

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 27 January 2009

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2009.

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 27 January 2009

	Col.
<b>INSTRUMENTS SUBJECT TO ANNULMENT</b> .....	461
Rural Development Contracts (Rural Priorities) (Scotland) Amendment Regulations 2009 (SSI 2009/1) .....	461
Animal By-Products (Scotland) Amendment Regulations 2009 (SSI 2009/7) .....	462
Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2009 (SSI 2009/8) .....	462
<b>INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT</b> .....	463
Scottish Register of Tartans Act 2008 (Commencement) Order 2009 (SSI 2009/5) .....	463
Public Health etc (Scotland) Act 2008 (Commencement No 1) Order 2009 (SSI 2009/9) .....	463
Act of Sederunt (Registration Appeal Court) 2009 (SSI 2009/12) .....	463
<b>HEALTH BOARDS (MEMBERSHIP AND ELECTIONS) (SCOTLAND) BILL</b> .....	464
<b>CLIMATE CHANGE (SCOTLAND) BILL: STAGE 1</b> .....	465
<b>LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION BILL</b> .....	478

---

## SUBORDINATE LEGISLATION COMMITTEE

4<sup>th</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 6



## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 27 January 2009*

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

### Instruments Subject to Annulment

**The Convener (Jamie Stone):** I welcome everyone to the fourth meeting in 2009 of the Subordinate Legislation Committee. We have received apologies from Jackson Carlaw. I remind everyone to turn off their mobile phones and BlackBerrys.

#### Rural Development Contracts (Rural Priorities) (Scotland) Amendment Regulations 2009 (SSI 2009/1)

**The Convener:** Are members content with the explanation provided by the Scottish Government, and to report to the lead committee and Parliament accordingly?

**Ian McKee (Lothians) (SNP):** I have a couple of concerns, convener. We are told that guidance is available on the web page <http://www.scotland.gov.uk/Publications/2008/04/01115039/124>, which is an extract from the "Scotland Rural Development Programme 2007-2013". In that guidance, which is for people who are affected by the regulations, the currency used is euros, whereas in the regulations, it is pounds. A conversion of the euro rate in the guidance works out at £1.79 per tree and £551.37 per hectare at today's rates as opposed to £1.30 per tree and £400 per hectare.

In one way, that is misleading; in another, it means that people who are pruning trees are benefiting from the decreasing value of the pound, which might not be the Government's intention either. I wonder whether we have any questions about whether, when European regulations specify payment in euros, the equivalent United Kingdom regulations automatically alter when the euro exchange rate alters in accordance with the value of the pound, and whether that could be sorted out.

**The Convener:** I see your point. I propose that we take up the issue and talk about it at our next meeting.

**Ian McKee:** I have another issue, I am afraid.

The regulations specify a cost for "high pruning", which is counted per tree, but there is also a figure for the "high pruning of trees", which is costed per hectare of trees. However, nowhere in the regulations or in the rural development programme does it state when "tree" changes into "trees".

For example, if someone was high pruning two trees, would it be two times £1.30 or, because trees, rather than a tree, were being pruned, would the cost become a proportion of a hectare? How do you work out trees and hectares? Trees are trees and hectares are a measurement of land. Is there a point at which the cost stops being £1.30 per tree and starts being £400 per hectare? Is it when you have a hectare with trees? If you have half a hectare, would you get half the hectare rate, or would you get a multiple of the tree rate? That confuses me, and I have found no explanation.

**The Convener:** You have obviously had some fun considering that point.

**Ian McKee:** Convener, "high pruning" and "high pruning of trees" are matters of deep interest to me as a tree planter.

**The Convener:** That is very clear, and I thank you for the thought that you have put into it. I am reminded that we have to report on the regulations this week, so are you happy for the committee to report on the regulations and come back to your point later?

**Ian McKee:** Yes, but it needs to be sorted out. It would be confusing to someone who has 10 or 20 trees.

**The Convener:** I can see that you will be given a high stepladder for Christmas.

We will come back to those points but the regulations will proceed in the meantime.

