

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 5 October 2004

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2004.

Applications for reproduction should be made in writing to the Licensing Division,  
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ  
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate  
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

---

# CONTENTS

**Tuesday 5 October 2004**

**Col.**

<b>DELEGATED POWERS SCRUTINY .....</b>	<b>593</b>
Fire (Scotland) Bill: Stage 1 .....	593
Water Services etc (Scotland) Bill: Stage 1 .....	594
<b>EXECUTIVE RESPONSE .....</b>	<b>597</b>
Building (Scotland) Regulations 2004 (SSI 2004/406) .....	597
<b>INSTRUMENTS SUBJECT TO APPROVAL .....</b>	<b>597</b>
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 10) (Scotland) Order 2004 (SSI 2004/412) .....	597
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No 4) (Scotland) Order 2004 (SSI 2004/417) .....	597
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 11) (Scotland) Order 2004 (SSI 2004/418) .....	597
<b>INSTRUMENTS SUBJECT TO ANNULMENT .....</b>	<b>598</b>
Victim Notification (Prescribed Offences) (Scotland) Order 2004 (SSI 2004/411) .....	598
Miscellaneous Food Additives Amendment (Scotland) Regulations 2004 (SSI 2004/413) .....	598
Feeding Stuffs (Sampling and Analysis) Amendment (Scotland) Regulations 2004 (SSI 2004/414) .....	598
Public Service Vehicles (Registration of Local Services) (Scotland) Amendment Regulations 2004 (SSSI 2004/415) .....	598
Sale of Spray Paint (Display of Warning Statement) (Scotland) Regulations 2004 (SSI 2004/419) .....	598
Controlled Waste (Fixed Penalty Notices) (Scotland) Order 2004 (SSI 2004/426) .....	599
Litter (Fixed Penalty Notices) (Scotland) Order 2004 (SSI 2004/427) .....	599
<b>INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT .....</b>	<b>600</b>
Debt Arrangement and Attachment (Scotland) Act 2002 (Commencement No 2 and Revocation) Order 2004 (SSI 2004/416) .....	600
Antisocial Behaviour etc (Scotland) Act 2004 (Commencement and Savings) Order 2004 (SSSI 2004/420) .....	600
<b>REGULATORY FRAMEWORK INQUIRY .....</b>	<b>601</b>

---

## SUBORDINATE LEGISLATION

### COMMITTEE

**27<sup>th</sup> Meeting 2004, Session 2**

#### CONVENER

\*Dr Sylvia Jackson (Stirling) (Lab)

#### DEPUTY CONVENER

\*Gordon Jackson (Glasgow Govan) (Lab)

#### COMMITTEE MEMBERS

Mr Adam Ingram (South of Scotland) (SNP)  
\*Mr Stewart Maxwell (West of Scotland) (SNP)  
\*Christine May (Central Fife) (Lab)  
\*Mike Pringle (Edinburgh South) (LD)  
\*Murray Tosh (West of Scotland) (Con)

#### COMMITTEE SUBSTITUTES

Alex Johnstone (North East Scotland) (Con)  
Maureen Macmillan (Highlands and Islands) (Lab)  
Stewart Stevenson (Banff and Buchan) (SNP)

\*attended

#### CLERK TO THE COMMITTEE

Alasdair Rankin

#### ASSISTANT CLERK

Bruce Adamson

#### LOCATION

Committee Room 6



## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 5 October 2004*

[THE CONVENER *opened the meeting at 10:39*]

### Delegated Powers Scrutiny

#### Fire (Scotland) Bill: Stage 1

**The Convener (Dr Sylvia Jackson):** Welcome to the 27<sup>th</sup> meeting this year of the Subordinate Legislation Committee. I have received one apology, from Adam Ingram.

Members will remember that we wrote to the Executive about two matters concerning sections 41 and 54 of the bill.

We turn first of all to section 41. Members will recall that there was a question about whether the affirmative procedure could provide the necessary flexibility. The Executive has written back to say that that would be difficult if there was an emergency situation in a parliamentary recess, so it suggests that the negative procedure would be better.

