

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 14 September 2004

Session 2

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## SUBORDINATE LEGISLATION COMMITTEE

### 24<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 CLERK

Bruce Adamson

#### LOCATION

Committee Room 2

## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 14 September 2004*

[THE CONVENER *opened the meeting at 10:37*]

**The Convener (Dr Sylvia Jackson):** I welcome everyone to the 24<sup>th</sup> meeting in 2004 of the Subordinate Legislation Committee, and to this beautiful new committee room. I gather that the committee might be in another committee room for some meetings, but that room will be equally nice.

I welcome back members. I have received no apologies, so I expect members who are not here yet to appear at some point.

We will hold one minute's silence at 11 o'clock for the tragedy in Beslan, so we shall stop proceedings at that point.

## Delegated Powers Scrutiny

### Tenements (Scotland) Bill: as amended at Stage 2

10:38

**The Convener:** Members will remember that we considered the Tenements (Scotland) Bill at an early stage and made recommendations about sections 4(11) and 22(4)(f). Our recommendations are highlighted in paragraph 11 of the legal brief. The Executive has chosen to take up the second one, which is that the power should remain as drafted but should be subject to a restriction to the effect that any changes in the specified sums be limited to changes in the value of money. The power would then be quite specific as to what could happen. In that case, the negative procedure would supply an appropriate level of scrutiny. Is the committee happy with the way in which the Executive has proceeded?

**Members** *indicated agreement.*

**The Convener:** There will be two additional powers in the bill and they will be relevant to the committee. One of those is to do with sale of a property and the second is about issues of access to property. Although it is not possible to give a definitive answer on the proposed powers because we have not been able to examine the amendments, it looks as if there are good reasons for seeking to introduce those powers.

I welcome Gordon Jackson to the meeting.

**Gordon Jackson (Glasgow Govan) (Lab):** I am sorry I am late. I could not find a lift that worked. I presume that matters will get better.

**Mike Pringle (Edinburgh South) (LD):** It takes a long time to get around the building.

## Draft Instruments Subject to Approval

### Housing Grants (Assessment of Contributions) (Scotland) Amendment Regulations 2004 (draft)

10:40

**The Convener:** No points have been identified on the regulations. Members will remember that we made points about the regulations; it seems that they have been taken on board.

### Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (draft)

**The Convener:** Our legal advisers have raised the issue of the vires of regulation 4(4), which deals with the fees notice that

"shall set out the manner in which the fee has been calculated."

It is argued that the parent act did not allow for such a regulation to be inserted. The question of the fees notice will appear in the guidance and the code of practice, so should it also be in the regulations? Obviously, that is a question of vires. Are members quite happy that we ask the Executive about that?

**Members** *indicated agreement.*

**Mike Pringle:** I hope that the Executive can enlighten us.

### Ethical Standards in Public Life etc (Scotland) Act 2000 (Modification of National Parks (Scotland) Act 2000) Order 2004 (draft)

**The Convener:** The order is intended to bring the national parks into line with the model code of conduct under the Ethical Standards in Public Life etc (Scotland) Act 2000. I remember that act well from my time on the Local Government Committee.

There are no points arising on the order.

## Instruments Subject to Approval

Food Protection (Emergency Prohibitions)  
(Amnesic Shellfish Poisoning)  
(West Coast) (No 4) (Scotland) Order 2004  
(SSI 2004/319)

Food Protection (Emergency Prohibitions)  
(Amnesic Shellfish Poisoning) (Orkney)  
(No 2) (Scotland) Order 2004 (SSI  
2004/322)

Food Protection (Emergency Prohibitions)  
(Amnesic Shellfish Poisoning)  
(West Coast) (No 5) (Scotland) Order 2004  
(SSI 2004/323)

Food Protection (Emergency Prohibitions)  
(Amnesic Shellfish Poisoning)  
(West Coast) (No 6) (Scotland) Order 2004  
(SSI 2004/330)

Food Protection (Emergency Prohibitions)  
(Amnesic Shellfish Poisoning) (Irish Sea)  
(Scotland) Order 2004 (SSI 2004/340)

