



ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

AGENDA

1st Meeting, 2004 (Session 2)

Thursday 8 January 2004

The Committee will meet at 12.45 pm in Committee Room 3.

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

the Registration of Establishments Keeping Laying Hens (Scotland) Regulations 2003, (SSI 2003/576).

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Clerk to the Committee
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The following papers are attached:

<p><u>Agenda Item 1</u></p> <p>the Registration of Establishments Keeping Laying Hens (Scotland) Regulations 2003, (SSI 2003/576)</p> <p>Extract from the Subordinate Legislation Committee's 15th Report</p>	<p>ERD/S2/04/01/1a</p> <p>ERD/S2/04/01/1b</p>
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**Subordinate Legislation Committee
Extract of 15th Report, 2003**

1. At its meeting on 9th December the Committee determined that it did not need to draw the attention of the Parliament to the instruments listed in the Annexe to this report on any of the grounds in its remit.
2. The report is also addressed to the following committees as the lead committees for the instruments specified:

Environment and Rural Development SSI 2003/576

Instruments subject to annulment

The Registration of Establishments Keeping Laying Hens (Scotland) Regulations 2003 (**SSI 2003/576**)

Background

1. The Regulations make provision for the registration of establishments keeping 350 or more laying hens and implement Commission Directive 2002/4/EC (OJ No.L30 31.1.2002 p.44).
2. The Committee referred a large number of serious concerns on the Regulations to the Executive for comment. Generally, these concerns have not been allayed by the Executive's responses. In the view of the Committee, the number and nature of the defects are such that consideration should be given to the making of a replacement instrument as soon as possible.
3. The Committee noted in passing that the Directive has been implemented very late and no explanation has been offered for the delay. In this instance, some explanation would have been particularly welcome.

Question 1

4. The Executive was asked what date was determined for the purposes of article 1.1(b) of the directive.

Report 1

5. The Executive has replied that the relevant date is 31st May 2003 and that producers were made aware of it by letter dated 15th March 2003. The Executive's response is reproduced at Appendix 3.

6. The Executive has supplied the information requested which the Committee draws to the attention of the lead committee and the Parliament.

Question 2

7. Article 1.1(c) of Directive 2002/4/EC states that the distinguishing number for establishments for which application was made by the date determined under Article 1.1(b) should have been allocated by 31 May 2003. The Committee therefore asked for confirmation that this obligation was fulfilled.

Report 2

8. The Executive has confirmed that a distinguishing number was issued by 31st May 2003 to all establishments which made an application for registration. **The Committee draws this information to the attention of the lead committee and the Parliament as providing the information requested.**

9. The Committee nevertheless observes that nowhere in the Regulations is there any provision for treating either the register that it appears has apparently already been established administratively or registration under the administrative scheme as the register and registration respectively for the purposes of the Regulations. This has implications for the remainder of the Regulations not least regulation 8(1) on which the Committee comments below.

10. **This appears to the Committee to be an unusually limited use of the power which it reports to the lead committee and the Parliament.** In the absence of such a provision, in the Committee's view, the Regulations could be construed as requiring Ministers to set up a new register and as requiring establishments to register anew which does not appear to be the policy intention.

Question 3

11. Regulation 8(1) provides that it is an offence for a person to continue to use an establishment for the keeping of laying hens after 31 December 2003 unless an application has been made by that date for registration in accordance with regulation 5 in respect of that establishment.

12. The Executive was asked to explain the *vires* of that provision standing Article 1.2 of the Directive which clearly states that Member States must provide that a person can only continue to use an establishment if an application for registration has been submitted by 1 June 2003 and that no establishment can be brought into use after that date until the registration requirements have been fulfilled.

Report 3

13. The Executive claims that, as the Regulations do not come into force until 31st December 2003 and there is no power to make retrospective legislation under section 2(2) of the European Communities Act 1972 (with which statement the Committee agrees), 31st December 2003 is the earliest date that could be provided for in regulation 8. In relation to section 57(2) of the Scotland Act, the view of the Executive is that, simply by virtue of being late, the implementation measure (which in itself is within devolved competence) does not become *ultra vires*.

14. In the Committee's view, this is not a question of late implementation, though the Regulations certainly raise that issue, but one of providing for a transitional provision for existing establishments for which there appears to be no basis in the Directive. The Directive clearly states that no establishment for which the information required has not been supplied by 31st May 2003 (being the due date determined by the Executive) may continue to be used.

