The Committee will meet at 10.30am in Committee Room 4.

1. **Item in private**: The Committee will consider whether to take items 8 and 9 in private.

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

   Housing (Scotland) Bill at Stage 1.

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

   Licensing (Scotland) Bill at Stage 1.

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

   - the Materials and Articles in Contact with Food (Scotland) Regulations 2005, (SSI 2005/243)

5. **Executive response**: The Committee will consider a response to general questions raised on the citation of the consultation requirements of Article 9 of Regulation (EC) No. 178/2002 in the preamble to relevant Scottish Statutory Instruments.

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

   - the Confirmation to Small Estates (Scotland) Order 2005, (SSI 2005/251)

7. **Draft code of practice not subject to Parliamentary procedure:** The Committee will consider the following—


8. **Delegated legislation conference, Canberra, Australia:** The Committee will consider a draft report.

9. **Inquiry into the regulatory framework in Scotland:** The Committee will consider and agree the main themes of its phase 1 report.

Ruth Cooper  
Clerk to the Committee  
Tel: 0131 348 5212
The following papers are relevant to this meeting:

**Agenda Items 2-4 and 6-7**

Legal Brief (Private) – to follow  

**Agenda Item 2**

Delegated powers memorandum  
Copy of the Bill and accompanying documents (circulated to Members only)  

**Agenda Item 3**

Delegated powers memorandum  
Paper from the Expert Reference Group on the content and purpose of operating plans  
Copy of the Bill and accompanying documents (circulated to Members only)  

**Agenda Item 4**

Executive responses  

**Agenda Item 5**

Executive response  

**Agenda Items 6 and 7**

Copies of instruments (circulated to Members only)  

**Agenda Item 8**

Draft report (Private)  

**Agenda Item 9**

Discussion paper (Private)  
Summary of written evidence (Private)  
Summary of oral evidence (Private)
Purpose

1. This memorandum has been prepared by the Scottish Executive to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.6.2 of the Parliament’s Standing Orders, of the Housing (Scotland) Bill (the Bill). It describes the purpose of each provision conferring power to make subordinate legislation and explains why the matter is to be left to subordinate legislation rather than being included in the Bill. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Policy context

2. The primary objective of the Housing (Scotland) Bill is to improve the condition and quality of private sector housing. To that end it modernises and extends local authority powers to deal with disrepair and lack of maintenance in the sector. It also changes the system of public support for house owners carrying out work on their properties, replacing mandatory grant where a statutory notice is issued with mandatory assistance (which could be grant, loans, subsidised loans, practical assistance and advice). Ministers are given powers to require the provision of information about houses to potential buyers. In the private rented sector, the Repairing Standard that landlords must meet is extended and tenants are given the power to enforce it through the Private Rented Housing Panel. The licensing system for Houses in Multiple Occupation (HMOs) is removed from its current position within Civic Government legislation and provided for expressly in the Bill. The Bill also extends protection for owners of mobile homes who rent site stances.

Parts of the Bill

3. The Bill is divided into eight Parts which deal with proposed measures in the following categories:

- Part 1 Housing standards
- Part 2 Scheme of assistance for housing purposes
- Part 3 Provision of information on sale of house
- Part 4 Licensing of houses in multiple occupation
- Part 5 Mobile homes
- Part 6 Amendment to criteria used to assess suitability to act as landlord
- Part 7 Rights of entry
- Part 8 General and supplementary
Direction making powers

4. In addition to the delegated powers set out below, the Bill confers on the Scottish Ministers powers to make directions and codes of practice, which are not subject to parliamentary procedure. These powers, together with the reasons for their conferral, are listed for information purposes in Annex A.

Delegated powers

5. The Bill confers powers on the Scottish Ministers to make orders and regulations in relation to a range of matters dealt with in the Bill. Some of the powers contained in the Bill are new, while others replace or update existing powers in the Housing (Scotland) Act 1987, the Housing (Scotland) Act 2001 and the Civic Government (Scotland) Act 1982. The powers conferred in the Bill are mainly either of a technical and procedural nature or require, because of their nature, a flexible procedure. It is therefore regarded as appropriate that they be dealt with by subordinate legislation. Regulations and orders under the powers described below are mainly subject to negative resolution procedure in the Scottish Parliament. The Executive has chosen this procedure where the delegated powers sought are required to prescribe procedural detail or other detail to supplement or update the provisions of the Bill. We do not believe affirmative resolution procedure will be necessary in these cases. With regard to certain powers affirmative resolution procedure is considered to be appropriate, as explained below.

Part 1 Chapter 3: The Tolerable Standard

Section 11(4) (inserts subsection (2A) into section 86 of the Housing (Scotland) Act 1987) – Amendment of the Tolerable Standard

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument

6. Section 86(2) of the Housing (Scotland) Act 1987 gives the Scottish Ministers the power by order to vary, extend or amplify the criteria, set out in section 86(1), which establish whether a house meets the Tolerable Standard. Section 11(4) inserts in section 86 of the 1987 Act a new subsection (2A). This specifies that an order under section 86(2) is to be made by statutory instrument and must be approved by resolution of the Scottish Parliament.

Reason for taking power

7. The opportunity is being taken in this Bill to create a parliamentary procedure for orders made under section 86(2) of the 1987 Act. There is currently no procedure for such an order nor indeed any requirement that such an order is a statutory instrument. It is believed that this was an oversight when the 1897 Act was drafted. The Tolerable Standard is a condemnatory standard, which sets a minimum level of acceptable housing, so it is appropriate that changes to it, by way of textual amendment, should be subject to affirmative resolution.
Part 2: Scheme of Assistance for Housing Purposes

Section 68(4) – Assistance for housing purposes

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament.

8. Section 68 gives local authorities powers to provide assistance for housing purposes in various forms, including grants and loans, practical assistance, training, advice, etc. Sections 71 to 90 make detailed provisions on the administration of grants and loans. Subsection 68(4) allows the Scottish Ministers to make similar provision for other forms of assistance. This includes details of the procedure which local authorities should follow in considering whether to provide assistance, other than grants and loans, the procedure to be followed in providing or arranging for the provision of such assistance, and the terms on which such assistance may be provided.

Reason for taking power

9. Grants and loans involve the provision of direct financial subsidy to home owners. It is therefore appropriate that there should be specific procedures to ensure that subsidy is distributed fairly and used properly. For other forms of assistance, Ministers seek to encourage local authorities to innovate, and the policy is that they should have maximum flexibility to do so. However, experience and changing circumstances may show that standard procedures or conditions should be applied to any or all forms of assistance. This power allows Ministers to react to other forms of assistance as they develop.

Section 70(5) – When assistance must be provided

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament.

10. The provision of assistance is, generally, at a local authority’s discretion. Section 70 provides for circumstances where the local authority is required to provide assistance. Those circumstances are where the work is required by a work notice, and where it is required to adapt a house to meet the needs of a disabled person. Subsection (2) provides that assistance must be provided by way of a grant where the work is to provide a standard amenity for a disabled person. Standard amenities are defined by reference to the Tolerable Standard in section 86 of the Housing (Scotland) Act 1987, and are currently a bath or shower, wash-hand basin, sink (all with hot and cold water supplies) and a toilet. The regulation making power in subsection (5) allows Scottish Ministers to alter the definition of standard amenities by adding or removing different elements of the Tolerable Standard.

Reason for taking power
11. Views on what features of a house should be considered so important as to justify mandatory grant may change over time. The elements included in the Tolerable Standard may also change (see paragraphs 6 and 7 above). There needs to be scope to adjust the legislation to reflect such changes, but not to extend standard amenities beyond the basic minimum requirements for a house as set out in the Tolerable Standard.

Section 73(4) – The approved expense

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament.

12. The approved expense is the base figure on which a local authority calculates the amount of grant or loan to be paid. It is based on the estimated cost of works applied for but also takes into account what the local authority considers reasonable for those works, in the individual case or according to a pre-determined schedule of rates. Subsection 73(4) gives Scottish Ministers powers to set statutory maximum levels of approved expense.

Reason for taking power

13. In the past, loans and grants were subject to statutory maximum levels which could only be exceeded with the consent of Scottish Ministers. In the context of a more flexible scheme of assistance, it is more appropriate to allow local authorities freedom in the amount of grant or loan they award. It is for them to ensure that they use their resources in a way that achieves Best Value. However, future circumstances might dictate that limits should be imposed in relation to some types of work, which this power would allow. Ministers might wish to ensure that the local authority had considered the cost effectiveness of alternative approaches such as assistance with house purchase, where the cost of works was unusually high.

Section 74(1) – Assessment of applicant’s contribution

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument

14. This section empowers the Scottish Ministers to establish a test of resources to determine the amount which the applicant should contribute to the approved expense where a grant or subsidised loan is given. The assessment may take into account the financial circumstances of the applicant and members of their family or household, and any other criteria which the Scottish Ministers think fit. The regulations may also allow for local authorities to reduce the applicant’s contribution in specified cases, with Ministers’ consent.

Reason for taking power
15. The principle that grants for housing purposes should be subject to a centrally determined test of resources was established in the Housing (Scotland) Act 2001 and is repeated here. It is also applied to subsidised loans, which were not previously available. The test of resources has a significant impact on how public subsidy is distributed, but at the same time it requires a great deal of detail, and is also likely to need periodic amendment reflecting changes in economic conditions, tax and benefit arrangements and so on. It is therefore considered appropriate to specify the test in regulations, but using affirmative procedure to ensure effective Parliamentary scrutiny.

16. In some circumstances, such as local regeneration projects, additional subsidy is required to ensure that works are carried out and the local authority’s objective is achieved. The policy is that Ministers will specify circumstances in which this may be permitted, in the light of issues, approaches and priorities as they develop. Local authorities will then be able to seek approval for the particular situation in which they wish to use this provision, and the amount by which grants and loans will be increased for applicants in that area or category.

**Section 76(6) – Amount of grant or loan**

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17. Subsidised loans are made up of a repayment element, which has to be repaid at a standard rate of interest over a specified period, and an interest-free element, equivalent to the amount of a grant, to be repaid on disposal of the property. The amount of a grant or the interest-free element of a subsidised loan is normally calculated by subtracting the applicant’s assessed contribution from the approved expense. Subsection 76(6) provides that Ministers may specify cases in which the amount of grant or interest-free element is no less than a set percentage. Ministers may also agree to a percentage set by a local authority for certain cases.

**Reason for taking power**

18. This section continues the provision for minimum percentage subsidy, currently found in the Housing (Scotland) Act 1987 by virtue of provisions introduced by Housing (Scotland) Act 2001. The basic policy is that subsidy should only be available where the individual cannot afford necessary repairs and improvements, and this is implemented by the test of resources. However, Ministers may wish to actively encourage some types of work, by providing for a minimum level of subsidy, regardless of income. Those on lower incomes may receive more than the minimum, as the test of resources may determine. Examples of types of work to which minimum percentage grant currently applies include adaptations for disabled people, common repairs (to encourage neighbours to co-operate) and bringing a house up to the tolerable standard. These categories are likely to need amendment as priorities change, so it is appropriate to specify them in subordinate legislation. However, as with the test of resources, this can have a significant impact on the distribution of subsidy, and therefore affirmative procedure will be used.
19. Local authorities may seek approval to raise the minimum subsidy level in cases where they consider this is necessary, similar to the power to increase the level of means-tested subsidy under section 74(1).

