SUBORDINATE LEGISLATION COMMITTEE

AGENDA

20th Meeting, 2010 (Session 3)

Tuesday 15 June 2010

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

1. **Alcohol etc. (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.

2. **Draft instruments subject to approval:** The Committee will consider the following—
   - the Applications by Creditors (Pre-Action Requirements) (Scotland) Order 2010 (SSI 2010/draft);

3. **Instruments subject to annulment:** The Committee will consider the following—
   - the Census (Scotland) Regulations 2010 (SSI 2010/211);
   - the Census (Scotland) Amendment Regulations 2010 (SSI 2010/215);
   - the Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010 (SSI 2010/213);
   - the Knives etc. (Disposal of Forfeited Property) (Scotland) Order 2010 (SSI 2010/214);
   - the Seed (Scotland) (Miscellaneous Amendments) Regulations 2010 (SSI 2010/219);
   - the National Lottery etc. Act 1993 (Amendment of Section 23) (Creative Scotland) Order 2010 (SSI 2010/223);
   - the Scottish Social Services Council (Appointments, Procedure and Access to the Register) Amendment Regulations 2010 (SSI 2010/224);
   - the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010 (SSI 2010/238).

4. **Instruments not laid before the Parliament:** The Committee will consider the following—
the Public Services Reform (Scotland) Act 2010 (Commencement No. 1) Order 2010 (SSI 2010/221 (C.11));
the Marine (Scotland) Act 2010 (Commencement No. 1) Order 2010 (SSI 2010/230 (C.12));
the Pollution Prevention and Control (Designation of Classification of Substances and Mixtures Directive) (Scotland) Order 2010 (SSI 2010/235).

Irene Fleming
Clerk to the Subordinate Legislation Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 248 5209
Email: irene.fleming@scottish.parliament.uk
The papers for this meeting are as follows—

**Agenda Items 1-4**

<table>
<thead>
<tr>
<th>Title</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRIVATE PAPER</td>
<td>SL/S3/10/20/1 (P)</td>
</tr>
<tr>
<td>Summary of Recommendations</td>
<td>SL/S3/10/20/2</td>
</tr>
</tbody>
</table>

**Agenda Item 1**

<table>
<thead>
<tr>
<th>Title</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol etc. (Scotland) Bill - Paper by the Clerk</td>
<td>SL/S3/10/20/3</td>
</tr>
</tbody>
</table>

**Agenda Item 3**

<table>
<thead>
<tr>
<th>Title</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government Responses</td>
<td>SL/S3/10/20/4</td>
</tr>
</tbody>
</table>
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 1**  Alcohol etc. (Scotland) Bill

The Committee may wish to note the Scottish Government’s response.

---

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

- The Applications by Creditors (Pre-Action Requirements) (Scotland) Order 2010 (SSI 2010/draft)
- The Home Owner and Debtor Protection (Scotland) Act 2010 (Consequential Provisions) Order 2010 (SSI 2010/draft)

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

---

**Agenda Item 3**  Instruments subject to annulment

- The Census (Scotland) Regulations 2010 (SSI 2010/211)
- The Census (Scotland) Amendment Regulations 2010 (SSI 2010/215)

The Committee may wish to report that it considered that the drafting of the original instrument was defective in respect that the second Individual Questionnaire (HI) within Schedule 2 is incomplete. In particular, as it stands that Questionnaire does not cover the particulars set out at item 23 of Schedule 2 to the Census (Scotland) Order 2010.

The Committee may also wish to report that it considered that the instrument’s meaning could be clearer in two respects—
Firstly, Schedule 1 prescribes the title of the form for each category of prescribed person and regulation 5 provides that the form is set out in Schedule 2 under that title. However, the forms at Schedule 2 are not set out under the specific titles given in Schedule 1.

Secondly, that the reference in regulation 15(4)(c) to “reply-paid envelope” is intended to cover both “reply-paid envelope” and “reply-paid individual envelope” and could be made clearer either by specific reference to “reply-paid individual envelope” or by simply referring to “the envelope provided.”

The Committee may wish to report that these issues have been addressed subsequently to its satisfaction in the Census (Scotland) Amendment Regulations 2010 (SSI 2010/215) and to welcome the swift action taken to correct SSI 2010/211.

The Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010 (SSI 2010/213)

While these Regulations, which are subject to negative procedure, do not provide for a specific coming into force date, the Committee might be content with the response from the Scottish Government that they will not be brought into force within 21 days of laying.

