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

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private.

2. **Instruments subject to annulment:** The Committee will consider the following—
   
   the National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2010 (SSI 2010/128);
   
   the Stipendiary Magistrates (Scotland) Order 2010 (SSI 2010/142);
   
   the Additional Support for Learning (Appropriate Agencies) (Scotland) Amendment Order 2010 (SSI 2010/143);
   
   the Additional Support for Learning (Sources of Information) (Scotland) Order 2010 (SSI 2010/145).

3. **Children's Hearings (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—

PRIVATE PAPER SL/S3/10/12/1 (P)
Summary of Recommendations SL/S3/10/12/2

**Agenda item 2**

Instrument Responses SL/S3/10/12/3

**Agenda Item 3**

Children's Hearings (Scotland) Bill - Government response SL/S3/10/12/4

PRIVATE PAPER SL/S3/10/12/5 (P)
SUBORDINATE LEGISLATION COMMITTEE

12th Meeting, 2010 (Session 3)

Tuesday 20 April 2010

Summary of Recommendations

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

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**Agenda Item 2  Instruments subject to annulment**

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The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2010 (SSI 2010/128)

The Committee may wish to consider if it is satisfied with the response received from the Scottish Government on the question raised, and if it is content with this instrument.

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The Stipendiary Magistrates (Scotland) Order 2010 (SSI 2010/142)

The Additional Support for Learning (Appropriate Agencies) (Scotland) Amendment Order 2010 (SSI 2010/143)

The Additional Support for Learning (Sources of Information) (Scotland) Order 2010 (SSI 2010/145)

The Committee may wish to consider if it is content with these instruments.
INSTRUMENTS SUBJECT TO ANNULMENT

The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2010 (SSI 2010/128)

On 1 April 2010 the Scottish Government was asked:
(i) Given that drugs, medicines and appliances may be prescribed under the chronic medication services, as provided for in paragraph 4(3) of Schedule 1 to SSI 2009/183; and
(ii) Paragraph (1A) only seeks to place additional obligations on pharmacists in relation to the supply of drugs and appliances,

Is it intended that these obligations are to be applied to the supply of medicines under the chronic medication services and, if so, is this clear?

The Scottish Government responded:
SSI 2010/128 inserts new provisions into SSI 2009/183. In doing so, the proposed provisions have been drafted to sit alongside the existing provisions and definitions within SSI 2009/183.

At Regulation 2 (Interpretation and application) of SSI 2009/183 the following definition for drugs is provided:

“drugs” includes medicines and chemical reagents;

As such, we consider that the meaning of the provisions is clear that the obligations extend to the supply of medicines under the chronic medication scheme, as the term “drugs” includes medicines.
Children’s Hearings (Scotland) Bill at Stage 1

Section 10 – Power of Scottish Ministers to change National Convenor’s functions; and
Section 17 – Power of Scottish Ministers to change Principal Reporter’s functions

This power is required to ensure that the two chief office holders in the children’s hearings system are able to respond to unforeseen changing needs and circumstances without the need for primary legislation, which can be time consuming and dependent on finding legislative time. It is crucial that future changes can be accommodated without disruption to the delivery of the children’s hearings service. These powers seek to allow changes to be put into place timeously and in response to changing conditions and circumstances, with proper consultation and subject to the high level of Parliamentary scrutiny associated with the affirmative procedure.

These powers will not be used to impinge upon the independence of either the Principal Reporter or National Convener, as stated in paragraphs 13 and 17 of the Delegated Powers Memorandum (DPM). The powers in sections 10(1)(e) and 17(1)(e), in particular, relate to specifying the manner in which a function is carried out or the time period within which a function is carried out, rather than seeking to alter the substance of a function. For example, this power could be used to specify the frequency of training that the National Convener should offer, or the timescale within which a statement of grounds for referral should be provided by the Principal Reporter prior to a children’s hearing.

Section 30(2) – Safeguarders Panels

This power replicates and builds upon current powers and regulations such as the Panel of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001 (S.S.I No. 476). Some of the substantive rights and duties of safeguarders are included in the Bill itself and these powers in section 30 relate to the consistent and high quality delivery of this key service for children. While we anticipate making regulations using section 30(2)(a)-(f), section 30(2)(g) would be used less frequently, for example to provide clarification of the role of safeguarders who are appointed by sheriffs. However in the
interests of accessible and transparent legislation, it would be pragmatic and appropriate to include all provision about safeguarders in one set of regulations, rather than having two separate sets of regulations (one subject to negative procedure and the other subject to affirmative) given that both sets of regulations would have to be read together. The need for accessible legislation is especially pertinent here, given the high level of lay involvement in the children’s hearings system.

