



The Scottish Parliament  
Pàrlamaid na h-Alba

## SUBORDINATE LEGISLATION COMMITTEE

### AGENDA

14th Meeting, 2013 (Session 4)

Tuesday 7 May 2013

The Committee will meet at 10.00 am in Committee Room 4.

1. **Decision on taking business in private:** The Committee will decide whether to take items 5 and 6 in private.
2. **Instruments subject to negative procedure:** The Committee will consider the following—

[Police Service of Scotland \(Amendment\) \(No. 2\) Regulations 2013 \(SSI 2013/125\);](#)  
[Late Payment of Commercial Debts \(Scotland\) \(No. 2\) Regulations 2013 \(SSI 2013/131\).](#)

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

[Freedom of Information \(Amendment\) \(Scotland\) Act 2013 \(Commencement and Transitional Provision\) Order 2013 \(SSI 2013/136 \(C.10\)\).](#)

4. **Aquaculture and Fisheries (Scotland) Bill:** The Committee will consider the delegated powers provisions in this Bill after Stage 2.
5. **Regulatory Reform (Scotland) Bill:** The Committee will consider its approach to the scrutiny of the delegated powers provisions in this Bill at Stage 1.
6. **Children's Hearings (Scotland) Act 2011:** The Committee will consider its approach to the scrutiny of instruments implementing the provisions of this Act.

**SL/S4/13/14/A**

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The papers for this meeting are as follows—

**Agenda Items 2 and 3**

Legal Brief (private)

SL/S4/13/14/1 (P)

**Agenda Item 2**

Instrument Responses

SL/S4/13/14/2

**Agenda Item 4**

[Aquaculture and Fisheries \(Scotland\) Bill - as amended at Stage 2](#)

[Aquaculture and Fisheries \(Scotland\) Bill - Supplementary Delegated Powers Memorandum](#)

Briefing Paper (private)

SL/S4/13/14/3 (P)

Briefing Paper (private)

SL/S4/13/14/4 (P)

**Agenda Item 5**

[Regulatory Reform \(Scotland\) Bill - as introduced](#)

[Regulatory Reform \(Scotland\) Bill - Delegated Powers Memorandum](#)

Briefing Paper (private)

SL/S4/13/14/5 (P)

**SUBORDINATE LEGISLATION COMMITTEE****14th Meeting, 2013 (Session 4)****Tuesday 7 May 2013****Instrument Responses****INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE****Police Service of Scotland (Amendment) (No. 2) Regulations 2013  
(SSI 2013/125)****On 25 April 2013, the Scottish Government was asked:**

1. As the policy note indicates, this instrument makes corrections and clarifying amendments to the Police Service of Scotland Regulations 2013, the Police Service of Scotland (Police Cadets) Regulations 2013, the Police Service of Scotland (Special Constables) Regulations 2013, the Police Service of Scotland (Conduct) Regulations 2013 and the Police Service of Scotland (Performance) Regulations 2013. The policy note further indicates that these amendments are being made after consideration of comments made by the Subordinate Legislation Committee (with the exception of the amendment to the Police Service of Scotland (Conduct) Regulations 2013, although we observe that that amendment addresses a minor point raised by the legal advisers to the Committee). It appears to us that, in the circumstances, it would be usual to include a headnote indicating that this instrument is being made to correct errors in the aforementioned instruments, and that it is being issued free of charge to all known recipients of those instruments. Could you please explain why this has not been done in this case?

**The Scottish Government responded as follows:**

The Scottish Government thanks the Committee for its question. The instrument in question is a mixture of both corrections of errors and amendments to clarify the law in the amended instruments. The Scottish Statutory Instrument Drafting Manual provides that where an instrument "is issued to correct defects in an earlier instrument then it *may* be issued free of charge" [emphasis added]. The instant instrument corrects two defects while the majority of its provisions are instead clarificatory amendments. The Scottish Government decided on this occasion not to issue this instrument free of charge and consequently no headnote was required.

The Scottish Government acknowledges that there is a balance to be struck in such mixed instruments between the number of defects being corrected as against any other amendments being made; distinguishing the former as those which are necessary to ensure the instrument being amended can operate as intended. On this occasion the Scottish Government chose to make a clarificatory instrument rather than wait to make adjustments until other amendments were being made to the instruments and, as part of that, chose to include a small number of amendments which corrected defects. The Scottish Government does not regard the clarificatory amendments as necessary for the proper operation of the instruments and given the small number of error correcting amendments does not consider the instrument merits being provided free of charge.

**Late Payment of Commercial Debts (Scotland) (No. 2) Regulations 2013  
(SSI 2013/131)**

**Breach of laying requirements: letter to Presiding Officer**

The above instrument was made on 24th April 2013 under section 2(2) of the European Communities Act. It is being laid before the Scottish Parliament on 26th April 2013 and comes into force on 3rd May 2013.

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 instrument less than 28 days before it is brought into force.

The Regulations correct an error in the Late Payment of Commercial Debts (Scotland) Regulations 2013 (SSI 2013/17) which amended the Late Payment of Commercial Debts (Interest) Act 1998 so as to implement Directive 2011/7/EU on combatting late payment in commercial transactions.

One part of the first SSI introduced a period of up to 30 days for the purchaser to confirm that the goods or services they have received conform with the contract before the payment period commences, as required by the Directive. Unfortunately the wording has the effect of adding an additional (unnecessary) period of 30 days to this acceptance and verification procedure. This new SSI, which is very short, removes the unnecessary words. Similar Regulations are being made at Westminster for England, Wales and Northern Ireland.

As our legislation is not at present in conformity with the Directive we wish to make this correction as soon as possible. The new SSI will therefore come into effect 7 days after it has been laid rather than the normal 28 days for a negative SSI.

The Scottish Government regrets that on this occasion it has been unable to lay the Regulations within a period which would allow scrutiny by the Parliament before it comes into force, and will endeavour to ensure that a breach is avoided in future.