

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 2 June 2009

Session 3

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# **SUBORDINATE LEGISLATION COMMITTEE**

## **19<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 5

## Scottish Parliament Subordinate Legislation Committee

*Tuesday 2 June 2009*

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

### Sexual Offences (Scotland) Bill: After Stage 2

**The Deputy Convener (Ian McKee):** I welcome members to the 19<sup>th</sup> meeting in 2009 of the Subordinate Legislation Committee. I have received apologies from Jamie Stone, Jackson Carlaw and Helen Eadie. I ask members and anyone else in the room to turn off mobile phones.

Item 1 is consideration of the delegated powers memorandum to the Sexual Offences (Scotland) Bill as amended at stage 2. Stage 3 of the bill will take place on 10 June. We have received the supplementary DPM to the bill. Members will also have a letter from the Cabinet Secretary for Justice, Kenny MacAskill, on amendments that have been proposed to section 45.

The first provision to consider is section 29(5A), which contains the power to specify relevant sexual offences for the purpose of section 29(2). Is the committee content that the power in section 29(5A) to modify the list of relevant sexual offences set out in schedule 1Z is acceptable, given its restriction in scope, and is it content that the power be subject to affirmative procedure?

**Members indicated agreement.**

**The Deputy Convener:** Section 32(8) contains the power to amend the definition of what constitutes “a position of trust” in respect of the offence of sexual abuse of trust in section 31. Is the committee content that the power in section 32(8) to amend that definition is acceptable in principle and does the committee agree that it is appropriate that the power be subject to affirmative procedure?

**Members indicated agreement.**

**The Deputy Convener:** On section 45, “Ancillary provision”, is the committee content that the proposed amendments to ancillary powers set out in the cabinet secretary’s letter of 27 May are acceptable?

**Members indicated agreement.**

## Tobacco and Primary Medical Services (Scotland) Bill: Stage 1

14:17

**The Deputy Convener:** Item 2 is consideration of the delegated powers memorandum to the Tobacco and Primary Medical Services (Scotland) Bill. We heard from officials at our meeting on 19 May and members will have the *Official Report* of that meeting in their papers. We now have to report on the remaining powers on which we took evidence.

Paragraph 3 of schedule 1 contains the power to prescribe the time after which a fixed penalty may not be given. Is the committee content to report to the lead committee and the Parliament that, given that the power to set the time after which a fixed penalty may not be given is of importance in the context of the operation of the scheme, and enforcement more generally, and that the power is not subject to any fixed limits within which it may be exercised, the power should be subject to affirmative procedure?

**Members indicated agreement.**

**The Deputy Convener:** Paragraph 4 of schedule 1 contains the power to prescribe the amount of fixed penalty and the discounted amount. Is the committee content to report to the lead committee and the Parliament that it considers that the prescribing of maximum penalties that can be imposed for contravention of the law is a significant and important matter, whether it arises in the context of a civil or criminal enforcement regime? Accordingly, is the committee content to recommend that the exercise of the power to set maximum penalties should be subject to affirmative procedure?

**Members indicated agreement.**

**The Deputy Convener:** Paragraph 11(2) of schedule 1 contains the power to modify paragraphs 5(1) and 5(4) of the schedule to substitute different deadlines of payment. Is the committee content to report to the lead committee and the Parliament that, given the potential impact on individuals of the exercise of the power, and given that no clear justification has been given of why it is necessary for the power to be exercisable without any limits as to what may be prescribed being set, it is appropriate that the exercise of the power be subject to affirmative procedure?

**Members indicated agreement.**

## Equality Bill

14:19

**The Deputy Convener:** Item 3 is consideration of a legislative consent memorandum on the Equality Bill. We will consider the powers to make subordinate legislation that are conferred on the Scottish ministers.

On clause 91, "Qualifications bodies", does the committee agree to report to the lead committee that it is content with that delegated power in principle and that it is content that it be subject to negative resolution procedure?

**Members indicated agreement.**

**The Deputy Convener:** Is the committee content to draw to the attention of the lead committee the fact that, although the power in clause 91(10)(c) enables the Scottish ministers to prescribe any "appropriate regulator" in Scotland for the purposes of clause 91, the Government's legislative consent memorandum, at paragraphs 20 to 25, indicates that the current appropriate regulator for Scotland is the Scottish Qualifications Authority alone?

**Members indicated agreement.**

**The Deputy Convener:** On clause 92, "Interpretation", and clause 145, "Power to specify public authorities", is the committee content that the powers in clause 92(3) and clause 145(3) are acceptable in principle and that they should be subject to negative procedure?