Section 88(4) – Local authority payments to not for profit lenders

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20. Instead of making loans directly to individuals, a local authority may make arrangements with certain designated lenders for that lender to make loans on the authority’s behalf. Designated lenders are specified in terms of section 88(2) as being not for profit organisations who are in the business of providing assistance by way of loans for housing purposes. The arrangements may involve the local authority making payments into the lender’s loan fund, or to cover the lender’s administrative costs. Ministers may make regulations to amend the definition of a “designated lender” for this purpose, and to make provision as to the terms on which such payments may be made.

Reason for taking power

21. As for assistance given directly to individuals, the policy is that local authorities should be free to make whatever arrangements they think fit with lenders who will make loans to individuals for housing purposes. No such arrangements exist in Scotland as yet. However, as they develop, it may appear that standard terms should be placed on the payments made to such lenders. There may also be a need to fine-tune the definition of a “designated lender”, as the loans market evolves.

Part 3: Provision of information on sale of house

Section 96(2) – Duty to provide information to potential buyer

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22. Section 96(1) requires the person who is responsible for marketing a house that is on the market (that is, either the seller or the seller’s agent) to provide a copy of prescribed documents relating to the house to a potential buyer who requests a copy. Section 96(2) confers on the Scottish Ministers a power to set out in regulations the period within which the responsible person must comply with such a request.

Reason for taking power

23. This power is needed since it may be necessary in the light of experience to vary the timescale for compliance with the requirement to provide information.
flexibility would allow Ministers to balance commercial practice with the need to set a timescale that meets the aims of the legislation.

Section 101(1) – Information to be held or provided to potential buyers

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament.

24. Section 101(1) confers on the Scottish Ministers a power to make regulations prescribing the documents in relation to a house on the market that a responsible person must hold and provide to a potential buyer. The regulations may make further provision about the prescribed documents, as the Scottish Ministers think fit. Subsection (2) specifies that a document may be prescribed only if the Scottish Ministers consider that it relates to the physical condition or value of a house, or any other matter connected with a house or its sale that would be of interest to potential buyers. Subsection (3) provides that the regulations may deal with the form and content of a prescribed document, who can prepare a document, the maximum period between preparation of a document and the date on which the house is put on the market, and the period for which a document is valid and circumstances that will invalidate it.

Reason for taking power

25. It is essential that Ministers have the flexibility to respond to buyers’ changing needs for information about houses for sale and to changing conditions in the housing market. This section sets out the kind of information that could be required, but the specific details, which may need to be varied, would be more appropriately dealt with in regulations.
Section 102 – Exceptions from duty to have or provide information

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament.

26. Section 102 confers on the Scottish Ministers a power to make regulations setting out exemptions from the duties to hold and provide prescribed documents. Exemptions may apply to categories of people, periods of time or circumstances in which a person does not need to hold or provide a prescribed document, or other specified exceptions.

Reason for taking power

27. It is expected that it would be appropriate that certain types of property transactions will be excluded from the duty to provide information. This power will allow Ministers the flexibility to vary these exceptions as required.

Section 108(4) – Penalty charge notices

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament.

28. Section 108(4) confers on the Scottish Ministers a power to make regulations making further provision about penalty charge notices and other notices mentioned in schedule 3. Such regulations may prescribe the form of notices, circumstances in which penalty charge notices may not be given, methods by which notices must be given and methods by which penalty charges may be paid.

Reason for taking power

29. These detailed technical matters are more appropriately dealt with in regulations rather than in primary legislation. Provisions may need to be adjusted as processes develop and conditions change.

Section 110(3) (inserts section 63A into the Housing (Scotland) Act 1987) – Information for tenants exercising right to purchase

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament.

30. Section 110(3) inserts a new section 63A into the Housing (Scotland) Act 1987. This new section confers on the Scottish Ministers a power to make regulations prescribing additional information to be supplied by a landlord to a tenant who has served an application to purchase under the “right to buy” provisions contained in the 1987 Act. The regulations may also make further provision about that information. The prescribed information may include a reasonable estimate of
costs of maintaining the house and any common parts; how long common parts, fixtures and fittings and other prescribed items are expected to last, with an estimate of replacement costs; and other matters that may be of interest to the tenant who has applied to purchase.

Reason for taking power

31. The additional information is of a detailed nature and best dealt with in regulations. Ministers will also have the flexibility to respond to changing conditions. This regulation making power will ensure that the required information best meets the needs of both disposing landlords and tenants.

Part 4: Licensing of Houses in Multiple Occupation

Section 119(2) – HMOs exempt from licensing requirements

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument

32. Section 118 provides the definition of an HMO. In general, all HMOs require to be licensed by the local authority. Section 119(1) sets out categories of HMO which are exempt from licensing. Subsection (2) allows for Ministers to alter the exempt categories by order.

Reason for taking power

33. The provisions on HMO licensing restate, with amendments, existing provisions under the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000. The categories of exemption have needed amendment in the past, and may need to be amended again in the future. For example, changes were made when the Care Commission took over regulation of care homes and school accommodation services, and small housing co-operatives were exempted when it was realised that they were unintentionally caught by the original legislation. Because the categories of exemption could have significant impact on the sectors affected, this power is subject to affirmative procedure.

Section 120(1) – Power to designate HMOs capable of being exempted by local authorities

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament.

34. Subsection (1) gives Scottish Ministers power by order to designate types of HMOs which may be exempted from licensing by a local authority. Subsection (2) provides that a local authority may then, by order, exempt such HMOs in all or part of their area.

Reason for taking power
35. Significant changes are taking place in the regulation of the private rented sector at present, through this Bill and elsewhere. In particular, the Antisocial Behaviour etc (Scotland) Act 2004 provides for all private landlords to be registered with the local authority, having been passed as fit and proper persons to let property. It is thought that registration, and other developments, may provide sufficient control over some categories of HMO, without the need for licensing. This power would enable the Scottish Ministers to indicate that in general such HMOs need no longer be licensed. However, there could still be problems in particular areas, for example where that type of HMO is typical accommodation for students or temporary workers in that particular area, but not in other areas. Subsection (2) allows local authorities to decide to continue the licensing requirement in such areas.

Section 126(2) – Conditions

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament.

36. Section 126(1) provides that an HMO licence may include such conditions as the local authority thinks fit. Under section 138(2), breaching a condition of a licence is an offence. Section 126(2) enables Ministers to set statutory conditions which local authorities must include in specified types of HMO licence.

Reason for taking power

37. One of the concerns about the existing system of HMO licensing under the Civic Government (Scotland) Act 1982 has been inconsistency in the conditions applied by local authorities. The system provided for in this Bill requires local authorities to have regard to guidance issued by the Scottish Ministers (section 147), but this section also allows Ministers to impose certain conditions by order if that appears necessary in the light of changing market conditions and expectations.

Section 145(2) – Fees

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament.

38. Section 145(1) allows local authorities to charge fees in relation to HMO licensing. Subsections (2) and (3) empower Ministers to make provisions about the charging of fees, including setting a fixed or maximum amount, setting out how fees are to be arrived at and specifying circumstances in which no fee will be payable.

Reason for taking power

39. The level of fees charged for HMO licensing, and the wide variation in fees across Scotland, has been a significant cause of complaint and concern under the existing system. These provisions will help to ensure that local authorities charge at
an appropriate level, and provide for greater consistency. The actual determination of fees is a level of detail which it is appropriate to place in secondary legislation.

Part 5: Mobile Homes

Section 150 (inserts section 1(2)(e) into the Mobile Homes Act 1983) – Particulars of site agreements to be given in advance

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament.

40. Section 150 inserts a new section 1 in the Mobile Homes Act 1983. Inserted section 1(2) provides that, before making an agreement for the let of a stance on a mobile home site, the site owner must give the proposed occupier of the stance a written statement. The statement should specify the parties, the land forming the stance and the express and implied terms of the agreement. Inserted section 1(2)(e) gives the Scottish Ministers powers to make regulations prescribing other requirements with which the statement must comply. These may make different provision for different cases or descriptions of cases (inserted section 10(1)(b)).

Reason for taking power

41. The new section 1 lists the essential core elements of the written statement on the face of the Bill. However, it may be necessary to require further matters to protect the parties. The section replaces with amendments an equivalent section in the Mobile Homes Act 1983, which contains the same regulation-making power. Although that power has not so far been used, it is desirable to retain flexibility to deal with problems or abuses as they come to light. For example, there has been discussion about the way in which the land should be identified. At present there are practical reasons why a requirement to produce a scale plan could create difficulties, and that is not required. If in future those difficulties could be overcome, it might be desirable to make the use of a plan a requirement.

Section 153 (inserts section 2B(1) into the Mobile Homes Act 1983) – Power to amend terms implied in site agreements

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument

42. The Mobile Homes Act 1983 provides in Schedule 1 for a range of terms to apply to any agreement between the operator of a protected mobile home site and a mobile home occupier for the let of the stance to that person. These are known as implied terms. Section 152 of the Bill amends some of those implied terms and section 153 inserts in the 1983 Act the power for Ministers to make other amendments to the implied terms by order, after consultation. The power is limited so that the first order can apply to all agreements including those then in force, but
subsequent orders can only apply to agreements made after the relevant order comes into force.

**Reason for taking power**

43. The Minister for Communities wrote to the Convener of the Subordinate Legislation Committee on 6 January 2005 with a full explanation of the reasons for seeking this power. (A copy of the letter is in Annex B.) In essence, the changes to implied terms contained in the Bill deal with matters where there is the clear potential for abuse. It is generally accepted that further changes to the implied terms are desirable in the light of changing circumstances over the 20 years since the current set of terms was established, but the arguments on these other matters are less clear-cut and they need to be considered as a package, taking into account the effect on mobile home owners as well as the effect on the economic viability of mobile home sites. The powers will allow Ministers to consult on a package of changes and to introduce them for all mobile home agreements in order to set the arrangements for this sector on a new and fairer footing. The powers will thereafter allow Ministers to make adjustments from time to time for new agreements to reflect changing circumstances and market conditions. Because the regulations could have a significant impact on the mobile home sector, the power is subject to affirmative procedure and a specific requirement to consult.

**Part 8: General and supplementary**

**Section 162(1) – Forms**

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44. Section 161 defines a “formal communication” as any of a list of written communications in relation to the Bill, including notices and licences. Section 162(1) confers on the Scottish Ministers a power to make regulations providing for the form and content of any formal communication. Subsection (2) requires that any formal communication for which such provision is made must be made in that form. Section 71(2)(d) refers specifically to regulations made under section 162 in relation to applications for grants and loans.

