



The Scottish Parliament
Pàrlamaid na h-Alba

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

1st Meeting, 2011 (Session 3)

Wednesday 12 January 2011

The Committee will meet at 10.00 am in Committee Room 5.

1. **Declaration of interests:** Alex Johnstone MSP will be invited to declare any relevant interests.
2. **Subordinate legislation:** The Committee will take evidence on the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 (SSI 2010/434) from—

Keith Brown MSP, Minister for Transport and Infrastructure, Graeme Purves, Assistant Chief Planner, Ian Black, Senior Planner, and Norman MacLeod, Senior Principal Legal Officer, Scottish Government.

3. **Subordinate legislation:** Ken Macintosh MSP to move S3M-7659—

That the Local Government and Communities Committee recommends that nothing further be done under the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 (SSI 2010/434).

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

the Registration Services (Fees) Amendment (Scotland) Regulations 2010 (SSI/2010/427);
the Registration of Births, Deaths and Marriages (Fees) (Scotland) Order (SSI/2010/428);
the Planning etc. (Scotland) Act 2006 (Saving and Transitional Provisions) Order 2010 (SSI 2010/431);
the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 (SSI 2010/432);
the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010 (SSI 2010/433).

5. **Private Rented Housing (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.
6. **Local Electoral Administration (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

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The papers for this meeting are as follows—

Agenda item 2

Cover note for SSI 2010/434

LGC/S3/11/1/1

[The Town and Country Planning \(Tree Preservation Order and Trees in Conservation Areas\) \(Scotland\) Regulations 2010 \(SSI 2010/434\)](#)

Agenda item 4

Cover note for SSI 2010/427

LGC/S3/11/1/2

[The Registration Services \(Fees\) Amendment \(Scotland\) Regulations 2010 \(SSI 2010/427\)](#)

Cover note for SSI 2010/428

LGC/S3/11/1/3

[The Registration of Births, Deaths and Marriages \(Fees\) \(Scotland\) Order 2010 \(SSI 2010/428\)](#)

Cover note for SSI 2010/431

LGC/S3/11/1/4

[The Planning etc. \(Scotland\) Act 2006 \(Saving and Transitional Provisions\) Order 2010 \(SSI 2010/431\)](#)

Cover note for SSI 2010/432

LGC/S3/11/1/5

[The Town and Country Planning \(Modification and Discharge of Planning Obligations\) \(Scotland\) Regulations 2010 \(SSI 2010/432\)](#)

Cover note for SSI 2010/433

LGC/S3/11/1/6

[The Town and Country Planning \(Modification and Discharge of Good Neighbour Agreement\) \(Scotland\) Regulations 2010 \(SSI 2010/433\)](#)

Agenda item 5

PRIVATE PAPER

LGC/S3/11/1/7 (P)

Agenda item 6

PRIVATE PAPER

LGC/S3/11/1/8 (P)

Local Government and Communities Committee

1st Meeting, 2011 (Session 3), Wednesday, 12 January 2011

Subordinate Legislation

SSI title and number: The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 (**SSI 2010/434**)

Type of Instrument: Negative

Meeting: 12 January 2011

Date circulated to members: 13 December 2010

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

Purpose: These Regulations make provision regarding the making of tree preservation orders under section 160 of the Town and Country Planning (Scotland) Act 1997 ("the Act"). They replace and revoke the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975.

Motion S3M-7659 to annul this instrument has been lodged by Ken Macintosh MSP and will be considered at today's meeting as agenda item 3.

Local Government and Communities Committee

1st Meeting, 2011 (Session 3), Wednesday, 12 January 2011

Subordinate Legislation

SSI title and number: The Registration Services (Fees) Amendment (Scotland) Regulations 2010 (**SSI 2010/427**)

Type of Instrument: Negative

Meeting: 12 January 2011

Date circulated to members: 13 December 2010

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

Purpose: These Regulations amend fees payable to the Registrar General and to district registrars under the Registration (Fees, etc) (Scotland) Regulations 2006 ("the 2006 Regulations") and the Book of Scottish Connections Regulations 2008 ("the 2008 Regulations").

