



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 22 February 2011

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Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
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SUBORDINATE LEGISLATION COMMITTEE

5th Meeting 2011, 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 5

Scottish Parliament

Subordinate Legislation Committee

Tuesday 22 February 2011

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

Decision on Taking Business in Private

The Convener (Jamie Stone): I welcome everyone to the fifth meeting this year of the Subordinate Legislation Committee. I welcome Katie Boyle, a trainee solicitor who has been seconded to us. Katie has been with us for six months, but she is going back to Victoria Quay. We will almost certainly see her again, perhaps in a more formal capacity at the end of the table—we will wait and see on that one. Thanks for all that you have done, Katie.

I have received no apologies. I am assuming that our colleague Helen Eadie will join us. I ask everyone to turn off mobiles and BlackBerrys.

The first agenda item is a decision on taking matters in private. The proposal is that we take items 9 to 12 in private. Is that okay?

Members *indicated agreement.*

Instrument subject to Approval

Muntjac Keeping (Scotland) Order 2011

14:16

The committee agreed that no points arose on the order.

Draft Instruments subject to Approval

Children's Hearings (Scotland) Act 2011 (Consequential Provision) and Public Appointments and Public Bodies etc (Scotland) Act 2003 (Amendment of Specified Authorities) Order 2011 (Draft)

14:16

The Convener: Do we agree to report that the order contains a minor drafting error in the numbering of the new paragraph to be inserted in section 6A(1) of the Social Work (Scotland) Act 1968, which the Scottish Government intends to correct if the order is approved by the Parliament?

Members *indicated agreement.*

Water Environment (Controlled Activities) (Scotland) Regulations 2011 (Draft)

The Convener: Do we agree to report that the meaning and effect of regulation 18(6) could be clearer in that it appears to exempt the Scottish Environment Protection Agency from applying the requirements of the water framework directive and groundwater directive when considering emergency applications in so far as that would not be reasonably practicable, when, separately, SEPA is under a duty to secure compliance with the directives by virtue of section 2(1) of the Water Environment and Water Services (Scotland) Act 2003?

Members *indicated agreement.*

The Convener: We should also welcome that the Government withdrew an earlier draft of the regulations to address drafting errors identified by the committee, which is good news.

Waste Management Licensing (Scotland) Regulations 2011 (Draft)

Radioactive Substances Act 1993 Amendment (Scotland) Regulations 2011 (Draft)

The Convener: Although we are content with the regulations, we might also wish to note and welcome that they replace an earlier version, which contained a drafting error that was picked up. We are doing good work. Is that agreed?

Members *indicated agreement.*

**Social Care and Social Work Improvement
Scotland (Requirements for Care Services)
Regulations 2011 (Draft)**

The Convener: We might wish to welcome that the Scottish Government withdrew the earlier draft of the regulations and laid this revised version after we identified some drafting errors. They appear to be corrected—more good news. Are we content with the regulations?

Members indicated agreement.

The Convener: Thank you. I wonder whether this roll will last.

**Interpretation and Legislative Reform
(Scotland) Act 2010 (Consequential
Provisions) Order 2011 (Draft)**

**Scottish Statutory Instruments
Regulations 2011 (Draft)**

The Convener: Our good friend the Minister for Parliamentary Business will give evidence on the instruments at our meeting next week. As we are the lead committee we will consider the policy aspect of the instruments.

I welcome Helen Eadie to the committee.

Helen Eadie (Dunfermline East) (Lab): I am sorry for arriving late.

The Convener: That is entirely accepted.

It is good news that the minister is coming next week—I think that that will be a first for me.

**Public Services Reform (Scotland) Act
2010 (Consequential Modifications) Order
2011 (Draft)**

**Advice and Assistance and Civil Legal Aid
(Financial Conditions and Contributions)
(Scotland) Regulations 2011 (Draft)**

**Advice and Assistance (Assistance by
Way of Representation) (Scotland)
Amendment (No 2) Regulations 2011
(Draft)**

**Debt Arrangement Scheme (Interest, Fees,
Penalties and Other Charges) (Scotland)
Regulations 2011 (Draft)**

The committee agreed that no points arose on the instruments.

