The Committee will meet at 12 noon in Committee Room 5.

1. **Decisions on taking business in private**: The Committee will decide whether to take items 7 and 8 in private.

2. **Instruments subject to approval**: The Committee will consider the following—
   - the Local Government Finance (Scotland) Amendment Order 2011 (SSI 2011/made);
   - the Local Government Finance (Scotland) Amendment (No.2) Order 2011 (SSI 2011/made).

3. **Instruments subject to annulment**: The Committee will consider the following—
   - the Licensing (Scotland) Act 2005 (Consequential Provisions) Order 2011 (SSI 2011/150);
   - the Food Labelling (Declaration of Allergens) (Scotland) Regulations 2011 (SSI 2011/152);
   - the Police Pensions (Amendment) (Scotland) Regulations 2011 (SSI 2011/154);
   - the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2011 (SSI 2011/160);
   - the Animal By-Products (Enforcement) (Scotland) Regulations 2011 (SSI 2011/171);
   - the National Health Service Superannuation Scheme (Scotland) Amendment Regulations 2011 (SSI 2011/173);
   - the Licensing (Food Hygiene Requirements) (Scotland) (No.2) Order 2011 (SSI 2011/177);
   - the National Health Service (Dental Charges) (Scotland) Amendment Regulations 2011 (SSI 2011/168);
4. **Instruments not laid before the Parliament**: The Committee will consider the following—

   the Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No.8 and Transitional) Order 2011 (SSI 2011/179 (C.16));
   the Historic Environment (Amendment) (Scotland) Act 2011 (Commencement No.1) Order 2011 (SSI 2011/174 (C.14));
   the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No.8, Transitional and Savings Provisions) Order 2011 (SSI 2011/178 (C.15));
   the Legal Services (Scotland) Act 2010 (Commencement No.1 and Saving Provision) Order 2011 (SSI 2011/180 (C.17));
   the Housing (Scotland) Act 2010 (Commencement No.3) Order 2011 (SSI 2011/181 (C.18));
   the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No.9) Order 2011 (SSI 2011/188 (C.19)).

5. **Certification of Death (Scotland) Bill**: The Committee will consider correspondence from the Minister for Public Health.

6. **Annual report**: The Committee will consider a draft annual report for the parliamentary year from 9 May 2010 to 22 March 2011.

7. **Welfare Reform Bill (UK Parliament legislation)**: The Committee will consider the powers to make subordinate legislation conferred on Scottish Ministers in the Welfare Reform Bill (UK Parliament legislation).

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

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

- **Legal Brief (private)**
  - SL/S3/11/8/1

- **Summary of Recommendations**
  - SL/S3/11/8/2

**Agenda Items 2, 3 and 4**

- **Instrument Responses**
  - SL/S3/11/8/3

**Agenda Item 5**

- **Paper by the Clerk**
  - SL/S3/11/8/4

**Agenda Item 6**

- **Draft Annual Report**
  - SL/S3/11/8/5

**Agenda Item 7**

- **Welfare Reform Bill Legislative Consent Memorandum**
- **Welfare Reform Bill and accompanying documents**

- **Briefing Paper (private)**
  - SL/S3/11/8/6

**Agenda Item 8**

- **Public Records (Scotland) Bill (as amended at Stage 2)**

- **Briefing Paper (private)**
  - SL/S3/11/8/7
SUBORDINATE LEGISLATION COMMITTEE

8th Meeting, 2011 (Session 3)

Tuesday 15 March 2011

Summary of Recommendations

The Committee will be invited to consider the following recommendations at the meeting. Decisions are a matter for the Committee.

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**Agenda Item 2  Instruments subject to approval**

**The Local Government Finance (Scotland) Amendment Order 2011**

**The Local Government Finance (Scotland) Amendment (No. 2) Order 2011**

The Committee may wish to report that the Local Government Finance (Scotland) Amendment Order 2011 is defectively drafted.

The Scottish Government has confirmed that the order is intended to increase the distributable amount of non-domestic rate income for the year 2011-12 by £11.5 million to £2,182 million. While the order seeks to provide for the distribution of non-domestic rate income between local authorities, which when aggregated totals £2,182 million, it does not make provision for the increase in the total distributable amount to that figure as required under the Local Government Finance Act 1992.

