SUBORDINATE LEGISLATION COMMITTEE

AGENDA

5th Meeting, 2011 (Session 3)

Tuesday 22 February 2011

The Committee will meet at 2.15 pm in Committee Room 5.

1. **Decisions on taking business in private:** The Committee will decide whether to take items 9, 10, 11 and 12 in private.

2. **Instruments subject to approval:** The Committee will consider the following—
   
   the Muntjac Keeping (Scotland) Order 2011 (SSI 2011/made).

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

   - the Children’s Hearings (Scotland) Act 2011 (Consequential Provision) and Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Amendment of Specified Authorities) Order 2011 (SSI 2011/draft);
   - the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (SSI 2011/draft);
   - the Waste Management Licensing (Scotland) Regulations 2011 (SSI 2011/draft);
   - the Radioactive Substances Act 1993 Amendment (Scotland) Regulations 2011 (SSI 2011/draft);
   - the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (SSI 2011/draft);
   - the Interpretation and Legislative Reform (Scotland) Act 2010 (Consequential Provisions) Order 2011 (SSI 2011/draft);
   - the Scottish Statutory Instruments Regulations 2011 (SSI 2011/draft);
   - the Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 (SSI 2011/draft);
   - the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (SSI 2011/draft);
   - the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No.2) Regulations 2011 (SSI 2011/draft);
   - the Debt Arrangement Scheme (Interest, Fees, Penalties and Other Charges) (Scotland) Regulations 2011 (SSI 2011/draft).
4. **Instruments subject to annulment:** The Committee will consider the following—

- the Edinburgh College of Art (Transfer) (Scotland) Order 2011 (SSI 2011/54);
- the National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Regulations 2011 (SSI 2011/55);
- the Home Energy Assistance Scheme (Scotland) Amendment Regulations 2011 (SSI 2011/56);
- the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Amendment Order 2011 (SSI 2011/59);
- the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Amendment Order 2011 (SSI 2011/60);
- the Scottish Crime and Drug Enforcement Agency (Scotland) Regulations 2011 (SSI 2011/61);
- the Police Grant (Scotland) Order 2011 (SSI 2011/62);
- the Local Authority Accounts (Scotland) Amendment Regulations 2011 (SSI 2011/64);
- the Ayr Road Route (M77) (Speed Limit) Amendment Regulations 2011 (SSI 2011/67);
- the M8 Motorway (Junction 10 Westerhouse Slip Roads) (Speed Limit) Regulations 2011 (SSI 2011/68);
- the Glasgow Renfrew Motorway (Stages I and II) (Speed Limit) Amendment Regulations 2011 (SSI 2011/69);
- the Sea Fishing (Licences and Notices) (Scotland) Regulations 2011 (SSI 2011/70);
- the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2011 (SSI 2011/73);
- the Non-Domestic Rates (Levying) (Scotland) Amendment Regulations 2011 (SSI 2011/74);
- the Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2011 (SSI 2011/75);
- the Marine Licensing (Fees) (Scotland) Regulations 2011 (SSI 2011/78);
- the Marine Licensing (Consultees) (Scotland) Order 2011 (SSI 2011/79);
- the Marine Licensing (Register of Licensing Information) (Scotland) Regulations 2011 (SSI 2011/80);
- the Interpretation and Legislative Reform (Scotland) Act 2010 (Savings and Transitional Provisions) Order 2011 (SSI 2011/88);
- the Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2011 (SSI 2011/89);
- the Road Works (Fixed Penalty) (Scotland) Amendment Regulations 2011 (SSI 2011/92);
- the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2011 (SSI 2011/94);
- the Food (Jelly Mini-Cups) (Emergency Control) (Scotland) Revocation Regulations 2011 (SSI 2011/95);
- the Roads (Scotland) Act 1984 (Fixed Penalty) Amendment Regulations 2011 (SSI 2011/98);
- the Food Additives (Scotland) Amendment Regulations 2011 (SSI 2011/99);
the Additional Support Needs for Tribunals for Scotland (Appointment of President, Conveners and Members and Disqualification) Amendment Regulations 2011 (SSI 2011/103);
the Additional Support Needs Tribunals for Scotland (Disability Claims Procedure) Rules 2011 (SSI 2011/104);
the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2011 (SSI 2011/105);
the Health Professions Council (Registration and Fees) (Amendment) (No.2) Rules 2010 Order of Council 2011 (SI 2011/210).

