LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

AGENDA

20th Meeting, 2006 (Session 2)

Tuesday 5 September 2006

The Committee will meet at 2 pm in Committee Room 4.

1. **Items in private:** The Committee will consider whether to take item 6 in private.

2. **Transport and Works (Scotland) Bill:** The Committee will take evidence on the general principles of the Bill at Stage 1 from—

   - Tricia Marwick MSP, Convener of Waverley Railway (Scotland) Bill Committee
   - John Halliday, Acting Assistant Chief Executive Transport and Strategy, Strathclyde Partnership for Transport
   - James Fowlie, COSLA; Euan MacLeod, Shepherd+ Wedderburn on behalf of Shetland Islands Council; and Councillor Chris Thompson South Lanarkshire Council.

3. **Subordinate Legislation Committee inquiry:** The Committee will consider its response to the Subordinate Legislation Committee’s Draft Report on its Inquiry into the Regulatory Framework in Scotland.

4. **Subordinate Legislation:** The Committee will consider the following negative instruments—

   - the Firefighters’ Compensation Scheme (Scotland) Order 2006 (SSI 2006/338); and
   - the Firefighters’ Pension Scheme Amendment (Scotland) Order 2006 (SSI 2006/342).

5. **Transport and Works (Scotland) Bill — witness expenses:** The Committee will be invited to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses for the Transport and Works (Scotland) Bill.

6. **Transport and Works (Scotland) Bill:** The Committee will consider an updated approach paper on the Bill.
Agenda Item 3

Paper by the Clerk

LGT/S2/06/20/1

Agenda Item 4

Covering note on the Firefighters’ Compensation Scheme (Scotland) Order 2006 (SSI 2006/338)

LGT/S2/06/20/2

The Firefighters’ Compensation Scheme (Scotland) Order 2006 (SSI 2006/338)

LGT/S2/06/20/3

Covering note on the Firefighters’ Pension Scheme Amendment (Scotland) Order 2006 (SSI 2006/342)

LGT/S2/06/20/4

The Firefighters’ Pension Scheme Amendment (Scotland) Order 2006 (SSI 2006/342)

LGT/S2/06/20/5

Agenda Item 6

Paper by the Clerk

LGT/S2/06/20/6(P)
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Subordinate Legislation Committee Inquiry into the Regulatory Framework

Introduction

1. The Subordinate Legislation Committee has been undertaking an inquiry into the Regulatory Framework in Scotland.

2. The Convener of the Subordinate Legislation Committee has written to all Committee Conveners to inform them that the Committee has now completed its consideration of all of the evidence it received during Phase 2 of the inquiry and has come to conclusions which it has included in a draft report.¹

3. The Convener’s letter is attached at Annex A.

Consultation

4. The Subordinate Legislation Committee has recommended in its draft report that the current system of scrutiny should be replaced with a new system which it has called the Scottish Statutory Instrument Procedure (SSIP).

5. The Committee is now consulting upon its recommendations before finally making up its mind on what to propose to Parliament. As part of this process, the report was debated in the Parliament on 8 June 2006.²

6. The Local Government and Transport Committee is invited to comment on the recommendations made in the draft report of the Subordinate Legislation Committee. Comments must be received by the Subordinate Legislation Committee by Friday 22 September 2006.

7. As well as seeking general comments on the draft report, the Subordinate Legislation Committee has also set out below a number of specific questions

¹ Report can be found here: http://www.scottish.parliament.uk/business/committees/subleg/inquiries/regfram/su04-001-regfram.htm
on which it would welcome responses or comments. These are reproduced at Annex B. The main recommendations of the report can be found between pages 67 and 75.

8. For information, a copy of a letter sent to the Subordinate Legislation Committee by the Convener, on behalf of the Local Government and Transport Committee, in October 2005 is attached at Annex C. This letter responded to the initial consultation held by the Subordinate Legislation Committee prior to the publication of its current report.

9. The Local Government and Transport Committee first considered the Subordinate Legislation Committee's draft report at its meeting on 20 June 2006. The Committee agreed to revisit the draft report after the summer recess.

