The Committee will meet at 2.15 pm in Committee Room 6.

1. **Decision on taking business in private:** The Committee will decide whether to take item 6 in private.

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

   - the Local Government Investments (Scotland) Regulations 2010 (SSI 2010/draft);
   - the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) Order 2010 (SSI 2010/draft);
   - the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2010 (SSI 2010/draft);
   - the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2010 (SSI 2010/draft);
   - the Renewables Obligation (Scotland) Amendment Order 2010 (SSI 2010/draft).

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

   - the National Health Service (Superannuation Scheme, Pension Scheme, Injury Benefits and Additional Voluntary Contributions) (Scotland) Amendment Regulations 2010 (SSI 2010/22);
   - the Food Enzymes (Scotland) Amendment Regulations 2010 (SSI 2010/26);
   - the Town and Country Planning (General Permitted Development) (Domestic Microgeneration) (Scotland) Amendment Order 2010 (SSI 2010/27);
   - the National Health Service (Appointment of Consultants) (Scotland) Amendment Regulations 2010 (SSI 2010/28);
the National Health Service (General Dental Services) (Scotland) Amendment Regulations 2010 (SSI 2010/33);
the Local Government Pension Reserve Fund (Scotland) Amendment Regulations 2010 (SSI 2010/34);
the Council Tax (Dwellings) (Scotland) Regulations 2010 (SSI 2010/35);
the Non-Domestic Rate (Scotland) Order 2010 (SSI 2010/36);
the Non-Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Amendment Order 2010 (SSI 2010/37);
the Transfer of Property etc. (Scottish Court Service) Order 2010 (SSI 2010/40);
the Scottish Court Service (Corporate Plan) Order 2010 (SSI 2010/41);
the Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2010 (SSI 2010/42);
the Non-Domestic Rates (Levying) (Scotland) Regulations 2010 (SSI 2010/43);
the Food for Particular Nutritional Uses (Miscellaneous Amendments) (Scotland) Regulations 2010 (SSI 2010/48);
the Town and Country Planning (Limit of Annual Value) (Scotland) Order 2010 (SSI 2010/49).

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


5. **Interpretation and Legislative Reform (Scotland) Bill:** The Committee will consider an interim consultation report by the Standards, Procedures and Public Appointments Committee.

6. **Crofting Reform (Scotland) Bill:** The Committee will consider the Scottish Government's response to points raised on the delegated powers provisions in this Bill at Stage 1, and the contents of a draft report.

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The papers for this meeting are as follows—

Legal Brief SL/S3/10/6/1 (P)
Summary of Recommendations SL/S3/10/6/2

**Agenda items 2 and 3**

Instrument Responses SL/S3/10/6/3

**Agenda item 5**

Paper by the Clerk SL/S3/10/6/4

**Agenda item 6**

Scottish Government Response SL/S3/10/6/5
The Committee will be invited to consider the following recommendations at the meeting. Decisions are a matter for the Committee.

### Agenda Item 2 Draft instruments subject to approval

**The Local Government Investments (Scotland) Regulations 2010 (SSI 2010/draft)**

The Committee may wish to report that an explanation has been sought from the Scottish Government as to why it is considered that regulation 3(1)(a) is within the enabling powers to make the Regulations contained in sections 40 and 58(5) of the Local Government in Scotland Act 2003. The Committee accepts the explanation provided.

**The Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) Order 2010 (SSI 2010/draft)**

**The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2010 (SSI 2010/draft)**

**The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2010 (SSI 2010/draft)**

**The Renewables Obligation (Scotland) Amendment Order 2010 (SSI 2010/draft)**

The Committee may wish to consider if it is content with these instruments.
Agenda Item 3  Instruments subject to annulment

The National Health Service (Superannuation Scheme, Pension Scheme, Injury Benefits and Additional Voluntary Contributions) (Scotland) Amendment Regulations 2010 (SSI 2010/22)

