Education Committee
9th Meeting, 2006

Wednesday 19 April 2006

The Committee will meet at 10.00 am in Committee Room 5

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

   the Children (Protection at Work) (Scotland) Regulations 2006 (SSI 2006/140)

2. Subordinate legislation: The Committee will take evidence on the draft Joint Inspections (Scotland) Regulations 2006 from—

   Robert Brown, Deputy Minister for Education and Young People

   Jackie Brock, Children and Families Division, Scottish Executive, Education Department

   Sara Davies, Medical Adviser, Health Planning and Quality Division, Scottish Executive, Health Department

   Douglas Tullis, Office of the Solicitor to the Scottish Executive

3. Subordinate legislation: Robert Brown (Deputy Minister for Education and Young People) to move S2M-4144—

   Peter Peacock: The Draft Joint Inspections (Scotland) Regulations 2006—That the Education Committee recommends that the draft Joint Inspections (Scotland) Regulations 2006 be approved.

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

5. Adoption and Children (Scotland) Bill (in private): The Committee will agree its approach to Stage 1 of the Bill.
The following papers are enclosed for the meeting:

Agenda item 1
Clerk’s note and copy of SSI 2006/140  ED/S2/06/9/1

Agenda item 2/3
Clerk’s note and copy of SSI 2006/draft   ED/S2/06/9/2

Agenda item 5
Clerk’s paper (private paper)   ED/S2/06/9/3(P)
SPICE briefing paper   ED/S2/06/9/4(P)
Committee adviser’s paper   ED/S2/06/9/5(P)
EDUCATION COMMITTEE

Subordinate legislation

The Children (Protection at Work) (Scotland) Regulations 2006, (SSI 2006/140)

1. The purpose of this instrument is to bring legislation in Scotland into line with European Council Directive 94/33 which limits to 12 hours per week the number of hours that a child below the minimum school leaving age (usually 16) can work during term time.

2. The Education Committee is the lead committee for this instrument and should report to the Parliament by 1 May 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 21 March and determined that it did not need to draw the attention of the Parliament to the instrument.

6. The relevant extracts from the Subordinate Legislation Committee’s 14th report 2006, SP527, published on 23 March is attached as ED/S2/06/9/1/A.

Action

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 2006/140 has been lodged with the chamber clerks.
Extract from the Subordinate Legislation Committee’s 14th Report (2006)
Session 2: SP Paper 527

The Children (Protection at Work) (Scotland) Regulations 2006, (SSI 2006/140)

The Committee reports to the Parliament as follows—

1. At its meeting on 21st March 2006 the Committee determined that it did not need to draw the attention of Parliament to the instruments listed in the Annex to this report on any of the grounds within its remit.

Extract from the Annex

Instruments subject to annulment

The Children (Protection at Work) (Scotland) Regulations 2006, (SSI 2006/140)
EDUCATION COMMITTEE

Subordinate legislation

The Joint Inspections (Scotland) Regulations 2006, (SSI 2006/draft)

1. The Committee's consideration of the above regulations is to be taken as agenda items 2 and 3.
   
i. Agenda item 2 gives the members the opportunity to take oral evidence on the instrument from the Deputy Minister for Education and Young People and Scottish Executive officials.
   
   ii. Agenda item 3 enables the Deputy Minister for Education and to move a motion for approval of the regulations and for members to debate the motion. No Scottish Executive officials may speak during this debate.

2. The Education Committee is the lead committee for this instrument and should report to the Parliament by 1 May 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 an affirmative instrument.

5. The Subordinate Legislation Committee considered the SSI at its meetings on 21 and 28 March and draws the attention of the Parliament to the instrument on the grounds of defective drafting. The relevant extracts from the Subordinate Legislation Committee’s 15th report 2006, SP533, published on 30 March is attached as ED/S2/06/9/2/A.

Action

6. The Committee is invited to CONSIDER whether it wishes to recommend approval of the motion:

   **Peter Peacock: The Draft Joint Inspections (Scotland) Regulations 2006—That the Education Committee recommends that the draft Joint Inspections (Scotland) Regulations 2006 be approved.**

   Eugene Windsor
   Clerk
   Education Committee
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 approval: ‘affirmative instruments’

2. Where an SSI is subject to approval, it cannot come into force unless the parliament by resolution approves the instrument, the lead committee shall decide whether to recommend that the instrument be approved.

3. Any member of the Scottish Executive or junior Scottish Minister (whether or not a member of the lead committee) may by motion propose to the lead committee that the committee recommend that the instrument be approved.

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

5. The lead committee shall report to the Parliament, setting out its recommendations. If the lead committee recommends that the instrument be approved, the Parliamentary Bureau shall by motion propose that the Parliament approve the instrument.

6. All the above must take place within 40 days of the instrument being laid, excluding recesses of more than 4 days.
Session 2: SP Paper 533

The Joint Inspections (Scotland) Regulations 2006, (SSI 2006/draft)

1. Regulation 5(2) (power of entry) provides that “A person who proposes to exercise any power of entry or inspection conferred by this regulation must if so requested produce some duly authenticated document showing the authority to exercise the power.” Regulation 11 (offences) provides that obstructing the exercise of any power conferred by, or failing to comply with any requirement under, regulation 5 is an offence.

2. The Committee asked the Executive, with respect to regulation 11, whether it is the intention that failure of a person to comply with regulation 5(2) is to be a criminal offence.

3. The Executive, in its response printed in Appendix 1, confirmed that it is not the intention that failure to comply shall be a criminal offence.

4. The Committee remains concerned that whilst the Executive’s intention may be that failure to comply is not a criminal offence, this is, in fact, what the Regulations provide. It is clear to the Committee that it is a requirement of regulation 5(2) that a person seeking to exercise a power of entry must produce evidence of authority if requested. Accordingly, a person who fails to do so may presumably be refused entry under regulation 5(1). This does not however detract from the effect of regulation 11 in creating a criminal offence for failing to comply with regulation 5(2).

5. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds of defective drafting.

APPENDIX 1

The Joint Inspections (Scotland) Regulations 2006, (SSI 2006/draft)

On 21st March the Committee asked the Executive for an explanation of the following matter:

“With respect to regulation 11 the Committee asks the Executive whether it is the intention that failure of a person to comply with regulation 5(2) is to be a criminal offence.”

The Scottish Executive responds as follows:

1. Regulation 5(2) (power of entry) provides that: “A person who proposes to exercise any power of entry or inspection conferred by this regulation must if so requested produce some duly authenticated document showing the authority to exercise the power.” Regulation 11 (offences) provides inter alia that obstructing the exercise of any power conferred by, or failing to comply with any requirement under, regulation 5 is an offence. It is not the intention that failure by an authorised person to produce
some duly authenticated document showing authority, when requested to do so, shall be a criminal offence. An offence is more specifically incurred in any obstruction of, or failure to comply with, regulation 5(1). Regulation 11(b) refers to a failure to comply with any “requirement” of regulation 5 whereas regulation 5(2) refers to a duly authenticated document being produced “if so requested”.
