SUBORDINATE LEGISLATION COMMITTEE

AGENDA

36th Meeting, 2005 (Session 2)

Tuesday 20th December, 2005

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

1. **Item in private:** The Committee will consider whether to take item 8 in private.

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

   Animal Health and Welfare (Scotland) Bill at Stage 1.

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


   the Adults with Incapacity (Management of Residents’ Finances) (Scotland) Regulations 2005, *(SSI 2005/610)*

   the Plant Health (Scotland) Order 2005, *(SSI 2005/613)*

   the Official Feed and Food Controls (Scotland) Regulations 2005, *(SSI 2005/616)*

   the Rural Stewardship Scheme (Scotland) Amendment Regulations 2005, *(SSI 2005/620)*

   the Less Favoured Area Support Scheme (Scotland) Amendment (No.2) Regulations 2005, *(SSI 2005/624)*.

4. **Proposed subordinate legislation:** The Committee will consider the following—

   the Student Fees (Specification) Order 2006.
5. **Draft instruments subject to approval:** The Committee will consider the following—

- the Budget (Scotland) Act 2005 Amendment Order 2006, (SSI 2006/draft)

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

- the Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Amendment Regulations 2005, (SSI 2005/630)
- the Adults with Incapacity (Countersignatories for Application for Authority to Intromit) (Scotland) Amendment Regulations 2005, (SSI 2005/631)
- the Fossil Fuel (Scotland) Amendment Regulations 2005, (SSI 2005/641)
- the Products of Animal Origin (Third World Imports) (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/645)
- the Avian Influenza (Preventive Measures) (Scotland) Amendment Regulations 2005, (SSI 2005/646)

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

- Act of Sederunt (Rules of the Court of Session Amendment No.9) (Civil Partnership Act 2004) 2005, (SSI 2005/632)

8. **Inquiry into the regulatory framework in Scotland:** The Committee will consider a draft report.

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

**Agenda Items 2 - 7**

Legal brief (Private) 
SL/S2/05/36/1

**Agenda Item 2**

Delegated powers memorandum 
SL/S2/05/36/2
Bill and accompanying documents (circulated to Members only)

**Agenda Item 3**

Executive responses 
SL/S2/05/36/3

**Agenda Items 4 - 7**

Copies of instruments (circulated to Members only) 
SL/S2/05/36/4

**Agenda Item 8**

Draft report (Private) 
SL/S2/05/36/5
Draft report of Committee visit to Westminster (Private) 
SL/S2/05/36/5a
Executive response to phase 2 consultation 
SL/S2/05/36/6
Executive response to phase 1 report 
SL/S2/05/36/7
Follow up correspondence from Minister 
SL/S2/05/36/8
SUBORDINATE LEGISLATION COMMITTEE

36th Meeting, 2005 (Session 2)

Tuesday 20th December, 2005

Memorandum on Delegated Powers

Animal Health and Welfare (Scotland) Bill

Purpose

1. This memorandum has been prepared by the Scottish Executive to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.4.A of the Parliament’s Standing orders, of provisions in the Animal Health and Welfare (Scotland) Bill introduced to the Scottish Parliament on 5th October 2005. It outlines the reasons for seeking the proposed powers and describes the purpose of each of the provisions for subordinate legislation in the Bill.

Outline and scope of the Bill


- amends the Animal Health Act 1981 (“the 1981 Act”) to provide additional slaughter and compensation powers to deal predominately with the most contagious animal diseases affecting livestock;
- provides additional slaughter and compensation powers to obtain disease free status;
- provides powers to issue biosecurity codes dealing with disease prevention;
- provides powers of entry to take tests and obtain samples from animals, and to undertake further testing of samples already taken;
- provides powers to license animal gatherings to prevent disease spreading;
- widens the power to be able to treat (vaccinate) with serum etc any animal or bird;

http://www.scotland.gov.uk/library5/environment/ahws-00.asp
• provides powers to seize and dispose of carcases, and other items, and powers of compensation;

• creates new offences of deliberate infection of an animal, following a conviction for an offence of deliberate infection under the Bill, courts will have the power to order the destruction or confiscation of the animal or to disqualify the convicted person from owning or keeping animals, or order the removal of all animals in the care of the disqualified person;

• makes provision for the ascertaining of livestock genotypes, and placing of restrictions, on the breeding of livestock of the same genotype as an animal found to have a Transmissible Spongiform Encephalopathy;

• clarifies the powers to arrest for obstruction and makes clear that anyone who prevents police and inspectors from carrying out their functions under the 1981 Act may be arrested;

• provides for the stopping and inspection of vehicles in infected areas; and

• standardises penalties, and time limits, for certain offences.

In summary, Part 2 of the Bill:

• strengthens a number of substantive provisions in the existing legislation such as animal fighting, the cruelty offence, the abandonment offence;

• introduces an offence of failure to take reasonable steps to ensure the welfare of an animal for which that person is responsible (the duty of care);

• provides for the making of regulations to regulate or prohibit a variety of matters in the interests of promoting animal welfare, and also to make Codes of Practice providing guidance on animal welfare issues (this will include regulations on permitted procedures);

• enables a system for the licensing or registration of pet dealers, animal sanctuaries, livery stables and pet fairs which are not currently regulated;

• raises the age at which young people can be sold animals to 16 years;

• introduces a prohibition on the offering or giving of animals as prizes unless in a family context;

• repeals certain existing primary legislation requiring the licensing of riding establishments, pet shops, and animal boarding establishments etc and
replaces it with a power to make regulations for the licensing or registration of activities involving animals;

- provides powers to local authorities or the Scottish Ministers to appoint or authorise inspectors to inspect premises where animals are kept, and for these inspectors to have a range of powers including powers of entry and the power to apply for a warrant;

- provides for emergency powers for the protection of animals where they are suffering or likely to suffer if the circumstances do not change, seizure of animals, care of animals in situ or elsewhere;

- makes provision to allow an application to be made for an order requiring the removal, care or destruction of animals before proceedings for an offence under the Bill or under regulations made under the Bill;

- gives courts the power to make orders upon conviction for an animal welfare offence under the Bill or under regulations made under the Bill for the destruction or confiscation of the animal or for disqualifying the convicted person from owning or keeping animals, or orders for the removal of all animals in the care of the disqualified person.

**Rationale for subordinate legislation**

3. In considering whether matters should be specified on the face of the Bill or left to subordinate legislation, the Scottish Executive has weighed the importance of the matter against the need to:

- ensure sufficient flexibility in responding to changing circumstances and the ability to make changes quickly in light of experience without the need for primary legislation; and

- allow detailed administrative arrangements to be set up and kept up to date within the basic structures and principles set out in the primary legislation, subject to Parliament’s right to challenge the inappropriate use of powers.

4. We intend to provide the Subordinate Legislation Committee and Lead Committee with draft Scottish Statutory Instruments for the following provisions by Stage 2 of the Bill’s passage at the latest:

- section 18 makes provision for the Scottish Ministers by regulation to specify the circumstances in which subsections 18(1) and (2), which create offences in relation to the mutilation of animals, will not apply; and

- section 24 makes provision for the making of regulations to introduce the requirement of licences for certain activities involving animals for
animal welfare purposes. The draft regulation will deal with the licensing of pet dealers.

5. These are the two most urgent pieces of secondary legislation required under the Bill and it is important for the Scottish Parliament to be able to scrutinise these while considering the general principles of the Animal Health and Welfare (Scotland) Bill. More detailed information on the scope and content of the regulations on these two areas are included at Annex A.

6. Both the animal health and the welfare parts of the Bill contain enabling provisions and in the main body of this memorandum the nature and likely use of each delegated power is provided in detail. For the animal health part of the Bill, it is hoped that most of the powers conferred by the Bill will never be used as they are generally for use in response to an animal disease outbreak or an animal disease related emergency and therefore the detail of orders will be dictated by the prevailing circumstances at that time. However full information on the nature and likely use of the powers has been provided in the body of the memorandum. For the animal welfare part of the Bill the intention is to over time consolidate and revise approximately 19 pieces of animal welfare legislation. This is a considerable task and will take a number of years to complete, however full information on the nature and likely use of all powers has been provided. In relation to the powers to make subordinate legislation relating to licensing in the welfare part of the Bill, detail of the activity to be licensed, the conditions for granting licences and the requirements and restrictions which may be contained in licences in each area which it is intended to cover in the first tranche of regulations to be introduced under the Bill is provided at Annex B. Each licensing regulation which the Scottish Ministers propose to make under section 24 must be consulted on, and have a separate Regulatory Impact Assessment. Each such regulation will be made by Statutory Instrument and must be laid in draft before, and approved by, resolution of the Scottish Parliament.

7. It will not be practicable to provide draft Scottish Statutory Instruments (SSI) for each provision which requires secondary legislation in the first tranche during the passage of the Bill. Instead, we provide a detailed explanation in every day language of the intended use of the powers, the circumstances in which they might be used, and the policy objectives which the secondary legislation is intended to pursue, to both the Subordinate Legislation Committee and the Lead Committee. It is considered that providing a detailed account of the policy and planned process behind the proposed regulations or orders will prove as useful as a draft SSI given the greater transparency and accessibility to readers with no legal background. It is hoped that this approach will provide the Committees with the reassurance they require.

8. The second tranche of regulations under the Bill will be introduced from 2008 onwards. This will include provisions such as: licensing of large animal sanctuaries; licensing of greyhound racing; a code of practice for the cupping of horses; licensing of markets in terms of animal welfare; and revision of the Performing Animals (Regulation)Act 1925.
Overview of delegated powers

Part 1: Animal Health

Section 1 - inserting Schedule 3A, paragraphs 6 and 8 – Slaughter for preventing spread of disease and compensation for slaughter

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure for paragraph 6: affirmative procedure of the Scottish Parliament (class 1 or, if an emergency order, class 3)
Parliamentary procedure for paragraph 8: no procedure (class 7)

9. Paragraph 6 provides an order making power to enable the Scottish Ministers to specify a disease and type(s) of animal, bird or amphibian to be slaughtered with a view to preventing the spread of that disease. The order will be subject to draft affirmative procedure (class 1) thereby giving the Parliament a full opportunity to scrutinise and debate the decision to specify both the disease and the creatures in question. However, where there exists a disease emergency, the Scottish Ministers could make an order which will cease to have effect if not approved by resolution of the Parliament within 28 days (in calculating the period of 28 days no account is taken of periods when the Parliament is dissolved or in recess for more than 4 days).

10. Paragraph 8 provides that Scottish Ministers must pay compensation in respect of any animal (as defined by section 87 of the 1981 Act) slaughtered under Schedule 3A and that the amount of compensation is to be prescribed by order.

Reason for taking power

11. This power will provide essential flexibility to the Scottish Ministers to respond quickly to any disease outbreak in animals or birds whether the disease is known, a variant or unknown. This could include attempts to “ring-fence” disease by slaughtering animals not showing clinical signs of disease with a view to preventing the spread of that disease. It would not be possible to provide the necessary flexibility and speed to deal with unknown diseases as they emerge in primary legislation. In a non-emergency situation it is appropriate that the affirmative procedure is used as this will balance the need for expediency with the need for scrutiny of provisions of this nature. In an emergency situation it is essential that the Scottish Ministers can act quickly, however it should be noted that an emergency order is finite unless approved by Parliament.

12. The power to determine levels of compensation by secondary legislation allows the Scottish Ministers to specify compensation of an appropriate monetary value at the time at which the disease outbreak occurs. This is essentially a detailed administrative arrangement and is therefore best suited to secondary legislation. A decision as to the appropriate level of
compensation cannot be made until the exact circumstances of a particular animal disease outbreak are known. Compensation orders will only be made in consequence of the exercise of the slaughter powers and will provide the detail of the level of compensation to be paid, together with the necessary administrative provisions. The lack of a parliamentary procedure will enable the Scottish Ministers to provide details of compensation arrangements quickly to those affected. Speed will be essential to both reassure and to ensure the full co-operation of those affected. No parliamentary procedure is also in keeping with the existing provisions of the 1981 Act for orders of this nature. Although, there is no parliamentary procedure, it should be remembered that as with the exercise of all their powers the Scottish Ministers will require to act compatibly with ECHR and Community law.

Section 2 – inserting section 16B(2) and (6) – Slaughter of treated animals and compensation

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure for 16B(2): affirmative procedure of the Scottish Parliament (class 3)
Parliamentary procedure for 16B(6): no procedure (class 7)

13. Section 2 inserts a new section 16B into the Animal Health Act 1981. Subsection (4) of this section provides the power to the Scottish Ministers to cause to be slaughtered any animal or bird to which that subsection applies for the purpose of obtaining, or contributing to the obtaining, of disease free status. Section 16B(1) provides that subsection (4) applies to animals or birds treated with serum or vaccine (or both) to prevent the spread of any of the diseases specified in that subsection. Subsection (2) provides the Scottish Ministers with the power to extend the application of subsection (4) to any animal or bird which has been treated with serum or vaccine (or both) to prevent the spread of such other disease as the Scottish Ministers may by order specify. Subsection (3) provides that the “animals” which can be slaughtered under section 16B are any mammals except man. The order once laid would cease to have effect if not approved by resolution of the Parliament within 28 days except where Parliament is dissolved or in recess.

14. Section 16B(6) requires the Scottish Ministers to pay compensation in respect of any animal (as defined by section 87 of the 1981 Act) slaughtered by virtue of inserted section 16B. The amount of compensation is to be prescribed by order.

Reason for taking power

15. To achieve early disease free status in international or European Community terms, Scottish Ministers might consider it expedient to slaughter animals which have been treated with serum or vaccine (or both) to prevent the spread of diseases not specified in subsection (1). The diseases in subsection (1) are known fast spreading diseases which can be treated by vaccine with varying
effectiveness. For any new disease treatment by vaccine may, or may not, be entirely effective across all the animals receiving treatment. In the case of a new disease there would be considerable uncertainty as to its nature – number of viral strains, likelihood of genetic reassortment to produce new strains, etc. A significant body of scientific work would be necessary to characterise the new disease. To regain disease free status as early as possible (in international or European Community terms), it might be necessary to slaughter vaccinated animals. Taking this power will provide flexibility to the Scottish Ministers to deal appropriately with the consequences of any new disease which may emerge and help ensure that their powers relating to animal disease and their consequences remain relevant. It would be essential to move quickly and therefore to allow the Scottish Ministers flexibility to respond to such a disease outbreak the class 3 affirmative procedure has been chosen. This would mean that the Scottish Ministers could introduce this legislation quickly but that it would be required to be withdrawn unless supported by a resolution of the Scottish Parliament 28 days later.

16. The power to determine, compensation rates for slaughtered animals in secondary legislation, would allow the Scottish Ministers to specify the appropriate monetary value at the time at which the slaughter takes place. A decision on the level of compensation cannot be made until the exact circumstances of the particular animal disease outbreak are known. Compensation orders will only be made in consequence of the exercise of the slaughter powers and will provide the detail of the level of compensation to be paid, together with the necessary administrative provisions. The lack of a parliamentary procedure will enable the Scottish Ministers to provide details of compensation arrangements quickly to those affected. Speed will be essential to both reassure and to ensure the full co-operation of those affected. No parliamentary procedure is also in keeping with the existing provisions of the 1981 Act for orders of this nature. Although, there is no parliamentary procedure, it should be remembered that as with the exercise of all their powers the Scottish Ministers will require to act compatibly with ECHR and Community law.