**Reason for taking power**

45. The details of forms are a technical matter that is most appropriately dealt with in regulations rather than primary legislation.

**Section 164(1) – Ancillary provision**

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46. Section 164(1) confers on the Scottish Ministers the power by order to make incidental, supplemental, consequential, transitional, transitory or saving provisions that they consider necessary or expedient in relation to the Bill. Subsection (2) provides that such an order may modify any enactment, instrument or document. Where an order adds to, replaces or omits any part of the text of an Act, that order will be subject to affirmative resolution procedure. In all other cases, negative resolution procedure will apply.

**Reason for taking power**

47. This power will allow flexibility if further changes are found to be necessary as a result of the new laws established by the Bill on dealing with problems in housing conditions and related matters and the repeal of existing laws. It will also, for example, allow savings provisions to ensure that procedures that are already underway in terms of existing laws, such as the award of grants, can be completed. Any provision made under this power must be considered to be necessary or expedient for the purposes or in consequence of the Bill’s provisions, so its extent is constrained by their scope. Any changes to primary legislation will require to be approved by an affirmative resolution of the Scottish Parliament.
Section 169(3) – Short title and commencement

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: None.

48. Section 169(2) provides that sections 164, 165 and 169 will come into force on Royal Assent. Section 169(3) provides that the rest of the Bill will come into force on such day as the Scottish Ministers may by order appoint.

Reason for taking power

49. The order making power is required to ensure effective commencement of the Bill.

Schedules

Schedule 2 paragraph 7(1) – Private Rented Housing Committees: Procedure etc

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament.

50. Section 22(1) provides for a tenant in the private sector to apply to the Private Rented Housing Panel for determination of whether his or her landlord has complied with the duty to ensure the house meets the repairing standard set out in section 14. The application is considered by the President of the Panel who may reject it or refer it for determination to a Private Rented Housing Committee. Schedule 2 is introduced by section 22(5) and makes detailed provision about the procedures that the Committee should follow, and paragraph 7(1) of Schedule 2 gives power to Scottish Ministers to make regulations to make further provision about the making or determination of applications under section 22(1).

Reason for taking power

51. The provisions set out in the Bill about the making or determination of applications are intended to ensure that the Panel and Committees have sufficient information and powers to make fair and timely decisions based on sound evidence. They reflect experience drawn from similar bodies, but this relates to other circumstances and subject matter. It may prove that in order to achieve the objective, aspects of the processes involved should be defined more fully or should be specified where currently they are dealt with administratively. It is considered that regulations are an appropriate way of doing this.

Schedule 3 paragraph 2 – Penalty charge notices

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament.
52. Section 108(1) provides for an authorised officer of an enforcement authority to give a penalty charge notice to a person that the officer believes has breached a duty to hold or provide a prescribed document. Subsection (3) provides that schedule 3 to the Bill, which makes further provision about penalty charge notices, has effect. Paragraph 2 of schedule 3 confers on the Scottish Ministers a power to make regulations prescribing for the time being the penalty charge specified in a notice, which must not exceed £500.

Reason for taking power

53. This power is necessary to allow the amount of the penalty charge to be varied so that it remains at an appropriate level without recourse to primary legislation.

Schedule 4, paragraph 1(2)(d) – Content of application

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament.

54. Schedule 4 deals with procedures relating to applications for HMO licences, and paragraph 1 sets out the required contents of an application. The basic requirements are the applicant's name and address and the address of the HMO, and Ministers may prescribe additional information to be required in all cases. Local authorities may additionally ask for other information that they may reasonably require.

Reason for taking power

55. The content of an application is a detail which it is appropriate to be able to adjust by secondary legislation. Items that Ministers may wish to see included in an application form in due course could include information relating to landlord registration under the Antisocial Behaviour etc (Scotland) Act 2004, or additional information to help confirm the landlord's identity.

The Scottish Executive
7 March 2005
Annex A

DIRECTION MAKING POWERS OF THE SCOTTISH MINISTERS

Direction making powers

Section 6(1) – Directions concerning identification of housing renewal areas

Reason for conferral of Direction making powers not subject to parliamentary scrutiny

To ensure consistency in the criteria used to identify areas suitable for designation as housing renewal areas, while taking account of different circumstances.

Section 91(1) to (3) – Directions in relation to the provision of assistance for housing purposes.

Reason for conferral of Direction making powers not subject to parliamentary scrutiny

To ensure consistency on details of the provision of assistance where guidance might not achieve national policy, and to deal with particular areas or cases as they arise.

Schedule 4, paragraph 3(5) – Directions about circumstances when local authority must omit information from notice of HMO licence application, for security reasons.

Reason for conferral of Direction making powers not subject to parliamentary scrutiny

To allow rapid action when cases arise where publication of information would place individuals at risk.

Code of practice

Section 155(3) – Power to make a code of practice known as the Letting Code about standards of management in the letting of houses.

Reason for conferral of powers to make code of practice not subject to parliamentary scrutiny

Although the Code will assist local authorities in judging whether a landlord is fit and proper it will not be a direct obligation on landlords, but rather a statement of accepted good practice.

The Scottish Executive

7 March 2005
TEXT OF LETTER DATED 6 JANUARY 2005 FROM THE MINISTER FOR COMMUNITIES TO THE CONVENER OF THE SUBORDINATE LEGISLATION COMMITTEE

Paragraph 43 refers.

Subordinate Legislation Committee: Housing Bill

I would like to raise with you an aspect of the forthcoming Housing Bill. We are in the process of drafting the Bill provisions and after discussions between my officials and your staff, I think it would be a courtesy to alert you to what we propose.

Proposals in Bill: powers to amend schedule 1 of the Mobile Homes Act 1983

The matter in question is connected with the protections afforded to occupants of mobile homes. Legislation dating back to 1960 provides a range of protections for people who choose this form of accommodation as their long-term residence. I should make clear at the outset that the changes introduced inadvertently for Scotland by Westminster through the Housing Act 2004 relate to only a small part of the proposals relating to mobile homes in our Bill and have no bearing on the provisions discussed in this letter.

The Mobile Homes Act 1983 contains a number of protections in connection with the agreement between a site operator and a resident for the occupation of a stance. Provisions about supplying the occupant with a written statement of terms and about the types of terms that must be included are on the face of the 1983 Act and we are proposing to amend them in some respects through the Housing Bill. The 1983 Act also specifies, in schedule 1, contractual terms which shall always form part of the terms for occupying the stance. These are known as “implied terms” because they are deemed to be part of the agreement reached between the two parties whether or not they are explicitly stated in the agreement.

A number of aspects of the implied terms are in need of amendment. Some substantial aspects have been of clear concern and in the light of consultation we propose to deal with them on the face of the Bill. For example, a site operator can currently terminate an agreement if the court is satisfied that having regard to age and condition the home is having a detrimental effect on the amenity of the site. We are proposing to remove the reference to age and to allow for a court to adjourn for the owner to rectify the situation by appropriate repairs. These changes will prevent operators ejecting owners unnecessarily in order to obtain a higher income from selling a new home on the stance.

There are, however, other aspects of the implied terms where the need for adjustment and the way it might be done are less clear. They form part of the balance between operators’ and residents’ interests which, combined with the economics of operating sites, needs to be right if there is to continue to be a supply of well-managed sites for those who need them. Any changes need to take account of full consultation and consideration. It is also desirable to be able to continue to adapt to changing market conditions. We are therefore proposing to include in the
Housing Bill powers for Scottish Ministers to amend schedule 1 of the Mobile Homes Act 1983 as it applies to Scotland, for the purpose of modifying the statutory implied terms. This would be a power to amend primary legislation through subordinate legislation. I am aware that this is an approach which should not be used without good reason. The Committee will no doubt wish to explore those reasons carefully, and that is why I think it might be helpful to provide information in advance of the introduction of the Bill.

Context: mobile homes market

In deciding how to approach this matter we have looked at the situation across Great Britain. The mobile home market in Scotland is relatively small by comparison with England and Wales, presenting a relatively lower level of problems and disputes. Scottish legislation in relation to mobile homes has been part of GB legislation from the first relevant statute in 1960 until devolution. The organisations representing site operators and residents have a GB identity. The market issues are generally discussed from a GB perspective. We therefore feel that there is an argument for maintaining consistency of policy between Scotland, England and Wales unless evidence emerges which point to the desirability of a different approach.

Context: developments in England

The Office of the Deputy Prime Minister (ODPM) has been examining this policy area and has taken forward legislation on mobile homes. The Housing Act 2004 contains amendments to the 1983 Act (applying only to England and Wales) which are similar to those which we intend to include on the face of the Housing Bill. It also contains a power for the Secretary of State to make subordinate legislation amending, for England and Wales, the implied terms contained in the primary legislation which is schedule 1 of the 1983 Act. The exercise of that power is subject to consultation and the proviso that only on the first use of that power can the amendments have retrospective effect in the sense of inserting implied terms into existing agreements.

Timetabling

The steps taken by ODPM have practical consequences for us. It has recently consulted on the way in which the power to amend schedule 1 might be used. This involved consultation with representative organisations and, because of the nature of the sector as I have described, the responses covered Scottish interests. We felt that it was sensible to use the outcome of the ODPM consultation exercise as the starting point for a consultation with a specifically Scottish focus, given that the main organisations concerned have a GB remit (as indicated above) and will already have thought through the issues in detail in that context. We will in effect be saying, ‘against the background of the implied terms that will apply in England and Wales what is the appropriate set of implied terms for Scotland?’.

The consultation paper will need to state the changes decided for England (we understand that they are likely to regulate in the near future) and there will need to be time for a three-month consultation period and for proper consideration of the outcome before finalising proposals. For these reasons it would not be practicable to undertake a meaningful consultation and include the resulting proposals on the face
of our proposed Bill. We therefore wish instead to provide powers that will allow us to conduct a consultation that allows respondents to take into account changes in the rest of GB and then make changes to schedule 1 following parliamentary scrutiny under the affirmative procedure.
Flexibility

It is also the intention that the powers will allow further changes in the future, beyond those currently contemplated. We think it is desirable to allow adjustment to reflect changing conditions within the mobile home market. The range of detailed changes currently thought to be desirable has built up since the last primary legislation in this area in 1983. Individually the changes are relatively small but the combined effect of the likely package could be significant. It is therefore important to apply them to the whole industry in order to set it on a new footing with an appropriate balance of rights and responsibilities, and that is why it is intended that the first use of the powers will have retrospective effect. However, having achieved that there will be less of a case for changing existing agreements in the future, and there is therefore a reasonable case that the retrospective effect of the powers should be limited to their first use.

Level of scrutiny

There is the further question whether the details of changes to schedule 1 should be matters which need the level of scrutiny that is accorded to primary legislation. I will not go into detail here on the likely issues which would be dealt with using these powers, but my view is that this type of detail can properly sit within subordinate legislation given the level of consultation with stakeholders and the level of scrutiny of subordinate legislation which are now standard practice. We are proposing that the affirmative procedure would apply in this instance.

