



The Scottish Parliament  
Pàrlamaid na h-Alba

## SUBORDINATE LEGISLATION COMMITTEE

### AGENDA

29th Meeting, 2012 (Session 4)

Tuesday 11 December 2012

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

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
2. **Instruments subject to affirmative procedure:** The Committee will consider the following—

[Knife Dealers \(Licence Conditions\) \(Scotland\) Order 2012 \[draft\];](#)  
[Planning etc. \(Scotland\) Act 2006 \(Supplementary and Consequential Provisions\) Order 2013 \[draft\];](#)  
[Public Services Reform \(Planning\) \(Pre-application consultation\) \(Scotland\) Order 2013 \[draft\];](#)  
[Public Services Reform \(Planning\) \(Local Review Procedure\) \(Scotland\) Order 2013 \[draft\];](#)

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

[Energy Performance of Buildings \(Scotland\) Amendment \(No. 3\) Regulations 2012 \(SSI 2012/315\);](#)  
[Materials and Articles in Contact with Food \(Scotland\) Regulations 2012 \(SSI 2012/318\);](#)  
[Council Tax Reduction \(State Pension Credit\) \(Scotland\) Regulations 2012 \(SSI 2012/319\);](#)  
[Welfare of Animals at the Time of Killing \(Scotland\) Regulations 2012 \(SSI 2012/321\);](#)  
[Civic Government \(Scotland\) Act 1982 \(Metal Dealers' Exemption Warrants\) Order 2012 \(SSI 2012/324\);](#)  
[Plant Health \(Scotland\) Amendment \(No. 2\) Order 2012 \(SSI 2012/326\);](#)  
[Crofting Register \(Scotland\) Amendment Rules 2012 \(SSI 2012/327\);](#)  
[Crofting Register \(Fees\) \(Scotland\) Amendment Order 2012 \(SSI 2012/328\);](#)

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

[The Public Bodies \(Abolition of British Shipbuilders\) Order \[2013\].](#)

5. **High Hedges (Scotland) Bill:** The Committee will consider a draft report to the Local Government and Regeneration Committee.

Euan Donald  
Clerk to the Subordinate Legislation Committee  
Room T1.01  
Tel: 0131 348 5212  
Email: euan.donald@scottish.parliament.uk

The papers for this meeting are as follows—

**Agenda Items 2 and 3**

Legal Brief (private)

SL/S4/12/29/1 (P)

**Agenda Item 3**

Instrument Responses

SL/S4/12/29/2

**Agenda Item 4**

[Public Body Consent Memorandum -  
The Public Bodies \(Abolition of British Shipbuilders\) Order  
\[2013\]](#)

Briefing Paper (private)

SL/S4/12/29/3 (P)

**Agenda Item 5**

[High Hedges \(Scotland\) Bill \(as introduced\)](#)

[High Hedges \(Scotland\) Bill \(Delegated Powers  
Memorandum\)](#)

Briefing Paper (private)

SL/S4/12/29/4 (P)

**SUBORDINATE LEGISLATION COMMITTEE**

**29th Meeting, 2012 (Session 4)**

**Tuesday 11 December 2012**

**Instrument Responses**

**INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE**

**Energy Performance of Buildings (Scotland) Amendment (No. 3) Regulations 2012 (SSI 2012/315)**

**On 29 November 2012, the Scottish Government was asked:**

1. The definition of “excluded building” inserted by regulation 3(c) provides that it means, among other things, “a building owned, occupied or used from time to time by... the Royal Family”.

a. Does this extend only to official residences of the Royal Family in Scotland (i.e. the Palace of Holyroodhouse)?

b. If it is not, and the term accordingly includes private residences, the term “Royal Family” does not appear to be defined. Does it include any person who is in the line of succession to the throne of the United Kingdom and Northern Ireland, or does some more limited definition (e.g. those entitled to be styled “Royal Highness” in virtue of the Letters Patent of King George V dated 30 November 1917) apply? Please explain the intended meaning of the term, and whether this is considered to be sufficiently clear for the purposes of identifying which buildings fall within the definition of “excluded building”.

c. Ownership and occupation of a building (the latter presumably under a lease or licence to occupy) may be relatively easily determined as matters of fact and law. However, the exclusion also extends to buildings “used from time to time”. What property right is intended to be encapsulated by this formulation, and what degree of use is necessary in order to establish the exclusion? Is repeated use of whatever nature necessary, and does it, for example, include buildings to which members of the Royal Family merely have resort on occasion?

