RURAL DEVELOPMENT COMMITTEE

AGENDA

33rd Meeting, 2002 (Session 1)

Tuesday 10 December 2002

The Committee will meet at 2.00 pm in the Committee Room 2.

1. **Organic Farming Targets (Scotland) Bill**: The Committee will take evidence at Stage 1 from:
   - Professor Hugh Pennington, Molecular Biology Department, University of Aberdeen
   - David Finlay, Cream o’Galloway Dairy Co Ltd, Dumfries and Galloway
   - William Rose, This is Organic, Inverness-shire

2. **Organic Farming Targets (Scotland) Bill**: The Committee will take evidence at Stage 1 from:
   - Ross Finnie MSP, Minister for Environment and Rural Development

3. **Cairngorms National Park**: The Committee will take evidence on the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 (draft) and Cairngorms National Park Elections (Scotland) Order 2003 (draft) from:
   - Roland Bean, Head of Forward Planning, Perth and Kinross Council
   - Hugh Anderson, Convener, Planning Committee, Perth and Kinross Council

4. **Subordinate legislation**: Allan Wilson MSP (Deputy Minister for Environment and Rural Development) to move S1M-3622 in the name of Ross Finnie MSP—

   That the Rural Development Committee, in consideration of the draft Cairngorms National Park Elections (Scotland) Order 2003, recommends that the Order be approved.

   and S1M-3621—

   That the Rural Development Committee, in consideration of the draft Cairngorms National Park Designation, Transitional and Consequential Provisions Order 2003, recommends that the Order be approved.

The Convener has selected the following amendments:
S1M-3621.1 Fergus Ewing: As an amendment to motion S1M-3621 in the name of Ross Finnie (The draft Cairngorms National Park Designation, Transitional and Consequential Provisions Order (Scotland) 2003), insert at end "but, in doing so, regrets the exclusion from the boundaries of the Cairngorms National Park of those areas of Highland Perthshire and Drumochter, including the Forest of Atholl, Beinn a ‘Ghlo and Blair Atholl, all of which were recommended for inclusion within the park’s boundary by Scottish Natural Heritage in its report, prepared for the Scottish Executive, on the proposal for a National Park in the Cairngorms, and is concerned that, if these areas remain excluded, the attainment by the park of World Heritage Status may be put in jeopardy."

S1M-3621.2 John Farquhar Munro—As an amendment to motion S1M-3621 in the name of Ross Finnie (The draft Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003), insert at end “but, in doing so, regrets that the Order does not include the Gaelic translation of Cairngorms National Park which is Pàirc Nàiseanta a’ Chàirn Ghuirm.”
**The following papers are attached or are relevant to this meeting:**

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<thead>
<tr>
<th><strong>Agenda item 1</strong></th>
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<tr>
<td>Submissions from Cream o’Galloway Dairy Co Ltd</td>
<td>RD/02/33/1a</td>
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<tr>
<td>Submission from Professor Hugh Pennington</td>
<td>RD/02/33/1b</td>
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<tr>
<td><em>(Professor Pennington’s submission dates from the consultation prior to the Bill’s introduction; however he has requested that it be circulated for this Stage 1 evidence.)</em></td>
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<tr>
<td>Suggested lines of questions <em>(for members only)</em></td>
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<th><strong>Agenda item 2</strong></th>
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<td>Executive memorandum on the Organic Farming Targets (Scotland) Bill</td>
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<td>Submission from Perth and Kinross Council</td>
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<tr>
<td>Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 (draft)</td>
<td>RD/02/33/4a</td>
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<td>Cairngorms National Park Elections (Scotland) Order 2003 (draft)</td>
<td>RD/02/33/4b</td>
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<td>Submission from Mr Peter MacAulay</td>
<td>RD/02/33/4c</td>
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<td>Letter to the Convener from Allan Wilson MSP, Deputy Minister for Environment and Rural Development</td>
<td>RD/02/33/4d</td>
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<td>Extract from the Subordinate Legislation Committee’s 43rd Report</td>
<td>RD/02/33/4e</td>
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<td>Report from the Transport and the Environment Committee <em>(to follow)</em></td>
<td>RD/02/33/4f</td>
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<tr>
<td>Detailed maps of the National Park area are available from the Clerk.</td>
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Submission to the Organic Farming Targets (Scotland) Bill Consultation
As a recently converted organic livestock farmer I am writing to give full support to the Organic Farming Targets (Scotland) Bill.

Our experience since converting to organic farming and also to more environmentally and animal welfare friendly farming as been a real eye opener.

Over the years we have been persuaded by vested interests that the only way we can remain in business is to carry more and more animals on the same land and in the same buildings and force them to grow faster and produce more meat, milk, etc. Of course to sustain this 'efficient' system we would require the help of more mechanisation (and less labour), bigger fields (less hedges, trees, dykes, wetland areas, rocky !mows etc) more soluble fertilisers (albeit with run off and leaching into aquifers and waterways), more pesticides (because animals give rise to much more pests), more herbicides (we cannot allow any weeds to compete with our crops - every drop counts), more vaccines and antibiotics (to protect the animals from the greatly increased challenge from diseases) and so on.

This probably sounds like the stereotypical rantings of a Friends of the Earth radical- and no, I am not even a member.

So it was with great trepidation that we tentatively began to go against those powerful messages 4 years ago. There was very limited technical help available.

We cut our stock numbers by 25%, cut out all soluble fertilisers and moved to a preventative medicine approach (in close consultation with our vet) to parasite and disease control. We spent £60,000 on improvements to livestock housing and £10,000 on increasing the clover content of our grass swards.

What we found was that we can largely replace the agrochemicals in farming by careful application of modern management techniques.

True, organics is not a simple system and requires a much greater management and labour input. But I defy anyone to say that animals are not more content and healthier on our organic farm than when we were pursuing the intensive alternative. Mortality, disease and injury rates are substantially lower. Job satisfaction from good stockmanship is also more evident.

The table overleaf summarises some of the changes that have actually occurred on the farm both during the period of intensification 1987 -1997 and also after converting to organic farming.

Rainton Farm -Intensification vs. Organic

<table>
<thead>
<tr>
<th></th>
<th>Intensification</th>
<th>Organic</th>
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<tbody>
<tr>
<td>Acres</td>
<td>1985</td>
<td>1997</td>
</tr>
<tr>
<td>850</td>
<td>850</td>
<td>850</td>
</tr>
<tr>
<td>Employees</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>-----------</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Cows</td>
<td>145</td>
<td>165</td>
</tr>
<tr>
<td>Ewes</td>
<td>420</td>
<td>1050</td>
</tr>
<tr>
<td>Feed Bought (Ton)</td>
<td>115</td>
<td>230</td>
</tr>
<tr>
<td>Fertilisers (Ton)</td>
<td>76</td>
<td>130</td>
</tr>
<tr>
<td>Antibiotics (Doses)</td>
<td>280</td>
<td>815</td>
</tr>
<tr>
<td>Anthelmintics (Doses)</td>
<td>650</td>
<td>3500</td>
</tr>
<tr>
<td>Vaccines (Doses)</td>
<td>1050</td>
<td>2500</td>
</tr>
<tr>
<td>Herbicide (1)</td>
<td>120</td>
<td>195</td>
</tr>
</tbody>
</table>

You will notice that the farm became much more intensive between 1985 and 1997 (two years before our conversion to organic) with 20% more cattle and 21/2 times as many sheep; yet with less employees. The value of the lamb, beef and milk barely changed between 1985 and 1997 -driving intensification. However the purchase of feed, fertilisers and herbicides, anthelmintics and vaccines doubled and use of antibiotics almost trebled. All a result of intensification.

Despite this we were never considered to be a particularly intensive farm nor used a great deal of animal drugs. Nevertheless we had become worryingly dependant on agrochemicals and antibiotics.

Think of the impact of all these chemicals and antibiotics on the environment and on our own and our animals' health!!

From an environmental perspective, because the importance of volume of production has now been replaced by the method of production, we have been able to encourage biodiversity through the planting of local tree species and creation of ponds and wetlands. Good selling points in a quality niche market for our products.

Surely this system delivers the 'vision' in the Scottish Executives' A Forward Strategy for Agriculture' which anticipates that food production should be focussed, sustain rural development, protect and enhance the environment and embrace change.

The Organic Farming Targets Bill is just a start. The plan that would follow would address issues such as infrastructure, training, marketing, processing and education. While I fully accept that agriculture needs to move to being more market driven, in organic farming we have a system that gives environmental, health and social benefits. If we consolidate Scotland’s’ green and wild’ image by encouraging a balanced organic farming, processing and marketing cluster then organic food could be a niche market in which we can truly be world class.
Dear Mr Harper

**Organic Food and Farming Targets Plan Bill**

Many thanks for asking me to respond to the consultation about this Bill. I have mixed feelings about organic farming. While I think that its aims are very laudable, as a scientist I am less happy about the philosophy that underlies its methods -partly because it seems to me to be based more on belief and anecdote rather than evidence, and partly because it has its roots in vitalism, to which I do not subscribe. I do not approve of its opposition to the compulsory pasteurization of milk. I also have a major problem with veterinary homeopathy. I believe its use may have negative animal welfare outcomes.

My major concern about a Bill which would specifically oblige the Scottish Executive to support the organic sector is that it would give an unfair advantage -not only In political support but, very likely, in financial terms -to one particular agricultural system whose aims in many important respects could be met by other developments such as Integrated Farming Systems, better animal welfare initiatives and Farm Assurance schemes. It is likely that a combination of these approaches may in some instances be a better way forward in a Scottish context and one more likely to have a broader and more general impact on farming and the environment as a whole. As far as” I know their adoption by farmers does not enable them to attract the substantial price premium advantages currently enjoyed by the organic sector. There is also the general argument about subsidies and agriculture -however laudable their aims they have had unintended consequences -and I am not sure that it would be a good thing for the Scottish public as a whole to increase the amount of public money supporting organic systems if their products are going to be bought mainly by the wealthier middle classes. In my view our major public health problem is the dreadful diet of people living in housing schemes.

