



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# SUBORDINATE LEGISLATION COMMITTEE

Tuesday 27 April 2010

Session 3

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**Tuesday 27 April 2010**

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**SUBORDINATE LEGISLATION COMMITTEE**

**13<sup>th</sup> Meeting 2010, 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**

Irene Fleming

**LOCATION**

Committee Room 6



## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 27 April 2010*

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

### Patient Rights (Scotland) Bill: Stage 1

**The Convener (Jamie Stone):** I welcome everyone to the Subordinate Legislation Committee's 13<sup>th</sup> meeting in 2010. I record apologies from Jackson Carlaw and Margaret Curran and I ask members to turn off mobile phones and BlackBerrys.

Agenda item 1 is our first look at the Patient Rights (Scotland) Bill. As is usual, we shall consider powers on which questions have been raised. We shall consider a draft report on 11 May.

In section 7, "Treatment time guarantee: further provision", subsection (1) contains a duty to make provision about the treatment time guarantee. Do members agree to ask the Scottish Government why it does not consider that descriptions of patients who are eligible for the treatment time guarantee or criteria for determining the descriptions of eligible patients could be specified in the bill?

**Members indicated agreement.**

**The Convener:** Given the significance and effect of the exercise of the power, do we agree to ask why the Scottish Government does not consider that affirmative rather than negative procedure is more appropriate?

**Members indicated agreement.**

**Helen Eadie (Dunfermline East) (Lab):** Convener, I am puzzled as to why you have missed out the recommendations on sections 5(1) and 9(1).

**The Convener:** I refer you to page 3 of your legal brief.

**Helen Eadie:** Okay—my apologies, convener.

**The Convener:** Are you happy?

**Helen Eadie:** Yes.

**The Convener:** It is just as well that members are—

**Helen Eadie:** Rhoda Grant has a query.

**Rhoda Grant (Highlands and Islands) (Lab):** The legal brief asks whether we wish to consider whether the delegated power in section 5(1) is

acceptable in guidance rather than subordinate legislation. I thought that we would ask the Government about that.

**The Convener:** Can we return to that at the end of the item? Is that appropriate?

**Rhoda Grant:** Yes.

**The Convener:** The point is fair.

Section 7(3) makes further provisions about the treatment time guarantee. Given that the exercise of the power in the subsection might exclude specified treatments and services from the treatment time guarantee, do we agree to ask why the Scottish Government does not consider that affirmative rather than negative procedure is more appropriate?

**Members indicated agreement.**

**The Convener:** Section 7(4) contains the power to amend the maximum waiting time. Why does the Scottish Government consider it necessary to take the power to substitute any maximum waiting time for the 12-week maximum that is specified in the bill? Could not the power be drawn more narrowly? Do we agree to ask those questions?

**Members indicated agreement.**

**The Convener:** As the waiting time is a central provision, do we agree to ask whether the maximum should be set in primary legislation and whether only shorter periods should be specifiable by order?

**Members indicated agreement.**

**The Convener:** As the power provides the ability to amend the definition of "maximum waiting time" in section 10, which is a central policy matter, do we agree to ask what the justification is for the choice of negative rather than affirmative procedure?

**Members indicated agreement.**

**The Convener:** Section 21(1)(c) contains the power when making orders or regulations to make consequential, supplementary, incidental, transitional, transitory or saving provision in those orders or regulations. Given the power in section 20(1) to make ancillary provision by order, do we agree to ask what the justification is for the power in section 21(1)(c)?

**Members indicated agreement.**

**The Convener:** Given that the exercise of the bolt-on power in section 21(1)(c) when attached to a commencement order will not be subject to parliamentary scrutiny, do we agree to ask the Scottish Government whether it would be appropriate to make an amendment to the effect that section 21(1)(c) should not apply to commencement orders or that, when section

21(1)(c) is applied to a commencement order, it should be subject to negative procedure?

**Members** *indicated agreement.*

**The Convener:** Section 9(3) provides for suspension of the treatment time guarantee. Given that the treatment time guarantee is a key part of the bill and that directions do not allow any parliamentary scrutiny, what is the justification for suspending the treatment time guarantee by directions rather than by statutory instrument? Do we agree to ask that important question?

**Members** *indicated agreement.*

**The Convener:** Does the Scottish Government intend suspension of the treatment time guarantee to be specific—to apply to a specified health board or health boards or to a specified hospital or hospitals—or of general application? Could that be made clear in the bill? Do we agree to ask those questions?

**Members** *indicated agreement.*

**The Convener:** Do members wish to raise other points about the bill?

**Rhoda Grant:** I have raised an issue.

**The Convener:** We return to Rhoda Grant's point.

**Rhoda Grant:** The legal brief makes a similar point about section 9(1).

**The Convener:** I propose to discuss the matters in detail when we consider the draft report.

**Ian McKee (Lothians) (SNP):** The difference between guidance and subordinate legislation is that the organisation that is being guided can overrule guidance, whereas subordinate legislation is mandatory. The balance is in favour of providing as much freedom as possible.

