

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 25 March 2003
(Morning)

Session 1

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CONTENTS

Tuesday 25 March 2003

	Col.
INSTRUMENTS SUBJECT TO ANNULMENT	1295
TSE (Scotland) Amendment Regulations 2003 (SSI 2003/198)	1295
National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2003 (SSI 2003/200)	1295
National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2003 (SSI 2003/201)	1296
Ethical Standards in Public Life etc (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2003 (SSI 2003/203)	1296
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY CONTROL	1297
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 16) (Scotland) Order 2002 Revocation Order 2003 (SSI 2003/195)	1297
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No 3) (Scotland) Order 2002 Revocation Order 2003 (SSI 2003/197)	1297
INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT	1298
Borders and Dumfries and Galloway National Health Service Trusts (Dissolution) Order 2003 (SSI 2003/189)	1298
Act of Sederunt (Rules of the Court of Session Amendment) (Fees of Solicitors) 2003 (SSI 2003/194) .	1298
Sheep Scab (Shetland Islands) Order 2003 (SSI 2003/202)	1298
Access to Justice Act 1999 (Commencement No 9 and Transitional Provisions) (Scotland) Order 2003 (SSI 2003/207)	1300
LEGACY PAPER	1301

SUBORDINATE LEGISLATION COMMITTEE

12th Meeting 2003, Session 1

CONVENER

*Margo MacDonald (Lothians) (Ind)

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

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 25 March 2003

(Morning)

[THE CONVENER *opened the meeting at 11:19*]

The Convener (Margo MacDonald): I welcome everyone to the 12th meeting of the Subordinate Legislation Committee in 2003, and our final meeting in this parliamentary session. Unhappily for him and for us, Gordon Jackson will not be joining us this morning. I believe that he is in good health, but is up to his neck in political things.

We will follow the procedure that we followed last week, when we had a flood of instruments. In other words, we have already taken note of what has been sent to us and have raised our questions with the Executive in advance of this meeting. As a result, we have received responses to three particular instruments. I think that we should simply work our way through the instruments as they appear on the agenda.

Instruments Subject to Annulment

TSE (Scotland) Amendment Regulations 2003 (SSI 2003/198)

The Convener: These particular regulations correct defects that the committee identified in the principal regulations. That has been done to our satisfaction.

National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2003 (SSI 2003/200)

The Convener: We raised a number of questions on these regulations with the Executive. For a start, we asked whether, in regulation 1(4)(b), the Executive intended to refer to "regulation 1(2)" instead of "paragraph 1(2)" of the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1998 (SI 1998/642). In fact, we asked the Executive several questions about the numbering of paragraphs in the regulations and about how various paragraphs and subparagraphs relate to one another.

The Executive has graciously admitted that we were right and has undertaken to correct those errors. It says that the matter was simply an

oversight and that it will revoke the regulations before they come into force. The amending regulations are being prepared and will be available either today or tomorrow. Moreover, they will be distributed free of charge, which is excellent.

National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2003 (SSI 2003/201)

The Convener: These regulations make amendments that are complementary to the National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2003 (SSI 2003/200). Apart from a few errors in the footnotes, which will be intimated informally, the regulations are okay.

Ethical Standards in Public Life etc (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2003 (SSI 2003/203)

The Convener: No points have been raised on the regulations.

Instruments not Subject to Parliamentary Control

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 16) (Scotland) Order 2002 Revocation Order 2003 (SSI 2003/195)

The Convener: We now come to the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 16) (Scotland) Order 2002 Revocation Order 2003 (SSI 2003/195). I just wanted to say that one last time.

Colin Campbell (West of Scotland) (SNP): It is all in order.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No 3) (Scotland) Order 2002 Revocation Order 2003 (SSI 2003/197)

The Convener: Believe it or not, this revocation order is not in order.

Murdo Fraser (Mid Scotland and Fife) (Con): The Executive has cited the Food and Environmental Act 1985, instead of the Food and Environment Act 1985.

The Convener: When we asked about that, the Executive informed us that it was a typographical error. However, one has to wonder why, given that there are pro formas for all these things.

Colin Campbell: Someone in the drafting office must have been having a bad day.

The Convener: Anyway, we have to draw the Parliament's attention to the defective drafting in the order.

Instruments not Laid Before the Parliament

Borders and Dumfries and Galloway National Health Service Trusts (Dissolution) Order 2003 (SSI 2003/189)

Bill Butler (Glasgow Anniesland) (Lab): The order seems fine.

The Convener: That means goodbye to four national health service trusts in the Borders and in Dumfries and Galloway.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): I think that it is an excellent move.

The Convener: You said that in a spirit of non-partisanship.

Bill Butler: It is just efficient management, convener.

Act of Sederunt (Rules of the Court of Session Amendment) (Fees of Solicitors) 2003 (SSI 2003/194)

Colin Campbell: The instrument is okay.

The Convener: That is fine. The Executive is so enthusiastic about giving solicitors 12 per cent more or something like that.

Murdo Fraser: Yes. They will be happy.

Sheep Scab (Shetland Islands) Order 2003 (SSI 2003/202)

The Convener: We asked the Executive about the peculiar wording in the order. Article 3(2) empowers Shetland Islands Council to make regulations that regulate the movement of sheep:

"to the Shetland Islands on their arrival there".

