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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Subordinate legislation considered by the Delegated Powers and Law Reform Committee on 3 October 2017



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Contents

Introduction	1
Points raised: Instrument subject to affirmative procedure	2
Points raised: Instrument subject to negative procedure	3
Points raised: Instruments not subject to any parliamentary procedure	5
No points raised	7
Annex A	8
Annex B	9
Annex C	11
Annex D	12

Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Introduction

1. At its meeting on 3 October 2017, the Committee agreed to draw to the attention of the Parliament the following instruments—

Private Housing (Tenancies) (Scotland) Act 2016 (Consequential Provisions) Regulations 2017 [draft]

Agricultural Holdings (Modern Limited Duration Tenancies and Consequential etc. Provisions) (Scotland) Regulations 2017 (SSI 2017/300)

Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 2 and Saving Provision) Regulations 2017 (SSI 2017/293 (C.21))

Land Reform (Scotland) Act 2016 (Commencement No. 6, Transitory and Saving Provisions) Regulations 2017 (SSI 2017/299 (C.23))

2. The Committee's recommendations and conclusions in relation to these instruments are set out in the following sections of this report.
3. The Committee determined that it did not need to draw the Parliament's attention to the instruments set out by the relevant lead committee at the end of this report.

Points raised: Instrument subject to affirmative procedure

Private Housing (Tenancies) (Scotland) Act 2016 (Consequential Provisions) Regulations 2017 [draft] (Local Government and Communities)

Purpose

4. The Private Housing (Tenancies) (Scotland) Act 2016 introduces a new type of tenancy for all future lets in the private rented sector. The aim of the new private residential tenancy is to improve security, stability and predictability for tenants and provide appropriate safeguards for landlords, lenders and investors.
5. These Regulations make a number of incidental and consequential provisions considered appropriate to give full effect to the policy intentions underpinning the Act. They are subject to the affirmative procedure, and if approved by the Parliament would come into force on 1 December 2017.

Discussion

6. Regulation 5(2)(b) amends paragraph 82 of schedule 1 of the Letting Agent Code of Practice (Scotland) Regulations 2016 (visiting and entering property), so that part of the paragraph reads as follows:

“Section 184 of the Housing (Scotland) Act 2006 specifies that at least 24 hours’ notice must be given, or 48 hours’ notice where the tenancy is a private residential tenancy, unless the situation is urgent...”

7. Regulation 5(2)(b) could have been drafted more clearly, given that the 48 hours’ notice period is not set out in section 184, but is set out in paragraph 6 of the schedule of the Private Residential Tenancies (Statutory Terms) (Scotland) Regulations 2017, which were laid before the Parliament on 14 September.
8. The Scottish Government has undertaken to include a provision to clarify this matter within an instrument which will amend the Letting Agent Code of Practice (Scotland) Regulations 2016 (SSI 2016/133), prior to those Regulations coming in to force on 31 January 2018. Annex A contains the exchange of correspondence with the Scottish Government on these matters.

9. **The Committee draws the Regulations to the attention of the Parliament on reporting ground (h), as the meaning of regulation 5(2)(b) could be clearer in a particular respect.**
10. **The Committee welcomes the Scottish Government's undertaking to include a provision to clarify this matter within an instrument which will amend the Letting Agent Code of Practice (Scotland) Regulations 2016 (SSI 2016/133), prior to those Regulations coming into force on 31 January 2018.**

Points raised: Instrument subject to negative procedure

[Agricultural Holdings \(Modern Limited Duration Tenancies and Consequential etc. Provisions\) \(Scotland\) Regulations 2017 \(SSI 2017/300\) \(Rural Economy and Connectivity\)](#)

