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

1. **Interpretation and Legislative Reform (Scotland) Bill:** The Committee will consider the delegated powers provisions in this Bill at Stage 1.

2. **Control of Dogs (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—

   - the Health Board Elections (Scotland) Regulations 2009 (SSI 2009/draft).

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

   - the Health Boards (Membership) (Scotland) Regulations 2009 (SSI 2009/302);
   - the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Amendment Order 2009 (SSI 2009/304);
   - the Plant Health (Import Inspection Fees) (Scotland) Amendment (No. 2) Regulations 2009 (SSI 2009/305);
   - the Seed Potatoes (Fees) (Scotland) Regulations 2009 (SSI 2009/306);
   - the National Health Service (Discipline Committees) (Scotland) Amendment Regulations 2009 (SSI 2009/308);
   - the Limited Liability Partnerships (Scotland) Amendment Regulations 2009 (SSI 2009/310);
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The papers for this meeting are as follows—

**Agenda Items 1-4**

- Legal Brief SL/S3/09/24/1 (P)
- Summary of Recommendations SL/S3/09/24/2

**Agenda Items 3-4**

- Government Responses SL/S3/09/24/3
The Committee will be invited to consider the following recommendations under consideration at the meeting. Decisions are a matter for the Committee.

Agenda Item 1 Interpretation and Legislative Reform (Scotland) Bill

Section 47(1) – Pre-consolidation modifications of enactment

The Committee may wish to highlight the following concerns as to the width of the power to SPPA—

- the power is available in respect of all subject matter and there may be some areas of the law considered too sensitive to permit substantive policy changes to be fast tracked in this way;

- the threshold which must be met before the power is available to Ministers is currently very loose and subjective;

- further consideration should be given to the potential for changes to the common law in the course of codification;

- Interaction between a Scottish instrument and a Westminster Bill raises issues of control of the process.

The Committee might therefore wish to highlight to SPPA concerns as to the level of scrutiny proposed and to express the view that if the power is approved by Parliament in this or amended form that consideration be given to increasing the level of scrutiny through super-affirmative procedure.
PART 5 (generally)
Orders subject to Special Parliamentary Procedure

The Committee may consider that it has no concerns to highlight to SPPA on delegated powers in relation to Part 5 of the Bill, but that it shall return to the consideration of Part 5 once the Standards Procedures and Public Appointments Committee has considered and reported to it on this Part.

Agenda Item 2  Control of Dogs (Scotland) Bill

Section 2(7) – (Content of dog control notice) - Power to amend content of the dog control notice including requirements and examples of steps to be taken

The Committee may wish to seek clarification (having regard to the final sentence of paragraph 7 of the DPM) as to whether the power set out in section 2(7)(a) to amend any paragraph of subsection (1) could not actually be used so as, effectively, to remove a requirement contained therein (notwithstanding the power contained in section 2(7)(b) referring, simply, to amendment of subsection(1) by adding a further requirement).

Section 2(10) – (Content of dog control notice) – power to prescribe form of dog control notice

The Committee may find the proposed power under section 2(10) to prescribe a form for a dog control notice acceptable in principle, and that it is subject to negative procedure.

Section 4(4) – (Duties of local authority) – power to permit the sharing of and access to information held by a local authority as regards any dog control notice served by that local authority

The Committee may find the proposed power under section 4(4) acceptable in principle, and that it is subject to affirmative procedure.
Section 8 – (Scottish dog control database) – Power to make provision as to the establishment, maintenance, operation, management and control of the database and for the appointment of the database operator

The Committee may wish to seek further clarification in regard to the power taken under section 8, with reference to the purpose of the database, and the effect of an entry being made on it.

The Committee may wish to probe the breadth of the general order making provision set out in section 8(1). In that regard it may wish to ask whether (notwithstanding it being indicated in the DPM (at paragraph 19) that the power under section 8 is concerned with matters of a technical and detailed nature, and more closely related to the operation than the principles of the Bill) the power contained within section 8(1) could not, having regard to the provision which it makes for the ‘operation’ etc, of the database, potentially, be used for purposes extending significantly beyond the nature of what is detailed in section 8(3). Can it be confirmed that this power cannot be used to make provision as to the effect of the database and of being included in it?

Section 11 (Further provision as regards disqualification from owning or keeping a dog) – Power to prescribe procedure in application to discharge disqualification by rules of court

The Committee may find the proposed power under section 11 acceptable in principle, and that it is not subject to parliamentary procedure.

Agenda Item 3 Draft Instruments subject to approval

The Health Board Elections (Scotland) Regulations 2009 (SSI 2009/draft)

The Committee may wish to report to the lead committee and the Parliament that the response provided by the Scottish Government has not assisted the Committee in establishing how as a matter of law eligibility of voters is to be established in circumstances where a person could be entitled by the criteria set out in rule 5 to vote in both Fife and Dumfries and Galloway Health Board elections.

Therefore the meaning and effect of the Regulations could be clearer in this respect. The Committee may also wish to report that failure to make specific provisions for such circumstances and leaving the matter to the discretion of individual returning officers is considered an unusual exercise of the power, given that the 2009 Act anticipated that criteria for eligibility would be set in these Regulations and approved by Parliament and not in guidance.
Agenda Item 4  Instruments subject to annulment

The Health Boards (Membership) (Scotland) Regulations 2009 (SSI 2009/302)

The Committee may wish to report that drafting errors have been identified in—

- the definitions of “elected members” and “Health Board election” in regulation 2;
- the amendments made to the Health Boards (Membership and Procedure) (Scotland) Regulations 2001 by the Schedule, paragraph 1(b); and
- in regulation 6(1) of those 2001 Regulations as substituted by the Schedule, paragraph 1(4).