Recommendation

10. The Committee is invited to consider and agree a response to the recommendations made in the draft report of the Subordinate Legislation Committee on its Inquiry into the Regulatory Framework in Scotland.

Alastair Macfie
Senior Assistant Clerk
Local Government and Transport Committee
To Committee Conveners  
c/o Committee Clerks  

23 May 2006  

Dear Convener  

**Subordinate Legislation Committee Inquiry into the Regulatory Framework in Scotland**  

As you will know, the Subordinate Legislation Committee has been undertaking an inquiry into the Regulatory Framework in Scotland.  

The Committee has now completed its consideration of all of the evidence it received during Phase 2 of the inquiry, including that from Committees, and has come to conclusions which it has included in a draft report.  

On the basis of the evidence the Committee received, and its own experience of scrutinising subordinate legislation over the last 7 years, the Committee has concluded that there should be a simplified system which is fit for purpose and where scrutiny is open and transparent and within realistic timescales.  

It has always been the Parliament’s intention to replace the current transitional procedures. The Committee therefore recommends in its draft report that the current system of scrutiny should be replaced with a new system which it has called the Scottish Statutory Instrument Procedure (SSIP). This is the procedure which forms the main recommendation in the Committee’s draft Report.  

Given the innovative nature of the SSIP and the wide-ranging implications for the Parliament, the Executive and those on whom subordinate legislation has an impact, the Committee has decided to publish the draft report in order to consult upon its recommendations before finally making up its mind on what to propose to Parliament.  

The purpose of this letter is to invite your Committee’s comments on the draft report and the recommendations that it makes.
The Committee would prefer to receive comments electronically. These should be sent to:

subordinate.legislation@scottish.parliament.uk

The general closing date for responses is Friday 8 September 2006. However, the Committee would welcome Committee’s responses by Friday 22 September 2006.

Yours sincerely

Sylvia Jackson MSP
Convener
Questions identified by the Subordinate Legislation Committee in its Report on its Inquiry into the Regulatory Framework in Scotland

1. Should all the existing procedures be replaced by the proposed SSIP under which all Scottish Statutory Instruments, with certain exceptions, would be laid in draft before the Parliament?

2. Should there be parallel consideration of instruments by both the Subordinate Legislation Committee and the lead Committee?

3. (a) Should the instruments laid in draft under the general procedure of SSIP be subject to being disapproved by the Parliament within 40 days?

   (b) Should the period be reduced to 30 days?

4. Should the Parliament be able to take a motion to disapprove a draft instrument or to annul an instrument for 10 days beyond the 40 day period?

5. Should the Executive be required to provide the Parliament every 3 months with a forward programme of instruments which it plans to make during that period?

6. Should the SLC be able to recommend to the Parliament that an instrument is annulled or that a draft instrument is disapproved but only on the ground that there are serious doubts about the legal validity of the instrument?

7. Should a draft instrument laid before the Parliament be able to be amended by the Executive, with the agreement of the SLC, to take account of technical changes without affecting the original timetable for consideration?

8. (a) Should emergency instruments be subject to the exceptional procedure?

   (b) Should emergency instruments be defined as proposed?

9. Should the exceptional procedure be confined to emergency and other instruments of an urgent nature?

10. Should consolidation instruments be subject to the modified general procedure under which the lead Committee will not be entitled to consider “pure” consolidations and only substantive amendments in a “rolling” consolidation?

11. Should commencement orders be subject to the modified general procedure under which the lead Committee will not be entitled to consider them?
12. (a) Should Scottish Statutory Instruments (SSIs) continue to be defined as at present?

(b) Should local instruments cease to be made by statutory instrument?

(c) Should local instruments be defined as proposed?

13. Should rules of court cease to be made by statutory instrument?

14. (a) Should an instrument which requires to be laid after being made (the exceptional procedure) be required to be laid as soon as practicable after being made and in any event not later than 7 days after making?

(b) Should an instrument which is made without either a draft being laid under the general procedure or the instrument being laid after making under the exceptional procedure (as required above) be treated as never have had any legal effect, subject to the following exception?

(c) Where an emergency instrument or other urgent instrument is brought into force within the 7 day period but are not laid within that period, should that invalidate the instrument the day after that period expires?

