SUBORDINATE LEGISLATION COMMITTEE

AGENDA

20th Meeting, 2004 (Session 2)

Tuesday 8th June, 2004

The Committee will meet at 10:30am in Committee Room 3, Committee Chambers, Edinburgh.

1. **Delegated powers scrutiny:** The Committee will consider the delegated powers provisions in the following Bill—

   the Antisocial Behaviour etc. (Scotland) Bill as amended at Stage 2

and will take evidence from Scottish Executive officials.

2. **Executive responses:** The Committee will consider the responses from the Scottish Executive to points raised on the following—

   the Town and Country Planning (Electronic Communications) (Scotland) Order 2004, *(draft)*

   the Crofting Community Body Form of Application for Consent to Buy Croft Land etc. and Notice of Minister’s Decision (Scotland) Regulations 2004, *(SSI 2004/224)*

   the Crofting Community Right to Buy (Grant Towards Compensation Liability) (Scotland) Regulations 2004, *(SSI 2004/225)*

   the Crofting Community Right to Buy (Compensation) (Scotland) Order 2004, *(SSI 2004/226)*

   the Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004, *(SSI 2004/227)*

   the Community Right to Buy (Ballot) (Scotland) Regulations 2004, *(SSI 2004/228)*

   the Community Right to Buy (Compensation) (Scotland) Regulations 2004, *(SSI 2004/229)*
the Community Right to Buy (Register of Community Interests in Land Charges) (Scotland) Regulations 2004, (SSI 2004/230)

the Community Right to Buy (Specification of Plans) (Scotland) Regulations 2004, (SSI 2004/231)

the Community Right to Buy (Forms) (Scotland) Regulations 2004, (SSI 2004/233)


3. **Draft instrument subject to approval:** The Committee will consider the following—


4. **Proposed Code subject to approval:** The Committee will consider the following—


5. **Instruments subject to annulment:** The Committee will consider the following—

   the Victim Statements (Prescribed Offences) (Scotland) Amendment Order 2004, (SSI 2004/ )

   the Plant Health (Export Certification) (Scotland) Order 2004, (SSI 2004/248)

   the Plant Health Fees (Scotland) Amendment Regulations 2004, (SSI 2004/249)

   the Seed Potatoes (Fees) (Scotland) Regulations 2004, (SSI 2004/250)

   the Potatoes Originating in Poland (Notification) (Scotland) Order 2004, (SSI 2004/255)

   the Education (Student Loans) Amendment (Scotland) Regulation 2004, (SSI 2004/256).

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

   the Land Reform (Scotland) Act (Commencement No.2) Order 2004, (SSI 2004/247).

Alasdair Rankin
Clerk to the Committee
Tel: 0131 348 5212
The following papers are attached for this meeting:

**Agenda Items 1-6**

Legal Brief (for members only) – to follow  
SL/S2/04/20/1

**Agenda Item 1**

Copies of the Bill as amended at Stage 2  
Executive Memorandum  
SL/S2/04/20/2

**Agenda Item 2**

Executive Responses  
SL/S2/04/20/3

**Agenda Items 3-6**

Copies of Instruments and Proposed Code (circulated to Committee members only)

**Papers circulated for information:**

Minutes of 19th meeting, 2004 (Session 2)  
SL/S2/04/19/M

The draft Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004

Letter from the Convener to the Convener of the Procedures Committee dated 3 June 2004
Memorandum to the Scottish Parliament Subordinate Legislation Committee

Antisocial Behaviour etc. (Scotland) Bill as amended at Stage 2

Purpose
This Memorandum has been prepared by the Scottish Executive to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.7.9 of the Parliament's Standing Orders, of the Antisocial Behaviour etc. (Scotland) Bill (the Bill). This Memorandum refers to the Bill as amended at Stage 2. It describes the purpose of those provisions conferring power to make subordinate legislation introduced to the Bill at Stage 2, explains why the matter is to be left to subordinate legislation and gives the reason for seeking the powers proposed. It should be read in conjunction with the Executive's memorandum to the Subordinate legislation Committee (see Communities Committee, 1st Report, 2004, Annex A).

Background
The Bill introduces a number of measures and changes which aim to tackle antisocial behaviour more effectively. It is intended to support the Executive's strategy to bring about a step change in people's attitudes and behaviour, focussing on the four themes of the Executive’s strategy on antisocial behaviour, Putting Our Communities First. These are:

- Protecting and empowering communities.
- Preventing antisocial behaviour by working with children and families.
- Building safe, secure and attractive communities.
- Effective enforcement.

It contains a range of provisions in the areas of justice, the environment, housing and child welfare, all of which are linked to tackling antisocial behaviour and improving the quality of life of ordinary members of the community.

The Bill as introduced was considered by the Subordinate Legislation Committee in January and February 2004.

The subordinate legislation provisions introduced to the Bill or amended at Stage 2 are outlined below. This Memorandum also describes the purpose of amendments to provisions about the issuing of guidance or directions by the Scottish Ministers, which were considered by the Committee in its Report.
Part 1 – Antisocial Behaviour Strategies

Regulation making power under section 3A (Scottish Ministers’ power to apply sections 1 and 3 to registered social landlords).

*Power conferred on:* the Scottish Ministers.
*Power exercisable by:* regulations made by statutory instrument
*Parliamentary procedure:* negative resolution of the Scottish Parliament.

*Purpose*
This section, which was added to the Bill by amendment at Stage 2, makes provision for the Scottish Ministers to apply ss 1 and 3 to registered social landlords. It is intended to replace the power to make directions requiring registered social landlords to collaborate in the preparation of antisocial behaviour strategies, which was in section 2 of the Bill as introduced but was amended out at Stage 2.

Subsection (1) provides that the Scottish Ministers may make regulations for the purpose of securing the participation of a registered social landlord in the preparation, review or revision of an antisocial behaviour strategy.

Subsection (2) provides that such regulations may in particular make such modifications of s 1(1), (3), (4), (6) or (8) and s 3(1) as the Scottish Ministers consider necessary or expedient for the purpose of securing the participation of a registered social landlord in the preparation, review or revision of an antisocial behaviour strategy.

*Reason for taking power*

The SLC in its Report at paragraphs 13 and 21 noted its concerns that the direction-making power in section 2 as introduced might be considered to be legislative in character and could be exercised generally as well as specifically. The Executive has taken on board those concerns.

Replacing the direction-making power with a power to make regulations will also provide more flexibility to ensure that registered social landlords can be fully integrated into the whole process of preparing, reviewing and revising antisocial behaviour strategies. The direction-making power would only have enabled them to be involved at the initial preparation stage. We have made this subject to negative resolution procedure notwithstanding that the power could be used to amend primary legislation after considering the nature of the power.

