EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

AGENDA

5th Meeting, 2009 (Session 3)

Wednesday 11 February 2009

The Committee will meet at 10.00 am in Committee Room 5.

1. **Her Majesty’s Inspectorate of Education reports:** The Committee will take evidence on the Improving Scottish Education 2005-2008 report, and Annual Report 2007-08 from—

   Graham Donaldson, HM Senior Chief Inspector, Wray Bodys, HM Chief Inspector, Annette Bruton, HM Chief Inspector, Chris Mcllroy, HM Chief Inspector, and Stuart Robinson, Corporate Services Director, HMIE.

2. **Subordinate legislation:** The Committee will consider the following negative instrument—


Eugene Windsor

Clerk to the Education, Lifelong Learning and Culture Committee

Room T3.40

The Scottish Parliament

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The papers for this meeting are as follows—

**Agenda item 1**

Paper by the Clerk  
ELLCP/S3/09/5/1

**Agenda item 2**

SSI cover note  
ELLCP/S3/09/5/2

*Protection of Vulnerable Groups (Scotland) Act 2007*  
Background

1. At its meeting on 17 September 2008, the Committee agreed to scrutinise the work of Her Majesty’s Inspectorate of Education (HMIE), including its annual reports and any other significant publications.

2. On 30 June 2008 HMIE published its *Annual Report and Accounts 2007-08* which can be accessed on-line at this link:
   

3. On 16 January 2009 HMIE published its report *Improving Scottish Education 2005-2008*. Hard copies of the report have previously been circulated to members, and the report can also be accessed on-line at this link:
   

Evidence session on 11 February 2009

4. At its meeting on 11 February 2009 the Committee will take evidence from HMIE on its report *Improving Scottish Education 2005-2008*, and also on its *Annual Report and Accounts 2007-08*.

5. The Report by HM Senior Chief Inspector (HMSCI) on the *Annual Report and Accounts 2007-08* is attached at Annexe A.

6. The Commentary by HMSCI on the *Improving Scottish Education 2005-2008* report is attached at Annexe B.

Nick Hawthorne
Senior Assistant Clerk
Education, Lifelong Learning and Culture Committee
This has been a year of significant challenge for all public services in Scotland. The Scottish Government’s Purpose, its Concordat with the Convention of Scottish Local Authorities (COSLA) and the related National Performance Framework, and the emerging policy priorities are all drivers for change and development. Of direct significance for HMIE has been the Government’s response to the Crerar Report on scrutiny. At the same time, educational policy and practice has itself been fast moving. The Early Years and Early Intervention Framework, Curriculum for Excellence and Skills for Scotland: a lifelong skills strategy have been particularly significant. These developments have all given rise to considerable strategic reflection and development.

A core function of HM Inspectorate of Education (HMIE) is to provide assurance and bring about improvement through inspection and review. In the past year, we carried out almost 1000 inspections covering all sectors of education. This has had a huge positive impact on children, young people and adult learners in Scotland. In spring last year, we published new frameworks for inspections – the third edition of How good is our school? and the second edition of The Child at the Centre. We revised our inspection models in schools and pre-school centres from January 2008 to take account of these new frameworks. We reintegrated nursery class inspections into primary school inspections and worked with the Care Commission to reduce the frequency of integrated inspections. We made changes to school inspections by including a significant shift towards getting it right for every child (the GIRFEC agenda). Our approaches to inspection have allowed us to focus directly on learners’ progress and achievements, on the quality of learning and teaching and on schools’ capacity for improvement. Through our programme of follow-through inspections, we continued to engage with schools and pre-school centres where we found underperformance. I am pleased to report that in these centres and schools we have found improvements since the original inspections had taken place.

During 2007-08, we continued with our second phase of inspections of the educational functions of local authorities. Our programme is now more proportionate. This year each of our full inspections included inspections of educational psychology services. We have also been developing approaches to assisted self-evaluation, working directly with two local authorities. We continued with our inspections of community learning and development (CLD) services, which helped the development of self-evaluation in that sector. As part of our continuing service level agreement with the Scottish Funding Council (SFC), we neared the end of the current cycle of college reviews and worked with SFC to develop new quality arrangements for implementation from August 2008. Our programme of joint inspections of provision for child protection in each local authority area maintained the drive for improvement.
We continued to develop services for children inspections in partnership with stakeholders and other inspectorates.