Section 3 – insert section 6C(1) – Biosecurity codes: Scotland

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative procedure of the Scottish Parliament (class 1 or if an emergency order class 3 (section 6D(2))

17. Section 3 (inserting sections 6C and 6D into the 1981 Act) confers on the Scottish Ministers a power by order to issue biosecurity codes. The power will allow the Scottish Ministers to make various biosecurity codes dealing with a range of scenarios in respect of particular animal diseases and groups/species of animals. For example, Scottish Ministers may issue a code for livestock animals generally and a separate one for dealing with a particular disease(s). Biosecurity codes will be of particular significance during a serious animal disease outbreak, but their provisions may also apply on a day to day basis,
i.e. when there is no fast spreading disease in the country. Section 6C(11) provides that before making an order under this section the Scottish Ministers must consult such persons as they consider appropriate about the proposed biosecurity codes. The code will specify the extent to which they apply to persons who own, keep or are in charge of animals.

18. An emergency order making procedure will allow the Scottish Ministers to make the statutory instrument at a time of disease emergency, for example when a fast spreading disease was evident and no appropriate biosecurity code was already in existence. In such circumstances, it might not be possible to fully consult with interested parties. The order will cease to have effect at the end of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order had been approved by the Scottish Parliament (in calculating the period of 28 days, no account is taken of periods when the Parliament is dissolved or in recess for more than 4 days).

Reason for taking power

19. In November 2002, the Parliament approved a biosecurity code (“Codes of Recommendations for the Welfare of Livestock: Animal Health and Biosecurity”). This code was made under part 1 section 3 of the Agriculture (Miscellaneous Provisions) Act 1968 (c.34). However, it is proposed that part 1 (except section 4), of the 1968 Act will be repealed by means of this Bill. Biosecurity, that is measures taken to reduce the risk of animal disease occurring or spreading to other animals, is predominantly an animal health matter. Diseases exist across many species, however the policy intention initially is to introduce a code that deals with disease prevention in livestock (cattle, sheep, goats, pigs and poultry). Its scope is intended to be wider than the 2002 code, with some measures being mandatory rather than simply being best practice. The detailed nature of the provisions, the diverse range of codes which may be needed to cover different situations appropriately and the need to retain flexibility to update provisions in response to changing circumstances and developments in the science of disease prevention make it appropriate that codes are set out in secondary legislation. The use of the affirmative procedure balances the need for expediency and convenience with the need for scrutiny of provisions of this nature. Further detail is provided at Annex B.

20. An emergency order could be necessary in the event of a new virulent disease suddenly emerging. The use of the class 3 affirmative procedure will give the Scottish Ministers the flexibility to respond appropriately to such an emergency.

Section 5 – insert section 8A(1) – Animal gatherings

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution procedure of the Scottish Parliament (class 5)
21. Section 5 (inserting section 8A into the 1981 Act) confers an order making power on the Scottish Ministers enabling them to make provision for the licensing (by them or others) of animal gatherings.

Reason for taking power

22. Places such as animal markets, exhibitions, shows, collection centres and other places where animals are gathered can result in disease being spread quickly across considerable distances. If strict biosecurity measures are followed, including animal identification and the proper recording of animal movements, then the risk of disease spreading to other premises is significantly reduced. Serious diseases exist across many species. Nevertheless, the policy intention is to focus on the licensing of livestock (cattle, sheep, goats, pigs and poultry) gatherings rather than on events such as dog shows, caged bird shows, common ridings and the like. However, it should be borne in mind that fast spreading diseases can occur across any species, and this could necessitate the licensing of gatherings of any susceptible species. There is a statutory requirement in section 8A(10) to consult with relevant interested parties prior to the making of an order making provision for, or in connection with, the licensing of an animal gathering. The level of detail, the need for flexibility and the need to be informed by the consultation process make it appropriate that the licensing of animal gatherings is dealt with in secondary legislation. The use of the affirmative procedure balances the need for expediency and convenience with the need for scrutiny of provisions of this nature. Further detail is provided at Annex B.

Section 7 – inserted section 36ZA(1) – Seizure of carcases etc.
inserted section 36ZB(3) and (6) – Compensation for seizure

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: no procedure (class 7 for both orders)

23. Section 7 (inserting section 36ZA(1)) confers on the Scottish Ministers a power to make an order to make provision for and to regulate the seizing, destruction, burial, disposal or treatment of anything, except for an animal, which appears to them might be capable of carrying or transmitting any disease in the case of which any power of slaughter under sections 1, 2, or 10 of the Bill might be exercised. Section 36ZB makes provision for compensation to be paid. The obligation to pay compensation does not extend to paying compensation for the seizure of carcases or other things produced by or obtained from animals, however subsection (3) provides that Scottish Ministers may by order compensate for these things. Compensation must be paid for objects seized such as farm equipment and animal housing. The value for objects seized is to be their value at the time of seizure, subsection (6) allows the Scottish
Ministers to make orders prescribing how that value has to be ascertained and to regulate applications for, and the mode of payment of compensation.

Reason for taking power

24. Animal disease can spread in many different ways, including on/in the carcase, in animal feed or by mechanical means such as in wooden areas of animal housing or on/in equipment. For disease prevention reasons, the Scottish Ministers may need to seize either carcases or things obtained or produced by them and provide for the destruction, burial, disposal or treatment of anything which is seized. The discretion to pay compensation for carcases seized or other things seized which are obtained from or produced by animals is appropriate as neither the carcase of a dead animal nor the potentially infected produce of an animal will always be of value. For example the carcases of sheep found on a hillside could be seized during a disease outbreak to prevent the spread of disease, these carcases could have been there for some time and could not be used for either human consumption or in the animal feed chain. These powers will provide the Scottish Ministers with the flexibility to respond appropriately to different situations as they develop, different disease outbreaks may call for different containment responses and the detailed nature of the provisions which will be required make it appropriate that these matters are dealt with in secondary legislation. The lack of parliamentary procedure is in keeping with the existing provisions of the 1981 Act. It is considered to be appropriate given the need to respond quickly to prevent the further spread of disease and the need to quickly provide compensation details to those affected. In addition, the orders will contain detailed administrative provisions the fully scrutiny of which is considered a disproportionate burden on the Parliament. Although, there is no parliamentary procedure, it should be remembered that as with the exercise of all their powers the Scottish Ministers will require to act compatibly with ECHR and Community law.

Section 8 – insert section 28I (2) – Specified diseases

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative procedure of the Scottish Parliament (class 3)

25. Section 8 (inserting section 28I and Schedule 2B into the 1981 Act) relates to the proposed new powers in relation to the deliberate infection of animals (section 9). The Schedule lists the known very fast spreading diseases that can have a significant impact on a country if an outbreak occurs.

26. The list of diseases might need to be changed by order to include previously unknown diseases and this could be done using the order making power in section 28I(2). Such an order will cease to have effect at the end of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order had been approved by the Scottish Parliament (in calculating
the period of 28 days, no account is taken of periods when the Parliament is dissolved or in recess for more than 4 days).

Reason for taking power

27. It is essential that Scottish Ministers have the flexibility to respond to animal diseases which are currently unknown and may be fast spreading. This order making procedure will allow changes to be made quickly should a previously unknown disease or disease variant emerge without recourse to primary legislation. This will ensure that the Scottish Ministers powers in relation to disease control are kept up to date. Given the consequences of changes to this list, (see section 6D (inserted by section 3) and section 28C (inserted by section 9)) the affirmative procedure is considered appropriate.

Section 10 – insert section 36N(1) – Power to specify livestock genotypes and TSEs

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament (class 5)

28. Section 36N confers on the Scottish Ministers a power to make an order to specify livestock genotypes where an animal of that livestock genotype has (or has had) a Transmissible Spongiform Encephalopathy (TSE). In the case of sheep the genotype confers resistance or susceptibility to TSEs and is ascertained by taking a sample of blood or tissue. Presently other livestock cannot be genotyped because understanding of the genetics is not sufficiently advanced in those species, (this possibility is not ruled out in the future and therefore other livestock are included in the provision).

Reason for taking power

29. Given current scientific knowledge it is not possible to specify all susceptible genotypes of livestock, and all forms of TSE to which they could be susceptible on the face of the Bill. The power will allow the Scottish Ministers to specify genotypes of animals which have had or have a TSE and if appropriate the form of TSE as that knowledge becomes available. The provision of an order making power will provide the Scottish Ministers with the flexibility to keep the legislation current and to react to discoveries as they are made. The negative procedure is considered appropriate as this will provide the balance of expediency and avoid unnecessary use of Parliamentary time.

Section 10 – inserting section 36O(1) – Ascertaining genotypes and identifying livestock

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament (class 5)

30. Section 36O confers on Scottish Ministers power to make provision requiring the keeper of any livestock to allow an inspector to take a sample from it in order to ascertain its genotype, to allow an inspector to administer or otherwise attach an identification device to livestock, and, in connection with the keeping of genotype records.

Reason for taking power

31. The detailed nature of the provisions and need to retain flexibility to update provisions in response to changing circumstances and scientific developments make it appropriate that these matters be set out in secondary legislation. The negative procedure is considered to be appropriate as this will provide the balance of expediency and avoid unnecessary use of Parliamentary time, while providing an opportunity for scrutiny.

Section 10 – inserting section 36V(1) – Compensation

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: no procedure (class 7)

32. Section 36V provides for the paying of compensation for livestock slaughtered and property which has been destroyed in accordance with a restriction notice, by virtue of section 36R or livestock slaughtered by virtue of section 36T.

Reason for taking power

33. Scottish Ministers must pay compensation in respect of animals and/or property destroyed as a result of these powers. The power to determine, compensation rates for slaughtered animals and/or property in secondary legislation, will allow the Scottish Ministers to specify the appropriate monetary value at the time at which the slaughter takes place. Compensation orders will only be made in consequence of the exercise of the powers outlined at section 36R and 36T and will provide the detail of the level of compensation to be paid, together with the necessary administrative provisions. The lack of a parliamentary procedure will enable the Scottish Ministers to provide details of compensation arrangements quickly to those affected. Speed will be essential to both reassure and to ensure the full co-operation of those affected. No parliamentary procedure is also in keeping with the existing provisions of the 1981 Act for orders of this nature. Although, there is no parliamentary procedure, it should be remembered that as with the exercise of all their powers the Scottish Ministers will require to act compatibly with ECHR and Community law.
Part 2: Animal Welfare

Section 14(3) – Animals to which this Part applies

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure of the Scottish Parliament (class 1)

34. Section 14 provides that an animal means a vertebrate other than man but that Part 2 does not apply to an animal in foetal or embryonic form.

35. Section 14(3)(a) confers on the Scottish Ministers power, by regulations, to amend following consultation the definition of “animal” for the purposes of Part 2 of the Bill to include invertebrates of any description, and to make provision as to the stages of development at which the animal welfare provisions of the Bill (Part 2) will apply to it. However, this power may only be exercised if Scottish Ministers are satisfied, on the basis of scientific evidence, that animals of the kind concerned are capable of experiencing pain or suffering. The requirement to consult will ensure that the use of the power is informed by the consultation process.

36. Section 14(3)(b) confers on the Scottish Ministers power, by regulations, following consultation to amend the definition of “animal” for the purposes of Part 2 of the Bill to include animals at earlier stages of development than is currently provided. However, this power may only be exercised if Scottish Ministers are satisfied, on the basis of scientific evidence, that animals of the kind concerned are capable of experiencing pain or suffering. The requirement to consult will ensure that the use of the power is informed by the consultation process.

Reason for taking power

37. Taking regulation making powers will allow flexibility to amend the definition of “animal” in line with scientific developments and knowledge, and without recourse to primary legislation. Given the importance of both the definition of “animal”, and the developmental stage at which Part 2 of the Bill is to apply, it is considered appropriate that the Scottish Parliament should be able to closely scrutinise and debate any proposed amendment which the draft affirmative procedure will allow.

Section 18(3) – Mutilation

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure of the Scottish Parliament (class 1)
38. Section 18 prohibits all mutilations which involve interference with the sensitive tissues or bone structure of an animal unless it is for the medical treatment of the animal. However, certain procedures will be permitted under regulations made under section 18(3). It is intended that a draft Scottish Statutory Instrument will be available for consultation whilst the Animal Health and Welfare (Scotland) Bill is passing through Parliament.

**Reason for taking power**

39. There are a significant number of individual operations which are considered to be necessary or desirable in the context of good animal husbandry (e.g. castration, disbudding, dehorning, tail docking of piglets and lambs and beak tipping) and it is these that will be specified by the Scottish Ministers in order to exclude them from the operation of section 18(1) and (2). It is considered that this level of detail is more appropriately dealt with by secondary legislation and will allow the provisions as to permitted mutilations to be kept up to date more easily in light of changes in science and animal husbandry. Given the controversial nature of the provisions which can be made under this new power and the potential effect the ban on certain mutilations may have in Scotland, it is appropriate that the Scottish Parliament may fully scrutinise and debate any proposed regulation. A more detailed explanation of the policy on exemptions to prohibited procedures and what will be included in the draft Scottish Statutory Instrument is included at Annex A.

**Section 23(1) – Provision for securing welfare of animals**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** affirmative procedure of the Scottish Parliament (class 1)

40. Section 23(1) confers a power on the Scottish Ministers to make regulations for the purposes of, and in connection with, securing the welfare of animals for which a person is responsible and their progeny. Such regulations may make provision for fees or other charges in relation to the exercise of functions under the regulations. The content of the regulations will be informed by the outcome of a consultation process, where the Scottish Ministers will consult animal welfare organisations (such as the Scottish SPCA) enforcement bodies (such as local authorities) and individuals. Section 23(2) provides a non-exhaustive list of the type of provision which may be made in such regulations. The list includes requirements or prohibitions, provision for enforcement, provision in relation to offences and post-conviction orders. Section 23(3) provides a non-exhaustive list of the matters to which requirements and prohibitions may relate and provides examples of the issues which may be addressed in such regulations including the prevention of suffering, the breeding and rearing of animals and the transportation of animals.

**Reason for taking power**
41. The introduction of a power to make regulations to secure animal welfare, following appropriate consultation and to revise these as considered necessary in line with developments in scientific knowledge and animal husbandry, will allow flexibility for the Scottish Ministers to introduce detailed regulations stipulating animal welfare standards for particular types (or breeds) of animals, as judged necessary. Such a level of detail is not considered appropriate for primary legislation. Nevertheless, given the nature of the provisions which can be made under this new power and the impact they may have on the prevention of suffering, and other areas which range from breeding to how animals are prepared for killing and are killed it is appropriate that the Scottish Parliament may fully scrutinise and debate any proposed regulation.

Section 24(1), 24(2) and 24(5) – Licensing etc. of activities involving animals

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure of the Scottish Parliament (class 1)

42. Section 24(1) and (2) confer power on the Scottish Ministers to require a range of activities involving animals to be licensed or registered for the purpose of securing the welfare of animals for which a person is responsible. Section 24(5) allows the Scottish Ministers to make provision about both licences and registration. Scottish Ministers will only be able to make regulations determining which activities are subject to licensing or registration for animal welfare purposes, and after appropriate consultation.

43. Section 24(4) sets out the types of provision that regulations for both licensing and registration may include: enforcement, other than by way of proceedings for an offence; the creation of offences; the imposition of penalties; post-conviction orders; the conferring of powers on specified individuals (such as powers of entry, search, inspection and seizure in connection with breaches and suspected breaches of provisions of the regulations); the creation of an offence of obstructing a person who is exercising their powers under this section; and for exemptions from or qualifications to an offence under the regulations.