Part 2 – Antisocial behaviour orders

Guidance under section 14A (Guidance in relation to antisocial behaviour orders)

*Purpose*
This section, which was added to the Bill at Stage 2, provides that a person (other than a court) discharging functions under Part 2 shall have regard to any guidance given by the Scottish Ministers about the discharge of those functions.

We do not consider that we need to give Scottish Ministers a power to issue guidance as this is something that they can already do. What we consider we need to provide for is circumstances in which we either want the Scottish Ministers to be placed under a duty to issue guidance or where we want that guidance to have a particular legal effect. In this case we have provided that Minister may issue guidance and that any person discharging functions under Part 2 shall have to regard to that guidance. A similar approach has been adopted at section 20, section 47A, section 51E, section 85, section 88A and section 106.

**Part 3 – Dispersal of Groups**

**Guidance under section 20**

Section 20 was amended at Stage 2 to provide that any guidance given by the Scottish Ministers about the powers in Part 3 of the Bill must be laid before the Scottish Parliament.

We have adopted the same approach in relation to guidance issued under section 20 as indicated in relation to section 14A. In addition the Subordinate Legislation Committee expressed concerns in its Report that guidance under s 20 was not required to be laid before the Scottish Parliament. The Executive took the Committee’s concerns on board and indicated that it would be content for a copy of such guidance to be laid before the Parliament.

**Power to issue directions under section 21**

*Power conferred on:* the Scottish Ministers.
*Power exercisable by:* issuing directions.
*Parliamentary procedure:* none.

Section 21, which allowed Scottish Ministers to give directions to persons exercising powers under Part 3, was amended out of the Bill at Stage 2.

*Reason for removing power*

The Subordinate Legislation Committee expressed concerns in its Report about the nature of the power to issue directions. It appeared to the Committee that it would be open to Ministers to issue general directions and that such directions may be legislative in effect. The Justice 2 Committee also expressed its strong view that it was not appropriate for Ministers to direct the police on operational matters, following evidence from the Association of Chief Police Officers and the Scottish Police Federation.

The Executive has taken these concerns on board, and supported the amendment laid by Bill Aitken at Stage 2 to remove section 21 from the Bill.
Part 4 – Closure of Premises

Regulation making power under section 23(2)

*Power conferred on:* the Scottish Ministers
*Power exercisable by:* regulations made by statutory instrument
*Parliamentary procedure:* negative resolution of the Scottish Parliament

Section 23(2) confers a power by regulations to specify premises or descriptions of premises in respect of which an authorisation of the service of a notice may not be given.

The Executive intends to amend the Bill at Stage 3 to provide that these Regulations will be subject to affirmative resolution procedure due to the importance of this matter as expressed by the Communities Committee during it’s Stage 2 consideration of the Bill.

Rule making power under section 24(5)(ea)

*Power conferred on:* the Court of Session (power relied on section 32 of the Sheriff Courts (Scotland) Act 1971)
*Power exercisable by:* rules of court made by statutory instrument.
*Parliamentary procedure:* none

*Purpose*
Section 24(5)(e) of the Bill as introduced required a closure notice to specify the date and time when, and the place where, the application is to be heard. That requirement was amended out at Stage 2 and this subsection which was added by amendment, providing that a closure notice shall specify such matters about the application to be made under section 25 for the closure of the premises as may be prescribed in rules of court.

*Reason for taking power*
Applications for closure orders under section 25 will be dealt with as summary applications and provision will be made in the rules of court as to the procedures surrounding them. It is more appropriate to deal with these matters in the rules of court than on the face of the Bill.

Part 5 – Noise nuisance

Regulation making power under section 43

*Power conferred on:* the Scottish Ministers.
*Power exercisable by:* regulations made by statutory instrument.
*Parliamentary procedure:* negative resolution of the Scottish Parliament.

*Purpose*
This section was amended at Stage 2 to provide that the Scottish Ministers may by regulations prescribe the maximum level of noise which may be emitted for any relevant property, rather than determining this level in directions.

Reason for amending power
The Subordinate Legislation Committee noted in its Report its concerns that the power to make directions in section 43 was legislative in nature. The Executive took on board the Committee's concerns that, in the interests of transparency and given that any breach of the noise control provisions can give rise to criminal liability, the setting of permitted levels of noise should be in subordinate legislation.

Regulation making power under section 44

Power conferred on: the Scottish Ministers.
Power exercisable by: regulations made by statutory instrument.
Parliamentary procedure: negative resolution of the Scottish Parliament.

Purpose
This section was amended at Stage 2 to provide that the Scottish Ministers may by regulations approve any type of device used for the measurement of noise, and may prescribe in the regulations conditions as to the purposes for which or the manner and circumstances in which devices of the type approved are to be used. Before this amendment, the Scottish Ministers' approval had to be in writing rather than in regulations.

Reason for amending power
The Subordinate Legislation Committee noted in its Report its concerns that the power to make directions in section 44 was legislative in nature. The Executive took on board the Committee's concerns that, in the interests of transparency and given that any breach of the noise control provisions can give rise to criminal liability, the approval of noise measurement devices should be in subordinate legislation.

Order making power under section 46

Power conferred on: the Scottish Ministers.
Power exercisable by: order made by statutory instrument.
Parliamentary procedure: negative resolution of the Scottish Parliament.

Purpose
Section 46 was amended at Stage 2 to restrict the Scottish Ministers’ power to amend the fixed penalty payable under section 42 by substituting an amount specified in the order for the amount that is for the time being mentioned in section 42(10). Following this amendment, the order may not specify an amount exceeding level 2 on the standard scale.

Reason for amending power
The Subordinate Legislation Committee noted in its Report its concerns that there was no upper limit on the level of penalty that could be fixed under this provision. The Executive took on board the Committee's concerns and undertook to lodge this
amendment limiting the penalty that could be fixed to no more than level 2 on the standard scale.

**Order making power under section 46B (Meaning of “relevant place” and “relevant property”)**

*Power conferred on:* the Scottish Ministers.
*Power exercisable by:* order made by statutory instrument.
*Parliamentary procedure:* affirmative resolution of the Scottish Parliament.

**Purpose**
This section, which was added to the Bill by amendment at Stage 2, defines “relevant place” and “relevant property” for the purposes of part 5. It allows Scottish Ministers to prescribe by order other places to be included in these definitions.

**Reason for taking power**
This section was introduced to enable the definitions of “relevant property” and “relevant place” to be amended in the future, if technical developments in the measurement of noise make this possible. For example, if it becomes possible to measure noise from one garden to another.

Given the importance of any future possible changes to these definitions, the Executive considered that it would be appropriate that any Order be subject to the affirmative procedure.

**Guidance under section 47A (Guidance in relation to this Part)**

*Purpose*
This section, which was added to the Bill at Stage 2, provides that a person (other than a court) discharging functions under Part 2 shall have regard to any guidance given by the Scottish Ministers about the discharge of those functions.

