EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

AGENDA

22nd Meeting, 2009 (Session 3)

Tuesday 8 September 2009

The Committee will meet at 10.00 am in Committee Room 6.

1. **Subordinate legislation:** Ken Macintosh to move S3M-4758—

   That the Education, Lifelong Learning and Culture Committee recommends that nothing further be done under the Children's Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211).

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

**Agenda item 1**

Paper by the Clerk
Introduction

1. This paper seeks to inform members’ consideration of the Children’s Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211).

2. Copies of the SSIs, explanatory notes and Executive Notes were provided to members in hard copy only for the meeting of 1 September 2009.

3. The Committee took evidence on this instrument from the Minister for Children and Early Years at its meeting on 1 September 2009. A copy of the cover note provided for members at that meeting is attached at Annexe A.

4. The instrument is subject to the negative procedure. A procedural note on this is attached at Annexe B.

Motion to annul

5. Ken Macintosh MSP has lodged a motion to annul the SSI as follows:

S3M-4758—That the Education, Lifelong Learning and Culture Committee recommends that nothing further be done under the Children’s Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211).

6. The Committee has, under Rule 10.4.2, up to 90 minutes to debate the motion and will then be required to take a decision on whether or not to support the motion. The Minister for Children and Early Years and his officials will attend the debate.

7. The Committee then reports its recommendation to the Parliament. Should the motion be agreed to by the Committee, the Parliamentary Bureau would propose by motion, under Rule 10.4.4, that nothing further be done under the instrument. A debate of no longer than six minutes would take place in the Parliament. The only members permitted to speak in such a debate would be the minister in charge of the instrument and member moving the motion, that is, a member of the Parliamentary Bureau.

Eugene Windsor
Clerk to the Education, Lifelong Learning and Culture Committee

1 Electronic copies are available on the website of the Office of Public Sector Information. http://www.opsi.gov.uk/legislation/scotland/s-200902
The Children’s Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211)

Background

8. These Amendment Rules were laid on 3 June 2009. The Education, Lifelong Learning and Culture Committee was designated the lead committee.

9. This instrument is made in exercise of powers conferred by the Children (Scotland) Act 1995.

Policy objectives

10. This instrument amends the Children’s Hearings (Legal Representation) (Scotland) Rules 2009, which set out the circumstances under which children can access state-funded legal representation in a children’s hearing. This is done in order to extend the availability of state-funded legal representation in children’s hearings to relevant persons, in certain circumstances.

11. The changes are made to support the effective participation of relevant persons where it is considered they would otherwise be unable to participate effectively in a children’s hearing. The new Rule 3B provides guidance on the factors that might impact on a person’s ability to participate effectively.

12. The instrument also makes minor amendment to the rules in relation to the provision of free legal representation to children under the scheme.

13. The scheme operates whereby local authorities appoint a legal representative on behalf of a child and recovers the cost from the Scottish Government.

Issues the Committee may wish to consider

14. Members will note that the Amendment Rules came into force on 4 June 2009, the day after they were laid before the Scottish Parliament. This is a breach of Article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 which provides that negative instruments shall be laid not less than 21 days before they come into force.

15. A letter from the lead official in the Children’s Hearings branch of the Scottish Government to the Presiding Officer relating to this issue is included with the instrument papers. It states that the breach was considered necessary to ensure that there was minimum delay in providing free legal representation and compliance with the European Convention on Human Rights, specifically Article 6 (right to a fair trial), Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination).

16. The Executive Note states that no additional costs are anticipated for local authorities. It also states that “additional costs for Scottish Government are anticipated, as yet undetermined”. The Clerks sought further information on this point from Scottish Government officials, who confirmed that initial costings suggest that these additional costs can be met from the current budget.
17. The SLC considered the instrument at its meeting on 16 June 2009 and determined that it did not need to draw it to the attention of the Parliament.

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 these instruments have been lodged with the chamber clerks.