

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 26 June 2007

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2007.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

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

CONTENTS

Tuesday 26 June 2007

Col.

DRAFT INSTRUMENTS SUBJECT TO APPROVAL	6
Smoking, Health and Social Care (Scotland) Act 2005 (Variation of Age Limit for Sale of Tobacco etc and Consequential Modifications) Order 2007 (draft)	6
Conservation (Natural Habitats, &c) Amendment (No 2) (Scotland) Regulations 2007 (draft)	6
INSTRUMENTS SUBJECT TO ANNULMENT	9
Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2007 (SSI 2007/304)	9
Bovine Semen (Scotland) Regulations 2007 (SSI 2007/330)	9
Gambling Act 2005 (Premises Licences and Provisional Statements) (Scotland) Amendment Regulations 2007 (SSI 2007/332)	10
Vegetable Seeds Amendment (Scotland) Regulations 2007 (SSI 2007/305)	10
Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs (Scotland) Amendment (No 2) Regulations 2007 (SSI 2007/306)	11
European Fisheries Fund (Grants) (Scotland) Regulations 2007 (SSI 2007/307)	11
Gambling Act 2005 (Fees) (Scotland) Regulations 2007 (SSI 2007/309)	11
Cattle Identification (Scotland) Amendment Regulations 2007 (SSI 2007/312)	11
Education (Publication and Consultation Etc) (Scotland) Amendment Regulations 2007 (SSI 2007/315)	11
Health Protection Agency (Scottish Health Functions) Amendment Order 2007 (SSI 2007/316)	11
National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2007 (SSI 2007/317)	11
Adults with Incapacity (Public Guardian's Fees) (Scotland) Amendment Regulations 2007 (SSI 2007/320)	11
Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2007 (SSI 2007/324)	11
Spreadable Fats (Marketing Standards) (Scotland) Amendment Regulations 2007 (SSI 2007/303)	12
Gambling Act 2005 (Fees No 2) (Scotland) Regulations 2007 (SSI 2007/311)	12
Licensing (Miscellaneous Amendments) (Scotland) Regulations 2007 (SSI 2007/313)	12
Plant Health Fees (Scotland) Amendment Regulations 2007 (SSI 2007/314)	12
Sheriff Court Fees Amendment Order 2007 (SSI 2007/318)	12
Court of Session etc Fees Amendment Order 2007 (SSI 2007/319)	12
High Court of Justiciary Fees Amendment Order 2007 (SSI 2007/321)	12
Discontinuance of Low Moss Prison (Scotland) Order 2007 (SSI 2007/322)	12
Addition of Vitamins, Minerals and Other Substances (Scotland) Regulations 2007 (SSI 2007/325)	12
INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT	13
Aquaculture and Fisheries (Scotland) Act 2007 (Commencement and Transitional Provisions) Order 2007 (SSI 2007/333)	13
Housing (Scotland) Act 2006 (Commencement No 5, Savings and Transitional Provisions) Order 2007 (SSI 2007/270)	14
Act of Adjournal (Criminal Procedure Rules Amendment No 3) (Miscellaneous) 2007 (SSI 2007/276)	14
Act of Sederunt (Rules of the Court of Session Amendment No 4) (Personal Injuries Actions etc) 2007 (SSI 2007/282)	14
Act of Sederunt (Rules of the Court of Session Amendment No 5) (Immigration, Asylum and Nationality Act 2006) 2007 (SSI 2007/283)	14
Vulnerable Witnesses (Scotland) Act 2004 (Commencement No 5, Savings and Transitional Provisions) Order 2007 (SSI 2007/329)	14
Crofting Reform etc Act 2007 (Commencement No 1) Order 2007 (SSI 2007/269)	14

SUBORDINATE LEGISLATION COMMITTEE

2nd Meeting 2007, Session 3

CONVENER

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

DEPUTY CONVENER

*Gil Paterson (West of Scotland) (SNP)

COMMITTEE MEMBERS

*Jackson Carlaw (West of Scotland) (Con)

*Ian McKee (Lothians) (SNP)

*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Christopher Harvie (Mid Scotland and Fife) (SNP)

Margaret Smith (Edinburgh West) (LD)

*attended

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 6

Scottish Parliament
Subordinate Legislation
Committee

Tuesday 26 June 2007

[THE CONVENER *opened the meeting at 14:15*]

The Convener (Mr Jamie Stone): Good afternoon, ladies and gentlemen. We have hit the starting time almost to the second. I welcome everyone to the second meeting in session 3 of the Subordinate Legislation Committee. We have received no apologies. I ask members and all others present to turn off their mobile phones and pagers—although pagers are mostly things of the past.

