



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# SUBORDINATE LEGISLATION COMMITTEE

Tuesday 7 December 2010

Session 3

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**Tuesday 7 December 2010**

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**SUBORDINATE LEGISLATION COMMITTEE**

**34<sup>th</sup> Meeting 2010, Session 3**

**CONVENER**

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

**DEPUTY CONVENER**

\*Bob Doris (Glasgow) (SNP)

**COMMITTEE MEMBERS**

Helen Eadie (Dunfermline East) (Lab)  
Rhoda Grant (Highlands and Islands) (Lab)  
Alex Johnstone (North East Scotland) (Con)  
\*Ian McKee (Lothians) (SNP)  
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 6



## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 7 December 2010*

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

### Decision on Taking Business in Private

**The Deputy Convener (Bob Doris):** I welcome members to the 34<sup>th</sup> meeting in 2010 of the Subordinate Legislation Committee. We have a number of apologies this afternoon, from Jamie Stone, Elaine Smith, Helen Eadie, Rhoda Grant and Alex Johnstone. I suspect that the weather has put paid to their attempts to attend today's meeting, as was the case with last week's meeting.

I welcome Ross Finnie as a substitute for Jamie Stone, and Bill Aitken—for a second week running—as a substitute for Alex Johnstone. I thank you both for attending the meeting to allow it to go ahead. I ask members to turn off any mobile phones or BlackBerrys.

It is proposed that the committee discusses items 6, 7, 8 and 9 in private. Does the committee agree to do so?

**Members indicated agreement.**

## Instrument subject to Approval

### Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010 (SSI 2010/370)

14:16

**The Deputy Convener:** Does the committee agree that the Scottish Government has provided a satisfactory response on the matter that has been raised concerning the interaction between paragraphs (a) and (f) of new section 88C(4) of the Sexual Offences Act 2003, and is the committee content with the instrument?

**Members indicated agreement.**

**Bill Aitken (Glasgow) (Con):** The issue, once again, is that the fact that we were signed up under the Scotland Act 1998 to the European convention on human rights is causing problems with Scots law. The amount of money and hassle that that has caused, to the detriment of the Scottish legal system, is really quite disturbing. I have no objection to what is proposed in the order, as it is simply plugging a gap, but the gap should not have been there to be plugged.

**The Deputy Convener:** I thank Bill Aitken for putting that on the record. It is for this committee to ensure that the structure under which it operates is appropriate, not to decide on the policy with regard to whether we should have signed up to the ECHR.

Does the committee also agree to draw to the attention of the lead committee new section 88H of the 2003 act and the power to amend the maximum notification periods? The power can be used to extend the period as well as to shorten it, and we might suggest to the lead committee that it may wish to explore the need for that.

**Members indicated agreement.**

**Bill Aitken:** I am sure that the lead committee will have some sport in that respect.

**The Deputy Convener:** I suspect that you are on that particular committee, Mr Aitken.

## Draft Instruments subject to Approval

### Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Regulations 2010 (Draft)

14:17

**The Deputy Convener:** Our legal advisers have noted in the legal brief a number of points on the regulations. Does the committee agree to report the regulations on the grounds that are set out in the summary of recommendations?

**Members** *indicated agreement.*

### Public Appointments and Public Bodies etc (Scotland) Act 2003 (Amendment of Specified Authorities) Order 2011 (Draft)

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

## Instruments subject to Annulment

### Beef and Veal Labelling (Scotland) Regulations 2010 (SSI 2010/402)

14:18

**The Deputy Convener:** Does the committee agree to report that, if the intention is that enforcement powers should not be available in relation to domestic premises, that could be more clearly expressed in regulation 7(1)?

**Members** *indicated agreement.*

**The Deputy Convener:** Is the committee content with the explanation that the Scottish Government has provided with regard to the enforcement notice procedure?

**Members** *indicated agreement.*

### Community Health Partnerships (Scotland) Amendment Regulations 2010 (SSI 2010/422)

*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 6, Transitional and Savings Provisions) Order 2010 (SSI 2010/413)

14:19

**The Deputy Convener:** The committee accepts that the order is *intra vires*. In general, however, where an enabling act provides for a particular power to make transitional or savings provisions in connection with the coming into force of the provisions of the act, such as the power in section 205(1) of the Criminal Justice and Licensing (Scotland) Act 2010, the committee would expect that power to be used to make such provisions, rather than any more general power, such as that in section 201(2)(a) of the 2010 act.

There is quite a lot in that; I assume that members were diligently following every word of it.

The committee notes that, as a result of the Government's choice of power, there is no parliamentary scrutiny of the ancillary provisions when section 205(1) provides for negative procedure.

Does the committee agree to report in those terms?

**Members** *indicated agreement.*

### Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendment) (No 2) 2010 (SSI 2010/416)

### Act of Sederunt (Rules of the Court of Session Amendment No 5) (Miscellaneous) 2010 (SSI 2010/417)

### Act of Adjournal (Criminal Procedure Rules Amendment No 4) (Miscellaneous) 2010 (SSI 2010/418)

### Sheep Scab (Scotland) Order 2010 (SSI 2010/419)

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

**The Deputy Convener:** As agreed earlier, we move into private session.

14:20

*Meeting continued in private until 14:32.*

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