**Rhoda Grant:** If we are going to ask the Government questions, would it not be wise to raise the points that are in the legal brief and to ask why the Government prefers guidance? That would help to inform us when we write our report.

**The Convener:** You want to ask the Government a general question.

**Rhoda Grant:** Yes—to have more information before we consider our report.

**The Convener:** We can ask the question—the suggestion is sensible. Is that all right? Are members happy?

**Ian McKee:** I am happy.

**The Convener:** Does that wrap up the matter?

**Members** *indicated agreement.*

**The Convener:** As I said, we will return to the bill to consider the responses at our meeting on 11 May, which is a fortnight hence.

## **Interpretation and Legislative Reform (Scotland) Bill: After Stage 2**

14:21

**The Convener:** We move on to agenda item 2. For the sake of tidiness and for the record, are we happy to note the supplementary provisions to make subordinate legislation that are detailed in the supplementary delegated powers memorandum in relation to the bill after stage 2 and to report to the Parliament that we are content with those provisions?

**Members** *indicated agreement.*

## **Draft Instruments Subject to Approval**

### **Climate Change (Annual Targets) (Scotland) Order 2010 (Draft)**

### **Climate Change (Limit on Carbon Units) (Scotland) Order 2010 (Draft)**

### **Carbon Accounting Scheme (Scotland) Regulations 2010 (Draft)**

14:22

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

## Instruments Subject to Annulment

### Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2010 (SSI 2010/144)

14:22

**The Convener:** Do we agree to report that we are content with the explanation that the Scottish Government has provided in relation to regulation 4(b), in so far as section 8A(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 as referred to in that regulation has not yet been brought into force, and with the Government's confirmation that section 8A shall be brought into force on the same date as the regulations are?

**Members** *indicated agreement.*

### Beet Seed (Scotland) (No 2) Regulations 2010 (SSI 2010/148)

**The Convener:** The regulations are an old friend. Members will recall that we reported the original regulations on several grounds and that the lead committee recommended that they be annulled. SSI 2010/148 revokes the original regulations and addresses the matters on which we reported.

Members are invited to note the response from the Cabinet Secretary for Rural Affairs and the Environment on the original regulations and to note that we can consider the quality control mechanisms to which the letter refers in the context of our annual report on Scottish Government commitments. There is a tick in the box—a success—but, to be fair, we will note those points. Is that agreed?

**Members** *indicated agreement.*

**The Convener:** Are we content with the reason that has been given for the failure of SSI 2010/148 to comply with the 21-day rule in article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SI 1999/1096)?

**Members** *indicated agreement.*

**The Convener:** Are the regulations satisfactory?

**Members:** Yes.

### Guar Gum (Restriction on First Placing on the Market) (Scotland) Revocation Regulations 2010 (SSI 2010/153)

**The Convener:** The next instrument concerns guar—I hope that I have pronounced that correctly—gum. We have only one question: are we content with the regulations and with the explanation that is provided in the letter to the Presiding Officer about the breach of the 21-day rule?

**Members** *indicated agreement.*

**Ian McKee:** They breached it when they came in and breach it when they go out.

**The Convener:** I see.

### Poultry Compartments (Fees) (Scotland) Order 2010 (SSI 2010/151)

### Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2010 (SSI 2010/152)

### Disposal of Land by Local Authorities (Scotland) Regulations 2010 (SSI 2010/160)

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



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

### **Act of Sederunt (Rules of the Court of Session Amendment No 3) (Miscellaneous) 2010 (SSI 2010/136)**

14:25

**The Convener:** Are we content with the explanations that the Lord President's private office has provided in respect of our questions 1 and 3? Do we agree to draw the Parliament's attention to the instrument on the ground that a drafting error has been made, in that the cross-references in rules 97.9(1), 97.10(2)(a) and 97.12(3)(b) should be to rule 97.8, to cover a reporting officer appointed under rule 97.8(1) or 97.8(4)?

**Members** *indicated agreement.*

**The Convener:** It should be noted that the Lord President's private office intends to correct the error when the opportunity arises—hopefully, very soon.

### **Act of Sederunt (Child Care and Maintenance Rules) Amendment (Human Fertilisation and Embryology Act 2008) 2010 (SSI 2010/137)**

**The Convener:** Are we content with the explanations that the Lord President's private office has provided in respect of our questions 1 and 3?

**Members** *indicated agreement.*

**The Convener:** Do we agree to draw the Parliament's attention to the instrument on the ground that a drafting error has been made, in that the cross-references in rules 2.51(1), 2.52(2)(a) and 2.54(3)(b) should be to rule 2.50, to cover a reporting officer appointed under rule 2.50(1) or 2.50(4)?

**Members** *indicated agreement.*

**The Convener:** Again, we should note that the Lord President's private office intends to correct the error when the opportunity arises.

## **Poultry Compartments (Scotland) Order 2010 (SSI 2010/150)**

### **Housing (Scotland) Act 2006 (Commencement No 8, Transitional Provisions and Savings) Order 2010 (SSI 2010/159)**

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

**The Convener:** That brings the meeting to a close. We will meet again a week today, on Tuesday 4 May 2010.

*Meeting closed at 14:27.*



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