

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 26 May 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 26 May 2009

Col.

<b>DECISION ON TAKING BUSINESS IN PRIVATE</b> .....	599
<b>CRIMINAL JUSTICE AND LICENSING (SCOTLAND) BILL: STAGE 1</b> .....	600
<b>DRAFT INSTRUMENTS SUBJECT TO APPROVAL</b> .....	604
Waste Batteries (Scotland) Regulations 2009 (Draft) .....	604
Planning etc (Scotland) Act 2006 (Consequential Amendments) Order 2009 (Draft) .....	604
Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009 (Draft) ....	604
Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009 (Draft).....	604
Licensing (Scotland) Act 2005 (Consequential Provisions) Order 2009 (Draft) .....	604
Renewables Obligation (Scotland) Amendment Order 2009 (Draft) .....	605
Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2009 (Draft) .....	605
<b>INSTRUMENTS SUBJECT TO ANNULMENT</b> .....	605
St Mary's Music School (Aided Places) (Scotland) Amendment Regulations 2009 (SSI 2009/181) .....	605
Adoptions with a Foreign Element (Scotland) Regulations 2009 (SSI 2009/182).....	605
Firefighters' Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Order 2009 (SSI 2009/184) .....	605
Local Government Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Regulations 2009 (SSI 2009/186).....	605
Education (Fees and Awards for EC Nationals and UK Returners) (Scotland) Regulations 2009 (SSI 2009/188) .....	605
Education (Interest on Student Loans) (Scotland) Regulations 2009 (SSI 2009/189) .....	605
Parental Responsibilities and Parental Rights Agreement (Scotland) Amendment Regulations 2009 (SSI 2009/191) .....	605
Personal Injuries (NHS Charges) (Scotland) Amendment Regulations 2009 (SSI 2009/193) .....	605
<b>INSTRUMENT NOT LAID BEFORE THE PARLIAMENT</b> .....	606
Title Conditions (Scotland) Act 2003 (Commencement No 2) Order 2009 (SSI 2009/190).....	606

---

# **SUBORDINATE LEGISLATION COMMITTEE**

## **18<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 4

## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 26 May 2009*

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

### Decision on Taking Business in Private

**The Convener (Jamie Stone):** Welcome to the 18<sup>th</sup> meeting of the Subordinate Legislation Committee in 2009. We have received no apologies—we have a full house. I ask everyone to turn off their mobiles and BlackBerrys.

The first item on the agenda is a decision on whether to take in private item 6, which concerns hybrid bills. The committee will discuss correspondence received from the Standards, Procedures and Public Appointments Committee. In advance of a report on the matter from that committee, it is appropriate for us to consider the item in private. Is that agreed?

**Members** *indicated agreement.*

## Criminal Justice and Licensing (Scotland) Bill: Stage 1

14:16

**The Convener:** Item 2 is consideration of the delegated powers memorandum to the Criminal Justice and Licensing (Scotland) Bill. We considered the delegated powers in the bill at our meeting of 28 April and disposed of a number of powers with which we were content. However, we had a number of questions, which we put to the Government. We have before us the Government's response, which I will go through bit by bit.

The first provision is section 14, "Community payback orders", so far as it inserts in the Criminal Procedure (Scotland) Act 1995 new section 227I(6), which gives the Scottish ministers the power to vary the minimum and maximum hours of unpaid work or other activity requirement. Are we content to report to the lead committee that we welcome the Government's confirmation in its response that it will lodge amendments at stage 2 to provide limits to the extent to which the minimum and maximum number of hours stated in section 227I(3) can be varied and the extent to which the figure of "100" in sections 227I(4) and (5) can be varied?

**Members** *indicated agreement.*

**The Convener:** We seem to have achieved something there.

Section 14 inserts in the 1995 act new section 227K(3), which provides for the power to vary the limits of the balance of activity within the unpaid work or other activity requirement. Are we content to report to the lead committee that we welcome the Government's confirmation that it will lodge amendments at stage 2 to vary the powers as drafted in new section 227K(3)? We understand that to mean that, instead of the power permitting the amendment of subsection (2) in any respect, it will be a power to specify different figures in subsection (2)(a) or (b). The response also confirms that the stage 2 amendments will provide for the application of affirmative resolution procedure rather than negative procedure.

