EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

AGENDA

8th Meeting, 2011 (Session 3)

Wednesday 9 March 2011

The Committee will meet at 9.15 am in Committee Room 2.

1. **Broadcasting in Scotland:** The Committee will take evidence from—

   Fiona Hyslop MSP, Minister for Culture and External Affairs, and Richard Wilkins, Head of Broadcasting Policy, Scottish Government.

2. **Subordinate legislation:** The Committee will take evidence on the following instruments—

   the draft Fundable Bodies (University of the Highlands and Islands) Order 2011 (SSI 2011/draft);

   the draft Fundable Bodies (Royal Conservatoire of Scotland) Order 2011 (SSI 2011/draft);

   the Edinburgh College of Art (Transfer) (Scotland) Order 2011 from—

   Michael Russell MSP, Cabinet Secretary for Education and Lifelong Learning, Stephen Kerr, Deputy Director, Higher Education and Learner Support, Louise Sutherland, Team Leader, Higher Education Governance Branch, and Ailsa Heine, Senior Principal Legal Officer, Directorate for Legal Services, Scottish Government.

3. **Subordinate legislation:** Michael Russell MSP (Cabinet Secretary for Education and Lifelong Learning) to move—

   S3M-7890—that the Education, Lifelong Learning and Culture Committee recommends that the Fundable Bodies (University of the Highlands and Islands) Order 2011 be approved;
S3M-7871—That the Education, Lifelong Learning and Culture Committee recommends that the Fundable Bodies (Royal Conservatoire of Scotland) Order 2011 be approved.

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

   the Edinburgh College of Art (Transfer) (Scotland) Order 2011 (SSI 2011/54).

5. **Education Bill (UK Parliament legislation):** The Committee will take evidence on legislative consent memorandum LCM(S3) 34.1 from—

   Michael Russell MSP, Cabinet Secretary for Education and Lifelong Learning, Clare Morley, Options and Partnerships Division, and Laurence Sullivan, Senior Principal Legal Officer, Directorate for Legal Services, Scottish Government.

6. **Education Bill (UK Parliament legislation):** The Committee will consider the legislative consent memorandum lodged by Michael Russell MSP (Cabinet Secretary for Education and Lifelong Learning (LCM(S3) 34.1).

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

   the Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 (SSI 2011/102);

   the Additional Support Needs Tribunals for Scotland (Appointment of President, Conveners and Members and Disqualifications) Amendment Regulations 2011 (SSI 2011/103);

   the Additional Support Needs Tribunals for Scotland (Disability Claims Procedure) Rules 2011 (SSI 2011/104);

   the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2011 (SSI 2011/105);

   the Individual Learning Account (Scotland) Regulations 2011 (SSI 2011/107);

   the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Devolved Public Bodies and Stipulated Time Limit) and the Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order 2011 (SSI 2011/113) (SSI 2011/113);

   the Children’s Hearings (Scotland) Act 2011 (National Convener Appeal against Dismissal) Regulations 2011 (SSI 2011/143);

   the Adoptions with a Foreign Element (Scotland) Amendment Regulations 2011 (SSI 2011/159).
8. **Scottish Government's autism strategy:** The Committee will take evidence from—

    Shona Robison, Minister for Public Health and Sport, Jean Maclellan, Head, Adult Care and Support division, and Jonathan Moore, Deputy Director, Support for Learning division, Scottish Government.

9. **Annual report:** The Committee will consider a draft annual report for the parliamentary year from 9 May 2010 to 22 March 2011.

10. **The future of schools management in Scotland (in private):** The Committee will consider a draft report.

11. **Legacy paper (in private):** The Committee will consider a draft legacy paper.

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The papers for this meeting are as follows—

**Agenda items 2 and 3**

Paper by the clerk

ELLC/S3/11/8/1

*The draft Fundable Bodies (University of the Highlands and Islands) Order 2011 (SSI 2011/draft)*

*The draft Fundable Bodies (Royal Conservatoire of Scotland) Order 2011 (SSI 2011/draft)*

**Agenda item 4**

Paper by the clerk

ELLC/S3/11/8/2

*The Edinburgh College of Art (Transfer) (Scotland) Order 2011 (SSI 2011/54)*

**Agenda items 5 and 6**

Paper by the clerk

ELLC/S3/11/8/3

Further information

**Agenda item 7**

Paper by the clerk

ELLC/S3/11/8/4

*The Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 (SSI 2011/102)*

*The Additional Support Needs Tribunals for Scotland (Appointment of President, Conveners and Members and Disqualification) Amendment Regulations 2011 (SSI 2011/103)*


*The Individual Learning Account (Scotland) Regulations 2011 (SSI 2011/107)*

*The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Devolved Public Bodies and Stipulated Time Limit) and the Freedom of Information (Scotland) Act 2002 (Scottish Public*
Agenda item 8

Further information

Agenda item 9

Paper by the clerk

Agenda item 10

PRIVATE PAPER

Agenda item 11

PRIVATE PAPER
Introduction

1. This paper seeks to inform members’ consideration of the following instruments—

   the draft Fundable Bodies (University of the Highlands and Islands) Order 2011 (SSI 2011/draft)

   the draft Fundable Bodies (Royal Conservatoire of Scotland) Order 2011 (SSI 2011/draft).

Committee consideration

2. The Committee will take formal evidence on both instruments from the Cabinet Secretary for Education and Lifelong Learning at agenda item 2 and the Committee will formally consider the draft orders at agenda item 3. After the Cabinet Secretary has moved the motions, the Committee has up to 90 minutes to debate them. The Committee is obliged to report to the Parliament on the instruments following the meeting.

