

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 16 March 2004
(Morning)

Session 2

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CONTENTS

Tuesday 16 March 2004

Col.

DRAFT INSTRUMENTS SUBJECT TO APPROVAL	361
Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2004 (draft)	361
Sexual Offences Act 2003 (Travel Notification Requirements) (Scotland) Regulations 2004 (draft)	361
INSTRUMENTS SUBJECT TO ANNULMENT	362
Individual Learning Account (Scotland) Regulations 2004 (SSI 2004/83)	362
Road Works (Inspection Fees) (Scotland) Amendment Regulations 2004 (SSI 2004/84)	363
Parking Attendants (Wearing of Uniforms) (Dundee City Council Parking Area) Regulations 2004 (SSI 2004/85)	363
Road Traffic (Parking Adjudicators) (Dundee City Council) Regulations 2004 (SSI 2004/86)	363
Road Traffic (Permitted Parking Area and Special Parking Area) (Dundee City Council) Designation Order 2004 (SSI 2004/87)	364
Private Hire Car Drivers' Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2004 (SSI 2004/88)	364
Teachers' Superannuation (Scotland) Amendment Regulations 2004 (SSI 2004/89)	364
Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Scotland) Amendment Regulations 2004 (SSI 2004/90)	364
Non-Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Amendment Order 2004 (SSI 2004/91)	365
Non-Domestic Rates (Lewying) (Scotland) Regulations 2004 (SSI 2004/92)	365
Regulation of Care (Fees) (Scotland) Order 2004 (SSI 2004/93)	365
Regulation of Care (Requirements as to Care Services) (Scotland) Amendment Regulations 2004 (SSI 2004/94)	366
Regulation of Care (Applications and Provision of Advice) (Scotland) Amendment Order 2004 (SSI 2004/95)	366
Regulation of Care (Registration and Registers) (Scotland) Amendment Regulations 2004 (SSI 2004/96)	366
National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2004 (SSI 2004/97)	366
National Health Service (General Ophthalmic Services) (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/98)	366
National Health Service (Dental Charges) (Scotland) Amendment Regulations 2004 (SSI 2004/101)	367
National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Amendment Regulations 2004 (SSI 2004/102)	367
National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2004 (SSI 2004/103)	367
Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment Regulations 2004 (SSI 2004/104)	367
Housing (Scotland) Act 2001 (Alteration of Housing Finance Arrangements) Order 2004 (SSI 2004/105)	367
National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2004 (SSI 2004/106)	367
Housing (Scotland) Act 2001 (Payments out of Grants for Housing Support Services) Amendment Order 2004 (SSI 2004/108)	367
Rural Stewardship Scheme (Scotland) Amendment Regulations 2004 (SSI 2004/109)	368
Pollution Prevention and Control (Scotland) Amendment Regulations 2004 (SSI 2004/110)	368
Potatoes Originating in Egypt (Scotland) Regulations 2004 (SSI 2004/111)	368
Countryside Premium Scheme (Scotland) Amendment Regulations 2004 (SSI 2004/113)	368
INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT	369
Regulation of Care (Scotland) Act 2001 (Commencement No 5 and Transitional Provisions) Order 2004 (SSI 2004/100)	369
National Health Service Trusts (Dissolution) (Scotland) Order 2004 (SSI 2004/107)	369

SUBORDINATE LEGISLATION COMMITTEE

10th 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 16 March 2004

(Morning)

[THE DEPUTY CONVENER *opened the meeting at 10:30*]

Draft Instruments Subject to Approval

The Deputy Convener (Gordon Jackson): Welcome to the 10th meeting of the Subordinate Legislation Committee this year. Sylvia Jackson, who is normally in the chair, apologises for not being here—she is unwell.

Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2004 (draft)

The Deputy Convener: We expressed doubt as to the vires of the order. The Executive has agreed and is withdrawing it. The Executive will, in due course, lay an amending instrument. I would have thought that that would do us nicely for now.