44. Regulations under subsection (5) may set out the procedures that should be followed in applying for licences or registration, granting and refusing applications, the qualifications to be held by the applicants, and other matters that are to be taken into account when considering applications. They may also cover the conditions that are to be set out in the licence or registration, for specifying circumstances which might result in the suspension or revocation of a licence or registration, the appeals procedure, and make provision for fees or other charges.

Reason for taking power
45. At present, licensing regimes contain many identical or similar provisions and are found in a number of statutes and secondary legislation. These will be drawn together to create a broad framework which will provide a consistent approach to the wide range of activities involving animals that require to be licensed or registered.

46. The detailed nature of the provisions including comprehensive procedural arrangements, the range of activities to be covered and the need to retain flexibility to update provisions in response to changing circumstances make it appropriate that these matters are covered by secondary legislation. Nevertheless, given the importance of the provisions which can be made under this new power and the impact they may have on animal related businesses and local authorities in Scotland it is appropriate that the provisions are consulted on in order to inform the regulations and that the Scottish Parliament may fully scrutinise and debate any proposed regulation.

47. It is intended that the regulations made under this section will be introduced in a number of stages. Broadly, the first stage will apply to areas where there is current regulation, but will also include pet dealing which is acknowledged as an area in urgent need of reform. No existing legislation will be repealed until the new provisions have been approved by the Scottish Parliament.

48. The following areas will have regulations introduced in the first stage:

- Animal boarding establishments (already regulated)
- Riding establishments (already regulated)
- Pet shops (already regulated) to include pet fairs (new proposal)
- Livery yards (new proposal)

49. There have been concerns about the welfare of puppies sold shortly after birth. Christine Grahame MSP lodged a proposal for a Transportation and Sale of Puppies (Scotland) Bill on 25 November 2003, and the Bill was issued for consultation on 30 March 2004. The broad proposals contained in that Bill will be incorporated into regulations made under this section, and a draft Scottish Statutory Instrument will be available for consultation during the passage of the Animal Health and Welfare (Scotland) Bill.

50. More detail as to the proposed first stage regulations under this section (listed in paragraph 48 above) are provided at Annex B.

**Section 25(1) – Prohibition on keeping certain animals**

**Power conferred on: the Scottish Ministers**
51. Section 25(1) confers on the Scottish Ministers the power to make regulations to prohibit the keeping of certain types of animals at domestic or other specified premises, for the purposes of ensuring animal welfare. The provision allows Scottish Ministers to specify by regulation the types of animals which may not be kept, as well as the types of premises other than domestic premises to which the prohibition is to apply.

52. The regulations may include provision for enforcement, offences, penalties, post-conviction orders, the conferring of powers on specified individuals (such as powers of entry, search, inspection and seizure of animals), for an offence of obstructing a person who is exercising their powers under the Bill, and provision for exemptions or exceptions.

Reason for taking power

53. This power is required in order to prohibit the keeping of certain animals which may, for example, require specialised care which cannot normally be provided in domestic premises. It is considered that detail as to the types of animals which may be subject to the provision is not suitable for primary legislation. It is not intended to specify all animals which could possibly be kept in domestic (or other) premises, and which it is considered cannot properly be looked after in such premises. Rather, it is intended that as problems are foreseen or emerge regulations can be made. For example, a recent report from the International Fund for Animal Welfare showed that up to 3,000 primates are kept as pets in the United Kingdom. The report concluded that it was almost impossible for a pet owner to provide the correct physical, social or behavioural environment to ensure the welfare of primates and recommended that primates should not be kept as pets. The use of a regulation making power under this section provides the Scottish Ministers with the flexibility to respond to developments. The draft affirmative procedure will allow the appropriate level of scrutiny and debate once the regulations have been informed by the consultation process.

54. The power to specify other premises for the purpose of the provision is intended to be used, for example, to specify particular places where specific animals may not be kept, if scientific or other evidence shows that appropriate animal welfare standards are not able to be maintained when such animals are kept in these environments.

Section 33(1) and 33(2) – Animal welfare bodies

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure of the Scottish Parliament (class 1)
55. Section 33 confers on the Scottish Ministers power to establish a body to provide themselves and such other persons as they may direct, with advice on matters concerning animal welfare specified by the Scottish Ministers. The Scottish Ministers may also make regulations making provision for facilitating or improving co-ordination among bodies which have functions relating to animal welfare.

Reason for taking power

56. Two examples of Animal Welfare Bodies already in operation would be the Farm Animal Welfare Council and the Companion Animal Welfare Council. In the future it may be necessary to establish equivalent Scottish Bodies. The detailed nature of the regulation required to establish such bodies is essentially an administrative matter and is more appropriate to secondary legislation, however given the important role any such body will have in advising the Scottish Ministers it is considered appropriate that the Scottish Parliament may scrutinise and debate any new regulation.

57. The power to make regulations to facilitate or improve co-ordination between Animal Welfare Bodies will allow the Scottish Ministers to ensure that they are provided with consistent advice on animal welfare related issues. This could be particularly important if a number of new bodies are established for separate animal species as co-ordination will allow the bodies to provide the Scottish Ministers with consistent advice on general animal welfare matters. The level of detail concerned and the need for flexibility mean that this matter is appropriately dealt with in secondary legislation.

Section 34(1) – Animal welfare codes

Power conferred on: the Scottish Ministers
Power exercisable by: codes laid before the Scottish Parliament
Parliamentary procedure: laid before and approved by a resolution of the Scottish Parliament

58. Section 34(1) confers on the Scottish Ministers a power to make, revise and revoke codes of practice for providing practical guidance in respect of the provisions of Part 2 of the Bill or regulations made there under. Broadly, such guidance will relate to the welfare of farmed and non-farmed animals.

59. A code may only be made following consultation with groups that represent relevant interests, and with other persons, as the Scottish Ministers consider to be appropriate. It must be laid before the Scottish Parliament and approved by it. A code will only come into force after approval, on a date specified in the code. The Scottish Ministers must publicise any animal welfare code in a manner and to an extent which they consider appropriate. Failure to comply with the terms of a code does not, of itself, give rise to proceedings. But compliance or non-compliance may be taken into account in any proceedings for an offence under Part 2 or under regulations made under sections 23 or 24.
Reason for taking power

60. Given the nature of the likely provisions of such codes (e.g. specifying appropriate training for animal keepers, minimum space required to house the animal, accessibility of feed and water), the wide range of animals to which the codes may apply, the need to revise them from time to time in light of developments in both animal husbandry and scientific knowledge and that they will not be mandatory, they are not well-suited to primary legislation. Although the codes will not be made by statutory instrument they will require to be approved by Parliament before they can come into force. It is considered appropriate that the codes are not made by statutory instrument as this will provide the Scottish Ministers with flexibility in relation to style and format and allow the codes to be presented in a more user-friendly and accessible format tailored for their intended use and potential users. Codes which currently follow this procedure include: Codes of Recommendations for the Welfare of Livestock: Sheep; Cattle; Pigs; and Meat chickens and breeding chickens.

61. There are two current proposals to introduce Codes of Practice under this section:

- Code of Practice for the tethering of equines;
- Code of Practice for the rearing of game birds for sport shooting.

62. Further details as to the scope and nature and intended effect of these codes are provided at Annex C.

Part 3: General

Section 48(1) Ancillary provision

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament (class 5) but where primary legislation is amended the affirmative procedure (class 1)

63. Section 48 confers on Scottish Ministers the power to make incidental supplemental, consequential, transitional, transitory or saving provisions as they consider necessary or expedient. Such orders are subject to affirmative resolutions where they amend primary legislation and negative resolution in any other case.

Reasons for taking this power

64. Any body of new law, like that contained in the Bill, gives rise to the potential for further necessary provision post-enactment in order that the full consequences of the Bill in practice may operate correctly. It will also, for example, allow savings provisions to ensure that statutory guidance that
already exists, such as codes of practice, can be maintained, this will avoid an
unnecessary use of Parliamentary time. It will also allow the amendment if
necessary of a number of regulations or orders via one piece of secondary
legislation which will avoid the need to scrutinise a high level of detail in
primary legislation. 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. Importantly any changes
to primary legislation will require to be approved by an affirmative resolution of
the Scottish Parliament, which will allow the necessary scrutiny and debate for
such a provision. Where changes are made to secondary legislation, the
negative procedure is used as this will balance the need for expediency with
the appropriate level of scrutiny required.

Section 50 – Commencement and short title

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

65. Section 50(1) provides that the provisions of this Bill except sections 48 and 49
will come into force on such a day as the Scottish Ministers may by order
appoint. Sections 48 to 50 will come into force on Royal Assent.

Reasons for taking power

66. Commencement by order is common and it is established practice that it
attracts no procedure.
Annex A

PROVISIONS FOR WHICH DRAFT STATUTORY INSTRUMENTS WILL BE PROVIDED FOR SCRUTINY BY STAGE 2 OF THE ANIMAL HEALTH AND WELFARE (SCOTLAND) BILL

Regulations under section 18 of the Animal Health and Welfare (Scotland) Bill (Mutilation)

Scope of the regulations

67. The regulations will apply to Scotland only.

Commencement

68. It is intended that the regulations will enter into force at the same time as section 18 (mutilation) of the Bill. This section is to enter into force on a day appointed by order by the Scottish Ministers, it is anticipated that this will be during the summer of 2006.

Structure of the regulations

69. It is intended that the regulations will permit the performance of certain procedures that will otherwise be prohibited by section 18 of the Animal Health and Welfare (Scotland) Bill.

70. The procedures permitted under the regulations will be arranged in the following four categories:

(a) procedures permitted subject to compliance with existing legislation (except where otherwise indicated);  
(b) procedures permitted except in relation to certain species;  
(c) procedures permitted subject to restrictions on the circumstances in which the procedure can be performed;  
(d) procedures permitted subject to restrictions on the performance of the procedure without anaesthetic.

Content of the regulations

Farm practices

71. For farm animals, the regulations will preserve the position before the enactment of the Bill. We do not wish to change any of the following accepted farm practices:

Methods of control of reproduction
72. Castration is permitted for cattle, goats, pigs and sheep.

Methods of identification

73. Freeze branding is permitted for cattle and horses, tattooing is permitted for all species, ear notching, clipping and tagging are permitted for all species.

Other management procedures

74. Ringing is permitted for cattle and pigs, tusk trimming is permitted for boars. Tail docking is permitted for pigs and sheep and beak trimming is permitted for poultry. Tooth cutting is permitted for pigs, desnooding is permitted for turkeys, detoeing is permitted for domestic fowl and turkeys, dehoming is permitted for adult cattle, sheep and goats. Disbudding is permitted for cattle and goats, dubbing is permitted for poultry, domestic fowl and turkeys, and supernumerary teat removal is permitted for cattle.

Wing pinioning

75. It is intended that there will be an exemption for wing pinioning (which is a permanent flight restraint mechanism, it involves the removal at a very young age, of the metacarpal and phalanges on one wing, which is the area where the primary feathers grow, so it constrains the bird from flying). This practice is widely performed and has strong welfare, management, conservation and restraint of non-native species arguments in its favour.

76. It is intended there will be an exemption for wing pinioning in non-farmed birds under 10 days old.

Tail docking (dogs)

77. It is intended that there will be no general exemption for docking of dogs’ tails, which will therefore be generally prohibited. The only exception to prohibition on tail docking will be to allow the docking of a dogs’ tail where the veterinary surgeon is satisfied that dogs from the litter are likely to be used as working (gun or sniffer) dogs.

Enforcement

78. The enforcement of these regulations will be in accordance with the provisions of the Animal Health and Welfare (Scotland) Bill. The maximum penalty for committing an offence under this provision will be a level 5 fine (£5,000) or 6 months custodial sentence or both. A conviction could also be subject to one of the post-conviction orders under the Bill (a deprivation order, or a disqualification order).
Offences

79. There are three offences created in section 18. These are:

(a) carrying out a prohibited procedure on a protected animal;
(b) causing a prohibited procedure to be carried out on a protected animal and;
(c) a person responsible for an animal commits an offence if they permit or fail to take reasonable steps to prevent another person carrying out a prohibited procedure on the animal they are responsible for.

80. "Prohibited procedure" is defined at section 18(4) as meaning a procedure which involves interfering with the sensitive tissue or bone structure of the animal. It is the carrying out of such a procedure which gives rise to a criminal offence.

81. If a “prohibited procedure” is carried out, however, for the purpose of medical treatment then this will not give rise to a criminal offence.

82. It will also be an offence to fail to comply with the provisions of the regulations in regard to when it is permitted to carry out a “prohibited procedure”.

Regulations to license pet dealers under section 24 of the Animal Health and Welfare (Scotland) Bill

Background

83. Christine Grahame MSP lodged a proposal for a Members’ Bill (The Transportation and Sale of Puppies (Scotland) Bill) in the Scottish Parliament in November 2003 which aimed to “bring to an end certain serious animal welfare problems associated with the transport and sale of puppies by third parties in Scotland”.

84. It was agreed that the main points of her proposed Bill would be taken forward in secondary legislation made under the Animal Health and Welfare (Scotland) Bill. This is a high profile issue, primarily concerning the purchase, transportation and sale of puppies. It would not be possible to prohibit this trade, but by licensing pet dealers the aim is to regulate it.

Scope of the regulations

85. The regulations will apply to Scotland only.

Commencement

86. It is intended that the regulations will come into force shortly after the Animal Health and Welfare Bill receives Royal Assent (Summer 2006).
Purpose of the regulations

87. The aim of the regulations is to protect the welfare of young companion animals which are bought and resold for profit by dealers. Concerns have been raised regarding whether these animals are: transported in appropriate conditions; allowed to rest after their journey; identified; healthy and disease free; and checked by a veterinary surgeon before being resold. The trade will not be prohibited but will be regulated and only legally conducted by people licensed by local authorities. It will be essential for dealers to have suitable premises for the animals (similar to rearing establishments) before any licence would be issued.

Licensing procedures

88. Each dealer will need to apply to the local authority for a “dealer’s licence” and the local authority will grant a licence only when it satisfies itself that the premises are suitable for the animals which the dealer intends to keep. This will normally involve a visit to inspect the premises by a local authority “Inspector” (as defined in the Animal Health and Welfare (Scotland) Bill) and a veterinary surgeon or practitioner (as defined in the Breeding of Dogs Act 1973). The local authority shall produce a report on the premises, the applicant and any other relevant matter. The local authority shall consider the report before determining whether to grant a licence.

Inspection

89. Inspectors appointed by Scottish Ministers or local authorities (under the Animal Health and Welfare (Scotland) Bill will have the power to enter and inspect all licensed dealers’ premises. They will also have the power to enter and inspect unlicensed premises where they have reason to believe animals have been brought onto the premises. A decision on whether to provide inspectors with the power to seize animals kept in breach of regulations has not yet been made and will be informed by the consultation process on the draft regulations. In the course of inspecting premises, if inspectors found an animal in distress, they will be able to remove that animal to a place of safety under the powers provided in section 29 of the Bill. Schedule 1 of the Bill details the powers to entry, inspection and search.

Enforcement

90. The enforcement of these regulations will be in accordance with the provisions of the Animal Health and Welfare (Scotland) Bill. Enforcement will be carried out by Inspectors appointed by the Scottish Ministers or local authorities and if necessary in connection with the police. The maximum penalty for committing an offence under this provision will be a level 5 fine (currently £5,000) or 6 months custodial sentence or both. Post-conviction orders under the Bill (a deprivation order, or a disqualification order) will also be available following a conviction, but it is expected that these will be used only in exceptional cases. A person will not normally be banned from keeping animals solely because of being convicted of dealing in pet animals without a licence.
Appeals

91. Any person aggrieved by the refusal of a local authority to grant such a licence may appeal to a court of summary jurisdiction in the place where the premises are situated. The court may give such direction with respect to the issue of a licence following that appeal.