The draft orders

Background

3. Both orders were laid on 2 February 2011 and the lead committee must report by 14 March 2011. The Education, Lifelong Learning and Culture Committee has been designated the lead committee.

4. The instruments are made in exercise of powers conferred in the Further and Higher Education (Scotland) Act 2005. Both are subject to the affirmative procedure.

Policy objectives

5. The Scottish Funding and Higher Education Funding Council (known as the Scottish Funding Council (SFC)) may only fund institutions listed in schedule 2 to the 2005 Act.

6. As both the UHI Millennium Institute and the Royal Scottish Academy of Music and Drama have changed their names, to the University of the Highlands and Islands and the Royal Conservatoire of Scotland respectively, this instrument amends schedule 2 of the 2005 Act to reflect this.

Issues that the Committee may wish to consider

7. The Subordinate Legislation Committee considered these instruments at its meeting on 8 February 2011. The Committee did not have any issues to bring to the lead committee’s attention.
Action

8. The Committee is invited to—

- Take oral evidence from the Cabinet Secretary for Education and Lifelong Learning on the instruments at agenda item 2;
- Formally consider the draft orders at agenda item 3; and
- Delegate authority to the Convener to agree the text of its report on the draft order with the Clerks.

Emma Johnston
Assistant Clerk
Education, Lifelong Learning and Culture Committee
Introduction

1. This paper seeks to inform members’ consideration of the Edinburgh College of Art (Transfer) (Scotland) Order 2011 (SSI 2011/54).

 Committee’s consideration of the instrument

2. The Committee will take evidence on this issue from the Cabinet Secretary for Education and Lifelong Learning at agenda item 2, when he gives evidence on the two fundable bodies draft orders. The Committee will consider the instrument formally at agenda item 4.

Edinburgh College of Art (Transfer) (Scotland) Order 2011

Background

3. This order was laid on 2 February 2011 and the lead committee must report by 14 March 2011. The Education, Lifelong Learning and Culture Committee has been designated the lead committee.


Policy objectives

5. Section 47 of the 1992 Act makes provision for the closure, by order, of designated higher education institutions, one of which is the Edinburgh College of Art. The College is being merged with the University of Edinburgh on 1 August 2011, when the employees, property, rights, liabilities and obligations will transfer to and be vested in the university court. The College will close and its governing body will be dissolved.

6. Articles 5, 9 and 10 relate to the transfer of property, rights, liabilities and obligations; transfer of staff; and closure and winding up of the college respectively.

7. Article 3 provides that the Edinburgh College of Art be re-constituted as part of the University of Edinburgh.

Issues that the Committee may wish to consider

8. The Subordinate Legislation Committee (SLC) considered the instrument at its meeting on 22 February 2011. In its report, the SLC highlighted two concerns. The first concern was that s47 of the 1992 Act (which relates to the closure of a designated higher education institution) did not, in the opinion of the Subordinate Legislation Committee, provide sufficient basis for Article 3 and the reconstitution of the college.
9. The SLC concludes—

“The Committee reports that there appears to be a doubt whether article 3 is intra vires, in that it purports to regulate the constitution and internal affairs of the University of Edinburgh, and that there is a doubt as to whether this can properly be said to be incidental, supplementary or ancillary to the closure and winding up of Edinburgh College of Art.”

10. The second concern is over the Edinburgh College of Art Prize Fund in article 7 and its definition.

11. The SLC concludes—

“The Committee reports that the meaning and effect of article 7 could be clearer, in respect that the Order fails to define the Edinburgh College of Art Prize Fund to which the article applies (either of new or by the continuation in effect of previous statutory provisions for this purpose), and so it is unclear to what transferred property the conditions imposed by that article apply.”

12. Further information on the Subordinate Legislation Committee’s concerns is set out in Annexe A.

Action

13. The Committee is invited to consider whether it has anything to report to the Parliament.

Emma Johnston
Assistant Clerk
Education, Lifelong Learning and Culture Committee
EXTRACT FROM SUBORDINATE LEGISLATION COMMITTEE REPORT
ON SUBORDINATE LEGISLATION

The Edinburgh College of Art (Transfer) (Scotland) Order 2011 (SSI 2011/54) (Education, Lifelong Learning and Culture Committee)

1. This Order makes provision for the abolition of the Edinburgh College of Art (“the original College”) and the transfer of its assets to the University of Edinburgh (“the University”).

2. It seeks to provide for the reconstitution of the original College as a part of the University; for the transfer of the property, rights, liabilities and obligations of the original College to the University; for the transfer of staff of the original College to the University; and for the closure of the original College and winding up of its governing body.

3. The original College is a designated higher education institution for the purposes of the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”). Section 47(1) of the 1992 Act permits the Scottish Ministers by order to close a designated institution and wind up its governing body.

4. The Order is subject to negative procedure and comes into force on 1 August 2011, with the exception of article 10 which comes into force on 2 August 2011, so that the transfers of property, rights, liabilities and obligations take place before the original College is closed and its governing body wound up.

5. Correspondence between the Committee and the Scottish Government is reproduced at Appendix 3.

Questions 1 and 2 - doubt over vires

6. It was not clear to the Committee which power was being used to make the provision in article 3 of the Order, which places a duty on the University to establish and maintain a part of the University to be known as the Edinburgh College of Art (“the reconstituted College”) and sets out the subjects which are to be taught there. It also requires the University to establish and maintain the office of Principal of the reconstituted College. Article 3(2) requires the reconstituted College to be located at the current College of Art campus at Lauriston Place.

