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

1. **Declaration of interests:** Members who have yet to declare any relevant interests will be invited to do so.

2. **Delegated powers scrutiny:** The Committee will consider the delegated powers provisions in the following Bill—
   
   School Education (Ministerial Powers and Independent Schools) (Scotland) Bill as amended at Stage 2.

3. **Delegated powers scrutiny:** The Committee will consider responses from the Scottish Executive to points raised on the following Bill—
   
   Fire (Scotland) Bill at Stage 1.

4. **Delegated powers scrutiny:** The Committee will consider the delegated powers provisions in the following Bill—
   
   Water Services (Scotland) Bill at Stage 1.

5. **Executive responses:** The Committee will consider the responses from the Scottish Executive to points raised on the following—
   
   - the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2004, **(draft)**
   
   
   - the Community Health Partnerships (Scotland) Regulations 2004, **(SSI 2004/386)**
the Mental Health (Advance Statements) (Prescribed Class of Persons) (Scotland) Regulations 2004, (SSI 2004/387)

the Mental Health (Patient Representation) (Prescribed Persons) (Scotland) Regulations 2004, (SSI 2004/388)

the National Assistance (Assessment of Resources) Amendment (No.2) (Scotland) Regulations 2004, (SSI 2004/389)

the Teachers (Medical Requirements for Admission to Training and Registration) (Scotland) Amendment Regulations 2004, (SSI 2004/390)

the Fireworks (Scotland) Regulations 2004, (SSI 2004/393)

the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment (No.3) Regulations 2004, (SSI 2004/399).

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

the Mental Health Tribunal for Scotland (Disciplinary Committee) Regulations 2004, (SSI 2004/402)


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

the Debt Arrangement and Attachment (Scotland) Act 2002 (Commencement) Order 2004, (SSI 2004/401)


the Youth Justice and Criminal Evidence Act 1999 (Commencement No.11) (Scotland) Order 2004, (SSI 2004/408).

8. **Inquiry into the regulatory framework in Scotland:** The Committee will consider a draft submission to the Conveners’ Group in relation to a proposed visit to Australia and New Zealand.

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

Agenda Items 2-7

Legal Brief (for members only) SL/S2/04/26/1

Agenda Item 2

Subordinate legislation memorandum Bill SL/S2/04/26/2

Agenda Item 3

Executive response SL/S2/04/26/3

Agenda Item 4

Subordinate legislation memorandum Bill and accompanying documents (circulated to Committee members only) SL/S2/04/26/4

Agenda Item 5

Executive responses SL/S2/04/26/5

Agenda Items 6 and 7

Copies of Instruments (circulated to Committee members only)

Agenda Item 8

Draft Conveners’ Group submission (PRIVATE) SL/S2/04/26/6

Papers circulated for information:

Minutes of 25th meeting, 2004 (Session 2) SL/S2/04/25/M
SUBORDINATE LEGISLATION COMMITTEE

26th Meeting, 2004 (Session 2)

Tuesday, 28th October 2004

Supplementary Memorandum to the Subordinate Legislation Committee by the Scottish Executive

School Education (Ministerial Powers And Independent Schools) (Scotland) Bill as amended at Stage 2

Purpose

This Supplementary 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 amendments made at Stage 2 to provisions in the School Education (Ministerial Powers and Independent Schools)(Scotland) Bill affecting powers to make subordinate legislation. It describes the amendments that were lodged by the Scottish Executive and agreed by the Education Committee.

Policy Context

1. The objective of Part 1 of the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill is to give the Scottish Ministers proportionate powers that will assist them to meet their statutory duty to endeavour to secure improvement in the quality of school education which is provided for Scotland. This statutory duty on the Scottish Ministers is set out in section 3(1) of the Standards in Scotland’s Schools etc. Act 2000 (the “2000 Act”).

2. Part 1 of the Bill, therefore, introduces new ministerial powers to direct action by education authorities and by grant-aided schools if sufficient steps have not been taken to secure improvement following Her Majesty’s Inspectorate of Education (HMIE) inspections. There is no subordinate legislation arising from this part of the Bill.