The Committee may wish to report that—

• it appears that the reference to “(Relevant Services Reckonable Pay)” in the formula in regulation 2.K.12(5)(a) is defectively drafted, given that the response from the Scottish Government confirms that the intention is to refer to “(Relevant Services x Reckonable pay”);

• the meaning and effect of regulation 2.K.2(14) on page 16 could be clearer, in relation to stating whether each of the paragraphs (1)(a)(ii), (8) and (13)(b) referred to must apply, for the provision to operate;

• an explanation was sought from the Scottish Government as to the meaning and effect of regulation 3.K.14(2)(a), and the Committee is satisfied with that explanation; and

• an explanation was sought from the Scottish Government as to its plans to lay a consolidation of the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (SSI 1995/365). The Committee accepts that explanation, and notes that it is hoped to lay a consolidation of these Regulations in the course of this year.

The Food Enzymes (Scotland) Amendment Regulations 2010 (SSI 2010/26)

The Committee may wish to report that it is content with the instrument and finds satisfactory for its interests the explanation given by the Scottish Government for the failure to comply with the 21 day rule.

The Town and Country Planning (General Permitted Development) (Domestic Microgeneration) (Scotland) Amendment Order 2010 (SSI 2010/27)

The National Health Service (Appointment of Consultants) (Scotland) Amendment Regulations 2010 (SSI 2010/28)

The National Health Service (General Dental Services) (Scotland) Amendment Regulations 2010 (SSI 2010/33)
The Local Government Pension Reserve Fund (Scotland) Amendment Regulations 2010 (SSI 2010/34)

The Council Tax (Dwellings) (Scotland) Regulations 2010 (SSI 2010/35)

The Non-Domestic Rate (Scotland) Order 2010 (SSI 2010/36)

The Non-Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Amendment Order 2010 (SSI 2010/37)

The Transfer of Property etc. (Scottish Court Service) Order 2010 (SSI 2010/40)

The Scottish Court Service (Corporate Plan) Order 2010 (SSI 2010/41)

The Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2010 (SSI 2010/42)

The Non-Domestic Rates (Levying) (Scotland) Regulations 2010 (SSI 2010/43)

The Food for Particular Nutritional Uses (Miscellaneous Amendments) (Scotland) Regulations 2010 (SSI 2010/48)

The Town and Country Planning (Limit of Annual Value) (Scotland) Order 2010 (SSI 2010/49)

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

Agenda Item 4  Instruments not laid before the Parliament


The Committee may wish to consider if it is content with this instrument.
The Local Government Investments (Scotland) Regulations 2010 (SSI 2010/draft)

On 11 February 2010 the Scottish Government was asked:

The Scottish Government is asked to explain and clarify the basis on which it is considered that regulation 3(1)(a) is within the enabling powers in sections 40 and 58(5) of the Local Government in Scotland Act 2003, given that-

(a) section 40(4) provides that these Regulations “may impose requirements” as to the obtaining by a local authority of consent to its doing anything in pursuance of the power to invest money, but

(b) regulation 3(1)(a) does not so impose requirements (the requirement to obtain Scottish Ministers’ consent being set out in regulation 2) but has the effect of sub-delegating to the Scottish Ministers the power to impose additional requirements from time to time, and outside the terms of the regulations, in relation to any consent which may be issued to the investment of money?

The Scottish Government responds as follows:

Section 40(4) of the Local Government in Scotland Act 2003 provides:

"Those regulations may impose requirements as to the obtaining by a local authority of consent to its doing of anything in pursuance of the power conferred on it by virtue of this section."

