SUBORDINATE LEGISLATION COMMITTEE

AGENDA

13th Meeting, 2010 (Session 3)

Tuesday 27 April 2010

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

1. **Patient Rights (Scotland) Bill**: The Committee will consider the delegated powers provisions in this Bill at Stage 1.

2. **Interpretation and Legislative Reform (Scotland) Bill**: The Committee will consider the delegated powers provisions in this Bill after Stage 2.

3. **Draft instruments subject to approval**: The Committee will consider the following—
   - the Climate Change (Annual Targets) (Scotland) Order 2010 (SSI 2010/draft);
   - the Climate Change (Limit on Carbon Units) (Scotland) Order 2010 (SSI 2010/draft);
   - the Carbon Accounting Scheme (Scotland) Regulations 2010 (SSI 2010/draft).

4. **Instruments subject to annulment**: The Committee will consider the following—
   - the Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2010 (SSI 2010/144);
   - the Beet Seed (Scotland) (No. 2) Regulations 2010 (SSI 2010/148);
   - the Guar Gum (Restriction on First Placing on the Market) (Scotland) Revocation Regulations 2010 (SSI 2010/153);
   - the Poultry Compartments (Fees) (Scotland) Order 2010 (SSI 2010/151);
   - the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2010 (SSI 2010/152);
   - the Disposal of Land by Local Authorities (Scotland) Regulations 2010 (SSI 2010/160).

5. **Instruments not laid before the Parliament**: The Committee will consider the following—
Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Miscellaneous) 2010 (SSI 2010/136);
Act of Sederunt (Child Care and Maintenance Rules) Amendment (Human Fertilisation and Embryology Act 2008) 2010 (SSI 2010/137);
the Poultry Compartments (Scotland) Order 2010 (SSI 2010/150);
the Housing (Scotland) Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2010 (SSI 2010/159 (C. 8))

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Clerk to the Subordinate Legislation Committee
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The papers for this meeting are as follows—

Legal Brief SL/S3/10/13/1 (P)

Summary of Recommendations SL/S3/10/13/2

**Agenda item 1**

Patient Rights (Scotland) Bill

Delegated Powers Memorandum

**Agenda item 2**

Interpretation and Legislative Reform (Scotland) Bill (as amended at Stage 2)

Supplementary Delegated Powers Memorandum

Paper by the Clerk SL/S3/10/13/3

**Agenda items 4 & 5**

Instrument Responses SL/S3/10/13/4
SUBORDINATE LEGISLATION COMMITTEE

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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 2 Interpretation and Legislative Reform (Scotland) Bill: Supplementary Delegated Powers Memorandum

The Committee is invited to note the supplementary provisions to make subordinate legislation which are contained in the Supplementary Delegated Powers Memorandum and report to the Parliament that it is content with these provisions.

Agenda Item 3 Draft instruments subject to approval

The Climate Change (Annual Targets) (Scotland) Order 2010 (SSI 2010/draft)

The Climate Change (Limit on Carbon Units) (Scotland) Order 2010 (SSI 2010/draft)

The Carbon Accounting Scheme (Scotland) Regulations 2010 (SSI 2010/draft)

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

Agenda Item 4 Instruments subject to annulment

The Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2010 (SSI 2010/144)

The Committee may wish to report that an explanation has been sought from and provided by the Scottish Government in relation to regulation 4(b), so far as section 8A(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 as referred to in that regulation has not yet been brought into force. The Committee is
content with the explanation provided, as the Scottish Government has confirmed that section 8A shall be brought into force on the same date as these Regulations.

The Beet Seed (Scotland) (No. 2) Regulations 2010 (SSI 2010/148)

The Committee may wish to be content for its interests with the reason given for the failure to comply with the 21 day rule (article 10(2) of the Transitional Order SI 1999/1096). The Committee may wish to find this instrument satisfactory.

The Guar Gum (Restriction on First Placing on the Market) (Scotland) Revocation Regulations 2010 (SSI 2010/153)

The Committee may wish to be content with this instrument and also, for its interest, with the explanation provided in the letter to the Presiding Officer concerning the breach of the 21 day rule.