**Members** *indicated agreement.*

**The Convener:** Section 14 inserts in the 1995 act section 227ZB(12), which provides for the power to vary the maximum number of months in which a restricted movement requirement can have effect. Are we content to report to the lead committee that we welcome the Government's confirmation that it will lodge amendments at stage 2 to address the issue raised in the committee's question on that power? The amendments will

provide for a single overall maximum period of 12 months for a restricted movement requirement, subject to the ability to modify that period by affirmative regulations.

**Members indicated agreement.**

**The Convener:** We have achieved something again.

Section 18(2)(a)(iii) provides for the power to prescribe by order the “prescribed period” for the purposes of certain sentences under part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007. First, are we content to report that the Government has indicated in its response that it will reconsider whether the power requires to be taken to prescribe any new period of custody, instead of 15 days, for the purposes of the section, and will consider whether the scope of the power could be narrowed by setting minimum or maximum limits? Secondly, are we content to draw our questions and the Government responses on the scope of and reasons for the delegated power to the attention of the lead committee, in connection with its consideration of the bill? Finally, are we content that the power should be subject to affirmative resolution procedure?

**Members indicated agreement.**

**The Convener:** Paragraphs 10(3) and (4) of schedule 2 provide for the power to prescribe the length of periods of detention for those under 21 years of age, for the purpose of determining whether they are serving

“short-term custody and community sentences”

or “custody and community sentences”. First, are we content to report that the Government has indicated in its response that it will reconsider whether the power requires to be taken to prescribe any new period of custody, instead of 15 days, for the purposes of section 55 of the 2007 act, and will consider whether the scope of the power could be narrowed by setting minimum or maximum limits? Secondly, are we content to draw our questions and the Government’s responses on the scope of and reasons for the delegated power to the lead committee, in connection with its consideration of the bill? Finally, are we content that the power should be subject to affirmative resolution procedure?

**Members indicated agreement.**

**The Convener:** Section 70(3) inserts in the Public Finance and Accountability (Scotland) Act 2000 new section 26G(1), on persons mentioned in the act. Is the committee content to take the view that, having obtained further explanation and justification from the Government, we may find the proposed power to be acceptable in principle and

that it should be subject to negative resolution procedure?

**Members indicated agreement.**

**The Convener:** Section 82(1)(a) amends section 133 of the Criminal Justice Act 1988 and gives the Scottish ministers the power to specify further circumstances in respect of which compensation may be paid. Are we content to draw to the attention of the lead committee and Parliament that the proposed power goes beyond what is strictly necessary to achieve the objective that is stated in the Scottish Government’s delegated powers memorandum—namely, to put the ex gratia scheme on a statutory basis—and that, in our opinion, the Scottish Government has given no adequate justification for the power to extend the scheme beyond that currently operating?

**Members indicated agreement.**

**The Convener:** Section 82(1)(d) inserts in the 1988 act new section 133(4B), on guidance to assessors. Are we content to note the Scottish Government’s commitment that any guidance issued under the power will be laid before the Parliament? Do we find the proposed power acceptable in principle and agree that it should be subject to no parliamentary procedure?

**Members indicated agreement.**

**The Convener:** Section 115 deals with the power to establish rules of court in relation to part 6 of the bill. Are we content to draw the breadth and scope of the proposed power to the attention of the lead committee and the Parliament? Do we also wish to report that we consider that the Scottish Government has given insufficient justification for the need for a power in these terms or for why the scope of the proposed power should not be limited to matters of criminal practice or procedure or other matters within the remit of the High Court, given that the power is not subject to parliamentary procedure?

**Members indicated agreement.**

**The Convener:** Section 121(3) gives the Scottish ministers the power to set mandatory conditions to licences granted under the Civic Government (Scotland) Act 1982. Are we content to report to the lead committee that we welcome the Government’s undertaking to lodge an amendment at stage 2 that will require the power to set mandatory conditions in respect of licences under the 1982 act to be subject to affirmative procedure?

**Members indicated agreement.**

**The Convener:** We will chalk that up as another give in our direction.

Section 129(4) inserts in the Licensing (Scotland) Act 2005 new section 27A, which provides for the power to prescribe those areas in respect of which licensing boards may vary all or a particular group of premises licences' conditions of operation. Are we content to draw the attention of the lead committee to the Government's confirmation that it intends to remove section 129 at stage 2?