I stress that this is rather an unusual meeting. It is not representative of the way in which things were done in the past or will be done in the future. This is our only opportunity to consider statutory instruments that have been laid since the dissolution of the second session of Parliament. Usually, when the committee considers instruments and raises points with the Executive, it has an opportunity at a further meeting to consider the Executive's response. We do not have that luxury today, which I think is a little unfortunate, but we are trapped between a rock and a hard place.

Members will note from the legal brief that the legal advisers have already approached the Executive about two instruments on which they identified substantive points. We will consider the Executive's responses at appropriate junctures during the meeting.

One of the instruments that we are considering today was laid only last Friday. Unusually, it will be considered by the whole Parliament this Thursday, under rule 10.7 of standing orders. That is a very short timescale, and we will touch on that later.

Draft Instruments Subject
to Approval

Smoking, Health and Social Care
(Scotland) Act 2005 (Variation of Age Limit
for Sale of Tobacco etc and Consequential
Modifications) Order 2007 (draft)

14:16

The Convener: I draw members' attention to the summary of recommendations—it is a very useful aide-mémoire—as well as to the legal brief. Our legal team has identified no substantive points on the draft order, although there are some minor points that we could raise informally with the Executive.

I am glad that I gave up smoking almost three years ago to the day. I am well past the age of 18.

The committee agreed to raise minor points on the instrument.

Conservation (Natural Habitats, &c)
Amendment (No 2) (Scotland) Regulations
2007 (draft)

The Convener: The second draft affirmative instrument is the one that was laid only last Friday. The legal brief on the draft regulations was included in members' supplementary papers, which came out yesterday. As I said, it is unusual that the regulations are being considered under rule 10.7 of standing orders. Although there is no formal role for the committee under that rule—and there is no lead committee, on which I believe Elaine Smith wishes to comment—this committee does usually consider such instruments and reports to Parliament if it is agreed that that is necessary.

No substantive points have been identified on the draft regulations, although the committee could raise some minor points informally with the Executive. Are members content with the regulations? Are there any comments?

Elaine Smith (Coatbridge and Chryston) (Lab): The timescale involved is extremely unfortunate, as is the fact that the draft regulations will not go before a lead committee. As I understand it, the regulations will not even go before a Committee of the Whole Parliament on Thursday—there will simply be a debate in the Parliament. That leaves little time to ask questions on the regulations; members can only comment on them.

It is not within the committee's remit to question the substance of an instrument; it is just a matter of ascertaining whether or not it is competent.

Given that the regulations will not go before any lead committee, however, issues need to be raised now.

I am concerned about a precedent being set. Some of the questions that could have been asked are about the fact that the instrument extends powers under part IV of the Conservation (Natural Habitats, &c) Regulations 1994 (SI 1994/2716) to all plans and projects—it gives new powers to call in plans and projects. We know that one of the issues that might arise is that of the ship-to-ship transfer of oil, which has attracted a lot of attention and concern among the public and members of the Parliament. Questions would have been asked at a lead committee about points such as the possibility of retrospective application of the legislation, so that Forth Ports could not approve schemes on ship-to-ship oil transfers before the Parliament approved the regulations.

Such questions were asked by Marilyn Livingstone and Malcolm Chisholm, and I do not think that answers were forthcoming from civil servants. Before dissolution Sarah Boyack, the then Deputy Minister for Environment and Rural Development, gave a commitment to the Environment and Rural Development Committee to provide answers on some of the issues. Did civil servants find those answers? The lead committee would have wanted to take up such points with a minister. We do not have a minister before us today, and we do not even have the opportunity to write to the Executive to ask about technical issues.

Those are my concerns. Questions could be asked during the debate on Thursday, and they might be answered. This is an unusual process and I would be extremely concerned if it set a precedent or became the norm. The convener said that standing orders allow for this situation, but I would like the committee to question how the decisions on the process were made. Do you know who decided to proceed in this fashion, convener? Has this been done before? Could the committee express concern over the procedure that has been adopted?

The Convener: By virtue of the fact that every word that we say is being taken down by the official report, what you have just said is now on the record and it will be published by Thursday, when the Parliament is due to consider the draft regulations.

I am duty bound to remind members that the committee must act within its remit, which is to consider the appropriateness of instruments within the framework of the parent legislation, and we have strong advice from our legal team that the regulations are perfectly correct. Discussion of the political dimension and of the rights and wrongs of the intention behind the regulations rightly lies with a lead committee, as Elaine Smith has mentioned.

I will make two points by way of being helpful. First, it is most unfortunate that we are constrained in this fashion and that there is so little time that the regulations cannot go before a lead committee, but must go straight before the Parliament. Secondly, I hope that ministers will exercise some foresight and wisdom when they read the *Official Report*, in terms of choosing what to say in the debate on Thursday and in terms of answering questions and taking interventions. However, the issues that Elaine Smith raises are not competent for consideration by this committee. I have said enough.