Offences

92. The offences under these regulations will be:

(a) “Dealing” without a licence issued by a local authority;
(b) failure to adhere to the licence conditions and;
(c) the obstruction of an Inspector in the exercise of his functions.
Annex B

FURTHER DETAIL ON PROPOSED ORDERS/REGULATIONS TO BE MADE UNDER DELEGATED POWERS OF THE ANIMAL HEALTH AND WELFARE (SCOTLAND) BILL

Biosecurity Codes - order under section 3 of the Animal Health and Welfare (Scotland) Bill

Scope of the order

93. The order will apply to Scotland only.

Commencement

94. It is intended that an order will come into force in the autumn of 2006.

Purpose of the order

95. The purpose of the biosecurity code is to set out biosecurity measures for the prevention of animal disease occurring in, or spreading to, other animals or humans. The primary focus is intended to be on livestock (cattle, sheep, goats, pigs and poultry) diseases. A code would deal with a range of animal health and animal management practices all designed to avoid disease; avoid harming the welfare of animals and; not disrupt farming and rural businesses. Some biosecurity measures in the code will be mandatory, a breach of which would result in an offence having been committed. The following is an example of what a typical biosecurity code would contain.

Structure of the Code

96. Subject to the statutory consultation process in advance of making the order, it is expected that a biosecurity code will include the following main subject headings:

(a) planning ahead to avoid disease;
(b) action required on first signs or suspicion of disease;
(c) avoidance measures vis-à-vis the spread of disease and ;
(d) key advice for visitors to farm properties.

97. Key elements of the code are likely to cover the following: animal and/or farm management; buildings and equipment; transportation of animals; handling animals; new, returning and replacement animals; records and traceability; animal medicines; feed and water; and wildlife.

98. Some biosecurity measures in the proposed code will include best practice, examples of which are included below. Other measures will be mandatory and
failure to comply with any such requirements will be an offence, except where there is lawful authority or reasonable excuse.

Planning ahead to avoid disease

99. Best practice likely to be included in the code would recommend the following action:

(a) preparation, and then annual review, of an animal health and welfare plan in consultation with a vet;
(b) training of staff in the principles of hygiene and disease security;
(c) accreditation of the health status of new or replacement livestock;
(d) isolation of new, returning or replacement animals before contact with “at home” animals;
(e) checking and maintaining boundaries regularly to avoid straying and nose-to-nose contact with neighbouring animals;
(f) disposing of bedding and preventing animal access to the premises for 6 weeks;
(g) avoidance of unnecessary contact between vehicles and animals;
(h) cleansing and disinfection of buildings after use by livestock;
(i) provision of permanent washing facilities for, and after, contact with any farm animal;
(j) agreement on a vermin control/eradication procedure with a vet;
(k) signposting the name of the farm or premises at all entrances/exits;
(l) notices directing callers to the premises or farm office; and
(m) reduction of the number of vehicles moving or parking near where animals are kept or regularly moved.

100. The code is likely to include the following mandatory requirements:

(n) recording the names of visitors and deliveries; and
(o) that cleansing and disinfection materials are provided and ready for use.

Action required on first sign or suspicion of disease

101. The code is likely to include best practice measures which would include the following action on the first sign or suspicion of disease:

(a) isolation of the animal(s) as soon as possible; and
(b) contact being made with a vet or duty vet at the local Animal Health Divisional Office.
102. The following mandatory measures may be included:

(a) if a notifiable disease (a disease which you are required to notify to your local Animal Health Office) is evident or suspected in an animal(s), contact must be made as soon as possible with the duty vet at the local Animal Health Divisional Office; and

(b) while waiting for veterinary inspection, no movement of such animals beyond the farm gate or premises until written authority has been obtained from the State Veterinary Service.

Avoidance measures vis-à-vis the spread of disease

103. Best practice measures likely to be included in the code will include the following action:

(a) re-examination, with a vet, of the animal health and welfare plan and introduction of any new measures where recommended;

(b) avoidance, where possible, of direct contact with infected animals;

(c) no wearing of dirty work clothes or footwear;

(d) no grazing on contaminated pastures; and

(e) recording of all visitors requiring access to the farm/premises.

104. The biosecurity code may, as well as providing new mandatory biosecurity measures, list, for ease of reference, any relevant existing statutory biosecurity measures and detail the relevant legislation. Examples of best practice relating to these obligations may also be given where appropriate. Such existing biosecurity measures include:

(a) for all notifiable diseases, cleansing and disinfection of all vehicles and equipment before any movement off premises that contain animals;

(b) movement of animals only on the basis of the relevant disease related legislation;

(c) the registration of all livestock and premises must accord with existing legislation;

(d) fallen stock must be disposed of in accordance with existing legislation;

(e) cleansing and disinfection after transporting animals must accord with existing legislation;

(f) water bowls or drinkers must be above the level of faecal contamination in accordance with existing legislation; and

(g) veterinary medicines must be used in accordance with existing legislation.
Advice for visitors to farm properties

105. The following best practice measures are likely to be included in the code:

(a) that visitors contact the farmer or representative before the visit; and
(b) that visitors follow the biosecurity advice given by individual farmers.

Enforcement

106. The enforcement of the mandatory aspects of the proposed code, is expected to fall on the State Veterinary Service and local authority Trading Standards Departments in the course of their existing inspection functions. The penalties for non-compliance with the mandatory measures will be in accordance with the updated offence provisions in section 13 of the Bill (or with the existing statutory provisions where applicable). The enforcement provisions of the code will be subject, as will the rest of the code to the proposed statutory consultation requirement in terms of the new section 6C(11).

Offences

107. A person will commit an offence under section 3 of the Bill if one or more of the proposed mandatory measures in the code are breached. Failure to adhere to best practice standards will not give rise to an offence.

Animal Gatherings - order under Section 5 of Part 1 of the Animal Health and Welfare (Scotland) Bill

Scope of the order

108. An order will apply to Scotland only.

Commencement

109. It is intended that an order will come into force in the autumn of 2006.

Purpose of the order

110. The purpose of any order is to regulate animal gatherings by implementing a licensing scheme.

Exceptions

111. An “animal gathering” is defined in the Bill as meaning an occasion at which animals are brought together for any purpose. This will include animal markets, shows, exhibitions, and sales. However, to this definition there are two exceptions. Firstly, if the animals involved are owned by the same person. Secondly, if the gathering takes place on land in which more than one person
has a right of use and the animals are owned by people who have a right of use in the land. So, for example, the definition in the Bill will not cover gatherings of animals on common grazings or such like.

112. The application of the order will be restricted accordingly.

**Use of Premises for Animal Gatherings**

113. It is intended that where premises are to be used for an animal gathering which requires a licence that a licence will need to be obtained in advance.

**Licensing Scheme**

114. The licensing scheme would make provision to the effect that licences would require to be in writing and would be subject to such conditions as the veterinary inspector considers necessary to control the introduction into, or spread of disease within or from, the licensed premises. The licence conditions will reflect the nature/type of the gathering concerned. It will be time limited. The licence will also specify the name of the licensee, the premises in which the animal gathering will take place and the area to which the animals may be given access.

**Restrictions on when an Animal Gathering can take place**

115. The licensing scheme would make provision to the effect that each licence would contain a requirement that there should be a 27 day period between different animal gatherings at the same premises. The intention is that this will allow full biosecurity cleansing and disinfection of the premises and all equipment. This restriction will not apply if the entire licensed premises are totally paved and capable of being effectively cleansed and disinfected at the end of each animal gathering i.e. after the last animal had departed from the premises.

**Enforcement**

116. An order would be administered and the licensing scheme would be enforced by the Local Authority in line with their existing enforcement functions.

**Appeals**

117. Any person aggrieved by the refusal of a local authority to grant such a licence may appeal to a court of summary jurisdiction in the place where the premises are situated. The court may give such direction with respect to the issue of a licence following that appeal.
Penalties

118. The penalties for non-compliance with any order will be in accordance with the updated offence provisions in section 13 of the Bill.

Animal boarding establishments (already regulated) to be licensed under a regulations made under section 24 of the Animal Health and Welfare (Scotland) Bill

Scope of the regulations

119. The regulations will apply to Scotland only.

Commencement

120. It is intended that the regulations will come into force by Summer 2007.

Current situation and intention of new regulations

121. It is intended that the regulations will require the licensing of animal boarding establishments in Scotland. Under the Animal Boarding Establishments Act 1963 local authorities are required to license boarding establishments for both cats and dogs. The keeping by anyone of a boarding establishment is defined in this Act as, “the carrying on by him at premises of any nature (including a private dwelling) of a business of providing accommodation for other peoples’ cats and dogs.”

122. In the last decade there has been a trend away from using traditional boarding kennels by dog owners in favour of home from home based boarding services. Under the current legislation a business providing accommodation for dogs or cats in a private dwelling should be licensed.

123. It is not the intention to require private arrangements between friends or family to be licensed. For example, if a person goes on holiday and asks their neighbour to look after their two dogs in return for a gift or even small payment then this should not be covered by the regulation.

124. There are two main reasons why it is felt necessary to transpose the current provisions from primary to secondary legislation:

(a) it will enable the regulations to be kept up to date and in line with developments in animal welfare and good practice in the animal boarding sector; and

(b) it will also allow the Scottish Ministers to extend the type of animal boarding establishments which require licensing, for example other small mammals, reptiles or even birds if there was evidence that this was necessary without recourse to primary legislation.
Content of the regulations

125. From an animal welfare point of view the risk in home boarding for dogs is the mixing together of animals from more than one owner. Therefore it is proposed that home boarding for dogs from more than one owner should be licensed. However from an animal welfare point of view home boarding of cats is always undesirable. The standards required to ensure that home boarding is done hygienically and safely for cats are prohibitively high.

126. The following conditions will need to apply:

(a) cats be kept in one room (not carpeted) which can be completely disinfected after their stay and any bedding or soft furnishings and so on be washed or disposed of in order to prevent the spread of disease; and

(b) cats from different homes should not mix. Nor should they occupy a space which has not been disinfected first. They should not mix with cats ordinarily resident in the boarding house.

127. It is undesirable that cats are kept in garages or cages in spare rooms. Work has been done to ensure that the standards in licensed catteries have risen. Thus it will be consistent to attempt to ensure that standards in relation to home-boarding are required to be of a similar standard.

128. It is therefore intended that the following activities will require a licence:

(a) providing residential care for dogs from two or more different owners at the same time, on premises or parts of premises used primarily as a private dwelling, in return for financial remuneration; and

(b) providing residential care on premises used primarily for purposes other than for private dwelling, for other people’s dogs or cats in return for financial remuneration.

129. Providing residential care for cats, on premises, or a part of premises, used primarily as a private dwelling, in return for financial remuneration will not meet the conditions of the licensing regime and will therefore not be granted a licence.

130. The following activities will be outside the scope of the regulations:

(a) boarding any number of dogs from one owner at a time on premises primarily used as a private dwelling; and

(b) boarding species other than dogs and cats.

Conditions on granting of a licence

131. It is intended that the following conditions will be applied by a local authority on granting a licence:
(a) that suitable accommodation, suitable in respects of construction, size of quarters, number of occupants, exercising facilities, temperature, lighting, ventilation and cleanliness is provided;

(b) that animals will be adequately supplied with suitable food, drink and bedding material, adequately exercised, and supervised;

(c) that all reasonable precautions will be taken to prevent and control the spread among animals of infectious or contagious diseases, including the provision of adequate isolation facilities;

(d) that appropriate steps will be taken for the protection of the animals in case of fire or other emergency;

(e) that a register be kept containing a description of any animals received into the establishment, date of arrival and departure, and the name and address of the owner such register to be available for inspection at all times by an officer of the local authority or veterinary surgeon.

132. It is intended that a licence will be granted for a period of up to 3 years.

133. Local authorities will be able to revoke a licence for reasons which will include convictions of a criminal offence under the Bill, or failure to comply with relevant Health and Safety requirements, for example fire safety and workplace health and safety.

Appeals

134. Any person aggrieved by the refusal of a local authority to grant such a licence may appeal to a court of summary jurisdiction in the place where the premises are situated. The court may give such direction with respect to the issue of a licence following that appeal.

Offences

135. A person commits an offence if they keep an animal boarding establishment without a licence or in contravention of the licence conditions.

136. The enforcement of these regulations will be in accordance with the provisions of the Animal Health and Welfare (Scotland) Bill. The maximum penalty for committing an offence under this provision will be a level 5 fine (currently £5,000) or 6 months custodial sentence or both. Post-conviction orders under the Bill (a deprivation order, or a disqualification order) will also be available following a conviction, but it is expected that these will be used only in exceptional cases. A person will not normally be banned from keeping animals solely because of running an unlicensed cattery.

Inspection and Enforcement

137. It is intended that a local authority officer will have the same authority to inspect any licensed establishment or alleged unlicensed establishment in order to ascertain whether an offence was being committed under these
regulations, as set out in Schedule 1 of the Bill. A decision on whether to provide inspectors with the power to seize animals kept in breach of the regulations has not yet been made and will be informed by the consultation process on the draft regulations. In the course of inspecting premises, if inspectors found an animal in distress, they will be able to remove that animal to a place of safety under the powers provided in section 29 of the Bill. It shall be an offence to wilfully obstruct or delay any person in the exercise of powers of entry or inspection under these regulations.

Riding establishments (already regulated) to be licensed under regulations made under section 24 of the Animal Health and Welfare (Scotland) Bill

Scope of the regulations

138. The regulations will apply in Scotland only.

Commencement

139. It is intended that the regulations will come into force by Summer 2007.

Current situation and intention of new regulations

140. These regulations would replace the Riding Establishments Acts 1964 and 1970.

141. The current legislation requires a licence to be held in order to run a riding establishment. Keeping a riding establishment is defined as “the carrying on of a business of keeping horses for either or both of the following purposes, that is to say, the purpose of their being let out on hire for riding or the purpose of their being used in providing, in return for payment, instruction in riding”. This definition excludes horses kept: under the management of the Secretary of State for Defence; solely for police purposes; by the Zoological Society of London; or by the Royal Zoological Society of Scotland. Riding establishment licences are granted annually following application. The Riding Establishment Act 1970 specifies that the licence holder must hold a current Public Liability Insurance Policy. The proposal is to keep the current definition of a riding establishment

142. The regulations will set out a minimum qualification for riding instructors and also to require that a veterinarian is present at all inspections of riding establishments.

143. Transposing the current provisions from primary to secondary legislation will enable the regulations to be kept up to date and in line with developments in animal welfare and good practice in the riding establishment sector. Also, detailed administrative provisions are required and this is most appropriately dealt with in secondary legislation.
Content of the regulations

144. It is intended that the following activities will require a licence:

(a) carrying on a business of keeping horses in order to let them out on hire for riding; or
(b) carrying on a business of keeping horses for use in providing instruction in riding for payment; or
(c) both of these.

