

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 11 September 2007

Session 3

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## **SUBORDINATE LEGISLATION COMMITTEE**

### **4<sup>th</sup> Meeting 2007, Session 3**

#### **CONVENER**

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

#### **DEPUTY CONVENER**

Gil Paterson (West of Scotland) (SNP)

#### **COMMITTEE MEMBERS**

\*Jackson Carlaw (West of Scotland) (Con)

\*Helen Eadie (Dunfermline East) (Lab)

\*Ian McKee (Lothians) (SNP)

John Park (Mid Scotland and Fife) (Lab)

\*Dr Richard Simpson (Mid Scotland and Fife) (Lab)

#### **COMMITTEE SUBSTITUTES**

Bill Aitken (Glasgow) (Con)

Richard Baker (North East Scotland) (Lab)

Christopher Harvie (Mid Scotland and Fife) (SNP)

Margaret Smith (Edinburgh West) (LD)

\*attended

#### **THE FOLLOWING ALSO ATTENDED:**

Bob Doris (Glasgow) (SNP)

#### **CLERK TO THE COMMITTEE**

Gillian Baxendine

#### **SENIOR ASSISTANT CLERK**

David McLaren

#### **ASSISTANT CLERK**

Jake Thomas

#### **LOCATION**

Committee Room 5

## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 11 September 2007*

[THE CONVENER *opened the meeting at 14:15*]

### Interests

**The Convener (Jamie Stone):** Welcome to the fourth meeting of the Subordinate Legislation Committee in the third session of the Parliament, and welcome to our new member, Helen Eadie. We have received apologies from John Park and Gil Paterson, both of whom are on a European and External Relations Committee visit to Brussels. In place of Gil Paterson, we are joined by Bob Doris, whom I welcome.

I have switched off my mobile phone and ask members please to do the same.

Given that this is Helen Eadie's first meeting, I ask her to declare any interests that she feels are of importance in relation to the remit of the committee.

**Helen Eadie (Dunfermline East) (Lab):** Thank you for your welcome, convener. I direct members to my declaration in the Scottish Parliament's register of members' interests.

**The Convener:** It might be prudent for Bob Doris to declare his interests, just to cover himself.

**Bob Doris (Glasgow) (SNP):** I have nothing to declare other than what has been laid before Parliament in my entry in the register of members' interests.

## Government Responses

14:16

**The Convener:** Members will recall that we wrote to the Scottish Government last week about a variety of issues, and we have received the Government's responses. I also draw members' attention to the summary of recommendations. As I said at last week's meeting, the summary is a public document, so we do not have to go through the detail of the Government's responses.

### Provision of School Lunches (Disapplication of the Requirement to Charge) (Scotland) Order 2007 (draft)

**The Convener:** We asked several questions about the order. As no points arise on the Government's response that the order is *intra vires*—in other words, it is all right—are members content to draw the order to the attention of the lead committee and Parliament on the grounds that are outlined in the summary of recommendations?

**Members indicated agreement.**

### Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007 (SSI 2007/336)

**The Convener:** I refer again to the Government's response and the summary of recommendations. The general thrust is that much of what we were concerned about is already covered by certain powers conferred by earlier legislation. As no further points arise, are members content to draw the regulations to the attention of the lead committee and Parliament on the basis that the Scottish Government has provided a satisfactory explanation about the sub-delegation in paragraphs 2 and 6 of the schedule to the regulations?

**Members indicated agreement.**

### European Communities (Lawyer's Practice) (Scotland) Amendment Regulations 2007 (SSI 2007/358)

**The Convener:** Are members content to draw the attention of the lead committee and Parliament to the regulations on the grounds that an explanation was requested from and supplied by the Scottish Government about the delay in implementing directive 206/100/EC, and that a satisfactory explanation has been provided such that, in this case, the delay between making the regulations and laying them is considered justifiable?

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** I am content, convener, but we were told that the delay was due to various legislative pressures on the Government. That is also true of another instrument that we will consider today. In view of the fact that the legislative programme is fairly light, as set out in the new programme for government, can we get an assurance from the Government that such delays will not occur in future?

**The Convener:** That seems a pertinent point. Do other members want to comment?

**Bob Doris:** I am quite keen to know the timescale behind the delay.

**The Convener:** That information is contained in the papers, although I know that you have not had a chance to read them properly.

**Bob Doris:** I have looked at some of them, but I would like to clarify that point.

**Dr Simpson:** Directive 206/100/EC was supposed to be implemented on 1 January 2007, the date of accession to the European Union of Romania and Bulgaria, so we are eight months late.

