SUBORDINATE LEGISLATION COMMITTEE

AGENDA

7th Meeting, 2010 (Session 3)

Tuesday 2 March 2010

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

1. **Subordinate legislation:** The Committee will take evidence on the forthcoming Water Quality (Scotland) Regulations from—

   Roseanna Cunningham MSP, Minister for Environment, David Williamson, Drinking Water Policy Manager, and Elizabeth Rutherford, Legal Officer, Scottish Government.

2. **Housing (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 International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2010 (SSI 2010/draft);
   - the Census (Scotland) Order 2010 (SSI 2010/draft).

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

   - the Building (Scotland) Amendment Regulations 2010 (SSI 2010/32);
   - the Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2010 (SSI 2010/38);
   - the Local Government (Allowances and Expenses) (Scotland) Amendment Regulations 2010 (SSI 2010/45);
   - the Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Regulations 2010 (SSI 2010/44);
   - the Advice and Assistance and Civil Legal Aid (Priority of Debts) (Scotland) Regulations 2010 (SSI 2010/57);
   - the Refuges for Children (Scotland) Amendment Regulations 2010 (SSI 2010/59);
the Management of Extractive Waste (Scotland) Regulations 2010 (SSI 2010/60);
the Town and Country Planning (Prescribed Date) (Scotland) Amendment Regulations 2010 (SSI 2010/61);
the Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2010 (SSI 2010/62);
the Pharmacy Order 2010 (Commencement No. 1) Order of Council (SI 2010/299(C.24));
the General Pharmaceutical Council (Constitution) Order 2010 (SI 2010/300).

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

Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Causes in the Inner House) 2010 (SSI 2010/30).

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The papers for this meeting are as follows—

Legal Brief
Summary of Recommendations

**Agenda item 1**
Paper by the Clerk

**Agenda Item 2**

**Housing (Scotland) Bill**

**Delegated Powers Memorandum**

**Agenda items 3-5**

Instrument Responses
Summary of Recommendations

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

Agenda Item 3 Draft instruments subject to approval

The International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2010 (SSI 2010/draft)

The Committee may wish to note that the points which were raised with the Scottish Government concerning the draft Order in Council, as initially laid on 12 February 2010 and subsequently withdrawn, have been satisfactorily addressed within the instrument now before it, and to indicate that it is content with this instrument.

The Census (Scotland) Order 2010 (SSI 2010/draft)

The Committee may wish to be content with this instrument. The Committee may wish to note in its report that a minor typographical error in the heading to Schedule 3 (the reference to Class VII should refer instead to Class VI) is to be corrected by the Scottish Government, should the instrument be approved by the Parliament, and before it is submitted to Her Majesty.

Agenda Item 4 Instruments subject to annulment

The Building (Scotland) Amendment Regulations 2010 (SSI 2010/32)

The Committee may wish to report that it is content with the explanation provided by the Scottish Government as regards the enabling powers but that it considers that the provision at the end of regulation 3(1), that “any reference in the Building (Scotland) Act 2003 to building regulations is to be construed accordingly” has no useful effect which is distinct from the transitional provisions in the remainder of that regulation.
The Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2010 (SSI 2010/38)

The Committee may wish to report that this instrument was defectively drafted in that a number of the proposed fixed line operators were not properly defined for the purposes of the Order.

The Committee welcomes the Scottish Government’s commitment to bring forward a corrective instrument prior to the proposed coming into force date of 01 April 2010.

The Local Government (Allowances and Expenses) (Scotland) Amendment Regulations 2010 (SSI 2010/45)

The Committee may wish to report that regulation 2(6)(b) appears to be defectively drafted. The response to the Committee (and the second paragraph of the Explanatory Note) confirms that the intended effect of the provision is to enable councillors only to claim reimbursement for the receipted costs of chartering a boat to travel between two islands within an Islands Council area, but that paragraph provides for the recovery of receipted costs of chartering a boat, without the restriction that the charter should be between islands in an Islands Council area.

The Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Regulations 2010 (SSI 2010/44)

The Advice and Assistance and Civil Legal Aid (Priority of Debts) (Scotland) Regulations 2010 (SSI 2010/57)

The Refuges for Children (Scotland) Amendment Regulations 2010 (SSI 2010/59)

The Management of Extractive Waste (Scotland) Regulations 2010 (SSI 2010/60)

The Town and Country Planning (Prescribed Date) (Scotland) Amendment Regulations 2010 (SSI 2010/61)

The Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2010 (SSI 2010/62)

The Pharmacy Order 2010 (Commencement No. 1) Order of Council (SI 2010/299)

The General Pharmaceutical Council (Constitution) Order 2010 (SI 2010/300)
The Committee may wish to consider if it is content with these instruments.