7. The Government considers the power in section 47(2)(f) of the 1992 Act is sufficiently wide to enable the Scottish Ministers to make the provisions in article 3 of the Order. Section 47(2)(f) permits the Scottish Ministers to make such incidental, supplementary, transitional or ancillary provisions as they consider necessary or expedient for the purposes of the closure and winding up of the original College. The Government also founds on the fact that the University Court has consented to the making of the Order, and concludes that Ministers were entitled to be satisfied that it was expedient to include those provisions.
8. The Committee considers that it is doubtful whether the provisions made in article 3 can properly be said to be incidental, supplementary or ancillary to the closure and winding up of the original College. In the Committee’s view the consent of the various parties involved is irrelevant in determining the purpose of the provision or whether the instrument is within *vires*.

9. Section 47(2) specifies that a closure order may contain additional provisions, but that additional provision is expressed to be in the context of the closure and winding up. By contrast, the provisions of article 3 purport to regulate the *composition and internal affairs of the University* following the closure of the original College.

10. Express provision is made in article 3 to allow the University Court to vary the location of the reconstituted College and the subjects it teaches. However, it is required to establish and maintain the reconstituted College and the office of Principal of that College. In effect, article 3 entrenches the reconstituted College and its Principal within the University. While the Court might otherwise alter the internal structure of the University in accordance with its governing legislation, this Order would change that. It requires that the University maintain the reconstituted College and its Principal unless the Order is subsequently amended or revoked by the Scottish Ministers.

11. The Committee has considered whether the general powers in section 60 of the 1992 Act to make incidental or supplementary provision in orders made under the Act could be used to make article 3. However, given that section 47(2)(f) already confers the power to do things which are supplementary to winding up, it finds it difficult to see what additional scope there was intended to be in a power to make provision which was itself supplementary to those supplementary powers.

12. It is therefore the view of the Committee that there is a doubt as to whether article 3 of the Order is *intra vires*.

**Question 3**

13. The Scottish Government states that article 4 of the Order transfers all property, rights, liabilities and obligations of the original College to the University, and so the Edinburgh College of Art Prize Fund (“the Fund”) will transfer by virtue of this provision. However, the Fund is currently defined in article 23 of the Edinburgh College of Art Order of Council 1995 (“the 1995 Order”) as consisting of certain endowments which are listed in Part I of the Third Schedule to the Edinburgh College of Art Order 1959 (“the 1959 Order”).

14. The Committee is satisfied that the endowments which make up the Fund will transfer to the University in terms of article 4, but the Committee considers that it is appropriate to define the Fund anew if separate provision is to be made about how it is to be administered in the future, given that the 1959 and 1995 Orders which currently define the Fund are to be revoked. There is nothing in this Order which provides that the Fund mentioned in article 7 is the same as the Fund previously constituted under article 23. While it might be possible to arrive at that interpretation, the Committee
considers it is not satisfactory to have to consult provisions which have been revoked in order to do so.

15. The Committee reports that there appears to be a doubt whether article 3 is *intra vires*, in that it purports to regulate the constitution and internal affairs of the University of Edinburgh, and that there is a doubt as to whether this can properly be said to be incidental, supplementary or ancillary to the closure and winding up of Edinburgh College of Art.

16. The Committee reports that the meaning and effect of article 7 could be clearer, in respect that the Order fails to define the Edinburgh College of Art Prize Fund to which the article applies (either of new or by the continuation in effect of previous statutory provisions for this purpose), and so it is unclear to what transferred property the conditions imposed by that article apply.
APPENDIX 3

INSTRUMENTS SUBJECT TO ANNULMENT

The Edinburgh College of Art (Transfer) (Scotland) Order 2011 (SSI 2011/54)

On 4 February 2011 the Scottish Government was asked:

1. The Scottish Government is asked to explain what powers are being relied upon in article 3 in order to:

   (a) require the University Court of the University of Edinburgh to establish and maintain a part of the University to be known as Edinburgh College of Art (“the reconstituted College”)

   (b) require the University Court to establish and maintain the office of Principal of Edinburgh College of Art; and

   (c) specify that the reconstituted College be situated at the Lauriston Place campus occupied by the original College as at 31 July 2011.

2. In the event that the Scottish Government considers the provisions of article 3 to be incidental or supplementary to the making of an Order under section 47 of the Further and Higher Education (Scotland) Act 1992, it is asked to explain why it is considered appropriate to make provision in this Order for the above matters, when the University Court has power to regulate these matters in terms of section 3 of and Schedule 2 to the Universities (Scotland) Act 1966.

3. The Scottish Government is asked to explain the legal effect of the failure to define the Edinburgh College of Art Prize Fund either by a restatement of the assets from which it is currently made up, or to provide for a savings provision in respect of the Edinburgh College of Art Prize Fund comprising the assets listed in Part I of the Third Schedule to the 1959 Order (which will be revoked by article 12 of and Schedule 2 to this Order) if that still applies.

The Scottish Government responds as follows:

1. The provisions of section 47(2)(f) of the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”) are considered to be sufficiently wide to allow the Scottish Ministers to include provision to address the matters specified in question 1 above in this Order.

Section 47(1) enables Scottish Ministers by Order to close a designated institution and to wind up the governing body of that institution. Section 47(1A) makes it clear that the Order shall include provision transferring property and rights, and may include provision transferring liabilities and
obligations, to a person specified in the Order. The University Court of the University of Edinburgh ("the University Court") may be such a person.