Conditions of granting a licence

145. It is intended that the following requirements for a riding establishment owner/manager should be stipulated by a local authority as being conditions of the licence:

(a) the person with day to day management of the yard must be suitably qualified (either by experience in the management of horses or by being the holder of an approved appropriate certificate). New applicants must be qualified or must employ qualified staff. The following certificates/qualifications are acceptable: a British Horse Society Assistant Instructor Certificate; an ABRS Initial Teaching Award; an SNVQ Level 3 in Horse Care and Management; a BTEC Level 3 National Diploma in Horse Management; a level 3 National (Advanced National) Certificate in Management of Horses; a British Equestrian Tourism Ride Leader Qualification; or a British Equestrian Tourism Riding Holiday Centre Manager Qualification;
(b) they must hold public liability insurance;
(c) they must ensure the welfare of the equines kept at the establishment;
(d) they must have in place records for each equine in work, detailing age, height and weight limit and records for clients and these records must be available for inspection;
(e) they must ensure that the construction and size of the stables is appropriate for the size and type of equine accommodated and is regularly maintained for the welfare of the animal;
(f) equines must have access to suitable food and a regular and sufficient supply of clean, fresh drinking water, and bedding and must be adequately exercised, groomed and rested and visited at suitable intervals;
(g) where grass is used as sustenance there must be sufficient quantity for every animal in that field;
(h) that all reasonable precautions will be taken to prevent and control the spread of infectious or contagious diseases among horses and that veterinary first aid equipment and medicines shall be provided and maintained in the premises;
(i) that appropriate steps will be taken for the protection of horses in case of fire; and
that adequate accommodation will be provided for forage, bedding, stable equipment and saddlery.

146. It is intended that a licence will be granted for a period of up to 3 years with the option of annual inspections.

147. Grounds for revocation of the licence will include convictions of a criminal offence under the Bill, failure to comply with a welfare improvement notice served under the legislation or failure to comply with relevant Health and Safety requirements, for example fire safety and workplace health and safety.

148. A welfare improvement notice could be served by an Inspector having inspected a premises and finding that the animal welfare standards stipulated in the regulations are not being met. An Inspector would serve a welfare improvement notice with the understanding that action will be taken to improve welfare standards by a certain time or the licence will be revoked.

Appeals

149. Any person aggrieved by the refusal of a local authority to grant such a licence may appeal to a court of summary jurisdiction in the place where the premises are situated. The court may give such direction with respect to the issue of a licence following that appeal.

Offences

150. A person commits an offence if they operate a riding establishment without a licence. The maximum penalty for committing an offence under this provision will be a level 5 fine (currently £5,000) or 6 months custodial sentence or both. Post-conviction orders under the Bill (a deprivation order, or a disqualification order) will also be available following a conviction, but it is expected that such orders will only be used in exceptional cases. A person will not normally be banned from keeping animals solely because of running an unlicensed riding establishment.

Inspection and Enforcement

151. The enforcement of these regulations will be in accordance with the provisions of the Animal Health and Welfare (Scotland) Bill. It is intended that a local authority officer or inspector appointed or authorised by the Scottish Ministers will have the same authority to inspect any licensed establishment, or alleged unlicensed establishment, in order to ascertain whether an offence was being committed under these regulations, as set out in Schedule 1 to the Bill. It shall be an offence to wilfully obstruct or delay any person in the exercise of powers of entry or inspection under these regulations.

152. A new application for a licence to operate a riding establishment will require to be inspected by both a local authority inspector and a veterinary surgeon.
Selling of pets (Pet shops already regulated, will include pet fairs – new proposal) to be licensed under regulations made under section 24 of the Animal Health and Welfare (Scotland) Bill

Scope of the regulations

153. The regulations will apply to Scotland only.

Commencement

154. It is intended that the regulations will come into force by June 2008.

Current situation and intention of new regulations

155. These regulations will replace the provision for the licensing of pet shops contained in the Pet Animals Act 1951. They will also include a new provision for the licensing of pet fairs where animals are sold.

156. For pet shops, it is intended that the regulations will require two things: firstly, the provision of written care instructions to prospective pet purchasers and secondly; a minimum competency level for pet vendors in the animal husbandry required to care for pet animals.

157. A pet fair is an event, usually of one or two days duration and often held at a venue temporarily used for such a purpose, for example an exhibition centre. Enthusiasts set up individual stalls where they display and sell animals. The law relating to the sale of animals at pet fairs is ambiguous. There is some confusion as to whether pet fairs are currently legal under the Pet Animals Act 1951 (as amended by the Pet Animals (Amendment) Act 1983). Some local authorities license pet fairs under the 1951 Act and others consider that such events are prohibited.

158. It is intended that pet fairs for the following 4 categories of animals will require to be licensed: bird fairs; reptile/amphibian fairs; small mammal fairs; and fish fairs.

159. There are three main reasons why it is felt necessary to transpose the current provisions from primary to secondary legislation:

(a) it will enable the regulation to be kept up to date and in line with developments in animal welfare and good practice in the area of pet vending;

(b) it will allow additional conditions to be considered in the granting of licences to pet vendors, including a requirement to provide written details on the care of animals to prospective purchasers; and

(c) it will also allow the Scottish Ministers to extend the regulations regarding pet shops to pet fairs.
Content of the regulations

160. It is intended that the following activities will require a licence:

(a) keeping a pet shop; and
(b) organising a pet fair where birds, reptiles, small mammals or fish are sold.

Conditions on granting of a licence

161. It is intended that the following conditions will be applied by a local authority on granting a licence:

(a) all pet vendors will be required to provide care leaflets;
(b) that animals will at all times be kept in accommodation suitable as respects size, temperature, lighting, ventilation and cleanliness;
(c) that animals will be adequately supplied with food and drink and visited at suitable intervals;
(d) that appropriate steps will be taken for the protection of the animals in case of fire or other emergency;
(e) that all reasonable precautions will be taken to prevent the spread among animals of infectious diseases;
(f) that either the owner/manager in respect of pet shops holds a suitable qualification (the level and type of qualification to be consulted on once the draft regulations are available).

162. It is intended that in respect of pet shops the licence will be granted for a period of up to 3 years with the option for annual inspections.

163. In respect of pet fairs the licence will require to be applied for at least one month in advance and will last for a specified period and only in respect of a location specified in the licence.

164. Grounds for revocation of the licence will include convictions of a criminal offence under the Bill, or failure to comply with relevant Health and Safety requirements for example fire safety and workplace health and safety.

Appeals

165. Any person aggrieved by the refusal of a local authority to grant such a licence may appeal to a court of summary jurisdiction in the place where the premises are situated. The court may give such direction with respect to the issue of a licence following that appeal.

Offences

166. A person commits an offence if they keep a pet shop without a licence or contravene any of the conditions of a licence.
167. A person commits an offence if they organise or participate in a pet fair without a licence or contravene any of the conditions of a licence.

168. The enforcement of these regulations will be in accordance with the provisions of the Animal Health and Welfare (Scotland) Bill. The maximum penalty for committing an offence under this provision will be a level 5 fine (currently £5,000) or 6 months custodial sentence or both. Post-conviction orders under the Bill (a deprivation order, or a disqualification order) will also be available following a conviction, but these will be expected to be used only in exceptional cases. A person will not normally be banned from keeping animals solely because of organising a pet fair without a licence.

**Inspection and Enforcement**

169. It is intended that a local authority officer will have the same authority to inspect any licensed pet shop or pet fair, or alleged unlicensed establishment or event, in order to ascertain whether an offence was being committed under these regulations, as set out in Schedule 1 to the Bill. There will be an offence of obstruction for any person who wilfully obstructs or delays any person in the exercise of powers of entry or inspection under these regulations.

**Livery yards (new proposal) to be registered under regulations made under section 24 of the Animal Health and Welfare (Scotland) Bill**

**Scope of the regulations**

170. The regulations will apply in Scotland only.

**Commencement**

171. It is intended that the regulations will come into force by June 2008.

**Current situation and intention of new regulations**

172. Livery yards or stables are establishments where horses are housed and fed on behalf of their owners. At present they are not regulated.

173. Some livery stables offer “DIY” services where housing is provided, but the owner is responsible for some or all of the feeding, exercise and grooming of their horse(s). In some of the DIY establishments the responsibility for the welfare of the animal lies with the horse owner and not the livery stable owner. The proposal is to require all types of livery stables to be registered. A condition of the registration will be initial inspection by the local authority with the presence of a veterinarian.

**Content of the regulations**

174. It is intended that the following features should constitute the definition of a livery yard:
(a) a place where at least 2 people (other than the yard owner) keep their equines;
(b) the equines are kept there on a permanent or temporary basis (the consultation process will inform whether any specific time periods should be set out in the regulations);
(c) any service other than the provision of land only or land and a field shelter is provided by the livery yard owner to an individual; and
(d) the service is provided for financial reward.

Conditions of registration

175. It is intended that the following requirements in relation to a livery yard owner/manager should be stipulated by a local authority as being conditions of registration:

(a) they must ensure that the person with day to day management of the yard is suitably qualified (either by experience in the management of horses or by being the holder of an approved appropriate certificate). New applicants must be qualified or must employ qualified staff. The following certificates/qualifications are acceptable: a British Horse Society Assistant Instructor Certificate; an ABRS Initial Teaching Award; an SNVQ Level 3 in Horse Care and Management; a BTEC Level 3 National Diploma in Horse Management; a level 3 National (Advanced National) Certificate in Management of Horses; a British Equestrian Tourism Ride Leader Qualification; or a British Equestrian Tourism Riding Holiday Centre Manager Qualification;

(b) they must hold public liability insurance;

(c) they must ensure the welfare of the equines kept at the establishment;

(d) they must satisfy themselves that all equine owners/keepers using the livery yard have in place third party insurance in respect of that equine;

(e) they must ensure that the construction and size of the stables is appropriate for the size and type of equine accommodated and is regularly maintained for the welfare of the animal;

(f) equines must have access to suitable food and a regular and sufficient supply of clean, fresh drinking water;

(g) suitable bedding must be provided;

(h) equines will be adequately exercised, groomed and rested and visited at suitable intervals;

(i) where grass is used as sustenance there must be sufficient quantity for every animal in that field;

(j) that all reasonable precautions will be taken to prevent and control the spread of infectious or contagious diseases among horses and that veterinary first aid equipment and medicines shall be provided and maintained in the premises;

(k) that appropriate steps will be taken for the protection of horses in case of fire; and
that adequate accommodation will be provided for forage, bedding, stable equipment and saddlery.

176. It is intended that registration will be granted for a period of up to 5 years.

177. Grounds for revocation of the registration will include convictions of a criminal offence under the Bill, failure to comply with a welfare improvement notice under the legislation or failure to comply with relevant Health and Safety requirements, for example fire safety and workplace health and safety.

Offences

178. A person commits an offence if they operate an unregistered livery yard. The maximum penalty for committing an offence under this provision will be a level 5 fine (currently £5,000) or 6 months custodial sentence or both in line with the provisions of the Bill. Post-conviction orders under the Bill (a deprivation order, or a disqualification order) will also be available following a conviction, but these will be expected to be used only in exceptional cases. A person will not normally be banned from keeping animals solely because of running an unregistered livery yard.

Inspection and Enforcement

179. The enforcement of these regulations will be in accordance with the provisions of the Animal Health and Welfare (Scotland) Bill.

180. It is intended that a local authority officer will have the same authority to inspect any registered livery yard or alleged unregistered yard in order to ascertain whether an offence was being committed under these regulations, as set out in Schedule 1 to the Bill. It shall be an offence to wilfully obstruct or delay any person in the exercise of powers of entry or inspection under these regulations.

181. A new application to register a livery yard will require a report provided by an equine specialist veterinary surgeon (registered with the British Equine Veterinary Association).

182. It is proposed that these regulations will provide for a combined licence being available for livery stables which also offer riding school facilities.
Annex C

**Code of Practice for the tethering of equines to be issued under section 34 of the Animal Health and Welfare (Scotland) Bill**

183. Tethered horses, ponies and sometimes donkeys can often be seen throughout Scotland. There are potential dangers associated with this practice. There have been cases reported of horses which have been strangled by the tether after having fallen or have been startled either by people or vehicles. Therefore the tethering of equines poses a serious problem, for horses in both urban areas and the countryside.

184. The statutory Code of Practice will provide a set of minimum standards that will promote the welfare of tethered horses.

185. The code will provide the following: a definition of tethering; a statement of the objective of tethering; dangers inherent in tethering horses and; minimum standards for the welfare of tethered horses.

186. These minimum standards could include:

(a) guidance on the whether it is suitable for the horse to be tethered, for example mares within the last third of pregnancy should not be tethered until the foal is at least one month old;

(b) guidance on tethering equipment, for example all equipment used for tethering horses must be maintained in good condition;

(c) guidance on the suitability of a tethering site, for example a suitable tethering site should be on reasonably level ground and not adjacent to any steep incline, bank, cliff or other dangerous feature;

(d) nutritional and health requirements, for example a horse should not be without water for a maximum of 2 hours;

(e) the period of tethering should be short;

(f) horses should never be left alone for long periods of time;

(g) horses should be checked at least twice a day;

(h) horses require regular watering, feeding and exercise.

187. Failure on the part of an animal owner or keeper to observe the provisions of a code should not of itself render that owner liable to any civil or criminal proceedings. However, the code should be admissible as evidence of good practice and reasonable standards of care.

**Code of Practice for the rearing of game birds for sport shooting to be issued under section 34 of the Animal Health and Welfare (Scotland) Bill**

188. Farmed Birds primarily reared for human consumption are subject to the provisions of the Agriculture (Miscellaneous Provisions) Act 1968. However,
game birds reared for sport shooting are not subject to the same provisions. There has been some recent concern about the welfare of game birds, it would seem appropriate to provide a set of minimum standards that will promote the welfare of game birds as this will remove the apparent anomaly between birds reared for food and those primarily reared for sport shooting. The proposal to introduce a statutory code of practice is in keeping with the principles of the Bill.

189. The majority of game farmers in Scotland are members of the Game Farmers’ Association and comply with their existing code of practice. The industry has agreed that a statutory code of practice should be based on the existing code of the GFA. It is envisaged that this code will form the basis for a Scottish Executive approved code and be applied to all game farmers in Scotland.

190. The code of practice could include guidance on:

(a) hygiene;
(b) preventing the spread of disease;
(c) transportation;
(d) stocking rates;
(e) housing;
(f) temperature and ventilation; and
(g) controlling aggressive behaviour.

191. Failure on the part of an animal owner or keeper to observe the provisions of a code should not of itself render that owner liable to any civil or criminal proceedings. However, the code should be admissible as evidence of good practice and reasonable standards of care.

On 13 December 2005 the Committee asked the Executive for an explanation of the following matter:-

“Article 16(6) obliges the court to “cancel the registration of the external forfeiture order or an application by the Lord Advocate or any person affected by it” if certain conditions are met. It appears to the Committee that “or” in the context of this sentence ought to read “on” and the Executive is asked to provide clarification of the drafting of this Article.”

The Scottish Executive responds as follows:

1. The Executive is grateful to the Committee for drawing this matter to its attention. The Committee is correct that the “or” as it first appears in Article 16(6) ought to read “on”. The Executive regrets this typographical error.

2. It is considered unlikely, however, that this error will cause difficulties for users of the Order. It is the Executive’s view that a reading of article 16 in its entirety discloses the correct meaning of this paragraph. Notwithstanding this, the Executive will endeavour to amend article 16(6) to rectify this error at the next available opportunity.
In its letter of 13th December 2005 to Catherine Hodgson, the Committee requested an explanation of the following matter-

"The Committee notes that the citation of the Adults with Incapacity (Scotland) Act 2000 in regulation 2 omits the word "(Scotland)". The Executive is asked for comment on this omission."

