Dear Convener

During an informal briefing session with the Subordinate Legislation and the Standards, Procedures and Public Appointments Committees on 8 September 2009, my officials indicated that I would write to both Convenors providing details of possible amendments to the Bill that the Scottish Government may be considering bringing forward at Stage 2. I have decided to provide this information on possible amendments to the Committees in order to allow them to take this into account, as appropriate, during the stage 1 consideration of the Bill.

Proposed stage 2 amendments

At present we are considering making minor amendments to the Bill as follows:-

- section 1 – we are keeping under review the application of Part 1 including the definition of “Scottish instrument” to ensure that it meets the policy intention;
- section 26 – following a meeting with the Law Society of Scotland about their concerns regarding electronic service of documents, we will make minor amendments to the section to clarify that consent to service by electronic means requires to be in writing;
- section 33 – we have made provision to allow the exercise of certain powers subject to different Parliamentary procedures (no procedure and negative) to be combined in the same instrument. We propose to extend this to allow powers that are subject to negative and affirmative procedure to be combined in the same instrument;
- local instruments and orders made under the Transport and Works (Scotland) Act 2007 (TAWS orders) – we are considering whether it is necessary to clarify the position on Parliamentary procedure in relation to local instruments.
- schedule 1 – we are also keeping under review the list of words and expressions defined in the schedule and will amend, as appropriate. We have identified, for instance, that the definition of registered medical practitioner requires to be updated.

The consideration of these amendments mentioned above has arisen for a number of reasons: to ensure the Bill’s provisions work as effectively and efficiently as possible; in order to meet concerns raised in response to the Parliament’s call for evidence; or to provide further clarification of the policy intention. However, as the committees will see, the matters under
consideration are not significant and, so far as I am aware, are unlikely to be controversial.

It may be that further amendments will become necessary as the Bill progresses. I will endeavour to keep the Committees informed of the need for any further amendment as soon as practicable.

Post laying modification to instruments

The SLC recommended in the 14th Report, 2007, Inquiry into the Regulatory Framework in Scotland and in the 12th Report, 2008, Inquiry into the Regulatory Framework in Scotland (recommendation 16) that consideration be given to creating a mechanism to allow minor changes to be made to instruments after they have been laid in draft.

The Government in its response to both Reports agreed that there appeared to be merit in the proposal and that it was certainly one worth exploring further. As a result, my officials have been discussing it with the clerking team. In considering the matter in greater depth, however, it has been recognised that there may be practical and technical issues to be overcome in devising such a mechanism. Whilst these may not be insurmountable, we have come to the view that the necessary provision would add complexity to a process which the Bill is intended to streamline. In the circumstances, we do not propose to pursue this policy option further and do not at present propose to bring forward an amendment to the Bill to implement the committee’s recommendation. I wish to assure the Committee that we have given the matter our full consideration and have come to this conclusion for reasons that seem to us to be consistent with the general principles of the Report.

Regulations under section 44 (Queen’s printer to publish instruments)

I would also like to take this opportunity to provide the committees with a draft set of regulations to be made under section 44 of the Bill. The draft is still work in progress however I would hope that it will illustrate how we intend to exercise the power.

Can I also take this opportunity to clarify the Scottish Government’s position in relation to Recommendation 9 of the SLC’s 12 Report (2008). During an exchange with Ian McKee MSP at the Committees meeting on 28 April 09 regarding the Scottish Government’s position in relation to Recommendation 9, I had unintentionally indicated that the Bill departed from the SLC’s recommendation, in that it does not retain the Class 3 procedure affirmative procedure. As you will be aware from my response to the SLC’s 12th Report (2008) the Scottish Government welcomed the retention of this procedure, whilst rejecting the introduction of an “emergency negative procedure”. The Bill does nothing to alter this position and I wish to confirm this to the committee in order to avoid any confusion on the point.

My officials will continue to cooperate with the clerking team and provide whatever assistance they can.
Bruce Crawford MSP
Minister for Parliamentary Business
20 October 2009