

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 10 February 2004  
*(Morning)*

Session 2

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## CONTENTS

Tuesday 10 February 2004

	Col.
<b>DELEGATED POWERS SCRUTINY</b> .....	311
Antisocial Behaviour etc (Scotland) Bill: Stage 1 .....	311
<b>EXECUTIVE RESPONSES</b> .....	320
National Health Service (Transfer of Property between Health Boards) (Scotland) Regulations 2004 (SSI 2004/15) .....	320
National Health Service (Borrowing and Loans from Endowments) (Scotland) Regulations 2004 (SSI 2004/16) .....	320
<b>DRAFT INSTRUMENT SUBJECT TO APPROVAL</b> .....	322
Renewables Obligation (Scotland) Order 2004 (Draft) .....	322
<b>INSTRUMENT SUBJECT TO APPROVAL</b> .....	322
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Order 2004 (SSI 2004/43) .....	322
<b>INSTRUMENTS SUBJECT TO ANNULMENT</b> .....	323
Registration of Establishments Keeping Laying Hens (Scotland) Amendment Regulations 2004 (SSI 2004/27) .....	323
Local Government Capital Expenditure Limits (Scotland) Regulations 2004 (SSI 2004/29) .....	324
Health Act 1999 (Savings) (Scotland) Order 2004 (SSI 2004/31) .....	324
Community Care and Health (Scotland) Act 2002 (Savings) Order 2004 (SSI 2004/34) .....	324
National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2004 (SSI 2004/36) .....	324
National Health Service (General Dental Services) (Scotland) Amendment Regulations 2004 (SSI 2004/37) .....	325
National Health Service (Tribunal) (Scotland) Regulations 2004 (SSI 2004/38) .....	325
National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2004 (SSI 2004/39) .....	325
National Health Service (General Medical Services Supplementary Lists) (Scotland) Amendment Regulations 2004 (SSI 2004/40) .....	325
National Health Service (General Medical Services) (Scotland) Amendment Regulations 2004 (SSI 2004/41) .....	325
Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2004 (SSI 2004/44) .....	326
<b>INSTRUMENT NOT SUBJECT TO PARLIAMENTARY PROCEDURE</b> .....	327
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 4) (Scotland) Partial Revocation Order 2004 (SSI 2004/42) .....	327
<b>INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT</b> .....	327
Local Government in Scotland Act 2003 (Commencement No 2) Order 2004 (SSI 2004/28) .....	327
Health Act 1999 (Commencement No 14) (Scotland) Order 2004 (SSI 2004/32) .....	327
Community Care and Health (Scotland) Act 2002 (Commencement No 3) Order 2004 (SSI 2004/33) .....	328
Public Appointments and Public Bodies etc (Scotland) Act 2003 (Commencement No 4) Amendment Order 2004 (SSI 2004/45) .....	328

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# **SUBORDINATE LEGISLATION COMMITTEE**

## **6<sup>th</sup> Meeting 2004, Session 2**

### **CONVENER**

\*Dr Sylvia Jackson (Stirling) (Lab)

### **DEPUTY CONVENER**

Gordon Jackson (Glasgow Govan) (Lab)

### **COMMITTEE MEMBERS**

\*Mr Stewart Maxwell (West of Scotland) (SNP)

\*Christine May (Central Fife) (Lab)

\*Alasdair Morgan (South of Scotland) (SNP)

Mike Pringle (Edinburgh South) (LD)

\*Murray Tosh (West of Scotland) (Con)

### **COMMITTEE SUBSTITUTES**

Bruce Crawford (Mid Scotland and Fife) (SNP)

Alex Johnstone (North East Scotland) (Con)

Maureen Macmillan (Highlands and Islands) (Lab)

\*attended

### **CLERK TO THE COMMITTEE**

Alasdair Rankin

### **ASSISTANT CLERKS**

Joanne Clinton

Catherine Fergusson

### **LOCATION**

Committee Room 3

## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 10 February 2004*

*(Morning)*

[THE CONVENER *opened the meeting at 10:44*]

**The Convener (Dr Sylvia Jackson):** I welcome members to the Subordinate Legislation Committee's sixth meeting in 2004. I have apologies from Mike Pringle, who is in Dublin on a fact-finding visit for his proposed environmental levy bill, and from Gordon Jackson, who has a constituency appointment.

