



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 7 September 2010

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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1069
DRAFT INSTRUMENT SUBJECT TO APPROVAL	1070
Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) (No 2) Order 2010 (Draft)	1070
INSTRUMENTS SUBJECT TO ANNULMENT	1071
General Pharmaceutical Council (Transfer of Property, Rights and Liabilities, Fees and Grants) Order of Council 2010 (SI 2010/1618)	1071
Pharmacy Order 2010 (Registration — Transitional Provisions) Order of Council 2010 (SI 2010/1619)	1071
Pharmacy Order 2010 (Approved European Pharmacy Qualifications) Order 2010 (SI 2010/1620)	1071
Pharmacy Order 2010 (Commencement No 2) Order of Council 2010 (SI 2010/1621)	1072
Criminal Legal Assistance (Fees) (Scotland) Regulations 2010 (SSI 2010/270)	1072
Smoke Control Areas (Authorised Fuels) (Scotland) Regulations 2010 (SSI 2010/271)	1072
Less Favoured Area Support Scheme (Scotland) Regulations 2010 (SSI 2010/273)	1072
Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment (No 2) Rules 2010 (SSI 2010/274)	1073
Additional Support for Learning (Co-ordinated Support Plan and Dispute Resolution) (Scotland) Amendment Regulations 2010 (SSI 2010/275)	1074
Additional Support for Learning (Appropriate Agencies and Sources of Information) (Scotland) Amendment of Commencement Dates Order 2010 (SSI 2010/276)	1075
Charities Accounts (Scotland) Amendment Regulations 2010 (SSI 2010/287)	1075
General Pharmaceutical Council (Appeals Committee Rules) Order of Council 2010 (SI 2010/1614)	1075
General Pharmaceutical Council (Fitness to Practise and Disqualification etc Rules) Order of Council 2010 (SI 2010/1615)	1075
General Pharmaceutical Council (Statutory Committees and their Advisers Rules) Order of Council 2010 (SI 2010/1616)	1075
General Pharmaceutical Council (Registration Rules) Order of Council 2010 (SI 2010/1617)	1075
Smoke Control Areas (Exempt Fireplaces) (Scotland) Order 2010 (SSI 2010/272)	1079
Education (Treatment of Student Loans on Sequestration) (Scotland) Regulations 2010 (SSI 2010/300)	1080
Nutrition and Health Claims (Scotland) Amendment Regulations 2010 (SSI 2010/307)	1080
Addition of Vitamins, Minerals and Other Substances (Scotland) Amendment Regulations 2010 (SSI 2010/308)	1080
INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT	1082
Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No 1) Order 2010 (SSI 2010/297)	1081
Education (Additional Support for Learning) (Scotland) Act 2009 (Commencement No 2) Order 2010 (SSI 200/277)	1081
Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2010 (SSI 2010/279)	1081
Act of Adjournment (Criminal Procedure Rules Amendment No 2) (Presentation of Conviction Appeals in Writing) 2010 (SSI 2010/309)	1081
Act of Sederunt (Lands Valuation Appeal Court) 2010 (SSI 2010/310)	1081

SUBORDINATE LEGISLATION COMMITTEE

23rd Meeting 2010, Session 3

CONVENER

*Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

DEPUTY CONVENER

*Ian McKee (Lothians) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow) (SNP)

*Helen Eadie (Dunfermline East) (Lab)

*Rhoda Grant (Highlands and Islands) (Lab)

Alex Johnstone (North East Scotland) (Con)

*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Bill Aitken (Glasgow) (Con)

Ross Finnie (West of Scotland) (LD)

Karen Gillon (Clydesdale) (Lab)

Christopher Harvie (Mid Scotland and Fife) (SNP)

*attended

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 4

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 7 September 2010

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

Decision on Taking Business in
Private

The Convener (Jamie Stone): Welcome to the 23rd meeting this year of the Subordinate Legislation Committee. I hope that everyone has had a relaxing summer break. We have received apologies from Alex Johnstone. I ask everyone to turn off all mobiles, BlackBerrys and so on.

Item 1 is a decision on whether to take matters in private. The proposal is that, under item 5, we discuss the content of our draft report on the Wildlife and Natural Environment (Scotland) Bill in private. Do members agree to that proposal?

Members *indicated agreement.*

Draft Instrument subject to
Approval

Public Appointments and Public Bodies
etc (Scotland) Act 2003 (Treatment of
Office or Body as Specified Authority) (No
2) Order 2010 (Draft)

14:15

The committee agreed that no points arose on the instrument.

Instruments subject to Annulment

General Pharmaceutical Council (Transfer of Property, Rights and Liabilities, Fees and Grants) Order of Council 2010 (SI 2010/1618)

14:16

The Convener: The order contains an error. The text of article 6(1) is incomplete. The words “by or” have been omitted where reference is made to the “Council”—the General Pharmaceutical Council. That is inconsistent with the terms of the earlier reference in that article to the “Society”—the Royal Pharmaceutical Society.

Unfortunately, our good friend the Scottish Government has not given us its view on whether the error affects the operation of the order so as to merit a full correction. However, the Westminster Department of Health intends to arrange for the matter to be addressed by means of the correction slip process. By saying that, we are at least putting that point on the record, in order to cover ourselves. Are members content to report in those terms?

Members indicated agreement.

Pharmacy Order 2010 (Registration — Transitional Provisions) Order of Council 2010 (SI 2010/1619)

The Convener: The order contains two drafting errors. References in article 5(11) to paragraph (11) and in article 5(14) to paragraph (12) should be to paragraph (12) and paragraph (13) respectively. The errors are not considered likely to affect the operation of the order and the Westminster Department of Health intends to issue correction slips and to amend the electronic version of the order on the Office of Public Sector Information website. We are putting that point on the record. Are we content to report in those terms?

Members indicated agreement.

Pharmacy Order 2010 (Approved European Pharmacy Qualifications) Order 2010 (SI 2010/1620)

The Convener: There is an error in the first paragraph of the explanatory note in that the order does not currently provide for the recognition of pharmacy qualifications awarded by Switzerland. Do we agree to report that point and to report that we are otherwise content with the order but for the Swiss problem?

Members indicated agreement.

Pharmacy Order 2010 (Commencement No 2) Order of Council 2010 (SI 2010/1621)

The Convener: There is a drafting error in respect of the inclusion, in the schedule to the order, of a reference to schedule 1 to the Pharmacy Order 2010 (SI 2010/231),

“in so far as not already in force”,

being commenced under SI 2010/1621. However, schedule 1 to SI 2010/231 has already been brought into force by other provision.

The error essentially concerns a superfluous reference that is not considered likely to affect the validity or operation of the order. Are we content to report in the terms that I have outlined?

Members indicated agreement.

Criminal Legal Assistance (Fees) (Scotland) Regulations 2010 (SSI 2010/270)

The Convener: Are we content with the reason given for the 21-day rule not having been complied with and are we otherwise content with the regulations?

Members indicated agreement.

Smoke Control Areas (Authorised Fuels) (Scotland) Regulations 2010 (SSI 2010/271)

The Convener: The proposal is that we report the regulations in the following terms. First, paragraph 46 of the schedule to the regulations appears to be defectively drafted as it fails to regulate the manner of burning of the fuel Unicite, as well as its composition at the point of sale. It is recommended that the Scottish Government rectify that error to ensure the proper operation of the regulations.

Secondly, a typographical error appears in paragraph 46(a)(ii), as the reference to sub-paragraph (d) should be to sub-paragraph (c). We welcome the Scottish Government's commitment to rectify the error at the earliest opportunity. Is that agreed?

Members indicated agreement.

Less Favoured Area Support Scheme (Scotland) Regulations 2010 (SSI 2010/273)

The Convener: Are we satisfied with the explanation provided by the Scottish Government for the breach of the 21-day rule on the time between the laying of regulations and their coming into force?

Members indicated agreement.

The Convener: We should also draw it to the attention of the lead committee that, given that the breach of the rule in this instance has meant that we are considering the regulations some two months after they have been brought into force, it would have been better if the letter to the Presiding Officer had explained in greater detail the actions that were scheduled in advance to prepare the regulations and the circumstances that led to it not being possible to make and lay the regulations any earlier than 1 July 2010. Is that agreed?

Members indicated agreement.

The Convener: It is proposed that we report in the following terms. First, the meaning of regulation 10(3) could be clearer in the respect that it applies where “the hectare multiplier”, which is one of two figures specified in schedule 8 to the regulations,

“is unrepresentative of the usual enterprise mix of the applicant”—

when it appears that the policy intention is, rather, that it should refer to where the enterprise mix of livestock units, after the culling of stock in accordance with regulation 10(3), becomes unrepresentative of the usual mix.

Secondly, the response to the committee confirms that the policy intention is that the applicant farmer should determine whether the “enterprise mix” of livestock becomes unrepresentative, but that is not specified in regulation 10(3).

Finally, the last two lines could make it clearer that the Scottish ministers may substitute a figure of their own choice as the hectare multiplier for the purposes of the formula in regulation 10(1) independently from the figures in schedule 8.

Is that agreed?

Members indicated agreement.

Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment (No 2) Rules 2010 (SSI 2010/274)

The Convener: Again, are we content with the reason given for the breach of the 21-day rule and are we otherwise happy with the instrument?

Members indicated agreement.

