



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# SUBORDINATE LEGISLATION COMMITTEE

Tuesday 1 March 2011

Session 3

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## SUBORDINATE LEGISLATION COMMITTEE

### 6<sup>th</sup> 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)  
\*Ilan 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

#### THE FOLLOWING GAVE EVIDENCE:

Bruce Crawford (Minister for Parliamentary Business)  
Al Gibson (Scottish Government Directorate for International and Constitution)  
Fraser Gough (Scottish Government Legal Directorate)

#### CLERK TO THE COMMITTEE

Irene Fleming

#### LOCATION

Committee Room 4

# Scottish Parliament

## Subordinate Legislation Committee

*Tuesday 1 March 2011*

[The Convener opened the meeting at 14:30]

## Subordinate Legislation

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

### Scottish Statutory Instruments Regulations 2011 (Draft)

### Interpretation and Legislative Reform (Scotland) Act 2010 (Savings and Transitional Provisions) Order 2011 (SSI 2011/88)

**The Convener (Jamie Stone):** I welcome everyone to the Subordinate Legislation Committee's sixth meeting in 2011. We have apologies from two of our colleagues—Rhoda Grant and Elaine Smith. I ask everyone to turn off their mobiles, BlackBerrys and other devices.

Without further ado, we move to agenda item 1, which covers two draft instruments that deal with the way in which our successor committee will consider statutory instruments. The item is a first for the committee, as we have never been the lead committee for any instrument in the lifetime of almost three parliamentary sessions.

We considered the instruments at our meeting last week as part of our usual technical, non-policy scrutiny, and we had no concerns. Our job today is different, because we are considering policy, which is why the minister and his officials are before us. I welcome the Minister for Parliamentary Business, Bruce Crawford. From the Scottish Government we have Elspeth MacDonald, head of the constitution and parliamentary secretariat; Fraser Gough from the directorate for legal services; and Al Gibson, policy adviser in the constitution and governance team.

We will take evidence from our witnesses, which will be followed by debates on the two motions that seek our recommendation to approve the draft instruments. We will also question the minister and his officials on SSI 2011/88, which we are considering as the lead committee.

The minister will make an opening statement, after which I will open the meeting to members to ask questions.

**The Minister for Parliamentary Business (Bruce Crawford):** I am grateful for your warm welcome, convener. I have no doubt that the committee is familiar with the policy effect of the three Scottish statutory instruments on which I will give evidence, but I thought that it would help if I made a brief opening statement as a summary and to offer background on developments since the relevant consultation exercise took place.

On the wider context, I record once more the fact that close partnership working between the Parliament and the Government has characterised the Interpretation and Legislative Reform (Scotland) Act 2010 project throughout. Constructive dialogue in the Parliament has been an enduring theme in the parliamentary session in that regard. I suggest that the ILRA project has proved too technical to catch the eye of headline writers or others in the media, which is perhaps unfortunate, as it is a sound example of good partnership working and of good and competent governance for Scotland.

I return to the business that is at hand. The Government has produced three SSIs that are necessary to underpin the 2010 act's commencement in full on 6 April. The draft Scottish Statutory Instruments Regulations 2011, which provide for the publication, numbering and citation of SSIs, are central to the recognition that the accessing of SSIs by electronic means will increase. However, they also provide for maintaining an archive print record of SSIs and for ensuring that SSIs continue to be accessible in printed form to the public.

Post-consultation, the Government took action to ensure that the regulations included a power for the Presiding Officer to require the printing of an SSI that was not laid in the Parliament, such as a road closure order or other minor instrument, and to require the office of the Queen's printer for Scotland to publish draft instruments.

The purpose of the draft Interpretation and Legislative Reform (Scotland) Act 2010 (Savings and Transitional Provisions) Order 2011 is to ensure a smooth migration from the old SSI scrutiny process to the new process and publication framework. The provisions in the order are built around 6 April, which falls in dissolution, when a clean break in making legislation occurs.

Some consultation respondents considered the provisions in the draft order to be overly complex. The Government noted those concerns, reflected and redrafted the order. The order as laid delivers a clear transitional framework in which instruments that are made or laid in draft before 6 April will remain broadly subject to the old arrangements.

