



The Scottish Parliament
Pàrlamaid na h-Alba

SUBORDINATE LEGISLATION COMMITTEE

AGENDA

11th Meeting, 2012 (Session 4)

Tuesday 24 April 2012

The Committee will meet at 2.30 pm in Committee Room 6.

1. **Decision on taking business in private:** The Committee will decide whether to take item 6 in private.
2. **Instruments subject to negative procedure:** The Committee will consider the following—
 - [Firemen's Pension Scheme Amendment \(Scotland\) Order 2012 \(SSI 2012/106\);](#)
 - [Firefighters' Pension Scheme \(Scotland\) Amendment Order 2012 \(SSI 2012/107\).](#)
3. **Draft instruments not subject to any parliamentary procedure:** The Committee will consider the following—
 - [Public Services Reform \(Planning\) \(Pre-application consultation\) \(Scotland\) Order 2012 and proposed Explanatory Document \(SG/2012/52\);](#)
 - [Public Services Reform \(Planning\) \(Local Review Procedure\) \(Scotland\) Order 2012 and proposed Explanatory Document \(SG/2012/53\).](#)
4. **Alcohol (Minimum Pricing) (Scotland) Bill:** The Committee will consider the Scottish Government's response to its Stage 1 report.
5. **Land Registration etc. (Scotland) Bill:** The Committee will consider the Scottish Government's response to its Stage 1 report.
6. **Welfare Reform (Further Provision) (Scotland) Bill:** The Committee will consider a draft report to the Welfare Reform Committee.

SL/S4/12/11/A

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The papers for this meeting are as follows—

Agenda Items 2 and 3

Legal Brief (private)

SL/S4/12/11/1 (P)

Agenda Items 2 and 3

Instrument Responses

SL/S4/12/11/2

Agenda Item 4

[Alcohol \(Minimum Pricing\) \(Scotland\) Bill - Delegated Powers Memorandum](#)

Briefing Paper

SL/S4/12/11/3

Agenda Item 5

[Land Registration etc. \(Scotland\) Bill - Delegated Powers Memorandum](#)

Briefing Paper

SL/S4/12/11/4

Agenda Item 6

[Welfare Reform \(Further Provision\) \(Scotland\) Bill](#)

[Welfare Reform \(Further Provision\) \(Scotland\) Bill - Delegated Powers Memorandum](#)

Draft Report (private)

SL/S4/12/11/5 (P)

Briefing Paper

SL/S4/12/11/6

SUBORDINATE LEGISLATION COMMITTEE

11th Meeting, 2012 (Session 4)

Tuesday 24 April 2012

Instrument Responses

INSTRUMENTS SUBJECT TO THE NEGATIVE PROCEDURE

Firemen's Pension Scheme Amendment (Scotland) Order 2012 (SSI 2012/106)

On 11 April 2012, the Scottish Government was asked:

(1) Would the Scottish Government agree there are drafting errors in respect that-

(a) article 3(a) (and the explanatory note) introduce the new Part A1 of Schedule 8 to the principal 1992 Order, but article 4 inserts a new Part 1A on pension contributions. Is the Part 1A heading in article 4 the error, as the intention appears to be to insert the new Part A1 before Part 1, and what is the effect?

(b) the text in article 1(3) should be the heading to article 2.

(2) If the Scottish Government agrees these are errors, is it proposed to correct them by an amendment?

The Scottish Government responded as follows:

The Scottish Government accepts that the reference in article 3(a) to Part A1 is correct as is the reference in the Explanatory Note and that in article 4 Part A1 has been reversed to Part 1A. This is an obvious typing error and it is thought there is no room for dubiety about the legal meaning. Similarly the text in article 1(3) which is not a proposition is obviously the heading of article 3. The Scottish Government intends to use a correction slip to rectify these errors. The Scottish Government is also trying to ensure that further such errors do not occur.

