The Scottish Parliament
Pàrlamaid na h-Alba

SUBORDINATE LEGISLATION COMMITTEE

AGENDA

5th Meeting, 2013 (Session 4)

Tuesday 5 February 2013

The Committee will meet at 10.30 am in Committee Room 5.

1. **Draft instruments not subject to any parliamentary procedure:** The Committee will consider the following—

   Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 [draft] (SG 2013/4).

2. **Instruments subject to affirmative procedure:** The Committee will consider the following—

   Children's Hearings (Scotland) Act 2011 (Transfer of Children to Scotland – Effect of Orders made in England and Wales or Northern Ireland) Regulations 2013 [draft];
   Social Care and Social Work Improvement Scotland (Requirements for Care Services) Amendment Regulations 2013 [draft].

3. **Instruments subject to negative procedure:** The Committee will consider the following—

   Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2013 (SSI 2013/7);
   Energy Performance of Buildings (Scotland) Amendment Regulations 2013 (SSI 2013/12);
   Looked After Children (Scotland) Amendment Regulations 2013 (SSI 2013/14).

4. **Instruments not subject to any parliamentary procedure:** The Committee will consider the following—

   Bovine Viral Diarrhoea (Scotland) Amendment Order 2013 (SSI 2013/21).

5. **High Hedges (Scotland) Bill:** The Committee will consider the response of Mark McDonald MSP to its Stage 1 report.

6. **Public Body Consent Memorandum:** The Committee will consider the following draft order under section 9 of the UK Public Bodies Act 2011—

Abolition of Administrative Justice and Tribunals Council Order [2013].

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The papers for this meeting are as follows—

Agenda Items 1,2,3 and 4

Legal Brief (private)	SL/S4/13/5/1 (P)

Agenda Item 3

Instrument Responses	SL/S4/13/5/2

Agenda Item 5

High Hedges (Scotland) Bill - Stage 1 report

Briefing Paper	SL/S4/13/5/3

Agenda Item 6

The Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013

Briefing Paper (private)	SL/S4/13/5/4 (P)

SUBORDINATE LEGISLATION COMMITTEE

5th Meeting, 2013 (Session 4)

Tuesday 5 February 2013

Instrument Responses

INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE

Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2013 (SSI 2013/7)

On 25 January 2013, the Scottish Government was asked:

1. These Regulations are made in exercise of the powers in section 93(2) of the Housing (Scotland) Act 2001. Section 93(3) requires that, before the Scottish Ministers make regulations under section 93(2), they must consult with a) such bodies representing local authorities, b) such bodies representing registered social landlords and c) such other persons, as they think it. The Policy Note, at paragraph 8, deals with the consultation process. It indicates that, before making these Regulations, a consultation was undertaken with seven bodies which had responded to an earlier consultation on the (revoked) Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2012 (SSI 2012/258). It appears that those seven respondents were Clyde Valley Housing Association, Home Scotland, East Ayrshire Council, Glasgow City Council, the Chartered Institute of Housing, Glasgow and West of Scotland Forum of Housing Associations, and the Scottish Federation of Housing Associations.

a. The Scottish Government is accordingly asked to explain how it has discharged the requirement, in terms of section 93(3)(a), to consult with such bodies representing local authorities as it sees fit before making these Regulations.

b. To the extent that the Scottish Government proposes to rely upon the earlier consultation on the revoked instrument, it is asked to explain how this discharges the requirement to consult on Schedule 2 insofar as it inserts Part 3 of Schedule 5 to the Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Regulations 2004. The new Part 3, as contained in these Regulations, appears to differ materially from Part 3 as it appeared in the revoked instrument and which was the basis of consultation. The third paragraph of page 3 of the Consultation on The Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2012 (as published by the Scottish Government in May 2012), which simply refers respondents to Schedule 2 to the draft instrument being consulted on, is referred to for its terms.

The Scottish Government responded as follows:

For the avoidance of doubt, the wording of section 93(4) of the Housing (Scotland) Act 2001 requires Ministers to consult with such bodies as they think fit. That discretion applies to the three categories of bodies and persons that are set out at section 93(4) of the Act.

