



The Scottish Parliament  
Pàrlamaid na h-Alba

## SUBORDINATE LEGISLATION COMMITTEE

### AGENDA

**10th Meeting, 2009 (Session 3)**

**Tuesday 17 March 2009**

The Committee will meet at 2.15 pm in Committee Room 6.

1. **Instruments subject to approval:** The Committee will consider the following—
  - the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (SSI 2009/draft);
  - the Local Government Finance Act 1992 (Scotland) Amendment Order 2009.
  
2. **Instruments subject to annulment:** The Committee will consider the following—
  - the Financial Assistance for Environmental Purposes (Scotland) Order 2009 (SSI 2009/75);
  - the High Court of Justiciary Fees Amendment Order 2009 (SSI 2009/87);
  - the Court of Session etc. Fees Amendment Order 2009 (SSI 2009/88);
  - the Sheriff Court Fees Amendment Order 2009 (SSI 2009/89);
  - Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2009 (SSI 2009/81);
  - the National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2009 (SSI 2009/86);
  - the Local Government Pension Scheme Amendment (Scotland) Regulations 2009 (SSI 2009/93);
  - the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Order 2009 (SSI 2009/94);
  - the National Health Service (General Dental Services) (Scotland) Amendment Regulations 2009 (SSI 2009/96);
  - the Diligence against Earnings (Variation) (Scotland) Regulations 2009 (SSI 2009/98);
  - The Planning etc. (Scotland) Act 2006 (Saving and Transitional Provisions) Order 2009 (SSI 2009/101).

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

the Planning etc. (Scotland) Act 2006 (Commencement No. 6) Order 2009 (SSI 2009/70);

Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Fees of Solicitors) 2009 (SSI 2009/82);

the Judiciary and Courts (Scotland) Act 2008 (Commencement No. 1) Order 2009 (SSI 2009/83);

The Planning etc (Scotland) Act 2006 (Commencement Order No.7) Order 2009 (SSI 2009/100).

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The papers for this meeting are as follows—

**Agenda Items 1-3**

Legal Brief

SL/S3/09/10/1 (P)

Summary of Recommendations

[SL/S3/09/10/2](#)

Government Responses

[SL/S3/09/10/3](#)

**SUBORDINATE LEGISLATION COMMITTEE**

**10th Meeting, 2009 (Session 3)**

**Tuesday 17 March 2009**

**Summary of Recommendations**

The Committee will be invited to consider the following recommendations under consideration at today's meeting. Decisions are a matter for the Committee.

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**Agenda Item 1                    Instruments subject to approval**

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**The Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (SI 2009/draft)**

**The Local Government Finance Act 1992 (Scotland) Amendment**

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The Committee may wish to consider if it is content with these instruments.

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**Agenda Item 2                    Instruments subject to annulment**

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**The Financial Assistance for Environmental Purposes (Scotland) Order 2009 (SSI 2009/75)**

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The Committee may wish to consider if it is content with the Scottish Government's response and to report to the lead Committee and the Parliament accordingly.

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**The High Court of Justiciary Fees Amendment Order 2009 (SSI 2009/87)**

**The Court of Session etc. Fees Amendment Order 2009 (SSI 2009/88)**

**The Sheriff Court Fees Amendment Order 2009 (SSI 2009/89)**

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The Committee may wish to consider if it is content with these instruments.

In doing so however it may wish to consider drawing the lead committee's attention to the statement which is made in the Executive Notes that steps have been taken to ensure that those in receipt of the new benefit, brought into force on 27th October

2008 under the Welfare Reform Act 2007, would have the benefit of the fee exemption concerned with effect **from that date**, i.e. prior to making the amendment by this instrument.

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**Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2009 (SSI 2009/81)**

**The Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2009 (SSI 2009/86)**

**The Local Government Pension Scheme Amendment (Scotland) Regulations 2009 (SSI 2009/93)**

**The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Order 2009 (SSI 2009/94)**

**The National Health Service (General Dental Services) (Scotland) Amendment Regulations 2009 (SSI 2009/96)**

**The Diligence against Earnings (Variation) (Scotland) Regulations 2009 (SSI 2009/98)**

**The Planning etc. (Scotland) Act 2006 (Saving and Transitional Provisions) Order 2009 (SSI 2009/101)**

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The Committee may wish to consider if it is content with these instruments.