Section 2 of this report provides more information about our inspection and reporting activities in 2007-08.

The direct engagement between inspectors and staff during inspections provides a unique lever for improvement at the points where learning takes place. I commented last year, in our annual report, on our commitment to ensuring that our inspection models maximise the extent to which we engage directly with staff. Throughout last year, we continued the training programme for inspectors that we started in 2006, to ensure the highest possible levels of interpersonal skills in our inspectors. Our school inspections are undergoing significant change in order to be more proportionate, to build more directly on self-evaluation and to drive improvement and innovation.

We published a range of reports in the last year on key national developments and provided high quality, independent, professional advice drawn from inspection and review evidence to Scottish Ministers and others with responsibilities in education and children’s services. Inspectors provided influential professional advice on Skills for Scotland: a lifelong skills strategy and contributed advice to developments within Curriculum for Excellence. We produced a report on our inspection of services and support provided to children of asylum seekers in Glasgow, which has had a considerable impact on improving the lives of these vulnerable children. Our influential report Leadership for learning: The challenges of leading in a time of change was published in June 2007. We disseminated the messages of this report by hosting a number of seminars throughout Scotland. Our second review of the implementation of the school meals strategy, Hungry for Success – Further Food for Thought continued the important debate on healthy eating in Scotland.

We are committed to ensuring improvements in children’s services, including provision for child protection, through the combination of inspection and robust self-evaluation. To assist local authorities and partner agencies develop sound approaches to improvement through self-evaluation, we published two guides based on the inspection framework for child protection. We plan to publish more guides in this series during 2008-09.

We are committed to the identification and dissemination of good practice. We launched our influential Journeys to Excellence online digital resource in September 2007. This resource, which contains an extensive range of examples of best practice in Scottish education, receives around 50,000 page visits per month and is growing steadily. Since January 2008, we have published examples of good practice that we have found in school inspection reports. Our series of aspect reports on specific educational themes includes examples of good practice, recommendations and areas for improvement. Aspect reports are often supported by good practice conferences and contributions from inspectors at national and local events. Demonstrable changes in practice follow.
Sections 2 and 3 of this report provide more information about our publications and the impact we have had on education and children’s services.

I am pleased to be able to report that throughout the last year we had a high degree of success in meeting our challenging targets. This success reflects the professionalism and strong teamwork of all staff in HMIE including assistant inspectors, associate assessors and lay members and their commitment to improving the lives of children, young people and adult learners in Scotland. I want to put on record my gratitude to them. I would also like to express my thanks to those who work with us, including education authorities, for their ongoing support.

We shall finalise and publish our Corporate Plan covering 2008-11 later this year. It is clear that the years to come will pose considerable challenges for HMIE as we continue to play our full part in improving Scottish education. The new streamlined early education and school inspection model, which we introduced in part from April 2008 and will introduce in full from September 2008, will be critical to ensuring that we play our full part in helping to realise the full potential of Curriculum for Excellence for all young people and in allowing us to report progress in Scotland Performs. The successes of the current year have established a strong platform for that work and for our contribution to education and children’s services as a whole.

Graham Donaldson
HM Senior Chief Inspector June 2008
Commentary by HM Senior Chief Inspector on the Improving Scottish Education 2005-2008 report

Recent events have underlined how quickly the world can change and how powerfully interconnected we are across the globe. In the opening paragraph of my commentary in our Improving Scottish Education 2002-2005 report, I said: ‘It is clear that the future will require a population with the confidence and skills to meet the challenges posed by fast and far-reaching change.’ That sentence continues to sum up the key test facing education, not just in Scotland but worldwide. This report focuses on how well placed Scotland is to rise to this challenge and provides important pointers for future development.

Scotland’s future economic prosperity requires an education system within which the population as a whole will develop the kind of knowledge, skills and attributes which will equip them personally, socially and economically to thrive in the 21st century. It also demands standards of attainment and achievement which match these needs and strengthen Scotland’s position internationally.

We have a powerful legacy of improvement in Scottish education over the last quarter of a century upon which we can build. Developments such as Standard Grade, 5-14, Higher Still and, more recently, Assessment is for Learning and Determined to Succeed, have established ways of thinking and working which will remain influential. As the Education (Additional Support for Learning) (Scotland) Act 2004 has been implemented, all teachers are now becoming more aware of their responsibilities for meeting the needs of every single learner.