1a. Discharge of requirement to consult:

Before making the Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2012 (SSI 2012/258; "the 2012 Regulations"), the Scottish Government undertook a 12 week public consultation. As part of that it consulted specifically with Scottish Federation of Housing Associations, the Convention of Scottish Local Authorities, all local authorities, all mainstream RSLs, non-registered housing associations, and Homes for Scotland. That consultation included bodies in all three categories set out in section 93(4) of the Housing (Scotland) Act 2001. The consultation attached draft Regulations and invited comment on them. Comments were only received from 7 of the bodies consulted.

As the Subordinate Legislation Committee will recall, at its meeting of 23 October 2012 it expressed concerns about the drafting of the 2012 Regulations. The Scottish Government therefore agreed to revoke them, before they could come into force, and has taken those concerns fully into account in making the Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2013 (SSI 2013/7; "the 2013 Regulations"), which is the instrument the Committee is now considering.

Prior to making the 2013 Regulations, the Scottish Government decided briefly to invite comment from the 7 respondents to the 12 week public consultation. Those bodies included the 2 local authorities that responded to the consultation. The Scottish Government did not see fit to consult more widely, as the changes between the instruments are not substantial and are changes of a type that might commonly be made between a consultation draft of Regulations (where consultation is accompanied by a draft) and the final version, without seeking further views from consultees. As the Policy Note narrates, none of the 7 bodies responded to the invitation to comment.

The Scottish Government's view is that Ministers had already met the consultation requirement with the 12 week 2012 consultation, as the 2013 Regulations deliver the policy that was consulted on. The 2012 Regulations did not come into force (though they were made) and therefore the matters considered in the 2012 consultation will only take effect once the 2013 Regulations come into force.

1b. Procedure adopted and specific changes:

The Scottish Ministers did not see fit to undertake a further public consultation in respect of the 2013 Regulations, as they do not in policy terms differ significantly from the 2012 Regulations. The changes between the two instruments relate to how that policy is expressed, to reflect concerns expressed by the Subordinate Legislation Committee regarding reference to an external document in Part 3 of

Schedule 2, to the way in which an eligibility criterion was expressed (and hence its vires), and a few minor printing points. The Committee's legal advisers have highlighted the change made in response to the first of these concerns.

Part 3 of Schedule 5 relates to the procedure to be followed by a local authority in making an Innovation and Investment Fund (IIF) grant. The change in that procedure between the two sets of Regulations reflects concerns expressed by the Committee in its legal advisers' questions of 28 September 2012. These were that the previous provision might constitute sub-delegation and did not clearly set out procedures to be followed by local authorities in considering applications for grant.

In practice, the requirements as set out in the 2013 Regulations are not significantly different from those councils would have undertaken using the 2012 Regulations, though they are expressed in a different way. The Committee will note that the provision made by the 2013 Regulations makes the procedure for IIF grants identical to the procedure to be followed for Partnership Support for Regeneration (PSR) grants, minus three elements of that procedure which are not required for IIF grants. (The PSR grant procedure in at Part 3 of Schedule 2, as inserted by Schedule 1 to the 2013 Regulations.)

Those consulted in the 12 week public consultation had the opportunity to comment on these procedural requirements, as they appeared in the draft Regulations that formed part of the consultation in the context of PSR grants. There were no comments from consultees to suggest that these requirements would give difficulty, which is unsurprising given that in essence they set out the evidence that an authority must require from applicants to allow proper appraisal of a proposed project.

The procedure adopted by the 2013 Regulations addresses the Committee's concerns and provides a clearer statement of the procedure local authorities are to follow. There may be advantages from the consistency of approach between both types of grant that the provision produces. The Scottish Government is grateful to the Committee for highlighting the issues in the procedure set out in the 2012 Regulations.

The Scottish Government's position is that any requirement to consult with bodies representing local authorities was met through the public consultation in 2012. Had the matters identified by the Committee been raised earlier, in consultation responses, then they would have been addressed prior to making the 2012 Regulations without further consultation. Although these matters were identified later, the Scottish Government does not see that as altering its ability to address them in the way that has been followed here.

