The Committee will meet at 2.00 pm in Committee Room 1.

1. **Legal Profession and Legal Aid (Scotland) Bill**: The Committee will consider the Bill at Stage 2 (Day 1).

2. **Subordinate legislation**: The Committee will consider the following negative instruments—

   The Fire Safety (Scotland) Regulations 2006 (SSI 2006/456)


Tracey Hawe/Alison Walker
Clerks to the Committee
Papers for the meeting—

Agenda Item 1

1st Marshalled List of Amendments for Stage 1 (Day 1) – to follow

Groupings – to follow

Members are reminded to bring with them copies of the Bill, Explanatory Notes and Policy Memorandum, available from Document Supply or from the Parliament’s website (http://www.scottish.parliament.uk/business/bills/56-legalProfession/index.htm) together with any papers from the Stage 1 process that are considered relevant (such as the Committee’s Stage 1 Report).

Agenda Item 2

Note by Clerk (including SSI and Executive Note) J2/S2/06/23/1

Note by Clerk (including SSI and Executive Note) J2/S2/06/23/2

Documents circulated for information only—

The Scope to Improve Consistency in Sentencing, report by the Sentencing Commission for Scotland

Letter from Deputy Minister for Justice to John Swinney MSP on the Legal Profession and Legal Aid (Scotland) Bill, dated 15 September 2006

Forthcoming meetings—

- Tuesday 3 October 2006, Committee Room 4
- Tuesday 24 October 2006, Committee Room 2
JUSTICE 2 COMMITTEE

23rd Meeting 2006 (Session 2)

Tuesday 26 September 2006

SI title and number: The Fire Safety (Scotland) Regulations 2006 (SSI 2006/456)

Type of Instrument: Negative

Meeting: 26 September 2006

Date circulated to members: 21 September 2006

Justice 2 Committee deadline to consider SSI: 23 October 2006

Motion for annulment lodged No

SSI drawn to Parliament’s attention by Sub Leg Committee: Yes

1. These Regulations make provision for the carrying out, and review, of assessments to identify risks in respect of harm caused by fire and for fire safety in non-domestic premises.

2. The Subordinate Legislation Committee, in its 34th Report, 2006 (Session 2) draws the attention of the lead Committee to the instrument on two grounds.

3. Firstly, the SLC considered that, even though the provision would, on balance, most likely be interpreted in the way contended by the Executive, regulation 15(2) should not refer to ‘information required by regulation 14(1)(a)’ as the text of regulation 14(1)(a) does not refer to any requirement to provide information. The SLC therefore draws the attention of the lead Committee to this instrument on the grounds of defective drafting.

4. Secondly, the SLC also questioned the meaning of regulation 24(2)(b), which refers to the maintenance of measures provided in common areas of dwellings for the protection of fire-fighters, as it was considered that the meaning was not clear. While it was considered that the wording of the provision could bear the interpretation contended for by the Executive, the SLC therefore draws the attention of the lead Committee to this instrument on the grounds that the meaning of the provision could be clearer.
5. The relevant extracts from the Committee’s report are attached as an Annex.

6. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk of the Committee as soon as possible, to allow for sufficient time for a response to be received in advance of the Committee meeting.

Clerk to the Committee
23 August 2006
Annex

Extract from Subordinate Legislation Committee 34th Report, 2006 (Session 2)

The Fire Safety (Scotland) Regulations 2006, (SSI 2006/456)

1. The Committee asked the Executive 2 questions on this instrument.

Point 1

2. The Committee asked for an explanation of the reference in regulation 15(2) to “the information required by regulation 14(1)(a)”, given that the latter provision did not appear to require any such information.

3. The Executive, in its response printed in Appendix 1, maintains that regulation 14(1)(a) provides for the establishment of “appropriate procedures”. The reference in regulation 15(2) to “information required by regulation 14(1)(a)” is therefore information regarding the procedures that require to be established in terms of that provision.

4. The Committee remains unconvinced by the Executive’s argument. It considers that regulation 15(2), as drafted, cross-refers to the information “required” in regulation 14(1)(a) – not, as the Executive states, information regarding the procedures to be established pursuant to that provision. These are quite different matters. If the Executive had meant the latter it would presumably have adopted the same drafting as is found later in the same paragraph – “information on the matters referred to in...”. The Committee considers that the Executive ought to have used this wording given the absence of any requirement to provide information in regulation 14(1)(a).

