EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

AGENDA

12th Meeting, 2009 (Session 3)

Wednesday 29 April 2009

The Committee will meet at 10.00 am in Committee Room 2.

1. **Education (Additional Support for Learning) (Scotland) Bill**: The Committee will consider the Bill at Stage 2 (Day 2).

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

   the Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) (No. 2) Regulations 2009 (SSI 2009/118).

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Clerk to the Education, Lifelong Learning and Culture Committee
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The papers for this meeting are as follows—

**Agenda item 1**

*Documents relevant to the Education (Additional Support for Learning) (Scotland) Bill*

**Agenda item 2**

SSI cover note  

*the Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) (No. 2) Regulations 2009 (SSI 2009/118)*
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. The Executive Note states that, 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 address this.

4. The intention of this instrument is twofold. First, workers employed in the sector for the first time will be required to apply for registration as soon as reasonably practical on commencement of employment. Second, deadlines have been set for existing social workers and social services workers to register.

6. The Education, Lifelong Learning and Culture Committee is the lead committee for this instrument and should report to the Parliament by 11 May 2009.

5. This regulation revokes and replaces the Regulation of Care (Fitness of Employees in relation to Care Services) (Scotland) Regulations 2009 (SSI 2009/91). These Regulations were revoked and replaced before the Committee had time to consider them.

7. Copies of the SSI, an explanatory note (which is not part of the Regulations) and the Executive Note are attached.

8. A note on procedure for considering SSIs is attached overleaf. This is a negative instrument.
Subordinate Legislation Committee’s consideration

9. The Subordinate Legislation Committee considered the SSI at its meeting on 31 March 2009 and noted the following:

(a) 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

(b) that the Subordinate Legislation Committee finds satisfactory for its interests the explanation given by the Scottish Government in their letter to the Presiding Officer dated 23 March 2009 for the failure to comply with Article 10(2) of the Scotland Act (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SSI 1999/1096).

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

Recommendation

11. The Committee is invited to consider whether it wishes to make any recommendation in relation to the instrument.

Emma Berry
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 2009/118 has been lodged with the chamber clerks.
INSTRUMENTS SUBJECT TO ANNULMENT

1. This instrument revokes and replaces the Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) Regulations 2009 (SSI 2009/91) which come into force on 31 March.

2. In the Committee’s 20th Report of 2009, the committee reported SSI 2009/91 on the ground that there had 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. The same issue arises in this instrument.

3. SSI 2009/91 comes into force on 31 March 2009. Regulation 17 of SSI 2009/118 revokes 2009/91. Regulation 17 comes into force on 30 March 2009 which does not comply with the 21 day rule in Article 10(2) of SSI 1999/1096. The remainder of the instrument complies with the 21 day rule.

4. The letter to the Presiding Officer explains the background to the new instrument and the reason for the failure to comply with Article 10(2) of 1999/1096 in respect of regulation 17.

5. The Committee for its interests is content that a full explanation and justification have been given for the failure to comply with the 21 day rule and that, in the circumstances as detailed in the letter, it may reasonably be considered necessary to bring the provision (regulation 17) into force before the expiry of the 21 day period.

6. The Committee draws this instrument to the attention of 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.

7. The Committee reports to the Parliament that the Committee finds satisfactory for its interests the explanation given by the Scottish Government in their letter to the Presiding Officer dated 23 March 2009 for the failure to comply with Article 10(2) of the Scotland Act (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SSI 1999/1096).