The Scottish Government has made the Local Government Finance (Scotland) Amendment (No. 2) Order 2011 to correct this defect and the Committee may wish to report that it is content with that instrument.

The Committee may therefore also wish to report that, if the Parliament wishes to approve the proposed increase in the distributable amount of non-domestic rate income and the revised distribution of that amount, it requires to approve both orders in order to achieve that effect.

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**Agenda Item 3  Instruments subject to annulment**

**The Alcohol etc. (Scotland) Act 2010 (Commencement) Order 2011 (SSI 2011/150)**

The Committee may wish to report that the drafting of paragraph 3(4) of the Schedule to the Order appears to be defective, in that it refers to "premises which
hold a premises licence” when it is not possible for premises themselves to be holders of a licence.

The Committee may wish to report under the general ground that there is a drafting error in paragraph 4(2)(a) of the Schedule to the Order, as it seeks to insert a new definition in regulation 2 of the Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007 after a definition which does not exist.

The Committee may also wish to welcome the Scottish Government’s decision to lay an amending Order to correct these errors.

The Food Labelling (Declaration of Allergens) (Scotland) Regulations 2011 (SSI 2011/152)

The Committee may wish to draw this instrument to the attention of the Parliament and the lead committee (under the general reporting ground), as there has been a delay from 31 December 2010 to 18 March 2011 in correcting an incompatibility between Scots criminal law and Community law.

The Police Pensions (Amendment) (Scotland) Regulations 2011 (SSI 2011/154)

The Committee may wish to report (under the general ground) that there is a drafting error in paragraph 9(ea)((1C) of Schedule 2 to the Police Pensions (Scotland) Regulations 2007, as inserted by paragraph 15(3) of Schedule 2 to the Regulations, which the Scottish Government has acknowledged. It is evident that “Regulations” requires to be read as the last word in that provision, to avoid absurdity.

The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2011 (SSI 2011/160)

The Committee may wish to report this instrument on the basis that the meaning of regulation 4(c), which substitutes new regulation 3(4A) into the 1989 Regulations, could be clearer as to whether solicitors require to make an election between payment options where counsel has made a request under new regulation 3(3)(b).

The Committee may also wish to report this instrument on the basis that paragraph 3 of Chapter 4, and paragraph 11(a) of Chapter 6, of Part 1 of Table of Fees A could be clearer in regard to the fees payable for the initial thirty minutes of a hearing which exceeds that period.
The Animal By-Products (Enforcement) (Scotland) Regulations 2011 (SSI 2011/171)

The Committee may wish to report (under the general reporting ground) that the Regulations contain drafting errors which are acknowledged by the Scottish Government, as follows—

- in regulation 15(2)(d), the reference to regulation “14(c)(iv)” should be to “14(c)(iii)”, and
- in regulation 15(2)(f), the references to regulation “14(b)(vi)” and “14(c)(iii)” should be to “14(b)(vii)” and “14(c)(iv)”.

The Committee may also wish to report that it is content for its interests with the reasons provided by the Scottish Government for the breach of the “21 day rule” between the date of laying the Regulations and the date when they come into force.

The National Health Service Superannuation Scheme (Scotland) Amendment Regulations 2011 (SSI 2011/173)

The Committee may wish to report that it is content for its interests with the reasons provided by the Scottish Government for the breach of the “21 day rule” between the date of laying the instrument and the coming into force date.

The Committee may wish to be content with the Regulations. The Committee may also wish to welcome that the Regulations promptly correct the errors which the Committee identified in relation to the National Health Service Superannuation Scheme (S) Regulations 2011 (SSI 2011/117).

The Licensing (Food Hygiene Requirements) (Scotland) (No. 2) Order 2011 (SSI 2011/177)

The Committee may wish to welcome the Scottish Ministers’ prompt making of this Order to replace the Licensing (Food Hygiene Requirements) (Scotland) Order 2011 in light of the defects in that instrument highlighted by the Committee.