**Bob Doris:** Was there a separate gap of about a week or so, when the new Government laid the regulations before Parliament?

**The Convener:** Let me put it this way: this is not a partisan issue because it is in everyone's interests to keep delays to a minimum. I joked in our pre-meeting briefing that it is just as well that no Romanian or Bulgarian lawyers are seeking to set up in Scotland. We will have to try and meet in the middle on this issue. The Government will do its best, and the committee will try to be as reasonable as possible. Is that acceptable to the committee?

*Members indicated agreement.*

#### **European Communities (Services of Lawyers) Amendment (Scotland) Order 2007 (SSI 2007/359)**

**The Convener:** The questions that we asked on the order were similar to those that we asked on SSI 2007/358, which we have just considered, and we have had a similar response. Are members content to draw the order to the attention of the lead committee and Parliament on the same basis as we will report on SSI 2007/358?

*Members indicated agreement.*

#### **Animals and Animal Products (Import and Export) (Scotland) Amendment Regulations 2007 (SSI 2007/375)**

**The Convener:** Are members content to draw the regulations to the attention of the lead

committee and Parliament on the ground of defective drafting, as acknowledged by the Scottish Government in relation to the four points that we raised, none of which was of such seriousness as to affect the validity or operation of the regulations?

*Members indicated agreement.*

#### **Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) Regulations 2007 (SSI 2007/376)**

#### **Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No 2) Regulations 2007 (SSI 2007/377)**

**The Convener:** We will consider the two sets of regulations together. We asked the Scottish Government to explain a couple of drafting points. Members will have seen the response, which seems quite reasonable. Are members content to draw the regulations to the attention of the lead committee and Parliament on the basis of defective drafting, which the Scottish Government has acknowledged, on two points? Neither is likely to make much difference to the workings of the regulations.

*Members indicated agreement.*

#### **Foot-and-Mouth Disease (Export Restrictions) (Scotland) Regulations 2007 (SSI 2007/386)**

**The Convener:** The committee raised three drafting points on the regulations. The Government has acknowledged the drafting errors and will rectify them in the near future. On that basis, are members content to draw the regulations to the attention of the lead committee and Parliament?

*Members indicated agreement.*

**The Convener:** I think that we are demonstrating that we can work constructively; it is a meeting of minds.

#### **Act of Sederunt (Rules of the Court of Session Amendment No 6) (Recognition and Enforcement of Judgments in Civil and Commercial Matters) 2007 (SSI 2007/350)**

#### **Act of Sederunt (Sheriff Court European Enforcement Order Rules) Amendment (Extension to Denmark) 2007 (SSI 2007/351)**

**The Convener:** We asked the Lord President's office to explain why specific articles in the European Communities Act 1972 have not been

cited as enabling powers in these acts of sederunt, and we have received a detailed response. Are members content simply to note that the information that we sought was supplied by the Lord President's office?

*Members indicated agreement.*

**Act of Sederunt (Rules of the Court of Session Amendment No 7) (Devolution Issues) 2007 (SSI 2007/360)**

**Act of Adjournment (Criminal Procedure Rules Amendment No 4) (Devolution Issues) 2007 (SSI 2007/361)**

**Act of Sederunt (Proceedings for Determination of Devolution Issues Rules) Amendment 2007 (SSI 2007/362)**

**The Convener:** Again, we asked the Lord President's office a number of questions about drafting points and we have seen the responses. Are members content therefore to note that the information sought was supplied by the Lord President's office?

*Members indicated agreement.*

**Disease Control (Interim Measures) (Scotland) Amendment Order 2007 (SSI 2007/387)**

**The Convener:** We discussed the order last week, and interesting and important points were raised. We have now had a response, which I found very interesting. It appears that we do not have a problem, unless members have seen something that I have not. Is there anything to be raised at this stage?

**Dr Simpson:** I do not have a problem with the order because the Government has said that it got it wrong and that it will effectively withdraw the provision. However, the Government's response says that it sees no problem with making part of an instrument subject to no procedure and part subject to the negative procedure. We were not particularly happy with that.

Can we ask the Government whether, when such a situation occurs, it will split the matters to which no procedure and the negative procedure apply? If it does not, we could end up back in the situation that prompted our original question, which was that one or other procedure could apply. In the original document that was sent to us, the Government indicated that it intended to opt for the procedure that involved less scrutiny. We should establish here and now with the Government the principle that, if it is to use two procedures in relation to an SSI, it should make clear where each procedure applies. If it cannot do

that, it should give an undertaking that the higher scrutiny procedure will always apply. If the Government accepts that principle, we will have no objections in future. In the case of this order, there is no longer an issue in relation to section 8A of the Animal Health Act 1981.