Food Protection (Emergency Prohibitions)  
(Amnesic Shellfish Poisoning)  
(West Coast) (No 7) (Scotland) Order 2004  
(SSI 2004/341)

Food Protection (Emergency Prohibitions)  
(Amnesic Shellfish Poisoning)  
(West Coast) (No 8) (Scotland) Order 2004  
(SSI 2004/344)

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(SSI 2004/359)

Food Protection (Emergency Prohibitions)  
(Diarrhetic Shellfish Poisoning)  
(East Coast) (No 2) (Scotland) Order 2004  
(SSI 2004/378)

10:42

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

**Fishing Vessels  
(Satellite-tracking Devices) (Scotland)  
Scheme 2004 (SSI 2004/379)**

**The Convener:** The scheme is the result of a European Commission requirement and it relates to the grants system. There are several questions about the scheme.

The first is to ask why copies of the EC legislation were not submitted with the scheme. Our legal adviser had to go to the internet to find it. Secondly, to what do the words from “or which” to the end of the definition of a Scottish fishing vessel in paragraph 3(4) of the scheme refer? Thirdly, what is the purpose of the reference in paragraph 10 to paragraph 9, which deals with requests for assistance to authorised officers? Why cannot paragraph 9 stand alone?

Are there any further points?

**Alasdair Morgan (South of Scotland) (SNP):** On your first question, convener, we should not argue that the Executive has to provide everything to the committee on paper. It would have been reasonable for it to have provided the internet address so that we could have accessed the legislation easily. If we are talking about a scheme that deals with satellite-tracking devices, it is a bit ridiculous to insist that we get some old-technology paper in front of us.

**The Convener:** Point taken. Perhaps it would be sufficient for us to get the link. Is that agreed?

**Members indicated agreement.**

**Instruments Subject  
to Annulment**

**European Communities  
(Lawyer’s Practice) (Scotland) Amendment  
Regulations 2004 (SSI 2004/302)**

**Advice and Assistance (Scotland)  
Amendment (No 2) Regulations 2004  
Amendment Regulations 2004  
(SSI 2004/305)**

**Criminal Legal Aid (Scotland) (Fees)  
Amendment (No 2) Regulations 2004  
(SSI 2004/316)**

10:44

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

**Oil and Fibre Plant Seed (Scotland)  
Regulations 2004 (SSI 2004/317)**

**The Convener:** There are a few points on the regulations, which form a large tome and are lengthy and complex. We wondered whether we should ask what steps have been taken to provide guidance to help people who will be affected by the regulations to understand them. That seems to be eminently sensible, especially because our review is going to consider that issue.

Secondly, in relation to the definition of “official post-control” in regulation 2, the legal adviser suggests that we seek clarification of regulation 2(a)(i)(bb)—that really outlines how complex such documents can be. The question is whether the reference to paragraph

“15(1) of Part II of Schedule 4”

should in fact be a reference to paragraph 15(a) of part II of schedule 4. Recommendations (c) to (d) of the legal advice deal with similar matters. Do we agree to pass those recommendations to the Executive?

**Members indicated agreement.**

10:45

**The Convener:** Another issue is the fact that we do not have a copy of the transposition note, which would have been helpful. It is also pointed out that a similar instrument has been radically altered in England. Paragraphs 57 to 65 of the legal advice relate to that issue.

**Christine May (Central Fife) (Lab):** For consistency, we should ask for the transposition note. We have done that before.

I have less of a problem with the fact that the nature and style of the regulations differ between Scotland and England. I think that those who use them will probably manage to cope because they will have other cross-border activities. We might want to ask the Executive what steps it has taken to discuss with civil servants in England the resolution of any confusion that might arise because of the difference in style.

I should add that I was delighted to discover that pages 48 and 49 of the document informed me of the difference between a single-chamber and a multi-chamber stick sampler.