This Order provides for the closure of Edinburgh College of Art and for the transfer of property, rights, liabilities and obligations to the University Court. It is of course important to note, as recorded in the preamble, that the Order has been made after consultation with the Governors of Edinburgh College of Art and with the consent of the University Court. The matters specified in question 1 are considered to be directly linked to the closure of the College and transfer of property, rights, liabilities and obligations to the University Court and it is therefore appropriate to treat these matters as a single package. Since the University Court has consented to their inclusion Scottish Ministers would be entitled to reach the view that it is expedient to include provision in the Order.

2. The Scottish Government considers that it is preferable to include provision relating to the closure of the Edinburgh College of Art, the transfer of property, rights, liabilities and obligations to the University Court and the conditions attached to the transfer in one Instrument. As noted above, it is considered that the provisions of section 47(2)(f) of the 1992 Act permit the Scottish Ministers to include such provision in this Order. While the University Court might regulate these matters in terms of section 3 of, and Schedule 2 to, the Universities (Scotland) Act 1966 Scottish Ministers are entitled to conclude that it is appropriate, particularly in circumstances where the University Court has consented to such provision being made in the Order, to make such provision in the Order.

3. Article 4 of this Order makes provision for the transfer of all property, rights, liabilities and obligations of the Governors of the Edinburgh College of Art ("the Governors") to the University Court. It is clear that article 4 applies in relation to the Edinburgh College of Art Prize Fund ("the Fund") being an endowment created by section 28 of the Edinburgh College of Art Order 1959 ("the 1959 Order") and currently held and administered by the Governors in terms of article 23 of the Edinburgh College of Art (Scotland) Order 1995. As with other property, rights, liabilities and obligations transferring by virtue of article 4, we did not consider that it was necessary to further define the Fund (although undoubtedly that could have been done). The purpose of article 7 of the Order is to make clear on the face of the Order that the Fund remains subject to the trust and conditions to which it is subject immediately before transfer. This was considered expedient although even in the absence of such specific provision this would be the effect of section 47(3) of the 1992 Act which provides that property transferred by virtue of this Order remains subject to any trust or condition to which it was subject immediately before such transfer. In addition, and for ease of reference of the reader, we have identified in a footnote in the Order that the Fund was created by section 28 of the 1959 Order.
Introduction

1. This paper seeks to inform members’ consideration of the legislative consent memorandum (LCM) for the Education Bill.

2. A copy of the LCM is set out in Annexe A.

Education Bill

3. The Bill was introduced in the House of Commons on 26 January 2011.

4. The House of Commons website states that the Bill is a “very wide-ranging Bill” which “seeks to implement the legislative proposals in the Department for Education’s schools White Paper, ‘The Importance of Teaching’ and measures from the Department for Business, Innovation and Skills relating to skills and the reform of higher education funding”.

5. The LCM provides a more detailed summary of the Bill’s provisions—

   • Part 1 makes provision regarding interest rates for student loans;
   • Part 2 makes provision for free early years provision for some two year-olds, and for establishments to charge for other early years provision in excess of the statutory requirements;
   • Part 3 makes provision relating to discipline in schools, giving members of staff greater powers and removing existing requirements;
   • Part 4 relates to the school workforce, abolishing the General Teaching Council for England, seeking to establish reporting restrictions on alleged teacher misconduct, and abolishing the Training and Development Agency for Schools and the School Support Staff Negotiation Body;
   • Part 5 includes a requirement for schools to participate in international surveys, amends the functions of Ofqual (Her Majesty’s Chief Regulator of Qualifications and Examinations), abolishes the Qualifications and Curriculum Development Agency, and repeals the entitlement to a diploma;
   • Part 6 makes provision relating to school governance and inspections;
   • Part 7 makes a range of provisions regarding academies, to widen the scope for different types of schools to become academies and to regulate their establishment and ongoing arrangements;
• Part 8 makes provisions regarding post-16 education and training, including abolishing the Young People’s Learning Agency for England, arrangements for apprenticeships, raising the age to which young people must participate in education or training and further detailed provision regarding schools and FE institutions; and

• Part 9 makes minor amendments to the powers of the National Assembly for Wales in relation to education and training.

Relevance of the Bill to Scotland

6. Members will note that the third bullet point relates to the abolition of the Young Person’s Learning Agency (YPLA). Section 68 of the Apprenticeships, Skills, Children and Learning Act 2009 confers functions on Scottish Ministers to make arrangements with the YPLA for the provision of services in connection with education and training. Section 69 of the 2009 Act provides that the YPLA can, with the consent of the Secretary of State for Education and Scottish Ministers, take part in arrangements to assist people to select, train for, obtain and retain employment in Scotland.

7. The YPLA has not, to date, made any arrangements with the YPLA to operate in Scotland. Nevertheless, because the Education Bill repeals functions conferred on Scottish Ministers in consequence of the abolition of the YPLA, the consent of the Scottish Parliament is required.

8. The LCM states that “there is no suitable Scottish Parliament Bill or statutory instrument in process that could be used to make the necessary changes in a timely manner and separate legislation for this minor, technical matter would be disproportionate”.

Procedure for consideration of the legislative consent memorandum

9. Chapter 9B of Standing Orders sets out the procedures for parliamentary consideration of a LCM for a “relevant Bill”. Rule 9B1.1 states that a “relevant Bill” is a Bill that is under consideration in the UK parliament, which makes provision applying to Scotland for any purpose within the legislative competence or the executive competence of the Scottish Ministers.

10. Rule 9B.3.3 sets out the information which a LCM shall contain. This includes a draft legislative consent motion and a statement explaining why the member lodging the LCM considers it appropriate for that provision to be made and for it to be made by means of the Bill.