Elaine Smith: I have a final point about process. Given that there will be a debate on Thursday, rather than a Committee of the Whole Parliament or a statement with questions and answers, perhaps there is some way of conveying to the Scottish Executive that the colleagues I mentioned—it may not be me—will wish to intervene on speeches, as there has not been a lead committee process. I hope that there is some way of conveying that to the Executive and of ensuring that ministers see the *Official Report*. That would be helpful.

The Convener: Also by way of being helpful, I remind the committee that we are proceeding in this way because the Parliamentary Bureau decided it. You might wish to take up the matter with your representative on the bureau, Elaine, and members of other parties may wish to do the same.

To get us back on track now that we heard comments on the regulations, I ask again whether members are content with the regulations and whether the committee wishes to report to the Parliament?

Ian McKee (Lothians) (SNP): As you said, convener, Elaine Smith's comments will have been noted and we should leave it at that.

The committee agreed to raise minor points on the instrument.

Instruments Subject to Annulment

14:24

The Convener: Item 2 is instruments subject to annulment. We all did our swotting after the bit of tuition that we were given last week. I have read every single instrument—whether I understand them is another matter.

Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2007 (SSI 2007/304)

The Convener: This is one of the instruments to which I referred earlier. Given that the committee can consider the regulations only once, as I pointed out, the legal advisers have already raised issues with the Executive on the committee's behalf. They are to be praised for their foresight.

The Executive has responded to the points raised, which is helpful. Members have the responses before them. We can now report to the lead committee on the regulations.

Are members content to draw the regulations to the attention of the lead committee and Parliament on the grounds of points (a) to (d) in the summary of recommendations?

Members indicated agreement.

Bovine Semen (Scotland) Regulations 2007 (SSI 2007/330)

The Convener: Never in my wildest dreams did I think that I would be dealing with this sort of thing in my career as a parliamentarian.

An instrument subject to negative procedure comes into force a minimum of 21 days after it is laid. If that limit is breached, the maker of the instrument must explain the reasons to the Presiding Officer, as we heard last week.

In this case, the Executive has provided an explanation, a copy of which members have in their papers. The Executive explains that the regulations require to be brought into force on 13 July, so that Scottish farmers are placed in the same position as English farmers, particularly in relation to fees payable under the regulations.

Members might also observe that the Executive could not reasonably have been expected to make the regulations much earlier, because of the dissolution of the Parliament and the election of the new Administration. In other words, the Executive has been time constrained and we should show it some understanding.

Are members content with the regulations and is the breach of the 21-day rule acceptable in this case?

Members indicated agreement.

Gambling Act 2005 (Premises Licences and Provisional Statements) (Scotland) Amendment Regulations 2007 (SSI 2007/332)

The Convener: As members will see from their papers, these regulations have also breached the 21-day rule. The amendment made by the regulations requires to be in force as soon as possible and, in any event, before 30 July. The principal reason for the breach of the 21-day rule was an oversight in the principal regulations as to policy implementation. That is a slightly different reason from the previous one.

Are members content with the regulations and is the breach of the rule acceptable? Should we write to the Executive about the minor points identified by our legal team?

Elaine Smith: Although breaches are not particularly acceptable, the reasons are understood. However, they should not be encouraged.

The Convener: Yes. I see that. I suspect that, given the changeover from one Administration to another, a few tidying acts might have to take place. Your point is fair and well made.

So, members are content.

Vegetable Seeds Amendment (Scotland) Regulations 2007 (SSI 2007/305)

The Convener: We come to instruments on which minor points arise. We have an esoteric group, which I think that we can take together.

The first is the vegetable seeds regulations. I want to talk about vegetables, because I was very interested to see the Latin names for Brussels sprouts and broccoli. I did not know that the word for lettuce in Latin is almost the same as it is in English, but I digress.

Do members have any comments on SSI 2007/319, SSI 2007/321, SSI 2007/322 and SSI 2007/325? I bet that they do not. Are members content to report to the lead committees and the Parliament that the committee is content with the instruments? *[Interruption.]* Oh dear. The instruments are out of order, because I have jumped a page. Oh, members, I have done it again. Tut, tut. Well done the clerks. I got the vegetable seeds one right, but it went wrong after that.

Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs (Scotland) Amendment (No 2) Regulations 2007 (SSI 2007/306)

European Fisheries Fund (Grants) (Scotland) Regulations 2007 (SSI 2007/307)

Gambling Act 2005 (Fees) (Scotland) Regulations 2007 (SSI 2007/309)

Cattle Identification (Scotland) Amendment Regulations 2007 (SSI 2007/312)

Education (Publication and Consultation Etc) (Scotland) Amendment Regulations 2007 (SSI 2007/315)

Health Protection Agency (Scottish Health Functions) Amendment Order 2007 (SSI 2007/316)

National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2007 (SSI 2007/317)

Adults with Incapacity (Public Guardian's Fees) (Scotland) Amendment Regulations 2007 (SSI 2007/320)

Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2007 (SSI 2007/324)

The committee agreed to raise minor points on the instruments.

The Convener: I apologise to the clerk. I will improve my convening as time goes on.

Spreadable Fats (Marketing Standards) (Scotland) Amendment Regulations 2007 (SSI 2007/303)

Gambling Act 2005 (Fees No 2) (Scotland) Regulations 2007 (SSI 2007/311)

Licensing (Miscellaneous Amendments) (Scotland) Regulations 2007 (SSI 2007/313)

Plant Health Fees (Scotland) Amendment Regulations 2007 (SSI 2007/314)

Sheriff Court Fees Amendment Order 2007 (SSI 2007/318)

Court of Session etc Fees Amendment Order 2007 (SSI 2007/319)

High Court of Justiciary Fees Amendment Order 2007 (SSI 2007/321)

Discontinuance of Low Moss Prison (Scotland) Order 2007 (SSI 2007/322)

Addition of Vitamins, Minerals and Other Substances (Scotland) Regulations 2007 (SSI 2007/325)

The committee agreed that no points arose on the instruments.

The Convener: We might be able to break all records for the length of a meeting of this committee.

Instruments Not Laid Before the Parliament

14:30

The Convener: Before the meeting, I had to have it explained to me why instruments not laid before the Parliament are different from the two sorts of instruments with which we have dealt already. Presumably, members are more up to speed.

Aquaculture and Fisheries (Scotland) Act 2007 (Commencement and Transitional Provisions) Order 2007 (SSI 2007/333)

The Convener: This is another instrument about which the legal advisers have raised an issue with the Executive on the committee's behalf, given the time constraints. As the order is not laid, and there is no lead committee in such circumstances, this committee reports directly to the Parliament.

The Executive considers that there is a typographical error in the order, which it will rectify when it is printed. However, the legal advisers' view is that the error is more significant than that and that the order should be revoked and relaid.

As members have no comments on the order, are they content that we report it to Parliament on the grounds of defective drafting in relation to article 4, such as might cast doubt on the operation of that transitional provision, and failure to follow proper legislative practice, in that the Executive intends to amend a drafting defect by means of a correction slip rather than by formally amending the order, which is in contravention of paragraph 5.25 of "Scottish Statutory Instrument Practice"?

Members indicated agreement.

The Convener: We are cutting up a little rough on this one. We do not like correction slips. We are going to say, "Try to do it again and get it right." Are they called correction notes or correction slips? We all know what I mean, anyway.

Housing (Scotland) Act 2006 (Commencement No 5, Savings and Transitional Provisions) Order 2007 (SSI 2007/270)

Act of Adjournal (Criminal Procedure Rules Amendment No 3) (Miscellaneous) 2007 (SSI 2007/276)

Act of Sederunt (Rules of the Court of Session Amendment No 4) (Personal Injuries Actions etc) 2007 (SSI 2007/282)

Act of Sederunt (Rules of the Court of Session Amendment No 5) (Immigration, Asylum and Nationality Act 2006) 2007 (SSI 2007/283)

Vulnerable Witnesses (Scotland) Act 2004 (Commencement No 5, Savings and Transitional Provisions) Order 2007 (SSI 2007/329)

The committee agreed to raise minor points on the instruments.

Crofting Reform etc Act 2007 (Commencement No 1) Order 2007 (SSI 2007/269)

The Convener: Do members have any comments on the order? Are they content that we report to the lead committee and Parliament that the committee is content with the order? Do we have any crofting experts among us? Do not point the finger at me.

Elaine Smith: Despite having been known as the Coatbridge crofter on my previous committee, I have no comment on the order.

The committee agreed that no points arose on the instrument.

The Convener: The next meeting of the committee is likely to be held on Tuesday 4 September at 2.15 pm. For those members staying with the committee, we hope to have an away day before that and the clerks will be in touch with members about it. I thank Elaine Smith. I understand that she might not be with us on the committee much longer, but in her short membership she has made a remarkable impact, which is truly astonishing. I will now have to take my tablets and lie down.

Meeting closed at 14:33.

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

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Wednesday 4 July 2007

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by RR Donnelley and available from:

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.

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
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

Scottish Parliament

RNID Typetalk calls welcome on
18001 0131 348 5000
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers