



SUBORDINATE LEGISLATION COMMITTEE

AGENDA

1st Meeting, 2007 (Session 2)

Tuesday 9 January 2007

The Committee will meet at 10.30am in Committee Room 6.

1. **Delegated powers scrutiny:** The Committee will consider the delegated powers provisions in relation to the following bill—

Criminal Proceedings etc (Reform) (Scotland) Bill as amended at Stage 2.

2. **Legislative consent memorandum:** The Committee will consider the powers to make subordinate legislation conferred on Scottish Ministers in the Further Education and Training Bill.
3. **Legislative consent memorandum:** The Committee will consider the powers to make subordinate legislation conferred on Scottish Ministers in the Statistics and Registration Service Bill.
4. **Executive responses:** The Committee will consider Executive responses in relation to the following instruments—

the Scottish Local Government Elections Order 2007, **(SSI 2006/draft)**

the Water Services etc. (Scotland) Act 2005 (Commencement No. 5) Order 2006, **(SSI 2006/599)**.

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

the Conservation (Natural Habitats &c.) Amendment (Scotland) Regulations 2007, **(SSI 2006/draft)**

the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2007, **(SSI 2006/draft)**

the Scottish Parliament (Disqualification) Order 2007, **(SI 2006/draft)**.

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

the Personal Injuries (NHS Charges) (General) (Scotland) Regulations 2006, **(SSI 2006/592)**

the Personal Injuries (NHS Charges) (Reviews and Appeals) (Scotland) Regulations 2006, **(SSI 2006/593)**

the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2006, **(SSI 2006/601)**

the Prohibition of Fishing with Multiple Trawls (No. 2) (Scotland) Amendment Order 2006, **(SSI 2006/602)**

the Teachers' Superannuation (Scotland) Amendment (No. 2) Regulations 2006, **(SSI 2006/605)**

the Welfare of Animals (Transport) (Scotland) Regulations 2006, **(SSI 2006/606)**

the Local Government (Discretionary Payments And Injury Benefits) (Scotland) Amendment Regulations 2006, **(SSI 2006/609)**.

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

the Registration of Births, Still-births, Deaths and Marriages (Prescription of Forms and Errors) (Scotland) Regulations 2006, **(SSI 2006/598)**

the National Health Service (Functions of the Common Services Agency) (Scotland) Amendment (No. 2) Order 2006, **(SSI 2006/603)**

the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Commencement No. 2) Order 2006, **(SSI 2006/607)**

the London Olympic Games and Paralympic Games Act 2006 (Commencement) (Scotland) Order 2006, **(SSI 2006/611)**.

Ruth Cooper
Clerk to the Committee
Tel: 0131 348 5212

The following papers are relevant to this meeting:

Agenda Items 1 – 6

Legal brief (Private)

SL/S2/07/01/1

Agenda Item 1

[Supplementary delegated powers memorandum](#)

Executive correspondence

SL/S2/07/01/2

Agenda Item 2

[Legislative consent memorandum](#)

Agenda Item 3

[Legislative consent memorandum](#)

Agenda Item 4

Executive responses

SL/S2/07/01/3

Agenda Items 5 - 7

Copies of instruments (circulated to Members only)

SUBORDINATE LEGISLATION COMMITTEE

1st Meeting, 2007 (Session 2)

Tuesday 9 January 2007

Executive Correspondence

**Criminal Proceedings etc (Reform) (Scotland) Bill
Stage 3 Amendments Impacting on Delegated Powers in the Bill**

1. The Supplementary Delegated Powers Memorandum for this Bill (detailing stage 2 amendments which had an impact on the Bill's delegated powers) was submitted to the Parliament on 20 December last year. I understand that the SLC will consider it in the course of next week. Separate from that process I thought I should send you a short note outlining Executive amendments proposed for stage 3, which impact on delegated powers in the Bill. There are only 2 such amendments, both fairly minor in nature. These have not yet been lodged by Ministers – this email is simply to alert you to them in good time before the stage 3 debate, which is scheduled to take place on 18 January.

Section 6(2) – Power to determine which police officers have the authority to liberate an accused on an undertaking

New section 22(1E) of the Criminal Procedure (Scotland) Act 1995

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution of the Scottish Parliament

2. This power was explained fully in pages 4-5 of the original Delegated Powers Memorandum accompanying the Bill on introduction. It was not changed at stage 2. New section 22(1E) of the 1995 Act (as inserted by section 6 of the Bill) currently provides that Scottish Ministers may by (negative) regulations define the type of police officer whose authority is required to impose either standard bail conditions or additional (sometimes known, in the bail context, as “special” conditions) to an undertaking. If no such regulations are made any police officer would be entitled to impose such conditions, regardless of rank or position.

