

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 20 January 2009

Session 3

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# **SUBORDINATE LEGISLATION COMMITTEE**

## **3<sup>rd</sup> Meeting 2009, 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 2

## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 20 January 2009*

[THE CONVENER opened the meeting at 14:15]

### Draft Instrument Subject to Approval

**The Convener (Jamie Stone):** I welcome everyone to the third meeting in 2009 of the Subordinate Legislation Committee and I remind you to switch off your mobile phones. We have received no apologies.

#### Non-Domestic Rating (Petrol Filling Stations, Public Houses and Hotels) (Scotland) Order 2009 (Draft)

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

## Instruments Subject to Annulment

14:15

**The Convener:** We must consider a lot of instruments, on which there are lengthy points, and which we will want to report to the Parliament. Therefore, where appropriate, I will refer to the summary of recommendations rather than read out the full reporting grounds for the *Official Report*. Are members happy for me to do that? It will save us time and trouble.

*Members indicated agreement.*

#### Transmissible Spongiform Encephalopathies (Scotland) Amendment (No 2) Regulations 2008 (SSI 2008/417)

**The Convener:** Are members content to report the regulations to the lead committee and the Parliament on the grounds that are set out in the summary of recommendations?

*Members indicated agreement.*

**The Convener:** Are members content with the Government's explanation for its non-compliance with article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SI 1999/1096)—the dreaded 21-day rule? If so, are you content that we report to the lead committee and the Parliament accordingly?

*Members indicated agreement.*

#### Beef and Veal Labelling (Scotland) Regulations 2008 (SSI 2008/418)

**The Convener:** Are members content to report the regulations to the lead committee and the Parliament on the ground that, given that regulation 7 creates a criminal offence—that is serious—the connection between the person to be found guilty of the offence and condition B should be more clearly expressed and should not be left to implication?

*Members indicated agreement.*

**The Convener:** That is a drafting matter, which needs to be addressed.

#### Freshwater Fish Conservation (Prohibition on Fishing for Eels) (Scotland) Regulations 2008 (SSI 2008/419)

**The Convener:** I read the regulations with great interest. We may not catch an eel for the foreseeable future unless we have a licence.

**Ian McKee (Lothians) (SNP):** We can catch eels in seawater.

**The Convener:** I expect that you have read what it says in the legal brief about the 12 nautical mile limit. First, are members content to report the regulations to the lead committee on the ground that in regulation 2 the meaning could have been clearer?

Secondly, on the Scottish Government's response to our questions on the form and content of the preamble, are members content to observe that the Government's explanation raises more general issues about consistency of approach in preambles to instruments? Also, in relation to what is ultimately a matter of drafting practice, are members content to await the review of drafting practice that we understand that the Government is undertaking, to see how the Government tightens things up?

*Members indicated agreement.*

### **Zoonoses and Animal By-Products (Fees) (Scotland) Amendment (No 2) Regulations 2008 (SSI 2008/423)**

**The Convener:** An old sin is committed in the regulations. Are members content to report the regulations to the lead committee and the Parliament on the ground that there appears to be a doubt as to whether they are *intra vires*? We have been here before and the issue is persistent.

**Jackson Carlaw (West of Scotland) (Con):** I was struck by the undisguised impatience of the Government's response to our queries. How should we react? As you said, we have been here before—we might ask why, after asking the question, we are here again. The Government's response was a little acidic.

**The Convener:** I am prepared to be corrected by colleagues on this, but my view is that our duty is to the Parliament and that, notwithstanding the tone of a response from the Scottish Government, we should not be deflected from our duty.

**Jackson Carlaw:** I entirely agree. Should we express that view to the Government? The Government was quite dismissive about our raising the matter after it thought that the issue had been dealt with. The tone of the response was unhelpful and there was no acknowledgment that it is our duty to point out that the issue that we raised last year is still germane.

**The Convener:** I expect the issue to be included in our annual report, on which we decided at our away day that we would invite comment and a response from the Scottish Government. We could sweep up the issue in the report or we could respond to the Government in the short term, to say that it must understand our locus in the matter.

**Ian McKee:** I take Jackson Carlaw's point. However, we cannot expect the Scottish Government to give an answer that is different from the answer that it has given in the past. We cannot expect the Government to agree with us when it did not agree with us before—I suppose that that is why a slight degree of impatience might come across in the response.

I agree that our duty is to the Parliament and not to the Government and that we must draw attention to the issue every time it arises, even if that is irritating for the Government.

**Helen Eadie (Dunfermline East) (Lab):** I support the view that we include the matter in our annual report. We need to highlight the matter and other issues. If we do so, we will have a hook on which to hang discussions with the Minister for Parliamentary Business and Scottish Government representatives when they give evidence to the committee. The Government must understand that we are raising legitimate concerns.

We could also do what Jackson Carlaw suggested—the two approaches are not mutually exclusive.