In Improving Scottish Education 2002-2005 we identified the need for: greater clarity about the outcomes of education; a stronger focus on essential life skills, particularly literacy and numeracy; assessment and qualifications that complement the curriculum but do not drive it; space for more imaginative teaching; replacing the separate concepts of academic and vocational education with that of an appropriate education for all; a more pronounced focus on health education; and a clearer and more consistent approach to education for citizenship. I am encouraged by the extent to which The Early Years Framework, Curriculum for Excellence, Skills for Scotland: A Lifelong Skills Strategy and Getting it right for every child (GIRFEC) address these findings. The challenge remains, however, to translate aspiration into action.

Our evidence shows that Scottish education continues to demonstrate the strengths that we highlighted in the period 2002-2005 across all sectors. Since then, further aspects of the system have moved to positions of strength and Scottish education in general is showing steady improvement. At the same time, however, a number of significant problems remain and the need for further and faster improvement has grown.

Early education continues to be strong overall and that good start is maintained into the early years of primary. Children in our primary and
secondary schools experience a broad curriculum which is generally in line with existing national guidance. While maintaining a focus on established expectations relating to knowledge and skills, increasing numbers of schools are giving greater emphasis to broadening achievement and to preparing pupils for positive post-school destinations. These undoubted strengths reflect the professional commitment and competence of our teachers and the improving quality of leadership in our centres and schools.

Other areas of Scottish education also show real strength. Colleges continue to provide relevant and accessible programmes and are helping learners develop an increasing range of essential and vocational skills for the world of work and their own personal development. *The Review of Scotland’s Colleges 2007* testifies to the key contribution that colleges make to economic growth. The impact of community learning and development on young people and adult learners has grown since *Improving Scottish Education 2002-2005*. Youth work and adult learning are generally strong.

The context in which local authorities provide education has changed significantly since 2005. Single outcome agreements have provided increased flexibility for decision making at local level and have highlighted the key role that councils play in establishing priorities and leading improvement. Many local authorities have been successful in promoting partnership working and in developing a range of initiatives to improve pupils’ learning in and out of school. The best of our local authorities are already leading curricular change and ensuring that high quality experiences and outcomes are being provided for learners. The challenge remains, particularly in a demanding economic climate, for all local authorities to use their increased freedom in innovative ways which address difficult issues and raise standards.

*Curriculum for Excellence* embodies a new way of working. It recognises that sustained and meaningful improvement should, to a significant extent, be shaped and owned by those who will put it into practice. Within a broad framework of experiences and outcomes, it aims to provide the space and incentive to develop the capacities of our young people as successful learners, confident individuals, effective contributors and responsible citizens. The key to developing capacities, raising standards and meeting the needs of all learners lies of course in consistent, high quality learning and teaching. It remains true that differences within schools are generally greater than those between schools. We must ensure that the welcome development of self-evaluation across Scottish education brings about real improvement and addresses instances of poor quality practice with determination. Self-evaluation should not be seen simply as more effective monitoring by managers but as the commitment of a staff team to reflect and improve. The increasing extent to which teachers are sharing, analysing and comparing each other’s practice, although still limited, is encouraging.

We have to place professional development, covering both subject content and pedagogy, at the centre of our approach to change if we are to achieve better experiences and outcomes for learners. The onus will be on local authorities, centres, schools and individual teachers to make optimum use of
the time and expertise available for professional development. Such development should build capacity for professional networking utilising, for example, the huge potential of Glow² and other forms of ICT. This drive for enhanced professionalism relies upon brave and effective leadership which engages the abilities and determination of a strong and reflective teaching profession.

It is vital that the new curriculum, qualifications and assessment framework embodies the kind of intellectual demand which will stretch all learners. The current profile of attainment within and across the different sectors of education remains uneven. In particular, many young people are not making the progress they should from the middle stages of primary until well into their secondary education. Difficulties with literacy and numeracy and an apparent reluctance or inability to engage with demanding areas of learning such as mathematics, science and modern languages can become entrenched at these stages. I am encouraged that Curriculum for Excellence proposes to address literacy and numeracy directly, emphasising the need to develop these fundamental skills across the curriculum and to provide formal recognition of progress up to the end of every young person’s school career. Developing to the full the skills and attributes that underpin the four capacities will be essential to equipping our young people to meet the challenges of the future. Formally accredited attainment and broader forms of achievement are sometimes portrayed as alternatives. They are not. Both are essential to the future success of individuals and of our society and economy as a whole.