11. Rule 9B.3.5 states that the Parliamentary Bureau will refer a LCM to a lead committee. The LCM was referred to the Education, Lifelong Learning and Culture Committee at the Parliamentary Bureau meeting on 1 February 2011. This Rule also provides that the lead committee will consider and report on the LCM.

1 Members will note that the LCM attached at Annexe A states that clause 64 of the Education Bill proposes the abolition of the YPLA. This should read clause 62.
12. The Subordinate Legislation Committee is required to consider a LCM where it confers delegated legislation powers. The Education Bill does not confer any delegated legislation powers and has not, therefore, been considered by the Subordinate Legislation Committee.

13. Standing Orders also state that the Parliament will not normally take the legislative consent motion earlier than the fifth sitting day after the day on which the lead committee’s report is published. It is intended that the Committee’s report will be published on Thursday 10 March 2011.

Action

14. Members are invited to:

- Take oral evidence on the LCM from the Cabinet Secretary for Education and Lifelong Learning (agenda item 5);
- Consider the issues to include in the Committee’s report (agenda item 6); and
- Delegate authority to the Convener to agree the text of the report with the clerks.

Emma Johnston
Assistant Clerk
Education, Lifelong Learning and Culture Committee
LEGISLATIVE CONSENT MEMORANDUM

EDUCATION BILL

Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Cabinet Secretary for Education and Lifelong Learning, is—

“That the Parliament agrees that the relevant provisions of the Education Bill, introduced in the House of Commons on 26 January 2011, in consequence of the abolition of the Young People’s Learning Agency, so far as these matters fall within the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by Michael Russell, Cabinet Secretary for Education and Lifelong Learning, under Rule 9.B.3.1(a) of the Parliament’s standing orders. The Education Bill (“the Bill”) was introduced in the House of Commons on 26 January 2011 (to be confirmed). The Bill can be found at:

http://www.publications.parliament.uk/pa/cm201011/cmbills/137/11137.i-v.html

Content of the Education Bill

3. The Bill covers a wide range of issues that are devolved to the Scottish Parliament. Its main provisions, therefore, are primarily relevant to England and Wales.

- Part 1 makes provision regarding interest rates for student loans;
- Part 2 makes provision for free early years provision for some two year-olds, and for establishments to charge for other early years provision in excess of the statutory requirements.
- Part 3 makes provision relating to discipline in schools, giving members of staff greater powers and removing existing requirements;
- Part 4 relates to the school workforce, abolishing the General Teaching Council for England, seeking to establish reporting restrictions on alleged teacher misconduct, and abolishing the Training and Development Agency for Schools and the School Support Staff Negotiation Body;
- Part 5 includes a requirement for schools to participate in international surveys, amends the functions of Ofqual (Her Majesty’s Chief Regulator of Qualifications and Examinations), abolishes the
Qualifications and Curriculum Development Agency, and repeals the entitlement to a diploma;

- Part 6 makes provision relating to school governance and inspections;
- Part 7 makes a range of provisions regarding academies, to widen the scope for different types of schools to become academies and to regulate their establishment and ongoing arrangements;
- Part 8 makes provisions regarding post-16 education and training, including abolishing the Young People’s Learning Agency for England, arrangements for apprenticeships, raising the age to which young people must participate in education or training and further detailed provision regarding schools and FE institutions; and
- Part 9 makes minor amendments to the powers of the National Assembly for Wales in relation to education and training.

4. The Legislative Consent Motion (LCM) relates to clause 64 in Part 8 of the Education Bill, which repeals sections 60 to 80 of the Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA). Sections 68 and 69 of ASCLA extend to Scotland and confer devolved functions on the Scottish Ministers in relation to the Young People’s Learning Agency, and the UK Parliament seeks the consent of the Scottish Parliament to repeal these provisions in so far as they relate to Scotland.

5. Provision in Part 8 of the Bill would abolish the Young People’s Learning Agency, established by ASCLA. Most of the provisions in that Act extend to England and Wales only. However, sections 68 and 69 of the Act extend to Scotland, conferring functions on the Scottish Ministers.

6. Section 68 provides that the Scottish Ministers are a “permitted recipient”, enabling them to make arrangements with the Young People’s Learning Agency for the provision of services in connection with the exercise by the Scottish Ministers of their functions relating to education and training. Section 69 provides that the Young People’s Learning Agency may, with the consent of both the Secretary of State for Education and the Scottish Ministers, take part in arrangements for assisting persons to select, train for, obtain and retain employment in Scotland.

**Reasons for seeking a Legislative Consent Motion**

7. The consent of the Scottish Parliament is sought in relation to clause 64 of the Bill, in so far as that provision repeals functions conferred on the Scottish Ministers in consequence of the abolition of the Young People’s Learning Agency for England [number to be confirmed when Bill is published].

8. The LCM is required as the, unexercised, functions of Scottish Ministers which relate to the procurement of services from the Young People’s Learning Agency will be removed in consequence of the abolition of the agency. This is a removal of devolved functions from the Scottish Ministers. Legislative consent is therefore required under the Sewel Convention.
9. It is appropriate that the Education Bill makes provision for this matter as there is no suitable Scottish Parliament Bill or statutory instrument in process that could be used to make the necessary changes in a timely manner and separate legislation for this minor, technical matter would be disproportionate.

Financial implications

10. There are no financial implications.

Conclusion

11. The view of the Scottish Government is that it is in the interests of good governance and clear legislation that, so far as these matters relate to the legislative competence of the Scottish Parliament or the executive competence of Scottish Ministers, they should be considered by the UK Parliament.

