

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 2 December 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 2 December 2008

	Col.
<b>FLOOD RISK MANAGEMENT (SCOTLAND) BILL: STAGE 1</b> .....	429
<b>INSTRUMENTS SUBJECT TO ANNULMENT</b> .....	433
Justice of the Peace Court (Sheriffdom of Glasgow and Strathkelvin) Amendment Order 2008 (SSI 2008/374) .....	433
Non-Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Amendment Order 2008 (SSI 2008/370) .....	434
Non-Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Amendment Order 2009 Amendment Order 2008 (SSI 2008/371) .....	434
European Communities (Service of Judicial and Extrajudicial Documents) (Scotland) Amendment Regulations 2008 (SSI 200/372) .....	434
Public Contracts and Utilities Contracts (Postal Services and Common Procurement Vocabulary Codes) Amendment (Scotland) Regulations 2008 (SSI 2008/376) .....	434
Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2008 (SSI 2008/377) .....	434
Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2008 (SSI 2008/379) .....	434
Book of Scottish Connections Regulations 2008 (SSI 2008/386) .....	434
National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Amendment (No 3) Regulations 2008 (SSI 2008/390) .....	434
Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2008 (SSI 2008/391) ...	434
<b>INSTRUMENT NOT LAID BEFORE THE PARLIAMENT</b> .....	435
Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) Amendment (Adult Support and Protection (Scotland) Act 2007) (No 3) 2008 (SSI 2008/375) .....	435

---

# **SUBORDINATE LEGISLATION COMMITTEE**

## **33<sup>rd</sup> 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 6

## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 2 December 2008*

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

### Flood Risk Management (Scotland) Bill: Stage 1

**The Deputy Convener (Ian McKee):** I welcome members to the 33<sup>rd</sup> meeting in 2008 of the Subordinate Legislation Committee. We have received apologies from our convener, Jamie Stone, which is why I am convening the meeting, and from Tom McCabe. I welcome Ross Finnie as the substitute for Jamie Stone. I remind members to turn off any mobile phones and so on.

This is our second consideration of the bill at stage 1. At its meeting on 4 November, the committee found many of the delegated powers in the bill to be acceptable, but we agreed to seek further information from the Scottish Government on a number of other delegated powers. We have received a response and we will consider how we wish to report on those powers.

Sections 1(3)(a)(ii), 1(3)(b)(ii), 1(3)(c)(ii) and 1(3)(d)(ii) confer a power to specify flood risk related functions for the Scottish ministers, the Scottish Environment Protection Agency, local authorities and other responsible authorities. Are members content to report the power to the lead committee on the basis that it might wish to consider whether the Scottish ministers' functions under sections 1(3)(b)(ii), 1(3)(c)(ii) and 1(3)(d)(ii) should be specified as flood risk-related functions of the Scottish ministers in section 1(3)(a)(i), meaning that those functions are subject to being exercised in accordance with the general duty in section 1 to reduce overall flood risk?

*Members indicated agreement.*

**The Deputy Convener:** On section 2(1), "Directions and guidance", are members content to recommend that the Scottish Government should give further consideration to amending the bill to apply the general duty in section 1 to reduce overall flood risk to the exercise of this power, and to provide that the direction-making power can be exercised only after consulting SEPA and/or any responsible authority about proposed directions in light of their impact upon the exercise of those bodies' functions?

*Members indicated agreement.*

**The Deputy Convener:** Section 5(c) confers the power to designate responsible authorities. Are members content to recommend that the minister should consider amending the bill to provide that the power is subject to an obligation to consult appropriately before its exercise, particularly in light of the apparent intention to conduct extensive consultation with any body that it is proposed to be specified as a responsible authority?

*Members indicated agreement.*

**The Deputy Convener:** Section 9(2) confers a duty on SEPA to prepare flood risk assessments. Are members content to reconsider the section at stage 2 to assess whether that direction-making power has been removed?

*Members indicated agreement.*

**The Deputy Convener:** I intend to put the question on four delegated powers together, because the issues that arise from them are the same. The powers are in section 10(1)(a), "Flood risk assessments: review"; section 13(2), "SEPA to identify potentially vulnerable areas and local plan districts"; section 14, "Potentially vulnerable areas and local plan districts: review"; and sections 16(1) and 16(2), "SEPA to assess possible contribution of alteration etc of natural features".

In light of the potential impact upon the deadlines that are imposed in the bill, are members content to draw the Scottish Government's response to the attention of the lead committee, which might wish to consider whether these direction-making powers should be subject to a consultation requirement?

*Members indicated agreement.*

**The Deputy Convener:** On sections 18(4), 18(5) and 18(6), "Flood hazard maps", in light of the minister's response, are members content to recommend that the Scottish Government should give further consideration to amending the bill to introduce a requirement to consult SEPA, because the exercise of the powers will impose additional obligations upon and might have resource implications for SEPA?

