



SUBORDINATE LEGISLATION COMMITTEE

AGENDA

10th Meeting, 2007 (Session 2)

Tuesday 13 March 2007

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

1. **Delegated powers scrutiny:** The Committee will consider a response from the Executive to points raised on the following bill—

Custodial Sentences and Weapons (Scotland) Bill as amended at Stage 2.

2. **Executive responses:** The Committee will consider the Executive response in relation to the following—

the Supervised Attendance Order (Prescribed Courts) (Scotland) Order 2007, **(SSI 2007/120)**

the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2007, **(SSI 2007/127)**

the Parental Involvement in Headteacher and Deputy Headteacher Appointments (Scotland) Regulations 2007, **(SSI 2007/132)**.

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

the Queen Margaret University, Edinburgh (Scotland) Order of Council 2007, **(SSI 2007/116)**

the Town and Country Planning (General Permitted Development) (Avian Influenza) (Scotland) Amendment Order 2007, **(SSI 2007/135)**

the Charities Accounts (Scotland) Amendment Regulations 2007, **(SSI 2007/136)**

the Plant Health (Export Certification) (Scotland) Amendment Order 2007 **(SSI 2007/137)**

the Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2007 **(SSI 2007/138)**

the National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2007, **(SSI 2007/139)**

the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment Regulations 2007, **(SSI 2007/142)**

the Colours in Food Amendment (Scotland) Regulations 2007 **(SSI 2007/143)**

the Meat (Official Controls Charges) (Scotland) Regulations 2007 **(SSI 2007/144)**

the Tuberculosis (Scotland) Order 2007, **(SSI 2007/147)**

the Education (Graduate Endowment, Student Fees and Support) (Scotland) Revocation Regulations 2007, **(SSI 2007/148)**

the Education Authority Bursaries (Scotland) Regulations 2007, **(SSI 2007/149)**

the Welfare of Animals (Slaughter or Killing) Amendment (Scotland) Regulations 2007, **(SSI 2007/150)**

the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007, **(SSI 2007/151)**

the Education (Fees and Awards) (Scotland) Regulations 2007, **(SSI 2007/152)**

the Students' Allowances (Scotland) Regulations 2007, **(SSI 2007/153)**

the Education (Student Loans) (Scotland) Regulations 2007, **(SSI 2007/154)**

the Graduate Endowment (Scotland) Regulations 2007, **(SSI 2007/155)**

the Education Maintenance Allowances (Scotland) Regulations 2007, **(SSI 2007/156)**

the Civil Partnership Act 2004 (Modification of Subordinate Legislation) (Scotland) Revocation Order 2007, **(SSI 2007/157)**

the Education (Student Loans for Tuition Fees) (Scotland) Amendment Regulations 2007, **(SSI 2007/158)**

the Repayment of Student Loans (Scotland) Amendment Regulations 2007, **(SSI 2007/159)**

the Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2007, **(SSI 2007/162)**

the Land Reform (Scotland) Act 2003 (Path Orders) Regulations 2007, **(SSI 2007/163)**

the Individual Learning Account (Scotland) Amendment Regulations 2007, **(SSI 2007/164)**

the Registered Social Landlords Accounting Requirements (Scotland) Order 2007, **(SSI 2007/165)**

the Building (Scotland) Amendment Regulations 2007, **(SSI 2007/166)**

the Building (Procedure) (Scotland) Amendment Regulations 2007, **(SSI 2007/167)**

the Building (Forms) (Scotland) Amendment Regulations 2007, **(SSI 2007/168)**

the Building (Fees) (Scotland) Amendment Regulations 2007, **(SSI 2007/169)**

the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007, **(SSI 2007/170)**

the Bell College of Technology (Transfer and Closure) (Scotland) Order 2007, **(SSI 2007/171)**

the Waste Management Licensing Amendment (Waste Electrical and Electronic Equipment) (Scotland) Regulations 2007, **(SSI 2007/172)**

the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007, **(SSI 2007/173)**

the Cattle Identification (Scotland) Regulations 2007, **(SSI 2007/174)**

the Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2007, **(SSI 2007/175)**

the Planning etc. (Scotland) Act 2006 (Consequential Provisions) Order 2007, **(SSI 2007/176)**

the Town and Country Planning (General Development Procedure) (Scotland) Amendment Order 2007, **(SSI 2007/177)**

the Surface Waters (Fishlife) (Classification) (Scotland) Amendment Regulations 2007, **(SSI 2007/178)**

the Radioactive Contaminated Land (Scotland) Regulations 2007, **(SSI 2007/179)**

the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2007, **(SSI 2007/180)**

the Civil Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2007, **(SSI 2007/181)**

the Air Quality Standards (Scotland) Regulations 2007, **(SSI 2007/182)**

the Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007, **(SSI 2007/183)**

the Seeds (Fees) (Scotland) Amendment Regulations 2007, **(SSI 2007/184)**

the Inshore Fishing (Prohibited Methods of Fishing) (Loch Creran) Order 2007, **(SSI 2007/185)**

the Inshore Fishing (Prohibited Methods of Fishing) (Firth of Lorn) Order 2007, **(SSI 2007/186)**

the Debt Arrangement Scheme (Scotland) Amendment (No. 2) Regulations 2007, **(SSI 2007/187)**

the Curd Cheese (Restriction on Placing on the Market) (Scotland) Revocation Regulations 2007, **(SSI 2007/188)**

the Teachers' Superannuation (Scotland) Amendment Regulations 2007, **(SSI 2007/189)**

the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2007, **(SSI 2007/190)**

the National Health Service (General Dental Services) (Scotland) Amendment Regulations 2007, **(SSI 2007/191)**

the National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2007, **(SSI 2007/192)**

the National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2007, **(SSI 2007/193)**

the Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Amendment Regulations 2007, **(SSI 2007/195)**

the Gambling Act 2005 (Premises Licences and Provisional Statements) (Scotland) Regulations 2007, **(SSI 2007/196)**

the Charities References in Documents (Scotland) Regulations 2007, **(SSI 2007/203)**

the Charities Reorganisation (Scotland) Regulations 2007, **(SSI 2007/204)**

the Valuation Appeal Panels and Committees (Scotland) Amendment Regulations 2007, **(SSI 2007/212)**

the Council Tax (Discounts) (Scotland) Amendment Regulations 2007, **(SSI 2007/213)**

the Council Tax (Discounts) (Scotland) Amendment Order 2007, **(SSI 2007/214)**

the Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2007, **(SSI 2007/215)**

the Non-Domestic Rates (Levy) (Scotland) Regulations 2007, **(SSI 2007/216)**

the Horse Passports (Scotland) Amendment Regulations 2007, **(SSI 2007/217)**

the Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2007, **(SSI 2007/219)**.

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

the Legal Profession and Legal Aid (Scotland) Act 2007 (Commencement No. 2) Order 2007, **(SSI 2007/140)**

the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (Commencement No. 16) Order 2007, **(SSI 2007/141)**

the Transport (Scotland) Act 2005 (Commencement No. 2) Order 2007, **(SSI 2007/161)**

the Smoking, Health and Social Care (Scotland) Act 2005 (Commencement No. 5) Order 2007, **(SSI 2007/218)**.

Ruth Cooper
Clerk to the Committee
Tel: 0131 348 5212

The following papers are relevant to this meeting:

Agenda Items 1 – 4

Legal brief (Private)

SL/S2/07/10/1

Agenda Item 1

Executive response
Additional Executive correspondence

SL/S2/07/10/2
SL/S2/07/10/2.1

Agenda Item 2

Executive responses

SL/S2/07/10/3

Agenda Items 3 - 4

Copies of instruments (circulated to Members only)



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Our ref:

7 March 2007

Dear Sylvia,

The Subordinate Legislation Committee (SLC) took evidence from Scottish Executive officials on Tuesday 6th March about the Custodial Sentences and Weapons (Scotland) Bill as amended at Stage 2. I am grateful to the SLC for providing this opportunity for officials to provide an update on the amendments, planned for Stage 3, which change the delegated powers provisions.

I now write to confirm that a number of amendments which change the delegated powers provisions will be made at Stage 3. They will be lodged with the Parliament by Thursday, 8 March at the latest.

The SLC has already been advised that the commitment given in Mrs Richardson's letter of 16 November 2006 to make the power under section 6(10) (amended at Stage 2 by Amendment 23 to insert it as a new section 6B) subject to affirmative procedure will be lodged as an amendment at Stage 3 of the Bill.

It was confirmed to the SLC that the Lord President had been consulted about the Act of Adjournal power in the provisions dealing with information from the courts at section 6C. However, I can confirm that the further amendment being made to these provisions at Stage 3 makes this power unnecessary and the Act of Adjournal power will be removed.

