

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 30 September 2003  
*(Morning)*

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2003.

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 The  
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now  
trading as The Stationery Office Ltd, which is responsible for printing and publishing  
Scottish Parliamentary Corporate Body publications.

---

# CONTENTS

Tuesday 30 September 2003

Col.

<b>INTERESTS</b> .....	153
<b>EXECUTIVE RESPONSES</b> .....	153
Air Quality Limit Values (Scotland) Regulations 2003 (SSI 2003/428) .....	153
National Health Service (Optical Charges and Payments) (Scotland) Amendment (No 3) Regulations 2003 (SSI 2003/431) .....	154
National Health Service (General Ophthalmic Services) (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/432) .....	154
Classical Swine Fever (Scotland) Order 2003 (SSI 2003/426) .....	155
Land Reform (Scotland) Act 2003 (Commencement No 1) Order 2003 (SSI 2003/427) .....	156
<b>INSTRUMENTS SUBJECT TO ANNULMENT</b> .....	157
National Health Service (General Medical Services) (Scotland) Amendment (No 3) Regulations 2003 (SSI 2003/443) .....	157
Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/445) .....	158
Compulsory Purchase of Land (Scotland) Regulations 2003 (SSI 2003/446) .....	158
Lands Tribunal for Scotland (Relevant Certificate) (Fees) Rules 2003 (SSI 2003/451) .....	159
Lands Tribunal for Scotland Rules 2003 (SSI 2003/452) .....	159
Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 (SSI 2003/453) .....	159
<b>INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT</b> .....	159
Criminal Justice (Scotland) Act 2003 (Commencement No 2) Order 2003 (SSI 2003/439) .....	159
Fife National Health Service Trusts (Dissolution) Order 2003 (SSI 2003/448) .....	159
Title Conditions (Scotland) Act 2003 (Commencement No 1) Order 2003 (SSI 2003/454) .....	159
Abolition of Feudal Tenure etc (Scotland) Act 2000 (Commencement No 1) Order 2003 (SSI 2003/455) .....	160
Abolition of Feudal Tenure etc (Scotland) Act 2000 (Commencement No 2) (Appointed Day) Order 2003 (SSI 2003/456) .....	160

---

## SUBORDINATE LEGISLATION COMMITTEE

8<sup>th</sup> Meeting 2003, 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

Alistair Fleming

### LOCATION

Committee Room 3



## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 30 September 2003*

*(Morning)*

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

### Interests

**The Convener (Dr Sylvia Jackson):** I welcome colleagues to the eighth meeting in session 2 of the Subordinate Legislation Committee. We have received apologies from Gordon Jackson and Alasdair Morgan.

Item 1 on the agenda concerns a declaration of interests. Because Alasdair Morgan, the new member of the committee, is not here, the item will reappear on the agenda of a future meeting at which he is present.

### Executive Responses

#### Air Quality Limit Values (Scotland) Regulations 2003 (SSI 2003/428)

10:31

**The Convener:** Several issues were raised concerning the regulations. In our first question to the Executive, we sought further explanation for the delay in making the regulations and received information regarding the 21-day rule. What would the committee like to do about that?

**Mr Stewart Maxwell (West of Scotland) (SNP):** Last week I pointed out the difference between the date specified for implementation of the directive and the date on which the regulations will come into force. The Executive has said that it decided to delay implementation to 2 October, rather than 9 September, out of respect for the 21-day rule. On the face of it, that seems to be a reasonable response. However, I remember that the Executive has used the opposite argument when explaining why it has breached the 21-day rule. Here it is changing the argument to suit itself. When the Executive breaches the 21-day rule, it explains that by saying that under Community legislation it has to implement an instrument by a set date. When it delays implementation, it says that it has done so out of respect for the 21-day rule.

The Executive cannot have it both ways—it cannot have its cake and eat it. I am concerned that the Executive is giving an excuse and I do not know the basis for that. The explanation seems to change depending on the Executive's mood. I would like us to tell the Executive that it should adopt one position or the other.

**The Convener:** We can add that point to our report to the lead committee and to the Parliament.

**Mr Maxwell:** That is fine—I simply want the point to be made to the Executive.

**The Convener:** That would be useful, because the two different arguments that the member outlined have been expressed to us.