**Reason for taking power**
This section was introduced in order to place those discharging functions under the Bill under a statutory duty to have regard to guidance issued by Ministers, rather than leave such guidance on a non-statutory basis.

**Part 6 – The Environment**

**Order making power under section 49**

*Power conferred on:* the Scottish Ministers.
*Power exercisable by:* order made by statutory instrument.
*Parliamentary procedure:* negative resolution of the Scottish Parliament.

**Purpose**
Section 49 was amended at Stage 2 to restrict the Scottish Ministers’ power to amend the fixed penalty payable under section 33A of the Environmental Protection
Act 1990 by substituting by order a different amount for the amount that is for the
time being specified in section 33A(7). Following this amendment, the order may not
substitute an amount exceeding level 2 on the standard scale.

Reason for amending power
The Subordinate Legislation Committee noted in its Report its concerns that there
was no upper limit on the level of penalty that could be fixed under this provision.
The Executive took on board the Committee’s concerns and undertook to lodge this
amendment limiting the penalty that could be fixed to no more than level 2 on the
standard scale.

Order making power under section 88, Environmental Protection Act 1990, as
amended by section 50

Power conferred on: the Scottish Ministers.
Power exercisable by: order made by statutory instrument.
Parliamentary procedure: negative resolution of the Scottish Parliament.

Purpose
Section 50 was amended at Stage 2 to restrict the Scottish Ministers’ power under
section 88(7) of the Environmental Protection Act 1990 (c.43) (“the 1990 Act”) to
amend the fixed penalty payable under section 88(6) by substituting by order a
different amount for the amount that is for the time being specified in section 88(6).
Following this amendment, the order may not substitute an amount exceeding level 2
on the standard scale.

Reason for taking power
The Subordinate Legislation Committee noted in its Report its concerns about
section 49 described above. The mechanisms for section 49 were based on those
already in force for littering under section 88 of the 1990 Act, under which there was
no limit on the Scottish Ministers’ power to vary by order the amount of the fixed
penalty fine for littering. Having agreed the change to the fly tipping regime set up by
section 49 to address the Committee’s concerns, the Executive made the same
changes to the littering regime, through section 50, for consistency.

Power to issue directions under section 51

Power conferred on: the Scottish Ministers.
Power exercisable by: issuing directions.
Parliamentary procedure: none.

Section 51 was amended at Stage 2 to provide that any directions issued under this
power, and any variation or revocation of a direction, shall be published, and copies
made available to the public.

Reason for amending power
The Subordinate Legislation Committee expressed concerns in its Report about the
transparency of directions issued under s 89 of the Environmental Protection Act
1990 as amended by section 51. The Executive took on board these concerns and
undertook to lodge an amendment at Stage 2 requiring directions and any variation or revocation of directions to be published and made available to the public.

Order making power under section 51B (Power to modify meaning of “relevant surface”)

*Power conferred on:* the Scottish Ministers.
*Power exercisable by:* order made by statutory instrument.
*Parliamentary procedure:* affirmative resolution of the Scottish Parliament.

**Purpose**
This section and section 51A (Power of local authority to serve notice about graffiti) were introduced by amendment at Stage 2. Section 51A allows a local authority to serve a graffiti removal notice where a relevant surface has been defaced by graffiti. Section 51B allows the Scottish Ministers by order to modify section 51A(3)(a) or (b) or (4), (5) or (6), and to make any appropriate consequential modifications to section 51A(9).

*Reason for taking power*
The power may be used by the Scottish Ministers if it becomes apparent in the light of experience that there is a need to amend the definition of “relevant surface” in relation to which a local authority may serve a graffiti removal notice. Any order made under this power would be subject to affirmative resolution procedure.

Power to issue guidance under section 51E (Guidance to local authorities about graffiti removal functions)

**Purpose**
This section, which was added to the Bill at Stage 2, provides that a local authority in discharging functions in relation to graffiti shall have regard to any guidance given by the Scottish Ministers.

This section was introduced in order to place those discharging functions under the Bill under a statutory duty to have regard to guidance issued by Ministers, rather than leave such guidance on a non-statutory basis.

Part 7 – Housing: antisocial behaviour notices

Regulation making power under section 56A (Appeals against orders under section 56)

*Power conferred on:* the Scottish Ministers.
*Power exercisable by:* regulations made by statutory instrument.
*Parliamentary procedure:* negative resolution of the Scottish Parliament.

**Purpose**
This section was introduced by amendment at Stage 2 and makes provision for appeals to the sheriff principal against an order as to rental income made under section 56.
Subsection (3) provides that the person appealing against the order must give notice to the tenant of such matters as may be prescribed in regulations by the Scottish Ministers.

Subsection (4) provides that those regulations may make provision for or in connection with the form of the notice and the manner and timing of service of the notice.

Reason for taking power

The power may be used by the Scottish Ministers to ensure that an occupant of a property which has become subject to an order that no rent is due (in terms of section 56), which order is then appealed, is notified of such matters that the Scottish Ministers may prescribe. Such matters could include the fact an appeal against such an order has been made and that if such an appeal is successful the occupant may be liable for rental payment from the date of the original order under section 56. The occupant might otherwise be unaware of the appeal and the consequences.

Subsection (5) of section 56A states that the court hearing the appeal cannot require the occupant to pay “back rent” if the notice of such matters has not been given. The power also allows the details of form and service to be prescribed. Such details are more appropriately covered through regulations than in primary legislation.

Part 8 – Housing: registration areas

Regulation making power under section 64B (Application for registration)

Power conferred on: the Scottish Ministers.
Power exercisable by: regulations made by statutory instrument.
Parliamentary procedure: negative resolution of the Scottish Parliament.

Purpose

This section was added to the Bill by amendment at Stage 2 and makes provision about the details of an application for entry in the register maintained by the local authority under section 64A(1) (Registers).

Subsection (1)(d) provides that an application shall specify such other information as the Scottish Ministers may by regulations prescribe.

Subsection (3) allows the Scottish Ministers to prescribe by regulations the fees to accompany an application, how fees are to be arrived at and cases in which no fee shall be payable.

Reason for taking power

Subsections (1)(a) to (c) of section 64B specifies certain information to be detailed in the application form. This certain information can be specified in an entry to the register in terms of section 64C(5). However in due course it may be that more information is desirable in relation to applications. For instance information which will assist the local authority making a judgement as to whether the applicant will pass the “fit and proper” test in section 64C. The power in Section 64B(1)(d) allows
for more information to be required. Such additional information is not to be specified in an entry to the register.

The power in section 64B(3) may be used by the Scottish Ministers to ensure transparency, fairness and consistency in how local authorities arrive at the fees to accompany an application for registration. The power allows Scottish Ministers to set not only the level of fees themselves but the methodology. For instance it may be desirable that where an applicant already holds a licence for a property under the legislation pertaining to a house in multiple occupation that there is a reduction to the fee, or no fee, charged under the registration system.

