SUBORDINATE LEGISLATION COMMITTEE

AGENDA

7th Meeting, 2009 (Session 3)

Tuesday 24 February 2009

The Committee will meet at 2.15 pm in Committee Room 4.

1. **Decision on taking business in private:** The Committee will decide whether to take item 8 in private.

2. **Climate Change (Scotland) Bill:** The Committee will consider the Scottish Government's response to points raised on the delegated powers provisions in this Bill at Stage 1.

3. **Flood Risk Management (Scotland) Bill:** The Committee will consider the Scottish Government's response to the Committee's Stage 1 report.

4. **Welfare Reform Bill (UK Parliament legislation):** The Committee will consider the powers to make subordinate legislation conferred on Scottish Ministers in the Welfare Reform Bill (UK Parliament legislation).

5. **Draft instruments subject to approval:** The Committee will consider the following—
   
   - the Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2009 (SSI 2009/draft);
   - the Community Care and Health (Scotland) Act 2002 (Amendment to schedule 1) Order 2009 (SSI 2009/draft);
   - the Regulation of Care (Fitness to Register, Provide and Manage Care Services) (Scotland) Amendment Regulations 2009 (SSI 2009/draft);
   - the Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2009 (SSI 2009/draft);
   - the Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009 (SSI 2009/draft);
   - the Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009 (SSI 2009/draft);
   - the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2009 (SSI 2009/draft).
6. **Instruments subject to annulment:** The Committee will consider the following—

- the Plastic Materials and Articles in Contact with Food (Scotland) Regulations 2009 (SSI 2009/30);
- the Town and Country Planning (General Permitted Development) (Domestic Microgeneration) (Scotland) Amendment Order 2009 (SSI 2009/34);
- the Scottish Local Government Elections Amendment Order 2009 (SSI 2009/36);
- the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2009 (SSI 2009/38);
- the Protection of Children (Scotland) Act 2003 (The Meaning of Disqualified from Working with Children: Corresponding Disqualifications in Northern Ireland) Order 2009 (SSI 2009/39);
- the Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2009 (SSI 2009/40);
- the Police Grant (Variation) (Scotland) Order 2009 (SSI 2009/41);
- the Police Grant (Revocation and Variation No. 2) (Scotland) Order 2009 (SSI 2009/55).

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


8. **Scottish Parliamentary Pensions Bill:** The Committee will consider a paper from the clerk on proposed changes to Standing Orders.

Shelagh McKinlay  
Clerk to the Subordinate Legislation Committee  
Room TG.01  
Scottish Parliament  
Edinburgh  
Tel: 0131 348 5212  
Email: shelagh.mckinlay@scottish.parliament.uk
The papers for this meeting are as follows—

**Agenda Items 1-8**

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**Welfare Reform Bill**

**Agenda Item 8**

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

**Agenda Item 2  Climate Change (Scotland) Bill**

**Section 4 - Setting annual targets**

The Committee may wish to consider if it is content with the delegated power in section 4, and that it is subject to affirmative procedure.

**Section 6 - Modifying annual targets**

The Committee may wish to consider if it is content with the delegated powers in section 6, and that they are subject to affirmative procedure.

**Section 12 - The net Scottish emissions account**

The Committee may wish to consider if it is content with the delegated powers in section 12, and that they are subject to affirmative procedure on the first occasion, but the second and subsequent Regulations will be subject to negative resolution, other than regulations making provision to alter the amount by which a carbon unit credited or debited to the net Scottish emissions account for a period reduces or increases the account for that period. (This is provided for in section 64(7)(a).)

The Committee might also consider whether it wishes to report that generally it does not favour the use of affirmative procedure for a first set of regulations and negative procedure for second and subsequent regulations. However, it may consider that in the instance of section 12 of this Bill, the Scottish Government have provided sufficient reasons why this choice of procedure appears to be suitable.
Section 14 - Scottish share of emissions from international aviation and international shipping

The Committee may wish to consider if it is content with the delegated power in section 14, and that it is subject to affirmative procedure.

Section 18 - Carbon units and carbon accounting

The Committee may wish to consider if it is content with the delegated powers in section 18, and that they are subject to affirmative procedure on the first occasion, but the second and subsequent Regulations will be subject to negative resolution, other than regulations making provision specifying a carbon unit of a kind not previously specified in regulations. (This is provided for in section 64(7)(b).)

The Committee might also consider whether it wishes to report that generally it does not favour the use of affirmative procedure for a first set of regulations and negative procedure for second and subsequent regulations. However, it may consider that in the instance of section 18 of this Bill, the Scottish Government have provided sufficient reasons why this choice of procedure appears to be suitable.

Section 36 - Duties of public bodies relating to climate change

The Committee may wish to report to the lead committee that the power under section 36(1) to impose climate change duties on public bodies is extremely wide in its scope in particular as neither the public bodies which may be subject to climate change duties nor climate change duties themselves are adequately and clearly defined.

The Committee may wish to consider whether it wishes to recommend that this could be mitigated to some extent by provision of a list of public bodies to whom the power is to apply along with a power to add to the list subject to affirmative procedure. This would be in line with the approach adopted to other regimes regulating public bodies such as freedom of information.

Section 37 – Guidance to relevant public bodies

The Committee may wish to consider whether it would be appropriate for the Parliament to have a role in scrutinising the guidance produced under section 37 because of its potential impact; if so, the Committee may wish to recommend that guidance under this section should be laid before Parliament for a period prior to
implementation and any resolutions of the Parliament made in respect of the draft
guidance during that period implemented.

Section 46 - Variation of permitted times for making muirburn

The Committee may be content with the response in respect that it may be taken to
confirm that informal consultation with potentially interested parties will take place in
advance of any instrument.

Section 47 - Power to modify functions of Forestry Commissioners

The Committee may wish to draw to the attention of the lead committee that the
power under section 47(1) to modify the functions of the Forestry Commissioners in
or as regards Scotland is, in the opinion of the Committee, very wide in its scope as
there is no limitation within the power on what may be done in exercise of the power
beyond that it must deliver a climate change purpose.

