



The Scottish Parliament
Pàrlamaid na h-Alba

SUBORDINATE LEGISLATION COMMITTEE

AGENDA

18th Meeting, 2012 (Session 4)

Tuesday 26 June 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 items 4 and 5 in private.
2. **Instruments subject to negative procedure:** The Committee will consider the following—

[Parole Board \(Scotland\) Amendment \(No. 2\) Rules 2012 \(SSI 2012/197\);](#)
[Trade in Animals and Related Products \(Scotland\) Amendment Order 2012 \(SSI 2012/198\);](#)
[Wildlife and Countryside Act 1981 \(Exceptions to section 14\) \(Scotland\) Amendment Order 2012 \(SSI 2012/205\);](#)
[Wildlife and Countryside Act 1981 \(Keeping and Release and Notification Requirements\) \(Scotland\) Amendment Order 2012 \(SSI 2012/206\).](#)

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

[Act of Sederunt \(Sheriff Court Rules\) \(Miscellaneous Amendments\) 2012 \(SSI 2012/188\);](#)
[Act of Sederunt \(Rules of the Court of Session Amendment No. 3\) \(Miscellaneous\) 2012 \(SSI 2012/189\);](#)
[Town and Country Planning \(Continuation in force of South Lanarkshire Local Plan\) \(Scotland\) Order 2012 \(SSI 2012/194\).](#)

4. **Scottish Civil Justice Council and Criminal Legal Assistance Bill:** The Committee will consider a draft report to the Justice Committee.
5. **Committee scrutiny review:** The Committee will consider its scrutiny role and its approach to the 2011-12 annual report on Scottish statutory instruments.

SL/S4/12/18/A

Irene Fleming
Clerk to the Subordinate Legislation Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5212
Email: irene.fleming@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda Items 2 and 3

Legal Brief (private)

SL/S4/12/18/1 (P)

Agenda Items 2 and 3

Instrument Responses

SL/S4/12/18/2

Agenda Item 4

[Scottish Civil Justice Council and Criminal Legal Assistance Bill \(as introduced\)](#)

[Scottish Civil Justice Council and Criminal Legal Assistance Bill \(DPM\)](#)

Draft Report (private)

SL/S4/12/18/3 (P)

Agenda Item 5

Briefing Paper (private)

SL/S4/12/18/4 (P)

SUBORDINATE LEGISLATION COMMITTEE**18th Meeting, 2012 (Session 4)****Tuesday 26 June 2012****Instrument Responses****INSTRUMENTS SUBJECT TO NO PARLIAMENTARY PROCEDURE****Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2012
(SSI 2012/188)****On 15 June 2012, the Lord President's Private Office was asked:**

1. Paragraph 5(4)(a) amends rule 33.7(1)(a)(i) of the Ordinary Cause Rules so that the text of that rule, as amended, reads: "*every person who is a child of the family (as defined in section 12(4)(a) of the Act of 1995)* between the parties who has reached the age of 16 years", the words in italics being newly-inserted. The unamended provision referred to "a child of the marriage between the parties...", which expression is readily understandable. However, the amended provision refers to "a child of the family... between the parties". By analogy with the provisions in rule 33A.66(1)(d) and rule 33A.70(1)(b)(i), as amended by paragraph 9 of this instrument, does the Lord President's Private Office accept that the words "between the parties" have been retained in rule 33.7(1)(a)(i) in error? If it does not, it is asked to explain the meaning of the expression "a child of the family... between the parties".

2. Paragraph 10(2) amends rule 5.1 of the Ordinary Cause Rules. In particular, in relation to warrants which must be signed by the sheriff, rule 5.1(2)(b) is amended so that it reads: "a warrant for arrestment to found jurisdiction (including the arrestment of a ship)" and a new rule 5.1(2)(e) is inserted which reads "a warrant for arrestment of a ship to found jurisdiction". Given that rule 5.1(2)(b) is being expressly amended so that it refers to warrants for arrestment to found jurisdiction where the subject of the arrestment is a ship, the Lord President's Private Office is asked to explain what purpose the provision in rule 5.1(2)(e) serves, as it appears only to make a duplicate reference to a type of warrant which is already provided for in rule 5.1(2)(b) as amended.