Local Government and Communities Committee

1st Meeting, 2011 (Session 3), Wednesday, 12 January 2011

Subordinate Legislation

SSI title and number: The Registration of Births, Deaths and Marriages (Fees) (Scotland) Order **(SSI 2010/428)**

Type of Instrument: Negative

Meeting: 12 January 2011

Date circulated to members: 13 December 2010

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

Purpose: This Order amends fees payable, under certain provisions of the Savings Bank Act 1887, the Factories Act 1961, the Education (Scotland) Act 1980 and the Social Security Administration Act 1992 for certificates of birth, death or marriage for the purposes of those Acts (article 2). The new fees are set out in the Schedule.

Local Government and Communities Committee

1st Meeting, 2011 (Session 3), Wednesday, 12 January 2011

Subordinate Legislation

SSI title and number: The Planning etc. (Scotland) Act 2006 (Saving and Transitional Provisions) Order 2010 (**SSI 2010/431**)

Type of Instrument: Negative

Meeting: 12 January 2011

Date circulated to members: 13 December 2010

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

Purpose: This Order makes transitional and savings provisions in connection with the commencement of sections 23 and 28 of the Planning etc. (Scotland) Act 2006 ("the 2006 Act").

Local Government and Communities Committee

1st Meeting, 2011 (Session 3), Wednesday, 12 January 2011

Subordinate Legislation

SSI title and number: The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 (**SSI 2010/432**)

Type of Instrument: Negative

Meeting: 12 January 2011

Date circulated to members: 13 December 2010

SSI drawn to Parliament's attention by Sub Leg Committee: Yes. The Subordinate Legislation Committee reports that there is a drafting error in referring to the title of certain Regulations ("Planning" is omitted) but considers that the error is not likely to affect the operation of the Regulations and notes that the Government have undertaken to rectify this when the opportunity arises. Full details are given in the annexe.

Purpose: These Regulations make provision in connection with applications for the modification and discharge of planning obligations entered into under section 75 of the Town and Country Planning (Scotland) Act 1997 ("the Act") and related appeals.

ANNEXE

***Extract from the Subordinate Legislation Committee's 72nd Report, 2010
covering both SSI 2010/432 and SSI 2010/433***

The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 (SSI 2010/432) (*Local Government and Communities Committee*)

The Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010 (SSI 2010/433) (*Local Government and Communities Committee*)

2. These Regulations set out procedural arrangements in relation to applications to a planning authority for the modification and discharge of planning obligations and good neighbour agreements entered into under sections 75 and 75D respectively, of the Town and Country Planning (Scotland) Act 1997, and related appeals. In summary the Regulations provide—

- how an application for the modification or discharge of the obligation or agreement is to be made, and when it is taken to have been made;
- that the planning authority is to determine the application within 2 months of the application being made, and how the decision is to be communicated to the applicant;
- that in the event of an appeal to the Scottish Ministers, the appeal will be handled in accordance with the provisions of the Town and Country Planning (Appeals) (Scotland) Regulations 2008 (with required modifications), and
- permission for the use of electronic communications for sending or receiving documents relating to an application (regulation 10).

3. In these instruments regulation 9(2)(a)(iii) or (iv) respectively refers to regulation 7(1) of these Regulations. However, there is an error in the proper citation of these Regulations. The word "Planning" is omitted from the title in each case. The Committee asked for an explanation of the effect of these drafting errors. The correspondence is reproduced in the Appendix.

4. The response acknowledges that these are drafting errors, and the Government proposes to amend the references when the opportunity arises.

5. The Committee agrees with the Government that it is clear that the references are intended to be to regulation 7(1) of these Regulations, and there is no ambiguity in this case that other Regulations could be referred to.

6. The Committee therefore reports SSI 2010/432 and SSI 2010/433, under the general reporting ground on the basis that there is a drafting error in regulation 9(2)(a)(iii) and 9(2)(a)(iv) respectively. These subparagraphs omit “Planning” in the reference to the title of these Regulations, where regulation 7(1) is referred to. It is considered that this error is not likely to affect the operation of the Regulations, and the Government have undertaken to amend the reference when the opportunity arises.

Subordinate Legislation Committee’s correspondence with the Government

APPENDIX 1

The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 (SSI 2010/432)

The Scottish Government was asked:

It appears that regulation 9(2)(a)(iii) omits the word “Planning” in the title of these Regulations, where regulation 7(1) is referred to. What is the effect of this apparent error considered to be?

