SUBORDINATE LEGISLATION COMMITTEE

AGENDA

19th Meeting, 2010 (Session 3)

Tuesday 8 June 2010

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

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

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

   the National Health Service (Reimbursement of the Cost of EEA Treatment) (Scotland) Regulations 2010 (SSI 2010/draft).

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

   the Glasgow Caledonian University Order of Council 2010 (SSI 2010/198);
   the Criminal Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2010 (SSI 2010/212).

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

   Act of Sederunt (Rules of the Court of Session Amendment No. 4) (Miscellaneous) 2010 (SSI 2010/205).

Irene Fleming
Clerk to the Subordinate Legislation Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 248 5212
Email: irene.fleming@scottish.parliament.uk
The papers for this meeting are as follows—

Legal Brief

Summary of Recommendations

**Agenda item 1**

Historic Environment (Amendment) (Scotland) Bill as introduced

Delegated powers memorandum

**Agenda items 2 and 4**

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

**Agenda Item 1  Historic Environment (Amendment) (Scotland) Bill**

Section 15 – Scheduled Monument Consent: regulations as respects applications, etc.

The Committee may wish to ask the Scottish Government—

Given the brief explanation in the Delegated Powers Memorandum (at paragraph 19) that these powers “will bring the scheduled monument consent application and granting process into line with the model used in the listed building and planning legislation”—

- On section 15(2), what are those similar model provisions in relation to the manner, form and content of planning permission and listed building consent (as opposed to applications for such permission or consent)? Why does this power require to be taken - why is it desirable to be consistent between those provisions and those for scheduled monument consent?

- Can it be explained why the power in section 15(3) is proposed as a discretion to make regulations rather than a requirement, given that presently on the face of paragraph 2 of Schedule 1 of the 1979 Act, Ministers have power to refuse to entertain an application for scheduled monument consent, unless it is accompanied by the certificates as specified in that paragraph?

**Agenda Item 2  Draft instruments subject to approval**

The National Health Service (Reimbursement of the Cost of EEA Treatment) (Scotland) Regulations 2010 (SSI 2010/draft)
The Committee may wish to report that it is satisfied with the Scottish Government’s response to questions 1 and 2 and to note that there is an error in the reference to the relevant EU Regulation in the Explanatory Note which could be corrected when the instrument is made.

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**Agenda Item 3  Instruments subject to annulment**

The Glasgow Caledonian University Order of Council 2010 (SSI 2010/198)

The Criminal Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2010 (SSI 2010/212)

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

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**Agenda Item 4  Instruments not laid before the Parliament**

Act of Sederunt (Rules of the Court of Session Amendment No. 4) (Miscellaneous) 2010 (SSI 2010/205)

The Committee may wish to report that the Lord President’s Private Office has acknowledged that there are minor drafting errors in the instrument which it proposes to address when a suitable opportunity arises.

The Committee may also wish to note that this instrument fulfils the commitment to correct an error in SSI 2010/136.

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SUBORDINATE LEGISLATION COMMITTEE

19th Meeting, 2010 (Session 3)

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Instrument Responses

DRAFT INSTRUMENTS SUBJECT TO APPROVAL

The National Health Service (Reimbursement of the Cost of EEA Treatment) (Scotland) Regulations 2010 (SSI 2010/draft)

On 27 May 2010 the Scottish Government was asked:

1. To explain why the duty to reimburse the cost of services imposed by new section 75B only extends to services provided in an EEA state other than the UK and does not extend to Switzerland, when the power to regulate the repayment of charges and payment of travelling expenses covers services provided in another EEA state and Switzerland, and Regulation 883/2004 is of relevance to EEA states and Switzerland.

2. To confirm that the functions conferred on the Health Board by new section 2CA to secure the provision of services outside Scotland are only intended to be exercisable in Scotland - since if any functions were to be exercisable beyond Scotland the extent provision specify that and that the regulations only extend beyond Scotland as a matter of Scots law.

3. To explain the reference to services received under Regulation 1408/71 in the Explanatory Note given that the regulations refer to Regulation 883/2004.

The Scottish Government responded:

1. Article 56 of the Treaty on the Function of the European Union, which gives rise to the obligations set out in the Watts case, does not apply to Switzerland which is not a member of the European Union or the European Economic Area. The duty to reimburse the cost of services imposed by the new section 75B has therefore not been extended to Switzerland.

   Switzerland is however linked to the EU by a series of bilateral agreements and in particular participates in the scheme under Article 22 of Regulation (EEC) 1408/71, replaced since 1 May 2010 by Articles 20(2) and 27(3) of Regulation (EC) 883/2004, which co-ordinates the social security systems of Member States. The duty to make payments under these regulations is separate from any obligation under Article 56. The inclusion of Switzerland in the amendment to section 75A is necessary to refer to obligations under these regulations.

2. The Scottish Government confirms that the functions conferred on a Health Board by the new section 2CA, to secure the provision of services outside Scotland, are only intended to be exercisable in Scotland.

3. The Scottish Government explains that, as of 1 May 2010, Regulation 1408/71 was replaced by Regulation 883/2004 and regrets that this was not made clear in the
Explanatory Note.

INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT

Act of Sederunt (Rules of the Court of Session Amendment No. 4) (Miscellaneous) 2010 (SSI 2010/205)

On 27 May 2010, the Lord President's Private Office was asked:

1. In relation to the amendment made to rule 46.3(1) by paragraph 5(5)(b), does the word “parties” not occur on more than two occasions? Is the addition of the word “other” prior to “parties” intended to have effect in relation to all references or only in relation to the first two?

2. Is the reference to rule 62.59(1) in new rule 62.60(4) meant to be a reference to rule 62.58(1)?

3. If these are errors, does the Lord President’s Private Office intend to correct them?

The Lord President’s Private Office responded:

1. The word “parties” occurs on more than two occasions in rule 46.3(1). The intention is that the word “other” should be inserted prior to all references to “parties” in that rule.

2. The reference to rule 62.59(1) in new rule 62.60(4) should be a reference to rule 62.58(1).

3. The Lord President's Private Office is grateful to the Committee for raising these points. Although the infelicities are unlikely to cause any difficulties in practice, we shall address them when a suitable opportunity arises.