SUBORDINATE LEGISLATION COMMITTEE

AGENDA

10th Meeting, 2010 (Session 3)

Tuesday 23 March 2010

The Committee will meet at 1.30 pm in Committee Room 5.

1. Decision on taking business in private: The Committee will decide whether to take items 6 and 7 in private.

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

   the Census (Scotland) Order 2010 (SSI 2010/draft).

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

   the National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2010 (SSI 2010/86);
   the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2010 (SSI 2010/89);
   the Water Quality (Scotland) Regulations 2010 (SSI 2010/95);
   the Parking Attendants (Wearing of Uniforms) (Renfrewshire Council Parking Area) Regulations 2010 (SSI 2010/97);
   the Road Traffic (Parking Adjudicators) (Renfrewshire Council) Regulations 2010 (SSI 2010/98);
   the Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010 (SSI 2010/100);
   the Home Energy Assistance Scheme (Scotland) Amendment Regulations 2010 (SSI 2010/110);
   the Local Government (Allowances and Expenses) (Scotland) Amendment (No. 2) Regulations 2010 (SSI 2010/111).

4. Instruments not subject to parliamentary procedure: The Committee will consider the following—

   the Plant Health (Potatoes) (Scotland) Amendment Order 2010 (SSI 2010/99).
5. **Children's Hearings (Scotland) Bill**: The Committee will consider the delegated powers provisions in this Bill at Stage 1.

6. **Public Services Reform (Scotland) Bill**: The Committee will consider the Scottish Government's response to points raised on the delegated powers provisions in Parts 1 to 2A of this Bill after Stage 2. The Committee will also consider the delegated powers provisions in the remainder of the Bill after Stage 2, and the contents of a draft report.

7. **Housing (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.

Douglas Wands  
Clerk to the Subordinate Legislation Committee  
Room T2.60  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5212  
Email: douglas.wands@scottish.parliament.uk
The papers for this meeting are as follows—

Legal Brief SL/S3/10/10/1 (P)

Summary of Recommendations SL/S3/10/10/2

**Agenda item 3**

Instrument Responses SL/S3/10/10/3

**Agenda item 5**

*Children's Hearings (Scotland) Bill*

*Delegated Powers Memorandum*

**Agenda item 6**

*Public Services Reform (Scotland) Bill (as amended at Stage 2)*

*Supplementary Delegated Powers Memorandum*

**Agenda item 7**

*Housing (Scotland) Bill*

*Delegated Powers Memorandum*
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 Census (Scotland) Order 2010 (SSI 2010/draft)**

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

**Agenda Item 3  Instruments subject to annulment**

**The National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2010 (SSI 2010/86)**

The Committee may wish to report that the drafting is defective in respect that the reference in regulation 3(11)(a)(viii) to sub-paragraph (i) of paragraph 1 of Part B of Schedule 2 should be to sub-paragraph (j) of paragraph 1 of Part B of Schedule 2. The effect of the error is that, with respect to the information etc. to be included in an application by an optician which is a body corporate for inclusion in the second part of the Ophthalmic List (under Part B of Schedule 2), there will not be a requirement on each director of the body corporate to disclose information if that director is, or has been where the outcome was adverse, the subject of any investigation in relation to fraud.

**The Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2010 (SSI 2010/89)**

The Committee may wish to report that this instrument is defectively drafted in so far as—
it confers duties or powers on “the relevant authority” since that expression is not defined for the purposes of the principal regulations;

consequently, it does not properly identify the competent authority for Scotland for the purposes of article 3.1 of Regulation 115/2010; and

it prescribes the wrong concentration for the monitoring obligation in relation to ammonium.

The Committee may wish to welcome the Government’s commitment to make a corrective instrument to resolve these errors prior to this instrument coming into force.

The Water Quality (Scotland) Regulations (SSI 2010/95)

The Committee may wish to report that this instrument does not follow the normal legislative practice. While there is a choice of draft affirmative or negative procedure available under paragraph 2 of schedule 2 to the European Communities Act 1972, the exercise of powers under section 2(2) of that Act which include amendment of primary legislation and the creation of new offences should normally select draft affirmative procedure as appropriate for parliamentary scrutiny.