The SLC was also advised of the insertion of a new order making power to deal with cross-border transfers of prisoners. This power will be subject to affirmative procedure.

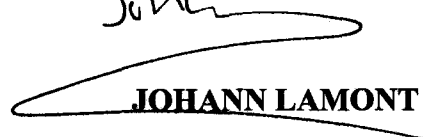
I understand that the SLC yesterday asked that the Executive should provide for affirmative resolution procedure to operate in relation to section 27Q (to be inserted into the Civic Government

(Scotland) Act 1982 by section 43 of the Bill). We had not considered such a change at Stage 2 since the Committee had previously indicated that it was content with negative procedure and negative procedure is not unprecedented for such powers. However, I have considered the points raised by the SLC and can confirm that the Executive will amend the Bill at Stage 3 in order to provide for affirmative procedure in relation to the order making powers in section 27Q.

Officials indicated yesterday that further amendments to the weapons sections of the Bill were being considered. I can confirm that we propose to amend section 45 of the Bill in relation to the power in subsection (11A) (to be inserted into section 141 of the Criminal Justice Act 1988) to modify the application of that section of the 1988 Act in relation to weapons specified in an order made under that section. As the SLC will recall, the intention of these powers is to enable exceptions to be made to ban on the sale of weapons where there are legitimate reasons for the exception, such as religious, cultural and sporting purposes. This amendment is related to other amendments being made to this section to ensure that any exceptions to manufacture, sale, hire etc. interface effectively with the import regime. The amendment is designed to ensure that an order made to implement such a ban can comply with that requirement.

It was also indicated to the SLC that the Executive would consider an amendment to ensure that, in the case where the order-making power under section 47(1) of the Bill is used to modify any enactment in terms of subsection (2) of that provision, that would be subject to affirmative procedure. I can confirm that an amendment to achieve that will be laid by the Executive.

I hope that you and your members will find this confirmation of the Executive's position on relevant amendments at Stage 3 helpful.

Best wishes,
John

JOHANN LAMONT



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Our ref:

9 March 2007

My letter of 8 March confirmed that a number of amendments which change the delegated powers provisions would be made at Stage 3. These amendments were lodged with the Parliament on Thursday, 8 March.

I now write to advise you of a new order making power to apply the provisions in the new schedule dealing with consecutive sentences to cases where a previous sentence is imposed by a court elsewhere in the United Kingdom. This power will be subject to affirmative procedure and will be lodged with the Parliament today.

The new schedule makes provision for the application of the Bill in relation to sentences which are framed to run consecutively. Given the technical complexity of those provisions, it is necessary to take a new order-making power to deal with cases where a previous sentence is imposed by a court out with Scotland as there is currently no provision for this in the Bill.

I hope that you and your members will find this helpful.

JOHANN LAMONT

SUBORDINATE LEGISLATION COMMITTEE

10th Meeting, 2007 (Session 2)

Tuesday 13 March 2007

Executive Responses

The Supervised Attendance Order (Prescribed Courts) (Scotland) Order 2007, (SSI 2007/120)

1. At its meeting on 6 March 2007 the Committee asked the Executive the following question:

“The Committee notes that no Executive Note has been provided with this Order which is in breach of drafting guidance. The Committee asks the Executive to explain this omission.”

The Scottish Executive responds as follows:

2. The Executive does not consider that it is necessary to provide a separate Executive Note where the information that would be included in the Executive Note is either in the Explanatory Note or is apparent from the terms of the Order itself. In this case the Executive considers that the effect of the instrument is fully explained in the Explanatory Note. The Explanatory Note read in conjunction with the Order itself describes the Courts that are prescribed for the purposes of section 235(4) of the Criminal Procedure (Scotland) Act 1995 and also explains what the effect of that is. The Explanatory Note also contains an explanation of what a Supervised Attendance Order is. In these circumstances the Executive considers that it is unnecessary to provide an Executive Note as well.

3. However in light of the Committee's comments the Executive has prepared an Executive Note (please see below) to assist both the Committee and the Lead Committee in their consideration of this instrument and this has been submitted to the Parliament.

EXECUTIVE NOTE

**THE SUPERVISED ATTENDANCE ORDER (PRESCRIBED COURTS)
(SCOTLAND) ORDER 2007 (SSI/2007/120)**

The above instrument is made in exercise of powers conferred by section 235(4)(a) of the Criminal Procedure (Scotland) Act 1995. The instrument is subject to negative resolution.

Policy objectives

The purpose of the instrument is to prescribe all courts to which the provisions of section 235(4) apply.