I am sorry to be so negative but would prefer a bill that took a broader approach to food I production and that was based on outcomes rather than processes.
ORGANIC FARMING TARGETS (SCOTLAND) BILL

MEMORANDUM BY THE SCOTTISH EXECUTIVE TO THE
RURAL DEVELOPMENT COMMITTEE OF THE SCOTTISH PARLIAMENT

December 2002
ORGANIC FARMING TARGETS (SCOTLAND) BILL

Introduction

1. This memorandum has been prepared by the Scottish Executive to assist the Rural Development Committee (as the lead committee) in its consideration of the Organic Farming Targets (Scotland) Bill which was introduced by Robin Harper MSP on 30 September 2002. It sets out the Scottish Executive’s current and intended action in support of the organic sector, including:

- Help to farmers converting to organic methods which has already brought over 7% of Scotland’s agricultural area into organic production;
- Substantial help for organic processing and marketing projects;
- The development with stakeholders of an Organics Action Plan to improve the Executive’s support; and
- The Executive’s commitment to reporting on the progress of that Action Plan.

The memorandum also sets out the Executive’s reasons for opposing the Bill because of its targets-driven approach to the development of the organic sector.

Background: Organic Farming

2. Organic farming is based on enhancing the natural biological cycles in soil (e.g. nutrient cycling in the soil), crops (e.g. encouraging natural predators of crop pests) and livestock (e.g. development of natural immunity in young animals); on building up soil fertility through the use of nitrogen fixation by legume crops such as clover and enhancing soil organic matter; and on avoiding pollution. The declared aim of organic farming is to work with natural processes and to minimise the use of non-renewable natural resources. Organic farming principles also encompass high animal welfare standards.

3. EC Regulations 2092/91 and 1804/99 define minimum standards for organic production. These include:

- restriction on the use of fertilisers to organic and specified mineral products;
- a prohibition on the use of most artificial pesticides, herbicides and insecticides;
- the use of multi-annual rotations to maintain the fertility of the soil;
- the use, from 2004, only of organically-produced seeds and seed tubers;
- prohibition on the use of genetically modified organisms in any way;
- prohibition of the use of prophylactic antibiotics for livestock and restrictions on the veterinary treatment of livestock;
- requirements for the composition of animal feeding stuff, including a requirement from 2005 that this should be sourced entirely organically; and

- requirements for animal husbandry that meets high standards of animal welfare.

4. The regulations require that organic farmers must be registered with an approved sector body which itself must be approved by a "national certifying authority". In the UK, this authority is the UK Register of Organic Foods Standards (UKROFS). The three main approved organic certification schemes operating in Scotland are the Bio-dynamic Agricultural Association, the Scottish Organic Producers’ Association, and the Soil Association. These organisations can set organic standards which exceed those specified in the EC Regulations, for instance in relation to higher animal welfare standards and the conservation of landscape features, although the policy intention of the UK Government is that in future certification bodies should be obliged to offer certification to EU standards.

Summary of the Bill

5. Robin Harper’s Bill, introduced on 30 September, would require the Scottish Ministers to publish targets, for attainment within 10 years, for the percentage of agricultural land which is to be organic. It requires that these targets should be that no less than 20% of arable land, improved grassland, and unimproved grassland/rough grazings should be organic. It places a duty on the Scottish Ministers to secure the achievement of these targets and to publish a report each year describing the progress made that year and progress intended in the subsequent year. The report should also set out what the Executive is doing to promote the marketing of organic produce, research into organic farming methods, and information about other agencies’ role in attaining the targets.

Scottish Executive policy and action in relation to the organic sector

6. The Scottish Executive’s policy is to support the organic sector, on an equitable basis with support for conventional farming, where organic production can help protect or enhance the environment or can help ensure that market demand is met by Scottish produce.

7. Within that overall policy, the Forward Strategy for Scottish Agriculture, developed in conjunction with experts from the farming, food and environmental sectors and published in July 2001, identified the following priorities for the organic sector. Action 18 of the Forward Strategy says that

“The Scottish organics sector must:

- identify and tailor production to consumer demand and market outlets;

- develop the supply chain so that organic producers are matched by sufficient processing capacity;

- in the livestock sector, identify finishers to whom store producers can sell their produce;
ensure the right business and technical advice is available on how to convert to and, as importantly, maintain organic farming in Scottish conditions; and

ensure that Scottish farmers are able to use organic standards which avoid gold plating and reflect Scottish conditions.”

8. The Scottish organic sector has seen considerable growth in recent years, largely driven by financial incentives from the Scottish Executive.

9. Scotland makes a strong contribution to organic farming, building on our tradition of extensive farming. Over 409,000 hectares of land (7% of Scotland's agricultural land area) are in organic production or conversion. Out of this amount, 304,000 hectares is currently supported by the Executive's Organic Aid Scheme, which offers financial assistance during the first five years of organic conversion and production, and most of the remaining 105,000 hectares were converted with the assistance of this scheme. Scotland accounts for 57% of the UK’s land in organic production or conversion. The percentage of land in organic status or conversion in Scotland compares strongly with proportions in the rest of the EU, as set out in the table below – in 2000, only Austria had over 7% of its land in organic status or conversion.

### Amount of land under organic production within the EU

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<tbody>
<tr>
<td>Austria</td>
<td>335865</td>
<td>267000</td>
<td>285500</td>
<td>7.74</td>
<td>22410</td>
<td>1.52</td>
</tr>
<tr>
<td>Belgium</td>
<td>500</td>
<td>1300</td>
<td>3385</td>
<td>20265</td>
<td>22410</td>
<td>1.52</td>
</tr>
<tr>
<td>Denmark</td>
<td>4500</td>
<td>11581</td>
<td>40884</td>
<td>165258</td>
<td>173497</td>
<td>6.09</td>
</tr>
<tr>
<td>Finland</td>
<td>1000</td>
<td>6726</td>
<td>44695</td>
<td>147423</td>
<td>147943</td>
<td>5.66</td>
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<td>France</td>
<td>45000</td>
<td>72000</td>
<td>118393</td>
<td>370000</td>
<td>420000</td>
<td>1.22</td>
</tr>
<tr>
<td>Germany</td>
<td>24940</td>
<td>90021</td>
<td>309487</td>
<td>546023</td>
<td>632165</td>
<td>3.15</td>
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<tr>
<td>Greece</td>
<td>150</td>
<td>2401</td>
<td>24800</td>
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<td>12634</td>
<td>32355</td>
<td>32000</td>
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<td>204494</td>
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<td>Luxembourg</td>
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<td>600</td>
<td>571</td>
<td>1030</td>
<td>1000</td>
<td>0.81</td>
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<td>Netherlands</td>
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<td>27820</td>
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<td>1.40</td>
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<td>10719</td>
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<td>380920</td>
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<td>83490</td>
<td>193611</td>
<td>3.15</td>
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<tr>
<td>UK</td>
<td>6000</td>
<td>31000</td>
<td>48448</td>
<td>679631</td>
<td>4429836</td>
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Organics Exec Memo Dec 02
Organic farming in the UK

<table>
<thead>
<tr>
<th></th>
<th>Organic farmland (inc in-conversion) (ha)</th>
<th>Organic farmland (inc in-conversion) (ha)</th>
<th>Organic farmland as % of total agricultural area April 2001</th>
<th>Number of organic farmers April 2001</th>
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<tr>
<td></td>
<td>April 2001</td>
<td>December 2001*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>England</td>
<td>219,200</td>
<td>219,531</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wales</td>
<td>42,030</td>
<td>50,451</td>
<td>2.5</td>
<td>589</td>
</tr>
<tr>
<td>Northern Ireland</td>
<td>3,000</td>
<td>3,855</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Scotland</td>
<td>288,000</td>
<td>405,793</td>
<td>5.5</td>
<td>611</td>
</tr>
<tr>
<td>UK total</td>
<td>552,500</td>
<td></td>
<td>3.2</td>
<td>3,691</td>
</tr>
<tr>
<td>Scotland (as of 1 October 2002)</td>
<td>Number of producers 681</td>
<td>Number of holdings 100</td>
<td>Area organic or in conversion 409,357</td>
<td></td>
</tr>
</tbody>
</table>

Source (both tables): Scottish Agricultural College organic farming website.

10. The table below shows year on year growth since 1995 in the number of participants, spending, and number of hectares in the Executive’s Organic Aid Scheme.

<table>
<thead>
<tr>
<th>Number of agreements in force at 31 March each year</th>
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<td>16</td>
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<thead>
<tr>
<th>Hectares under agreement at 31 March each year</th>
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<tr>
<td>15,458</td>
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<th>Expenditure as at 31 March each year (£k)</th>
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11. Demand for organic produce has surged in recent years, and there is further scope for Scottish producers to take advantage of this growth. Demand for organic produce is currently reckoned at around 2% of all food sales in the UK. Demand for organic produce increased by an estimated 55% in 1999-2000, a further 30% in 2000-01, and, according to the Soil Association, a further 15% in the year to April 2002. Around 65% of organic produce is reckoned to be imported, compared to around one-third of all food bought in the UK. This is partly explained by the fact that a substantial amount of organic produce is of a type which can more easily and cheaply be produced in other countries (e.g. citrus fruit, top fruit and salad vegetables), but there is undoubted scope for increased penetration of Scottish produce into markets where our producers are not at a climatic disadvantage. Organic meat is already principally supplied by domestic producers, but there is scope e.g. to displace the estimated 30% of dairy products which are imported and to take advantage of emerging markets in organic fodder and seed. To help strengthen the position of domestic producers, the Executive’s Processing and Marketing Grant Schemes give priority to projects which strengthen the organic food chain. Since last year around £1.45m has been awarded to organic projects, and the Executive has funded development and publication of the “Guide to the Marketing of Organic Food” by the Scottish Agricultural College to assist producers and processors to understand supply chain issues and to provide advice on how to exploit market opportunities. The Executive looks forward to receiving further applications for assistance under the Processing and Marketing Grant Schemes from the organic sector.
12. The Executive works closely with DEFRA on the UK’s overall research effort on organic farming, and contributes around £500,000 a year to this effort.

13. The Executive also funds a package of technical advice and support for farmers considering or undertaking organic conversion, through the Scottish Agricultural College.

