SUBORDINATE LEGISLATION COMMITTEE

AGENDA

3rd Meeting, 2011 (Session 3)

Tuesday 1 February 2011

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

1. **Patient Rights (Scotland) Bill**: The Committee will take evidence on the Bill after Stage 2 from—

   Ruth Dickinson, Patient Rights Bill Team Officer, Fiona Montgomery, Head of Patient Support and Participation, and Francesca Rennie, Solicitor, Scottish Government.

2. **Decisions on taking business in private**: The Committee will decide whether to take items 8 and 9 in private.

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

   - the M8 (Baillieston to Newhouse) Special Road Scheme 2011 (SSI 2011/10);
   - the A8 Trunk Road (Baillieston to Newhouse) Order 2011 (SSI 2011/11);
   - the A725 Trunk Road (Baillieston to Newhouse) Order 2011 (SSI 2011/12);
   - the Local Government Finance (Scotland) Order 2011 (SSI 2011/made).

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

   - the Tenancy Deposit Schemes (Scotland) Regulations 2011 (SSI 2011/draft);
   - the Energy Act 2008 (Storage of Carbon Dioxide) (Scotland) Regulations 2011 (SSI 2011/draft);
   - the Budget (Scotland) Act 2010 Amendment Order 2011 (SSI 2011/draft).

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

   - the Waverley Railway (Scotland) Act 2006 (Extension of Time for Land Acquisitions) Order 2011 (SSI 2011/14);
the Social Care and Social Work Improvement Scotland (Requirements for Reports) Regulations 2011 (SSI 2011/26);
the Social Care and Social Work Improvement Scotland (Fees) Order 2011 (SSI 2011/27);
the Social Care and Social Work Improvement Scotland (Registration) Regulations 2011 (SSI 2011/28);
the National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (SSI 2011/32);
the Healthcare Improvement Scotland (Fees) Regulations 2011 (SSI 2011/33);
the Healthcare Improvement Scotland (Requirements for Reports) Regulations 2011 (SSI 2011/34);
the Control of Dogs (Scotland) Act 2010 (Prescribed Form of Notice) Order 2011 (SSI 2011/39).

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

   - the Charities and Trustees Investment (Scotland) Act 2005 (Commencement No.5) Order 2011 (SSI 2011/20 (C.4));
   - Act of Adjournal (Criminal Procedure Rules Amendment) (Community Payback Orders) 2011 (SSI 2011/21);
   - the Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No. 7 and Transitionals) Order 2011 (SSI 2011/31 (C.6));
   - the NHS Quality Improvement Scotland (Dissolution) Order 2011 (SSI 2011/36);
   - the Forth Crossing Act 2011 (Commencement) Order 2011 (SSI 2011/38 (C.7)).

7. **Reservoirs (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.

8. **Energy Bill (UK Parliament legislation)**: The Committee will consider the contents of a draft report.

9. **Patient Rights (Scotland) Bill**: The Committee will consider the evidence heard earlier in the meeting.

Irene Fleming
Clerk to the Subordinate Legislation Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5212
Email: irene.fleming@scottish.parliament.uk
The papers for this meeting are as follows—

Legal Brief (private)  SL/S3/11/3/1
Summary of Recommendations  SL/S3/11/3/2

**Agenda Item 1**

*Patient Rights (Scotland) Bill (as amended at Stage 2)*

*Supplementary Delegated Powers Memorandum*

Briefing Paper (private)  SL/S3/11/3/3
Briefing Paper (private)  SL/S3/11/3/4

**Agenda Item 7**

Paper by the Clerk  SL/S3/11/3/5
Scottish Government's response to the Subordinate Legislation Committee's Stage 1 report  SL/S3/11/3/6

**Agenda Item 8**

Draft Report (private)  SL/S3/11/3/7
SUBORDINATE LEGISLATION COMMITTEE

3rd Meeting, 2011 (Session 3)

Tuesday 1 February 2011

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 3  Instruments subject to approval

The M8 (Baillieston to Newhouse) Special Road Scheme 2011 (SSI 2011/10)
The A8 Trunk Road (Baillieston to Newhouse) Order 2011 (SSI 2011/11)
The A725 Trunk Road (Baillieston to Newhouse) Order 2011 (SSI 2011/12)
The Local Government Finance (Scotland) Order 2011 (SSI 2011/made)

The Committee may wish to be content with these Regulations.

Agenda Item 4  Draft instruments subject to approval

The Tenancy Deposit Schemes (Scotland) Regulations 2011 (SSI 2011/draft)
The Energy Act 2008 (Storage of Carbon Dioxide) (Scotland) Regulations 2011 (SSI 2011/draft)
The Budget (Scotland) Act 2010 Amendment Order 2011 (SSI 2011/draft)

The Committee may wish to be content with these Regulations.