Purpose

11. A main purpose of these Regulations is to make provision for who is a “new entrant” to farming, for the purposes of whether or not a person’s lease of a Modern Limited Duration Tenancy (“MLDT”) under the Land Reform (Scotland) Act 2016 (“the 2016 Act”) can contain a break clause.
12. The Regulations provide that a tenant under a lease constituting an MLDT is a new entrant to farming, unless they are excluded by the Regulations. The Regulations set out the circumstances in which a tenant is so excluded .
13. The instrument also contains some technical, consequential modifications of pieces of secondary legislation in schedule 1, and transitory and saving provisions in schedule 2. As well as providing for the creation of MLDTs, the 2016 Act also provides for the creation of a further type of agricultural tenancy, the Repairing Tenancy (“RT”). The relevant provisions of the 2016 Act which provide for the creation of RTs are not yet in force.
14. Accordingly schedule 1 contains provisions which modify various instruments to insert references to MLDTs and RTs. This is in consequence of the coming into force of the provisions of the 2016 Act which introduce MLDTs on 30 November 2017, by SSI 2017/299. As the provisions of the 2016 Act which introduce RTs are not yet in force, paragraphs 2 , 3, 5 and 6 of schedule 2 make transitory (temporary) provisions in connection with the modifications made by schedule 1.
15. The general effect of those paragraphs is that the references to a “Repairing Tenancy” in the instruments modified by schedule 1 are to be ignored, until section 92 of the 2016 Act (which provides for the creation of Repairing Tenancies) comes into force for all purposes.
16. These Regulations are subject to the negative procedure. They come into force on 30 November 2017.

Discussion

17. Paragraphs 2, 3, 5 and 6 of schedule 2 of the Regulations make provision, until the coming into force of section 92 of the Land Reform (Scotland) Act 2016 for all purposes, that various specified enactments are to be read as if references to certain words, as expressed within quotation marks in each regulation, are omitted. Those words are “repairing tenancy” or “a repairing tenancy”, as the case may be.
18. The provisions could be more clearly expressed if the precise wording within each enactment which falls to be either omitted or modified (as the case may require) is quoted, so that the provision as modified reads sensibly. In the case of those

paragraphs of schedule 2 of the Regulations, that precise wording is not quoted in the provisions.

19. The Scottish Government has acknowledged that it may have been clearer to have drafted the transitory provisions in the manner outlined. Annex B contains the exchange of correspondence with the Scottish Government on these matters.

20. **The Committee draws the Regulations to the attention of the Parliament on reporting ground (h), as the meaning of various transitory provisions in the instrument could be made clearer, in a particular respect. This applies to paragraphs 2, 3, 5 and 6 of schedule 2 of the Regulations.**
21. **The Committee calls on the Scottish Government to further consider laying an amending instrument to clarify the drafting of the provisions.**

Points raised: Instruments not subject to any parliamentary procedure

[Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(Commencement No. 2 and Saving Provision\) Regulations 2017 \(2017/293 \(C.21\)\) \(Local Government and Communities\)](#)

Purpose

22. The Regulations commence the remaining provisions of the Private Housing (Tenancies) (Scotland) Act 2016 on 1 December 2017, with the exception of one consequential amendment in paragraph 5 of schedule 4, and makes saving provision for existing short assured tenancies.
23. The saving provision provides that any short assured tenancy which began before 1 December 2017 can continue to operate after that date, regardless of whether or not it is continuing by tacit relocation (i.e. automatic renewal where the tenancy is not terminated) or renewing at regular intervals.
24. The instrument is laid but not subject to any parliamentary procedure in terms of section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010. The instrument comes into force on 1 December 2017.

Discussion

25. No provision appears to have been made to reflect the terms of section 79(4)(a) or (b) of the Private Housing (Tenancies) (Scotland) Act 2016 in relation to the commencement of section 1 of that Act.
26. The Scottish Government has confirmed that this is an oversight and intends to bring forward immediately an amending instrument to make provision reflecting the terms of section 79(4). Annex C contains the exchange of correspondence with the Scottish Government on these matters.