Energy Performance of Buildings (Scotland) Amendment Regulations 2013 (SSI 2013/12)

On 25 January 2013, the Scottish Government was asked:

1. In its letter to the Presiding Officer of 23 January 2013, the Scottish Government indicates that the making of these Regulations on 27 January 2013 is a necessary pre-condition in order that the Secretary of State may also make the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) (Amendment) Regulations 2013 on that day, given that those Regulations are to be made under section 11(6) of the Energy Act 2011. The Scottish Government suggests that section 11(4)(b) of the Energy Act 2011 makes it a pre-condition of the exercise of the section 11(6) power that the Energy Performance of Buildings (Scotland) Regulations 2008 ("the principal Regulations") have been amended by regulations made under section 10(3) (i.e. this instrument). Given that section 11(2) provides that section 11(6) applies if "one or more of the first, second or third conditions is met", and that the first condition would appear to be met by the coming into force on 27 January of the Energy Performance of Buildings (England and Wales) etc. (Amendment) Regulations 2013, the Scottish Government is asked to explain:

a. Whether it agrees that the section 11(6) power becomes exercisable, without qualification, once any one of the conditions set out in subsections (3) to (5) of section 11 is met, and – if it disagrees – the basis for that view; and

b. Accordingly, why it considers the making of these Regulations to be a necessary pre-condition for the making of the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) (Amendment) Regulations 2013?

2. The letter further narrates that it was considered necessary to delay the making of these Regulations until the Secretary of State had made the equivalent instrument for England and Wales, the Energy Performance of Buildings (England and Wales) etc. (Amendment) Regulations 2013. It also narrates that that instrument was made on 9 January and laid before Parliament on 11 January. Given the stress which the letter lays upon the desirability of ensuring that the Green Deal operates as far as practicable on the same basis in Scotland and in England and Wales, the Scottish Government is asked:

a. Why there does not appear to have been a co-ordinated approach taken to the making of the two instruments so that the procedural requirements for scrutiny could properly be observed in both the UK and the Scottish Parliament or, if that were not possible, so that the Scottish Ministers could have made these Regulations at the same time as, or very shortly after, the Secretary of State made the equivalent instrument for England and Wales; and

b. Why, when that instrument was made on 9 January, the Scottish Ministers were not in a position to make these Regulations until 22 January, some 13 days later?

The Scottish Government responded as follows:

1. The Scottish Government recognises that section 11(2) of the Energy Act 2011 provides that section 11(6) applies if one or more of the conditions set out in sections 11(3) to (5) is met. It does not, however, agree that the coming into force of the Energy Performance of Buildings (England and Wales) etc. (Amendment) Regulations 2013 would be sufficient to enable the powers available under section 11(6) to be exercised so as to enable the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) (Amendment) Regulations 2013 to be made on 27 January 2013.

It is considered that section 11 envisages that the power under section 11(6) to make regulations to require information to be updated rests upon there already being provision made by regulations under section 10(3) for the inclusion in a document of the information which is to be updated.

Section 11(6) of the Energy Act 2011 (as amended by Energy Act 2011 (Amendment) (Energy Performance of Buildings) Regulations 2012) provides-

"(6) The framework regulations may make provision as to the circumstances in which—
(a) data from which a document of a description falling within subsection (3) or (4) may be produced, or
(b) a document of a description falling within subsection (5), is required to be updated or further updated in accordance with the provision made by the Secretary of State in the regulations."

The condition contained in section 11(5) (the third condition) is not of immediate relevance as the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012 specify documents falling within section 11(3) and (4). Regulation 42(2) of those Regulations (read together with the definitions of "the 2007 Regulations", "the 2008 Regulations", "disclosure document", "energy performance certificate", "Energy Performance Regulations" and "recommendations report" in regulation 2(1)) provide that the document specified for the purposes of section 8(4)(b) of the Energy Act 2011 is—

(a) for a property in England and Wales, the energy performance certificate within the meaning of the Energy Performance of Buildings (England and Wales) Regulations 2012 (at the time of the passage of the Energy Act 2011 these were the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007);

(b) for a property in Scotland, the energy performance certificate and the recommendations report within the meaning of the Energy Performance of Buildings (Scotland) Regulations 2008.