5. Although the Committee believes that the provision would, on balance, most likely be interpreted in the way contended by the Executive, the Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds of defective drafting.

Point 2

6. The Committee also asked the Executive for an explanation of the meaning of regulation 24(2)(b) and, in particular, the persons to whom the duty to maintain the safety measures referred to in that provision is intended to apply.

7. In its response, the Executive explained that regulation 24(2)(a) is to ensure that the person who has “control” of the common areas should be subject to the duty on regulation 24(2).

8. The Executive also explained the purpose of regulation 24(2)(b) and that the duty under the provision is intended to fall on whoever has control of the premises, whether or not the owner. The owner will also have a duty if the person having control has such control other than in the course of running a business.

9. While the Committee considers that the wording of the provision could bear the interpretation contended for by the Executive, it believes that the drafting could be much clearer.

10. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds that the meaning of the provision could be clearer.

Appendix 1

The Fire Safety (Scotland) Regulations 2006, (SSI 2006/456)
On 12 September 2006 the Committee asked for an explanation of the following matters:-

(a) the Executive is asked to explain the reference in regulation 15(2) to “the information required by regulation 14(1)(a)” given that the latter provision does not appear to require any such information;

(b) the Committee had difficulty in deciphering the meaning and effect of regulation 24(2), and particularly sub-paragraph (b). The Executive is asked to explain the meaning of this regulation and, in particular, the persons to whom the duty to maintain the safety measures referred to in that provision is intended to apply.

The Scottish Executive responds as follows:

(a) Regulation 14(1)(a) provides for the establishment of “appropriate procedures”. The reference in regulation 15(2) to “information required by regulation 14(1)(a)” is information regarding the procedures that require to be established in terms of that provision.

(b) The purpose of regulation 24 is to ensure that the provisions of regulation 23 will apply to common areas of private dwellings. For example, such common areas could include the common staircase in a block of flats. The purpose of regulation 24(2) is to identify to whom the duty will apply. The effect of paragraph (2)(a) is to ensure that the person who has “control” of the common areas should be subject to the duty, to the extent that element of control applies. Such a person may, for example, be a factor appointed to represent the interests of all of the proprietors of the individual flats who also have an interest the common areas.

The purpose of paragraph (2)(b) is to ensure that if the person having control of the common areas is neither exercising that control in the course of business, for example acting as a factor appointed by the proprietors, nor as the owner of the common areas, the duty should also fall on any person who owns the common areas. In that scenario, therefore, the duty would lie with both the owners and the person exercising control.
1. This instrument modifies and revokes secondary legislation in consequence of Part 3 of the Fire (Scotland) Act 2005, which consolidates existing fire safety legislation as it applies to non-domestic premises.

2. The Subordinate Legislation Committee, in its 34th Report 2006 (Session 2), draws the attention of the lead Committee to the instrument on the grounds that the meaning of article 3 of the Order could be clearer, and to the explanation provided by the Executive. The relevant extracts from the SLC’s report are attached as an Annex.

4. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk of the Committee as soon as possible, to allow for sufficient time for a response to be received in advance of the Committee meeting.

Clerk to the Committee
21 September 2006
Extract from the Subordinate Legislation Committee 34th Report 2006 (Session 2)

The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) (No. 2) Order 2006, (SSI 2006/457)

1. The Committee asked the Executive to provide an explanation of the background to the drafting of article 3 as it had some difficulty in understanding article 3 and in particular how regulation 3(6)(c) of the Fire Precautions (Workplace) Regulations 1997 actually operates so as to disapply the provisions of regulations 12, 13 and 16(1) of The Fire Safety (Scotland) Regulations 2006, (SSI 2006/456).

2. In its response printed in Appendix 2, the Executive explains the purpose and intention behind regulation 3(6)(c) which appears is a temporary arrangement to ensure that members of the armed forces, the police or members of any emergency service are not prevented by the requirements of Part II of the Fire Precautions (Workplace) Regulations 1997 from carrying out their duties pending the making of appropriate regulations.