27. **The Committee draws the instrument to the attention of the Parliament under reporting ground (g) on the basis that it has been made by what appears to be an unusual or unexpected use of the powers conferred by the parent statute.**
28. **The Committee welcomes the Scottish Government's undertaking to bring forward an amending instrument immediately to make provision reflecting the terms of section 79(4).**

[Land Reform \(Scotland\) Act 2016 \(Commencement No. 6, Transitory and Saving Provisions\) Regulations 2017 \(SSI 2017/299 \(C.23\)\) \(Rural Economy and Connectivity\)](#)

Purpose

29. A main purpose of these Regulations is to commence a number of provisions of Part 10 of the Land Reform (Scotland) Act 2016 ("the 2016 Act"), on 30 November

2017. The overall policy objective of Part 10 is to modernise legislation relating to agricultural tenancies.

30. Various provisions in the Regulations make provision, until the coming into force of section 92 of the 2016 Act for all purposes, that various specified enactments are to be read as if references to certain words, as expressed within quotation marks in each regulation, are omitted. Those words are “a repairing tenancy” or “repairing tenancies”, as the case may be.

Discussion

31. The Committee considered that the provisions could be more clearly expressed, if the *precise* wording within each enactment which falls to be either omitted or modified (as the case may require) is quoted, so that the provision as modified reads sensibly. In the case of regulations 5 to 11, regulation 12(a) to (j), (m), (n) in respect of section 77(4) of the 2003 Act, and regulation 13, that precise wording is not quoted in the provisions.
32. The Scottish Government has undertaken to lay an amending instrument before the Parliament to correct an error in regulation 1(2) at the earliest opportunity, and before these Regulations come into force on 30 November 2017. Annex D contains the exchange of correspondence with the Scottish Government on these matters.

33. The Committee draws the Regulations to the attention of the Parliament:

(1) On reporting ground (i), as there appears to be defective drafting within regulation 1(2). A “limited duration tenancy” is defined for the purposes of the Regulations as having the same meaning as in section 93 of the Land Reform (Scotland) Act 2016. However the definition is contained in section 93 of the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”); and

(2) On reporting ground (h), as the meaning of various transitory provisions in the instrument could be made clearer in a particular respect. This applies to regulations 5 to 11, regulation 12(a) to (j), (m), (n) in respect of section 77(4) of the 2003 Act, and regulation 13.

- 34. The Committee calls on the Scottish Government to so clarify the provisions by means of an amending instrument.**

No points raised

Economy, Jobs and Fair Work

Scotland Act 1998 (Insolvency Functions) Order 2017 [draft]

Health and Sport

Functions of Health Boards (Scotland) Amendment Order 2017 (SSI 2017/304)

Justice

Legal Aid (Scotland) Act 1986 Amendment Regulations 2017 [draft]

Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2017 (SSI 2017/310)

Annex A

Private Housing (Tenancies) (Scotland) Act 2016 (Consequential Provisions) Regulations 2017 [draft]

On 21 September 2017, the Scottish Government was asked:

Regulation 5(2)(b) appears to amend paragraph 82 of the Letting Agent Code of Practice (Scotland) Regulations 2016 (visiting and entering property) so that part of the paragraph will read as follows, with the inserted words in italics:

“Section 184 of the Housing (Scotland) Act 2006 specifies that at least 24 hours’ notice must be given, *or 48 hours’ notice where the tenancy is a private residential tenancy*, unless the situation is urgent...”

(a) Please clarify how section 184 of the 2006 Act has been amended to so provide, or whether this is planned in a forthcoming instrument under the Private Housing (Tenancies) (Scotland) Act 2016, or whether there is any error?

(b) Please clarify accordingly why it is considered that the added reference to 48 hours’ notice in regulation 5(2)(b) makes consequential provision for the purposes of the 2016 Act, under section 76(1) of the Act.

The Scottish Government responded as follows:

(a) We confirm that section 184 of the Housing (Scotland) Act 2006 (“the 2006 Act”) has not been amended in relation to private residential tenancies. Instead, the Private Residential Tenancies (Statutory Terms) (Scotland) Regulations 2017 which were made under sections 7 and 8 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and laid in draft on 14th September, provide for access to a property let under a private residential tenancy. Paragraph 6 of the schedule of those Regulations sets out the statutory term which makes provision for access to the let property both for authorised purposes where notice is given and where access is required urgently. However, we appreciate that it perhaps could be drafted more clearly to express that the longer notice period in respect of private residential tenancies is not set out in section 184 of the 2006 Act. We already intend to bring forward an instrument amending the Letting Agent Code of Practice (Scotland) Regulations 2016 prior to its coming into force on 31st January 2018 and we intend to include provision clarifying this point.