2. Regulation 6 substitutes in its entirety regulation 13. The new regulation 13(3) provides that the keeper of a register must inform the authorised recipient that an opt-out is in effect “[w]here an opt-out is in effect in respect of data relating to the building or building unit”. Standing the requirement in regulation 13(2)(a) that the authorised recipient has made a request for one or more specific descriptions of energy performance data, and the requirement in 13(2)(e) that the disclosure may be made only where the data does not relate only to a particular building or building unit, what building or building unit is being referred to in regulation 13(3)? While this expression may readily be understood in the context of the equivalent subsection of

new regulation 12A (which relates to requests relating to a particular building or building unit), it is not clear what this means when the request is for energy performance data of one or more specific descriptions, instead of a request relating to a particular building or building unit.

**The Scottish Government responded as follows:**

1a. The definition of excluded buildings does not only extend to official residences of the Royal Family.

1b. The term “Royal Family” is not defined. This is not unusual and the term is used without further definition in various other enactments including for example, section 41 of the Freedom of Information (Scotland) Act 2002 (asp 13) and section 7(6) of the Requirements of Writing (Scotland) Act 1995 (c. 7). It is considered that the meaning of the terms is sufficiently clear without further definition. Information is available on this matter from the official website of the British Monarchy: <http://www.royal.gov.uk/ThecurrentRoyalFamily/Overview.aspx> .

1c. The formulation of ‘used from time to time’ is not intended to refer to or be related to a property right. This formulation would include regular or repeated occasional use. Use on a single occasion would not be within the ambit of the definition nor, for example, would mere attendance at an event held in a building be sufficient.

2. An opt-out is in effect where the owner or occupier of a building or building unit has given notice (and not withdrawn that notice) to the keeper of a register that data is not to be disclosed so as to enable the contact to be made with the owner or occupier. The keeper of a register may disclose bulk data under regulation 13 provided (among other things) that that data does not relate to a particular building or building unit. The fact that the data may not relate to a particular building does not remove the benefit of the opt-out. It is possible for a request for data to be made and dealt with under regulation 13 which would be sufficient to enable the recipient to contact the owners or occupier of properties. It is envisaged that regulation 13 will be used to support and inform energy and carbon saving initiatives. These may, for example, involve the identification of areas where the buildings have a low energy efficiency rating so as to target the promotion of energy efficiency initiatives. If the owner or occupier of a building or building unit in such an area has given notice that an opt-out is in effect in relation to the building or building this information is to be given to the recipient in terms of regulation 13(3). It is not considered that there is any ambiguity as to the meaning of regulation 13(3) in its context.

**Materials and Articles in Contact with Food (Scotland) Regulations 2012  
(SSI 2012/318)****On 3 December 2012, the Scottish Government was asked:**

Please explain the intended meaning and effect of regulation 20(1)(b) and (3). That subparagraph (b) provides that each food authority in its area must execute and enforce these Regulations except in relation to the provisions referred to in paragraph (3), indicating the apparent intention that these are not to be the responsibility of the food authority. Paragraph (3) states a contrary proposition - that each food authority in its area must execute and enforce the provisions of Regulation 2023/2006 specified in regulation 5 (which refers to Article 4 (conformity with good manufacturing practice) of that Regulation).

Given the apparent contradiction within the drafting of this provision does the Scottish Government consider this provision properly confers functions on the food authority in relation to the matters referred to in regulation 20(3), and is this sufficiently clear?

**The Scottish Government responded as follows:**

The Scottish Government is grateful to the Committee for raising this matter and accepts that regulation 20 has not been drafted as clearly as it could have been. Regulation 20(1) confers functions on the food authority in respect of the European Regulations referred to in paragraph (1)(a) and these Regulations. It would be reasonable for a reader to infer, by virtue of the reference to paragraph (3) in paragraph 1(b), that a body other than the food authority would have functions conferred upon it by paragraph (3). However, paragraph (3) nevertheless confers functions on the food authority (in respect of Regulation 2023/2006 in relation to these Regulations). Whilst a different approach to drafting regulation 20 could have improved its clarity, the Scottish Government considers that the provision does achieve its intended effect: the relevant functions are conferred on the food authority. This is further supported by the fact that these Regulations consolidate existing law (as the accompanying documentation explains) which conferred these functions on the food authority. It is also relevant that during the public consultation (which included consultation with food authorities) no concerns were raised about the meaning of this provision. Nevertheless, the Scottish Government appreciates the concern raised by the Committee. The Scottish Government would like to undertake to the Committee to amend regulation 20 at the next appropriate opportunity to improve the drafting.

**Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012  
(SSI 2012/319)**

**On 29 November 2012, the Scottish Government was asked:**

1. In relation to the Council Tax Reduction (Scotland) Regulations 2012, we asked for explanation why, by reference to the purpose of the provisions, the Regulations do not relate to any of the reserved matters described in Section F1, Part 2, Schedule 5 to the Scotland Act 1998. Is your explanation the same in relation to these Regulations, or would you have anything to add?

2. In the definition of “official error” in regulation 2(1), is the reference to “a subsequent decision of the Upper Tribunal of a court” an error and should it refer to “or a court”? If so would you propose to correct this by an amendment?

3. Regulation 4(3) extends the definition of “young person” for the purposes of the Regulations to include “a child or young person in respect of whom section 145A of the 1992 Act applies for the purposes of entitlement to child benefit but only for the period prescribed under section 145A(1) of that Act”.

In relation to the Council Tax Reduction (Scotland) Regulations 2012, the Scottish Government has considered that the equivalent regulation 4(3) is otiose, and has undertaken to lay an amendment in the first quarter of next year to omit the paragraph. Would you propose that a similar amendment will be laid in relation to these Regulations?

4. In regulation 9, is the reference to “an income-related benefit” an error, as the defined term in regulation 2(1) is a “qualifying income-related benefit”? If so would you propose to correct this by amendment, given that the defined term includes for the purposes of regulation 9, income support and income-based jobseeker’s allowance as well as “income-related” employment and support allowance?

5. Regulation 27(1)(v) includes as income for the purposes of the Regulations, any payment of rent made to an applicant who (i) owns the freehold or leasehold interest in any property or is a tenant of any property, and where the applicant meets the other criteria in paragraphs (ii) and (iii).

As “freehold” is the description of ownership of property in England and Wales and not Scotland, is it intended to include in that requirement the ownership of property in Scotland? If so should the provision be amended so that it has that intended effect?

6. In regulation 29(8)(c), the citation of the Children and Families (Wales) Measure” omits the year of the instrument (which is given in subparagraph (d)). Would you propose to correct this by amendment?

**The Scottish Government responded as follows:**

1. The Scottish Government's view is that these Regulations do not relate to any of the reserved matters described in Section F1 of Schedule 5 to the Scotland Act 1998 for the same reasons given with regard to the Council Tax Reduction (Scotland) Regulations 2012. In summary, that view is taken because the Regulations operate by reducing a person's liability for council tax and do not provide assistance for social security purposes to help the person meet a council tax liability. Calculation of council tax liability is not a reserved matter. We have nothing further to add.
2. The definition of "official error" should refer to the Upper Tribunal "or" a court, and this will be corrected by an amending instrument which the Scottish Government proposes to lay in the first quarter of next year.
3. Although regulation 4(3) has no adverse effect on the operation of the Regulations it is otiose and the Scottish Government will take the opportunity provided by the amending instrument referred to above to remove it.
4. Regulation 9 should not refer to a "qualifying income-related benefit" because, by virtue of regulation 12(2), the Regulations do not apply to a person if that person, or any partner of that person, is a person on income support, an income-based jobseeker's allowance or an income-related employment and support allowance. In those circumstances the reference to "income-related benefit" in regulation 9 refers to income-related benefits other than a qualifying income-related benefit. (Persons in receipt of a qualifying income-related benefit will be dealt with under the Council Tax Reduction (Scotland) Regulations 2012 by virtue of regulation 12(1)(b) of those Regulations.)
5. Regulation 27(1)(v) should cover an applicant who owns property in Scotland and it will be amended accordingly.
6. The reference in regulation 29(8)(c) is to the Children and Families (Wales) Measure 2010", which is correct.