However, the Committee may wish to note that the same issue in relation to the anticipatory exercise of powers arises with this Order as with the one which it replaces, and accordingly it may wish to report that there is a doubt whether the Order is *intra vires*, in that the powers under which it are made are not yet in force, and it seems to be doubtful whether the exercise the powers inserted by the 2010 Act can be necessary or expedient simply for the purpose of giving effect to the provisions in the 2010 Act which insert those powers into existing legislation.

The Committee may wish to be content, for its interests, with the explanation provided for the failure to comply with the 21 day rule.
The National Health Service (Dental Charges) (Scotland) Amendment Regulations 2011 (SSI 2011/168)


The Committee may wish to be content with these instruments.

**Agenda Item 3  Instruments not laid before the Parliament**

The Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No. 8 and Transitional) Order 2011 (SSI 2011/179 (C. 16))

The Committee may wish to report that this instrument is defectively drafted in so far as it seeks to bring into force the amendment contained in paragraph 6(3) of Schedule 5 to the 2007 Act, as paragraph 6(1) has not been commenced for the purposes of that amendment.

The Historic Environment (Amendment) (Scotland) Act 2011 (Commencement No. 1) Order 2011 (SSI 2011/174 (C. 14))

The Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 8, Transitional and Savings Provisions) Order 2011 (SSI 2011/178 (C. 15))

The Legal Services (Scotland) Act 2010 (Commencement No. 1 and Saving Provision) Order 2011 (SSI 2011/180 (C. 17))

The Housing (Scotland) Act 2010 (Commencement No. 3) Order 2011 (SSI 2011/181 (C. 18))

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 9) Order 2011 (SSI 2011/188 (C. 19))

The Committee may wish to be content with these instruments.
INSTRUMENTS SUBJECT TO APPROVAL

The Local Government Finance (Scotland) Amendment Order 2011

On 3 March 2011, the SLC’s legal advisers noted that:

“The intended effect of the changes to the distribution of non-domestic rate income for the year 2011-12 set out in the amended figures in column 3 of the replacement schedule 1 to the Local Government Finance (Scotland) Order 2011 (LGFO) appears to be to increase the proposed distributable amount by £11,500,000 to £2,182,000,000.”

The Scottish Government was asked:
1. Why the distributable amount for the year 2011-12 defined by article 3 of the LGFO has not been amended to reflect this;

2. What the effect of this omission is considered to be, since (i) paragraph 9 of Schedule 12 to the Local Government Finance Act 1992 requires the distributable amount to be set out by order prior to the financial year beginning and (ii) the calculation of the entitlement of each local authority under article 3(3) of the LGFO no longer makes arithmetical sense;

3. Whether it intends to revoke this instrument and bring forward a new instrument to correct this omission to be approved by the Parliament before the financial year commences (i.e. before dissolution).

The Scottish Government response is as follows:
1. This was an oversight, and we are grateful to the Parliament's legal advisers for drawing it to our attention. We have made the Local Government Finance (Scotland) Amendment (No. 2) Order 2011 to make this further, and necessary, amendment.

2. Paragraph 9(1) of Schedule 12 to the Local Government Finance Act 1992 requires Scottish Ministers to estimate the aggregate of certain items of account before the financial year begins. That estimate has been undertaken within this timescale and consequently Scottish Ministers have complied with their duties under paragraph 9. That paragraph does not expressly require Scottish Ministers to make an LGFO prior to the start of the financial year in question. However, without the further amendment, the Order would not make sense. In the original LGFO (S.S.I. 2011/109) the Scottish Ministers estimated the amounts that will be credited and debited to the NDR account, in accordance with paragraph 9(1) of Schedule 12 of the Act. The Ministers also specified the distributable amount of NDRI for that year. The Scottish Ministers can alter the distributable amount at any time, being permitted to do so by paragraph 1(4)(a) of Schedule 12. However, without the further amendment, the original LGFO would not
comply with the terms of paragraph 9(4) of Schedule 12, because it would not specify a distributable amount that corresponded with the amount to be distributed, in terms of column 3 of Schedule 1 to the Order.

