



The Scottish Parliament
Pàrlamaid na h-Alba

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

AGENDA

11th Meeting, 2009 (Session 3)

Wednesday 22 April 2009

The Committee will meet at 9.30 am in Committee Room 4.

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

The Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) Regulations 2009 (SSI 2009/91)

The Repayment of Student Loans (Scotland) Amendment Regulations 2009 (SSI 2009/102)

2. **Schools (Consultation) (Scotland) Bill - witness expenses:** The Committee will be invited to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.2, any expenses of witnesses on the Bill.
3. **Education (Additional Support for Learning) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 2 from—

Adam Ingram MSP, Minister for Children and Early Years, Robin McKendrick, Head of Branch, Support for Learning Division, and Louisa Walls, Principal Legal Officer, Scottish Government.

Eugene Windsor
Clerk to the Education, Lifelong Learning and Culture Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5204
Email: eugene.windsor@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda item 1

SSI cover note

ELLC/S3/09/11/1

[The Regulation of Care \(Fitness of Employees in Relation to Care Services\) \(Scotland\) Regulations 2009 \(SSI 2009/91\)](#)

SSI cover note

ELLC/S3/09/11/2

[The Repayment of Student Loans \(Scotland\) Amendment Regulations 2009 \(SSI 2009/102\)](#)

Agenda item 3

Paper by the Clerk

ELLC/S3/09/11/3

Education, Lifelong Learning and Culture Committee

11th Meeting, 2009 (Session 3), Wednesday 22 April 2009

Subordinate legislation

The Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) Regulations 2009 (SSI 2009/91)

Background

1. The Scottish Social Services Council (SSSC) was established under the Regulation of Care (Scotland) Act 2001. The policy intention in setting up the SSSC was to regulate the social service workforce and require registration for all those employed in the sector.
2. One of the SSSC's main objectives was to set up and maintain registers of social workers and other social services workers. Registration, which applies to all social workers and social services workers, commenced in April 2003 with a phased approach.
3. To date, the pace of registration has been slow. The need to ensure that workers are registered with the SSSC has been highlighted in a number of reports detailing historic abuse of children in care homes. In February 2008 the Minister for Children and Early Years announced that legislation would be brought forward to effect the policy intention of required registration.
4. The intention of the above instrument is that workers employed in the sector for the first time will be required to apply for registration as soon as is reasonably practical on commencement of employment. For existing workers in the sector, final dates have been set for each individual group by which time registration must be achieved.
5. The Education, Lifelong Learning and Culture Committee is the lead committee for this instrument and should report to the Parliament by 27 April 2009.
6. Copies of the SSI, an explanatory note (which is not part of the Regulations) and the Executive Note are attached.
7. A note on procedure for considering SSIs is attached overleaf. This is a negative instrument.

Subordinate Legislation Committee's consideration

8. The Subordinate Legislation Committee considered the SSI at its meeting on 24 March 2009 and noted the following:
 - (a) that there was a failure on the part of the Scottish Government to follow normal drafting practice in respect that one of the relevant enabling

powers – section 29(10) of the Regulation of Care (Scotland) Act 2001 – was not referred to in the preamble.

(b) that there is an error which is not likely to affect the operation of the instrument in respect that the word ‘with’ is missing after the word ‘whether’ in regulation 6(4)(a).

(c) that there is an error which is not likely to affect the operation of the instrument in respect that the reference to ‘the Act’ in regulation 15 should have been a reference to the Regulation of Care (Scotland) Act 2001 as properly cited.

9. An extract from the Subordinate Legislation Committee’s report is attached at **Annexe A**.

Action

10. 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.

Linda Smith
Assistant Clerk
Education, Lifelong Learning and Culture 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 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 is annulled by the Parliament. Any MSP may by motion propose to the lead committee that the committee recommends 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 2009/91 has been lodged with the chamber clerks.

EXTRACT FROM SUBORDINATE LEGISLATION COMMITTEE, 20TH REPORT, 2009

INSTRUMENTS SUBJECT TO ANNULMENT

The Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) Regulations 2009 (SSI 2009/91)

1. The purpose of this instrument is to specify persons who are not fit to be employed as a social worker or social service worker in the provision of a care service.

