

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 18 November 2008

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2008.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR
Donnelley.

CONTENTS

Tuesday 18 November 2008

Col.

INTERESTS	423
DEPUTY CONVENER	424
INSTRUMENTS SUBJECT TO ANNULMENT	425
Plant Health (Scotland) Amendment (No 2) Order 2008 (SSI 2008/350)	425
Business Improvement Districts (Scotland) Amendment Regulations 2008 (SSI 2008/359)	425
Valuation for Rating (Plant and Machinery) (Scotland) Amendment Regulations 2008 (SSI 2008/360)	425
Justice of the Peace Courts (Sheriffdom of Tayside, Central and Fife) Order 2008 (SSI 2008/363)	425
Sheep and Goats (Identification and Traceability) (Scotland) Amendment Regulations 2008 (SSI 2008/368)	425
INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT	426
Act of Sederunt (Rules of the Court of Session Amendment No 5) (Miscellaneous) 2008 (SSI 2008/349)	426
Act of Sederunt (Transfer of Judicial Review Applications from the Court of Session) 2008 (SSI 2008/357)	427
Criminal Proceedings etc (Reform) (Scotland) Act 2007 (Commencement No 6) Order 2008 (SSI 2008/362)	427
Pigs (Records, Identification and Movement) Amendment (Scotland) Order 2008 (SSI 2008/369)	427

SUBORDINATE LEGISLATION COMMITTEE

32nd Meeting 2008, Session 3

CONVENER

*Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

DEPUTY CONVENER

*Ian McKee (Lothians) (SNP)

COMMITTEE MEMBERS

*Jackson Carlaw (West of Scotland) (Con)

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

*Bob Doris (Glasgow) (SNP)

*Helen Eadie (Dunfermline East) (Lab)

Tom McCabe (Hamilton South) (Lab)

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

CLERK TO THE COMMITTEE

Shelagh McKinlay

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 18 November 2008

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

The Convener (Jamie Stone): I welcome everyone to the 32nd meeting in 2008 of the Subordinate Legislation Committee. We have received apologies from Tom McCabe.

I remind everyone to turn off any mobile phones or BlackBerrys.

On behalf of the committee, I thank Gil Paterson, our deputy convener, who has left us to become convener of the Standards, Procedures and Public Appointments Committee. I want to put on the record my thanks for his contribution because, when I was absent from time to time, he chaired the committee extremely well. Some might argue that he did it better.

Bob Doris (Glasgow) (SNP): Surely not.

Ian McKee (Lothians) (SNP): Heaven forbid.

The Convener: I have to make two welcomes. First, I welcome Bob Doris to the committee to replace Gil Paterson. We look forward to working with you. It is a lively committee and we get on rather well together. There is a lot to read.

Bob Doris: I had noticed that already.

The Convener: Yes, indeed. It will be a baptism of fire.

I also welcome Neil Ross who has come from the Scottish Government to join the legal team. We look forward to working with you.

Interests

14:16

The Convener: Bob Doris, we come back to you. Do you have any interests to declare?

Bob Doris: I am happy with the declaration of interests that I have already made to the Parliament and which is available on the Parliament's website. I have nothing to add to that.

The Convener: Thank you.

Deputy Convener

14:16

The Convener: Agenda item 2 is the choice of a deputy convener. A note has been sent to members about how we do this. Can I have nominations please?

Bob Doris: I nominate Ian McKee.

The Convener: There are no other nominations.

Ian McKee was chosen as deputy convener.

The Convener: Welcome aboard, Dr Ian McKee. You will be in the chair for the next two weeks.

Ian McKee: Thank you, convener.

Instruments Subject to Annulment

Plant Health (Scotland) Amendment (No 2) Order 2008 (SSI 2008/350)

14:17

The Convener: Are we content to draw the order to the attention of the lead committee and Parliament on the ground that we consider that it would be normal drafting practice for the preamble to the instrument to narrate that the Scottish ministers are satisfied that it is expedient to make the order for the prevention of the spread of pests in Great Britain in accordance with the enabling power in section 3(1) of the Plant Health Act 1967?

Members *indicated agreement.*

The Convener: Thank you. I do not know what I would have done if you had not agreed.

Business Improvement Districts (Scotland) Amendment Regulations 2008 (SSI 2008/359)

Valuation for Rating (Plant and Machinery) (Scotland) Amendment Regulations 2008 (SSI 2008/360)

Justice of the Peace Courts (Sheriffdom of Tayside, Central and Fife) Order 2008 (SSI 2008/363)

Sheep and Goats (Identification and Traceability) (Scotland) Amendment Regulations 2008 (SSI 2008/368)

The committee agreed that no points arose on the instruments.

Instruments not laid before the Parliament

Act of Sederunt (Rules of the Court of Session Amendment No 5) (Miscellaneous) 2008 (SSI 2008/349)

14:18

The Convener: Are we content to draw the act of sederunt to the attention of Parliament on the ground that paragraph 7(6), which will insert new rule 41.59 into the Court of Session Rules 1994, has been made by what appears to be an unusual or unexpected use of the power that is conferred by section 5 of the Court of Session Act 1988?

Ian McKee: I am happy to go along with that course of action if it is the committee's view. However, having read carefully our excellent legal brief, I would have thought that rule 41.59 is quite sensible. There is a lower tribunal—I forget its name—and a further tribunal, and there is a hurdle to overcome before moving from one to the other. I thought that the Court of Session had more of a supervisory than an appellate role, and someone who has been turned down by both tribunals would have a poor chance of getting anywhere with the Court of Session unless their appeal met one of the two criteria that are laid down in new rule 41.59. One criterion is that

“there is some other compelling reason for the court to hear the appeal.”

That is a very broad brush approach and I wonder whether it is a reasonable definition of practice. It would be pretty expensive for an appellant to go on to the Court of Session in circumstances in which they would be unlikely to get anywhere if they did not meet the new criteria. I believe that new rule 41.59 would protect people who are going through the tribunal system from incurring further expense—I doubt that they would get legal aid for such an action—so the rule seems to be sensible to me.

If the legal advisers and others think that the use of the power is unusual, I do not mind going along with drawing that to the attention of the lead committee.

The Convener: Thank you. We have all seen the correspondence between Jonathan Mitchell QC and our clerk. It is useful to have what Ian McKee has said on the record. I am no lawyer, but the way in which the law and the courts operate is open to change and interpretation. That is a useful statement and, I hope, a view that the committee can endorse. Is that all right?

Members *indicated agreement.*

**Act of Sederunt (Transfer of Judicial
Review Applications from the Court of
Session) 2008 (SSI 2008/357)**

**Criminal Proceedings etc (Reform)
(Scotland) Act 2007 (Commencement No
6) Order 2008 (SSI 2008/362)**

**Pigs (Records, Identification and
Movement) Amendment (Scotland) Order
2008 (SSI 2008/369)**

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

The Convener: At our meeting on 11 November, we agreed to consider in private our report on the delegated powers of the Health Boards (Membership and Elections) (Scotland) Bill at stage 1.

14:21

Meeting continued in private until 14:40.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Wednesday 26 November 2008

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by RR Donnelley and available from:

Blackwell's Bookshop

**53 South Bridge
Edinburgh EH1 1YS
0131 622 8222**

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

Blackwell's Scottish Parliament Documentation
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

Scottish Parliament

RNID Typetalk calls welcome on
18001 0131 348 5000
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers