



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# SUBORDINATE LEGISLATION COMMITTEE

Tuesday 5 October 2010

Session 3

---

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2010

Applications for reproduction should be made in writing to the Information Policy Team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by email to:  
[licensing@ogps.gov.uk](mailto:licensing@ogps.gov.uk).

OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by  
RR Donnelley.

---

**Tuesday 5 October 2010**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1117</b>
<b>DRAFT INSTRUMENTS SUBJECT TO APPROVAL .....</b>	<b>1118</b>
Sexual Offences (Scotland) Act 2009 (Supplemental and Consequential Provisions) Order 2010 (Draft) .....	1118
Legal Profession and Legal Aid (Scotland) Act 2007 (Membership of the Scottish Legal Complaints Commission) Amendment Order 2010 (Draft) .....	1118
Protected Trust Deeds (Scotland) Amendment Regulations 2010 (Draft) .....	1118
Bankruptcy (Certificate for Sequestration) (Scotland) Regulations 2010 (Draft) .....	1118
<b>INSTRUMENTS SUBJECT TO ANNULMENT .....</b>	<b>1119</b>
Materials and Articles in Contact with Food (Scotland) Regulations 2010 (SSI 2010/327) .....	1119
Food Irradiation (Scotland) Amendment Regulations 2010 (SSI 2010/328) .....	1119
Firefighters' Pension Scheme Amendment (Scotland) (No 2) Order 2010 (SSI 2010/332) .....	1119
Firefighters' Pension Scheme (Scotland) Order 2007 Amendment (No 2) Order 2010 (SSI 2010/333) .....	1120
Special Restrictions on Adoptions from Haiti (Scotland) Order 2010 (SSI 2010/341) .....	1120
Plant Health (Scotland) Amendment (No 2) Order 2010 (SSI 2010/342) .....	1121
<b>INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT .....</b>	<b>1122</b>
Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No 2) Order 2010 (SSI 2010/339) .....	1122
Protection of Vulnerable Groups (Scotland) Act 2007 (Commencement No 4) and the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No 3) Order 2010 (SSI 2010/344) .....	1122
Tobacco and Primary Medical Services (Scotland) Act 2010 (Commencement No 1, Consequential and Saving Provisions) Order 2010 (SSI 2010/345) .....	1122
<b>PROPERTY FACTORS (SCOTLAND) BILL: STAGE 1 .....</b>	<b>1123</b>

---

**SUBORDINATE LEGISLATION COMMITTEE**

**27<sup>th</sup> 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 5 October 2010*

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

### Decision on Taking Business in Private

**The Convener (Jamie Stone):** I welcome everyone to the 27<sup>th</sup> meeting in 2010 of the Subordinate Legislation Committee. We have received apologies from Alex Johnstone and Elaine Smith. I ask members to turn off mobile phones and BlackBerrys.

Agenda item 1 is a decision on taking business in private. It is proposed that under item 6 we discuss in private our approach to consideration of reports laid under section 26 of the Public Services Reform (Scotland) Act 2010. Do members agree?

**Members indicated agreement.**

### Draft Instruments subject to Approval

#### Sexual Offences (Scotland) Act 2009 (Supplemental and Consequential Provisions) Order 2010 (Draft)

#### Legal Profession and Legal Aid (Scotland) Act 2007 (Membership of the Scottish Legal Complaints Commission) Amendment Order 2010 (Draft)

#### Protected Trust Deeds (Scotland) Amendment Regulations 2010 (Draft)

#### Bankruptcy (Certificate for Sequestration) (Scotland) Regulations 2010 (Draft)

14:15

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

## Instruments subject to Annulment

### Materials and Articles in Contact with Food (Scotland) Regulations 2010 (SSI 2010/327)

14:16

**The Convener:** Do we agree to welcome the Scottish Government's clarification of the scope of the offence of contravening regulation 8 as set out in its response?

**Members indicated agreement.**

**The Convener:** Do we agree to report that the reference to the transitional defence in relation to regenerated cellulose film in the explanatory note is an error and to welcome the Scottish Government's commitment to correct that by correction slip?

**Members indicated agreement.**

### Food Irradiation (Scotland) Amendment Regulations 2010 (SSI 2010/328)

**The Convener:** Do we agree to report that the Scottish Government has explained how regulation 4 makes the necessary correction to properly transpose the requirements of articles 8 and 9 of directive 1999/2/EC, on which we reported in our 39<sup>th</sup> report of 2009 in relation to the Food Irradiation (Scotland) Regulations 2009 (SSI 2009/261), and that we are satisfied with that explanation?

**Members indicated agreement.**

### Firefighters' Pension Scheme Amendment (Scotland) (No 2) Order 2010 (SSI 2010/332)

**The Convener:** Do we agree to draw it to the Parliament's attention that the risk of volatility in the pension provision is to be borne by the Scottish consolidated fund rather than by the operating accounts of the fire and rescue authorities? That is in so far as, first, new rule LA6(1), which is inserted by article 8, will result in the imposition of a charge on the consolidated fund if the Scottish ministers determine to pay to a fire and rescue authority under that rule any sums that are transferred under rule LA5(1), which covers transfers between the pension account and the operating account, out of moneys that are provided by the Parliament; and secondly, new rule LA6(2), which is also inserted by article 8, will result in sums being paid into the consolidated fund when otherwise they would not be, if the Scottish ministers determine to require fire and

rescue authorities to pay any sums that are transferred under rule LA5(2) into the fund.

Do we also agree to highlight the response, which contains further explanation of how those payments could arise, for the attention of the lead committee and the Parliament?

**Members** *indicated agreement.*

**Firefighters' Pension Scheme (Scotland)  
Order 2007 Amendment (No 2) Order 2010  
(SSI 2010/333)**

**The Convener:** Do we agree to draw it to the Parliament's attention that, again, the risk of volatility in the pension provision is to be borne by the Scottish consolidated fund rather than by the operating accounts of the fire and rescue authorities? That is in so far as, first, new rule 6(1) in part 13B, which is inserted by the schedule, will result in the imposition of a charge on the consolidated fund if the Scottish ministers determine to pay to a fire and rescue authority under that rule any sums that are transferred under new rule 5(1), which covers transfers between the pension account and the operating account, out of moneys that are provided by the Parliament; and secondly, new rule 6(2) in part 13B, which is also inserted by the schedule, will result in sums being paid into the consolidated fund when otherwise they would not be, if the Scottish ministers determine to require fire and rescue authorities to pay any sums that are transferred under rule 5(2) into the fund.

Do we also agree to highlight the response, which contains further explanation of how those payments could arise, for the attention of the lead committee and the Parliament?

**Members** *indicated agreement.*

**Special Restrictions on Adoptions from  
Haiti (Scotland) Order 2010 (SSI 2010/341)**

**The Convener:** Do we agree to note the explanation that the Scottish Government gave in its letter to the Presiding Officer of 23 September 2010 for the failure to comply with article 10(2) of the Scotland Act (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SI 1999/1096), but to note that the explanation does not adequately address the matter of necessity in terms of why it was not possible to comply with the 21-day rule in this case? Do we agree to draw the matter to the lead committee's attention for consideration?

**Members** *indicated agreement.*

**The Convener:** Are we otherwise content with the order?

**Members** *indicated agreement.*

**Plant Health (Scotland) Amendment (No 2)  
Order 2010 (SSI 2010/342)**

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

**Instruments not laid before the  
Parliament**

**Criminal Justice and Licensing (Scotland)  
Act 2010 (Commencement No 2) Order  
2010 (SSI 2010/339)**

**Protection of Vulnerable Groups  
(Scotland) Act 2007 (Commencement No  
4) and the Criminal Justice and Licensing  
(Scotland) Act 2010 (Commencement No  
3) Order 2010 (SSI 2010/344)**

**Tobacco and Primary Medical Services  
(Scotland) Act 2010 (Commencement No 1,  
Consequential and Saving Provisions)  
Order 2010 (SSI 2010/345)**

14:21

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

## Property Factors (Scotland) Bill: Stage 1

14:21

**The Convener:** I had to pay some attention to the legal brief on this item. The Property Factors (Scotland) Bill is a member's bill and there is no requirement for the member in charge of the bill to produce a delegated powers memorandum. That is the rule with such bills, but we are still required to consider and report on all proposed delegated powers. There are a number of such powers in the bill and our advisers have provided a briefing on them, which I have been reading in some detail. Our advisers have suggested that we seek further information from Patricia Ferguson, who is the member in charge of the bill, as follows.

Section 3(4) is on fees for applications. Do we agree to ask Patricia Ferguson, in relation to sections 3(4), 3(5) and 7(4), to explain how the Scottish ministers, at the date of exercising the delegated powers to prescribe the fee levels, would be in a position to comply with the duty in section 3(5) to ensure that fee income under sections 3 and 7,

"taking one financial year with another",

does not exceed the cost of exercising the functions under part 1, given that it appears that future fee income and perhaps the cost of exercising the bill functions for any future financial year might be only estimated amounts at the date of making any regulations and that the fee income that is received might depend on the number of applications?

Do we also agree to ask on what dates it is to be established that the Scottish ministers have complied with the requirement in section 3(5) by prescribing the fee levels in regulations and, in the absence of provision in that section, what the consequences would be if there was a failure to comply?

**Members indicated agreement.**

**The Convener:** Section 13 is on the code of conduct for property factors. Do we agree to ask Patricia Ferguson to explain why it is considered an appropriate level of scrutiny of the code of conduct for it to be laid in the Parliament before it is published but without a stated period of time for the Parliament to consider it in its laid form before publication or any requirement for approval by resolution?

**Members indicated agreement.**

**The Convener:** Section 26 is on the delegation of functions. Do we agree to ask Patricia Ferguson to explain why the negative resolution procedure is

considered the appropriate level of scrutiny for the delegated power in section 26, given the apparent significance of that power to delegate functions under the bill?

**Members indicated agreement.**

**The Convener:** We will consider the responses and a draft report when we meet again on 26 October, after the short break.

I thank the official report. We will now move into private session.

14:24

*Meeting continued in private until 14:27.*





Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

Members who wish to suggest corrections for the archive edition should mark them clearly in the report or send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP.

#### PRICES AND SUBSCRIPTION RATES

##### OFFICIAL REPORT daily editions

*Single copies: £5.00*

*Meetings of the Parliament annual subscriptions: £350.00*

##### WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by RR Donnelley and is available from:

#### Scottish Parliament

**All documents are available on the Scottish Parliament website at:**

**[www.scottish.parliament.uk](http://www.scottish.parliament.uk)**

For more information on the Parliament, or if you have an inquiry about information in languages other than English or in alternative formats (for example, Braille, large print or audio), please contact:

#### Public Information Service

The Scottish Parliament  
Edinburgh EH99 1SP

**Telephone: 0131 348 5000**

**Fòn: 0131 348 5395** (Gàidhlig)

**Textphone users** may contact us on **0800 092 7100**.

We also welcome calls using the Text Relay service.

**Fax: 0131 348 5601**

**E-mail: [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)**

We welcome written correspondence in any language.

#### 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, subscriptions and standing orders**  
**[business.edinburgh@blackwell.co.uk](mailto:business.edinburgh@blackwell.co.uk)**

#### 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.

#### Accredited Agents

(see Yellow Pages)

and through other good booksellers

e-format first available  
ISBN 978-1-4061-6803-7

Revised e-format available  
ISBN 978-0-85758-133-4

Revised e-format ISBN 978-0-85758-133-4