The Committee will meet at 2.00 pm in Committee Room 6.

1. **Decisions on taking business in private:** The Committee will decide whether to take item 6 in private, and whether to conduct discussions on its draft report in private at future meetings.

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


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

   the Budget (Scotland) Act 2009 Amendment Order 2009 (SSI 2009/draft);

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

   the Town and Country Planning (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2009 (SSI 2009/343);
   the Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Amendment (No. 2) Order 2009 (SSI 2009/344);
the Pensions Appeal Tribunals (Scotland) (Amendment) Rules 2009 (SSI 2009/353);
the Mental Health Tribunal for Scotland (Appointment of Medical Members) Amendment Regulations 2009 (SSI 2009/359).

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

   Act of Adjournal (Criminal Procedure Rules Amendment No. 5) (Miscellaneous) 2009 (SSI 2009/345);

6. **Interpretation and Legislative Reform (Scotland) Bill**: The Committee will consider the main themes arising from the evidence session.

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The papers for this meeting are as follows—

**Agenda Items 1-5**

Legal Brief

Summary of Recommendations

**Agenda Item 2**

Paper by the Clerk

**Agenda Items 3-5**

Government Responses
SUBORDINATE LEGISLATION COMMITTEE

28th Meeting, 2009 (Session 3)

Tuesday 3 November 2009

Summary of Recommendations

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

Agenda Item 3  Draft instruments subject to approval

The Budget (Scotland) Act 2009 Amendment Order 2009 (SSI 2009/draft)

The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009 (SSI 2009/draft)

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

Agenda Item 4  Instruments subject to annulment


The Committee may wish to report that—

- In relation to the replies provided by the Scottish Government in respect of questions 1 to 3, all concerned essentially with the same issue and relating to the nature of the ‘modifications’ which the Order makes to other primary legislation, the Committee may wish to bring this instrument to the attention of the lead committee and the Parliament on the basis that the form or meaning of articles 3 and 4, which provide for modification of the Police Act 1997, and the Protection of Children(Scotland) Act 2003, could have been made clearer. Where the question of whether an instrument makes a textual amendment is determinative of the Parliamentary procedure which applies the Committee considers that the form of modification adopted should be absolutely clear.

- In relation to the reply provided to question 4 the Committee may wish to bring this instrument to the attention of the lead committee and the Parliament on the
basis that the intended effect of article 2, which provides for the Order being of temporary effect could have been made clearer as there appears to be a fundamental inconsistency with the proposition that the entire Order is temporary in its legal effect and article 6 which provides for the revocation of the instrument which is referred to therein and which is assumed to be intended to be permanent.

- In relation to the breach of the 21 day rule the Committee may wish to report to the Parliament that it finds satisfactory for its interests the explanation given by the Scottish Government in its letter to the Presiding Officer dated 5th October 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 Town and Country Planning (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2009 (SSI 2009/343)

The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Amendment (No. 2) Order 2009 (SSI 2009/344)

The Pensions Appeal Tribunals (Scotland) (Amendment) Rules 2009 (SSI 2009/353)

The Mental Health Tribunal for Scotland (Appointment of Medical Members) Amendment Regulations 2009 (SSI 2009/359)

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

Agenda Item 6 Instruments not laid before Parliament

Act of Adjournal (Criminal Procedure Rules Amendment No. 5) (Miscellaneous) 2009 (SSI 2009/345)


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

28th Meeting, 2009 (Session 3)

Tuesday 3 November 2009

Scottish Government Responses


On 9th October the Scottish Government was asked:

1. On what basis it considers that articles 3 and 4 do not, actually, make textual amendments in relation to the Police Act 1997 and the Protection of Children (Scotland) Act 2003 (such that this instrument should not therefore be subject to affirmative procedure in terms of section 100 (4) of the 2007 Act).

2. What meaning it considers attaches to the phrases ‘For the purpose of this Order’ and ‘has effect as if it had been modified by inserting’ which are used in articles 3 and 4 with reference to the inserted text which then follows.

3. Why it has elected to deliver a permanent change to the legal effect of sections 113C(3) of the Police Act 1997 and section 17(1) of the Protection of Children (Scotland) Act 2003 other than in the form of a straightforward textual amendment, and to indicate what considerations were taken into account in that regard.