The other points are fairly straightforward. Questions 2, 3 and 4 to the Executive related to defective drafting of headings to columns, footnotes and so on. The Executive has acknowledged the points that we made. Question 5 related to the definition of “public” in regulation 14(15). We should raise that issue with the lead committee and the Parliament.

#### National Health Service (Optical Charges and Payments) (Scotland) Amendment (No 3) Regulations 2003 (SSI 2003/431)

#### National Health Service (General Ophthalmic Services) (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/432)

**The Convener:** We agree that these regulations are a bit of mess.

**Christine May (Central Fife) (Lab):** I accept the reasons that the Executive has given for not consolidating the regulations. It is clear that the Health Department is dealing with a significant amount of legislation, including some big bills. However, as has been noted, these regulations have been amended so many times that they are difficult—perhaps impossible—to follow. They are not the only health regulations that suffer from that problem. In the note from our legal adviser, broadly the same point is made about a subsequent set of regulations. Prior to the meeting, it was suggested that if regulations are confusing it may be impossible for them to be implemented correctly and breaches may go unnoticed, because people are unable to make sense of them.

There is a case for expressing our concern—informally, perhaps, at first—that the need to work on big bills is militating against the good housekeeping that needs to be done to ensure that consolidation takes place.

**The Convener:** Do we agree that both things must be done? There is on-going work on bills that the drafting team at the Health Department must do, but work to consolidate regulations is also very important.

**Mr Maxwell:** I agree with Christine May. I accept that the Health Department has difficulties because it has a particularly heavy work load—a number of bills relating to the national health service are before the Parliament. However, a multiplicity of regulations has been introduced. It is important that the people who use those have clarity. If clarity is lost and legislation becomes almost impossible to follow because there are so many regulations that amend previous regulations, it does not help to say that new bills are being prepared: people do not know what the position is. It is important that regulations should be clear. Given that these regulations have been amended so many times, consolidation is vital.

**Murray Tosh (West of Scotland) (Con):** There is an understanding that when powers are delegated to ministers, ministers should be able to exercise them crisply, competently and efficiently. That includes keeping regulations up to date. The argument that has been put to us is that the Health Department cannot do the basic job of consolidation because it has too much primary legislation to deal with. Perhaps ministers should not ask for more powers until they can cope with those that they have. That criticism may be over-severe, but the Executive should be reminded that when introducing and programming legislation it should have an eye to its wider work load, which must include proper and scrupulous concern for the whole body of subordinate legislation for which each department is responsible.

**Mike Pringle (Edinburgh South) (LD):** I agree entirely with that point.

**The Convener:** We will make those points in an informal letter to Richard Henderson.

**Christine May:** The problem is not confined to the Health Department, but affects the whole range of the Executive's work.

### **Classical Swine Fever (Scotland) Order 2003 (SSI 2003/426)**

**The Convener:** Before members comment on the order, I would like to say that I am very unhappy about one point. The third question that we put to the Executive related to the 21-day period that is mentioned in paragraph 16 of schedule 1 to the order. I will read out the passage in question, on page 10, so that we have it on the record. It states:

"Where an infected area has been established following confirmation of the disease on a holding, until that holding has been cleansed and disinfected no person shall move

any pig off any other holding in the surveillance zone forming part of that infected area for at least 21 days."

That suggests that the 21-day period commences before disinfecting starts. However, in its answer to question 3 the Executive states:

"The 21 day period, imposing a standstill on pig movements, is intended to run from the date the premises are cleansed and disinfected."

Either the Executive or I have got the wrong end of the stick. However, I think that the committee agrees with me.

**Mr Maxwell:** This is confusing. Schedule 1, paragraph 16 prohibits the movement of pigs from the surveillance zone from the point at which the disease was identified. According to the Executive response, however, once the disease has been identified there is a period between that point and the point at which cleansing happens during which pigs may be moved. Are we saying that? I am not sure, but that seems to be the inference. Even if it is not, the situation is confusing and must be clarified.

**The Convener:** Given that Scotland has experienced an outbreak of foot-and-mouth disease, it is important that we get this provision clear and ensure that people understand it.