**Regulation making power under section 64F (Duty of registered person to provide information to local authority)**

*Power conferred on:* the Scottish Ministers.  
*Power exercisable by:* regulations made by statutory instrument.  
*Parliamentary procedure:* negative resolution of the Scottish Parliament.

**Purpose**
This section was added to the Bill by amendment at Stage 2 and makes provision about information to be provided by a registered person to the local authority in consequence of a change of that person’s circumstances.

Subsection (3) allows the Scottish Ministers to prescribe by regulations the fees to accompany a notice of a change in circumstances, how fees are to be arrived at and cases in which no fee shall be payable.

**Reason for taking power**
The power in section 64F(3) may be used by the Scottish Ministers to ensure transparency, fairness and consistency in how local authorities arrive at the fees to be charged when receiving information which updates the register. The power allows Scottish Ministers to set not only the level of fees themselves but also the methodology.

**Regulation making power under section 64M (Appeal against order that no rent payable)**

*Power conferred on:* the Scottish Ministers.  
*Power exercisable by:* regulations made by statutory instrument.  
*Parliamentary procedure:* negative resolution of the Scottish Parliament.

**Purpose**
This section was included in the Bill by amendment at Stage 2 and makes provision for appeals to the sheriff principal against a decision of the sheriff making or refusing to make an order under section 64L (Order that no rent payable).

Subsection (3) provides that the person appealing against the sheriff’s decision must give notice to the tenant of such matters as may be prescribed by the Scottish Ministers by regulations.
Subsection (4) provides that those regulations may include provision for or in connection with the form of the notice and the manner and timing of the service of the notice.

**Reason for taking power**

The power may be used by the Scottish Ministers to ensure that an occupant of a property which has become subject to an order that no rent is due (in terms of section 64L), which order is then appealed, is notified of such matters that the Scottish Ministers may prescribe. Such matters could include the fact an appeal against such an order has been made and that if such an appeal is successful the occupant may be liable for rental payment from the date of the original order under section 64L. The occupant might otherwise be unaware of the appeal and the consequences. Subsection (5) of section 64M states that the court hearing the appeal cannot require the occupant to pay “back rent” if the notice of such matters has not been given. The power also allows the details of form and service to be prescribed. Such details are more appropriately covered through regulations than in primary legislation.

**Removal of regulation making powers under section 66, 68 and 69**

*Power conferred on:* the Scottish Ministers.
*Power exercisable by:* regulations made by statutory instrument.
*Parliamentary procedure:* negative resolution of the Scottish Parliament.

**Reason for omitting powers**

These powers are no longer necessary as they relate to other provisions left out of the Bill by amendment at Stage 2. After amendment at Stage 2 Part 8 of the Bill provides a national registration scheme for landlords rather than a limited scheme in designated areas.

**Part 9 – Parenting Orders**

**Regulation making power under section 83D (Conduct of proceedings by reporters)**

*Power conferred on:* the Scottish Ministers.
*Power exercisable by:* regulations made by statutory instrument.
*Parliamentary procedure:* negative resolution of the Scottish Parliament.

**Purpose**

This section, which was added to the Bill by amendment at Stage 2, enables the Scottish Ministers by regulations to empower a reporter to conduct proceedings in relation to parenting orders before a sheriff or a sheriff principal.

Subsection (2) provides that the regulations may prescribe such requirements as the Scottish Ministers think fit as to qualifications, training or experience necessary for a reporter to be so empowered.

**Reason for taking power**
Reporters currently have the right to appear before the sheriff in accordance with the Reporters (Conduct of Proceedings before the Sheriff) (Scotland) Regulations 1997. Those Regulations allow a reporter to appear before the sheriff for the purposes of proceedings under chapters 2 or 3 of Part II of the Children (Scotland) Act 1995.

The power to make those regulations would not allow similar regulations to be made for proceedings in relation to parenting orders. The Executive thinks that it is important to enable reporters to use their experience of addressing complex factual and legal issues in proof hearings before a sheriff in parenting order proceedings.

**Guidance under section 85**

**Purpose**

This section, which was added to the Bill at Stage 2, replaces section 85 as introduced, and provides that a person (other than a court) discharging functions in relation to parenting orders shall have regard to any guidance given by the Scottish Ministers about the discharge of those functions. For the reasons discussed above in relation to section 14A we think it is sufficient to simply provide the legal effect that we want such guidance to have.

**Part 10 – Further Criminal Measures**

**Regulation making power under s 88A (Records of antisocial behaviour orders made in criminal courts)**

*Power conferred on:* the Scottish Ministers.  
*Power exercisable by:* regulations made by statutory instrument.  
*Parliamentary procedure:* negative resolution of the Scottish Parliament.

**Purpose**

This section, which was added to the Bill by amendment at Stage 2, confers on the Scottish Ministers the power to prescribe in regulations matters to be specified in the records of orders made in the criminal courts to be maintained by local authorities. These will be matters relating to the orders other than those already specified in subsection (2)(a) to (e).

*Reason for taking this power*

The aim of the requirement on local authorities to maintain these records is to support effective information exchange and for monitoring of the use of antisocial behaviour orders. If it becomes apparent that there are matters, other than those specified in subsection (2)(a) to (e), the inclusion of which in the records would further this aim, then this power can be used by the Scottish Ministers to add them to the list of required matters without having to have recourse to primary legislation. A similar power was taken in relation to records of civil orders made under Part 2 and was mentioned in the Executive’s Memorandum to the Subordinate Legislation Committee for Stage 1.

**Guidance under section 88A**

**Purpose**
Section 88A(5) provides that a local authority, in discharging functions by virtue of section 88A shall have regard to any guidance given by the Scottish Ministers about the discharge of those functions. For the reasons discussed above in relation to section 14A we think it is sufficient to simply provide the legal effect that we want such guidance to have.

Part 11 – Fixed Penalties

Order making power under section 95(2) and (3)

The Subordinate Legislation Committee at paragraph 90 of its Report noted its concerns about the potential for a wider use of this power. However, the Executive have considered this further and are content to rest with the power as introduced based on the reasoning given at paragraph 89 of that Report. The Executive does not consider that this power could be used to remove any of the safeguards or substantially amend Part 11.

Regulation making power under section 96

*Power conferred on:* the Scottish Ministers.  
*Power exercisable by:* regulations made by statutory instrument.  
*Parliamentary procedure:* negative resolution of the Scottish Parliament.

**Purpose**  
This section was amended at Stage 2 to confer on the Scottish Ministers a regulation making power to prescribe areas for the purpose of piloting fixed penalty notice powers.