The overall policy intent is to minimise the numbers of fine defaulters currently receiving custodial sentences. Section 235(4) of the '95 Act requires courts to impose a Supervised Attendance Order where the court would otherwise have imposed a custodial sentence on persons defaulting on fines not exceeding £500. A negative resolution instrument is necessary to prescribe the courts to which the provisions of Section 235(4) apply.

A pilot exercise prescribing Ayr Sheriff and Glasgow District courts for the purposes of Section 235(4) commenced in May/June 2004 respectively. These pilots were subject to external evaluation and the findings published in December 2006. Having regard to the findings of the evaluation, Scottish Ministers announced on 20 December 2006 their intention to undertake national roll-out of the provisions contained within Section 235(4). The Supervised Attendance Order (Prescribed Courts) (Scotland) Order 2007 prescribes all Sheriff Courts, District Courts and Justice of the Peace Courts in Scotland for the purposes of Section 235(4). Schedule 7 of the '95 Act excludes High Courts from the provisions in relation to Supervised Attendance Orders, which is principally a sentence of the court restricted to those persons who have failed to pay a fine.

Consultation

The Association of Directors of Social Work (ADSW) have been consulted on the planned date for commencement of the provision. Local authorities, in conjunction as necessary with partner agencies, require to put in place effective infrastructure arrangements to ensure that there is sufficient capacity to deal with the increased numbers of Supervised Attendance Orders, which will occur as a result of application of Section 235(4) to all courts. It was agreed with ADSW that 1 September would provide sufficient time for local authorities to put the necessary arrangements in place.

Financial Effects

It is anticipated that the measures might result in up to 3,200 additional Supervised Attendance Orders per year being imposed by the courts. As part of its announcement of national roll-out of the provisions of Section 235(4), Scottish Ministers indicated that additional grant of £1.6 million per year for this purpose would be provided to local authorities under Section 27 of the Social Work (Scotland) Act 1968, which provides ringfenced funding arrangements for the delivery of criminal justice social work.

The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2007, (SSI 2007/127)

1. The Committee requested in its letter of 6 March 2007 information from the Executive on the following matter:

“To explain why this Order, unlike similar Orders in previous years, does not contain a savings provision for the purposes of prosecution of offences under the Order it revokes.”

The Executive responds as follows:

2. The savings provision included in previous years' Orders continued the Order being revoked for the purposes of the legal process of charges in relation to offences under the Order being revoked.

3. A similar provision was not included in this year's Order because it was considered unnecessary in view of the provisions of the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (SI 1999/1379).

4. Paragraph 13 of Schedule 1 to the 1999 Order and article 7(1) of that Order have the effect that the revocation of the previous year's Order does not affect the legal process of charges in relation to offences under the Order being revoked. The savings provision is therefore unnecessary.

The Parental Involvement in Headteacher and Deputy Headteacher Appointments (Scotland) Regulations 2007, (SSI 2007/132)

1. On 6 March 2007, the Subordinate Legislation Committee, having considered the above instrument, asked the Executive to explain the practical effect of regulation 7(2) and in particular who is to chair an appointment panel in circumstances where an acting head has been deemed to be an “inappropriate” chairperson by the education authority.

The Scottish Executive responds as follows:

2. The practical effect of regulation 7(2) is that where an appointment relates to a deputy headteacher the appointment panel will, generally, be chaired by the headteacher of the school to which the appointment is to be made. However, in circumstances where the school has (only) an acting headteacher then it will be the acting headteacher who will, normally, chair the appointment panel.

3. Circumstances may however arise, albeit rarely, where appointment of an acting headteacher, for the purposes of chairing an appointment panel, may be deemed inappropriate by the education authority. This might arise, for example, where an acting headteacher is relatively inexperienced and new to post. In that situation it is conceivable that it might not be considered appropriate that the acting headteacher should chair the appointment panel.

4. Where, then, the chairperson is not a person specifically as prescribed in terms of regulation 7(2), ie as a result of those rare circumstances where the education authority does not consider appointment of the acting headteacher as chair to be appropriate, the appointment panel members would not however be precluded from appointing one of their number to chair the panel.

5. It is perhaps worth mentioning also that guidance in respect of the Regulations, which will be available when they come into force on 1 August 2007, will cover various practical issues relating to their operation, including considerations for education authorities in relation to the setting up of appointment panels. In that regard, the observation which has been made by the Committee is helpful.