**The Scottish Executive responds as follows:**

1. The Executive is grateful to the Committee for its comments. The omission is an error. We do not consider however that it is necessary to amend or revoke the instrument, for the following reasons.

2. The enabling power under which the instrument is made is referred to in the preamble of the instrument. This makes it clear that the instrument is to be made under the Adults with Incapacity (Scotland) Act 2000 ("the Act"). In addition, the enabling power (section 35(4)) only allows the Scottish Ministers to amend the list of authorised establishments in section 35(1) of the Act, and there is no Westminster or other United Kingdom statute of that (or similar) title in that year. Regulation 2 of the instrument also makes reference to the list of authorised establishments in section 35(1) (by the words “list of authorised establishments” which appear in brackets) and makes specific reference to the words “independent hospital” that appear in section 35(1)(b) of the Act.

Given the above, we consider regulation 2 is clearly intended to refer to section 35(1)(b) of the Act. The intention behind the instrument is also made clear in its accompanying Explanatory Note. We therefore consider that the amendment to the Act made by regulation 2 of the instrument is effective.
The Plant Health (Scotland) Order 2005, (SSI 2005/613)

On 13th December the Committee asked the Executive re the following matters-

“The Committee notes that articles 42(1) and 43(1) impose a duty of notification to the Scottish Ministers of certain matters and that as soon as possible after giving the notice to “confirm it in writing”. It seems to the Committee that this assumes the original notice will be given orally when it could be given in writing. The Executive is asked for an explanation.

The Committee also seeks clarification of the meaning of article 7(3). It appears to the Committee that there may be some words missing.”

The Scottish Executive responds as follows:

1. In relation to the notification duty in articles 42(1) and 43(1), the Committee’s assumption about the original notice being given orally is correct. It is the usual practice for the person on whom notification is incumbent to seek advice from SEERAD in respect of the plant pest to which notification relates, and this request is invariably made by telephone in the first instance. For this reason, it would not be appropriate to require this first notification to be given in writing, since that would be neither practical nor expeditious in the circumstances.

2. The wording of article 7(3) sets out the conditions which would require a phytosanitary certificate to be issued where the status of relevant material consigned to Scotland via any third country by way of transit is changed. There are three distinct variables here which could bring about that change of status, viz:

   • exposure of the material to infection or contamination by any plant pest;
   • where the material is not the same material specified in the original phytosanitary certificate which accompanies it; or
   • where it is material which has been processed so as to change its nature.

3. The Executive is of the view that the wording of article 7(3) is clear in its intent and adequately conveys the meaning of the obligation set out therein.
In its letter of 13 December to Catherine Hodgson, the Committee commented as follows-

2. “The Committee asks why it was thought necessary to include a definition of Regulation 1688/2005 as these Regulations do not seem to contain a reference to it.

3. The Committee notes that regulation 7 authorises the Scottish Ministers to issue codes of practice. As these codes appear to have legislative effect, the Committee asks for an explanation of the vires of regulation 7 in the light of the prohibition contained in Schedule 2, paragraph 1(1)(c) of the European Communities Act 1972.

4. It appears to the Committee that the effect of regulations 18(4) and (5) would be to confer prosecuting functions on local authorities and the Food Standards Agency. The Executive is asked to explain the vires of these provisions given section 29(2)(e) of the Scotland Act 1998.

5. The word “date” seems to be missing from regulation 43(2)(a). The Executive is asked to confirm.”

The Food Standards Agency responds as follows-

2. Regulation 1688/2005 is referred to in two places in Schedule 1 to the Regulations – in the definition of “Regulation 852/2004” and in the definition of “Regulation 853/2004”. It was thought to be helpful to make those references in shorthand rather than to repeat the full title of the Regulation at length each time.

3. The power taken to issue a code of practice relates to the guidance of enforcement authorities under the Regulations and is not a power to legislate of new. It is envisaged that a code will demonstrate best practice in the enforcement of the Regulations rather than in any way add to or otherwise alter the effect of the Regulations. The power to direct authorities in regulation 7 (2) is consistent with the description in paragraph 1(2) of Schedule 2 to the European Communities Act 1972.

4. Regulation 18(4) and (5) give general effect to certain provisions in article 3 and 7 of Regulation (EC) 882/2004 by assisting in ensuring transparent and effective application of enforcement procedures. There is no intention that these provisions give authority to the body concerned to institute or conduct criminal proceedings. The provision intends that the body concerned in each case is responsible for ensuring so far as practicable that no breach of the relevant provisions of the Regulations is committed and for investigating any suspected breach. In each case the body concerned will still be required to report any such suspected offence to the prosecuting authorities in the normal way. As the Committee is aware food law made under powers under the Food Safety Act 1990 require (by section 6(4) of that Act) that the authority responsible for the execution and enforcement of that food law be
specified on the face of the subordinate legislation. This has not been construed in any such case as authorising prosecution by the bodies so specified.

5. The Agency is grateful to the Committee for pointing out the typographical error in regulation 43(2)(a). The Agency will enquire as to any administrative means of rectifying the error and in any event will ensure that at the next legislative opportunity the position is resolved. That opportunity should present itself in early course with the need to bring forward further Regulations to ensure that further EU legislation on the subject of food hygiene is transposed.
On 13\textsuperscript{th} December the Committee asked the Executive re the following matters-

“In the definition of “post-2003 entrant” in regulation 3(e) it is not clear to the Committee why it is thought necessary to include a reference to the current Regulations and explanation is requested.

2. The definition in regulation 10(b) in unclear, particularly with regard to the purpose and effect of the words “at least”. The Committee therefore asks the Executive for clarification of this point.”

The Scottish Executive responds as follows:

1. The definition of “post-2003 entrant” in regulation 3(e) includes a reference to the current Regulations because this definition is being inserted into the principal Regulations (S.S.I. 2001/300) as amended. The definition is intended to clarify that a post-2003 entrant means, in terms of the principal Regulations, a person who entered an undertaking under the Rural Stewardship Scheme from 1st January 2003 onwards. This covers both applicants from 1st January 2003 to now, and also future applicants to the Scheme. The wording of the definition seeks to ensure that it could not be interpreted as merely referring to applicants from 1st January 2003 to now.

2. The definition in regulation 10(b) of “seed of at least UK stock” is required because regulation 7(d) inserts this phrase into item 8 c of Schedule 2 (Management Activities) to the principal Regulations. Management activity No. 8 concerns the “creation and management of species rich grassland” and 8 c, as amended, will now read:

“The site must be sown with a low productivity grass and herb mix agreed with the Scottish Ministers to create a new sward. Seed of local provenance must be used wherever possible and must be seed of at least UK stock”.

3. The purpose and effect of this is that a site should be planted with seed of local provenance but, where this is not possible, it will be acceptable to plant seed which is not of local provenance, but such seed must originate from within the United Kingdom and not from abroad.
On 13th December the Committee asked the Executive for an explanation of the following matters:-

“Whether these Regulations will be made available free of charge to recipients of the principal Regulations and, if so, why no italic headnote to that effect appears on the instrument.”

The Scottish Executive responds as follows:

The amending Regulations will be made available free of charge to any known recipient of the principal Regulations and the Scottish Executive regrets the absence of a headnote to this effect. This oversight is being addressed with The Stationery Office, and the appropriate arrangements will be put in place.
SUBORDINATE LEGISLATION COMMITTEE

36th Meeting, 2005 (Session 2)

Tuesday 20th December, 2005

Inquiry into the regulatory framework in Scotland

Scottish Executive response to phase 2 consultation

Introduction

The Executive’s overall approach to regulation was outlined during stage 1 of the inquiry. Central to that approach is the view that “regulation should be imposed only when, on balance, the inherent constraints and costs are assessed to be more than offset by the anticipated benefits”. Our approach to the regulation of regulation – i.e. to the processes and procedures that govern the making of regulation – is similarly based on the view that the costs incurred, for example, in additional consultation and scrutiny, should not outweigh the likely benefits.

In reviewing the efficacy of the current approach and the merits of potential changes, the Executive considers that account needs to be taken of practical experience as well as abstract theory. There is a wealth of experience now that the Parliament has passed nearly a hundred Acts and several thousand statutory instruments. From the Executive’s standpoint, the experience has been a generally positive one in that – while there is always the potential for improvement – a large amount of necessary and beneficial secondary legislation has been enacted timeously, efficiently and effectively.

Nature of supervision by the Parliament

As regards procedural matters, the Executive considers that it is necessary (and generally sufficient) to have the two types of Parliamentary control – affirmative and negative – for the making of statutory instruments. Over the past 6 years, the Parliament has legislated to apply each of these procedures on very many occasions. This suggests that the Parliament sees merit in both procedures, with the choice between them being made on a case-by-case basis according to circumstances. That is certainly the Executive’s conclusion. It is not clear what alternative procedures the Committee might consider and what the benefits might be, but the Executive will consider any other proposals that are put forward on this issue.

The consultation paper raises the question of the stage at which it is appropriate to determine the procedure that should be applied. While there may be theoretical arguments for making that determination individually for each and every instrument only after its content is clear, in practice this is likely to be problematic in terms of timing and handling. It is also worth highlighting that it is already possible for primary legislation to provide for a degree of flexibility. For example, an Act may provide that an instrument should be subject to negative procedure unless certain objective
criteria are met, in which case the affirmative procedure should be followed. It is for the Parliament to decide, in the context of a particular Bill, how much detail it wishes to insist upon in the sections of the Bill, and how much discretion it is prepared to leave to the Executive. In addition, it is increasingly the case that draft regulations (setting out how it is intended that a power will be used) are available at stage 2 of the Bill’s consideration. The SLC report to the Parliament on the basis of the Delegated Powers Memorandum, and the Parliament then approves or adjusts the balance.

It is correct, as the consultation paper points out, that under either procedure the Parliament technically does not have the capacity to amend an instrument substantively: its options are simply to accept it fully or reject it fully. It is however entirely possible, for example, for the Parliament to reject an instrument and, in doing so, to make clear that specific changes are required before a subsequent instrument will receive more favourable treatment. It is also possible for the Parliament to approve an instrument having first obtained a Ministerial commitment that a further instrument will be introduced to effect desired changes. The Executive’s experience has been that this level of flexibility has been generally sufficient. Moreover, while recognising some attractions in giving the Parliament power to make amendments to statutory instruments more directly, the Executive would have serious concerns that this would fundamentally change the nature of the process with unwelcome consequences in practice. Therefore, the Executive’s initial view is that the disadvantages are likely to outweigh any advantages.

Consultation

The Executive is fully committed to meaningful consultation as part of an overall commitment to civic participation, with policy being developed and implemented on the basis of partnership and engagement in line with the founding principles of the Parliament. However, the Executive does not engage in consultation simply for consultation’s sake. The process can be demanding for those who consult and those who are consulted, so it is important that it is undertaken only when it will be of benefit. Judgements on the degree of consultation therefore require to be made on a case-by-case basis.

The Executive’s approach to the specific issue of consultation with the Parliament on draft instruments reflects that wider approach. And, in coming to a view on the case for such consultation on any particular instrument, the Executive takes account of the fact that in any event the Parliament will have 40 days in which to consider instruments under the formal procedures. Imposing a requirement to consult the Parliament on all draft instruments seems likely to cause delay and not to be necessary in many cases.

That said, the Executive accepts that there are cases where prior consultation is appropriate and valuable, and, exceptionally, where the nature of the subject-matter means that it will be appropriate for the legislation to provide that a draft instrument, or proposal for a draft instrument, should be laid before Parliament for a period of consultation prior to commencing the formal approval process. The Executive also takes the view, however, that the standard affirmative procedures are rigorous and
that – given the implications, not least for delays in legislating – the circumstances in which it will be appropriate will be limited and exceptional.

It is also appropriate to recall that, more often than not, statutory instruments are often downstream components in the implementation of a policy that has been developed and implemented on the basis of considerable prior consultation. They should be considered against the general context of consultation that has helped to inform that policy.

**Definition of SSIs**

The consultation paper canvasses views on whether guidelines, codes of conduct etc “of a legislative character” should require to be SSIs and subject to formal Parliamentary procedure. Generally speaking, the character and status of such material is such that it is not necessary or appropriate for it to be and that is why it is not subject to the same formal procedures as subordinate legislation. Such material, however, is potentially subject to Parliamentary supervision, not least through the general accountability of Ministers for their actions. The Executive sees little benefits in imposing additional formal procedures on such material. Again the form of Parliamentary procedure to be applied to guidelines, codes of conduct etc is considered by the Parliament during the passage of a Bill and this allows for a bespoke approach to applying more formal procedures in any case where that is thought, exceptionally to be appropriate.

**Existing Parliamentary procedures**

The Executive notes the consultation paper’s description of the various classes of SSI and types of parliamentary control. The Executive’s comments on the ‘super-affirmative’ procedure have been set out above.

As regards the timing of negative and affirmative consideration, the Executive appreciates why there is a desire to increase both the time that the Parliament has to consider SSIs and the time given for negative instruments to come into force. On the other hand, it is important to recognise that such increases would likely mean that the coming into force of laws aimed at benefiting Scotland would be delayed. There is clearly a balance to be struck and the current balance seems about right. The Executive does feel, however, that consideration ought to be given to allowing recess days to count for the purposes of the “21 day rule” that applies in relation to negative SSIs. One benefit of such a change would be to smooth the SSI workload profile by removing one of the reasons for routine but unhelpful peaks in activity before recesses.

The Committee might also want to consider the merits of the SLC and the lead Committee considering instruments simultaneously. Both Committees could have up to say 30 days to consider instruments; with a further 10 days for the lead Committee to take on board comments from the SLC.

As the consultation paper points out, there are instances where instruments are not subject to Parliamentary procedure. In the Executive’s view, it is wise to retain provision for flexibility to accommodate appropriately the wide range of instruments
that come forward. The Executive sees little evidence of the need for change in this area.

**Numbering, classification and publication of SSIs**

The consultation paper raises the question of whether drafts of affirmative SSIs ought to be published by the Queen's Printer for Scotland. The Committee will wish to be aware that, from 1 July 2005, draft affirmative orders and accompanying Executive notes are being published on the OPSI website (formerly HMSO website).

**Consequences of not laying**

In general the Executive aims to tell the Parliament as much as it can as soon as it can, and in line with this approach would, in principle, have no objection to the notion that an instrument should be required to be laid as soon as practicably possible. That said, however, the ultimate consideration ought to be the value of the output rather than adherence to process. With this in mind, the Executive would be reluctant to see valuable legislation struck down and the benefits lost because of an inadvertent failure to lay an instrument as required.

Scottish Executive
September 2005
SUBORDINATE LEGISLATION COMMITTEE

36th Meeting, 2005 (Session 2)

Tuesday 20th December, 2005

Inquiry into the regulatory framework in Scotland

Scottish Executive response to phase 1 report

I was pleased to see the Subordinate Legislation Committee’s report into stage 1 of the inquiry into the regulatory framework in Scotland that was published before the summer recess. It is a very thorough piece of work.

My colleagues and I appreciated the opportunities given to the Executive to be involved in stage 1 of the inquiry, in providing comments on the consultation paper last year and oral evidence to the Committee in April this year. On behalf of the Executive, I now enclose our response to your report.

I am sending copies to the Presiding Officer and your Committee’s clerk.