**Reason for taking the power**  
The power is required to allow Scottish Ministers to prescribe areas in regulations for the purposes of piloting the fixed penalty notice scheme. Section 96 as amended makes clear on the face of the Bill that the power to issue fixed penalty notices will only be available to the police where they have reason to believe that a fixed penalty offence has been committed in a “prescribed area”. This allows the scheme to be piloted in prescribed areas.

Part 12 – Children’s Hearings

Regulation making power under section 70(12) of the Children (Scotland) Act 1995, as inserted by section 103

*Power conferred on:* the Scottish Ministers.  
*Power exercisable by:* regulations made by statutory instrument.  
*Parliamentary procedure:* negative resolution of the Scottish Parliament.

**Purpose**  
Section 103 of the Bill was amended at Stage 2 to insert a new section 70(12) into the Children (Scotland) Act 1995 (c.36). The new section 70(12) allows the Scottish Ministers to prescribe conditions which may be imposed by a children’s hearing when the hearing imposes a movement restriction condition.
Reason for taking power

This power has been taken so that when imposing a movement restriction condition a hearing may also attach other conditions to it, and provides Ministers with the power to prescribe in regulations the type of conditions, by way of support measures, that should be made available to children subject to a movement restriction condition.

Regulation making power under section 70(17) of the Children (Scotland) Act 1995, as inserted by section 103

Power conferred on: the Scottish Ministers.
Power exercisable by: regulations made by statutory instrument.
Parliamentary procedure: negative resolution of the Scottish Parliament.

Purpose
Section 103 of the Bill was amended at Stage 2 to insert a new s 70(17) into the Children (Scotland) Act 1995 (c.36). The new section 70(17) allows Scottish Ministers to prescribe a children’s panel for a local government area, a children’s hearing constituted from which may include a movement restriction condition in a supervision requirement.

Reason for taking power
This power has been taken so that the use of a movement restriction condition within a supervision requirement is initially restricted to those areas participating in the pilot scheme, and will therefore be possible only where appropriate support is available.

Part 13 - Miscellaneous

Guidance under section 106

Purpose
Section 106(3) was amended at Stage 2 to provide that any person who by virtue of this Act must or may provide information or who provides or receives information for the purposes of any provision of the Act shall have regard to any relevant guidance issued by the Scottish Ministers.

The Subordinate Legislation Committee noted at paragraph 104 of its Report its concerns that it was not clear whether section 106(3) applied only to substantive provisions of the Bill or also in relation to amendments made by the Bill to other enactments. The Executive took on board the Committee’s concerns and agreed to bring forward amendments at Stage 2 to clarify this. The expression “by virtue of” includes “by or “under” (see article 6(3) of the Interpretation Order).

Order making power under section 112

Power conferred on: the Scottish Ministers.
Power exercisable by: order made by statutory instrument.
Parliamentary procedure: none.

Purpose
Section 112(2) was amended at Stage 2 to provide that the Bill (other than section 112 and 108) shall come into force on such day as the Scottish Ministers may by order appoint. Before this amendment, this subsection provided that different days may be appointed for different purposes.

Reason for amending power
The power under section 112 was amended to simplify the commencement provision for the Act, which had included reference to the means by which any order commencing the Act is made and a provision making explicit that commencement may be appointed on different days for different purposes. These references are unnecessary as any commencement order will attract the provisions of section 108 of the Bill which already makes such provision.

Schedule 4 – Minor and consequential amendments

Direction making power in s 27(5B) of the Social Work (Scotland) Act 1968, as amended by Schedule 4

Power conferred on: the Scottish Ministers.
Power exercisable by: issuing directions.
Parliamentary procedure: none.

Purpose
Schedule 4 was amended at Stage 2 to insert a new subsection into s 27 of the Social Work (Scotland) Act 1968 (c.49). Subsection (5B), as inserted by Schedule 4, allows the Scottish Ministers to give local authorities directions in writing as to the content of community justice schemes. New subsection (5C) allows such directions to be varied or revoked.

Reason for amending power
The Subordinate Legislation Committee noted in paragraph 109 of its Report that the direction-making power did not include a power to amend or revoke. The Executive agreed that it needed to consider whether to make an express provision in relation to variation or revocation of directions, and subsequently laid this amendment at Stage 2.
Executive Responses

- the Town and Country Planning (Electronic Communications) (Scotland) Order 2004, (draft)
- the Crofting Community Body Form of Application for Consent to Buy Croft Land etc. and Notice of Minister’s Decision (Scotland) Regulations 2004, (SSI 2004/224)
- the Crofting Community Right to Buy (Grant Towards Compensation Liability) (Scotland) Regulations 2004, (SSI 2004/225)
- the Crofting Community Right to Buy (Compensation) (Scotland) Order 2004, (SSI 2004/226)
- the Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004, (SSI 2004/227)
- the Community Right to Buy (Ballot) (Scotland) Regulations 2004, (SSI 2004/228)
- the Community Right to Buy (Compensation) (Scotland) Regulations 2004, (SSI 2004/229)
- the Community Right to Buy (Register of Community Interests in Land Charges) (Scotland) Regulations 2004, (SSI 2004/230)
- the Community Right to Buy (Specification of Plans) (Scotland) Regulations 2004, (SSI 2004/231)
- the Community Right to Buy (Forms) (Scotland) Regulations 2004, (SSI 2004/233)
- the Victim Statements (Prescribed Offences) (Scotland) Amendment Order 2004, (SSI 2004/246)
On 1 June 2004, the Committee asked the Executive for an explanation of the following matters:–

1. The Committee notes that a number of the statutory references do not seem to be quite right. In relation to regulation 4(5) the Committee asks –
   - whether the reference in paragraph (f) should be to section 88(2);
   - whether the reference in paragraph (j) to section 101(2) should be to section 101(1); and
   - if the reference in paragraph (u) should be to paragraph 4 of Schedule 10.

2. The Committee suggests that in regulation 6(2) on page 3, for consistency with regulation 11(2), the words “at the appropriate places” should have been added to the first line of this paragraph and seeks the Executive's views on this matter.

3. The Committee observes that in regulation 7(2) on page 4, the reference to sub-paragraph (10) in new sub-paragraph (8) does not seem to be correct. The applicant gives notice under sub-paragraph (9) and sub-paragraph (10) states the effect of such a notice. Also in relation to this regulation, the reference to paragraph (b) in new sub-paragraph (9) again does not seem quite right. The Executive is asked for clarification.

4. Regulation 8(2) on page 4 raises the same points as regulation 7(2) above and the Executive is again asked whether the references as drafted are correct.

5. The Committee observes that the footnote references to amendments do not appear to be entirely accurate, for example in footnote (d) on page 6 there is a reference to SSI 2000/2040, an instrument which does not exist. It is not clear to which instrument a reference was intended and the Executive is therefore asked for clarification.