Question 1

2. The preamble states that the instrument is made in exercise of the powers conferred by section 29(1), (2), (5) and (13) of the 2001 Act and all other powers enabling them to do so. The preamble does not refer to section 29(10) of the 2001 Act.

3. The Committee considered that the Scottish Government's response at Appendix 3 to this question was not satisfactory. The Committee considered that section 29(10) explicitly provides that regulations under section 29(1) may create offences. Section 29(10) is in the same position as section 29(13) in that it provides clarification of what can be done under 29(1) and (2) as regards creation of offences. The Committee considers the approach adopted by the Scottish Government inconsistent in that it considers it necessary to refer to section 29(13) in the preamble but not 29(10). It considers this a failure to follow normal drafting practice. The Committee notes the offer to refer to section 29(10) in the footnote, but this is not part of the instrument and does not address the error in practice. The Committee considers that it is apparent that this power was relied on and accordingly is covered by the reference to "all other powers". It therefore considers that there is no issue as regards validity of the instrument.

Question 2

4. The Committee asked for clarification of the drafting of regulation 6(4)(a). The Scottish Government accept that the word 'with' is missing after the word 'whether' in regulation 6(4)(a). The Committee is content that regulation 6(4)(a) can be readily understood although the word 'with' is missing. The Committee considers that this has is unlikely to have any effect on the meaning or interpretation of the instrument and therefore reports this issue as an error which does not affect the operation of the instrument.

Question 3

5. In response to the question about the non-defined term 'the Act' in regulation 15, the Scottish Government refers to the footnote reference to the 2001 Act on page one of the instrument. However, as the Government is aware, the footnote is not part of the instrument. The Committee considers that in order to be clear the 2001 Act should have been properly cited in the instrument itself. However, the Committee agrees that the reader would not be in any doubt that it is the 2001 Act which is being referred to in regulation

6. Nor does the Committee consider that the lack of specification or reference is likely to have any effect on the meaning or interpretation of the instrument.

7. **The Committee draws this instrument to the attention of the lead committee and the Parliament on the ground that there has been a failure on the part of the Scottish Government to follow normal drafting practice in respect that one of the relevant enabling powers – section 29(10) of the Regulation of Care (Scotland) Act 2001 - was not referred to in the preamble.**

8. **The Committee draws this instrument to the attention of the lead committee and the Parliament on the ground that there is an error which is not likely to affect the operation of the instrument in respect that the word 'with' is missing after the word 'whether' in regulation 6(4)(a).**

9. **The Committee draws this instrument to the attention of the lead committee and the Parliament on the ground that there is an error which is not likely to affect the operation of the instrument in respect that the reference to 'the Act' in regulation 15 should have been a reference to the Regulation of Care (Scotland) Act 2001 as properly cited.**

APPENDIX 1

The Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) Regulations 2009 (SSI 2009/91)

On 12th March the Scottish Government was asked:

- 1. The preamble states that the regulations are made in exercise of the powers conferred by section 29(1),(2),(5) and (13) of the Regulation of Care (Scotland) Act 2001 ('the 2001 Act') and all other powers enabling them to do so. Given that the regulations create offences in respect of a contravention or failure to comply with the provisions of regulations 2(1) or 3(1), the Scottish Government is asked whether or not this instrument is made in reliance on section 29(10) of the 2001 Act and , if so, what does the Scottish Government consider is the effect of the failure to refer to section 29(10)?*
- 2. In regulation 6(4)(a) is the word ' with' missing after the word 'whether'? If so, does the Scottish Government consider that this has any effect on the meaning or interpretation of the instrument?*
- 3. What is 'the Act' referred to in regulation 15, given that 'the Act' does not appear to be a defined term?*

The Scottish Government responds as follows:

1. Section 29 (10) of the 2001 Act provides that regulations made under 29(1), (2), (7) and (9) may make it an offence to contravene or fail to comply with any specified provision of the regulations . This provision does not state that regulations made under it may create an offence, rather that regulations made under section 29 (1) etc may create an offence. Therefore we consider that the preamble cites the correct powers and that failure to refer to section 29(10) does not have any effect on the instrument. If however, the Parliament considers it would be helpful, we could refer to the connection with section 29(10) in a footnote.
2. We consider that regulation 6(4)(a) can be readily understood whether the word 'with' is included after 'whether' or not , and this has no effect on the meaning or interpretation of the instrument.
3. The 'Act 'referred to in regulation 15 is the Regulation of Care (Scotland) Act 2001, which the regulations are made under . We did footnote and refer to the Act on page 1 of the SSI AS "the Act". On reflection it may have been of more assistance to the reader if we had referred to the Act in full. However, we think that by implication when the Instrument is considered along with the relevant sections of that Act (which refer to "authorised persons") that there can be no doubt about this. Therefore, we do not think that this would have any effect on the operation of the instrument. We would be happy to footnote this again and could do so if the Parliament so wishes.

Education, Lifelong Learning and Culture Committee

11th Meeting, 2009 (Session 3), Wednesday 22 April 2009

Subordinate legislation

**The Repayment of Student Loans (Scotland) Amendment Regulations
2009 (SSI 2009/102)**

Background

1. The instrument amends the Repayment of Student Loans (Scotland) Regulations 2000 (“the 2000 Regulations”) which make several references to the Education (Student Loans) (Repayment) Regulations 2000 (“the Collection Regulations”). The Collection Regulations are UK wide Regulations which govern the collection of repayments of student loans by Her Majesty’s Revenue and Customs.

2. The Department for Innovation, Universities and Skills (DIUS) has advised that the Education (Student Loans) (Repayment) Regulations 2009 (“the 2009 Regulations”) revoke and replace the Collection Regulations. The purpose of this instrument is to amend the 2000 Regulations so as to refer to the 2009 Regulations as opposed to the Collection Regulations.

3. The Regulations also correct an omission of references to the Graduate Endowment (Scotland) Regulations 2007 and the Graduate Endowment (Scotland) Regulations 2008 in regulations 6(a) and 7(2)(b) of the 2000 Regulations.

Subordinate Legislation Committee’s consideration

4. The Subordinate Legislation Committee considered the SSI at its meeting on 24 March 2009 and determined that it did not need to draw the attention of the Parliament to the instrument on any of the grounds set out within Rule 10.3.1.

Action

5. 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.

**Linda Smith
Assistant Clerk
Education, Lifelong Learning and Culture 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.

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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 2009/102 has been lodged with the chamber clerks.

Education, Lifelong Learning and Culture Committee

11th Meeting, 2009 (Session 3), Wednesday 22 April 2009

Education (Additional Support for Learning) (Scotland) Bill

Background

1. The *Education (Additional Support for Learning) (Scotland) Bill* (SP Bill 16)¹ was introduced in the Scottish Parliament on 6 October 2008 by Fiona Hyslop MSP.

2. The Parliamentary Bureau subsequently referred the Bill to the Education, Lifelong Learning and Culture Committee as lead committee at Stage 1.

3. The Committee published its Stage 1 report on the Bill on 10 February 2009. A copy is available at this link—

<http://www.scottish.parliament.uk/s3/committees/ellc/reports-09/edr09-02.htm>

4. The Bill passed Stage 1 on 4 March 2009, and details of the Stage 1 debate can be viewed at this link—

<http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0304-02.htm#Col15365>

5. The Parliamentary Bureau subsequently referred the Bill to the Education, Lifelong Learning and Culture Committee as lead committee at Stage 2.

6. The Committee began its Stage 2 proceedings on 25 March 2009. The Marshalled List of amendments, Groupings of amendments and the Official Report from that meeting can be viewed at this link—

<http://www.scottish.parliament.uk/s3/bills/16-EdAddSup/index.htm>

7. At the Stage 2 proceedings on 25 March 2009, the first 11 amendments on the Marshalled list of amendments were disposed of.

8. However, the Convener halted proceedings at that stage, as the Presiding Officer had ruled that one of the amendments in the next Group due for consideration would, if agreed to, require a Financial Resolution.

9. The Bill does not currently have a Financial Resolution, because the Presiding Officer had determined on introduction that the expenditure in the Financial Memorandum that accompanied the Bill was not sufficiently significant to require such a resolution.