### Delegated Powers Scrutiny

#### Antisocial Behaviour etc (Scotland) Bill: Stage 1

10:45

**The Convener:** The first item concerns delegated powers scrutiny. The committee will remember that we raised various points on the Antisocial Behaviour etc (Scotland) Bill, and we now have comments back from the Executive, which we will take in turn. We have had fairly full responses to the questions that we raised, but I am sure that we will want to get back to the Executive on a number of issues.

We will deal first with section 1, which concerns antisocial behaviour strategies, and section 2, which concerns directions to registered social landlords. The committee will remember that one of the issues that we raised was the interaction between section 1(3)(c) and section 1(10), and section 2. It was not clear to the committee to what extent the placing of obligations on the various individuals and bodies envisaged amounted to an exercise of administrative power suitable to a direction-making power or to a more general power that was legislative in nature. That theme will be common to quite a number of the points that we will raise this morning. Secondly, the committee will remember that section 2(2) seemed to suggest that directions may have a more general effect.

Do committee members want to give their views on the Executive's response?

**Christine May (Central Fife) (Lab):** I have one overriding comment. The Executive's response says:

"It should be noted that there is no particular sanction for breach of the direction",

which raises the question: what is the point of a provision to which no sanction for lack of compliance is attached? I would be interested to hear the committee's views on that.

**Alasdair Morgan (South of Scotland) (SNP):** My only problem is that, if the Executive wrote to us to say that it would introduce sanctions for people who did not obey directions, we would presumably write back and complain that there was no parliamentary procedure to allow us to approve directions, the breach of which would lead to sanctions. We must be a bit more careful; if we write and say that there should be sanctions, we should also say that the Executive would need to lay the detail of directions before us.

**The Convener:** Absolutely. There is no difficulty with raising both those points, because they are both valid, but we must realise that one has an implication for the other.

**Mr Stewart Maxwell (West of Scotland) (SNP):** The Executive response says:

"The directions would be likely to be localised in nature".

My point is to do with the phrase "likely to be localised": it seems to me that there is no limit on the direction-making power in section 1(10)—although the Executive says that it is "likely to be localised", the power is not limited in any way—and the same point applies to section 2(2). It seems that the powers could be localised, but they could also be general in nature—they could apply to an individual or to any group—and we need more clarity on that. Also, I am not sure what "localised" means in the context; the Executive needs to define what that means because it is too general.

Although the Executive says that the powers are localised—whatever that may mean—there is no guarantee that they are, because there is no limit on them, and we should therefore at least write back to the Executive on the matter and seek further clarity.

**Murray Tosh (West of Scotland) (Con):** I was broadly satisfied by the Executive's response, because it cleared up why the Executive picked out registered social landlords in section 2. As we heard in last week's housing statement, the Executive expects that most local authorities will dispose of their housing stock through stock transfer; it is therefore attempting, through section 2, to ensure that the stock transfer housing associations—the landlords—will exercise the strategic functions that would otherwise have fallen on the local authority.

The problem with section 1 is that, if the Executive simply placed a duty to prepare

antisocial behaviour strategies on local authorities that do not control housing stock—that are not landlords—it would be difficult to bind them to the strategies. Because the Executive is a bit nervous about its ability to influence the new, large-scale, stock transfer landlords to co-operate with the policy, section 2 seems to be a fallback that says that registered social landlords definitely have a duty to co-operate.

The logic of such a split makes some sense, but I do not understand the reason for tying section 1 to section 106, which is the compulsor—I am grateful to the legal advisers for introducing me to a term that, previously, I would have guessed meant a green box put in the garden to collect household waste.

Section 1 imposes a fairly wide duty on everybody to provide information: police, councils, RSLs, voluntary-sector landlords, private-sector landlords and even, I presume, a social landlord who is not registered, if such a thing is possible. However, the enforcement section, section 106, requires only the relevant authorities—which means only the local authority, the chief constable and the registered social landlord—to have regard to the guidance. Why, in section 1, compel everybody to give the information without compulsory powers and then restrict section 106 to the relevant authorities? That point is made in our legal briefing paper.