3. The Scottish Ministers consider that it is simpler for the reader of legislation if a further Order is laid to make the provision that was overlooked. Revocation of the first amending instrument is awkward, because it is a made affirmative Order. That means that it is neither numbered nor published until approved. If revoked before approval, the non-publication means that the reader cannot see the full picture. By laying a further instrument, which can be approved along with and come into effect at the same time as the first amending instrument, the full picture is apparent, and the original LGFO is properly amended.
INSTRUMENTS SUBJECT TO ANNULMENT

The Licensing (Scotland) Act 2005 (Consequential Provisions) Order 2011 (SSI 2011/150)

On 3 March 2011 the Scottish Government was asked:

1. Paragraph 3(4) of the Schedule to the Order amends regulation 12(b) of the Club Gaming and Club Machine Permits (Scotland) Regulations 2007 so that it will read “(b) has been issued under Schedule 12 to the Act to a club or institute which operates from premises which hold a premises licence in terms of the Licensing (Scotland) Act 2005.” Section 20(1) of the Licensing (Scotland) Act 2005 permits any person, other than an individual under the age of 18, to apply for a premises licence, and if the application is granted a licence must be issued to the applicant specifying, inter alia, the name and address of the holder of the licence (section 26). “Premises” is defined in section 147(1) as meaning any place, and including a vehicle, vessel or moveable structure. The Scottish Government is asked to explain how “premises” may be said to hold a premises licence in terms of terms of the 2005 Act, when it appears clear from the 2005 Act that a person holds a premises licence for the premises in respect of which the licence is issued. The Scottish Government is further asked whether the effect of regulation 12(b) as amended is sufficiently clear.

2. Paragraph 4(2)(a) of the Schedule to the Order purports to insert a new definition after the definition of “the 1968 Act” in regulation 2 of the Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007. However, there does not appear to be such a definition in that regulation. The Scottish Government is asked to explain the effect of this error, and whether it intends to remedy it.

The Scottish Government responds as follows:

1. The Scottish Government accepts that premises cannot hold premises licences although the premises themselves are specified in the licence. While paragraph 3(4) of the Schedule to the Order could be readily understood as a reference to premises in respect of which there is in existence a premises licence, it is accepted that the wording of this provision could be made clearer. To this end an amending Order is to be made under sections 145 and 146(3) of the Licensing (Scotland) Act 2005 clarifying this matter. This amending Order is intended to come into force at the same time as this Order.

2. The Scottish Government accepts that there is an error in paragraph 4(2)(a) of the Schedule to the Order. That paragraph inserts a definition into regulation 2 of the Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007 after the definition of “the 1968 Act”. The definition should have been inserted into regulation 2 of the 2007 Regulations after the definition of “the Act” as there is no definition of “the 1968 Act”. The amending Order mentioned in answer 1 will also correct this error.
On 3 March 2011 the Scottish Government was asked:

*Given that the implementation of the extension of the transitional period provided by the amendment of Article 3 of Directive 2007/68/EC is late (from the end of December 2010) can the Scottish Government comment on:*

(a) whether there is a risk that persons to whom the new transitional provision inserted by these regulations and the defence would apply after 19 March 2011 may be, or may have been, prosecuted in relation to acts allegedly in the period from the expiry of the current transitional exemption (31 December 2010) until 18 March 2011, being the day before the extended exemption under Scots law comes in to force?

(b) what steps if any the Scottish Government have taken to address this?

The Scottish Government responds as follows:

(a) There is very little risk that any person to whom the new transitional provision and the defence would apply after 19 March 2011 may be, or may have been, prosecuted in relation to acts allegedly in the period from the expiry of the current transitional exemption (31 December 2010) until 18 March 2011.

The Crown Office and Procurator Fiscal Service (COPFS) have confirmed that there are no current prosecutions under regulation 44 of the Food Labelling Regulations 1996 (S.I. 1996/1499). Therefore it is unlikely that persons may be, or may have been, prosecuted for alleged offences under this regulation for the period from 31 December to 18 March 2011. In addition, steps were taken during 2010, as detailed below, to ensure that local authorities, the Scottish Government Justice Directorate (SGJD) and all other Interested Parties, were fully aware that the European Commission intended, and then decided, to extend the exemption, and to inform them of the delay by the Commission in publishing the Commission Regulation to do so.

