



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# SUBORDINATE LEGISLATION COMMITTEE

Tuesday 15 December 2009

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**SUBORDINATE LEGISLATION COMMITTEE**

**34<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)  
Margaret Curran (Glasgow Baillieston) (Lab)  
\*Bob Doris (Glasgow) (SNP)  
\*Helen Eadie (Dunfermline East) (Lab)  
\*Rhoda Grant (Highlands and Islands) (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**

Douglas Wands

**ASSISTANT CLERK**

Jake Thomas

**LOCATION**

Committee Room 6



## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 15 December 2009*

[The Convener opened the meeting at 10:00]

[The Deputy Convener opened the meeting at 14:15]

### Decision on Taking Business in Private

**The Deputy Convener (Ian McKee):** I welcome members to the 34<sup>th</sup> meeting in 2009 of the Subordinate Legislation Committee. I will switch my mobile phone off and ask everyone else to turn off their mobiles and BlackBerrys. We have apologies from Jamie Stone.

It is proposed that, under agenda item 7, the committee discusses its draft report on the delegated powers in the Legal Services (Scotland) Bill in private. Given the nature of the discussion, it would be appropriate to do that. Do members agree?

**Members indicated agreement.**

## Bribery Bill

14:16

**The Deputy Convener:** A legislative consent memorandum has been lodged for the United Kingdom Bribery Bill—an interesting name. We need to report on only one power, which is in subsection 4 of clause 16, “Consequential provision”.

Do we agree to report to the lead committee that we are content with the delegated power in principle, and that exercise of the power should be subject to draft affirmative procedure, unless the order does not amend or repeal a provision in an act of the Scottish Parliament or a public general act, in which case negative procedure applies?

The committee might also consider reporting that it is content that the consequential and ancillary powers in clause 16 should apply on a similar basis for England and Wales, Scotland, and Northern Ireland. Is that agreed?

**Members indicated agreement.**

## Crime and Security Bill

14:17

**The Deputy Convener:** A legislative consent memorandum has been lodged on the UK Crime and Security Bill. Two issues arise on the bill.

Clause 39 will insert into the Private Security Industry Act 2001 new section 4A(2)(c), which contains a power to designate activities that are licensable. The legal advisers recommend that the committee should draw it to the attention of the lead committee that the manner in which clause 39 has been drafted appears not to take the position in Scotland properly into account. Although new section 4A of the 2001 act extends to Scotland, it appears that new sections 4A(2)(a) and 4A(2)(b) can have no practical application to activities described in those paragraphs and carried out in Scotland, since the LCM advises that such activities are currently illegal in Scotland. It does not appear to be sensible to require illegal activities to be subject to a licensing regime.

Subject to those observations, is the committee content with the power, and that it be subject to negative procedure?

**Members** *indicated agreement.*

**The Deputy Convener:** We might also draw it to the attention of the lead committee that, in exercising their powers under new section 4A(2)(c), the Scottish ministers are able to designate the activities undertaken by businesses that are to be subject to the regulatory and licensing regime. However, that ability is subject to the overriding power of the secretary of state under new section 4B(1) to prescribe circumstances in which a business, which would otherwise be caught by the regulations, shall not be guilty of an offence. We could draw it to the attention of the lead committee that the bill does not confer on the Scottish ministers a power equivalent to that conferred on the secretary of state by new section 4B(1). Are we agreed?

**Members** *indicated agreement.*

**The Deputy Convener:** On clause 45, "Commencement", do we agree to report that the proposed power is acceptable in principle and that, in accordance with normal practice, it is appropriate that the commencement order is subject to no procedure?

**Members** *indicated agreement.*

## Draft Instrument subject to Approval

### Crofting (Designation of Areas) (Scotland) Order 2010 (Draft)

14:19

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

## Instruments subject to Annulment

### Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2009 (SSI 2009/412)

14:19

**The Deputy Convener:** The committee might wish to report that an explanation has been sought from and provided by the Scottish Government about the temporary effects of regulations 3(b), 3(d) and 6. The committee might also note that the Government has confirmed that it intends to make new principal regulations in March 2010 that will bring in new rates to be paid for less favoured area support for the scheme year 2010. Is that agreed?

**Members** *indicated agreement.*

### Control of Salmonella in Turkey Flocks (Scotland) Order 2009 (SSI 2009/417)

**The Deputy Convener:** The order is unusual. It was laid as subject to negative resolution procedure but, following the committee's challenge to that view, the Government has confirmed that the correct procedure that applies is that the order is not laid. We should therefore report that there has been a failure to follow proper legislative process. Is that agreed?

**Members** *indicated agreement.*

**The Deputy Convener:** We should also note that, although that failure has no effect on the validity or operation of the provisions in the order—the resulting error is contained in the italicised heading, which is not part of the operative provisions—the committee is highly critical of the absence of adequate quality control of the drafting process in relation to the order. Is that agreed?

**Members** *indicated agreement.*

### Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2009 (SSI 2009/428)

**The Deputy Convener:** This is another first, because, if the committee agrees, we will use a reporting ground that has not been used since devolution. Under rule 10.3.1(a) of the standing orders, the Subordinate Legislation Committee may report an instrument on the ground

“that it imposes a charge on the Scottish Consolidated Fund or contains provisions requiring payments to be made to that Fund”.

It is suggested that the committee might report the regulations on the following grounds. First, new regulation 47C of the Public Contracts (Scotland) Regulations 2006 (SSI 2006/1) and new regulation 45C of the Utilities Contracts (Scotland) Regulations 2006 (SSI 2006/2), as inserted by regulations 2(12) and 4(12) of the 2009 regulations, provide that the Scottish ministers shall pay into the Scottish consolidated fund any financial penalty ordered to be paid by them or recovered by them, when such a financial penalty is ordered by the court to be paid by a contracting authority under the regulations. However, in its response, the Scottish Government states that civil financial penalties that might be paid into the Scottish consolidated fund by virtue of new regulations 47C and 45C are not designated receipts for the purposes of sections 64(5) to 64(7) of the Scotland Act 1998. They are viewed, therefore, as payments into the fund, but not charged on the fund as designated receipts.

Secondly, regulations 2(4)(b)(i) and 2(5)(b)(i) are defectively drafted. Those provisions should refer to the word “ensure” where it first appears in regulations 17(23) and 18(23) of the Public Contracts (Scotland) Regulations 2006, rather than where it second appears. The Government intends to lay an amending instrument to ensure that the 2006 regulations are amended correctly on 20 December 2009 when the regulations come into force. Is that agreed?

**Members** *indicated agreement.*

**The Deputy Convener:** That was truly a historic moment. We made history and we did not even know it.

## **Instruments not laid before the Parliament**

### **Sheep and Goats (Records, Identification and Movement) (Scotland) Order 2009 (SSI 2009/414)**

14:24

**The Deputy Convener:** The committee might wish to report as satisfactory the Scottish Government's response on the meaning of the term "critical control point" as used in the order and, in consequence, the committee might wish to be content with the order. Are we agreed?

**Members** *indicated agreement.*

### **Criminal Proceedings etc (Reform) (Scotland) Act 2007 (Commencement No 8) Order 2009 (SSI 2009/432)**

### **Health Boards (Membership and Elections) (Scotland) Act 2009 (Commencement No 2) Order 2009 (SSI 2009/433)**

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

**The Deputy Convener:** The committee will now move into private session.

14:24

*Meeting continued in private until 14:34.*



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