The Scottish Parliament
Parlaimed na h-Alba

SUBORDINATE LEGISLATION COMMITTEE

AGENDA

4th Meeting, 2011 (Session 3)

Tuesday 8 February 2011

The Committee will meet at 2.15 pm in Committee Room 3.

1. **Decision on taking business in private**: The Committee will decide whether to take item 8 in private.

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

   the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (SSI 2011/45).

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

   - the Healthcare Improvement Scotland (Requirements as to Independent Health Care Services) Regulations 2011 (SSI 2011/draft);
   - the Healthcare Improvement Scotland (Inspections) Regulations 2011 (SSI 2011/draft);
   - the Public Services Reform (Joint Inspections) (Scotland) Regulations 2011 (SSI 2011/draft);
   - the Public Services Reform (Social Services Inspections) (Scotland) Regulations 2011 (SSI 2011/draft);
   - the Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011 (SSI 2011/draft);
   - the Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 (SSI 2011/draft);
   - the Legal Profession and Legal Aid (Scotland) Act 2007 (Modification and Consequential Provisions) Order 2011 (SSI 2011/draft);
   - the Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011 (SSI 2011/draft);
   - the Waste (Scotland) Regulations 2011 (SSI 2011/draft);
   - the Equality Act 2010 (Statutory Duties) (Scotland) Regulations 2011 (SSI 2011/draft);
   - the Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2011 (SSI 2011/draft);
4. **Instruments subject to annulment:** The Committee will consider the following—

- Act of Sederunt (Fees of Sheriff Officers) 2011 (SSI 2011/47);
- the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011 (SSI 2011/24);
- the Social Care and Social Work Improvement Scotland (Applications) Order 2011 (SSI 2011/29);
- the Healthcare Improvement Scotland (Applications and Registration) Regulations 2011 (SSI 2011/35);
- the Legal Aid and Advice and Assistance (Solicitors' Travel Fees) (Scotland) Regulations 2011 (SSI 2011/41);
- the Teachers' Superannuation (Scotland) Amendment Regulations 2011 (SSI 2011/42);
- the Scottish Road Works Register (Prescribed Fees) Regulations 2011 (SSI 2011/43);
- the Scottish Charitable Incorporated Organisations Regulations 2011 (SSI 2011/44);
- the Brucellosis (Scotland) Amendment Order 2011 (SSI 2011/51);
- the Teachers' Superannuation (Scotland) Amendment (No.2) Regulations 2011 (SSI 2011/52);
- the National Health Service (Superannuation Scheme and Pension Scheme) (Scotland) Amendment Regulations 2011 (SSI 2011/53).

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

- the Public Services Reform (Scotland) Act 2010 (Commencement No.3) Order 2011 (SSI 2011/30 (C.5));

6. **Instruments not subject to parliamentary procedure:** The Committee will consider the following—
the Rabies (Importation of Dogs, Cats and Other Mammals) Amendment (Scotland) Order 2011 (SSI 2011/46).

7. **Private Rented Housing (Scotland) Bill** The Committee will consider the Scottish Government’s response to its Stage 1 report.

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

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

- Legal Brief (private) SL/S3/11/4/1
- Summary of Recommendations SL/S3/11/4/2

**Agenda Items 2, 3, 4 and 5**

- Instrument Responses SL/S3/11/4/3

**Agenda Item 7**

- Paper by the Clerk SL/S3/11/4/4
- Correspondence from the Scottish Government SL/S3/11/4/5

**Agenda Item 8**

- Draft Report (private) SL/S3/11/4/6
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  Instruments subject to approval

The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (SSI 2011/45)

The Committee may wish to be content with this instrument.

The Committee draws to the attention of the lead committee, for its interest, inserted section 88H and the power to amend the maximum notification periods. This power can be used to extend the period as well as to shorten it. This same provision also appeared within the recent Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010 (SSI 2010/370), when it was notified to the lead committee with respect to whether it wished to explore the need for this power.

Agenda Item 3  Draft instruments subject to approval

The Healthcare Improvement Scotland (Requirements as to Independent Health Care Services) Regulations 2011 (SSI 2011/draft)

The Committee may wish to report that this instrument contains a drafting error in the incorrect citation of the Nursing and Midwifery Order 2001, in the definition of a “registered nurse, midwife or health visitor”.

