SUBORDINATE LEGISLATION COMMITTEE

AGENDA

9th Meeting, 2009 (Session 3)

Tuesday 10 March 2009

The Committee will meet at 2.15 pm in Committee Room 4.

1. **Health Boards (Membership and Elections) (Scotland) Bill**: The Committee will consider the delegated powers provisions in this Bill after Stage 2.

2. **Arbitration (Scotland) Bill**: The Committee will consider the delegated powers provisions in this Bill at Stage 1.

3. **Scottish Local Government (Elections) Bill**: The Committee will consider the delegated powers provisions in this Bill at Stage 1.

4. **Instruments subject to annulment**: The Committee will consider the following—
   - the Registration Services (Fees, etc.) (Scotland) Amendment Regulations 2009 (SSI 2009/64);
   - the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2009 (SSI 2009/72);
   - the National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2009 (SSI 2009/73);
   - the Road Works (Inspection Fees) (Scotland) Amendment Regulations 2009 (SSI 2009/74);
   - the Non-Domestic Rating (Payment of Interest) (Scotland) Amendment Regulations 2009 (SSI 2009/76);
   - the Police Grant (Scotland) Order 2009 (SSI 2009/80).

5. **Instruments not laid before the Parliament**: The Committee will consider the following—
   - the Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No. 4, Savings and Transitionals) Order 2009 (SSI 2009/67).

6. **Guidance subject to approval**: The Committee will consider the following—

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Clerk to the Subordinate Legislation Committee
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The papers for this meeting are as follows—

**Agenda Items 1-5**

Legal Brief  
Summary of Recommendations

**Agenda Item 1**

Clerk’s Letter to Government  
Health Boards Government Response

**Agenda Item 2**

Arbitration (Scotland) Bill  
Delegated Powers Memorandum

**Agenda Item 3**

Scottish Local Government (Elections) Bill  
Delegated Powers Memorandum

**Agenda Items 4-6**

Government Responses
The Committee will be invited to consider the following recommendations under consideration at today’s meeting. Decisions are a matter for the Committee.

**Agenda Item 1  Health Boards (Membership and Elections) (Scotland) Bill**

**Section 7(1) – Powers to make a “roll-out order”**

The Committee may wish to consider whether the Scottish Government response in relation to section 7 is acceptable, and to report to the Parliament that it finds section 7 acceptable subject to the amendment proposed by the Scottish Government that the period of 60 days must include at least 30 days when the Parliament is not dissolved or in recess.

**Agenda Item 2  Arbitration (Scotland) Bill**

**Section 15 – Power to adapt enactments providing for statutory arbitration**

The Committee may wish to consider that the proposed power is acceptable in principle; that affirmative procedure is appropriate in respect of changes to primary legislation; and that negative procedure is appropriate in all other cases.

**Section 16(3) – New York Convention awards**

The Committee may wish to consider the proposed power acceptable in principle and that negative procedure is appropriate.
Section 22 – Arbitral appointments referees

The Committee may wish to consider the proposed power acceptable in principle and that negative procedure is appropriate.

Section 23(2) – Power of judge to act as arbitrator or umpire – fees

The Committee may wish to consider the proposed power acceptable in principle and that negative procedure is appropriate.

Section 24 – Amendments to UNCITRAL Model Law or New York Convention

The Committee may wish to consider the proposed power acceptable in principle in so far as it relates to amendments to the New York Convention and that affirmative procedure is appropriate.

The Committee may consider it is appropriate to ask the Scottish Government:—

Given that the Model Law is to be repealed and will no longer form part of the Scottish law on arbitration, what is the justification for a power to amend Scots law in consequence of any amendment made to the Model Law?

Section 30 – Ancillary provision

The Committee may wish to consider that the proposed power is acceptable in principle; that affirmative procedure is appropriate in respect of changes to primary legislation; and that negative procedure is appropriate in all other cases.

Section 33 – Commencement

The Committee may wish to consider that the proposed power is acceptable in principle and that, in accordance with the normal practice with respect to commencement orders, no procedure is appropriate.
Agenda Item 3  Scottish Local Government (Elections) Bill

Section 2 – Voting information from local government elections

The Committee may wish to consider if the delegated powers in section 2 of the Bill are acceptable, and may be subject to affirmative resolution procedure.

Section 3 – Commencement

The Committee may wish to consider if the delegated power in section 3 is acceptable.