SCOTTISH GOVERNMENT
January 2011
Introduction

1. This paper seeks to inform members’ consideration of the following negative instruments—

   - the Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 (SSI 2011/102);
   - the Additional Support Needs Tribunals for Scotland (Appointment of President, Conveners and Members and Disqualification) Amendment Regulations 2011 (SSI 2011/103);
   - the Additional Support Needs Tribunals for Scotland (Disability Claims Procedure) Rules 2011 (SSI 2011/104);
   - the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2011 (SSI 2011/105);
   - the Individual Learning Account (Scotland) Regulations 2011 (SSI 2011/107);
   - the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Devolved Public Bodies and Stipulated Time Limit) and the Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order 2011 (SSI 2011/113) (SSI 2011/113);
   - the Children’s Hearings (Scotland) Act 2011 (National Convener Appeal against Dismissal) Regulations 2011 (SSI 2011/143);
   - the Adoptions with a Foreign Element (Scotland) Amendment Regulations 2011 (SSI 2011/159).

Additional support for learning instruments (SSI 2011/102 – 105)

Background

2. These instruments were laid on 15 February and the lead committee must report by 14 March. The Education, Lifelong Learning and Culture Committee has been designated the lead committee.

3. All four instruments are made in exercise of powers conferred in the Education (Additional Support for Learning) Act 2004. SSI 2011/104 and 105 are also made under the Equality Act 2010.

Policy objectives

4. SSI 2011/102 revises the Additional Support for Learning (Sources of Information) (Scotland) Order 2010. The 2010 order was established under
s26 of the 2004 Act; s26 provides that Scottish Ministers may make an order specifying persons who can provide advice, further information and support in relation to the provision for additional support needs. The order is being revised to take account of the provision of funding to Barnardo’s Scotland and the Scottish Child Law Centre to deliver an advocacy service for the Additional Support Needs Tribunals for Scotland (ASNTS).

5. SSI 2011/103 amends the Additional Support Needs Tribunals for Scotland (Appointment of President, Conveners and Members and Disqualification) Regulations 2005. The 2005 regulations relate to the appointment to a panel of individuals who may act as a member of an ASNTS. Under the Equality Act 2010, the remit of ASNTS is being expanded to hear disability claims cases in school education; these regulations are being updated to ensure that members are required to have knowledge or experience of children or young persons with a disability.

6. SSI 2011/104 introduces rules to allow ASNTS to hear disability claims cases in school education.

7. SSI 2011/105 updates the rules governing the practice and procedure of ASNTS to reflect the new power to hear disability claims cases in school education.

Issues that the Committee may wish to consider

8. The Subordinate Legislation Committee (SLC) considered SSI 2011/103 to 105 at its meeting on 22 February and did not find any issues to bring to the lead committee’s attention.

9. The SLC considered SSI 2011/102 at its meeting on 1 March. The Committee found that the meaning of the instrument could have been made clearer, although it did not consider this to be a matter likely to affect the validity or operation of the instrument. The Scottish Government has undertaken to correct this error at the earliest opportunity. Further information is provided in Annexe A.

The Individual Learning Account (Scotland) Regulations 2011 (SSI 2011/107)

Background

10. This instrument was laid on 17 February and the lead committee must report by 14 March. The Education, Lifelong Learning and Culture Committee has been designated the lead committee.

Policy objectives

11. The instrument amends the Individual Learning Account (Scotland) Regulations 2004 to make provision for the child of a Turkish worker for an individual learning account. As the 2004 regulations had been revised six times already, the Scottish Government deemed that this would also be a good opportunity to consolidate these regulations.
Issues that the Committee may wish to consider
12. The SLC considered this instrument at its meeting on 1 March and did not find any issues to bring to the lead committee’s attention.

The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Devolved Public Bodies and Stipulated Time Limit) and the Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order 2011 (SSI 2011/113) (SSI 2011/113)

Background
13. The instrument was laid on 18 February and the lead committee must report by 14 March. The Education, Lifelong Learning and Culture Committee has been designated the lead committee.


Policy objectives
15. The Explanatory Note for the instrument states that “Children’s Hearings Scotland … should be subject to the same scrutiny and regulation as existing, similar bodies”. Accordingly, this instrument amends the two parent acts to ensure that they apply to Children’s Hearings Scotland.

Issues that the Committee may wish to consider
16. The SLC considered this instrument at its meeting on 1 March and did not find any issues to bring to the lead committee’s attention.

The Children’s Hearings (Scotland) Act 2011 (National Convener Appeal against Dismissal) Regulations 2011 (SSI 2011/143)

Background
17. The instrument was laid on 24 February and the lead committee must report by 14 March. The Education, Lifelong Learning and Culture Committee has been designated the lead committee.

18. The instrument is made in exercise of powers conferred in the Children’s Hearings (Scotland) Act 2011.

Policy objectives
19. The regulations set out the procedure for a National Convener to make an appeal to Scottish Ministers against dismissal. These procedures are similar to those for the Principal Reporter. The Explanatory Note for the instrument states that “the objective behind the provision of this right of appeal is to provide insulation for the appointee from unfair removal from post”.

Issues that the Committee may wish to consider
20. The SLC considered this instrument at its meeting on 1 March and did not find any issues to bring to the lead committee’s attention.
Adoptions with a Foreign Element (Scotland) Amendment Regulations 2011 (SSI 2011/159)

Background
21. The instrument was laid on 25 February and the lead committee must report by 14 March. The Education, Lifelong Learning and Culture Committee has been designated the lead committee.