The Lord President's Private Office responded as follows:

1. In relation to the first point, the Lord President's Private Office takes the view that by referring specifically to "between the parties" in rule 33.7(1)(a)(i) of the Ordinary Cause Rules, when that rule is read with section 12(4)(a) of the Children (Scotland) Act 1995 it is tolerably clear that the relevant persons are the children of the family constituted by the parties to the marriage.

2. With regard to the second point, the purpose of rule 5.1(2)(e) is to be consistent with new Rule 49.11(1)(a)(ii) in so far as it provides that, in an admiralty action, the execution of a warrant for the arrestment of a ship to found jurisdiction is to be in Form 49.11-AA; Rule 49.11 also states that where two or more of the

arrestments mentioned are to be executed they may be combined in one schedule. In terms of mixed property (including the arrestment of a ship) then Form 49.11-AA would, given Rule 49.11(1)(a)(i), serve as the “primary” Form. This is different from non-admiralty actions where there are no particular Forms in relation to the arrestment of a ship; though it can occur hence the amendment of Rule 5.1.(2)(b) to make this clear.

**Act of Sederunt (Rules of the Court of Session Amendment No. 3)
(Miscellaneous) 2012 (SSI 2012/189)**

On 19 June 2012, the Lord President's Private Office was asked:

Form 12B.2, as inserted by the Schedule to this instrument, requires the prospective lay representative to make certain declarations. In particular, paragraph (d) requires that person to declare that he or she has no previous convictions, or alternatively to list those previous convictions. However, section 4 of the Rehabilitation of Offenders Act 1974 provides, inter alia, that a person who has become a rehabilitated person "...shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction..." and in particular that such a person shall not, in any proceedings before a judicial authority, be asked or required to answer any question relating to his or her past "...which cannot be answered without acknowledging or referring to a spent conviction or spent convictions...". The Lord President's Private Office is asked:

- (a) Is it intended that a person who has become a rehabilitated person (and whose convictions are spent) should be required to disclose those convictions notwithstanding section 4 of the Rehabilitation of Offenders Act 1974?
- (b) If that is the case, to identify the power which is relied upon to make such provision; or
- (c) If that is not the case, to explain why it is considered that Form 12B.2 makes it sufficiently clear (in particular having regard to the likelihood that the form will be completed by those who are not legally qualified) that the prospective lay representative need not declare spent convictions.

The Lord President's Private Office responded as follows:

- (a) Yes.
- (b) The powers to make the court rules are contained in sections 5 and 5A of the Court of Session Act 1988. In particular, paragraphs (a), (b) and (ef) of section 5 are relevant for these purposes. The Lord President's Private Office takes the view that the court's rule-making powers also require to be read against the background of section 7(3) of the Rehabilitation of Offenders Act 1974, which enables the court, at any stage in any proceedings, to require evidence relating to a person's spent convictions, notwithstanding the terms of section 4(1) of the 1974 Act, where the court is satisfied in the light of any considerations which appear to it to be relevant that justice cannot be done except by admitting or requiring the evidence relating to those spent convictions. Other exclusions of section 4(1) of the 1974 Act (including exclusions relating to certain types of proceedings in the Court of Session) are set out in the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003.
- (c) In light of the answer to question (a), question (c) does not require to be answered.

Parole Board (Scotland) Amendment (No. 2) Rules 2012 (SSI 2012/197)

Breach of laying requirements: letter to Presiding Officer

The above instrument was made by the Scottish Ministers under section 20(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 on Monday 18 June 2012. It is being laid before the Scottish Parliament today and is to come into force on 26 June 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 explains why.

S.S.I. 2012/197 is required to correct a drafting defect contained in rule 7 of S.S.I. 2012/167, which was identified by the Subordinate Legislation Committee at their meeting of 12 June 2012.

S.S.I. 2012/167 made a number of amendments to the Parole Board (Scotland) Rules 2001 (S.S.I. 2001/315) ("the principal rules"). Rule 7 of S.S.I. 2012/167 amended rule 14 of the principal rules to allow the Parole Board to appoint 2 members to deal with certain cases, instead of 3 while preserving the power of the chairman of the Board to appoint 3 members to deal with cases by oral hearing under rule 15A.