**The Convener:** Are there any other points on the United Kingdom issue?

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

I agree with Christine May that there is not really a UK issue here. If companies can operate in various countries across Europe, I do not think that there is a problem with their ability to follow the regulations, which are similar to other European regulations. The wording might be different in England and Scotland, but a company that works in Ireland and England or France and Germany will also have to deal with differently worded regulations. It seems more sensible to go down the route that we have gone down in Scotland, whereby we have kept the format roughly the same as that of the previous regulations. That will make them easier for the relevant companies to understand than if we had given them a radical overhaul, as happened in England. I do not think that there is a problem.

**Alasdair Morgan:** I agree. Either we have legislatures that do such things individually or we do not. The only way to ensure that they are all the same would be to have them all created centrally; there has already been a policy decision that that is not to be done.

I do not know what the purpose of consultation would be. The only purpose that I can imagine would be to ensure that we are doing the same thing as the other legislatures that are being consulted.

I do not think that there is a problem. It is not as if there is no accompanying guidance, which is what most people will refer to rather than the nitty-gritty of the legislation. I suspect that only lawyers would read that and then only if cases came to court where, of course, they would be doing that in the context of differing legal frameworks in any case.

**The Convener:** I take that on board, but I can see Christine May's point. It was obviously thought necessary to make the changes in England and I wonder whether the length and complexity of the regulations is an issue for us at the moment. Perhaps the Executive could ask the people who

will use the regulations whether they have a problem with that. If they do not, that is fine.

**Mr Maxwell:** I understand what you are saying but, as Alasdair Morgan just said, the users of the regulations will refer to the guidance and explanatory notes rather than to the technical detail in the regulations. I am not sure where consultation of the sort that you outline would take us.

**Christine May:** My suggestion was to ask not the users about the differences but those in the civil service down south who are involved in making the changes to the style and terminology of the regulations. It might be useful to find out what thoughts they have had on the resolution of any confusion.

**The Convener:** I am tempted to suggest that it would do no harm to ask them about that. Stewart Maxwell's point relates to the first recommendation in our legal advice, which is that we should ask what steps the Executive has taken to provide guidance to people who will be affected by the requirements that will be imposed by the regulations. We might also ask whether there has been consultation, because of the length and complexity of the regulations. That might be a way of starting to consider whether any changes are needed—of course, it might be that changes are not needed. It might be useful to put down such a marker, given that, as our legal adviser points out, the regulations are lengthy and complex.

**Mr Maxwell:** I am not arguing that the regulations are not lengthy or complex; I am saying that all that is important is whether they have been drafted correctly. The critical point is dealt with in the first recommendation in the legal advice, which relates to the guidance that the Executive will provide to the relevant people. The difference between the precise wording in England, Scotland, France or anywhere else is a bit of a sideshow.

**The Convener:** That is what I am saying. Perhaps I did not put it as well as you did.

**Christine May:** Given that I do not foresee enormous confusion over the matter, it is not something that I want to die in a ditch over. I was merely curious as to whether there had been any conversation between the people in the Executive and their counterparts down south. If no one in the rest of the committee agrees with me, I am perfectly happy to drop my proposal.

**The Convener:** We are agreed that the crunch issue is whether the regulations are understandable. Therefore, we should simply ask about the guidance. Are we agreed?

**Members indicated agreement.**



**Register of Sasines  
(Application Procedure) Rules 2004  
(SSI 2004/318)**

**The Convener:** The legal adviser suggests that we should ask why the word “registration”, which has rather a technical meaning, is used in rule 6 rather than “recording”. “Registration” is also used in question 20 of the form in the schedule to the rules. Is that agreed?

**Members** *indicated agreement.*

**Housing (Scotland) Act 2001  
(Payments out of Grants for Housing  
Support Services) Amendment (No 2)  
Order 2004 (SSI 2004/348)**

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

**Mr Maxwell:** The legal adviser points out that the regulations breach the 21-day rule. Should we at least put that fact on the record and state that we would generally prefer that that not happen?

**The Convener:** The Executive has explained the reason for the breach; it is obvious that the breach was necessary. There have been difficulties with the process of registering with the Scottish Commission for the Regulation of Care.

