Local Government Committee

32nd Meeting, 2002

Tuesday 10 December 2002

The Committee will meet at 2.00 pm in the Hub, Castlehill, Edinburgh

1. **Items in private:** The Committee will consider whether to take items 4, 5, 6, and 7 in private.

2. **Public Appointments and Public Bodies etc. (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (day 2).

3. **Subordinate Legislation:** The Committee will consider the following negative instrument—

   The Taxi Drivers’ Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2002 (SSI 2002/500)

4. **Gaelic Language (Scotland) Bill:** The Committee will consider proposals for consideration of the Bill at Stage 1.

5. **Renewing Local Democracy - Phase 2 Inquiry:** The Committee will consider an interim report on the Civic Participation event in Glasgow.

6. **Proportional Representation (Local Government Elections) (Scotland) Bill:** The Committee will consider a draft Stage 1 report.

7. **Renewing Local Democracy - Phase 2 Inquiry:** The Committee will consider the findings of the external research.

Eugene Windsor
Clerk to the Committee
Room 2.05, Committee Chambers
85217
e mail: eugene.windsor@scottish.parliament.uk
The following papers are attached for this meeting:

**Agenda item 3**

The Taxi Drivers’ Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2002 (SSI 2002/500)  
Extract from the 43rd Report of the Subordinate Legislation Committee  
LG/02/32/1  
SL/02/43R

**Agenda item 4**

Gaelic Language (Scotland) Bill – Paper from the Convener [PRIVATE]  
LG/02/32/2

**Agenda item 5**

Renewing Local Democracy – Phase 2 Inquiry: Interim report on the Civic Participation event in Glasgow [PRIVATE]  
LG/02/32/3

**Agenda item 6**

Proportional Representation (Local Government Elections) (Scotland) Bill: Draft Stage 1 Report [PRIVATE]  
LG/02/32/4

**Agenda item 7**

Renewing Local Democracy – Phase 2 Inquiry: External Research findings [PRIVATE]  
LG/02/32/5
Subordinate Legislation Committee

Remit and Membership

Remit:

The remit of the Committee is to consider and report on—

(a) (i) subordinate legislation which is laid before the Parliament;

(ii) any Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter;

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation; and

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

*(Standing Orders of the Scottish Parliament Rule 6.11)*

Membership:

Bill Butler
Colin Campbell
Brian Fitzpatrick
Murdo Fraser
Gordon Jackson QC
Ian Jenkins (Deputy Convener)
Margo MacDonald (Convener)

Committee Clerks:

Alasdair Rankin
Steve Farrell
Alistair Fleming
Joanne Clinton
The Committee reports to the Parliament as follows—

1. At its meeting on 26th November the Committee determined that the attention of the Parliament need not be drawn to the instruments listed in the Annexe to this report.

2. The report is also addressed to the following committees as the lead committees for the instruments specified:

   Health and Community Care  
   SSI 2002/498  
   SSI 2002/511  

   Rural Development  
   The Cairngorms National Park Elections (Scotland) Order 2003, (draft)  

   Local Government  
   The Scottish Local Government Elections Regulations 2002, (draft)  
   SSI 2002/500
Instruments subject to annulment

The Taxi Drivers’ Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2002, (SSI 2002/500)

Background
44. The Committee raised six points with the Executive on these Regulations.

Question 1
45. The Committee asked why, given the clear intention to make provision in relation to “other categories of dog”, the Regulations as drafted do not actually prescribe the category or the disability as required by the enabling power, but instead appear to rely solely on a definition in regulation 1(4).

Response 1
46. The Executive, in its response reproduced at Appendix 4, notes that section 20(2A) of the Civic Government (Scotland) Act 1982 enables Ministers to make such provision as they consider to be “necessary or expedient in relation to the carrying in taxis of disabled persons”. In particular, Ministers may prescribe “requirements as to the carriage of wheelchairs, guide dogs, hearing dogs and other categories of dog”.

47. At subsection (2A)(c) ““other categories of dog” means such other categories of dog as the Scottish Ministers may prescribe, trained to assist disabled persons who have disabilities of such kinds as he may prescribe”. This power has been used to prescribe the category of dog referred to in the Regulations as “an assistance dog” at regulation 1(4). The Executive did not think it necessary in the Regulations to state expressly that “an assistance dog” was an “other category of dog” as we were satisfied we had the vires to make provision for a further category of dog under section 20(2A).