While the amendment which is made by these Regulations with respect to section 14(2) of the Family Law Act 1986 repeats certain words of text, the Committee may consider that the repetition concerned is not such as to render the meaning of the provision concerned, overall, to be unclear. The Committee may therefore wish to report this instrument on the basis that the provision could have been made clearer, by means of avoiding a repetition of text, but that the duplication concerned is not considered such as to be likely to affect the validity or operation of the instrument.

The Knives etc. (Disposal of Forfeited Property) (Scotland) Order 2010 (SSI 2010/214)

The Committee may wish to report this instrument as follows:

- It accepts the explanation provided by the Scottish Government as to why the instrument makes no provision as to the vesting of property which is not the subject of an application for a recovery order.

- It considers that in so far as article 4 seeks to apply to property in respect of which a recovery order has been granted there is a doubt as to whether the instrument is intra vires.
• While the Committee accepts that there is no immediate need to correct the instrument, it considers it would be good practice to do so promptly.

The Seed (Scotland) (Miscellaneous Amendments) Regulations 2010 (SSI 2010/219)

The National Lottery etc. Act 1993 (Amendment of Section 23) (Creative Scotland) Order 2010 (SSI 2010/223)

The Scottish Social Services Council (Appointments, Procedure and Access to the Register) Amendment Regulations 2010 (SSI 2010/224)

The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010 (SSI 2010/238)

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

Agenda Item 4 Instruments not laid before the Parliament

The Public Services Reform (Scotland) Act 2010 (Commencement No. 1) Order 2010 (SSI 2010/221)

The Marine (Scotland) Act 2010 (Commencement No. 1) Order 2010 (SSI 2010/230)

The Pollution Prevention and Control (Designation of Classification of Substances and Mixtures Directive) (Scotland) Order 2010 (SSI 2010/235)

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

1. Under Rule 9.6.2 of Standing Orders, the Subordinate Legislation Committee submitted its report on the delegated powers provisions in the Alcohol etc. (Scotland) Bill to the Health and Sport Committee, as lead committee for the Bill, on 11 February 2010.

2. On 5 May 2010, Gary Cox, the Head of the Alcohol etc. (Scotland) Bill team, wrote to the Clerk of the Subordinate Legislation Committee responding to the Committee’s Stage 1 report.

Scottish Government Response

3. The response indicates that the Scottish Government will bring forward the necessary amendment to change the procedure from negative to affirmative in relation to the delegated powers set out in section 7 (Occasional licences: modification of mandatory conditions), as recommended by the Committee.

4. The response also notes the Committee’s intention to re-examine the powers in section 9 (Premises licences: variation of conditions) and section 10 (Licence holders: social responsibility levy) after Stage 2.

5. With regard to section 1 (Minimum price of alcohol), the response indicates that the Government’s position remains unchanged in relation to these powers. The response also refers to correspondence between the Cabinet Secretary for Health and Wellbeing and the Health and Sport Committee on the issue which is attached for reference. Members should also note that the Parliament resolved, following the Stage 1 debate on the Bill on 10 June, that section 1 should be removed at Stage 2.

Progress of the Bill

6. The Bill passed Stage 1 on 10 June 2010. Stage 2 is not expected to start until September.

7. The Subordinate Legislation Committee will give further consideration to the delegated powers contained in the Bill after Stage 2.
Recommendation

8. Members are invited to note the Scottish Government’s response to the Subordinate Legislation Committee’s report on the Alcohol etc. (Scotland) Bill at Stage 1.

Irene Fleming
Clerk to the Committee
Alcohol etc. (Scotland) Bill
Scottish Government response to SLC Stage 1 Report

1. The Subordinate Legislation Committee published its report on the Alcohol etc. (Scotland) Bill on 24 February. The Scottish Government was asked to respond to the report before Stage 2 of the Bill process. This letter responds to the recommendations and observations made by the Committee.

Section 1 - Minimum price of alcohol

2. The Committee report concluded:

- “The Committee draws to the attention of the lead committee that it is apparent, from evidence given by Scottish Government officials, that a careful and complex assessment of any particular minimum price and alternative options will be required in order to determine whether any exercise of the power will be compatible with Community law and therefore within devolved competence. In the absence of a proposed minimum price and supporting evidence it is not clear to the Committee that it has been shown by the Government that the power introduced by section 1 can be exercised within competence, although the Committee accepts that it could be possible to do so.”