The Interpretation and Legislative Reform (Scotland) Act 2010 (Consequential Provisions)

Order 2011 deals with the parliamentary resolutions under the Interests of Members of the Scottish Parliament Act 2006 and the Scottish Parliamentary Pensions Act 2009. Those acts allow the Parliament to modify their terms by resolution. To ensure that such resolutions are published, both acts provide for resolutions that are passed under them to be published as if they were SSIs, in accordance with the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999. The Interpretation and Legislative Reform (Scotland) Act 2010 (Consequential Provisions) Order 2011 also updates the reference to the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SSI 1999/1096) by replacing it with a reference to the Scottish Statutory Instruments Regulations 2011.

I confirm that the Government will be required separately to bring further consequential provisions to complete the transitional framework. Those provisions will relate to certain orders made under the transport-related statute and to certain order-making powers highlighted by the Lord President's office. The consequential provisions required are especially complex, and the Government is aware that no orders are expected to be made under the relevant powers in the coming months—probably not before September. It has, therefore, decided to take further time to ensure the integrity of the provisions, given their complexity. We intend to lay the necessary orders immediately after the summer recess.

The regulations are highly technical and it may take me a wee while to find my briefing notes on the specific issues that you raise with me, although I hope not. My officials will be able to deal with stuff that really digs down deep and drills into the issues.

**The Convener:** Thank you, minister. I invite committee members to ask questions.

**Alex Johnstone (North East Scotland) (Con):** Just to keep the minister at ease, I will start off with some simple questions—we will start shallow. If the Queen's printer for Scotland is no longer routinely going to have to provide printed copies, how have you ensured that people will have proper access to instruments? There are people out there who do not have access to technology. How will you ensure that they know what is going on?

**Bruce Crawford:** The framework that was set down by the 2010 act enhances the arrangements for the publication of SSIs and nothing in the reforms in any way erodes public access to legislation. The move to electronic publication maximises public access to SSIs. Those who want to get legislation from the Queen's printer for Scotland on the web and keep up to date with new

legislation will be able to do so easily through the processes that will be available. With printed publication, by contrast, it can be difficult for people to know what relevant legislation is available and how to obtain that legislation. Nevertheless, for those who require them, printed copies of the SSIs will still be provided as they are today.

The regulations also require the Queen's printer for Scotland to make printed copies of the SSIs available on request. That is possible thanks to—what would it be called?—the latest print-on-demand publishing technology that is available to the QPS. People will be able to place orders through bookshops, by phone, by e-mail and online. Quite an advanced service is coming in that regard. It is worth recording that many public facilities—most obviously libraries—offer internet access, and staff would normally be available to help the public if that was required.

**Alex Johnstone:** What will making printed copies available on a request basis do to the cost of providing printed copies? Will that remain the same or will there be a cost associated with requesting copies of the SSIs? I am concerned that the cost of printing material might be increased, which may be a prohibitive factor for some people.

**Bruce Crawford:** Al Gibson may want to add to what I say. I am aware that the amount that is charged by the Queen's printer for Scotland is determined by the number of pages in the individual SSI and whether they contain such things as colour content, maps or plans, which all have an impact on the cost.

**Al Gibson (Scottish Government Directorate for International and Constitution):** As the minister says, the QPS operates a banding system. As I understand it, the costs have not risen in the past couple of years. The cost is dependent on the number of pages. For instance, for the most common instruments, such as those that we have before us today, for up to six or seven pages there is a set cost of about £4 and anything more than that is about £5 or £6. Only when you get to the threshold of an instrument being 30 or 40 pages in length do the costs increase. Nothing that we do today will impact on the cost; it is just continuing the provisions for the sale of instruments.

**Bruce Crawford:** To help you feel a bit easier about that, Mr Johnstone, I would add that the QPS is always seeking the cheapest printing cost. This work is subject to competitive tendering to try to get the best value that we can. I understand that the cover prices have been fixed at the 2010 level for the next two years. There is a general understanding that, after that, prices will rise in line

with inflation. I think that we are in a pretty good place as far as that is concerned.

**Alex Johnstone:** Are you saying that if I specifically request a printed copy, the cost of that is likely to be the same as it would have been if it had been distributed in printed form initially?

**Bruce Crawford:** The cost would be the same.

**Alex Johnstone:** Okay.

I turn to the information as it is published online. To what timescale is the QPS required to publish instruments on the website and how often is that target achieved? Do you monitor that? Do you monitor the level of failure to adhere to the timescale?