Sound assessment is integral to the learning and teaching process and to our ability to be confident about standards. A prerequisite is for educators to ensure that they are secure in their judgement of pace and progress in learning. That means actively and rigorously seeking to develop and share knowledge, data and other intelligence about performance in order to be confident that each learner is achieving fully. The next period of development in Curriculum for Excellence will involve setting out new approaches that streamline assessment and qualifications arrangements, particularly at S4. Such change poses significant challenges in ensuring progression, breadth of recognition and smooth transitions from the earlier phase of general education.

The publication of Skills for Scotland: A Lifelong Skills Strategy represented a call to action that challenges all lifelong learning providers to equip people with the skills, expertise and knowledge for success. It has provided added impetus for Scottish education to work across sectors in order to ease transition between stages and support learners into positive destinations after each stage. Scotland’s lifelong skills strategy draws upon the agenda set by Curriculum for Excellence in the pre-school and schools sectors, and requires partnership working between schools and other sectors, including colleges and community learning and development, in developing skills progressively.

Positive links across partners and stakeholders are key elements in all of this. Successful change in our centres and schools requires the full involvement of parents and learners in considering both the implications of what is proposed
and their own contribution. It requires pre-school centres, schools and colleges to work together and with community learning and development, employers and other providers to enhance and extend the curriculum and prepare learners to move on to positive destinations.

The GIRFEC approach aims to ensure that centres, schools and educational services work more closely with partner agencies so that all children get the help that they need when they need it. The 2007 Organisation for Economic Co-operation and Development (OECD) report Quality and Equity of Schooling in Scotland acknowledged that, in comparison with most OECD countries, the Scottish school system is high performing and highly equitable in respect of both learner outcomes and school quality. However, the report also highlighted the limited success of Scotland’s schools in tackling those differences in outcomes that are associated with socio-economic disadvantage. A number of important steps are being taken to address this fundamental issue, particularly through early intervention. Curriculum reform should also, in time, make an impact by improving motivation and relevance.

Findings from our child protection inspections show considerable variation in the effectiveness of practice across Scotland. There are strengths in the initial support given to children to keep them safe but these are not always sustained. Effective planning to meet children’s needs, based on a rigorous assessment of risk, needs much more development. Improvements are also still required in multi-agency self-evaluation to ensure that this process leads to improvements in practice. We are working with stakeholders to ensure that the lessons from the current cycle of child protection inspections are embedded in practice.

In our last report we said that systems of accountability must themselves adapt to reinforce the kind of changes in practice and in culture which the new ways of working demand. Since then, HMIE has significantly reformed inspections and reviews to focus on what matters most in terms of outcomes for learners, building directly on self-evaluation and enhancing capacity by promoting well-judged innovation. We have also strengthened our work in identifying and spreading good practice through, for example, The Journey to Excellence and good practice conferences. These changes have been possible because of the good progress in effective self-evaluation made by schools and colleges over many years. Initial experience of our new arrangements seems to justify that confidence but more needs to be done to establish a consistent culture of self-evaluation for improvement.

This report identifies a range of vital strengths on which Scottish education can build. It also makes very clear the areas where further significant improvement is needed. HMIE will continue to work with others to ensure that Scotland has the creative and dynamic education system for learners of all ages and the effective services for children it needs to meet the challenges of the 21st century.

Graham Donaldson
HM Senior Chief Inspector
Subordinate legislation


Background

1. When fully commenced, the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act") will provide for a new vetting and barring scheme, including new types of disclosure checks for those individuals working with children or vulnerable adults in Scotland.

2. A similar piece of legislation, the Safeguarding Vulnerable Groups Act 2006 ("the 2006 Act"), established a vetting and barring Board for England, Wales and Northern Ireland. This new board will assume responsibility for barring decisions from the Secretary of State.

3. The purpose of the above order is to ensure that individuals barred by the new board are included on a Scottish enhanced disclosure and as a consequence could not legally and undetected enter the Scottish vulnerable groups' workforce.

4. The date which the order comes into force is noted in the instrument by reference to a related English order.

5. The Education, Lifelong Learning and Culture Committee is the lead committee for this instrument and should report to the Parliament by 23 February 2009.

