

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 11 March 2003  
*(Morning)*

Session 1

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# **SUBORDINATE LEGISLATION COMMITTEE**

## **10<sup>th</sup> Meeting 2003, Session 1**

### **CONVENER**

Margo MacDonald (Lothians) (Ind)

### **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**

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

### **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 11 March 2003*

*(Morning)*

[THE DEPUTY CONVENER *opened the meeting at 11:22*]

**The Deputy Convener (Ian Jenkins):** Welcome to the 10<sup>th</sup> meeting this year of the Subordinate Legislation Committee. We have apologies from Margo MacDonald, who is attending a funeral, and from Colin Campbell, who is on a visit to Namibia.

**Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab):** Oh, to be in Windhoek.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Now that spring is here.

### Delegated Powers Scrutiny

#### Mental Health (Care and Treatment) (Scotland) Bill: as amended at Stage 2

**The Deputy Convener:** The first item on the agenda, under delegated powers scrutiny, is the Mental Health (Care and Treatment) (Scotland) Bill. Last week, we considered many amendments made at stage 2. We drew a number of points to the Executive's attention and asked for further information.

The first of those points concerned section 81(2), about the ancillary powers of the tribunal. We asked for clarification on why it was necessary for such matters to be prescribed in regulations made by the Scottish ministers rather than by order of the tribunal. The Executive has given us an explanation. If members are happy with that, I think that we should accept that the amplification of the reasons clarifies the position very well. Is that agreed?

*Members indicated agreement.*

**The Deputy Convener:** That seems to be justified.

Section 171A concerns the ministers' power to make provision in relation to treatment for certain informal patients, mostly children. Again, the Executive responded to our question by explaining that it felt that further extensive consultation was required, which it did not want to pre-empt by putting information into the bill that might need amendment rather quickly. We were worried about

an important human rights matter being left to subordinate legislation, although the exercise of the power would be subject to the affirmative procedure. However, it is clear that no consensus has yet been reached on the specific treatments that should be covered. Partly because of the time pressure on the bill, it is probably better that some provision is made rather than none. I wonder whether the committee accepts the situation as it is, having made that point to the Executive.

**Murdo Fraser:** The issue is serious, but the Executive has made a reasonable reply to our observations. We should just accept that.

**The Deputy Convener:** Sections 202B(6) and 202D(5) are about removal to a place of safety. Again, we have received further information. Does anyone wish to comment, or do we accept that the provision is reasonable, given the explanation. Do you accept it, Brian?

**Brian Fitzpatrick:** Yes.

**The Deputy Convener:** Section 46(5) is on medical examination requirements. We asked about the definitions and about how conflicts of interest would be resolved. The Executive intends to lodge amendments at stage 3 providing for the regulations to make further provisions about conflicts of interest in relation to the granting of emergency and short-term detention certificates. Although there are still arguments to be had about the detail, we felt that there was a risk of over-regulation, which might undermine the purpose of the provision. That is almost straying into policy matters and the committee might not need to make further points. Is that fair enough?

*Members indicated agreement.*

**The Deputy Convener:** Section 168 is on treatments given over a period of time. In this case, our legal advisers have scored a couple of palpable hits. The Executive thanks the committee for pointing out the incorrect reference in section 225 and accepts the suggestion that the exercise of the power under section 168(5) ought to be subject to affirmative procedure, as we indicated. We have received a positive response and I do not doubt that members welcome it.

#### Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill: as amended at Stage 2

**The Deputy Convener:** The next item is delegated powers scrutiny of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill, as amended at stage 2. Given that Murdo Fraser convened the committee that scrutinised the bill, perhaps he would like to tell us about the situation as it stands.

**Murdo Fraser:** Thank you, convener. The committee was excellent and was well served by all its members.

**Gordon Jackson (Glasgow Govan) (Lab):** Hear, hear.

**Murdo Fraser:** I am pleased to say that the committee took on board the Subordinate Legislation Committee's various comments and that the recommended changes to sections 38, 39 and 72(2) were all addressed. I believe that the bill, as amended at stage 2, takes account of the comments that were made.