The underlying principle that there are implied terms would continue to sit in the primary legislation. A recent parallel for this type of material to be in secondary legislation is the powers contained in section 7 of the Housing (Scotland) Act 2001 for Ministers to specify occupancy terms for hostel and other short-term accommodation.

Conclusion

The reasons I have given in connection with timetabling and flexibility make a power to amend primary legislation by subordinate legislation desirable. Subordinate legislation is appropriate for the material which is to be the subject of the proposed power, given the intention that the affirmative procedure would be used and the power would have retrospective effect only on first use. The legislative arrangements we propose are similar to those contained in the Housing Act 2004, but I am certainly not suggesting that we should create a similar power simply because one exists in the Housing Act 2004. The need for the power arises from the practical circumstances that I have described.

I apologise for such a lengthy letter but for a relatively small area of law this is a complex issue. If there are points requiring clarification your clerk’s office may wish to contact my officials direct – the initial contact is Roger Harris of the Private Sector Housing Team at 0131 244 7952, roger.harris@scotland.gsi.gov.uk.

MALCOLM CHISHOLM

The Scottish Executive
7 March 2005
Purpose

This memorandum has been prepared by the Scottish Executive to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.6.2 of the Parliament’s Standing Orders, of provisions in the Licensing (Scotland) Bill 2005. It describes the purpose of each of the Bill’s provisions and the reasons for seeking the proposed powers.

Policy context

The provisions in the Bill are broadly based on two independent reports. Those reports are:

- the Report of the Nicholson Committee - established in 2001 - “to review all aspects of liquor licensing law and practice in Scotland, with particular reference to the implications for health and public disorder; to recommend changes in the public interest; and to report accordingly”; and

- the Report of the Daniels Committee - established in 2003 - “In the light of the evidence from Sheriff Principal Nicholson’s Review of Liquor Licensing and from consultation on the Antisocial Behaviour Bill, to consider the issues surrounding the regulation of off-licences and to make recommendations on:
  - the better scope for engagement and consultation at community level on the grant of licences; and
  - management and enforcement mechanisms which will help to prevent off-licences being a focus of antisocial behaviour”.

On 17 May 2003 Ministers also published a White Paper: The Licensing (Scotland) Bill – “A Consultation on Liquor Licensing”. The Licensing (Scotland) Bill seeks to establish a modern licensing system for Scotland which reflects the needs of individuals, communities, the licensed trade and consumers. The proposals in the Bill complement the Executive’s approach to tackling antisocial behaviour and the Plan for Action on Alcohol Abuse, but at the same time improve the environment for social drinking. The Bill establishes a framework under which local authority Licensing Boards will have the flexibility to deal with local issues. However, this is balanced with a clear, effective and mandatory national framework within which those Boards must operate. The proposals in the Bill are underlined by a philosophy provided through 5 statutory licensing objectives. These objectives represent the values on which the new Scottish licensing system is based, the criteria against
which the system should be measured and to which Boards must have regard in carrying out their functions under the Bill.

Secondary Legislation

The Nicholson Committee, in their report, argued that, since drinking habits and associated problems relative to public health and public order can change very quickly, it is desirable that there should be a means whereby further legislative intervention of an informed kind can take place with a minimum of delay. The Committee noted that many of their consultees felt that it was undesirable that a matter as important as liquor licensing law and practice should be subject to review at only very infrequent intervals.

They also noted that purely procedural provisions are scattered throughout the Licensing (Scotland) Act 1976, resulting in a situation in which it is often difficult to establish with certainty the procedures which must be followed. In addition to the difficulty of locating and interpreting relevant procedural provisions in the 1976 Act, any changes can be made only by amendment by further primary legislation. The Committee saw a clear advantage in providing for procedural matters to be dealt with by way of secondary – rather than primary – legislation: where practice, experience or changing social trends indicated a need for change, this could be achieved much more quickly by secondary legislation.

A further advantage of setting certain procedures out in secondary legislation, as opposed to allowing Boards to make their own rules, is the contribution this will make to national consistency within the system and the advantage this has for business and for the public in understanding, for example, how to make applications and objections.

The Nicholson Committee also recommended that, to ensure the system was kept under review and could reflect emerging problems and concerns, there should be a National Licensing Forum which would offer advice to Ministers. We are committed to establishing this forum, but this will not be a statutory body (ie neither primary nor secondary legislation is required to set it up). One of the first duties of this forum will be to give advice on the Guidance to be distributed to Licensing Boards about the new system. This Guidance, in line with section 133 of the Bill, will be laid for approval by affirmative resolution before the Scottish Parliament.

Outline and scope of the Bill

The Bill covers all aspects of liquor licensing and is split into 9 Parts.

Part 1 Core provisions

Part 1 provides an interpretation of the terms “alcohol” and “sale of alcohol” for the purposes of this Bill and contains the prohibition on the unlicensed sale of alcohol.
Part 2 provides for the continuation of current Licensing Boards as the bodies which will be, as before, responsible for all matters relating to granting of licences under the licensing regime. It also provides for the establishment of new Local Licensing Forums, which will allow representation of local interests, and for the appointment of Licensing Standards Officers, who will be employed by local authorities to police licensed premises to make sure they operate in accordance with their licence and to provide a source of mediation and advice for both local communities and the licensed trade.

Part 3 Premises licences

Part 3 introduces the new premises licence established by this Bill and sets out the framework for consideration of the grant or refusal of applications for licences and for determination of applications for variations, reviews and transfers of premises licences.

Part 4 Occasional licenses

Part 4 sets out the procedure for application and determination of the grant or refusal of occasional licences for special events.

Part 5 Licensed hours

Part 5 establishes the new licensing hours regime which replaces the concept of “permitted hours” under the Licensing (Scotland) Act 1976. It also sets out the criteria against which the granting of any “24-hour” licences must be considered by Licensing Boards.

Part 6 Personal licences

Part 6 introduces the new personal licence established by this Bill and sets out the framework for the grant or refusal of applications for these licences. It also provides for circumstances under which personal licences can be revoked and a requirement for mandatory training for personal licence holders.

Part 7 Control of order

Part 7 sets out the conditions and procedure under which closure orders and exclusion orders for licensed premises can be made in the interests of public safety.

Part 8 Offences

Part 8 sets out offences with respect to the sale of alcohol to children or young persons, the purchase of alcohol by children or young persons, the delivery of alcohol to children or young persons, the purchase of alcohol by or for a child or young person and requesting a child or young person to purchase alcohol. It also places a duty on premises licence holders to display a notice on the premises setting
out the policy in relation to no proof no sale. Other offences in this part are those relating to sales of alcohol by wholesalers, the carriage of alcohol on public service vehicles, deliveries of alcohol from vehicles, and keeping smuggled goods. There are also powers to prohibit alcohol sales in service stations and late night deliveries of alcohol.

Part 9 Miscellaneous and General

Part 9 deals with a number of miscellaneous and general matters. In summary, these are provisions covering matters such as fees for licences, definitions of relevant offences and foreign offences for the purposes of the Bill, powers to issue statutory guidance, the procedure that would be adopted for orders and regulations made under the Bill, interpretation of terms used throughout this Bill and repeals of existing legislation by schedule 5 to the Bill. This part also sets out the appeals process that would be introduced by this Bill. Powers of entry for the police to licensed premises are provided, as are procedural matters relating to any hearing held under the provisions of this Bill and licences with regard to vessels, vehicles and moveable structures and also on trains.

Delegated powers

Choice of procedure

Regulations and orders under the powers described below are generally subject to negative resolution procedure in the Scottish Parliament. The Executive has chosen this procedure as the delegated powers we seek are required to prescribe procedural detail or other detail to supplement or up-date the provisions of the Bill. We do not believe affirmative resolution procedure will be necessary for this. However, in line with usual practice, affirmative resolution procedure has been chosen for orders under section 135 which textually amend primary legislation.

PART 2 LICENSING BODIES & OFFICERS

Section 6(7)(a) Statements of licensing policy

Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 6(7)(a) confers on the Scottish Ministers the power to specify in an order the date before which every Licensing Board must publish their first ‘licensing policy statement’.

Reasons for taking this power

The purpose of the ‘licensing policy statement’ is to offer guidance and clarity on the policy upon which Licensing Boards are to base their decisions in carrying out their functions under the Bill. This is particularly important for a system in which, in order to allow for a high degree of local flexibility, Licensing Boards are given discretion. The proposed power would enable the Scottish Ministers to set the date when the
first such policies should be in place. No firm date for the publication of the ‘licensing policy statement’ has currently been decided due to the need to discuss and consider in detail with Boards and the licensed trade the timescales during which the transitional period should take place.

Section 9(2) Licensing Board’s Duty to keep a public register

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 9(2) confers a power on the Scottish Ministers to make regulations specifying the form and manner in which the licensing registers are to be kept and specifying any additional information (not already outlined in the Bill) which Licensing Boards are to be required to enter into their licensing register.

Reasons for taking this power

All Licensing Boards are to be under a duty to keep a public register of licence decisions. The purpose of this power is to ensure that all Boards maintain a consistent approach across Scotland. This is important for a document which is open to inspection by the public. How this will be achieved will require further discussion with Boards and the level of detail required would make it a more suitable candidate for regulations.

Section 13(4) Licensing Standards Officers

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 13(4) confers on the Scottish Ministers a power to make regulations prescribing the qualifications and experience required to be held by a Licensing Standards Officer.

Reasons for taking this power

The office of Licensing Standards Officer is a new one created by the Bill. Every local authority must appoint at least one such officer. To ensure a consistent minimum standard of competence across Scotland, Ministers would prescribe the qualifications and experience of such officers. This will be an extremely detailed piece of work which will require additional expert advice from the National Licensing Forum. A degree of flexibility to change the job description to enable the officers post to remain relevant with the market is also seen as desirable. All other terms and conditions would be a matter for the council to determine.

PART 3 PREMISES LICENCES
Section 19(2)(b)(ii) Application for premises licence

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 19(2)(b)(ii) confers on the Scottish Ministers a power to prescribe by regulations the form which the layout plan of the licensed premises should take, which will accompany a licence application.

Reasons for taking this power

The details are likely to be intricate and will require further consultation, so it is considered more appropriate for these to be set out in regulations.

Section 19(4) Application for premises licence

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 19(4) confers a power on the Scottish Ministers to make regulations prescribing the form of operating plans and the information they would be required to contain in addition to that listed in subsection (4)(a)-(d). This includes information about the individual who is to be the premises manager, the activities to be carried on in the premises, the times alcohol is to be sold and whether the alcohol is for consumption on the premises, off the premises or both.

