SUBORDINATE LEGISLATION COMMITTEE

AGENDA

12th Meeting, 2009 (Session 3)

Tuesday 31 March 2009

The Committee will meet at 2.15 pm in Committee Room 5.

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.

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

3. **Instruments subject to annulment:** The Committee will consider the following—
   
   the European Communities (European Order for Payment) (Scotland) Regulations 2009 (SSI 2009/99);
   the Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) (No. 2) Regulations 2009 (SSI 2009/118);
   the Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2009 (SSI 2009/112);
   the Building (Procedure) (Scotland) Amendment Regulations 2009 (SSI 2009/117);
   the Building (Scotland) Amendment Regulations 2009 (SSI 2009/119).

4. **Instruments not laid before the Parliament:** The Committee will consider the following—

   Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Exchequer Appeals) 2009 (SSI 2009/114);
   the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 7) Order 2009 (SSI 2009/116).

5. **Response to Standards, Procedures and Public Appointments Committee**
   The Committee will consider a draft response to SPPA on proposed Standing Orders rules to govern the scrutiny of Public Bills which affect private interests, to be termed as "Hybrid Bills".
The papers for this meeting are as follows—

**Agenda Items 2-4**

Legal Brief

Summary of Recommendations

**Agenda Item 2**

_Schools (Consultation) (Scotland) Bill_

_Delegated Powers Memorandum_

**Agenda Item 3**

Government Responses

**Agenda Item 5**

Paper from the Clerk

Letter from SPPA

ANNEXE A

ANNEXE B

ANNEXE C
SUBORDINATE LEGISLATION COMMITTEE

12th Meeting, 2009 (Session 3)

Tuesday 31 March 2009

Summary of Recommendations

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 2  Schools (Consultation) (Scotland) Bill

Section 20(1) - Ancillary provisions etc.

The Committee may wish to seek clarification from the Scottish Government as to the reason why the power under section 20(1) to make ancillary provision makes specific reference to the ability to “elaborate” on any aspect of the procedure or to make provision as to functions, and in particular to provide further explanation as to how and in what circumstances it is considered that the provision contained in subsections (3) and (4), so far as it relates to the power conferred under section 20(1), might be used.

Section 20(2) - Modifications to schedules 1 and 2

The Committee may find the proposed power acceptable in principle, and that it is subject to affirmative procedure.

Section 22(2) - Commencement and short title

The Committee may wish to seek clarification as to the provision contained in section 22 (4)(a), with particular reference to what might be contemplated by the phrase ‘in connection with the commencement of this Act’ and to explain whether it is considered that such provision may amend other enactments, and if so, why no procedure is justified for such an order given the approach in section 20(6)(b).
Agenda Item 3  Instruments subject to annulment

The European Communities (European Order for Payment) (Scotland) Regulations 2009 (SSI 2009/99)

The Committee may wish to report this instrument to the lead Committee and to the Parliament, in relation to the form and content of the preamble, so far as there is set out, there, the purpose of the instrument, without there being any apparent basis or need to have done so, and this representing a failure to follow normal drafting practice in regard to preambles to instruments.

The Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) (No. 2) Regulations 2009 (SSI 2009/118)

The Committee may wish to draw this instrument to the attention of the Parliament on the ground that there has been a failure on the part of the Scottish Government to follow normal drafting practice in respect that one of the relevant enabling powers – section 29(10) of the Regulation of Care (Scotland) Act 2001 - was not referred to in the preamble.

The Committee may wish to report to the Parliament that the Committee finds satisfactory for its interests the explanation given by the Scottish Government in their letter to the Presiding Officer dated 23 March 2009 for the failure to comply with Article 10(2) of the Scotland Act (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SSI 1999/1096).

The Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2009 (SSI 2009/112)

The Building (Procedure) (Scotland) Amendment Regulations 2009 (SSI 2009/117)

The Building (Scotland) Amendment Regulations 2009 (SSI 2009/119)

The Committee may wish to consider if it is content with these instruments.
Agenda Item 4 Instruments not laid before Parliament

Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Exchequer Appeals) 2009 (SSI 2009/114)

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 7) Order 2009 (SSI 2009/116)

The Committee may wish to consider if it is content with these instruments.
The European Communities (European Order for Payment) (Scotland) Regulations 2009 (SSI 2009/99)

On 19 March 2009 the Scottish Government was asked:

1) why there is set out, within the preamble, what is described as the purpose of the instrument (with reference to Regulation (EC) No. 1896/2006), having regard also, in any event, to provision for what the instrument does (with reference to that Regulation) being made in the body of the Regulations, and in particular within regulation 3; and

2) whether the reference which is made in the preamble to the purpose of the instrument is, in any event, consistent with what is stated in regulation 3.

The Scottish Government responds as follows:

It is accepted that the preamble is more expansive than normal. The reason is the unusual nature of the instrument. Although under section 2(2) of the European Communities Act 1972, it does not seek to implement the EC Regulation that has triggered it, but merely make a limitation on which courts could handle a request for an order. Implementation is largely by Act of Sederunt. This extra text in the preamble thus alerts the reader not to expect implementation of the Regulation in the instrument.

It is considered that what is said in the preamble is consistent with what is said in regulation 3. If it were not, it is thought that this would not affect the legal effect of regulation 3.