(b) We think that the added reference to 48 hours’ notice is consequential for the purposes of the 2016 Act as the requirement for access to a property let under a private residential tenancy is 48 hours’ notice as set out in the Statutory Terms Regulations mentioned in paragraph (a) above. The Letting Agent Code of Practice (Scotland) Regulations 2016 need to provide clarity to letting agents in relation to the requirements for access to a let property.

Annex B

Agricultural Holdings (Modern Limited Duration Tenancies and Consequential etc. Provisions) (Scotland) Regulations 2017 (SSI 2017/300)

On 22 September 2017, the Scottish Government was asked:

1. Regulation 3(5) specifies certain circumstances in which a tenant ('T') is not to be regarded as a new entrant to farming for the purposes of section 5B of the Agricultural Holdings (Scotland) Act 2003. Regulation 3(5)(c) specifies as one of those required circumstances, that the requirements of regulation 3(3) apply to each of the persons who between them either hold or "control" voting rights in T, or hold or "control" the right to appoint or remove the majority of T's board, or have the right to exercise influence or "control" over T.

Regulation 5(1) defines, for the purposes of regulation 3, the circumstances in which a person has "control" of a legal person ("L"). However, those circumstances extend to either where the controlling person holds or controls voting rights in L, or holds or controls the right to appoint or remove L's board, or otherwise has dominant influence over L.

So is there any error or inconsistency in the provisions, in respect that the definition of "control" which applies for the purposes of all of the references to "control" in regulation 3(5)(c)(i) to (iii) extends to any of the circumstances specified in regulation 5(1)(a) to (c)?

Otherwise please explain why the provisions are considered to be appropriate.

2. (a) Paragraph 2 of schedule 2 makes a transitory provision until the coming into force of section 92 of the 2016 Act for all purposes. This provides that regulation 2(1) of the Rural Stewardship (Scotland) Regulations 2001 has effect as if the references to "repairing tenancy" in the definitions of "landlord" and "tenant" were omitted. Comparable transitory provisions are made in paragraphs 3, 5 and 6 of schedule 2 in relation to provisions of the Organic Aid (Scotland) Regulations 2004, the Land Management Contracts (Menu Scheme) (Scotland) Regulations 2005 (SSI 2005/225) and the Scheduled Monument Consent Procedure (Scotland) Regulations 2015, respectively.

Would those provisions properly implement the policy intentions or could they be made clearer, if the omitted term was "or repairing tenancy" rather than "repairing tenancy", given that leaving out the "or" in the provisions appears to affect the sense of the various specified regulations which have effect, as modified?

(One example is that paragraph 5 of schedule 2, as read with paragraph 3 of schedule 1, appears to have the effect that for the purposes of the transitory provision the definition of "landlord" in regulation 2(1) of SSI 2005/225 is to be read as:

""landlord" means...(b) in the case of a lease constituting a limited duration tenancy, short limited duration tenancy, modern limited duration tenancy *or* under the 2003 Act, the landlord within the meaning of section 93 of that Act".)

3. Is corrective action proposed?

The Scottish Government responded as follows:

1) The Scottish Government does not consider that there is any error or inconsistency in the provisions. Regulation 3(3)(d) refers to the situation where a person has 'control' of a legal person. Regulation 3(4)(b) refers to the situation where a person has control of T, in the circumstances where T is a legal person. Regulation 3(5)(b) refers to the situation where no one person has control of T, in the circumstances where T is a legal person. Regulation 5(1) specifies the circumstances in which a person has control of a legal person for these purposes.

Regulation 3(5) concerns the situation where no one person has control of T, in the circumstances where T is a legal person. Regulation 5(1) applies in the determination of this question. If no one person satisfies any of the requirements of regulation 5(1), then no one person has control of T. In those circumstances, the question as to whether or not T is a new entrant to farming is to be answered by determining if regulation 3(3) applies to each of the persons who between them satisfy one or more of the requirements set out in regulation 3(5)(c)(i) to (iii). These intentionally reflect the same factors that determine whether a single person 'controls' a legal person, as set out in regulation 5(1).