Agenda Item 5  Instruments subject to annulment

The Waverley Railway (Scotland) Act 2006 (Extension of Time for Land Acquisitions) Order 2011 (SSI 2011/14)
The Social Care and Social Work Improvement Scotland (Requirements for Reports) Regulations 2011 (SSI 2011/26)
The Social Care and Social Work Improvement Scotland (Fees) Order 2011 (SSI 2011/27)

The Social Care and Social Work Improvement Scotland (Registration) Regulations 2011 (SSI 2011/28)

The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (SSI 2011/32)

The Healthcare Improvement Scotland (Fees) Regulations 2011 (SSI 2011/33)

The Healthcare Improvement Scotland (Requirements for Reports) Regulations 2011 (SSI 2011/34)

The Healthcare Improvement Scotland (Applications and Registration) Regulations 2011 (SSI 2011/35)

The Control of Dogs (Scotland) Act 2010 (Prescribed Form of Notice) Order 2011 (SSI 2011/39)

The Committee may wish to be content with these instruments.

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**Agenda Item 6 Instruments not laid before the Parliament**

The Charities and Trustees Investment (Scotland) Act 2005 (Commencement No.5) Order 2011 (SSI 2011/20 (C.4))

Act of Adjournal (Criminal Procedure Rules Amendment) (Community Payback Orders) 2011 (SSI 2011/21)

The Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No. 7 and Transitionals) Order 2011 (SSI 2011/31 (C.6))

The NHS Quality Improvement Scotland (Dissolution) Order 2011 (SSI 2011/36)

The Forth Crossing Act 2011 (Commencement) Order 2011 (SSI 2011/38 (C.7))

The Committee may wish to be content with these instruments.
Reservoirs (Scotland) Bill – Response from the Cabinet Secretary

Background

1. The Subordinate Legislation Committee reported on the delegated powers in the Reservoirs (Scotland) Bill on 8 December 2010 in its 68th Report of 2010.

Cabinet Secretary Response

2. In his response to the recommendations made by the Committee, the Cabinet Secretary has agreed to make a number of the recommendations in line with what the Committee requested.

3. In relation to the powers in sections 71(1), 76(1) and 77(1), the Cabinet Secretary has indicated that he has considered the Committee’s questions on the “civil sanctions” that the Bill proposes to create. He states that Chapter 9 of the Bill is intended to set out the framework for SEPA’s civil enforcement powers in relation to reservoirs.

4. He does not consider that it is appropriate for the Bill to directly empower SEPA, which is not directly accountable to Parliament, to be able to deploy all of these enforcement powers.

5. The intention would be for the Scottish Ministers to decide which powers to pass on to SEPA, having consulted in accordance with section 84, by Order. Scottish Ministers will take account of experience in England and Wales, where the Environment Agency has similar powers through the Regulatory Enforcement and Sanctions Act 2008 as implemented by the Environmental Civil Sanctions (England) Order 2010, and an equivalent order for Wales. He argues that the affirmative procedure will give the Scottish Parliament the opportunity to scrutinise any such Order.

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 Cabinet Secretary’s response on this matter and to reconsider the powers in the Bill after Stage 2.

Irene Fleming
Clerk to the Committee
RESERVOIRS (SCOTLAND) BILL – RESPONSE TO THE STAGE 1 REPORT ON DELEGATED POWERS

I am writing following publication of the Subordinate Legislation Committee’s 68th report of 2010 (Session 3), which concerns the delegated powers contained in the Reservoirs (Scotland) Bill, received on 7th December 2010. This letter updates the response that the Minister for Environment and Climate Change sent to you on 24th November 2010 regarding the Committee’s recommendations.

Section 1(4) - Power to specify whether individual structures or combinations of structures are to be treated as a controlled reservoir

I am pleased that the Committee is now content that the delegated power to make orders under section 1(4) is acceptable in principle.

In relation to the choice of negative rather than draft affirmative procedure for the exercise of this power, I note that the Committee considers that an order under section 1(4) could substantially extend the application of the Bill (by providing that the reservoirs specified by the order are “controlled reservoirs”, even although the 10,000 cubic metre threshold is not satisfied) and that the Committee considers that, in the absence of clearly drawn criteria for the exercise of this power, the scope of the power merits draft affirmative procedure.

Following further consideration, I am happy to consider amending this power so that it is subject to draft affirmative procedure.

