



SUBORDINATE LEGISLATION COMMITTEE

AGENDA

7th Meeting, 2007 (Session 2)

Tuesday 20 February 2007

The Committee will meet at 10.30am in Committee Room 4.

1. **Delegated powers scrutiny:** The Committee will consider the delegated powers provisions in the following bill—

Aquaculture and Fisheries (Scotland) Bill as amended at Stage 2.

2. **Executive responses:** The Committee will consider Executive responses in relation to the following—

Licensing (Scotland) Act 2005: Draft Guidance for Licensing Boards and Local Authorities, **(SE/2007/9)**

the Fundable Bodies (Scotland) Order 2007, **(SSI 2007/draft)**

the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007, **(SSI 2007/draft)**.

3. **Draft instruments subject to approval:** The Committee will consider the following—

the Advice and Assistance (Financial Conditions) (Scotland) Regulations 2007, **(SSI 2007/draft)**

the Advice and Assistance (Financial Limit) (Scotland) Amendment Regulations 2007, **(SSI 2007/draft)**

the Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2007, **(SSI 2007/draft)**

the Debt Arrangement Scheme (Scotland) Amendment Regulations 2007, **(SSI 2007/draft)**

the Fundable Bodies (Scotland) Order 2007, **(SSI 2007/draft)**

the Local Governance (Scotland) Act 2004 (Allowances and Expenses) Regulations 2007, **(SSI 2007/draft)**

the National Waste Management Plan for Scotland Regulations 2007, **(SSI 2007/draft)**

the Number of Inner House Judges (Variation) Order 2007, **(SSI 2007/draft)**

the Renewables Obligation (Scotland) Order 2007, **(SSI 2007/draft)**

the Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Regulations 2007, **(SSI 2007/draft)**

the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007, **(SSI 2007/draft)**.

4. Instruments subject to annulment: The Committee will consider the following—

the Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2007, **(SSI 2007/58)**

the Civil Legal Aid (Scotland) Amendment Regulations 2007, **(SSI 2007/59)**

the Advice and Assistance (Scotland) Amendment Regulations 2007, **(SSI 2007/60)**

the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2007, **(SSI 2007/63)**

the Regulation of Care (Scotland) Act 2001 (Commencement No. 7 and Transitional Provisions) Amendment Order 2007, **(SSI 2007/67)**

the Police (Injury Benefit) (Scotland) Regulations 2007, **(SSI 2007/68)**

the Avian Influenza (Preventive Measures) (Scotland) Order 2007, **(SSI 2007/69)**

the Local Government Pensions Etc. (Councillors and VisitScotland) (Scotland) Amendment Regulations 2007, **(SSI 2007/71)**

the Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2007, **(SSI 2007/72)**

the Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2007, **(SSI 2007/73)**

the Housing (Scotland) Act 2001 (Alteration of Housing Finance Arrangements) Order 2007, **(SSI 2007/74)**

the Licensing (Clubs) (Scotland) Regulations 2007, **(SSI 2007/76)**

the Personal Licence (Scotland) Regulations 2007, **(SSI 2007/77)**

the Food Supplements (Scotland) Amendment Regulations 2007, **(SSI 2007/78)**

the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2007, **(SI 2007/286)**.

5. Instruments not laid before the Parliament: The Committee will consider the following—

the Legal Profession and Legal Aid (Scotland) Act 2007 (Commencement No. 1) Order 2007, **(SSI 2007/57)**

the Avian Influenza (H5N1 in Wild Birds) (Scotland) Order, **(SSI 2007/61)**

the Avian Influenza (H5N1 in Poultry) (Scotland) Order 2007, **(SSI 2007/62)**.

Ruth Cooper
Clerk to the Committee
Tel: 0131 348 5212

The following papers are relevant to this meeting:

Agenda Items 1 – 5

Legal brief (Private)

SL/S2/07/07/1

Agenda Item 1

[Delegated powers memorandum](#) (circulated to Members only)

Agenda Item 2

Executive responses

[SL/S2/07/07/2](#)

Agenda Items 3 - 5

Copies of instruments (circulated to Members only)

SUBORDINATE LEGISLATION COMMITTEE

7th Meeting, 2007 (Session 2)

Tuesday 20 February 2007

Executive Responses

Licensing (Scotland) Act 2005: Draft Guidance for Licensing Boards and Local Authorities, (SE/2007/9)

1. On 13 February the Committee asked the Executive for clarification on the following:

“The Committee noted that the points that it had raised at its meeting of 6 February 2007 had been responded to and that a new draft of the guidance had been laid. However, the Committee was concerned that an initial response from the Executive on this guidance indicated that the Executive was content that there were no substantial errors in the document. The Committee seeks explanation of the checks undertaken at the point of this initial correspondence on 6 February 2007 and the background to the circumstances that have lead to a further draft being laid.”

The Scottish Executive responds as follows:

2. In responding to the SLC's points in their letter of 31 January the Scottish Executive assured the Committee that there were no substantial errors in the document. That remains our assessment based on a review of the draft by the Licensing Team.

3. With regard to internal checks made on the draft guidance, it was considered independently by three members of the Licensing Team.

4. The reason a further draft was laid was in response to the subsequent request from the SLC dated 6 February, based on points raised by the Clerk to Glasgow Licensing Board. As stated in the SE's response the SE were content to make adjustments to the draft guidance in response to these points.

The Fundable Bodies (Scotland) Order 2007, (SSI 2007/draft)

1. On 13 February 2007 the Committee asked the Executive:

“(a) to explain the lack of a commencement date; and
(b) to explain why, given the Committee’s comments and resultant Executive assurances (please see the Annex) on the Fundable Bodies (Scotland) Order 2005, (SSI 2005/660), it has failed to make an appropriate revision to the Explanatory Note.”

The Scottish Executive responds as follows:

2. The Executive thanks the Committee for these comments on the Orders.

3. The Executive accepts that the commencement date ought to have been inserted and has decided to withdraw the Order and re-lay it to address the points raised by the Committee.

4. The Executive notes the Committee’s view that the Explanatory Note could have contained more information; however, the Explanatory Note is not part of the Order and any omission thereto would not have invalidated the effect of the Order. Although the Executive remain of the view that the Order would not be invalid by reason of this omission, on this occasion the opportunity has been taken to make a small amendment to the Explanatory Note to the Order prior to it being re-laid.

The Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007, (SSI 2007/draft)

1. On 13th February 2007 the Subordinate Legislation Committee, having considered the above draft instrument asked the Scottish Executive to:

- “(a) explain the vires for regulation 4(1) (and the corresponding provision in Schedule 6) which allows the Scottish Ministers to impose conditions on the grant of an authorisation to hot brand equine animals, given the requirement in the enabling power to “specify” such conditions in the Regulations; and
- (b) explain whether, and if so why, it is satisfied that the review procedures in regulation 5 are compliant with article 6 of ECHR”.

The Scottish Executive responds as follows:

First Question

2. Section 20(5) provides:

- “This section does not apply
- (a) in relation to a procedure which is carried out for the purpose of medical treatment of an animal,
 - (b) in relation to a procedure which is carried out –
 - (i) for a purpose which,
 - (ii) in such manner as, and
 - (iii) in accordance with such conditions as,the Scottish Ministers may by regulations specify, or
 - (c) in such circumstances as the Scottish Ministers may by regulations specify.”

3. This provision relies on a combination of the powers in section 20(5)(b) and (c). The Regulations provide that a person may hot brand equine animals provided that the Scottish Ministers have authorised the branding of the equine animals concerned. Section 20(5)(c) allows for the specification of circumstances by the Scottish Ministers in which the offences in section 20 do not apply. The circumstances specified are that the person seeking to carry out the hot branding of the equine animals concerned must be authorised to do so by the Scottish Ministers and the conditions attaching to that authorisation must be satisfied.

4. The power to impose conditions in regulation 4(1) is not intended to allow the Scottish Ministers to set conditions on the performance of the procedure itself and cannot be so used. Regulation 4(1) provides the power for the Scottish Ministers to impose conditions on the authorisation to hot brand such as that the hot branding may only be performed in a particular geographical location or that only the specified number of horses may be branded.

Second Question

5. The review procedures set out in regulation 5, if taken on their own, are not ECHR compliant as they do not provide for an independent review. However, the procedures in

regulation 5 are only part of the review process, so anyone who is dis-satisfied with the outcome of any review could have recourse to judicial review. The Executive is satisfied that judicial review would provide sufficiency of review for Article 6 ECHR purposes. The Executive is therefore of the opinion that in this case the review process, taken as a whole, is ECHR compliant.