6. The Committee notes that 1992/223 and SI 1992/224 have been amended no fewer than 16 and 9 times respectively and therefore seeks confirmation what, if any, plans the Executive has for consolidation of the regulations, perhaps within the context of the forthcoming Planning Bill.

The Scottish Executive responds as follows:–

First question

The Executive is very grateful to the Committee for highlighting the errors in the statutory references in regulation 4(5). To deal with these points, the Executive has now brought forward a corrective instrument, which should now be before the Committee for consideration.
Second question

The Executive acknowledges that drafting should be consistent. The inconsistency is dealt with in the corrective instrument referred to in the answer to the previous question. The Executive thanks the Committee again for drawing attention to this point.

Third question

The Executive advises that the provisions of this regulation 7(2) were deliberately drafted in this way. Paragraph (10) is an integral part of the provisions about notice which are referred to in paragraph (8) insofar as the effect of a notice relates to any deemed agreement which would otherwise apply to an applicant's use of electronic communications.

Similarly, it is the Executive’s view that the reference to paragraph (b) in paragraph (8) is apt. Paragraph (8) sets out the basis on which an applicant shall be deemed to agree to electronic communications. Paragraph (a) provides that such agreement covers usage of electronic communications, and paragraph (b) makes specific provision in terms of an applicant’s address in connection with that usage. A notice given under new sub-paragraph (9) can be given in relation either to deemed agreement as to general usage of electronic communication, or to deemed agreement specific to an applicant’s address. Therefore the Executive’s view is that reference to both sub-paragraphs is apt.

Fourth question

The response given to the previous question would also apply to the points raised by the Committee in relation to regulation 8(2).

Fifth question

The Executive agrees the reference to S.S.I. 2000/2040 is erroneous. The intended reference is to S.I. 2000/2040, and this will be reflected in the corrective instrument referred to above. Once again the Executive thanks the Committee for highlighting this point.

Sixth question

The Executive appreciates the Committee’s concerns about the number of amendments to Regulations 1999/223 and 1999/224. Initial steps have been made towards consolidation of the instruments. The Executive will complete that consolidation when time and resources permit.

SCOTTISH EXECUTIVE DEVELOPMENT DEPARTMENT
THE CROFTING COMMUNITY BODY FORM OF APPLICATION FOR CONSENT TO BUY CROFT LAND ETC. AND NOTICE OF MINISTERS DECISION (SCOTLAND) REGULATIONS 2004 (SSI 2004/224)

On 1st June, the Committee asked the Executive for an explanation of the following matters:

1. The Committee observes that in all the instruments in this series, the Executive appears to have the effect of rendering many of the provisions technically of doubtful vires, for example regulation 2 of this instrument.

Regulation 2 as drafted states that an application under section 73(2) of the Act must be made in the form prescribed in the Regulations. This requirement is however set out in the Act itself in section 73(5). The power conferred on Ministers is to prescribe the form and the information that must be supplied not to require applications to be submitted in that form. The Committee suggests that the regulation should have said that “the form prescribed for the purposes of an application by a crofting community body under section 73(2) of the Act shall be in the form set out in Schedule 1 to these Regulations …” or words to that effect. A similar observation is made to the drafting of regulation 3.

2. In regulation 1(2) on page 1, the Committee asks the Executive why it has been thought necessary to define “crofting community body” in the Regulations given the extensive provision in the parent Act.

3. In regulation 3 on page 2 on the last line, the use of the phrase “form of Schedule 2” is odd and is also inconsistent with regulation 2, which uses the word “in”. The Committee suggests that it may have been better drafted if the phrase “set out in” had been used, particularly as “in” could be considered acceptable but “of” appears very strange.

4. Schedule 1, paragraph 3(b) contains the first reference to the ballot, whilst other subsequent references refer to specific provisions in the Act eg paragraph 3(e). The Executive is asked to explain this discrepancy in drafting.

5. Schedule 1, paragraph 3(c) contains a reference to “crofters” which is not defined either in the Act or in the Regulations. The term used both in the Act and indeed in other related instruments is “tenant of a croft”. The Committee seeks an explanation as to why a different term has been used in these Regulations and whether a different interpretation is intended.

6. The Executive is asked to explain the meaning of the word “description” in Schedule 1, paragraph 4(b).

7. In Schedule 1, paragraph 4(g) the wording of the question does not match the wording of the enabling power. The Executive is asked to explain if the words “in inland waters” should proceed the word “on”.

8. Schedule 1, paragraph 6 assumes that there is only one landowner. It is not clear whether this item applies only to the owner of the eligible land or also to the owner of eligible additional land. The Executive is asked for clarification.
9. The Committee assumes that the provision in Schedule 1 paragraph 9(a) on page 5 is intended to mirror the requirement set out in section 73(5)(f). However, that paragraph does not mention “contiguous” land but refers simply to “other land” which therefore could but need not be contiguous. As this provision appears therefore to be of doubtful vires the Committee seeks an explanation.

10. In Schedule 1, the Committee observes that Note 2 on page 7 states (reflecting the terms of the Act) that the description of the property should include all rights and interests in the property. The form then sets out questions under a number of heads. There is, however, no specific head for interests (eg heritable creditors) which are not specifically mentioned in the form. The Executive is asked whether the items in the form are intended to be definitive of all the matters mentioned in Note 2 and, if not, why there is no specific head in the form to allow for additional information to be provided in this respect.

11. The Committee finds Schedule 2, Note 1 on page 9 very misleading. It is not the transfer that must be completed within 6 months but the payment of the consideration. If it is not possible to complete the transfer (which could well be caused by title difficulties) the Act appears to provide that the consideration is consigned to the Land Court until title is completed. The Executive is asked to explain the discrepancy. The Committee also observes that the Note does not mention when the 6 months commences.

12. The Committee made a number of comments on Schedule 2 and the Notes. The Act states that the notice must include an explanation of its consequences. It is obviously a matter of judgement how much information should be included in the form short of a full repetition of the terms of the Act. The Committee notes for example that while the Notes cover the effect on rights of pre-emption, they do not mention that the operation of any diligence in relation to the land (such as an inhibition) is not affected. Also although the obligation on an owner to make title deeds available is mentioned, the obligation to transfer title is not nor the right of the Land Court to grant title if the owner refuses. Another point might be the effect of the decision on the rights of an owner to claim compensation from Ministers under section 83(3) (an owner must do so within 90 days of the decision by virtue of SSI 2004/226 below).

13. The Committee does not suggest that the absence of such information from the Form would necessarily cast doubt on its vires but nevertheless would welcome an explanation for the selection of material to be included in the Notes in order to further consider this point.”

The Scottish Executive responds as follows:

**First Question**

1. The Executive notes the Committee’s observations and agrees that the drafting of the regulations might have approached differently. However the Executive takes the view that the effect of regulation 2 is to prescribe the form of the application, by reference to Schedule 1. The Executive takes a similar view in relation to regulation 3.
Second Question

2. The Executive agrees that it was not necessary to define “crofting community body” in the Regulations, and regrets the inclusion of the unnecessary words. The error will be rectified at the next suitable opportunity.