3. The duty on the Scottish Ministers to secure improvement covers all school education, and Part 2 of the Bill amends the existing legislative provisions for independent schools. The statutory provisions for independent schools are contained in Part V of the Education (Scotland) Act 1980 Act (the “1980 Act”). They cover the process of registration and procedures for addressing concerns about these schools. The objective of Part 2 of the Bill is to update these provisions to ensure that they apply consistently across the independent school sector and that appropriate, timely and proportionate action can be taken by Ministers to address concerns.

4. The provisions of the Bill all amend existing legislation relating to the provision of education. As such, they make amendments of the 1980 Act and the 2000 Act. This reflects the objective of the Bill to build on the existing systems in place to deliver improvement.
OUTLINE AND SCOPE OF THE BILL

5. **Part 1** provides the Scottish Ministers with new powers to direct education authorities and the managers of grant-aided schools to take specific actions to secure improvements following inspections by HMIE. The new provisions are inserted into the 1980 Act and the 2000 Act.

6. **Part 2** contains amendments of the provisions governing independent schools in Part V of the 1980 Act, and amends the definition of an independent school under section 135 of that Act.

7. **Part 3** provides for the short title, commencement, minor amendments and repeals and transitional provisions.

SUBORDINATE LEGISLATIVE POWERS AT INTRODUCTION

8. Part 2 of the Bill gives the Scottish Ministers power to make subordinate legislation as follows:

   - regulations to stipulate what information registered schools must provide for the Registrar and in what form (Schedule 1 amendment to section 98(3)(a) of the 1980 Act);
   - regulations on the form an application for registration of an independent school will take and what information it will contain (section 4(2) inserting section 98A(2) into the 1980 Act);
   - regulations to define "prescribed person". The consequence of a person falling within a class of persons defined as “prescribed persons” being that the Scottish Ministers would consider them not proper to be either a proprietor of an independent school or a teacher (section 4(2) inserting section 98A(6) into the 1980 Act); and
   - commencement orders including transitional and savings provisions (section 9(2) and section 9(3)).

These provisions were explained in more detail in the Memorandum provided by the Scottish Executive for the Subordinate Legislation Committee on introduction of the Bill.

SUMMARY OF AMENDMENTS TO SUBORDINATE LEGISLATIVE POWERS

Amendments affecting subordinate legislation, lodged by the Scottish Executive and agreed by the Education Committee, relate to the following section of the Bill:
In Schedule 1, paragraph 1 (6A): the provisions for preparing the regulations to define “prescribed person” under section 4(2) of this Bill, which inserts section 98A(6) into the 1980 Act.

DETAIL OF AMENDMENTS TO SUBORDINATE LEGISLATIVE POWERS

Definition of a “prescribed person”

The power to prescribe by regulations the class of person that will be defined as a “prescribed person”, so that a person falling within that class of person would not be considered by Scottish Ministers to be a proper person to be the proprietor of an independent school or a teacher, was contained within section 4(2) of the Bill as introduced, inserted as section 98A(6) of the 1980 Act. The power remains unchanged within this section.

Schedule 1, paragraph 1(6A) provides for an amendment to the effect that any regulations made under this section, to prescribe persons not suitable to be teacher/proprietors, will be subject to affirmative procedure. Additionally, it provides for a statutory obligation to consult on a draft of such regulations before they are brought before the Parliament.

These amendments seek to address the concerns that the Subordinate Legislation Committee raised at their meetings on 17 and 25 May, and which were subsequently endorsed in the Education Committee’s report on the Bill at Stage 1.

Other Subordinate Legislative Powers

No other amendments were made to the provisions laid out in the initial memorandum submitted at introduction, and no new powers to make subordinate legislation were introduced.
Thank you for your letter of 21 September, concerning the Subordinate Legislation Committee’s consideration of the Fire (Scotland) Bill.

We were interested in your comments, and I have attempted to clarify in this response the issues you raised.