**Instruments subject to
Annulment**

**Edinburgh College of Art (Transfer)
(Scotland) Order 2011 (SSI 2011/54)**

14:19

The Convener: We have seen the legal brief. This is a significant matter, so we might want to discuss it. Do we agree to report that there appears to be a doubt whether article 3 is *intra vires*, in that it purports to regulate the constitution and internal affairs of the University of Edinburgh and that there is doubt as to whether that can properly be said to be incidental, supplementary or ancillary to the closure and winding up of Edinburgh College of Art?

Do we also agree to report that the meaning and effect of article 7 could be clearer, in respect that the order fails to define the Edinburgh College of Art prize fund, to which the article applies—either of new or by the continuation in effect of previous statutory provisions for that purpose—and so it is unclear to what transferred property the conditions imposed by that article apply?

Ian McKee (Lothians) (SNP): Yes. There appears to be doubt, so it should be brought to the attention of the lead committee.

The Convener: Yes. The word “doubt” is in the *Official Report*. We are fulfilling our duty in that we are sending out the signals. Are members happy with that?

Members indicated agreement.

**National Health Service (Free
Prescriptions and Charges for Drugs and
Appliances) (Scotland) Regulations 2011
(SSI 2011/55)**

The Convener: There are some drafting errors, which I invite the committee to agree to report on the general reporting ground. Reference to “regulation 3(1)(b)” in paragraphs 1 and 2(3) of the schedule should be to “regulation 3(2)(b)”. Also, the words “are amended as follows” have been omitted from paragraph 5(1) of the schedule. Is that agreed?

Members indicated agreement.

**Home Energy Assistance Scheme
(Scotland) Amendment Regulations 2011
(SSI 2011/56)**

**Sea Fishing (EU Recording and Reporting
Requirements) (Scotland) Amendment
Order 2011 (SSI 2011/59)**

**Aquaculture and Fisheries (Scotland) Act
2007 (Fixed Penalty Notices) Amendment
Order 2011 (SSI 2011/60)**

**Scottish Crime and Drug Enforcement
Agency (Scotland) Regulations 2011 (SSI
2011/61)**

**Police Grant (Scotland) Order 2011 (SSI
2011/62)**

**Local Authority Accounts (Scotland)
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**Less Favoured Area Support Scheme
(Scotland) Amendment Regulations 2011
(SSI 2011/73)**

**Non-Domestic Rates (Levying) (Scotland)
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**Additional Support Needs for Tribunals for
Scotland (Appointment of President,
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Disqualification) Amendment Regulations
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**Additional Support Needs Tribunals for
Scotland (Disability Claims Procedure)
Rules 2011 (SSI 2011/104)**

**Additional Support Needs Tribunals for
Scotland (Practice and Procedure)
Amendment Rules 2011 (SSI 2011/105)**

**Health Professions Council (Registration
and Fees) (Amendment) (No2) Rules 2010
Order of Council 2011 (SI 2011/210)**

The committee agreed that no points arose on the instruments.

The Convener: Can we note and welcome that regulation 7 of SSI 2011/73 makes some drafting clarifications to regulation 10 of the Less Favoured Area Support Scheme (Scotland) Regulations

2010 (SSI 2010/273), in response to our report on those regulations?

Members *indicated agreement.*

Instruments not laid before the Parliament

**Marine (Scotland) Act 2010
(Commencement No 2 and Transitional Provisions) Order 2011 (SSI 2011/58)**

Muntjac Keeping (Scotland) Regulations 2011 (SSI 2011/63)

Fire and Rescue Authorities (Appointment of Chief Inspector) Order 2011 (SSI 2011/65)

Non-Domestic Rates (Levying) (Scotland) (No 3) Regulations 2010 Revocation Order 2011 (SSI 2011/76)

Sheep Scab (Scotland) Amendment Order 2011 (SSI 2011/77)

Act of Sederunt (Rules of Court of Session Amendment) (Taxation of Accounts and Fees of Solicitors) 2011 (SSI 2011/87)

Right to Purchase (Application Form) (Scotland) Order 2011 (SSI 2011/97)

14:22

The committee agreed that no points arose on the instruments.