Regulation 3(5) explicitly applies where no one person has control of a legal person, T. Regulation 5(1) applies to the determination as to whether any one person does or does not have control of a legal person T. If a person does, then by virtue of regulation 3(5)(b), regulation 3(5) does not apply to T, and regulation 3(5)(c) is not relevant in those circumstances. When no one person has control of a legal person, regulation 3(5)(c) applies to the determination as to whether persons between them have what can amount to control of a legal person. A single person having control of a legal person is different to persons between them having what can amount to control of a legal person. Regulation 5(1) applies to the former, and regulation 3(5)(c) to the latter.

2) The Scottish Government acknowledges that it may have been clearer to draft the transitory provisions in paragraphs 2, 3, 5 and 6 of schedule 2 in the manner outlined by the Committee, but considers that the provisions as drafted are sufficiently clear as to the intended effect and to deliver the policy. The transitory provisions seek to temporarily omit 'references' to 'a repairing tenancy' (or 'repairing tenancies', as the case may be). We consider this includes ancillary words such as 'or'. The provisions do not seek to omit terms or words in the relevant legislation and no textual amendment is made. The Scottish Government considers that the policy is properly implemented by the provisions and that the provisions are sufficiently clear when read in context.

3) The Scottish Government does not consider that corrective action is necessary.

Annex C

Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 2 and Saving Provision) Regulations (SSI 2017/293 (C.21))

On 18 September 2017, the Scottish Government was asked:

Section 79 of the Private Housing (Tenancies) (Scotland) Act 2016 provides for commencement of that Act. Subsection (4) provides that commencement regulations appointing the day that section 1 is to come into force (i.e. the current instrument) may: (a) amend certain provisions in certain enactments so that, instead of referring to the day on which section 1 comes into force, they specify the date that section 1 actually comes into force; and (b) repeal section 8(5) of the 2016 Act on the day that section 1 comes into force.

The Supplementary DPM for the 2016 Act at Bill stage considers what was then section 62 on commencement. It explains that the purpose of subsection (4)(a) is to "spare anyone reading one of the amended enactments from having to look up the commencement regulations in order to comprehend the reference to the date that section 1 comes into force". It also explains that subsection (4)(b) is to allow repeal of what was then section 6(5), which is a transitional rule that operates only in the period prior to section 1 coming into force.

In relation to the power in section 79(4)(a), the relevant enactments which refer to the day on which section 1 comes into force appear to be provisions created by paragraphs 1 to 5 of schedule 5 of the 2016 Act. Schedule 5 is commenced in full on 1 December 2017 by virtue of this instrument. This instrument comes into force on 1 December 2017. The schedule commences section 1 and all the other provisions referred to in the schedule (which is almost all of the remainder of the Act) on that date.

However no provision appears to have been made in this instrument to reflect the terms of section 79(4)(a) or (b) of the 2016 Act (and therefore, to reflect the Parliamentary intention which underlies those provisions). Please explain why this has been considered to be appropriate?

The Scottish Government responded as follows:

As the Committee notes, there is no provision as envisaged by section 79(4) in the above Commencement Regulations. I confirm that this is an oversight and we intend to bring forward immediately an amending instrument to make provision reflecting the terms of section 79(4).

Annex D

Land Reform (Scotland) Act 2016 (Commencement No. 6, Transitory and Saving Provisions) Regulations 2017 (SSI 2017/299 (C. 23))

On 22 September 2017, the Scottish Government was asked:

1. Regulation 1(2) defines "limited duration tenancy" for the purposes of the instrument. Is it intended that the definition should have the same meaning as in section 93 of the 2003 Act, and not "of that Act" as drafted, as the Act referred to which precedes the definition is the Land Reform (Scotland) Act 2016?

2. (a) Regulation 5 makes a transitory provision until the coming into force of section 92 of the 2016 Act for all purposes, which provides that section 5A(1)(c) of the 2003 Act is to be read as if the reference to "a repairing tenancy" was omitted. Comparable transitory provisions are made in regulations 6, 7, 8, 9(a) and (b), 10, 11, regulation 12(a) to (j), (m), (n) in respect of section 77(4) of the 2003 Act, and regulation 13.