3. The Executive considers it is necessary to disapply the provisions of regulations 12, 13 and 16(1) of the 2006 Regulations in order to achieve the required result.

4. Whilst acknowledging that retaining regulation 3(6) of the 1997 Regulations alone may not appear to achieve that outcome, the Executive is of the view that since the 2005 Act and the 2006 Regulations re-enact the 1997 Regulations the reference in regulation 3(6)(c) to “this Part of these Regulations” should be read as being a reference to those regulations as re-enacted.

5. The Committee notes the Executive’s explanation of what is a very confusing provision and considers that its arguments are tenable in legal terms. However, it suggests that it might have been helpful if the Executive’s explanation had been summarised in the Executive Note. As the provision is intended as a temporary measure, the Committee is of the view that it is not likely to cause any long term problems of interpretation.

6. The Committee draws the attention of the lead committee and the Parliament to this instrument on the grounds that its meaning could be clearer and to the explanation provided by the Executive.

Appendix

The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) (No. 2) Order 2006, (SSI 2006/457)

On 12 September 2006 the Committee asked for an explanation of the following matter –

“The Committee had some difficulty in understanding article 3 and in particular how regulation 3(6)(c) of the Fire Precautions (Workplace) Regulations 1997 actually operates so as to disapply the provisions of regulations 12, 13 and 16(1) of SSI 2006/456.

The Committee, therefore, asks the Executive to provide an explanation of the background to the drafting of article 3.”

The Scottish Executive responds as follows –

The purpose of regulation 3(6) of the Fire Precautions (Workplace) Regulations 1997 (“the 1997 Regulations”) is to ensure that the requirements of Part II of the 1997 Regulations shall not apply in such a way as to prevent members of the armed forces, the police or members of any emergency service from carrying out their
duties. The provisions of the 1997 Regulations are revoked by article 2(2) of this Order because they are effectively replaced and re-enacted by the provisions of the Fire (Scotland) Act 2005 ("the 2005 Act") and the Fire Safety (Scotland) Regulations 2006 (SSI 2006/456) ("the 2006 Regulations").

Section 60 of the 2005 Act provides for the temporary suspension of duties under Chapter 1 of Part 3 of that Act. This effectively re-enacts the provisions of the 1997 Regulations, insofar as relevant, in relation to members of the armed forces and police officers. It means that the duties imposed on employers, persons with control of relevant premises and employees in relation to fire safety do not apply to members of the armed forces or police officers, if compliance with these duties would prevent them from carrying out their operational duties. This re-enacts the provisions of regulation 3(6)(a) and (b) of the 1997 Regulations.

The Executive considers, however, that it would be undesirable to lose the effect of Regulation 3(6)(c) of the 1997 Regulations as loss of that provision could make it difficult for members of the emergency services to continue to undertake their operational duties. Section 60 of the 2005 Act allows Scottish Ministers to prescribe other occupations by Regulations. Such Regulations require to be made by affirmative resolution procedure. It is anticipated that Regulations will be laid before Scottish Parliament to add members of the emergency services in the list of persons to whom a temporary suspension of the Chapter 1 duties may apply in terms of section 60 of the 2005 Act.

In order to preserve the effect of regulation 3(6)(c) of the 1997 Regulations until Regulations under section 60 of the 2005 Act are made the Executive concluded that it would be appropriate to retain regulation 3(6)(c) of the 1997 Regulations in the meantime. That is the purpose of article 3 of this Order. It is necessary to disapply the provisions of regulations 12, 13 and 16(1) of the 2006 Regulations in order to achieve the required result.

The Executive acknowledges that retaining regulation 3(6) of the 1997 Regulations alone may not appear to achieve that outcome since that regulation, in order to be effective, requires to be read in conjunction with the provisions of Part II of the 1997 Regulations, which are being revoked by article 2(2) of this Order. However, the Executive is of the view that since the 2005 Act and the 2006 Regulations re-enact the 1997 Regulations the reference in regulation 3(6)(c) to "this Part of these Regulations" should be read as being a reference to those regulations as re-enacted ie regulations 12, 13 and 16(1) of the 2006 Regulations. The Executive is of the view that this interpretation is permissible by reference to paragraph 14(2)(a) of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order (SI 1999/1379) which applies to Scottish subordinate legislation by virtue of Article 7 of that Order.