



The Scottish Parliament
Pàrlamaid na h-Alba

SUBORDINATE LEGISLATION COMMITTEE

AGENDA

6th Meeting, 2013 (Session 4)

Tuesday 19 February 2013

The Committee will meet at 10.30 am in Committee Room 5.

1. **Decision on taking business in private:** The Committee will decide whether to take items 6 and 7 in private.
2. **Instruments subject to affirmative procedure:** The Committee will consider the following—

[Town and Country Planning \(Fees for Applications and Deemed Applications\) \(Scotland\) Amendment Regulations 2013 \[draft\];](#)
[Budget \(Scotland\) Act 2012 Amendment Order 2013 \[draft\];](#)
[Valuation \(Postponement of Revaluation\) \(Scotland\) Order 2013 \[draft\];](#)
[Community Care \(Personal Care and Nursing Care\) \(Scotland\) Amendment Regulations 2013 \[draft\];](#)
[Tobacco and Primary Medical Services \(Scotland\) Act 2010 \(Incidental Provision and Commencement No. 4\) Order 2013 \[draft\].](#)

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

[Tenant Information Packs \(Assured Tenancies\) \(Scotland\) Order 2013 \(SSI 2013/20\);](#)
[Water Environment \(Drinking Water Protected Areas\) \(Scotland\) Order 2013 \(SSI 2013/29\);](#)
[Wildlife and Countryside Act 1981 \(Variation of Schedules A1 and 1A\) \(Scotland\) Order 2013 \(SSI 2013/31\);](#)
[Non-Domestic Rates \(Levy\) \(Scotland\) Amendment Regulations 2013 \(SSI 2013/34\);](#)
[Non-Domestic Rating \(Valuation of Utilities\) \(Scotland\) Amendment Order 2013 \(SSI 2013/36\);](#)
[Police Service of Scotland \(Promotion\) Regulations 2013 \(SSI 2013/39\);](#)
[National Assistance \(Sums for Personal Requirements\) \(Scotland\) Regulations 2013 \(SSI 2013/40\);](#)

[National Assistance \(Assessment of Resources\) Amendment \(Scotland\) Regulations 2013 \(SSI 2013/41\).](#)

4. **Instruments not subject to any parliamentary procedure:** The Committee will consider the following—

[Private Rented Housing \(Scotland\) Act 2011 \(Commencement No. 5 and Transitional Provision\) Order 2013 \(SSI 2013/19 \(C.2\)\);](#)
[Act of Sederunt \(Messengers-at-Arms and Sheriff Officers Rules\) \(Amendment\) 2013 \(SSI 2013/23\);](#)
[Tobacco and Primary Medical Services \(Scotland\) Act 2010 \(Commencement No. 3\) Order 2013 \(SSI 2013/38 \(C.3\)\).](#)

5. **Water Resources (Scotland) Bill:** The Committee will consider the delegated powers provisions in this Bill after Stage 2.
6. **Post-16 Education (Scotland) Bill:** The Committee will consider a draft report to the Education and Culture Committee.
7. **Land and Buildings Transaction Tax (Scotland) Bill:** The Committee will consider a draft report to the Finance Committee.

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The papers for this meeting are as follows—

Agenda Items 2, 3 and 4

Legal Brief (private) SL/S4/13/6/1 (P)

Agenda Item 2 and 3

Instrument Responses SL/S4/13/6/2

Agenda Item 5

[Water Resources \(Scotland\) Bill - as amended at Stage 2](#)

[Water Resources \(Scotland\) Bill - Supplementary Delegated Powers Memorandum](#)

Briefing Paper (private) SL/S4/13/6/3 (P)

Agenda Item 6

[Post-16 Education \(Scotland\) Bill - as introduced](#)

[Post-16 Education \(Scotland\) Bill - Delegated Powers Memorandum](#)

Briefing Paper (private) SL/S4/13/6/4 (P)

Agenda Item 7

[Land and Buildings Transaction Tax \(Scotland\) Bill - as introduced](#)

[Land and Buildings Transaction Tax \(Scotland\) Bill - Delegated Powers Memorandum](#)

Briefing Paper (private) SL/S4/13/6/5 (P)

SUBORDINATE LEGISLATION COMMITTEE**6th Meeting, 2013 (Session 4)****Tuesday 19 February 2013****Instrument Responses****INSTRUMENTS SUBJECT TO AFFIRMATIVE PROCEDURE****Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2013 [draft]****On 8 February 2013, the Scottish Government was asked:**

Section 252(7) of the Town and Country Planning (Scotland) Act 1997 requires that, where a fee is calculated in the regulations, the planning authority (receiving the fees) must secure that, taking one financial year with another, the income from the fees does not exceed the cost of the performance of the function/s for which fees are payable. In other words authorities cannot make profits from the fee levels prescribed by the regulations year on year, in return for the function performed in exchange for the fee. We appreciate that this is dependent on both the prescribed fee levels, and the costs of the functions to each planning authority.