The Committee may wish to welcome the undertaking from the Government to correct that drafting error in regulation 1(2)(e), immediately by a further order.

The Committee may wish to report that this instrument contains further drafting errors in the form of the instrument, which could be corrected when the instrument is made.

The Healthcare Improvement Scotland (Inspections) Regulations 2011 (SSI 2011/draft)
The Public Services Reform (Joint Inspections) (Scotland) Regulations 2011 (SSI 2011/draft)

The Public Services Reform (Social Services Inspections) (Scotland) Regulations 2011 (SSI 2011/draft)

The Committee may wish to report that these instruments contained a drafting error in the incorrect citation of the Nursing and Midwifery Order 2001 in the definition of “registered nurse”. However, the Committee welcomes the Scottish Government’s commitment to correct this error immediately since this definition is important, being used to determine a class of persons entitled to conduct examinations and to inspect medical records.

The Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011 (SSI 2011/draft)

The Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 (SSI 2011/draft)

The Legal Profession and Legal Aid (Scotland) Act 2007 (Modifications and Consequential Provisions) Order 2011 (SSI 2011/draft)

The Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011 (SSI 2011/draft)

The Waste (Scotland) Regulations 2011 (SSI 2011/draft)

The Equality Act 2010 (Statutory Duties) (Scotland) Regulations 2011 (SSI 2011/draft)

The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2011 (SSI 2011/draft)

The Housing Support Grant (Scotland) Order 2011 (SSI 2011/draft)

The Marine Licensing Appeals (Scotland) Regulations 2011 (SSI 2011/draft)

The Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 (SSI 2011/draft)


The Cross-Border Mediation (Scotland) Regulations 2011 (SSI 2011/draft)

The Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2011 (SSI 2011/draft)
The Committee may wish to be content with these instruments.

Agenda Item 4 Instruments subject to annulment

Act of Sederunt (Fees of Sheriff Officers) 2011 (SSI 2011/47)

The Committee may wish to draw this instrument to the attention of the lead committee and the Parliament on the basis that it combines negative procedure and no procedure and that, while an explanation has previously been provided by the Lord President’s Private Office for this approach, the Committee considers such an unusual exercise of the enabling powers inappropriate as it could give rise to technical difficulties in the event of a motion to annul the instrument being successful.

The Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011 (SSI 2011/24)

The Social Care and Social Work Improvement Scotland (Applications) Order 2011 (SSI 2011/29)

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

The Legal Aid and Assistance (Solicitors’ Travel Fees) (Scotland) Regulations 2011 (SSI 2011/41)

The Teachers’ Superannuation (Scotland) Amendment Regulations 2011 (SSI 2011/42)

The Scottish Road Work Register (Prescribed Fees) Regulations 2011 (SSI 2011/43)

The Scottish Charitable Incorporated Organisations Regulations 2011 (SSI 2011/44)

The Brucellosis (Scotland) Amendment Order 2011 (SSI 2011/51)
The Teachers' Superannuation (Scotland) Amendment (No.2) Regulations 2011 (SSI 2011/52)

The National Health Service (Superannuation Scheme and Pension Scheme) (Scotland) Amendment Regulations 2011 (SSI 2011/53)

The Committee may wish to be content with these instruments.

**Agenda Item 5 Instruments not laid before the Parliament**

The Public Services Reform (Scotland) Act 2010 (Commencement No. 3) Order 2011 (SSI 2011/30 (C.5))

The Committee may wish to draw this instrument to the attention of the Parliament on the ground that it contains drafting errors within article 3(3).

Given that the Order contains two Schedules, with different commencement dates applying to the provisions made in each, article 3(3), in making provision relative to the purpose for which provisions are to come into force, should have made appropriate reference to paragraph (2) of article 3 and not simply paragraph (1).

The Committee may wish to take the view that this is not likely to affect the validity or effect of the instrument since it should be plain by reference also to the two Schedules to the instrument which provisions are to come into force on which date, and for what purpose.

Act of Sederunt (Fees of Messengers-at-Arms) 2011 (SSI 2011/48)

The Committee may wish to be content with this Act of Sederunt.