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

   the Marine (Scotland) Act 2010 (Commencement No.2 and Transitional Provisions) Order 2011 (SSI 2011/58 (C.8));
   the Muntjac Keeping (Scotland) Regulations 2011 (SSI 2011/63);
   the Fire and Rescue Authorities (Appointment of Chief Inspector) Order 2011 (SSI 2011/65);
   the Non-Domestic Rates (Levying) (Scotland) (no.3) Regulations 2010 Revocation Order 2011 (SSI 2011/76);
   the Sheep Scab (Scotland) Amendment Order 2011 (SSI 2011/77);
   Act of Sederunt (Rules of Court of Session Amendment) (Taxation of Accounts and Fees of Solicitors) 2011 (SSI 2011/87);
   the Right to Purchase (Application Form) (Scotland) Order 2011 (SSI 2011/97).

6. **Certification of Death (Scotland) Bill**: The Committee will consider the Scottish Government's response to its Stage 1 report.

7. **Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill**: The Committee will consider the Scottish Government's response to its Stage 1 report.

8. **Property Factors (Scotland) Bill**: The Committee will consider the delegated powers provisions in this Bill after Stage 2.

9. **Draft instruments subject to approval**: The Committee will consider its approach to the following—

   the Public Services Reform (General Teaching Council for Scotland) Order 2011 (SSI 2011/draft);
   the Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 (SSI 2011/draft).

10. **Wildlife and Natural Environment (Scotland) Bill**: The Committee will consider the delegated powers provisions in this Bill after Stage 2, and the contents of a draft report.

11. **Damages (Scotland) Bill**: The Committee will consider the delegated powers provisions in this Bill after Stage 2, and the contents of a draft report.
12. **Patient Rights (Scotland) Bill:** The Committee will consider the contents of a draft report.
The papers for this meeting are as follows—

Legal Brief (private) SL/S3/11/5/1
Summary of Recommendations SL/S3/11/5/2

**Agenda Items 3 and 4**
Instrument Responses SL/S3/11/5/3

**Agenda Item 6**
Paper by the Clerk SL/S3/11/5/4
Correspondence from the Scottish Government SL/S3/11/5/5

**Agenda Item 7**
Paper by the Clerk SL/S3/11/5/6
Correspondence from the Scottish Government SL/S3/11/5/7

**Agenda Item 8**
*Property Factors (Scotland) Bill (as amended at Stage 2)*
Briefing Paper (private) SL/S3/11/5/8

**Agenda Item 9**
Briefing Paper (private) SL/S3/11/5/9

**Agenda Item 10**
*Wildlife and Natural Environment (Scotland) Bill (as amended at Stage 2)*
Revised Delegated Powers Memorandum
Briefing Paper (private) SL/S3/11/5/10
Draft Report (private) SL/S3/11/5/11

**Agenda Item 11**
*Damages (Scotland) Bill (as amended at Stage 2)*
Briefing Paper (private) SL/S3/11/5/12
Draft Report (private) SL/S3/11/5/13

**Agenda Item 12**

Draft Report (private) SL/S3/11/5/14
SUBORDINATE LEGISLATION COMMITTEE

5th Meeting, 2011 (Session 3)

Tuesday 22 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 2  Instruments subject to approval

The Muntjac Keeping (Scotland) Order 2011 (SSI 2011/made)

The Committee may wish to be content with this Order.

Agenda Item 3  Draft instruments subject to approval

The Children's Hearings (Scotland) Act 2011 (Consequential Provision) and Public Appointments and Public Bodies etc (Scotland) Act 2003 (Amendment of Specified Authorities) Order 2011 (SSI 2011/draft)

The Committee may wish to report that this instrument contains a minor drafting error in the numbering of the new paragraph to be inserted in section 6A(1) of the Social Work (Scotland) Act 1968 which the Scottish Government intends to correct if this instrument is approved by the Parliament.

The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (SSI 2011/draft)

The Committee may wish to report that the meaning and effect of regulation 18(6) could be clearer in that it appears to exempt SEPA from applying the requirements of the Water Framework Directive and Groundwater Directive when considering emergency applications in so far as that would not be reasonably practical, when separately SEPA are under a duty to secure compliance with the Directives by virtue of section 2(1) of the Water Environment and Water Services (Scotland) Act 2003.