MARGARET CURRAN
Introduction

The Executive fully appreciates the importance for Scotland of ensuring that the framework of regulation is appropriate and informed by the principles of necessity, proportionality, subsidiarity, transparency, accountability, accessibility and simplicity. In December 2004 the first Improving Regulation Annual Report was published by the Executive, underscoring a determination to build on the progress that has already been made in that regard. In this endeavour, the Executive welcomes the perspectives and contributions of other stakeholders and has found the process and outcome of stage 1 of the Committee’s Inquiry particularly constructive. The detailed recommendations in the Committee’s report have been considered carefully, with both the costs and the benefits being weighed, and the Executive’s views on each of them are set out below.

Regulatory Impact Assessment (RIA)

Recommendation at paragraph 24. The Committee recommends that-
- the Parliament and its Committees should have a role in scrutinising any RIA, given that the Executive sees the RIA as its main tool in improving regulation.
- any Parliamentary scrutiny should consider whether an RIA has been produced in adequate time to inform policy choices.

Recommendation at paragraph 26. The Committee appreciates the Minister’s concerns but believes strongly that there should be a short statement from the responsible Minister in relation to any instrument which does not have an accompanying RIA. The Committee recommends that this explanation should be a statutory requirement.

The Improving Regulation Unit (formerly IRIS) always advises that an RIA should be carried out if the regulation is expected to impact on business, charities or the voluntary sector. However, in cases where the policy officials determine to proceed without an RIA, it is recommended that a statement is inserted into the advice to Ministers to alert them to that effect. Departments must be prepared, if challenged, to defend the decision not to produce an RIA.

The Executive is concerned that the focus on RIAs should be appropriate and proportionate, with effort and resources directed where they are likely to be of most benefit. The Executive notes the strength of the Committee’s view on this matter and will, therefore, examine how this can be introduced in an efficient and cost-effective manner. The requirement may most appropriately be met by including a statement within the Executive Note as a matter of standard practice, rather than through the production of a separate document.

Recommendation at paragraph 27. The Committee also recommends that impact assessments should be extended to cover the impact of a regulation on the wider community.

The Executive acknowledges that RIAs should cover impact on the wider community and has already taken steps for that purpose. RIAs currently measure the impact on
different sectors and groups. Proposals may have different effects on people, depending on where they live (in deprived, urban or rural communities) as well as on their ethnicity, gender, age, health and income. Thus different options may have beneficial impacts on some groups and negative impacts on others. It is important, therefore to determine who is affected to ensure that the economic, social and environmental costs and benefits are as comprehensive as possible in order to help those affected to assess the impact of a change on them. We will review the Guidance Note on RIAs to see how best to take these points on board.

**Consultation**

*Recommendation at paragraph 35.* The Committee recommends that there should be a statutory requirement for the Executive to explain, when consultation has not been carried out in relation to any statutory instrument, and the reasons why it has not been undertaken.

The Executive is firmly committed to an approach to government that is based on engagement and participation. At the same time, it is recognised that this can be demanding on all parties. Therefore, consultation needs to be focused appropriately. As previously noted, many instruments are minor and technical in nature. It is also the case that other instruments give effect to policy that has been developed on the basis of thorough consultation and in relation to which further consultation would add little value. Therefore, the Executive agrees with the Committee’s conclusion that a statutory requirement to consult on all subordinate legislation would not be workable.

The Executive considers that a general presumption that consultation should be undertaken on legislation that is new and substantive is already part of our civic participation ethos. Appropriate engagement and consultation is promoted, with Ministers and officials being expected to be responsible for individual decisions on whether / how to consult. The Executive’s *Consultation Good Practice Guidance* encourages clear and justifiable decisions to be taken on consultations, on a case by case basis, and that these decisions be open and accountable. Supplementary guidance for consultation relating to both primary and secondary legislation appears in the Scottish Executive Bill Handbook – *A Guide to Bill Procedure in the Scottish Parliament.*

As regards the specific proposal that there should be a statutory requirement to explain decisions in each and every case where consultation is not undertaken, the Executive’s view corresponds with its view on the similar proposal relating to RIAs. The Executive recognises the Committee’s concerns and will examine how this can be introduced in an efficient and cost-effective manner. Again, the requirement may most appropriately be met by including a statement within the Executive Note as a matter of standard practice, rather than through the production of a separate document.

*Recommendation at paragraph 40.* The Committee recommends that-

- all of these issues should be addressed within the Executive’s review of consultation processes currently being undertaken.
• the Executive should inform the Committee of the findings from this review on issues associated with the policy development of subordinate legislation, including mechanisms for co-ordination across the Executive.

The Executive is currently looking at ways of refining its consultation processes – e.g., encouraging the use of innovative methods of inviting comment on its proposals – which will enhance the policy making process and help ensure that the development of our proposals takes account of a wide range of views. The points made by the Committee will be considered as part of this process, and the Executive will inform the Committee of the outcome of this work. However, our initial thoughts on the specific issues raised in paragraphs 36 to 39 are noted in the Annex to this response.

Understanding and accessibility of legislation

Recommendation at paragraph 47. The Committee believes that there should always be a presumption in favour of expressing law in plain language in regulations and intends that its proposed Committee bill will include provision for this, either on the face of the bill itself or delegated to guidance, which may be laid before Parliament.

The Office of the Scottish Parliamentary Counsel (OSPC) drafts Executive Bills and amendments. OSPC share the Committee’s desire that legislation should, so far as possible, be drafted in plain language.

Numerous factors contribute towards the form and style of primary legislation. One such factor is the need for it to be drafted consistently with rules of statutory interpretation. Those rules have different sources. There are common law rules, such as the rule that a statute creating an offence will be strictly construed in favour of the accused. There is the interpretation order (S.I. 1999/1379). And there is the existing law, changes and additions to which should be drafted so as to mesh in coherently. The need to draft new law in a way which weaves it into both the existing interpretation rules and the background law is often the reason why a Bill does not appear to tell the whole story. (In any such cases, the accompanying Explanatory Notes can supply the balance.)

Perhaps the most significant influence on legislative style is the need for legal certainty. Ministers and the Parliament wish legislation to be drafted to a degree of precision and particularity which enables them to predict, with confidence, how it will apply. It is not normal practice to draft Bills so as only to give abstract indications as to how the resultant Acts should be operated and interpreted.

The practice of legislating with precision and particularity means that Bills can sometimes appear detailed and complex. Judges and lawyers, accustomed to the precision of legislation, attribute substantive meaning to every word and phrase. So drafters try to avoid including any unnecessary, repetitive or explanatory text which could be interpreted in a way which would distort or confound the legislative intention.
But the unique considerations which dictate the form and style of legislation do not conflict with or prevent the use of plain language. Some laws can be set out by way of a few simple propositions. Others can be inherently complex and will not lend themselves to being expressed in such a straightforward manner. While Scotland is a small country, it houses a modern, complex society in which a large number of citizens, with differing ambitions, interests and requirements have to live and interact together. Their relationships are complex, and the regulations which govern those relationships will inevitably reflect that complexity. The aim of plain language drafting is to express complex legislation in the simplest way possible without compromising the legal certainty demanded by legislators.

Legislation must be effective: it must be observed and, if it is not, it must be capable of being readily enforced. For those purposes, effective communication to citizens, public officials, lawyers and courts is essential. Plain language is the natural medium for that effective communication.

Drafting does not consist of translating simple concepts into arcane “legal” prose. Obscure, unfamiliar, old-fashioned and technical words and complicated syntax are seldom found in modern primary legislation. Contrary perceptions may be based on a belief that legislation is drafted today in much the same style as it was 50 or 100 years ago. However, this is not the case. OSPC has during the six years of its existence followed a well-understood practice of using plain language and simple syntax, and continues to follow and, wherever possible, improve on that practice.

Subordinate legislation is drafted by the Executive’s solicitors (although OSPC have very recently assumed responsibility for the drafting of some instruments). The desirability of using plain language is covered in the Executive’s in-house training and in quality control work. Where the Executive is transposing Community legislation, an extremely important factor is the form of that legislation. It will always be difficult and frequently legally risky to attempt to re-express the language of Community texts in an effort to achieve clarity of purpose let alone plainness of speech. However, the Executive does indeed aim for greater use of plainer language in subordinate legislation, where possible, but doubts that a statutory requirement will assist in this regard.

Recommendation at paragraph 49. The Committee welcomes this commitment and requests a progress report from the Executive in relation to this matter.

The Executive’s memorandum to the Committee noted that, as regards taking forward this commitment from the Partnership Agreement, the Scottish Law Commission had been asked to investigate methods by which legislation can be published in plain English. The Executive expects to publish a report in the near future.

Recommendation at paragraph 54. The Committee recommends that an Executive note should be laid with each instrument and published on the HMSO website for both negative and affirmative instruments. The Committee also recommends that the format of and material contained in each note should follow agreed guidelines that are made publicly available.
The Committee will be aware, in accordance with the letter from Margaret Curran to Sylvia Jackson dated 20 June, that Executive Notes for both negative and affirmative instruments are being published on the HMSO website from 1 July. The Executive provides Executive Notes for all instruments which are required to be laid before Parliament, except where this is clearly superfluous (e.g. for very simple instruments where the Explanatory Note covers everything that would be in the Executive Note) or there are other special circumstances (e.g. extreme urgency). The Executive is very willing to work with the Committee on an agreed style format for Executive Notes.

Recommendation at paragraph 61. The Committee strongly recommends that the public should have electronic access, free of charge, to –

- up to date texts of primary and secondary legislation, showing those texts as they are currently amended and
- the historical versions of any texts, showing how they have been amended.

The Executive agrees with this recommendation in principle. However, it could require a significant amount of resources and, unless the Executive was to set up its own database, is not wholly within its control. The Statutory Publications Office, within the Department of Constitutional Affairs (DCA), is working to produce a Statute Law Database for access to the public. Our understanding is that it is planned that the general public will be given access, free of charge, to the original text of primary and secondary legislation that has appeared on the statute book since 1 January 1991 (the database base date). They will also be able to access, free of charge, the latest available revised version of primary legislation. (The DCA has no current plans in relation to revised secondary legislation.) The DCA expects to be able to start running a pilot of the public version of the enquiry service next year.

Consolidation

Paragraph 62. In the circumstances the Committee seeks clarification from the Executive in relation to its plans to consolidate primary legislation.

Paragraph 65. The Committee believes that this rolling consolidation would greatly assist accessibility to regulations and recommends that this is taken forward by the Executive.

Recommendation at paragraph 66. In the interim, however, the Committee recommends that the Scottish Executive should report to the Committee on a regular basis on its plans to consolidate regulations, and in particular should present a programme of its planned work for this Committee and relevant subject Committees to consider.

The Executive agrees that there is merit in consolidation and that consolidated legislation would improve the statute book. However, consolidation involves much more than a simple renumbering of existing provisions, inevitably throwing up questions of policy and practice which require policy input. Even a ‘pure consolidation’ is intensive of both legal and administrative resources at a time when
resources are stretched to accommodate busy legislative schedules. An appropriate balance therefore requires to be struck. A further practical consideration is that a great deal of the legislation most in need of consolidation is GB or UK in extent; separating out the “Scottish” component on its own may not be an option and support, if not further legislation by the UK Government or other devolved administrations, may be necessary to ensure cross border effect.

Notwithstanding these constraints, the Executive shares the Committee’s desire to make progress in relation to consolidation. In determining the way ahead, it will be important to be clear about the form of consolidation. There may be a number of examples of subordinate legislation which could benefit from pure consolidation i.e. the various texts can simply be put together without the need for any changes to the legislation. In the case of such pure consolidations, it is anticipated that Committees would put in place rules that would enable consolidations to go through with a very limited degree of scrutiny, without opening up all aspects of the legislation to consideration. That is a matter which the Executive has discussed with the Committee in the past, and on which it would welcome the Committee’s specific proposals. For consolidation that involved more than this, it is anticipated that Parliament would wish to exercise a greater degree of scrutiny and this again would have resource implications.

In relation to “rolling consolidations” of subordinate legislation, the Executive recognises this would have the advantage that, following an initial “pure” consolidation, subsequent amendments would be made by replacing the whole existing instrument with a new instrument which incorporated the (perhaps minor) adjustments being made. The user’s attention could be drawn to the alterations in the Explanatory Note. The Executive anticipates that, over a period, such a process would produce considerable savings in time and resources in the preparation of subordinate legislation. But, again, the Executive would anticipate a requirement for appropriate alterations to Standing Orders to reflect the fact that a large part of any such instrument would previously have been examined, as to substance, by the Parliament, and would not require to be examined afresh on each (perhaps minor) alteration.

So far as a programme of consolidation is concerned, the Executive does not have the administrative or legal resources to commence a free-standing programme of consolidation: the intention remains to undertake consolidations in particular areas of law where the need is greatest, and as opportunities present themselves. A recent example is the Teachers’ Superannuation (Scotland) Regulations 2005 (SSI 2005/393). The 2005 Regulations will consolidate the principal regulations and the various amending regulations. The consolidation of these regulations was instructed in 1999 and, even though it has been largely a pure consolidation exercise with a few minor amendments, the time and effort required - against other priorities for the office - meant that it was not possible to complete it until this year.
Recommendation at paragraph 67. The Committee recommends that the Executive should update the Committee on what further priorities it has identified with the Scottish Law Commission in this area.

As the report observes, the Scottish Law Commission’s seventh programme of law reform has been laid before the Parliament by the Scottish Ministers. The Commission additionally continues to deal with requests for advice received from government; four topics are currently referred to the Commission by Scottish Ministers:-

- Sharp v Thomson (examining the protection of buyers on the seller’s insolvency)
- Interest on debt and damages
- Rape and other sexual offences
- Limitation in personal injury actions

Any further priorities to be identified will be notified.

Periodic Review

Recommendation at paragraph 72. The Committee believes that there is a duty to those regulated to assess whether a regulation is functioning well or could be improved and considers that the Executive’s current policy of review at 10 years of those new regulations impacting on business is insufficient in this regard. The Committee therefore recommends that the Executive undertakes to review areas of new regulation every five years.

The Executive introduced a request to undertake review RIAs after a maximum of 10 years. The review RIA process currently requires policy developers to revisit within 10 years their decisions on the course to adopt. The review RIA process provides them with the opportunity to review the situation and to check that the approach that they adopted is appropriate and still current. However, the Executive recognises that this might not be an appropriate time frame in every case and the Small Business Consultative Group Regulation Sub-Group is currently looking at this area. Options include recommending some regulations which might need reviewing after 3 or 5 years. However, it is also important to guard against reviews routinely being carried out within a shorter time for every regulation introduced, without regard to need and in the absence of representations and evidence of difficulty, in order to avoid nugatory activity and unnecessary bureaucracy, which could impact on organisations’ ability to respond constructively.

Recommendation at paragraph 73. The Committee also recommends that sunsetting provisions should be included in regulations made in the circumstances set out in the Mandelkern Report. The Committee considers this to be sound regulatory practice.

Although sunsetting is a way of ensuring that legislation is reviewed, kept up to date and not left on the statute book after it has served its purpose, sunsetting is not always appropriate, for instance for regulation implementing some EU directives, or where there is the possibility of generating considerable uncertainty for business.
Using sunset clauses for laws that are justified in the long-term is likely to be bureaucratic, resource intensive and unproductive.

The Committee itself was alive to and sympathetic to concerns as to how “sunsetting” might create unnecessary administrative burdens. That is a key objection to “sunsetting” but again in special and exceptional circumstances the Executive accepts that there may well be a case for such a clause.