**Section 10 Conferral of functions in relation to other emergencies**

The Committee can be assured that the additional function order will be subject to full consultation and Scottish Ministers would, as a matter of course, therefore consult the relevant authorities on whom the order may impact.

**Section 36 Framework document**

As the National Framework document will be introduced by an order, we had hoped that it was sufficiently clear that it would be published. The document will be made available to interested parties on the Scottish Executive website (and to MSPs via SPICe) in the usual way. We also acknowledge that without sight of the National Framework, the Scottish Parliament would not be in a position properly to consider the order. A pre-consultation on the draft Framework will also be undertaken with the key stakeholder interests.

With regard to revisions, Scottish Ministers would class a revision as significant if it changed in a material way, the strategic aims and objectives set out in the National Framework.

Any revision of the National Framework (whether deemed significant or not) would be subject to notification to fire and rescue authorities by means of a “Dear Chief Officer” Circular, and would also be published on the Scottish Executive website.

**Section 41 Directions for public safety purposes**

This power is only likely to be exercised at a time of concern for public safety. An example would be during a period of industrial action, where the required emergency cover has to be provided by an alternative source, e.g. the military. In these circumstances, the ability to react quickly and flexibly will be crucial, hence the use of the negative resolution procedure. It is considered that this will provide an opportunity for scrutiny by the Scottish Parliament, whilst not affecting the speed of response.
Section 42  Requirements concerning equipment and services

We do consider that there is a case for consultation of relevant authorities, and such consultation will take place. Our intention would be to seek the views of those relevant authorities affected by any proposed order under section 42.

Section 54  Power to make regulations about fire safety

In response to the Committee’s first comment, the Executive has undertaken to consult on the draft regulations in due course and a Regulatory Impact Assessment will form part of the consultation material. The Scottish Executive will also be undertaking a publicity and awareness campaign to ensure that all persons affected by the revised legislation are made aware of their responsibilities; although we do not anticipate that this will be a new burden in most cases.

The Committee has also queried the drafting of section 54(2) (l). This power specifically enables the Executive to create criminal offences in regulations. The regulations which are to be brought forward under section 54 will concern fire safety on relevant premises. Requirements or prohibitions in those regulations will be backed up by criminal sanctions. For example, a provision may be included concerning fire-fighters’ switches for luminous tube signs. It is the policy of the Executive that an offence will be committed where an individual fails, without reasonable excuse, to install such apparatus in a manner that is compliant with regulations.

Sections 67 to 69 make provision for offences that may be committed under the Bill. Section 67(3) supplements this by providing that where a person fails to comply with requirements or prohibitions in regulations, and where that puts a relevant person at risk of death, or serious injury, in the event of fire, an offence is committed. The penalties for this are also set out in section 67.

However, we require the power in regulations to make breach of certain requirements or prohibitions contained therein an offence, even where that breach does not result in such serious consequences. Returning to the example above, failure to comply with provisions on luminous tube signs will be an offence, even if a relevant person is not subsequently put at risk of death, or serious injury.

Section 72  Meaning of “relevant premises”

The Committee has queried the use of a negative resolution procedure given that this power will be used to amend primary legislation. On further consideration we would agree that an affirmative resolution procedure would be more appropriate. We intend to amend this at Stage 2.

Section 75  Inquiries

The Executive considers that inquiries held under section 74 of the Bill only fall within the scope of section 9 of the Tribunals and Inquiries Act 1992 (“the 1992 Act”) which allows the Lord Advocate (after consultation with the Council on Tribunals) to make rules regulating the procedure to be followed in connection with any statutory inquiry.
Any rules made under section 9(1) of the 1992 Act are subject to the provisions of the enactment under which the inquiry is to be held and of any regulations made under that enactment (section 9(2)).

The Executive considers that the procedure under which an inquiry under section 74 of the Bill will be regulated will be by section 75 regulations and will not require rules to be made under the 1992 Act. Thus the Scottish Ministers will not require to consult the Council on Tribunals (although in theory if the Lord Advocate wished to make rules under the 1992 Act he would require to consult with the Council).