**Agenda Item 6 Instruments not subject to Parliamentary procedure**

The Rabies (Importation of Dogs, Cats and Other Mammals) Amendment (Scotland) Order 2011 (SSI 2011/46)

The Committee may wish to be content with this instrument.
INSTRUMENTS SUBJECT TO APPROVAL

The Healthcare Improvement Scotland (Requirements as to Independent Health Care Services) Regulations 2011 (SSI 2011/draft)

On 28 January the Scottish Government was asked:
(1) What is the effect of the apparent error in the second line of the preamble, which cites the enabling power to make the Regulations, but refers to “the National Health (Scotland) Act 1978” (omitting “Service”)?

(2) What is the effect of the apparent error, that the 3rd paragraph of the preamble cites “section 104(2) of that Act” as the provision which requires the instrument to be laid in draft for approval by resolution, but it appears that this should refer to section 105(3) of the 1978 Act?

(3) What is the effect of the apparent error in regulation 1(2)(e), in the citation of the “Nurses and Midwives Order 2001” rather than “Nursing and Midwifery Order 2001”?

The Scottish Government responds as follows:

1) The Scottish Government considers the error in the second line of the preamble, which cites the enabling power to make the Regulations but refers to the National Health (Scotland) Act 1978 (“omitting Service”) to be unfortunate but does not consider that it has any material effect on this instrument. The enabling power has a correct footnote so it is considered unlikely that there will be ambiguity as to which piece of legislation is being referred to. Furthermore, it is well established precedent that the preamble is not part of the text of an instrument therefore failure to cite a relevant enabling provision does not result in the invalidity of an instrument. (Craies on Legislation 3.3.6)

2) The Scottish Government does not consider that the error in the 3rd paragraph of the preamble, which cites section 104(2) of that Act as the provision which requires the instrument to be laid in draft for approval by resolution, rather than section 105(3) of the 1978 Act, has any material effect on the validity of the instrument. It is a matter of fact that the instrument has been laid in draft for approval by resolution of the Scottish Parliament, the headnote refers to the correct section in the 1978 Act under which the instrument must be laid in draft and as this paragraph forms part of the preamble, it is not part of the text of the instrument and therefore failure to cite a relevant enabling provision does not result in the invalidity of an instrument, as we have mentioned above.

3) The Scottish Government considers the error in the citation of the Nursing and Midwifery Order 2001 to be unfortunate but does not consider that it has any significant effect on these Regulations. The Order in question is correctly footnoted and it is
submitted that the Order can easily be recognised by the title given, together with the description in the definition of registered nurse. The description refers to the register maintained under Article 5 of the Order. There is only one register that can fall within this definition therefore we do not consider that the error in the citation would mislead the reader. The Regulations are therefore fit for purpose.

However we have noted the concern of legal advisors to the Subordinate Legislation Committee on this point and, in the forthcoming Consequential Modifications (Public Services Reform (Scotland) Act Order 2011, (which will be laid in Parliament this week) we have taken the opportunity to correct the erroneous citation. This Order will come into force on the same day as the Healthcare Improvements Scotland (Requirements as to Independent Healthcare) Regulations 2011 so there will be no delay in the correction being effective.

The Healthcare Improvement Scotland (Inspections) Regulations 2011 (SSI 2011/draft)

On 28 January the Scottish Government was asked: The Scottish Government is asked to explain what is considered to be the effect of the error in the citation of the Nursing and Midwifery Order 2001 in the definition of “registered nurse” and following through to the definition of “health professional” for the purposes of restricting access to information under regulation 5 and the conduct of interviews and examination under regulation 7(4)? Does the Scottish Government intend to correct this error?

The Scottish Government responds as follows: The Scottish Government considers this error in the citation of the Nursing and Midwifery Order 2001 to be unfortunate but does not consider that it has any significant effect on these Regulations. The Order in question is correctly footnoted and it is submitted that the Order can easily be recognised by the title given, together with the description in the definition of registered nurse. The description refers to the register maintained under Article 5 of the Order. There is only one register that can fall within this definition therefore we do not consider that the error in the citation would mislead the reader. The Regulations are therefore considered to be fit for purpose.

