

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 11 March 2008

Session 3

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# **SUBORDINATE LEGISLATION COMMITTEE**

## **9<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 11 March 2008*

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

## Scottish Government Responses

**The Convener (Jamie Stone):** I welcome everyone to the ninth meeting of the Subordinate Legislation Committee in 2008. We have no apologies; we await Mr Richard Baker. I ask members to turn off any mobile phones or BlackBerrys. I see them being turned off. In particular, I very much welcome our new temporary committee assistant, Margaret McKenzie. We look forward to working with you, Margaret.

Following our last meeting, on 4 March, we asked the Scottish Government about five Scottish statutory instruments, and we have seen the responses.

### **Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Amendment Regulations 2008 (SSI 2008/53)**

### **Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Amendment Regulations 2008 (SSI 2008/55)**

**The Convener:** Are we content to draw the regulations to the attention of the lead committee and Parliament on the grounds that are set out in the summary of recommendations?

**Members indicated agreement.**

### **Crofting Counties Agricultural Grants (Scotland) Amendment Scheme 2008 (SSI 2008/58)**

**The Convener:** We had two questions about the scheme. First, are we content to draw the scheme to the attention of the lead committee and Parliament on the grounds relating to question (a)? There appears to be a doubt as to whether the instrument is *intra vires*. Secondly, are we satisfied with the Scottish Government's response to question (b), and do we wish to draw that response to the attention of the lead committee and Parliament?

**Members indicated agreement.**

### **Act of Adjournal (Criminal Procedure Rules Amendment) (Criminal Proceedings etc (Reform) (Scotland) Act 2007) 2008 (SSI 2008/61)**

**The Convener:** Are we content to draw the act of adjournal to the attention of Parliament on the grounds that are set out in the summary of recommendations in relation to question (a)?

**Members indicated agreement.**

**The Convener:** Are we satisfied with the response to question (b) that was provided by the Lord President's office, and are we content to draw it to the attention of the Parliament?

**Members indicated agreement.**

### **Agricultural Processing, Marketing and Co-operation Grants (Scotland) Regulations 2008 (SSI 2008/64)**

**The Convener:** Are we satisfied with the Scottish Government's response to question (a) and do we agree to draw it to the attention of the lead committee and Parliament?

**Members indicated agreement.**

**The Convener:** Secondly, in relation to point (b), are we content to draw the regulations to the attention of the lead committee and Parliament on the grounds that the Government accepts that regulation 9(4)(f) contains an error such as could affect the regulations, which the Government has undertaken to correct at a suitable opportunity?

**Members indicated agreement.**

## **Instruments Subject to Annulment**

### **Leader Grants (Scotland) Regulations 2008 (SSI 2008/66)**

14:18

**The Convener:** Are we content to ask the Scottish Government questions (a) to (c), as set out in the summary of recommendations?

*Members indicated agreement.*

### **Intensive Support and Monitoring (Scotland) Regulations 2008 (SSI 2008/75)**

**The Convener:** Are we content to ask the Scottish Government questions (a) to (d), as set out in the summary of recommendations?

*Members indicated agreement.*

### **Bankruptcy (Scotland) Regulations 2008 (SSI 2008/82)**

**The Convener:** Members have before them a revised legal brief on the regulations. The brief was revised in light of further discussions between our legal advisers and Scottish Government officials.

With that in mind, are members content to ask the Scottish Government to explain what powers are being relied upon to prescribe the following, given that the power that appears to be available to ministers has not been cited in the preamble to the regulations, and given what the Government considers to be the effect of failing to cite any available power: the amount that is specified in regulation 10; the period that is given for the provision of the debt advice and information package in regulation 12; form 8; forms 21 and 22, which are introduced by regulation 19, paragraphs (1) and (2); and form 23, which is introduced by regulation 20?

*Members indicated agreement.*

**The Convener:** I take this opportunity to thank our legal advisers for the effective exchange of views that allowed our legal brief to be updated. That is a good example of how to get things done efficiently.

### **Rice Products from the United States of America (Restriction on First Placing on the Market) (Scotland) Regulations 2008 (SSI 2008/87)**

**The Convener:** This is an unusual instrument. Are we content with the explanation that was provided by the Scottish Government for the

breach of the 21-day rule, and are we content with the regulations?

*Members indicated agreement.*

### **Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008 (SSI 2008/88)**

**The Convener:** Are we content to ask the Scottish Government the question that is set out in the summary of recommendations?

