



The Scottish Parliament
Pàrlamaid na h-Alba

SUBORDINATE LEGISLATION COMMITTEE

AGENDA

15th Meeting, 2012 (Session 4)

Tuesday 29 May 2012

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

1. **Instruments subject to affirmative procedure:** The Committee will consider the following—

[Licensed Legal Services \(Specification of Regulated Professions\) \(Scotland\) Regulations 2012 \[draft\];](#)
[Legal Services \(Scotland\) Act 2010 \(Ancillary Provision\) Regulations 2012 \[draft\];](#)
[Wildlife and Natural Environment \(Scotland\) Act 2011 \(Consequential Modifications\) Order 2012 \[draft\];](#)
[Fundable Bodies \(Scotland\) Order 2012 \[draft\].](#)

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

[Fire and Rescue Services \(Framework\) \(Scotland\) Order 2012 \(SSI 2012/146\);](#)
[A823\(M\) Pitreavie Spur Trunk Road \(Variable Speed Limits\) Regulations 2012 \(SSI 2012/145\);](#)
[M9/A90/M90 Trunk Road \(Kirkliston to Halbeath\) \(Variable Speed Limits and Actively Managed Hard Shoulder\) Regulations 2012 \(SSI 2012/147\);](#)
[Private Landlord Registration \(Information and Fees\) \(Scotland\) Amendment Regulations 2012 \(SSI 2012/151\);](#)
[Licensed Legal Services \(Complaints and Compensation Arrangements\) \(Scotland\) Regulations 2012 \(SSI 2012/153\);](#)
[Licensed Legal Services \(Maximum Penalty and Interest in respect of Approved Regulators\) \(Scotland\) Regulations 2012 \(SSI 2012/155\);](#)
[Snares \(Training\) \(Scotland\) \(No. 2\) Order 2012 \(SSI/2012/161\).](#)

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

[Act of Sederunt \(Summary Cause Rules Amendment\) \(Personal Injuries Actions\) 2012 \(SSI 2012/144\);](#)
[Private Rented Housing \(Scotland\) Act 2011 \(Commencement No. 3\) Order 2012 \(SSI 2012/150 \(C.13\)\);](#)
[Legal Services \(Scotland\) Act 2010 \(Commencement No. 2 and Transitional Provisions\) Order 2012 \(SSI 2012/152 \(C.14\)\).](#)

4. **Guidance subject to affirmative procedure:** The Committee will consider the following—

[Code of Practice on Non-Native Species \(SG 2012/87\).](#)

5. **Annual report 2011-12:** The Committee will consider a draft annual report for the parliamentary year from 11 May 2011 to 10 May 2012.

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The papers for this meeting are as follows—

Agenda Items 1,2,3 and 4

Legal Brief (private)

SL/S4/12/15/1 (P)

Agenda Item 2

Instrument Responses

SL/S4/12/15/2

Agenda Item 5

Draft Annual Report 2011-12

SL/S4/12/15/3

SUBORDINATE LEGISLATION COMMITTEE

15th Meeting, 2012 (Session 4)

Tuesday 29 May 2012

Instrument Responses

INSTRUMENTS SUBJECT TO THE NEGATIVE PROCEDURE

Fire and Rescue Services (Framework) (Scotland) Order 2012 (SSI 2012/146)

On 18 May 2012, the Scottish Government was asked:

1. Article 2 of the Order purports to give effect to a document prepared by the Scottish Ministers under section 40(1) of the Fire (Scotland) Act 2005 entitled “Transitional Fire and Rescue Framework for Scotland 2012” which was published in June 2012. The Scottish Ministers made this Order on 16 May 2012. The date of making the Order accordingly precedes the nominal date of publication of the document, regardless of when the instrument comes into force. The Scottish Government is accordingly asked to explain why it is competent to purport to make an Order giving effect to something which, at the date of making the Order, was not in existence?
2. Separately, it appears that the “Transitional Fire and Rescue Framework for Scotland 2012” (which is referred to in a footnote to the Order and in the Explanatory Note as being published on the Scottish Government’s website) was in fact published on 18 May 2012. On the reverse of the document, it states “Published by the Scottish Government, May 2012”. Is that document the one which the Order is intended to refer to? If that is the case, on what basis does the Scottish Government consider that they have correctly designed it in the Order?

The Scottish Government responded as follows:

1. In reply to question 1, we highlight that section 40(4) of the Fire (Scotland) Act 2005 enables the Scottish Ministers to make an order bringing a framework document into effect. In preparing the document, the consultation requirements set out in section 40(5) and (6) must be followed.
2. In this context, as noted in the preamble, the framework document was prepared (and so to adopt your language, existed) and the necessary consultation carried out, in advance of the making of the order on 16 May 2012. The document as duly prepared was published on the Scottish Government’s website on 18 May.
3. In reply to question 2, as you say, the framework document was published on 18 May. This gave fair notice to those likely to be affected by its terms in due course. Strictly speaking, the words in article 2 of the order ‘which was published in June 2012’ are otiose and can in our view be ignored as having no effect or statutory

purpose. That said, in order to assist users in finding the framework document, we propose to republish it in June, updating the reverse of the document to refer to publication in 'June 2012'.