The Poultry Compartments (Fees) (Scotland) Order 2010 (SSI 2010/151)


The Disposal of Land by Local Authorities (Scotland) Regulations 2010 (SSI 2010/160)

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. 3) (Miscellaneous) 2010 (SSI 2010/136)

The Committee may wish to find the explanations provided by the Lord President’s Private Office in respect of questions one and three to be satisfactory. However, the Committee may wish to draw the instrument to the attention of the Parliament on the grounds that a drafting error has been made in respect that the cross-references in rules 97.9(1), 97.10(2)(a) and 97.12(3)(b) should be to rule 97.8, to cover a reporting officer appointed under rule 97.8(1) or 97.8(4). The Committee may wish to note that the Lord President’s Private Office intends to correct this error when the opportunity arises.
The Committee may wish to find the explanations provided by the Lord President’s Private Office in respect of questions one and three to be satisfactory. However, the Committee may wish to draw the instrument to the attention of the Parliament on the grounds that a drafting error has been made in respect that the cross-references in rules 2.51(1), 2.52(2)(a) and 2.54(3)(b) should be to rule 2.50, to cover a reporting officer appointed under rule 2.50(1) or 2.50(4). The Committee may wish to note that the Lord President’s Private Office intends to correct this error when the opportunity arises.

The Poultry Compartments (Scotland) Order 2010 (SSI 2010/150)

The Housing (Scotland) Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2010 (SSI 2010/159)

The Committee may wish to consider if it is content with these instruments.
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Paper by the Clerk

INTERPRETATION AND LEGISLATIVE REFORM (SCOTLAND) BILL:
SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Background and progress of the Bill

1. The Subordinate Legislation Committee was designated as lead committee in consideration of the Interpretation and Legislative Reform (Scotland) Bill at Stage 1. Under Rule 9.6.1 of Standing Orders, the Committee submitted its Stage 1 report on the general principles of the Bill to the Parliament on 10 December 2009. The Committee considered and reported on the provisions to make subordinate legislation as part of this process.

2. The Bill passed Stage 1 on 13 January 2010. The Bill was referred to the Committee at Stage 2 which took place on 16 March 2010. Stage 3 is scheduled for 28 April 2010.

Supplementary Delegated Powers Memorandum

3. Under Rule 9.7.9 the Committee is obliged to consider the provisions conferring power to make subordinate legislation either inserted or altered at Stage 2 and report to the Parliament on these provisions.

4. The supplementary provisions are set out below and further details are provided in the Supplementary Delegated Powers Memorandum.

Provisions conferring power to make subordinate legislation removed at Stage 2

Section 47 – Pre-consolidation modification of enactments

Provisions conferring power to make subordinate legislation amended at Stage 2

Section 1 – Application of Part 1
Section 42 – Publication, numbering and citation: regulations

Provisions conferring power to make subordinate legislation introduced at Stage 2

Section 30(5) – Other instruments laid before the Parliament
Section 56A – Orders
Section 56B – Ancillary provision
Conclusion

5. Given the Committee’s role as lead committee at Stage 2, members have already had the opportunity to consider these supplementary provisions in detail during Stage 2 consideration of amendments. A legal briefing has therefore not been prepared on these provisions.

6. Members are invited to note the supplementary provisions to make subordinate legislation which are contained in the Supplementary Delegated Powers Memorandum and report to the Parliament that it is content with these provisions.

Irene Fleming
Clerk to the Committee
INSTRUMENTS SUBJECT TO ANNULMENT

The Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2010 (SSI 2010/144)

On 15 April 2010 the Scottish Government was asked:

In relation to the insertion of the Schedule sub-paragraph 1(f) to the 2005 Regulations, by regulation 4(b) –

(a) whether section 8A (as inserted by section 7 of the 2009 Act) has been brought into force as at the date of making these Regulations, and if not, can it be confirmed when it is proposed to bring the section into force?

(b) the effect of this provision that a decision of an education authority to refuse a request for an assessment or examination as referred to in section 8A(1)(c) of the 2004 Act is a “specified matter” in terms of the 2005 Regulations, if that section is not in force at the date of making these Regulations, and at that date it is not clear if and when it will be brought into force?

The Scottish Government responded:

(a) It is intended to bring section 8A (as inserted by section 7 of the 2009 Act) into force on the same date as the date on which these regulations come into force.

(b) The effect of section 8A not being commenced at the date of making the Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2010 is that the new paragraphs 1(f) and (g) of the Schedule to the 1995 Regulations are currently of no effect and that position will remain until the planned commencement of the paragraphs takes place.

However, the intention is to bring the remaining provisions of the 2009 Act which have not yet been commenced, including section 8A, into effect on the date of the commencement of these regulations rather than commence section 8A in isolation. The effect will be that section 8A will be commenced on the same day as that on which the regulations come into effect. There will therefore be no gap in time between the coming into effect of section 8A and the coming into effect of the regulations.