It is considered that the first condition contained in section 11(3) is intended to relate to the position in England and Wales and the second condition contained in section 11(4) is intended to relate to the position in Scotland. Section 11(3)(a) refers to Regulations which apply only to England and Wales and section 11(4)(a) refers to Regulations which apply only to Scotland. Similarly section 11(3)(a) and (4)(b) refer

respectively to amendments made by regulations made by the Secretary of State under section 9(3) and by the Scottish Ministers under section 10(3). Section 9 extends only to England and Wales and section 10 extends only to Scotland.

In terms of section 11(4)(b) the third condition, which relates to Scotland, is only met where the Scottish Ministers have made regulations under section 10(3) to amend the Energy Performance of Buildings (Scotland) Regulations 2008 to require the energy performance certificate and recommendations report ("the disclosure document") to contain information in connection with the green deal ("green deal information"). Regulations under section 11(6) may provide when the green deal information required to produce a disclosure document is to be updated or further updated. The structure of section 11 envisages that regulations will already have been made to require green deal information to be included in a disclosure document.

It is considered that the intention is that the powers to make regulations under section 11(6) which extend to Scotland is not properly exercisable until the disclosure document which applies in Scotland is required to contain green deal information. As the green deal extends GB wide and the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) (Amendment) Regulations 2013 accordingly extend to Scotland it is considered that it would not be sufficient if only the condition which related to England and Wales had been met.

2. The Scottish Government considers that a co-ordinated approach has been taken in the drafting and laying of these amendment regulations. Continuous dialogue has taken place between Scottish Government officials and those in the UK Department for Energy and Climate Change (DECC) over recent months.

It became clear in late 2012 that final text would not be available from the UK policy lead until early in 2013. This has resulted in compressed laying timetables for both the UK and Scottish Governments and breach of the respective 21 day and 28 day period between laying of regulations under negative resolution and coming into force date.

The Energy Performance of Buildings (Scotland) Amendment Regulations 2013 is made solely for the purpose of enabling use of the Scottish energy performance certificate and recommendations report as the vehicle for disclosure of information relating to the green deal status. The information which must be disclosed in such circumstances is the same in England, Wales and Scotland and it was therefore essential that, in making regulations, the requirements for the production, validity and disclosure of this information and the data requirements introduced by Schedule 2 of these Regulations functioned in the same way as those in England & Wales.

Confirmation of the final text of The Energy Performance of Buildings (England and Wales) etc. (Amendment) Regulations 2013 was received in the evening of Wednesday 9 January 2013, following signature by the UK Minister.

As the final instrument contained changes from previous drafts, officials from the Building Standards Division sought information from DECC on Friday 11 January whilst amendments were made to previous drafts of the Regulations. Clarifications

were received from DECC late on Monday 14 January. The Regulations were finalised, checked and styled and arrangements made for signature by the Minister. This occurred six working days (including the date of signature) after receipt of final information from UK officials.

On notification of final text from the UK Government, officials sought to expedite proceedings whilst still allowing sufficient time for analysis of the implications of applying similar provisions within differing legislative frameworks.

Breach of Laying Requirements: Letter to the Presiding Officer

The above instrument amends The Energy Performance of Buildings (Scotland) Regulations 2008 ("the 2008 Regulations"). It was made by the Scottish Ministers on 22 January 2013 under section 2(2) of the European Communities Act 1972 and sections 10 and 75 of the Energy Act 2011. It has been laid before the Scottish Parliament under the negative procedure on 23 January 2013 and will come into force on 27 January 2013.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with section 31(3) of that Act, this letter explains why

The Green Deal is an initiative to remove the barrier of up-front costs to the installation of the more expensive energy efficiency measures and whole-property (domestic and non-domestic) approaches needed to meet climate change targets and promote green jobs. DECC expect the overall number of jobs in the insulation industry to increase significantly under the Green Deal and ECO, rising on DECC estimates from 27,000 in 2007/8, to between 39,000–60,000 by 2015. This will be an important contribution in our transition to a Low Carbon Scotland and could present huge opportunities for Scottish industry.