6. Copies of the SSI, an explanatory note (which is not part of the Regulations) and the Executive Note are attached.

7. A note on procedure for considering SSIs is attached overleaf. This is a negative instrument.

Subordinate Legislation Committee’s consideration

8. The Subordinate Legislation Committee considered the SSI at its meeting on 3 February 2009 and noted the following:

   (a) that the Scottish Government has admitted that there was a failure to expedite the publication of this instrument (which was not published until after it came into force) and that it will work with the Queen’s Printer to ensure that this does not happen again;
(b) that it would have been possible to specify the date that the instrument comes into force on the face of the Order rather than by reference to the related English Order, which would have been more transparent and accessible for the reader; and

(c) that there has been a drafting error identified in article 5(2) and acknowledged by the Scottish Government but which is not thought to affect the legal operation or effect of the instrument.

9. An extract from the Subordinate Legislation Committee’s report is attached at Annexe A.

Action

10. The Committee is invited to consider whether it wishes to make any recommendation in relation to the instrument. The instrument is not subject to amendment.

Linda Smith
Assistant Clerk
Education, Lifelong Learning and Culture Committee
Procedural Note

Standing Orders

1. The procedures for dealing with Scottish Statutory Instruments (SSIs) are covered by Chapter 10 of Standing Orders. SSIs are laid by being lodged with the chamber clerks, and are published in the Business Bulletin. They are referred to the Subordinate Legislation Committee, the appropriate subject committee (the ‘lead committee’), and, where relevant, any other committee.

SSIs subject to annulment: ‘negative instruments’

2. Where an SSI is subject to annulment, it comes into force on a specified date and then remains in force unless it is annulled by the Parliament. Any MSP may by motion propose to the lead committee that the committee recommends that nothing further is to be done under the instrument. Such motions are lodged with the chamber clerks.

3. The lead committee debates such a motion for no more than 90 minutes.

4. The lead committee reports to the Parliament, setting out its recommendations. If it recommends annulment, the Bureau will propose to the Parliament a motion that nothing further is to be done under the instrument.

5. All the above must take place within 40 days of the instrument being laid, excluding recesses of more than 4 days.

6. To date, no motion to annul SSI 2009/4 has been lodged with the chamber clerks.
Annexe A

EXTRACT FROM SUBORDINATE LEGISLATION COMMITTEE, 8TH REPORT, 2009

INSTRUMENTS SUBJECT TO ANNULMENT


1. This instrument makes provision for persons listed by the Independent Barring Board for England, Wales and Northern Ireland to be treated as subject to the Scottish requirements on disclosure and barring from working with children and other vulnerable groups.

2. The English Order was subject to affirmative procedure and accordingly could not be made until approved by the Westminster Parliament. The commencement date for the operative provisions was set at 7 days after the English Order was made. Accordingly the Committee notes that the Scottish Ministers had a very short window of opportunity to make this negative order so as to come into force at the same time as the English Order and prevent there being any gap in recognition in Scotland of the new barring arrangements in the rest of the UK.

3. This instrument therefore does not comply with the 21 day rule as set out in article 10(2) of the transitional order. A letter explaining why it was necessary not to comply with the rule was sent to the Presiding Officer as required by article 10(3). The Committee found the reasons for not complying with the 21 day rule acceptable in this case.

4. Correspondence between the legal advisers and the Scottish Government is reproduced in Appendix 1.

5. The Order is unusual in that rather than providing for a specified date on which it is to come into force, it provides that it will come into force on the same date as the English Order. The English Order itself does not specify an actual date but provides that it will come into force on the date seven days after the date on which it is made. The Committee notes that any person reading the Scottish Order therefore has to obtain the English Order and then calculate the coming into force date. In the interests of clarity and transparency legal advisers asked the Scottish Government to explain their drafting approach (question (c)).

6. The Scottish Order was made and laid before Parliament on 14 January. However, it was not available on the Queen’s Printer for Scotland website when the questions were submitted to the Government on the morning of 22 January. The Order was already in force. As the Committee is entitled to report any undue delay in publication of instruments to Parliament in accordance with Standing Order Rule 10.3.1.d legal advisers asked the Scottish Government questions (a) and (b).
7. In addition there appeared to be some text omitted from article 5(2) of the order. Question (d) asked the Government to comment.