14. The Executive has taken recent action to improve the focus of its support for the organic sector. In particular, new selection guidelines for Organic Aid Scheme applications were introduced in September 2002, to help prioritise conversion where this could achieve the most environmental gain or help join-up the food chain (e.g. to prioritise conversion of arable land and of mixed farms where livestock can be finished before sale as organic produce).

15. The Executive has further action in hand to ensure that it is supporting the organic sector as effectively as possible. An expert Organics Stakeholder Group has been asked to report by January with recommendations for the content of the Executive’s Organics Action Plan. Particular issues which the Organics Stakeholder Group will address include:

- Developing agri-environmental prescriptions. For instance, the group will look at whether incentive levels are currently right to encourage organic production where this will be beneficial; how agri-environmental measures can help ensure that livestock born on organic rough grazings are finished as organic produce; whether the duration over which support is offered is right; and whether assistance should be given for the costs of preparing a conversion plan.

- Joining up the food chain. The Organics Stakeholder Group will look at how to promote organic processing and marketing in Scotland - there are substantial opportunities to seize e.g. through clear and attractive labelling of Scottish organic produce, and increased penetration of Scottish produce into the value-added sectors of the food market such as convenience foods.

- Research. The Group will look at what the Executive can do to support research to help the development of the organic food chain.

- Organic standards. The Group will ensure that the further development of organic standards ensures that those standards, and certification arrangements, are appropriate to Scottish circumstances.

16. The Executive intends, in the light of the Organics Stakeholder Group’s advice, to publish an Action Plan setting out practical ways in which the Executive can further develop its support for the organic sector in Scotland. As proposed in the Bill, the Executive would be willing to publish an annual report on its support for the organic sector.

Executive’s view of the Organic Farming Targets (Scotland) Bill 2002

17. The Executive supports the development of a prosperous and environmentally-friendly organic sector and, as set out above, we have already put substantial measures in place to assist the development of the organic sector. In developing an Action Plan with the advice of the Organics Stakeholder Group we aim to make our support even more effective.
18. The Executive does not support the Bill, because of its targets-driven approach to the development of the organic sector. The Executive does not believe that the Bill is workable since it creates a duty for the Scottish Executive to attain targets for organic production even though the attainment of these targets is outwith the Executive’s power.

19. It is clearly desirable that demand for organic produce in Scotland is, as far as possible, met from Scottish supply. The Executive believes, however, that the market itself should determine how much organic produce should be sold. Growth in demand for organic produce appears to be slowing, and conversion of 20% of Scottish agricultural land to organic status would be very likely to result in over-supply of the market and, as a consequence, unprofitably low prices for organic producers. There is already evidence of weakening prices in certain sectors as supply rises to, or beyond, the levels of demand. According to the Scottish Agricultural College "Guide to the Marketing of Organic Food", over-supply of the organic milk market has led to only 46% of the organic milk produced being actually sold as organic, with the surplus being sold as conventional milk without any price premium for the costs of its organic production. High rates of conversion of organic livestock grazing in recent years are likely to reduce the premium for organic products, and the Scottish Agricultural College's advice is that the organic lamb sector appears to have reached its peak at the moment. While the Scottish Executive would welcome and support further organic conversion where this can meet market demand, the Bill’s targets-driven approach would be very likely to lead to severely reduced returns for existing organic producers as well as uneconomic conversion for new entrants. Whatever incentives the Executive may offer, high targets for organic conversion will not be achieved unless farmers believe that their best economic choice is to convert their land to organic status, and the targets will therefore be unattainable if market conditions do not support increased organic production.

20. On the environmental side, the Executive recognises the positive contribution which organic farming can make to the sustainable management of Scotland’s land. Organic methods pay particular attention to the maintenance of the fertility and biodiversity of the soil, and organic standards require farmers to practice methods which respect landscape features and wildlife. The organic sector also claim environmental benefits for their farming methods in relation to pesticide pollution, waste management, energy efficiency, and greenhouse gases (reflected in DEFRA’s Action Plan for Organic Food and Farming in England). The Executive supports organic conversion though the Organic Aid Scheme because it believes that organic farming, done well, can be of significant environmental benefit.

21. Organic farming should, however, in the Executive’s view be seen as a valuable part of developing a sustainable agriculture industry, not as the entire answer to achieving sustainability. Its claims to be a uniquely preferable farming method are scientifically debateable. Other farming methods can also bring substantial environmental and biodiversity benefits, and for instance practitioners of Integrated Farm Management, e.g. farmers who meet the requirements of the LEAF (“Linking Environment And Farming”) organisation’s standards claim that they can achieve similar benefits for the maintenance of soil quality and protection of the environment without completely abandoning the use modern fertilisers and agricultural chemicals. The Executive’s policies and agri-environment schemes have addressed the achievement of environmental sustainability in both organic and ‘conventional’ farming and, for instance, environmental monitoring of the Scottish Executive's Environmentally Sensitive Areas schemes, which support conversion to environmentally-friendly farming methods which are not normally organic, has demonstrated the delivery of
environmental benefits when conventional farming is practised with methods which respect biodiversity and the environment, for example, on croppable machair, heather moorland and wetlands. Conversely, and despite its acknowledged benefits, organic farming is not entirely risk-free: while organic farming does not involve any of the risks inherent in the misuse of modern synthetic pesticides and herbicides, some of the alternative substances used in organic farming (e.g. copper sulphate used as a fungicide) are potentially of concern from a biodiversity and environmental protection point of view, and the use of in organic farming of mechanical weed control methods rather than sprays can lead to the destruction of the nests of ground-nesting birds.

22. The Agriculture and Environment Working Group, in their report "Custodians of Change", reviewed and identified the key environmental challenges facing the agriculture industry. They advised that policy makers and the industry had, over the next 5-10 years, to tackle diffuse pollution to water, biodiversity and habitat protection, and landscape change as the key challenges for all Scottish agriculture, not that the Executive should concentrate on the development of organic farming. The Executive’s support for organic farming must be seen in the context of the need to ensure that the rest of Scottish agriculture is also challenged and assisted to secure environmental sustainability. In that context, and in the light of the ability of non-organic farming to offer sound management of the environment and biodiversity when done well, the Executive does not believe that it is appropriate for environmental reasons to set a 20% target for the amount of land in organic production.

Conclusion

23. The Rural Development Committee is invited to note the Scottish Executive's reasons for supporting the organic sector, but opposing the targets-driven approach to the expansion of this sector set out in the Bill. The Executive looks forward to further developing its active support for the organic sector in the light of advice from the Organics Stakeholder Group, and to early publication of an Action Plan setting out ways in which the Executive will enhance its support for the organic sector.

Scottish Executive Environment and Rural Affairs Department
December 2002
Introduction

1. The case by Perth and Kinross Council for inclusion of parts of northern Perthshire within the Cairngorms National Park is contained in the letter from the Director of Planning and Development Services dated 22 November and this paper provides some more detailed evidence. The Council welcomed the support of the Rural Development Committee in recommending to the Deputy Minister that the Park boundaries should generally follow the recommendations of SNH, and trusts that the Committee will maintain this stance in its recommendation to Parliament on the final Designation Order.

2. The Council has been encouraged by the widespread support for the inclusion of parts of Perth and Kinross within the Park from national bodies representing a wide spread of interests in conservation and recreation including:

   - The National Trust for Scotland
   - The Royal Society for the Protection of Birds
   - The Cairngorms Campaign
   - Ramblers Scotland

Extent of the National Park

3. There have been many attempts to define the extent of the Cairngorms over the years, which have all, understandably, differed from each other to a greater or lesser extent. These include the following boundaries shown on Map 1, which has been prepared by SNH:

   - Scottish Development Department 1967
   - Mountain Areas of Scotland Review 1991
   - Cairngorms Working Party 1992
   - Cairngorms Partnership Area 1995
     (used by Ministers in their original proposal for the Park)
   - SNH recommended boundary 2001

4. Despite the variations in these boundaries, a common feature of them is that, with the notable exception of the draft and final Designation Orders, they all include parts of northern Perthshire.
5. Perth and Kinross are surprised at the difference in approach by Ministers between Loch Lomond and the Trossachs, where the area of that Park was extended through the various drafts (for example, Killin was only included in response to consultations on the draft Designation Order), and the Cairngorms, where the area has shrunk from that originally proposed by Ministers and recommended by SNH. The Council wonder whether this latter approach is being driven by reasons other than sound planning and environmental ones. The lack of justification for the proposals, and in particular the disregard for the outcome of the extensive consultation exercises undertaken previously, is a major concern.

6. The Council is conscious that boundaries need to be drawn somewhere, and not all places can be included. However, SNH in Para 4-90 of its report, which summarises the arguments on the recommended Park area, refers to the issue of “the size and location of the Park with reference to the effective and efficient administration by the Park authority of its functions, and delivery of its purpose. On balance, while a smaller Park may be justified on natural heritage grounds alone, we consider the Park we have described above would be more appropriate to the four aims of National Parks in Scotland”. That is an important, balanced statement to justify the SNH boundary - and overall extent - of the Park.

7. SNH go on to say in the same paragraph that: “the area we have recommended would provide a reasonable degree of separation from the Loch Lomond and the Trossachs National Park, and should minimise any undesirable effects on the intervening parts of Highland Perthshire”. This last point is of particular concern to Perth and Kinross Council because wherever the boundary is drawn, Highland Perthshire, uniquely, will be sandwiched between the two Parks and may suffer either displacement of undesirable development from the Parks, or lie within their ‘economic wind shadow’. This means the social and economic implications of the boundary on communities in Highland Perthshire are a matter of particular sensitivity.

**Detailed Boundaries**

8. The proposed southern boundary of the Park between Drumochter Pass and the A93 at the Glenshee ski slopes is the administrative boundary of Perth and Kinross. The line follows the watershed between these points and in doing so cuts through landscape of identical character and value as well as dissecting important nature conservation sites (SSSIs, SPAs and SACs) and omitting Beinn A Ghlo and other important sites (see Map 2).