Leaving aside the point raised at Paragraph 17 above, by providing for existing unregistered establishments to continue in use after 31st December 2003 the Regulations appear in open violation of the express terms of the Directive.

15. In the Committee's view, therefore, to that extent there is a doubt as to whether the Regulations are *intra vires*. In respect that regulation 8(1) breaches Community law, the Regulations also appear to raise a devolution issue. The Committee reports the Regulations to the lead committee and the Parliament on those grounds.

16. Although possibly more a matter of policy for the lead committee and the Parliament, it is not clear in any event why it was thought that a transitional provision was appropriate in this instance as it appears that establishments have already had a period of more than 18 months in which to make application to register (though see comments above). It does seem to the Committee a very unexpected or unusual use of the power to include an additional period of grace in such circumstances. **The Committee draws this transitional provision to the attention of the lead committee and the Parliament to pursue as they see fit.**

Question 4

17. The Committee asked how a person could in any case take advantage of regulation 8(1) given that regulation 5 does not come into force until 31st December 2003.

Report 4

18. The Committee had some difficulty in following the Executive's reply. The Executive states that the intention is to treat all applications made before commencement of these Regulations as if they had been made under regulation 5. The Executive regrets the "narrowness" of the provision. **However, it seems to the Committee that irrespective of any questions as to its *vires*, the requirements of regulation 8(1) as drafted are impossible for an establishment to meet and as such the provision must be regarded as defectively drafted. The Committee therefore reports it to the lead committee and the Parliament on that ground.**

Question 5

19. The Executive was asked what sanction will apply where a registration is cancelled by Ministers given that regulation 8(2) only prohibits a person from *starting* to use premises until they have been registered and allocated a number.

Report 5

20. The Committee found the Executive's response very confusing. In particular, it does not seem to accord with the clear wording of the Regulations. On the Committee's reading of regulation 7 an establishment may be removed from the register not only, as the Executive states, if it ceases to be used for keeping laying hens but also if a person fails to supply notice of changes in the information submitted in the application for registration.

21. In the latter circumstances, it is true that a person does not seem to commit any offence by continuing to keep laying hens even although the establishment's registration has been cancelled. Under the Regulations as drafted, it seems that if an establishment has once been registered it can continue to be used even although the registration is withdrawn. The purpose of the power to withdraw registration in such circumstances is therefore obscure. **This appears to be a very unusual or unexpected use of the power and the Committee reports the Regulations on that ground.**

Question 6

22. Regulation 8(2) states that a person cannot begin to use an establishment until "that person has received a distinguishing number under regulation 4(2)". Regulation 4(2) states that Ministers are to intimate the distinguishing number to "the owner or keeper who made the application". As it seems possible that the person who will use the premises may not be the same person who made the application and to whom intimation is made, the Executive was asked to explain the discrepancy.

Report 6

23. Whilst the Executive has provided some indication as to the policy intention behind this provision, there remains a degree of confusion in the drafting of regulation 8(2) by reason of the reference to receiving a number under regulation 4(2). Only the person who makes the application receives the number under regulation 4(2) and, as the Executive confirms, this need not be the person using the establishment. The drafting of regulation 8(2) therefore appears to be defective in this respect as, contrary to the Executive's assertions, the Regulations do not take account of this possibility.

24. As a further point, the Committee notes that regulation 8(2) refers to the "person" having received a distinguishing number. However, it would seem that it is the premises which receive the number under regulation 4(2) which is then intimated to the person who made the application. Regulation 8(2) is therefore defectively drafted in this respect also.

25. The Committee therefore reports regulation 8(2) as defectively drafted in the above respects.

Question 7

26. Regulation 4(2) on page 2 requires the Scottish Ministers, within 21 days of receipt of an application under the Regulations, to allocate "to every establishment which is registered on the register" a distinguishing number. The Committee asked whether Ministers are obliged to register an establishment on an application being received and, if not, on what basis registration can be refused and what provision exists for notifying an applicant of the decision and of any right of appeal under regulation 9.

Report 7

27. The Executive states that, if an application is properly made, the establishment is registered and that, as whether or not an application is properly made is a matter of fact, no right of review under regulation 9 arises.