**Bruce Crawford:** The regulations and the contract with the QPS require legislation to be published on the website as soon as possible on receipt of the authorised text from the responsible authority. That is the starting point. The instrument is made available to the QPS as soon as it is signed and as soon as Government can get it to the QPS. The SSI is then required to reach the contractor by 2 pm or published on the website that afternoon, so that we know how soon the information is reaching the public domain. We are pretty certain that that is a good process. SSIs received after that time are published at 9 o'clock the next day, so the process is almost as instant as you can get in today's modern world. Printed copies are made available as soon as possible, certainly within three working days of the authorised text being received.

You asked about monitoring. The QPS produces statistics on its performance within its annual reporting system. January 2011 was the last time that we got figures. In the most recent month for which figures are available, 45 SSIs were received and they were published after an average of 2.11 days. We have good monitoring information; we have a good feel for what is going on.

**Alex Johnstone:** The final issue on which I seek reassurance is the use of correction slips. It is considered acceptable to use correction slips to deal with minor variations. Can you set out the appropriate use of correction slips and what criteria are applied in considering whether their use is appropriate?

**Bruce Crawford:** I will give you a general answer before I let Fraser Gough come in.

Correction slips have always been there. There will be no real change to the way that they are used. They are used to make very minor and technical changes to instruments, such as where the punctuation, spelling or a heading is wrong and correcting it would not change the substance

of the instrument. I think that I have that about right.

**Fraser Gough (Scottish Government Legal Directorate):** There are broadly three circumstances in which the Government legal directorate as a responsible authority allows correction slips as a mode of correction. The first is where the element of the instrument to be corrected is not officially part of the instrument. For instance, the explanatory note does not form part of the instrument, so you could not redeem it by amending the instrument—the only way of dealing with an error in the explanatory note is by using a correction slip.

There might also be a discrepancy between the signed version and the version that the QPS publishes, although that is very rare nowadays, because the process is such that what goes to the minister for signing is created in the same template as what is ultimately published. Obviously, if a mistake was made between signing and publication, that would need to be corrected to reflect accurately the instrument as made.

The third circumstance is any case where there is self-evidently an error. For instance, "the Scottish ministers ministers" patently does not make sense, so it would be changed. A further caveat, given that there is a cost to correction slips, is that if an error was so minor that it did not present any practical difficulty for the interpretation of the legislation—for example, if we had not used a capital S for "schedule" when we ought to have done—the legal directorate would take a pragmatic view of whether it would be worth correcting it.

**Alex Johnstone:** Thank you.

14:45

**Ian McKee (Lothians) (SNP):** I have a follow-up question for Al Gibson about the cost that the Queen's printer for Scotland will charge for hard copies. In the printing world, cost normally depends not just on the number of pages but on the number of copies. I presume that, under the new regime, far fewer copies will be printed. Can you guarantee that the fact that fewer copies will be produced and therefore that more work will be involved in producing a single copy will not put up the cost?

**Al Gibson:** I am not in a position to offer any guarantees but, as I mentioned, nothing that we do will change the position. We understand from the QPS that the vast majority of instruments are accessed online so, as far as we know, the demand for print copies will not change as a result of our proposed legislation. There is always quite a discrete run, shall we say, of copies of SSIs, most of which are taken up on a default basis—

there is a list of people in libraries who receive such publications by default. The demand on any individual SSI is not subject to peaks or troughs. Certain instruments will obviously be more intriguing to members of the public than others, but there is no suggestion that fewer copies will be requested than has ever been the case.

**Helen Eadie (Dunfermline East) (Lab):** Good afternoon, minister. It is nice to have you here again, particularly as you have brought Al Gibson with you—it is not every minister who brings an Al Gibson with their team, so we are especially pleased.

My question is about the numbering process for draft affirmative instruments. The regulations before us maintain the current position, whereby draft affirmative instruments are not numbered until they have been approved. During the consultation there was discussion of whether it would be helpful for such instruments to be numbered, but the Scottish Government is of the view that introducing such a system would cause confusion. Do you not agree that there is an argument for having a separate numbered series for draft affirmative instruments?

**Bruce Crawford:** I saw that part of the consultation process, but I do not agree that draft instruments should be numbered. Let me explain why. Rather than making the whole process clearer, it could lead to greater confusion. If drafts were numbered separately from the series of final SSIs, the draft and the final instrument would inevitably have different numbers. It would not be possible to get to a situation in which draft instrument number 1 became instrument number 1 and draft instrument number 2 became instrument number 2. It is inevitable that they would not be in sequence, which would cause confusion.