9. In drawing the boundary in this way, the Council believes that Ministers may not have paid sufficient regard to both the aims of the Park set out in Section 1 of the National Parks Act and the conditions for the establishment of the Park in Section 2.
10. In relation to the **aims** of the Park legislation:

- the boundary cuts across areas of high and consistent natural heritage (aim (a) – natural and cultural heritage)
- the boundary severs important historic routes – the Minigaig and Gaick passes and Glen Tilt (aim (c) – enjoyment in the form of recreation)
- The Park will impact on Blair Atholl which is likely to be subject to increased visitor pressure without a corresponding increase in either protection or resources (aim (d) – to promote sustainable economic and social development of the area’s communities).

11. In relation to the **conditions** in the Act, the proposed boundary does not reflect the outstanding natural heritage of Highland Perthshire (condition (a)) nor the ‘distinctive character and coherent identity of the area’ (condition (b)). The SNH report deals with the Highland Perthshire area in paragraph 4-86: “The most compelling arguments in favour of inclusion (of Forest of Atholl, Blair Atholl and Drumochter) would appear to be the high quality of much of the cultural and natural heritage and also the principle that inclusion of such an area is desirable around the more sensitive mountain massifs”.

12. Importantly, Annex D of the SNH report is an ‘assessment of the general area of the proposed National Park against conditions from the National Parks (Scotland) Act 2000’. In it, each sub-area is assessed and scored 1 - 5 against the three conditions, giving a maximum score of 15 for each area. Sub-areas 15 – Upper Glenshee and 17 – Atholl each were scored 11 by SNH, but have been excluded, which is a higher score than almost all of the sub-areas added to the Park by the Deputy Minister following consultation on the draft Designation Order.

**Planning Powers**

13. It should be noted that Perth and Kinross Council is also opposed to the proposals in the Designation Order for the operation of planning powers, believing them to be ill thought out and over complicated and likely to lead to conflict between the Park authority and local authorities. It would prefer that planning powers were retained by local authorities, as originally proposed by Ministers. However, the Council is clear that this issue is less important at this stage than getting the boundary right.

**Conclusions**

14. The Council would ask the Committee to maintain its strong, well-founded and well-articulated opposition to the Designation Order and to reject it, and as a consequence also reject the Election Order. We suggest that the Orders be withdrawn and redrafted as a matter of urgency to include the parts of northern Perthshire proposed by the Reporter, so that the establishment of this vital National Park is not unnecessarily delayed.
<table>
<thead>
<tr>
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<th>The Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003, (draft)</th>
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<td>Jim Halley 46516</td>
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<td>Standing Order:</td>
<td>10.6.1(a) subject to approval</td>
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## RECOMMENDATION

**Lead Committee:** Rural Development  
**Other Committees:** 1. Transport and the Environment

**Clerk Contact Room & No:** Tracey Hawe 85221  
**Clerk Contact No:** 1. Callum Thomson 85208

**Reason:** This instrument’s purpose is to designate an area as shown on a deposited map as “The Cairngorms National Park Boundary”. The instrument also allows for establishment of a National Parks Authority.

**Time Limit for Parliament to Deal with Instrument:** 4th January 2003

**1st SLC Meeting SLC reporting deadline:** 19th November 2002  
**4th December 2002**

**Lead Committee To Report By:** 16th December 2002  
**Other Committees To Report to the Lead Committee:** Transport and the Environment Committee to report to Rural Development Committee by 6th December 2002

**SSI Attached** | Draft Motion Attached if Required | Date Motion and Designation Form E-Mailed to the Bureau | Laying Clerk Advised of Designated Lead Committee

* 10 days before the lead committee reporting date. “Other” committees may wish to negotiate timing of their report with the lead committee.
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**Reason:** The Order sets out arrangements for the conduct of direct elections to the Cairngorms National Park Authority. Details are provided of the electoral system to be used and the electoral procedures to be followed.

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* 10 days before the lead committee reporting date. “Other” committees may wish to negotiate timing of their report with the lead committee.
1st December, 2002.

Achnaneasag,
Fortrose,
Ross-shire,
IV10 8RA.

Dear Ms Hawe,

I should be grateful if you would permit me to comment on the choice of Gaelic name for Cairngorms National Park. Although this is ultimately a matter for the Park Authority, I understand that it may be discussed by the Rural Development Committee.

I write as an everyday user of Gaelic, both professionally and socially, and as someone who has been to the top of hundreds of Scotland's peaks above 2,000 feet. Therefore I wholeheartedly recommend "Pairce Naiseanta a’ Chaimh Ghuirm" as Gaelic for Cairngorms National Park. This seems to me the most sensible name, for a number of reasons.

First and foremost, it is to all intents and purposes a direct translation of "Cairngorms National Park". It is important that the name should reflect the heartland of the area designated for Park status, and that is the area universally known today as the Cairngorms. Boundaries can be a touchy subject, but by any standard the Cairngorms massif is enormous. At the very least it includes 18 hills over 3,000 feet, and some would argue a great many more. At any rate, it is safe to assume that without the Cairngorms there would not be a National Park. Just because the Park shall include bits of other areas makes no difference at all to its core.

I was rather surprised to read that Scottish Natural Heritage has proposed "Pairce Naiseanta a’ Mhonaidh Ruaidh" (Red Hills National Park) as the official Gaelic name for the Park. It is quite incredible that the Park should be called one thing in its English form, and something totally different in Gaelic. If the name of the Park is to be "Cairngorms National Park", it would be utterly ridiculous to give it the equivalent of "Red Hills National Park" in Gaelic. That would mean the Park was blue (gorm) on the one hand, but it was red (ruadh) on the other!! Not to give "An Carn Gorm" its proper place in the name of Scotland's flagship National Park would be a major blunder.

As it happens, "A’ Monadh Ruadh" is very probably the most misused name in Gaelic geography. For some inexplicable reason, the name "A’ Monadh Ruadh" has been applied as Gaelic for the Grampians as a whole, and that is simply wrong in every sense. Whilst there has never been unanimity over the precise boundaries of the Grampians, it is embarrassingly obvious that this vast range contains many colours other than red. Liath (grey), buidhe (yellow), odhar (dun), uaine (green) and gorm (blue) are just some of the colours that give names to many of these mountains.

It is interesting that Dwelly's Gaelic-English Dictionary, the standard reference for Gaelic speakers since 1901, omits mention of "A’ Monadh Ruadh". Edward Dwelly went to great lengths, over many years, to gather names as they were spoken in the local community. The Grampians is translated as: "Monadh Dhruiom Uachdair west of Struan; Monadh Minigeig east of Struan". It is beyond dispute that use of "A’ Monadh Ruadh" for the Grampians is erroneous. Therefore it is important that the name of the Cairngorms National Park does not become entangled in such dubious derivation.

There is nothing special about "A’ Monadh Ruadh" that makes retention of the name vital. Ranges of "red hills" are two a penny, any one of which could be (and long ago may well have been) called "A’ Monadh Ruadh" locally. There is a range with at least seven named peaks of "red hills" in the Torridon area. There are five peaks called Carn Dearg (Red Cairn) within two miles of the summit of Ben Nevis. The Red Cullin in Skye stretches from Sligachan to Broadford. This is not surprising, in a country with large deposits of sandstone of various types.
The word "Cairngorms" as a mountain range is not nearly such a latter-day invention as some would have us believe. The Reverend Hugh MacMillan, in his excellent book "Rothiemurchus" (published in 1907), frequently refers to "the Cairngorm range", which suggests the name was commonly used a hundred years ago.

Whatever may have been the case once upon a time, the fact remains that this range of hills is nowadays known as The Cairngorms, and not the Grampians, the Red Hills or anything else. Even Lochnagar, well to the east of Braemar, is now classed in official reports to the procurator fiscal as the "eastern Cairngorms". It is wise not to dwell in the past.

Quite apart from geographical considerations, there are practical implications here for day-to-day Gaelic speakers and writers. "Pairce Naiseanta a' Mhonaidh Ruaidh" would simply open up a can of worms. For example, what would the Cairngorm Mountain Rescue Team then be called? To be consistent, it could no longer be "Sgioba Teasraiginn a' Chaimh Ghuirm", and would instead become "Sgioba Teasraiginn a' Mhonaidh Ruaidh". In that case, what would we call the Braemar Mountain Rescue Team, which covers the eastern end of the range (while the Cairngorm team covers the western end)? Would the Braemar team not also have to be called "Sgioba Teasraiginn a' Mhonaidh Ruaidh"? How would we distinguish between the two teams? The truth is that we could not.

Then what about the Cairngorm funicular? If logic were the criterion, it would be "Reile Beinne a' Chaimh Ghuirm", since it is confined to Cairngorm mountain. But if the Cairngorms National Park is to be called "Pairce Naiseanta a' Mhonaidh Ruaidh", would the funicular not have to be called "Reile Beinne a' Mhonaidh Ruaidh"? People are going to be mightily confused!

There are of course numerous other examples of this absurdity. Will the Cairngorms Partnership become "Co-bhanntachd a' Mhonaidh Ruaidh"? Will Cairngorms Chamber of Commerce become "Seomar Malairt a' Mhonaidh Ruaidh"? Will the Cairngorm Hotel in Aviemore henceforth be known as "Tigh Osd' a' Mhonaidh Ruaidh" in Gaelic journalism? The only solution is to cut out this nonsense before it begins. The litmus test, surely, must be what people understand and identify with. Everybody with a sense of geographical awareness knows where the Cairngorms are. The words "Cairngorms" and "Cairngorm" are potent marketing tools, chosen for that specific purpose. By contrast, "A' Monadh Ruaidh" means not a great deal, and certainly not to the great majority of Gaelic speakers whom I know. Place names constantly evolve and that is a fact we have to accept, rather than engage in pedantry about names from a long bygone age.

Yours sincerely,
Peter MacAulay.
PROPOSALS FOR THE CAIRNGORMS NATIONAL PARK

Thank you for your letter of 14 October setting out the views of the Rural Development Committee on the proposals contained in the draft Cairngorms National Park Designation Order. As you know, I value the Committee’s views and I am grateful that you were able to submit these so promptly, following your meeting in Kingussie.