*Members indicated agreement.*

**The Deputy Convener:** On section 23(2), "SEPA to prepare flood risk management plans", in light of the potential impact upon the deadlines that are imposed in the bill, are members content to draw the Scottish Government's response to the attention of the lead committee, which might want to consider whether such a direction-making power should be subject to a consultation requirement?

*Members indicated agreement.*

**The Deputy Convener:** Section 29(6) confers a power to make further provision in relation to local

authorities preparing local flood risk management plans. Are members content to report that the committee considers that the power should be subject to a requirement to consult local authorities and other appropriate bodies, including SEPA and Scottish Water?

**Members indicated agreement.**

**The Deputy Convener:** Are members content to report that the committee questions whether it is within the vires of the proposed delegated power to make provisions for the structure of such plans, and the procedural steps that must be taken during their preparation? The committee might also want to draw the matter to the attention of the lead committee, which might want to consider it further. Are members happy with those proposals?

**Members indicated agreement.**

**The Deputy Convener:** On section 44(1), "Power to give effect to Community obligations etc", are members content to welcome the Scottish Government's agreement to amend the bill to provide that the power will be subject to affirmative rather than negative procedure? The committee might want to reconsider the power at stage 2 to ensure that the amendment has been made. Do members agree to those proposals?

**Members indicated agreement.**

**The Deputy Convener:** Section 52(4) confers the power to amend the flood protection scheme-making process. Are members content to welcome the Scottish Government's commitment to amend the bill to provide that the exercise of the power is subject to a requirement to consult parties that will be directly affected by the exercise of the power, such as local authorities and agents of local authorities?

**Members indicated agreement.**

**The Deputy Convener:** Are members content to recommend that the Scottish Government, in considering the amendment to the power, consider carefully whether consultation should also be done with other notifiable bodies, whose interests might be affected by any proposed change to the flood protection scheme-making process?

**Members indicated agreement.**

**The Deputy Convener:** Section 77 inserts a new section 12ZA into the Reservoirs Act 1975, and confers the power to make provision for reporting reservoir safety incidents. Are members content that the power to be conferred by new section 12ZA(1) of the Reservoirs Act 1975 is acceptable in principle, and that it is subject to affirmative procedure?

**Members indicated agreement.**

**The Deputy Convener:** In light of the Scottish Government's response, are members content that the power to be conferred by new section 12ZA(2)(d) of the Reservoirs Act 1975 upon SEPA and the Scottish ministers to issue guidance relating to incident reporting to undertakers, supervising engineers and other persons is acceptable in principle?

**Members indicated agreement.**

**The Deputy Convener:** On section 82(1), "Ancillary provision", are members content to recommend that the Scottish Government should give further consideration to agreeing that any modification of primary legislation, however it is effected, be subject to affirmative procedure?

**Members indicated agreement.**

**The Deputy Convener:** Paragraph 13 of schedule 2 confers the power to make provision about the consideration to be given to the likely environmental effects of proposed flood protection schemes. Are members content that the proposed power is acceptable in principle, and that it is subject to negative procedure?

**Members indicated agreement.**

## **Instruments Subject to Annulment**

**Justice of the Peace Court (Sheriffdom of Glasgow and Strathkelvin) Amendment Order 2008 (SSI 2008/374)**

14:23

**The Deputy Convener:** Are members content to draw the order to the attention of the lead committee and the Parliament on the ground that, in relation to the citation of the enabling powers in the first paragraph of the preamble, the committee considers that there has been a failure to follow normal drafting practice, but not so as to affect the validity or operation of the instrument?

**Members** *indicated agreement.*

**Non-Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Amendment Order 2008 (SSI 2008/370)**

**Non-Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Amendment Order 2009 Amendment Order 2008 (SSI 2008/371)**

**European Communities (Service of Judicial and Extrajudicial Documents) (Scotland) Amendment Regulations 2008 (SSI 200/372)**

**Public Contracts and Utilities Contracts (Postal Services and Common Procurement Vocabulary Codes) Amendment (Scotland) Regulations 2008 (SSI 2008/376)**

**Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2008 (SSI 2008/377)**

**Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2008 (SSI 2008/379)**

**Book of Scottish Connections Regulations 2008 (SSI 2008/386)**

**National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Amendment (No 3) Regulations 2008 (SSI 2008/390)**

**Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2008 (SSI 2008/391)**

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

## **Instrument not laid before the Parliament**

**Act of Sederunt (Summary Applications,  
Statutory Applications and Appeals etc  
Rules) Amendment (Adult Support and  
Protection (Scotland) Act 2007) (No 3)  
2008 (SSI 2008/375)**

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

**The Deputy Convener:** The next meeting of the  
committee will be held on Tuesday 9 December at  
2.15.

*Meeting closed at 14:25.*



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 10 December 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