22. The instrument is made in exercise of powers conferred in the Adoption and Children (Scotland) Act 2007.

Policy objectives
23. The adoption process for a child who is habitually resident outside the UK differs depending on whether the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption applies. Although applications for “non-Hague Convention” adoptions are processed by the Scottish Government, they must have their certificate issued by the Secretary of State for Education. The Explanatory Notes states that this “means that these applications are going through duplicate processes and may be subject to delay”. This instrument will transfer responsibility for issuing these certificates to Scottish Ministers.

Issues that the Committee may wish to consider
24. The SLC will consider this instrument at its meeting on 8 March. Members will be updated on the SLC’s deliberations at the Committee’s meeting.

Action
25. The Committee is invited to consider whether it has anything to report to the Parliament.

Emma Johnston
Assistant Clerk
Education, Lifelong Learning and Culture Committee
EXTRACT FROM SUBORDINATE LEGISLATION COMMITTEE REPORT ON SUBORDINATE LEGISLATION

The Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 (SSI 2011/102) (Education, Lifelong Learning and Culture Committee)

This instrument amends the Additional Support for Learning (Sources of Information) (Scotland) Order 2010 ("the principal Order") which specifies persons from whom parents of children or young persons who have additional support needs can obtain advice, further information and support in relation to the provision for such needs. That includes such support and advocacy as is referred to in section 14 of the Education (Additional Support for Learning) (Scotland) Act 2004.

The operative provision of this instrument is article 2 which amends the provision of the principal Order that specifies two groups of persons, namely, at paragraph (a), Children in Scotland and, at paragraph (b), the Scottish Independent Advocacy Alliance Limited.

This instrument amends article 2 of the principal Order by restating, in expanded form, references to the aforementioned groups of persons, and adding a further group, the Scottish Child Law Centre.

Correspondence between the Committee and the Scottish Government is reproduced at Appendix 3.

In introducing this amendment, the instrument indicates that it is to be made at article 2(b) of the principal Order.

However, the amendment properly falls to be inserted so that it removes both of the existing entries, (a) and (b), with the new text being positioned at the start of those entries, and not within the body of article 2(b), as the opening line of article 2 of this instrument indicates.

In order to place a proper construction on the intended meaning it is necessary to read the reference to article 2(b), which introduces the amendment, as a reference to article 2.

The Committee notes the Scottish Government’s view that in considering the effect of the error, a purposive construction of the error should be applied.

The Committee reports this instrument in respect that its meaning could be clearer, so far as the reference which article 2 makes to article 2(b) of the Additional Support for Learning (Sources of Information) (Scotland) Order 2010, is erroneous. It notes that this is not considered to be a matter likely to affect the validity or operation of the instrument.

The Committee welcomes the statement by the Scottish Government that it will take the next available opportunity to correct the error.
APPENDIX 3

The Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 (SSI 2011/102)

On 18 February 2011 the Scottish Government was asked:

In relation to this instrument, the Scottish Government is asked what is considered to be the effect of the erroneous reference, in article 2, to article 2(b) of the Additional Support for Learning (Sources of Information) (Scotland) Order 2010, when introducing the amendment? This provides that within article 2(b), specifically, (and not, instead, article 2) of the 2010 Order certain text is to be omitted and replaced with another provision.

The Scottish Government responds as follows:

The Scottish Government agrees that the reference to article 2(b) of the Additional Support for Learning (Sources of Information) (Scotland) Order 2010 in article 2 of the Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 is an error. We are grateful to the SLC for bringing this to our attention. The reference should only have been to article 2 of the 2010 Order.

The Scottish Government is of the view that in considering the effect of the error, a purposive construction of the Order should be applied. The main purpose of the 2011 Order is to specify the Scottish Child Law Centre in addition to the two bodies which were specified in the 2010 Order. However the 2011 Order also adds references to the Scottish charity registration numbers of each of the three bodies, including the two bodies already specified in the 2010 Order, for the purpose of better identification and to update the name by which Children in Scotland trades.

It is suggested that the purposes described are achieved because the three bodies, as more fully described, will still appear in the 2010 Order, as amended. A purposive reading of the 2011 Order would mean that the erroneous reference to article 2(b) should be read as “article 2”, since this provision clearly describes the amendment made as commencing at “(a)” and there is no “(a)” in article 2(b) of the 2010 Order. For the 2011 Order to make sense the reference to “(a)” must mean that article 2(a) in the 2010 Order is being replaced too, because otherwise there would be two slightly different references to Children in Scotland. Even if that purposive construction were not to be favoured, it is submitted that at worst there would be a duplication of the reference to Children in Scotland would not cause any mischief in the meaning of the 2010 Order as amended. It is clear what 3 bodies are specified for the purposes of section 26(2)(i) of the 2004 Act. The Scottish Government will take the next available opportunity to correct the error.
The Committee reports to the Parliament as follows—

Introduction

1. In this final parliamentary year of Session 3, between 9 May 2010 and 22 March 2011, the Education, Lifelong Learning and Culture Committee has concluded its work programme of scrutiny of the Scottish Government’s legislation and policies within its remit.

2. The Committee has been the lead committee for three government bills (one carried over from the previous parliamentary year) as well as one member’s bill, scrutinised elements of the 2011-12 budget within its remit, considered UK legislation under a legislative consent memorandum, completed its two scoping exercises and concluded a number of regular update evidence sessions.

Inquiries, other evidence sessions and reports

Scoping exercises

3. The Committee continued its two scoping exercises from the previous parliamentary year. The first was on local-authority funding of education and children’s services and the second on the question of the future structure of the state school system.