Given the number and the complexity of those transitory provisions, would the provisions properly implement the policy intentions or be made clearer, if the term omitted was "or a repairing tenancy", given that leaving out the "or" in the provisions appears to affect the sense of the various specified sections which are to be read as modified?

(b) Similarly and further in relation to regulation 7, this provides that section 16(9) (inter alia) of the Succession (Scotland) Act 1964 is to be read as if references to "a repairing tenancy" were omitted. However the precise wording in section 108(1)(c)(ii) of the 2016 Act, which amends section 16(9), is "and "repairing tenancy"" as a defined term, and leaving out the "and" and the additional quotation marks affects the sense of how section 16(9) is to be read as modified?

(c) Similarly in relation to regulation 9(c), this instructs for the purpose of the transitory provision that section 29B(b)(v) is to be read as modified by omitting "a repairing tenancy". That sub-paragraph (v) refers to "a repairing tenancy within the meaning of that Act".

Would the provision have properly implemented the policy intention, or be made clearer, had it omitted the whole of sub-paragraph (v) for the purpose of the transitory provision, rather than only "a repairing tenancy"? (It appears such an approach would have been comparable to that adopted in regulation 14).

(d) Similarly and further in relation to regulation 12, some of the sections of the 2003 Act referred to in paragraphs (a) to (j) of the regulation refer to "and repairing tenancies" rather than "repairing tenancies". Does leaving out the "and" affect the sense of how those sections are to be read as modified, for the purposes of the transitory provision?

3. Is corrective action proposed?

The Scottish Government responded as follows:

1) It is intended that the definition of "limited duration tenancy" for the purposes of this instrument should have the same meaning as in section 93 of the Agricultural Holdings (Scotland) Act 2003 ('the 2003 Act'). The Scottish Government thanks the Committee for drawing the drafting error in regulation 1(2) to the Government's attention. It is the

Government's intention to bring forward an amending instrument to correct this error at the earliest opportunity, and before this instrument comes into force.

2) (a) The Scottish Government acknowledges that it may have been clearer to draft the transitory provisions in regulations 6, 7, 8, 9(a) and (b), 10, 11, 12(a) to (j), (m), (n) (in respect of section 77(4) of the 2003 Act) and 13 in the manner outlined by the Committee, but considers that the provisions as drafted are sufficiently clear as to the intended effect and to deliver the policy. The transitory provisions seek to temporarily omit 'references' to 'a repairing tenancy' (or 'repairing tenancies', as the case may be). We consider this includes ancillary words such as 'or'. The provisions do not seek to omit terms or words in the relevant legislation and no textual amendment is made. The Scottish Government considers that the policy is properly implemented by the provisions and that the provisions are sufficiently clear when read in context.

In reviewing the instrument following the Committee's queries, the Scottish Government noticed that there is a minor typographical error in regulation 12(g) of the instrument. That paragraph refers to 'section 19(1)' of the 2003 Act. However, there is no subsection (1) of section 19. The Government considers that this is a minor typographical error and that the intended meaning is clear seeing as there are no subsections of section 19. The Government considers that it is appropriate to make this correction by correction slip.

(b) As with the response to (a), the Scottish Government acknowledges that regulation 7 may have been clearer if drafted in the manner outlined by the Committee, but considers that the provision as drafted is sufficiently clear as to the intended effect and to deliver the policy.

(c) The Scottish Government acknowledges that it may have been clearer to omit the whole of sub-paragraph (v) of section 29B(b) of the Crofters (Scotland) Act 1993, but considers that the provision as drafted is sufficiently clear as to the intended effect and to deliver the policy.

(d) As with the response to (a), the Scottish Government acknowledges that regulation 12(a) to (j) may have been clearer if drafted in the manner outlined by the Committee, but considers that the provision as drafted is sufficiently clear as to the intended effect and to deliver the policy.

3) Corrective action is proposed in relation to regulation 1(2) of the instrument (as outlined in the response to question 1 above), and in relation to regulation 12(g) of the instrument (as outlined in the response to question 2 (a) above).