For example, if draft instruments were numbered as part of the SSI series, that would cause confusion in the event that a draft instrument was not made or was not approved by the Parliament. Inevitably, the whole process would go out of sync. That would cause a lot more confusion than continuing to refer to draft instruments by their title, which I think is the best way to proceed. Otherwise, we would be in danger of creating a bureaucracy that caused more confusion than it solved. There could be gaps in the numbering, with some draft instruments being agreed to and some not being agreed to.

I invite my officials to add to that.

**Fraser Gough:** I have just one point to add. There is always a question about neat symmetries. As made instruments are numbered, would it be neater to have draft instruments numbered as well? There is also a question about what the utility of numbering draft instruments

would be. Made affirmative instruments are cited in other legislation and there is particular provision in the SSI regulations for how to cite them by reference to their number. People do not cite draft instruments in legislation, because they are just that and not legislation, so there is a limited call for the use of numbers for draft instruments, at least in the context of legislation.

**Helen Eadie:** That is helpful. You have answered the second part of that question, too, so I will move on.

Regulation 8 of the SSI regulations requires the QPS periodically to publish SSI issue lists and regulation 9 requires the QPS to publish an annual edition containing information about all the SSIs made in the calendar year to which the edition relates. Regulation 10 gives presumptive evidential validity to SSI lists and annual editions printed by the QPS and provides that the entries in SSI issue lists and annual editions are to be treated as conclusive evidence of the date on which SSIs were first published by the QPS.

As print copies of SSIs will no longer be available as a matter of course, consideration has been given to the evidential status of the lists to ensure that the date when the provisions were published will be clear to the public. Section 41 of the 2010 act provides for a defence that the instrument had not been published at the time that the alleged contravention of the instrument took place, so it is important to ensure that the evidential status of SSI issue lists is clear. Can you set out for us how the evidential status of SSI issue lists will work in practice? In particular, how often will the SSI lists be produced?

**Bruce Crawford:** I will pass that question to Al Gibson because it involves quite a lot of detail at a level at which it would be more appropriate for an official to answer.

**Al Gibson:** I do not want to sound repetitive, but in general terms we are not changing anything. The lists are published by the QPS on a daily and monthly basis and in an annual edition, so there is no change. I might defer to my colleague Fraser Gough on the evidential status, but the information contained in a list will be unchanged from what it is today. There is no danger of the information not being publicly available; it will be placed on the QPS website on a daily basis. If a member of the public requests a print copy under regulation 12 the information will be supplied to them. That information will dictate the date and the proof of the publication of the instrument. I do not know whether Fraser wants to add to that.

**Fraser Gough:** I do not have a huge amount to add. As Al Gibson said, we are not changing anything materially in these regulations. The purpose of a list in terms of its evidential use is to



establish the date on which the QPS first published an instrument, which of course plays into the section 41 defence, to which Helen Eadie referred, that the instrument had not been published and was not available to the public.

If in the course of making out a section 41 defence you sought to prove to the court that the instrument had not been published, your obvious port of call would be to ask the QPS for a printed copy of the list for that day. The regulations further provide that the version that is printed by the QPS has presumptive evidential validity.

There is no great hardship in this. It is not as though instruments do not come into force because a list has not been published. Rather, it is just *ex post facto*, if you were trying to establish whether the legislation bit at the time at which the offence was said to have been committed, you would ask for the list in order to establish the date on which the instrument was first published by the QPS.

**Helen Eadie:** Would it not be desirable, though, in terms of ease of access to the information, to have regular publication of SSI lists so that people would not have the inconvenience of having to contact the QPS? Our key concern is how it is clear what the current law is without the regular publication of SSI lists.

**Bruce Crawford:** There is the annual edition of the list of all the printed SSIs that the QPS produces. That provides the substance and framework for all the law in Scotland. Occasionally, there will be an issue with the odd SSI that deals with pretty inconsequential matters, but it would still be on the website. In any case, anyone can have access to the website, which contains all the information that is available on SSIs at any time. There is an annual pulling together of all the SSIs that have been printed through the QPS but, at any stage, individuals can access SSIs online.

**Helen Eadie:** That might lead us into the situation in which we are looking retrospectively, rather than providing easy access between the time of the annual publication and the time when an instrument is announced. It is more important to have it from the date when it is announced. If an instrument is announced in August of one year but is not in the annual report until April of the following year, there will be a gap.

**Bruce Crawford:** At any time, anyone can access the web to find out about SSIs—which will be available within less than two days—and what the law of Scotland is. That provides the back stop that people require on information.