The draft Regulations provide (at regulation 2) that consent is required from Scottish Ministers in respect of local authority investments. The primary legislation permits that provision. Such consent could be issued subject to conditions. Regulation 3(1)(a) states that any such conditions must be complied with, to clarify that they take precedence over the CIPFA documents to which local authorities must have regard. It does not sub-delegate to the Scottish Ministers the power to impose additional requirements from time to time. Rather, it makes clear what happens where their existing power is exercised.
INSTRUMENTS SUBJECT TO ANNULMENT

The National Health Service (Superannuation Scheme, Pension Scheme, Injury Benefits and Additional Voluntary Contributions) (Scotland) Amendment Regulations 2010 (SSI 2010/22)

On 5 February 2010 the Scottish Government was asked:
(1) the meaning and effect of regulation 2.K.2(14) on page 16, in relation to (a) whether each of the paragraphs (1)(a)(ii), (8) and (13)(b) referred to must apply for the provision to operate and whether this should be clearer, and (b) whether the reference to paragraph (13)(b) is correct?

(2) the meaning of “(Relevant Services Reckonable Pay)” in the formula in regulation 2.K.12(5)(a), given that it appears that this term is not defined in 2K.12(16), or whether similarly with other formulae in 2.K.12 it should refer to “(Relevant Service x Reckonable pay)”?

(3) whether the reference to “paragraph (3) or (4) regulation 3.K.13” is correct in regulation 3.K.14(2)(a) on page 61, given that it appears that paragraph (3) contains definitions, rather than an operative provision about the determination of the enhancement period? Should it refer to paragraph (2)?

(4) given that this appears to be the 21st occasion on which the 1995 Regulations (SI 1995/365) have been amended, and these Regulations contain so many amendments to those Regulations (in particular to change the 1995 and 2008 NHS Pension Schemes into two Sections of the one Scheme) why has the legislative practice been taken of amending the 1995 Regulations, rather than doing an “amending consolidation”?

The Scottish Government responds as follows:
(1)(a) Regulation 2.K.2 (14) provides “Where paragraph (1)(a)(ii) applies and any extension of time in accordance with paragraph (8), where paragraph (13)(b) applies the person must have a period equal to at least 3 months ending on the date specified by the Scottish Ministers in accordance with paragraph (4)(a) in which to opt to join this Section of the scheme.

The purpose of regulation 2.K.2 (14) is to ensure that where a person (by virtue of their employment) is an active member of the 1995 Section of the NHS Pension Scheme on the day that their option to join the 2008 Section of the scheme is received by the Scottish Ministers (including where the time limit within which to exercise that option has been extended under paragraph (8)), and the comparative statement of benefits is sent to their employing authority for onward transmission to them (instead of being sent to their home address), then the person will have an additional 3 months in which to opt to join the 2008 Section of the scheme. This is to allow for the fact that it may take some time for a comparative statement of benefits sent to an employing authority to reach the person to whom it relates (for example, due to delays in processing paperwork).

The Scottish Government considers that this provision achieves its objective.

(b) The reference to paragraph (13)(b) is correct as regulation 2.K.2(14) makes provision in relation to a situation where it is for some reason not practicable to send the
comparative statement of benefits to a person’s home address and it is instead sent to their employing authority for onward transmission to the person.

(2) This is a typing error, and we are grateful to you for drawing this to our attention. It should read "Relevant Services x Reckonable Pay".

Given the use of the formula "Relevant Services x Reckonable Pay" in other formulae in the instrument, it is considered that a court would be able to recognise that an error has clearly occurred and arrive at the proper interpretation of the provision. In practice, these Regulations are primarily used by SPPA, and it is considered therefore that this error is unlikely to give rise to difficulties in practice. SPPA will take steps to ensure that the operational procedures note the error, and explain what is intended, both for their own purposes and for the benefit of other interested parties.

(3) Regulation 3.K.13 makes provision in relation to a person who is considering opting to join the 2008 Section of the scheme, but submits a claim for ill health pension which is received by the Scottish Ministers before they receive the 2008 Section option form. Paragraph (2) provides that the enhancement for such an optant should be calculated in accordance with paragraph (3). The amount of enhancement for the transitional period which is given if the member is awarded an upper tier ill health pension is normally that referred to in paragraph (3) (i.e. two thirds of assumed pensionable service). But where the period determined under that formula is less than 4 years, then the pensionable service is to be calculated as set out in paragraph (4) (i.e. the lesser of 4 years and the pensionable service which would have counted if the optant had carried on working to age 60).