(b) The following steps were taken to ensure that no such prosecutions would occur.

In July 2010, when the proposal for the extension of the exemption was in draft form, a letter was sent out by the Food Standards Agency to all Interested Parties throughout the UK, including local authorities and the SGJD, asking for their views on the proposed extension. In December 2010, the Food Standards Agency Scotland advised all Scottish local authorities and the SGJD that the Commission Regulation extending the exemption, had been agreed by the Commission, but its publication had been delayed. Therefore there would be an inevitable resulting gap in legislation to enforce the Regulation which it would be best practice for local authorities to take into account when considering the accuracy of labelling of wines.

Commission Regulation 1266/2010/EU was finally published on 31 December 2010, and came into force on that day. A short time was then needed for the Food Standards Agency in Scotland to liaise with administrations in the rest of the United Kingdom to finalise plans for consistent implementation and to finalise these Regulations and the accompanying documentation. The Regulations were made on 22nd February, laid on 24th February and come into force on 19th March 2011.
On 4 March 2011 the Scottish Government was asked:

*What is paragraph 9(ea)((1C) of Schedule 2 to the Police Pensions (Scotland) Regulations 2007, inserted by paragraph 15(3) of Schedule 2 to the Regulations, intended to mean, as patently this paragraph does not make sense?*

**The Scottish Government responds as follows:**
The Scottish Government explains that the word “Regulations” has been accidentally misplaced in the provision and should come after “1987” rather than being at the beginning of the line. The expression “1987 Regulations” is used in the previous provision and there can be no ambiguity as to what was intended. Accordingly SG proposes to rectify the error at the printing stage.
The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2011 (SSI 2011/160)

On 4 March 2011 the Scottish Government was asked:

1. When counsel requests payment in accordance with regulation 3(3)(b), must the solicitor request payment in accordance with paragraph (2) of that regulation (as suggested by new paragraph (4A)), or does payment of the solicitor in accordance with paragraph (2) remain the default position without any request?

2. To clarify what is meant by “due regard being had to economy” in new regulation 9, as substituted by regulation 6 of the Regulations.

3. Where a hearing, to which paragraph 3 of Chapter 4 or paragraph 11(a) of Chapter 6 of Part 1 of Table of Fees A applies, exceeds thirty minutes, what is the prescribed fee for the initial thirty minutes?

The Scottish Government responds as follows:

First Question

1. In the absence of a contrary request, the submission of legal aid accounts by the solicitor is regarded as a request for payment in accordance with paragraph (2). When the solicitor has submitted accounts and only counsel requests payment in accordance with regulation 3(3)(b), paragraph 4A will therefore apply.

Second Question

2. The phrase “due regard being had to economy” is also found in regulations 7(1) and 8(1) of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 and in regulation 17(1)(a) of the Advice and Assistance (Scotland) Regulations 1996. It is a phrase that has been used for some years in legal aid regulations. Article 3 of the Code of Conduct for criminal work for published on the Law Society’s website makes reference to the 1989 Regulations:— http://www.lawscot.org.uk/members/member-services/a-to-z-rules--guidance/a---f/code-of-conduct/code-of-conduct-for-criminal-work

3. As with regulation 7 of the 1989 Regulations and with regulation 17(1)(a) of the 1996 Regulations (albeit that the wording in the latter is in a slightly different form), the wording in new regulation 9 is a further qualification to work which has “actually and reasonably” been done. It means that the question of cost requires to be actively considered at every stage of the proceedings and when assessing the fees payable the Board will consider whether the work has been carried out in the most efficient and cost effective manner.

