the tenant's interest to exercise the pre-emptive right to buy?

Murdo Fraser: That is okay as well.

The Convener: Section 25(2) concerns notice of a proposal to transfer land. Although the

procedure laid out there departs from that used in previous sections, it seems okay.

Ian Jenkins: I think that we should just accept that there is a precedent for that sort of thing.

The Convener: Section 26(6) deals with transfers that do not require notice.

Murdo Fraser: The provision raises the question of amendments to a list. Ministers will have the power to vary what is included in a list of exemptions. We should ask the Executive whether the use of subordinate legislation is justified, although, given the technical nature of the matter, it might be all right as it is.

The Convener: We do not need to take evidence on the matter. Instead, we should simply write to the Executive, asking for further justification of the thinking behind the provision and an example of how it might work in practice.

The power outlined in section 27(6), which deals with the right to buy, allows ministers to modify provisions through the affirmative procedure. We might raise the same questions on this section as we raised about section 26(6).

Murdo Fraser: It is a Henry VIII power, because ministers have the power to vary the substantive provisions in the primary legislation.

The Convener: We should inquire about the matter because, on principle, we do not want to let such issues go by on the nod. Nevertheless, you seem to be saying, with your depth of expert knowledge, that the provision might be acceptable.

Murdo Fraser: No, I am not. The right to buy is an entirely new provision that does not affect any previous agricultural holdings legislation. That means that we can consider the matter afresh.

The Convener: I will be guided by you, because you know a lot more about the matter than I do.

Section 32(7) concerns the power for ministers to make further provisions in connection with the valuation process by regulations subject to the affirmative procedure.

Murdo Fraser: The provision gives ministers the power to make regulations to amend the way in which land is valued. Such a potentially serious power could have human rights implications, as it raises protection of property issues. The bill sets out in some detail how the value of land is to be calculated, which is followed by a catch-all provision that allows ministers to vary valuation powers. We need to consider carefully whether it is appropriate that ministers should have such powers.

Ian Jenkins: It has been suggested that ministers could have powers to deal with individual cases, which is a quite unusual departure.

The Convener: It is enough of a departure that we should find out what the Executive intends by it and why it has chosen to take such an approach.

Ian Jenkins: We could just ask the Executive about it.

The Convener: Section 55(2)(b), which concerns notices to quit, inserts section 24(5) into the Agricultural Holdings (Scotland) Act 1991. The proposal is that the procedure should be negative rather than affirmative. However, we believe that the provision might be serious enough to require the use of the affirmative procedure. After all, it involves the Executive's ability to change provisions through orders and its interaction with the Scottish Land Court and the decisions that it might make.

Murdo Fraser: The proposal is that the committee should suggest the use of the affirmative rather than the negative procedure. If we are raising questions with the Executive, we should perhaps ask it to justify the use of negative procedure.

The Convener: We will do that.

Section 57(2), which concerns good husbandry and conservation activities, inserts section 85(2A) into the 1991 act. Proposed subsection (2A)(b) parallels section 17(3)(b) of the bill in purpose and scope.

Murdo Fraser: That seems acceptable.

The Convener: I am glad, because that is legal stuff.

Section 58 concerns the rights of certain persons where the tenant is a partnership. The section is important.

Murdo Fraser: Subsection (9) contains a power to modify the list of "relevant interests" in subsection (7) and the definition of "associate" in subsection (8).

The Convener: The power is subject to affirmative procedure. Is that enough?

Murdo Fraser: There is no difficulty with giving ministers the power to add to or vary lists, but the power to remove items from lists is more controversial.

The Convener: That is especially the case when somebody's livelihood could be affected. We will query the power.

Section 67 concerns the power to amend the Land Court's jurisdiction. Are members content with that power?

Members indicated agreement.

The Convener: Section 76 is an ancillary provision, which allows the Scottish ministers to

make further provision by order for purposes of or in consequence of the bill. That power is all right. Are we agreed?

Members indicated agreement.

The Convener: Section 77 concerns the meaning of "family". Subsection (4) provides that the Scottish ministers may by order subject to affirmative resolution adjust the definition. We are advised that the definition in section 77 is all embracing and would probably cover communes, for example.

Murdo Fraser: The question is why ministers want the right to vary the definition of "family". Can we foresee circumstances in which the definition would extend beyond the categories that are listed or would be restricted?

The Convener: It will be interesting to hear the Executive's answer on that.

Section 80(3) is the commencement power. Are members content with that power?

Members indicated agreement.

Executive Responses

Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (draft)

The Convener: We brought our concerns on the regulations to the Executive's attention. The Executive has accepted our point on the defective drafting of regulation 26(1), which we raised with it last week. It has withdrawn the instrument, corrected the defect and relaid the instrument. However, our point on the failure to follow proper drafting practice in regulation 2(1) is still relevant.