Report
48. It seems to the Committee that the Executive may have misunderstood this question. The powers of the Scottish Ministers to make Regulations covering assistance dogs are not in doubt. The Committee’s question related to the drafting of the relevant provision. The Regulations rely solely on a definition to introduce a category of dog not covered in the enabling power. As the Committee has pointed out on previous occasions, this is a fault that can have serious consequences. A definition should not contain substantive law-making provisions.

49. Moreover, it is axiomatic that when exercising delegated powers, the drafter must adhere closely to the terms of the delegation, including the wording of the enabling power in order to be certain of being within the terms of the delegation.

50. In the present instance, the instrument fails to prescribe the assistance dog as another category of dog as required by the enabling power and this error is compounded by the inclusion of substantive provisions relating to such dogs in an interpretation section. In the event, a court might well interpret the Regulations in the manner intended. However, this does not alter the fact that the Regulations appear
to be defectively drafted to the above extent and the Committee reports them to the lead committee and the Parliament on that ground.

Question 2
51. The Executive is asked to explain why the definitions of “a guide dog” and “a hearing dog” in regulation 1(4) are thought to be necessary, given that both are defined in the enabling power.

Response 2
52. The Executive agrees that the terms “a guide dog” and “a hearing dog” are used in the 1982 Act. These were inserted to assist the reader of the instrument.

Report
53. As the Committee has observed on previous occasions, it is regarded as bad practice to include in subordinate legislation to provide definitions of terms that are defined in the parent Act. In the case of these Regulations, the terms in question are defined not just in the Act but in the enabling power itself. In the Committee’s view, if it is considered that the reader needs further information then the place to provide that information would be the Explanatory Note rather than in the body of the Regulations. The Committee draws the attention of the lead committee and the parliament to the Regulations on the ground of failure to follow proper drafting practice in this respect.

Question 3
54. (a) Regulation 1(2) provides that regulations 2 and 3 are to come into force on 3rd March 2003. Regulation 2 however refers to applications for licences made on or after 1st March 2003. The Committee therefore asked for an explanation of the discrepancy in the dates.

55. (b) Following on from question 3 above, the Committee asked why, if regulations 2 and 3 are not to come into force until 3rd March, this date does not apply to the remainder of the Regulations, all of which relate to regulations 2 and 3.

56. (c) The Executive was also asked to explain why the italic heading does not follow the prescribed form for staged commencement as set out in the relevant guide to the drafting of statutory instruments

Response 3
57. The Executive is grateful to the Committee for pointing out the inconsistency between the provision made at regulation 1(2) and regulation 2. While, as drafted, it considers that the instrument could have full effect, its intention had been to rely on the provision made at regulation 1(2). Therefore, although the Regulations would come into force on 2nd December, the prescribed condition would only apply to licence applications made on or after 3 March 2003. The reason for this is to give applicants due notice of the change in licensing condition and an opportunity to consider whether, at the time of making the application, an exemption would be applied for. The continued reference in regulation 1(2) to a different coming into force date for regulations 2 and 3 is an oversight.

58. The Executive will bring forward an amending instrument to remove this discrepancy immediately and issue it free of charge. The policy intention is that
regulations 2 and 3 would apply to applications on or after 3 March because 1 and 2 March are weekend days. Regulation 2 will be amended to show a date of 3 March 2003.

Report
59. The Executive’s intention to give applicants due notice of the change in the licensing condition is commendable. Unfortunately, as the Executive has acknowledged, the Regulations are defectively drafted although without adverse consequences for those who will be affected by them. The Committee welcomes the Executive’s undertaking to bring forward amending Regulations drawing it to the attention of the lead committee and the Parliament.

Question 4
60. In regulation 1(4), “assistance dog” is defined as meaning a dog “trained by a charity” and “wearing a jacket inscribed with the name of a charity”. The Committee was unclear as to whether the two references are intended to the same charity or whether a dog trained by one charity could then wear a jacket bearing the name of a different charity and still meet the definition. The Committee therefore requested clarification.

Response 4
61. In terms of regulation 1(4) “an assistance dog” has to meet two criteria. The first is that the dog must be trained to assist the categories of persons with physical impairment set out at regulation 1(4)(a). The second is that the dog must be wearing a jacket inscribed with the name of a charity. The Executive confirms that it would expect that the jacket worn by the dog would be inscribed with the name of the charity that trained the dog. It did not think it necessary to make express provision for this as to be an assistance dog it would have to meet both criteria in any event.