Third Question

4. The fee for the first 30 minutes is always chargeable. If the hearing lasts no longer than 30 minutes that is the only fee chargeable. However, if the hearing lasts over 30 minutes the second fee is chargeable for each subsequent half hour, or part thereof. Similar formulation is used in other legal aid fees regulations and in Tables of Fees in Acts of Sederunt. For examples, see regulation 5 of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 and paragraph 17 of Part 2A of Chapter 2 and paragraphs 4(b) and 21 of Part 3 of Chapter 4 of the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993 (SI 1993/3080).
The Animal By-Products (Enforcement) (Scotland) Regulations 2011 (SSI 2011/171)

On 4 March the Scottish Government was asked:
(1) In regulation 15(2)(d), should the reference to regulation “14(c)(iv)” be to “14(c)(iii)” or is there any error in the reference to “withdrawal of full approval”?

(2) In regulation 15(2)(f), should the references to regulation “14(b)(vi)” and “14(c)(iii)” be to “14(b)(vii)” and “14(c)(iv)”? Or is there any error in the references to “a prohibition”?

(3) Would the Government propose to correct these apparent errors in the references?

The Scottish Government responds as follows:
The Scottish Government confirms that the references in regulation 15(2) to regulations “14(c)(iv)”, “14(b)(vi)” and “14(c)(iii)” are incorrect and ought to be references to regulations “14(c)(iii)”, “14(b)(vii)” and “14(c)(iv)”, respectively. The Government is grateful to the Subordinate Legislation Committee for drawing this matter to its attention. The Government confirms that these incorrect references will be amended by correction slip. However, the descriptors used in regulation 15(2) are correct. The Government regrets the incorrect references but considers that the meaning of the provision is clear and they do not affect the operation of the instrument. As competent authority making the relevant decisions, the Scottish Ministers would give reasons for decisions made in respect of suspension of approval, withdrawal of approval or prohibition as a matter of good administrative practice.
The National Health Service (Dental Charges) (Scotland) Amendment Regulations 2011 (SSI 2011/168)

On 4 March 2011 the Scottish Government was asked:
If dental corporate bodies have been included on dental lists since the National Health Service (General Dental Services) (Scotland) Regulations 2010 (SSI 2010/208) came into force on 2nd July 2010, how have charges been made and recovered for general dental services provided, and for the supply of appliances, by corporate bodies since that date? What is the effect of the delay in amending the current regulations to make provision for charging by such bodies?

The Scottish Government responds as follows:
The Scottish Government believes that the delay in amending The National Health Service (Dental Charges) (Scotland) Regulations 2003 (“the Dental Charges Regulations”) will have no effect on the provision for charging by dental bodies corporate between 2nd July 2010 and the coming into force of these Regulations.

The National Health Service (General Dental Services) (Scotland) Regulations 2010 (“the 2010 Regulations”) revoked and re-enacted, with modifications, the National Health Services (General Dental Services) (Scotland) Regulations 1996 (“the 1996 Regulations”). By virtue of section 17, read with section 23, of the Interpretation Act 1978 any reference to the 1996 Regulations must be construed as a reference to the 2010 Regulations.

In the Dental Charging Regulations there are a number of references to the 1996 Regulations and to “dental practitioners” who may provide general dental services and supply appliances. The changes in article 2(2) and (3) of these Regulations simply make appropriate changes to the definitions and cross-references to the 1996 Regulations. The other changes clarify that both dental practitioners and bodies corporate may provide general dental services or supply appliances as provided for by the 2010 Regulations.

It is our view that the Interpretation Act means that since 2nd July 2010 (i.e. the revocation and re-enactment of the 1996 Regulations) the references in the Dental Charges Regulations to provisions in the 1996 Regulations would properly be read as references to the provisions re-enacted in the 2010 Regulations.

Furthermore we believe that the references to “dental practitioners” should also properly be read to include reference to bodies corporate. Until July 2010 only dentists could provide general dental services and (in terms of the Dental Charges Regulations) make and recover charges for those services but since then both dentists and bodies corporate have been able to provide those services. Bodies corporate now included on a Health Board’s list will be obliged to provide general dental services under the 2010 Regulations and will have an expectation to be able to make and recover charges from patients in that regard. It would be contrary to scheme for charging for general dental services set out in the National Health Service (Scotland) Act 1978 to read the provisions of the Dental Charges Regulations narrowly so as to exclude bodies corporate and their patients from the provisions regarding charges for general dental services whereas allowing a dental practitioner to make and recover such charges.
Therefore these amendments provide clarification rather than being necessary for the appropriate charges to be made. Accordingly charges would have been made and recovered by bodies corporate under the Dental Charges Regulations as read with section 17 of the Interpretation Act and with the beneficial construction of the term “dental practitioner”.