The Committee may wish to welcome that the Government withdrew an earlier draft of this instrument to address drafting errors identified by the Committee.
The Waste Management Licensing (Scotland) Regulations 2011 (SSI 2011/draft)

The Radioactive Substances Act 1993 Amendment (Scotland) Regulations 2011 (SSI 2011/draft)

Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (SSI 2011/draft)

The Interpretation and Legislative Reform (Scotland) Act 2010 (Consequential Provisions) Order 2011 (SSI 2011/draft)

The Scottish Statutory Instruments Regulations 2011 (SSI 2011/draft)

The Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 (SSI 2011/draft)

The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (SSI 2011/draft)

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No 2) Regulations 2011 (SSI 2011/draft)

The Debt Arrangement Scheme (Interest, Fees, Penalties and Other Charges) (Scotland) Regulations 2011 (SSI 2011/draft)

The Committee may wish to be content with these instruments.

Agenda Item 4  Instruments subject to annulment

The Edinburgh College of Art (Transfer) (Scotland) Order 2011 (SSI 2011/54)

The Committee may wish to report that there appears to be a doubt whether article 3 is *intra vires*, in that it purports to regulate the constitution and internal affairs of the University of Edinburgh, and that there is as doubt as to whether this can properly be said to be incidental, supplementary or ancillary to the closure and winding up of Edinburgh College of Art.

The Committee may wish to report that the meaning and effect of article 7 could be clearer, in respect that the Order fails to define the Edinburgh College of Art Prize Fund to which the article applies (either of new or by the continuation in effect of previous statutory provisions for this purpose), and so it is unclear to what transferred property the conditions imposed by that article apply.
The National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Regulations 2011 (SSI 2011/55)

The Committee may wish to report the following drafting errors under the general reporting ground:

- References to “regulation 3(1)(b)” in paragraphs 1 and 2(3) of the Schedule should be to “regulation 3(2)(b)”;  
- The words “are amended as follows” have been omitted from paragraph 5(1) of the Schedule.

The Home Energy Assistance Scheme (Scotland) Amendment Regulations 2011 (SSI 2011/56)

The Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Amendment Order 2011 (SSI 2011/59)

The Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Amendment Order 2011 (SSI 2011/60)

The Scottish Crime and Drug Enforcement Agency (Scotland) Regulations 2011 (SSI 2011/61)

The Police Grant (Scotland) Order 2011 (SSI 2011/62)

The Local Authority Accounts (Scotland) Amendment Regulations 2011 (SSI 2011/64)

The Ayr Road Route (M77) (Speed Limit) Amendment Regulations 2011 (SSI 2011/67)

The M8 Motorway (Junction 10 Westerhouse Slip Roads) (Speed Limit) Regulations 2011 (SSI 2011/68)

The Glasgow Renfrew Motorway (Stages I and II) (Speed Limit) Amendment Regulations 2011 (SSI 2011/69)

The Sea Fishing (Licences and Notices) (Scotland) Regulations 2011 (SSI 2011/70)

The Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2011 (SSI 2011/73)

The Non-Domestic Rates (Levying) (Scotland) Amendment Regulations 2011 (SSI 2011/74)

The Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2011 (SSI 2011/75)
The Marine Licensing (Fees) (Scotland) Regulations 2011 (SSI 2011/78)

The Marine Licensing (Consultees) (Scotland) Order 2011 (SSI 2011/79)

The Marine Licensing (Register of Licensing Information) (Scotland) Regulations 2011 (SSI 2011/80)

The Interpretation and Legislative Reform (Scotland) Act 2010 (Savings and Transitional Provisions) Order 2011 (SSI 2011/88)

The Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2011 (SSI 2011/89)

The Road Works (Fixed Penalty) (Scotland) Amendment Regulations 2011 (SSI 2011/92)

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2011 (SSI 2011/94)

The Food (Jelly Mini-Cups) (Emergency Control) (Scotland) Revocation Regulations 2011 (SSI 2011/95)

The Roads (Scotland) Act 1984 (Fixed Penalty) Amendment Regulations 2011 (SSI 2011/98)

The Food Additives (Scotland) Amendment Regulations 2011 (SSI 2011/99)

The Additional Support Needs Tribunals for Scotland (Appointment of President, Conveners and Members and Disqualification) Amendment Regulations 2011 (SSI 2011/103)

The Additional Support Needs Tribunals for Scotland (Disability Claims Procedure) Rules 2011 (SSI 2011/104)


The Health Professions Council (Registration and Fees) (Amendment) (No. 2) Rules 2010 Order of Council 2011 (SI 2011/210)

The Committee may wish to be content with these instruments.