**Christine May (Central Fife) (Lab):** We accept that.

**Mr Stewart Maxwell (West of Scotland) (SNP):** There is some merit in that argument.

**The Convener:** Are members agreed?

*Members indicated agreement.*

**The Convener:** Section 54 concerns the power to make regulations about fire safety, and members will remember that, although it contains a power to create criminal offences by regulation, no maximum penalty was identified. Members have all seen copies of the Executive's feedback on the issue. Are there any points that members want to make?

**Mr Maxwell:** I hear what the Executive is saying, and it has mentioned a couple of examples of cases where it has done the same thing in the past, perhaps even before this Parliament was established. We see on an almost weekly basis examples of powers to limit penalties according to a standard scale. It is the normal practice for bills to set a maximum penalty on the standard scale—at level 3, level 5 or whatever it happens to be—but it seems to me that the Executive has not answered the question properly, so I have not changed the opinion I held last week. It seems to

me entirely reasonable and appropriate that the Executive should set a maximum penalty in the bill, rather than leaving it to subordinate legislation.

**The Convener:** I should add that I have the information from the Transport (Scotland) Act 2001 that the Executive response refers to. That is an example of an act in which the maximum fine is detailed, and Stewart Maxwell is quite right to say that we have usually seen that in legislation.

We have no time to send this matter back to the Executive, so do members agree that we should just point up the issue to the lead committee that is dealing with the bill?

*Members indicated agreement.*

#### Water Services etc (Scotland) Bill: Stage 1

**The Convener:** Members will remember that we had concerns about sections 4(7) and 5(7), which are almost identical. The wide powers are what is at issue here. I wonder what comments members have on the Executive's response.

**Christine May:** For a start, the Executive has not dealt with our most serious concern, which is whether the powers give a future Executive scope to privatise Scottish Water. I accept the Executive's explanation in respect of minor matters that it might not have thought of at this stage, and that seems entirely reasonable, but on the specific point at issue I would like to press the Executive to answer that concern before I would be content to say either yes or no.

**Mr Maxwell:** I accept what Christine May has said and I agree with her. The Executive has answered a number of points without saying what its intent is. There has never really been any argument about its intention, which I am sure is entirely honourable, and I understand why there may be difficulties in some of the cases that it highlights. However, it has just not answered the primary question that we asked, which was about whether the powers as they stand could enable a future Executive to privatise Scottish Water—by the back door, I think is the phrase. That question was not answered and it seems to me that the powers remain for the Executive to do that. Whether or not that is its intention is irrelevant. I think that we should stick to our guns on this point. Do we have time to ask the Executive again?

**The Convener:** No. We would have to pass the matter on to the lead committee.

**Mr Maxwell:** I think that we should convey our concerns to the lead committee in the strongest terms.

**The Convener:** The lead committee also appears to be concerned about that power, and it will be asking the minister about that today.

Members will also note that the Executive replied on the issue of consultation, indicating that there is a consultation process, but our legal advisers have reminded us that the Executive would need to consult only with Scottish Water and with the proposed water industry commission for Scotland. The consultation would not be wider than that.

**Mr Maxwell:** That is not consultation as I understand it.

**The Convener:** I just wanted to point out that added issue.

Do members agree that we should pass that on to the lead committee?

**Members indicated agreement.**

10:45

**The Convener:** Members will remember that there was an issue to do with the disconnections code, and we have had quite a lot of information from the Executive with regard to who would be affected and who would not. With regard to the code, the Executive insists that it will not follow any formal procedure such as laying it before the Parliament.

**Christine May:** I am pleased to see that answer from the Executive. What concerned me last week was that there might be some change with regard to disconnections for domestic customers. I am reassured that that is not the case and that the Executive intends to codify the procedure in respect of other premises. I am content with the answer and I think that we should just accept what the Executive says.