The Scottish Government responds as follows:

The Scottish Government notes that the reference to the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 contained in regulation 9(2)(a)(iii) of the Regulations omits the word “Planning” from the title to this instrument. The Scottish Government are grateful to the Committee for drawing this matter to their attention.

It is not considered that the omission of this word gives rise to any doubt as to which Regulations reference is being made. There are no other Regulations which bear a similar title and no risk of confusion with another instrument could arise. Furthermore in the context of regulation 9 it is clear that the reference is to regulation 7(1) of the Regulations. Regulation 7(1) sets out the period for determination of an application under section 75A of the Town and Country Planning (Scotland) Act 1997. The failure to determine an application within this period gives rise to a right of appeal under section 75B(1)(a) of that Act. Regulation 9 makes provision in respect of such appeals. In particular, the definition of the term ‘period allowed for determination of the application’ in the Town and Country Planning (Appeals) (Scotland) Regulations 2008 - which regulation 9(2)(a)(iii) modifies for the purposes of appeals under section 75B - is used in regulation 3(2)(b) of those Regulations, as modified by regulation 9(2)(b)(iii) of the Regulations, only in connection with appeals under section 75B(1)(a).

The Scottish Government therefore considers that that there is no legal effect of the omission of this word. The Scottish Government nevertheless proposes to amend the reference when the opportunity arises.

APPENDIX 2

The Town and Country Planning (Modification and Discharge of Good Neighbour Agreements) (Scotland) Regulations 2010 (SSI 2010/433)

The Scottish Government was asked:

It appears that regulation 9(2)(a)(iv) omits the word “Planning” in the title of these Regulations, where regulation 7(1) is referred to. What is the effect of this apparent error considered to be?

The Scottish Government responds as follows:

The Scottish Government notes that the reference to the Town and Country Planning (Modification and Discharge of Good Neighbour Agreements) (Scotland) Regulations 2010 contained in regulation 9(2)(a)(iv) of the Regulations omits the word “Planning” from the title to this instrument. The Scottish Government are grateful to the Committee for drawing this matter to their attention.

It is not considered that the omission of this word gives rise to any doubt as to which Regulations reference is being made. There are no other Regulations which bear a similar title and no risk of confusion with another instrument could arise. Furthermore in the context of regulation 9 it is clear that the reference is to regulation 7(1) of the Regulations. Regulation 7(1) sets out the period for determination of an application under section 75E of the Town and Country Planning (Scotland) Act 1997. The failure to determine an application within this period gives rise to a right of appeal under section 75F(1)(a) of that Act. Regulation 9 makes provision in respect of such appeals. In particular, the definition of the term ‘period allowed for determination of the application’ in the Town and Country Planning (Appeals) (Scotland) Regulations 2008 - which regulation 9(2)(a)(iv) modifies for the purposes of appeals under section 75F - is used in regulation 3(2)(b) of those Regulations, as modified by regulation 9(2)(b)(iii) of the Regulations, only in connection with appeals under section 75F(1)(a).

The Scottish Government therefore considers that that there is no legal effect of the omission of this word. The Scottish Government nevertheless proposes to amend the reference when the opportunity arises.

Local Government and Communities Committee

1st Meeting, 2011 (Session 3), Wednesday, 12 January 2011

Subordinate Legislation

SSI title and number: The Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010 (**SSI 2010/433**)

Type of Instrument: Negative

Meeting: 12 January 2011

Date circulated to members: 13 December 2010

SSI drawn to Parliament's attention by Sub Leg Committee: Yes. The Subordinate Legislation Committee reports that there is a drafting error in referring to the title of certain Regulations ("Planning" is omitted) but considers that the error is not likely to affect the operation of the Regulations and notes that the Government have undertaken to rectify this when the opportunity arises. **Full details are given in the annexe of the cover note for SSI 2010/432 (LGC/S3/11/1/5).**

Purpose: These Regulations make provision in connection with applications for the modification and discharge of obligations entered into good neighbour agreements under section 75D of the Town and Country Planning (Scotland) Act 1997 ("the Act") and related appeals.