As drafted, rule 7 of S.S.I. 2012/167 would not have achieved the intended policy objective, because it did not preserve the chairman of the Board's ability to appoint 3 members in cases determined to be dealt with by way of an oral hearing. Given that that instrument is due to come into force on 26 June 2012, the Scottish Government's view was that it was necessary to breach the 28 day rule in order to ensure that the error identified by the SLC was rectified as quickly as possible, so as to ensure that the policy objective is achieved. We are grateful to the Committee for drawing the error to our attention.

**Trade in Animals and Related Products (Scotland) Amendment Order 2012
(SSI 2012/198)**

Breach of laying requirements: letter to Presiding Officer

The Trade in Animals and Related Products (Scotland) Amendment Order 2012 SSI 2012/198 was made by the Scottish Ministers under section 2(2) of and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and section 72 of the Animal Health Act 1981 on 20 June 2012. It will come into force on 30 June 2012 and is being laid before the Scottish Parliament today, 22 June 2012.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) ("the 2010 Act") has not been complied with. In accordance with section 31(3) of the 2010 Act, this letter explains why.

The Order makes minor amendments to the Trade in Animals and Related Products (Scotland) Regulations 2012 ("TARP Regulations") which were made on 29 May and are due to come into force on 1 July. During review by the legal advisers to the Subordinate Legislation Committee a number of technical points were raised which require to be addressed by legislative amendment. Those amendments are being made now so that the TARP Regulations are correct when they come into force.

**Wildlife and Countryside Act 1981 (Exceptions to section 14) (Scotland)
Amendment Order 2012 (SSI 2012/205)**

Breach of laying requirements: letter to Presiding Officer

The above instrument (the Amendment Order) was made by the Scottish Ministers under section 14(2B) and (2D)(a) and (e) of the Wildlife and Countryside Act 1981 on Thursday 21 June 2012. It is being laid before the Scottish Parliament today and is to come into force on 2 July 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 explains why.

S.S.I. 2012/205 is required to amend the Wildlife and Countryside Act 1981 (Exceptions to section 14) (Scotland) Order 2012 (S.S.I. 2012/173), (the 2012 Order). The Amendment Order clarifies article 2(1), corrects some typographical errors and updates the nomenclature of the species listed following queries raised by the Subordinate Legislation Committee.

The policy objective of the 2012 Order is to create exceptions to offences created by the Wildlife and Natural Environment (Scotland) Act 2011 which offences are commenced on 2 July 2012 by the Wildlife and Natural Environment (Scotland) Act (Commencement No.4, Savings and Transitional Provisions) Order 2012 (SSI 2012/175). The exceptions created by the 2012 Order are required to allow activities, such as planting to deliver the aims of the Scottish Forestry Strategy, to continue and therefore require to come into force on 2 July 2012 when the new offences come into force. It is the Scottish Government's view that it is necessary for this Amendment Order to come into force on the same day as the 2012 Order to deliver that policy objective.

Wildlife and Countryside Act 1981 (Keeping and Release and Notification Requirements) (Scotland) Amendment Order 2012 (SSI 2012/206)

Breach of laying requirements: letter to Presiding Officer

The above instrument (the Amending Order) was made by the Scottish Ministers under sections 14(1)(a)(ii), (2D)(a) and (e) and 14ZC(1)(a) and (2)(a) of the Wildlife and Countryside Act 1981 on Thursday 21 June 2012. It is being laid before the Scottish Parliament today and is to come into force on 2 July 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 explains why.

S.S.I. 2012/206 is required to amend the Wildlife and Countryside Act 1981 (Keeping and Release and Notification Requirements) (Scotland) Order 2012 (S.S.I. 2012/174) (the 2012 Order). It corrects typographical errors and updates the nomenclature of the species listed following queries raised by the Subordinate Legislation Committee.

The policy objective of the 2012 Order is to maintain certain necessary restrictions that are being repealed by the Wildlife and Natural Environment (Scotland) Act 2011. Those repeals are commenced on 2 July by the Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No.4, Savings and Transitional Provisions) Order 2012 (SSI 2012/175). The 2012 Order will also come into force on 2 July 2012. It is the Scottish Government's view that it is necessary for the Amendment Order to come into force on the same day to deliver that policy objective.