#### Animal By-Products (Scotland) Amendment Regulations 2009 (SSI 2009/7)

#### Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2009 (SSI 2009/8)

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

## Instruments not laid before the Parliament

**Scottish Register of Tartans Act 2008  
(Commencement) Order 2009 (SSI 2009/5)**

**Public Health etc (Scotland) Act 2008  
(Commencement No 1) Order 2009  
(SSI 2009/9)**

**Act of Sederunt (Registration Appeal  
Court) 2009 (SSI 2009/12)**

14:19

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

## Health Boards (Membership and Elections) (Scotland) Bill

14:20

**The Convener:** We have seen the letter of 12 January from the Deputy First Minister and Cabinet Secretary for Health and Wellbeing, Nicola Sturgeon, and the proper copy of our report was circulated to members before this meeting. Are there any comments?

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** The cabinet secretary's letter was generally helpful. However, she does not address the issue that we discussed at some length: the power to dismiss an elected member of a health board. I suppose that there is a substantive policy issue there but, under our responsibilities, the committee was saying that if there were to be such a power, it should be prescribed in some way. The cabinet secretary is silent about that, and it is an obvious omission, but she has responded very positively in other ways to what we suggested.

**The Convener:** As there are no other points, we will leave it at that for the moment. The cabinet secretary's response is pretty good and a lot of things have gone our way, although Malcolm Chisholm has pointed out the one glaring omission from her letter. Is everyone happy with that?

**Members indicated agreement.**

## Climate Change (Scotland) Bill: Stage 1

14:22

**The Convener:** This is the big one today. We have seen the bill, and read the long and detailed legal briefing. On behalf of us all, I thank the legal team. It was no mean undertaking to put that brief together.

The delegated powers in the bill are lengthy and complex, and there is a large number of recommendations for us to consider. When I can, I will refer to the summary of recommendations rather than read the proposed decisions out in full. That said, we will still have to go into some detail. We will take it section by section.

On section 4, “Setting annual targets”, and in relation to section 6, “Modifying annual targets etc.”, are we content to ask the Scottish Government on what basis it considers that there should be no requirements in the bill for ministers to consult on the terms of an order made under those sections with specified persons or bodies that might have particular interest in the proposals?

**Malcolm Chisholm:** The Climate Change (Scotland) Bill is different from other bills. Normally I would support consultation, but there is a specific advisory body—presumably of experts on climate change—that will be consulted on this and other proposals. That is what makes me uncertain whether there is a need to consult other bodies; presumably it is the experts who matter as far as climate change is concerned. I assume that the advisory committee will be constructed in such a way as to contain the relevant experts.

**Ian McKee:** Convener, I seek your guidance on how much we might be straying into lead committee territory by saying that certain people should be consulted. Rather than making a point, I am asking for guidance. Is that this committee’s duty or should we pass it on to the lead committee for a decision?

**The Convener:** I am fairly content that we are asking a relevant question. Of course, the Scottish Government could come back and say that it does not agree. I am in the committee’s hands, but I think that the question is reasonable, given our role as custodians of the Parliament’s interests. We do not assume that there will be any particular response from the Government.

**Ian McKee:** I thought that leaving the provision out would not impair the bill and that is what we are looking at. Perhaps who should and who should not be consulted is more to do with policy.

**The Convener:** I would be concerned if we never asked questions—I would rather err on the side of asking questions, not for the sake of it, but because I never want us not to fulfil our duty. Also, in asking questions, we do not impair the progress of the bill; we will revisit it in due course.

**Ian McKee:** If the rest of the committee is happy with that, so am I.

**The Convener:** Both your point and Malcolm Chisholm’s are on the record.

**Malcolm Chisholm:** A further point to that is in the next section of the bill, section 5. The assumption is that the ministers will follow the advice of the advisory body. If they do not, they have to set out the reasons why. That is a completely different situation from what we are used to in other legislation.

**The Convener:** Let us move on to section 6, “Modifying annual targets etc”. There are two questions for the Scottish Government. The first is to explain and justify why it is considered that the power in section 6(4) may be exercised in any circumstances where the Scottish ministers consider it appropriate to do so. The second question is whether more defined circumstances in which it would be appropriate to exercise the power—in a similar manner to sections 6(2) and 6(3)—could be prescribed, for instance, where it becomes necessary for the achievement of targets.

*Members indicated agreement.*

**The Convener:** We come to section 9, “Greenhouse gases”. I had not expected this—I thought that we knew what all the greenhouse gases were, but it appears that we do not.