¹ Scottish Government (2008). *Education (Additional Support for Learning) (Scotland) Bill*. Available at: <http://www.scottish.parliament.uk/s3/bills/16-EdAddSup/index.htm>

10. The Convener therefore stopped Stage 2 proceedings to allow time for the Scottish Government to bring forward a Financial Resolution, if it wished to do so.

11. The Scottish Government confirmed at the meeting of 25 March 2009 that it did not intend to bring forward a Financial Resolution for the Bill.

12. The Parliamentary Bureau subsequently agreed to recommend to the Parliament that the deadline for completion of Stage 2 be extended to allow all members an opportunity to provide information on costings of amendments to the Presiding Officer.

13. The Presiding Officer has then ruled on which of the remaining amendments would, if agreed to, require a Financial Resolution, either on their own, or cumulatively.

Evidence session on 22 April 2009

14. The session on 22 April will give the Committee the opportunity to discuss any amendments that the Presiding Officer has ruled would, if agreed to, require a Financial Resolution (either individually or cumulatively).

15. On the basis of the Presiding Officer's rulings, the amendments fall into the following categories:

- **amendments with no or *de minimis*² cost:** these amendments will be able to be debated as normal on 29 April. These amendments are:
 - amendment 8
 - amendments 14 to 14F
 - amendment 26
 - amendment 21
 - amendment 22
 - amendment 11
 - amendment 20
 - amendment 24
 - amendment 27
 - amendment 28
 - amendment 9
- **significant cost³:** these amendments may be discussed on 22 April but no proceedings may be taken on them on 29 April (i.e. the amendment may not be moved, debated or the question on it put –

² Less than £10,000.

³ Each individual amendment costs over £300,000

unless a financial resolution were to be brought forward after all). These amendments are:

- amendment 23
- amendment 13
- amendment 15
- amendment 25
- amendment 16
- **potential cumulative cost⁴**: these amendments can be discussed on 22 April and may be moved, debated and the question on them put on 29 April until such time as an amendment is reached on the Marshalled List which, taking account of amendments already agreed to, would tip the cost over £300,000. The amendment which breaches that tipping point and any subsequent amendments in this category may not be moved, debated or the question on them put on 29 April. Members should note that as matters currently stand, only three amendments fall within this category (with a cumulative cost of £210,000) and so no amendments will currently fail to be moved, debated and the question on them put on 29 April as a result of the cumulative operation of Rule 9.12.6. These amendments (and their costs) are as follows:
 - amendment 10 (£50,000)
 - amendment 19 (£100,000)
 - amendment 12 (£60,000)

16. If, as a result of discussion on 22 April, any member requests any amendment to be redrafted (e.g. in order to remove any unintended consequences with cost implications) prior to the deadline for lodging amendments (12 noon on Friday 24 April), the Presiding Officer will give further consideration to the redrafted amendment. Members will be advised if any amendment changes category (and of the cost of any amendment now falling within the “potential cumulative cost” category).

17. Discussion on amendments on 22 April will be structured around the groupings prepared for the Committee’s meeting on 25 March. That is, amendments in the second two categories above will be discussed in the following order:

amendment 23

amendment 13

amendment 15

amendments 10 and 19

⁴ Each amendment gives rise to a cost of between £10,000 and £300,000.

amendment 25

amendment 16

amendment 12

**Nick Hawthorne
Senior Assistant Clerk
Education, Lifelong Learning and Culture Committee**

Annexe B

Groupings of amendments

Assessment and examination: further provision

8, 23

Additional support needs: specified children and young people

14, 14A, 14B, 14C, 14D, 14E, 14F

Coordinated support plans: issue of “significant”

13

Pre-school children: role of health boards

26

Supporters and advocacy: local authority provision

15

Mediation services: independence from local authorities

21

Dispute resolution: referral to Scottish Ministers

22

Publication of information: availability

10, 19

Publication of information: content

11, 20, 24

Local authorities consultation on policy for additional support needs provision

25

Definition of ‘young person’

16

Reference to Tribunal: post-school transition

12

Implementation of Tribunal decisions: power to monitor

27

Recovery of costs: host authority obligation to pay

28