Section 52(1), (2) and (4) - Waste prevention and management plans
Section 53(1), (2), (3) and (5) - Information on waste
Section 54(1), (2), (4) and (5) - Recyclable waste: facilities for deposit etc.
Section 56(1), (2), (3) and (6) - Procurement of recyclate - regulations

The Committee may wish to report to the lead committee and to Parliament that
these powers are expressed in very broad terms and that there is nothing on the
face of the Bill to restrict their application to purely commercial activity.

Section 57(1), (2) and (4) – Targets for reduction of packaging etc.

The Committee may wish to consider whether the Parliament should be made aware
that these powers are expressed in very broad terms and that there is nothing on the
face of the powers to restrict their application to commercial activity.

Section 64 – Subordinate legislation

The Committee may wish to consider that the general power contained in section
64(3), which enables orders or regulations to modify any enactment (including the
Act) by affirmative procedure, and whether in the instance of this Bill, this power may be acceptable.

**Agenda Item 3** Flood Risk Management (Scotland) Bill

The Committee may wish to note the Scottish Government’s response.

**Agenda Item 4** Welfare Reform Bill (UK Parliament legislation)

Clause 31: Power to make provision enabling exercise of greater choice and control

The Committee may wish to be content with the power under clause 31, taking the following into account:

Although the power is very wide, an indication is given in the Bill’s provisions of what is contemplated may be done in exercise of the power and what regulations may contain. Furthermore, protection is afforded by the requirement for affirmative procedure.

The Committee may also wish to refer in its report to the provision of a non-mandatory pilot scheme in clause 34.

**Agenda Item 5** Draft instruments subject to approval

The Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2009 (SSI 2009/draft)

The Community Care and Health (Scotland) Act 2002 (Amendment to schedule 1) Order 2009 (SSI 2009/draft)

The Regulation of Care (Fitness to Register, Provide and Manage Care Services) (Scotland) Amendment Regulations 2009 (SSI 2009/draft)

The Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2009 (SSI 2009/draft)

The Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009 (SSI 2009/draft)
The Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009 (SSI 2009/draft)

The Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2009 (SSI 2009/draft)

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

Agenda Item 6  Instruments subject to annulment

The Plastic Materials and Articles in Contact with Food (Scotland) Regulations 2009 (SSI 2009/30)

The Town and Country Planning (General Permitted Development) (Domestic Microgeneration) (Scotland) Amendment Order 2009 (SSI 2009/34)

The Scottish Local Government Elections Amendment Order 2009 (SSI 2009/36)

The Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2009 (SSI 2009/38)


The Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2009 (SSI 2009/40)

The Police Grant (Variation) (Scotland) Order 2009 (SSI 2009/41)

The Police Grant (Revocation and Variation No. 2) (Scotland) Order 2009 (SSI 2009/55)

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

Agenda Item 7  Instruments not laid before Parliament

Act of Sederunt (Child Care and Maintenance Rules) Amendment 2009 (SSI 2009/29)
The Committee may wish to consider if it is content with this instrument.
6 February 2009

Dear Shelagh,

Climate Change (Scotland) Bill at Stage 1

1. Thank you for your letter of 28 January 2009 to Paul Johnston regarding the Subordinate Legislation Committee’s consideration of the Climate Change (Scotland) Bill at Stage 1.

For ease of reference I have set out each of the points raised, followed by the Scottish Government response.

Section 4 - Setting annual targets

2. The Committee asked the Scottish Government—

in relation to sections 4 and 6, on what basis it has considered that there should be no requirements on the face of the Bill to the effect that Ministers shall consult on the terms of an order under those sections (setting or modifying annual targets) with specified persons or bodies who may have particular interest in the proposals?

3. Scottish Government response—

i. When setting annual targets (section 4) and modifying them (section 6), Ministers must first seek the advice of the relevant body (sections 5 and 7 respectively). Section 5(5) provides that the relevant body is the UK Committee on Climate Change or a person or body designated under section 19(1), in practice an existing body or a Scottish Committee on Climate Change.

ii. The Scottish Government has committed to utilising the UK Committee on Climate Change in the short to medium term before reviewing the situation. The UK Committee comprises leading experts on the subject of climate change. Paragraph 1(3) of Schedule 1 to the UK Climate Change Act 2008 sets out the areas of experience and knowledge that the national authorities, which include the Scottish Ministers, must have regard to securing for the Committee as a whole when appointing its members. This includes an understanding of the differences in circumstances between England, Wales, Scotland and Northern Ireland.
iii. If Ministers decide to lay an instrument which makes provision different from that recommended by the Committee, section 5(3) of the Bill requires that they publish a statement explaining why. This is intended to enhance transparency and scrutiny.

iv. The annual targets in the Climate Change (Scotland) Bill apply to the entire Scottish economy. The Bill contains no targets for individual sectors of the economy in order to allow sufficient flexibility for policies to be put in place to reduce emissions in the most cost effective ways possible, without disproportionately disadvantaging any particular industry in Scotland. This is reinforced by the fact that the duty to ensure that the net Scottish emissions account is reduced in line with the annual and longer-term targets in the Bill is placed upon the Scottish Ministers alone.

v. These factors, combined with the provisions requiring the advice of the relevant body, means that it is not felt necessary to require additional consultation on the proposed levels of the annual targets, or on proposed modification of these levels, both of which will be set by orders subject to affirmative resolution.

Section 6 - Modifying annual targets

4. The Committee asked the Scottish Government—

(a) to explain and justify why it is considered, in relation to the power in section 6(4), that this may be exercised in any circumstances where the Scottish Ministers consider it appropriate to do so; and

(b) whether more defined circumstances in which it would be appropriate to exercise the power (in a similar manner to section 6(2) and (3)) could be prescribed, for instance where it becomes necessary for the achievement of targets?