These changes were, however, overlooked in the consequential changes necessary as a result of the 2010 Regulations and we accept that it is preferable to make these changes on the face of the Dental Charges Regulations and take this opportunity to make those changes now.

In any event, as far as we are aware there are very few, if any, dental bodies corporate on any Health Board lists so this is likely to have little practical effect.
The Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No 8 Transitional) Order 2011 (SSI 2011/179) (C.16)

On 10 March the Scottish Government was asked:
Paragraph 6(1) of schedule 5 provides “The Sheriff Courts (Scotland) Extracts Act 1892 is amended as follows”. Thereafter follows two sub-paragraphs that make provision for the amendment of the 1892 Act in consequence of the 2007 Act. On commencing sub-paragraph (2), the fifth commencement order (SSI 2009/369) also brought into force sub-paragraph (1) “for the purposes of the provisions commenced in this Order”. Sub-paragraph (1) has not been brought into force for the purposes of sub-paragraph (3).

On 9 March 2011 the Scottish Government was contacted to request, firstly whether it accepted that to commence paragraph 6(3) of schedule 5 to the 2007 Act it is necessary to bring into force sub-paragraph (1) for the purposes of the former, and secondly, if the Government did so consider, what action would be taken to achieve that end.

The Scottish Government responded:
Thank you for pointing out that the instrument fails to commence paragraph 6(1) of Schedule 5 to the Bankruptcy and Diligence etc. (Scotland) Act 2007 for the purpose of the amendment in paragraph 6(3) of that Schedule. In the context of paragraph 6(3), in particular the heading to paragraph 6 as an internal aid to construction, which allows “section 7(4)” in sub-paragraph (3) to be identified in the absence of paragraph 6(1) for these purposes, we do not consider there is a doubt over the legal effect of the commencement order or over the amendment entering into force from 4th April 2011. We would however acknowledge the defective drafting and thank the Parliament for bringing this to our attention.
Certification of Death (Scotland) Bill – Response from the Minister for Public Health

Background

1. The Subordinate Legislation Committee reported on the delegated powers in the Certification of Death (Scotland) Bill as amended at Stage 2 on 8 March 2010 in its 20th Report 2011.

2. In the report, the Committee recommended that orders which revoke orders of suspension made under section 24A(7) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 or under section 4(7) of the Bill should be subject only to the requirements of section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 (laid only).

Response from the Minister for Public Health

3. The Minister for Public Health has written advising the Committee, as a matter of courtesy, that she has brought forward amendments to achieve this intention. The only difference being that any revocation orders brought forward under these sections would be subject to the negative procedure.

4. The amendments were lodged on Wednesday 9 March and are attached, along with the letter, in the annex.

Recommendation

5. Members are invited to note the Minister’s response on this matter.

Irene Fleming
Clerk to the Committee
CERTIFICATION OF DEATH (SCOTLAND) BILL - Stage 3

I write to advise the Committee that Government amendments have been lodged to the above Bill to be considered at stage 3 which adjust the procedure applicable to certain powers in the Bill. A copy of the amendments is attached to this letter.

It has come to my attention that the Subordinate Legislation Committee considered the Bill as amended at stage 2 at its most recent meeting and recommended that orders which revoke orders of suspension made under section 24A(7) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 or under section 4(7) of the Bill should be subject only to the requirements of section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Prior to learning of the Committee’s recommendation on this point, we had already given consideration to the procedure which should apply to orders which revoke orders of suspension and we came to the view that such orders should be subject to negative procedure. We considered that negative procedure was to be preferred over affirmative procedure in this circumstance as it would not be appropriate to take up Parliamentary time to deal with the revocation of a suspension order. We were also aware that this approach followed a recent precedent where negative procedure was used in a similar power in section 12(7) of the Patient Rights (Scotland) Bill, and that the Committee were content with that provision.