4. In relation to the scoping exercise on local-authority funding of education, the Committee completed its programme of informal visits to local authorities with visits to the City of Edinburgh Council and Clackmannanshire Council. The Committee also took evidence from COSLA on 9 June 2010 and the Cabinet Secretary for Education and Lifelong Learning on 16 June 2010. Subsequently, the Committee agreed that the information gained during this exercise would feed into its other scoping exercise on the future of schools management in Scotland.

5. In relation to the scoping exercise on the future of schools management in Scotland, the Committee received 38 submissions. Due to legislative commitments, the Committee postponed detailed consideration of this issue until February 2011. A round-table discussion was then organised with a full range of stakeholders; this was followed by evidence from David Cameron on the review of devolved school management that he is carrying out on behalf of the Scottish Government. The Cabinet Secretary for Education and Lifelong Learning gave evidence on this issue on 23 February 2011.
6. The Committee published its joint report on both scoping exercises in March 2011.

**Budget process 2011-12**

7. The Committee invited stakeholders in the further and higher education sector and culture sector to submit written evidence on the impact of the draft budget on stakeholders and their activities. The Committee also took evidence from the Cabinet Secretary for Education and Lifelong Learning and the Minister for Culture and External Affairs.

**Evidence sessions**

8. The Committee continued to hold a number of evidence sessions on issues within its remit. The Committee took evidence on the following issues—

- School estates
- Teacher employment
- Class sizes
- Further and higher education
- Scotland’s Commissioner for Children and Young People
- Creative Scotland
- Review of teacher education in Scotland
- Broadcasting in Scotland.

**Legislation**

9. The majority of the Committee’s time over this parliamentary year has been spent scrutinising legislation. The Committee considered the following bills—

**Children’s Hearings (Scotland) Bill**

10. The Committee completed its Stage 1 scrutiny of the Bill, which had begun in the previous reporting year. The Committee published its report to the Parliament on the general principles of the Bill on 9 June 2010.

11. The Bill was then referred to the Committee for consideration at Stage 2. This took place at seven meetings between September and November 2010. The Bill was considered, and passed by the Parliament, at Stage 3 on 25 November 2010.

**Historic Environment (Amendment) (Scotland) Bill**

12. The Historic Environment (Amendment) (Scotland) Bill was introduced in the Parliament on 4 May 2010 by the Minister for Culture and External Affairs. The Bill was referred to the Education, Lifelong Learning and Culture Committee for Stage 1 consideration by the Parliamentary Bureau at its meeting on 11 May 2010.

13. The Committee issued a call for evidence and received 21 submissions. The Committee took oral evidence at four meetings during September 2010. The Committee reported to the Parliament on the general principles of the Bill on 28 October 2010.

14. The Bill was referred to the Committee for consideration at Stage 2. The Committee completed its Stage 2 scrutiny of the Bill on 15 December 2010. The
Bill was considered, and passed by the Parliament, at Stage 3 on 20 January 2011.

**Autism (Scotland) Bill**

15. The Autism (Scotland) Bill was introduced on 26 May 2010 by Hugh O’Donnell as a member’s bill. The Bill was referred to the Education, Lifelong Learning and Culture Committee for Stage 1 consideration by the Parliamentary Bureau at its meeting on 15 June 2010.

16. The Committee issued a call for evidence and received 145 submissions. The Committee took oral evidence at three meetings during November 2010. The Committee reported to the Parliament on the general principles on 17 December 2010. In the report, the Committee recommended that the general principles be not agreed to. The Stage 1 debate was held on 12 January 2011 and the Parliament did not agree the motion to approve the general principles. Accordingly, the Bill fell.

**Public Records (Scotland) Bill**

17. The Public Records (Scotland) Bill was introduced on 7 October 2010 by the Minister for Culture and External Affairs. The Bill was referred to the Education, Lifelong Learning and Culture Committee for Stage 1 consideration by the Parliamentary Bureau.

18. The Committee issued a call for evidence and received 33 submissions. The Committee took oral evidence at three meetings in December 2010 and January 2011. The Committee reported to the Parliament on the general principles on 3 February 2011.

19. The Bill was then referred to the Committee for consideration at Stage 2 and the Committee completed its Stage 2 scrutiny of the Bill on 2 March 2011. The Bill was considered, and passed by the Parliament, at Stage 3 on 16 March 2011.

**Subordinate legislation and UK legislation**

20. During the parliamentary year, the Committee considered 64 Scottish statutory instruments (SSIs): 11 of those were considered under the affirmative procedure and the remainder under the negative procedure.

21. The Committee also considered a legislative consent memorandum on the UK Government’s Education Bill.

**Petitions**

22. The Committee did not consider any petitions during this parliamentary year.

**Equalities**

23. The Committee continued to mainstream equalities issues throughout its work in the parliamentary year.

24. In particular, the Committee sought to make its consideration of the Autism (Scotland) Bill as accessible as possible to enable people with autism to contribute
to the call for written evidence and Committee’s deliberations. The Committee wanted to take evidence from people with autism as part of its oral evidence taking sessions but recognised that the formal meeting setting might not be the most appropriate discussion forum. Accordingly, the Committee worked with the National Autistic Society Scotland to arrange an informal meeting between Committee members and a small group of people with autism to talk through a range of issues and experiences. The Committee’s clerks worked closely with National Autistic Society Scotland staff and colleagues across the Parliament to ensure that the participants were supported appropriately at all points during their visit. The Committee found the meeting invaluable in informing members about the day-to-day experiences and challenges of living with autism.

Meetings

25. During the parliamentary year, the Committee met 30 times. Of these meetings, one was held entirely in private. Fourteen meetings were held partly in private. Meetings were held partly in private in order to consider draft reports or work programme papers. All the Committee’s meetings were held in Edinburgh.