15. (a) Should the SSIP apply to all SSIs and to all other statutory instruments which are subject to procedure in the Scottish Parliament?

(b) Should it apply in all cases (both past and future) where there is a power to make such instruments?
Dear Sylvia

SUBORDINATE LEGISLATION COMMITTEE INQUIRY INTO THE REGULATORY FRAMEWORK IN SCOTLAND

Thank you for your letter of 31 August seeking the Local Government and Transport Committee’s views on this inquiry.

You will recall that the Committee discussed its response to the Subordinate Legislation Committee’s consultation paper at its meeting on 3 October. I thought it would be helpful to provide a brief summary of the views expressed by the Committee at the meeting. I also attach a copy of the Official Report of the meeting which provides a full account of the discussion which took place.

The Committee agreed the following comments in response to the consultation paper.

1. The Committee agreed, in principle, that there should be a power to amend instruments. However, the Committee considered that the Subordinate Legislation Committee could examine further the practical implications of such a change. In particular, the Committee noted that whilst a new power to amend instruments could lead to improved scrutiny of SSIs, there might be some disadvantages, such as an increased workload for the Parliament and potential delays in the process of scrutinising SSIs.

2. The Committee noted that many statutory instruments have been subject to consultation by the Scottish Executive before being laid before Parliament. The Committee considered, however, there were variations in the standard of consultation undertaken by the Executive. The Committee therefore suggested that, as part of its inquiry, the Subordinate Legislation Committee
could look at the question of the overall standard of consultation on statutory instruments with a view to ensuring that an appropriate level of consultation is carried out for each instrument.

3. There were mixed views from Committee members on the use of the negative procedure. Some members were opposed to the use of negative instruments and argued that it was undesirable that the procedure could lead to a situation where members had to annul an instrument which had already come into force. Other members of the Committee were of the view that the negative procedure should continue to exist for the Parliamentary consideration of subordinate legislation, and that the procedure could be appropriate where an instrument conferred minor or technical powers on which there was unlikely to be much political debate. There was a general view that where significant powers were being conferred by an instrument, it would normally be more appropriate for the affirmative procedure to be used. Members also noted that it would be the role of Parliament, when scrutinising primary legislation, to consider the delegated powers contained in Bills, and to take a view on the balance between the use of the affirmative and negative procedure.

I shall await with interest the outcome of your committee’s inquiry.

Bristow Muldoon
Convener - Local Government and Transport Committee
SSI Cover Note For Committee Meeting

SSI title and number: The Firefighters’ Compensation Scheme (Scotland) Order 2006, (SSI 2006/338)

Type of Instrument: Negative

Meeting: 5 September 2006

Date circulated to members: 23 June 2006

SSI drawn to Parliament’s attention by Sub Leg Committee: No

Purpose: The purpose of this instrument is to provide for a new scheme for compensating firefighters who die or sustain injuries whilst engaged in firefighting duties.
SSI Cover Note For Committee Meeting

SSI title and number: The Firefighters’ Pension Scheme Amendment (Scotland) Order 2006 (SSI 2006/342)

Type of Instrument: Negative

Meeting: 5 September 2006

Date circulated to members: 23 June 2006

SSI drawn to Parliament’s attention by Sub Leg Committee: Yes (see annexes)

Purpose: This instrument makes changes to the Firefighters’ Pension Scheme Order 1992. Many of the amendments in this instrument are consequential on the splitting of the Firefighters’ Pension Scheme to remove provisions relating to the Firefighters’ Compensation Scheme (Scotland) Order 2006, (SSI 2006/338).
11. The Committee asked why the "Firefighters' Compensation Scheme", which is referred to in paragraph 12(f) of Schedule 1 to the Order, is not defined in the Order. Instead, it is "the Compensation Scheme" that is defined in paragraph 54 of that Schedule.

13. In its response in Appendix 2, the Scottish Public Pensions Agency (SPPA), which has responsibility for the Firefighters' Pension Scheme regulations in Scotland, agrees that "Firefighters' Compensation Scheme" is not defined in this Order and regrets the error in this respect. Nevertheless, it considers that it is sufficiently clear to the reader that the reference to "Firefighters' Compensation Scheme" has the same meaning as "Compensation Scheme" and has no other meaning.