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### **Agenda Item 3                      Instruments not laid before Parliament**

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**The Planning etc. (Scotland) Act 2006 (Commencement No. 6) Order 2009 (SSI 2009/70)**

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The Committee may wish to consider reporting this instrument on the ground that there has been a failure to follow proper legislative practice, so far as the Government has acknowledged in its response that due to inadvertence this instrument was not made earlier than 24 February 2009, so as to enable the Committee to scrutinise the Order before the provisions were commenced on 28 February 2009.

The Committee may also wish to note that the Government also indicates that it will endeavour to ensure that proper time for Committee scrutiny is available in relation to future commencement orders to be made under the 2006 Act.

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**Act of Sederunt (Rules of Court of Session Amendment No 2) (Fees of Solicitors) 2009 (SSI 2009/82)**

**The Judiciary and Courts (Scotland) Act 2008 (Commencement No 1) Order 2009 (SSI 2009/83)**

**The Planning etc. (Scotland) Act 2006 (Commencement No. 7) (SSI 2009/100)**

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The Committee may wish to consider if it is content with these instruments.

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**SUBORDINATE LEGISLATION COMMITTEE**

**10<sup>th</sup> Meeting, 2009 (Session 3)**

**Tuesday 17 March 2009**

**Scottish Government Responses**

**The Planning etc. (Scotland) Act 2006 (Commencement No. 6) Order 2009 (SSI 2009/70)**

*The Scottish Government are asked in relation to this instrument to explain why it has not been possible to allow a greater number of days between the date of making the order (24 February) and coming into force of the provisions (28 February), which might have made possible both this Committee's scrutiny and report on this order prior to the provisions coming into force, and to allow persons and bodies interested in the order a greater period of time to be informed of the effect of making the order, prior to coming into force ?*

**The Scottish Government responds as follows:**

In order to correspond to the coming into force date of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 (SSI 2008/426) which relate to the introduction of the new development planning provisions by section 2 of the Planning etc. (Scotland) Act 2006 ("2006 Act") it was necessary to commence the provisions listed in the Schedule to SSI 2009/70 on 28<sup>th</sup> February 2009. The Scottish Government regrets that due to inadvertence SSI 2009/70 was not made earlier so as to enable the Committee to scrutinise the Order before the provisions were commenced and will endeavour to ensure that time for such scrutiny is available in relation to future commencement orders to be made under the 2006 Act. The Scottish Government had as early as December 2008 made planning authorities aware of the expected date of commencement of the provisions and of the regulations made in respect of the new development planning provisions.

**The Financial Assistance for Environmental Purposes (Scotland) Order 2009 (SSI 2009/75)**

*The Scottish Government is asked:*

*1. To clarify whether, in relation to the amendment which article 2 makes to section 153(1) of the Environmental Protection Act 1990(in the application of that section to Scotland), the inserted provision is not intended to follow after paragraph '(uu)' of section 153(1), rather than after paragraph '(yy)', as indicated (i.e. given that section 153(1) as it relates to Scotland currently ends in paragraph '(uu)', as inserted by SSI 2005/324) and if so whether in consequence the inserted paragraph should not be referred to as '(v v)', rather than '(zz)', as indicated.*

*2. If the Scottish Government agrees with the foregoing assessment, to explain how it is intended to address this matter, including any consequential adjustment which may be required in respect of footnote (c ) to article 2.*

**The Scottish Government responds as follows:**

The Scottish Government consider that the new paragraph (zz) is correctly inserted after paragraph (yy) of section 153(1) of the Environmental Protection Act 1990 and is correctly referred to as paragraph '(zz)'. While section 153(1)(yy) does not apply to Scotland it still forms part of section 153 of that Act and requires to be taken account of in the naming of the new sub-paragraph. The drafting follows the practice used in primary legislation which is intended to avoid the confusion that could arise from having two sub-paragraphs '(vv)'. The Scottish Government does not therefore consider that any adjustment is needed in respect of the Order or footnote (c).