28. In the Committee's view, however, there is nothing to support this argument in the Regulations as drafted. The obligation on Ministers under regulation 4(2) is to allocate a distinguishing number to every establishment "which is registered on the register" within 21 days of receipt of the registration application. There is nothing in the Regulations that obliges the Ministers to register an establishment on the receipt of an application even if properly made. On the contrary, the existence of an unrestricted right of appeal suggests that it might be open to the Ministers to refuse to register an establishment in any circumstance.

29. It seems to the Committee that there may also be questions as to whether an application has been properly made, which appears to be a possibility that the Executive has not considered. **The Committee therefore reports the instrument to the lead committee and the Parliament on the two grounds of defective drafting of regulation 4 (2) as above.**

Question 8

30. Regulation 5(2) on page 2 requires any change in the information submitted in the application for registration to be notified to the Ministers "by the person who submitted the application for registration". The Committee asked whether this obligation will continue even if the person concerned has ceased to have any connection with the premises and what would happen, for example, in the event of death of the person.

Report 8

31. The Executive states that it will accept the change of information from persons representing the person who submitted the application.

32. In the Committee's view, that this cannot be considered wholly satisfactory. While it may deal with the problem of the apparent obligation on a deceased to notify the fact of his or her own death, it does not take account, for example, of a chain of different proprietors. It is not, it seems to the Committee, a question of a "possible narrow construction" of the provision. The provision is quite clear on whom the duty of notification is to lie.

33. Furthermore, it is changes in the particulars of the application that are to be notified rather than changes in the registered data (see Article 1.4 of the Directive). Again, it may be something of a burden on the notifier to have to refer to the original application rather than to the current data on the register. In most cases, the end result may be the same but, again, it does not take account of the fact that a change to the current registered data may in fact not be a change to the data included on the original application if, for example, a property has been sold and then bought back by the original owner.

34. **Therefore, in the Committee's view, regulation 5(2) as drafted represents a very unusual or unexpected use of the power and the Committee reports the instrument on that ground.** The Committee notes that the Executive recognises the problem and has undertaken to consider amending the provision.

35. As failure to notify changes to registered data could result in the removal of a registration, regulation 5(2) therefore does have some potentially

serious consequences (depending on what view is taken of such removal – see above). However, because of the doubts as to the effectiveness of the offence provisions these may be less than would otherwise be the case.

Question 9

36. The Executive was asked to explain, in relation to the words in parentheses in regulation 10(1), how authorised officers would know whether a dwelling house was being or not being used in connection with the Regulations unless they had first entered the house.

Report 9

37. Although the Executive considers that provisions such as that referred to by the Committee are commonplace, the Committee observes that it is extremely unusual for authorised officers to have powers of entry to a dwelling house as of right without first having obtained a court order. Even when such powers of entry are conferred by statute, they are invariably hedged with restrictions on their use to take account of the implications of Article 8.1 of the European Convention on Human Rights (ECHR).

38. The Executive claims that an officer would require to make appropriate enquiries as to the use of the dwelling house and only proceed to exercise the powers under the Regulations if satisfied that, in doing so, he would not be in breach of those powers. It seems evident to the Committee, however, that entry can only ever be on “reasonable suspicion” until the officer has actually entered the house and discovered at first hand whether or not it is being used for the stated purposes.

39. If it transpires that the house was not being so used then the power of entry will have been exercised unlawfully. This is not a happy position for either the officer or the householder. **It therefore seems to the Committee that regulation 10(1) as drafted is a very unusual or unexpected use of the powers and it reports the provision to the lead committee and the Parliament on that ground.**

Question 10

40. Regulation 12(1) provides that offences under the Regulations are to be triable either summarily or on indictment (“either way”) and that a person guilty of an offence is to be liable on summary conviction to a fine “not exceeding level 4 on the standard scale”. As the standard scale is relevant only to offences triable “only summarily” the Committee asked for an explanation of the drafting of this provision.

Report 10

41. The Executive’s response to the Committee’s question suggests that the Executive has misunderstood the purpose and effect of the provision. This Committee and the Joint Committee on Statutory Instruments (JCSI) at Westminster have often pointed out, as does the Executive’s own guidance, that the standard scale has no relevance to offences triable either way. The purpose of providing for a statutory offence to be triable either way is partly to emphasise the seriousness of the offence and, as the Committee has very recently pointed out, for various reasons to provide for a greater penalty to be

available than would be available on summary conviction for which the maximum fine (unless the legislation otherwise provides) is level 5 on the standard scale, currently £5000. On conviction on indictment there is no monetary limit on the fine that can be imposed.