**The Convener:** Is that agreed?

**Members indicated agreement.**

**The Convener:** Our next concern was about section 23 and the meaning of “dwelling” in relation to eligible premises. The Executive repeats that the power is intended to be used in a very narrow set of circumstances, and it refers to the type of situation in which it would be used. However, members will remember that we were concerned that, where there is a power to amend primary legislation, it should be subject to the affirmative procedure. Ought we to be consistent and stick to our guns on that point?

**Mr Maxwell:** I think that that is a good idea. We should stick to our guns.

**The Convener:** Is that agreed?

**Members indicated agreement.**

**The Convener:** We shall pass that on to the lead committee.

Finally, paragraph 1(7) of schedule 2 concerns consideration of licence applications, and the Executive has said that it will look at that again following our comments. Are members content with that?

**Members indicated agreement.**

## Executive Response

### Building (Scotland) Regulations 2004 (SSI 2004/406)

10:46

**The Convener:** Three technical points arise on the regulations. We asked for explanations and pointed out drafting issues. Most points have been acknowledged by the Executive and I suggest that we simply pass those comments on to the lead committee. Is that agreed?

**Members indicated agreement.**

## Instruments Subject to Approval

### Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 10) (Scotland) Order 2004 (SSI 2004/412)

### Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No 4) (Scotland) Order 2004 (SSI 2004/417)

### Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 11) (Scotland) Order 2004 (SSI 2004/418)

10:47

**The Convener:** Are members content with the three emergency food protection orders?

**Members indicated agreement.**

## Instruments Subject to Annulment

### Victim Notification (Prescribed Offences) (Scotland) Order 2004 (SSI 2004/411)

10:47

**The Convener:** No points of substance arise on the order, but our legal advisers have raised two points that we might care to mention in an informal letter. One is about timing and the other is about footnotes. Is that agreed?

**Members indicated agreement.**

### Miscellaneous Food Additives Amendment (Scotland) Regulations 2004 (SSI 2004/413)

**The Convener:** No major points arise on the regulations, but minor points are noted in paragraphs 55 to 59 of our legal briefing. I suggest that we include those points in an informal letter to the Executive. Is that agreed?

**Members indicated agreement.**

### Feeding Stuffs (Sampling and Analysis) Amendment (Scotland) Regulations 2004 (SSI 2004/414)

**The Convener:** The Executive note explains that the Commission directive implemented by these regulations should have been implemented by 1 July and that the delay is attributable to other legislative measures that have been given priority, and to the need to consult stakeholders.

**Mr Maxwell:** That sounds like a resourcing issue.

**Christine May:** It does indeed.

**The Convener:** We shall add that resourcing issue to our list. Apart from that, no points of substance arise. Are members agreed?

**Members indicated agreement.**

### Public Service Vehicles (Registration of Local Services) (Scotland) Amendment Regulations 2004 (SSI 2004/415)

### Sale of Spray Paint (Display of Warning Statement) (Scotland) Regulations 2004 (SSI 2004/419)

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

**Controlled Waste (Fixed Penalty Notices)  
(Scotland) Order 2004 (SSI 2004/426)**

**The Convener:** No substantive points have been identified on the order. There are a few small points relating to footnotes, and we could send an informal letter about those. Is that agreed?

**Members** *indicated agreement.*

**Litter (Fixed Penalty Notices) (Scotland)  
Order 2004 (SSI 2004/427)**

**The Convener:** It is nice to see all the instruments coming through from the Antisocial Behaviour etc (Scotland) Act 2004.

No points of substance arise on the order. Are members agreed?

**Members** *indicated agreement.*

**Instruments Not Laid Before  
the Parliament**

**Debt Arrangement and Attachment  
(Scotland) Act 2002 (Commencement No 2  
and Revocation) Order 2004 (SSI 2004/416)**

10:49

**The Convener:** No points have been identified on the order, but exceptionally good work has been done on it by our legal advisers, who headed off some issues that were taken on board by the Executive before the order reached us.