The Policy Note states that the purpose of the instrument is to ensure that the planning fee recovers “more of the local authority costs” associated with the processing of planning applications from initial registration to decision stage, which suggests there should be reduction of costs rather than profit (para 4). However the Business and Regulatory Impact Assessment (at the foot of page 3) states – “Assuming application numbers and types remain similar, a 20 per cent increase in fees will increase income by £4m-£5m.” (That estimated figure is also referred to in the “costs and benefits table” on the second last page).

Please clarify therefore how the prescription of the fees levels in the Regulations complies with the restriction contained in section 252(7) of the 1997 Act?

The Scottish Government responded as follows:

Section 252(1A)(b) provides that the Scottish Ministers may by regulations made under section 252(1) make provision to enable the charge or fee payable to a planning authority to be calculated by that authority. Section 252(7) only operates where the planning authority are given functions under the regulations enabling them to calculate a charge or fee payable in relation to the exercise of a planning function. The provision is intended to ensure that where the planning authority are given such control by the regulations that the planning authority are also under a duty to ensure that the charge or fees payable do not exceed the cost of performing their functions. The Regulations do not as currently framed confer such control on the planning authority and the duty under section 252(7) is therefore not applicable.

In addition, the Scottish Ministers are satisfied that the increased level of fees set by the Regulations will not result in income under the Regulations exceeding the cost over a financial year to planning authorities in performing their relevant planning functions.

INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE**Tenant Information Packs (Assured Tenancies) (Scotland) Order 2013
(SSI 2013/20)****On 1 February 2013, the Scottish Government was asked:**

1. Article 3(2) of the Order provides that no charge is to be made to the tenant for the provision of the standard tenancy documents. Those documents, by virtue of article 2, include a copy of the document stating the terms of the tenancy as required by section 30(1) of the Housing (Scotland) Act 1988. By section 30(3) of that Act, the tenant is not to be required to make payment in respect of anything done under subsection (1) (i.e. the drawing and execution of that document, and the giving of a copy to the tenant). Article 3(2) purports to make similar provision in respect of all the standard tenancy documents.

a. What power is being relied upon to make that provision, particularly given that the equivalent provision in section 30 is included in the primary legislation itself?

b. To the extent that it is proposed to rely upon the power in section 30B(1)(b) to make such further provision about the documents specified in the order by virtue of section 30B(1)(a) as the Scottish Ministers see fit, why is this power considered to be sufficient for that purpose? That power appears to be directed to the form and content of those documents, rather than extending to charging (or prohibition of charging) arrangements in respect of them. We observe that the provision duplicates provision already made in section 30(3) in respect of the document supplied under section 30(1).

The Scottish Government responded as follows:

As anticipated in the second part of the question, the Scottish Government considers the provision prohibiting a charge to be made to a tenant for provision of the standard tenancy documents was made using section 30B(1)(b) of the Housing (Scotland) Act 1988. That enables the Scottish Ministers to make “such further provision about the documents as they see fit”.

The Scottish Government accepts that such a power could not provide a basis for imposing a charge for supply of the documents, but does not consider that an express power relating to charging is needed to prohibit a charge. Nor does the Scottish Government see the power as limited to provision about the form and content of the documents, which is simply quoted as a particular matter about which provision can be made. That does not prevent more general further provision.

The Scottish Government would find it surprising if power of this type could not be used to provide that one party had to meet the costs of undertaking a requirement imposed by subordinate legislation. There is no difference in a prohibition on a landlord charging costs to a tenant for undertaking a requirement.

Section 30(3) of the Housing (Scotland) Act 1988 provides that a tenant shall not be required to make any payment in respect of anything done under subsection (1) of

that section, in other words the drawing up, execution and provision of the copy document that is the first of the four specified tenancy documents. Section 89A of the Rent (Scotland) Act 1984, which prohibits the charging of premiums, could in some circumstances also be relevant. That these provisions exist in primary legislation is of no relevance to the extent of the power under consideration. They make provision for specific documents and particular situations, in a particular way. They do not cover all provision that the Order may require, even for the same document. For example the Order could require the landlord to provide a further copy of the first specified document, if the landlord did not have an acknowledgement of receipt.

The Scottish Government wished to ensure that the specified documents were provided without any charge being made to tenants. It considers that the power quoted allows it to make that provision.