Are we content that the proposed power is acceptable in principle and that its exercise will be subject to affirmative procedure—as they discover new gases, although hopefully they will not?

*Members indicated agreement.*

**The Convener:** On section 11, “Baselines for additional greenhouse gases”, are we content that the proposed power is acceptable in principle and that it is subject to affirmative procedure?

*Members indicated agreement.*

**The Convener:** On section 12, “The net Scottish emissions account”, are we content to notify the Scottish Government that we do not favour the use of the lesser degree of scrutiny of negative procedure for second or subsequent regulations, as provided for in section 64(7)(a) in relation to section 12(2), rather than affirmative procedure? It is an old point, and it is one that we have stuck to in the past.

*Members indicated agreement.*

**The Convener:** Also on section 12, are members content to ask the Scottish Government the questions set out in the summary of recommendations?

**Members indicated agreement.**

**The Convener:** That takes us to section 14, "Scottish share of emissions from international aviation and international shipping", which seemed tricky to me when I read it.

Are members content to ask the Scottish Government on what basis it has considered that there should be no requirements in the bill to the effect that ministers shall consult on the terms of an order with specified persons or bodies who may have particular interest in the proposals?

**Members indicated agreement.**

**Malcolm Chisholm:** That relates to our comments on section 4.

**The Convener:** That is on the record.

On section 15, "Scottish emissions and removals", are we content that the proposed power is acceptable in principle and that it is subject to affirmative procedure?

**Members indicated agreement.**

**The Convener:** On section 17, "International carbon reporting practice", are we agreed that the proposed power is acceptable in principle and that it is subject to negative procedure?

**Members indicated agreement.**

**The Convener:** On section 18, "Carbon units and carbon accounting", are we content to notify the Scottish Government that we do not favour the use of the lesser degree of scrutiny of negative procedure for second or subsequent regulations, as provided for in section 64(7)(b) in relation to section 18(1), rather than our preferred affirmative procedure?

**Members indicated agreement.**

**The Convener:** Are we also content to ask the Scottish Government the questions on section 18 that are set out in the summary of recommendations?

**Members indicated agreement.**

**The Convener:** On section 19, "Meaning of advisory body", are we content that the proposed power is acceptable in principle and that it is subject to affirmative procedure?

**Members indicated agreement.**

**The Convener:** Also on section 19, are we content to draw to the attention of the lead and secondary committees for the bill, in relation to the effect of the delegated powers contained in

sections 19 and 20 and schedule 1, that paragraph 33 of the explanatory notes and paragraph 31 of the policy memorandum indicate that ministers will require to seek expert and—this is the important word—independent advice from the advisory body, but that the bill provides, first, in sections 19(1) and 19(5) that a designated advisory body may be any public body that ministers consider appropriate, which may be a person or body with functions of a public nature, not necessarily independent of the Scottish ministers or Government; and secondly, in paragraph 2 of schedule 1, that the members of the Scottish committee on climate change shall be appointed by the Scottish ministers?

In pointing that out, however, we acknowledge that, in relation to the statements in the policy memorandum and explanatory notes, "independent" is capable of having different meanings and does not necessarily refer to a body that is wholly independent of the Scottish ministers.

14:30

**Ian McKee:** Is that last bit not the Scottish Government's answer to us, rather than our answer to the Scottish Government?

**The Convener:** No. I think that we are seeking clarification of the meaning of "independent". It may be very clear to you, as a member of the Scottish National Party—

**Ian McKee:** That is not my point. My point is that the last paragraph of the recommendation is saying that all that the Government needs to say is that "independent" has different meanings and does not necessarily refer to a body that is wholly independent of the Scottish ministers. We should leave it to the Scottish Government to decide what the response should be, rather than telling it what we think would be a good response to keep us happy.

**The Convener:** We are not doing that—perish the thought. Ministers are not such shrinking violets that they would not come back and tell us exactly what they thought.

**Ian McKee:** I am sure that the ministers are perfectly capable of looking after themselves, but it is the function of the committee to ask the questions and it is the function of the Government to reply.

**The Convener:** That is a thought that I shall bear in mind in future. Is the committee content to proceed on those lines, with that admonition from Dr McKee's good self in the meantime?