Members *indicated agreement.*

Sexual Offences Act 2003 (Travel Notification Requirements) (Scotland) Regulations 2004 (draft)

The Deputy Convener: No points have been identified on the draft regulations.

Instruments Subject to Annulment

Individual Learning Account (Scotland) Regulations 2004 (SSI 2004/83)

10:31

The Deputy Convener: There are a large number of instruments subject to annulment, the first of which is the Individual Learning Account (Scotland) Regulations 2004 (SSI 2004/83). A number of points have been identified for raising with the Executive.

One of the regulations covers circumstances under which the Scottish ministers may cancel the registration of a learning account holder. However, there is no provision for the Scottish ministers to inform the individual of that. Although the ministers might be informing the individual in practice, we would like the Executive to tell us why the regulations contain nothing of that nature.

Christine May (Central Fife) (Lab): In addition to the three other matters that are noted in our legal advice—which I am happy to go through for the record if you wish, convener—there is a question about the qualifications for entitlement to a learning account, which might raise a point of European Community law. We ought to ask for clarification on that. There has not been time to produce a briefing on the matter, but there is a question whether, if someone who is a resident of this country and who is in receipt of social security benefits is entitled to that account, that also applies to someone who comes here from another European Union state. If not, is that discriminatory? I would like the committee to ask the Executive that question.

The Deputy Convener: I do not know the answer to that. It is worth finding out.

Alasdair Morgan (South of Scotland) (SNP): One of the reasons for the cancellation or suspension of registration is that a learning provider payment agreement has not been delivered. However, the regulations do not mention that that is a requirement. That should be stated elsewhere.

The Deputy Convener: There is also a provision that states:

“A learning account holder shall forthwith notify the Scottish Ministers of any change of circumstances which may affect his or her status”.

We might ask the Executive how that is to be enforced.

We might also ask why there is no provision for appeal should an application for registration as a learning provider be rejected.

We have a range of questions to ask, and we should at least find out what the Executive has to say about those matters.

Murray Tosh (West of Scotland) (Con): We should also pursue the typographical errors and so on by informal letter.

The Deputy Convener: Indeed.

Road Works (Inspection Fees) (Scotland) Amendment Regulations 2004 (SSI 2004/84)

The Deputy Convener: No points have been identified on the regulations.

Parking Attendants (Wearing of Uniforms) (Dundee City Council Parking Area) Regulations 2004 (SSI 2004/85)

The Deputy Convener: There are no points of substance on the wearing of uniforms in Dundee.

Murray Tosh: It is a pity that the council is not required to provide something appropriate, such as Desperate Dan outfits or something.

Christine May: It would be a bit more Dennis the Menace.

Murray Tosh: Well, there is an enormous D C Thomson stable to choose from. It would be possible to vary the garb according to the season.

Road Traffic (Parking Adjudicators) (Dundee City Council) Regulations 2004 (SSI 2004/86)

The Deputy Convener: Sticking with Dundee, two points have been mentioned on the regulations. One is that they are not drafted in gender-neutral terms; the other is that there is no provision for the communication to the appellant of any decision to extend the time limits. We have raised both those matters quite often in the past, in connection with other regulations; it might be appropriate to raise them again.

Mr Stewart Maxwell (West of Scotland) (SNP): We should raise the point about gender-neutral language formally. You are quite right, convener, to point out that we have raised it a number of times. It seems strange that the same mistake about drafting things, or rather failing to draft them, in gender-neutral terms is still coming up. It seems an obvious mistake.

Road Traffic (Permitted Parking Area and Special Parking Area) (Dundee City Council) Designation Order 2004 (SSI 2004/87)

The Deputy Convener: There are a number of points on the order.

Christine May: The first is whether in schedule 2 to the order, paragraph 7, the omission of an amendment to the reference to the secretary of state is deliberate.