It is not considered that the drafting errors would affect the validity or the operation of the Regulations.

The Sea Fishing (Enforcement of Community Control Measures) (Scotland) Amendment Order 2009 (SSI 2009/304)

The Plant Health (Import Inspection Fees) (Scotland) Amendment (No. 2) Regulations 2009 (SSI 2009/305);

The Seed Potatoes (Fees) (Scotland) Regulations 2009 (SSI 2009/306)

The National Health Service (Discipline Committees) (Scotland) Amendment Regulations 2009 (SSI 2009/308)

The Limited Liability Partnerships (Scotland) Amendment Regulations 2009 (SSI 2009/310)

The Judiciary and Courts (Scotland) Act 2008 (Transitional Provision) Order 2009 (SSI 2009/311)

The Committee may wish to consider if it is content with these instruments.
Health Boards Elections (Scotland) Regulations 2009 (SSI 2009/draft)

On 4 September the Scottish Government was asked:

Paragraph 9(1) of Schedule 1A to the National Health Service (S) Act 1978 provides that persons aged 16 and over are entitled to vote in a Health Board election if they meet any further criteria specified in election regulations. No further criteria for or restriction on eligibility is set in primary legislation. Paragraph 9(4) restricts the power to make election regulations so that those regulations may not entitle an individual to vote more than once in the same Health Board area, nor in more than one Health Board area. The 1978 Act does not in terms restrict entitlement to vote in more than one area. It states that election regulations (in which the criteria for eligibility are to be set) may not do so.

The criteria for eligibility to vote in Health Board elections are set out in rule 5 of the Schedule of the draft Regulations. The criteria prescribed are that an individual is registered in a register of local government electors for an address in the area and they would be entitled to vote in a local government election for a ward which is wholly or partly in the Health Board area. They do not appear to make any provision as to where a person is entitled to vote if they fulfil these criteria in relation to more than one Health Board area. It is accepted they do not purport specifically to do so. They appear silent on the matter. The effect of paragraph 9(4) is to prevent any interpretation that eligibility could arise in relation to more than one Health Board area because election regulations are not permitted to make such provision. However, it is not clear how eligibility is then to be determined between different areas where such circumstances arise.

The Government is asked to comment on:

- whether there is any statutory provision which regulates competing eligibility to vote in only one Health Board area where an individual fulfils the criteria in rule 5 in respect of more than one Health Board area;
- whether it is sufficiently clear how the entitlement of such persons to vote is to be ascertained;
- whether any additional provision to that effect is required?

The Scottish Government responds as follows:

1. While there is no statutory provision regulating competing eligibility it is clear from paragraph 9(4) of Schedule 1A to the 1978 Act that an individual is prohibited from voting more than once in the same Health Board area and in more than one Health Board Area. As a result these Regulations cannot make provision in relation to an individual’s right to vote in two different Health Board areas as the Act expressly prohibits this and we do not consider there would be vires to deal with this issue in
Regulations given the terms of the Act. It will then be for the returning officers in the Health Board areas to consider how to ensure these provisions are given effect to in practice.

2. We will ensure that the explanatory documents issued for the electorate will provide guidance on this point. We have not been prescriptive on this as it was the intention, while setting up the election process for the pilots, to allow the registration and returning officers to utilise existing rules and processes around voter registration and eligibility, as would be the case in administering local government elections. We are working closely with representatives of both the registration and returning officers in planning for these elections and their views will continue to inform our approach after the pilot elections to consider any necessary changes.

3. We do not consider that any further provision is required for the reasons set out in paragraph 2.

In addition it is noted that these elections are pilots and there will be a full review of the elections and their procedure following the two elections next year. As set out above, if any problems are to arise, including any issue of competing eligibility, we will work to avoid these at later elections. The terms of section 7(7) of the Act, in relation to roll-out, would enable us to amend the Act if necessary.

The Health Boards (Membership) (Scotland) Regulations 2009 (SSI 2009/302)

On 3 September the Scottish Government was asked:

1) The definitions of “elected members” and “health Board election” in regulation 2, and the amendments made to the Health Boards (Membership and Procedure) (S) Regulations 2001 in the Schedule, paragraph 1(b) refer to “the 1978 Act”, but the definition in these Regulations and in the 2001 Regulations is “the Act” and “the 1978 Act” is not defined. What is the effect of this considered to be?

(2) In regulation 6(1) of those 2001 Regulations, as substituted by the Schedule, paragraph 1(4), sub-paragraph (e) appears to be missing. Was there an intention to have a provision in a sub-paragraph (e), or is this simply an error in the paragraphing?

The Scottish Government responds as follows:

(1) We recognise that the reference in the definitions that you refer to should be to “the Act” rather than “the 1978 Act” but consider that in the context of the Regulations that it will be clear to the reader that it is the National Health Service (Scotland) Act 1978 which is referred to and will have no effect on the intended meaning.

(2) Unfortunately this is simply an error in paragraphing. We do not consider that the omission of paragraph (e) would have any effect.

However, we will undertake to correct these minor drafting errors at the earliest opportunity.