**Firefighters' Pension Scheme (Scotland) Amendment Order 2012
(SSI 2012/107)**

On 12 April 2012, the Scottish Government was asked:

The letter from the Scottish Public Pensions Agency to the Presiding Officer explains that the 28 day rule contained in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with in relation to this Order and the Firemen's Pension Scheme Amendment (Scotland) Order 2012, because "while the UK contribution rates for the NHS, Teachers and Police schemes were confirmed to allow the subsequent statutory instruments for the Scottish schemes to be laid within the necessary Parliamentary time limits, the revised rates for the Firefighters' schemes in England were only confirmed to the Scottish Government on 26 March by the Department of Communities and Local Government."

Could the Scottish Government clarify why the revised contribution rates for the Firefighters' schemes could only be confirmed on 26 March, requiring the breach of the rule?

The Scottish Government responded as follows:

The revised contribution rates for the Firefighters' schemes were communicated to the Scottish Government as soon as they had been agreed between the Communities and Local Government Department of HMG and the firefighters' trade unions which was earlier on day of 26 March 2012.

**Firemen's Pension Scheme Amendment (Scotland) Order 2012 (SSI 2012/106)
and
Firefighters' Pension Scheme (Scotland) Amendment Order 2012
(SSI 2012/107)**

Breach of laying requirements; letter to Presiding Officer

The above instruments were made on 29 March 2012 under respectively sections 26(1) and (5) of the Fire Services Act 1947 and sections 34 and 60 of the Fire and Rescue Services Act 2004. They are being laid before the Scottish Parliament on 30 March 2012 and come into force on 1 April 2012.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with section 31(3) of that Act, this letter sets out why it is necessary to lay the instruments less than 28 days before they are brought into force.

These instruments fix the pension contribution rates for firefighters in Scotland under two public sector schemes applicable to Scotland. These schemes are reserved under the Scotland Act 1998, although the making of subordinate legislation in relation to the schemes is executively devolved.

On 28 October 2010 the UK Government set out its intent on delivering savings of £2.8bn per annum across the public sector pension schemes by 2014/15 by increasing employee contribution rates by an average of 3.25% of pay in three annual increments starting April 2012. Despite Scottish Ministers' principled opposition to increasing employee contributions at this time and in this way the UK Government has refused to change its policy and indicated that if similar increases were not introduced to the schemes in Scotland then the Scottish block grant and hence budget would be adjusted accordingly.

Scottish Ministers sought suitable alternatives with key stakeholders but this has not been possible so reluctantly decided to apply the increases in the NHS, Teachers, Police and Firefighter schemes from 1 April 2012. In ensuring that affected Scottish pension scheme members paid no more in increased contributions than their UK counterparts the rates applied by UK Government Departments are being introduced to the schemes in Scotland. Whilst the UK rates for the NHS, Teachers and Police schemes were confirmed to allow the subsequent statutory instruments for the Scottish schemes to be laid within the necessary Parliamentary time limits the revised rates for the firefighters' schemes in England were only confirmed to the Scottish Government on 26 March by the Department of Communities and Local Government.

These instruments have been made as soon as possible after the details of the contribution rates for England were communicated to the Scottish Government and in line with contribution increases to the other affected schemes must come into force on 1 April 2012. I should finally add that this is the first occasion that SPPA has had to lay late in respect of any of the five schemes it has legislative responsibility for and are making this request due to the unavoidable circumstances outlined above.

SUBORDINATE LEGISLATION COMMITTEE

11th Meeting, 2012 (Session 4)

Tuesday 24 April 2012

Alcohol (Minimum Pricing) (Scotland) Bill – Response from the Bill Team

Background

1. The Subordinate Legislation Committee reported on the delegated powers in the Alcohol (Minimum Pricing) (Scotland) Bill on 25 January 2012 in its 3rd Report of 2012.

Government response

2. In its Stage 1 report, the Committee accepted in principle that any variation to the minimum price per unit (MPU) should be done by delegated powers. It also accepted the Cabinet Secretary's arguments for the initial price also being set through delegated powers. However, its acceptance was predicated on the imposition of robust scrutiny procedures and it therefore sought reassurances from the Scottish Government in a number of respects.

