SUBORDINATE LEGISLATION COMMITTEE

AGENDA

36th Meeting, 2010 (Session 3)

Tuesday 21 December 2010

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

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

   the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 (SSI 2010/432);
   the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010 (SSI 2010/433);
   the Flavourings in Food (Scotland) Regulations 2010 (SSI 2010/439);
   the Non-Domestic Rates (Levying) (Scotland) (No.2) Regulations 2010 (SSI 2010/440);
   the Non-Domestic Rates (Levying) (Scotland) (No.3) Regulations 2010 (SSI 2010/441);
   the Regulation of Care (Social Service Workers) (Scotland) Amendment Order 2010 (SSI 2010/442);
   the Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) (No.2) Amendment Regulations 2010 (SSI 2010/443).

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

   the Jurors' Allowances (Scotland) Regulations 2010 (SSI 2010/424);
   the Housing (Scotland) Act 2010 (Commencement No.1) Order 2010 (SSI 2010/444 (C.32)).

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

4. **Wildlife and Natural Environment (Scotland) Bill:** The Committee will consider the Scottish Government's response to its Stage 1 report.
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The papers for this meeting are as follows—

Legal Brief (private) SL/S3/10/36/1
Summary of Recommendations SL/S3/10/36/2

**Agenda Items 1 and 2**

Instrument Responses SL/S3/10/36/3

**Agenda Item 3**

*Long Leases (Scotland) Bill (as introduced)*

Delegated Powers Memorandum

Briefing Paper (private) SL/S3/10/36/4

**Agenda Item 4**

Paper by the Clerk SL/S3/10/36/5

Correspondence from the Scottish Government SL/S3/10/36/6
The Committee will be invited to consider the following recommendations at the meeting. Decisions are a matter for the Committee.

**Agenda Item 1** Instruments subject to annulment

**The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 (SSI 2010/432)**

The Committee may wish to report (under the general reporting ground) that there is a drafting error in regulation 9(2)(a)(iii). That sub-paragraph omits “Planning” in the reference to the title of these Regulations, where regulation 7(1) is referred to. It is considered that this error does not affect the operation of the Regulations, and the Government have undertaken to amend the reference when the opportunity arises.

**The Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010 (SSI 2010/433)**

The Committee may wish to report (under the general reporting ground) that there is a drafting error in regulation 9(2)(a)(iv). That sub-paragraph omits “Planning” in the reference to the title of these Regulations, where regulation 7(1) is referred to. It is considered that this error does not affect the operation of the Regulations, and the Government have undertaken to amend the reference when the opportunity arises.

**The Flavourings in Food (Scotland) Regulations 2010 (SSI 2010/439)**

**The Non Domestic Rates (Levying) (Scotland) (No 2) Regulations 2010 (SSI 2010/440)**

**The Non Domestic Rates (Levying) (Scotland) (No 3) Regulations 2010 (SSI 2010/441)**

**The Regulation of Care (Social Service Workers) (Scotland) Amendment Order 2010 (SSI 2010/442)**

**The Regulation of Care (Fitness of Employees in relation to Care Services) (Scotland) (No. 2) Amendment Regulations 2010 (SSI 2010/443)**
The Committee may wish to consider if it is content with these instruments.

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**Agenda Item 2**  
**Instruments not laid before the Parliament**

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**The Jurors’ Allowances (Scotland) Regulations 2010 (SSI 2010/424)**

The Committee may wish to report that regulations 4(2) and 5(3), and paragraph 3(2) of the Schedule make an unusual or unexpected use of the enabling power contained in section 24(1) of the Juries Act 1949. This is in respect that the regulations reiterate that the Scottish Ministers may decide the subsistence, financial loss or motor car travel rates (as the case may be) for juror allowances by determination from time to time, it already being implicit in section 24(1) that different rates may be directly determined.