**The Deputy Convener:** Thank you, Murdo. I see that Mr Jackson is endorsing your comments about the excellent committee.

**Gordon Jackson:** It is fair to say that the committee's business was co-operative. When we asked the Executive to do this or that, such as to use the affirmative procedure rather than the negative procedure, it sometimes argued its corner but never really went to the barricades over anything. The Subordinate Legislation Committee's suggestions were taken on board quite amicably.

**The Deputy Convener:** That is excellent. I know that the bill was difficult and technical, but the scrutiny committee seems to have come up with the goods in the end.

**Murdo Fraser:** We were well advised by our very good legal advisers.

**The Deputy Convener:** I am sure. We know the style and we know the kind of advice that we get.

## Executive Response

### Sheriff Court Fees Amendment Order 2003 (SSI 2003/97)

**The Deputy Convener:** The next item is on the Executive's response to our queries on the Sheriff Court Fees Amendment Order 2003. There is a suggestion that we might wish to draw the order to the attention of the lead committee on the ground that its meaning required clarification, which the Executive has now supplied. There is also the small matter of reporting the order on the ground of defective drafting of the explanatory note. Do we agree to do that, given that members do not seem to want to go into the detail, which is fairly clear?

**Members indicated agreement.**

## Instruments Subject to Annulment

### Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Amendment Regulations 2003 (SSI 2003/118)

11:30

**The Deputy Convener:** No points arise on the regulations.

### Ethical Standards in Public Life etc (Scotland) Act 2000 (Devolved Public Bodies) Order 2003 (SSI 2003/119)

**The Deputy Convener:** No points of substance arise. There are a couple of typos, which might be dealt with in an informal letter.

### Ethical Standards in Public Life etc (Scotland) Act 2000 (Stipulated Time Limit) Order 2003 (SSI 2003/122)

### Non-Domestic Rate (Scotland) Order 2003 (SSI 2003/123)

**The Deputy Convener:** No points arise on the orders. We are content.

### Strathclyde Passenger Transport Authority (Constitution, Membership and Transitional and Consequential Provisions) Amendment Order 2003 (SSI 2003/128)

**The Deputy Convener:** Wait for it—no points arise.

### Less Favoured Area Support Scheme (Scotland) Regulations 2003 (SSI 2003/129)

**Murdo Fraser:** We have raised points on previous occasions about the competency of the Executive to make such regulations under section 2(2) of the European Communities Act 1972. Given that we always receive the same response from the Executive, it is probably rather gratuitous for us to do so again.

**The Deputy Convener:** You would not bother to mention it.

**Murdo Fraser:** We could mention it informally. There is little point in asking for a response, because we will get the same response as we always get.

**The Deputy Convener:** Absolutely. We could write an informal letter pointing out one or two other wee typos and things. That could do the trick.

**National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2003 (SSI 2003/130)**

**Brian Fitzpatrick:** These are the regulations about mobile dentists.

**The Deputy Convener:** Would members like to talk about the instrument, or are we content?

**Murdo Fraser:** The regulations are about charges for tights, fabric supports, wigs and elastic hosiery.

**Gordon Jackson:** I suppose that, if they are about wigs, I might need to declare an interest, unless we are talking about a different kind of wig.

**Murdo Fraser:** Are we talking about a partial human-hair wig or a full, bespoke human-hair wig?

**The Deputy Convener:** The regulations are about various appliances. I do not know about the elastic stockings or tights. Gee whiz.

The part of the legal advice that I like says:

"The word 'said' in regulation 3(a) has no place in legislation or for that matter in any document. It is beloved of conveyancers but is pure jargon and adds nothing to the instrument."

**Brian Fitzpatrick:** I agree whole-heartedly. I hate the word "said". It should be excised from legalese—

**Gordon Jackson:** He said.

**Brian Fitzpatrick:** Gordon Jackson knows exactly what I am talking about. "Aforesaid" is worse, and "hereinbeforesaid" is particularly appalling.