**The Convener:** The Scottish Government has acted properly in response to the comments that we made last week. We are taking a belt-and-braces approach, in order to establish the ground rules at this stage. Are members content that we should write to the Scottish Government in the terms that Richard Simpson has set out?

**Ian McKee (Lothians) (SNP):** I may have missed a point. Where did the Government say that it had no problem with combining the two procedures?

**The Convener:** Richard Simpson will highlight the relevant part of the Government's response.

**Dr Simpson:** On page 11 of paper SL/S3/07/04/3, the Government states:

"The Scottish Government does not consider that it is improper to make an instrument part of which is made under a 'no procedure' power, and part under a 'negative procedure' power. Indeed there may be good reasons for doing so".

**Ian McKee:** I agree that the higher level of scrutiny should be applied.

**The Convener:** Are we content to bring the order to Parliament's attention on the following grounds: that there has been a failure to follow proper drafting practice by reason of the citation of an unnecessary enabling power; that the Scottish Government has provided a satisfactory explanation on the issue of the statutory consultation requirement; and that there is defective drafting of article 12, which the Scottish Government has acknowledged but which is not such as to affect the order's validity?

*Members indicated agreement.*

**The Convener:** The Scottish Government has provided us with a proper response, but we will write to it in the terms that Richard Simpson has suggested, which would be prudent. Such an approach can only be of service to the Government, because I cannot imagine that any Government would want to bypass proper scrutiny.

## Draft Instruments Subject to Approval

### Club Gaming and Club Machine Permits (Scotland) Regulations 2007 (draft)

### Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007 (draft)

14:28

*The committee agreed to raise minor points on the instruments.*

## Instruments Subject to Annulment

14:28

**The Convener:** I point out to members that although paper SL/S3/07/04/1 is headed “Item 3”, it relates to the third instrument under item 4 on our agenda.

### National Health Service (Pharmaceutical Services) (Scotland) Amendment (No 2) Regulations 2007 (SSI 2007/390)

**The Convener:** This is the 20<sup>th</sup> amendment of the principal regulations, which go back some time. That is quite a thought. The clerks and legal advisers recommend that we probe whether there should be consolidation. The legal brief makes the point that any layman—or even a lawyer—would have considerable difficulty pulling together and making sense of the regulations. Consolidation would be a tidying-up exercise.

**Dr Simpson:** If the same provision is being revised each time, consolidation is unnecessary. It may be that one bit of the regulations is being updated. For example, every year prescribing costs are updated by amending one regulation. A series of amendments may be made without that being a problem and consolidation being required.

If significant or technical changes are being made, consolidation should clearly take place. However, paragraph 103 of our legal brief states:

“The consolidation Working Group has yet to meet”.

Can we ask the Government to indicate when the group will meet and what its remit will be? The Government has been in discussions about the group’s remit, but that remit has not yet been agreed. Can we seek a timetable indicating when we may reasonably expect the group’s work to conclude, so that we can get on with the consolidation that, as we agreed at our previous meeting, is important for the sake of transparency—one of the principles on which the new Parliament was founded?

14:30

**Gillian Baxendine (Clerk):** We discussed the matter with the Government over the recess. We have made suggestions to it regarding the group’s remit and are awaiting its response. Once the remit has been agreed, we will bring it before the committee to ensure that members are happy with it. Our intention is that the group should begin to meet very shortly, but there is no harm in the Government being aware that the committee is taking a close interest in the matter.



**The Convener:** We will do what Richard Simpson has suggested.

**National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Amendment (No 2) Regulations 2007 (SSI 2007/393)**

**The Convener:** This is the seventh amendment of the principal regulations. Do members agree that we should ask the Scottish Government what plans it has for consolidation?

*Members indicated agreement.*

**Plant Protection Products (Scotland) Amendment (No 2) Regulations 2007 (SSI 2007/410)**

**The Convener:** I refer members to the supplementary legal brief that they have received. To be honest, I found the regulations difficult to understand, but I am working at it and think that I am getting there. There is an issue of clarity and transparency. Are members content with recommendations (a) and (b) in the summary of recommendations? Are members also content to raise informally the two minor points that have been identified?