Although section 106(5) gives the Executive the power to modify the meaning of “relevant authority”, I cannot really see that the Executive will issue directions to include social landlord X in local authority Y in the list of people who should have regard to the guidance. I think that this is more of a subordinate legislation point than a policy point. Why, in section 106(3), is the requirement to have regard to the guidance restricted to the relevant authorities in 106(2), rather than all the relevant persons in section 1 who are supposed to provide the information to allow the strategy to be put together? I do not know why section 106 narrows the number of people on whom the duty would be placed.

**The Convener:** In a way, that exemplifies the point that Christine May was making. It is the main example of the problems that we have noted with regard to this part of the bill.

**Murray Tosh:** Is there still time to ask the Executive about that point?

**The Convener:** Yes.

**Murray Tosh:** In that case, I would like to ask the Executive about it. In general, the responses that we have received have been helpful and informative.

**The Convener:** Do we agree to write to the Executive to ask about that point and the others that have been identified in the legal advice?

**Members indicated agreement.**

**The Convener:** Thank you. That point might be a good one to include in our forthcoming inquiry into localised and general powers.

Sections 20 and 21 deal with guidance and direction. We thought that these were the two most contentious sections in the bill. Section 20 confers on the ministers a wide power, but not an obligation, to issue guidance. We compared the situation with what was happening with the equivalent English legislation. The response from the Executive details quite clearly why there is a different procedure in our legislation.

Paragraph 18 of our legal advice tells us that the Executive is prepared to concede that any guidance that is issued under section 20 will be laid before the Parliament, although there is no indication that the guidance would be subject to any procedure.

**Christine May:** It would be helpful if the Executive could give us a further indication of its intentions on this point. We could then consider what we might do, depending on what answer we got.

**The Convener:** The Executive gives no firm undertaking to amend the bill. Should we ask about that as well?

**Alasdair Morgan:** It is important that we get another bite at the cherry. I understand that, if the bill is amended, we will get a chance to consider the amendments, but it is equally if not more important that we get a chance to comment on the areas of the bill that have not been amended. It is difficult to proceed on the basis that amendments that meet our concerns might be brought forward because, at the end of the day, we might find that that has not happened.

**The Convener:** The clerk tells me that we will get another bite at the cherry.

Do we agree to write to the Executive along the lines that have been suggested?

**Members indicated agreement.**

**The Convener:** Again, the points that have just been raised should form part of our inquiry.

Section 43 and section 44 deal with the permitted level of noise and the approval of a measuring device. Is everybody happy with the Executive's clear undertaking that it will introduce amending legislation?

**Mr Maxwell:** I think that that is very helpful.

**The Convener:** I hope that that comment is included in the *Official Report*.

**Murray Tosh:** Somebody in the Executive will be embarrassed.

**The Convener:** Never.

Section 46(4) and section 49 relate to the fixed penalty notices. The Scottish Executive response tells us that it believes that it needs flexibility to make adjustments over time. However, it does not accept the committee's concerns regarding the placing of some clear limits on the exercise. We need to decide what to do in this regard.

**Alasdair Morgan:** With regard to the limits, the Executive's position is helpful, providing the amendment is lodged.

**The Convener:** Do you want us to write to the Executive to get a firmer commitment in that regard?

**Alasdair Morgan:** Given what we said earlier about having another bite at the cherry, I do not know if that is necessary. However, there is no harm in asking, even though the Executive might say that it has been as firm as it is prepared to be at this stage.

**Murray Tosh:** The response says that the Executive will consider whether to amend the provisions. The rest of its argument seems to accept the logic that that amendment should be made. Given that it sounds a bit grudging of the Executive to say only that it is considering amending the section, I think that we should ask it to clarify that that is indeed what it intends to do.

**The Convener:** Do we agree to write to the Executive in those terms?

*Members indicated agreement.*

**The Convener:** Section 51 relates to directions in respect of a duty under section 89 of the Environmental Protection Act 1990 and raised the question of the difference between direction and the code of practice and the issue of parliamentary scrutiny. Again, the Executive's response does not give a firm commitment to amend the section. Do we agree to write to the Executive asking it to clarify its intentions?

*Members indicated agreement.*

**The Convener:** Section 62(3) relates to failure to comply with a notice and action by an authority at the landlord's expense. Our legal advice suggests that the Executive's response is sufficient. Do we agree?

*Members indicated agreement.*

**The Convener:** Section 69(8) relates to the designation of relevant houses within a designated area. The Executive's response supplies some

further information. Do we agree that the choice of wording relating to the power is clearer than we thought it was?