Section 55 – Section 53 and 54: regulations (making further provision in respect of child removed to or kept in place of safety)

This power will support the implementation of policy objectives which are themselves set out in considerable detail in sections 53 and 54. The power in section 55 is to make “further provision” and as such cannot provide for modifications to sections 53 and 54. It is necessary to have this power to allow for “future-proofing” of these emergency child protection measures. We are of the view that this power essentially reflects that in section 62 of the 1995 Act which refers to “regulations concerning the duties in respect of a child of any person removing him to, and keeping him in, a place of safety”. The formulation in section 55 – “regulations [to] make further provision in respect of a child removed to or kept in a place of safety” – is a clearer articulation of what went before. Given the supplementary and operational nature of the section 55 power, we consider negative procedure to be appropriate.

Section 128(5) – Right of relevant person to require a review

Section 128 allows a child, or their relevant person, to require a review of the compulsory supervision order which is in force in respect of that child no earlier than 3 months from the day the order is made, continued or varied. The provision, at subsection (5), allows for a different time period to be set for review of compulsory supervision orders which contain a secure accommodation authorisation. Currently, where a child is subject to a supervision requirement which contains a secure accommodation authorisation, the Principal Reporter must arrange a review hearing within 3 months of the condition being made or continued (regulation 11 of the Secure Accommodation (Scotland) Regulations 1996 (S.S.I. 1996/3255). A shorter time frame only applies if the child is not placed in secure accommodation (if no placement within the preceding 6 weeks the child or their relevant person may require the Principal Reporter to make arrangements to have the supervision requirement reviewed (regulation 12 of the 1996 Regulations)).

The policy intention is that it should be possible to set a shorter period than the current 3 month period for all cases where a secure accommodation authorisation has been granted attaching to a compulsory supervision order as discussed in the DPM. Rather than specifying the period in the Bill, which could be unnecessarily restrictive, the power allows for that period to be reviewed and allows for flexibility to adapt to future needs that may emerge as a result of this new approach.

However, given the Committee’s comments, the Scottish Government will look again at this provision to see if its effect can be clarified further.

Section 143(1) – Compulsory supervision orders etc: further provision
These powers are necessary and they will be used, for example, to make provision similar to that in the Children’s Hearings (Transmission of Information etc) (Scotland) Regulations 1996 (S.I. No. 3260). The powers enable provision that is in furtherance to the making of orders and warrants and relates to their implementation and process rather than the substantive content of these orders and warrants. That substantive content itself is set out in considerable detail in sections 97 to 102 of the Bill. The powers in section 143(1)(a)-(d) are nearly identical to those in section 74(a)-(c) of the 1995 Act re: transmission of information; temporary accommodation; and conveyance of a child. Section 74 was subject to negative procedure and that is appropriate here too. As with section 30 above, splitting these powers between negative and affirmative procedure would not enhance the accessibility of subsequent regulations and the balance of the nature of the provisions points to negative procedure being the appropriate level of scrutiny for the totality of this power.

Section 144(1) – Movement restriction conditions: regulations etc.

The meaning of a movement restriction condition is set out in section 98 of the Bill and establishes that an MRC means a restriction on the child’s movements. Section 144 allows Scottish Ministers to prescribe restrictions that may be imposed as part of that MRC, the principle of which is embedded in primary legislation. Most of the content of the regulations would concern compliance issues, as do the Intensive Support and Monitoring (Scotland) Regulations 2008 (S.S.I. No. 75). However, given that the regulations could prescribe restrictions that may be imposed as part of an MRC the Scottish Government will propose an amendment at stage 2 to ensure that regulations under section 144 will be subject to the affirmative procedure.

Section 146(1) – Secure accommodation: placement in other circumstances

Section 146 of the Bill replicates section 75(1)(a) of the Children (Scotland) Act 1995 (“the 1995 Act”). That power is subject to negative procedure. It was used, in the Secure Accommodation (Scotland) Regulations 1996, to make provision allowing interim placements in secure accommodation for children subject to supervision requirements but not subject to a secure accommodation condition (regulation 6).

