

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 5 February 2008

Session 3

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## SUBORDINATE LEGISLATION COMMITTEE

### 5<sup>th</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:

Judith Morrison (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 5 February 2008*

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

## Scottish Government Responses

**The Convener (Jamie Stone):** Good afternoon. I welcome members to the fifth meeting in 2008 of the Subordinate Legislation Committee. We have apologies from Richard Baker and we may have a late arrival or two. I ask members to turn off their mobile telephone or BlackBerry.

After our meeting on 29 January, the committee wrote to the Scottish Government about two Scottish statutory instruments. Members have seen the responses.

### Bluetongue (Scotland) Order 2008 (SSI 2008/11)

**The Convener:** A couple of additional matters have arisen on the order since the meeting papers were issued. For the record, I ask the legal adviser to explain them to the committee.

**Judith Morrison (Legal Adviser):** I have three points to make, the first of which arises in connection with point (a). Although I do not wish to alter the recommendation made to the committee in the legal brief, I have considered in addition whether there is any argument that, where it is necessary for an instrument to be given proper effect, to impute particular provisions to a particular enabling power would be sufficient. In this case, I consider that it is not appropriate to rely on any such suggestion and that the proper practice would be to attribute enabling powers to the particular provisions.

The second point relates to point c(ii). I have considered the argument that the Scottish Government put forward in its response. I agree with its conclusion that there is no real doubt as to the meaning of “suspicion” in this context, because the European Commission regulation adopts the definition of “suspicion” contained in the previous directive. My reading of article 8 of the order leads me to the inescapable conclusion that “suspicion” used in that context must adopt the same meaning. I agree with the Scottish Government that it would not be appropriate for it to gloss the meaning, or to impute any additional meaning to that provided in a directly effective European measure. So I agree with the Government’s

conclusion as to effect, but I have reached it by a slightly different route.

Finally, I ask members to consider writing to the Scottish Government on an additional matter. Unfortunately, the committee will be unable to include the response in its report to the lead committee, but the question is important, nonetheless. The question is why provisions in articles 13(5), 14(7) and 15(3) of the order, which appear to delegate to the Scottish ministers the ability to specify that other measures are required when issuing declarations under those articles, are considered to be *intra vires* the enabling powers in the absence of any specific power to make such provision?

**The Convener:** Thank you. The last point is something of a tidying-up exercise; we will do what we can within the time constraints.

I will run through the grounds for our recommendations. On point (a), there has been a failure to follow proper drafting practice, such as may impact on the operation of the instrument. On point (b), there has been a failure to follow proper legislative practice. On points c(i) and c(iii), an explanation was sought from and provided by the Scottish Government with which we are satisfied; on point c(ii)—a point to which our legal adviser has just alluded—an explanation was sought from and provided by the Scottish Government, which we find satisfactory in part. On point (d), an explanation was sought from and provided by the Government with which we are satisfied.

Finally, our legal adviser recommends that we write to the Scottish Government to seek an explanation of how the provisions in articles 13(5), 14(7) and 15(3) of the order, which appear to delegate to the Scottish ministers the ability to specify that other measures are required when issuing declarations under those articles, are considered to be *intra vires* the enabling powers in the absence of any specific power to make such provision.

Are we content to draw the order to the attention of the lead committee and Parliament on those grounds?

**Members indicated agreement.**

**The Convener:** Before we move on, I point out that it has been only a short time since we last talked about this sort of procedure and Government response and yet another such instrument is before us today. We continue to believe that the Government could improve the situation.

**Scottish Road Works Register (Prescribed  
Fees and Amounts) Regulations 2008  
(SSI 2008/16)**

**The Convener:** Are members content with the Government's response and on that basis to draw the regulations to the attention of the Parliament?

**Members** *indicated agreement.*

**Draft Instruments Subject  
to Approval**

**Renewables Obligation (Scotland)  
Amendment Order 2008 (Draft)**

**Home Detention Curfew Licence  
(Amendment of Specified Days) (Scotland)  
Order 2008 (Draft)**

14:20

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

**Instrument Subject to Annulment**

**Police Grant (Variation) (Scotland) Order  
2008 (SSI 2008/20)**

14:20

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

## Instruments Not Laid Before the Parliament

### Management of Offenders etc (Scotland) Act 2005 (Commencement No 4) Order 2008 (SSI 2008/21)

14:21

**The Convener:** Are members content to ask the Scottish Government the questions that are set out in the summary of recommendations, which are to explain which provision is newly commenced by article 2(1)(b), coming into force on 11 February 2008; and whether the relevant provision has already been commenced on 8 February 2006, by virtue of articles 3(1) and 3(3) of the Management of Offenders etc (Scotland) Act 2005 (Commencement No 1) Order 2006 (SSI 2006/48)?

*Members indicated agreement.*

### Abolition of Bridge Tolls (Scotland) Act 2008 (Commencement) Order 2008 (SSI 2008/22)

**The Convener:** Members will note that two options are given in the summary of recommendations. The first is to ask the Scottish Government to explain why the convention that primary legislation does not come into force less than two months after the date on which it is enacted has not been observed in the case of the 2008 act. The second is to say that we are content with the Government's reasons for the earlier commencement of the act and to note that in our report to the lead committee.

The point is made in the legal brief—and it struck home with me—that, at stages 1 and 2 of the bill, the Minister for Transport, Infrastructure and Climate Change made it fairly clear that he was minded to move as swiftly as possible on the matter. Does any member have a comment on the options?

**John Park (Mid Scotland and Fife) (Lab):** The Government has set out its rationale for wanting to move quickly. The second option is therefore the best one. I am happy to go with that.

**Ian McKee (Lothians) (SNP):** It is pretty obvious that that is the best one.

**John Park:** Yes, it flags up the situation, but recognises the wider debate on why the Government moved so quickly on the issue.

**The Convener:** We know the will of the Parliament and what the minister said. For those reasons, are members content to go for the second option, which is to agree that we are

content with the Government's reasons for the earlier commencement of the act and to note that in our report to the lead committee?

*Members indicated agreement.*

**The Convener:** Following our new procedure, members will note from the annex to the summary of recommendations that some minor points arise on SSI 2008/20. We will raise those points informally with the Scottish Government. I say this for the purposes of the *Official Report*.

The next meeting will be held on Tuesday 19 February at 2.15 pm, after our short, late-winter recess. Before I close the meeting, I thank the clerks and our legal advisers.

*Meeting closed at 14:23.*



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**Wednesday 13 February 2008**

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