The laying requirements have not been complied with due to the need to ensure that the Green Deal will operate in essentially the same manner on a GB wide basis and that the legislation underpinning the Green Deal will be in force both on a GB wide basis on the same date, namely 28 January 2013. This is the date on which The Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) Regulations 2012 (SI 2012/2079) ("the Framework Regulations") are to come fully into force.

The Secretary of State is to make a further set of amendments to the Framework Regulations. These, The Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) (Amendment) Regulations 2013 are subject to the affirmative procedure and were laid in draft before the UK Parliament in early December 2012.

Those draft regulations include provision made under section 11(6) of the Energy Act 2011 relating to circumstances in which green deal information must be updated. It is considered that due to the wording of section 11(3) and (4) those amending regulations cannot be made until amendments to both 2008 Regulations and the Energy Performance of Building (England and Wales) Regulations 2012 (SI 2012/3118) have come into force. Section 11(4)(b) makes it a pre-condition of the exercise of the power in section 11(6) that the 2008 Regulations have been amended

by regulations made under section 10(3) to require information to be contained in a document required to be produced under the 2008 Regulations (i.e. the energy performance certificate and related recommendations report). The amendments to the Framework Regulations need to be in force on 28 January 2013 to coincide with the date on which the Framework Regulations themselves come fully into force.

The commencement provision in the draft Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) (Amendment) Regulations 2013 (regulation 1) provides for the regulations to come into force the day after the day on which they are made. Subject to Parliamentary approval of the draft amending regulations, those Regulations could be made on 27 January and will come into force the following day. The amendments to the 2008 Regulations therefore need to be in force on or before 27 January in order to allow those Regulations to be made and the changes to be made to the manner in which the Green Deal is to operate as the point when the Framework Regulations come fully into force in England, Scotland and Wales on 28 January 2013.

In order to ensure that the green deal information specified was essentially the same on a GB wide basis, it was considered necessary to delay making of Energy Performance of Buildings (Scotland) Amendment Regulations 2013 until the Secretary of State had made the Energy Performance of Buildings (England and Wales) etc. (Amendment) Regulations 2013 (SI 2013/10). Those Regulations were made on 9 January and laid before the UK Parliament on 11 January.

The legislative context to the making of the Amendment Regulations is set out more fully below.

Under section 8(4)(b) of the Energy Act 2011 a green deal provider must if required to do so by the framework regulations secure that a document of a description specified in the framework regulations is produced. Regulation 42(1) of the Framework Regulations requires a green deal provider to take that action provided in section 8(4)(b). Regulation 42(2) of the Framework Regulations (read with the relevant definitions in regulation 2(1)) provides that the document specified for the purposes of section 8(4)(b) of the Energy Act is in Scotland the energy performance certificate and recommendations report produced under the 2008 Regulations. These documents are together referred to as the “disclosure document”.

Where this is the case section 10 of the Energy Act 2011 enables the Scottish Ministers to make regulations amending the 2008 Regulations in connection with the production of such a disclosure document and in particular to require the document to contain information in connection with a green deal plan and improvements installed under the plan. Section 9 of the Energy Act 2011 confers an equivalent power on the Secretary of State to amend the Energy Performance Regulations for England and Wales. At the time of the passage of the Energy Act 2011 these were the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (SI 2007/991). The 2007 Regulations have since been replaced by the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118).

The result is that the power to make regulations for Scotland to specify the green deal information to be included in a disclosure document is conferred on the Scottish

Ministers while the equivalent power to make regulations for England and Wales is conferred on the Secretary of State.

The Green Deal is a GB wide scheme under the Energy Act 2011 and it is considered to be highly desirable that it operates as far as practicable on the same basis both north and south of the border. It is therefore considered important that the green deal information to be included in a disclosure document should be essentially the same in Scotland as it is in England and Wales. In order to ensure that this was the case the Scottish Ministers have held off making regulations under section 10 of the Energy Act 2011 under the Secretary of State has made regulations under section 9.

The Secretary of State has now made the Energy Performance of Buildings (England and Wales) etc. (Amendment) Regulations 2013 under (among other powers) section 9 of the Energy Act 2011. These Regulations require the energy performance certificate produced under the 2012 Regulations for a green deal property (which is the disclosure document for England and Wales) to include information known as green deal information. The green deal information is set out in the new Schedule A1 to be introduced by those Regulations into the 2012 Regulations.