3. Following discussions on this provision at stage 2 the Executive intends to remove the order making power provided in section 22(1E) at stage 3. That section will be amended to provide that in respect of “special” conditions the authority of a police officer of the rank of inspector or above will always be required before such conditions can be imposed. By implication it will also

provide that the imposition of standard bail conditions to an undertaking may be performed by any police officer. This amendment reflects concerns expressed by the Justice 1 Committee at stage 2 to the effect that a senior officer should always be involved before special conditions are imposed. That being the case it is proposed to provide for this on the face of the Bill as opposed to providing for the option to make such provision in regulations. From a delegated powers perspective this change would simply remove the regulation making power from the Bill.

Section 51(4) – Power to repeal provisions of the District Courts (Scotland) Act 1975

Power conferred on: Scottish Ministers

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative resolution of the Scottish Parliament

4. This power was explained fully in pages 22-23 of the original Delegated Powers Memorandum accompanying the Bill on introduction. The original provision in section 51(4) stated simply that *“The Scottish Ministers may by order repeal any or all of the provisions of the 1975 Act.”* The SLC commented on this power at stage 1, stating:

“The Committee notes that the delegated powers in this provision are very wide and largely consequential on other provisions in the Bill. However, the Committee considers that the policy might not be wholly covered by the ancillary powers conferred by section 69 and that an express provision is necessary.”

The Committee considers that the power could be subject to negative procedure if the Bill was amended to make clearer the purpose of the provision which is described in the DPM. If the Executive is not minded to make the purpose clear in this way, the Committee considers that affirmative procedure would be more appropriate. The Executive is asked to comment.”

5. As a result of that comment the Executive amended section 51(4) at stage 2 to read - *“The Scottish Ministers may by order repeal any or all of the provisions of the 1975 Act to such extent as they consider to be appropriate in connection with the disestablishment of district courts.”*

6. On further consideration we think this amendment requires a further change. Several provisions of the District Courts Scotland Act 1975 (“the 1975 Act”) relate to justices of the peace (the current appointment terms of JPs, for example). In order to reform the system of lay justice in Scotland, it will be necessary to repeal these provisions. Strictly speaking, the reform of lay justice is not a necessary part of the disestablishment of district courts. It would be possible to reform lay justice without disestablishing district courts.

There is therefore scope for some doubt as to whether section 51(4), in its current form, allows Ministers to make an order repealing provisions of the 1975 Act for the purpose of reform to the system of lay justice.

7. For that reason a further change to section 51(4) is proposed at stage 3 which would make it read – *“The Scottish Ministers may by order repeal any or all of the provisions of the 1975 Act to such extent as they consider to be appropriate for the purposes of or in connection with the provisions of this Part”*. The reference to “this Part” relates to part 4 of the Bill, which deals solely with establishing JP courts and making provision for JPs. This change will put it beyond doubt that Ministers can make an order to repeal provisions of the 1975 Act in order to implement reforms to lay justice. It still meets the concerns originally expressed by the Subordinate Legislation Committee however, by making clear that provisions of the 1975 Act can only be repealed for the purposes of or in connection with the provisions of Part 4 of the Bill.

3 January 2007

SUBORDINATE LEGISLATION COMMITTEE

1st Meeting, 2007 (Session 2)

Tuesday 9 January 2007

Executive Responses

The Scottish Local Government Elections Order 2007, (SSI 2006/draft)

1. On 19th December the Committee asked for an explanation of the following matter.

The Committee asks the Executive to confirm whether, in Form 2 of Part VI of the Schedule, "(see note 3)" is correct when referring to an electoral number. It would appear that note 5 is more suitable.

The Scottish Executive responds as follows:

2. The Executive note that the reference in Form 2 of Part VI of the Schedule to the draft Order should refer to "note 5" rather than "note 3". The Executive are grateful to the Committee for drawing this matter to their attention. Should the draft Order receive the approval of Parliament and be made, the Executive would propose to correct the reference when the opportunity arises. Rule 4 of the Schedule to the draft Order does not require the nomination form to be in exactly the same form as that set out in Form 2 of Part VI of the Schedule. The nomination paper may be in a form to like effect. The Executive will therefore draw the matter to the attention of returning officers, local authorities, the main political parties and the Electoral Commission with the view to ensuring as far as possible that the actual nomination papers provided for the purposes of an election do contain the reference to note 5.

The Water Services etc. (Scotland) Act 2005 (Commencement No. 5) Order 2006, (SSI 2006/599)

1. In its letter of 19 December the Committee commented as follows on this instrument—

"Given that this is the 5th commencement order made under the parent Act, the Committee asks the Executive for the current position in relation to the Act's commencement and how many more commencement orders are expected to be made."

The Scottish Executive responds as follows:

2. The five commencement orders made under the Water Services etc (Scotland) Act 2005 have now brought into force almost all of the Act. The only provisions not fully in force are—

- Section 26(10) which will require to be commenced to disapply the sections 79 to 81 of the Environmental Protection Act to any sewerage nuisance which in future becomes the subject of a code of practice under section 26; and
- Schedule 5, para 7(5), which provides for the repeal of section 40 (reduced charges) of the Water Industry (Scotland) Act 2002; and section 32 of the 2005 Act so far as it gives effect to that part of schedule 5.

3. There are currently no plans to make further commencement orders in relation to these provisions.