

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 4 December 2007

Session 3

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## SUBORDINATE LEGISLATION COMMITTEE

14<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

\*Richard Baker (North East Scotland) (Lab)  
Jackson Carlaw (West of Scotland) (Con)  
\*Helen Eadie (Dunfermline East) (Lab)  
\*Ian McKee (Lothians) (SNP)  
\*John Park (Mid Scotland and Fife) (Lab)

### COMMITTEE SUBSTITUTES

Bill Aitken (Glasgow) (Con)  
Christopher Harvie (Mid Scotland and Fife) (SNP)  
Elaine Smith (Coatbridge and Chryston) (Lab)  
Margaret Smith (Edinburgh West) (LD)

\*attended

### THE FOLLOWING ALSO ATTENDED:

Judith Morrison (Legal Adviser)

### 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 4 December 2007*

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

### Delegated Powers Scrutiny

#### Glasgow Commonwealth Games Bill: Stage 1

**The Convener (Jamie Stone):** Welcome to the 14<sup>th</sup> meeting of the Subordinate Legislation Committee in session 3. We have received apologies from Jackson Carlaw. I ask members to turn off any mobile phones.

The bill is pretty wide-ranging and seems to give ministers an awful lot of powers. It is interesting to note that all the powers to make subordinate legislation are subject to negative procedure except the commencement and repeal provisions, which are not subject to parliamentary procedure. Members will have noted that the exercise of many of the powers in the bill can completely alter the effect or scope of the substantive provisions and we might feel that such matters of principle should be subject to the higher level of parliamentary scrutiny afforded by affirmative procedure.

We have two questions on section 1(2), which defines a "Games event". Are members content to ask the Scottish Government to consider narrowing the scope of the power by introducing a requirement to demonstrate a connection to the games or to host city obligations or through some other means? Alternatively, are you prepared to accept a broadly framed power in order to afford maximum flexibility to the Scottish Government provided that its exercise is subject to affirmative procedure?

We have a clear choice to put to the Scottish Government.

**Ian McKee (Lothians) (SNP):** We can put both questions to the Government.

**The Convener:** We can indeed.

**Ian McKee:** I suggest that that is the answer.

**The Convener:** Are we all happy with that?

**Members indicated agreement.**

**The Convener:** For speed, I refer members to the summary of recommendations so that I do not have to read out everything.

Section 2 is on trading regulations. Are members content to ask the Scottish Government questions (a), (b), (c) and (d) as listed in the summary of recommendations?

**Members indicated agreement.**

**The Convener:** Section 10 is on advertising regulations. Are members content to ask questions (a), (b) and (c) as listed in the summary of recommendations?

**Members indicated agreement.**

**The Convener:** On section 19, "Use of internet etc", do members agree that we should put questions (a), (b), (c) and (d) to the Scottish Government? Before you answer, I would like to hear any thoughts on question (d). Would affirmative procedure be more appropriate in these circumstances?

**John Park (Mid Scotland and Fife) (Lab):** Are you talking about the further points in paragraph 39 of the legal brief?

**The Convener:** I am looking at the summary of recommendations.

As there are no comments, we will put questions (a), (b), (c) and (d) to the Scottish Government.

On section 20, "Authorised ticket sales", are members content with the power in subsection (4) and that it is subject to negative procedure? There was not much of a problem with this one in the legal brief. Are we content?

**Members indicated agreement.**

**The Convener:** On section 21, "Enforcement of Games offences", are members content to ask, about subsection (1), questions (a), (b), (c) and (d) as listed in the summary of recommendations?

**Members indicated agreement.**

**The Convener:** The legal brief does not show any problems with the powers in section 22(2), on enforcement officers, or those in section 31, "Compensation and recovery of costs". Are members content with the powers and that they are subject to negative procedure?

**Members indicated agreement.**

**The Convener:** On section 38, "Games traffic regulation orders", are members content that the games transport plan in subsection (1)(a) is not to be laid before Parliament? Are there any views on whether the expansion of the existing power of local authorities to make traffic regulations for the purposes of the games is reasonable?

**Members indicated agreement.**

**The Convener:** Just to be absolutely certain, are you content that the games transport plan is not to be laid before Parliament?