**Helen Eadie:** If there is delay in publication, is there not a danger that the defence under section 41 of the 2010 act would apply more regularly?

**Bruce Crawford:** I ask Fraser Gough to deal with that, as it is a legal question.

**Fraser Gough:** We have no reason to assume that anything in the regulations will produce delays in publication that have not existed hitherto, and we are not aware that there have been delays in publication so far. On the section 41 defence, there is a danger of turning the situation on its head. It is the publication of an instrument that makes it the law of Scotland, not its inclusion on a list. The list is just evidence that the instrument has in fact been published. The principal source for citizens who want to find out what the law is is the instrument, which will say on it when it comes into force. There is a slight caveat defence to that, which is that, if an instrument has not been published or brought to someone's notice, it cannot be enforced against them. However, that is very much an exceptional case and is not the norm.

**Bob Doris (Glasgow) (SNP):** My questions are on the draft Interpretation and Legislative Reform (Scotland) Act 2010 (Consequential Provisions) Order 2011. They might be relatively straightforward, because the minister dealt with a significant number of the issues in his opening statement, but I will ask them for clarity and to put the issues on the record.

I understand that the order will amend the Interests of Members of the Scottish Parliament Act 2006 and the Scottish Parliamentary Pensions Act 2009. The minister said that the Government will produce further instruments to make other amendments after the summer. Will those be to the Transport and Works (Scotland) Act 2007, the Harbours Act 1964 and the Roads (Scotland) Act 1984? Is it your intention to make those amendments after the summer?

**Bruce Crawford:** It is certainly our intention to do that. In my opening statement, I highlighted the complex issues surrounding those matters. We are still considering the detail of the changes, which are complex and need to be fully proofed and agreed with the various transport officials, so that we have them right. The Government has established that the order-making powers that are concerned will not be exercised until September 2011 at the earliest.

Those are not the only acts that we have to think about—there are other powers in the Public Records (Scotland) Act 1937 and the Pensions Appeal Tribunals Act 1943. Further consequential provisions will be required to amend certain provisions. The Lord President and Lord Justice General, under a range of acts, is interested in those areas. Therefore, we are still considering in detail which measures will need to be proofed and agreed with the courts. Obviously, we have to go through that process. My briefing tells me that

those powers will not be exercised until September 2011 and that the provisions that are required to complete the statutory framework under the 2010 act will therefore be laid before the Parliament immediately after the summer recess. That is the general planning assumption. So it is not only the transport area in which there are issues to which we need to return because they are complex and we need further time to think about them.

15:00

**Bob Doris:** I was aware that you were considering additional matters. That was going to be my next question, so thank you for answering it, but I suppose that I should check that you do not anticipate the powers being needed for the acts that I listed until September. Will the delay have any practical effect?

**Bruce Crawford:** There will be no practical effect at all.

**Bob Doris:** You mentioned the Public Records (Scotland) Act 1937 and the Pensions Appeal Tribunals Act 1943. Has a decision yet been made on whether to bring forward orders to amend those acts?

**Bruce Crawford:** We will bring orders forward but, again, that will be done in the September time slot to give us a bit more time to talk to the Lord President and Lord Justice General and the courts to ensure that we get the detail nailed down properly.

**Bob Doris:** That is new information. Can I clarify that a decision has been made that you should bring forward amending orders, but that the detail of them still has to be worked out?

**Bruce Crawford:** That is correct. The principle of bringing orders forward is established; it is about ensuring that we get the detail right.

**Ian McKee:** As you know, the Interpretation and Legislative Reform (Scotland) Act 2010 (Savings and Transitional Provisions) Order 2011 (SSI 2011/88)—we are on to the meaty topic of transitional provisions—provides a mechanism for dealing with instruments that begin their parliamentary scrutiny prior to the commencement of the remainder of the 2010 act, but which will complete the process after that date. It also provides for the transition arrangements for publication requirements under the 2010 act and the Scottish Statutory Instruments Regulations 2011.

Can the minister provide more detail on what transitional arrangements are in place to ensure that no instrument falls between the two scrutiny regimes?

**Bruce Crawford:** I am particularly interested in this area, because it is one of the key bits of the transition process from the old to the new regime. Ensuring that we get it right is key to ensuring that the instruments that we are bringing forward now and the act that we have already passed in the Parliament will be successful, because if we are not able to manage the transition process correctly, the whole thing could become a bit messy. Thankfully, with the help of the committee, I think that we have managed to do a pretty good job of managing that transition. Article 5 of the savings and transitional provisions order ensures that an SSI that began to be scrutinised by the Parliament before 6 April remains subject to the existing scrutiny procedure and, accordingly, a not laid SSI that is made prior to 6 April will not be subject to section 30 of the 2010 act, which is the section that would deal with such matters. I was particularly keen to ensure that we got that stuff right, because that is the fulcrum of making the transition from the old to the new regime.