Reasons for taking this power

All applications for a premises licence must be accompanied by an operating plan. These plans will provide Licensing Boards and the general public with a clear indication of the activities to be undertaken on the premises. The operating plan approved by the Board forms part of the licence documentation. Ministers would take this power to prescribe the form and content of operating plans. As these will need to be detailed it is considered more appropriate for these to be set out in regulations. This should also ensure consistency across Scotland, a central element of the new system. Ministers also wish to ensure that the information provided in the operating plan demonstrates how the applicant proposes to comply with the 5 licensing objectives of the Bill. Prescribing the form of the operating plan will allow a simple standard pro forma to be developed. An Expert Reference Group on licensing was established by the Executive to further assist in the development of policy leading towards the drafting of the Bill and to provide expert advice. This is chaired by the Scottish Executive and has representatives from the Licensing Boards, the licensed trade, health, communities and the Police. One area the Group specifically considered was the content of operating plans and a separate paper will be submitted to the Committee on behalf of this Group.

Section 20(6) Notification of applications
The effect of section 20(6) is to confer on the Scottish Ministers a power to narrow or widen the category of persons having an interest in land neighbouring that in relation to which a premises licence application has been made. This category of person is entitled to receive notification of such an application. The power which is given to the Scottish Ministers is that of defining “neighbouring land” and “notifiable interest”. In this way, the Scottish Ministers will be able to set out what type of interest (eg ownership or tenancy) a person must have in the property before he or she is entitled to notification and how far from the licensed premises a property must be to qualify as “neighbouring”.

Reasons for taking this power

The Licensing (Scotland) Act 1976 requires notification of an application to neighbours situated in the same building as the premises applying for a licence. This proposed power would enable Ministers to prescribe in greater detail which persons are to be entitled to notification and enable this category to be changed as the regime develops. We are currently considering a range of 50 metres. We should point out that this power relates only to written notification of a licence application and does not limit the general power for ‘any person’ to object or make representations.

Section 21(2)(a) Objections and representations

Section 21(2)(a) confers a power on the Scottish Ministers to prescribe the manner and timescales within which Licensing Boards are to be required to forward to a premises licence applicant any objection or representation the Board has received relating to that applicant’s licence application.

Reasons for taking this power

It will be important that there is transparency about the procedures to be followed under the new system for the benefit of applicants and objectors. The power concerns the detailed procedure and it is therefore considered more appropriate for these procedures to be set out in regulations. As a general point, the removal of quarterly Board meetings has made it important for any procedural timescales to be clearly set, and that these should be consistent across Scotland.

Section 24(1)(a)(i), (1)(b) and (2)(f) Issue of licence and summary
Section 24(1)(a)(i), (1)(b) and (2)(f) confer on the Scottish Ministers a power to prescribe the form of the premises licence and the summary of the premises licence and to prescribe any additional information to be included which is not covered in section 24(2)(a)-(e) of the Bill.

**Reasons for taking this power**

It is considered appropriate that the premises licence is a document which can be easily recognised across the country by Licensing Standards Officers, the police and consumers. A summary of the licence is to be displayed on the premises and that summary should be in a form which is instantly identifiable. The power concerns the detailed procedure and it is therefore considered more appropriate for these procedures to be set out in regulations.

**Section 25(2) and (3) Conditions of premises licence**

Section 25(2) confers on the Scottish Ministers a power to modify both the content and the application of the mandatory conditions relating to premises licences set out in schedule 3. Section 25(3) confers a power on the Scottish Ministers to prescribe further conditions which a Licensing Board may at their discretion impose when granting a licence.

**Reasons for taking this power**

Schedule 3 lists a set of mandatory conditions which premises licence holders must comply with. These conditions are intended to ensure a nationally consistent approach on those matters which are central to the delivery of the policy underlying the Bill (such as training and irresponsible drinks promotions).

The purpose of section 25(2) is to enable Ministers to add to this list and to extend the application of any condition specified in the schedule. This power would allow us in future to modify these conditions or to prescribe additional conditions that become desirable over time once the new system has bedded in or on advice from the National Licensing Forum. It is very likely, as new practices develop within the trade or as new public order issues arise, that we may need to add additional licence conditions.

The Expert Reference Group on liquor licensing considered what mandatory and discretionary licence conditions should be imposed by the Scottish Ministers and we have endorsed the conclusions of the Group. Attached at Annex A are those...
mandatory conditions proposed by the Group (which we intend to implement) covering:

- Provision of adult entertainment on any licensed premises;
- Access by children to on-sale licensed premises.

As these conditions may be difficult to word and will require more thought and consultation before they are finalised it was preferable not to put them on the face of the Bill now.

In relation to the former, we consider in addition, that the use of private booths should be discontinued, whether or not they are lockable. We are also considering whether any additional licence conditions should be imposed.

In relation to the latter, we can confirm that this would relate to premises providing on-sales only. Compliance with the no-proof no-sale provisions set out in the Bill would be sufficient for off-sales.

We also wish to point out that the power to amend the schedule to modify the application of mandatory licence conditions would allow the Scottish Ministers, if this becomes desirable, to extend the application of the listed (or other) conditions on irresponsible promotions to off-sales. We intend to consider further how we might gather evidence relating to any links between binge drinking and its consequences and the purchase of alcohol from off sales.

The purpose of section 25(3) is to enable Ministers to prescribe discretionary conditions which Boards may draw on as required within their locality. This allows Ministers to prescribe a ‘pool’ of conditions that Boards must have regard to. This power would allow us to prescribe and modify conditions that become desirable over time once the new system has bedded in or on advice from the National Licensing Forum. It is very likely, as new practices develop within the trade or as new public order issues arise, that we may need to add additional licence conditions.

The use of a pool approach, especially when looking at the demands of a busy city centre premises compared to a rural premises was supported by the Expert Reference Group when considering suitable licence conditions for ‘late opening premises’ which supply on-sales. The draft conditions proposed are attached at Annex B. These have been endorsed by Ministers and we therefore intend to include these conditions in regulations using this power.

In addition Annex B sets out a proposed discretionary condition to be applied to off-sales. The Expert Reference Group, by a slim majority, considered that this condition ought to be mandatory but with an exemption for small premises. However, we believe it is simpler to make this a discretionary condition. We believe it would be extremely difficult to formulate a workable exemption from the condition which would successfully avoid penalising small shops.

As these conditions may be difficult to word and will require more thought and consultation before they are finalised it was preferable not to put them on the face of the Bill now.
Section 27(6)(d) Application to vary premises licence

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 27(6)(d) confers on the Scottish Ministers a power to prescribe what may constitute a minor variation to a premises licence in addition to those already listed in section 27(6)(a)-(c).

Reasons for taking this power

Such a power would enable Ministers to add to the list of minor variations which are likely to change over time. The provision to adapt the definition of a ‘minor’ variation will allow the system to run with greater efficiency, since adding issues to this list as the system develops will avoid the need for unnecessary oral proceedings. The National Licensing Forum will be best placed to monitor Board views on this issue. The existing list of minor variations was agreed with the Expert Reference Group.

Section 32(1) Transfer on application of person other than licence holder

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 32(1) confers a power on the Scottish Ministers to prescribe who may apply to the Licensing Board for the transfer of the licence under the circumstances set out in this section i.e. when the present holder of a premises licence being an individual:

- dies;
- becomes incapable;
- being a company, becomes insolvent or is dissolved;
- when the business is transferred (for example by sale) to another person.

Reasons for taking this power

Regulations are to set out the required nexus the applicant for a transfer (who, under this section, will be the proposed transferee) is to have with the premises licence holder to entitle him/her to make that application. So, for example, where the licence holder has died, it is envisaged that it will be an executor who makes the application and where a business has been sold it is likely to be the purchaser. As the details of possible permutations are likely to be intricate and complicated, it is considered most appropriate for these to be set out in regulations.

Section 52(c) Certified copies
Section 52(c) confers on the Scottish Ministers a power to prescribe who may certify a copy of a premises licence to be a true copy in addition to those persons listed in section 52(a) and (b).

*Reasons for taking this power*

This would enable the list to be updated as and when necessary.

**PART 4 OCCASIONAL LICENCES**

**Section 53(7)(a) and (8)(h) Occasional licences**

Section 53(7)(a) and (8)(h) confers a power on the Scottish Ministers to prescribe the form and content of occasional licences subject to section 53(8)(a)-(g).

*Reasons for taking this power*

It is appropriate that the occasional licence is a document which can be easily recognised across the country. Further discussions with Licensing Boards on what is required to ensure a workable procedure and agreed document have still to take place. When completed, the level of detail required will make it more appropriate to be set out in regulations.

**Section 55(2)(a) Objections and representations**

Section 55(2)(a) confers on the Scottish Ministers a power to prescribe the manner and timescale within which Licensing Boards would be required to forward to an occasional licence applicant any objection or representation the Board has received in relation to that application.

*Reasons for taking this power*

It will be important that there is transparency about the procedures to be followed under the new system for the benefit of applicants and objectors. Further
discussions with Licensing Boards on what is required to ensure a workable procedure have still to take place. When completed, the level of detail required will make it more appropriate to be set out in regulations. As a general point, the removal of quarterly Board meetings has made it important for any procedural timescales to be clearly set, and that these should be consistent across Scotland.

**Section 57(2) and (3) Conditions of occasional licence**

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 57(2) confers a power on the Scottish Ministers to modify both the content and the application of the mandatory conditions relating to occasional licences set out in schedule 4. Section 57(3) confers on the Scottish Ministers a power to prescribe further conditions which a Licensing Board may at their discretion impose when granting an occasional licence.

*Reasons for taking this power*

This Bill would, for the first time, introduce detail and procedure on occasional licences. At present these licences are dealt with on an ad-hoc basis. We believe in the interests of transparency and ease of administration, these simple procedures should be set out nationally (and this appears in the Bill).

Adopting the same approach as is taken to premises licence conditions, schedule 4 sets out a modified version of schedule 3. The modifications provide for alcohol to be sold by voluntary organisations, and exclude the conditions placed on premises licence holders regarding staff training and the payment of annual or recurring fees. However we see no reason not to apply our national policy on irresponsible promotions to the one-off events that will be covered by occasional licences.

As with premises licences, the power to modify schedule 4 in relation to mandatory conditions and to prescribe a pool of discretionary conditions, would allow us to prescribe and modify conditions that become desirable over time once the new system has bedded in or on advice from the National Licensing Forum. It is very likely, as new practices develop within the trade or as new public order issues arise, that we may need to add additional licence conditions.

**PART 6 PERSONAL LICENCES**

**Section 67(1) and (2)(e) Issue of licence**

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament
Section 67(1) and (2)(e) confers a power on the Scottish Ministers to prescribe the form of a personal licence and the information it must contain in addition to that listed in section 67(2)(a)-(d).

*Reasons for taking this power*

The personal licence effectively provides a ‘qualification’ usable across Scotland. It is therefore important that the licence itself is, like a driving licence, instantly recognisable. The power concerns the detailed procedure and it is therefore considered more appropriate for these procedures to be set out in regulations.