Agenda Item 4  Instruments subject to annulment

The Registration Services (Fees, etc.) (Scotland) Amendment Regulations 2009 (SSI 2009/64)

The Committee may wish to draw this instrument to the attention of the Parliament on the ground that there has been an admitted failure on the part of the Scottish Government to follow normal drafting practice in respect that one of the relevant enabling powers – section 54(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 - was not referred to in the preamble.

The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2009 (SSI 2009/72)

The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2009 (SSI 2009/73)

The Road Works (Inspection Fees) (Scotland) Amendment Regulations 2009 (SSI 2009/74)

The Non-Domestic Rating (Payment of Interest) (Scotland) Amendment Regulations 2009 (SSI 2009/76)

The Police Grant (Scotland) Order 2009 (SSI 2009/80)
The Committee may wish to consider if it is content with these instruments.

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**Agenda Item 5  Instruments not laid before Parliament**

**The Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No. 4, Savings and Transitionals) Order 2009 (SSI 2009/67)**

The Committee may wish to report on this instrument on the ground that, in relation to article 7 of the Order so far as substituting article 12(2)(b) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No. 3, Savings and Transitionals) Order 2008 (SSI 2008/115), that substituted sub-paragraph has no effect.

The Committee may also wish to note that in relation to the Committee’s consideration of that SSI 2008/115, the Government stated in its response to the Committee on that instrument that “we would intend to amend the transitional provision before 6th October 2008 in the next commencement order to clarify its application”. The response for this Order apologises to the Parliament for the failure to clarify the position by 6th October 2008, as originally intended.

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**Agenda Item 6  Guidance subject to approval**


The Committee may wish to consider if it is satisfied with the response from the Scottish Government, and if so to report to the lead committee and the Parliament accordingly.

The Committee may also wish to welcome the Government’s undertaking to review the question of whether the illustrative nature of the code is made clear where necessary in relation to future editions of this code and to comment that it anticipates that this approach will be adopted in relation to other codes made under the 2006 Act.
Health Boards (Membership and Elections) (Scotland) Bill

The Subordinate Legislation Committee considered the above Bill on Tuesday 3 March and agreed to write seeking a response on the following matter—

Section 7(1) (roll-out) – Powers to make a “roll-out order”

The Committee considered the new delegated power which provides for “super-affirmative” procedure in relation to a roll-out order.

The Committee noted that, although the Bill provides that the Minister must have regard to any representations about the proposed draft order, any resolution of the Parliament about that draft, and any Parliament committee report on the proposed draft, made "during the 60 days following the day on which the proposed draft roll-out order was laid before the Scottish Parliament", the Bill does not take account of any Parliamentary recess or dissolution periods so that, in the worst case, a 60 day period could allow not Parliamentary consideration of the proposed draft.

The Committee therefore asks the Scottish Government to explain urgently (due to the deadline for Stage 3 amendments), in relation to section 7(3A)(c), why the period of 60 (calendar) days specified for Parliament and committee consideration of a proposed draft roll-out order does not exclude any days during which the Parliament is dissolved or in recess, so far as the effect of this may be that there is an insufficient period for Parliament consideration of a proposed draft roll-out order after it is laid.

The Committee also wishes to ask the Scottish Government (again urgently) for a commitment that it will bring forward an amendment at Stage 3 which will provide that the period of 60 days specified takes account of the effect of recess or dissolution days on the Parliament's ability to consider the proposed draft roll-out
order, ensuring that the 60 days will include sufficient sitting days for the necessary Parliamentary consideration to take place.

You may wish to note that the Committee today agreed that an amendment should be drafted to address this issue which may be lodged in the Convener’s name, depending on the response received by the Scottish Government.

Please email your response to the shared e-mail address above by 2.00pm on Wednesday 4 March 2009. This timescale is in order to enable members of the Committee to consider the response and then give further consideration to lodging a possible amendment in time for the deadline on Friday 6 March.

Shelagh McKinlay
Clerk to the Committee

cc. Andy Beattie, Ian Shanks OSPC, Beth Elliot SGLD, Kenneth Hogg Performance Management
Dear Shelagh

Health Boards (Membership and Elections) (Scotland) Bill

Thank you for your letter of 3 March 2009 to Paul Johnston regarding the Subordinate Legislation Committee’s consideration of the Health Boards (Membership and Elections) (Scotland) Bill and the provisions relating to making a roll-out order.