The Scottish Government agrees with the Committee that affirmative procedure may be the more appropriate procedure for the exercise of this power given that it could be used to set the criteria to be applied before a child may be placed in secure accommodation in those circumstances. It is also agreed that provisions regulating those matters listed in subsection (2) could potentially have varying effects. Accordingly, the Scottish Government will undertake to bring forward an amendment at Stage 2 to ensure that this power is subject to affirmative procedure.

147(1) – Secure accommodation: regulations

This power was included in the Bill to replicate the effect of section 75(6) of the 1995 Act which is also subject to negative procedure. Section 147 of the Bill is narrower in that it applies only where a child has been placed in secure accommodation by virtue of the Bill.
The power may be used to regulate procedures once a child has already been placed in secure accommodation. However, given the potential breadth of this power, the Scottish Government agrees that affirmative procedure may be appropriate in this case and undertakes to bring forward an amendment at Stage 2 to this effect.

Section 170 – Children’s hearings: procedural rules

This power will be used to develop a complete set of Tribunal Rules for children’s hearings, including pre-hearing panels, and these Rules will be used primarily by lay people. The current Children’s Hearings (Scotland) Rules 1996 (S.I. No. 3261) are extensively used for reference by panel members and Reporters. There is substantial merit in these Rules being contained in the one statutory instrument, to aid accessibility and support good use.

We think it would be artificial, and counter-productive in terms of accessibility, to distinguish provision under section 170(2)(c) re notifying persons of a children’s hearing, from provision under section 170(2)(d) re attendance of those same persons at a children’s hearing - the latter leads on from the former. Similarly the provision of documents under section 170(2)(g) leads on to the withholding of documents under section 170(2)(h) and Rules about these two matters are best contained in the same statutory instrument. It can also be noted that the powers in section 170(2)(d) to (f) re attendance, excusal and excluding are supplementary to the sections of the Bill which already make extensive provision about these matters (sections 72-77). We consider negative procedure appropriate for rules about tribunal procedure,

Section 189 – Power to make supplementary, incidental or consequential provision as is considered appropriate for the purposes of, in consequence of, or for giving full effect to any provision of the Bill

We do not think it necessary that affirmative procedure attach to all potential uses of section 189. Where the supplementary, incidental or consequential provision involves textual amendments to an Act then affirmative procedure is the appropriate level of parliamentary procedure. However for other types of provision, made using these powers and which do not amend primary legislation, we consider negative procedure to represent an appropriate balance between parliamentary scrutiny and the need for some degree of legislative flexibility. There are precedents for this. For example, during the recent implementation of the Adoption and Children (Scotland) Act 2007 there were 2 SSIs making consequential amendments to other legislation. Firstly the Adoption and Children (Scotland) Act 2007 (Modification of Subordinate Legislation) Order 2009 (SSI No. 429) which was subject to negative procedure and secondly the Adoption and Children (Scotland) Act 2007 (Modification of Enactments) Order 2010 (SSI No. 21) which made changes to primary legislation and was subject to affirmative procedure.

Section 191(2) - Power to commence provisions of the Bill

Scottish Ministers accept that the committee has concerns here and undertake to lodge amendments at stage 2 with the effect that a commencement order cannot include incidental, supplementary or consequential provision. Standalone incidental etc. provision would be made under the ancillary powers in section 189. A commencement order could contain transitional, transitory or savings provision and would continue to be
subject to no parliamentary procedure. We consider this to be justified on the basis that transitional, transitory or savings provision is, by definition, temporary and time-limited and is closely related to the section to be commenced, which Parliament has already closely scrutinised.

**Powers of Direction**

We note that this point does not relate to subordinate legislation making powers. We are of the view that the direction powers in sections 13 and 22 are appropriately framed and should not be re-cast as secondary legislation powers. In relation to section 22 this power of direction re SCRA is almost identical to that contained in section 134 of the Local Government etc (Scotland) Act 1994. Given that the Bill carries over that power re SCRA it is appropriate to include a similar direction power re the new body created by the Bill, Children’s Hearings Scotland. These powers of direction could be used, for example, to set strategic direction for either of the NDPBs concerned, and the powers do not, of course, apply to the functions of the National Convenor or the Principal Reporter, whose independence is guaranteed by sections 12 and 21 respectively. The Scottish Ministers will be accountable to Parliament for any use made of these powers of direction.