**National Health Service (General Dental Services) (Scotland) Amendment Regulations 2003 (SSI 2003/131)**

**The Deputy Convener:** These are the regulations that were referred to. Somebody skipped ahead.

**Brian Fitzpatrick:** Sorry, these are the regulations about the mobile dentists. I was getting ahead of myself.

**Ian Jenkins:** I know. We are talking about the aforesaid regulations to which you referred.

**Brian Fitzpatrick:** The aforesaid mobile dentists.

**The Deputy Convener:** Yes. No points arise.

**Miscellaneous Food Additives (Amendment) (Scotland) Regulations 2003 (SSI 2003/132)**

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

**The Deputy Convener:** Thank you and welcome, Mr Butler.

**Ethical Standards in Public Life etc (Scotland) Act 2000 (Register of Interests) Regulations 2003 (SSI 2003/135)**

**The Deputy Convener:** There are questions on the regulations. I wonder whether anyone would like to elaborate on them. Section 7(2) of the Ethical Standards in Public Life etc (Scotland) Act 2000 states:

"The duties under subsection (1) above shall be carried out in accordance with such regulations as may be made by Ministers for the purposes of this section and such guidance as may be issued by the Standards Commission for Scotland for those purposes."

However, regulations 4 and 5 place duties not on a council or a devolved public body, but on the "responsible person"—the councillor or member—to place the prescribed information on the register. Therefore, a question of vires arises.

There are one or two other issues. Regulation 7 states that the registers are to be open for inspection "without charge". The enabling power does not appear to contain any authority to make provision about charging, so the phrase "without charge" might be redundant. Indeed, there is no power to implement charging, which is beyond the vires of the instrument.

**Murdo Fraser:** There is a reference in regulation 2 to "the 2000 Act", when in fact there are two 2000 acts, so we do not know which one it is.

**The Deputy Convener:** That is right. There is an interesting question about the elections and what happens if there are breaks between periods of office of a responsible person. For example, if a councillor loses his seat at one election but is subsequently returned at a later election, until what date do the records in respect of the earlier period of office have to be kept?

**Gordon Jackson:** It is worth asking those questions. Some are obviously more important than others, because some might be about simple errors, but we should ask the questions that the legal advisers have raised.

**The Deputy Convener:** Absolutely.

**Council Tax (Liability of Owners)  
(Scotland) Amendment Regulations 2003  
(SSI 2003/137)**

**The Deputy Convener:** No points arise on the instrument.

**Local Government Pension Scheme  
(Management and Investment of Funds)  
(Scotland) Amendment Regulations 2003  
(SSI 2003/138)**

**The Deputy Convener:** Would anybody like to take us through the details?

**Murdo Fraser:** Regulation 2 states that the principal regulations

“are amended in accordance with regulations 3 to 5 of these Regulations”,

but regulation 5 does not amend the principal regulations—it contains a transitional provision.

**The Deputy Convener:** We can ask about that drafting error. We can also ask why the new regulation 9A(3A) states that certain information must be included in statements published after 30 June 2003, when regulation 5 seems to require the information to be incorporated in statements and published by that date. There is some confusion.

**Bill Butler:** Could we ask about the difference between a revised statement and a new statement for the purposes of regulation 5? There is a lack of clarity.

**The Deputy Convener:** Yes. We can also ask the Executive to explain the purpose of the words from “which has published” to “into force” in regulation 5. Regulation 5 appears to suggest that some administering authorities might not have published a statement under regulation 9A, yet under that regulation the first such statement had to be published on or before 3 July 2000. Regulation 9A does not appear to make provision for the establishment of new administering authorities. There is confusion about the dates and what takes place when. Things are generally not clear. We can also ask whether an administering authority would have to consult before publishing a revised statement. Regulation 9A(1) is not clear on that point.