3. The Committee called on the Scottish Government to keep the Parliament informed of any developments with regard to the review of the Sheffield model used to set the MPU during the passage of the Bill. It also called on the Scottish Government to provide further information on the evidence which may be used in determining the minimum price as part of this scrutiny process.

4. The Committee also recommended that the Scottish Government bring forward an amendment at Stage 2 which places an obligation on the Scottish Government to provide detailed accompanying documentation providing detail of the modelling carried out and the evidence used to determine the minimum price when bringing forward an instrument to set or vary the MPU.

5. In its response, the Scottish Government gives an update on the Sheffield model and confirms that, prior to Stage 3, it will announce the minimum price and give an indication of its proposed approach to future price adjustments. The Scottish Government also agrees with the Committee that it will need to provide detailed accompanying documentation but does not consider it necessary to bring forward an amendment at Stage 2. The response is included in the Appendix.

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

Recommendation

7. 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.

Appendix

Correspondence from the Scottish Government dated 20 April 2012

**ALCOHOL (MINIMUM PRICING) (SCOTLAND) BILL
RESPONSE TO SUBORDINATE LEGISLATION COMMITTEE STAGE 1 REPORT**

I thank the Committee for its considered report on the Alcohol (Minimum Pricing) (Scotland) Bill and I am responding to the points raised at paragraphs 33 and 35 of the report.

33. In order to ensure the robustness of the evidence used to determine the MPU, the Committee calls on the Scottish Government to keep the Parliament informed of any developments with regard to the review of the Sheffield model used to set the MPU during the passage of the Bill. In particular, it welcomes the Scottish Government's commitment to provide the Parliament with an indication of what the initial MPU is expected to be before the Bill completes its passage through the Parliament. It also welcomes the Scottish Government's commitment to provide details of the basis on which variations to the MPU will be made and how regularly it is anticipated these variations will be made.

Response:

On keeping the Parliament informed of developments with regard to the review of the Sheffield model, the Health & Sport Committee was provided with an advance copy of the updated results of the modelling prior to the appearance before them of the Cabinet Secretary for Health, Wellbeing and Cities Strategy on 31 January. The report was published on 31 January and can be found at the following link <http://www.scotland.gov.uk/Topics/Health/health/Alcohol/resources> (second link in recent key publications section).

As regards the setting and varying of the minimum price per unit before the end of the Bill's passage through Parliament, this was addressed in the Cabinet Secretary's response to the Health & Sport Committee's report of 4 April 2012 on page 4. An extract is reproduced below for ease of reference and the full report can be found at the following link <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29829.aspx>:

187. The Committee notes the assurance of the Cabinet Secretary that the level at which the minimum price is to be set will be announced prior to Stage 3.

189. The Committee notes the options for a proposed mechanism for adjusting the level at which the price is set and the frequency of conducting that adjustment.

192. The Committee recommends that the Scottish Government states its preferred option and sets out the rationale for that decision by the end of Stage 2.

Response:

As indicated during my oral evidence session, I can confirm that we will announce the minimum price prior to Stage 3 of the bill process and also give an indication of the approach we would propose to future price adjustments.

35. Finally, in line with its observation in paragraph 28 that it is not unprecedented for additional accompanying documentation to be required when certain Scottish statutory instruments are brought forward, the Committee recommends that the Scottish Government bring forward an amendment at Stage 2 which places an obligation on the Scottish Government to provide detailed accompanying documentation providing detail of the modelling carried out and the evidence used to determine the minimum price when bringing forward an instrument to set or vary the MPU.

Response:

In setting and varying the minimum price per unit of alcohol, we are required to ensure it remains proportionate under EU law. Proportionality depends on the level of public health benefits justifying the intervention in the market. In order to demonstrate this, we agree with the Committee that we need to provide detailed accompanying documentation over and above the standard documentation required for statutory instruments. We intend to provide a Business and Regulatory Impact Assessment to accompany the minimum price per unit, as was provided when a minimum price of 45p per unit was proposed previously. We do not, however, consider it necessary to bring forward an amendment at Stage 2 placing an obligation on the Scottish Government to do this. This is an affirmative order and so we recognise the need to provide sufficient evidence to Parliament to demonstrate proportionality.