The deadline for lodging Government amendments was Wednesday 9th March and our amendments had already been lodged prior to the Committee’s report being made available. We were therefore unaware of the Committee’s recommendation on this point.

A further minor amendment is made to section 28 of the Bill; this is consequential on amendments made to section 28 at stage 2 and simply removes a reference to ‘regulations’ which is no longer relevant to section 28.

SHONA ROBISON
MINISTER FOR PUBLIC HEALTH
Section 2

Shona Robison

1 In section 2, page 2, line 31, after <(7)> insert <(other than one to which subsection (9B) applies)>

Shona Robison

2 In section 2, page 2, line 35, at end insert—

<9A> Subsection (9B) applies to an order made under subsection (7) consisting only of—

(a) provision revoking an earlier order made by virtue of subsection (7), or

(b) such provision and provision made by virtue of subsection (8)(a).

(9B) An order to which this subsection applies is subject to annulment in pursuance of a resolution of the Parliament.>

Section 28

Shona Robison

4 In section 28, page 15, line 15, after <4(7)> insert <(other than one to which subsection (1AB) applies)>

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5 In section 28, page 15, line 19, at end insert—

<1AA> Subsection (1AB) applies to an order made under section 4(7) consisting only of—

(a) provision revoking an earlier order under section 4(7), or

(b) such provision and provision made by virtue of section 28(1)(b).

(1AB) An order to which this subsection applies is subject to annulment in pursuance of a resolution of the Parliament.>

Shona Robison

6 In section 28, page 15, line 28, leave out <regulations or>
Background

1. Under rule 12.9 of Standing Orders the Committee is obliged to report to the Parliament at the end of each parliamentary year on its activities during that year.

2. These activities include details of its meetings, the number of times it has met in private and how the committee has taken into account equal opportunities in its work. In the case of this year, the parliamentary year ends on the dissolution of the Parliament and so the committee is required to report its activities before the Parliament is dissolved.

3. The attached report sets out the committee’s draft annual report for 2010-11.

Recommendation

4. Members are invited to consider and agree the contents of the draft annual report for 2010-11.

Irene Fleming
Clerk to the Committee
Introduction

1. This Report covers the work of the Subordinate Legislation Committee during the parliamentary year from 9 May 2010 to 22 March 2011. The Committee has scrutinised a number of bills and instruments again this year, reporting to subject Committees and the Parliament on issues such as the scope of delegated powers, and whether delegated powers are within vires as well as on detailed drafting issues.

Bills

2. The Committee considers delegated powers provisions in Government, Members’, Committee and Private bills. Over the reporting period, the Committee has considered and reported on 16 bills at Stage 1 and 17 bills as amended at Stage 2. As with previous years, the recommendations of the Committee on bills have led to a number of changes by the Government to relevant provisions, and through its scrutiny process the Committee continues to ensure that the correct balance between primary and secondary legislation is maintained.

3. The Committee has also considered three legislative consent memorandums. These are Westminster Bills which seek to change the law or alter Scottish Ministers’ or the Scottish Parliament’s powers in relation to devolved matters.

Subordinate Legislation

4. The Committee has continued to work to tight timescales in its consideration of subordinate legislation, producing 71 reports over the reporting year. During the parliamentary year, the Committee published 31 statutory instrument reports, reporting on 422 Scottish Statutory Instruments in total.

5. Of the instruments considered, 87 were subject to affirmative procedure, 255 to negative procedure, and 80 which were either not laid or not subject to Parliamentary procedure.

Equalities

6. The Committee considers equalities issues which can arise under the European Convention on Human Rights and under Community law. It is part of the Committee’s remit to draw the attention of lead committees and the Parliament to any instrument that, in its opinion, fails to comply with any such requirement.
7. It is also within the Committee’s remit to report any instrument on the grounds of an unusual or unexpected use of a power which raises equalities issues.

8. The Committee also scrutinises drafting practice and so points out, for example, failure to use gender neutral language in instruments.

**Meetings**

9. During the parliamentary year, the Committee met 30 times. Of these meetings, none were entirely in private and 24 were partly in private.

10. All the meetings have been held in Edinburgh.