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**The Housing (Scotland) Act 2010 (Commencement No. 1) Order 2010 (SSI 2010/444 (C. 32))**

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

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**Agenda Item 3**  
**Long Leases (Scotland) Bill**

**Section 21(3) - Power to prescribe a period during which a person may oppose or make representations in relation to an application to the Lands Tribunal to dispense with the need for a conversion condition to be met when converting a leasehold condition to a real burden**

The Committee may wish to ask the Scottish Government to explain more fully the need for the use of a delegated power as set out in section 21(3) to achieve the stated aim of ensuring the Tribunal can deal with cases without unnecessary delays, given the absence of any detailed justification within the DPM. Why is it not possible for a period within which a person could oppose or make representations in relation to an application to be set out upon the face of the Bill, if necessary with a power to change that if circumstances require?

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**Section 75(5) - Power to prescribe a date or period after which notices and agreements determined registrable by the courts or the Lands Tribunal cannot be registered and to provide that applications to the courts or the Tribunal**
must be made within a specified period for the notices and agreements to be registrable

The Committee may wish to ask the Scottish Government to explain more fully the need for the use of a delegated power at section 75(5) to achieve the aim referred to in the DPM with respect to this provision, given the absence of any detailed justification for such power within the DPM itself.

Agenda Item 4 Wildlife and Natural Environment (Scotland) Bill

The Committee may wish to note the comments in Clerk’s paper.
INSTRUMENTS SUBJECT TO ANNULMENT

The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 (SSI 2010/432)

The Scottish Government was asked:

*It appears that regulation 9(2)(a)(iii) omits the word “Planning” in the title of these Regulations, where regulation 7(1) is referred to. What is the effect of this apparent error considered to be?*

The Scottish Government responds as follows:

The Scottish Government notes that the reference to the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 contained in regulation 9(2)(a)(iii) of the Regulations omits the word “Planning” from the title to this instrument. The Scottish Government are grateful to the Committee for drawing this matter to their attention.

It is not considered that the omission of this word gives rise to any doubt as to which Regulations reference is being made. There are no other Regulations which bear a similar title and no risk of confusion with another instrument could arise. Furthermore in the context of regulation 9 it is clear that the reference is to regulation 7(1) of the Regulations. Regulation 7(1) sets out the period for determination of an application under section 75A of the Town and Country Planning (Scotland) Act 1997. The failure to determine an application within this period gives rise to a right of appeal under section 75B(1)(a) of that Act. Regulation 9 makes provision in respect of such appeals. In particular, the definition of the term ‘period allowed for determination of the application’ in the Town and Country Planning (Appeals) (Scotland) Regulations 2008 - which regulation 9(2)(a)(iii) modifies for the purposes of appeals under section 75B - is used in regulation 3(2)(b) of those Regulations, as modified by regulation 9(2)(b)(iii) of the Regulations, only in connection with appeals under section 75B(1)(a).

The Scottish Government therefore considers that that there is no legal effect of the omission of this word. The Scottish Government nevertheless proposes to amend the reference when the opportunity arises.
The Town and Country Planning (Modification and Discharge of Good Neighbour Agreements) (Scotland) Regulations 2010 (SSI 2010/433)

The Scottish Government was asked:
It appears that regulation 9(2)(a)(iv) omits the word “Planning” in the title of these Regulations, where regulation 7(1) is referred to. What is the effect of this apparent error considered to be?

The Scottish Government responds as follows:

The Scottish Government notes that the reference to the Town and Country Planning (Modification and Discharge of Good Neighbour Agreements) (Scotland) Regulations 2010 contained in regulation 9(2)(a)(iv) of the Regulations omits the word “Planning” from the title to this instrument. The Scottish Government are grateful to the Committee for drawing this matter to their attention.

It is not considered that the omission of this word gives rise to any doubt as to which Regulations reference is being made. There are no other Regulations which bear a similar title and no risk of confusion with another instrument could arise. Furthermore in the context of regulation 9 it is clear that the reference is to regulation 7(1) of the Regulations. Regulation 7(1) sets out the period for determination of an application under section 75E of the Town and Country Planning (Scotland) Act 1997. The failure to determine an application within this period gives rise to a right of appeal under section 75F(1)(a) of that Act. Regulation 9 makes provision in respect of such appeals. In particular, the definition of the term ‘period allowed for determination of the application’ in the Town and Country Planning (Appeals) (Scotland) Regulations 2008 - which regulation 9(2)(a)(iv) modifies for the purposes of appeals under section 75F - is used in regulation 3(2)(b) of those Regulations, as modified by regulation 9(2)(b)(iii) of the Regulations, only in connection with appeals under section 75F(1)(a).