I hope you find this information helpful.

Yours sincerely

ANDREW BRUCE
Head of Tobacco, Alcohol and Diet Team

SUBORDINATE LEGISLATION COMMITTEE

11th Meeting, 2012 (Session 4)

Tuesday 24 April 2012

Land Registration etc. (Scotland) Bill – Response from the Scottish Government

Background

1. The Subordinate Legislation Committee reported on the delegated powers in the Land Registration etc. (Scotland) Bill on 25 January 2012 in its [4th Report of 2012](#).

Government response

2. In its Stage 1 report, the Committee made several recommendations and received from the Scottish Government several commitments to change the level of scrutiny required for instruments made under certain powers in the Bill.

3. In its response, the Scottish Government has confirmed its intention to lodge amendments at Stage 2 to meet the Committee's recommendations. It has also provided further detail on its thinking in relation to the Committee's concerns on the information to be made available to the Keeper of the Registers. The response is included in the Appendix.

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.

Correspondence from the Scottish Government dated 20 April 2012**Response from the Scottish Government to the Subordinate Legislation Committee's Stage 1 Report****General**

1. This response relates to the points raised by the Subordinate Legislation Committee and follows the ordering of the Bill provisions discussed in the Committee's Stage 1 Report.

Issues raised

The Committee considers the powers to set interest rates in sections 77(4), 80(7) and 91(4) should not be drawn more widely than is appropriate to give effect to the intended policy. The Committee also considers that these powers have significant enough effects that the affirmative procedure would be a suitable level of scrutiny.

2. The Scottish Government notes the Committee's comments on the potential impact on individuals' compensation. While the Government feels these powers are limited in scope, in this instance, taking account of the Committee's views, the Government intends to bring forward amendments at Stage 2 to alter the procedure from the negative to the affirmative procedure.

3. The Government has indicated it will set interest rates in light of market conditions, which will require a view to be taken as to the market conditions at that time. The change in procedure will allow Parliament to scrutinise the Government's proposed rates fully. The Government considers, however, that the flexibility to set interest rates is important to the intended policy, and drawing the power more narrowly may undermine this flexibility, especially in light of the difficulty of determining market conditions at any given time. As seen recently, for instance, bank base rates may not always give a reliable indication of the level of interest bank accounts will pay. In view of the change in procedure, the Government does not consider narrowing the scope of the powers is necessary.

The Committee reports the Scottish Government has undertaken to consider whether it is appropriate to add a requirement to consult relevant persons with an interest in the Register of Sasines, in relation to the powers in section 47(5) and (6), and in light of that consideration whether affirmative or negative procedure is the most appropriate level of scrutiny for the exercise of these powers.

4. The Scottish Government recognises the significance of closing the General Register of Sasines, be that to standard securities or to all deeds. It will be an important step for stakeholders and the Government's intention is to consult widely before taking such a step. The Government is therefore happy to bring forward a Stage 2 amendment with a requirement to consult.

5. In light of this, following the Committee's recommendation, the Government considers the negative procedure is appropriate and proposes to amend the procedure from affirmative to negative.

The Committee reports in relation to the power in section 55(4) that the negative procedure would be an appropriate level of scrutiny for the exercise of this power and the Scottish Government have indicated their agreement.

6. The Scottish Government confirms it will take this forward by a suitable amendment at Stage 2.

The Committee reports in relation to the power in section 58(6)(b) that the affirmative procedure would be an appropriate level of scrutiny for the exercise of this power and the Scottish Government have indicated their agreement.

7. The Scottish Government confirms it will take this forward by a suitable amendment at Stage 2.

The Committee considers the power in section 61(1) to modify the application of Part 4 of the Bill should not be drawn more widely than is appropriate to give effect to the intended policy. The Committee also considers that these powers have significant enough effects that the affirmative procedure would be a suitable level of scrutiny.