We also raised with the Executive whether regulation 37 was within devolved competence. We said that it might be and the Executive has said that it definitely is. We have agreed to differ with the Executive on that. We will bring the issues to the attention of the relevant committee and the Parliament.

Civil Legal Aid (Scotland) Regulations 2002 (SSI 2002/494)

The Convener: The next instrument for consideration is SSI 2002/494. There is an issue of defective drafting—the meaning of regulation 6 could be clearer. There is also doubt about whether regulation 11 is within devolved competence. It may contravene article 14 as read with article 6 of the European convention on human rights. In addition, the Executive has acknowledged that regulation 35 is defectively drafted.

We talked about when a child is a child. The Executive has said that that varies. Are we minded to accept the Executive's explanation?

Murdo Fraser: There is doubt about the drafting of the instrument. We should indicate that in our report.

The Convener: I thought so. There is an issue of compatibility with the ECHR. However, we can do no more than draw the Executive's attention to the queries that we have raised. There are problems on two counts—age and the rights enjoyed by cohabiting couples.

Brian Fitzpatrick: Does that mean that we contemplate asking people who are of the same sex and are living together whether they are cohabiting?

The Convener: I think so.

Brian Fitzpatrick: So that question could be put to my maiden aunts.

The Convener: We want to ask the Executive what it means by cohabiting couples and to whom the term applies.

Brian Fitzpatrick: I have no problem with that.

The Convener: The cases that have been tested relate to discrimination against single-sex couples. Obviously, there may be discrimination against opposite-sex couples. We will draw the attention of the Executive and the lead committee to the matter and ask the Executive to explain what it has in mind.

Ian Jenkins: Our legal adviser has noted a number of cases that would be of interest to the lead committee. Is it possible for the committee to have sight of that information?

The Convener: I do not pretend that I am absolutely au fait with all the various cases that have been quoted to us as precedents. I am not sure whether it serves any purpose at this stage to refer the information to the lead committee. It will appear in our report, but first we must indicate to the Executive that we are not entirely satisfied with its response.

Draft Instruments Subject to Approval

Scottish Local Government Elections Regulations 2002 (draft)

The Convener: We may want to put several questions to the Executive about the text of these regulations. Why does regulation 2(1) define the Representation of the People (Scotland) Regulations 2001 when those regulations do not appear to be referred to in the draft regulations? Should regulation 15(7) refer to a "returning officer", rather than a "registration officer"? I have never heard of a registration officer.

Bill Butler: I have never heard of one either.

The Convener: We will ask about the term, as it appears only once in the regulations.

Bill Butler: The only sort of registration officer that I know of is a poll tax registration officer.

The Convener: Oh, the person is mentioned in the Representation of the People Act 1983.

Bill Butler: You live and learn.

Colin Campbell: What a fount of knowledge you are, convener.

The Convener: Aye, I am. It is a pity that Gordon Jackson is not here, because he knows about this sort of thing.

We should ask whether in regulation 22(7)(c) the words

"and in such cases, shall mark the declarations to indicate which ballot paper is missing"

should apply to both paragraph (i) and (ii), rather than to paragraph (ii) alone.

12:00

Ian Jenkins: The layout implies that the wording applies to paragraph (ii) alone, but it should probably apply to both paragraphs.

The Convener: As it is about missing ballot papers, it should apply to everything, but I take your point.

Another question is why regulation 26(1) makes reference to regulation 24(3) and (4), when regulation 24 does not contain a fourth paragraph and nor does that regulation appear to be particularly relevant. That just looks like a mistake.

Colin Campbell: Do you think that they missed out the fourth paragraph?

The Convener: That is probably the case, but we can put the question to the Executive.

There are some typographical or grammatical mistakes, but we will deal with those informally. Is that agreed?

Members indicated agreement.

Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (2nd draft)

The Convener: There are no points to raise.

Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 (draft)

The Convener: This order is probably all right.

Murdo Fraser: Much as I would like to find something wrong with it, I cannot.

The Convener: And you have been through it with a fine-toothed comb, have you?

Murdo Fraser: Yes.

The Convener: Then that one is okay.

Cairngorms National Park Elections (Scotland) Order 2003 (draft)

The Convener: There may be something in this. We have some straight questions for the Executive. What sanction will apply to a breach of article 51 and for making a false statement under article 52? The order does not appear to mention that. Also, is the absence of any provisions in the order in exercise of the powers contained in paragraphs 4(1)(e) and (f) of schedule 1 to the parent act deliberate? There is no provision equivalent to section 65(2), which concerns tampering with nomination or ballot papers, section 66, which relates to secrecy, and the provisions for challenging elections in the Representation of the People Act 1983. Article 48 obviously envisages such proceedings, but neither the order nor the enabling act appears to contain any relevant offence provisions. We will ask for clarification from the Executive. Is that agreed?

Members indicated agreement.