5. Scottish Government response—

i. The power in section 6(1)(c) enables the Scottish Ministers to amend the dates for which batches of annual targets must be set. The power in section 6(1)(d) enables the Scottish Ministers to amend the criteria which Ministers must have regard to when setting annual targets. Section 6(4) stipulates that Scottish Ministers may make orders under sections 6(1)(c) and (d) only if they consider it appropriate to do so. Consideration was given to whether it would be desirable to limit the exercise of these powers by reference to particular conditions which must be met but this was rejected because of the factors outlined below.

ii. The dates set out in section 4(2) mirror the dates for which carbon budgets will be set by the UK Government under the Climate Change Act 2008. This recognises that total emissions reductions in Scotland depend in part upon policies which are reserved and therefore that the batches of annual targets should take account of the levels at which UK carbon budgets are set. It also provides greater certainty for the many organisations which operate both in Scotland and other parts of the UK. It is necessary for Scottish Ministers to be able to amend the annual target dates should the Secretary of State ever exercise the power in section 23(1) of the UK Act to change the length or timing of the UK carbon budgets.
iii. Consideration was given to drafting this section so that the power could only be exercised in order to keep Scottish annual target batch dates in line with the UK carbon budgets or other relevant European or other international agreements. However, it was felt that this was unnecessarily restrictive given the differences between the Scottish annual target model and other emissions reduction models in place elsewhere. Any amendments made under the section 6(1)(c) provision would be subject to affirmative resolution and therefore open to considerable Parliamentary scrutiny.

iv. The target setting criteria in section 4(4) represent the areas and issues which the Scottish Ministers believe are relevant and appropriate to have regard to when setting annual targets. The framework established by the Climate Change (Scotland) Bill is designed to last until at least 2050. It may become appropriate to amend these criteria at some point in the coming four decades. Given this lengthy timescale, it is felt that there needs to be considerable flexibility to adapt these criteria to best fit current thinking and therefore it would not be desirable to attempt to try to restrict the use of the section 6(1)(d) power in a specific way. Once again, any such amendment will be subject to the level of Parliamentary scrutiny afforded by affirmative resolution procedure.

v. With regard to the Committee’s suggestion that the exercise of the power in section 6(4) be restricted so that it is used only, for example, where it becomes necessary for the achievement of targets, we consider that this would be difficult to achieve satisfactorily. It would be difficult to argue that changing the dates for which batches of targets are set affects the ability to achieve those targets because it is the level at which any particular target is set which is the key factor in whether or not it is achievable. Similarly, it would be difficult to draw a direct link between changing the target setting criteria and the achievability of targets themselves.

vi. Finally, it is worth noting the duty in section 7 of the Bill which requires that Ministers seek the advice of the relevant body before making an order under section 6. If the order makes provision different from that recommended by the relevant body, Ministers must publish a statement explaining why. This provides another safeguard as to the use of the section 6 powers.

Section 12 - The net Scottish emissions account

6. The Committee notified the Scottish Government that it does not favour the use of the lesser degree of scrutiny of negative procedure for second or subsequent regulations, as provided for in section 64(7)(a) in relation to section 12(2), rather than affirmative procedure.

7. The Committee asked the Scottish Government—

(a) whether it could re-consider if all regulations under section 12(2) could be by affirmative procedure, and

(b) if it does not take this view, if it could fully explain to the Committee what types of “technical” provisions would be subject to second and subsequent negative procedure regulations under section 12(2) (but would not be provisions that would attract affirmative procedure under section 64(7)(a)); could a description of these provisions be put in the Bill; and why it is considered appropriate those provisions should be subject to negative procedure, while the other provisions should be subject to affirmative procedure?
Scottish Government response—

i. The Scottish Government does not take the view that affirmative resolution is necessary for all regulations made under section 12(2). The first regulations made under this section will be used to establish the circumstances in which carbon units will be credited to or debited from the net Scottish emissions account and the manner in which this is to be done. This first set of regulations will be subject to affirmative resolution, as will any amendment to them or to subsequent regulations which would have a fundamental impact on the operation of the net Scottish emissions account by altering the amount by which carbon units increase or decrease that account.

ii. It is envisioned that second and subsequent regulations which would attract negative procedure would be instruments designed to align emissions trading schemes operating in Scotland, such as the EU Emissions Trading Scheme (EU ETS), with the net Scottish emissions account. These regulations are likely to be very technical and detailed in nature but would be unlikely to change the fundamental operation of the net Scottish emissions account.

iii. For example, in Phase II of the EU ETS (up to and including the year 2012) nearly all emissions allowances are allocated to industry free of charge. Participants only have to pay for extra allowances necessary to offset emissions over and above their allocation. However, in Phase III of the EU ETS (2013-2020), auctioning will become the default method of distributing allowances, rather than free allocation. In sectors of industry not subject to specific exemptions, 20% of allowances to be distributed will be auctioned in 2013, gradually increasing to 70% in 2020. Additionally the electricity generation sector in most Member States will not receive any free allowances from 2013 onwards. The proportion they would have received will also be auctioned. Work is underway within the Scottish Government to develop section 12 regulations covering the operation of the EU ETS up to and including 2012. However, although the principles of Phase III of the EU ETS are known, there are currently a great number of uncertainties about how it will actually operate in practice. It is almost certain that the first set of section 12 regulations, put in place to enable the net Scottish emissions account to operate appropriately in 2010-2012, will need to be amended to take account of the changes to the EU ETS from 2013. The aim of these amendments will simply be to enable the EU ETS allowances used by installations in Scotland to continue to be properly accounted for. The amended regulations will not change the amounts by which individual EU ETS allowances increase or decrease the net Scottish emissions account. The Scottish Government therefore considers that negative resolution is appropriate in such circumstances. This follows the approach taken in the equivalent sections of the UK Climate Change Act (sections 27 and 28).

Section 14 - Scottish share of emissions from international aviation and international shipping

9. The Committee asked the Scottish Government—

in relation to section 14, on what basis it has considered that there should be no requirements on the face of the Bill to the effect that Ministers shall consult on the terms of an order with specified persons or bodies who may have particular interest in these proposals?

Scottish Government response—
Emissions from domestic aviation and domestic shipping are considered to have been emitted from sources in Scotland and therefore fall within the scope of the Bill’s targets by virtue of section 13(a). An order made under section 14(1) of the Bill would designate a share of emissions from international aviation and international shipping as being attributable to Scotland. The effect of such an order would be to include these emissions within those which count towards the reduction targets set in the Bill. This does not amount to specific targets for either the aviation or the shipping industries because the Bill’s targets apply to Scotland’s emissions taken as a whole, not to individual sectors. This, combined with the requirement in section 14(3) that Scottish Ministers request advice from the relevant body (the expert Committee on Climate Change or Scottish equivalent), and the related requirement to publish a statement setting out any reasons for not following that advice should that be the case, meant that it was not felt necessary to require consultation on the terms on any order made under section 14(1).