4. With reference to article 2 of this instrument, which suggests that the whole Order is of temporary effect, the Scottish Government is asked to explain what is considered to be the effect of that article on the operation of articles 4, 5 and 6.

The Scottish Government responds as follows:

1. The Government considers that articles 3 and 4 do not make any textual amendment in relation to the Police Act 1997 and to the Protection of Children (Scotland) Act 2003. The drafting makes it clear that the provision is made only for the purpose of this Order and that the legislation has effect as if it had been modified. The drafting is clearly not intended to be make actual textual amendments to the Police Act 1997 and the Protection of Children (Scotland) Act 2003. Section 100(4) of the Protection of Vulnerable Groups Act 2007 ("the PVG Act") provides that the draft affirmative procedure is the appropriate parliamentary procedure where the instrument adds to, replaces or omits any part of the text of an Act. The approach adopted in the drafting of this Order does not do any of the above, but glosses the meaning of the affected Acts specifically for the purposes of the Order.

The drafting of these articles should be contrasted with article 5 where a textual amendment is made to the affected Regulations. The words used by the drafter in article 5 to bring about a textual amendment can be contrasted with those used in articles 3 and 4 to gloss the meaning of the affected Acts for the purposes of the Order.

2. The Government considers that 'For the purpose of this Order' means that the gloss to be applied to the affected provisions of the Police Act 1997 and of the
Protection of Children (Scotland) Act 2003 is only for the purpose of this Order. Section 87(1) of the PVG Act provides that Ministers may make such provision as they consider appropriate in consequence of or for giving full effect to any provision made by virtue of the Safeguarding Vulnerable Groups Act 2006 ("the SVG Act").

The Explanatory Note makes clear that the purpose of the Order is to make transitory provision in consequence of the Safeguarding Vulnerable Groups Act (Commencement No. 6, Transitional Provisions and Savings) Order 2009 (S.I. 2009/2611) ("the England and Wales Commencement Order"). The England and Wales Commencement Order commences certain provisions of the SVG Act to allow the new vetting and barring system to commence operation in England and Wales. The provisions of the Police Act 1997 and the Protection of Children (Scotland) Act 2003 are therefore to have effect 'as if they had been modified' for a transitory period.

3. This Order does not deliver a permanent change to the legal effect of section 113C(3) of the Police Act 1997 and section 17(1) of the Protection of Children (Scotland) Act 2003. The provisions introduced are transitory as they will have effect only until provisions in the PVG Act come into force. It is due to the transitory nature of the provision that the Government considers that it was neither necessary nor appropriate to effect an actual textual amendment.

4. The Government notes the comment that article 2 suggests that the whole Order is of temporary effect. The Government confirms that the Order is intended to have only temporary effect until the relevant provisions of the Protection of Vulnerable Groups (Scotland) Act 2007 come into force in order to make a permanent legislative provision to deal with the SVG Act. It is considered that the effect of article 2 on the operation of articles 4, 5 and 6 is that the Police Act 1997, the Protection of Children (Scotland) Act 2003 and the Police Act 1997 (Criminal Records) (Scotland) Regulations will only have effect as if they had been modified as set out in this Order until the Protection of Vulnerable Groups (Scotland) Act 2007 comes into force. That is the clear intention of article 2.

As a final comment, it is should be mentioned that the Executive Note sets out the detailed information concerning the new systems which are being introduced in England and Wales and in Scotland to protect vulnerable groups. These new systems are being implemented in different stages in the two jurisdictions, making complicated transitory provisions necessary to ensure that vulnerable groups continue to be fully protected in the implementation stages. This Order will prevent a loophole from emerging which would otherwise occur with effect from 12 October 2009 when the relevant provisions of the SVG Act came into force in England and Wales. Without this Order, a person included on either the children’s or adults’ barred list under the SVG Act would not have that fact included on a Scottish enhanced disclosure and, in respect of inclusion on the SVG Act children's barred list, would not be barred from taking up a child care position in Scotland. Without this Order, an individual determined to be unsuitable to work with vulnerable groups in England and Wales could legally and undetected enter the Scottish vulnerable groups' workforce.