

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 31 May 2005

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2005.

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 31 May 2005

Col.

<b>EXECUTIVE RESPONSES</b> .....	1073
Mental Health (Safeguards for Certain Informal Patients) (Scotland) Regulations 2005 (draft) .....	1073
Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Amendment Regulations 2005 (SSI 2005/257) .....	1073
Additional Support for Learning (Appropriate Agency Request Period and Exceptions) (Scotland) Regulations 2005 (SSI 2005/264) .....	1074
Additional Support for Learning (Changes in School Education) (Scotland) Regulations 2005 (SSI 2005/265) .....	1075
Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Regulations 2005 (SSI 2005/266) .....	1075
<b>DRAFT INSTRUMENT SUBJECT TO APPROVAL</b> .....	1077
Dentists Act 1984 (Amendment) Order 2005 (draft) .....	1077
<b>INSTRUMENT SUBJECT TO ANNULMENT</b> .....	1079
Right to Purchase (Prescribed Persons) (Scotland) Amendment Order 2005 (SSI 2005/275) .....	1079
<b>INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE</b> .....	1080
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 3) (Scotland) Revocation Order 2005 (SSI 2005/272) .....	1080
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 8) (Scotland) Order 2004 Revocation Order 2005 (SSI 2005/273) .....	1080
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 9) (Scotland) Order 2004 Revocation Order 2005 (SSI 2005/274) .....	1080

---

## SUBORDINATE LEGISLATION COMMITTEE

18<sup>th</sup> Meeting 2005, 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

Ruth Cooper

### LOCATION

Committee Room 6



## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 31 May 2005*

[THE CONVENER *opened the meeting at 10:31*]

**The Convener (Dr Sylvia Jackson):** I welcome members to the 18<sup>th</sup> meeting of the Subordinate Legislation Committee in 2005. I have received apologies from Christine May, but I am expecting Adam Ingram and Gordon Jackson to join us. I welcome to the public gallery Margaret Macdonald, our legal adviser. Welcome back—you look very well, Margaret.

### Executive Responses

#### Mental Health (Safeguards for Certain Informal Patients) (Scotland) Regulations 2005 (draft)

10:31

**The Convener:** We asked the Executive to explain why the definition of “the 2003 Act” is included in regulation 1(2), given that the term “the Act” is used in the body of the regulations. The Executive has confirmed that that results from an oversight stemming from an earlier draft of the regulations. It has undertaken to remedy the defect at the earliest legislative opportunity. Are we happy with the explanation that we have received? Should we report the draft regulations to the lead committee and the Parliament on the ground of defective drafting?

**Mr Stewart Maxwell (West of Scotland) (SNP):** It is appropriate to report the draft regulations on the basis of defective drafting, although I welcome the fact that we will get an early remedy.

**Members:** Agreed.

#### Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Amendment Regulations 2005 (SSI 2005/257)

**The Convener:** The Executive has provided us with further information about the oversight leading to its breach of the 21-day rule. What are members’ feelings about the Executive’s explanation?

**Mr Maxwell:** The original comment was about an oversight. Then the Executive said that communication had broken down in this instance. I accept that that is what happened. Human error will obviously occur. However, given the fact that there are time rules in place and the fact that businesses and individuals are affected by such instruments, there is an onus on the Executive to ensure that channels of communication do not break down. It needs to be more proactive in checking that the appropriate measures are being taken and that the deadlines for laying such instruments before the Parliament are adhered to. I accept that the breach was accidental and that there is nothing that we can do about that, but I still think that the Executive should perhaps look again at its channels of communication and ensure that it is up to speed in that regard.

**The Convener:** I suggest that we do two things. First, we should report the explanation that we received. Secondly, I propose that we write to the Executive and ask about its procedures and how it liaises with colleagues in Westminster.

**Members indicated agreement.**

**Murray Tosh (West of Scotland) (Con):** That would be appropriate. Judging from the terms of its response, the Executive has obviously tried to mitigate the impact on individuals. That is to be welcomed. This is another instance in a series where we have identified points worthy of scrutiny on the relationship between the Executive and Westminster in the processing of subordinate legislation. Perhaps we should look into that more closely at a future date, when our programme is not as congested as it currently is.

