



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# SUBORDINATE LEGISLATION COMMITTEE

Tuesday 15 March 2011

Session 3

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**Tuesday 15 March 2011**

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## **SUBORDINATE LEGISLATION COMMITTEE**

### **8<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)

\*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 15 March 2011*

[The Convener *opened the meeting at 12:00*]

### Decision on Taking Business in Private

**The Convener (Jamie Stone):** I welcome everyone to our 8<sup>th</sup> meeting in 2011 and our final meeting in this parliamentary session. We have received apologies from Elaine Smith, Helen Eadie and Bob Doris. Can we all turn off our mobile phones and BlackBerrys please?

Colleagues, I am looking for a decision to take agenda items 7 and 8 in private. Is that agreed?

**Members** *indicated agreement.*

## Instruments subject to Approval

### Local Government Finance (Scotland) Amendment Order 2011

### Local Government Finance (Scotland) Amendment (No 2) Order 2011

12:00

**The Convener:** Do we agree to report that the Local Government Finance (Scotland) Amendment Order 2011 is defectively drafted?

**Members** *indicated agreement.*

**The Convener:** The Scottish Government has confirmed that the order is intended to increase the distributable amount of non-domestic rate income for the year 2011-12 by £11.5 million to £2,182 million. Although the order seeks to provide for the distribution among local authorities of non-domestic rate income, which, when aggregated, totals £2,182 million, it does not make provision for the increase in the total distributable amount to that figure as required under the Local Government Finance Act 1992. The Scottish Government has therefore made the Local Government Finance (Scotland) Amendment (No 2) Order 2011 to correct the defect. Is the committee happy with that?

**Members** *indicated agreement.*

**The Convener:** Do we also agree to report that, if the Parliament wishes to approve the proposed increase in the distributable amount of non-domestic rate income and the revised distribution of that amount, it requires to approve both orders? The orders must work together.

**Members** *indicated agreement.*

## **Instruments subject to Annulment**

### **Licensing (Scotland) Act 2005 (Consequential Provisions) Order 2011 (SSI 2011/150)**

12:01

**The Convener:** Do we agree to report that the drafting of paragraph 3(4) of the schedule to the order appears to be defective because it refers to

“premises which hold a premises licence”,

when it is not possible for premises to be the holder of a licence?

**Members indicated agreement.**

**The Convener:** We will also report, under the general ground, that there is a drafting error in paragraph 4(2)(a) of the schedule to the order, as it seeks to insert in regulation 2 of the Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007 (SSI 2007/505) a new definition to follow after another definition, which does not exist in the regulations.

We welcome the Scottish Government's decision to lay an amending order, the Licensing (Scotland) Act 2005 (Consequential Provisions) Amendment Order 2011 (SSI 2011/187), which is before us today, to correct those errors.

### **Food Labelling (Declaration of Allergens) (Scotland) Regulations 2011 (SSI 2011/152)**

**The Convener:** Do we agree to draw the regulations to the attention of the Parliament and the lead committee, under the general reporting ground, in that there has been a long delay—from 31 December 2010 to 18 March 2011—in correcting an incompatibility between Scots criminal law and European Union law?

**Members indicated agreement.**

### **Police Pensions (Amendment) (Scotland) Regulations 2011 (SSI 2011/154)**

**The Convener:** We can report, under the general ground, that there is a drafting error in new paragraph 9(ea)(1C) of schedule 2 to the Police Pensions (Scotland) Regulations 2007 (SSI 2007/201), as inserted by paragraph 15(3) of schedule 2 to the regulations. The Scottish Government has acknowledged the error. It is evident that “Regulations” requires to be read as the last word in that paragraph, to avoid absurdity. Is that agreed?

**Members indicated agreement.**

**The Convener:** We must always avoid absurdity.

### **Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2011 (SSI 2011/160)**

**The Convener:** Do we agree to report the regulations on the basis that the meaning of regulation 4(c), which substitutes new regulation 3(4A) into the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (SI 1989/1490), could be clearer about whether solicitors require to make an election between payment options where counsel has made a request under new regulation 3(3)(b)?

