

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 7 October 2008

Session 3

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## SUBORDINATE LEGISLATION COMMITTEE

28<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

\*Malcolm Chisholm (Edinburgh North and Leith) (Lab)

Jackson Carlaw (West of Scotland) (Con)

\*Helen Eadie (Dunfermline East) (Lab)

\*Tom McCabe (Hamilton South) (Lab)

\*Ian McKee (Lothians) (SNP)

### COMMITTEE SUBSTITUTES

Bill Aitken (Glasgow) (Con)

Ross Finnie (West of Scotland) (LD)

Christopher Harvie (Mid Scotland and Fife) (SNP)

Elaine Smith (Coatbridge and Chryston) (Lab)

\*attended

### THE FOLLOWING ALSO ATTENDED:

Judith Morrison (Legal Adviser)

### CLERK TO THE COMMITTEE

Shelagh McKinlay

### ASSISTANT CLERK

Jake Thomas

### LOCATION

Committee Room 4



## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 7 October 2008*

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

### Interests

**The Deputy Convener (Gil Paterson):** I open the 28<sup>th</sup> meeting in 2008 of the Subordinate Legislation Committee. I welcome Malcolm Chisholm and Tom McCabe to the committee. I am sure that you will find our work interesting and we hope that you join our team. We are a good team that works closely together.

I have received apologies from Jackson Carlaw and Jamie Stone.

If members have not already done so, please turn off your mobile phones.

Agenda item 1 is to ask Malcolm Chisholm and Tom McCabe to declare any relevant interests.

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** I have nothing to add to what is already on the record. I never know whether I should declare my memberships of the Educational Institute of Scotland and Unison.

**Tom McCabe (Hamilton South) (Lab):** Nothing springs to mind other than what is already in my declaration in the register of members' interests.

## Decision on Taking Business in Private

14:16

**The Deputy Convener:** Agenda item 2 is to decide whether we should discuss agenda item 8 in private. It is correspondence from the Minister for Parliamentary Business about the Plastic Materials and Articles in Contact with Food (Scotland) Amendment Regulations 2008 (SSI 2008/261).

Members are aware that the correspondence is about the application of the 21-day rule, which is a statutory rule that provides that a negative instrument may be brought into force less than 21 days after it has been laid only if it is necessary to do so. Consideration of the item will involve extensive discussions of legal advice and it is therefore appropriate to consider the item in private. Of course, any decisions that arise out of our deliberations will be made public.

Is the committee agreed that it should discuss agenda item 8 in private?

**Members indicated agreement.**

## Sexual Offences (Scotland) Bill: Stage 1

14:17

**The Deputy Convener:** Members will recall that, at our meeting on 9 September, we asked the Scottish Government to explain its thinking on four matters relating to the powers to make subordinate legislation that are contained in the bill. We have now received the Scottish Government's response. Members will have noted that the summary of recommendations proposes that there might be merit in exploring two matters further with the Scottish Government.

Section 29(5) confers a power to specify relevant offences for the purpose of section 29(2), and section 32(1) confers a power to amend the definition of what constitutes a "position of trust" in respect of the offence of sexual abuse of trust contained in section 31.

If members agree that there is merit in considering further the intended use of those powers, we could invite Scottish Government officials to give evidence at a future committee meeting. Are there any comments?

**Malcolm Chisholm:** There are quite a lot of questions to be answered, so the alternatives are to keep corresponding or to have people along to the committee. If it is usual to have people along to the committee from time to time, that would seem to be a good thing to do.

**Helen Eadie (Dunfermline East) (Lab):** It is desirable to have the Government come along because there are questions to be answered, not least of which is why it does not consider that it is necessary or desirable to specify on the face of the bill the nature of the offences that might constitute a relevant offence. There is a variety of potentially serious questions to be asked along those lines, and the Government must come and respond to our concerns.

**Ian McKee (Lothians) (SNP):** If we agree to invite Government ministers to the committee, can we ask about other issues on section 29? For example, there is the point that someone who has been charged with a relevant offence—whatever that is—cannot use the defence that is specified in section 29(1)(a) in a subsequent case. Can we ask about that at the same time?

**The Deputy Convener:** I am advised that that question would be at the limit of our remit, but if we do not ask, we do not get, so we will ask the question.

**Ian McKee:** I appreciate that that is at the limit of the committee's remit but I would like it to be in rather than out.

**The Deputy Convener:** Can I take it that the committee agrees that we should ask Government officials to come and speak to us about those points?

**Members indicated agreement.**

**The Deputy Convener:** Section 35 confers a power to specify circumstances that are to be regarded as constituting the provision of care services for the purpose of the offence of

"sexual abuse of trust of a mentally disordered person."

Is the Scottish Government's response satisfactory?

**Members indicated agreement.**

**The Deputy Convener:** On section 45, "Ancillary provision", is the committee content to welcome the Scottish Government's response and to consider the proposed amendments at stage 2?