I note that the Committee has commented on the Executive’s consultation process, comparing it with that conducted by Scottish Natural Heritage. The Committee also expressed disappointment that the Executive did not provide a full explanation of the reasons for the differences between SNH’s proposals and those contained in the draft Designation Order. As your letter implies, the Executive’s consultation process was less extensive than the SNH process. It should be remembered, however, that we were building on a great deal of earlier evidence of the range of views held on this issue in the excellent work of SNH and others. We sent out around 2,200 copies of the consultation document, participated in a number of meetings in the area, funded local meetings and events when local facilitators explained the Executive’s proposals and made available supplementary briefing material to aid discussion at these events. We also met a number of interested groups and individuals to hear their views and concerns on our proposals. The consultation exercise effectively covered a 14 week period and attracted almost 500 responses.
On boundaries, I note that the Committee has recommended that the Executive should adopt the boundary proposed by SNH, together with the whole parish of Laggan including the head waters of the River Spey. We have noted this recommendation. The proposal contained in the draft Designation Order was based on the mountain core of the central Cairngorms, the most closely linked adjacent straths and the Grantown-on-Spey area. In essence, these were the areas which SNH felt had a very strong case for inclusion. The park area proposed by SNH, however, also included areas which they felt represented a strong case. In the light of the Committee’s recommendation and also of the views submitted by respondents to the Executive’s consultation, I recognise that there is a case for extending the Park area, not only to remove the anomalies which had arisen through the division of certain communities e.g. at Cromdale, and to follow watersheds more closely, but also to include significantly larger areas. In that latter context, we have looked again at the areas which attracted SNH’s “strong” classification. Bearing in mind the need to establish a National Park which will have a coherent identity and which will make a difference, I recognise that there are strong arguments in favour of including in the Park the heads of the Angus Glens and much of the Glenlivet Estate and the Strathdon/Glen Buchat area. There is also clearly a substantial body of opinion in favour of including a significant part of the Laggan area, including Strathmashie, Drumochter Pass and Dalwhinnie, within the Park boundary. There appears too to be a strong case for the southern boundary to incorporate Glen Tromie and the Gaick Forest area at the Highland Council boundary. The draft Order we have now tabled reflects that situation.

On planning powers, I note that the Committee has recommended by a majority that local authorities and the National Park Authority should jointly produce the structure plan for the Park. However, the National Parks (Scotland) Act 2000 does not make provision for a designation order to set out that local authorities and National Park Authorities should be joint planning authorities. You will also be aware that one of the conclusions of our Review of Strategic Planning is that we will remove the Scotland-wide requirement for structure plans and that 2-tier plans will only be required for the 4 major city regions. This will require a Planning Bill which we will introduce when time and resources permit. I also note your majority view that local authorities should retain overall responsibility for development planning – by which I take you to mean the preparation of local plans – and development control, with the National Park Authority retaining the ability to call in applications which are of general significance to the aims of the Park. I am impressed by the general thrust of these arguments, but am inclined to think that there are at least equally strong arguments to the effect that responsibility for preparing local plans should rest with the National Park Authority in order to provide a broad and Park-wide perspective and consistency in their policy approach. In exercising such a local planning function, the Park Authority would of course have to undertake wide consultation with all stakeholders, including in particular the relevant local authorities.

It will be important to allow the National Park Authority to concentrate on the work of preparing a local plan and on its other core responsibilities, such as land management. I believe, however, that the proposal to allow the Park Authority to call-in for its own determination, planning applications of general significance to the National Park aims, will minimise the risk that the national importance of the Park is prejudiced by local considerations. Again, the draft Order now tabled reflects that position.

I note that the Committee has also recommended that the operation of the planning arrangements should be monitored and reviewed after a period of seven years. While this is not a matter for the Designation Order, I readily recognise the merit in the Committee’s proposal and, indeed, intend that a review of the planning arrangements would be a feature of the Quinquennial Reviews to which the National Park Authority, in common with all other NDPBs, will be subject.

I also note the Committee's comments on affordable social housing and the need to develop appropriate land management schemes. Again, these are not matters for the Designation Order, but we shall consider in due course how guidance might be issued to encourage the National Park
Authority to become involved in this area. On land management schemes, we already have in hand a research project, the aim of which is to identify ways in which new directions in land management in National Parks could generate a range of environmental, social and economic benefits.

The Committee has also commented on the need to involve the local community in the establishment of the Cairngorms National Park. I recognise the value of such a course and we shall seek to involve the community where appropriate.

As I have said, I am grateful to the Committee for its speedy response to the proposals in the draft Designation Order. I look forward to its consideration of the finalised draft Order now laid before Parliament.

ALLAN WILSON
Subordinate Legislation Committee

Remit and Membership

Remit:

The remit of the Committee is to consider and report on—

(a) (i) subordinate legislation which is laid before the Parliament;

(ii) any Scottish Statutory Instrument not laid before the Parliament but
classified as general according to its subject matter;

and, in particular, to determine whether the attention of the Parliament should be
drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other
proposed legislation;

(c) general questions relating to powers to make subordinate legislation; and

(d) whether any proposed delegated powers in particular Bills or other legislation
should be expressed as a power to make subordinate legislation.

*(Standing Orders of the Scottish Parliament Rule 6.11)*

Membership:

Bill Butler
Colin Campbell
Brian Fitzpatrick
Murdo Fraser
Gordon Jackson QC
Ian Jenkins (Deputy Convener)
Margo MacDonald (Convener)

Committee Clerks:

Alasdair Rankin
Steve Farrell
Alistair Fleming
Joanne Clinton
Subordinate Legislation Committee

43rd Report 2002

Subordinate Legislation

The Committee reports to the Parliament as follows—

1. At its meeting on 26th November the Committee determined that the attention of the Parliament need not be drawn to the instruments listed in the Annexe to this report.

2. The report is also addressed to the following committees as the lead committees for the instruments specified:

   Health and Community Care   SSI 2002/498
                               SSI 2002/511
   Rural Development           The Cairngorms National Park Elections
                               (Scotland) Order 2003, (draft)
   Local Government           The Scottish Local Government Elections
                               Regulations 2002, (draft)
                               SSI 2002/500
Draft instruments subject to approval

The Scottish Local Government Elections Regulations 2002, (draft)

Background
1. The Committee raised four points with the Executive on these Regulations. The Executive considers that the errors are relatively minor but has signalled its intention to bring forward an amending instrument at the next available opportunity.

Question 1
2. The Committee asked why regulation 2(1) defines the Representation of the People (Scotland) Regulations 2001 when those regulations do not appear to be referred to in the draft Regulations.

Response 1
3. The Executive's reply, reproduced at Appendix 1, confirms that the reference to the Representation of the People (Scotland) Regulations 2001 is an oversight.

Report
4. The Committee therefore draws the attention of the lead committee and the Parliament to the instrument on the ground that it is defectively drafted in the above respect, acknowledged by the Executive.

Question 2
5. The Committee asked for clarification as to whether the reference in regulation 15(7) to a “registration officer” should be to a “returning officer”, as this appears to be the only reference to a registration officer contained in the Regulations.

Response 2
6. The Executive confirms that the reference in regulation 15(7) to “the registration officer” should have been a reference to “the returning officer”. In context, it does not think that this incorrect reference would cause any mischief as it is suggested that the reference to regulation 15(3) in regulation 15(7) makes the intention clear. However, the Executive is grateful to the Committee for drawing this to its attention.

Report
7. The Committee observes that, as registration officers are persons with functions under the parent Act and are defined under that Act, the interpretation of the Regulations may not be quite as certain as the Executive hopes. The Committee reports the instrument to the lead committee and the Parliament on the ground that it is defectively drafted in the above respect acknowledged by the Executive.

Question 3
8. The Executive was asked to confirm whether it is intended in regulation 22(7)(c) that the words “and in such cases, shall mark the declarations to indicate which ballot paper is missing” should apply to both paragraphs (i) and (ii), rather than, as drafted, to paragraph (ii) alone.
Response 3
9. The Executive confirms that the words “and in such cases, shall mark the declarations to indicate which ballot paper is missing” should apply only to paragraph (ii). There need only be a mark on the declaration where there is more than one ballot paper. This situation arises only in relation to paragraph (ii).

Report
10. The Committee reports the instrument to the lead committee and the Parliament on the ground that it is defectively drafted in the above respect.

Question 4
11. The Committee asked why regulation 26(1) refers to regulation 24(3) and (4) when regulation 24 does not contain a fourth paragraph, nor does that regulation appear to be of particular relevance.

Response 4
12. The Executive confirms that the reference in regulation 26(1) to regulation 24(3) and (4) is incorrect. It should have referred to regulation 25(3) and (4). In context, it does not think that this incorrect cross-reference would create any practical difficulties but is grateful to the Committee for drawing this to its attention.

Report
13. This appears to the Committee to be a further instance of defective drafting on which ground it again reports the instrument to the lead committee and the Parliament.

The Cairngorms National Park Elections (Scotland) Order 2003, (draft)

Background
14. The Committee raised six points with the Executive on this instrument. The Executive has replied that it is grateful to the Committee for drawing these various points to its attention, and for the opportunity of clarifying them. However, it considers that they can all be justified in terms of the need to make measures in the Order proportionate to the scale of elections conducted under it.

15. The Executive is also aware that elections to the Loch Lomond and The Trossachs National Park were conducted efficiently and without difficulty or complaint. In these circumstances, the Executive does not see the need to introduce any amending Order to alter the terms of the draft Order.

16. The Committee was of course aware that similar points had arisen in relation to the order governing elections to the Loch Lomond and The Trossachs National Park Authority which had not been raised formally with the Executive at that time. The Committee is relieved that, in the event, the elections to that Authority appear to have proceeded smoothly to date.

17. Whilst the Committee has no wish to stray into areas of policy it accepts that there is a need to consider proportionality in designing elections Rules for the new authorities. Whether this has been achieved is a matter for the lead Committee and the Parliament. This Committee’s concern is to point to apparent anomalies in the
drafting. It appears that the Executive has based this Order on the Rules that apply to local government elections in Scotland (see SSI 2002/457). The Committee observes, however, that those Rules are part of a larger package of measures contained in the enabling power for the Rules namely the Representation of the People Act 1983. This Act provides the “infrastructure” for the Rules and materially affects how they operate, particularly with regard to enforcement.

