SUBORDINATE LEGISLATION COMMITTEE

AGENDA

14th Meeting, 2009 (Session 3)

Tuesday 28 April 2009

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

1. **Draft Interpretation and Legislative Reform (Scotland) Bill**: The Committee will take evidence on the draft Bill from—


2. **Tobacco and Primary Medical Services (Scotland) Bill**: The Committee will consider the delegated powers provisions in this Bill at Stage 1.

3. **Draft instruments subject to approval**: The Committee will consider the following—


4. **Instruments subject to annulment**: The Committee will consider the following—

   the Victim Notification (Prescribed Offences) (Scotland) Amendment Order 2009 (SSI 2009/142);
   the Public Service Vehicles (Registration of Local Services) (Scotland) Amendment Regulations 2009 (SSI 2009/151).

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

   Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2009 (SSI 2009/144);
   the Adoption and Children (Scotland) Act 2007 (Commencement No. 3) Order 2009 (SSI 2009/147);

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The papers for this meeting are as follows—

**Agenda Items 2-5**

Legal Brief  SL/S3/09/14/1 (P)

Summary of Recommendations  SL/S3/09/14/2

**Agenda Item 1**

Paper by the Clerk  SL/S3/09/14/3 (P)
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 Tobacco and Primary Medical Services (Scotland) Bill**

**No procedure**

Section 35(3) - commencement

The Committee may wish to find this power acceptable and that it is appropriate it is subject to no procedure.

**Negative procedure**

Section 1(2)(c), 1(3)(b) and 1(4) – power to prescribe requirements for exempt display

Section 4(4)(c) – prescribe documents as proof of age

Section 5(5) – power to prescribe dimension etc of warning notice

Section 8(2)(d) – power to prescribe additional information on applications

Section 30 (new section 17CA(5)(6)) – meaning of regular performance etc./disregarding certain periods

Section 30 (new section 17CA(7)) – effect of change of partnership

Section 31 – (new section 17L(5)(6)) – meaning of regular performance etc./disregarding certain periods

Section 31 (new section 17L(7)) – effect of change of partnership

Section 34(1) – ancillary powers – not textually amending primary legislation
Schedule 1 fixed penalty – following aspects:
   para 11(1)(a)(c) form of notice and means of payment

The Committee may wish to find these powers acceptable and that it is appropriate they are subject to negative procedure.

Affirmative procedure

Section 27(3) – power to amend list of tobacco products

Section 34(1) – ancillary powers textually amending primary legislation

Schedule 1 fixed penalty – following aspects:
   Para 10 – application by councils of payments and keeping of accounts
   Para 11(1)(b) – prescribe circumstances in which fixed penalty may not be given

The Committee may wish to find these powers acceptable and that it is appropriate they are subject to affirmative procedure.

Section 2 – power to distinguish adverts from display

The Committee may wish to ask the Scottish Government to explain the justification for the use of negative procedure when the exercise of the power and choice of regulatory regime impacts on the level of penalties applicable. The application of affirmative procedure to a similar power in the Tobacco Advertising and Promotion Act 2002 is referred to and the Scottish Government is asked to explain the difference in approach.

Section 3(1) – requirements in relation to display of prices

The Committee may wish to ask the Scottish Government the following question—

Given that the power in section 3(1) defines the limits of permitted behaviour and therefore the scope of the offence provisions, and that it replicates the power in section 8 of the Tobacco Advertising and Promotion Act 2002 ('the 2002 Act'), the Scottish Government is asked why it is considered that negative procedure is appropriate given the nature of this power and that regulations under section 8 of the 2002 Act are subject to affirmative procedure?
Section 8(2)(e) – form and manner of application for registration

The Committee may wish to ask the Scottish Government the following questions—

In what manner or by what means does the Scottish Government propose to publish or otherwise make known to potential applicants the ‘form and manner’ of an application determined by the Scottish Ministers if this is not to be prescribed in subordinate legislation?