Do we also agree to report the regulations on the basis that paragraph 3 of chapter 4, and paragraph 11(a) of chapter 6, of part 1 of table of fees A, could be clearer about the fees payable for the initial 30 minutes of a hearing that exceeds that period.

**Members indicated agreement.**

**The Convener:** Quite right too.

### **National Health Service (Dental Charges) (Scotland) Amendment Regulations 2011 (SSI 2011/168)**

**The Convener:** We note that, prior to the regulations coming into force, there appears to have been no clear legal basis for dental bodies corporate to make and recover charges under the National Health Service (Dental Charges) (Scotland) Regulations 2003 (SSI 2003/158) since 2 July 2010, from which date such bodies could be included on health board dental lists by virtue of the National Health Service (General Dental Services) (Scotland) Regulations 2010 (SSI 2010/208). We will refer the matter to the lead committee. Is that agreed, and are we otherwise content with the regulations?

**Members indicated agreement.**

### **Animal By-Products (Enforcement) (Scotland) Regulations 2011 (SSI 2011/171)**

**The Convener:** Do we agree to report, under the general reporting ground, that, alas, the regulations contain drafting errors that are acknowledged by the Scottish Government? In regulation 15(2)(d), the reference to regulation “14(c)(iv)” should be to “14(c)(iii)” and, in regulation 15(2)(f), the references to regulation “14(b)(vi)” and “14(c)(iii)” should be to “14(b)(vii)” and “14(c)(iv)”.

We should also report that we are content with the reasons provided by the Scottish Government for the breach of the 21-day rule between the date

of laying the regulations and when they came into force. Do we agree to report on those grounds?

**Members** *indicated agreement.*

**The Convener:** I am sometimes thankful that I can read Roman numerals.

### **National Health Service Superannuation Scheme (Scotland) Amendment Regulations 2011 (SSI 2011/173)**

**The Convener:** Do we agree to report that we are content with the reasons provided by the Scottish Government for the breach of the 21-day rule between the date of laying the regulations and the coming into force date, and are we otherwise content with the regulations?

**Members** *indicated agreement.*

**The Convener:** We should also welcome the fact that the regulations promptly correct the errors that the committee identified in the National Health Service Superannuation Scheme (Scotland) Regulations 2011 (SSI 2011/117) when we considered them last week. That is pretty good work by the Government.

### **Licensing (Food Hygiene Requirements) (Scotland) (No 2) Order 2011 (SSI 2011/177)**

**The Convener:** I hope that we can welcome the Scottish ministers' prompt making of the order to replace the Licensing (Food Hygiene Requirements) (Scotland) Order 2011 (SSI 2011/128) in light of the defects in that order that the committee highlighted at last week's meeting.

The same issue in relation to the anticipatory exercise of powers arises with this order as it did with the one that it replaces, so there is a doubt about whether the order is *intra vires*, in that the powers under which it is made are not yet in force and it seems doubtful whether the exercise of the powers inserted by the Criminal Justice and Licensing (Scotland) Act 2010 can be necessary or expedient simply for the purpose of giving effect to the provisions in the 2010 act that insert those powers into existing legislation. Do we agree to note that?

**Members** *indicated agreement.*

**The Convener:** Once again, we should be satisfied with the explanation provided for the failure to comply with our old friend, the 21-day rule. Is that agreed?

**Members** *indicated agreement.*

### **Licensing (Scotland) Act 2005 (Consequential Provisions) Amendment Order 2011 (SSI 2011/187)**

**The Convener:** Are we content with the order, and with the explanation provided for the failure to comply with the 21-day rule?

