

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 6 May 2008

Session 3

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## SUBORDINATE LEGISLATION COMMITTEE

### 15<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

\*Jackie Baillie (Dumbarton) (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

#### CLERK TO THE COMMITTEE

Gillian Baxendine

#### SENIOR ASSISTANT CLERK

David McLaren

#### ASSISTANT CLERK

Jake Thomas

#### LOCATION

Committee Room 6



## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 6 May 2008*

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

**The Convener (Jamie Stone):** I welcome everyone to the 15<sup>th</sup> meeting this year of the Subordinate Legislation Committee. We have received apologies from Jackson Carlaw. I remind everyone to turn off mobile phones and BlackBerrys, which might interfere with the electronic systems or make noises when we are speaking.

I remind members that, immediately after this meeting, we will meet informally Gordon Nabney, who is sitting in the public gallery and who is the Examiner of Statutory Rules at the Northern Ireland Assembly.

### Interests

**The Convener:** On behalf of the committee, I express my thanks and best wishes to Richard Baker, who has moved on to climes new. I am sure that we are all grateful for his detailed contribution to the work of the committee, over which he took a lot of time and trouble.

I welcome Richard Baker's replacement, Jackie Baillie. We have worked together in the past and will now be doing so again. Jackie, it is nice to have you on board. I am sure that you will be a worthy replacement for Richard. I invite you to declare any relevant interests.

**Jackie Baillie (Dumbarton) (Lab):** I, too, look forward to working with you, convener. I do not think that I have any relevant interests, but, to be safe, I refer members to my entry in the register of members' interests.

## Delegated Powers Scrutiny

### Public Health etc (Scotland) Bill

14:16

**The Convener:** We move on to agenda item 2. The Government has responded to the issues that we raised in our stage 1 report on the bill. The bill is due to commence stage 2 on 7 May. It is anticipated that sections 1 to 66 will be dealt with on 7 May, sections 67 to 89 will be dealt with on 14 May and the remainder of the bill will be dealt with on 21 May. Today, we will consider issues that are relevant to the first day of stage 2 consideration.

The first of those relates to section 12, "Lists of notifiable diseases and notifiable organisms". I am sure that everyone will be pleased to note that, in its response to our stage 1 report, the Scottish Government has agreed to remove at stage 2 reference to the expression, "any other clinically significant pathogen found in blood" from the list of notifiable organisms in part 2 of schedule 1 to the bill. That is a satisfactory outcome. Dr McKee, you may be allowed a smile, given that it was your good self who raised the issue.

**Ian McKee (Lothians) (SNP):** Thank you.

**The Convener:** That was constructive work. It is a compliment to the Scottish Government that it took on board the point and has been flexible.

We come to section 25, "Supplementary", which is on investigatory powers. In view of the deadline for amendments for the first day of stage 2 consideration, last week I lodged two amendments in my name. Members will recall from our stage 1 report that we were concerned about whether the correct balance had been struck between the public interest in being able to use the powers effectively and the public interest in ensuring proper scrutiny of enforcement powers.

The first amendment that I lodged provides for the insertion of the word "supplementary" into section 25(3). The intention is to make it clear that ministers' powers to confer additional enforcement powers are restricted to conferring supplementary powers on investigators for the purposes of public health investigations.

By that, we seek to ensure that any additional powers conferred on investigators by regulations made under section 25(3) do not undermine or cut across the existing investigatory powers that are set out in sections 22 to 24. We seek to ensure that we build on previously laid foundations.

My second amendment is to section 102(4) and is to provide that regulations under section 25(3) that contain provisions that modify an act of

Parliament or an act of the Scottish Parliament should be subject to affirmative procedure. We raised that point repeatedly.

The bill is just about to start stage 2. We are at an early stage in the passage of the bill and matters can be revisited at stage 3. I am in the committee's hands. Are members content with the amendments that I lodged in relation to the exercise of the power to confer additional enforcement powers under section 25, and for me to move those amendments at stage 2?

**Members indicated agreement.**

**The Convener:** We have no way of knowing how the Government will respond, but the debate on the amendments will be informative in itself.

Later at stage 2, we will deal with section 89, "International Health Regulations"; section 94, "Power to make further provision regarding statutory nuisances"; and section 95, "Enforcement of statutory nuisances: fixed penalty notice", which inserts new section 80ZA(11)(e) into the Environmental Protection Act 1990. The idea was that we would write to the Scottish Government requesting confirmation of its proposals for replacement powers to implement international health regulations under section 89 of the bill and in relation to the other sections that I mentioned. Late last week, we received notification of the content of the proposals in relation to section 89. It is therefore unnecessary to write to the Government at this stage. We will receive formal feedback by way of a briefing before next week's meeting. We got a wee bit ahead of ourselves, but we got what we wanted on Friday night. Is that acceptable to members?

**Members indicated agreement.**

**The Convener:** Of course, what I said relates only to section 89. Are members happy that we write to the Government about sections 94 and 95, as per the summary of recommendations?