We know that the Shetlands has Norse connections, so perhaps that wording is an example of Old Norse; on the other hand it might be nonsense. The wording certainly is confusing and because a criminal charge could be associated with not observing the regulations correctly, it is a serious matter. We must draw the order to the attention of the Parliament on the ground that it is seriously defectively drafted. We questioned the Executive about the wording, but it just said that we had misunderstood it. I do not think that we did. If the Executive had used the correct preposition, there would have been no misunderstanding between the committee and the Executive.

Ian Jenkins: It certainly seems odd to regulate the movement of something to a place once it is already there.

Colin Campbell: Perhaps the word “thereto” should have been used.

Ian Jenkins: Aha!

The Convener: Oh, dear, it is like old times.

We drew another point about wording to the attention of the Executive. In article 3(3) the words

“For the purposes of paragraph (2)(c) above”

do not seem to serve any useful purpose because article 3(3) does not appear, in any way, to be for the purpose of article 3(2)(c), which is properly stated to be subject to article 3(3). Do members follow that?

Colin Campbell: I am astonished at your analytical powers, Margo.

Ian Jenkins: Yes, we follow that forensic analysis.

The Convener: Again, the Executive disagrees with us. We can draw the attention of the Parliament to the order and say that the committee is not completely satisfied with it.

Another important point is that, because a criminal charge could be involved, the regulations must be publicised. However, the order does not specify how, where or by whom the regulations will be publicised. We must also draw that matter to the attention of Parliament. [*Interruption.*] I apologise. It seems that the Executive has agreed that the regulations should be publicised. The Executive says that section 91(2) of the Animal Health Act 1981 will apply, because it obliges Shetland Islands Council to publicise the regulations in such manner as Scottish ministers may direct and, in the absence of any direction, by newspaper advertisement—so *The Shetland Times* should tell all about sheep scab.

We can rest content that we have discharged our duty, gentlemen, as far as this morning’s subordinate legislation agenda is concerned.

Colin Campbell: We have one further instrument to deal with, which refers to the Access to Justice Act 1999.

The Convener: Where is that on the agenda? Did I nearly forget it?

Colin Campbell: You nearly did. It is called a senior moment.

The Convener: It is just as well that this is the committee’s last meeting. Has anybody ever been sine died from a committee?

**Access to Justice Act 1999
(Commencement No 9 and Transitional
Provisions) (Scotland) Order 2003
(SSI 2003/207)**

11:30

The Convener: I am reliably informed that no points arise on the order that need concern the committee.

Legacy Paper

The Convener: Just before we wind up, I thank, on behalf of all the members, everyone who has supported the committee and I particularly thank the committee clerk, Alasdair Rankin, for the legacy paper. The committee has conferred on the paper, but Alasdair is the one who put the work into it.

We would like to add to our legacy paper, with members' permission, paragraph 366 of the Procedures Committee's report, which seems to endorse the comments in our legacy paper. The paragraph states:

"our successors in the next Parliament should review all aspects of legislation, including subordinate legislation. In the case of subordinate legislation, we note that the current system is wholly derived from the Westminster model and was established for this Parliament through the means of a Transitional Order in the Scotland Act 1998. We recommend that the next Parliament should take the necessary steps to replace the Transitional Order with primary legislation to establish subordinate legislation procedures fit for the purposes of this Parliament."

I think that that recommendation simply endorses what we said. The job of producing a process for subordinate legislation that is fit for the purposes of the Scottish Parliament will not fall to this committee, but to the next Parliament and the next Subordinate Legislation Committee.

With that, I thank you for your attendance.

Ian Jenkins: Convener, may we express our tremendous thanks to our legal adviser, Margaret Macdonald, and her team?

The Convener: Indeed, yes.

Ian Jenkins: Our committee could not function without Margaret and we should put on record that that is so. We lean heavily on her. We have done so from the beginning and our successor committee will do so again. I dread to think what would have happened if Margaret had had a serious absence from work for any reason. I think that we would have been floundering.

The Convener: It is entirely fitting that you should say so, Ian, because you are the only one who has been a member of the committee since its inauguration.

Ian Jenkins: Since Adam was a lad.

The Convener: Just as we have leant on Margaret MacDonald, I have leant on you, Ian, and have much appreciated your support and help, when it has been required.

Colin Campbell: Can I say, as a new boy, that although I did not volunteer to be a member of the Subordinate Legislation Committee—as I suspect many of the rest of the committee did not—nonetheless, in personal terms it has been a

pleasure to be here. The committee has been well and amiably conducted by you, Convener. Despite members' fundamental differences of political opinion, we have all mucked in to what is a pretty gory task, from my point of view.

The Convener: We have disposed of the scabby sheep.

Colin Campbell: We have produced the goods for the Parliament. I thank the convener.

Murdo Fraser: Well said.

Bill Butler: I record my admiration for the support from the clerks and the legal adviser. I thank the convener for convening the committee in a way that lightened the heavy burden that is the lot of the Subordinate Legislation Committee.

Murdo Fraser: Specifically, convener, we have to record our thanks to you for conducting business efficiently and with good humour.

The Convener: Thank you, Murdo. Once I had got over the terrible shock, I did enjoy convening the committee. I do not know about anybody else, but I have learned a great deal from being on the committee and that is always a bit of a pleasure. Sometimes, in the wee small hours of the morning when I was ploughing through the work of the last month, I had to keep reminding myself that it was good for me and good for the soul, and that ultimately, the Parliament just would not work unless we dealt with the subordinate legislation.

On that note, I bring the committee to an end and invite everyone to enjoy a small celebration of our wonderful work over the past four years—thank you.

Meeting closed at 11:34.

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