Section 18 - Carbon units and carbon accounting

11. The Committee notified the Scottish Government that it does not favour the use of the lesser degree of scrutiny of negative procedure for second or subsequent regulations, as provided for in section 64(7)(b) in relation to section 18(1), rather than affirmative procedure.

12. The Committee asked the Scottish Government—

(a) whether it could re-consider if all regulations under section 18 could be by affirmative procedure, and

(b) if it does not take this view, if it could fully explain and justify to the Committee why it is considered appropriate that the first use of the regulation-making power under section 18 together with any regulations making provision specifying a carbon unit of a kind not previously specified) should be subject to affirmative procedure, whereas all other second or subsequent regulations under section 18 should be subject to negative procedure?

13. Scottish Government response—

i. The Scottish Government does not take the view that affirmative resolution is necessary for all regulations made under section 18. Once a scheme is established under section 18(1) for registering or otherwise keeping track of carbon units, including the establishment and maintenance of accounts for holding such units, and the designation or establishment of a person or body to administer the scheme, it is considered that any further regulations made under section 18(1) would be used simply to vary the operation of this scheme.

ii. For example, a second or subsequent set of section 18(1) regulations might be necessary at some point in the future to create an additional account within which carbon units may be held because of changes to the way in which carbon units are traded at a UK or international level. This is considered to be an administrative procedure. Similarly, it may become necessary to change the level of the charges that users of the scheme are required to pay, to cover the reasonable operating costs of the scheme. Changes of these types would not fundamentally alter the carbon accounting scheme established in the first set of regulations.
regulations made under section 18(1) and negative resolution is therefore considered sufficient for second and subsequent regulations which seek to make such amendments.

iii. By comparison, specifying a new type of carbon unit would have a significant effect because of the direct relevance to the net Scottish emissions account. Regulations making such a specification would therefore be subject to affirmative resolution.

iv. This follows the approach taken in the equivalent sections of the UK Climate Change Act (sections 26 and 28).

Section 36 - Duties of public bodies relating to climate change

14. The Committee asked the Scottish Government—

(a) Whether consideration was given to the type of 'public bodies' which could be subject to climate change duties and, if so, whether 'public bodies' for purposes of this section could be better defined;

(b) Whether consideration was given to providing a definition of 'climate change duties' which did not refer back to section 36(1) and, if so, whether 'climate change duties' for purposes of this section could be more specifically defined; and

(c) Given that climate change duties are not precisely defined and given that any order under section 36 could potentially affect a very wide range and large number of public bodies, whether consideration was given to providing for a broader range of persons whom the Scottish Ministers are obliged to consult under section 36(4) and (5)?

15. Scottish Government response—

i. In response to part (a) of the question, section 19(5) of the Bill provides that the term 'public body' means any body with a function of a public nature. This definition applies to section 36 by virtue of section 65 of the Bill. When drafting the Bill, consideration was given to the lists of public bodies in both the Freedom of Information (Scotland) Act 2002 and the Public Appointments and Public Bodies etc. (Scotland) Act 2003. However, given that the policy intention is only to use the powers in section 36 when it is considered necessary in the future (about which more detail is given below) it was not felt appropriate to list the bodies to which the duties might be applied. It was considered more appropriate to use the general term 'public bodies'.

ii. Apart from the set of specific provisions in Part 5, the Climate Change (Scotland) Bill is principally designed to set long-term statutory emissions reduction targets for Scotland and to establish the framework of annual targets, reporting and scrutiny to drive the policies for delivering the emissions reductions necessary for meeting these targets. The public sector can act as an exemplar by reducing its own emissions in line with the Bill’s targets. The Scottish Ministers wish to work in partnership with public bodies to achieve this but recognise that as emissions reductions become more difficult and more expensive to achieve it may become necessary to place duties on certain public bodies to take specific action. If this does become necessary, section 36(6) of the Bill specifically requires Scottish Ministers to co-operate with relevant public bodies to help them comply with their climate change duties.
iii. It is not possible to know exactly which public bodies may need to become subject to statutory climate change duties at various points over the course of the forty years that the Bill’s framework is designed to cover. If the Bill were to include a list of the public bodies relevant to section 36 it would be highly likely that bodies would need to be included in the list for the sake of completeness but upon which climate change duties may never need to be applied. This approach could also limit the Bill in terms of future application to any new bodies which are created between now and 2050. It was therefore considered appropriate to retain flexibility as to which public bodies climate change duties might be applied to.

iv. Section 36(5) of the Bill contains the safeguard that Scottish Ministers must consult with associations of local authorities or other persons (it is intended that this should be the representative bodies for the part of the public sector in question or, if there are none, the specific public bodies themselves) before laying a draft of a statutory instrument containing an order under section 36(1). Scrutiny is further strengthened by the requirement that such orders be subject to affirmative resolution.

v. In response to part (b) of the question, it was never the intention to define ‘climate change duties’ more specifically elsewhere in the Bill. Given the complex nature of climate change and the long-term nature of the emissions reduction framework established by the Bill, it was felt that this power should be flexible enough to be used in reaction to or anticipation of circumstances which cannot be foreseen at the present time.

vi. It is intended that the term ‘climate change duties’ be sufficiently broad to encompass measures designed to mitigate specific public bodies’ contribution to climate change, ways in which the bodies may adapt to the effects of climate change, or ways in which they may carry out their functions with regard to the objectives of mitigation and adaptation.

vii. In response to part (c) of the question, the Scottish Ministers are required to consult with associations of local authorities or other persons as the Scottish Ministers consider appropriate. As explained above, the term ‘other persons’ is intended to cover representative bodies for the part of the public sector in question (other than local authorities) should they exist, or, if they do not, the specific public bodies themselves. However, because the specific public bodies to which duties might be applied are not listed in the Bill in order to retain the flexibility sought for this power, it was not considered appropriate to set out a more specific or broader list of persons whom the Scottish Ministers would be obliged to consult.

Section 37 – Guidance to relevant public bodies

16. The Committee asked the Scottish Government for more information as to the function and likely content of this guidance.