8. The Scottish Government notes the Committee's concerns in this area. However, the Government notes that the advance notice scheme is new to Scotland. It is considered that there is a significant benefit to all involved in having the flexibility to make technical amendments where required, as well as being able to extend the operation of the scheme to other types of deed in due course. The Government also notes that this power can only alter the advance notice system in relation to deeds, rather than alter the effect of registration of deeds more generally. The Government therefore considers the power to be appropriately drawn and proposes to retain the power with its current scope.

9. However, in light of the concerns raised by the Committee, the Government will bring forward a suitable amendment at Stage 2 to change the procedure to the affirmative procedure.

The Committee considers the power in section 93(2), in so far as it inserts new section 9E(1)(b) of the Requirements of Writing (Scotland) Act 1995, is a potentially significant power going beyond mere technical matters in relation to authentication and alteration of electronic documents. The Committee considers the power to be significant enough that the affirmative procedure would be a suitable level of scrutiny.

10. The Scottish Government notes the Committee's point and confirms it will take this forward by a suitable amendment at Stage 2.

The Committee has concerns as to the general scope of the power in section 103(1) in relation to information to be made available by the Keeper and recommends the Scottish Government consider this further.

11. The Scottish Government has given careful consideration to the Committee's concerns in this area but remains of the view that the power is appropriately drawn. The Government considers that flexibility is paramount in this area to allow information from and access to the Keeper's registers to be provided in a manner that best suits the Keeper, stakeholders and members of the public in light of developing technology. The Government considers that drawing the power more narrowly would risk the legislation rapidly falling behind technology and losing the ability to modernise to meet the requirements of stakeholders.

12. The Government notes that this power and the power in section 113(1) are both subject to the affirmative procedure, which will allow Parliament to scrutinise fully any Government proposals in this area.

SUBORDINATE LEGISLATION COMMITTEE

11th Meeting, 2012 (Session 4)

Tuesday 24 April 2012

**Welfare Reform (Further Provision) (Scotland) Bill –
Scottish Government correspondence**

1. At its meeting on 17 April 2012, the Committee took evidence from Scottish Government officials on the Welfare Reform (Further Provision) (Scotland) Bill at stage 1. In its consideration of the evidence later in that meeting, it agreed to write to the Scottish Government to request further information on its views regarding the inclusion in the Bill of a sunset clause applying to the delegated powers provisions once the changes consequential on the UK Act have been made.
2. The clerk's letter to Chris Boyland, the bill team leader, and his reply are included in the appendix to this paper.
3. **The Committee is invited to note the contents of the reply, which will inform its consideration of the draft report.**

Letter to the Scottish Government – 17 April

Dear Chris

I am writing to thank you and your colleagues for attending today's meeting of the Subordinate Legislation Committee to give evidence on the delegated powers provisions within the Welfare Reform (Further Provision) (Scotland) Bill.

In considering its conclusions on the Bill, the Committee would appreciate further information from the Scottish Government regarding the inclusion in the Bill of a sunset clause applying to the delegated powers provisions once the changes consequential on the UK Act have been made.

Although the issue was explored at the meeting today, the Committee would welcome further explanation from the Scottish Government as to why it is considered that this is an unnecessary provision. In particular, can you provide justification for these powers being retained and further information on the consequences of such a provision on the operation of the Bill?

The Committee accepts that sufficient time must be given to address fully the consequences of the UK Act and that this may extend over a significant period of time as the UK changes are rolled out. Also changes made using the powers must obviously continue in effect. However the Committee would like clarification of the need to maintain powers of this nature beyond the period of full transition to the new UK Act system. In particular, would it be possible for any future changes to be considered on a longer timeframe and for more specific powers to be taken at that point if they were required?

The Committee would welcome a response in time to inform its conclusions on the Bill. It will be considering a draft Stage 1 report at its meeting next Tuesday and so an early response would be appreciated. Given the tight timescale of the Bill, it would be helpful if you could respond to me by close of business on Thursday this week if at all possible. Please advise me if you do not think this will be possible.

