

# **COMMUNITIES COMMITTEE**

Wednesday 10 January 2007

Session 2

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## COMMUNITIES COMMITTEE

### 1<sup>st</sup> Meeting 2007, Session 2

#### CONVENER

\*Karen Whitefield (Airdrie and Shotts) (Lab)

#### DEPUTY CONVENER

\*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

#### COMMITTEE MEMBERS

\*Scott Barrie (Dunfermline West) (Lab)  
\*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)  
\*Christine Grahame (South of Scotland) (SNP)  
\*Patrick Harvie (Glasgow) (Green)  
\*John Home Robertson (East Lothian) (Lab)  
\*Tricia Marwick (Mid Scotland and Fife) (SNP)  
\*Dave Petrie (Highlands and Islands) (Con)

#### COMMITTEE SUBSTITUTES

Chris Ballance (South of Scotland) (Green)  
Alex Johnstone (North East Scotland) (Con)  
Christine May (Central Fife) (Lab)  
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)  
Ms Sandra White (Glasgow) (SNP)

\*attended

#### CLERK TO THE COMMITTEE

Steve Farrell

#### SENIOR ASSISTANT CLERK

Katy Orr

#### ASSISTANT CLERK

Catherine Fergusson

#### LOCATION

Committee Room 5



## Scottish Parliament

### Communities Committee

*Wednesday 10 January 2007*

[THE CONVENER *opened the meeting at 10:02*]

### Subordinate Legislation

#### Home Energy Efficiency Scheme (Scotland) Regulations 2006 (SSI 2006/570)

**The Convener (Karen Whitefield):** I open the Communities Committee's first meeting in 2007 and wish everybody a very happy new year.

**John Home Robertson (East Lothian) (Lab):** And the same to you.

**The Convener:** Thank you.

Item 1 is consideration of subordinate legislation. The Home Energy Efficiency Scheme (Scotland) Regulations 2006 are subject to the negative procedure. They consolidate the amendments to the Home Energy Efficiency Scheme Regulations 1997 (SI 1997/790) and put into effect the changes to fuel poverty programmes that were announced in Parliament in March 2006. Those changes include the extension of eligibility criteria for the warm deal to include families with disabled children; the provision of upgrades to partial or inefficient heating systems for people who receive the guarantee element of pension credit; the funding of repairs that are considered to be viable and cost effective; and the introduction of a cap on the costs of individual installations.

The Subordinate Legislation Committee raised several points about the regulations, notably in relation to appeal procedures for people who are refused a grant or from whom a grant is withdrawn and for installers who wish to appeal against any decision to terminate or suspend their appointment. That committee also commented on the lack of clarity in the drafting of the regulations on several matters.

Do committee members have any comments?

**Christine Grahame (South of Scotland) (SNP):** Paragraph 5 of the clerk's note says:

"The level of the cap will be kept under review and, while people will still have a choice of fuel type, the amount of grant available will be restricted to fuel types which do not breach the cap."

I am concerned about people in remote and rural areas who have no access to piped gas or whatever. It may be expensive for some such people to run and install a central heating system,

because of the cost of importing materials and having people install a system. I want us to consider that issue, particularly given that Scottish Gas instead of the Eaga Partnership now has the contract. I would not like any preference to be given to that company; I am not maligning it, but we must keep an eye on it. The issues relate to the agency that runs the scheme, the installation costs in remote and rural areas and the type of fuel that can be used in some places, which can mean that a system is expensive.

**Patrick Harvie (Glasgow) (Green):** It would be reasonable to write to the new Minister for Communities to ask the question that the Subordinate Legislation Committee raises in paragraph 7 of its report. It says that if there is an appeal procedure, it will not operate within the regulations; it seems reasonable to ask whether there will be such a procedure and how it will operate.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I have no objection to the point raised by Patrick Harvie, but the issue raised by Christine Grahame is a difficult one to address. It would perhaps mean looking at the whole scheme again. There has to be a limit at some point. I understand her point about someone who lives in a rural village and does not have access to gas, but it can cost many thousands of pounds to take the gas supply to a particular house, so there would have to be alternatives. We have to be careful as there is not a bottomless purse of money. There must be a cap so that we can spread the moneys about. I do not think that at this point it is necessary to go into that detail.

**The Convener:** I do not think that that is what Christine Grahame suggested. I think that she was raising concerns that some communities in Scotland do not have a gas supply, so the type of central heating that they require is sometimes more expensive and there needs to be some recognition of those additional costs. That is not only an issue for rural communities. A number of villages in my constituency in the central belt do not have a gas supply. They rely on electricity, coal or oil, which sometimes requires a more costly installation.

**Christine Grahame:** There is also the cost of getting tradesmen out to some of these places to do the installation and the cost of importing materials—it is a package. I hope that the regulations would not impact on remote rural communities.

**The Convener:** It should not limit our ability to agree to the regulations today, but we should write to the minister to raise those points and seek clarification.

On the point about how the central heating programme is now being operated by Scottish Gas, I hope that when the committee considers its legacy paper it will include comments on the central heating programme and state that we hope that our successor committee in the new session will undertake a monitoring exercise on the effectiveness of the central heating programme and assess what the programme has done, what it has achieved and what it has delivered. I hope that we can come back to that issue at a later date.

I draw the committee's attention to the fact that we have not received a response from the minister to a letter that I wrote at the committee's request in June about the defective drafting of statutory instruments. I seek the committee's agreement that I write to the Executive asking why we have received no response to the letter that we sent in June and raising again the concerns that have been raised once more by the Subordinate Legislation Committee in its report to this committee. Does any member object to my doing that?