The Convener: We might also note that SSI 2011/76 has been brought forward to revoke the Non-Domestic Rates (Levying) (Scotland) (No 3) Regulations 2010 (SSI 2010/44), which was annulled by the Parliament. The timescale for revocation of the order is 31 March, which appears to be unnecessarily tardy, given that it was due to come into force on 1 April. However, the Scottish Government has elected to match the coming into force date of 31 March set in the Non-Domestic Rates (Levying) (Scotland) Amendment Regulations 2011 (SSI 2011/74), which ensures that those properties that will not now pay the large retail supplement pay the higher rate set by the Non-Domestic Rates (Levying) (Scotland) (No 2) Regulations 2010 (SSI 2010/440). That date was set as the latest possible to allow the maximum time for parliamentary scrutiny. Is that acceptable?

Members *indicated agreement.*

Certification of Death (Scotland) Bill: After Stage 1

14:24

The Convener: We come to item 6—we ought to have a drum roll for this really. Members will have seen the response from the Government to our stage 1 report. Given that the Government will do as we requested, and the fact that we will reconsider the powers in the bill after stage 2 has been completed, do members agree to note the response at this stage?

Members *indicated agreement.*

Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill: After Stage 1

14:24

The Convener: We have seen the Government's response to our stage 1 report. We questioned only one power at stage 1. However, in this case, although we were content with the power itself, we had asked for a requirement for consultation with the Lord President before making an order. The minister considers that that is unnecessary.

Do members have strong views, given what the minister said, or are we happy to note the response at this stage and reconsider the bill in a couple of weeks' time, after it has completed stage 2?

Helen Eadie: We should go back to the Government and say that, even if only as a matter of courtesy, the Lord President should be consulted. Whether to consult him is a value judgment, but I think that it would be appropriate.

The Convener: Is that the view of colleagues?

Bob Doris (Glasgow) (SNP): No. Is it not enough just to note the matter at this stage, rather than take a definitive view? We have raised the issue, so we could just note it.

The Convener: We have two opposing views.

Bob Doris: Do we get an opportunity to come back to the bill?

The Convener: We do.

Bob Doris: If this was the last opportunity for us to consider the bill and Helen Eadie was keen to do what she suggests, I would not object. However, if we have the opportunity to return to the matter at a later date, I suggest that we note it at this stage.

Helen Eadie: No. The Lord President would probably look at an order and think that it was okay, but it would be a bit of a cop-out if we did not ensure that it was put in front of him. I imagine that, if he was on the ball, he would already have had someone consider the matter.

Why is the Government resisting? Why not, as a matter of courtesy, send an order to the Lord President?

Bob Doris: I am not dead keen to push the matter. It would be for the minister to decide what was or was not courteous—not for the committee, which deals with legal matters. I have put it on the record that I do not think that it is necessary to pursue the matter, but I have no wish to break the

committee's harmony by opposing Helen Eadie's suggestion. It is a little unnecessary but, by all means, pursue it.

Helen Eadie: Thank you, Bob.

The Convener: In that conciliatory and recorded manner we go forward.

What a splendid example of how the committee works. Let us hope that the next Parliament takes note of it. Some of us will not be here.

Property Factors (Scotland) Bill: After Stage 2

14:26

The Convener: We have the legal brief on the bill, to which we may return. The legal advisers' recommendations are set out in the boxes below paragraphs 11, 21, 26 and 36. Do we agree to the recommendations as set out?

Members *indicated agreement.*

The Convener: It is suggested that the powers in sections 13 and 26 should be subject to affirmative procedure, as we said in our stage 1 report. The clerks have also told me that the member in charge of the bill has indicated that she will lodge amendments to that effect. I am sure that we will be grateful for that but, in the event that she does not, we need to decide whether I should lodge such amendments for stage 3 proceedings on behalf of the committee.

First, therefore, do we agree that the powers in sections 13 and 26 should be subject to affirmative procedure, as we said in our report?

Members *indicated agreement.*

The Convener: Secondly, do we agree that if other amendments are not forthcoming we will lodge committee amendments in my name?

Members *indicated agreement.*

The Convener: We will go forward on that basis.

Do we agree to delegate to our legal advisers authority to ask questions of the Scottish Government on issues that arise in bills for the remainder of the session, because of the timescale to which we are working? We have only three meetings after this one. Surely we can trust our team to do that on our behalf.

Helen Eadie: Of course. We trust them implicitly.

The Convener: Implicitly, completely, explicitly and all the rest of it.

As agreed earlier, we move into private.

14:28

Meeting continued in private until 14:44.

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