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Agenda Item 5 Instruments not laid before the Parliament

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The Marine (Scotland) Act 2010 (Commencement No. 2 and Transitional Provisions) Order 2011 (SSI 2011/58 (C. 8))

The Muntjac Keeping (Scotland) Regulations 2011 (SSI 2011/63)
The Committee may wish to content with these instruments.

**Agenda Item 8 Property Factors (Scotland) Bill**

**Section 2 (1B) – Meaning of “property factor”**

The Committee may wish to report that it considers the new delegated power introduced at section 2(1B) to be acceptable in principle, and that affirmative procedure is appropriate.

**Section 24A – recovery of costs from property factors in relation to certain applications and orders**

The Committee may wish to report that it considers the delegated power in section 24A(1) to be acceptable in principle, and that affirmative procedure is appropriate.

**Section 26A – ancillary provision**

The Committee may wish to report that it considers the delegated power in section 26A to be acceptable in principle.

While the Committee does not find the use of affirmative procedure objectionable, it may wish to ask the Member to consider whether that is actually essential in all circumstances and whether it might be more appropriate to limit such procedure to those circumstances where the order making power is being used to modify an enactment or to make incidental, supplemental or consequential provision.
Section 3(4): Fees for applications

The Committee may wish to report that it considers the delegated powers in section 3(4) and 7(4) to be acceptable in principle, and that negative procedure is appropriate.

The Committee may also wish to note the response received by the Member in charge concerning section 3(5), which does not directly relate to a delegated power.

Section 13: Property factor code of conduct

The Committee may wish to consider writing to the Member in charge in relation to the code of conduct under section 13, suggesting that in view of the important legal effect of the Code of Conduct (the Scottish Ministers being able under section 8 to remove a factor from the register if the factor has failed to demonstrate compliance with the Code) it be subject to affirmative resolution of the Parliament.

In doing so, it is suggested that the Member be advised that, if she is not minded to bring forward such an amendment, the Committee proposes to bring forward its own amendment in that regard.

Section 26: Delegation of functions

The Committee may wish to consider writing to the Member in charge in relation to section 26, suggesting that the power provided for there be made subject to affirmative procedure.

Again, in doing so, it is suggested that the Member be advised that, if she is not minded to bring forward such an amendment, the Committee proposes to bring forward its own amendment in that regard.
DRAFT INSTRUMENTS SUBJECT TO APPROVAL

The Children's Hearings (Scotland) Act 2011 (Consequential Provision) and Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Amendment of Specified Authorities) Order 2011 (SSI 2011/draft)

On 2 February 2011 the Scottish Government was asked:

Whether the new paragraph to be inserted in section 6A(1) of the Social Work (Scotland) Act 1968 by article 2 of the order should be paragraph (f) and not paragraph (c)? If so, how does the Scottish Government propose to correct this error to avoid confusion with the existing paragraph (c)?

The Scottish Government responds as follows:

We confirm that the inserted paragraph should be paragraph (f) and not paragraph (c) and thank the Committee for bringing this error to our attention. While we consider that it is clear from the drafting where the new paragraph should be inserted in section 6A(1) of the Social Work (Scotland) Act 1968 we will ensure that the draft instrument is corrected prior to it being made. We apologise for this oversight.

The Water Environment (Controlled Activities) (Scotland) Regulations 2011

On 4 February 2011 the Scottish Government was asked:

1. Regulation 18(6) authorises SEPA to depart from compliance with regulation 15(1) when determining applications in certain circumstances. This regulation appears to disapply the requirement for applications for permission to conduct a controlled activity to be granted in a manner which applies the requirements of the legislation referred to in Part 1 of Schedule 4 to the regulations. Can the Scottish Government explain how this exemption from the application of the requirements of the Directive and the Groundwater Directives 1980 and 2006 in the authorisation of controlled activities is permitted in accordance with these Directives?

2. What the effect of the error in the citation of the Nature Conservation (Scotland) Act 2004 in Part 2 of Schedule 4 is and whether it intends to correct this error.

3. What the effect of the error in the citation of the Water Environment (Controlled Activities) (Third Party Representations etc) (Scotland) Regulations 2006 in regulation 58(1)(b) is and whether it intends to correct this error.
4. Whether the reference to regulation 28(1) in regulation 16(1) should be to regulation 27(3) since that regulation directs SEPA to determine the application whereas regulation 28(1) requires notice of that decision to be given, and if so whether it intends to amend this.