**Members** *indicated agreement.*

**The Convener:** It is worth making the general observation that a number of errors that were identified in the instruments have been rectified by the use of correction slips. That appears to be an increasing trend. Given the evidence that we recently received from the Minister for Parliamentary Business on that very issue, do we agree to flag up the issue as something for our successor committee to consider? In addition, it has been apparent that there is an on-going need for the consolidation of instruments and so, again, can we pass that on as part of our legacy to our successor committee? That would be a responsible thing to do.

**Members** *indicated agreement.*

## Instruments not laid before the Parliament

### Bankruptcy and Diligence etc (Scotland) Act 2007 (Commencement No 8 and Transitional) Order 2011 (SSI 2011/179)

12:08

**The Convener:** Do we agree to report that the order is defectively drafted, in so far as it seeks to bring into force the amendment contained in paragraph 6(3) of schedule 5 to the 2007 act, as paragraph 6(1) has not been commenced for the purposes of that amendment?

**Members** *indicated agreement.*

### Historic Environment (Amendment) (Scotland) Act 2011 (Commencement No 1) Order 2011 (SSI 2011/174)

### Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No 8, Transitional and Savings Provisions) Order 2011 (SSI 2011/178)

### Legal Services (Scotland) Act 2010 (Commencement No 1 and Saving Provision) Order 2011 (SSI 2011/180)

### Housing (Scotland) Act 2010 (Commencement No 3) Order 2011 (SSI 2011/181)

### Criminal Proceedings etc (Reform) (Scotland) Act 2007 (Commencement No 9) Order 2011 (SSI 2011/188)

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

**The Convener:** SSI 2011/178 is a complex order that provides for the coming into force of a large number of sections of the Criminal Justice and Licensing (Scotland) Act 2010 from 28 March 2011 onwards across a range of significant subject areas. Do we agree to note that?

**Members** *indicated agreement.*

## Certification of Death (Scotland) Bill: After Stage 2

12:09

**The Convener:** The fifth agenda item goes by the chilling title of the Certification of Death (Scotland) Bill. In our stage 2 report, we recommended that orders that revoke orders of suspension made under section 24A(7) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965, or under section 4(7) of the bill, should be subject only to the requirements of section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010; in other words, they should be laid only.

We have had a letter from the Minister for Public Health and Sport, advising the committee that she has lodged amendments to achieve that intention, the only difference being that any revocation orders made under those sections would be subject to the negative procedure. There is a copy of the letter in the committee papers.

If members have no comments, are we happy to note the correspondence?

**Members** *indicated agreement.*



## Annual Report

12:10

**The Convener:** We have the draft annual report in our papers. The report is pretty clear to me. If there are no comments from colleagues, are we happy to sign it off?

**Members** *indicated agreement.*

**The Convener:** Before we go into private, I will put on the record, on behalf of colleagues—if that is all right—an expression of thanks to our team: our clerks, the official report, our legal advisers and everyone who has helped us to carry out our work over the four years of this parliamentary session.

It may not seem the most important thing in the world, but a highly technical machine works only if all its parts work. If one part fails, the whole thing fails. The Subordinate Legislation Committee is crucial to the work of the Parliament. If I might be so bold, in our own small way the committee plays a part in the working of democracy and in the safeguarding of the role of the Parliament and its elected members when it comes to agreeing to legislation. That job has been done well and I am extremely grateful to our support team and to my colleagues. I thank each and every one of you.

I do not know what the future holds, least of all for me. I wish each one of you the very best.

**Rhoda Grant (Highlands and Islands) (Lab):** I wish you all the best for the future. It has been a pleasure working on the committee with you and we concur with your comments about the support staff. We wish you all the best.

**The Convener:** I may need those sentiments.

**Ian McKee (Lothians) (SNP):** I know, from speaking to colleagues in the Parliament and elsewhere, how highly regarded our team of clerks and our legal advisers are. They contribute enormously to the working of democracy because they find problems and manage to nip them in the bud before they cause further problems. I associate myself with your remarks and wish you all the best in future.

**The Convener:** That is very kind. With that, we move into private.

12:12

*Meeting continued in private until 12:14.*



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