



SUBORDINATE LEGISLATION COMMITTEE

AGENDA

6th Meeting, 2007 (Session 2)

Tuesday 13 February 2007

The Committee will meet at 10.30am in Committee Room 6.

1. **Legislative consent memorandum:** The Committee will consider the powers to make subordinate legislation conferred on Scottish Ministers in the Serious Crime Bill.
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Licensing (Scotland) Act 2005: Draft Guidance for Licensing Boards and Local Authorities, **(SE/2007/9)**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 Strathclyde Passenger Transport Authority (Constitution, Membership and Transitional and Consequential Provisions) Amendment Order 2007, **(SSI 2007/23)**

the Local Electoral Administration and Registration Services (Scotland) Act 2006 (Commencement No. 2 and Transitional Provisions) Order 2007, **(SSI 2007/26)**

the Sulphur Content of Liquid Fuels (Scotland) Regulations 2007, **(SSI 2007/27)**.

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

the Business Improvement Districts (Ballot Arrangements) (Scotland) Regulations 2007, **(SSI 2007/draft)**

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

the Gambling Act 2005 (Mandatory and Default Conditions) (Scotland) Regulations 2007, **(SSI 2007/draft)**

the Housing Support Grant (Scotland) Order 2007, **(SSI 2007/draft)**

the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Modification of Agency's Powers and Incidental Provision) Order 2007, **(SSI 2007/draft)**

the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 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 Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007, **(SSI 2007/draft)**

the Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2007, **(SSI 2007/draft)**

the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment 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 Contaminants in Food (Scotland) Regulations 2007, **(SSI 2007/29)**

the Licensing Register (Scotland) Regulations 2007, **(SSI 2007/33)**

the Licence Transfer (Prescribed Persons) (Scotland) Regulations 2007, **(SSI 2007/34)**

the Licensing (Closure Orders) (Scotland) Regulations 2007, **(SSI 2007/35)**

the Non-Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Amendment Order 2007, **(SSI 2007/36)**

the Notification of Marketing of Food for Particular Nutritional Uses (Scotland) Regulations 2007, **(SSI 2007/37)**

the Sea Fishing (Prohibition on the Removal of Shark Fins) (Scotland) Order 2007, **(SSI 2007/39)**

the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2007, **(SSI 2007/40)**

the Registration of Civil Partnerships (Prescription of Forms, Publicisation and Errors) (Scotland) Amendment Regulations 2007, **(SSI 2007/53)**

the Registration of Births, Deaths and Marriages (Re-registration) (Scotland) Regulations 2007, **(SSI 2007/54)**

the Smoke Control Areas (Exempt Fireplaces) (Scotland) Order 2007, **(SSI 2007/55)**

the Smoke Control Areas (Authorised Fuels) (Scotland) Amendment Regulations 2007, **(SSI 2007/56)**.

5. **Instruments not subject to Parliamentary procedure:** The Committee will consider the following—

the Food Protection (Emergency Prohibitions) (Radioactivity in Sheep) Partial Revocation (Scotland) Order 2007, **(SSI 2007/38)**.

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

the Tourist Boards (Scotland) Act 2006 (Commencement) Order 2007, **(SSI 2007/47)**

the Planning etc. (Scotland) Act 2006 (Commencement No. 1) Order 2007, **(SSI 2007/49)**

the Water Environment and Water Services (Scotland) Act 2003 (Commencement No. 5) Order 2007, **(SSI 2007/50)**

the Registration Services (Miscellaneous Provisions) (Scotland) Regulations 2007, **(SSI 2007/52)**.

7. **Inquiry into the regulatory framework in Scotland (in private):** The Committee will consider its draft report.

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Clerk to the Committee
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The following papers are relevant to this meeting:

Agenda Items 1 – 6

Legal brief (Private)

SL/S2/07/06/1

Agenda Item 1

[Legislative consent memorandum](#)

Agenda Item 2

Executive responses

SL/S2/07/06/2

Agenda Items 3 - 6

Copies of instruments (circulated to Members only)

Agenda Item 7

Draft report (Private)

SL/S2/07/06/3

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6th Meeting, 2007 (Session 2)

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Executive Responses

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

1. On 6 February the Committee asked the Executive for clarification on the following points:
 - (a) to explain the first sentence of paragraph 137 of the Guidance which appears to be legally inaccurate and in particular seems to be inconsistent with the terms of paragraphs 8(2)(c) of schedule 3 to the parent Act;
 - (b) to explain why, in paragraph 160 of the Guidance, it is stated that “the five licensing objectives apply to the consideration of applications for personal licences as to all other parts of the Act” given the restricted grounds for refusing such an application set out in section 74(3) – (6) of the Act. (is the Committee notes that the crime prevention objective may be a relevant consideration in certain limited circumstances by virtue of section 74(6))
 - (c) to comment on the view that paragraph 171 of the Guidance lists the *conditions* for a successful application (by virtue of section 74(3) and not, as the Guidance states, the application criteria which are set out in section 72(1); and
 - (d) to explain why the Guidance points to the requirement for a “causal” connection in paragraph 207 when it appears that this is not the effect of section 97 of the Act. The Committee understands that the Act will allow for an order to be granted in emergency situations under section 97(2) where the disorder is only in the “vicinity” of the licensed premises and, conceivably therefore has no connection with the premises.