**Enforcement**

*Recommendation at paragraph 77. The Committee recommends that the Executive reports the findings of this working group, ideally within the Improving Regulation in Scotland Unit’s annual report.*

Scottish local authorities are to the fore in much of the enforcement work that impacts in the business community in Scotland and have the lead in committing to the Enforcement Concordat. The Improving Regulation Unit issues reminders bi-annually to all Executive agencies and NDPBs to encourage them to fulfil their obligations to the principles of the Concordat towards improving the regulatory and enforcement environment for business in Scotland. The regulatory sub-group of the Small Business Consultative Group is also looking at enforcement by Scottish regulators as part of its general look at aspects of the regulatory environment.

The Executive accepts this recommendation and will include the findings of the Concordat working group in the Improving Regulation Unit’s future annual reports

*Recommendation at paragraph 79. Whilst the Committee acknowledges that enforcement information is included in Scottish RIAs currently, it recommends that this should be extended to include, similarly to the Hampton findings, an assessment of existing administrative systems and the advice to be provided to those being regulated.*

Scottish RIA guidance is regularly reviewed to enable improvements to be made. As noted by the Committee, Scottish RIAs already provide enforcement information. However, the Executive fully support the Hampton findings on this issue, will adopt amended guidance on RIAs as a result and will encourage Scottish agencies to adopt the new Hampton guidance as part of Best Practice.

**Role of the Improving Regulation in Scotland Unit (IRIS)**

*Recommendation at paragraph 87. The Committee recommends—*

- That the Improving Regulation Unit is relocated to the First Minister’s Office and should be given enhanced powers to assess standards of regulation within other departments.
- That IRIS should assess the performance of individual departments on areas such as the early production of an RIA, innovation in consultation and alternatives to regulation.
- That IRIS should have a role in identifying new regulations requiring review within five years, as recommended earlier in this report and should be responsible for the supervision of this review.*
As previously advise, the Unit was formed in November 1999 as a focal point for concerns about regulatory matters. It advises and is consulted by all Executive Departments and their agencies, if any proposed legislation will have regulatory impacts on the Scottish business community.

The role of the Unit is important, but the remit for action – and therefore the resources to be devoted to it – needs to be seen in context. It is generally recognised that the vast majority of regulatory burden falls in areas with an EU or UK base and that the scope for Executive only action is relatively limited. Moreover, survey evidence suggests that there is no additional “Scotland only” regulatory burden that causes significant problems. Nor is there evidence that the organisational or geographic position of the Unit hampers the remit assigned to it. We see no immediate benefit to be obtained from creating a large bureaucracy associated with Scottish-only legislation nor from relocating the Unit from one Department to another. And in relation specifically to the recommendation for centralisation within the First Minister’s Office, it is important to recognise that this would alter substantively the nature and balance of that office.

To some extent the Unit already assesses the performance of individual departments. It now also publishes an Annual Report for deregulation work across the Executive as a whole. But to greatly expand its role in this area would necessitate significant increase in staff resources and associated expenditure at a time when the Executive is determined to streamline bureaucracy.

As noted in the response to the recommendation at paragraph 72, the Executive is receptive to the idea of holding reviews of new regulations at shorter intervals, where the particular circumstances warrant earlier reviews.

Scottish Executive
September 2005
CONSULTATION

This Annex sets out some initial thoughts on the specific issues raised in paragraphs 36 to 39 of the Committee’s report.

Using different consultation methods - The Scottish Executive Consultation Good Practice Guidance currently encourages the use of a wide range of consultation methods which should be selected to meet the needs of the target audience of a particular exercise. It also contains relevant information about the consultation database and related advice about co-ordinating consultation activity. The current review will continue to develop this guidance, stressing in particular the need to use appropriate methods to engage members of the public.

The distinction between formal and informal consultation - The Consultation Good Practice Guidance does not draw a distinction between formal and informal consultation, but sets out good practice which teams can apply as appropriate to their circumstances. The Executive encourages ongoing engagement with stakeholders and specific consultation exercises should take place within that context. Much ongoing engagement will constitute "informal" consultation.

Incorporating the spirit of the Aarhus Convention into all areas of Scottish Executive practice - In line with the spirit of the Aarhus Convention, the Executive already promotes and encourages participation at appropriate stages in the development of policy. In particular, the Executive promotes a 12 week standard consultation period, has published a summary version of its consultation guidance, and there are plans to give greater emphasis to the need to engage directly with the public in the revised version of its full consultation guidance.

Greater co-ordination of consultation activity - The Executive is aware of the need to introduce greater co-ordination into its consultation activity. Teams are already encouraged to coordinate where possible with other related consultation exercises, but inevitably a lot of our stakeholders are interested in a wide range of consultations. A recently introduced database of consultations may offer some potential to achieve greater co-ordination, and this will be explored as the database is developed. In addition, the Executive has recently established a Civic Participation Steering Group and a Civic Participation Network. Both of these initiatives provide opportunities for addressing the issue of co-ordination of consultation activity.

Logging of consultations on regulators’ websites - The Consultation Good Practice Guidance encourages teams to think creatively about the distribution and advertising of their consultation exercises. The best way to reach the intended audience will vary from exercise to exercise, but seeking the assistance of other organisations in this is recognised as helpful, through the distribution of copies of consultation papers at appropriate locations, or through the hosting of web links. The Executive is happy to give further emphasis to the option of seeking the assistance of appropriate organisations in hosting links to consultation papers on the Scottish Executive
website, where a short summary of the exercise can be found, along with a link to the full paper(s).

Scottish Executive
September 2005
SUBORDINATE LEGISLATION COMMITTEE

36th Meeting, 2005 (Session 2)

Tuesday 20th December, 2005

Inquiry into the regulatory framework in Scotland

Follow up correspondence from the Deputy Minister for Parliamentary Business

Thank you for your letter of 25 November following the evidence session in relation to your Committee’s inquiry into the regulatory framework in Scotland. We agreed that a number of issues would benefit from some follow-up and the consideration of particular examples. In this regard, I hope that the information provided in the enclosed note will be helpful.

I look forward to learning in due course of the outcome of the Committee’s deliberations and subsequent proposals for a debate and introduction of a Bill. Meantime, we will continue to give thought to the issues and should be happy to respond as helpfully as possible to any further points that the Committee may wish to raise.

I am sending a copy of this letter to the Committee’s clerk.

GEORGE LYON
This note responds to points raised in the letter of 25 November from the Committee’s convener.

Classes of Statutory Instrument procedure

The letter invited the Executive to provide examples of subordinate legislation which had been considered under each of the available procedures, with the rationale for the choice of procedure. Examples, with some statistical information, are set out below. In each case the procedure adopted was in accordance with the procedures set out in the parent Act. The rationale for those procedures will have been set out and accepted by the relevant Parliament during the passage of the parent Act.

Class 1 – the draft affirmative procedure, whereby instruments are laid in draft and require approval by the Parliament following consideration by the SLC and lead Committee, is used around 60 times per year. A recent example is the Civil Partnership Act 2004 (Consequential Amendments)(Scotland) Order 2005.

Class 2 – the made affirmative procedure is used for finance or budget orders. This procedure is not used often, with around 5 such orders being processed each year. An example is the Local Government Finance (Scotland) Order 2005 S.S.I. 2005/19.

Class 3 – this procedure is used mainly for Emergency Shellfish orders under the Food and Environment Protection Act 1985. There are around 50 such orders per year at present but we understand that these orders will be required less often following changes to food hygiene legislation due to commence on 1 January 2006.

Class 4 – the draft negative procedure, whereby the instrument cannot be made until after it has been considered in the Parliament for 40 days and not disapproved, is not used frequently and examples relate to powers given in older legislation (mainly pre-1947). Examples include The Holyrood Park Amendment Regulations 2005 S.S.I. 2005/15 and The Disposal of Records (Scotland) Amendment Regulations 2003 S.S.I. 2003/522.

Class 5 – around 175 instruments are made under this procedure each year. Instruments can come into force 21 days after being laid in the Parliament, and the period can be waived in exceptional circumstances – for example, in relation to potential outbreaks of infectious diseases such as Foot and Mouth or Avian Influenza. A current example is the Avian Influenza (Preventative Measures) (Date for Identification of Poultry Premises)(Scotland) Regulations 2005 S.S.I. 2005/625, which was made on 7 December, laid on 8 December and came into force on 9 December.

Class 6 – this procedure is used almost exclusively for revocation or partial revocation of class 3 instruments (so if class 3 instruments became less
commonly used, then there could well be a corresponding decrease in class 6 instruments). A recent example is The Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No. 3) Revocation Order 2005 S.S.I. 2005/272. Class 6 instruments tend to come into force very soon after they are made, for example to allow fishermen to commence fishing in specified areas.

Class 7 – This is the largest category of instrument and can be split into 3 main sections:

1. **Local Orders** which tend to be Road, Water or Harbour orders which are made by officials, registered and come into force. Water and Harbour orders are printed and published on the OPSI website. Road orders are given an SSI number but, in line with the practice for local orders in England, are not currently published on the OPSI website. Around 150 – 200 local orders are made each year.

2. **Commencement Orders** are General Instruments which are not laid in the Parliament but are forwarded to the Subordinate Legislation Committee, ideally 10-14 days before they come into force. Around 50 such orders are processed each year.

3. **Other instruments that are not laid** include other general instruments where the enabling power permits a minister, certain officials and the Lord President to make and bring into force instruments without referral to the Parliament. Examples of such instruments are Acts of Adjournment and Sederunt (rules of the court for both Court of Session and Sheriff Courts); instruments which make small amendments to previous instruments or upgrade fees. Recent examples include Act of Sederunt (Sheriff Court European Enforcement Order Rules) 2005 S.S.I. 2005/523 and The Housing Support Grant (Scotland) Order S.S.I. 2005/166.

**Class 4 procedure (draft negative)**

The letter invited the Executive to clarify concerns about the use of this procedure. As noted above, this procedure is used only in relation to older Acts. The Executive anticipates that there is likely to be little benefit in extending the use of this class and, in fact, would consider this to be one class of instrument that could potentially be dispensed with if there is a desire to reduce the number of procedures. The merit of the more commonly used class 5 negative procedure is that it entails a lower burden and is, therefore, appropriate for routine instruments that are less complex or controversial and can come into force after 21 days if necessary. If 40 days were required before an instrument could come into force, then an order needed by 1 November would need to be laid before the summer recess since the summer and autumn recesses do not count towards the 40 days. The Executive considers that these lengthened timescales for a larger number of orders would make the process of making timeous subordinate legislation very difficult.
The Executive does not consider that more use of the draft negative procedure would assist with the amendment of draft orders. The SLC would not have any longer to consider the orders and the Executive is already willing to come forward with an amended order within the 21 days under the class 5 procedure, or to withdraw, amend and re-lay an instrument under class 1 procedure, in appropriate circumstances.

A further consideration for instruments in this category is that, if an amendment is required after laying, then an entirely new instrument would have to be prepared and the 40 day period would have to start again with the laying of the new draft.

Parent Act or significance of instrument?

The letter advised the Executive of comments from other committees about the timescales and level of scrutiny associated with various instruments. The Executive is grateful for these illustrations and notes particularly that some affirmative instruments do not generate much discussion and some negative instruments are of much more interest to the Committees. This is to some extent inevitable but it does not necessarily mean that the incorrect procedure was chosen in the parent Act. If the Committee would like to provide examples where lead Committees believe that the incorrect procedure was selected in the parent Act, the Executive is very willing to look at such examples.

As far as the rules governing the Less Favoured Area Support Scheme made under the EC Act are concerned, LFASS as a scheme involving payment of money on this scale was introduced in 2001. The scheme broadly provides each year for payments to be made to the same people in the same proportions and in practice the recent SSI was rolling the LFASS scheme forward for another year. As no new scheme involving significant government expenditure was being launched or no major or significant changes in policy or law in relation to the existing scheme were being implemented, it was thought negative resolution procedure was appropriate.

The Executive could consider whether, in cases where there are similar or identical orders, there might be some flexibility built into the system whereby the first or early instruments might be affirmative procedure and subsequent instruments could be negative procedure. However, this would need to be provided for in the parent legislation, or by an amendment to the relevant Act.

Technical flaws in SSIs/Bills

The letter gives three examples of instances when there were fundamental differences between the Committee and the Executive on technical aspects of instruments. In the first example, the International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders)(Scotland) (Revocation) Regulations 2004 SSI 2004/437, the Executive revoked a set of regulations that the Committee considered were technically flawed, therefore they acted in accordance with the Committee’s view. With regard to the 2 other examples, the Panel of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001 (SSI 2001/476) and the Curators ad Litem and Reporting Officers(Panels)(Scotland) Regulations 2001 (SSI 2001/477) having considered the minutes of the relevant meeting of the
Committee, it would appear that the Executive answered in full the points raised by the Committee and whilst there remained a difference of opinion on certain matters, the differences were not such as to result in fundamental flaws to the instruments.

**Advance notice of subordinate legislation**

The letter noted that the Executive had agreed to consider how committees might receive better advance notice of instruments. The objective of early notification is one that is shared. As a general rule, the Executive’s view is that the Parliament should be told as much as possible as soon as possible and, in this particular context, the benefits of putting this principle into practice are fully recognised. The Executive will direct further attention to this matter and liaise further with the Committee.

**Subordinate Legislation Committee reports**

The letter noted that the Executive had agreed to confirm how it tracks and responds to SLC reports. Currently, reports are allocated to, and dealt with by, the relevant solicitors, administrators and Ministers as regards individual instruments. The commitments given by the Executive in relation to bringing forward an amending instrument at the next opportunity are that the administrator and solicitor will note the requirement and seek a suitable instrument to bring forward an amendment at the earliest opportunity. The Executive will, however, consider the merits and feasibility of setting up a central tracking system to record such commitments.

**Motion to annul an instrument outwith the 40 day period**

The letter provided information about the nature of this procedure in New Zealand and Australia. The Executive is grateful for this information. It notes that the procedure for annulment in the Scottish Parliament is set out in Standing Orders. The relevant sections in Rule 10.4 paragraphs 1 and 2 provide that any member may propose a motion to the lead Committee or the lead Committee shall report to the Parliament, in both cases no later than 40 days after the instrument has been laid. This appears to be slightly at odds with the next paragraph which states that “the Parliamentary Bureau shall, no later than 40 days after the instrument is laid, by motion propose that nothing further is to be done under the instrument”. This flows from the Transitory and Transitional Provisions (SI) Order 1999 No.1096, paragraph 11. However, the Executive recognises that this effectively cuts short the timescale for consideration by the lead Committee. Therefore, the Executive would not object if consideration were given to amending the procedure so that the motion could be taken beyond the 40 days if necessary provided that notice had been given within the 40 days. There would have to be some sort of timescale for the motion to be considered – perhaps within week/10 days. Of course, the wider consequences of such a procedure would need to be carefully considered before any final decision.

During the course of the inquiry, one issue that has been highlighted is the different (greater) demands on the same 40 day period in the Scottish Parliament as compared to Westminster. It may be useful to examine the reasons, implications and options in this regard.
Codes and guidance

The letter notes that the SLC will provide further information in relation to experience of accessing codes and guidance which form part of regulatory packages. The Executive looks forward to receiving this in due course.

Financial transparency

The letter notes, and gives examples of, the Finance Committee’s concerns about the scrutiny of costs associated with subordinate legislation. The Executive, of course, already provides information on the financial implications that are expected to arise from any instrument. It would be keen to further support the rigour and transparency of the process of financial scrutiny. Therefore, while the Executive could not support an approach that would see provisions included inappropriately in primary rather than subordinate legislation, it would be very willing to consider any other proposals that the SLC or Finance Committee might make for strengthening procedures.

Scottish Executive
December 2005