However we have noted the concern of legal advisors to the Subordinate Legislation Committee on this point and, in the forthcoming Consequential Modifications (Public Services Reform (Scotland) Act Order 2011, (which will be laid in Parliament this week) we have taken the opportunity to correct the erroneous citation. This Order will come into force on the same day as the Healthcare Improvements Scotland (Inspections) Regulations 2011 so there will be no delay in the correction being effective.

The Public Services Reform (Joint Inspections) (Scotland) Regulations 2011 (SSI 2011/draft)

On 28 January the Scottish Government was asked: The Scottish Government is asked to explain what is considered to be the effect of the error in the citation of the Nursing and Midwifery Order 2001 in the definition of “registered nurse” and following through to the definition of “health professional” for the
purposes of restricting access to information under regulation 5 and the conduct of interviews and examination under regulation 7(4)? Does the Scottish Government intend to correct this error?

The Scottish Government responds as follows:
The Scottish Government considers this error to be unfortunate but does not consider that the error has any significant effect on these regulations. The Order in question is correctly footnoted and it is submitted that the Order can easily be recognised by the title given, together with the description in the definition of registered nurse. The description refers to the register maintained under Article 5 of the Order. There is only one register that can fall within this definition therefore we do not consider that the error in the citation would mislead the reader. The regulations are therefore considered to be fit for purpose.

However we have noted the concern of legal advisors to the Subordinate Legislation Committee on this point and, in the forthcoming Consequential Modifications (Public Services Reform (Scotland) Act Order 2011, (which will be laid in Parliament this week) we have taken the opportunity to correct the erroneous citation. This Order will come into force on the same day as the Healthcare Improvements Scotland (Inspections) Regulations 2011 so there will be no delay in the correction being effective.

The Public Services Reform (Social Services Inspections) (Scotland) Regulations 2011 (SSI 2011/draft)

On 28 January the Scottish Government was asked:
*The Scottish Government is asked to explain what is considered to be the effect of the error in the citation of the Nursing and Midwifery Order 2001 in the definition of “registered nurse” and following through to the definition of “health professional” for the purposes of restricting access to information under regulation 5 and the conduct of interviews and examination under regulation 7(4)? Does the Scottish Government intend to correct this error?*

The Scottish Government responds as follows:
The Scottish Government considers this error to be unfortunate but does not consider that it has any significant effect on these Regulations. The Order in question is correctly footnoted and it is submitted that the Order can easily be recognised by the title given, together with the description in the definition of registered nurse. The description refers to the register maintained under Article 5 of the Order. There is only one register that can fall within this definition therefore we do not consider that the error in the citation would mislead the reader. The Regulations are therefore considered to be fit for purpose.

However we have noted the concern of legal advisors to the Subordinate Legislation Committee on this point and, in the forthcoming Consequential Modifications (Public Services Reform (Scotland) Act Order 2011, (which will be laid in Parliament this week) we have taken the opportunity to correct the erroneous citation. This Order will come into force on the same day as the Healthcare Improvements Scotland (Inspections) Regulations 2011 so there will be no delay in the correction being effective.
INSTRUMENTS SUBJECT TO ANNULMENT

The Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011
(SSI 2011/24)

On 28 January 2011 the Scottish Government was asked:
“to explain how regulation 13(4) and the compulsory licence condition set out in paragraph 3(3) of Schedule 1 is to be complied with in respect of licences granted in relation to sites which are not offshore installations, since the proposed extension of the licensing regime to the whole of Scotland by the Energy Act 2008 (Storage of Carbon Dioxide) (Scotland) Regulations 2011 appears to permit licences to be granted in respect of such sites.

The Scottish Government responds as follows:
Section 30 of the Energy Act 2008 provides that part 4 of the Petroleum Act 1998 applies in relation to a carbon storage installation as it applies in relation to an offshore installation within the meaning given by section 44 of the 1998 Act. In those circumstances operators of onshore carbon storage sites are under the same post-closure obligations as the operators of offshore carbon storage sites with regard to the sealing of sites and removal of injection facilities.