Third Question

3. Again the Executive notes the Committee’s observation and agrees that the drafting might have been approached differently. The Executive however takes the view that the meaning of the provision is clear.

Fourth Question

4. The Executive accept that there is a discrepancy in drafting here, but consider that there is no ambiguity caused as a result.

Fifth Question

5. The Executive confirm that the term “crofter” is not defined in the Act or in the Regulations, although section 68(2) of the Act does refer the reader to the definition of “crofter” in the Crofters (Scotland) Act 1993. “Crofter” is there defined as the tenant of a croft, and the Executive confirm that no different interpretation is intended here.

Sixth Question

6. The Executive’s view is that “description” in this context means an explanation of what is shown on the map or drawing.

Seventh Question

7. The Executive recognises that paragraph 4(g) in Schedule 1 does not reflect exactly the wording of section 68(2)(d), but does not consider that the addition of the words “in inland waters” is necessary for the meaning to be clear.

Eighth Question

8. The Executive explains that paragraph 6 of Schedule 1 assumes that there is only one landowner because section 73(3) of the Act makes it clear that land owned by separate owners requires to be the subject of a separate applications. In addition, section 70(4)(b), which defines “eligible additional land”, makes it clear that this land must be owned by the owner of eligible croft land.

Ninth Question

9. The Executive agree that section 73(5)(f) does not mention the word “contiguous”. However, it is the Executive’s view that in the circumstances the boundaries and services will inevitably be shared with contiguous land.
The Executive therefore considers that the use of the word “contiguous” is merely explanatory. In the Executive’s view the regulation does not have the effect of creating an additional condition for which there is no vires.

Tenth Question

10. The Executive consider that if there are interests in the land, such as those of heritable creditors, these should be mentioned in paragraph 4(d). The detailed Guidance under preparation and to be issued to crofting community bodies will clarify this.

Eleventh Question

11. The Executive explains that the phrase “transfer is not completed” in note 1 to Schedule 2 is intended to include the case where the price had not been paid.

Questions Twelve and Thirteen

12 & 13. The Executive agrees that it is not possible, short of a full repetition of the terms of the Act, to include in the notes to Schedule 2 of all the consequences of the decision by the Scottish Ministers. The Executive considered that the main points to be made should be the rights of appeal available to landowners and the crofting community body and also the main consequences for the landowner if the decision is to consent. Once again, a much larger amount of information will be available to both landowners and crofting community bodies in the Guidance presently under preparation and to be issued by the Department.

ENVIRONMENT AND RURAL AFFAIRS DEPARTMENT
On 1st June, the Committee asked the Executive for an explanation of the following matters:

1. The Executive is asked to explain the description of regulation 2 contained in the Explanatory Note, since if the intended effect of the regulation is to specify the person who must make the application there would appear to be some doubt as to whether it is *intra vires* standing section 90(5) of the parent Act.

2. The Committee also seeks an explanation of the purpose of the words “whichever date is earlier” in regulation 3, given that the question will only be referred to the Land Court where parties have failed to agree.

3. In addition, the Executive is asked to explain what power authorises regulation 4.

The Scottish Executive responds as follows:

**First Question**

1. The Executive accepts that the Explanatory Note, insofar as it appears to suggest that the effect of regulation 2 is to specify the person who is to make the application, is inaccurate. Regulation 2 in fact prescribes the form and procedure of an application for a grant. The Executive regrets the error and will arrange for the note to be amended by HMSO at the earliest opportunity.

**Second Question**

2. The Executive agrees that a question will only be referred to the Land Court where parties have failed to agree and that the date on which the Land Court determine the matter will always be the later date. The quoted words are therefore unnecessary and have no effect. The Executive is grateful to the Committee for drawing this point to its attention and will make a correction at the next suitable opportunity.
On 1st June, the Committee asked the Executive for an explanation of the following matters-

1. The Executive is asked why article 3 does not appear to deal specifically with all the situations referred to in section 89(1). Given that failure to include all such relevant situations means that there will be no time limit within which claims for compensation must be made, the Committee seeks clarification as to whether this is the intention.

2. The Committee also seeks an explanation of the purpose and meaning of the words “whichever is the earlier” in regulation 3.

3. The Executive is asked whether it is the intention that (as drafted) article 5 should extend to all claims for compensation including claims under article 4.

4. In addition, the Committee seeks an explanation why article 6 appears to confer a right of appeal rather than prescribe the period within which an appeal may be brought given that the right of appeal is contained in section 89(5) of the Act.

5. The Executive is also asked to explain why the Explanatory Note appears to give a misleading explanation of the effect of the Order which contrary to what the Note states is not to prescribe who is to pay the compensation in any given case (provided for in the Act) but to set out the procedures etc for applying for compensation.”

**The Scottish Executive responds as follows:**

**First Question**

1. The Executive consider that article 3 deals specifically with all the situations referred to in section 89(1) by reference to article 2 which refers to section 89(1)(a), (b) or (c).

**Second Question**

2. It is conceivable that a claim for compensation could be made under more than one of the heads of claim specified in section 89(1), and if that situation arises the words “whichever is the earlier” are intended to convey that the time limit of 90 days runs from the date of the first claim arising.

**Third Question**

3. Article 5 is intended to extent to all claims for compensation, including claims under article 4, even though a claim submitted under the latter article will always arise under section 89(1)(a).

**Fourth Question**
4. The Executive considers that article 6 clearly prescribes a time limit for appeal to the Land Court. It does not seek to confer a right given that specific reference is made to section 89(5) of the Act.

Fifth Question

5. The Executive does not agree that the Explanatory Note gives a misleading explanation of the effect of the Order. Reference is made to the first sentence of the Explanatory Note which commences with the words “This Order provides for the procedure by and manner in which compensation for loss or expense may be claimed by any person … under section 89 of the Land Reform (Scotland) Act.”

ENVIRONMENT AND RURAL AFFAIRS DEPARTMENT
THE CROFTING COMMUNITY RIGHT TO BUY (BALLOT) (SCOTLAND) REGULATIONS 2004 (SSI 2004/227)
THE COMMUNITY RIGHT TO BUY (BALLOT) (SCOTLAND) REGULATIONS 2004 (SSI 2004/228)

On 1st June, the Committee asked the Executive for an explanation of the following matters:

1. The Executive is asked to explain why regulation 1(2) contains the definition of “crofting community body”.

2. The Committee seeks clarification of the purpose of the reference to section 71(1)(a) in regulation 3(a).

3. The Executive is asked to explain why there is no definition of “eligible voter” a term not used in the parent Act.

4. The Committee asks whether the reference in regulation 4 to 10 days means 10 clear days.

5. The Executive is asked to explain why regulation 7(2) imposes an obligation on the crofting community to make a return to Ministers rather than simply (as per the enabling power) prescribing the form in which the return is to be made.