*Members indicated agreement.*

11:00

**The Convener:** Section 85 is on guidance. We asked the Executive for further justification of the use of guidance in this instance, rather than the use of a legislative instrument. We received further explanation, which seems sufficient. Is that agreed?

*Members indicated agreement.*

**The Convener:** Section 95(2) and section 95(3) cover fixed-penalty offences. We thought that the additional powers that are conferred under section 95(3) were very wide. The legal advisers think that the Executive's interpretation of section 95(3) could be correct, and it is certainly reassuring. Do we accept that, or do members have any further comments, bearing in mind the fact that the power is subject to the affirmative procedure?

**Mr Maxwell:** I am not sure. That is my position on this matter—I have a firm position of being not sure. I acknowledge what the Executive says, but I still have reservations and concerns, which we expressed previously. We still have the problem that, although the Executive has stated that it has no intention of doing any of the things that we are concerned about, it remains open for them to be done at some point. We cannot guarantee that they will not be done in the future. Although I accept the Executive's reassurances, I consider that we should draw our concerns about what is a wide-ranging power to the attention of the lead committee.

**The Convener:** The power will be subject to the affirmative procedure, so it will go before the Parliament.

**Mr Maxwell:** That is why I am not sure about our need to raise those concerns.

**Christine May:** I support Stewart Maxwell's comments. Although the powers will be subject to the affirmative procedure, and therefore to scrutiny, it is still worth drawing to the attention of the lead committee the fact that we had concerns and that, although we are partly reassured by what the Executive says, we would still like the lead committee to be aware of those concerns.

**The Convener:** After our first meeting following the recess, we will be doing our final report to the lead committee on the bill. We will insert our concerns then. Is that agreed?

*Members indicated agreement.*

**The Convener:** Section 106(5) is on the disclosure and sharing of information, and section 106(3) is on guidance. We received clarification from the Executive on the powers covered by those two subsections. Do we think that it was sufficient?

**Christine May:** Yes—although Murray Tosh was concerned about the equivalent provisions in respect of a point that he made earlier.

**Murray Tosh:** I do not have any further comments to make, other than the fact that these subsections relate to the issues that I raised earlier. We have already agreed to seek clarification on the matter, and I do not think that we need to say anything else about it.

**The Convener:** The clerk can make a note of that.

Section 109 is on directions. Is it agreed that we make no further points on the section?

*Members indicated agreement.*

**The Convener:** Section 112(2) is the commencement, which is always an issue for the committee. In this case, we were worried that the powers are potentially very wide and, if exercised through a commencement order, would not be subject to any parliamentary scrutiny. We could raise with the Executive the continuing concern that we have already raised on a number of occasions—in relation to different matters that arose in two other bills, as I recall.

**Alasdair Morgan:** There is the saving grace that a commencement power such as this can be exercised only once. The extent to which the Executive may run riot over legislation in general is somewhat limited.

**The Convener:** Yes. The points that have always been raised in such contexts are about some other Executive in the future, and about what it might do.

**Alasdair Morgan:** Indeed. This is not a complete protection, but at least once the Executive has brought into force any particular part of the eventual act, it cannot, by definition, bring it into force again. Therefore, the commencement order problem does not arise again.

**The Convener:** We are certainly getting into the intricacies of this.

**Christine May:** We have a lot to debate for a section that is only two sentences long.

**The Convener:** We could raise the wider issue at our next meeting with the Scottish Executive. We are still not satisfied about it. Is that agreed?

*Members indicated agreement.*

**The Convener:** We have some comments about paragraph 3(3) of schedule 3, which is introduced by section 58. According to our legal advice, if the Executive intends that expenditure that is meant simply to enhance the capital value of a property is not to be considered appropriate, that limitation should perhaps be included in the bill, if only in the interests of transparency. Do we want to ask again about the provision? Do we wish to pursue the matter further, or are we content with the answer that we have been given? The Executive has supplied quite a lot of information on the matter.

**Murray Tosh:** Might putting that in the bill restrict in practice what an authority might do about a specific property in some obscure circumstance that might arise—although I cannot imagine one at the moment? Is it not sufficient for the intention to be clear that the expenditure that local authorities might incur is not designed to support capital works to make improvements? Does that need to appear in the bill?