There are other issues relating to the order. In question 3, we asked the Executive to explain what the words "any other holding" refer to. The meaning of those words is not terribly clear, although not quite as unclear as the point about the 21-day period.

I recommend that we draw to the attention of the lead committee and the Parliament the various points at which there is defective drafting. We made three points about the order last week. The Executive has acknowledged only the second one; it has certainly not acknowledged the third one. This is an important matter.

**Mike Pringle:** There is also the matter of a transposition note.

**The Convener:** Are we all agreed, including on the point about the transposition note?

**Members indicated agreement.**

### **Land Reform (Scotland) Act 2003 (Commencement No 1) Order 2003 (SSI 2003/427)**

**The Convener:** Members will recall that the title of the order, as cited under article 1, did not correspond with the order's heading. The Executive points out that that does not affect the validity of the order, but it has acknowledged the point, and is taking steps to correct it. However, I think it is important that we should report the matter to the Parliament. Is that agreed?

**Members indicated agreement.**

## Instruments Subject to Annulment

### National Health Service (General Medical Services) (Scotland) Amendment (No 3) Regulations 2003 (SSI 2003/443)

10:41

**The Convener:** There is quite a big consolidation issue with these regulations.

**Christine May:** Without repeating what I said earlier, the issue of consolidation applies very much to the regulations.

We also ought to raise a point about the meaning of the word “applicable”, as introduced under regulation 3(d) in new paragraph 29C(2)(a) of schedule 1 to the National Health Service (General Medical Services) (Scotland) Regulations 1995 (SI 1995/416). It is unclear, and that suggests that some of the conditions listed in the cross-referenced provision—which is in the National Health Service (General Medical Services) (Scotland) Amendment Regulations 1997 (SI 1997/943)—will not be relevant to the supplementary prescriber. Which conditions might not apply? In which circumstances might they not apply? Are conditions that are disapplied elsewhere included? There is little point in going through the convoluted part of the legal brief on this matter. When I was reading it, it took me a long time to work out what was what. The matter needs to be drawn to the Executive’s attention, and questions need to be asked.

**The Convener:** We will ask the Executive about the point that Christine May has raised.

**Christine May:** There is a further point, about the period during which a doctor may be appointed to help a general practitioner in a practice and that doctor’s references taken up. Periods of 14 days and seven days are referred to. Are those periods consecutive? Could they run at different times? Clarity is needed.

**The Convener:** There is a further point to do with the various references to “paragraph” in regulation 3(a)(ii) to (vi), which should be references to “sub-paragraph”.

Are we agreed on those points, which we will include in a letter to the Executive?

**Members indicated agreement.**

### Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/445)

**The Convener:** The big issue with these regulations is the lateness of implementation. What do members think about the answer that the Executive has issued?

**Mr Maxwell:** We have already made a point that applies to these regulations.

**The Convener:** We have already come across the issue of trying to ensure that legislation complies for the whole United Kingdom. In this case, we need to work with Westminster. We have to take on board the fact that there will be some delay as a result of that.

**Christine May:** For the sake of consistency in our arguments, we should report on one instance of such lateness if we report on another. We might qualify that by accepting that there seem to be circumstances in this case that make it more sensible for implementation to be late. Nevertheless, the committee ought to be more consistent.

**The Convener:** Yes. Being a chemist, I am interested in the next point. Regulations 2(6)(a) and 2(6)(b) refer to the heading “Aminotriazole (Amitrole)”. There is a need for clarity on that.

Are those points agreed?

**Members indicated agreement.**

### Compulsory Purchase of Land (Scotland) Regulations 2003 (SSI 2003/446)

10:45

**The Convener:** The legal adviser has drawn to our attention the numbering of the schedules to the regulations. Are we agreed that we should write an informal note on that?