42. It follows, therefore, that it is internally inconsistent and therefore wrong for an offence provision such as regulation 12 to provide in the case of an either way offence for the maximum penalty on summary conviction to be less than the maximum (the “statutory maximum”, currently £5000) that can be imposed on such conviction as specified by the Criminal Procedure (Scotland) Act 1995 as read with the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995.

43. If the Executive wishes certain offences to be subject to maximum penalties that do not exceed £5000 or whatever the current value of level 5 on the standard scale may be, then it seems to the Committee that the correct approach is to provide for them to be triable only summarily and subject to a penalty described with reference to a level on the standard scale. Creation of an “either way” offence is not appropriate.

44. There is a further difference between an offence triable only summarily and a summary trial of an “either way” offence in that, in the latter case, the statutory time limit in the Criminal Procedure (Scotland) Act 1995 for commencing proceedings does not apply. However, any perceived difficulties that this may cause can, in any case, easily be overcome by appropriate provision in the relevant offence-creating provision. The Executive has not indicated in any case that this was a factor in its considerations on the policy underlying this regulation.

45. The Committee therefore reports regulation 12(1) to the lead committee and the Parliament on the ground of defective drafting as above.

Question 11

46. The Executive was asked to explain why offences of obstruction under the Regulations are to be triable “either way” instead of, as is usual, triable summarily only and subject to a maximum penalty not exceeding level 3 on the standard scale.

Report 11

47. The Executive does not accept this point and refers to other SSIs including the TSE (Scotland) Regulations (SSI 2002/255) where obstruction is not triable only summarily and subject to the statutory maximum.

48. The Committee agrees that there has been a practice in some SSIs to provide for an offence of obstruction to be triable either way or, where the offence is triable only summarily, subject to a maximum fine exceeding level 3 on the standard scale. The Committee has already remarked adversely on this practice as, although it touches on policy, it is a departure from previously accepted guidelines in the field of criminal justice and thus represented an unusual or unexpected use of the power.

49. It may well be that in some circumstances obstruction of officers may demand a more serious sanction than normal. The TSE Regulations, which deal with controls related to BSE, may be one such example. This is not a matter on which this Committee can express a view. This is not to say, however, that because such a penalty is appropriate in one case it is equally appropriate in others. There is a question of proportionality in every case. It is by no means certain that obstruction in the context of the present Regulations is in the same category as obstruction in the context of the TSE Regulations. **While the matter is substantially one of policy for the lead committee, the Committee reports the provision on the ground that it appears to represent an unusual or unexpected use of the power.**

Question 12

50. Regulation 13(2) allows Ministers to direct a “local authority” to enforce the Regulations as an alternative to the Ministers themselves. The Committee asked why, contrary to usual practice, the Regulations do not contain a definition of “local authority”.

Report 12

51. The Executive has replied that it regrets the absence of the usual definition of “local authority” and will make an amendment at the next legislative opportunity.

52. It seems likely, in the Committee’s view, that “local authority” would be interpreted as meaning a council within the meaning of section 2 of the Local Government etc. (Scotland) Act 1994 (which it is assumed is the policy intention). However, as the term “local authority” can have different meanings for different purposes this is by no means certain. **The Committee therefore reports the instrument on the ground of defective drafting in this respect, acknowledged by the Executive and which it has undertaken to correct.**

Appendix

THE REGISTRATION OF ESTABLISHMENTS KEEPING LAYING HENS (SCOTLAND) REGULATIONS 2003, (SSI 2003/576)

On 2nd December the Subordinate Legislation Committee asked for an explanation of the following matters:

1. The Executive is asked to confirm what date was determined for the purposes of article 1.1(b).
2. The Committee notes that article 1.1(c) of Directive 2002/4/EC states that the distinguishing number for establishments for which application was made by the date determined under Article 1.1(b) should have been allocated by 31 May 2003. The Committee therefore seeks confirmation that this obligation was fulfilled.
3. The Executive is asked to explain the vires of regulation 8 standing Article 1.2 of the Directive which clearly states that Member States must provide that a person can only continue to use an establishment if an application for registration has been submitted by 1 June 2003 and that no establishment can be brought into use after that date until the registration requirements have been fulfilled.
4. The Committee seeks an explanation as to how a person can take advantage of regulation 8(1) given that regulation 5 does not come into force until 31 December 2003.
5. The Executive is asked to confirm what sanction will apply where a registration is cancelled by Ministers given that regulation 8(2) only prohibits a person from starting to use premises until they have been registered and allocated a number.
6. The Committee notes that regulation 8(2) states that a person cannot begin to use an establishment until “that person has received a distinguishing number under regulation 4(2)”. Regulation 4(2) states that Ministers are to intimate the distinguishing number to “the owner or keeper who made the application”. As it seems possible that the person who will use the premises may not be the same person who made the application and to whom intimation is made, the Executive is asked to explain the discrepancy.
7. The Committee observes that regulation 4(2) on page 2 requires the Scottish Ministers within 21 days of receipt of an application under the Regulations to allocate “to every establishment which is registered on the register” a distinguishing number. The Executive is therefore asked to confirm whether Ministers are obliged to register an establishment on an application being received and if not, on what basis registration can be refused and what provision exists for notifying an applicant of the decision and of any right of appeal under regulation 9.

8. Regulation 5(2) on page 2 requires any change in the information submitted in the application for registration to be notified to the Ministers “by the person who submitted the application for registration”. The Committee seeks clarification as to whether this obligation will continue even if the person concerned has ceased to have any connection with the premises and what would happen in the event of death of the person.

9. The Executive is asked to explain in relation to the words in parentheses in regulation 10(1) how authorised officers would know whether a dwelling house was being or not being used in connection with the Regulations unless they had first entered the house.

10. The Committee seeks clarification as to why regulation 12(1) on page 4 provides that a person guilty of an offence against the Regulations is to be liable on summary conviction to a fine “not exceeding level 4 on the standard scale” given that offences under the Regulations are triable “either way” and the standard scale is relevant only to offences triable “only summarily”.

11. The Executive is asked to explain why offences of obstruction under the Regulations are to be triable “either way” instead of as is usual triable summarily only and subject to a maximum penalty not exceeding level 3 on the standard scale.

12. The Committee seeks confirmation as to why in relation to regulation 13(2) contrary to usual practice the Regulations do not contain a definition of “local authority”.

The Scottish Executive responds as follows:

1. The date determined for the purposes of article 1.1(b) was 31 May 2003. Producers were made aware of this date by letter dated 15 March 2002.

2. A distinguishing number was issued by 31 May 2003 to all establishments which made an application for registration.

3. As the Regulations do not come into force until 31 December 2003 and there is no power to make retrospective legislation under section 2(2) of the European Communities Act 1972, it is considered that 31 December 2003 is the earliest date that could be provided for in regulation 8. In relation to section 57(2) of the Scotland Act, the view of the Executive is that, simply by virtue of being late, the implementation measure (which in itself is within devolved competence) does not become *ultra vires*. This matter has been the subject of correspondence between the Committee and the Executive on previous occasions.

4. It is the intention to treat all applications made prior to commencement of these Regulations as if they had been made under regulation 5. The drafting of this provision is unfortunately narrow but, as explained above, all applicants have received distinguishing numbers.

5. No sanction is required as removal from the register will only occur “if an establishment ceases to be used for the keeping of laying hens” (regulation 7).

6. The provision in regulation 4(2) requiring intimation of the number was added to provide clarity as to the person who would receive the number. The Executive considered whether there might be scope for a third person (in effect an “operator” of the establishment who was neither the keeper nor owner) to be included as recipient. It was decided that because the responsibility for application for registration rests with the owner or keeper, only the owner or keeper should receive the number. The owner or keeper should then make their own arrangements for confirming the position in relation to the outcome of application to any third person.

7. If an application is properly made the establishment is registered. If an application does not contain the information referred to in regulation 5(1) then that application has not been properly made and the Scottish Ministers cannot register the establishment and allocate a distinguishing number in terms of regulation 4(2). It follows accordingly that because no application has been properly made, no review right arises under regulation 9.

8. The point is noted. The Executive will accept the change of information from persons representing the person who submitted the application. Given the possible narrow construction of the provision, the Executive will consider amending this provision at a suitable legislative opportunity.

9. Provisions such as that referred to by the Committee are common place (although may be drafted in slightly different ways). An officer would require to make appropriate enquiries as to the use of the dwelling house and only proceed to exercise the powers under the Regulations if satisfied that in doing so he would not be in breach of those powers.

10. The intention of the provision is to reduce the maximum fine which may be imposed when tried summarily. The committee’s concern is noted and further consideration is being given to the point. If appropriate, an amendment will be made at the next suitable legislative opportunity.