The Deputy Convener: The title of the designation order is also cited at one point as being a 2003 order, as opposed to a 2004 order. I suggest that a few little errors have crept into the instrument.

We could also ask the Executive to confirm that the adaptation of section 63A of the Road Traffic Regulation Act 1984 effected by paragraph 3(b) of schedule 3 of the order, is correct. We should check what the Executive is doing in that regard.

Private Hire Car Drivers' Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2004 (SSI 2004/88)

The Deputy Convener: No points of substance arise on the regulations.

Teachers' Superannuation (Scotland) Amendment Regulations 2004 (SSI 2004/89)

The Deputy Convener: We should consider whether the reference in regulation 4 to regulation C13(5) is correct. That might simply be a typing error, but we should ask the Executive about it.

It has been noted that, contrary to the guidance on the drafting of statutory instruments, the explanatory note does not indicate the regulations that make the changes that are described in the note.

We could query both matters by informal letter. Is that agreed?

Members *indicated agreement.*

Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Scotland) Amendment Regulations 2004 (SSI 2004/90)

The Deputy Convener: No points arise on the regulations.

Non-Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Amendment Order 2004 (SSI 2004/91)

The Deputy Convener: Does anyone have any points to raise on the order?

Christine May: We should query why paragraph 1(5) of schedule 2 to the Local Government and Rating Act 1997 has not been cited as an enabling power.

The Deputy Convener: There is no harm in asking that question.

Non-Domestic Rates (Levying) (Scotland) Regulations 2004 (SSI 2004/92)

The Deputy Convener: No points arise on the regulations.

Regulation of Care (Fees) (Scotland) Order 2004 (SSI 2004/93)

The Deputy Convener: The next instrument is a little more interesting.

Alasdair Morgan: We have commented at previous meetings about the necessity to specify how fees may be varied. It seems that the increase that the order makes in fees is rather large. Some of the fees have almost doubled, and the Executive note says that the fees will probably go up again next year and the year after, in similar fashion. We should at least draw the attention of the lead committee to what might be an unexpected use of powers.

The Deputy Convener: Would that be sufficient for what is a semi-policy matter? Do we put the matter to the lead committee, or do we ask the Executive to tell us more about it?

Alasdair Morgan: The Executive spelled out in its note why it believes that those increases are necessary for the full recovery of costs from the care commission, but that does not get away from the fact that there are 100 per cent increases in some cases.

The Deputy Convener: That would be a matter for the lead committee. All that the Executive could tell us about it would be what it has already told us.

Christine May: Given our previous correspondence with the Executive on the issue, in connection with another instrument, it might be worth raising our objections with the Executive again as well as highlighting the issue for the lead committee.

The Deputy Convener: I am easy. Do members think that we should ask the Executive for its comments?

Mr Maxwell: In debates in previous weeks, we have been concerned about the open-ended nature of the power, which we said should be restricted to covering inflation, so we should ask the Executive for its comments.

Murray Tosh: These increases are different from inflationary upgrading because the order will move the charging basis from one that is not based on cost recovery to one that is based on cost recovery. I am sure that that is how the Executive will explain the increases, but it will do no harm to have that clarification in case there are issues for us in the Executive's response.

The Deputy Convener: We have agreed to ask the Executive and to tell the lead committee what we are doing.

Regulation of Care (Requirements as to Care Services) (Scotland) Amendment Regulations 2004 (SSI 2004/94)

Regulation of Care (Applications and Provision of Advice) (Scotland) Amendment Order 2004 (SSI 2004/95)

Regulation of Care (Registration and Registers) (Scotland) Amendment Regulations 2004 (SSI 2004/96)

National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2004 (SSI 2004/97)

The Deputy Convener: No points have been identified on the instruments.

National Health Service (General Ophthalmic Services) (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/98)

The Deputy Convener: No points of substance have been identified on the regulations, but we might want to highlight the drafting of the explanatory note's final paragraph, which is not enlightening and needs further explanation.