**Members indicated agreement.**

**The Deputy Convener:** On clause 147, "Power to impose specific duties" and clause 148, "Power to impose specific duties: cross-border authorities", is the committee content that those powers are acceptable in principle and that they should be subject to affirmative procedure?

**Members indicated agreement.**

**The Deputy Convener:** On clause 149, "Power to impose specific duties: supplementary", is the committee content that the power in clause 149(5) is acceptable in principle and that it should be subject to affirmative procedure where regulations under the clause would amend an act, but otherwise to negative procedure?

**Members indicated agreement.**

**The Deputy Convener:** We come to clause 155, "Designated transport facilities" and the power in clause 155(3); schedule 11, part 1, paragraph 4, which is on single-sex schools turning co-educational; schedule 14, paragraph 2, which is on educational endowments; and schedule 17, "Disabled Pupils: Enforcement",

paragraph 10 of which is on tribunals in Scotland. Is the committee content that those powers are acceptable in principle and that they should be subject to negative resolution procedure?

**Members indicated agreement.**

## Draft Instruments subject to Approval

### Licensing (Mandatory Conditions) (Scotland) Regulations 2009 (Draft)

14:21

**The Deputy Convener:** Is the committee 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* and, specifically, whether regulation 2, which restricts the application of an existing mandatory licence condition set out in paragraph 13 of schedule 3 to the Licensing (Scotland) Act 2005, is within the scope of the enabling power cited or the implied power in paragraph 11 of schedule 1 to the interpretation order?

*Members indicated agreement.*

### Environmental Liability (Scotland) Regulations 2009 (Draft)

**The Deputy Convener:** Is the committee content to draw regulations 18(1) and 18(2), on allocation of costs, to the attention of the lead committee in relation to its consideration of the regulations?

*Members indicated agreement.*

**The Deputy Convener:** The committee might consider that those provisions appear to be within the enabling powers to make regulations contained in the European Communities Act 1972. However, it should be drawn to the attention of the lead committee that regulation 18(1) requires a competent authority to determine the operators' responsibility for the costs of environmental damage under the regulations where there is more than one operator. Regulation 18(2)(d) sub-delegates to the authority the ability to determine any other basis for the allocation of liability for such costs beyond the options set out in regulations 18(2)(a) to (c).

## Instruments subject to Annulment

### National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009 (SSI 2009/183)

14:23

**The Deputy Convener:** Is the committee content to report to the lead committee and the Parliament that the regulations contain a number of drafting errors, which are set out in the correspondence with the Scottish Government, but to note and welcome the Government's commitment to lodge a corrective instrument to address those errors prior to the regulations coming into force?

*Members indicated agreement.*

### Police Pensions Amendment (Increased Pension Entitlement) (Scotland) Regulations 2009 (SSI 2009/185)

**The Deputy Convener:** Is the committee content to draw the regulations to the attention of the Parliament on the ground that a mistake has been made in a reference to a related statutory instrument? The committee might wish to acknowledge that that mistake is unlikely to have any effect on the operation of the regulations. The committee might also wish to acknowledge and welcome the Scottish Government's commitment to bring forward an amendment to correct the error. Is that agreed?

*Members indicated agreement.*

### Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009 (SSI 2009/187)

**The Deputy Convener:** Is the committee content to report the regulations to the lead committee and the Parliament on the ground of drafting errors, because although regulation 3(a)(ii) of the regulations will insert into the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (SI 1998/192) a definition of "the Benefits Regulations", the amendments in regulations 3(b), 3(c)(i), 12 and 25 of the 2009 regulations refer to "the Benefit Regulations"? Those errors are not considered to affect the validity of the regulations and are not thought likely to affect their operation. We would welcome the Scottish Government's undertaking to correct the drafting errors in due course.

**Members indicated agreement.**

**University of the West of Scotland Order  
of Council 2009 (SSI 2009/194)**

**Non-Domestic Rating (Valuation of  
Utilities) (Scotland) Amendment (No 2)  
Order 2009 (SSI 2009/196)**

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

**Instruments not laid before  
the Parliament**

**Judiciary and Courts (Scotland) Act 2008  
(Commencement No 2) Order 2009  
(SSI 2009/192)**

**Custodial Sentences and Weapons  
(Scotland) Act 2007 (Commencement No 2  
and Transitional Provisions) Order 2009  
(SSI 2009/197)**

14:25

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

**Annual Report**

14:26

**The Deputy Convener:** Members have copies of the committee's draft annual report, which is presented in a standard format that all committee annual reports use. Do members have comments on the draft?

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** It is fine.

**Bob Doris (Glasgow) (SNP):** It is okay.

**The Deputy Convener:** Are members happy to agree the committee's annual report?

**Members indicated agreement.**

*Meeting closed at 14:26.*



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**Wednesday 10 June 2009**

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