6. The Committee asks for an explanation of the vires for regulation 7(3) and for regulation 8.

The Scottish Executive responds as follows:

First Question

1. The Executive is grateful to the Committee for drawing this to its attention and agrees that the definition of “crofting community body” is unnecessary.

Second Question

2. The reason for the reference to section 71(1)(a) of the Act in regulation 3(a) is to direct readers to the definition of the crofting community in that section. The Executive recognises that a reference to section 71(5) might have been more helpful and is grateful to the Committee for drawing this matter to its attention.

Third Question

3. The reason why there is no definition of “eligible voter” in the Regulations is that while that term is not specifically used in the Act, the phrase “persons eligible to vote” is used in section 75(2). The Executive considers that it is clear from that subsection that such persons are as defined in subsection (1) of section 75. It was therefore considered that there was no requirement for the definition in question.
Fourth Question

4. The Executive explains that the reference to 10 days is intended to mean 10 clear days.

Fifth Question

5. The Executive agrees that the obligation imposed on the crofting community to make a return to Ministers in regulation 7(2) is unnecessary as this is prescribed in section 75(4) of the Act. Once again, the Executive is grateful to the Committee for drawing this unnecessary provision to its attention.

Sixth Question

6. The Executive considers it is of great importance that the ballot is conducted in a fair and reasonable manner as prescribed in regulation 2. To that end, it is considered that the provisions made in regulation 7(3) and regulation 8 are supplementary to having a fair and reasonable ballot, and thus fall within the ambit of section 98(3) of the Act.
THE COMMUNITY RIGHT TO BUY (COMPENSATION) (SCOTLAND) REGULATIONS 2004 (SSI 2004/229)

On 1st June, the Committee asked the Executive for an explanation of the following matters:

1. The Executive is asked why the term “Ministers” has been defined in regulation 1(2) when a definition has not been considered necessary in any of the other instruments in this series and the term is defined in the parent Act.

2. The Committee also seeks an explanation of the meaning of and vires for regulation 3(2)(a), given that the Lands Tribunal does not appear to have any power under section 57 of the Act to order a community body to give notice under section 54, and section 63(1) of the Act does not prescribe the giving of a Notice under section 54 as one of the bases for claiming compensation under the Act.

3. The Executive is also asked to explain the purpose and effect of the words “whichever is the later” in regulation 3.

The Scottish Executive responds as follows:

First Question

1. The Committee will note that Footnote (a) explains that section 98(1) of the Act contains *inter alia* a definition of “Ministers”. The definition of “Ministers” in regulation 1(2) was included in error. The Executive is grateful to the Committee for drawing this point to its attention.

Second Question

2. Regulation 3(2)(a) sets out the starting date for the time limit of 90 days within which a claim may be made under section 63(1)(b) of the Act. It does not purport to be other than a mechanism for setting the time limit. The Executive does not therefore consider that there is any difficulty as to vires. The Executive recognises that the paragraph might have been more happily worded but considers that its meaning is clear.

Third Question

3. As explained above, the purpose of regulation 3(2) is to set dates from which the 90 days time limit for claiming runs. It is quite possible for a community body to have given notice under section 54 as a result of an order under section 57, and the date of such notice would be different from the date on which the Lands Tribunal makes an order extinguishing the right to buy. The later date is then taken as the date from which the time commences running.

ENVIRONMENT AND RURAL AFFAIRS DEPARTMENT
THE COMMUNITY RIGHT TO BUY (REGISTER OF COMMUNITY INTERESTS IN 
LAND CHARGES) (SCOTLAND) REGULATIONS 2004 (SSI 2004/230)

On 1st June, the Committee asked the Executive for an explanation as to what is 
comprised in Item 4 of the Schedule to the above Regulations.

The Scottish Executive responds as follows:

Item 4 in the Schedule to the Regulations indicates that if more than one 
extract or copy is obtained there is an additional charge of £6 for each such 
additional extract or copy. As indicated in the accompanying Executive Note, 
these charges mirror the charges presently made for similar services by the 
Keeper of the Registers of Scotland, who is also the Keeper of the Register of 
Community Interests in Land.

ENVIRONMENT AND RURAL AFFAIRS DEPARTMENT
On 1st June, the Committee asked the Executive to explain the purpose of and *vires* for regulation 3 of the above Regulations.

**The Scottish Executive responds as follows:**

The Executive accepts that regulation 3 is merely a restatement of what is contained in section 36(2) of the Act and that it does not constitute a specification of a map, plan or drawing. The Executive accepts that the regulation is unnecessary and is grateful to the Committee for drawing the matter to its attention.

ENVIRONMENT AND RURAL AFFAIRS DEPARTMENT
THE COMMUNITY RIGHT TO BUY (FORMS) (SCOTLAND) REGULATIONS 2004 (SSI 2004/233)

On 1st June, the Committee asked the Executive for an explanation of the following matter-

“The Committee suggests that it might be helpful to the reader if the headings of the forms in Schedules 2 to 6 gave some indication of the purpose of the form (as with the form in Schedule 1), and seeks the Executive’s views on this matter”.

The Scottish Executive responds as follows:

The Executive agrees that it might have been of additional aid to the reader if the headings of the forms in Schedules 2 to 6 gave a further indication of the purpose of the forms. However, the Executive considers that the purpose for which each form is intended is clear from a quick scrutiny of it, and observes that the Explanatory Note details the purpose of each form. In addition, a detailed guidance pack on Part 2 of the Act is being prepared and this will explain the stages in the community right to buy process to which each form relates. In these circumstances the Executive considers that the purpose of the forms in question will be sufficiently clear to readers of the instrument.

ENVIRONMENT AND RURAL AFFAIRS DEPARTMENT
On 1 June 2004 the Committee asked for an explanation of the following matter –

The Executive is asked to explain the reference in article 2(a) to paragraph 5(d) of the Schedule to SSI 2003/441, which does not appear to exist.

The Scottish Executive responds as follows –

The Executive agrees that the reference in article 2(a) to paragraph 5(d) of the Schedule to the 2003 Order is incorrect. The reference should have been to paragraph 15(d) of that Schedule but unfortunately an error appears to have arisen at the final stage in the preparation of the Order and, as a result, the correct reference to paragraph 15(d) did not appear in the version of the Order submitted to the Minister for signing.

The Executive is grateful to the Committee for drawing this matter to its attention. Arrangements are being made to prepare a further Order that will revoke this Order and make the correct amendments to the 2003 Order. The intention is to bring this new Order into force on 17 June 2004 to avoid the incorrect Order coming into force.

SCOTTISH EXECUTIVE JUSTICE DEPARTMENT