Section 1(6)(a) - Power to substitute a different volume of water to the 10,000 cubic metres of water currently specified

I note that the Committee is content with the power in section 1(6)(a) in principle, and with the fact that it is subject to draft affirmative procedure, but continues to take the view that it should be exercisable with regard to advice provided by ICE.

As detailed in the previous response of 24th November 2010, I confirm that the intention is still to amend this power to that effect at Stage 2.

Section 25 – Power to establish panels of reservoir engineers

I am pleased to note that the Committee considers that the power in section 25(a) is acceptable in principle and is content that the power is subject to negative resolution procedure.
Section 52(1) – Power to make provision for reporting incidents to SEPA relating to reservoir safety

I am pleased to note that the Committee is content with the powers in section 52(1) in principle, and with the fact that they are subject to draft affirmative resolution procedure.

Section 53(1) – Power to make provision for preparing reservoir flood plans

I am pleased to note that the Committee is content with the delegated power contained in section 53(1) in principle, and with the fact that it is subject to draft affirmative procedure.

Section 71(1) – Power to make provision for SEPA to give stop notices to reservoir managers of controlled reservoirs

Section 76(1) – Power to make provisions for SEPA to accept an enforcement undertaking from a reservoir manager

Section 77(1) – Power to impose fixed monetary penalties on reservoir managers

Section 80(1) – Power to make provisions about the imposition of further enforcement measures on reservoir managers

The Committee has drawn the attention of the lead committee to sections 71(1), 76(1), 77(1) and section 80(1) and noted that these sections provide powers to enforce Part 1 of the Bill in the form of discretionary order-making powers which the Scottish Ministers may either implement as a whole, partially, or not, as they determine. The Committee observes that, while the Parliament will require to approve any delegation of these functions to SEPA when they are brought forward, the Parliament cannot require that any of the powers are conferred.

The Committee has also drawn to the lead committee’s attention that it is normally considered the function of the Parliament to impose the maximum level of penalty which is to be imposed by a third party which is not accountable to the Parliament. The Committee has therefore recommended that the Scottish Government consider the insertion of appropriate maximum penalty amounts, in relation to the powers contained in sections 80(4)(a) and 83(1), by amendment at Stage 2.

The Committee has also drawn to the attention of the lead committee, the Scottish Government’s explanation why SEPA is considered the appropriate body to determine any amounts of penalty under the powers in section 80(4)(a) and 83(1) to be imposed in a particular case.

I have considered the Committee’s various questions on these “civil sanctions” that the Bill proposes to create. Chapter 9 of the Bill is intended to set out the framework for SEPA’s civil enforcement powers in relation to reservoirs. It is not thought appropriate for the Bill to directly empower SEPA, which is not directly accountable to Parliament, to immediately be able to deploy all of these enforcement powers.
Rather, having obtained the approval of the Parliament in principle to the use of the various powers, the intention is that the Scottish Ministers will decide which powers to pass on to SEPA, having consulted in accordance with s.84, and will do so by Order. Before doing so, the Scottish Ministers will take account of experience in England and Wales, where the Environment Agency has recently been given similar powers through the Regulatory Enforcement and Sanctions Act 2008 as implemented by the Environmental Civil Sanctions (England) Order 2010, and an equivalent order for Wales. The Scottish Parliament will have the opportunity to scrutinise any such Order using the affirmative procedure.

In relation to s.80(4)(a) and 83(1), I consider SEPA to be best-placed to determine the appropriate penalty amount that will act as a proportionate deterrent for a particular offender in a particular case. However, in light of the Committee’s concerns about potentially unlimited penalties being issued by SEPA, I am happy to consider the insertion of appropriate maximum penalty amounts at Stage 2.

**Section 87(1) – Power to permit SEPA to publish information**

I have noted the Committee’s previously expressed concerns about the use of an order-making power, provided for in section 87(1), to enable SEPA to publish information about enforcement action it has taken under the Bill.

As was previously indicated, I am happy to consider amending this provision so that it enables the Scottish Ministers to require SEPA to publish such information about the enforcement action it has taken as Ministers may specify. That will enable Ministers to exercise more control over what SEPA publishes and allow Parliament the opportunity to scrutinise that control.

**Section 103 - Power to make offences inserted into section 22 of the Water Environment and Water Services (Scotland) Act 2003 to be triable and subject to specified liabilities**

I am pleased to note that the Committee is content with the commitment given by the Government that it would consider carefully whether to adopt affirmative or negative procedure in any particular case.

I am happy to note that the Committee is content with the delegated power in section 103, and with the fact that it is subject to a choice of draft affirmative or negative resolution procedure.

**RICHARD LOCHHEAD**
**CABINET SECRETARY FOR RURAL AFFAIRS AND THE ENVIRONMENT**