Thus, both paragraphs (3) and (4) of regulation 3.K.13 are operative sections, and the reference to them in regulation 3.K.14 is correct.

(4) Steps have previously been taken towards consolidation, but these were not completed due to the UK Government led pension reform, a complex and lengthy process which commenced in 2004.

We are currently working on a consolidation, but, as you will appreciate, this is a major piece of work which will involve preparation of a draft consolidation which will then be consulted upon. A first draft of the consolidation has been prepared. However, it is likely that it will take a little time before it can be ready for consultation, and it is likely that a further amendment to the 1995 Regulations will require to be done later this year before the consolidation is completed. Nevertheless, a consolidation is in progress and we would hope to lay a consolidating instrument in Parliament in the course of the current year.
SUBORDINATE LEGISLATION COMMITTEE

6th Meeting, 2010 (Session 3)

Tuesday 23 February 2010

Interpretation and Legislative Reform (Scotland) Bill and other subordinate legislation rules

Interim consultation report by the Standards, Procedures and Public Appointments Committee

Purpose

1. The Subordinate Legislation Committee is invited to note the interim conclusions of the Standards, Procedures and Public Appointments Committee (“the SPPA Committee”) consultation on Standing Order rule changes.

2. The SPPA Committee would be happy to receive any comments on the rule changes proposed in its report by Friday 12 March 2010.

Background

3. On 28 January 2010, the SPPA Committee published its Interim Consultation Report on the Interpretation and Legislative Reform (Scotland) Bill (“the Bill”) and other possible subordinate legislation Standing Order rule changes. The report is intended to help to inform members about the content and effect of the Bill in preparation for Stage 2 consideration. Following Stage 3, the SPPA Committee will report with final recommendations for rule changes required as a result of enactment of the Bill.

4. In general, the changes to Standing Orders recommended by the Subordinate Legislation Committee have been adopted by the SPPA Committee. This paper highlights areas of difference and new proposals.

Interpretation and Legislative Reform (Scotland) Bill

Section 32: laying of Scottish statutory instruments before the Scottish Parliament

5. This section defines the laying of an instrument as “the taking of such action as is specified in standing orders”. Rule 10.1 already specifies what constitutes the laying of instruments: “the lodging of a copy of the instrument or the draft with the Clerk at any time when the office of the Clerk is open shall be treated for all purposes as being the laying of it before the Parliament”. The meaning of “laying” therefore depends on the meaning of “lodging”.

6. It is highly possible that in future the Parliament may wish to make provision for statutory instruments to be laid electronically. At present they can only be laid in paper copy. Rule 17.4.1 makes provision for a member to lodge certain documents by e-mail but Chapter 10 is specifically excluded from this procedure, so at present
instruments cannot be laid under 10.1 by way of e-mail. To allow this would require changes to Rules 10.1 and 17.4.

7. The SPPA Committee considered whether it would be desirable to include rules now which would allow electronic laying of statutory instruments, although these would only be able to be used once procedures for electronic laying had been agreed. Alternatively, rule changes might be made later, once agreement had been reached between the Parliament and the Scottish Government. The SPPA Committee agreed to seek the views of the Scottish Government, the SLC and the Head of the Chamber Office on this issue.

8. The SLC recommended that rules should be developed now which would allow electronic laying of statutory instruments at a future date. However, the Government’s view was that it would be necessary for the Parliament to work closely with a range of stakeholders, most specifically the Queen’s Printer for Scotland prior to the promotion of any rules on this matter.

9. Following consideration of the responses to its initial consultation, the SPPA Committee was minded to recommend that inclusion of rules on electronic laying of instruments be deferred until further attention has been given to the matter and consultation has taken place with other interested organisations.

The Committee is invited to note the recommendation of the SPPA Committee.