The procedure introduced by the amendment tabled at Stage 2 of the Bill, provides for greater parliamentary scrutiny of any roll out order. The 60 day time period that applies to the proposed draft roll out order is only one aspect of this procedure and is certainly not intended to try and circumvent any parliamentary procedure.

The 60 day period is expected to mirror the 12 week standard public consultation period that is used by the Government. In drafting the provision in this way we considered that it would appear unusual if, for instance, the 60 day period took place over the summer, that we would need to add on an additional 9 weeks to that period to allow for recess. A further delay caused by October recess could effectively mean having to leave the proposed draft for consideration with the Parliament until mid November and not being able to make the order until early the following year.

The Cabinet Secretary has considered the issue very carefully and has instructed that an amendment be submitted at Stage 3. The amendment will set out that, after the proposed roll out order is laid before Parliament, the 60 day timescale must include at least 30 days when the Parliament is not dissolved or in recess. This will ensure adequate time for Parliament to consider any proposed draft roll out order and avoid the possibility of having 2 recesses interrupting the procedure.

I hope this clarifies our position for the Committee.

Yours sincerely,

ROBERT KIRKWOOD
Bill Team
Health Delivery Directorate
The Registration Services (Fees, etc.) (Scotland) Amendment Regulations 2009 (SSI 2009/64)

On 26 February 2009 the Scottish Government was asked if the above instrument is made in reliance of section 54(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965.

The Scottish Government responds as follows-

The Scottish Government accepts section 54(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 should have been cited in the preamble to the instrument, in addition to the other provisions relied on.

Sections 37(1), 39D(1), 39E(3) of the 1965 Act cited in the preamble provide for the payment of fees prescribed for the issue of extracts, lodging of notices, marriage ceremonies and civil partnerships. Section 56(1) of the 1965 Act provides that “prescribed” means prescribed by regulations under section 54 of that Act. Section 54(1) makes clear the instrument is made by the Registrar General, with the approval of the Scottish Ministers as narrated in the preamble. Reference is made in the preamble to “all other powers” which enable the Registrar General to make the Regulations. Footnote (a) to the 1965 Act in the preamble also refers to the definition in section 56 as relevant to the statutory powers under which these Regulations are made. Accordingly, the failure to cite section 54(1) in the preamble does not render the instrument invalid and the powers used will be clear to the reader when it is read with the parent Act.

The Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No. 4, Savings and Transitionals) Order 2009 (SSI 2009/67)

On 26 February the Scottish Government was asked:

To explain:-

(a) in relation to the substitution of article 12(2)(b) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No. 3, Savings and Transitionals) Order 2008 (SSI 2008/115) by article 7 of this Order, how this transitional amendment has effect as from the date of making this Order on 23 February 2009, given that the provision defines the pay-day (which is capable of being a day prior to the making of this Order) in relation to the obligation to send information as prescribed in article 12(2)(a) of SSI 2008/115, which in turn is an obligation to send information no later than 6 October 2008;
(b) whether it is considered that the substituted article 12(2)(b) has retrospective effect; and if so, to explain how it has such retrospective effect and which enabling power is being relied on to make such retrospective provision?

(c) given that the Government stated in its response to the Committee in regard to SSI 2008/115 that “we would intend to amend the transitional provision before 6th October 2008 in the next commencement order to clarify its application”, why the amendment has not been made by that date?

The Scottish Government responds as follows:

The Scottish Government regrets the delay in making the corrective provision contained in article 7 of the Order; we also apologise to Parliament for the failure to clarify the position by 6th October 2008 as originally intended.

On the particular questions asked:

(a) Article 12(2)(b) of SSI 2008/115 as substituted on 23rd February 2009 is (taken on its own) a dead letter in so far as it applies to a pay-day prior to the making of this Order - article 12(2)(b) is substituted only to correct, for this already complicated provision, the ongoing effect of article 12(2)(c), i.e. for notification requirements arising after 6th October 2008 as indicated in the Government’s response of 1st April 2008 regarding SSI 2008/115.

Article 12(2) of SSI 2008/115 was clear for notification requirements arising before 6th October 2008, as noted in that response. The provision also operated correctly, on a close reading, for notification requirements arising no later than 6th October 2008 where the pay-day in question was the pay-day next following that date – because the relevant date was directly substituted by article 12(2)(b) as it originally appeared (and the original article 12(2)(c) could have no possible effect until April 2009).

(b) Substituted article 12(2)(b) accordingly has no effect in practice to change the operation of the provision, and therefore no retrospective effect.