**Ian McKee:** Section 33 of the 2010 act introduces a new provision that allows the various powers to make subordinate legislation to be combined in the same statutory instrument. Can you confirm whether or not that ability to combine powers within a statutory instrument will apply to instruments laid before the new regime comes into effect, if the instrument completes its passage through the Parliament after the new provisions are in place?

**Bruce Crawford:** I think that I am right in saying—I will have to check with Fraser Gough that I am right—that any instrument laid prior to 6 April cannot be subject to that particular section. Can Fraser Gough confirm that I am right to say that?

**Fraser Gough:** Yes.

**Bruce Crawford:** We can confirm that an instrument laid prior to 6 April cannot be subject to that particular section.

**The Convener:** I will ask the last question. Notwithstanding all that you have said about transitional arrangements, what safeguards are in place to review, if necessary, the transitional arrangements and deal with the unexpected? We hope that the unexpected will not occur, but you never know.

**Bruce Crawford:** I guess that you are asking me to think about the unknown unknowns.

**The Convener:** Not quite in Donald Rumsfeld's language.

**Bruce Crawford:** That is the territory that you are taking me into.

**The Convener:** You do not have to comment, but we are interested in whether you have anything to say on the matter.

**Bruce Crawford:** I think that the process is robust. There is integrity in the provisions in the Interpretation and Legislative Reform (Scotland) Act 2010 (Savings and Transitional Provisions) Order 2011. There is no doubt of that; we have worked together to ensure that there is integrity.

We are adopting a policy of making as few SSIs as possible during the transition period. I have been trying to ensure that we manage the process so that we get those instruments that we need to get through early and make as few instruments as possible in the transition period. That approach, together with close monitoring of the process, should ensure that the opportunity for unforeseen circumstances—unknown unknowns—is managed as carefully as possible.

Of course, given what is currently available to ministers, if an unknown were to become known we would be able to act and use the consequential provisions that are available under the 2010 act. I do not envisage such a situation arising, but we would deal with it expeditiously if it did.

**The Convener:** Thank you for your full answer. It might be wise of me not to pursue the issue.

That concludes our questions, so we move to the more formal part of the process.

*Motions moved,*

That the Subordinate Legislation Committee recommends that the Interpretation and Legislative Reform (Scotland) Act 2010 (Consequential Provisions) Order 2011 be approved.

That the Subordinate Legislation Committee recommends that the Scottish Statutory Instruments Regulations 2011 be approved.—[*Bruce Crawford.*]

*Motions agreed to.*

**The Convener:** If members have no comments on the Interpretation and Legislative Reform (Scotland) Act 2010 (Savings and Transitional Provisions) Order 2011 (SSI 2011/88), are you content to make no recommendation to the Parliament on the order?

**Members indicated agreement.**

**The Convener:** Before we say goodbye to you, minister, it is appropriate to thank you and your officials for the courteous, thoughtful and co-operative approach that you have taken at all times during this session of the Parliament, when I have been convener of the Subordinate Legislation Committee. We will not see you again in this session, but my thanks are on the record in the *Official Report*.

**Bruce Crawford:** It has been a pleasure working with the committee on an issue that I said

at the outset was not necessarily the sexiest one, as far as attracting media interest is concerned. In seeing the 2010 act through, I think that we have done a good job on behalf of the Scottish Parliament and the Scottish people.

## Decision on Taking Business in Private

15:08

**The Convener:** It is proposed that we discuss item 10 in private. Is that agreed?

**Members** *indicated agreement.*

## Draft Instruments subject to Approval

### Public Services Reform (General Teaching Council for Scotland) Order 2011 (Draft)

15:09

**The Convener:** We considered our approach at last week's meeting, so I suggest that we agree to report as follows. First, there appears to be doubt as to whether the following functions that would be conferred on the General Teaching Council for Scotland to make rules or schemes are *intra vires*, by reason of a breach of the prohibition in section 20(1) of the Public Services Reform (Scotland) Act 2010, that an order may not confer or transfer a function of legislating on persons other than the Scottish ministers, the First Minister or the Lord Advocate: the function of making rules in relation to the registration of teachers, in article 15; the function of making schemes, under articles 26 and 31 and paragraphs 2 and 7 of schedule 2; and the function of making rules, under schedule 4, paragraph 1.