Section 83 Commencement

On the issue of when the sections of the Bill will be commenced, it is likely that the sections relating to new fire safety duties and also the repeal of the Discipline Regulations will be commenced at a later date to allow those affected to become familiar with the new regimes and associated guidance. With regard to fire safety, the Executive is also keen to ensure that there is some co-ordination on a UK basis of the introduction of the provisions in Part 3 of the Bill and the related subordinate legislation (the new fire safety regime is being provided for in England and Wales via a Regulatory Reform (Fire Safety) Order).

We agree with the Committee’s view that section 81(2) (a) of the Bill provides the necessary authority for commencing different provisions on different days. Consequently, anything further is unnecessary. (This also reflects the approach taken in the Anti-Social Behaviour etc. (Scotland) Act 2004.)

I trust the foregoing is of assistance to the Committee, and thank them for their comments.

Yours sincerely

IAN SNEDDEN
Fire Services Division
Executive Responses

- the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2004, *(draft)*


- the Community Health Partnerships (Scotland) Regulations 2004, *(SSI 2004/386)*

- the Mental Health (Advance Statements) (Prescribed Class of Persons) (Scotland) Regulations 2004, *(SSI 2004/387)*

- the Mental Health (Patient Representation) (Prescribed Persons) (Scotland) Regulations 2004, *(SSI 2004/388)*

- the National Assistance (Assessment of Resources) Amendment (No.2) (Scotland) Regulations 2004, *(SSI 2004/389)*

- the Teachers (Medical Requirements for Admission to Training and Registration) (Scotland) Amendment Regulations 2004, *(SSI 2004/390)*

- the Fireworks (Scotland) Regulations 2004, *(SSI 2004/393)*

- the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment (No.3) Regulations 2004, *(SSI 2004/399)*
On 21st September 2004 the Committee asked the Executive for an explanation of the following matters-

“The Committee asks the Executive whether this Order in Council supersedes the existing provision in the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 and, if so, whether it intends to revoke article 6 of that instrument.

The Committee asks the Executive to confirm that the intended commencement date of the Order in Council is immediately before 1 January 2005, as stated in article 1(1), and not the day after the day on which it is made, as stated in the Executive Note.”.

The Scottish Executive responds as follows:

First question

1. The Executive consider that this Order in Council complements rather than supersedes article 6 of the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748).

2. The original provision made in that Order and the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 1999/1756) for “the Scottish farmer” in relation to cross-border holdings under the old Common Agricultural Policy (CAP) subsidy regime governed by Council Regulation (EEC) No 3508/92 (O.J. No. L 355, 5.12.1992, p. 1) modified functions of the Secretary of State so those functions could be devolved to the Executive by the Scotland Act when it took effect for these purposes on 1st July 1999. That subsidy regime has now been replaced by the reformed CAP regime governed by Council Regulation No 1782/2003 (O.J. No. L 270, 21.10.2003, p. 1) and this Order, together with the relative order under section 106 of the Scotland Act, makes equivalent modifications to ensure the necessary functions are available to the extent the Executive do not already have the functions to match the scope of the new regime.

3. In addition, Regulation 3508/92 continues to apply to applications for direct payments in respect of calendar years before 2005 notwithstanding its repeal by Article 153(1) of Regulation 1782/2003 on the reform of the CAP. This EC law saving is made in Article 153(1) of Regulation 1782/2003. Article 6 of S.I. 1999/1748 will continue to operate in respect of functions exercised and legislative competence in relation to the continued existence of Regulation 3508/92 for those payment applications.

4. Accordingly, the Executive does not intend to revoke article 6 of S.I. 1999/1748.
4. The Executive can confirm that the commencement of the Order in Council is intended to occur immediately before 1 January 2005 as stated in article 1(1). The Executive regrets the error in the Executive Note and thank the Committee for allowing this opportunity to clarify this issue.

Scottish Executive Environment and Rural Affairs Department
On 21st September 2004 the Committee asked the Executive for an explanation of the following matters-

1. “The Committee asks the Executive why with respect to regulation 15 it has amended the 1975 Regulations which were revoked and replaced for Scotland by SSI 2003/231.”