**Welfare of Animals at the Time of Killing (Scotland) Regulations 2012  
(SSI 2012/321)****On 3 December 2012, the Scottish Government was asked:**

1. Part 1 of Schedule 5 repeals paragraphs 1, 2 and 5 of Schedule 9 to the Deregulation and Contracting Out Act 1994. It appears that paragraph 2 relates to the transfer of functions under the Slaughterhouses Act 1974 from local authorities in England or Wales to the Minister of Agriculture, Fisheries and Food or the Secretary of State respectively. Paragraph 3 relates to the transfer of functions under provisions of the Slaughter of Animals (Scotland) Act 1980 (which are also repealed by this Schedule) from local authorities to the Secretary of State. Was it intended that Part 1 of Schedule 5 repeal paragraph 3 instead of paragraph 2 of Schedule 9 to the Deregulation and Contracting Out Act 1994? If so, what do you consider to be the effect of this error and how do you propose to remedy it?

2. Regulation 2(1) of these Regulations defines the “Rabbinical Commission”. Is this the body established (or continued in existence) by Part IV of Schedule 12 to the Welfare of Animals (Slaughter or Killing) Regulations 1995? If so, is this considered to be sufficiently clear in the absence of cross-reference to those provisions?

3. Article 29 of Council Regulation 1099/2009 contains two transitional provisions – one in respect of Article 14(1) and Annex II (which is given effect by regulation 27, which disappplies those provisions until the specified date of 8 December 2019), and one in respect of the simplified procedure for issuing certificates of competence to persons demonstrating relevant professional experience of at least three years. That simplified procedure appears to be given effect by regulation 8(a)(ii), but there does not appear to be any provision which time-limits the operation of that provision to the grant of certificates until 8 December 2015. Why has it not been considered necessary to include transitional provision in the Regulations in respect of that provision?

4. Article 26 of Council Regulation 1099/2009 permits the maintenance by member states of stricter national rules which are in force at the time of entry into force of the Regulation. By virtue of Article 30, it came into force on 8 December 2009. Paragraphs 9 to 11 of Schedule 1 represent additional requirements to those in the Regulation. However, they appear to have a different scope to the related provisions of the Welfare of Animals (Slaughter or Killing) Regulations 1995, i.e. those in Schedule 7 which relate to the killing of pigs and birds by exposure to gas mixtures, rather than the stunning of pigs and poultry. Could you please explain why these provisions are considered to fall within the ambit of Article 26 when it appears that the national rules in force at the coming into force of the Regulation related to killing rather than merely stunning? Should those provisions not be within the ambit of Article 26, would there be any alternative basis for purporting to make them?

5. In relation to the appeals provision in regulation 25, could you please explain:

a. What the test of “good cause shown” mentioned in regulation 25(4) involves, and how it differs from the ordinary position of the sheriff’s discretion being exercised on cause shown – or, indeed, from the default rule on extension of time limits in

summary applications (contained in rule 2.6(3) of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999) that this may be done on special cause shown? Is it sufficiently clear what an appellant will have to demonstrate to meet this test should he or she require to lodge an appeal out of time?

b. Why it is considered necessary to provide in regulation 26(5) that the sheriff may hear evidence, standing a) the provision in regulation 26(3)(a) that an appeal may be taken on any issue of fact or law and b) the powers of the sheriff in relation to the disposal of summary applications under section 50 of the Sheriff Courts (Scotland) Act 1907?

6. Paragraphs 3 and 4 of Schedule 4 make consequential amendments to the Foot-and-Mouth Disease (Scotland) Order 2006 and the Foot-and-Mouth Disease (Slaughter and Vaccination) (Scotland) Regulations 2006. In each case, the effect appears to be to modify the definition of “slaughter” so that it reads ““slaughter” includes causing the death of an animal by any process other than slaughter [...]”. Standing the apparent circularity of this definition, could you please clarify the effect of this provision and, in particular, whether this means that slaughter is to be taken as including causing the death of an animal by any means? Do you consider that the definition is sufficiently clear, particularly when the needs of end-users of the instruments are considered?

7. Part II of Schedule 5 revokes paragraph 158 of Part II of Schedule 2 to the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999. That provision modifies regulation 7 of the Welfare of Animals (Slaughter or Killing) Regulations 1995. It does not appear, however, that regulation 7 is revoked or modified by these Regulations. Could you please explain why paragraph 158 falls to be revoked when the provision it modifies appears still to be in force, and the effect that revoking it will have upon regulation 7?

