



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# SUBORDINATE LEGISLATION COMMITTEE

Tuesday 22 November 2011

Session 4

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**Tuesday 22 November 2011**

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**SUBORDINATE LEGISLATION COMMITTEE**  
**12<sup>th</sup> Meeting 2011, Session 4**

**CONVENER**

\*Nigel Don (Angus North and Mearns) (SNP)

**DEPUTY CONVENER**

\*James Dornan (Glasgow Cathcart) (SNP)

**COMMITTEE MEMBERS**

\*Chic Brodie (South Scotland) (SNP)

\*Kezia Dugdale (Lothian) (Lab)

\*Mike MacKenzie (Highlands and Islands) (SNP)

\*John Scott (Ayr) (Con)

\*Drew Smith (Glasgow) (Lab)

\*attended

**CLERK TO THE COMMITTEE**

Irene Fleming

**LOCATION**

Committee Room 6



**Scottish Parliament**  
**Subordinate Legislation**  
**Committee**

*Tuesday 22 November 2011*

[The Convener *opened the meeting at 14:35*]

**Decision on Taking Business in**  
**Private**

**The Convener (Nigel Don):** I welcome members to the 12th meeting in session 4 of the Subordinate Legislation Committee. As usual, I ask you to turn off mobile phones, please.

Agenda item 1 is to decide whether to take in private item 6, which is to consider the committee's approach to scrutiny of the delegated powers in the Alcohol (Minimum Pricing) (Scotland) Bill. Do members agree to take that in private?

**Members** *indicated agreement.*

**Instruments subject to**  
**Affirmative Procedure**

**Student Fees (Specification) (Scotland)**  
**Order 2011 [Draft]**

**London Olympic Games and Paralympic**  
**Games (Advertising and Trading)**  
**(Scotland) Regulations 2011 [Draft]**

**Storage of Carbon Dioxide (Licensing etc)**  
**(Scotland) Amendment Regulations 2011**  
**[Draft]**

14:36

**The Convener:** Our legal advisers raised no points on the instruments.

The committee may wish to welcome the Scottish Government's adjustment of the drafting of the Student Fees (Specification) (Scotland) Order 2011 to reflect the points that the committee raised in relation to the draft of the order that was laid for consultation.

The committee may also wish to note that the London Olympic Games and Paralympic Games (Advertising and Trading) (Scotland) Regulations 2011 have been relaid to correct the errors identified in the first draft of the regulations.

The committee may further wish to note that the Storage of Carbon Dioxide (Licensing etc) (Scotland) Amendment Regulations 2011 were withdrawn and relaid in order to address concerns raised about the previous draft.

I suspect that the committee will wish to note and welcome those points. I am sure that I am not the only one who will note that that again demonstrates the value of having time in which to consider these matters both formally and informally.

Is the committee content with the instruments?

**Members** *indicated agreement.*

## Instruments subject to Negative Procedure

### Education (Fees) (Scotland) Regulations 2011 (SSI 2011/389)

14:37

**The Convener:** The drafting of the regulations appears to be defective in the definition of “family member” in regulation 2(1). Although “Swiss frontier employed person” is referred to, that is not a defined term in the regulations; the reference should be to “Swiss frontier worker”. Does the committee agree to draw the regulations to the Parliament’s attention on reporting ground (i)?

**Members** *indicated agreement.*

**The Convener:** The committee should note that the Scottish Government has undertaken to correct the error by bringing forward an amending instrument, which will come into force on the same day as the regulations.

**John Scott (Ayr) (Con):** Convener, if I may, I will welcome the Government’s intention to bring forward an amending instrument on the same day. That is progress.

**The Convener:** Indeed.

### Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc) (Scotland) Regulations 2011 (SSI 2011/394)

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

## Instruments not subject to Parliamentary Procedure

### Act of Adjournal (Criminal Procedure Rules Amendment No 7) (Double Jeopardy (Scotland) Act 2011) 2011 (SSI 2011/387)

14:39

**The Convener:** New rule 59.2(2) of the criminal procedure rules makes superfluous provision, duplicating the effect of section 5(1) of the Double Jeopardy (Scotland) Act 2011, contrary to normal drafting practice. Does the committee agree to draw the instrument to the Parliament’s attention on the general reporting ground?

**Members** *indicated agreement.*

### Act of Sederunt (Contempt of Court in Civil Proceedings) 2011 (SSI 2011/388)

**The Convener:** In so far as the act of sederunt makes rules for the procedure to be followed in contempt proceedings in the sheriff court, it has been made by what appears to be an unusual use of the powers conferred by section 32(1) of the Sheriff Courts (Scotland) Act 1971. Does the committee agree to draw the act of sederunt to the attention of the Parliament on reporting ground (g)?

**Members** *indicated agreement.*

**Mike MacKenzie (Highlands and Islands) (SNP):** There may be a case for going beyond that. Having read the various papers, I cannot help but feel that the situation is very unsatisfactory as it stands. I wonder whether there is any appropriate action that we can take other than what has been suggested.

**The Convener:** There are a number of issues with this particular Scottish statutory instrument. The first one, which we are considering at the moment, is the provenance of the powers under section 32(1). The advice of our legal advisers is that that seems to be pretty marginal, which I think is already an indication that we might be concerned. There are other points to come and I suspect that we might have things to say when we have them all together so, unless there are other comments, we will move on.

In addition to the first point, the committee may wish to draw the act of sederunt to the attention of the Parliament on reporting ground (h) in relation to the following three matters.

First, the meaning of rule 4(1) could be clearer. The rule provides, without further explanation, that a “differently constituted court” is to deal with the contempt proceedings. It is not clear from the rule

what will constitute a differently constituted court, although presiding judges and sheriffs will have to interpret it in a way that is compatible with the rights of the person accused under articles 5 and 6 of the European convention on human rights.

Secondly, the meaning of rule 9(1) could be clearer. The rule provides for appeals only from lower courts and is silent on appeals from the inner house. However, it appears that rights of appeal exist, although they are to be found outwith the instrument, and that the instrument is not intended to exclude them, although it may appear to do so by implication.

Thirdly, the meaning of rule 9(2) could be clearer. Although the rule provides for appeals to be treated, so far as possible, as if they were bail appeals in criminal proceedings, the degree of modification required to section 32 of the Criminal Procedure (Scotland) Act 1995, which governs bail appeals, is substantial. The procedure that would apply in consequence would not necessarily be clear or accessible to appellants.

Taking all those points together, do committee members have anything to say?

**Mike MacKenzie:** I find the situation very disappointing. I do not think that the instrument has the clarity that ought to be required. I hope that we can draw that to the attention of the appropriate body, which is perhaps the lead committee, in strong terms.

**The Convener:** I am happy that we do that. Do other members have a view?

**Chic Brodie (South Scotland) (SNP):** The instrument is just not clear.

**The Convener:** I am coming at it from the point of view that someone in court, or possibly someone who has been sent to the cells for contempt of court, should be able to know what the rules are. I recognise that the average individual might not know, but their lawyer certainly should be entirely clear what the rules are. If we are struggling to be clear about what precisely the rules might be, that is a matter of concern.

I recognise that the courts are masters of their own procedure and I am sure that they will do something sensible, so I do not think that we have to tell them that they are incapable of resolving this problem. However, the fact that the meaning is not clear on the face of an instrument that ought to make it clear, because that is what the instrument is for, leaves us concerned.

On that basis, would the committee be happy if, as well as generally reporting to the Parliament on the instrument, we drew all those points specifically to the attention of the lead committee on the ground that the instrument is not as clear

as it might be and that the lead committee might wish to consider it further? Are we comfortable with that?

**Members** *indicated agreement.*

**The Convener:** Thank you very much.

**Act of Sederunt (Sheriff Court Rules)  
(Miscellaneous Amendments) (No 3) 2011  
(SSI 2011/386)**

**Spring Traps Approval (Scotland) Order  
2011 (SSI 2011/393)**

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

## National Library of Scotland Bill: Stage 1

14:45

**The Convener:** The committee will consider the delegated powers in the National Library of Scotland Bill. The committee is invited to agree what questions it wishes to raise with the Scottish Government. It is suggested that the questions are raised in written correspondence. On the basis of the responses received, the committee would consider a draft report at its meeting on 6 December 2011.

It is recommended that the committee raise questions in relation to the power in section 12(2) to commence provisions, which includes power to make transitional, transitory or saving provisions. Specifically, the committee may wish to ask the Scottish Government why an order made under section 12(2), where it includes transitional, transitory or saving provisions, should be subject simply to the default "laid only" procedural requirement, in contrast to an order that makes incidental or consequential provision under section 10(2), which order would be subject to, at minimum, the negative procedure.

With reference to this same power, the committee may also wish to ask the Scottish Government to explain what sort of provision might be necessary and to justify why exercise of the power need not attract parliamentary scrutiny.

Are members content to raise those questions with the Scottish Government in writing? Do members have any other concerns that they would like to raise about the bill?

**James Dornan (Glasgow Cathcart) (SNP):** I will be interested to see the Government's responses.

**John Scott:** Those are valid points. As indicated, there does appear to be a difference in emphasis and almost a contradiction; it is well worth raising that.

**The Convener:** Yes. It is perhaps worth recognising that after the Aberdeen adoption case we are naturally just a bit wary about any powers, transitory or transitional, that do not come with scrutiny. Will we refer the matter to the Government in the terms suggested?

**Members indicated agreement.**

**The Convener:** We now move into private session.

14:47

*Meeting continued in private until 15:07.*

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