**Section 78(1) Licence holder’s duty to undertake training**

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Section 78(1) confers on the Scottish Ministers a power to prescribe in regulations the appropriate training a personal licence holder would have to undertake to renew their personal licence, including different requirements in relation to different descriptions of the personal licence and the qualifications of the trainer. It also confers on Scottish Ministers a power to prescribe the form which the licence holder would present to the Licensing Board when renewing his or her licence.

*Reasons for taking this power*

Refresher training every 5 years was a recommendation of the Daniels Committee which Ministers endorsed and which will ensure skills are kept current. This will be an extremely detailed piece of work which will require additional expert advice from the National Licensing Forum. The power to prescribe training will ensure that training undertaken is to an assured standard applicable across all Licensing Boards in Scotland.

**Section 80(7) Licensing Board’s duty to update licence**

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<td>Negative resolution of the Scottish Parliament</td>
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Section 80(7) confers power on the Scottish Ministers to prescribe by regulations the level of detail of the refresher training which should be endorsed on the personal licence.

*Reasons for taking this power*

This will be an extremely detailed piece of work which will require additional expert advice from the National Licensing Forum. It will ensure the same approach is
followed across Scotland again adding to the ease of use and recognition of the licence.

**Section 81(1) Power to specify which Licensing Board is to exercise functions under this Part**

Power conferred on: The Scottish Ministers  
Powers exercised by: Order made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 81(1) confers on the Scottish Ministers the power by order to re-determine which Licensing Board should carry out the functions of Part 6 of the Bill concerning personal licences.

*Reasons for taking this power*

If a national database of information about personal licences is established in the future, that may allow more flexibility in the arrangements as to which Board should deal with issues relating to any particular personal licence. The power accordingly allows changes in those arrangements to be made.

**Section 82(1) and (2) Power to prescribe licensing qualifications**

Power conferred on: The Scottish Ministers  
Powers exercised by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 82(1) and (2) confer a power on the Scottish Ministers to specify in regulations, “licensing qualifications” for the purposes of this Bill.

*Reasons for taking this power*

This power allows the Scottish Ministers to specify a minimum standard of training for all personal licence holders in Scotland. It also enables Ministers to keep the required training current. Training is a key element of the new system and it is important that personal licence holders, particularly premises managers, are trained to a standard which will enhance the licensed trade in Scotland in terms of service provision and will ensure those staff have the necessary skills to deal with difficult situations on licensed premises and have a full knowledge of the law. The National Licensing Forum will be asked for advice on appropriate training. Section 82(2)(c) and (d) effectively allows specialisation e.g. in on-sales or off-sales, subject to the advice of the forum, if this is considered appropriate.

**Section 91 Regulations as to closure orders**
Section 91 confers on the Scottish Ministers a power to make further provision through regulations as to the procedure to be followed in connection with the making of closure orders and extensions to closure orders. In particular:

- the form and manner of an application or notice to close; and
- the holding of hearings by Licensing Boards before making or extending closure orders.

**Reasons for taking this power**

It is considered appropriate for the procedure, which it is expected will be very detailed, to be contained in regulations. Such detailed regulations will contribute to a consistency of approach across Scotland.

**PART 8 OFFENCES**

**Section 93(4)(c) Sale of alcohol to a child or young person**

Section 93(4)(c) confers on the Scottish Ministers a power by regulation to list what documents, in addition to those listed in section 93(4)(a) and (b), would be acceptable in establishing a child or young person’s age with regard to the purchase of alcohol.

**Reasons for taking this power**

There is already a plethora of different schemes and a continuing problem of fake ID and such a power would ensure that those who sell alcohol have a measure of reassurance of what is acceptable proof. However, this policy is considered likely to be too detailed for the Bill if, for example, we have to list out the types of cards that are acceptable.

**Section 101(3) Duty to display notice**

Section 101(3) confers a power on the Scottish Ministers to prescribe by regulation the form and dimensions of a mandatory notice to be displayed in all licensed
premises which will contain the statement set out in section 101(3) with regard to the
offences connected to the sale of alcohol to those under 18.

Reasons for taking this power

Since we wish to prescribe the pro forma for the notice, this is considered more
appropriate for regulations than for the Bill. However, the content of the notice is
specified in the Bill. It will be important that consumers recognise that such notices
are required by law and therefore that each premises is required by law to display
the same notice

PART 9 MISCELLANEOUS AND GENERAL

Section 115(3)(b) Excluded Premises

Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 115(3)(b) extends the power of the Scottish Ministers under section 8 of the
Roads (Scotland) Act 1984 to prescribe further classes of traffic for the purposes of
that Act. When making such an order, the Scottish Ministers have the power to
adapt the references in section 115(2)(a) to include the additional class.

Reasons for taking this power

Section 115(2)(a) effectively prevents licences from being granted in respect of
motorway service stations. Motorways are identified as such by reference to
prescribed classes of traffic which use them (“class 1” traffic as specified in
Schedule 3 to the Roads (Scotland) Act 1984). The definition reflects that and this
power ensures that any modifications to the classification of traffic which may affect
the definition for the purposes of this Bill can be taken into account.

Section 115(5) Excluded premises

Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 115(5) confers on the Scottish Ministers a power to amend, by order, the
category of excluded premises.

Reasons for taking this power

Certain groups of premises such as Motorway Service Stations are regarded as
unsuitable for the sale of alcohol. This power would allow Ministers to add other
types of premises to the list of those excluded as the need arose.

Section 116(1)(a) and (b) Exempt premises

Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament
Section 116(1)(a) and (b) confers a power on the Scottish Ministers to make an order listing which airports, ports or hover ports are exempt from the requirement to hold a licence under the Bill. Only the “examination station” or “approved wharf” at the airport, port or hoverport would be exempt. These are the areas beyond the security controls.

Reasons for taking this power

Under section 116(2) such an order would only be made if the airport or port appeared to have a substantial amount of international passenger traffic. Ministers have a power under the Licensing (Scotland) Act 1976 to exclude ports and airports from the statutory hours in order that they may provide refreshments to those travelling. This section updates and extends the present power. If a port or airport is not listed in such an order it would be required to obtain a licence in the normal way. This power would enable the exemption to be granted or withdrawn in line with the levels of international traffic experienced by ports and airports over time.

Section 117(1) and (4) Special provisions for certain clubs

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 117(1) and (4) confers on the Scottish Ministers the power to prescribe in regulations special provisions for certain clubs. These would exempt such clubs from certain provisions in the Bill and may prescribe the descriptions of clubs by reference to requirements such as the constitution of the club, membership and the rules of the club.

Reasons for taking this power

At present certain members clubs are registered under Part VII of the Licensing (Scotland) 1976 Acts by virtue of a certificate granted by a sheriff. This system was first introduced by the Licensing (Scotland) Act 1903 to enable non profit making clubs to provide a bar supplying alcohol to their members. Section 117 enables such clubs to keep their present special status while bringing them into the licensing system. Examples of such clubs range from veterans associations and sports clubs to student unions. In order to come within the definition of such a club, we would intend that the following requirements (which have been discussed with the representatives of the present registered clubs) would need to be met:

- the club must be non-profit making and not open to the public;
- the club must have a written constitution and rules;
- the business and affairs of the club must be under the management of a committee or governing body which is elected by the general body of members (and this must be reflected in the constitution and rules);
the rules must state that no person under 18 shall be admitted a member of the club unless the club is one which is devoted primarily to some athletic or sporting purpose or is a students’ union;

the rules must state that no member of the committee or governing body and no manager or servant employed in the club shall have any interest in the sale of alcohol;

the rules must state that a visitor may not be admitted to the club except on the invitation and in the company of a member of the club and that where a visitor is supplied with alcohol the member must enter his own name and the name and address of the visitor in a book which shall be kept for that purpose and which shall show the date of each visit;

the rules must state that correct accounts and books shall be kept showing the financial affairs of the club;

the rules must state that, in order for the club to be properly constituted, it must have at least 25 members.

It is intended that those meeting such requirements would be excluded from the overprovision assessment carried out by the Licensing Board.

In addition, we intend to prescribe a further category of members club that may be exempted from the requirement to have a premises manager who is a personal licence holder. This exemption would be applied only to very small clubs for whom the financial burden of employing a personal licence holder would be too great. While some discussions have already been held with clubs, it has not been possible to conclude what further refinement may be required, in particular the position with regards to smaller clubs. Taking this power would enable further consultation on this issue and present a degree of flexibility to update the conditions for this diverse group in the future. We intend to consult clubs further on a suitable level for this exemption which could, for example, be based on bar turnover.

Section 120(1) Relevant offences and foreign offences

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 120(1) confers a power on the Scottish Ministers through regulations to prescribe what would be a “relevant offence” for the purposes of the Bill.

Reasons for taking this power

It is considered that setting out the offences in regulations rather than on the face of the Bill is both neater and will provide the flexibility required to respond to any change in what types of offence are considered relevant in the context of alcohol licensing.

Section 123(8) Appeals: supplementary provision

Power conferred on: The Court of Session
Powers exercised by: Act of Sederunt
Parliamentary procedure: None

Section 123(8) confers a power to make by Act of Sederunt further provision as to the procedure to be followed in appeals against Licensing Boards’ decisions.

Reasons for taking this power

It is considered appropriate to allow the courts to regulate their own procedure by Act of Sederunt.

Section 124(2) and (3)(a) Hearings

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 124(2) confers a power on the Scottish Ministers to make regulations that set out the procedure to be followed by Licensing Boards in relation to a hearing held under the provisions of this Bill, including those matters set out in section 124(3). In particular section 124(3)(a) confers on the Scottish Ministers the power to prescribe in regulations who should be given notice of the hearing.

Reasons for taking this power

It is considered preferable for this level of detail to be contained in secondary rather than primary legislation. National procedures will ensure a greater understanding, particularly amongst those in the licensed trade who frequently deal with several different Licensing Boards, of their requirements in relation to preparing for a hearing. We believe it is particularly important for all Boards to notify the same range of people about a hearing and within the same timescale.

Section 125(1) Form etc. of application and notices

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 125(1) confers on the Scottish Ministers a power to make regulations that set out the form, content, requirement to publicise or notice to be given of any application or notices made under the Bill.

Reasons for taking this power
It will be neater for this level of procedural detail, including the pro formas to be used, to appear in regulations. This will also allow us to consult further with interested parties to ensure that the forms are easy to understand and complete.

This power will, amongst other things, allow us to prescribe the detail of how applications should be advertised. It is our intention that applications should be well publicised e.g. to local residents and anyone with an interest. This will be done, as at present, by newspaper advertisements, until Licensing Board websites have been established. Once websites have been established there will be no further need for newspaper adverts, which are seen by Boards themselves as being expensive and ineffective. In addition, however, it is our intention that an A3 pro-forma notice would be displayed by the applicant outside the premises in question. The form of the notice would take into account advice from the National Licensing Forum. We would expect it to contain the following information:

- Licence applicant’s name;
- Name and address of premises;
- Proposed hours of operation on each day of the week;
- Brief overview of the nature of business to be conducted at the premises (drawn from draft operating plan);
- Specific arrangements for children;
- Information about how to make an objection or representation.