17. Scottish Government response—

i. Guidance issued under section 37(1) will indicate how specific climate change duties should be discharged. This is intended to assist in developing consistency of approach across those public bodies to which specific section 36 duties apply. For example, and for illustrative purposes only, a duty might be applied requiring certain public bodies to take account of greenhouse emissions in new procurement contracts. Associated guidance issued under section 37 might set out examples of best practice as to how this might be achieved.

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1 Victoria Quay, Edinburgh  EH6 6QQ
www.scotland.gov.uk
Section 46 - Variation of permitted times for making muirburn

18. The Committee asked the Scottish Government—

whether or not it considers it would be appropriate to consult the hill farming community, landowners and others who may be affected on the dates which may be appropriate for muirburn, in advance of making an instrument.

19. Scottish Government response—

i. The Scottish Government agrees that it would be appropriate to consult with parties likely to be affected by any proposed change to the times at which muirburn may be made. However, the Scottish Government considers that the introduction by section 46 of the Bill of provision in a new section 23A of the Hill Farming Act 1946 to create a statutory duty to consult would be impractical. Unlike sections 36(4) and 37(2) of the Bill, which require the Scottish Ministers to consult with, among other persons, associations of local authorities prior to placing climate change duties on public bodies and giving guidance about those duties, there is no one organised body or group of individuals that specifically or particularly represent the interests of those who are involved in the practice of making muirburn. In addition, the Scottish Government is not aware of any existing statutory body or agency with any particular role or statutory function in relation to muirburn.

ii. Muirburn may be made by any person, both a landowner or a tenant, anywhere in Scotland. The Scottish Government considers that in the absence of any organised persons or bodies representing those who may make muirburn, its standard practice of consulting on a non-statutory basis with potentially interested parties is appropriate and reasonable in the circumstances. Such a means of consultation will help to ensure that the views of those generally with an interest in muirburn are obtained and taken into account, as opposed to obtaining views from persons or groups whose remit or experience does not in particular concern the activity of muirburn.

Section 47 - Power to modify functions of Forestry Commissioners

20. The Committee asked the Scottish Government—

Given that the proposed power under section 47(1) to modify, by order, the functions of the Forestry Commissioners in or as regards Scotland does not contain any limitation with respect to the nature, scope or extent of any such modification, has the Scottish Government given consideration to the imposition of a restriction, within the power, on the nature, scope and extent of any modification which may be made; and, whether or not any such consideration has been given, does the Scottish Government not consider that such a limitation would be both feasible and appropriate?

21. Scottish Government response—

i. The Scottish Government considers that the power in draft section 47(1) to modify the functions of the Forestry Commissioners in or as regards Scotland is limited by section 47(2) to the effect that the Scottish Ministers may only make such an order where they consider it necessary or expedient to do so in order to comply with their duty under sections 1, 2 or 3(1)(b) to meet the targets set out in those provisions, or otherwise in relation to climate change.
ii. Any modifications to the functions of the Forestry Commissioners in or as regards Scotland contained in an order under section 47(1) may therefore only be made for purposes demonstrably related to the mitigation of the effects of climate change. The Scottish Government’s position is that consideration has been given to limiting the power in section 47(1), and that it is both feasible and appropriate that the power should be limited in such a way that it requires to relate to climate change purposes.

iii. The Committee will also have noted that, in terms of section 64(4), an order to be made under section 47(1) will be subject to affirmative resolution procedure, thereby ensuring that any such order will require to be debated and approved by the Parliament before it can be made.

Section 52(1), (2) and (4) - Waste prevention and management plans

22. The Committee asked the Scottish Government—

(a) What kinds or classes of persons does the Scottish Government intend or anticipate will be subject to duties under the regulations? In particular is there any intention to apply the power to domestic activities or individuals?

(b) Would it not be possible for the Scottish Government to specify, in the section, the classes of persons to be subject to the regulations and, if so, why has this not been done?

Section 53(1), (2), (3) and (5) - Information on waste

23. The Committee asked the Scottish Government—

(a) What kinds or classes of persons does the Scottish Government intend or anticipate will be subject to duties under the regulations? In particular is there any intention to apply the power to domestic activities or individuals?

(b) Would it not be possible for the Scottish Government to specify, in the section, the classes of persons to be subject to the regulations and, if so, why has this not been done?

Section 54(1), (2), (4) and (5) - Recyclable waste: facilities for deposit etc.

24. The Committee asked the Scottish Government—

(a) What kinds or classes of persons does the Scottish Government intend or anticipate will be subject to duties under the regulations? In particular is there any intention to apply the power to domestic activities or individuals?

(b) Would it not be possible for the Scottish Government to specify, in the section, the classes of persons to be subject to the regulations and, if so, why has this not been done?
25. The Committee asked the Scottish Government—

(a) What kinds or classes of persons does the Scottish Government intend or anticipate will be subject to duties under the regulations? In particular is there any intention to apply the power to domestic activities or individuals?

(b) Would it not be possible for the Scottish Government to specify, in the section, the classes of persons to be subject to the regulations and, if so, why has this not been done?

Scottish Government response—

i. In respect of sections 52, 53, 54, and 56 the Committee asks about the classes of persons on whom the Scottish Government believes duties under eventual regulations may fall. It is not at present possible to be specific, since in none of these cases has the Scottish Government yet drawn up firm proposals for regulation. In addition to policy considerations (which might, for example, mean exemptions for small businesses or particular sectors), actual regulations, which are not foreseen in the current economic circumstances, will have to be drawn up according to the economic, market and environmental position at the time. There is, however, no intention to apply regulations made in terms of any of these sections to private individuals acting in a non-business capacity.

26. The Committee asked the Scottish Government to fully explain and justify (given that no such explanation is given in the Delegated Powers Memorandum) why—

(a) unlike the approach taken in Part 1 of the Bill, the Government requires to take the powers in section 57(1) and (2), in so far as they propose that any targets without limit (set by any method) may be set for the reduction of packaging or the reduction of emissions produced by packaging, or requirements on persons to comply with those targets;

(b) given that the Memorandum refers to the possibility of targets being imposed on retailers, the Government requires to impose those targets or requirements on any types of persons (individuals or legal persons) who might be specified in the Regulations, and

(c) On what basis it has considered that there should be no requirements on the face of the Bill to the effect that Ministers shall consult on the terms of the regulations with specified persons or bodies that may have particular interest in the proposals?