Does the Scottish Government not consider that it would be more appropriate for the form and manner of an application under section 8(2)(e) to be specified in regulations, whereby the requirements would be clear and transparent and potential applicants would have access to them and know what they had to do in order to make a valid application for registration?

Section 17 – power to modify application to vehicles/ vessels

The Committee may wish to ask the Scottish Government the following questions—

Given that the power in section 17 is very broad and has the potential to alter any aspect of the regime for the register of tobacco retailers as it applies in relation to vehicles, vessels and other movable structures, would it not be possible for the Scottish Government to specify and to restrict the nature, scope and extent of ‘modifications’ which may be provided for in regulations under this section?

Given the potential scope and effect of the power, what is the justification for the Scottish Government’s view that negative procedure provides an adequate level of parliamentary control, particularly where it appears that the power could be used to make alternative provision in relation to significant matters such as offences and sentencing?

Section 30 – (new section 17CA(1)) arrangements – persons with whom agreements can be made – conditions which can be prescribed

The Committee may wish to ask the Scottish Government—

• whether it considers that the effect of the power in section 17CA(1) is actually to permit the general prescription of conditions before a Health Board can make a section 17C agreement for the provision of primary medical services rather than simply a power to prescribe criteria for eligibility to perform such service, and is that the intended effect of this power?
• what it considers this power adds, beyond the existing provisions in section 17E of the 1978 Act to make regulations with respect to section 17C arrangements, and in particular section 17E(3)(ca). That paragraph provides the regulations can impose conditions (including as to qualifications and experience) to be satisfied by persons performing primary medical services in accordance with section 17C arrangements?

• whether there is any intention to prescribe further conditions beyond those relating to eligibility?

Section 31 – (new section 17L(1)) – general medical services contracts – conditions which can be prescribed

In the context that the Scottish Government’s Delegated Powers Memorandum describes the effect of this delegated power as – “Regulations may impose conditions on Health Boards as to the persons they may enter into contracts with” the Committee may wish to ask the Government to explain—

• if it is considered that the effect of the power in the new section 17L(1) is actually to permit the general prescription of conditions before a Health Board can make a general medical services contract with a contractor (which is the current position in section 17L), rather than simply to impose conditions as to eligibility, and is that the intended effect of this power? and

• if there is any intention to prescribe further conditions beyond those relating to eligibility?

Schedule 1 – fixed penalty scheme – following aspects:
Para 3 – time after which fixed penalty can’t be given
Para 4 – prescribe amount of fixed penalty and discounted amount
Para 11(2) – power to modify time to pay

The Committee may wish to obtain a further explanation as to the proposals for exercise of the powers to change significant elements of the fixed penalty scheme set out in paragraphs 3, 4 and 11(2) of schedule 1 and why it is considered that negative procedure is appropriate.

The Committee may wish to consider whether evidence in relation to the powers concerning the fixed penalty scheme might best be taken at an oral evidence session.
Agenda Item 3  Instruments subject to approval

The Scottish Public Services Ombudsman Act 2002 (Amendment) Order 2009 (SSI 2009/draft)

The Committee may wish to consider if it is content with this instrument.

Agenda Item 4  Instruments subject to annulment

The Victim Notification (Prescribed Offences) (Scotland) Amendment Order 2009 (SSI 2009/142)

The Public Service Vehicles (Registration of Local Services) (Scotland) Amendment Regulations 2009 (SSI 2009/151)

The Committee may wish to consider if it is content with these instruments.

Agenda Item 5  Instruments not laid before Parliament

Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2009 (SSI 2009/144)

The Adoption and Children (Scotland) Act 2007 (Commencement No 3) Order 2009 (SSI 2009/147)

The Building (Scotland) Act 2003 (Commencement No. 2 and Transitional Provisions) Order 2009 (SSI 2009/150)

The Committee may wish to consider if it is content with these instruments.