The Social Care and Social Work Improvement Scotland (Applications) Order 2011 (SSI 2011/29)

On 27 January the Scottish Government was asked:
In relation to this instrument the Scottish Government is asked to clarify what powers are being relied on in relation to articles 4(2) and 5(3) so far as the specification which they make in regard to a minimum three month period is concerned, within the context of applications for variation, removal or addition of conditions, or cancellation of registration.

The power cited in the preamble, within section 70 of the Public Services Reform (Scotland) Act 2010, provides for applications to be made ‘in such manner and (to) state such particulars as may be prescribed’. In stipulating a minimum period does this not effectively amount to the imposition of a condition, rather than being concerned with the manner in which an application is to be made, to which extent the power enables provision to be made?

The Scottish Government responds as follows:
The Scottish Government does not agree that the stipulation of a minimum time period amounts to an imposition of a condition on a service rather than being concerned with the manner in which an application is made. Section 70 of the Public Services Reform (Scotland) Act 2010 provides that an application must be made in such manner as may be prescribed. It is the view of the Scottish Government that the manner in which an application must be made means the way in which an application must be carried out and placing certain time limits on such an application would fall within the meaning of ‘manner’. In this context it is considered that the power in section 70 has been used appropriately in this case.
Furthermore using this power in such a way has precedent in that an identical power was used for the purpose of imposing a time limit on making applications for variation or removal of conditions relating to a care service to the Care Commission, the predecessor body to Social Care and Social Work Improvement Scotland.

The Regulation of Care (Applications and Provision of Advice) (Scotland) Order 2002 (SSI 2002/113) provides at article 4 of that order that an application made to the Care Commission for variation or removal of a condition relating to registration of a care service, shall specify the date on which a variation or removal is to take effect, but that date shall not be less than three months after the date on which the application is made. The power that order relies on is section 14 (3) of the Regulation of Care(Scotland) Act 2001 which provides that an application shall be made “in such manner and state such particulars as may be prescribed”.

The Healthcare Improvement Scotland (Applications and Registration) Regulations 2011 (SSI 2011/35) On 27 January the Scottish Government was asked: In relation to this instrument the Scottish Government is asked to clarify what powers are being relied on in relation to regulations 8(2) and 9(3) so far as the specification which they make in regard to a minimum three month period is concerned, within the context of applications for variation, removal or addition of conditions, or cancellation of registration.

The power cited in the preamble, within section 10Y of the National Health Service (Scotland) Act 1978, provides for applications to be made ‘in such manner and (to) state such particulars as may be prescribed’. In stipulating a minimum period does this not effectively amount to the imposition of a condition, rather than being concerned with the manner in which an application is to be made, to which extent that power enables provision to be made?

The Scottish Government responds as follows: The Scottish Government does not agree that the stipulation of a minimum time period amounts to an imposition of a condition on a service rather than being concerned with the manner in which an application is made. Section 10Y of the 1978 Act provides that an application must be made in such manner as may be prescribed. It is the view of the Scottish Government that the manner in which an application must be made means the way in which an application must be carried out and placing certain time limits on such an application would fall within the meaning of “manner”. In this context therefore the power in section 10Y has been used appropriately.

Furthermore using this power in such a way has precedence in that an identical power was used for the purpose of imposing a time limit on making applications for variation or removal of conditions relating to a care service to the Care Commission, the predecessor body to Healthcare Improvement Scotland insofar as independent healthcare services are concerned.

The Regulation of Care (Applications and Provision of Advice) (Scotland) Order 2002 (SSI 2002/113) provides at article 4 of that order that an application made to the Care Commission for variation or removal of a condition relating to registration of a care
service, shall specify the date on which a variation or removal is to take effect but that date shall not be less than three months after the date on which the application is made. The power that order relies on is section 14 (3) of the Regulation of Care (Scotland) Act 2001 which provides that an application shall be made in “such manner and state such particulars as may be prescribed”

INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT

The Public Services Reform (Scotland) Act 2010 (Commencement No.3) Order 2011 (SSI 2011/30 C.5))

On 27 January 2011 the Scottish Government was asked: The Scottish Government is asked to clarify the intended meaning of article 3(3), in respect to (a) the reference which it makes to ‘that table’, given that separate tables are attached to both of the Schedules to which article 3 relates, and (b) the reference which it makes to provisions mentioned coming into force ‘in accordance with paragraph (1) only for that purpose’, and whether reference requires not also to be made to paragraph (2) of article 3. What is considered to be the effect on this instrument of article 3(3) not having distinguished between paragraphs (1) and (2) in the provision made there?