The Scottish Government responds as follows:

1. SEPA is not exempted from applying the requirements of the Directive or the Groundwater Directive 2006 (which replaces the Groundwater Directive 1980 from 16th January 2009). SEPA must still, by virtue of section 2(1) of the 2003 Act, exercise its functions under “the relevant enactments”\(^1\) so as to secure compliance with the requirements of the Directive and the Groundwater Directive 2006. Although SEPA must still, therefore, exercise its functions under these Regulations so as to secure compliance with the Directive, that does not mean that it cannot authorise activities that will cause a temporary deterioration in water status. Article 4(6) of the Directive permits, subject to certain conditions, temporary deterioration in the status of bodies of water provided the temporary deterioration is the result of circumstances of natural cause or force majeure which are exceptional or could not reasonably be foreseen, or the result of circumstances due to accidents which could not reasonably have been foreseen.

2. The Scottish Government acknowledges this error with regret. The instrument will be withdrawn and an amended version laid in accordance with Rule 10.8 of the Standing Orders of the Scottish Parliament.

3. The Scottish Government acknowledges this error with regret. The instrument will be withdrawn and an amended version laid in accordance with Rule 10.8 of the Standing Orders of the Scottish Parliament.

4. The Scottish Government acknowledges this error with regret. The instrument will be withdrawn and an amended version laid in accordance with Rule 10.8 of the Standing Orders of the Scottish Parliament.

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

On 4 February 2011 the Scottish Government was asked:

*Can it be explained and clarified how the transitional provisions in regulation 31 are compatible with Community law, since they appear to perpetuate the failure to implement the Waste Directive 2008/98/EC until 27 September 2011 or other date as set out in paragraph (a), by permitting the carrying on of non-exempt activities?*

The Scottish Government responds as follows:

Exemptions from the requirement for permitting (known as waste management licensing in Scotland) are dealt with in Articles 24 and 25 of the Waste Directive. Within the broad parameters set out in those Articles, Member States are entitled to decide for

\(^1\) The “relevant enactments” are specified in the Water Environment (Relevant Enactments and Designation of Responsible Authorities and Functions) Order 2008 (SSI 2008/263) as including the 2005 Regulations and therefore, by virtue of section 19(3) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp. 10), these Regulations.
themselves which specific activities they wish to exempt from the permitting requirement. The Waste Directive does not contain any list of authorised exemptions.

The adjustments being made to Schedule 1 to the Regulations (formerly Schedule 3 to the Waste Management Licensing Regulations 1994) reflect domestic policy choices and are not required to achieve transposition of the Waste Directive. Similarly, it has been decided as a matter of domestic policy that where the scope of an exempt activity has been restricted by the Regulations, operators should be given a “grace period” during which they may either adjust their activities or apply for the waste management licence which they will need in future.

**INSTRUMENTS SUBJECT TO ANNULMENT**

**The Edinburgh College of Art (Transfer) (Scotland) Order 2011 (SSI 2011/54)**

On 4 February 2011 the Scottish Government was asked:

1. The Scottish Government is asked to explain what powers are being relied upon in article 3 in order to:

   (a) require the University Court of the University of Edinburgh to establish and maintain a part of the University to be known as Edinburgh College of Art (“the reconstituted College”)

   (b) require the University Court to establish and maintain the office of Principal of Edinburgh College of Art; and

   (c) specify that the reconstituted College be situated at the Lauriston Place campus occupied by the original College as at 31 July 2011.

2. In the event that the Scottish Government considers the provisions of article 3 to be incidental or supplementary to the making of an Order under section 47 of the Further and Higher Education (Scotland) Act 1992, it is asked to explain why it is considered appropriate to make provision in this Order for the above matters, when the University Court has power to regulate these matters in terms of section 3 of and Schedule 2 to the Universities (Scotland) Act 1966.

3. The Scottish Government is asked to explain the legal effect of the failure to define the Edinburgh College of Art Prize Fund either by a restatement of the assets from which it is currently made up, or to provide for a savings provision in respect of the Edinburgh College of Art Prize Fund comprising the assets listed in Part I of the Third Schedule to the 1959 Order (which will be revoked by article 12 of and Schedule 2 to this Order) if that still applies.