**Members indicated agreement.**

## Legislative Consent Memorandum

### Energy Bill

14:20

**The Convener:** We come to item 3. Under rule 9B.3.6 of the standing orders, where the subject of a legislative consent memorandum contains provisions conferring on the Scottish ministers powers to make subordinate legislation, the Subordinate Legislation Committee will consider and may report to the lead committee on those provisions.

Are members content with the powers in clause 18, "Requirements relating to grant of licences" and clause 20, "Content of licences: regulations"?

**Members indicated agreement.**

**The Convener:** Our legal advisers deemed the powers to be pretty reasonable.

On clause 26, "Inspectors", are members content to seek an explanation from the Scottish Government as to the necessity for the breadth of the power to confer enforcement powers rather than specifying what those might be in the bill, before we come to a view on whether the scope of the power is acceptable?

**Members indicated agreement.**

**The Convener:** Are members also content to seek justification from the Scottish Government for the choice of negative procedure on this occasion?

**Members indicated agreement.**

**The Convener:** Thank you. We will do our usual safety check on that.

On clause 29, "Abandonment of installations", which relates to section 39 of the Petroleum Act 1998, are members content to ask the Scottish Government for an explanation for the use of negative procedure, before we reach a view on whether the power is appropriate?

**Members indicated agreement.**

**The Convener:** On clause 30, "Termination of licence: regulations", do we wish to seek an explanation from the Scottish Government to justify the scope of the power and the use of the negative procedure, before we take a final view on whether the power is acceptable?

**Members indicated agreement.**

**The Convener:** That takes us to clause 33, "Power of Secretary of State to transfer functions", which relates to the power to modify the

application of section 188 of the Energy Act 2004 to carbon storage and the power to impose charges to fund energy functions. Are members content to seek an explanation from the Scottish Government as to why the power to modify the application of section 188 of the Energy Act 2004 should be subject to negative procedure, before we come to a view as to whether the level of parliamentary scrutiny applicable to the exercise of the power is appropriate?

**Members indicated agreement.**

**The Convener:** Are members content with the powers in clause 88, "Subordinate legislation" and clause 91, "Minor and consequential amendments"?

**Members indicated agreement.**

**The Convener:** On clause 93, "Transitional provision etc", are members content to seek clarification from the Scottish Government as to whether it is intended that such powers be subject to the affirmative procedure, following the model of the powers available to the secretary of state and, if not, for justification of that approach before the committee reaches a view on the power?

**Members indicated agreement.**

**The Convener:** On clause 94, "Commencement", are members content to seek an explanation from the Scottish Government as to why the power to commence the provisions rests with the secretary of state?

**Members indicated agreement.**

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

## Scottish Government Responses

14:24

**The Convener:** We come to item 4. After our previous meeting on 29 April, we wrote to the Scottish Government about four Scottish statutory instruments and we have seen the responses.

### **Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008 (SSI 2008/159)**

**The Convener:** Are members content with the response from the Scottish Government on the regulations? Shall we draw the regulations to the attention of the lead committee on the grounds that are set out in the summary of recommendations?

**Members indicated agreement.**

### **Land Managers Skills Development Grants (Scotland) Regulations 2008 (SSI 2008/162)**

**The Convener:** Are members content with the Scottish Government's response and, if so, to report to the lead committee and Parliament on that basis?

**Members indicated agreement.**

### **Designation of Institutions of Higher Education (The Scottish Agricultural College) (Scotland) Order 2008 (SSI 2008/163)**

**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.**

**The Convener:** I invite members to note that the Government has given an undertaking to revoke and replace the order and to make separate regulations to revoke the 1990 regulations.

### **Planning etc (Scotland) Act 2006 (Commencement No 3) Order 2008 (SSI 2008/164)**

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

**Members indicated agreement.**

**The Convener:** For Jackie Baillie's information, rather than taking an inordinate time in the committee, I refer, for the sake of the *Official Report*, to the summary of recommendations,

which is a public document. That is an easier way to do it, and a slight change from how things were done in the past.

## **Draft Instruments Subject to Approval**

### **Advice and Assistance (Limits, Conditions and Representation) (Scotland) Regulations 2008 (Draft)**

14:25

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

**Members** *indicated agreement.*

### **Further and Higher Education (Scotland) Act 1992 Amendment Order 2008 (Draft)**

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

**Members** *indicated agreement.*

## **Instruments Subject to Annulment**

### **Transmissible Spongiform Encephalopathies (Scotland) Amendment Regulations 2008 (SSI 2008/166)**

14:26

**The Convener:** Are members satisfied with the explanation provided by the Government for the breach of the 21-day rule?

**Members** *indicated agreement.*

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

**Members** *indicated agreement.*

### **Lyon Court and Office Fees (Variation) (No 2) Order 2008 (SSI 2008/168)**

### **Bathing Waters (Scotland) Regulations 2008 (SSI 2008/170)**

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

**The Convener:** We should note from the annex to the summary of recommendations that minor points arise in relation to SSI 2008/166 and SSI 2008/168. We will raise those points informally with the Scottish Government.

The next meeting of the committee will be held on Tuesday 13 May at 2.15 pm. I never thought the day would come when there would be a demonstration when subordinate legislation was being discussed, but so it proved to be last week.

*Meeting closed at 14:28.*



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**Wednesday 14 May 2008**

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