**Members indicated agreement.**

**The Convener:** Section 140(1) gives the Scottish ministers the power to make provision for the imposition of a social responsibility levy on relevant licence holders. Are we content to draw the attention of the lead committee to the Government's confirmation that it intends to remove the section at stage 2?

**Members indicated agreement.**

**The Convener:** Sections 146 and 147 deal with ancillary provision. First, are we content to report that we welcome the Government's undertaking to amend section 146 to provide that any modification of enactments is subject to affirmative procedure? Secondly, are we content to report that we accept section 147 and that only textual amendments should be subject to affirmative procedure, but on the understanding that we expect the Government to bring forward measures in a form that attracts affirmative procedure when those measures impact on individuals' rights or liberty?

**Members indicated agreement.**

**Ian McKee (Lothians) (SNP):** We have made a great deal of progress. We should congratulate the members of our legal team, who have been responsible for many beneficial comments that have improved the law.

**The Convener:** We can crystallise around that comment.

**Ian McKee:** I wanted the point to be made on the record.

**The Convener:** We should congratulate the clerks, too, as it has been a joint effort.

**Ian McKee:** And everyone else.

**The Convener:** Steady on—we will be congratulating *The Daily Telegraph* if we are not careful. There are limits, you know.

## Draft Instruments subject to Approval

### Waste Batteries (Scotland) Regulations 2009 (Draft)

14:25

**The Convener:** We have all read about the next item. Are we content, after due and weighty consideration, to draw the regulations to the attention of the lead committee for its interest, in so far as—in regulations 7(4), 9 and 10, in particular—they might be seen to involve matters of policy and legal policy because of how they seek to transpose the batteries directive? That is the best way that we could put it.

**Members indicated agreement.**

**The Convener:** Are we content to bring the regulations to the attention of the lead committee and the Parliament on the ground that the form and meaning of regulations 9 and 10 could have been clearer as far as reference to the date of modifications to permit conditions is concerned, but that that lack of clarity is not considered to be such that it is likely to affect the regulations' operation?

**Members indicated agreement.**

**The Convener:** Collectively, we are gently wagging a finger.

### Planning etc (Scotland) Act 2006 (Consequential Amendments) Order 2009 (Draft)

### Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009 (Draft)

### Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009 (Draft)

### Licensing (Scotland) Act 2005 (Consequential Provisions) Order 2009 (Draft)

**Renewables Obligation (Scotland)  
Amendment Order 2009 (Draft)**

**Rehabilitation of Offenders Act 1974  
(Exclusions and Exceptions) (Scotland)  
Amendment Order 2009 (Draft)**

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

**Instruments subject  
to Annulment**

**St Mary's Music School (Aided Places)  
(Scotland) Amendment Regulations 2009  
(SSI 2009/181)**

**Adoptions with a Foreign Element  
(Scotland) Regulations 2009 (SSI 2009/182)**

**Firefighters' Pension Scheme Amendment  
(Increased Pension Entitlement) (Scotland)  
Order 2009 (SSI 2009/184)**

**Local Government Pension Scheme  
Amendment (Increased Pension  
Entitlement) (Scotland) Regulations 2009  
(SSI 2009/186)**

**Education (Fees and Awards for EC  
Nationals and UK Returners) (Scotland)  
Regulations 2009 (SSI 2009/188)**

**Education (Interest on Student Loans)  
(Scotland) Regulations 2009 (SSI 2009/189)**

**Parental Responsibilities and Parental  
Rights Agreement (Scotland) Amendment  
Regulations 2009 (SSI 2009/191)**

**Personal Injuries (NHS Charges)  
(Scotland) Amendment Regulations 2009  
(SSI 2009/193)**

14:27

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

**Instrument not laid before  
the Parliament**

**Title Conditions (Scotland) Act 2003  
(Commencement No 2) Order 2009  
(SSI 2009/190)**

14:28

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

**The Convener:** We move into private session, as we agreed at the beginning of the meeting. I thank our colleagues from the official report.

14:28

*Meeting continued in private until 14:31.*



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:

**Thursday 4 June 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