**Members indicated agreement.**

## Scottish Parliamentary Pensions Bill: Stage 1

14:21

**The Deputy Convener:** This is our first consideration of the bill at stage 1. The only delegated power in the bill appears in section 3, and is a power conferred on the Parliament to modify the Scottish parliamentary pension scheme—SPPS—by a resolution of the Parliament. Although it is not expressed as a power to make subordinate legislation, it is in order for us to consider the delegated power under standing orders rule 6.11.1(d), which states that the committee may consider and report on

“whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.”

The committee might wish to explore the appropriate level of scrutiny of the terms of resolutions that amend the pension scheme, as well as input into their drafting and accountability for them. Are members content to ask the Convener of the Scottish Parliament Pension Scheme Committee the three questions set out in the summary of recommendations?

**Members indicated agreement.**

## Scottish Government Responses

14:22

**The Deputy Convener:** After our meeting on 1 October, the committee wrote to the Scottish Government about two Scottish statutory instruments. Members have seen the responses.

### Energy Performance of Buildings (Scotland) Regulations 2008 (SSI 2008/309)

**The Deputy Convener:** Are members satisfied with the clarification provided and that we should report the regulations on that basis?

**Helen Eadie:** I have a concern. I am sure that you will keep me right if I go out with the remit of the committee—I do not know whether it is a policy matter. I wonder whether it is appropriate that

“a penalty charge may be incurred and enforced by a local authority in circumstances where an oral request has not been complied with.”

The legal brief goes on to say:

“No recorded evidence may be available to confirm that the circumstances have arisen for a penalty charge notice to be issued.”

Is that an appropriate point for the committee to be concerned about?

**The Deputy Convener:** My advice is that we can notify the lead committee about it, but that that is the limit of what we can do.

**Helen Eadie:** I would like to notify the lead committee because I am not happy about the matter. It is entirely unsatisfactory, convener, but I accept your guidance.

**The Deputy Convener:** Yes, that is just about as far as we can go.

**Tom McCabe:** I am concerned about that as well. It would seem to be an impossible task for local government. I do not know how it could be proved that an oral request was not made. How do we bring that to the lead committee's attention?

**The Deputy Convener:** It will be in our report.

**Helen Eadie:** When we report to the lead committee, shall we mention the good point that the Government could issue non-statutory guidance on the matter?

**The Deputy Convener:** If members are happy with that, we will do that.

**Members indicated agreement.**

**The Deputy Convener:** Are members content to draw the explanation to the lead committee's attention because of its policy interests?

**Members** *indicated agreement.*

**Inshore Fishing (Prohibition on Fishing)  
(Lamlash Bay) (Scotland) Order 2008  
(SSI 2008/317)**

**The Deputy Convener:** Are members content to report to the lead committee and the Parliament that confirmation has been received that the prohibition in the order applies to an area that is in Scottish inshore waters?

**Members** *indicated agreement.*

**Draft Instruments Subject  
to Approval**

**International Criminal Court (Remand  
Time) Order 2008 (Draft)**

**Provision of School Lunches  
(Disapplication of the Requirement to  
Charge) (Scotland) Order 2008 (Draft)**

**Pre-release Access to Official Statistics  
(Scotland) Order 2008 (Draft)**

14:25

**The Deputy Convener:** Are members content with the orders, on which no points arise?

**Helen Eadie:** I have a question about the draft Provision of School Lunches (Disapplication of the Requirement to Charge) (Scotland) Order 2008. An annex on page 41 of our legal brief says:

“Footnote (b) on page 1 refers to section 53 of the Education (Scotland) Act 1980 as having been amended”

and refers to provisions that are not in force. Will that be clarified? Can we amend something that is not in force?

**Judith Morrison (Legal Adviser):** That is possible. A provision exists as a matter of law, so it can be amended. The amendment and the provision that it amended would have to be brought into force before the amended provision came into force.

**Helen Eadie:** So provisions would have to be introduced before an amendment could be made.

**Judith Morrison:** No. A provision could be amended so that it came into force as amended.

**Helen Eadie:** Okay—I am with you.

**The Deputy Convener:** Is Helen Eadie happy with that?

**Helen Eadie:** Yes.

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



## Instrument Subject to Annulment

### Infant Formula and Follow-on Formula (Scotland) Amendment Regulations 2008 (SSI 2008/322)

14:27

**The Deputy Convener:** Are members content to ask the questions that are set out in the summary of recommendations?

**Members** *indicated agreement.*

**The Deputy Convener:** I invite members to note from the annex to the summary of recommendations that minor points that arise in relation to the draft Provision of School Lunches (Disapplication of the Requirement to Charge) (Scotland) Order 2008 and SSI 2008/322 will be raised informally with the Scottish Government. Are we happy with that?

**Members** *indicated agreement.*

**The Deputy Convener:** The next agenda item is in private, so any members of the public are excluded from the meeting.

14:28

*Meeting continued in private until 15:03.*



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