Additional Support for Learning (Co-ordinated Support Plan and Dispute Resolution) (Scotland) Amendment Regulations 2010 (SSI 2010/275)

The Convener: We have a breach of the 21-day rule. Are we content with the explanation for that?

Helen Eadie (Dunfermline East) (Lab): I think that we are content, convener, but we should send a message to the Government that it cannot simply go on breaking the 21-day rule without giving it much deeper thought. Somebody, somewhere needs to be taking action to avoid that. Parliament really should not be put in this position all the time.

The Convener: That is now on the record. We could be stronger and ask the clerks to write a letter for my signature to point that out.

Helen Eadie: Yes.

The Convener: That is a firm suggestion from Helen Eadie. Are we in broad agreement with it?

Ian McKee (Lothians) (SNP): It depends on the reasons why the rule has been broken. If there is a good reason each time, there is not much point—

The Convener: I suppose that Helen Eadie’s point is that we have just gone through a string of such breaches, have we not?

Helen Eadie: We have. The other point is that we had big long debates just prior to breaking up for the recess about 28-day rules, 21-day rules and 42-day rules. We said that there should be a 21-day rule. We should send a message to the Government that we want to stick to the 21-day rule, because it gave us good explanations as to why it did not want to go to a 28-day rule. That is okay, but it has to get its act together on the 21-day rule.

Ian McKee: I would agree if it can be shown that the 21-day rule is being breached in a casual manner. We need first to find out whether the 21-day rule is being breached for reasons that we think are acceptable.

The Convener: I have just been reminded that this matter will of course be covered in our annual report. We could ask our clerks and legal team to go away and look at what we have just talked about and come back at our next meeting with a draft letter that we could send where, in their opinion, the criticism is valid. Perhaps in other cases the explanation is acceptable. That would bring both points together. Is that all right?

Ian McKee: Yes, I agree with that.

Helen Eadie: Yes.

The Convener: All right. Thank you very much. We have dealt with the 21-day rule in some detail.

There is also the point that the regulations address an inconsistency in the wording used in new regulations inserted by the Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2010 (SSI 2010/149). The committee had drawn the inconsistency to the Scottish Government's attention. Are we therefore content with the regulations?

Members *indicated agreement.*

**Additional Support for Learning
(Appropriate Agencies and Sources of
Information) (Scotland) Amendment of
Commencement Dates Order 2010 (SSI
2010/276)**

The Convener: Once again, the question is whether we are content with the reasons for the 21-day rule not having been complied with. Given what we have said, we are content at this stage, but with the caveat—

Helen Eadie: Add it to the list.

The Convener: Otherwise, are we happy with the order?

Members *indicated agreement.*

**Charities Accounts (Scotland) Amendment
Regulations 2010 (SSI 2010/287)**

The Convener: Do we agree to report that an explanation has been provided as to the meaning and effect of regulation 9(a) and that we are satisfied with it?

Members *indicated agreement.*

**General Pharmaceutical Council (Appeals
Committee Rules) Order of Council 2010
(SI 2010/1614)**

**General Pharmaceutical Council (Fitness
to Practise and Disqualification etc Rules)
Order of Council 2010 (SI 2010/1615)**

**General Pharmaceutical Council (Statutory
Committees and their Advisers Rules)
Order of Council 2010 (SI 2010/1616)**

**General Pharmaceutical Council
(Registration Rules) Order of Council 2010
(SI 2010/1617)**

**Smoke Control Areas (Exempt Fireplaces)
(Scotland) Order 2010 (SSI 2010/272)**

**Education (Treatment of Student Loans on
Sequestration) (Scotland) Regulations
2010 (SSI 2010/300)**

**Nutrition and Health Claims (Scotland)
Amendment Regulations 2010 (SSI
2010/307)**

**Addition of Vitamins, Minerals and Other
Substances (Scotland) Amendment
Regulations 2010 (SSI 2010/308)**

The committee agreed that no points arose on the instruments.

Instruments not laid before the Parliament

Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No 1) Order 2010 (SSI 2010/297)

14:26

The Convener: Are we content with the order and with the account provided by the Scottish Government as to why it was necessary to bring the order into force immediately following upon the act receiving royal assent, and without the usual period between making the order and it coming into force?

Members *indicated agreement.*

Education (Additional Support for Learning) (Scotland) Act 2009 (Commencement No 2) Order 2010 (SSI 200/277)

Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2010 (SSI 2010/279)

Act of Adjournal (Criminal Procedure Rules Amendment No 2) (Presentation of Conviction Appeals in Writing) 2010 (SSI 2010/309)

Act of Sederunt (Lands Valuation Appeal Court) 2010 (SSI 2010/310)

The committee agreed that no points arose on the instruments.

The Convener: As agreed earlier, we now move into private. Our thanks go to the official report.

14:27

Meeting continued in private until 14:31.

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