Report
62. If the Executive does not consider it important that the name of the charity should be the same as the charity that trained the dog it might be asked why this requirement is necessary at all (though this is a matter of policy for the lead committee). As it stands, the provision is wholly ambiguous and as such seems to constitute defective drafting. The Committee therefore draws the attention of the lead committee and the Parliament to the instrument on that ground.
Appendix 4

THE TAXI DRIVERS’ LICENCES (CARRYING OF GUIDE DOGS AND HEARING DOGS) (SCOTLAND) REGULATIONS 2002, (SSI 2002/500)

On 19 November 2002 the Committee asked the Executive for an explanation of the following matters-

“The Committee seeks clarification as to why, given the clear intention to make provision in relation to “other categories of dog”, the Regulations as drafted do not actually prescribe the category or the disability as required by the enabling power, but instead appear to rely solely on a definition in regulation 1(4).

The Executive is asked to explain why the definitions of “a guide dog” and “a hearing dog” in regulation 1(4) are thought to be necessary, given that both are defined in the enabling power.

The Committee notes that regulation 1(2) provides that regulations 2 and 3 are to come into force on 3rd March 2003, when regulation 2 refers to applications for licences made on or after 1st March 2003. The Committee therefore seeks an explanation of the discrepancy in the dates.

Furthermore, the Committee requests clarification as to why, if regulations 2 and 3 are not to come into force until 3rd March, this date does not apply to the remainder of the Regulations, all of which relate to regulations 2 and 3.

The Executive is asked to explain why the italic heading does not follow the prescribed form for staged commencement as set out in the relevant guide to the drafting of statutory instruments.

The Committee notes that in regulation 1(4), “assistance dog” is defined as meaning a dog “trained by a charity” and “wearing a jacket inscribed with the name of a charity”. The Committee was unclear as to whether the 2 references are intended to the same charity or whether a dog trained by one charity could then wear a jacket bearing the name of a different charity for the blind and still meet the definition. The Committee therefore requests clarification of this matter.”

The Scottish Executive responds as follows:

First Question
The Executive notes that section 20(2A) of the Civic Government (Scotland) Act 1982 enables Ministers to make such provision as they consider to be “necessary or expedient in relation to the carrying in taxis of disabled persons”. In particular Ministers may prescribe “requirements as to the carriage of wheelchairs, guide dogs, hearing dogs and other categories of dog”. At subsection (2A)(c) ““other categories of dog” means such other categories of dog as the Scottish Ministers may prescribe, trained to assist disabled persons who have disabilities of such kinds as he may prescribe”. This power has been used to prescribe the category of dog referred to in the Regulations as “an assistance dog” at regulation 1(4). We did not think it necessary in the Regulations to state expressly that “an assistance dog” was an
“other category of dog” as we were satisfied we had the vires to make provision for a further category of dog under section 20(2A).

Second Question
The Executive agrees that the terms “a guide dog” and “a hearing dog” are used in the 1982 Act. These were inserted to assist the reader of the instrument.

Third, Fourth and Fifth Questions
The Executive is grateful to the Committee for pointing out the inconsistency between the provision made at regulation 1(2) and regulation 2. While, as drafted, we consider that the instrument could have full effect, our intention had been to rely on the provision made at regulation 1(2). Therefore, although the Regulations would come into force on 2 December, the prescribed condition would only apply to licence applications made on or after 3 March 2003. The reason for this is to give applicants due notice of the change in licensing condition and an opportunity to consider whether at the time of making the application an exemption would be applied for. The continued reference in regulation 1(2) to a different coming into force date for regulations 2 and 3 is an oversight. We will bring forward an amending instrument to remove this discrepancy immediately and issue this free of charge. The policy intention is that regulations 2 and 3 would apply to applications on or after 3 March because 1 and 2 March are weekend days. Regulation 2 will be amended to show a date of 3 March 2003.

Sixth Question
In terms of regulation 1(4) “an assistance dog” has to meet two criteria. The first is that the dog must be trained to assist the categories of persons with physical impairment set out at regulation 1(4)(a). The second is that the dog must be wearing a jacket inscribed with the name of a charity. We can confirm that we would expect that the jacket worn by the dog would be inscribed with the name of the charity which trained the dog. We did not think it necessary to make express provision for this as to be an assistance dog it would have to meet both criteria in any event.

Scottish Executive

21 November 2002