**The Convener:** If there is a worry about that, we should leave things as they are.

*Members indicated agreement.*

**The Convener:** I thank Murray Tosh for those comments.

We asked the Executive to clarify whether new section 27(5A) of the Social Work (Scotland) Act 1968, introduced under schedule 4 to the bill, obliges ministers to make the regulations concerned. If regulations are not made, there will be no obligation on a local authority to consult anyone before exercising its powers under new section 27(1)(b)(va) of the 1968 act. The Executive has confirmed that new section 27(5A) requires amendment to meet the policy intention. It has been suggested by our legal advisers that we leave matters there and make no further points at the moment. Is that agreed?

**Mr Maxwell:** This is very like, if not exactly the same as, the points that we raised with respect to section 1(10) and section 2(2). The powers in question are supposedly to be exercised on a localised basis, but there is no guarantee from the Executive that it will not use them in a much more general way. The Executive does not confirm that the power will not be used to modify, amend or add to the statutory provisions. We should ask about that in a similar vein to our questions on section 1(10) and section 2(2).

**The Convener:** We can make all those points together.

*Members indicated agreement.*

**Murray Tosh:** Please excuse me at this point, convener. I have stayed longer than I intended.



**The Convener:** Thank you for your comments, Murray; they were very useful.

**Murray Tosh:** I agree with all the other recommendations.

## Executive Responses

### National Health Service (Transfer of Property between Health Boards) (Scotland) Regulations 2004 (SSI 2004/15)

11:08

**The Convener:** Under item 2, we start with the National Health Service (Transfer of Property between Health Boards) (Scotland) Regulations 2004 (SSI 2004/15). Members will recall that two issues arose. First, there was an issue around the introduction of amending regulations. Secondly, there were some drafting issues. The drafting issues have been explained by the Executive, although perhaps not to our satisfaction. The first point, on when amending regulations might be expected, has not been addressed.

We do not have the time to write back to the Executive about the regulations, so we will need to raise with the lead committee the fact that we did not get any more word on the matter. We should voice our concerns about the four specific points that we raised with the Executive and about the explanations that we received.

**Mr Maxwell:** We wrote to the Executive on various points concerning the regulations. Our main point—the fact that we were hoping for a timetable or date for the amending regulations—has been ignored completely, and we must bring that to the attention of the lead committee.

**The Convener:** We do not seem to have moved too far forward in the explanations that we have received about the four points either, so it is important that we also document those points for the lead committee.

**Members** *indicated agreement.*

### National Health Service (Borrowing and Loans from Endowments) (Scotland) Regulations 2004 (SSI 2004/16)

**The Convener:** The committee will remember that, on the National Health Service (Borrowing and Loans from Endowments) (Scotland) Regulations 2004 (SSI 2004/16), we made exactly the same points about the introduction of amending regulations as on the preceding instrument, as well as some specific points. The point on the amending regulations will have to be made to the Executive again; we will also have to make the point that we do not feel that we have received satisfactory answers to the questions that we asked.

**Alasdair Morgan:** One of the main points of the regulations is to set a borrowing limit, and the fact that the drafting of that provision is defective

raises the question of the point of the regulations, as they stand.

**The Convener:** That is right.

## **Draft Instrument Subject to Approval**

### **Renewables Obligation (Scotland) Order 2004 (Draft)**

11:11

**The Convener:** Three main points arise under the Renewables Obligation (Scotland) Order 2004, which is a draft instrument. First, articles 3(1), 6(5) and (6), and 7(1) and (3), as read with the definition of “specified day” in article 2(1) and schedule 1, appear to have retrospective effect in respect of the year to March 2003. It looks as if those articles have been lifted straight from the Renewables Obligation (Scotland) Order 2003, but the drafter appears to have forgotten that the new order comes into force on 1 April this year, and if the Executive is going to take account of the year to March 2003, it will have to reconsider how it has drafted the order. The second point concerns the references to the retail prices index in article 7 of the order and whether the Executive should have referred instead to the harmonised index of consumer prices. Thirdly, in article 4(10)(d)(i), the words “in this paragraph (10)(d)” do not seem quite right. There are also a couple of other minor points.

Do we agree to raise those points with the Executive?