Secondly, there appears to be doubt as to whether the provisions in schedule 2 that would have the effect of transferring to another person the existing function of the Scottish ministers of appointing six members of the GTCS are *intra vires*, by reason of their breaching the prohibition on such transfer that is contained in section 20(7) and (8) of the 2010 act. Our colleagues on the Education, Lifelong Learning and Culture Committee will consider the instrument at their meeting tomorrow.

Does the committee agree to report in the terms that I have outlined?

**Members** *indicated agreement.*

### Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 (Draft)

**The Convener:** We considered our approach to the instrument at last week's meeting. First, there appears to be doubt as to whether article 3, which replaces the "two-man unit" test with a "viable unit" test, is *intra vires*. We doubt that the failure of the

two-man unit to operate in a way that delivers the desired policy can properly be described as a burden within the meaning of section 17 of the 2010 act, in the form of an obstacle to efficiency, productivity and profitability.

Secondly, the function of the test is to determine, between two competing private interests, who is to be entitled to occupation of the holding. Clearly, the test will operate to the financial detriment of one party and to the financial benefit of the other. In whatever manner a test that operates in that way is framed, the characteristic of detriment to one party will remain. For that reason, doubts remain as to what burden as regards efficiency, productivity and profitability will be removed by refinement of the test in the manner that is proposed in article 3.

Do we agree to report in the terms that I have outlined? I remind members that the Rural Affairs and Environment Committee will consider the instrument at its meeting a week hence, on 9 March.

**Members** *indicated agreement.*

## **Instruments subject to Annulment**

### **Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011 (SSI 2011/57)**

15:12

**The Convener:** Does the committee agree to report, under the general reporting ground, that the order contains the following three drafting errors, which are not likely to affect the operation of the order? First, the reference to article 4 in article 4(3) should be to article 5. Secondly, the reference to paragraph (4)(c) in article 15(3)(c) is superfluous, as there is no subparagraph (c). Finally, the reference to “the 2009 Act” in the definition of “an MPA” in regulation 3 should be to “the Act”, which is the defined term.

**Members** *indicated agreement.*

### **Road Works (Inspection Fees) (Scotland) Amendment Regulations 2011 (SSI 2011/91)**

**The Convener:** Does the committee agree to report, under the general reporting ground, that the instrument contains a minor drafting error, in not specifying in the operative text which instrument is being amended by regulation 3? That is unlikely to have any practical effect on the operation of the instrument. In passing, we should welcome the Government’s undertaking to remove redundant definitions at the next available opportunity.

**Members** *indicated agreement.*

### **Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 (SSI 2011/102)**

**The Convener:** Does the committee agree to report that the instrument’s meaning could be clearer, as the reference in article 2 to article 2(b) of the Additional Support for Learning (Sources of Information) (Scotland) Order 2010 (SSI 2010/145) is erroneous? That is not considered to be a matter that is likely to affect the validity or operation of the instrument. Again, do we agree to welcome the statement by the Scottish Government that it will take the next available opportunity to correct the error?

**Members** *indicated agreement.*

### **Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2011 (SSI 2011/71)**

### **Reporting of Prices of Milk Products (Scotland) Amendment Regulations 2011 (SSI 2011/81)**

### **Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Amendment Regulations 2011 (SSI 2011/82)**

### **Dairy Produce Quotas (Scotland) Amendment Regulations 2011 (SSI 2011/83)**

### **Drinking Milk (Scotland) Regulations 2011 (SSI 2011/84)**

### **Rural Development Contracts (Land Managers Options) (Scotland) Amendment Regulations 2011 (SSI 2011/85)**

### **Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2011 (SSI 2011/86)**

### **Official Feed and Food Controls (Scotland) Amendment Regulations 2011 (SSI 2011/93)**

### **Healthy Start Scheme (Prescribed Description of Food) (Scotland) Regulations 2011 (SSI 2011/101)**

### **Rural Development Contracts (Rural Priorities) (Scotland) Amendment Regulations 2011 (SSI 2011/106)**

### **Individual Learning Account (Scotland) Regulations 2011 (SSI 2011/107)**

### **Ethical Standards in Public Life etc (Scotland) Act 2000 (Devolved Public Bodies and Stipulated Time Limit) and the Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order 2011 (SSI 2011/113)**