The Energy Performance of Building (Scotland) Amendment Regulations 2012 require the recommendations report produced under the 2008 Regulations for a green deal property to include the same green deal information. This information is set out in the new Schedule 2 to be introduced by these Regulations. The information is the same but the new Schedule 2 does not include information regarding the energy performance certificate required by paragraphs 2 and 3 of Schedule A1 as in Scotland the information will be contained in the recommendations report rather than the energy performance certificate.

SUBORDINATE LEGISLATION COMMITTEE

5th Meeting, 2013 (Session 4)

Tuesday 5 February 2013

High Hedges (Scotland) Bill

Response from Mark McDonald MSP – Member in charge of the Bill

Background

1. The Subordinate Legislation Committee reported on the delegated powers in the High Hedges (Scotland) Bill on 11 December 2012 in its 58th report of 2012.

2. The response from Mark McDonald MSP to this report is reproduced in the appendix.

3. The Stage 1 debate is due to take place on Tuesday 5 February 2013.

Scottish Government response

Section 34 – Power to modify meaning of "high hedge"

4. In its Stage 1 report, the Committee drew this power to the attention of the lead committee as it considered it to be particularly broad in scope. The Committee also observed that it appeared possible for the power to be used in the future so as to significantly alter the scope of the Bill by substantially narrowing or widening the definition of a "high hedge."

5. In his response, Mr McDonald noted the Committee's comments and invited Members to express such views at the stage 1 debate on the Bill. Mr McDonald has undertaken to consider the matter further and write to the Committee again to confirm his views on the matter in advance of Stage 2.

Section 37 – Commencement

6. The Committee did not consider that it would be appropriate for the powers in Section 37 to be used to amend section 12 of the Land Registration (Scotland) Act 1979. It observed that such provision would more appropriately be made under the powers in section 35 of the Bill, in order that the resulting instrument would be subject either to the negative procedure or (if it textually amends that Act) the affirmative procedure.

7. The report stated that, if the above recommendation was accepted, the Committee would find the powers in Section 37 to be acceptable and would be content that the powers are laid in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 but are not subject to any further Parliamentary scrutiny.

8. Mr McDonald responded that the appropriate power will be determined by Ministers, if such a choice is available to them.

9. With particular regard to the Committee's views relating to section 12 of the Land Registration (Scotland) Act 1979, Mr McDonald stated that as the section is likely to be repealed by the Land Registration etc. (Scotland) Act 2012, any modification to section 12 would be transitory at most and may not be used at all.

Conclusion

10. In light of Mr McDonald's offer to write to the Committee again prior to Stage 2, we may consider the Bill again. However, if no amendments affecting the delegated powers provisions are made to the Bill at Stage 2 it may not be necessary for the Committee to look at the Bill again. Members are therefore invited to make any comments they wish on the Bill at this stage.

Recommendation

11. **Members are invited to note Mr McDonald's response to the report and to make any comments they wish at this stage.**

APPENDIX

Correspondence Mark McDonald MSP dated 31 January 2013

I note the Subordinate Legislation Committee's different interpretation of the width of the power as drafted. I am keen to hear the views of members on this provision in the Stage 1 debate and, following this, will consider what action might need to be taken including how addressing the points made by your Committee and the Local Government Committee on this issue might impact on the Bill. I will therefore look to give further consideration to this matter following stage 1 and will write to the Committee to confirm my intentions ahead of stage 2.

I am pleased that the committee found the powers in section 37 acceptable in principle. In relation to the committee's recommendation on using section 37(3) to modify primary legislation, it will of course be for Ministers to determine the appropriate power, should they have a choice in which power to exercise when making ancillary provisions. I would not expect to see section 37 used to avoid appropriate Parliamentary scrutiny. In relation to the specific example of section 12 of the Land Registration (Scotland) Act 1979, that section is of course prospectively repealed by the Land Registration etc. (Scotland) Act 2012. Therefore any modification of that would be transitory in nature at most, and may not actually be needed.