**The Convener:** And as it will remain for a few weeks.

#### Additional Support for Learning (Appropriate Agency Request Period and Exceptions) (Scotland) Regulations 2005 (SSI 2005/264)

**The Convener:** The committee asked for clarification on the wording used in regulations 2 and 3(3). It was not clear what the Executive meant by a request being “made”. We were fairly certain that it meant when a communication was received, but we needed clarification on that, which we now have before us.

**Mr Maxwell:** As expected, “made” means “received” in this instance. As the legal briefing points out, there is no problem when a communication is made by e-mail, but that is obviously not always the case. Such matters should not be left open to interpretation; instruments should be absolutely clear about what is meant. In this case, however, I do not think that anybody could reasonably argue that “made”

referred to when a letter was posted or handed over to a company to deliver, for example. It is pretty clear that the reference is to when the communication is received, although the matter should not be open to interpretation. The Executive should have made the wording a bit tighter.

**The Convener:** Do we agree to report that the drafting could have been clearer?

**Members indicated agreement.**

### **Additional Support for Learning (Changes in School Education) (Scotland) Regulations 2005 (SSI 2005/265)**

**The Convener:** We asked for clarification on the use in regulation 3(2)(b) of the words:

“where the authority seek advice and information under paragraph (a)”.

The Committee considered that those words of qualification might cast doubt on what appeared to be a mandatory duty under regulation 3(2)(a). The Executive has clarified that there is a level of discretion in relation to regulation 3(2)(a), and that it might not always be appropriate for an education authority to seek information and advice. Are members content with the clarification that we received from the Executive?

**Mike Pringle (Edinburgh South) (LD):** Yes. We should pass that on to the lead committee.

**Members indicated agreement.**

### **Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Regulations 2005 (SSI 2005/266)**

**The Convener:** Two points arose on the regulations. First, we asked the Executive why it had repeated a provision of the parent act—the Education (Additional Support for Learning) (Scotland) Act 2004—at regulation 3(1)(b)(iv). The Executive agreed that that was superfluous, but considered that it would help in the understanding of the regulations. We have a wee bit of sympathy with that point of view. However, that does not appear to follow proper legislative practice. I suggest, if members agree, that we pass that observation on to the lead committee and the Parliament.

**Members indicated agreement.**

**The Convener:** The committee’s second point was on the meaning of regulation 5, which includes a reference to

“subsection 5(a) of that section”.

The committee was not clear what section that referred to. The Executive has confirmed that the reference is meant to be to section 11. It

acknowledged that the previous section to be mentioned in the regulations was section 10, which makes the reference inaccurate. The Executive has undertaken to lodge an amendment to remedy the defect before the full commencement of the parent act in the autumn. We should welcome that.

**Members indicated agreement.**

**Mr Maxwell:** But we should still report the matter. That was defective drafting.

**The Convener:** Absolutely. We must report the defective drafting. It was incorrect.

When we discussed the regulations before, Christine May mentioned the number of cross-references to the parent act. The Executive has also agreed to consider our comments on that issue. That, too, is to be welcomed.

**Members indicated agreement.**

**The Convener:** We will report to the lead committee and Parliament on the matter of defective drafting.

## Draft Instrument Subject to Approval

### Dentists Act 1984 (Amendment) Order 2005 (draft)

10:39

**The Convener:** Article 50(2) of the order gives the Privy Council a power, by order, to make

“such further transitional, transitory or saving provisions as it considers appropriate”.

We are discussing this power because, when exercised, it could affect a devolved area, namely, the regulation of certain professions complementary to dentistry—PCDs—or dental nurses. It is therefore not clear why orders made under this power are subject to annulment in pursuance of a resolution of either House of Parliament at Westminster but not a resolution of the Scottish Parliament.

**Mr Maxwell:** We should pursue this matter. It is odd that an order would be subject to annulment at Westminster but not here; as you have rightly pointed out, convener, devolved competencies such as those affecting dental nurses could be affected.

The committee has received legal advice on this matter and, strangely, dental nurses are devolved but dental hygienists are reserved. From my point of view, that is an example of the lunacy of devolution. It seems completely bizarre. However, dental nurses are devolved and this Parliament should have some say over devolved matters. If Westminster has made an order that cuts across a devolved area of competence, that order may be incorrect. The issue should come before the Scottish Parliament.