**Christine May:** Well done to everybody.

**Antisocial Behaviour etc (Scotland) Act  
2004 (Commencement and Savings) Order  
2004 (SSI 2004/420)**

**The Convener:** This order is an example of good practice, because the Executive has chosen to make one commencement order for the whole of the Antisocial Behaviour etc (Scotland) Act 2004, providing for different provisions to be commenced at different times. We should welcome that approach, because it gives the user of the act a better idea of what is in force.

**Christine May:** Could we somehow ensure that the order is drawn to the attention of all departments that are working on subordinate legislation to implement acts? If different sections of an act commence on different dates, it is much easier for the users and for practitioners to have those dates in one order.

**The Convener:** The clerk will do that.

Paragraph 85 of the legal brief says that there were "minor infelicities in form" in the order, but apart from that, it is fine.

## Regulatory Framework Inquiry

10:51

**The Convener:** Item 7 concerns options for the committee's regulatory framework inquiry. The Conveners Group was not happy with the second proposal that we put to it for visiting Australia in November. The main issue was cost: the amount for which we were asking was a substantial part of the Conveners Group budget. We considered various ways in which we might reduce the cost, but there was still an issue with the budget.

There are various ways in which we can proceed. We will examine the feedback from the consultation paper, which we would have done anyway. We outlined to the Conveners Group the difficulty of doing extensive videoconferencing, which we still regard as a difficulty. We might do limited videoconferencing, but no more than that. Therefore, we still need to think about how to make progress on a substantive review of an area that is important to the Parliament. One suggestion is that we tackle the matter head on and try to find other moneys that might be available to the committee. I suggest that we write to Paul Grice to investigate that opportunity and see where we go from there.

**Mr Maxwell:** I agree. I understand the impact that the proposed trip could have on the Conveners Group budget—we have been informed that the trip would take a large chunk of that budget—but the inquiry would, we hope, lead to a bill that would put in place a process that would last for a generation. The inquiry and the trip are not of the type that happen once a year, every year, so perhaps we should try other sources of funding. Your suggestion of going to the chief executive and explaining the circumstances and the problems that the inquiry might cause for the Conveners Group budget is worth while. Perhaps the trip should be considered in isolation, rather than along with the normal away days and other local trips for which the Conveners Group budget is intended.

**The Convener:** Are we all agreed with that proposal?

**Members** *indicated agreement.*

**The Convener:** With the recess coming up, is the committee happy that the clerk and I should proceed with that approach and see how far we get with the proposal that we made to the most recent Conveners Group meeting, which was based on two people going?

**Members** *indicated agreement.*

**The Convener:** Thank you for your attendance.

*Meeting closed at 10:54.*



Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

**Tuesday 12 October 2004**

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Astron Print Room, the Document Supply Centre or the Official Report.

#### PRICES AND SUBSCRIPTION RATES

##### OFFICIAL REPORT daily editions

*Single copies: £5.00*

*Meetings of the Parliament and annual subscriptions: £350.00*

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

##### WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Standing orders will be accepted at the Astron Print Room.

Published in Edinburgh by Astron and available from:

**Blackwell's Bookshop**  
53 South Bridge  
Edinburgh EH1 1YS  
0131 622 8222

**Blackwell's Bookshops:**  
243-244 High Holborn  
London WC1 7DZ  
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

**Blackwell's Scottish Parliament Documentation**  
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

**Telephone orders and inquiries**  
0131 622 8283 or  
0131 622 8258

**Fax orders**  
0131 557 8149

**E-mail orders**  
[business.edinburgh@blackwell.co.uk](mailto:business.edinburgh@blackwell.co.uk)

**Subscriptions & Standing Orders**  
[business.edinburgh@blackwell.co.uk](mailto:business.edinburgh@blackwell.co.uk)

**RNID TYPETALK calls welcome on**  
18001 0131 348 5412  
Textphone 0845 270 0152

[sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)

All documents are available on the Scottish Parliament website at:

[www.scottish.parliament.uk](http://www.scottish.parliament.uk)

**Accredited Agents**  
(see Yellow Pages)

and through good booksellers