2. “The Committee asks the Executive why any amendment is considered necessary given that paragraph 15 of Part 1 of Schedule 1 to the 1975 Regulations and paragraph 15 of Schedule 4 to SSI 2003/231 both already specifically refer to a registered foreign lawyer.”

The Scottish Executive responds as follows:

1. The Executive regrets that the amendment was drafted without account being taken of the change made for Scotland by SSI 2003/231. The Executive acknowledges the error and is grateful to the Committee for drawing it to its attention. The result of the error is that the instrument contains text which has no effect. While this does not affect the validity of the instrument, regulation 15 will be repealed at the next suitable opportunity.

2. The amendment would have been appropriate for Scotland if SSI 2003/231 had not been made, however the Executive acknowledges that it is unnecessary given the existence of that instrument. As explained above, the amendment unfortunately failed to take account of that instrument.

Scottish Executive Justice Department
THE COMMUNITY HEALTH PARTNERSHIPS (SCOTLAND) REGULATIONS 2004
(SSI 2004/386)

On the 21st September 2004 the Committee asked in relation to the above instrument:

“The Committee asks the Executive whether the intention of regulation 5(1) is that a single person shall be appointed to act as both chairman and general manager, or whether separate members will hold each position.”

“The Committee asks the Executive for further explanation in relation to regulation 5(2), as to how the post of general manager will operate, and whether it sees any conflict between a general manager’s contractual obligations to the Board, his or her management functions under regulation 5 and his or her responsibilities as a member of a community health partnership. The Executive is asked to explain the reference to “terms of employment” in paragraph (3)(b) standing the specific reference in sub-paragraph (b) to the terms of employment with the Board.”

“The Committee asks the Executive to explain the purpose of regulation 5(4) given the provisions of regulation 6(1).”

“The Committee asks the Executive whether the reference to a curator bonis in regulation 7(2)(b) should, in light of paragraph 1 of schedule 4 to the Adults with Incapacity (Scotland) Act 2000, be a reference to a guardian appointed under that Act with power to manage the property and financial affairs of an incapable adult.”

“The Committee asks the Executive for an explanation of the vires of regulation 10(1)(page 6), standing the provisions of section 4B(1) of the enabling Act.”

“The Committee asks the Executive for an explanation of the meaning of “specified circumstances” in paragraph 8 of the Schedule; in particular who is to specify and how are circumstances to be specified.”

The Scottish Executive responds as follows –

First question

The Executive agrees that it is not clear whether it is intended that the Board is to appoint separate persons to act as general manager and chairman or a single person to fill both roles. The policy intention is that separate persons are to be appointed in every case and the Executive will amend regulation 5 at the next appropriate opportunity. In the meantime it is anticipated that Boards will appoint separate persons and this will be recommended to them in guidance to be issued by the Executive.
Second question

The policy intention behind regulation 5(2) is that it is thought to be appropriate that the general manager should be an officer of the Health Board (i.e. an NHS employee) in order to ensure his or her accountability in carrying out his or her functions. It is anticipated that the general manager’s contract of employment will reflect the responsibilities of a general manager under the Regulations and it is not thought that any conflict will arise in practice resulting either from the contract of employment, position as general manager or member of the Community Health Partnership.

The Executive is grateful to the Committee for pointing out the discrepancy between the reference to “terms of employment with the Board” in regulation 5(3)(a) and the reference to “terms of employment” in regulation 5(3)(b). This is an omission. The intention is that both should refer to “terms of employment with the Board”. The Executive does not consider however that the omission should cause any practical difficulties as the general manager will only have one contract of employment with the Health Board.

Third question

The policy intention in relation to regulation 5(4) is that the positions of chairperson and general manager are additional to membership. It is considered appropriate that where a person resigns from either position, their membership should automatically cease. Such persons are eligible for reappointment.

Fourth question

The Executive is grateful to the Committee for their comments. The reference to “curator bonis” is an error and the Executive intends to amend at an appropriate opportunity.