Section 127(1) Fees

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 127(1) confers on the Scottish Ministers the power to make regulations setting out what fees are to be applied under the provisions of this Bill.

Reasons for taking this power

The Licensing (Scotland) Act 1976 requires licence holders to apply for their licences every three years and to apply every year for a regular extension to their hours. The proposed new licensing regime is based upon an open-ended premises licence which would not require renewal. With such a change and the policy for the regime to be self financing, Ministers require the power to set out a fee structure that will finance the system without making costs untenable. It is considered appropriate for this level of detail to be contained in regulations rather than on the face of the Bill. In addition, secondary legislation provides the flexibility to change fee levels and fee structures regularly.

Section 130(3) Remote sales of alcohol

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 130 effectively requires that, where a sale of alcohol has been made remotely ie by telephone or internet and the place of despatch (warehouse) is in Scotland, then a premises licence is required for that warehouse. Section 130(3) confers power on the Scottish Ministers to make such provision as they consider appropriate to cover the case where alcohol is sold remotely and despatched from outwith Scotland but delivered to a place within Scotland.

Reasons for taking this power

We are concerned that, at present, sales made eg over the internet, from overseas companies are exempt from licensing regulation. This is a new and developing market and Ministers wish to take this power to ensure that this sector can be regulated appropriately in the future should the need arise.

Section 135 Ancillary provision

Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Affirmative/negative resolution of the Scottish Parliament

Section 135 confers on Scottish Ministers the power to make incidental, supplemental, consequential, transitional, transitory or savings provisions as they consider necessary or expedient. Such orders are subject to affirmative resolution where they make textual amendments to any Act, and negative resolution in any other case.

Reasons for taking this power

This provision allows suitable flexibility to deal with any minor problems that may arise.

Section 140(2) Short title and commencement

Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: None

Section 140(2) provides for the Scottish Ministers by order to appoint a day when the provisions of the Bill shall come into force and that different days may be appointed for different purposes.

Reasons for taking this power

This order making power is required to ensure effective commencement of the Bill.

SCHEDULE 1 LICENSING BOARDS

Schedule 1, paragraph 11(1) Training of members
Schedule 1, paragraph 11(1) confers the power on the Scottish Ministers to specify in regulations the training that must be undertaken by members of the Licensing Board and the qualifications to be held by those who provide the training.

Reasons for taking this power

It is considered that the accreditation of training is too detailed to be contained on the face of the Bill. We also wish to consult further on the subject of training and, in particular, will seek advice from the National Licensing Forum. We intend to set out mandatory requirements for Board member training. This can take the form either of specifying the minimum content of that training or accrediting particular courses and adding to this over time. This has to be done on a national basis.

Schedule 1, paragraph 12(4) Proceedings

Schedule 1, paragraph 12(4) confers on the Scottish Ministers the power to make regulations that would set out provisions relating to the proceedings of Licensing Boards including:

- the times by which an application or other business must be considered;
- the publicising of meetings of a Board; and
- public access to any agenda and record of and other information concerning a meeting of a Board.

Reasons for taking this power

It is considered preferable for this level of detail to be contained in secondary rather than primary legislation. This will also allow changes to be made over time to reflect more modern practices which may ultimately reduce administration.

With the removal of fixed quarterly Board meetings, it is necessary to ensure the efficient progress of business by prescribing timescales within which different proceedings must take place. We have also taken powers to prescribe particularly those aspects of Board procedure which have the most impact on members of the public e.g. publicising meetings and public access to records. The public is entitled to expect the same standard across the country.
Power conferred on: Licensing Board
Powers exercised by: Rules
Parliamentary procedure: None

Subject to the provisions in schedule 1, paragraph 12(4), Licensing Boards may provide their own rules for the arrangements of meetings and proceedings. Rules made by the Licensing Boards must be published.

Reasons for taking this power

This would allow each Licensing Board to conduct its business in a manner best suited to them within the provisions prescribed.

SCHEDULE 3 PREMISES LICENCES: MANDATORY CONDITIONS

Schedule 3, paragraph 6(1) Training of staff

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Schedule 3, paragraph 6(1) confers a power on the Scottish Ministers to make regulations prescribing the appropriate training to be undertaken by staff who sell alcohol from a licensed premises and when such training should be renewed. It also enables Scottish Ministers to proscribe the qualifications to be held by those providing the training.

Reasons for taking this power

It is considered that the accreditation of training is too detailed to be contained on the face of the Bill. We also wish to consult further on the subject of training and, in particular, will seek advice from the National Licensing Forum.

We intend to set out mandatory requirements for the training of all permanent members of staff serving alcohol on licensed premises. This can take the form either of specifying the minimum content of that training or accrediting particular courses and adding to this over time. This has to be done on a national basis.

We intend to provide different requirements for casual staff and for staff working in seaman’s canteens, who are largely volunteers. This is expected to be in-house basic instruction given by the designated personal licence holder. We intend to provide that ‘casual staff’ would be considered to be those staff working in the trade in any post for a total of 4 months or less ie the 4 month period is cumulative.
Accreditation of training, including the suitable range and content of such training, will be considered further in conjunction with the National Licensing Forum.

**Schedule 3, paragraph 8(4) Irresponsible drinks promotions**

Power conferred on: The Scottish Ministers  
Powers exercised by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Schedule 3, paragraph 8(4) confers on the Scottish Ministers the power to modify or add to the list of drinks promotions set out in paragraph 8(3).

**Reasons for taking this power**

See explanation under section 25(2) and 25(3) - conditions of premises licence.

**SCHEDULE 4 OCCASIONAL LICENCES: MANDATORY CONDITIONS**

**Schedule 4, paragraph 7(4) Irresponsible drinks promotions**

Power conferred on: The Scottish Ministers  
Powers exercised by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Schedule 4, paragraph 7(4) confers a power on the Scottish Ministers to modify or add to the list of drinks promotions with regard to an occasional licence set out in paragraph 7(3).

**Reasons for taking this power**

See explanation under section 57(2) and (3) - conditions of occasional licence

**CONSULTATION**

It is our intention to ensure adequate time for consultation on all regulations to be made under this Bill. It will be important to consult Licensing Boards and the licensed trade before licence conditions are finalised. Licensing Boards will also have a key interest in ensuring procedures are workable. Some issues, particularly training and the job description for the LSO, will require advice by the National Licensing Forum and liaison with bodies such as Alcohol Focus Scotland. We intend to continue to work closely with all interested parties on the detailed elements of the new system.
ANNEX A
LICENSING (SCOTLAND) BILL
DRAFT MANDATORY LICENCE CONDITIONS

ADULT ENTERTAINMENT

Entry Age Limit: over 18

External Doors: doors should be closed except to allow entry to customers. Performances should not be visible from outside the premises

Touching: there shall be no physical contact between performers and patrons before, during or after performances subject to some exemptions which require further work e.g. exchange of payment for the dance and a handshake at the beginning and/or end of a performance.

CCTV: CCTV shall be installed and maintained in good working order to the satisfaction of the Board and in consultation with the (local) Police. CCTV should be provided in public areas and also in some ‘private areas’ such as booths and corridors. It would be for the Board to specify the number of cameras.

Signage: promotional and advertising material may be distributed provided the content has been approved by the Licensing Board. Signs outside the club agreed with the Board may be displayed as long as the content is not of a suggestive nature and women or men are fully clothed. A price list should be displayed inside the club. The rules of behaviour by staff and customers within the club should also be made available.

Health and Welfare of Dancers: changing facilities and showers should be provided for the dancers.

Trained Door Stewards: trained door stewards should be provided.

Adult entertainment should be given only by performers and patrons may not participate.

Private Booths: where booths are provided they should not have locks or be capable of being locked and they should be covered by CCTV.

There was no agreement on the following proposed condition which may require further discussion:
Minimum Entrance Fee: there must be a minimum entrance fee and the level of that fee may be set by local Boards. The fee must not be attached to any drinks promotions

CHILDREN AND YOUNG PERSONS
Changing Facilities: where children under 5 are to be admitted baby changing facilities accessible to both sexes should be provided. Provision of such facilities in unisex disabled toilets would also be acceptable.

**Signage:** Each premises is to visibly display a sign at the entrance (minimum A4 size) stating either:

- No children allowed; or
- Children welcome.

This should be supplemented with a note of the relevant hours during which children are allowed access, whether young persons (16 and 17 year olds) may enter accompanied or unaccompanied and a statement reminding accompanying adults of their responsibilities in the general control and welfare of their children.
ANNEX B
LICENSING (SCOTLAND) BILL
DRAFT DISCRETIONARY LICENCE CONDITIONS

LATE OPENING PREMISES

It was agreed that late opening premises would be defined as any licensed premises opening later than 12 midnight. The Board would have discretion to choose to apply any appropriate conditions from a pool of standard conditions.

- **Noise**: steps should be in place to ensure that there is no noise leakage from the premises.

- **CCTV**: A minimum of one CCTV camera covering the entrance to the premises shall be installed and maintained in good working order, to the satisfaction of the Board and in consultation with the (local) Police.

- **First Aid**: someone with first aid training should be on the premises at all times after 12 midnight.

- **Minimum Entrance Fee**: a minimum entrance fee should be charged.

- **Door stewards**: trained door stewards should be provided.

- **Radio link and Pubwatch Schemes**: where a local scheme based on a radio link to the Police or Pubwatch or a scheme with similar principles exists, the licensee must be a member.

- **Disposal of glassware**: disposal of glassware should be made at a reasonable time to be agreed by the Board. There should be secure bins provided for the disposal of glass.

- **Glass**: “non-glass receptacles” (e.g. plastic) required to be used throughout trading hours.

- **Toilet supervisors**: toilet supervisors should be provided.

- **Drugs policy**: a drugs policy should be implemented.

- **Curfews**: a curfew may be imposed on entrance (i.e. by a time agreed by the Board).

OFF-SALES

**Display areas**: the provision of separate display areas for alcohol for those premises where that would be appropriate.
LICENSING (SCOTLAND) BILL 2005

CONTENT AND PURPOSE OF OPERATING PLANS

Introduction and Background

1. The production of an operating plan for each licensed premises is a mandatory requirement of the Licensing (Scotland) Bill. This paper is intended to provide the Committee with some background information on operating plans. The paper sets out in broad terms both what the operating plan is for and the kind of information which will be contained in it. The content and layout of the operating plan pro-forma will be prescribed in regulations and will be the subject of further consultation before it is finalised and laid before Parliament.

2. An Expert Reference Group was established following the publication of the Scottish Executive’s White Paper in May 2004. Its remit is:

   To work with the Scottish Executive to help create the framework for the Licensing (Scotland) Bill and associated regulations;
   To share information and expertise to assist the development of a range of detailed issues, including procedural issues, and to identify a suitable way forward on each issue as outlined in Annex A to the White Paper;
   To provide ad-hoc advice on other issues as they arise.