Part 4 – Section 47 – Pre-consolidation modification of enactments

10. Section 47(1) gives the Scottish Ministers the power, by order subject to the affirmative procedure, to “make such modifications of enactments relating to a particular subject as in their opinion facilitate, or are otherwise desirable in connection with, the consolidation of the law on the subject”.

11. Both this Committee and the SPPA Committee had raised serious concerns about the scope of this proposed power during Stage 1 scrutiny of the Bill. In light of this, the SPPA Committee had not considered Standing Orders rule changes in relation to this Part.

12. However, in its response to a recommendation in the Subordinate Legislation Committee’s Stage 1 report on the Bill, the Scottish Government has confirmed that it will bring forward an amendment at Stage 2 to remove this Part of the Bill. As a consequence, no further consideration of potential Standing Order changes is required in relation to this Part.

The Committee is invited to note that the Scottish Government has confirmed that it will bring forward an amendment at Stage 2 to remove Part 4 of the Bill.
Other possible Chapter 10 rule changes

Rule 10.4.1/10.4.3/10.4.4 – 40 days

13. Standing Orders currently provide that—

- any member may lodge a motion to annul not later than 40 days after the instrument is laid
- the lead committee shall report to the Parliament not later than 40 days after the instrument is laid; and
- the Parliamentary Bureau shall, if the lead committee so recommends, by motion propose that nothing further be done no later than 40 days after the instrument is laid.

14. The Bill also gives the Parliament 40 days to resolve that an instrument is annulled. Clearly, therefore, in practice, the three key procedural steps set out above must take place, in stages, earlier than 40 days after the instrument is laid. Lead committees are given an administrative deadline by which to report and it would be for the Convener to decide whether to include on the agenda any annulment motion which was lodged after the Committee had already considered the instrument. The Bureau would schedule any debate in response to a committee recommendation to annul (although it should be noted that this is an extremely unusual occurrence).

15. The SPPA Committee reflected on options to clarify deadlines in the 40 day procedure, including—

(a) rather than having a set period (i.e. 33 days), having a rule which recommends that, where a motion for annulment is lodged, it must be considered by the lead committee at the next (or a subsequent) committee meeting unless (i) that meeting takes place less than X (for example, two) days after the motion is lodged or (ii) there is no scheduled meeting of the Parliament between that committee meeting and the expiry of the 40 day period;

(b) having an administrative deadline set for lead committees to report to the Parliament on consideration of subordinate legislation. The deadline is set to allow sufficient time after the publication of a report for the Bureau to lodge and schedule a motion for consideration by the Parliament. In practice, this deadline does not fall at a set point within the 40 day period, but takes into account the circumstances of each instrument. The Committee considered whether publishing this administrative deadline more widely, for example in the Business Bulletin (Section J), would help members who are considering lodging an annulment motion to be aware of the time constraints that apply to committee consideration of any instrument. This would not require to be covered in Standing Orders but could simply be an administrative practice adopted in the Chamber Office.

16. The SPPA Committee agreed to recommend that option (b) above be implemented which would involve the publication in the Business Bulletin of the timetable for lead committees to report on subordinate legislation.
17. In order to implement the recommendation, SLC clerks will be required to calculate the administrative deadline for each instrument and publish this in the Business Bulletin. It is considered that this would be a relatively simple process which can be delivered from within existing resources.

The SLC is invited to support the recommendation of the SPPA Committee.

Rule 10.4.1 – Motions
18. The SLC suggested that consideration should be given to how far Rule 8.2, concerning motions without notice, should apply to subordinate legislation procedure and motions for annulment. This Rule is applicable to committees by virtue of Rule 8.8 which applies Rule 8.1 to 8.7 to committees “with such modifications as are appropriate” (for example, for “Presiding Officer”, read “Convener”).

19. Most committee business is carried out without formal motions but it is the general right of any member to give notice of a motion for consideration by a committee (Rule 8.1.1). Normally, this would require to be lodged with the Clerk, subject to admissibility, and printed in the Business Bulletin and it would not be considered before the sitting day after it was lodged. However, the rules provide for the Convener to allow a motion without notice or a motion on shorter notice.