However, the Executive does not consider that the error will cause any practical difficulty. Health Boards have a general power under regulation 6(2) to remove persons as members where it does not consider that it in the interests of the community health partnership or the Health Board that that person should continue to hold office as a member. If a Health Board was of the view, following consultation with the Community Health Partnership, that it was not in the interests of it or the CHP to retain a member who lacked capacity, it is intended that it would use the power in Regulation 6(2) to remove that person.

Fifth question

The Executive considers that the provision is within vires. The enabling powers within section 4B(6) of the National Health Service (Scotland) Act 1978 (“the 1978 Act”) include the general power in section 4B(6)(e) to provide in regulations for “such other matters with respect to community health partnerships as the Scottish Ministers think fit”.

Section 4B(1) of the 1978 Act provides that the Scottish Ministers may specify the period within which Boards must prepare and submit schemes of establishment to
them for consideration. That provision does not in the Executive’s view reduce the scope of the general power in section 4B(6)(e) to specify in regulations the period within which, following approval of a scheme of establishment, a community health partnership must be established.

Sixth question

Paragraph 8 of the Schedule to the regulations relates to matters which must be included in standing orders for the regulation of the procedure and business of community health partnerships. Regulation 8(1) of the regulations which introduces the provision provides that standing orders are to be made by the Health Board. Any “specified circumstances” should therefore be specified by the Health Board in the standing order. The policy intention behind the provision is that it should be left to the discretion of the Health Board to specify what these circumstances might be.

For the Scottish Executive
THE MENTAL HEALTH (ADVANCE STATEMENTS) (PRESCRIBED CLASS OF PERSONS) (SCOTLAND) REGULATIONS 2004 (SSI 2004/387)

On 21 September the Committee asked the Executive for an explanation of the following matter-

“The Committee notes that the above Regulations come into force on 1 October, that is, 3 days before the section to which the Regulations relate comes into force for substantive purposes. The Committee asks the Executive for an explanation.”

The Scottish Executive responds as follows:

It is acknowledged that, due to an oversight, the Regulations do indeed come into force 3 days before the section comes into force for substantive purposes. We apologise for this error and will take steps to ensure that this error is not repeated.

We have considered whether this means that we should revoke and remake these regulations. These regulations were made under section 275 of the Act which was brought into force on 1 September 2004 by SSI 2004/367 for the purpose of making the regulations. It is not expressly stated in that SSI that the regulation making power in section 275 was being brought into force so as to make regulations which would only come into force not earlier than 4 October 2004, when that section would come fully into force. Accordingly there are reasonable grounds for taking the view that the regulations are validly made even if they can have no substantive application until 4 October 2004.

Nevertheless, there remains some doubt. Although not expressly stated, it may be thought that there could be a reasonable implication that the regulation making power in section 275 was only being brought into force for the purpose of making regulations when that section was fully in force. It cannot reasonably have been intended that the regulations should be capable of being made so as to come into force before section 275 itself was in force.

Accordingly, we think that the safer view would be to revoke and remake the regulations. Unfortunately, however it will mean that the new regulations will have to breach the 21 day rule in order to come into force on 4 October.
On 21 September the Committee asked the Executive for an explanation of the following matter:

“The Committee notes that the above Regulations come into force on 1 October, that is, 3 days before the section to which the Regulations relate comes into force for substantive purposes. The Committee asks the Executive for an explanation.”

The Scottish Executive responds as follows:

It is acknowledged that, due to an oversight, the Regulations do indeed come into force 3 days before the section comes into force for substantive purposes. We apologise for this error and will take steps to ensure that this error is not repeated.

We have considered whether this means that we should revoke and remake these regulations. These regulations were made under sections 250 and 253 of the Act which were brought into force on 1 September 2004 by SSI 2004/367 for the purpose of making the regulations. It is not expressly stated in that SSI that the regulation making powers in sections 250 and 253 were being brought into force so as to make regulations which would only come into force not earlier than 4 October 2004, when those sections would come fully into force. Accordingly there are reasonable grounds for the taking the view that the regulations are validly made even if they can have no substantive application until 4 October 2004.