Questions (a) and (b)
8. The order was made available on the QPS website and paper copies were printed and available some time on 22 January. This was more than a week after the order was made and after it had come into force. Given that the order did not comply with the 21 day rule, the Committee would have been expected that publication of it ought to have been expedited. It was noted that various instruments made after the order were published before it was subsequently published. The Scottish Government acknowledged that publication of this instrument ought to have been expedited and that this was not done. It advised that they will work with QPS to ensure that this does not happen again.

9. Given the subject matter of this instrument, it is important that there should be no gaps in recognition of persons barred from working with children or vulnerable adults in the rest of the UK for the purposes of the equivalent Scots law. The committee considered that there was a public interest in ensuring that this instrument was published and printed quickly.

Question (c)
10. The committee agreed with the Government’s interpretation of the restrictions on their vires, and that the coming into force should be linked to that of the English Order. However, as the coming into force date of the English Order was known when the Scottish Ministers made the Scottish Order, it would have been possible to specify that date on the face of the Scottish Order which would have been more transparent and accessible for the reader.

Question (d)
11. The Scottish Government confirmed that the words “to be treated” are omitted from article 5(2). The Committee agrees that this omission is not likely to have any effect on the operation of the instrument. If these words had been included, the clarity of article 5(2) would however have been improved.

12. The Committee finds the reasons supplied for the failure to comply with the 21 day rule as set out in article 10(2) of the transitional order satisfactory and reports accordingly.

13. The Committee reports the order to the lead committee and to the Parliament on the following grounds:

(d) that the Scottish Government has admitted that there was a failure to expedite the publication of this instrument (which was not published until after it came into force) and that it will work with the Queen’s Printer to ensure that this does not happen again;

(e) that it would have been possible to specify the date that the instrument comes into force on the face of the Order rather than by reference to the related English Order, which would have been more transparent and accessible for the reader; and
(f) that there has been a drafting error identified in article 5(2) and acknowledged by the Scottish Government but which is not thought to affect the legal operation or effect of the instrument.
APPENDIX 1


On 22nd January 2009 the Scottish Government was asked—

(a) to confirm when this instrument will be published on the Queen's Printer for Scotland website and paper copies will be printed and available for sale;

(b) given that the instrument was not so published on the website when this question was submitted (although the instrument was made on 14th January and came into force on 20th January) to explain the reason for the delay in publication;

(c) given that it is not patent from the face of the instrument or the explanatory note when the instrument is to come into force (that date being dependent on the date SI 2009/12 comes into force which was known at the time this Order was made) to explain the drafting approach and comment on whether it is sufficiently transparent; and

(d) to explain whether the words "to be treated" are missing after "person" in the penultimate line of article 5(2) to reflect similar wording in article 4(2) and to comment on the effect of the text of article 5(2) without those words.

The Scottish Government responds as follows—

(a) We have been advised that this Order was published on the Queen’s Printer for Scotland’s website sometime on 22nd January 2009. Paper copies were also printed and made available on that day.

(b) It appears that the publication of this SSI was not expedited as it should have been and we will work with the QPS to try to ensure that this does not happen again.

(c) As explained in the letter to the Presiding Officer the vires of this instrument did not permit our SSI to be made in advance of SI 2009/12. Ministers were required to respond quickly to the making of that SI, the date of which had changed. On 14th January we received confirmation that SI 2009/12 was made on 13th January 2009.

To provide the public and Parliament with as much notice as possible of the Order, within the constraints of the vires and the need for the Order, it was made and laid on 14th January. At the time of drafting the Order, we considered that in order to ensure that it could be signed as soon as confirmation was received that SI 2009/12 was made (without the need to make any alterations to the Order) the safest approach, to ensure that the Order came into force at the same time as SI 2009/12, was to link the commencement date of the Order to that of SI 2009/12. While the
commencement date could have been added immediately prior to signing, we wished to avoid the possibility of any mistakes as to the commencement date.

In any event we consider that the drafting approach is sufficiently transparent. The commencement date was linked to a specified and ascertainable date, the date of making of SI 2009/12.

(d) We confirm that the words “to be treated” are missing from the provision and thank the SLC for bringing this oversight to our attention. While the missing words would have provided additional clarity as to the effect of the provision we do not consider that their absence has any legal effect on the meaning of the provision in question.