SUBORDINATE LEGISLATION COMMITTEE

15th Meeting, 2012 (Session 4)

Tuesday 29 May 2012

Annual Report

Background

1. Under rule 12.9 of Standing Orders, the Committee is obliged to report to the Parliament at the end of each parliamentary year on its activities during that year.
2. These activities include details of its meetings, the number of times it has met in private and how the Committee has taken into account equal opportunities in its work.
3. The attached report sets out the Committee's draft annual report for 2011-12, covering the reporting year 11 May 2011 to 10 May 2012. The report will be published during the week beginning 11 June to coincide with the publication of all other Committee annual reports.
4. Encompassing the work of the Subordinate Legislation Committee during the parliamentary year, the report comprises data relating to Scottish statutory instruments, Bills, legislative consent memorandums and public body consent memorandums, but Members are asked to note that more in-depth analysis of this work will be outlined in the Scottish Statutory Instruments Annual Report which is due for publication in September 2012.

Recommendation

5. **Members are invited to consider and agree the contents of the draft annual report for 2011-12.**

**Irene Fleming
Clerk to the Committee**



The Scottish Parliament
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Subordinate Legislation Committee

Draft Report on Annual Report 2011-12

The Committee reports to the Parliament as follows—

Introduction

1. This Report covers the work of the Subordinate Legislation Committee during the parliamentary year from 11 May 2011 to 10 May 2012. The Committee has scrutinised a number of Bills and Scottish statutory instruments this year, reporting to subject Committees and the Parliament on issues such as the scope of delegated powers and whether delegated powers are within vires, as well as on detailed drafting issues.

Bills

2. The Committee considers delegated powers provisions in Government, Members', Committee and Private Bills. Over the reporting period, the Committee has considered and reported on the following eight Bills at Stage 1:

Alcohol (Minimum Pricing) (Scotland) Bill;
National Library of Scotland Bill;
Land Registration etc. (Scotland) Bill;
Budget (Scotland) Bill;
Criminal Cases (Punishment and Review) (Scotland) Bill;
Long Leases (Scotland) Bill;
Police and Fire Reform (Scotland) Bill; and
Welfare Reform (Further Provision) (Scotland) Bill.

3. The Committee also considered and reported on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill as amended at Stage 2.

4. All of the Bills were Government Bills and, as with previous years, the recommendations of the Committee on Bills have led to a number of changes by the Government to relevant provisions. Through its scrutiny process, the Committee also aims to ensure that the correct balance between primary and secondary legislation is maintained.

5. The Committee has also considered three Legislative Consent Memorandums (LCMs). These are Westminster Bills which seek to change the law or alter Scottish Ministers' or the Scottish Parliament's powers in relation to devolved matters. The three LCMs considered by the Committee were on:

London Olympic Games and Paralympic Games (Amendment) Bill;
Welfare Reform Bill; and
Scotland Bill.

6. The Committee also gave consideration to four Public Body Consent Memorandums (PBCMs). These relate to draft orders made under sections 1 to 5 of the Public Bodies Act 2011 which would fall within the Scottish Parliament's legislative competence. The four PBCMs considered by the Committee were on:

Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 [draft];
Advisory Committee on Hazardous Substances (Abolition) Order 2012 [draft];
Inland Waterways Advisory Council (Abolition) Order 2012 [draft]; and
British Waterways Board (Transfer of Functions) Order 2012 [draft].

Subordinate Legislation

7. The Committee has continued to work to tight timescales in its consideration of subordinate legislation, producing 45 reports over the reporting year. During the parliamentary year, the Committee published 30 statutory instrument reports, reporting on 244 Scottish statutory instruments in total.

8. Of the instruments considered, 41 were subject to affirmative procedure, 130 to negative procedure, and 73 were not subject to any Parliamentary procedure.

Equalities

9. The Committee considers equalities issues which can arise under the European Convention on Human Rights and under Community law. It is part of the Committee's remit to draw the attention of lead committees and the Parliament to any instrument that, in its opinion, fails to comply with any such requirement.

10. It is also within the Committee's remit to report any instrument on the grounds of an unusual or unexpected use of a power which raises equalities issues.

11. The Committee also scrutinises drafting practice and so points out, for example, failure to use gender neutral language in instruments.

Meetings

12. During the parliamentary year, the Committee met 28 times. Of these meetings, none were entirely in private and 19 were partly in private.

13. All the meetings have been held in Edinburgh.