Nevertheless, there remains some doubt. Although not expressly stated, it may be thought that there could be a reasonable implication that the regulation making powers in sections 250 and 253 were only being brought into force for the purpose of making regulations when that section was fully in force. It cannot reasonably have been intended that the regulations should be capable of being made so as to come into force before sections 250 and 253 were in force.

Accordingly, we think that the safer view would be to revoke and remake the regulations. Unfortunately, however it will mean that the new regulations will have to breach the 21 day rule in order to come into force on 4 October.
On 21st September the Committee asked in relation to the above instrument:

“The Committee ask the Executive what plans it has to consolidate the principal Regulations”.

The Scottish Executive responds as follows:

The Executive is aware of the need to consolidate the principal Regulations and acknowledged this fact in the Executive Note. The Executive has no immediate plans to consolidate the principal Regulations but will consider doing so, time and resources permitting.
On 21 September 2004 the Committee asked for an explanation of the following matter –

The Executive is asked whether in addition to revoking regulation 3(1)(c) of the Teachers (Entitlement to Registration) (Scotland) Regulations 1991, the words “or (c)” in regulation 3(2) of those Regulations, which now appear to be redundant should not also have been revoked.

The Scottish Executive responds as follows –

The Executive agrees that in addition to revoking regulation 3(1)(c) of the Teachers (Education, Training and Recommendation for Registration) (Scotland) Regulations 1993, rather than the Teachers (Entitlement to Registration) (Scotland) Regulations 1991, it would also have been appropriate to revoke the words “or (c)” in regulation 3(2) as these words cease to have any effect following the revocation of regulation 3(1)(c). However, the Executive does not believe that retention of the words “or (c)” in regulation 3(2) will create any practical difficulty with the operation of the Regulations as a whole and consequently it considers that there is no need to make further Regulations to correct this oversight.
On 21 September, the Committee asked the Executive for an explanation of the following matters:

1. The Committee asks the Executive to explain the meaning of “permitted fireworks night” in regulation 3(2)(a) on page 3.

2. The Committee asks the Executive whether the power to apply for a dispensation conferred by regulation 4(2)(b) and (c) extends to the persons specified only while acting in an official capacity.

3. The Committee asks the Executive to explain the purpose of and vires for these provisions as neither of the enabling powers appears to the Committee to bind the Crown.

The Scottish Executive responds as follows:

The Executive thanks the Committee for these comments on the Regulations.

First Question

1. “Permitted fireworks night” is defined for the purposes of regulation 3 in paragraph 3 of the regulation. The prohibition of using certain fireworks during the hours from 23.00 until 07.00 does not apply during a permitted fireworks night, which is defined in paragraph 3 as meaning either of the first day of the Chinese New Year, 5th November, Diwali, or 31st December, during the hours as specified in that paragraph.

Second Question

2. By virtue of regulation 4(1), a local authority may grant a dispensation to the persons specified in regulation 4(2)(b) and (c) (government or armed forces employees) to enable that person to use fireworks only for the purposes of putting on a firework display for their employer, or for the alternative purposes of a national public celebration or national commemorative event. Accordingly, the power to apply for a dispensation only applies to enable such persons to use fireworks for a display put on by the employer, or for such national events. A government or armed forces employee is not entitled to apply for a dispensation for their own display, or for other purposes that are not a display put on by the employer, or such national events.

Third Question

3. As indicated in response 2, the purpose of regulation 4(1)(a) and (b), in relation to the persons stated in regulation 4(2)(b) and (c) (government and armed forces employees) is to make clear that such persons may only obtain a dispensation from the prohibition on use of certain fireworks during night hours, where they put on the display for the employer, or alternatively, for a national public celebration or commemorative event. An employee who puts on a display for other
purposes during night hours cannot avail themselves of the dispensation provision, and any such person (whether they are a government or armed forces employee or not) who contravenes the prohibition in regulation 3 commits an offence under section 11 of the Fireworks Act 2003.