However, the Minister for Environment has explained in evidence to the Committee at its meeting on 2 March 2010 why it was required to choose negative procedure in this instance.

The Parking Attendants (Wearing of Uniforms) (Renfrewshire Council Parking Area) Regulations 2010 (SSI 2010/97)

The Road Traffic (Parking Adjudicators) (Renfrewshire Council) Regulations 2010 (SSI 2010/98)

The Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010 (SSI 2010/100)

The Home Energy Assistance Scheme (Scotland) Amendment Regulations 2010 (SSI 2010/110)

The Local Government (Allowances and Expenses) (Scotland) Amendment (No. 2) Regulations 2010 (SSI 2010/111)

The Committee may wish to consider if it is content with these instruments.
Agenda Item 4  Instruments not subject to parliamentary procedure

The Plant Health (Potatoes) (Scotland) Amendment Order 2010 (SSI 2010/99)

The Committee may wish to consider if it is content with this instrument.
The National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2010 (SSI 2010/86)

On 12 March 2010 the Scottish Government was asked:
Regulation 3(11)(a)(viii) provides that in sub-paragraph (i) of paragraph 1 of Part B of Schedule 2 of SSI 2006/135, the words specified in the provision have to be inserted after the word “applicant” in the sub-paragraph. Should the reference in regulation 3(11)(a)(viii) be to sub-paragraph (j) of paragraph 1 of Part B of Schedule 2 rather than to sub-paragraph (i) and, if so, what does the Scottish Government consider is the effect of this error?

The Scottish Government responded:
We are grateful to the Committee for drawing this point to our attention. The Scottish Government agrees that the reference in regulation 3(11)(a)(viii) to sub-paragraph (i) of paragraph 1 of Part B of Schedule 2 is a typographical error and the reference should be to sub-paragraph (j). The Scottish Government considers that the effect of this error is that sub-paragraph (i) (as amended) is not entirely clear and sub-paragraph (j) will not be amended as was originally intended. However, we are satisfied that no significant confusion or problems will be caused by this error. The error in sub-paragraph (i) (as amended), while rendering the provision slightly unclear, will not have any effect in practice. Furthermore, we do not consider that any practical problems will be caused by the fact that sub-paragraph (j) is not amended. The intention behind amending sub-paragraph (j) was to ensure that the obligation on an applicant to supply information where they have been the subject of an investigation in relation to fraud, would also apply to all directors of a body corporate, where the applicant is a body corporate. This amendment was for clarification and consistency purposes only and we do not anticipate any practical problems as a result of this amendment not being made.

We anticipate that further amendments will be made to the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006 later this year and intend to amend this error at that stage.
On 9 March 2010 the Scottish Government was asked:
1. What is the reference to “the relevant authority” in new Schedule 1A intended to mean, given that this term is not defined for the purpose of the principal regulations (although we note that it is a defined term for the purpose of the equivalent to the principal regulations in relation to England), and whether the meaning is sufficiently clear?

2. Have the “competent authorities” been clearly identified in these regulations for the purposes of article 3.1 of EU Regulation 115/2010 and the corresponding offence provision contained in regulation 20(2)(d)?

3. Is the entry for ammonium in the table set out in Schedule 9 correct? The corresponding entry in Directive 1998/83/EC set out in Part C of Annex I refers to a concentration or value of 0.50 and not 200 and the unit of measurement is stated to be mg/l and not microgram per litre. It appears that what has been transposed in error is the entry for Aluminium. If so, what action does the Scottish Government propose to take to correct this?

The Scottish Government responded:
We are grateful to the Committee for identifying, in points 1 and 3, errors in these Regulations. We intend to make an amending instrument that will come into force at the same time as these Regulations (9 April 2010).

In relation to point 2, measures relative to article 3 of EU Regulation 115/2010 are to be found in Schedule 1A (inserted into the principal Regulations by these Regulations). This Schedule refers to, and gives powers to, the “relevant authority” (which will now be amended to be the “food authority”). We consider that this means it will be sufficiently clear that the food authority is the competent authority for the purposes of article 3.1 of EU Regulation 115/2010 and the corresponding offence provision.