

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 22 January 2008

Session 3

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## SUBORDINATE LEGISLATION COMMITTEE

### 3<sup>rd</sup> Meeting 2008, 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:

Mairi Gibson (Legal Adviser)

#### CLERK TO THE COMMITTEE

Gillian Baxendine

#### SENIOR ASSISTANT CLERK

David McLaren

#### ASSISTANT CLERK

Jake Thomas

#### LOCATION

Committee Room 4



## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 22 January 2008*

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

### Scottish Government Responses

**The Convener (Jamie Stone):** I welcome everyone to the third meeting of the Subordinate Legislation Committee in 2008. There are no apologies; everyone is here. I ask members to turn off their mobile phones.

We move to agenda item 1. After the meeting on 15 January, the committee wrote to the Scottish Government about three Scottish statutory instruments. You have seen the responses. As I do at every meeting, I draw your attention to the summary of recommendations. There is also a supplementary legal brief.

#### Agriculture and Horticulture Development Board Order 2007 (Draft)

**The Convener:** Are members satisfied with the explanations that have been provided? If so, are you content to draw the draft order to the attention of the lead committee and Parliament on the grounds that are set out in the summary of recommendations, in paragraphs (a) to (e)?

**Ian McKee (Lothians) (SNP):** I would be grateful for advice about point (d) and whether my concerns come within the remit of this committee. It seems strange to have an instrument that would make it almost certain that someone would commit an offence. If someone gets a milk order in on the last day of a month and does not report it on that day, that is technically an offence. We have reassurance from the Government that it would not pursue the offence if there was a reasonable excuse. Is making an instrument that means that someone might commit an offence almost automatically, and then ignoring that offence, a reasonable way to do business? Would it not be good drafting practice to allow someone a period of time in which notification could be given, if a purchase had been made right at the end of the month, when the notification is meant to take place?

**Mairi Gibson (Legal Adviser):** I would certainly agree that it would be good drafting practice to be specific about the period within which notification should be given. Persons who potentially commit such an offence should know what behaviour

would constitute that offence. I agree with the points that the member makes.

**Ian McKee:** Should we therefore not be stronger in our recommendation?

**Mairi Gibson:** The recommendation is to report on the ground that there is a doubt as to the validity of that provision. That is the strongest of the grounds that are available to the committee. Further reasoning or background could be put in our report.

**Ian McKee:** It seems a slippery slope if we create legislation that will automatically result in some people committing an offence and rely on the good will of the Government of the day not to pursue it.

**Mairi Gibson:** The explanation that we have received suggests discretion on the part of prosecutors as to when they prosecute and when they do not. They will take the individual circumstances into account.

**Ian McKee:** But it is intolerable to have a situation where an offence is almost bound to be committed because of the way in which the legislation is framed, and then to leave it to the discretion of prosecutors. We are in a benign environment at the moment, but we might not always be in a benign environment, and we need the benefit of the law to protect honest citizens. The order might make honest citizens commit an offence inadvertently.

**Mairi Gibson:** I agree. For the reasons that you have described, it is good drafting practice to be specific as to time limits and to allow people a reasonable time limit within which to comply with whatever the requirement is.

**Richard Baker (North East Scotland) (Lab):** I take it that the Rural Affairs and Environment Committee will be the lead committee on the order. Having briefly been on that committee before I had the pleasure of acceding to this committee, I am aware that it has previously discussed concerns regarding similar instruments. Although I would not wish to prejudge that committee's discussions, I think, on the basis of its previous meetings, that it would be interested in this matter. It might therefore be useful for us to flag it up.

Ian McKee has done us a service by raising his concerns, which we can now forward to the lead committee. We could perhaps attach the *Official Report* of this meeting to our letter, to show the points that have been raised. There are important and material policy concerns that the lead committee might wish to discuss at some length.

**The Convener:** Our objective is to liaise and to flex our muscles as much as we can. With the provisos that members have raised, are we

content to draw the order to the attention of the lead committee and Parliament on the grounds suggested in our summary of recommendations?

**Members** *indicated agreement.*

### **Quality Meat Scotland Order 2008 (Draft)**

**The Convener:** Are members content to draw the order to the attention of the lead committee and Parliament on the grounds set out in the summary of recommendations?

**Members** *indicated agreement.*

### **Local Authorities' Traffic Orders (Procedure) (Scotland) Amendment Regulations 2008 (SSI 2008/3)**

**The Convener:** Are members content to draw to the attention of the lead committee and Parliament that a satisfactory explanation of the regulations was sought and received from the Government?

**Members** *indicated agreement.*

## **Draft Instruments Subject to Approval**

**Criminal Procedure (Scotland) Act 1995  
Fixed Penalty Order 2008 (Draft)**

**Valuation and Rating (Exempted Classes) (Scotland) Order 2008 (Draft)**

**Criminal Proceedings etc (Reform) (Scotland) Act 2007 (Supplemental Provisions) Order 2008 (Draft)**

14:21

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

## **Instruments Subject to Annulment**

**Bankruptcy Fees (Scotland) Amendment Regulations 2008 (SSI 2008/5)**

**Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2008 (SSI 2008/6)**

**Criminal Procedure (Scotland) Act 1995  
Compensation Offer (Maximum Amount) Order 2008 (SSI 2008/7)**

**Discontinuance of Legalised Police Cells (Scotland) Rules 2008 (SSI 2008/8)**

14:22

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

## Instruments Not Laid Before the Parliament

### **Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) Amendment (Licensing (Scotland) Act 2005) 2008 (SSI 2008/9)**

14:23

**The Convener:** Are members content to ask the Scottish Government to explain the two points raised in the summary of recommendations?

**Members** *indicated agreement.*

**The Convener:** Members will note from the annex to the summary of recommendations that some minor points arise on the draft Valuation and Rating (Exempted Classes) (Scotland) Order 2008, as well as on SSI 2008/7 and SSI 2008/9. We will raise those points informally. Are members content with that?

**Members** *indicated agreement.*

**Gillian Baxendine (Clerk):** I would like to clarify one point. On the first instrument that we considered—the draft Agriculture and Horticulture Development Board Order 2007—our ground for reporting the order will not be the validity of the order but the fact that there appears to be an unusual or unexpected use of the powers conferred by the parent statute.

**The Convener:** In fairness to the clerk, I should have pointed that out but failed to do so.

14:24

*Meeting continued in private until 14:54.*





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**Wednesday 30 January 2008**

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