

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 17 June 2008

Session 3

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# **SUBORDINATE LEGISLATION COMMITTEE**

## **21<sup>st</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**

Shelagh McKinlay

### **SENIOR ASSISTANT CLERK**

David McLaren

### **ASSISTANT CLERK**

Jake Thomas

### **LOCATION**

Committee Room 6

## Scottish Parliament

### Subordinate Legislation Committee

Tuesday 17 June 2008

[THE CONVENER opened the meeting at 14:15]

### Offences (Aggravation by Prejudice) (Scotland) Bill: Stage 1

**The Convener (Jamie Stone):** I welcome everyone to the 21<sup>st</sup> meeting of the committee. There are no apologies and we have a full house. I ask everyone to turn off their mobiles and BlackBerrys.

I turn to the first item. When we considered the Offences (Aggravation by Prejudice) (Scotland) Bill on 3 June, we wrote to Patrick Harvie, the member in charge of the bill, for clarification on a couple of points. We have now received Patrick Harvie's response. Our first point was on section 3, "Commencement and short title". In response to the committee's request for clarification on whether there is any intention of commencing sections 1 and 2 of the bill on different days, Patrick Harvie has indicated that the Government has no such intention. Are members content with that response?

**Members indicated agreement.**

**The Convener:** Our second point related to the committee's concern that persons potentially committing offences should have sufficient notice of the commencement date of the provisions of the act. Patrick Harvie has clarified that, in line with standard practice, the Government does not intend to commence the bill's provisions any earlier than two months after royal assent. That is useful in so far as it is important that persons are given adequate notice of the date when the provisions are brought into force. There will be no excuse for not knowing that the law has been changed. Are we satisfied with that response?

**Members indicated agreement.**

**The Convener:** Are we content with the delegated powers in the bill?

**Members indicated agreement.**

**The Convener:** That concludes our consideration of the bill at stage 1.

## Scottish Government Responses

14:16

**The Convener:** Following our meeting on 10 June, we wrote to the Scottish Government about two statutory instruments. Members have seen the responses.

### Licensing of Animal Dealers (Young Cats and Dogs) (Scotland) Regulations 2008 (Draft)

**The Convener:** In relation to our questions (a) and (b), are we content to draw the regulations to the attention of the lead committee and Parliament on the grounds set out in the summary of recommendations?

**Members indicated agreement.**

**The Convener:** Also on question (a), are we content to report to the lead committee for further consideration the "reasonable excuse" defence for the offence of making false statements?

**Members indicated agreement.**

**The Convener:** Are we satisfied with the Government's explanation in relation to our question (c) and, if so, are we content to draw the regulations to the attention of the lead committee and Parliament on that basis? Are we also content to draw the effect of regulation 15(3) to the attention of the lead committee for further consideration?

**Members indicated agreement.**

**The Convener:** In relation to our question (d), are we content to draw the regulations to the attention of the lead committee and Parliament on the grounds set out in the summary of recommendations?

**Members indicated agreement.**

### Diseases of Animals (Approved Disinfectants) (Scotland) Order 2008 (SSI 2008/219)

**The Convener:** Are we satisfied with the explanation provided by the Scottish Government in relation to article 13(2) and, if so, are we content to draw the order to the attention of the lead committee and Parliament on that basis?

**Members indicated agreement.**

## **Instruments Subject to Annulment**

### **National Health Service Pension Scheme (Scotland) Regulations 2008 (SSI 2008/224)**

14:18

**The Convener:** There are 7 points in the summary of recommendations. I will read out point (a) because the wording has been changed slightly. Where it reads "collaborative services", it should read "commissioned services". Thus point (a) now suggests that we might wish to ask the Scottish Government

"with regard to the definition of 'commissioned services' in regulation 2.A.1, whether the reference to 'section 16(1)(3)' of the National Health Services (Scotland) Act 1978 ('1978 Act') is an error in so far as no such subsection exists? If the view is taken that this is an error, what is the correct reference, and what is the effect of the error considered to be".

Is the committee content to ask the Scottish Government questions (a) to (g) inclusive, as set out in the summary of recommendations?