18. It does appear to the Committee that the approach to the drafting of the instrument could give rise to difficulties of enforcement. Although, again, that is a matter of policy for the Executive, it seems to the Committee to amount in particular to a rather unusual or unexpected use of the powers to impose obligations on third parties where failure to comply with those obligations appears to carry no sanction. Moreover, it does appear from the terms of the Order (and indeed the responses from the Executive) that the Executive intends the obligations imposed by the Order to have some effect enforceable in law.

Question 1

19. The Committee noted the absence of a sanction for breaching the requirement relating to election expenses in article 51 and for making a false election expenses return in article 52, and asked the Executive to explain what sanction would apply in these cases.

Response 1

20. In its reply, reproduced at Appendix 2, the Executive states that it considers that the general law of fraud would cover situations where articles 51 or 52 were breached. It is the Executive’s policy intention throughout the Order to balance simplicity against the provision of adequate safeguards and the absence of sanctions was, therefore, intentional.

Report

21. The Committee notes the Executive’s response but has some difficulty in seeing how common law fraud could apply in relation to a candidate who had incurred election expenses in excess of £250. As it stands, breach of article 51 appears to attract no sanction. In local government elections, a breach of the equivalent provision in the Local Government Election Rules seems to be an “illegal practice” and punishable under the 1983 Act. As it stands, therefore, article 51 seems to represent an unusual or unexpected use of the power in that it contains a prohibition but no sanction. It is hard to envisage how these provisions effect any safeguard at all. The Committee therefore reports the instrument to the lead committee and the Parliament on the ground that article 51 is an unusual or unexpected use of the power as indicated above.

22. As regards article 52 it might well be that, as the Executive claims, common law fraud might be available to cover false statements under this article but not, it is suggested, for failure to submit the return in the first place. Again, there appears to be a lacuna that, in local government elections, appears to be covered by the 1983 Act. To this extent, also, article 52 appears to the Committee to represent an unusual or unexpected use of the power. The Committee therefore again reports the instrument on that ground in respect of article 52.
Question 2
23. The Committee asked the Executive to confirm whether the absence of any provisions in the Order in exercise of the powers contained in paragraph 4(1)(e) and (f) of schedule 1 to the parent Act is deliberate. By way of example, there is no provision equivalent to section 65(2) (tampering with nomination or ballot papers, etc.), section 66 (provisions relating to secrecy) and the provisions for challenging elections in the 1983 Act. It would appear that article 48 envisages such proceedings, but neither the Order nor the enabling Act contains any relevant offence provisions. The Committee asked for clarification.

Response 2
24. The Executive confirms that such absence is deliberate. Again, the Executive’s policy intention is to strike an appropriate balance between a system of elections that combined effectiveness with relative simplicity of operation. Specifically in relation to secrecy provisions, those were considered less necessary in the context of a postal ballot.

Report
25. The Committee has no wish to stray into policy areas but found it necessary to clarify the Executive’s intentions in view of the wording of certain provisions of the Order which did not seem to the Committee to be consistent with the apparent absence of sanctions. Article 48(1), for example, refers to “a prosecution for an offence in relation to ballot papers”. There does not, however, seem to be any provision in either the parent Act or the Order that creates any relevant offence. Nor has the Executive instanced any common law offence that might be relevant. Indeed, the Executive states that it does not consider that any sanctions were necessary at least in relation to secrecy provisions. The Executive has not commented on article 48(1) at all in relation to offences and, accordingly, its purpose in the light of the foregoing comments remains obscure.

26. The Committee therefore draws the instrument to the attention of the lead committee and the Parliament on the grounds that its meaning could be clearer and that it is defectively drafted in that it contains provisions that appear to have no purpose.

Question 3
27. Articles 13(6) and 43 appear to exclude challenge from the courts. The Committee asked the Executive to comment on this matter in the light of Standing Order 10.3.1(b).

Response 3
28. In relation to article 13(6), the Executive considers that, given the nature of the elections, it would be sufficient to rely on the judgement of the returning officer. It is not considered appropriate in policy terms to have decisions on the validity of nomination papers routinely questioned in the courts. In relation to article 43, again, the Executive considers that it would not be appropriate in policy terms to enable an appeal against decisions of the returning officer (beyond the remedies that may lie by way of judicial review).
Report

29. Only article 13(6) expressly excludes challenge in the courts. Arguably, the possibility is not absolutely excluded in article 43. The point is largely one of policy and the Committee’s remit is only to draw attention to the point and to the Executive’s response. The Committee notes that the Executive has not questioned the Committee’s interpretation of article 13(6) in particular. The Committee reports the instrument to the lead committee and the Parliament on the ground that articles 13(6) and 43 appear to exclude challenge in the courts.

Question 4

30. The Executive was invited to comment on article 7, which relates to disqualification for nomination, election and holding office as a member, in the light of article 3 of Protocol 1 of the ECHR. The Committee was particularly interested to know what would happen should the infirmity referred to in article 7(1)(a)(iv) turn out to be temporary.

Response 4

31. The disqualification provisions of article 7 are the same as in the corresponding article of the Loch Lomond and The Trossachs National Park Elections Order (S.S.I. 2002/202). They are based on the provisions of paragraph 9 of Schedule 1 to the parent Act with regard to removal of Ministers’ appointees and similar to those in section 31 of the Local Government (Scotland) Act 1973 relating to members of local authorities.

32. Regarding the question of temporary incapacity, the Executive considers that disqualification should not arise unless it became clear that the condition was permanent. The Executive does not consider that the provisions contravene Article 3 of Protocol 1 of the ECHR (which refers to the holding of free elections, by secret ballot under conditions, which allow free expression of opinion).

Report

33. The Executive has provided the further information requested. The Committee is inclined to agree on the point relating to the ECHR. Nevertheless, as regards the substantive point, as mentioned above, it is dangerous to take seemingly similar provisions out of context.

34. The Committee observes that there is a difference between a Ministerial appointee and an elected representative. In one case, the Ministers who have power over the terms and conditions of appointment can remove the appointee, in accordance with provisions set out in the Act. In the case of an elected representative, however, it is not clear who is to take the decision on when a person becomes disqualified and what is to happen when disqualification arises. Furthermore, the wording of the relevant enabling power, paragraph 4(1)(c) of schedule 1 to the parent Act, appears to envisage that the Order will make the necessary provision.

35. As regards disqualification under the Local Government (Scotland) Act 1973, sections 32 and 33 of that Act go on to set out procedure to deal with removal from office etc of persons disqualified. Again, neither this Order nor the enabling Act provides any equivalent. Accordingly, for example, if a person is disqualified under the terms of the order but refuses to stand down or resign there does not seem to be
36. As regards incapacity on grounds of ill health, the Executive states that it considers that disqualification should not arise unless the incapacity is permanent but, again, it is not clear who takes this decision or what happens if the member in question disagrees. The Committee therefore reports the instrument to the lead committee and the Parliament on the ground that section 7, in imposing a requirement without providing a means of enforcement, appears to be an unusual or unexpected use of the enabling power.

Question 5
37. The Committee asked for an explanation of the effect of disqualification particularly in relation to the point at which it bites and the length of time it lasts.

Response 5
38. Articles 7(2) and (3) gives details of the different periods of currency of a disqualification. Where the disqualification has come to an end, it would be open to the individual to put themselves forward whenever a vacancy occurred in the membership of the Authority. It is not the Executive’s policy intention that the individual could simply resume membership as if there had been no disqualification. Therefore, in so far as the Order does not represent the policy intention in this respect it appears to be defectively drafted and the Committee reports it to the lead committee and the Parliament on that ground.

Question 6
40. The Executive was asked to explain how article 8 and article 7(2) and (3) interact, especially with regard to what would happen if a person ceases to be bankrupt but the vacancy has been filled under article 8.

Response 6
41. Articles 7(2), (3) and 8 are the same as the corresponding articles of the Loch Lomond and The Trossachs National Park Elections Order. A Board member disqualified because of the bankruptcy could not simply resume membership but would be eligible to stand in a subsequent election if the disqualification had been discharged.

Report
42. This question is related to question 5 above. The Committee is aware that the articles referred to are in the same terms as the earlier order but observes that this does not make them right. Whilst it may not be the intention that a member disqualified because of bankruptcy could resume membership if the bankruptcy is discharged, this appears again to be what the Order provides. In so far as the
Order may not reflect the policy intention it appears to be defectively drafted and the Committee reports it to the lead committee and the Parliament on that ground.

43. Although it is to some extent a matter of policy, the Committee notes in passing that it is not clear, in any event, why a member should not be reinstated in the circumstances provided for in article 7(3)(a) namely that the bankruptcy is annulled on the grounds that the person should not have been adjudged bankrupt. This seems to be one possible interpretation of the provision as drafted.

Instruments subject to annulment

The Plastic Materials and Articles in Contact with Food (Amendment) (Scotland) Regulations 2002, (SSI 2002/498)

Background
44. The Committee raised two points with the Executive.

Question 1
45. The Executive was asked to explain why there is no reference in the preamble to the consultation requirement in Council Regulation (EC) 178/2002.

Response 1
46. In Its reply, reproduced at Appendix 3, The Food Standards Agency states that it does not consider it necessary to refer in the preamble to the consultation requirements proposed by Article 9 of Regulation (EC) No.178/2002 of the European Parliament and of the Council, given that it is not a statutory precondition to the making of the instrument.

47. The Agency is, however, satisfied that any consultation anticipated by Article 9 has been carried out and in particular that the consultation carried out in accordance with section 48 of the Food Safety Act 1990 meets all necessary requirements. The Agency continues in its view that the provision of Article 9 does not impose any requirement that is additional to those contained in the Food Safety Act.

Report
48. The Committee does not doubt that the requirement to consult under the EC Regulation does not impose any duty additional to that imposed under section 48 of the 1990 Act. Nevertheless, it is a requirement of EC legislation binding on the Executive and failure to consult will now not only breach a requirement of domestic law but could also lead to infraction proceedings in the European Court of Justice (ECJ).

49. The Committee observes that the guidance on drafting of statutory instruments states that all the essential pre-requirements of the making of an instrument should be detailed in the preamble to the instrument. This is undoubtedly one such requirement even although it is not expressly contained in domestic legislation. Even although in practice the requirement is subsumed within the domestic obligation, it is still very relevant information for the reader.
50. The Committee also notes that all the other UK legislatures include similar statements in relevant instruments. The Committee draws the attention of the lead committee and the Parliament to this instrument on the ground of defective drafting in this respect.