To assist our consideration of operating plans, a sub-group of the Expert Reference Group met in December to discuss the matter, and this paper reflects the outcome of those discussions and a further discussion at a meeting of the full Group. The membership of the Expert Group can be found at Annex A.

3. At present, there are seven different types of liquor licence which may be granted by a Licensing Board. These are: a public house licence; an off-sales licence; a hotel licence; a restricted hotel licence; a restaurant licence; a refreshment licence; and an entertainment licence. The Licensing (Scotland) Bill seeks to replace these with just two types of licence – the personal licence and the premises licence. An applicant for a premises licence will be required to submit with the application, a draft operating plan and a layout plan. The applicant will also be required to submit copies of planning consent, food hygiene and building control certificates for the Board’s information. However, the Executive should consider further how this would work for existing licensees under transitional arrangements. The draft operating plan will set out in some detail the nature of the premises for which a licence is sought and how it is proposed that the premises will be run. The licensing conditions will then be tailored for the premises for which a licence is being submitted, by reference to the draft operating plan.

Purpose of Operating Plans

4. The operating plan will be a standard pro-forma, issued to licence applicants together with a licence application form. It is not intended as a substitution for the licence application form itself. The pro-forma should be accompanied by a guidance note to assist licence applicants in correctly completing the operating plan. The
operating plan will be used to provide a general description of the nature and type of the premises for which a licence is being sought. The applicant will also be required to submit a layout plan with the application, and the operating plan, together with the layout plan, should be sufficient to enable the Licensing Board to determine what standard national and local licence conditions should apply.

5. The operating plan will be drawn up by the applicant, having regard to the Licensing Board’s published policy on matters such as, for example, opening hours and overprovision. The operating plan submitted by the applicant will essentially be a draft operating plan and as such, the Licensing Board will have power to require amendments to be made to ensure that it meets with the Board’s published policy statement and with their obligation to fulfil their duties in line with the licensing objectives set out in the Bill. Once the final operating plan has been agreed with the Board, it will form a part of the premises licence and it should be a standard national condition of that licence that the licensee abides by the terms of the operating plan. As such it is important that the operating plan details information in a sufficiently clear manner to enable the Licensing Board and enforcement agencies to determine if a breach of the operating plan is occurring. A copy of the operating plan, or a summary of it, should be issued with the licence and shall be displayed on the premises.

Content of Operating Plans

6. Following consideration by the Expert Reference Group of the content of the operating plan, it should include the following:

**Name of applicant** – Where the applicant is a non-natural person (i.e. a company or partnership), the registered address of the company and the names of its directors or partners shall also be required. The office bearers of members clubs may also need to be stated but provided there is a simple way for this to be updated as members may change annually. If this information is provided on the licence itself it could however be omitted from the operating plan.

**Exact Location (address) of the premises**

**Name of designated personal licence holder** – The Bill requires there to be a single designated personal licence holder (the ‘premises manager’) whose name should be stated on the operating plan. It may also be appropriate to ask applicants to supply the names of any additional managers if available, though these should not be noted on the licence or operating plan as this would not be a statutory requirement.

- **Activities to be carried on in the premises** – The operating plan should specify all the activities to be carried on in the premises for which a licence is being sought. In practical terms, this would include matters such as whether food is to be served, whether the premises offer accommodation (i.e. a hotel or guesthouse), whether the premises is a cinema, theatre or bowling alley, whether there is a dance floor or provision of entertainment such as live music, karaoke or stand-up comedy. In order to provide a full picture of the
activities being carried on in the premises, the operating plan should, if it is relevant, specify the times during which these additional activities are taking place. The applicant might also be asked to indicate the balance of activities to be carried on (for example where a premises sells alcohol for consumption both on and off the premises, what proportion of sales they anticipate for on and off sales).

**Adult Entertainment** - In addition to the general question relating to activities being carried on in the premises, as specific mandatory conditions are to apply to the provision of adult entertainment, the operating plan should specifically ask whether the licensee intends to provide adult entertainment on the premises.

- **Opening Hours** – The operating plan should specify these in as much detail as possible. For instance, where later opening is proposed at weekends, the operating plan should note both the proposed weekend and weekday opening hours.

- **Nuisance and safety issues** – The operating plan should contain a question asking the applicant for the premises licence what plans they have, or will have in place to deal with nuisance and safety issues, referring specifically to some of the core licensing objectives in the Bill – the prevention of crime or disorder; the promotion of public safety and the prevention of public nuisance. The guidance notes accompanying the application form should contain information on what is appropriate. For example, for some late-opening premises in city centres, this might include provision of trained door staff, CCTV monitoring and plans for ensuring that customers do not cause disturbance to nearby residents when leaving the premises at night.

- **Admission of children** – The operating plan should contain details of the proposed policy with regard to the admission of children to relevant premises. Applicants should state whether children are to be admitted to the premises. If they are, the operating plan should include details of where on the premises they are to be admitted, at what times they may be admitted and whether they are to be admitted unaccompanied or only when accompanied by an adult. Any lower age limit on children to be admitted to the premises should also be stated in the operating plan as provision of changing facilities is a mandatory condition of licence if children under 5 are to be admitted.

- **Capacity of the premises** – Measures of the capacity of the premises should be contained in the operating plan. The methods of assessment of capacity will be determined by the National Licensing Forum.

**Conclusion**

7. We hope that the Committee finds this paper helpful in terms of setting out the purpose and content of the operating plans referred to in the Licensing (Scotland) Bill. Members of the Expert Group would be happy to provide additional information to Committee Members if they would find this helpful.
8. The content of this paper has been seen and endorsed by Scottish Ministers.

Expert Reference Group
February 2005
ANNEX A

MEMBERSHIP OF THE EXPERT GROUP

Mr Eric Anderson Aberdeen City Licensing Board
Councillor Douglas Campbell South Ayrshire Licensing Board
Mr Bill Cowan Edinburgh Old Town Association
Mr Jack Cummins Hill Brown Licensing
Mr Stewart Ferguson Glasgow City Licensing Board
Mr Scott Landsburgh Scottish Grocers’ Federation
Mr Gordon Millar Scottish Beer & Pub Association
Mr Patrick Browne Scottish Beer & Pub Association
Inspector Alan Murray Strathclyde Police
Dr Peter Rice Scottish Association of Alcohol Action Teams
Mr Donald Somerville Highland Licensing Board
Mr Eddie Tobin Bar, Entertainment & Dance Association
Mr Paul Waterson The Scottish Licensed Trade Association

Scottish Executive Secretariat

Jacqueline Conlan (Chair)

Contributions from:
Tony Rednall
Ian Fairweather
Patrick Down
Lindsay Young
Gareth Warner
Antonette Cerqua
Executive Responses

The Materials and Articles in Contact with Food (Scotland) Regulations 2005, (SSI 2005/243)

In its letter of 10 May to Catherine Hodgson, the Committee requested an explanation of the following matter –

“The Committee asks the Executive to explain why Article 3(3) of SI 1990/2487, which amended the Materials and Articles in Contact with Food Regulations 1987, has not been expressly revoked as regards Scotland by regulation 16 of these Regulations given that the 1987 Regulations have been revoked in full by regulation 16.”

The Food Standards Agency responds as follows –

The Agency thanks the Committee for pointing out the omission from regulation 16 of an express revocation of Article 3(3) of SI 1990/2487. While express revocation of spent provisions is not necessary, the Agency’s view is that such measures are good practice. Accordingly it will take the next suitable legislative opportunity to rectify this omission.
The Fireworks (Scotland) Amendment Regulations 2005, (SSI 2005/245)

On 10 May 2005 the Committee asked the Executive –

“Section 2(4) of the 2003 Act requires Ministers to issue a full regulatory impact assessment detailing the financial, social and environmental impact of the proposed Regulations. While the Committee notes that this requirement was fulfilled and narrated in the principal Regulations, and that Ministers would not be expected to issue a fresh RIA for this particular set of amending Regulations, it has not been so narrated in this instance and the Committee asks the Executive for an explanation as to why this is the case.”

The Scottish Executive responds as follows:

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

2. The requirement under section 2(4) of the 2003 Act is that before making fireworks regulations, a regulatory impact assessment (“RIA”) must be issued. This precondition to the making of the Regulations was met by the RIA which was issued in 2004. The Committee accepts that Ministers would not be expected to issue a fresh RIA for the Regulations. No amendments to the existing RIA were necessary as a result of the amending Regulations as their effect had no impact on Scottish business, charities or voluntary bodies. Therefore it is clear that Ministers did complete all necessary preconditions prior to making the Regulations.

3. In these unusual circumstances, it was thought to be sufficient that the Executive Notes should narrate the position with regard to the RIA.

4. While the Executive accepts that it might have been preferable to narrate the fulfilment of this pre-condition in the preamble to the amending Regulations, the requirement to issue the RIA was in fact met. Therefore, it is the Executive’s view that the amending Regulations are not invalid by reason of this omission.
SUBORDINATE LEGISLATION COMMITTEE

16th Meeting, 2005 (Session 2)

Tuesday 17th May, 2005

Executive Response

Article 9 of Regulation (EC) No. 178/2002

The Miscellaneous Food Additives Amendment (Scotland) Regulations 2005 (SSI 2005/214)

The Smoke Flavourings (Scotland) Regulations 2005 (SSI 2005/215)

Thank you for your letter of 27 April 2005 addressed to Catherine Hodgson setting out the Committee’s position on its preferred approach to Article 9 of Regulation (EC) No. 178/2002.

In its letter the Committee advises that it considers a failure to include a reference to compliance with the consultation requirements of Article 9 of Regulation (EC) No. 178/2002 in the preamble to relevant Scottish Statutory Instruments as defective drafting. It indicates that it will report all such Instruments which fail to make such a reference as defective.

The Committee has asked the Executive for its view on there being clearer reference to the consultation requirement in the footnote to the Instruments in question.

The Executive is satisfied that the failure to make reference to the consultation requirements in the preamble does not affect the legal validity of those Instruments. The Executive considers that where Article 9 requires public consultation to take place the key issue is that Article 9 has as a matter of fact been complied with, not that this is recorded on the face of the Instrument. The Executive is satisfied that such consultation has taken place in relation to each Instrument laid before the Parliament to which Article 9 applies. It will continue to monitor observation of this requirement in relation to future Instruments.

Nevertheless, the Executive notes the Committee’s continued concern and in light of this will undertake a review of its long-standing practice on this point. We will be conducting this wide review with colleagues across the range of the Executive’s functions over the coming weeks and will write to the Committee again with our conclusions.

As part of this review we will be considering the form of footnotes relative to the consultation requirements laid down by Community law. The Food Standards Agency has also agreed to consider more fully the way in which the consultation requirements which apply to food law, and the extent of consultation undertaken, is referred to in the Executive Notes prepared in relation to such Instruments.