The Scottish Government responds as follows: The Scottish Government thanks the Committee for pointing out the drafting error. Article 3(3) should have referred to “those tables” and “paragraph (1) or (2)” as suggested by the fact that article 3(2) was made “subject to” article 3(3).

It is not considered that this creates any doubt on the intended effect of the Order. Any doubt would be limited to the effect of article 3(2) for the provisions commenced on 1 April 2011. However, for those provisions, even without the restriction on the purpose of commencement in column 3 of Schedule 2 to the Order, which only affects the “inducing” provisions in schedule 4 to the Act, the coming into force dates for the operative amendments in Schedule 2 to the Order are clear from their listing in Schedule 1 or 2 to the Order respectively, with those in Schedule 2 commenced for all purposes.
SUBORDINATE LEGISLATION COMMITTEE

4th Meeting, 2011 (Session 3)

Tuesday 8 February 2011

Paper by the Clerk

Private Rented Housing (Scotland) Bill – Response from the Cabinet Secretary

Background


Minister for Housing and Communities response

2. There was only one delegated power in the Bill which the Committee considered was not appropriate, in section 31(4) of the Bill. In his response to the Committee’s stage 1 report, the Minister has agreed to lodge an amendment in line with the recommendation that the Committee requested.

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

Recommendation

4. Members are invited to note the Minister’s response on this matter and to reconsider the powers in the Bill after it has completed Stage 2.

Irene Fleming
Clerk to the Committee
I am writing in formal response to the Subordinate Legislation Committee report on the Private Rented Housing (Scotland) Bill at Stage 1.

The Committee raised two issues which I shall address below.

**Section 31(4) (inserts section 28B into the Housing (Scotland) Act 2006) – Landlord application to private rented housing panel: further provision**

Section 31 of the Bill amends the Housing (Scotland) Act 2006 by introducing a new section 28A. Section 28A will enable a landlord to apply to the Private Rented Housing Panel for assistance in exercising the landlord’s right of entry in order to comply with the Repairing Standard, without the need for court action or waiting until the end of the tenancy. A further new section 28B gives Ministers power to make by regulations further provision about applications made under section 28A.

The Subordinate Legislation Committee expressed concern that regulations made under the new section 28B could cover a wide range of matters, going beyond matters of administrative detail and asked the Scottish Government whether affirmative procedure would therefore be more appropriate. In response, the Scottish Government agreed that this could be the case and that we were therefore reviewing the position with a view to bringing forward amendments to the Bill to address this.

I am now pleased to confirm that the Scottish Government will lodge an amendment at Stage 2 of the Bill with the intention that regulations under new section 28B making provision under subsection 2(a), (c) or (d) would be subject to affirmative procedure. Regulations making provision only under subsection 2(b), i.e., prescribing a fee to accompany applications, would continue to be subject to negative procedure. Subordinate legislation setting application fees is commonly subject to negative procedure, since fees may be changed with some frequency.

**Section 35 – Commencement**

The commencement power contained in section 35(3) of the Bill, enables provisions to come into force on such day as the Scottish Ministers by order appoint.

In its Stage 1 consideration, the Committee asked the Scottish Government why an order made under section 35, where it includes transitional, transitory or saving provision, should be subject to no procedure, in contrast to an order containing such provision where made under section 33, which would be subject to negative procedure.
The Scottish Government explained that it:

“considers that it is appropriate to include transitional, transitory or savings provision with commencement orders which take no procedure on the basis that such provision is by its very nature temporary and time-limited and is closely related to the section to be commenced, which the Parliament has already closely scrutinised.

The use of such powers in the context of section 33 will tend to be for more substantive matters where the negative procedure is more appropriate.”

I note that the Committee has accepted our assurances on this matter and is content with our explanation.

I thank the Committee for co-operation in its consideration of the Bill and look forward to working further with Committee members throughout the remaining Parliamentary stages of the Bill.

ALEX NEIL
Minister for Housing and Communities