**The Convener:** The fact that our discussion will be published in the *Official Report* is important. We can make it clear to the Government that although we note its position we must carry on reviewing each case on its merits. Not to do so would be entirely wrong. The matter is on the record. Are members content to include the issue in our annual report and take it from there, along the lines that Helen Eadie suggested?

*Members indicated agreement.*

**The Convener:** That was a useful discussion.

### **Town and Country Planning (Development Planning) (Scotland) Regulations 2008 (SSI 2008/426)**

**The Convener:** Are members content to report the regulations to the lead committee and the Parliament on the grounds, first, that in relation to regulations 3(2) and 10(2) the regulations appear to raise a devolution issue in respect of the failure to transpose amendments made by directive 2003/105/EC to directive 96/82/EC into the requirements for the preparation of development plans, which are set out in the regulations, and, secondly, that the meaning or effect of the first three lines of regulation 24 is not clear? The Scottish Government has acknowledged and undertaken to correct the lack of clarity, which is not thought to affect the validity or operation of the regulations.

**Helen Eadie:** The failure to transpose amendments made by directive 2003/105/EC into the requirements for the preparation of

development plans is of serious concern. Can we write to the Scottish Government to ask whether the European Commission is considering infraction proceedings? From time to time I get the impression that the Government does not take its devolved responsibilities in respect of European issues as seriously as it might do and that ministerial involvement at European level is poor.

**The Convener:** What you suggest is possible, although we are beyond our reporting deadline. We could write to the lead committee and strongly suggest that it consider the matter. Would that be acceptable to you?

**Helen Eadie:** Yes, but we should also ask the Scottish Government whether there are infraction proceedings.

**The Convener:** The matter is on the record. You flagged it up appropriately.

**Ian McKee:** However, it is our duty only to flag up the matter; it is for the lead committee to decide what further action to take.

**The Convener:** All right, we will discharge our duty in that way.

Is the committee happy to report the regulations to the lead committee on the grounds that I outlined?

*Members indicated agreement.*

#### **Planning etc (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008 (SSI 2008/427)**

**The Convener:** Is the committee content to report the order to the lead committee and the Parliament on the ground that, in article 1(2), there is a drafting error? It is a cracker, as, instead of referring to the Conservation (Natural Habitats &c) Regulations 1994, it refers to “the Conservation (Natural Habitats &c) Regulation 1994”. Do you see? There should be an s in there.

The Scottish Government has undertaken to correct the error by amendment prior to the order coming into force. Do we welcome this tremendous undertaking?

**Ian McKee:** I think that, in fact, the real problem is that the order says “National” instead of “Natural”.

**The Convener:** I am sorry, you are quite right; I read it wrongly. The order says “National Habitats”, but it should say “Natural Habitats”.

With that correction, embarrassing though it is, do we agree to welcome the Government’s undertaking to correct the error?

*Members indicated agreement.*

#### **Act of Sederunt (Fees of Sheriff Officers) 2008 (SSI 2008/430)**

**The Convener:** Are we are content to report the act of sederunt to the lead committee and the Parliament on the basis that—here we go again—it combines negative procedure and no procedure and that, while the Lord President’s private office has provided an explanation for that approach, the committee considers such an unusual exercise of the enabling powers inappropriate, as it could give rise to technical difficulties in the event of a successful motion to annul the act of sederunt?

*Members indicated agreement.*

**The Convener:** As I said, we have been here before. This issue is something that just might feature in the annual report.

#### **Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 (SSI 2008/433)**

**The Convener:** Is the committee content to report the regulations to the lead committee and the Parliament on the grounds that in relation to regulations 7(1), 8(1) and 9(2)(b) an explanation has been sought from and provided by the Scottish Government, which we find acceptable; and that in relation to regulation 10(2) there is a drafting error, which the Government has acknowledged and undertaken to correct at a later date, but which is not considered to affect the validity or operation of the regulations?

*Members indicated agreement.*

#### **Town and Country Planning (Appeals) (Scotland) Regulations 2008 (SSI 2008/434)**

**The Convener:** Is the committee content to report the regulations to the lead committee and the Parliament on the grounds that are set out in the summary of recommendations?

*Members indicated agreement.*

#### **Non-Domestic Rate (Scotland) Order 2009 (SSI 2009/3)**

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

## **Instrument not Subject to Parliamentary Procedure**

### **Local Electoral Administration and Registration Services (Scotland) Act 2006 (Commencement No 5 and Transitional Provision) Order 2009 (SSI 2009/2)**

14:28

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

## **Interpretation and Legislative Reform (Scotland) Bill**

14:29

**The Convener:** First, are members content to note the consultation on the draft bill and, secondly, do we agree to invite the Minister for Parliamentary Business to give evidence on the draft bill following the end of the consultation, so that discussions with the minister can be informed by the views of respondents to the consultation?

**Members indicated agreement.**

**The Convener:** Our next meeting will be on 27 January in a committee room that is yet to be revealed to us.

*Meeting closed at 14:29.*



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**Wednesday 28 January 2009**

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