**Gordon Jackson:** Those are good questions to ask.

**Scotland Act 1998 (Agency Arrangements)  
(Specification) Order 2003 (SI 2003/407)**

**The Deputy Convener:** No points have been identified by the legal advisers.

**Instruments Not Laid Before the  
Parliament**

**Act of Adjournal (Criminal Procedure  
Rules Amendment) (Proceeds of Crime  
Act 2002) 2003 (SSI 2003/120)**

**The Deputy Convener:** There is a bit of confusion about the numbering around chapter 37AA and chapter 37. With great respect to the court and all the people involved therein, we should draw that to their attention.

**Murdo Fraser:** There appears to be an error in section 2(2), to do with the revocation of chapter 37. We should ask the Executive to clarify that.

**Brian Fitzpatrick:** I would not be particularly happy if no rules of court governed the seizure of proceeds of crime.

**The Deputy Convener:** So a gap would be left—

**Brian Fitzpatrick:** That we do not want the bad guys to go through.

**The Deputy Convener:** That is right. We will ask those questions.

**Adoption (Intercountry Aspects) Act 1999  
(Commencement No 10) (Scotland) Order  
2003 (SSI 2003/121)**

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

**Local Government in Scotland Act 2003  
(Commencement No 1) Order 2003  
(SSI 2003/134)**

**The Deputy Convener:** No points have been identified.

**Brian Fitzpatrick:** Apart from the fact that the order seems to be an example of exquisite drafting.

**The Deputy Convener:** Beauty is in the eye of the beholder, of course, and we know that you look at these things with great interest.

**Adults with Incapacity (Scotland) Act 2000  
(Commencement No 3) Order 2003  
(SSI 2003/136).**

**The Deputy Convener:** No points have been identified in relation to the order.



## Annual Report

**The Deputy Convener:** We have a couple of other items on the agenda, the first of which is consideration of the annual report, which members received in their papers. The report is a factual account of what we have done, including the number of meetings that we have had, the scrutiny of bills, the way in which we have helped to amend bills and how we have taken into account the way in which people can contribute to the shape and content of legislation through consultation. We have often achieved changes in that regard. We have taken our duty to scrutinise secondary legislation in public fairly seriously, which is important for the working of the Parliament.

Mention is made of the conferences that members have attended. The report refers to the fact that we were invited to attend an Australasian conference on delegated legislation and the scrutiny of bills, which is the important work of the committee, but were unable on that occasion to send a delegate because of the pressure of work in the lead-up to dissolution. Does anyone wish to add to or take things from that?

**Murdo Fraser:** The plot development was a bit limited. I cannot see the report being a best seller.

**The Deputy Convener:** No, that is right, but we could put a nice cover on it and it might attract a few people to glance at it. Their lives might be changed when they open the covers—you never know.

**Brian Fitzpatrick:** Meantime, back in the real world.

## Timing of Secondary Legislation

**The Deputy Convener:** Back in the real world, we move on to consider a letter to the Minister for Parliamentary Business, Patricia Ferguson, from our beloved and much-missed convener, which draws attention to the proliferation of instruments ahead of dissolution. The build-up has caused difficulties that our legal advisers have worked very hard to overcome. The letter points out that pushing things so close to the wire also raises potential strategic problems in relation to calling witnesses and members' ability to seek to change or annul instruments.

**Brian Fitzpatrick:** I do not have any problems with the draft letter and I certainly have no problem with its final paragraph, which might help the Executive to improve its method of tracking instruments. However, the penultimate paragraph mentions the committee's surprise at being in such a situation. I have to say that I am not surprised that any bureaucratic institution that is chuntering towards dissolution or holidays suddenly finds that it has a chunk of work to get through.

**Gordon Jackson:** Just pretend that you are surprised, Brian.

**Brian Fitzpatrick:** Okay, then. In the interests of unanimity, I am content to pretend to be surprised.

**The Deputy Convener:** Your lack of surprise is already on the record, Brian. In a sense, I am inclined to agree with you, but if a letter makes the Executive pay attention to these issues—

**Brian Fitzpatrick:** A well-ordered universe is a great aspiration, but life is a bit more horrible and difficult than that.

**The Deputy Convener:** With that judgment on life, love and the pursuit of happiness, I shall close the meeting.

*Meeting closed at 11:45.*



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