**Members** *indicated agreement.*

## **Instrument Subject to Approval**

### **Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Order 2004 (SSI 2004/43)**

11:12

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

## Instruments Subject to Annulment

### Registration of Establishments Keeping Laying Hens (Scotland) Amendment Regulations 2004 (SSI 2004/27)

11:12

**The Convener:** Agenda item 5—instruments subject to annulment—is very familiar. The first such instrument is the Registration of Establishments Keeping Laying Hens (Scotland) Amendment Regulations 2004 (SSI 2004/27). Our legal adviser still wonders why the drafters have not considered the Registration of Establishments (Laying Hens) (England) Regulations 2003, which seem to be a model of clarity and coherence, which the Scottish regulations do not appear to be. In fact, if anything, the regulations seem to get worse as we keep trying to amend them.

Where do we go from here? The regulations still contain serious defects, particularly with regard to registrations. They say that the “owner or keeper” should register: they are not clear with whom the responsibility lies, whereas the English regulations are very clear that it is the operator’s responsibility. One of the more significant defects is the failure to amend regulation 9 of the Registration of Establishments Keeping Laying Hens (Scotland) Regulations 2003. Also, the penalties in the offence provision in regulation 12 of the 2003 regulations still remain different from those in the English regulations.

I am open to comments.

**Mr Maxwell:** On the face of it, it seems that the penalties for the failure to register are disproportionate to the offence, in that a whole business can, in effect, be destroyed on the basis of a failure to reregister.

There is lack of clarity about whether it is the owner or the operator who must register. Who is responsible? There is no clarity on that and, therefore, the question arises who is it that actions would be taken against. Someone could lose their business on the back of someone else’s inaction. If there is no clarity about who is responsible, I would expect that there would be a clear defence in law of not knowing that it was your responsibility or believing that it was somebody else’s responsibility to do whatever it was that you were supposed to do. The way in which the provision is worded means that someone could not pursue an action against an individual—they could say, as an operator, that they thought that the owner was responsible or, as an owner, they could say that they thought that the operator was responsible. None of that has been addressed and the situation

has been left open. We should seek further improvements from the Executive.

11:15

**Christine May:** While there might be a defence in law that the matter of who was responsible was not clear, the fact is that, usually, the length of time that it would take to get such a case to court might mean, in effect, that the business would be closed down. That relates to the powers that are vested in ministers under the regulations. It is essential that there is clarity about which individual is responsible for re-registration in the event of a change of ownership, a death or whatever. That would allow for such penalties to be considered in terms of whether they were commensurate with the obligation. There might still be a concern about the nature of the power given to ministers to oblige the business to cease trading in the event of a breach.

We need clarity about on whom the responsibility should fall, and there should be further consideration of the power that is given to ministers and whether there should be a stay of execution while a defence is being prepared.

**The Convener:** Could we ask what the rationale is for having the penalties in Scotland differ from those in England? There might be a good reason, but it would be useful to know that.

**Members indicated agreement.**

### Local Government Capital Expenditure Limits (Scotland) Regulations 2004 (SSI 2004/29)

**The Convener:** It is suggested that we ask the Executive to explain which power authorises the reference to future editions of the code of practice referred to in regulation 2(2). Do we agree to write to the Executive to ask that question?

**Members indicated agreement.**

### Health Act 1999 (Savings) (Scotland) Order 2004 (SSI 2004/31)

### Community Care and Health (Scotland) Act 2002 (Savings) Order 2004 (SSI 2004/34)

**The Convener:** No points arise in relation to these two orders.

### National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2004 (SSI 2004/36)

**The Convener:** No points of substance arise in relation to this instrument. However, it is the first in

a series of instruments that we will consider today whose explanatory notes are not in the normal form, which would comprise a summary and a link to the regulation. Do we agree to write an informal letter to the Executive on that point?

**Members** *indicated agreement.*

**National Health Service (General Dental Services) (Scotland) Amendment Regulations 2004 (SSI 2004/37)**

**The Convener:** No points arise on this instrument, but it relates to consolidation, which is a matter of interest to Christine May.

**Christine May:** Consolidation is an important issue. I would like the *Official Report* to show that we raised the matter at this point but decided to do nothing about it as we are already discussing the matter with the Executive.