Question 2
51. In regulation 11, new regulation 8B, paragraph (1) is stated to be “subject to” paragraphs (2) and (3) and paragraph (2) is stated to be “subject to” paragraph (3). The Committee was unclear why these paragraphs are stated to be “subject to” one another as paragraphs (2) and (3) are purely interpretative provisions. The Executive was therefore, asked for clarification.

Response 2
52. The Agency does not consider that the terms of new regulation 8B have been made ambiguous or ineffective by the use of the phrase “subject to” in paragraphs (1) and (2). New regulation 8A sets out certain prohibitions on the use of substances in the making of adhesives and materials coming into contact with food. New regulation 8B(1) establishes the testing methods by reference to which such a substance is to be treated as offending those prohibitions. It was considered, however, that it should be apparent to the reader that the reference to the appropriate testing methods was subject to such modifications as were contained in paragraphs (2) and (3).

53. Both paragraphs (2) and (3) modify the application of Schedules 3 and 4 to the Regulations in relation to testing in relation to substances prohibited by regulation 8A. The “subject to” approach was, therefore, intended to ensure that the reader read all of regulation 8B(1) to (3) as a unity. The Agency considers that this approach is helpful to the reader in obtaining a full understanding of these complex Regulations.

Report
54. The words “subject to” are rather confusing since they suggest that another provision may qualify the substantive effect of the provision in question when in fact the reference is simply to a definition for the purposes of the regulation. However, it seems to the Committee that the meaning of the provision is reasonably clear. The Committee therefore simply draws the Agency’s response to the attention of the lead committee and the Parliament as providing the clarification requested.

The Taxi Drivers’ Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2002, (SSI 2002/500)

Background
55. The Committee raised six points with the Executive on these Regulations.

Question 1
56. The Committee asked why, given the clear intention to make provision in relation to “other categories of dog”, the Regulations as drafted do not actually prescribe the category or the disability as required by the enabling power, but instead appear to rely solely on a definition in regulation 1(4).
Response 1
57. The Executive, in its response reproduced at Appendix 4, notes that section 20(2A) of the Civic Government (Scotland) Act 1982 enables Ministers to make such provision as they consider to be “necessary or expedient in relation to the carrying in taxis of disabled persons”. In particular, Ministers may prescribe “requirements as to the carriage of wheelchairs, guide dogs, hearing dogs and other categories of dog”.

58. At subsection (2A)(c) “other categories of dog” means such other categories of dog as the Scottish Ministers may prescribe, trained to assist disabled persons who have disabilities of such kinds as he may prescribe”. This power has been used to prescribe the category of dog referred to in the Regulations as “an assistance dog” at regulation 1(4). The Executive did not think it necessary in the Regulations to state expressly that “an assistance dog” was an “other category of dog” as we were satisfied we had the vires to make provision for a further category of dog under section 20(2A).

Report
59. It seems to the Committee that the Executive may have misunderstood this question. The powers of the Scottish Ministers to make Regulations covering assistance dogs are not in doubt. The Committee’s question related to the drafting of the relevant provision. The Regulations rely solely on a definition to introduce a category of dog not covered in the enabling power. As the Committee has pointed out on previous occasions, this is a fault that can have serious consequences. A definition should not contain substantive law-making provisions.

60. Moreover, it is axiomatic that when exercising delegated powers, the drafter must adhere closely to the terms of the delegation, including the wording of the enabling power in order to be certain of being within the terms of the delegation.

61. In the present instance, the instrument fails to prescribe the assistance dog as another category of dog as required by the enabling power and this error is compounded by the inclusion of substantive provisions relating to such dogs in an interpretation section. In the event, a court might well interpret the Regulations in the manner intended. However, this does not alter the fact that the Regulations appear to be defectively drafted to the above extent and the Committee reports them to the lead committee and the Parliament on that ground.

Question 2
62. The Executive is asked to explain why the definitions of “a guide dog” and “a hearing dog” in regulation 1(4) are thought to be necessary, given that both are defined in the enabling power.

Response 2
63. The Executive agrees that the terms “a guide dog” and “a hearing dog” are used in the 1982 Act. These were inserted to assist the reader of the instrument.

Report
64. As the Committee has observed on previous occasions, it is regarded as bad practice to include in subordinate legislation to provide definitions of terms that are defined in the parent Act. In the case of these Regulations, the terms in question are defined not just in the Act but in the enabling power itself. In the Committee’s view, if
it is considered that the reader needs further information then the place to provide that information would be the Explanatory Note rather than in the body of the Regulations. **The Committee draws the attention of the lead committee and the parliament to the Regulations on the ground of failure to follow proper drafting practice in this respect.**

**Question 3**

65. (a) Regulation 1(2) provides that regulations 2 and 3 are to come into force on 3rd March 2003. Regulation 2 however refers to applications for licences made on or after 1st March 2003. The Committee therefore asked for an explanation of the discrepancy in the dates.

66. (b) Following on from question 3 above, the Committee asked why, if regulations 2 and 3 are not to come into force until 3rd March, this date does not apply to the remainder of the Regulations, all of which relate to regulations 2 and 3.

67. (c) The Executive was also asked to explain why the italic heading does not follow the prescribed form for staged commencement as set out in the relevant guide to the drafting of statutory instruments.

**Response 3**

68. The Executive is grateful to the Committee for pointing out the inconsistency between the provision made at regulation 1(2) and regulation 2. While, as drafted, it considers that the instrument could have full effect, its intention had been to rely on the provision made at regulation 1(2). Therefore, although the Regulations would come into force on 2nd December, the prescribed condition would only apply to licence applications made on or after **3 March 2003**. The reason for this is to give applicants due notice of the change in licensing condition and an opportunity to consider whether, at the time of making the application, an exemption would be applied for. The continued reference in regulation 1(2) to a different coming into force date for regulations 2 and 3 is an oversight.

69. The Executive will bring forward an amending instrument to remove this discrepancy immediately and issue it free of charge. The policy intention is that regulations 2 and 3 would apply to applications on or after 3 March because 1 and 2 March are weekend days. Regulation 2 will be amended to show a date of **3 March 2003**.

**Report**

70. The Executive’s intention to give applicants due notice of the change in the licensing condition is commendable. Unfortunately, as the Executive has acknowledged, the Regulations are defectively drafted although without adverse consequences for those who will be affected by them. **The Committee welcomes the Executive’s undertaking to bring forward amending Regulations drawing it to the attention of the lead committee and the Parliament.**

**Question 4**

71. In regulation 1(4), “assistance dog” is defined as meaning a dog “trained by a charity” and “wearing a jacket inscribed with the name of a charity”. The Committee was unclear as to whether the two references are intended to the same charity or whether a dog trained by one charity could then wear a jacket bearing the name of a...
different charity and still meet the definition. The Committee therefore requested clarification.

Response 4
72. In terms of regulation 1(4) “an assistance dog” has to meet two criteria. The first is that the dog must be trained to assist the categories of persons with physical impairment set out at regulation 1(4)(a). The second is that the dog must be wearing a jacket inscribed with the name of a charity. The Executive confirms that it would expect that the jacket worn by the dog would be inscribed with the name of the charity that trained the dog. It did not think it necessary to make express provision for this as to be an assistance dog it would have to meet both criteria in any event.

Report
73. If the Executive does not consider it important that the name of the charity should be the same as the charity that trained the dog it might be asked why this requirement is necessary at all (though this is a matter of policy for the lead committee). As it stands, the provision is wholly ambiguous and as such seems to constitute defective drafting. The Committee therefore draws the attention of the lead committee and the Parliament to the instrument on that ground.
Annexe

Instruments subject to approval

The Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No.15) (Scotland) Order, (SSI 2002/511)

Instruments not subject to Parliamentary control

Appendix 1

THE SCOTTISH LOCAL GOVERNMENT ELECTIONS REGULATIONS 2002 (DRAFT)

1. On 19 November 2002 the Committee asked the Executive for an explanation of the following matters:
   
   • “why regulation 2(1) defines the Representation of the People (Scotland) Regulations 2001 when those regulations do not appear to be referred to in the draft Regulations.
   
   • The Committee seeks clarification as to whether the reference in regulation 15(7) to a “registration officer” should be to a “returning officer”, as this appears to be the only reference to a registration officer contained in the Regulations.
   
   • The Executive is asked to confirm whether it is intended in regulation 22(7)(c) that the words “and in such cases, shall mark the declarations to indicate which ballot paper is missing” should apply to both paragraphs (i) and (ii), rather than (as drafted) to paragraph (ii) alone.
   
   • The Committee requests an explanation as to why regulation 26(1) refers to regulation 24(3) and (4) when regulation 24 does not contain a fourth paragraph, nor does that regulation appear to be of particular relevance.”

The Scottish Executive responds as follows:

First Question
The Executive confirms that the reference to the Representation of the People (Scotland) Regulations 2001 is an oversight.

Second Question
The Executive can confirm that the reference in regulation 15(7) to “the registration officer” should have been a reference to “the returning officer”. In context we do not think that this incorrect reference would cause any mischief as we think with the reference to regulation 15(3) in regulation 15(7) makes the intention clear. However, we are grateful to the Committee for drawing this to our attention.

Third Question
The Executive can confirm that the words “and in such cases, shall mark the declarations to indicate which ballot paper is missing” should only apply to paragraph (ii). There need only be a mark on the declaration where there is more than one ballot paper, a situation which arises only in relation to paragraph (ii).

Fourth Question
The Executive can confirm that the reference in regulation 26(1) to regulation 24(3) and (4) is incorrect. It should have referred to regulation 25(3) and (4). In context we do not think that this incorrect cross-reference would create any practical difficulties but we are grateful to the Committee for drawing this to our attention.
The Executive considers that the errors are minor in nature but intends to bring forward correcting amendments at the next suitable opportunity.

Scottish Executive

21 November 2002
Appendix 2

THE CAIRNGORMS NATIONAL PARK ELECTIONS (SCOTLAND) ORDER 2003 (DRAFT)

1. On 19 November 2002 the Committee asked the Executive for an explanation of the following matters—

“The Committee notes the absence of a sanction for breaching the requirement relating to election expenses in article 51 and for making a false election expenses return in article 52, and asks the Executive to explain what sanction would apply in these cases.