The Scottish Executive responds as follows:

2. The Executive thanks the Committee for bringing these matters to our attention. The Executive has considered the points raised in the Committee’s letter and are content to make the necessary amendments to those paragraphs of the draft guidance highlighted in the Committee’s letter to address the concerns of the Committee. The Executive proposes to withdraw the current version of the draft guidance and replace it with an updated version of the draft guidance for the Committee to consider.
3. The Executive has made adjustments to paragraphs; 137, 160, 171, 173, 207 and 209.

The Strathclyde Passenger Transport Authority (Constitution, Membership and Transitional and Consequential Provisions) Amendment Order 2007, (SSI 2007/23)

1. On 6 February 2007 the Committee asked the Executive for an explanation of the following matter:

“The Committee asks the Executive how it envisages the reduction in membership of the SPTA will be achieved. For example, in the absence of any transitional provisions, the Committee seeks information as to how surplus members be chosen and removed from office.”

The Scottish Executive responds as follows:

2. Paragraph 4 of the Executive Note laid with the Order highlights the intention behind the Order in terms of SPTA's membership. This is reproduced below for ease of reference.

“4. This Order reduces the residual SPTA's membership from 34 to 20 to bring it into line with the councillor membership of the Strathclyde Partnership for Transport (the brand name of the West of Scotland Transport Partnership). This should allow the same councillor members to attend meetings of both the Authority and the Transport Partnership. The Order also makes the appointment of a secretary to SPTA discretionary.”

3. We appreciate that the appointment of SPTA members is entirely a matter for its constituent councils (see paragraph 2 of Part I of Schedule 5 to the Local Government etc. (Scotland) Act 1994 and article 4(2) of the Principal Order - S.I. 1995/3026). However, given that SPTA is now a shell body following the transfer of its substantive transport functions to the Strathclyde Partnership for Transport (the brand name of West of Scotland Transport Partnership) by S.S.I. 2006/106 and, in practice, it no longer meets, there is an understanding between the Executive, the new Transport Partnership and its constituent councils that, following the local government elections in May, the same councillor members would be appointed to the residual SPTA as to SPT, should the need for SPTA to meet formally arise again.

4. In terms of S.S.I. 2005/622, each constituent council of the Strathclyde Partnership for Transport is under a duty to appoint new councillor members at the first meeting of that council taking place after each ordinary election for councillors (see paragraph 1(8) of that Order). The coming into force date of the present order (1st June 2007) was agreed after consultation with SPT and allows enough time following the May elections for the constituent councils of SPTA (and SPT) to make fresh councillor member appointments prior to the reconstituted body coming into effect. The constituent councils of SPTA have sufficient flexibility in the appointment provisions of the Principal Order (articles 4 to 6) to allow them to do this. SPT were consulted on the terms of the Order and agreed that this was sufficient for their purposes without the need for a transitional provision.

The Local Electoral Administration and Registration Services (Scotland) Act 2006 (Commencement No. 2 and Transitional Provisions) Order 2007, (SSI 2007/26)

1. Thank you for your letter of 6 February in which the Committee asked the Executive the following:

- (a) to explain why it was considered necessary to cite section 62(1)(b) as an enabling power in addition to section 63(2) as read with section 61(2); and
- (b) to explain why, given that this power was cited, the Order has not been made in the form of an instrument subject to annulment.

The Scottish Executive responds as follows:

2. We have considered the matter and, on reflection, consider that it was unnecessary to cite section 62(1)(b) as the instrument could have been made as it stands without reference to that power. Given that the order is a commencement order to which no procedure should be applied we treated it as such and did not make it in the form of an instrument subject to annulment. We consider that to have been appropriate. We do, however, recognise that there may have been an error in citing section 62(1)(b) as an enabling power.

The Sulphur Content of Liquid Fuels (Scotland) Regulations 2007, (SSI 2007/27)

1. In its letter of 6 February to Gerald Byrne, the Committee commented as follows:

"The Committee asks the Executive the following:

- (a) to explain why the Regulations for England and Wales (SI 2007/79) define "new plant" and "existing plant" while the Scottish Regulations contain no such definition; and
- (b) to explain the difference in the transitional provisions north and south of the Border"

The Scottish Executive responds as follows:

(a) The Scottish Regulations do contain definitions of "new plant" and "existing plant". These appear in Regulation 2(1). The view was taken that since Regulation 2 deals with definitions generally it would be appropriate for the definitions of these terms to appear in that regulation. In the Regulations for England and Wales (SI 2007/79) these definitions appear in their Regulation 4. The definitions in each case are the same.

(b) The Regulations for England and Wales (SI 2007/79) provide that applications for authorisations made under the previous England and Wales Regulations but not determined at the time the new Regulations for England and Wales come into force should continue to be treated as applications under the previous England and Wales regulations. In Scotland the view was taken that it was preferable to provide that, in the event that there were any applications pending when the new Scottish Regulations

came into force, those should be treated as applications under the new Regulations. There were no material differences related to the procedure for application which would disadvantage an applicant in those circumstances. The Executive understands that there were no outstanding applications at the time that the present Scottish Regulations were made.