**The Scottish Government responded as follows:**

1. The reference to paragraph 2 was intended to be a reference to paragraph 3. The error has no effect because the Slaughterhouses Act 1974 does not form part of Scots law. Section 48 of the Slaughterhouses Act 1974 provides that it does not extend to Scotland. The effect of paragraph 3 not being revoked as intended is that the Scottish Ministers still have the power, now redundant, to make regulations providing for the transfer of functions of local authorities in executing and enforcing section 7 of the Slaughter of Animals (Scotland) Regulations 1980 to themselves. At the next convenient opportunity we will revoke paragraph 3 in order to tidy up the statute book.

2. The reference to the Rabbinical Commission is to the same body referred to in Part IV of Schedule 12 to the Welfare of Animals (Slaughter or Killing) Regulations 1995 and which continues in existence. It was not considered necessary further to define the Rabbinical Commission because it is a statutory body; there is no other body called “the Rabbinical Commission” and those who work in the industry will know the body to which the Regulations refer. We therefore consider that there is no scope for confusion and that the provision is sufficiently clear.

3. A policy choice arose regarding how to deal with this provision and the decision was taken to issue certificates which would be subject to an expiry date which will appear on the face of the certificates. Regulation 11(2) provides expressly that a certificate or a temporary certificate may be granted subject to an expiry date. From the point of view of practical enforcement of these Regulations and the checking of Certificates of Competence in slaughterhouses, it was considered that it would be more practical to stamp certificates showing the period that they are valid for.

4. Paragraphs 9 to 11 of the Schedule 1 to the Regulations are equivalent in scope to the related provisions of Schedule 7 to the Welfare of Animals (Slaughter or Killing) Regulations 1995. The apparent differences are differences in terminology only. Stunning is a stage of the killing process. In Regulation 1099/2009 'stunning' is defined as "any intentionally induced process ... including any process resulting in instantaneous death", it therefore includes 'killing', whereas in the Welfare of Animals (Slaughter or Killing) Regulations 1995 "stunning" and "killing" were defined as separate processes. The term 'killing' is not defined in Regulation 1099/2009. An animal subject to the gases at the concentrations required by Regulation 1099/2009 would be "killed" for the purposes of the 1995 Regulations, even if the same process would be defined as "stunning" under Regulation 1099/2009 and these Regulations. Accordingly, the rules do fall within the ambit of Article 26.

5. a. This formulation is very well precedented, recent examples can be found in SSIs such as 2010/330, 2009/141, 2009/225. Regulation 25(4) confers a discretion upon the sheriff to allow late lodgement of an appeal. The sheriff will, in exercising that discretion, be exercising a judicial function. The sheriff would have to consider what constitutes "good cause" in the circumstances. It is for the sheriff to apply the test to the circumstances.

b. We read the reference in the letter of 3 December to regulation 26(5) as a reference to regulation 25(6) and the reference to regulation 26(3(a)) as a reference to regulation 25(3(a)). Again this formulation is very well precedented. Recent examples can be found in SSI 2011/318 and 2009/339. Examples can also be found in primary legislation, for example in Section 64 of the Civic Government (Scotland) Act. The express reference to the power to hear evidence is considered useful to make it clear for the end users of the legislation.

6. Yes, this means that slaughter is to be taken as including causing the death of an animal by any means. The amendment is required due to a change in the terminology used in the 1995 Regulations and Regulation 1099/2009. The references to slaughter in the Foot-and-Mouth Disease (Scotland) Order 2006 and the Foot-and-Mouth Disease (Slaughter and Vaccination) (Scotland) Regulations 2006 require to cover all means of killing. That is, killing not just for human consumption, which is generally what "slaughter" means, but also killing for purposes other than human consumption. We consider that the definition is sufficiently clear.

7. The intention was also to revoke regulation 7 of the Welfare of Animals (Slaughter or Killing) Regulations 1995. The effect of the revocation of paragraph (8) is that codes of practice will be subject to the pre-devolution dual parliamentary procedure. However, this is of no practical effect because there are no codes of practice in

existence and there is no intention to introduce any. At the next convenient opportunity we will tidy up the statute book by revoking regulation 7.