The Convener: Articles 13(6) and 43 appear to exclude challenge from the courts. Paragraph 1(b) of standing order 10.3, which provides for our committee, says that that right must be enshrined. It says:

"the Subordinate Legislation Committee shall determine whether the attention of the Parliament should be drawn to the instrument on the grounds ... that it is made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts, on all or certain grounds, either at all times or after the expiration of a specific period or that it contains such provisions".

We have to ask the Executive about that. There is no way round it. Is that agreed?

Members indicated agreement.

The Convener: We should also invite the Executive's comments on article 7, because of article 3 of protocol 1 of the European convention on human rights, which refers to infirmity. If infirmity is temporary, should that be an exclusion? We also need an answer about the effect of disqualification. When is someone disqualified and for how long?

Ian Jenkins: What happens if some of the reasons for disqualification are worked out? How do people who have been elected to the board stand? Do they come back in automatically, or is someone elected in the meantime to take their place? They are left a wee bit in limbo, because it is not clear what happens if the infirmity reason for disqualification ceases to apply. I am a bit uncertain and I think that the position should be clarified.

The Convener: There is a defect in the draft order, to which we must draw the Executive's attention. At an earlier meeting, we dealt with another order and we might have drawn the same conclusions in relation to the local government election rules, but we did not. We should not feel too bad about that, but we are apologising a bit. That does not mean to say that we should not clear up this draft order if it is wrong.

We have mentioned article 3 of protocol 1 of the ECHR and whether some of the causes for disqualification are proportionate. There is almost a Henry VIII power. Instead of saying, "Off with their heads," the Executive is saying, "Give them a slap over the wrists."

We have mentioned all the points that we will raise with the Executive. The wording of article 6 of the order, which is about the age of a person who can be a candidate and an elected member, is a bit superfluous. We will draw those matters to the attention of the Executive and its responses will be sought.

Instruments Subject to Annulment

Plastic Materials and Articles in Contact with Food (Amendment) (Scotland) Regulations 2002 (SSI 2002/498)

The Convener: Guess who thought this one up.

Colin Campbell: You.

The Convener: Our membership of the European Union means that the regulations are required, but there is no reference in the preamble to the regulations to the consultation requirement in Council regulation (EC) 178/2002. In regulation 11, which introduces new regulation 8B, paragraph (1) is stated to be

"Subject to paragraphs (2) and (3)"

and paragraph (2) is stated to be "Subject to paragraph (3)", but paragraphs (2) and (3) are purely interpretative provisions rather than qualifications of substantive provisions. That is another good reason for not adopting the euro.

Colin Campbell: We are supposed to be objective here.

The Convener: That was my objective conclusion. A transposition note from the Executive would have been helpful when we were working out paragraphs (1), (2) and (3). The serious point is that the English and Welsh have included in the preamble a reference to the consultation requirement. We might ask the Executive why it has not followed what is generally considered to be best practice in this field.

Taxi Drivers' Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2002 (SSI 2002/500)

The Convener: I suggest that members bone up on this subject—this is the sort of thing that you will be asked about in the course of your business.

As members will be aware, taxi drivers have the right to opt out of taking passengers in wheelchairs, and wheelchair users need a medical certificate. Mechanisms exist to administer the subordinate legislation that applies to wheelchair users and I presume that the instrument before us is some sort of parallel. It gives taxi drivers the right—under certain circumstances, and if the requirements are met—to refuse to carry guide dogs or hearing dogs in their cars.

Murdo Fraser: What if the dog fouls in the taxi?

The Convener: Send for Keith Harding.

Brian Fitzpatrick: I think that guide dogs and hearing dogs are exempt from the provisions of

the bill to which you refer, and they are much better behaved than the average taxi occupant.

Colin Campbell: I am glad that Brian Fitzpatrick said that.

Brian Fitzpatrick: I suspect that it is the case, at certain times of night and in certain parts of our rural areas.

The Convener: We should perhaps ask for an explanation of why the regulations are so drafted if the clear intention is to make provision in relation to other categories of dog. They do not prescribe the category, or indeed the disability, as is required by the enabling power. They appear instead to rely solely on a definition under regulation 1(4). We should ascertain why the definitions of “a guide dog” and “a hearing dog” under regulation 1(4) are thought necessary, given that both are already defined in the enabling power. I am not sure whether that is just a question of draftsmanship.

Regulation 1(2) provides that regulations 2 and 3 come into force on 3 March 2003, but regulation 2 refers to applications for licences made on or after 1 March 2003. That might be a wee mistake. We should ask the Executive about the apparent discrepancy. We might also make a presentational or stylistic query: we should ask why the italic headnote does not follow the prescribed form for staged commencement.

I will be interested to see the responses on regulation 1(4). The paragraph goes on to say that “an assistance dog” is defined as a dog that is “trained by a charity” or is

“wearing a jacket inscribed with the name of a charity”.

There is a missing space in the footnote. We should deal with that informally.

We have no further notices. I thank members for their attendance—and for the fact that we have not had too many doggy do-dos jokes.

Meeting closed at 12:12.

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