**Members indicated agreement.**

**The Convener:** Again, are you content with the power and that it is subject to the negative procedure? Our legal brief seems to be fairly happy about that.

**Members indicated agreement.**

**The Convener:** On section 43, "Orders and regulations", are members content with the provision in subsection (2)?

**Members indicated agreement.**

**The Convener:** On section 47, "Ancillary provision", are members content to ask the Scottish Government to consider that the exercise of the power in subsection (1) should be subject to a higher degree of parliamentary scrutiny by means of affirmative procedure where the effect of the exercise of the power is to modify the bill or the primary legislation? That seems to be important.

**Members indicated agreement.**

**The Convener:** On section 49, "Commencement", are members content with the provision in subsection (2)?

**Members indicated agreement.**

**The Convener:** On section 50(2), are members content to leave it to the Scottish Government to determine when repeal should take effect?

**Gil Paterson (West of Scotland) (SNP):** I am slightly uncomfortable with that. I would have thought that a time limit should be imposed. I see no purpose in leaving it for eternity. Can we ask if it is necessary to do that?

**The Convener:** We can ask that. Is that all right?

**Judith Morrison (Legal Adviser):** Yes, we could ask that, or we could ask the Government to place some sort of sunset provision in the bill for when the Commonwealth games are complete and the powers are no longer needed.

**The Convener:** Would that provision be on the face of the bill?

**Judith Morrison:** We could suggest that it should be. That is the alternative.

**The Convener:** Does that address your point, Gil?

**Gil Paterson:** The powers could run out perhaps five days after the games. There should be something definitive.

**Ian McKee:** It could be the same thing as the provision in the London Olympic Games and Paralympic Games Act 2006.

**The Convener:** Yes. It is worth putting on the record at this stage that the legal brief was interesting, instructive and informative about what has been done with the London Olympic Games and Paralympic Games Act 2006.

That takes us to the consideration of other delegated powers.

Sections 9 and 16 are on guidance and information about trading and advertising. Are members content that that guidance is not subject to parliamentary procedure?

**Members indicated agreement.**

**The Convener:** On section 40, "Power to direct councils to regulate road use for Games purposes", are members content that ministers' powers of action under subsection (1) be the same as those of councils as traffic authorities?

**Members indicated agreement.**

**Ian McKee:** I do not quite understand the sentence.

**Judith Morrison:** Yes; it could have been better expressed. The words "as traffic authorities" should be in parenthesis, to show that ministers would be stepping into the shoes of the councils when councils act as traffic authorities.

**Ian McKee:** Yes. I did not understand the sentence as I read it.

**Judith Morrison:** My apologies.

**The Convener:** On section 42, "Compulsory acquisition of land for Games purposes", is the inclusion of the additional basis of compulsory acquisition of land for games purposes reasonable in light of the requirements of the games?

**Members indicated agreement.**

**The Convener:** Are members content with the schedule, which contains additional permissive provisions that may be made in the trading and advertising regulations?

**Members indicated agreement.**

**The Convener:** We will consider the responses to our questions at our meeting in two weeks' time.

## Legislative Consent Memorandum

### Dormant Bank and Building Society Accounts Bill

14:22

**The Convener:** As with the legislative consent memorandum that we discussed at last week's meeting, we do not have the time to raise any issues with the Scottish Government directly. Any issues that we raise will have to be reported to the lead committee.

I found the bill to be most interesting. Although its subject matter is not appropriate for discussion by the committee, I am sure that it will reverberate in all our constituencies, to say the least.

On clause 19, "Distribution of money for meeting Scottish expenditure", are members content to invite the lead committee to consider whether clarification should be sought on how the Scottish Government intends to use the powers to make an order under clause 19, in terms of the further restrictions on purposes or persons that may be imposed when distributing dormant account money for social or environmental purposes? Should we seek a bit of clarification there?

**Members indicated agreement.**

**The Convener:** We could say something similar about clause 21, "Directions to Big Lottery Fund". Are members content to invite the lead committee to consider whether it should ask the Scottish Government for further information on how it intends to use the direction-making power in subsection (5), and on the process by which detailed spending areas and the persons who will receive dormant money will be considered, before ministers use the power of direction? Again, do we seek a bit more clarification?

**Members indicated agreement.**

**The Convener:** Finally, are members content with the power in schedule 3, part 1, paragraph 3, "Strategic plans for Scotland"?