**Agenda Item 5  Instruments not laid before the Parliament**

**Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Causes in the Inner House) 2010 (SSI 2010/30)**

The Committee may wish to find the explanation provided by the Lord President’s Private Office as to the continued application of Schedule 3C of the Civil Jurisdiction and Judgments Act 1982 in certain cases to be satisfactory but to note that it may be more helpful to the reader if the reference to Schedule 3C in footnote (a) to rule 38.8 was more comprehensive.
DRAFT INSTRUMENTS SUBJECT TO APPROVAL

The International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2010 (SSI 2010/draft)

On 19 February 2010 the Scottish Government was asked:

a) to clarify the reference which is made in paragraph 1 of inserted Schedule 14 to ‘the Agreement’, and whether it is considered that further detail, in regard to when that Agreement was executed, etc, should not have been provided within the instrument, whether by way of footnote or otherwise.

b) to clarify whether, in relation to inserted Schedule 15, the paragraph headed ‘All Other Officers’, and numbered ‘9’, should in fact be numbered ‘8’, and to indicate what is considered to be the effect of this apparent error in numbering upon the operation of this instrument, having regard to that paragraph also making, at sub-paragraph (1), an apparently incorrect cross-reference to paragraph 8 (rather than to 7) ?

The Scottish Government responded:-

a) Reference to the “Agreement”

The Agreement mentioned in paragraph 1 of inserted Schedule 14 is the EU Status of Forces Agreement signed by representatives of the governments of the Member States of the EU on 17 November 2003 (O.J. C321/6). We agree that the Order would benefit from a specific reference by way of footnote. As discussed with you, we propose withdrawing and relaying the draft instrument in order to add a footnote with a reference to the date of the Agreement and to the OJ.

b) Paragraph references

We are grateful to you for spotting these points and confirm that paragraph 9 of inserted Schedule 15 should be numbered paragraph 8 and that the cross reference in sub-paragraph (1) should be to paragraph 7, rather than paragraph 8. We do not consider that these typographical errors would have any effect on the operation of the instrument, as in context the meaning of these provisions is clear. However, as discussed with you, we are taking the opportunity now to withdraw and relay the draft instrument in order to correct minor errors.

I would also highlight further minor amendments to the draft Order which we have taken this opportunity to make:-

- A reference to the 1968 Act has been added to footnote (a) on page 1;
- Sub-paragraph 7(3) of inserted Schedule 15 has been changed to 7(2); and
- The last sentence of paragraph 3 of the Explanatory Note has been changed to reflect the sequence of Schedules 14 and 15 to:-
"These immunities and privileges are conferred in accordance with the international obligations agreed under the European Union Status of Forces Agreement and between the Government of the United Kingdom and the European Organisation for Astronomical Research in the Southern Hemisphere."
INSTRUMENTS SUBJECT TO ANNULMENT

The Building (Scotland) Amendment Regulations 2010 (SSI 2010/32)

On 17 February 2010 the Scottish Government was asked:

(a) Which enabling power is being relied on to make the provision within regulation 3(1) that modifies the construction of all references to “building regulations” in the 2003 Act, in consequence of regulation 3? If the power in section 1(5) of that Act is being relied on, why is it required to modify all such references in the 2003 Act, in consequence of the provision in regulation 3 (given that “building regulations” are defined by section 1 of that Act)?

(b) Why is the provision referred to above contained in these Regulations rather than being proposed in an order (given that section 1(5) provides that Ministers may by order modify any enactment that is inconsistent with or requires alteration in consequence of any provision of “building regulations”)?

The Scottish Government responded:

(a) The Regulations amend the Building (Scotland) Regulations 2004 (“the 2004 Regulations”) using powers under sections 1, 8(8) and Schedule 1 to the Building (Scotland) Act 2003. By virtue of section 54 these powers include powers to make transitional provisions. Regulation 3(1) is made under the powers available under section 54.

Section 1(5) enables the Scottish Ministers to modify an enactment by order in certain circumstances. Regulation 3(1) does not modify an enactment but rather it makes transitional provisions. These provisions ensure, notwithstanding the changes made to the 2004 Regulations by the Regulations, that for the purposes of works to be carried out under contracts entered into before 1st October 2010 references to “building regulations” in the 2003 Act remain (subject to the limitations in regulation 3(2)) to be treated as references to the building regulations in force at the date on which the contract in question was entered into. This only applies to cases where no building warrant is required but the works must still comply with building regulations.