**The Convener:** Is that agreed?

**Members** *indicated agreement.*

**National Health Service (Tribunal) (Scotland) Regulations 2004 (SSI 2004/38)**

**The Convener:** It has been suggested that we ask the Executive to explain the vires of regulation 26, and that we question it further on the matter of the notices in schedule 2. Do we agree to do so?

**Members** *indicated agreement.*

**National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2004 (SSI 2004/39)**

**The Convener:** Again, we have a point to raise about the form of the explanatory note. We can add that to our list, which will accumulate as we go on.

**National Health Service (General Medical Services Supplementary Lists) (Scotland) Amendment Regulations 2004 (SSI 2004/40)**

**The Convener:** Once again, we have a point about the form of the explanatory note. Is that agreed?

**Members** *indicated agreement.*

**National Health Service (General Medical Services) (Scotland) Amendment Regulations 2004 (SSI 2004/41)**

**The Convener:** Again, our point relates to the explanatory note.

**Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2004 (SSI 2004/44)**

**The Convener:** This is quite a contentious issue. The legal brief lists from (a) to (f) a number of instances of what the adviser views as some fairly silly slips.

**Mr Maxwell:** We should raise all the points that have been identified. There are quite a few of them, although I accept that most of them are fairly minor. Given the contentious nature of the order, the fact that it deals with the restriction on days at sea and the way in which it affects the communities concerned, it is incumbent on the Executive to get the order right first time—or even the second time.

I have one particular point on article 17(1), which deals with the conferring of powers of entry on British sea-fishery officers. That seems to relate to fishing boats for the purposes of enforcing articles 8 and 10. At the same time, however, the provisions seem to refer in some places to road haulage. Is that just a mistake, or is there something that I do not understand about boats that go on roads? I assume that it is a mistake, but perhaps we should raise the matter.

**The Convener:** We will raise that as a further question, in addition to points (a) to (f) as listed on the legal brief.

**Christine May:** I wish to reinforce the last of those points:

“why the Order was not accompanied by a copy of the relevant EC legislation.”

The issue of transposition notes has come up in the committee over and over again. The order concerns a contentious matter, so it might be expected that those who will be affected by the regulations would want to see them in conjunction with the detail of the EC legislation. The same applies in other areas. An issue to do with animal by-products was raised recently in my constituency. As far as the regulations for that are concerned, people have to hunt for the relevant legislation to see what it says. We should reinforce our point on the matter.

**The Convener:** Is that agreed?

**Members** *indicated agreement.*

**Alasdair Morgan:** As Stewart Maxwell said, the problems with the order are probably fairly trivial on the scale of things. However, in view of the political sensitivity of the matter, the Executive will want to get the order 100 per cent correct.

**The Convener:** Exactly.

## **Instrument Not Subject to Parliamentary Procedure**

### **Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 4) (Scotland) Partial Revocation Order 2004 (SSI 2004/42)**

11:22

**The Convener:** No points have been identified on the order.

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

### **Local Government in Scotland Act 2003 (Commencement No 2) Order 2004 (SSI 2004/28)**

11:23

**The Convener:** No points have been raised on the order.

**Christine May:** Article 2(1) could, and should, have specified a calendar date for the coming into force of the sections of the parent act to which it refers. That error does not mean that the order will not work, but it is not good drafting practice.

**The Convener:** We will write back to the Scottish Executive on that. Is that agreed?

**Members** *indicated agreement.*

**The Convener:** There is a second minor point, about the drafting of the explanatory note. We will raise that in our correspondence.

**Mr Maxwell:** Would that not be an informal matter?

**The Convener:** Yes—we will raise that second point in an informal note.

### **Health Act 1999 (Commencement No 14) (Scotland) Order 2004 (SSI 2004/32)**

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

## **Community Care and Health (Scotland) Act 2002 (Commencement No 3) Order 2004 (SSI 2004/33)**

**The Convener:** No points have been identified on the order.

**Christine May:** There are, however, some minor typographical errors.

**The Convener:** We can deal with them informally.

### **Public Appointments and Public Bodies etc (Scotland) Act 2003 (Commencement No 4) Amendment Order 2004 (SSI 2004/45)**

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

**Christine May:** We can add any minor points to our informal letter, which is going to be very long.

**The Convener:** Yes, it looks as though that will be the case, as we pick up the points that have been raised in the legal brief.

I thank the committee. We shall next meet in two weeks' time.

*Meeting closed at 11:25.*



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