The Executive is asked to confirm whether the absence of any provisions in the Order in exercise of the powers contained in paragraph 4(1)(e) and (f) of schedule 1 to the parent Act is deliberate. By way of example, there is no provision equivalent to section 65(2) (tampering with nomination or ballot papers, etc.), section 66 (provisions relating to secrecy) and the provisions for challenging elections in the 1983 Act. It would appear that article 48 envisages such proceedings, but neither the Order nor the enabling Act contains any relevant offence provisions.

The Committee notes that articles 13(6) and 43 appear to exclude challenge from the courts and asks the Executive to comment on this matter in the light of Standing Order 10.3.1(b).

The Executive is invited to comment on article 7, which relates to disqualification for nomination, election and holding office as a member, in the light of article 3 of Protocol 1 of the ECHR. The Committee would be particularly interested to know what would happen should the infirmity referred to in article 7(10(a)(iv) turn out to be temporary.

The Committee would welcome an explanation of the effect of disqualification particularly in relation to the point at which it bites and the length of time it lasts.

The Executive is asked to explain how article 8 and article 7(2) and (3) interact, especially with regard to what would happen if a person ceases to be bankrupt but the vacancy has been filled under article 8.”

The Scottish Executive responds as follows:-

First Question
The Executive considers that the general law of fraud would cover situations where Articles 51 or 52 were breached. It was the Executive’s policy intention throughout the Order to balance simplicity against the provision of adequate safeguards and the absence of sanctions was, therefore, intentional.

Second Question
The Executive confirms that such absence is deliberate. Again, the Executive’s policy intention was to strike an appropriate balance between a system of elections which combined effectiveness with relative simplicity of operation. Specifically in
relation to secrecy provisions, those were considered less necessary in the context of a postal ballot.

**Third Question**
In relation to article 13(6), the Executive considers that, given the nature of the elections, it would be sufficient to rely on the judgement of the returning officer. It is not considered appropriate in policy terms to have decisions on the validity of nomination papers routinely questioned in the courts. In relation to article 43, again, the Executive considers that it would not be appropriate in policy terms to enable an appeal against decisions of the returning officer (beyond the remedies that may lie by way of judicial review).

**Fourth Question**
The disqualification provisions of article 7 are the same as in the corresponding article of the Loch Lomond and The Trossachs National Park Elections Order (S.S.I. 2002/202). They are based on the provisions of paragraph 9 of Schedule 1 to the parent Act with regard to removal of Ministers’ appointees and similar to those in section 31 of the Local Government (Scotland) Act 1973 relating to members of local authorities. Regarding the question of temporary incapacity, the Executive considers that disqualification should not arise unless it became clear that the condition was permanent. The Executive does not consider that the provisions contravene Article 3 of Protocol 1 of the ECHR (which refers to the holding of free elections, by secret ballot under conditions which allow free expression of opinion).

**Fifth Question**
Articles 7(2) and (3) gives details of the different periods of currency of a disqualification. Where the disqualification has come to an end, it would be open to the individual to put themselves forward whenever a vacancy occurred in the membership of the Authority. It is not the Executive’s policy intention that the individual could simply resume membership as if there had been no disqualification.

**Sixth Question**
Articles 7(2), (3) and 8 are the same as the corresponding articles of the Loch Lomond and The Trossachs National Park Elections Order. A Board member disqualified because of the bankruptcy could not simply resume membership but would be eligible to stand in a subsequent election if the disqualification had been discharged.

The Executive is grateful to the Committee for drawing these various points to its attention, and for the opportunity of clarifying them, but considers that they can all be justified in terms of the need to make measures in the Order proportionate to the scale of elections conducted under it. The Executive is also aware that elections to the Loch Lomond and The Trossachs National Park were conducted efficiently and without difficulty or complaint. In these circumstances, the Executive does not see the need to introduce any amending Order to alter the terms of the draft Order.

**Scottish Executive**

21st November 2002
Appendix 3

THE PLASTIC MATERIALS AND ARTICLES IN CONTACT WITH FOOD (AMENDMENT) (SCOTLAND) REGULATIONS 2002 (SSI 2002/498)

In its letter of 19 November 2002 the Committee commented as follows:

“(1) The Executive is asked to explain why there is no reference in the preamble to the consultation requirement in Council Regulation (EC) 178/2002.

(2) The Committee notes that in Regulation 11, new Regulation 8B, paragraph (1) is stated to be subject to paragraphs (2) and (3) and paragraph (2) is stated to be subject to paragraph (3). The Committee is unclear as to why these paragraphs are stated to be “subject to” one another as paragraphs (2) and (3) are purely interpretative provisions. The Executive is, therefore, asked for clarification of this matter.”

The Food Standards Agency responds as follows:

(1) The Agency does not consider that it is necessary to refer in the preamble to the consultation requirements proposed by Article 9 of Regulation (EC) No.178/2002 of the European Parliament and of the Council, given that it is not a statutory precondition to the making of the instrument. The Agency is, however, satisfied that any consultation anticipated by Article 9 has been carried out and in particular that the consultation carried out in accordance with section 48 of the Food Safety Act 1990 meets all necessary requirements. The Agency continues in its view that the provision of Article 9 does not impose any requirement which is additional to those contained in the Food Safety Act.

(2) The Agency does not consider that the terms of new Regulation 8B have been made ambiguous or ineffective by the use of the phrase “subject to” in paragraphs (1) and (2). New Regulation 8A sets out certain prohibitions on the use of substances in the making of adhesives and materials coming in contact with food. New Regulation 8B(1) establishes the testing methods by reference to which such a substance is to be treated as offending those prohibitions. It was considered, however, that it should be apparent to the reader that the reference to the appropriate testing methods were subject to such modifications as were contained in paragraphs (2) and (3).

(3) Both paragraphs (2) and (3) modify the application of Schedules 3 and 4 to the Regulations in relation to testing in relation to substances prohibited by Regulation 8A. The “subject to” approach was, therefore, intended to ensure that the reader read all of Regulation 8B(1) to (3) as a unity. The Agency considers that this approach is helpful to the reader in obtaining a full understanding of these complex Regulations.

Food Standards Agency

November 2002
Appendix 4

THE TAXI DRIVERS’ LICENCES (CARRYING OF GUIDE DOGS AND HEARING DOGS) (SCOTLAND) REGULATIONS 2002, (SSI 2002/500)

1. On 19 November 2002 the Committee asked the Executive for an explanation of the following matters-

“The Committee seeks clarification as to why, given the clear intention to make provision in relation to “other categories of dog”, the Regulations as drafted do not actually prescribe the category or the disability as required by the enabling power, but instead appear to rely solely on a definition in regulation 1(4).

The Executive is asked to explain why the definitions of “a guide dog” and “a hearing dog” in regulation 1(4) are thought to be necessary, given that both are defined in the enabling power.

The Committee notes that regulation 1(2) provides that regulations 2 and 3 are to come into force on 3rd March 2003, when regulation 2 refers to applications for licences made on or after 1st March 2003. The Committee therefore seeks an explanation of the discrepancy in the dates.

Furthermore, the Committee requests clarification as to why, if regulations 2 and 3 are not to come into force until 3rd March, this date does not apply to the remainder of the Regulations, all of which relate to regulations 2 and 3.

The Executive is asked to explain why the italic heading does not follow the prescribed form for staged commencement as set out in the relevant guide to the drafting of statutory instruments.

The Committee notes that in regulation 1(4), “assistance dog” is defined as meaning a dog “trained by a charity” and “wearing a jacket inscribed with the name of a charity”. The Committee was unclear as to whether the 2 references are intended to the same charity or whether a dog trained by one charity could then wear a jacket bearing the name of a different charity for the blind and still meet the definition. The Committee therefore requests clarification of this matter.”

The Scottish Executive responds as follows:

First Question
The Executive notes that section 20(2A) of the Civic Government (Scotland) Act 1982 enables Ministers to make such provision as they consider to be “necessary or expedient in relation to the carrying in taxis of disabled persons”. In particular Ministers may prescribe “requirements as to the carriage of wheelchairs, guide dogs, hearing dogs and other categories of dog”. At subsection (2A)(c) “other categories of dog” means such other categories of dog as the Scottish Ministers may prescribe, trained to assist disabled persons who have disabilities of such kinds as he may prescribe”. This power has been used to prescribe the category of dog referred to in the Regulations as “an assistance dog” at regulation 1(4). We did not think it necessary in the Regulations to state expressly that “an assistance dog” was an
“other category of dog” as we were satisfied we had the vires to make provision for a further category of dog under section 20(2A).

Second Question
The Executive agrees that the terms “a guide dog” and “a hearing dog” are used in the 1982 Act. These were inserted to assist the reader of the instrument.

Third, Fourth and Fifth Questions
The Executive is grateful to the Committee for pointing out the inconsistency between the provision made at regulation 1(2) and regulation 2. While, as drafted, we consider that the instrument could have full effect, our intention had been to rely on the provision made at regulation 1(2). Therefore, although the Regulations would come into force on 2 December, the prescribed condition would only apply to licence applications made on or after 3 March 2003. The reason for this is to give applicants due notice of the change in licensing condition and an opportunity to consider whether at the time of making the application an exemption would be applied for. The continued reference in regulation 1(2) to a different coming into force date for regulations 2 and 3 is an oversight. We will bring forward an amending instrument to remove this discrepancy immediately and issue this free of charge. The policy intention is that regulations 2 and 3 would apply to applications on or after 3 March because 1 and 2 March are weekend days. Regulation 2 will be amended to show a date of 3 March 2003.

Sixth Question
In terms of regulation 1(4) “an assistance dog” has to meet two criteria. The first is that the dog must be trained to assist the categories of persons with physical impairment set out at regulation 1(4)(a). The second is that the dog must be wearing a jacket inscribed with the name of a charity. We can confirm that we would expect that the jacket worn by the dog would be inscribed with the name of the charity which trained the dog. We did not think it necessary to make express provision for this as to be an assistance dog it would have to meet both criteria in any event.

Scottish Executive

21 November 2002