27. Scottish Government response—

i. With regard to part (a) of the question, concerning the power in section 57(1) to set targets, the Bill requires that this power be exercised through regulations. A different approach from that taken in Part 1 is required since producers of packaging are already subject to a producer responsibility regime. In Scotland, this is set out in the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (SI 2007/871). These, inVictoria Quay, Edinburgh EH6 6QQ
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turn, implement the requirement in Article 7 of the Packaging and Packaging Waste Directive (94/62/EC) that return, collection and recovery systems be established. The Scottish Government does not consider it appropriate to transfer responsibilities to itself for meeting packaging targets when a statutory scheme placing considerable responsibilities on producers is already in place.

ii. Furthermore, in terms of waste in general, producer responsibility is a requirement of Community law - see, for example, Article 8 of the recently revised Waste Framework Directive (2008/98/EC). The power to set targets in respect of packaging is obviously less far-reaching in its effects on life in Scotland than the targets in Part 1 may potentially be. It is not limited because very different targets may be appropriate for different forms of packaging on different kinds of product - and indeed the appropriate targets will vary widely according to the state of the market.

iii. Part (b) of the Committee's question on Section 57 asks why the Bill refers to the imposition of targets on persons other than retailers. A great deal of the packaging in circulation does not pass through the hands of retailers, so requirements to reduce these forms of packaging would need to be set for other categories of person. Even where packaging does pass through the hands of retailers, it may well be appropriate to place reduction requirements on producers instead. (As indicated above, these persons are the object of existing producer responsibility legislation in any case.) This does not mean that the Delegated Powers Memorandum's reference to retailers was necessarily wrong. Measures to reduce the amount of packaging reaching consumers in particular, for example, would be likely to be addressed at retailers.

iv. Part (c) of the Committee's question on Section 57 concerns the lack of a specific provision on consultation. The Scottish Government's usual practice is to consult with interested parties when making secondary legislation. It seemed, therefore, unnecessary to require this on the face of the Bill.

Section 64 – Subordinate legislation

28. The Committee asked the Scottish Government—

Why (in contrast for example to the approach taken in sections 74 and 75 of the Judiciary and Courts (Scotland) Act 2008))—

(a) it is considered that section 64(3) requires to contain a power for orders or regulations to modify any enactment (including the Act) by affirmative procedure (a “Henry VIII power”), without any reference to the purposes of such modification, for example, for the purposes of making consequential, incidental, transitional, transitory, or savings provisions; and

(b) if the Government could re-consider whether the power to make supplementary, incidental or consequential provision could be limited to the purposes of giving full effect to, any provision of the Act, and the power to make transitory, transitional or saving provisions could be limited to being in connection with the coming into force of any provision of the Act?
29. **Scottish Government response**—

i. With regard to part (a) of the question, the Scottish Government considers that it is necessary for the power in section 64(3) to be available for use in wider circumstances than those prescribed in section 64(2)(b) for making consequential, incidental, transitional, transitory, or savings provision.

ii. For example, the power in section 47 enables the Scottish Ministers to modify the functions of the Forestry Commissioners in or as regards Scotland. It is likely that doing so will necessitate the modification of enactments, because the existing functions of the Forestry Commission are mainly set out in the Forestry Act 1967. The modification of that Act would be the main method by which the power would be used, rather than being merely ancillary. Section 36(1) provides a similar case because it might be necessary to modify enactments applying to local authorities, for example, to reflect the new climate change duties.

iii. This is a wide-ranging Bill and it is difficult to know in advance which powers might need to modify enactments. That is why section 64(3) is expressed as applying generally.

iv. Turning to part (b) of the question, the Scottish Government considers that dividing the section 64(3) powers in the way described would result in some of the ancillary powers being subject to the ‘full effect’ test and others subject to the ‘in connection with the coming into force’ test. As previously stated, it is difficult in advance to know which of the ancillary powers will be needed in practice. The Bill contains such a wide range of different powers that a particular set of subordinate legislation in a particular subject area might, for example, need to ‘mix and match’ a consequential provision with a saving. It was not felt that having to use different tests in this manner would add to the level of scrutiny which will have to be applied.

v. The Judiciary and Courts (Scotland) Act 2008, contains separate standalone “ancillary” and “transitional provision etc.” powers in sections 74 and 75, but it also contains a full list of incidental etc. powers within section 71. Section 64(2) (b) of the Climate Change (Scotland) Bill takes a similar approach to section 71(2) (a) in that Act.

I hope this information is helpful to the Committee.

Yours sincerely,

Fiona Page
Bill Team Leader
Climate Change (Scotland) Bill
SUBORDINATE LEGISLATION COMMITTEE

7th Meeting, 2009 (Session 3)

Tuesday 24 February 2009

Paper by the Clerk

FLOOD RISK MANAGEMENT (SCOTLAND) BILL – RESPONSE TO SLC STAGE 1 REPORT

Background

1. Under Rule 9.6.2 of Standing Orders the Committee submitted its report on the delegated powers provisions in the Flood Risk Management (Scotland) Bill to the Rural Affairs and Environment Committee Health, as lead committee for the Bill, on 15 December 2008.

2. On 18 February the Minister for the Environment, Roseanna Cunningham MSP wrote to the Convener responding to the Subordinate Legislation Committee’s (SLC) report

Scottish Government Response

3. The response indicates that the Scottish Government (SG) intend to seek to amend the Bill in line with the Committee’s views on the delegated powers in the following sections:
   Section 1(3)(a)(ii), (3)(b)(ii), (3)(c)(ii) and (3)(d)(ii); Section 2(1); Section 5(c); Section 9(2); Section 18(4), (5) and (6); Section 29(6).

4. The response also indicates that that SG do not intend to seek amendment of the Bill in relation to the issues raised by the SLC in relation to the delegated powers in the following sections:
   Section 10(1)(a); Section 13(2); Section 14 (1); Section 16(1) and (2); Section 23(2).

5. For each of these sections the Committee recommended that the delegated powers be subject to a requirement to consult with SEPA before their exercise. The Minister indicates in her response that she does not consider this appropriate given that the powers are being exercised within a tight timetable of deadlines and that informal discussion with SEPA will occur.