The Scottish Government therefore considers that that there is no legal effect of the omission of this word. The Scottish Government nevertheless proposes to amend the reference when the opportunity arises.
The Scottish Government was asked:

(1) What conditions are prescribed in regulations 4(2) and 5(3), which simply repeat that the Scottish Ministers may decide the subsistence or financial loss rates by determination, it already being implicit in section 24(1) that different rates may be determined?

(2) Similarly in relation to the determination of rates for motor car travel allowance set in paragraph 3 of the Schedule, what conditions are prescribed in 3(2), since this appears simply to state that different rates may apply in different circumstances?

The Scottish Government responds as follows:

(1) The Regulations set out in what circumstances allowances will be payable and on what terms. To this extent the Regulations establish the Scheme under which the allowances will operate and what conditions need to be satisfied before payment is made. Regulation 4(2) makes it clear that the subsistence allowance is only payable if no meals are provided and that the juror is necessarily absent from home, business or employment for less than, or more than, 10 hours on any one day. Those are the conditions that need to be met to qualify for subsistence allowance. Regulation 5(3) imposes conditions regarding the different periods for which a juror must serve before being eligible for financial loss allowances.

(2) The Schedule to the Regulations needs to be read as a whole and specifies the conditions that require to be met to qualify for a travelling allowance.
Wildlife and Natural Environment (Scotland) Bill – Response to SLC Stage 1 Report

Background

1. Under Rule 9.6.2 of Standing Orders, the Subordinate Legislation Committee submitted its report on the delegated powers provisions in the Wildlife and Natural Environment (Scotland) Bill to the Rural Affairs and Environment Committee, as lead committee for the Bill, on 8 September 2010.

2. On 15 December 2010, Kathryn Fergusson, Wildlife and Natural Environment Bill Team Leader, wrote to the Clerk to the Subordinate Legislation Committee responding to the Committee’s Stage 1 report.

Scottish Government Response

3. The response indicates that the Scottish Government intends to seek to amend the Bill in line with the Subordinate Legislation Committee’s recommendations on the delegated powers contained in sections 15 and 23.

4. The Government is considering whether an amendment is required for the Committee’s recommendation with regard to section 14(5). Clerks will monitor whether an amendment is forthcoming in line with the Committee’s stage 1 recommendation, and the Committee will reconsider this matter after stage 2 has completed.

Progress of the Bill

5. Stage 2 will start on Tuesday 22 December.

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

Recommendation

7. Members are invited to note the Scottish Government’s response to the Subordinate Legislation Committee’s report on the Wildlife and Natural Environment (Scotland) Bill at Stage 1.

Irene Fleming
Clerk to the Committee
Correspondence from the Scottish Government dated 16 December 2010

Wildlife and Natural Environment (Scotland) Bill

Thank you for the Subordinate Legislation Committee’s Stage 1 Report on the Wildlife and Natural Environment (Scotland) Bill. The Scottish Government’s response to the Committee’s recommendations, and to the relevant recommendations of the Rural Affairs and Environment Committee, is set out below.

Section 14(5) – Power to specify invasive animals and plants out with their native range which specified persons must provide notification of

The Scottish Government is currently considering whether an amendment is required in light of this recommendation.

Section 15 – Non-native species code

The Scottish Government will bring forward amendments at Stage 2 to make the first code of practice, and any replacement code of practice, subject to affirmative procedure. The Scottish Government will also bring forward amendments at Stage 2 to make any revision to the code of practice, or revocation (where this is not being replaced) subject to negative procedure.

Section 23 – Deer management code of practice

The Scottish Government will bring forward amendments at Stage 2 to make the code subject to negative procedure.