**Members indicated agreement.**

**The Convener:** On section 20, “Scottish Committee on Climate Change”, are we content that the proposed power is acceptable in principle, and that it is subject to affirmative procedure?

**Members indicated agreement.**

**The Convener:** Schedule 1 to the bill is on the Scottish committee on climate change that is introduced by section 20. Paragraph 2(2) of the schedule is on the membership of the committee. Are we content that the proposed power is acceptable in principle and that it is subject to negative procedure?

**Members indicated agreement.**

**The Convener:** The next question is on the delegated powers in schedule 1 that are in the form of directions or determinations. Are we content that the proposed delegated powers are acceptable in the form of directions or determinations, as the case may be, and that they are not more appropriately expressed in the form of subordinate legislation? The delegated powers in schedule 1 to which I refer are in paragraphs 6(1), 7(5), 8(2) and 9(3).

I, too, found the wording of that question slightly confusing—it is almost a double negative. However, I promise that that is no criticism of the legal team; it is a reflection of my brain power.

Is that okay?

**Members indicated agreement.**

**The Convener:** That takes us to section 23, “Reporting on progress towards targets”. Are we content that the proposed powers are acceptable in principle and that they are subject to affirmative procedure?

**Members indicated agreement.**

**The Convener:** On section 24, “Scottish Ministers’ response to reports on progress”, are we content that the proposed powers are acceptable in principle and that they are subject to affirmative procedure?

**Members indicated agreement.**

**The Convener:** Section 26 is “Guidance to advisory body”. I point out that, unfortunately, the proposal in the summary of recommendations is somewhat misleading. For the avoidance of doubt, we are invited to agree that it is appropriate for the delegated power to be in the form of guidance, rather than subordinate legislation. Are members clear about that? It is a little confusing.

The question is, is the committee content that the proposed delegated power is acceptable in the form of the issue of guidance and is not more appropriately expressed in the form of subordinate legislation?

**Members indicated agreement.**

**The Convener:** On section 27, “Power to give directions to advisory body”, is the committee content that it is acceptable that the proposed delegated power is exercised by issuing directions and is not more appropriately expressed in the form of subordinate legislation?

**Members indicated agreement.**

**The Convener:** Are members content to draw to the attention of the lead and secondary committees for the bill the delegated powers that are conferred on the Scottish ministers in sections 26 and 27 to issue directions and guidance to the advisory body, given that paragraph 33 of the explanatory notes and paragraph 31 of the policy memorandum indicate that the advisory body will provide independent advice to ministers?

**Members indicated agreement.**

**The Convener:** On section 35, “Further provision about reporting duties”, are members content that that power is acceptable in principle, and that it is subject to affirmative procedure?

**Members indicated agreement.**

**The Convener:** On section 36, “Duties of public bodies relating to climate change”, there are three questions to ask the Scottish Government.

The first question is whether consideration was given to the type of public bodies that could be subject to climate change duties and, if so, whether “public bodies”, for the purposes of this section, could be more narrowly defined.

The second question is whether consideration was given by the Scottish Government to providing a definition of “climate change duties” that did not refer back to section 36(1) and, if so, whether “climate change duties”, for the purposes of this section, could be more specifically and more narrowly defined.

The third question is whether, given that climate change duties are not precisely defined and given that any order under section 36 could potentially affect a very wide range and large number of public bodies, consideration was given to providing for a broader range of persons whom Scottish ministers are obliged to consult under section 36(4) and (5).

That is quite an important section in terms of the powers that ministers propose to take to themselves. Do members have any comments?

**Malcolm Chisholm:** Section 36(3) distinguishes between

“all public bodies; ... public bodies of a particular description”

and

“individual public bodies”.

With regard to the first question, it seems to be clear that consideration has been given to the type of bodies that may be subject to an order. It is clear that, in certain cases, it covers all public bodies. I do not think that the point is valid.

With regard to the second question, I suppose that one could ask for a more precise definition, although a narrower definition is not necessarily desirable. At the same time, it is quite clear what climate change duties are. The third question is another point about consultation.

**The Convener:** So you are clear on what public bodies are? It includes everyone, really.

**Malcolm Chisholm:** I think that they are referred to in several pieces of legislation.

**The Convener:** Do you propose that we do not ask the three questions that I read out, or are you content to make your point on the record?