**Mr Maxwell:** I am not denying that. I was merely saying that, given that we generally pressure the Executive to stick to the 21-day rule, we should note that it has been breached in this instance rather than pass over the fact as we were about to.

**The Convener:** Is that agreed?

**Members** *indicated agreement.*

**Sports Grounds and Sporting Events  
(Designation) (Scotland) Order 2004  
(SSI 2004/356)**

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

**Gordon Jackson:** These regulations also breach the 21-day rule but, as that was necessary to allow Hearts to play at Murrayfield, I think that this week of all weeks we should turn a blind eye to the breach.

**Mike Pringle:** There has been enough trouble at Tynecastle without our interfering.

**Environmental Protection  
(Restriction on Use of Lead Shot)  
(Scotland) (No 2) Regulations 2004  
(SSI 2004/358)**

**The Convener:** We previously had great

concerns about the regulations but, as members will see, they have been rewritten to include everything that we asked for, and now no points arise on the regulations. We should express great pleasure about that.

**International Criminal Court (Enforcement  
of Fines, Forfeiture and Reparation  
Orders) (Scotland) Regulations 2004 (SSI  
2004/360)**

**The Convener:** A significant issue appears to arise on the regulations. What is being recommended appears to go totally against what the *Official Report* records ministers as having said when questions were asked about the matter. Both Iain Gray—in a discussion with the Justice 2 Committee, which obviously took place some time ago—and the Deputy First Minister argued against what is proposed in the regulations. That seems to be a bit odd.

**Christine May:** We should take that up with the Executive. As far as I am concerned, the regulations are incorrect and of dubious vires. It might be that there is a good reason for the situation that has been identified and, if so, we should try to find out what it is.

**Gordon Jackson:** I am curious to find out what answer we will be given. We should ask why the situation has arisen, but I would not like to pre-empt the answer at this stage.

**The Convener:** Do we agree to ask the Executive for an explanation?

**Members** *indicated agreement.*

**Plant Protection Products (Scotland)  
Amendment Regulations 2004  
(SSI 2004/368)**

**National Health Service  
(Charges to Overseas Visitors) (Scotland)  
Amendment Regulations 2004  
(SSI 2004/369)**

**Sexual Offences Act 2003  
(Prescribed Police Stations) (Scotland)  
Amendment Regulations 2004  
(SSI 2004/370)**

**General Medical Services and Section 17C  
Agreements (Transitional and Other  
Ancillary Provisions) (Scotland)  
Amendment Order 2004 (SSI 2004/372)**

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

**Mental Health Tribunal for Scotland  
(Delegation of the President's Functions)  
Regulations 2004 (SSI 2004/373)**

**The Convener:** No points of substance arise on the regulations. A few minor points arise, however. Do we agree to deal with them in an informal letter?

**Members** *indicated agreement.*

**Mental Health Tribunal for Scotland  
(Appointment of Medical Members)  
Regulations 2004 (SSI 2004/374)**

**Mental Health Tribunal for Scotland  
(Appointment of General Members)  
Regulations 2004 (SSI 2004/375)**

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

**Freedom of Information  
(Fees for Disclosure under Section 13)  
(Scotland) Regulations 2004 (SSI 2004/376)**

**The Convener:** It has been suggested that we might want to consider getting an explanation of the effect of the reference in regulation 4 to the agreement of the person requesting the information. We might want to ask what that means. Is it suggested that some sort of bartering might go on?

Do we agree to ask the Executive about that?

**Members** *indicated agreement.*

**Regulation of Care (Scotland) Act 2001  
(Commencement No 5 and Transitional  
Provisions) Amendment Order 2004  
(SSI 2004/377)**

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

**Fodder Plant Seeds Amendment  
(Scotland) Regulations 2004 (SSI 2004/380)**

**The Convener:** It is suggested that we ask the Executive what, if any, plans it has for consolidation, as that is happening elsewhere. Do we agree to do so and also to write an informal letter to deal with some minor points that arise?