*Members indicated agreement.*

**Miscellaneous Food Additives and the Sweeteners in Food Amendment (Scotland) Regulations 2007 (SSI 2007/412)**

**The Convener:** This is the 17<sup>th</sup> amendment to the Miscellaneous Food Additives Regulations 1995 (SI 1995/3187) and the 11<sup>th</sup> amendment to the Sweeteners in Food Regulations 1995 (SI 1995/3123). My goodness—that must be pretty muddling to the layman. Are members content to push the Government on its plans for consolidation?

*Members indicated agreement.*

**Plant Health (Scotland) (Amendment) Order 2007 (SSI 2007/415)**

**The Convener:** Our legal brief indicates that there has been a delay in implementing the relevant Council directives. Should we again ask the Scottish Government why there has been such a delay? I refer to the points that Richard Simpson and others made earlier.

*Members indicated agreement.*

**Plant Health (*Phytophthora ramorum*) (Scotland) Amendment Order 2007 (SSI 2007/416)**

**The Convener:** In the pre-meeting, I asked our advisers what the order is about. *Phytophthora*

*ramorum*—not a name for someone with a lisp—is a sort of fungal infection. The delay in implementing the relevant Commission decision is of concern. To be absolutely impartial, the delay straddles two Governments and has lasted some time. It may not be of much consequence in the case of this disease, but if a much faster-moving disease were involved it could be of considerable concern to farmers. Are members happy for us to ask why there has been such a delay?

**Dr Simpson:** We should point out that the Government has missed the growing season—the Commission decision stated specifically that inspections should take place during the growing season. The Government has completely missed the opportunity to use the order during this growing season. Like you, convener, I have no idea what the implications are of that, but the fact that the decision is worthless for this year suggests that the delay is potentially serious.

**The Convener:** Yes. If the disease is not particularly vicious, that is down to luck.

**National Health Service (Charges for Drugs and Appliances) (Scotland) (No 2) Regulations 2007 (SSI 2007/389)**

**Provision of School Education for Children under School Age (Prescribed Children) (Scotland) Amendment Order 2007 (SSI 2007/396)**

**Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Amendment Regulations 2007 (SSI 2007/414)**

**The Convener:** Are members content with the instruments and to write informally to the Scottish Government about the minor points that arise?

**Dr Simpson:** I do not have a copy of SSI 2007/396. Do we have an implementation date for the policy of increasing pre-school children's entitlement to education from 412 hours to 475 hours a year? I am sorry; I should have asked that in the pre-meeting. I put the wrong colour of sticker on my notes.

**The Convener:** The wrong colour of sticker—the story of all our lives.

We will return to the matter once our team has had a chance to check it out for you.

*The committee agreed to raise minor points on the instruments.*

**National Health Service (General Medical Services Contracts) (Scotland) Amendment (No 2) Regulations 2007 (SSI 2007/392)**

**Gambling Act 2005 (Review of Premises Licences) (Scotland) Regulations 2007 (SSI 2007/394)**

**Gambling Act 2005 (Fees No 3) (Scotland) Regulations 2007 (SSI 2007/395)**

**Licensing (Training of Staff) (Scotland) Regulations 2007 (SSI 2007/397)**

**Private Security Industry Act 2001 (Designated Activities) (Scotland) Order 2007 (SSI 2007/398)**

**Water Industry Commissioner for Scotland (Dissolution) Order 2007 (SSI 2007/399)**

**Regulation of Care (Social Service Workers) (Scotland) Amendment Order 2007 (SSI 2007/407)**

**Scottish Road Works Commissioner (Imposition of Penalties) Regulations 2007 (SSI 2007/411)**

**National Health Service (Primary Medical Services Performers Lists) (Scotland) Amendment (No 2) Regulations 2007 (SSI 2007/413)**

*The committee agreed that no points arose on the instruments.*

## **Instruments Not Laid Before the Parliament**

**Disease Control (Interim Measures) (Scotland) Amendment (No 2) Order 2007 (SSI 2007/400)**

14:36

**The Convener:** Are members content to draw the order to the attention of Parliament on the basis of a failure to follow proper drafting practice by reason of the citation of an unnecessary enabling power? We have talked about that already.

**Members** *indicated agreement.*

**Transport (Scotland) Act 2005 (Commencement No 3) Order 2007 (SSI 2007/409)**

*The committee agreed to raise minor points on the instrument.*

**The Convener:** I refer back to the Provision of School Education for Children under School Age (Prescribed Children) (Scotland) Amendment Order 2007. The order was made on 30 August, and laid before the Parliament on 3 September. It will come into force on 25 September 2007.

**Dr Simpson:** Thank you.

**The Convener:** The next meeting of the committee will be a week hence, on 18 September at 2:15. I thank members for their contributions.

*Meeting closed at 14:38.*

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