In relation to the vires of the dispensation provision, Section 4(1) of the Fireworks Act 2003 provides that “fireworks regulations may include provision prohibiting persons from ….using fireworks….during hours of the day so specified.” Section 4(3) makes general provision that if fireworks regulations impose such a prohibition, they may contain provision for granting dispensations from the prohibition. Regulations 4(1) and 4(2) set out the persons and purposes for which such dispensation may be granted. Section 11(1) of the Fireworks Act provides that any person who contravenes a prohibition imposed by fireworks regulations is guilty of an offence. Accordingly, the prohibition (unless a dispensation, on the terms and for the purposes specified applies) applies to any persons, and any persons contravening the prohibition may commit an offence. This applies whether or not the individuals are government or armed forces employees.
On 21 September the Committee asked the Executive for an explanation of the following matters:

2. The Committee asks the Executive to confirm whether “omit” in regulation 2(2) applies to the whole of that paragraph or only to sub-paragraphs (a) and (b).


The Scottish Executive responds as follows-

First Question

In regulation 2(2) “omit” applies to sub-paragraphs (a) and (b) only. The Executive accepts that the provision as drafted could be seen as ambiguous. However sub-paragraphs (c) and (d) include verbs which make it clear that the entries in paragraphs (c) and (d) require to be inserted and substituted, respectively. The Executive is therefore of the opinion that there is no possibility of any real confusion arising as to the effect of the provision made in regulation 2(2).

Commission Directive 2000/24/EC set among other things residue levels for Aramite and was implemented on 1 April 2001 by the Pesticides (Maximum Residue Levels in Crops, Food and Feedings Stuffs) (Scotland) Amendment Regulations 2001 (S.S.I. 2001/84). However, in the consolidation of Part 2 of Schedule 2 to the Pesticides (Maximum Residue Levels in Crops, Food and Feedings Stuffs) (Scotland) Regulations 2000 (S.S.I. 2000/22) in the Pesticides (Maximum Residue Levels in Crops, Food and Feedings Stuffs) (Scotland) Amendment Regulations 2003 (S.S.I. 2003/118) an error was made in the entry for papaya in relation to the maximum residue level for Aramite and therefore a correction to the 2000 Regulations was required.

Commission Directive 2000/57/EC set residue levels for Diphenylamine and was implemented on time on 1 April 2001 by the Pesticides (Maximum Residue Levels in Crops, Food and Feedings Stuffs) (Scotland) Amendment Regulations 2001 (S.S.I. 2001/84). However, in the consolidation of Part 2 of Schedule 2 to the Pesticides (Maximum Residue Levels in Crops, Food and Feedings Stuffs) (Scotland) Regulations 2000 (S.S.I. 2000/22) in the Pesticides (Maximum Residue Levels in Crops, Food and Feedings Stuffs) (Scotland) Amendment Regulations 2003 (S.S.I. 2003/118) an error was made in the entry for papaya in relation to the maximum residue level for Diphenylamine and therefore a correction to the 2000 Regulations was required.
Commission Directive 2002/71 was implemented in the Pesticides (Maximum Residue Levels in Crops, Food and Feedings Stuffs) (Scotland) Amendment (No.2) Regulations 2002 (S.S.I. 2002/489). The Directive set maximum residue levels for Dimethoate which included Omethoate in the residue definition. A separate entry for Omethoate was therefore not required in the 2000 Regulations. The 2002 Regulations inserted the new residue levels for Dimethoate into Part 1 of Schedule 2 to the 2000 Regulations and inserted the pesticide Dimethoate and its residue into Schedule 1 to the 2000 Regulations. However, a consequential amendment was required to remove the pesticide Omethoate and its residue from Schedule 1 to the 2000 Regulations. Regulation 2(2)(a) of S.S.I. 2004/399 made this minor consequential amendment.

Therefore all three Commission Directives have been implemented timeously and the amendments made by regulation 2(2)(a) and (4)(a) and (b) of S.S.I. 2004/399 were made simply to correct the minor errors outlined above.