6. Finally, in relation to section 82(1) Ancillary Provision, the response states that the Minister is giving further consideration to the Committee’s recommendation that any modification of primary legislation, however effected, should be subject to affirmative procedure.
Progress of the Bill

7. The Bill passed Stage 1 on 22 January 2009. Day 1 of Stage 2 consideration in the Rural Affairs and Environment Committee is on 4 March 2009.

Recommendation

Members are invited to note and comment on the Scottish Government’s response to the Committee’s report on the delegated powers provisions in the Flood Risk Management (Scotland) Bill at Stage 1.

Shelagh McKinlay
Clerk to the Committee
Dear Jamie

FLOOD RISK MANAGEMENT (SCOTLAND) BILL – RESPONSE TO STAGE 1 REPORT DELEGATED POWERS

I am writing following publication of the Subordinate Legislation Committee’s (SLC) stage 1 report to the Rural Affairs and Environment Committee on delegated powers in the Flood Risk Management (Scotland) Bill. This letter provides an update to the response that was sent to the SLC in November 2008 on action being taken as a result of the SLC’s recommendations.

Section 1(3)(a)(ii), (3)(b)(ii), (3)(c)(ii) and (3)(d)(ii) – Powers to specify “flood risk related functions” for the Scottish Ministers, SEPA, local authorities and other responsible authorities

The Committee queried why these functions (of specifying flood risk related functions) are not subject to the general duty in section 1.

I have considered this section again and am happy to amend the Bill such that the general duty in section 1 applies to these powers.

Section 2(1) – Directions and guidance

The Committee queried why the function (of giving directions and guidance) is not subject to the general duty in section 1 and whether the Scottish Government is willing to consider amending the Bill to provide that the direction-making power is exercisable only after consulting with SEPA and/or responsible authorities.

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I have considered this power further and I am happy to amend the Bill so that the general
duty in section 1 applies to directions and guidance issued by Ministers.

I am also happy to amend the Bill to require the Scottish Ministers to consult SEPA or the
relevant responsible authorities, as appropriate, before making directions.

Section 5(c) – Power to designate “responsible authorities”

The Committee recommended amending the Bill so that this power is subject to an obligation
to consult with affected organisations.

I am happy to amend the Bill so as to require the Scottish Ministers to consult SEPA, existing
responsible authorities, the bodies or office holders they intend to designate and such other
people as they consider appropriate before making an Order under section 5(c).

Section 9(2) – SEPA to prepare flood risk assessments

The Committee previously asked the Scottish Government to explain the circumstances in
which it envisages using the delegated power to direct SEPA to prepare a flood risk
assessment before the deadline in the Flooding Directive (22 December 2011).

I have considered this section further and am happy to amend the Bill so as to remove the
flexibility for Ministers to direct for the flood risk assessment to be prepared prior to
December 2011.

Section 10(1)(a) – Flood risk assessments: review

The Committee previously asked the Scottish Government: to explain the circumstances in
which it envisages using the delegated power to direct SEPA to review and update each
flood risk assessment before the deadline in the Flooding Directive (22 December 2018);
and to consider making the power subject to a requirement to consult SEPA.

I note that the Committee now considers this direction making power acceptable in principle.
However, I remain concerned that to require formal consultation before this power could be
used would risk introducing further delays into an already tight timetable of deadlines. The
Scottish Government and SEPA are in constant liaison with one another and informal
discussion with SEPA on the direction of dates is something that I am confident will occur
without the need to formalise this in the Bill. I therefore consider that this section should
remain unchanged.

Section 13(2) – SEPA to identify potentially vulnerable areas and local plan districts

The Committee made a recommendation to consider making this power (to direct the date by
which a document identifying potentially vulnerable areas and local plan districts is to be
submitted to the Scottish Ministers) subject to a requirement to consult SEPA before its
exercise.

I have looked once more at this point, however, I still do not consider this appropriate. The
Scottish Government and SEPA are in constant liaison with one another and informal
discussion with SEPA on the direction of dates is something that I am confident will occur
without the need to formalise this in the Bill. Furthermore, I remain concerned that to require
formal consultation would risk introducing further delays into an already tight timetable of
deadlines.

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Section 14(1) – Potentially vulnerable areas and local plan districts: review

The Committee made a recommendation to consider making this power (to direct the date by which a document identifying potentially vulnerable areas and local plan districts must be reviewed and updated) subject to a requirement to consult with SEPA before its exercise.

I have looked once more at this point, and still do not consider this appropriate. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I remain concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.

Section 16(1) and (2) – SEPA to assess possible contribution of alteration etc. of natural features

The Committee made a recommendation to consider making these powers (to direct the dates by which an assessment of the contribution of alterations of natural features must be carried out and reviewed) subject to a requirement to consult with SEPA before their exercise.

I have looked once more at this point, however, I still do not consider this appropriate. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I remain concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.

Section 18(4)(b), (5)(b) and (6)(b) – Flood hazard maps

The Committee recommended that the Scottish Government should consider making these powers (to direct SEPA to include in flood hazard maps information on coastal floods, flooding from groundwater and floods from sewerage systems) subject to a requirement to consult with SEPA before their exercise.

I am happy to amend the Bill so as to make these powers subject to a requirement to consult with SEPA before their exercise.

Section 23(2) – SEPA to prepare flood risk management plans

The Committee made a recommendation to consider making this power (to direct the date by which SEPA must submit a flood risk management plan) subject to a requirement to consult with SEPA before its exercise.

I have looked once more at this point, however, I still do not consider this appropriate. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I remain concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.
Section 29(6) – Power to make further provision in relation to local authorities preparing local flood risk management plans

The Committee recommends that this power should be subject to a requirement to consult with local authorities and other appropriate bodies including SEPA and Scottish Water.

I have reconsidered this power and am happy to amend the Bill to require the Scottish Ministers to consult SEPA, responsible authorities (which include local authorities and Scottish Water) and any other persons they consider appropriate before they make regulations.

The Committee also queried whether it is within the vires of this proposed delegated power to make provisions as to the structure of such plans and the procedural steps that must be taken in the course of their preparation. Section 29(6) would be used to make provision about the content of plans, whereas provisions about form and procedure would more naturally fall under the regulation making power in section 35(1).

Section 44(1) – Power to give effect to Community obligations etc.