11. The point is noted but not accepted. In relation to other Scottish Statutory Instruments there are examples where obstruction is not triable summarily only and subject to statutory maximum. For example, see the TSE (Scotland) Regulations 2002 (SSI 2002/255).

12. It is regrettable that the usual definition of “local authority” is not included in the Regulations. An amendment will be made at the next suitable legislative opportunity. However, it is considered that the matter will be clear when a direction is issued under regulation 13(2) as the Scottish Ministers will specify the local authority which is to be directed to discharge the duty under regulation 13(1).

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January 2004

Thank you for your letter of 17 December concerning The Registration of Establishments Keeping Laying Hens (Scotland) Regulations 2003 (SSI 2003/576).

I note your Committee's concerns about the Regulations. I have given serious consideration to these concerns, in view of the issues raised by the Subordinate Legislation Committee in their Fifteenth Report for 2003 (session 2), and I have instructed amendments. My response to the Committee's report, including details of proposed amendments, is as follows:

Question 1

The Committee are content with the information provided and no further comment is required.

Question 2

While the Committee are content with the information provided they are concerned that the provision does not meet the policy intention as explained to the Committee by my officials. Given this concern I have asked my officials to consider an amendment to regulation 4 to put beyond doubt the fact that all establishments which have received a distinguishing number do not require to reapply and that number is to be recorded on the register referred to in regulation 4.

Question 3

Article 1.2(a) is distinguished from Article 1.2(b) in that the test is whether the information has been supplied (whereas for Article 1.2(b) the registration must be complete and distinguishing numbered issued). The same distinction is made in regulation 8. While the delay in implementation is

regretted, the earliest date possible (31 December 2003) following the making of these regulations has been applied to this provision. I have difficulty in seeing, without retrospective provision, how any other provision could have been made. It is quite clear in terms of regulation 8(2) that after 31 December 2003 no new premises can be brought on line without registration having been completed.

Question 4

In preparing these regulations my officials took account of the fact that the obligations under the Directive have been complied with administratively. The 114 establishments with more than 350 laying hens have been registered and issued with unique establishment codes. My officials are not aware of any new establishments which will require to register soon.

Question 5

The committee are concerned at the lack of sanction following removal from the register for failure to notify changes. I accept the point and have requested an amendment be considered to address the issue.

Question 6

As my officials have already clarified in their written response to the Subordinate Legislation Committee, the provision of regulation 4(2) was carefully considered to ensure clarity as to who would receive the distinguishing number. However the point made in relation to 8(2) is noted and I have asked my officials to prepare an amendment which will refer to the premises (rather than the “person”) receiving the distinguishing number.

Question 7

The intention of the provision at regulation 4 was to ensure that upon receipt of an application in the appropriate form (i.e. containing the information referred to in regulation 5(1)) would result in the allocation of a distinguishing number. The difficulty that the Committee has with this regulation seems to be in relation to the words “every establishment which is registered on the register”. I have asked my officials to make an amendment to regulation 4(2) so that an application in proper form is sufficient to result in registration.

Question 8

As already indicated to the Subordinate Legislation Committee and noted by them at paragraph 42 of the Report, my officials are taking steps to prepare an amendment in relation to the point raised on notification of changes in information. In particular my officials are considering an amendment which would allow any person connected with the establishment to notify changes.

Question 9

The point raised by the Committee is understood by those drafting instruments within the Executive. The provision is a standard provision and has been provided for in most SIs requiring enforcement provisions that have come before the Parliament. The wording may vary slightly between instruments but the effect is that if premises are used only as a dwelling then there is no power of entry conferred on an authorised officer.

Question 10

In response to the Subordinate Legislation Committee my officials explained that they were further considering the point made by the Committee. Having further considered that point an amendment is being prepared to address the concerns of the Committee.

Question 11

I have asked my officials to consider preparing an amendment to change the offence in relation to obstruction as part of the amendment being prepared for regulation 12 (see question 10 also).

Question 12

As already indicated by my officials to the Subordinate Legislation Committee, an amendment is being prepared to address the concerns of the committee.

I hope that this reassures the Committee that I have carefully considered the concerns raised in relation to these Regulations. I am committed to making the necessary amendments to the Instrument and will ensure that amending regulations are laid in January. In the meantime, I would ask the Committee to pass the Regulations as currently drafted so that the statutory registration of establishments can be confirmed and enforced.

ROSS FINNIE