(b) The power in section 1(5) of the Act is not relied upon. The powers relied upon are exercisable by means of regulations.
The Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2010 (SSI 2010/38)

On 17 February 2010 the Scottish Government was asked:
1. The Order defines “fixed line operator” with reference to the names and registration numbers of companies. What does the Scottish Government consider to be the implications on the operation of the instrument given the names Smallworld Media Communications Ltd, Thus plc and Virgin Media Group do not correspond with the registration numbers as at the date when the Order was made? The names of these companies being noted as Smallworld Cable Limited, Thus Group Holdings plc and Virgin Media Limited respectively.

2. In the interests of consistency, does the Scottish Government consider that both the registration number and company name ought to appear in the Order as they appear in the register maintained by Companies House given:

(a) that the figure “0” is included in the registration numbers of both Ntl Business Ltd and Opal Telecom Limited as they appear in the register but does not appear in the Order; and

(b) that the word "Limited" has been shortened to "Ltd" in the Order for some companies, including "AOL (UK) Ltd" for example, but has not been shortened for others such as "Be Un Limited"?

The Scottish Government responded:
1. In response to both the first and second of the Scottish Parliament's questions, the Scottish Government realises the importance to the operation of the instrument in the names and registration numbers of the companies contained in the Order being consistent with their entries in Companies House.

2. As the Order is not due to start coming into force until 31 March 2010 it has been decided to make a new order, The Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment (No. 2) Order 2010, which will repeal both The Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2009 and The Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2010. The new Order will make the required amendments to The Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment 2005 Order while ensuring that the details of companies' names and registration numbers contained in the amendments are consistent with their current entries in Companies House.
The Local Government (Allowances and Expenses) (Scotland) Amendment Regulations 2010 (SSI 2010/45)

On 18 February 2010 the Scottish Government was asked:
Regulation 2(6)(b) amends Schedule 2 to the 2007 Regulations (SSI 2007/108) to provide that a member of a local authority may recover the receipted costs of chartering a boat, provided that the other requirements set out in regulation 4 of those principal Regulations are met.

The second paragraph of the Explanatory Note however states that provision is made for an entitlement to claim reimbursement of receipted expenditure for travel by chartered boat “between islands not directly served by a public ferry service” (and the third paragraph of the Executive Note is to similar effect). Is it intended that the effect of regulation 2(6)(b) should be so restricted to the recovery of boat charter costs between islands not directly served by a public ferry, or can it be explained why no such provision is required?

The Scottish Government responded:
The purpose of the amendment is to enable councillors to claim reimbursement for the receipted costs of hiring a boat to travel between two islands within an Islands Council area.

If these islands were linked by a public ferry, it is not expected that it would be economic to claim such reimbursement. Schedule 2 of the 2007 Regulations already enables councillors to claim reimbursement of ferry fares.

Regulation 4 of the 2007 Regulations provides that travel expenditure must be 'reasonably incurred'. It would not be reasonable to incur boat hire costs that resulted in a greater cost than was available from a direct public ferry service.
Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Causes in the Inner House) 2010 (SSI 2010/30)

On 17 February 2010, the Scottish Government was asked:

Given that Schedule 3C to the Civil Jurisdiction and Judgements Act 1982 appears to have been repealed (with effect from 1 January 2010) by regulation 25 of the Civil Jurisdiction and Judgments Regulations 2009 (SI 2009/3131), what does the Lord President’s Private Office consider is the effect of the reference to Schedule 3C in rule 38.8(a) at line 2 (article 6 of the instrument)?

The Scottish Government responded:

Although regulation 25 of the said 2009 Regulations repeals Schedule 3C to the Civil Jurisdiction and Judgements Act 1982 with effect from 1 January 2010, that repeal is subject to the savings provision at regulation 48 of the 2009 Regulations.

Schedule 3C to the 1982 Act sets out the provisions of the 1988 Lugano Convention on jurisdiction and the enforcement of judgments and authentic instruments. The effect of regulation 48 of the 2009 Regulations is that the 1982 Act (including Schedule 3C) continues to have effect as if the amendments made in the 2009 Regulations had not been made, for the purposes of proceedings, judgments and authentic instruments to which the 1988 Convention continues to apply pursuant to transitional provision made in the 2007 Lugano Convention.

The effect of these provisions is that both the 1988 Lugano Convention and Schedule 3C to the 1982 Act continue to apply in relation to certain States which have not yet ratified the 2007 Lugano Convention. As at the date of writing, it is the understanding of the Lord President’s Private Office that both Switzerland and Iceland have yet to ratify the 2007 Convention.

The effect of the reference to Schedule 3C to the 1982 Act in rule 38.8(a) is therefore to provide that the rules in Chapter 38 of the Court of Session Rules apply to any appeal from a decision of the Lord Ordinary under the specified Articles of the 1988 Lugano Convention, in so far as that Convention continues to apply by virtue of the relevant transitional and savings provisions contained in the 2007 Convention and in the 2009 Regulations.