The Scottish Government responds as follows:

1. The provisions of section 47(2)(f) of the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”) are considered to be sufficiently wide to allow the Scottish Ministers to include provision to address the matters specified in question 1 above in this Order.
Section 47(1) enables Scottish Ministers by Order to close a designated institution and to wind up the governing body of that institution. Section 47(1A) makes it clear that the Order shall include provision transferring property and rights, and may include provision transferring liabilities and obligations, to a person specified in the Order. The University Court of the University of Edinburgh (“the University Court”) may be such a person.

This Order provides for the closure of Edinburgh College of Art and for the transfer of property, rights, liabilities and obligations to the University Court. It is of course important to note, as recorded in the preamble, that the Order has been made after consultation with the Governors of Edinburgh College of Art and with the consent of the University Court. The matters specified in question 1 are considered to be directly linked to the closure of the College and transfer of property, rights, liabilities and obligations to the University Court and it is therefore appropriate to treat these matters as a single package. Since the University Court has consented to their inclusion Scottish Ministers would be entitled to reach the view that it is expedient to include provision in the Order.

2. The Scottish Government considers that it is preferable to include provision relating to the closure of the Edinburgh College of Art, the transfer of property, rights, liabilities and obligations to the University Court and the conditions attached to the transfer in one Instrument. As noted above, it is considered that the provisions of section 47(2)(f) of the 1992 Act permit the Scottish Ministers to include such provision in this Order. While the University Court might regulate these matters in terms of section 3 of, and Schedule 2 to, the Universities (Scotland) Act 1966 Scottish Ministers are entitled to conclude that it is appropriate, particularly in circumstances where the University Court has consented to such provision being made in the Order, to make such provision in the Order.

3. Article 4 of this Order makes provision for the transfer of all property, rights, liabilities and obligations of the Governors of the Edinburgh College of Art (“the Governors”) to the University Court. It is clear that article 4 applies in relation to the Edinburgh College of Art Prize Fund (“the Fund”) being an endowment created by section 28 of the Edinburgh College of Art Order 1959 (“the 1959 Order”) and currently held and administered by the Governors in terms of article 23 of the Edinburgh College of Art (Scotland) Order 1995. As with other property, rights, liabilities and obligations transferring by virtue of article 4, we did not consider that it was necessary to further define the Fund (although undoubtedly that could have been done). The purpose of article 7 of the Order is to make clear on the face of the Order that the Fund remains subject to the trust and conditions to which it is subject immediately before transfer. This was considered expedient although even in the absence of such specific provision this would be the effect of section 47(3) of the 1992 Act which provides that property transferred by virtue of this Order remains subject to any trust or condition to which it was subject immediately before such transfer. In addition, and for ease of reference of the reader, we have identified in a footnote in the Order that the Fund was created by section 28 of the 1959 Order.
The Scottish Government responds as follows:

1. The Scottish Government thanks the Committee for drawing this typographical error to its attention- a reference to regulation 3(1)(b) has been made where a reference to regulation 3(2)(b) should have been made in two places.

The amendment to both instruments being amended incorrectly substitutes the reference to regulation 3(1)(b)(ii) of the 2008 regulations with a reference to regulation 3(1)(b) of the 2011 Regulations. However, as there is no regulation 3(1)(b) in the 2011 Regulations, and regulation 3(2)(b) re-enacts the provision being revoked, the Scottish Government believes that the intention of the provision would be properly determined by a court seeking to interpret paragraphs 1 and 2(2) of the Schedule to the 2011 Regulations.

2. The Scottish Government thanks the Committee for drawing this error in paragraph 5(1) to its attention. The omission is not considered to have any substantive effect. The Regulation which induces the Schedule (regulation 6) states that the amendments listed there have effect. As paragraph 5 is an extension to the regulation which induces it, the amendments listed in that paragraph have effect.

Paragraph 5 must be read as a whole. Paragraph 5(1) together with the cross heading to that paragraph make it clear that the paragraph relates to SSI 2004/116. Given that the court will construe legislation so as to give meaning to words where possible, it is considered that the effect of paragraph 5(1) is to make clear that amendments in the remainder of the paragraph relate to SSI 2004/116.

3. Whilst the Scottish Government is of the view that the legal effect of paragraphs 1 and 2(2) of the Schedule to the 2011 Regulations would be properly determined by a court, it is acknowledged that this typographical error may cause initial confusion for the reader. Given that, the Scottish Government will make a correction to the regulations by correction slip, correcting the cross references to regulation 3(2)(b).