3. The Scottish Government has set out, in a letter dated 21 April 2010 from the Cabinet Secretary for Health and Wellbeing to the Health and Sport Committee, further details on what will be required for a minimum price for alcohol based on a minimum price per unit of alcohol to comply with European law. We consider that this form of minimum pricing is capable of complying with European law. The Scottish Government welcomes the Committee’s acceptance that it could be possible for the power in section 1 to be exercised within competence and further notes that this issue has been considered in some detail by the lead Committee.

4. The Committee’s conclusion on section 1 of the Bill continued:

- “The use of affirmative procedure...would not afford the Parliament sufficient opportunity to conduct full and proper scrutiny of the minimum price of alcohol proposed by the Scottish Ministers. The Committee therefore recommends that the initial price per unit should be set out in the Bill so that the supporting evidence can be subject to full parliamentary scrutiny. This could be facilitated if the Scottish Ministers were to announce the initial price prior to the Stage 2 proceedings. Subsequent orders varying the minimum price per unit should be subject to super-affirmative procedure.”

5. Stage 1 involves consideration of the Bill’s general principles and the lead Committee has taken a great deal of evidence on the principle of minimum pricing as a means of reducing alcohol consumption and harm. To inform that debate, the lead Committee has been presented with a range of information and evidence including modelling work which shows the possible impact of
minimum pricing based on a range of prices. The Scottish Government does not believe that the consideration of the principles of minimum pricing has in any way been hampered in the absence of a decision about a specific minimum price per unit of alcohol.

6. The Cabinet Secretary for Health and Wellbeing informed Parliament on 29 April 2010 that the Scottish Government intends to announce the specific minimum price per unit of alcohol before a final vote is taken by the Parliament. Once the Bill is passed any order to specify a minimum price per unit of alcohol will be subject to the affirmative resolution procedure, allowing Parliament to scrutinise the specific price. We have also made clear that any order would be accompanied by a regulatory and competition impact assessment tailored to the price being proposed. The Cabinet Secretary has also noted that the Scottish Government must take the decision on a specific minimum price per unit of alcohol in a careful and considered way, taking into account all the evidence. That process is running in parallel with the Bill process.

Section 6 - Premises licences: modification of mandatory conditions

7. The Committee considered that

- “the proposed amendment to the power to modify mandatory conditions in relation to premises licences is acceptable in principle and it is appropriate that the power remains subject to affirmative procedure.”

8. The Scottish Government welcomes the Committee’s view.

Section 7 - Occasional licences: modification of mandatory conditions

9. The Committee recommended:

- “that the power currently available under section 60 of the Licensing (Scotland) Act 2005 to vary the mandatory conditions which apply to all occasional licences should be made subject to the affirmative procedure.”

10. The Scottish Government accepts the Committee’s recommendation and intends to bring forward an amendment at Stage 2 to give it effect.

Section 9 – Premises licences: variation of conditions

11. The Committee:

- invited the lead Committee to seek further evidence from the Scottish Government for the power in section 9, to prescribe those areas in respect of which licensing boards may vary the conditions of operation for all or a particular group of premises’ licences. Should the power
remain in the Bill, the Committee will consider its scope again after Stage 2.

12. The Scottish Government notes that the lead Committee may seek further evidence, and further notes the Subordinate Legislation Committee’s intention to consider the scope of this power again after Stage 2. I can reaffirm that the Scottish Government intends that this power is to be used so as to enable Licensing Boards to impose licence conditions restricting off-sales to people age under 21 and at present no representations have been received about other areas in which the power could be exercised.

Section 10 – Licence holders: social responsibility levy

13. The Committee concluded that it:

- Does not consider that the question of the appropriateness of using subordinate legislation for the purpose of establishing a Social Responsibility Levy has been adequately addressed by the Scottish Government. The Bill and accompanying documents provide only limited information about the principles of the levy; the details of the policy are still being developed by the Scottish Government. As a minimum, the Committee would expect details of the levy, such as who is to be responsible for administering it, the basis on which liability to pay it will be determined, the maximum charge permitted, the implications for non-payment and any right of appeal to be set out in the bill itself. The Committee draws to the attention of the lead Committee the evidence received from the Scottish Government regarding the proposed use of subordinate legislation for the purpose of establishing a social responsibility levy. Should the power remain in the Bill, the Committee will consider its scope again after Stage 2.

14. The Scottish Government notes the Committee’s views on this section. These issues are now being pursued by the lead Committee and the Cabinet Secretary for Health and Wellbeing has since provided further information to the lead Committee. The Scottish Government further notes the Committee’s intention to revisit the scope of this section after Stage 2.

Sections 11 and 14

15. The Scottish Government notes the Committee’s comments.

16. I am copying this letter to the Clerk to the Health and Sport Committee.
SUBORDINATE LEGISLATION COMMITTEE

20th Meeting, 2010 (Session 3)

Tuesday 15 June 2010

Instrument Responses

INSTRUMENTS SUBJECT TO ANNULMENT

The Census (Scotland) Regulations 2010 (SSI 2010/211)

On 27 May 2010 the Scottish Government was asked:

1. Regulation 5(1) and Schedules 1 and 2-

Regulation 5 and Schedule 1 prescribe the forms which must be completed by prescribed persons. Schedule 1 provides the title of the form for each category of prescribed person. Regulation 5 explains that the form is set out in Schedule 2 under that title.

However, the forms at Schedule 2 are not set out under the titles specified in Schedule 1. Schedule 1 refers to “Household Form”, “Communal Establishment Individual Form”, “Individual Form” and “Communal Establishment Form”. The forms at Schedule 2 are named, “Household Questionnaire”, “Communal Establishment Questionnaire”, “Individual Questionnaire” and “Individual Questionnaire”.

The different titles given to the forms in Schedule 2, as opposed to Schedule 1, could create a lack of clarity. In particular, that fact that two different forms are titled “Individual Form” could cause confusion. This is of particular significance given that under the Census Act 1920 criminal sanctions apply to contravention of these Regulations.

Does the Scottish Government consider the prescription of the appropriate form for each category of prescribed person is sufficiently clear?

2. Schedule 2 - Individual Questionnaire (HI)

We note that the second Individual Questionnaire within Schedule 2 is incomplete. As it stands, this form does not cover the particulars set out at items 23 and 33 of Schedule 2 to the Census (Scotland) Order 2010.

Can the Scottish Government confirm that it will amend the regulations to prescribe the form in full?

3. Regulation 15(4)(c)-

Regulation 2(1) provides that a reply-paid envelope is the envelope to be used for Household Forms, however a reply-paid individual envelope is to be used for Individual Forms. Is the reference to “reply-paid envelope” in regulation 15(4)(c ) intended to cover both reply-paid envelope and reply-paid individual envelope and is this sufficiently clear?
The Scottish Government responded:
The Government thanks the Committee for pointing out the omission of the last page of the Individual Questionnaire (HI) in Schedule 2. Amending regulations to prescribe the form in full will be made tomorrow and issued free of charge to all known recipients of the Regulations. Given the detailed scheme of the Census (Scotland) Order 2010 (SSI 2010/187), particularly articles 5 and 6 of that Order, and the context of the Regulations, it is considered that the form to be delivered by the census staff and used in any case would be clear, but the Government accepts that the way the forms appear in the Regulations could have been clearer. On point 3 raised by the Committee the intention was to cover both reply envelopes. The Regulations correcting the omission in the form will also amend the Regulations to take account of points 1 and 3 raised by the Committee.

The Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010 (SSI 2010/213)

On 3 June 2010 the Scottish Government was asked:
1. It is noted that these Regulations have been made subject to negative procedure. They do not identify a specific coming into force date but, instead, provide that they are to come into force “on the day on which the Convention enters into force for the United Kingdom”. Can the Scottish Government confirm that these Regulations will not be brought into force within 21 days of laying?

2. In the Schedule, at paragraph 3(1)(d), which concerns amendment to section 14(2) of the Family Law Act 1986, is the inserted text not intended to be placed at the end of the words which follow paragraph (c), and if so then should the inserted text be shortened to read “or Article 8 of the Hague Convention”?

The Scottish Government responded:
1. It is confirmed that the regulations will not come into force within 21 days. Expected coming into force day is on or after 1 November 2010.

2. The SLC point in question 2 is correct. The amendment referred to does lead to a repetition of three words of text “of the Regulation”. The Scottish Government however is satisfied that the meaning of the provision overall is clear. We therefore do not propose to correct the instrument.

The Knives etc. (Disposal of Forfeited Property) (Scotland) Order 2010 (SSI 2010/214)

On 2 June 2010 the Scottish Government was asked:
1. Whether it is intended that this order vests in the police rights in property in respect of which neither an application under s 27K(3) of the 1982 Act nor an appeal against conviction has been made within the 6 month period referred to in article 3(1)(a)?

2. If so, to explain how that is achieved since article 4(1) deals with property in respect of which either an application for recovery or an appeal against conviction has been made