20. There is a question about the application of Rule 8.2 to committees when considering instruments subject to annulment, given Rule 10.4.2 which states that the minister in charge of the instrument is entitled to participate in proceedings on a motion to annul.

21. Ordinarily, it is a matter for the Convener to judge whether or not it is appropriate for the committee to consider a motion without notice. The Convener will take into account, for example, whether there is any committee meeting scheduled and if so, whether the item in question is already on the agenda.

22. Even if the instrument was already on an agenda at a scheduled meeting, it is not usually the case that a Minister will be in attendance at a committee meeting where a negative instrument is being considered. If the Minister is not present, the Convener could not accept the motion without notice as to do so would be in conflict with Rule 10.4.2 (allowing the Minister to participate in any annulment debate). It is, however, conceivable that a Minister could be invited to give evidence on an instrument and the committee not decide until it had heard the evidence whether or not it was satisfied with the instrument.

23. The Committee considered previously whether it would be preferable to maintain the status quo, which would retain flexibility but also uncertainty surrounding use of the procedure or, alternatively, to prohibit motions without notice in committees. The Committee concluded that it supported the status quo position and reported this view to the SPPA Committee.

24. The SPPA Committee noted that there was a lack of consensus among consultees (including the Scottish Government and the Conveners Group) and
therefore proposed that the status quo be retained in Standing Orders. It acknowledged that this will not clarify the ambiguity which currently exists in Standing Orders, however, and the SPPA Committee recommended that additional guidance should be produced for conveners and clerks which highlights the issues which exist in this area and which recommends best practice in relation to specific circumstances.

The SLC is invited to support the recommendation of the SPPA Committee.

**Rule 10.7 – Instruments considered by the Parliament**

25. This Rule provides that any member may give notice of and move the relevant motion when an instrument is to be taken in the Parliament. The SLC suggested that it may be more appropriate for this Rule to stipulate that a Minister should lodge and move the relevant motion.

26. In relation to the procedure for consideration of an instrument by the Parliament, the rules set out a two stage process—

- Rule 10.1 provides that an instrument is referred to the lead committee and to the SLC for consideration, unless the Parliament, on a motion of the Parliamentary Bureau, decides that the instrument is to be considered by the Parliament
- Rule 10.7 provides that, where the Parliament has decided that an instrument be considered by the Parliament, any member may give notice of and move the relevant motion in relation to that instrument.

27. In response to the suggestion from the SLC, the SPPA Committee was initially of the view that Rule 10.7 should be amended. However, following consultation with the Scottish Government, which considered that the current rule had caused no difficulty and, consequently, no change was necessary, the SPPA Committee is now minded to retain the rule in its current form.

The SLC is invited to support the recommendation of the SPPA Committee.

Dougie Wands
Clerk to the Committee
The Subordinate Legislation Committee asked:
Given that section 10(1) of the Public Services Reform (Scotland) Bill contains an almost identical power (albeit one which is more comprehensive in its application), what is the need for the power in section 2(2)?

What is the difference in substance, if any, between the power in section 2(2) and the power in section 10 of the Public Services Reform (Scotland) Bill?

The Scottish Government replies as follows:
The Public Service Reform (Scotland) Bill (“PSR Bill”) has not yet been given Royal Assent and is currently being scrutinised by Parliament. The power in section 2(2) of the Crofting Reform Bill is narrower in scope than the power in section 10(1) of the PSR Bill. The section 2(2) power allows the Scottish Ministers, by order subject to affirmative procedure, to add to, remove or modify the Commission's functions. By the inclusion of the Commission in schedule 3 to the PSR Bill, the Scottish Ministers can by order (a) modify, add to, remove, transfer or provide for the delegation of any function of the Commission or (b) amend the constitution or abolish the Commission. At present, we consider that section 2(2) of the Bill is appropriate to the Commission’s circumstances. However, we will reflect upon the Parliamentary progress of the PSR Bill and we will consider the implications of that Bill upon the the proposed delegated power in section 2(2) of the Crofting Reform (Scotland) Bill in the context of the Commission’s functions at Stage 2.