The Committee asked the Government to consider amending the Bill to provide that this power to modify Part 3 is subject to affirmative rather than negative procedure in light of the presumption in favour of affirmative procedure where a provision in a Bill enables primary legislation to be amended or repealed by subordinate legislation.

As the response submitted to the Committee in November confirmed, I am happy to amend the Bill to provide that this power should be subject to affirmative, rather than negative, procedure.

Section 52(4) – Power to amend flood protection scheme making process

The Committee asked the Government to consider amending the Bill to require consultation with affected parties (especially local authorities) before the exercise of this power.

As the response submitted to the Committee in November confirmed, I am happy to amend the Bill to require consultation with affected parties before the exercise of this power (to amend the procedure for making flood protection schemes).

Section 77 (inserting new section 12ZA of the Reservoirs Act 1975) – Incident reporting

I note that the Committee is content, in principle, with this delegated power and that affirmative procedure is the appropriate level of parliamentary scrutiny.

Section 82(1) – Ancillary provision

The Committee recommends that the Scottish Government give further consideration to agreeing that any modification of primary legislation should be subject to affirmative procedure and that it would reconsider this power after stage 2 following notification of the outcome of the Government’s further consideration.

I am giving this issue further consideration
Schedule 2, paragraph 13 – Power to make provision about consideration to be given to likely environmental effects of proposed flood protection schemes

The Committee has reported that it considers the delegated power to be acceptable in principle and that negative procedure is the appropriate level of parliamentary scrutiny.

ROSEANNA CUNNINGHAM MSP
MINISTER FOR ENVIRONMENT
LEGISLATIVE CONSENT MEMORANDUM

WELFARE REFORM BILL

Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Cabinet Secretary for Health & Wellbeing, is:

“That the Parliament agrees that the relevant provisions of the Welfare Reform Bill, introduced in the House of Commons on 14 January 2009, relating to a Right to Control for disabled people, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by Nicola Sturgeon MSP, Cabinet Secretary for Health and Wellbeing, under Rule 9.B.3.1(a) of the Parliament’s standing orders. The Welfare Reform Bill (“the Bill”) was introduced in the House of Commons on 14 January 2009. The Bill can be found at:

http://services.parliament.uk/bills/2008-09/welfarereform.html

Content of the Welfare Reform Bill

3. The main purpose of the Bill is to further reform the welfare and benefit systems to improve support and incentives for people to move from benefits into work, provide greater choice and control for disabled people and encourage parental responsibility by introducing a requirement for births to be registered jointly by both parents.

Provisions which relate to Scotland

4. Part 2 of the Bill relates specifically to the proposals for a Right to Control. The following paragraphs describe those proposals.

These provisions will help to give disabled people control over their lives by legislating for them to have a right to control certain services for which they are eligible, and will allow for the new arrangements to be piloted. Currently, many disabled people do not have the sort of choice and control over their lives that non-disabled people take for granted. In part, this can be explained by the fact that disabled people require public services to a greater extent than non-disabled people. Recent policy developments have focused on addressing this disparity and providing disabled people with greater choice and control.

5. The purpose of the Right to Control provisions is to enable disabled people aged 18 or over to have choice and control over the way certain services are provided to, or for, them by defined public authorities. The provisions consist of a series of regulation-making powers which will enable disabled people to have choice and control over named services they receive – either by discussing and reaching agreement with the authority about how the service could be delivered to them, or by taking an equivalent direct payment. The provisions will allow for these measures to be piloted for a period up to 36 months.
6. The relevant provisions within the Welfare Reform Bill will enable disabled people to have choice and control over named services they receive. The relevant services relate to:

- The provision of further education
- Facilitating the undertaking of further education or higher education
- The provision of training
- Securing employment
- Facilitating continued employment
- Enabling the disabled person to live independently or more independently in their home
- Enabling the disabled person to overcome barriers to participation in society

7. Community care services and children’s services are excluded services. In particular, community care services as defined by section 5A of the Social Work Services (Scotland) Act 1968 (c.49) and services provided under section 22(1) of the Children (Scotland) Act 1995 (c.36) (promotion of welfare of children in need) are excluded.

**Reasons for seeking a legislative consent motion**

8. The Right to Control will be delivered through regulations. The provisions include a power to enable the appropriate authority to make regulations which make provision enabling exercise of greater choice and control. In relation to provisions that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, the Scottish Ministers are the appropriate authority.

9. The Sewel Convention requires that the Scottish Parliament gives its consent to those aspects of the Bill which legislate for the Right to Control in relation to devolved matters in Scotland (including the provision of regulation-making powers to be exercised by the Scottish Ministers). The Scottish Government believes that it would be appropriate to take advantage of the enabling legislation being promoted at Westminster, while exercising specific responsibility for determining those devolved funds to be eligible for the Right to Control mechanism, through regulations.

**Consultation**

10. The UK Department of Work and Pensions ("DWP") consulted on the principle of a Right to Control through their Green Paper “No-one written off: reforming welfare to reward responsibility” in July 2008. The Scottish Government indicated its support for the principle in November and made clear its willingness to work with DWP to simplify the means of disabled people accessing different funding streams designed to support them.

11. The Scottish Government remains supportive of the principle of additional control and choice of services for those with disabilities. This is being taken forward in Scotland through our policy of “self-directed support” which refers to the process of giving
individuals the ability to control their own budget for social care. The Scottish Government is also keen to extend support to meet healthcare and educational needs. At present, different funding streams have different eligibility criteria and means of monitoring. The Scottish Government intends to work with the UK Government to consider how we could simplify the means of accessing these funds.

12. The Bill as introduced has been developed to provide enabling provisions, creating pilot schemes which will allow the consideration of administrative arrangements and regulation-making powers to set out the detail of the Right to Control schemes proposals. The Scottish Government will consult on the draft Scottish regulations in due course.

Financial Implications

13. The changes to be brought about by the Bill will be limited to affecting the administrative mechanism through which the existing funding streams available to disabled people are delivered. There are consequently no direct financial implications.

Conclusion

14. In summary, these proposals will give disabled people more control over the public funding available to support their inclusion in society, and provide for the Scottish Ministers to bring forward regulations implementing the new arrangements in Scotland.

SCOTTISH GOVERNMENT
January 2009