**Members:** Yes.

**The Convener:** Are there any other points?

**Members:** No.

**The Convener:** This could turn out to be a quick meeting.

**Lands Tribunal for Scotland (Relevant Certificate) (Fees) Rules 2003 (SSI 2003/451)**

**Lands Tribunal for Scotland Rules 2003 (SSI 2003/452)**

**Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 (SSI 2003/453)**

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

**Instruments Not Laid Before the Parliament**

**Criminal Justice (Scotland) Act 2003 (Commencement No 2) Order 2003 (SSI 2003/439)**

10:46

**The Convener:** It has been discovered that the date 2003 has appeared in the schedule to the order in place of 2004, which is the correct date. There is some concern about this. What is called the “blue” for signing copy of the order had 2004 on it but, somehow, 2003 appeared on the final copy. Because that was only discovered following last week’s meeting, we have returned to the matter.

**Mike Pringle:** Congratulations to the person who discovered that.

**The Convener:** It was picked up by somebody in the Executive. We need to report the matter officially, and the error will be amended. Is that agreed?

**Members** *indicated agreement.*

**Mike Pringle:** We hear a new term every week—it is “blue-for-signing copy” this week. I presume that it is so called because the actual paper is blue.

**The Convener:** Yes. We now know a new term, Mike.

**Fife National Health Service Trusts (Dissolution) Order 2003 (SSI 2003/448)**

**Title Conditions (Scotland) Act 2003 (Commencement No 1) Order 2003 (SSI 2003/454)**

**The Convener:** No points of substance arise on the orders.

**Abolition of Feudal Tenure etc (Scotland) Act 2000 (Commencement No 1) Order 2003 (SSI 2003/455)**

**The Convener:** Some interesting points have been raised in relation to the order, but there are no points of substance that we need to take forward.

**Christine May:** It is interesting to note that the abolition of barony estates is not included. This is the first time that I was aware that barons were dignified—the “dignity of baron” is referred to in our legal brief.

**Mike Pringle:** I am appalled to discover that it is possible to sell the title of baron and make money out of that. That seems absolutely ludicrous, but there we go.

**The Convener:** As the committee does not deal with any policy issues, that will stop any intervention by Murray Tosh.

**Murray Tosh:** I was just wondering whether a “dignity of barons” was one of those peculiar collective nouns.

**The Convener:** We will move swiftly on.

**Abolition of Feudal Tenure etc (Scotland) Act 2000 (Commencement No 2) (Appointed Day) Order 2003 (SSI 2003/456)**

**The Convener:** A small point is raised about a typographical error in the explanatory note, but no substantive points arise apart from that.

**Christine May:** The regulations are interesting because they formally mark the abolition of the feudal system in Scotland.

**The Convener:** I am looking at Murray Tosh, because we were involved in that during the first session of the Parliament, although we might have been coming at it from different sides.

**Murray Tosh:** They were different subjects.

*Meeting closed at 10:50.*



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, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

**Tuesday 7 October 2003**

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

#### PRICES AND SUBSCRIPTION RATES

##### DAILY EDITIONS

*Single copies: £5*

*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.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

*Single copies: £3.75*

*Special issue price: £5*

*Annual subscriptions: £150.00*

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

**The Stationery Office Bookshop**  
71 Lothian Road  
Edinburgh EH3 9AZ  
0870 606 5566 Fax 0870 606 5588

**The Stationery Office Bookshops at:**  
123 Kingsway, London WC2B 6PQ  
Tel 020 7242 6393 Fax 020 7242 6394  
68-69 Bull Street, Birmingham B4 6AD  
Tel 0121 236 9696 Fax 0121 236 9699  
33 Wine Street, Bristol BS1 2BQ  
Tel 01179 264306 Fax 01179 294515  
9-21 Princess Street, Manchester M60 8AS  
Tel 0161 834 7201 Fax 0161 833 0634  
16 Arthur Street, Belfast BT1 4GD  
Tel 028 9023 8451 Fax 028 9023 5401  
The Stationery Office Oriel Bookshop,  
18-19 High Street, Cardiff CF1 2BZ  
Tel 029 2039 5548 Fax 029 2038 4347

**The Stationery Office 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**  
0870 606 5566

**Fax orders**  
0870 606 5588

**The Scottish Parliament Shop**  
George IV Bridge  
EH99 1SP  
Telephone orders 0131 348 5412

**RNID Typetalk calls welcome on**  
18001 0131 348 5412  
Textphone 0131 348 3415

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

**Accredited Agents**  
(see Yellow Pages)

and through good booksellers