Education Committee
8th Meeting, 2006

Wednesday 29 March 2006

The Committee will meet at 10.30 am in Committee Room 3

1. **Item in private**: The Committee will consider whether to take item 4 in private.

2. **Scottish Schools (Parental Involvement) Bill**: The Committee will consider the Bill at Stage 2 (Day 1).

3. **Subordinate legislation**: The Committee will consider the following negative instrument—

   the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006 (SSI 2006/88)

   and take evidence from Robin McKendrick, Branch Head, Support for Learning Division, Scottish Executive Education Department.

4. **Proposed Adoption and Children (Scotland) Bill**: The Committee will consider its approach to Stage 1 consideration of the Bill.

5. **Pupil motivation inquiry (in private)**: The Committee will consider a draft report.

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Clerk to the Committee
Room T3.40, Committee Office
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The following papers are enclosed for the meeting:

- Agenda item 3
  Clerk’s note and copy of SSI 2006/88 (re-issued paper)  ED/S2/06/7/2

- Agenda item 4
  Clerk’s paper on Stage 1 approach to proposed Adoption and Children (Scotland) Bill (private paper)  ED/S2/06/8/1(P)

- Agenda item 5
  Draft report (private paper)  ED/S2/06/8/2(P)
1. The purpose of this instrument is to fulfil the undertaking given by Peter Peacock, the Minister for Education and Young People, to the Education and Subordinate Legislation Committees to bring forward an amendment to (SSI 2005/514), the Additional Support Needs for Scotland (Practice and Procedures) Rules 2005.

2. The Education Committee is the lead committee for this instrument and should report to the Parliament by 17 April 2006. The Minister responsible is Robert Brown, Deputy Minister for Education and Young People.

3. A copy of the SSI, an explanatory note which is not part of the Regulations, and the Executive Note are attached.

4. A note on procedure for considering SSIs is attached overleaf. This is a negative instrument.

5. The Subordinate Legislation Committee considered the SSI at its meeting on 14 March following a response to points of concern it had raised with the Scottish Executive on grounds within its remit. The Subordinate Legislation Committee’s concerns were only partly satisfied by the Scottish Executive’s response and it draws the lead committee’s attention to defective drafting.

6. The relevant extracts from the Subordinate Legislation Committee’s 13th report 2006, SP521, published on 15 March is attached as ED/S2/06/7/2/A.

7. The Committee is invited to consider whether it wishes to make any recommendation in relation to the instrument. The instrument is not subject to amendment.
Procedural Note

Standing Orders

1. The procedures for dealing with Scottish Statutory Instruments (SSIs) are covered by Chapter 10 of Standing Orders. SSIs are laid by being lodged with the chamber clerks, and are published in the Business Bulletin. They are referred to the Subordinate Legislation Committee, the appropriate subject committee (the ‘lead committee’), and, where relevant, any other committee.

SSIs subject to annulment: ‘negative instruments’

2. Where an SSI is subject to annulment, it comes into force on a specified date and then remains in force unless it annulled by the Parliament. Any MSP may by motion propose to the lead committee that the committee recommend that nothing further is to be done under the instrument. Such motions are lodged with the chamber clerks.

3. The lead committee debates such a motion for no more than 90 minutes.

4. The lead committee reports to the Parliament, setting out its recommendations. If it recommends annulment, the Bureau will propose to the Parliament a motion that nothing further is to be done under the instrument.

5. All the above must take place within 40 days of the instrument being laid, excluding recesses of more than 4 days.

6. To date, no motion to annul SSI 2006/88 has been lodged with the chamber clerks.

5. The Committee noted in rule 7(2) that the effect of the reference to rule 15 was uncertain. It was not clear to the Committee how far, if at all, rule 15 can apply to a direction under rule 7. The Committee therefore asked the Executive for clarification.

6. The Executive, in its response printed at Appendix 2, informed the Committee that rule 7(2) provides that rules 15 and 17 apply to a direction under rule 7(1).

7. The Executive was grateful to the Committee for drawing the interplay of rule 7(2) and rule 15 to its attention. It is now of the view that the reference in rule 7(2) to rule 15 should be amended, and intends to do so. However, the Executive is of the view that the current wording of rule 7(2) does not cause particular or immediate difficulty in the application of these Rules. The Committee is of the view that this will only be the case if the rule is disregarded.

8. The Committee does not share the Executive’s view and is concerned that the paragraph is effectively impossible to apply not only as regards the reference to rule 15 but also in relation to rule 17.

9. The Committee therefore draws the attention of the lead Committee and the Parliament to the Rules on the grounds of defective drafting of regulation 7(2) which has been acknowledged in part by the Executive

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APPENDIX 2


On 7th March the Committee asked the Executive for an explanation on the following matter:

“With regard to rule 7(2), it is not clear to the Committee how rule 15 can apply to a direction under rule 7: for example, paragraph (5)(b) of rule 15 refers to rule 16 but that rule is not applied by rule 7. It is unclear whether the intention is to apply only parts of rule 15. The Committee therefore seeks clarification of the meaning and effect of rule 7(2).”

1 This note retains the paragraph and appendix numbering of the original Subordinate Legislation report.
The Scottish Executive responds as follows:

1. Rule 7(2) states that rules 15 and 17 apply to a direction under rule 7(1). The direction under rule 7(1) is when the convenor directs the appellant to send further and better particulars of the grounds of reference to the Secretary within 10 working days of the receipt of notice of such a direction. Rule 15 is the general power re directions while rule 17 concerns failure to comply with a direction. Rule 17 can be applied to a direction under rule 7(1) because if the direction under rule 7(1) is not complied with then the convenor has open to him the powers under rule 17(1).

2. The Executive is grateful to the Committee for drawing the interplay of rule 7(2) and rule 15 to our attention. We are now of the view that the reference in rule 7(2) to rule 15 should be amended, and it is our intention to do so. However the Executive are of the view that the current wording of rule 7(2) does not cause particular or immediate difficulty in the application of these Rules.