Irene Fleming
Clerk to the Committee

Scottish Government response – 18 April 2012

Dear Irene,

Thank you for your letter of 17 April. You have asked, on the Committee's behalf, for a further explanation as to why we consider that a sunset clause would be an unnecessary provision in our Bill. As you acknowledge, this matter was discussed at our meeting with Committee on Tuesday and there will be a limit as to how much further explanation I can provide as I think that discussion covered the salient points. We do not believe that a sunset clause would be appropriate. Furthermore, we consider that if the Bill were to be amended to include such a clause, that this approach would give rise to additional risk as a consequence.

Taking these points in turn, we believe that a sunset clause would be unnecessary because the Bill's provisions are intended for the longer-term, not just the period immediately affected by the transition to Universal Credit and the Personal Independence Payment. We tried to illustrate this point yesterday by citing the example of an income threshold, which might be set to determine eligibility to passported benefits. Whatever figure is set for the income threshold, this is likely to become less useful over time, as a means of accurately identifying low income for the purposes of entitlement to passported benefits.

This is because inflationary pressures on the cost of living mean that, if a household which is currently in receipt of, for example, an income of £16,000 can hypothetically be said to be in relative poverty in comparison with other households in Scotland, this may not be true in 10 years time. By that time, inflationary pressures may mean that households with an income of above £16,000 may also be at an equivalent relative level of poverty. We would require to adjust the income threshold, in order to ensure that we could continue to accurately capture households with low, relative incomes over time and not exclude those which are at risk of falling into poverty as the cost of living rises.

As things stand, we would be able to make this adjustment using the powers enabled by the Bill. If these powers ceased, because of a sunset clause, we might then have to recourse to further primary legislation – which we do not consider to be a useful or effective use of government or Parliamentary resources. We believe therefore, that this requirement, to use a term from yesterday, to “futureproof” our eligibility criteria for passported benefits justifies these powers being retained in order to keep the related legislation operating effectively over time. I hope this also clarifies the need the need to maintain powers of this nature beyond the period of full transition to the new UK Act system.

You also asked for further information on the consequences of a sunset clause for the operation of the Bill. We believe that one consequence would be to give rise to additional risk. This is the risk that - if the UK Government were to decide to amend the welfare system in the future, in a way which in turn, also effected devolved legislation - then Scottish Ministers might need to react quickly in order to deal with the implications of those changes. We would expect UK amendments to be made by way of subordinate legislation, which the UK Government would be able to do, in

part because the powers delegated by the UK Welfare Reform Act 2012 are not subject to a sunset clause.

For as long as Scottish Ministers are able to use the enabling powers proposed in our Bill, then they would be able to bring about adjustments to timescales which would likely be equivalent to those undertaken in the UK. Depriving Scottish Ministers of these powers could, at some future point, result in a need for further primary legislation which would in turn, potentially cause delay and a risk to continued provision. We believe that we have been quite explicit thus far, about the Scottish Government's wish in bringing forward this legislation, to avoid any risk to the provision of passported benefits.

Finally, you asked if it would be possible for any future changes to be considered on a longer timeframe and for more specific powers to be taken at that point if they were required. We do not see any reason why this would not be theoretically possible. However, we do not believe that this approach would be as effective a means of ensuring continued provision as the one taken in the Bill. To reiterate something I said on Tuesday, "the primary policy intent of this Bill is to ensure continued access to passported benefits". Introducing a sunset clause would not, in our view, ensure continued access – it would ensure access for a fixed period, after which the same issue would have to be addressed again.

We understand, to an extent, Committee's concern about delegating these powers in perpetuity. However, we feel that the existing Parliamentary procedures for scrutinising regulations, such as those which will be made under the Bill, should provide sufficient assurance that these powers will be used appropriately.

I trust this has been helpful. Please let me know if there is anything further I can do to be of assistance, at this time.

Regards,

Chris Boyland
Welfare Division