**Members indicated agreement.**

## Scottish Government Responses

14:24

**The Convener:** We wrote to the Scottish Government about five instruments following last week's meeting. Members will have seen the responses, which were circulated with the papers.

### Environmental Protection Act 1990: Part IIA Contaminated Land The Radioactive Contaminated Land (Scotland) Regulations 2007 Draft Statutory Guidance (SE/2007/168)

**The Convener:** Are members content to report the draft guidance to the lead committee and to the Parliament on the ground that the delay in the production of that guidance gives rise to a doubt as to the proper operation of part IIA of the Environmental Protection Act 1990 as applied to radioactive contaminated land by the Radioactive Contaminated Land (Scotland) Regulations 2007 (SSI 2007/179)?

**Members indicated agreement.**

**The Convener:** Secondly, we ought to welcome the Scottish Government's undertaking to resolve at the next legislative opportunity the tension between sections 78A(2), 78BA and 78BB of the 1990 act, which was noted in the course of the scrutiny of the draft guidance. That is a satisfactory outcome from a constructive dialogue.

**Members indicated agreement.**

### Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007/513)

**The Convener:** Are members content to report the regulations to the lead committee and the Parliament on the grounds that are listed in the summary of recommendations?

**Members indicated agreement.**

### Foot-and-Mouth Disease (Export and Movement Restrictions) (Scotland) Regulations 2007 (SSI 2007/518)

**The Convener:** I refer members to the supplementary legal brief, which suggests slightly different questions from those in the earlier legal brief. Do members agree to ask the Scottish Government to clarify whether the term "dispatch" used in regulation 9(1), as read with the definition of that term set out in regulation 2, is intended to prohibit the activity of transferring or moving animals from Scotland that does not involve export from the United Kingdom; if so, what restrictions are placed on such activity by European Commission decision 2007/554/EC; and how

those restrictions are given effect in the regulations?

**Members** *indicated agreement.*

**The Zootechnical Standards Amendment (Scotland) Regulations 2007 (SSI 2007/521)**

**The Convener:** Are members content to draw the regulations to the attention of the Parliament and the lead committee on the ground that the committee is satisfied with the explanation sought from and provided by the Scottish Government?

**Members** *indicated agreement.*

**The Convener:** That is more satisfactory work and progress.

**Official Feed and Food Controls (Scotland) Regulations 2007 (SSI 2007/522)**

**The Convener:** Are members content to report the regulations to the lead committee and the Parliament on the ground that, in so far as regulations 49(5)(a) and (b) remove the application of various regulations of the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 (SSI 2005/608) concerning enforcement measures to certain feeding stuffs, they appear to give rise to an unexpected and unintended effect?

**Members** *indicated agreement.*

**The Convener:** We also welcome the statement that the Food Standards Agency Scotland is considering whether any further amendments are necessary. That is another productive outcome.

**Instrument Subject to Annulment**

**Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Amendment (No 4) Regulations 2007 (SSI 2007/523)**

14:27

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



## Instrument Not Laid Before the Parliament

### **Criminal Proceedings etc (Reform) (Scotland) Act 2007 (Commencement No 2 and Transitional Provisions and Savings) Amendment Order 2007 (SSI 2007/527)**

14:27

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

## Scottish Government Correspondence

14:28

**The Convener:** The committee will recall agreeing in private at its meeting on 23 October to write to the Scottish Government about the combining in one instrument of powers that are subject to different procedures. If committee members have no comments on the response that we have received, do they agree with the Scottish Government's position on combining negative procedure and no procedure within a single instrument? Do we also agree to refer issues relating to consolidation to the consolidation working group?

**Ian McKee:** There does not seem to be a major point of difference.

**The Convener:** We will put it to the consolidation working group.

**Ian McKee:** Yes. Crack it to the boundary.

**The Convener:** That concludes the formal part of the meeting. The next meeting of the committee will be next Tuesday, 11 December, at 2.15 pm. We will take evidence from members of the previous committee and its adviser on the inquiry into the regulatory framework in Scotland. That will be the first item on next week's agenda, and I suggest that, as today, committee members should come to a pre-meeting briefing to discuss questions.

*Meeting closed at 14:29.*



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