*Members indicated agreement.*

### **National Health Service Superannuation Scheme (Additional Voluntary Contributions, Injury Benefits and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2008 (SSI 2008/225)**

**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.*

### **National Health Service Superannuation Scheme (Scotland) Amendment Regulations 2008 (SSI 2008/226)**

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

*Members indicated agreement.*

### **Teachers' Superannuation (Scotland) Amendment Regulations 2008 (SSI 2008/227)**

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

*Members indicated agreement.*

### **Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (SSI 2008/228)**

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

*Members indicated agreement.*

### **Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008 (SSI 2008/229)**

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

*Members indicated agreement.*

### **Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (SSI 2008/230)**

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

*Members indicated agreement.*

### **Rural Development Contracts (Rural Priorities) (Scotland) Amendment Regulations 2008 (SSI 2008/233)**

**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.*

### **Court of Session etc Fees Amendment Order 2008 (SSI 2008/236)**

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

*Members indicated agreement.*

### **Sheriff Court Fees Amendment Order 2008 (SSI 2008/239)**

**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.*

**Jackie Baillie (Dumbarton) (Lab):** I suspect that, like the rest of the committee, the convener will have received representations from the Law Society of Scotland about the content and substance of the Court of Session etc Fees Amendment Order 2008 and the Sheriff Court Fees Amendment Order 2008. I am sure that you agree that that is properly a matter for the Justice

Committee, which is the lead committee. I suggest that we refer those representations to that committee.

**The Convener:** Are we content with that suggestion?

**Members** *indicated agreement.*

**Criminal Legal Assistance  
(Fees and Information etc) (Scotland)  
Regulations 2008 (SSI 2008/240)**

**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.*

**Academic Awards and Distinctions  
(UHI Millennium Institute) (Scotland) Order  
of Council 2008 (SSI 2008/212)**

**Title Conditions (Scotland) Act 2003  
(Conservation Bodies) Amendment Order  
2008 (SSI 2008/217)**

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

**Official Feed and Food Controls (Scotland)  
Amendment Regulations 2008  
(SSI 2008/218)**

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

**The Convener:** The committee may wish to welcome the swift correction by the Food Standards Agency and the Scottish Government of the omission from the Guar Gum (Restriction on First Placing on the Market) (Scotland) Regulations 2008 (SSI 2008/176). That is good news and we can go home happy.

**Academic Awards and Distinctions  
(Additional Powers of the University of  
Aberdeen) Order of Council (SSI 2008/220)**

**Offenders Assisting Investigations and  
Prosecutions (Substituted Sentences)  
(Scotland) Order 2008 (SSI 2008/232)**

**High Court of Justiciary Fees Amendment  
Order 2008 (SSI 2008/237)**

**Adults with Incapacity (Public Guardian's  
Fees) (Scotland) Amendment Regulations  
2008 (SSI 2008/238)**

**Roads (Scotland) Act 1984 (Fixed Penalty)  
Regulations 2008 (SSI 2008/243)**

**Road Works (Fixed Penalty) (Scotland)  
Regulations 2008 (SSI 2008/244)**

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

## Instruments Not Laid Before the Parliament

### Bluetongue (Scotland) Amendment Order 2008 (SSI 2008/234)

14:23

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

**Members** *indicated agreement.*

### Glasgow Commonwealth Games Act 2008 (Commencement No 1) Order 2008 (SSI 2008/245)

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

**The Convener:** We should note from the annex to the summary of recommendations that minor points arise on SSI 2008/224, SSI 2008/225, SSI 2008/226, SSI 2008/228, SSI 2008/229, SSI 2008/230, SSI 2008/232, SSI 2008/233, SSI 2008/236, SSI 2008/237, SSI 2008/238, SSI 2008/239 and SSI 2008/240. We will raise those minor points informally with the Scottish Government.

## Regulatory Framework Inquiry

14:24

**The Convener:** It is now my chance to let others contribute, and I can rest my voice-box. Agenda item 5 is our inquiry into the regulatory framework. We have received a response from the Scottish Government to our inquiry report. The response is gratifyingly supportive of the changes to the scrutiny process that we recommended in our report and the Government has indicated that it is willing to bring forward a bill to give effect to the proposed improvements. That is good news. Although the Government supports the vast majority of the recommendations that are made in the report, the response paper sets out two recommendations that the Government does not support and two to which it wishes to give further consideration.

Before we take any decisions on the matter, I invite thoughts and comments from members on the Scottish Government's response, thinking in particular about the areas of disagreement—although it is up to your good selves.