**Malcolm Chisholm:** I have made the point on the record. My concern about the first question, in particular, is that it might imply the subtext that we want to limit the number of public bodies to which section 36 applies, whereas the legislation quite clearly says that, in some cases, it is appropriate that the order should apply to all public bodies.

**The Convener:** Perish the thought that the Subordinate Legislation Committee should stand in the way of stopping climate change—we would be vilified in no uncertain terms. Do members have any more comments on that point?

**Tom McCabe (Hamilton South) (Lab):** With regard to the second question, I understand the concern about a lack of definition. A minister or ministers could decide to do lots of things under the guise of climate change. For instance, they could say that people will get their bins emptied only once every month, which would be controversial. That is just one example, but there are many others, so there might be a case for a bit more definition.

**The Convener:** Okay. I thought that you were going to take us back to the realm of trees.

**Tom McCabe:** No—I have no interest in high trees.

**The Convener:** That would indeed be for a subject committee rather than for our committee. Given that Malcolm Chisholm's caveats are on the record, will we proceed to ask the three questions

and wait to see what comes back? I have to say, on the record, that there is no way that we want to stand in way of the progress of a bill that is as important as this one. Nevertheless, we have to balance that consideration against our duties to Parliament.

**Ian McKee:** Would a compromise be to take out the word “narrowly” in the first question, which implies that it is trying to be restrictive?

**Malcolm Chisholm:** And indeed, the same word in the second question.

**Ian McKee:** Indeed—it is also in the second question.

**The Convener:** That would be acceptable. There is enough on the record to cover ourselves and to show that we are not trying to prevent efforts to stop the world from heating up.

**Ian McKee:** One is judged by one's public utterances in writing as well.

**The Convener:** With that amendment, we will proceed. I see that the legal team is content with that.

On section 37, “Guidance to relevant public bodies”, are we content that the proposed delegated power is acceptable in the form of the issue of guidance and that it is not more appropriately expressed as a power to make subordinate legislation? If we seek further justification from the Scottish Government as to the nature and scope of the power that is sought under section 36, however, we may wish to ask for more information as to the function and likely content of the guidance.

That is not expressing opposition to guidance as such, but simply asking for a little more information. Are members happy with that?

**Members indicated agreement.**

**The Convener:** On section 38, “Reporting on climate change duties”, are members content, subject to considering section 36—and depending on what we get back—to find the power acceptable in principle and that it is subject to negative procedure?

**Members indicated agreement.**

**The Convener:** On section 39, “Appointment of monitoring body”, are members content that the proposed power is acceptable in principle and that it is subject to affirmative procedure?

**Members indicated agreement.**

**The Convener:** On sections 40 to 44 inclusive, are members content that the proposed powers to direct in sections 40(2), 42(1), 42(2) and 44(1) are acceptable in principle and are not more

appropriately expressed in the form of subordinate legislation?

**Members indicated agreement.**

**The Convener:** Are members also content that the proposed delegated power in section 43 is acceptable in the form of the issue of guidance, and that it is not more appropriately expressed in the form of subordinate legislation?

**Members indicated agreement.**

**The Convener:** On section 46, "Variation of permitted times for making muirburn"—I do not know how to pronounce that, but I know what it means—are members content to ask the Scottish Government whether or not it considers that it would be appropriate to consult the hill farming community, landowners and others who may be affected on the dates that may be appropriate for muirburn, in advance of making an instrument? Do we talk to the farmers and the lairds about that one?

**Members indicated agreement.**

**The Convener:** Indeed—we are open with everyone.

On section 47, "Power to modify functions of Forestry Commissioners", are we content to ask the Scottish Government the questions as set out in the summary of recommendations? It is fairly far-reaching stuff, but rather than read it out I ask whether members are happy to go with the summary of recommendations?

**Members indicated agreement.**

**The Convener:** On section 50, "Non-domestic buildings: assessment of energy performance and emissions", are members content that the proposed power to make regulations with respect to the assessment of energy performance and emissions is acceptable in principle; and that, subject to the following exception, the affirmative procedure is appropriate, the exception being that negative procedure is appropriate in respect of regulations with respect to the levy of charges to enable the enforcement authority to recover reasonable costs incurred by it in exercising its functions under the regulations?