The regulations seem to be long overdue for consolidation, so we could also ask what is happening on that front. Shall we ask about both those things in an informal letter?

Members indicated agreement.

**National Health Service (Dental Charges)
(Scotland) Amendment Regulations 2004
(SSI 2004/101)**

**National Health Service (Travelling
Expenses and Remission of Charges)
(Scotland) Amendment Regulations 2004
(SSI 2004/102)**

**National Assistance (Assessment of
Resources) Amendment (Scotland)
Regulations 2004 (SSI 2004/103)**

The Deputy Convener: Unless anyone interrupts me, no points arise on the regulations.

Murray Tosh: Can we assume that all the minor typographical and drafting points that have been picked up will be raised with the Executive informally?

The Deputy Convener: Absolutely. I am sorry if, in rushing on quickly, I did not make that clear.

Murray Tosh: I am quite happy if that is understood and if it applies in all cases.

**Pesticides (Maximum Residue Levels in
Crops, Food and Feeding Stuff)
(Scotland) Amendment Regulations 2004
(SSI 2004/104)**

The Deputy Convener: No points arise on the regulations.

**Housing (Scotland) Act 2001 (Alteration of
Housing Finance Arrangements) Order
2004 (SSI 2004/105)**

Christine May: We should ask the Executive why the word "year" is defined in article 2, when the term is not used elsewhere in the order.

The Deputy Convener: I am happy to do that.

**National Assistance (Sums for Personal
Requirements) (Scotland) Regulations
2004 (SSI 2004/106)**

The Deputy Convener: Again, no points of substance arise on the regulations.

**Housing (Scotland) Act 2001 (Payments
out of Grants for Housing Support
Services) Amendment Order 2004
(SSI 2004/108)**

Christine May: In this case, a definition could usefully have been provided. The term "care service" is not defined so there is an inconsistency with the principal order.

The Deputy Convener: That is another question that we can properly ask the Executive.

**Rural Stewardship Scheme (Scotland)
Amendment Regulations 2004
(SSI 2004/109)**

Christine May: The regulations come into force on 31 March but they provide a start date of 15 March for certain activities. We should ask the Executive whether the regulations are intended to be retrospective.

The Deputy Convener: Okay.

**Pollution Prevention and Control
(Scotland) Amendment Regulations 2004
(SSI 2004/110)**

The Deputy Convener: No points arise on the regulations other than the typographical errors, which, Murray Tosh was right to say, will be pointed out to the Executive.

**Potatoes Originating in Egypt (Scotland)
Regulations 2004 (SSI 2004/111)**

**Countryside Premium Scheme (Scotland)
Amendment Regulations 2004
(SSI 2004/113)**

The Deputy Convener: No points arise on the regulations.

Instruments Not Laid Before the Parliament

Regulation of Care (Scotland) Act 2001 (Commencement No 5 and Transitional Provisions) Order 2004 (SSI 2004/100)

10:45

The Deputy Convener: No points arise on the order.

National Health Service Trusts (Dissolution) (Scotland) Order 2004 (SSI 2004/107)

The Deputy Convener: Finally.

Mr Maxwell: We should ask why the penultimate item in the list of revocations on page 4 is the Ayrshire and Arran Acute Hospitals National Health Service Trust (Establishment) Amendment Order 1999 (SSI 1999/100), which appears to have been revoked by a previous Scottish statutory instrument.

The Deputy Convener: We will ask the Executive about that.

As Mr Tosh was not present when I mentioned this earlier, let me remind members that we will have a photo call next week at about half past 10, before our meeting starts. I mention that so that all who wish their photo to be taken can be here.

Mike Pringle (Edinburgh South) (LD): Complete with costumes from Dundee.

Murray Tosh: I see that you already have yours.

The Deputy Convener: The dress code is optional.

I thank members for their attendance.

Meeting closed at 10:46.

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