The Subordinate Legislation Committee asked:
Given that section 12(3) of the Land Registration (Scotland) Act 1979 provides an extensive and detailed list of circumstances in which there is to be no entitlement to indemnity from the Keeper under section 12 of that Act, the Scottish Government is asked to explain why it is not possible to list in this Bill all the possible circumstances where a person may not be entitled to an indemnity?

Given that it has been possible in section 12(3) of the Land Registration (Scotland) Act 1979 to provide an extensive and detailed list of circumstances in which there is to be no entitlement to indemnity, the Scottish Government is asked why subordinate rather than primary legislation is considered necessary for this purpose?
Given that the exercise of the power will take away substantive rights provided for in the Bill, on what basis does the Scottish Government consider that the power concerns a “point of procedure” (paragraph 26 of the DPM)? Having regard to the substantive effect of the exercise of the power, does the Scottish Government accept that affirmative procedure would be more appropriate?

The Scottish Government replies as follows:
The Land Registration (Scotland) Act 1979 makes provision about the Land Register, which serves a different function to the proposed Crofting Register. The Crofting Register will contain information of a different nature and, at this point, it is difficult to be certain about the extent to which that information can be guaranteed as accurate until the Crofting Register is in operation.

A power to prescribe circumstances in which there is to be no entitlement to indemnity has been included to provide flexibility if it becomes obvious over time that it is difficult to ascertain the accuracy of certain matters which are to be included on the Register.

The Government will review the effect of the exercise of this power and consider whether the affirmative procedure may be more appropriate in this case.

Section 16(1) – power to make rules for the Crofting Register

The Subordinate Legislation Committee asked:
Does the Scottish Government intend the power in section 16(1) to be restricted to administrative and procedural (rather than substantive) matters and, if so, why is it not expressed in terms which restrict its exercise to that extent?

The Scottish Government replies as follows:
The items in referred to in paragraphs (a) to (d) of section 16(1) are administrative or procedural matters and, as such, there is no requirement to state this expressly. Paragraph (e) provides that the Scottish Ministers may make rules concerning other matters to give full effect to the purposes of Part 2 of the Bill relating to the Crofting Register. This rule-making power will be used for limited purposes such as ensuring that the Crofting Register operates effectively. The exercise of the power is restricted as it exercisable only when the Scottish Ministers consider that the making of the rules are necessary or proper and may only be exercised after consultation with the Keeper and the Commission.

Schedule 1, Paragraph 2(2)(d) - Power for the Crofting Commission to charge in respect of its functions

The Subordinate Legislation Committee asked:
Does the Scottish Government intend to consult the Commission, the crofting community and the public at large in advance of making regulations under paragraph 2(2)(d) of schedule 1 and, if so, does the Scottish Government consider that a requirement for consultation could be provided for in the Bill?
The Scottish Government replies as follows:
The Government has not decided whether to consult in advance of making regulations under Paragraph 2(2)(d) of Schedule 1 and wishes to leave this option open.

Schedule 1, Paragraph 7(1) – power to make provisions for the election of members to the Commission

The Subordinate Legislation Committee asked:
With reference to the power in schedule 1, paragraph 7(1), has the Scottish Government considered whether key elements of the system for elections, including franchise and any provision for offences should be specified in primary legislation?

The Scottish Government replies as follows:
Subordinate legislation is considered appropriate for the kind of detail required to support elections. Making provision in relation to the elections in subordinate legislation rather than primary legislation will provide greater flexibility to change the election system if required in light of experience. Therefore, it is the Government’s intention to include the details of elections, including franchise and any provisions for offences, in subordinate legislation. This would provide greater flexibility whilst ensuring a higher level of scrutiny through the use of the affirmative procedure.