**Malcolm Chisholm:** I have a question—you read out that recommendation, but you did not read out the recommendation for section 47. Will the section 47 recommendation still appear in the *Official Report*?

**Shelagh McKinlay (Clerk):** It would not appear in the *Official Report*.

**The Convener:** I am sorry—have I failed to read out the recommendation for section 47?

**Malcolm Chisholm:** Yes. It is a particularly important recommendation.

**The Convener:** Okay—I offer my apologies for that. On section 47, "Power to modify functions of Forestry Commissioners",

"The Committee may wish to consider asking the Scottish Government, given that the proposed power under section 47(1) to modify, by order, the functions of the Forestry Commissioners in or as regards Scotland does not contain any limitation with respect to the nature, scope or extent of any such modification, whether it has given consideration to the imposition of a restriction, within the power, on the nature, scope and extent of any modification which may be made; and, whether or not any such consideration has been given, does it not consider that such a limitation would be both feasible and appropriate."

That is now a matter of record.

**Malcolm Chisholm:** It is important that that modification should be in primary legislation. The functions are in the Forestry Act 1967, which was amended by primary legislation, so that is important.

**The Convener:** That is a fair point. It is now on the record in full—thank you for that.

Where are we? We have done section 50, so we move on to section 52, "Waste prevention and management plans". Sections 52(1), 52(2) and 52(4) are on waste management plans and section 52(3) provides that the enforcement authority must have regard to any guidance given to it by the Scottish ministers in relation to the functions conferred on it by the regulations.

Are we content to ask the Scottish Government what classes of person it intends or anticipates will be subject to duties under the regulations, and whether there is any particular intention to apply the power to domestic activities or individuals? That could mean you or me. Secondly, would it not be possible for the Scottish Government to specify, in the section, the classes of persons to be subject to the regulations and, if it is, why has that not been done? We are looking for a bit of clarity on that point. Are we happy with those questions? They seem to be quite logical.

**Members indicated agreement.**

14:45

**The Convener:** Are we also content that the proposed delegated power to issue guidance under section 52(3) is acceptable, and that it would not be more appropriately expressed in the form of subordinate legislation?

**Members indicated agreement.**

**The Convener:** I suppose that we have to phrase it that way for legal accuracy.

Sections 53(1), (2), (3) and (5) are on information on waste, and section 53(4) provides that the Scottish Environment Protection Agency may give guidance to persons to whom the regulations apply on how to comply with the regulatory requirements.

Are we content to ask the Scottish Government the questions as set out in the summary of recommendations? Are we content that the proposed delegated power to issue guidance in section 53(4) is acceptable and that it would not be more appropriately expressed in the form of subordinate legislation?

**Members indicated agreement.**

**The Convener:** Sections 54(1), (2), (4) and (5) are on facilities for the deposit of recyclable waste, and section 54(3) provides that the enforcement authority must have regard to any guidance given to it by the Scottish ministers in relation to the functions that are conferred on it by the regulations. Are we content to ask the Scottish Government the questions as set out in the summary of recommendations? Are we also content that the proposed delegated power to issue guidance is acceptable and that it would not be more appropriately expressed in the form of subordinate legislation?

**Members indicated agreement.**

**The Convener:** Sections 55(1) and 55(2) contain provisions for facilities for the deposit of recyclable waste at events, and sections 55(3) and 55(4) provide that local authorities and enforcement authorities must have regard to any guidance that has been given to them by the Scottish ministers in relation to the functions that will be conferred on them by the regulations. Are we content that the delegated powers in sections 55(1) and 55(2) are acceptable in principle and that they are subject to affirmative procedure, with specified exceptions where negative procedure applies?

**Members indicated agreement.**

**The Convener:** Are we also content that the proposed delegated powers under sections 55(3) and 55(4) are acceptable in the form of guidance and that they would not be more appropriately expressed in the form of subordinate legislation?

**Members indicated agreement.**

**The Convener:** Sections 56(1), 56(2), 56(3) and 56(6) are on the procurement of recycle regulations, and section 56(4) provides that the enforcement authority must have regard to any guidance given to it by the Scottish ministers in relation to the functions that the regulations will confer on it. Section 56(5) provides that persons to whom the regulations apply must have regard to any guidance that has been given by the Scottish

ministers or the enforcement authority in relation to the requirements that are imposed by the regulations.