14. The Committee considers that the use of 2 different terms for the same scheme is very misleading for the reader, and hopes that in practice the error will not cause any difficulties.

15. **The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds of defective drafting, as acknowledged by the Executive.**

16. Secondly, with reference to the wording substituted by sub-paragraph (c)(ii) in paragraph 57 of Schedule 1 to the Order, it was not clear to the Committee to which paragraph of Part 1 of Schedule 4 the references to sub-paragraph (2)(b) and (3)(b) refer.

17. The SPPA, in its response, explains that although there is no reference to a particular paragraph of Part 1, only paragraph 1 of Part 1 has sub-paragraphs (2)(b) and (3)(b). It therefore considers the reference to be sufficiently clear to the reader.

18. The Committee notes the response, but nevertheless considers that the reader should not have to carry out a detailed examination of the instrument to determine to which paragraph of the Schedule the provision refers.

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

20. Thirdly, with reference to Schedule 2 to the Order, the Committee suspected that the corresponding entry for rule K2 which is to Part 9, Rule 2 of the Compensation Scheme, may be incorrect, and sought clarification.

21. In its response, the SPPA agrees that the corresponding entry for rule K2 should be to Part 9, Rule 1 of the Compensation Scheme and apologises for the error. The Agency considers that despite the error, the extent of the revocation is apparent to the reader; however it undertakes to remedy the error on the first occasion that there are amendments to this scheme.
22. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds of defective drafting, as acknowledged by the Executive, and to its intention to remedy the error on the next occasion that there are amendments made to the scheme.

Annex 2

The Firefighters' Pension Scheme Amendment (Scotland) Order 2006, (SSI 2006/342)

7. On 20 June 2006 the Committee requested an explanation of the following matters-

(a) paragraph 12(f) of Schedule 1 to the Order (page 6) refers to the "Firefighters' Compensation Scheme". This term is not defined in this Order; what is defined in paragraph 54 of that Schedule is "the Compensation Scheme". The Committee asked the Executive for an explanation;

(b) with reference to paragraph 57 in Schedule 1 to the Order in the wording substituted by sub-paragraph (c)(ii), it is not clear to which paragraph of Part 1 of Schedule 4 the references to sub-paragraph (2)(b) and (3)(b) refer. The Committee asked the Executive for clarification; and

(c) with reference to Schedule 2 to the Order, the Committee suspects that the corresponding entry for rule K2 which is to Part 9, Rule 2 of the Compensation Scheme, may be incorrect. The Committee sought clarification from the Executive.

The Scottish Public Pensions Agency, which has responsibility for the Firefighters' Pension Scheme regulations in Scotland, responds as follows:

8. The Agency thanks the Committee for these comments on the 2006 order and responds as follows.

9. The Agency agrees that "Firefighters' Compensation Scheme" is not defined in this Order and regrets the error in this respect. It nevertheless considers that it is sufficiently clear to the reader that the reference to "Firefighters' Compensation Scheme" has the same meaning as "Compensation Scheme" as defined at paragraph 54 of Schedule 1 to this Order, and has no other meaning.

10. The Agency thanks the Committee for this comment and offers the following clarification. With reference to paragraph 57 in Schedule 1 to the Order, the wording substituted by sub-paragraph (c)(ii) is: "sub-paragraph (2)(b) and (3)(b) of Part 1 of this Schedule applies". Although there is no reference to a particular paragraph of Part 1, only paragraph 1 of Part 1 has sub-paragraphs (2)(b) and (3)(b). The Agency accordingly considers the reference in question to be sufficiently clear to the reader.

11. The Agency agrees that with reference to Schedule 2 to the Order, the corresponding entry for rule K2 which is to Part 9, Rule 2 of the Compensation Scheme, should be to Part 9, Rule 1 of the Compensation Scheme and apologises for the error. The Agency considers that despite the error the extent of the revocation is nevertheless apparent to the reader but undertakes to remedy the error on the first occasion that there are further amendments to this scheme.