We are talking about a draft order, so I hope that we have time to pursue the matter with the Executive. Is there time for that?

**The Convener:** Yes, there is time. If I understood our legal advice correctly, quite a number of professions complementary to dentistry are not devolved and that is because of the Dentists Act 1984. That act covers a number of allied professionals but not dental nurses, which is why they are devolved.

**Mr Maxwell:** That may well be, but I would be extremely interested to hear an explanation in layman's terms of why a dental nurse is devolved but a dental hygienist is reserved.

**The Convener:** That would not be easy.

**Murray Tosh:** It is a bit over the top to refer to this as “the lunacy of devolution”. It would be more

appropriate to reflect on the fact that devolution is a process.

**The Convener:** Within that process, does the committee agree that we should ask for clarification of why the Scottish Parliament is not mentioned? From looking at the draft order, I think that any additional wording would go into article 50. However, it would be better to get clarification first. We should ask whether the Scottish Parliament has been forgotten in error or whether there is a good reason for its omission.

**Mike Pringle:** We should ask the Executive to speak to colleagues at Westminster.

**The Convener:** The Executive may well have done that already. We would find that out.

**Mike Pringle:** We should get our officials to talk to officials at Westminster to find out whether a change can be made.

**The Convener:** We should first have it clarified whether or not there has been an error. There may have been discussions already and there may be good reasons why the Scottish Parliament is not mentioned. After we hear the clarification, we can discuss the matter again.

**Murray Tosh:** And then Mike can go for the Executive.

**Mike Pringle:** That would be a compromise; Stewart wants to go for the Executive right now.

**The Convener:** Do members agree that we should seek clarification from the Executive?

**Members indicated agreement.**

## Instrument Subject to Annulment

### Right to Purchase (Prescribed Persons) (Scotland) Amendment Order 2005 (SSI 2005/275)

10:43

**The Convener:** Agenda item 3 is an instrument subject to annulment. Members will see that an Executive note was not supplied with the order—another example of an on-going issue with the committee. In this particular case, I would have found a note useful. Our briefing paper gives the example of janitors' houses that have been part of school estates. That subject has not been covered before but will be covered by the order.

**Mr Maxwell:** There should have been an Executive note; it would have been helpful, to say the least. It is good practice to provide such notes. Can we ask the Executive why there was no note?

**The Convener:** I am a bit reticent about asking that question because we have asked it many times. The issue is one that we will cover in our review. In this particular case, a note would have been useful because more explanation was needed.

**Murray Tosh:** Rather than asking the Executive for a response that we might be able to predict, we should perhaps simply advise the Executive that a note can be useful, that this instrument is a case in point, and that, although we will shortly be returning to the matter in general, we would like the Executive to reflect on the particular point that we are making.

**The Convener:** We could point out that, as well as information on the background to this particular policy, information on any consultation would have been useful too.

There are also a couple of minor drafting points. If members agree, we will raise those points in an informal letter.

**Members** *indicated agreement.*

## Instruments Not Subject to Parliamentary Procedure

### Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 3) (Scotland) Revocation Order 2005 (SSI 2005/272)

### Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 8) (Scotland) Order 2004 Revocation Order 2005 (SSI 2005/273)

### Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 9) (Scotland) Order 2004 Revocation Order 2005 (SSI 2005/274)

10:45

**The Convener:** Agenda item 4 is three instruments that are not subject to parliamentary procedure. No points arise on the orders; do members wish to raise any points?

**Mr Maxwell:** I would point out for Murray's benefit—before he gets too upset—that these are revocation orders.

**Murray Tosh:** That point had already registered with me and I had informed the other half of the committee not to get excited.

**The Convener:** On that note I will close the meeting. I look forward to seeing you all next week.

*Meeting closed at 10:45.*



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:

**Thursday 9 June 2005**

#### PRICES AND SUBSCRIPTION RATES

##### OFFICIAL REPORT daily editions

*Single copies: £5.00*

*Meetings of the Parliament 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 Document Supply.

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

Printed in Scotland by Astron