Are we content to ask the Scottish Government the questions as set out in the summary of recommendations? Are we content that the proposed delegated powers to issue guidance under sections 56(4) and 56(6) are acceptable and that they would not be more appropriately expressed in the form of subordinate legislation?

**Members indicated agreement.**

**The Convener:** Sections 57(1), 57(2) and 57(4) are on the targets for the reduction of packaging, and section 57(3) provides that the enforcement authority must have regard to any guidance issued to it by the Scottish ministers in relation to the functions that the regulations will confer on it. Are we content that the particular power to issue guidance that is contained in section 57(3) would not be more appropriately expressed as a power to make subordinate legislation?

**Members indicated agreement.**

**The Convener:** In relation to sections 57(1), 57(2) and 57(4), are members content that we should ask the Scottish Government to fully explain and justify why, unlike the approach taken in part 1 of the bill, the Scottish Government requires to take the powers in sections 57(1) and 57(2), in so far as they propose that any targets without limit—set by any method—may be set for the reduction of packaging or the reduction of emissions produced by packaging, or requirements on persons to comply with those targets?

Given that the memorandum refers to the possibility of targets being imposed on retailers, why does the Scottish Government require to impose those targets or requirements on any types of persons—individuals or legal persons—who might be specified in the regulations?

On what basis has the Government considered that there should be no requirements on the face of the bill to the effect that ministers shall consult on the terms of the regulations with specified persons or bodies that may have particular interest in the proposals?

Is the committee content to ask those three questions?

**Members indicated agreement.**

**The Convener:** On section 58, “Deposit and return schemes”, are we content that that power is acceptable in principle and—with specified exceptions where negative procedure applies—subject to affirmative procedure?

**Members indicated agreement.**

**The Convener:** Section 59 is “Charges for supply of carrier bags”. Mike Pringle, where are you?

Section 59(3) says that the enforcement authority must have regard to guidance issued by the Scottish ministers in relation to the functions conferred on it by the regulations.

Are we content that the powers are acceptable in principle and are subject to affirmative procedure, with the exception of negative procedure for regulations dealing only with charging by the enforcement authority, under section 64(7)(e)?

Are we content that the power to issue guidance contained in section 59(3) is not more appropriately expressed as a power to make subordinate legislation?

Are we content?

**Members indicated agreement.**

**The Convener:** Thank you. I would take silence as assent—I have probably bowed you all into complete silence.

Now we look at ourselves, as in a mirror. On section 64, “Subordinate legislation”, are we content to ask the Scottish Government why, in contrast to the approach taken in sections 74 and 75 of the Judiciary and Courts (Scotland) Act 2008, it is considered that section 64(3) requires to contain a power for orders or regulations to modify any enactment, including the act, by affirmative procedure—a Henry VIII power—without any reference to the purposes of such modification, for example for the purposes of making consequential, incidental, transitional, transitory, or savings provisions?

**Members indicated agreement.**

**The Convener:** Are we content to ask the Scottish Government whether it would reconsider whether the power to make supplementary, incidental or consequential provision could be limited to the purposes of giving full effect to any provision of the act, and whether the power to make transitory, transitional or savings provisions could be limited to being in connection with the coming into force of any provision of the act?

**Members indicated agreement.**

**The Convener:** On section 67, “Short title and commencement”, are we content that the power is acceptable, and that the provisions—being commencement provisions—are subject to no procedure?

**Members indicated agreement.**

## Local Democracy, Economic Development and Construction Bill

14:52

**The Convener:** The Local Democracy, Economic Development and Construction Bill is UK legislation.

Clause 143 is “Commencement: construction contracts”. I read that several times in the legal brief—I think that I understand it. Are we content that the commencement power, which is conferred on the Scottish ministers in regard to part 8 provisions in the bill relating to construction contracts, is acceptable?

**Members indicated agreement.**

**The Convener:** I thank members, clerks and the legal team for their input. This stuff has not been easy. We next meet on Tuesday 3 February at 2.15; we shall be given the room number in due course.

*Meeting closed at 14:53.*



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 4 February 2009**

#### 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