Provided section 8A is commenced in August 2010, the effect would be that a decision of an education authority to refuse a request for an assessment or examination as referred to in section 8A(1) of the 2009 Act could be referred to the dispute resolution procedure provided for in the Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 (S.S.I. 2005/501). The regulations add this kind of refusal to the matters which can be dealt with under dispute resolution.
The Scottish Government hopes that this explains the position with regard to the commencement of the paragraphs in question and otherwise considers that the regulations clearly express the policy intention.

INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT

Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Miscellaneous) 2010 (SSI 2010/136)

On 15 April 2010 the Lord President’s Private Office was asked:
1. In line one of new rule 97.9(1) (Duties of a reporting officer and curator ad litem) what is the reason for the word “other” in advance of the words “duties of a reporting officer”? What are the duties of a reporting officer, other than the duties set out in rule 97.9(1) (or ordered by the court under new rule 97.12(2)(iii))? If there are no duties other than those set out in rule 97.9(1), what does the Lord President’s Private Office consider to be the meaning and effect of the word ‘other’ in line one?

2. New rule 97.9(1) specifies the duties of a reporting officer “appointed under rule 97.8(1)”. Rule 97.8(1) relates to the appointment of a reporting officer on the presentation of a petition. However, rule 97.8(4) provides that a person may, before presenting the petition, apply for the appointment of a reporting officer by the Lord Ordinary. Is it intended that the provisions of rule 97.9(1) are to be applied to a reporting officer appointed under rule 97.8(4), and, if so, what is considered to be the effect of the reference only to a reporting officer appointed under rule 97.8(1)?

The same considerations apply with respect to the reference to a reporting officer appointed under rule 97.8(1) in rule 97.10(2)(a) and 97.12(3)(b).

3. What is intended by the reference in new rule 97.13 to “an application under section 22(3)” of the 2007 Act, given that section 22 relates to restrictions on removal while an application for a parental order is pending and the reference to an application (in section 22(3)(b)) appears to be a reference to that pending application for the parental order but not to any other application? Is it intended that the words “for leave for the removal” should appear before the words “under section 22(3)” in line one of rule 97.13 and, if so, what is considered to be the effect of this omission?

The Lord President’s Private Office responded:
1. In this response the following abbreviations are used:-

“2007 Act” means the Adoption and Children (Scotland) Act 2007;
“2008 Act” means the Human Fertilisation and Embryology Act 2008;
“2009 Act of Sederunt” means the Act of Sederunt (Rules of the Court of Session Amendment No. 7) (Adoption and Children (Scotland) Act 2007) 2009 (S.S.I. 2009/283);

2. The provisions in S.S.I. 2010/136 are consequent to the 2008 Act and the 2010 Regulations, made under sections 55 and 61 of the 2008 Act. Regulation 4 of, and Schedule 3 to, the 2010 Regulations apply with modifications certain provisions of the
2007 Act in relation to parental orders. Consequently, the provisions in S.S.I. 2010/136 are modelled on the equivalent rules in respect of the 2007 Act, namely the Act of Sederunt (Rules of the Court of Session Amendment No. 7) (Adoption and Children (Scotland) Act 2007) 2009 (S.S.I. 2009/283). The points raised at numbers 1 and 3 apply equally to the 2009 Act of Sederunt. Given both Acts of Sederunt result from the 2007 Act (albeit as applied with modifications in relation to parental orders by the 2010 Regulations) it was desirable to ensure that the provisions of the respective Acts of Sederunt were, so far as possible, consistent.

3. In relation to the first point, the Lord President’s Private Office takes the view that the word "other" in advance of the words “duties of a reporting officer” is required in rule 97.9(1) given that section 108(1)(b) of the 2007 Act (as modified and applied in relation to applications for parental orders by regulation 4 of, and Schedule 3 to, the 2010 Regulations) prescribes that rules of court must provide for the appointment, in such cases as are prescribed by the rules-

“of a person to act as reporting officer for the purpose of witnessing agreements to the parental order and performing such other duties as may be so prescribed.”

Given section 108(1)(b) (as modified and applied), the Lord President’s Private Office is of the view that the wording of rule 97.9(1) is appropriate.

4. In relation to the second point, the Lord President’s Private Office acknowledges that the cross-reference in rules 97.9(1), 97.10(2)(a) and 97.12(3)(b) should be to rule 97.8, to cover a reporting officer appointed under rule 97.8(1) or 97.8(4). We shall correct this error when the opportunity arises. We are grateful to the Committee for pointing out this error.

5. In relation to the third point, the Lord President’s Private Office takes the view that, while it may have been more precisely phrased, the reference in rule 97.13 to an “application under section 22(3)” of the 2007 Act as modified and applied in relation to applications for parental orders by regulation 4 of, and Schedule 3 to, the 2010 Regulations, is clearly a reference to an application for leave to remove the child while the application for a parental order is pending. Accordingly, the Lord President’s Private Office considers that the terms of rule 97.13 are appropriate and no amendment is required.