Who is first? You should not all bash into each other in the rush.

**Jackie Baillie:** I am never one to miss an opportunity to speak, convener. I would not wish to second-judge what the previous committee did, and I am conscious that it spent a lot of time on the inquiry and arrived at thoughtful conclusions. There are technical discussions to be had, however, and I wonder whether we could task the clerks with holding those discussions with the Scottish Government over the long summer months, with the starting point being the committee's report, while recognising that we want to get to an end point and move the agenda forward. Rather than going through the technical comments that the Government has made, we might agree that as an appropriate way forward.

**The Convener:** The nub of it being on recommendations 12 and 15 in our report, which the Government does not like very much, and recommendations 4 and 9, on which the Government wishes to comment further.

**Ian McKee (Lothians) (SNP):** We should record—and this should come from someone other than yourself, convener—how gratifying it is that the Government has supported the majority of our recommendations.

Although our clerks need to discuss the finer details of recommendations 4 and 9, as the Government is still considering them, it is perhaps asking a bit much of them to discuss recommendations 12 and 15 much further, as the



Government has firmly stated that it does not support them. Perhaps the committee should discuss those recommendations now, rather than leave it to the clerks.

In reaction to recommendation 12, the Government feels that a 50-day delay with respect to motions to approve or annul instruments would produce a very long interval—too long to be “practicable”. I would be interested to hear the view of other committee members who have been in the Parliament longer than I have as to whether that caveat sounds reasonable.

On recommendation 15, although I understand any Government not wanting conditional annulment, it does seem reasonable for the Scottish Government to argue that it

“would cause significant confusion for those affected by the legislation”

if they did not know whether something was going to be annulled or not. That might inhibit people's plans or involve financial expenditure—it could set their plans at naught and cause a great deal of confusion.

I am inclined to accept the Government's not going along with recommendation 15. I would like to hear the views of other committee members about recommendation 12.

**Helen Eadie (Dunfermline East) (Lab):** I am not entirely happy with that. I do not like to disagree with Ian McKee—we agree from time to time on a range of issues—but witnesses proposed some interesting views on conditional annulment as a tool in our armoury that we might wish to use from time to time. In any situation where we are fighting policy proposals, we always need an ultimate weapon. We might not ever wish to use it, but we might want to have the possibility there. That would be the case with recommendation 15. I would welcome our clerks discussing the matter a little further. The same applies to recommendation 12.

I would like us to revisit the matter when we return after the summer recess, once the technical discussions have taken place. This committee, like others, should have some time for reflection at an away day. I would like to revisit the point in private discussions. There are reasons to consider the matter.

14:30

**The Convener:** I take that as a suggestion that, as we did last year, we should meet quickly after the recess.

**Helen Eadie:** Yes—or towards the end of the recess—whichever you think, convener. The make-up of the committee has changed by 50 per cent since the first intake. There are matters that it

would be useful to discuss and reflect on further with committee members.

**The Convener:** Could the clerks organise that, if that is the feeling of the committee?

**Shelagh McKinlay (Clerk):** Yes, if members wish to pursue that.

**Jackson Carlaw (West of Scotland) (Con):** In essence, I support Jackie Baillie's suggestion. Because of the timing, with just one further committee meeting before the summer recess, and given the nature of such exchanges—we ask questions, get responses, ask questions and get responses—I think that, rather than embarking upon such discussions now, it would be useful for the clerks to pursue some issues and for us to revisit them in a concentrated fashion and draw all the strands together fairly quickly over a series of meetings after the recess. That would seem to make sense. I am not casting doubts on anybody's ability to retain information over the two months of the summer, but I suspect that we would find ourselves in a hiatus, halfway through a discussion and not sure where we had left it.

**The Convener:** That sounds like wise counsel. Can I take that as the view of the committee?

**Members indicated agreement.**

**The Convener:** We will ask the clerks to discuss the issues over the recess and we will then consider them together. We can decide a suitable date for that by e-mail.

**Members indicated agreement.**

**The Convener:** I think that we have got there. I thank members for their contributions. Before I close this meeting, I should mention that I will not be here next Tuesday. Gil Paterson will kindly convene the meeting. For my part, I thank our officials for their support, which is much appreciated. Have a good break. I also thank my committee colleagues—I am very grateful.

*Meeting closed at 14:32.*



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**Wednesday 25 June 2008**

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