### **Electricity Act 1989 (Requirement of Consent for Hydro-electric Generating Stations) (Scotland) Revocation Order 2011 (SSI 2011/115)**

**Environmental Liability (Scotland)  
Amendment Regulations 2011 (SSI  
2011/116)**

**British Waterways Board (Forth and Clyde  
and Union Canals) (Reclassification) Order  
2011 (SSI 2011/118)**

**Building (Scotland) Amendment  
Regulations 2011 (SSI 2011/120)**

**National Assistance (Sums for Personal  
Requirements) (Scotland) Regulations  
2011 (SSI 2011/123)**

**National Assistance (Assessment of  
Resources) Amendment (Scotland)  
Regulations 2011 (SSI 2011/124)**

**Public Services Reform (Scotland) Act  
2010 Social Care and Social Work  
Improvement Scotland (Transfer of Staff)  
Order 2011 (SSI 2011/125)**

**Edinburgh Tram (Line One) Act 2006  
(Extension of Time for Land Acquisition)  
Order 2011 (SSI 2011/126)**

**Edinburgh Tram (Line Two) Act 2006  
(Extension of Time for Land Acquisition)  
Order 2011 (SSI 2011/127)**

**Sale and Hire of Crossbows, Knives and  
certain other Articles to Children and  
Young Persons (Scotland) Order 2011 (SSI  
2011/129)**

**Licensing (Local Licensing Forum)  
(Scotland) Order 2011 (SSI 2011/130)**

**Advice and Assistance and Civil Legal Aid  
(Special Urgency and Property Recovered  
or Preserved) (Scotland) Regulations 2011  
(SSI 2011/134)**

**Criminal Legal Aid (Scotland) (Fees)  
Amendment Regulations 2011 (SSI  
2011/135)**

**Town and Country Planning  
(Miscellaneous Amendments) (Scotland)  
Regulations 2011 (SSI 2011/138)**

**Bankruptcy Fees (Scotland) Amendment  
Regulations 2011 (SSI 2011/142)**

**Children's Hearings (Scotland) Act 2011  
(National Convener Appeal against  
Dismissal) Regulations 2011 (SSI  
2011/143)**

**Town and Country Planning (Marine Fish  
Farming) (Scotland) Amendment  
Regulations 2011 (SSI 2011/145)**

**Disclosure (Persons engaged in the  
Investigation and Reporting of Crime or  
Sudden Deaths) (Scotland) Regulations  
2011 (SSI 2011/146)**

**CRC Energy Efficiency Scheme  
(Amendment) Order 2011 (SI 2011/234)**

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

**The Convener:** We should also note a couple of instruments that we consider should be consolidated at the earliest opportunity—which we have been saying for quite a bit.

With regard to SSI 2011/106, given that the principal regulations—the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008 (SSI 2008/100)—have been amended nine times, the most recent amendments do not footnote individually the locations of relevant amendments for each rural priority option, which makes identification of the current text difficult. We should recommend that the principal regulations be consolidated at the next opportunity. Is that agreed?

**Members** *indicated agreement.*

**The Convener:** I shall go to my grave saying “consolidate”.

The principal regulations for SSI 2011/135, which are the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 (SI 1989/1491), have been amended—wait for it, colleagues—19 times and it is becoming increasingly difficult to track the effect of amendments and the content of the principal regulations as amended. Therefore, consolidation would be desirable and reference to that might be made in the next annual report. Is that agreed?

**Members** *indicated agreement.*

**Instruments not laid before the  
Parliament**

**Children's Hearings (Scotland) Act 2011  
(Commencement No 2) Order 2011 (SSI  
2011/111)**

**Public Services Reform (Scotland) Act  
2010 (Commencement No 4) Order 2011  
(SSI 2011/122)**

**Tobacco and Primary Medical Services  
(Scotland) Act 2010 (Commencement No 1,  
Consequential and Saving Provisions)  
Amendment Order 2011 (SSI 2011/131)**

**Town and Country Planning (Marine Fish  
Farms Permitted Development) (Scotland)  
Order 2011 (SSI 2011/144)**

15:15

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

**Instrument not subject to  
Parliamentary Procedure**

**Crofting Counties Agricultural Grants  
(Scotland) Variation Scheme 2011 (SSI  
2011/72)**

15:16

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

**The Convener:** I thank the official reporters. As  
agreed earlier, we now move into private session.

15:16

*Meeting continued in private until 15:19.*



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