(c) The amendment was not made by 6th October 2008 in view of the ongoing development of the package of accompanying measures for the provisions commenced by this Order on 22nd April 2009 - the Arrestment Jurisdiction (Scotland) Order 2009 (SSI 2009/66), the Diligence (Scotland) Regulations 2009 (SSI 2009/68) and the draft Bankruptcy and Diligence etc. (Scotland) Act 2009 (Inhibition) Order 2009. Continued discussion with Registers of Scotland, the Sheriff Court Rules Council and other stakeholders led to late changes to these measures. It was considered important for the users of the legislation to have these SSIs made together to provide notice of the changes in the Act commenced on 22nd April 2009 and of these SSIs.

Regrettably given the work required and changes to the provisions commenced we were unable to meet the timescale originally indicated to Parliament to clarify article 12(2). Although not ideal, the notification requirements arising no later than 6th October 2008 operate correctly on a close reading of the original legislation, and the position will be clarified for those who will be required to notify in accordance with article 12(2)(c) as soon as reasonably practicable after 6th April 2009.
The Scottish Government code of practice for welfare of Equidae (SG 2009/20)

On 26 February the Scottish Government was asked:

Q1: Whether the list of activities for which a horse passport is required set out in paragraph 6 should include movement for the purposes of receiving veterinary treatment given that regulation 17 of the Horse Passports (Scotland) Regulations 2005 appears to require this and regulation 25 makes non-compliance an offence?

In response to Question 1, we appreciate that we could have included movement for the purposes of receiving veterinary treatment and also movement of an animal which has been brought into Scotland. It was not intended that the Code set out in detail all of the provisions of the 2005 Regulations. Paragraph 6 was intended to be illustrative rather than prescriptive and was simply meant to set out some of the activities which cannot take place for horses without passports. We appreciate that paragraph 6 could have explained more clearly that the list is only illustrative. If the Code is approved by the Scottish Parliament, the Scottish Government will review how it is received and take this comment on board when making amendments in the future.

Q2: With reference to paragraph 66 the provision of the Farriers (Registration) Act 1975 which requires farriers to register each year?

In response to Question 2, the provision which requires farriers to register every year is section 4 of the 1975 Act which states:-

"4. Rules with respect to register.

— (1) The Council may make rules with respect to the form and keeping of the register, the making of entries therein and the removal of entries therefrom and, in particular—

(a) prescribing a fee to be charged on the entry of a name in the register or on the restoration of any entry to the register;

(b) prescribing a fee to be charged in respect of the retention in the register of the name of a person in any year subsequent to the year in which he was first registered;

(c) authorising the registrar, notwithstanding anything in this Act, to refuse to make in, or restore to, the register any entry until a fee prescribed by rules under this section has been paid.

(2) Rules under this section may authorise the registrar to remove from the register the name of a person who, after such notices and warning as may be prescribed by the rules, fails to pay a fee prescribed under paragraph (b) of the foregoing subsection.

(3) If, within such period as may be prescribed by rules under this section, any person whose name has been removed from the register in accordance with rules made by virtue of the last foregoing subsection pays the fee due from him, together with such additional sum (if any) as may be so prescribed, his name shall be restored to the register and, if the Council so directs, shall be deemed for all purposes not to have been removed therefrom."
Rules under this section prescribing fees may provide for the charging of different fees in different cases and may provide that fees shall not be chargeable in prescribed cases."

The Farriers Registration Council make specific rules with regard to the payment of annual fees as follows:-

"RETENTION, REMOVAL AND RESTORATION"

Retention of a Name and Removal for Non-Payment of Fees

41. Not later than the 30th day of November in each year the Registrar shall send to the Registered Address of every registered person whose registration will expire on the 31st day of December in that year, the appropriate form for the retention of a name in the Register with a notice of the fees payable. The failure by a registered person to receive a form or notice shall not constitute a ground for retention or registration of a name.

42. If the Retention Fee is not received by 31st of December, the Registrar shall remove the name from the Register on the first following working day in January. This also applies to persons with registered addresses outside the areas covered by the Act.

43. The Registrar shall also send the appropriate form and notice of fees payable to those on the Retired and Overseas Lists. If the fee is not received by the 31st of December, the Registrar shall remove the name from the list on the first following working day in January but it can be restored at any time on payment of the annual fee."

Therefore, a person must pay an annual fee to ensure that his or her name remains on the register of farriers otherwise that person's name will be removed which effectively means that a person must register each year in order to remain a registered farrier.