*Members indicated agreement.*

### **National Health Service (Superannuation Scheme, Injury Benefits, Additional Voluntary Contributions and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2008 (SSI 2008/92)**

**The Convener:** I point out that the second question in the summary of recommendations has been withdrawn. Again, that follows discussions between our legal advisers and Scottish Government officials. Having pointed that out, I ask whether we are content to ask the Scottish Government to clarify point (a), as set out in the summary of recommendations?

*Members indicated agreement.*

### **Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment Regulations 2008 (SSI 2008/65)**

### **Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment No 2) 2008 (SSI 2008/72)**

### **Town and Country Planning (General Permitted Development) (Avian Influenza) (Scotland) Amendment Order 2008 (SSI 2008/74)**

### **Bankruptcy Fees (Scotland) Amendment (No 2) Regulations 2008 (SSI 2008/79)**

### **Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2008 (SSI 2008/83)**

### **Non-Domestic Rating (Telecommunications and Canals) (Scotland) Amendment Order 2008 (SSI 2008/84)**

**Non-Domestic Rates (Levying) (Scotland)  
Regulations 2008 (SSI 2008/85)**

**Road Works (Settlement of Disputes and  
Appeals against Directions) (Scotland)  
Regulations 2008 (SSI 2008/89)**

**Justice of the Peace Courts (Sheriffdom of  
Grampian, Highland and Islands) Order  
2008 (SSI 2008/93)**

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

**Instrument Not Laid Before  
the Parliament**

**Pollution Prevention and Control  
(Designation of Batteries Directive)  
(Scotland) Order 2008 (SSI 2008/86)**

14:23

**The Convener:** We have a choice here. First, are members content that the Scottish Government's interpretation as to the scope of the enabling power is reasonable?

**Ian McKee (Lothians) (SNP):** We should ask the Scottish Government to provide an explanation. If our legal team have some doubts about the order, it is reasonable to explore the matter, as we do in general. Then we can be absolutely certain about the matter.

**The Convener:** There has been a precedent for this, certainly during the previous session.

**Judith Morrison (Legal Adviser):** That is right. The previous committee questioned the use of the enabling power in this way.

**Ian McKee:** Could you clarify what the result would be if we queried the order? Would that cause any gross impairment to the progress of the government of the country?

**Judith Morrison:** I would say not.

**Ian McKee:** We have a convention. If we have doubts, we explore them, get answers and satisfy ourselves that the answers that we have received are reasonable. We should do that in these circumstances, although I would not go to the stake on the matter. I would be happy to go along with colleagues' views.

**Helen Eadie (Dunfermline East) (Lab):** I do not mind doing that. Am I right in thinking that we are considering how the Government is interpreting the transposition of a directive of the European Parliament and of the Council?

**Judith Morrison:** The Government is designating the directive for the purposes of the integrated pollution prevention and control regulations to enable it to make further transposing measures. Our view is that there are two alternative interpretations of the scope of the power. If members wish to seek clarification from the Government on its view, it is certainly open to them to do so.

**Helen Eadie:** I would not object to that.

**Jackson Carlaw (West of Scotland) (Con):** Was the question that we want to ask previously asked of the same situation, and is it therefore expected that the answer will be the same as that

which was previously given? We are talking about a typical process that we regularly go through, but we have not had an example of this since the current committee started to meet. Is that the position that we are in?

**Judith Morrison:** That is correct.

**Jackson Carlaw:** So this will be the first time this session that we will seek a reply to the question.

**Judith Morrison:** That is correct.

**Jackson Carlaw:** We can probably anticipate the answer that we will receive, but as we have not asked the question in this session, we probably should do so.

**The Convener:** Members agree that we are not content. Therefore, we will ask the Scottish Government to provide an explanation of the point that is set out in the summary of recommendations.

## **Instrument Not Subject to Parliamentary Procedure**

### **Transport (Scotland) Act 2005 (Commencement No 4) Amendment Order 2008 (SSI 2008/90)**

14:26

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

**The Convener:** Members will wish to note that the annex to the summary of recommendations shows that minor points arise on SSI 2008/65, SSI 2008/66, SSI 2008/72, SSI 2008/79, SSI 2008/82, SSI 2008/84, SSI 2008/85, SSI 2008/87, SSI 2008/88, SSI 2008/92 and SSI 2008/93. The points will be raised informally with the Scottish Government. I think that I got through the list correctly.

14:27

*Meeting continued in private until 14:38.*



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