**Members:** No.

**The Convener:** Okay. Thank you. All the comments made today by members will be incorporated into the committee's report to the Parliament on the regulations. Does the committee agree to make those comments but to make no recommendation on the regulations?

**Members** *indicated agreement.*

**The Convener:** I ask members to agree that we report to the Parliament on our decision on the regulations. Are we agreed?

**Members** *indicated agreement.*

### **Scottish Charity Appeals Panel Rules 2006 (SSI 2006/571)**

**The Convener:** Item 2 is also subordinate legislation. These rules are subject to the negative procedure. They make provision for the process that is to be followed in making an appeal to the Scottish charity appeals panel and for the operation of the panel. The rules relate to the procedures that the panel will follow in the processing and determination of an appeal, the publication of the appeal decision and the criteria for the award of expenses. The rules also set out more detailed provision on the appeals process and appeal hearings. They will allow for the award of expenses against either the appellant or the Office of the Scottish Charity Regulator.

No motions to annul the rules have been lodged. The Subordinate Legislation Committee raised a number of concerns; in particular, it had a serious concern about whether rule 10 is *intra vires*, as the

parent act does not provide the necessary powers for what is proposed. Another concern was raised about the clarity of drafting. In its response to the Subordinate Legislation Committee, the Executive has stated that it does not share that committee's view on the matter.

In reporting to the Parliament on the rules, do members have any comments, particularly in light of the Subordinate Legislation Committee's concerns?

**Christine Grahame:** Do we need to endorse the Subordinate Legislation Committee's concerns? We want to pick up on the fact that, as that committee says in paragraph 4, in principle it is not possible—as far as I know—to have something in subordinate legislation that is not authorised in primary legislation. We are back to the nature and quality of the drafting of subordinate legislation. It is an issue that we have already raised and that keeps being repeated. It is more than just a problem of style.

**The Convener:** That is the part that the Executive disputes. In its response to the Subordinate Legislation Committee, it said that Scottish ministers have powers and may make rules on the practice and procedures of the panel. The power allows the ministers to get round the difficulties that have been raised by the Subordinate Legislation Committee. It would be legitimate for us to raise those concerns in our report and to ask the Executive to comment further on the issue. We could ask for further explanation about why the Executive considers that the Subordinate Legislation Committee was not right in concluding that the instrument is *ultra vires*.

**John Home Robertson:** This is the sort of argument that puts a committee in some difficulties. There is a risk of getting into a sort of playground argument—"Oh yes it is," "Oh no it isn't." Frankly, we do not know. It is clear that someone has advised the Subordinate Legislation Committee that rule 10 is *ultra vires*, but the Executive says, "Oh no it isn't." Who are we to believe? It is an issue that matters. Somewhere down the line, someone may feel aggrieved by the way in which an appeal is being handled. The process could be open to challenge on that basis. It is important that we get this right. I presume that the Executive has had advice from the law officers. What advice is available to committees? At the end of the day, we may get the blame if we get it wrong.

**The Convener:** Ultimately, it would be for the rules to be challenged in the courts. As I said earlier, there has been no motion to annul.

**Patrick Harvie:** I am not a lawyer of any description, but the Subordinate Legislation Committee's report seems to be about the

meaning of the word “constituted”. I am not entirely convinced that that committee’s concern makes sense. This committee is constituted of nine people, but if two of us are absent, the committee is still constituted of nine people and is still able to meet. It seems reasonable that that should be allowed. We should get some kind of answer from the Executive about how it intends to ensure that rule 10 is not going to be common or standard practice and will be used only in exceptional circumstances. It would be reasonable for both parties to an appeal to agree that the hearing can go ahead if one panel member is absent, but it should not be a regular practice.

10:15

**Tricia Marwick (Mid Scotland and Fife) (SNP):** In response to John Home Robertson’s point, I would guess that the Subordinate Legislation Committee’s advice is coming from parliamentary officials, in the same way that the Executive advice is coming from Executive officials. The Parliament is duty bound to follow the independent advice of parliamentary officials as opposed to the advice of the Executive. Having said that, I think that there is clearly a dispute between the Executive’s advisers and the Parliament’s advisers on the matter. Can we suggest that it would be a good idea if the two sets of advisers got together to consider the legal advice that has been given to the Parliament and to the Executive and to work out whether there is a way round this?

**Christine Grahame:** We get back to the issue that the parent act enables rules to be made as to the practice and procedures of the panels but omits the circumstances in which a panel is constituted and duly empowered and enforced. The instrument takes that on its shoulders. That is the conflict. It would be a belt-and-braces approach, perhaps, but that should have been included in the principal legislation.

**The Convener:** The best way forward would be for us to write to the minister seeking further information and clarification, based on the representations the committee has received from the Subordinate Legislation Committee. That does not mean that we have reached any conclusion or that we agree with the Subordinate Legislation Committee. We may well do, but at this point we seek further clarification on the conflicting advice. That is really the only way forward for us, as no motion to annul has been lodged with the committee. Are members content with that course of action?

**Members indicated agreement.**

**The Convener:** In that case, I suggest that our comments are incorporated into the committee’s report to the Parliament on the rules and that we

write to the minister on the drafting of the rules. In so doing, we should express our concern about whether the instrument is, as the Subordinate Legislation Committee suggests, *ultra vires*. We will not, however, make any recommendation on the rules. Does the committee agree to take that approach?

**Members indicated agreement.**

10:17

*Meeting continued in private until 11:40.*





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