In relation to the omission of the words “are amended as follows” or similar from paragraph 5(1) of the Schedule, the Scottish Government believes the even without these words the effect of the provision is clear and therefore does not intend to take corrective steps.
SUBORDINATE LEGISLATION COMMITTEE

5th Meeting, 2011 (Session 3)

Tuesday 22 February 2011

Paper by the Clerk

Certification of Death (Scotland) Bill – Response from the Bill Team

Background

1. The Subordinate Legislation Committee reported on the delegated powers in the Certification of Death (Scotland) Bill on 8 December 2010 in its 66th Report of 2010.

Government response

2. The Committee made three recommendations in its stage 1 report.

3. In its response, the Scottish Government has confirmed that it will lodge amendments in line with the recommendations made by the Committee.

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

Recommendation

5. Members are invited to note the Government’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
Correspondence from the Scottish Government dated 9 February 2011

Certification of Death (Scotland) Bill - Stage 1

Thank you for the letter from Jake Thomas, Assistant Clerk to the Subordinate Legislation Committee dated 7 December 2010 enclosing a copy of the Stage 1 Report of the Subordinate Legislation Committee.

The Committee drew attention to 3 sections in particular. In relation to the delegated powers in sections 2 and 4(7), the Scottish Government confirms that it will seek to amend the Bill at Stage 2 to adopt the emergency affirmative procedure for these powers, discounting periods of recess. In relation to the delegated power in section 23(3) to set fees, the Scottish Government confirms that it will seek to amend the Bill at stage 2 to provide for negative procedure in this case.

The Committee will wish to note that the Minister for Public Health & Sport confirmed in her response to the Health & Sport Committee Stage 1 report that the necessary amendments have already been drafted in relation to the above.

The Scottish Government is grateful to the Committee for its scrutiny of and comments on the Bill.

ANNETTE STUART
Bill Team
SUBORDINATE LEGISLATION COMMITTEE

5th Meeting, 2011 (Session 3)

Tuesday 22 February 2011

Paper by the Clerk

Forced Marriages etc. (Protection and Jurisdiction) (Scotland) Bill – Response from Minister for Housing and Communities

Background

1. The Subordinate Legislation Committee reported on the delegated powers in the Forced Marriages etc. (Protection and Jurisdiction) (Scotland) Bill on 8 December 2010 in its 67th Report of 2010.

Government response

2. The Committee was satisfied with the choice of negative procedure for the power in section 3(7)(c) (Power to specify a person, or a person falling within a description of persons, as a relevant third party). However, it did recommend that the Government should amend the power, making a requirement for Ministers to consult the Lord President before making an order.

3. The Equal Opportunities Committee also agreed with this recommendation.

4. In his response, the Minister for Housing and Communities argues that as this power is expected to be used only sparingly and in relation to persons with a clear interest in seeking a Forced Marriage Protection Order on behalf of victims of forced marriage, it is unnecessary to consult the Lord President whenever the power is exercised.

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

Recommendation

6. Members are invited to note the Government’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
SUBORDINATE LEGISLATION COMMITTEE

5th Meeting, 2011 (Session 3)

Tuesday 22 February 2011

Correspondence from the Scottish Government dated 14 February 2011

FORCED MARRIAGE ETC. (PROTECTION AND JURISDICTION) (SCOTLAND) BILL

I am writing in response to one of the Subordinate Legislation Committee's recommendations included in the Equal Opportunities Committee's Stage 1 Report for the above Bill.

In paragraph 206 of the Report, the Equal Opportunities Committee agreed with the Subordinate Legislation Committee's recommendation that the power at section 3(7)(c) of the Bill, to specify a person, or a person falling within a description of persons, as a relevant third party, should be amended so that it is subject to a requirement on Ministers to consult the Lord President prior to making an order.

The position in the Bill at present is that the leave of court must be obtained before an application for a FMPO may be made. The exceptions are the protected person and “relevant third parties”. The power to extend the group of relevant third parties in section 3(7)(c) is expected to be used only sparingly and in relation to persons with a clear interest in seeking a FMPO on behalf of victims of forced marriage. Consequently, it is not considered necessary for the Lord President to be consulted whenever the power is exercised, notwithstanding the removal of the courts' discretion to entertain an application from a person designated a relevant third party.

Therefore at present the Government is not minded to bring forward an amendment in relation to this recommendation.

ALEX NEIL
MINISTER FOR HOUSING AND COMMUNITIES