**Members** *indicated agreement.*

**Agricultural Subsidies (Appeals)  
(Scotland) Regulations 2004 (SSI 2004/381)**

**The Convener:** No items arise on the regulations.

11:00

**The Convener:** It is 11 o'clock. We will stop here and resume in one minute. This silence is in remembrance of the tragedy in Beslan.

11:01

**The Convener:** Thank you.

## Order Subject to Special Parliamentary Procedure

**Aberdeen City Council  
(Bobby Calder Park) Compulsory  
Purchase Order (No 3) 2001 (SE 2004/159)**

11:01

**The Convener:** We might wish to ask why the order was not accompanied by an Executive note, and we might ask for an explanation of the delay between confirmation of the order and its being laid before Parliament.

**Alasdair Morgan:** For how long has this matter been going on?

**Christine May:** Three years, I think. I am sure that it dates from 2001.

**The Convener:** Yes, it has been more or less three years.

**Alasdair Morgan:** That seems to be a bit excessive.

**The Convener:** Yes, it does. Is it agreed that we make those two points?

**Members** *indicated agreement.*

**Gordon Jackson:** Have we seen this type of order before?

**The Convener:** No.

**Gordon Jackson:** So it is the first one that we have ever had under this procedure. I was just curious.

## Instruments Not Subject to Parliamentary Procedure

**Food Protection (Emergency Prohibitions)  
(Amnesic Shellfish Poisoning) (Orkney)  
(Scotland) Revocation Order 2004  
(SSI 2004/315)**

**Food Protection (Emergency Prohibitions)  
(Amnesic Shellfish Poisoning)  
(West Coast) (No 4) (Scotland) Order 2004  
Revocation Order 2004 (SSI 2004/345)**

**Food Protection (Emergency Prohibitions)  
(Diarrhetic Shellfish Poisoning) (East  
Coast) (Scotland) Revocation Order 2004  
(SSI 2004/349)**

11:02

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

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

### **Act of Sederunt (Rules of the Court of Session Amendment No 5) (Miscellaneous) 2004 (SSI 2004/331)**

11:02

**The Convener:** Two main points have been identified on the act of sederunt, which were referred informally to the Court of Session. First, the court has acknowledged the deficit under point (a) of our legal brief, and that will be corrected shortly. Secondly, the court has explained new rule 41.5. It is suggested that we simply draw the attention of Parliament to those two issues and to the feedback that we received.

### **Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) Amendment (Protection of Children) (Scotland) Act 2003) 2004 (SSI 2004/334)**

### **National Health Service Reform (Scotland) Act 2004 (Commencement No 1) Order 2004 (SSI 2004/335)**

### **Act of Adjournal (Criminal Procedure Rules Amendment No 3) (Extradition etc) 2004 (SSI 2004/346)**

### **Scottish Qualifications Authority Act 2002 (Commencement No 2) Order 2004 (SSI 2004/347)**

### **Act of Sederunt (Ordinary Cause Rules) Amendment (Competition Appeal Tribunal) 2004 (SSI 2004/350)**

### **Local Governance (Scotland) Act 2004 (Commencement No 1 and Transitional Provisions) Order 2004 (SSI 2004/351)**

### **National Health Service Reform (Scotland) Act 2004 (Commencement No 2) Order 2004 (SSI 2004/361)**

**The Convener:** No points of substance have been identified on the instruments.

### **Mental Health (Care and Treatment) (Scotland) Act 2003 (Commencement No 3) Order 2004 (SSI 2004/367)**

**The Convener:** Although no points of substance have been identified on the order, we might ask

the Executive to explain why it was not possible to allow the customary period of scrutiny of the order before its provisions took effect.

**Members indicated agreement.**

**The Convener:** That brings us to the end of the agenda.

I wish Alasdair Morgan all the best. This is his last meeting with the committee. I am sure that his expertise and his many questions will be missed. He has always done his homework and he is always very good.

**Alasdair Morgan:** It has been a great pleasure to serve on the committee. I am sure that my experience here will be very useful in the future.

**The Convener:** We will miss you.

Many of our meetings will be in committee room 6, which is just across from this room. Room 6 is slightly smaller, but it is a beautiful room.

*Meeting closed at 11:05.*

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