Act of Sederunt (Child Care and Maintenance Rules) Amendment (Human Fertilisation and Embryology Act 2008) 2010 (SSI 2010/137)

On 15 April 2010 the Lord President’s Office was asked:

1. In line one of new rule 2.51(1) (Duties of a reporting officer and curator ad litem) what is the reason for the word “other” in advance of the words “duties of a reporting officer”? What are the duties of a reporting officer, other than the duties set out in rule 2.51(1) (or ordered by the court under new rule 2.54(2)(c)? If there are no duties other than those set out in rule 2.51(1), what does the Lord President’s Private Office consider to be the meaning and effect of the word “other” in line one?

2. New rule 2.51(1) specifies the duties of a reporting officer “appointed under rule 2.50(1)” Rule 2.50(1) relates to the appointment of a reporting officer on the lodging of
a petition. However, rule 2.50(4) provides that the sheriff may, on cause shown, appoint a reporting officer prior to the lodging of a petition. Is it intended that the provisions of rule 2.51(1) are to be applied to a reporting officer appointed under rule 2.50(4) and, if so, what is considered to be the effect of the reference only to a reporting officer appointed under rule 2.50(1)?

The same considerations apply with respect to the reference to a reporting officer appointed under rule 2.50(1) in rule 2.52(2)(a) and 2.54(3)(b).

3. What is intended by the reference in new rule 2.55 to “an application under section 22(3)” of the 2007 Act, given that section 22 relates to restrictions on removal while an application for a parental order is pending and the reference to an application (in section 22(3)(b)) appears to be a reference to that pending application for the parental order but not to any other application? Is it intended that the words “for leave for the removal” should appear before the words “under section 22(3)” in line one of rule 2.55 and, if so, what is considered to be the effect of this omission?

The Lord President’s Private Office responded:
1. In this response the following abbreviations are used:-

   “2007 Act” means the Adoption and Children (Scotland) Act 2007;
   “2008 Act” means the Human Fertilisation and Embryology Act 2008;
   “2009 Act of Sederunt” means the Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009 (S.S.I. 2009/284);

2. The provisions in S.S.I. 2010/137 are consequent to the 2008 Act and the 2010 Regulations, made under sections 55 and 61 of the 2008 Act. Regulation 4 of, and Schedule 3 to, the 2010 Regulations apply with modifications certain provisions of the 2007 Act in relation to parental orders. Consequently, the provisions in S.S.I. 2010/137 are modelled on the equivalent rules in respect of the 2007 Act, namely the Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009 (S.S.I. 2009/284). The points raised at numbers 1 and 3 apply equally to the 2009 Act of Sederunt. Given both Acts of Sederunt result from the 2007 Act (albeit as applied with modifications in relation to parental orders by the 2010 Regulations) it was desirable to ensure that the provisions of the respective Acts of Sederunt were, so far as possible, consistent.

3. In relation to the first point, the Lord President’s Private Office takes the view that the word "other" in advance of the words “duties of a reporting officer” in rule 2.51(1) is required given that section 108(1)(b) of the 2007 Act (as modified and applied in relation to applications for parental orders by regulation 4 of, and Schedule 3 to, the 2010 Regulations) prescribes that rules of court must provide for the appointment, in such cases as are prescribed by the rules-

   “of a person to act as reporting officer for the purpose of witnessing agreements to the parental order and performing such other duties as may be so prescribed.”
Given section 108(1)(b) (as modified and applied), the Lord President’s Private Office is of the view that the wording of rule 2.51(1) is appropriate.

4. In relation to the second point, the Lord President’s Private Office acknowledges that the cross-reference in rules 2.51(1), 2.52(2)(a) and 2.54(3)(b) should be to rule 2.50, to cover a reporting officer appointed under rule 2.50(1) or 2.50(4). We shall correct this error when the opportunity arises. We are grateful to the Committee for pointing out this error.

5. In relation to the third point, the Lord President’s Private Office takes the view that, while it may have been more precisely phrased, the reference in rule 2.55(1) to an “application under section 22(3)” of the 2007 Act as modified and applied in relation to applications for parental orders by regulation 4 of, and Schedule 3 to, the 2010 Regulations, is clearly a reference to an application for leave to remove the child while the application for a parental order is pending. Accordingly, the Lord President’s Private Office considers that the terms of rule 2.55(1) are appropriate and no amendment is required.