



Environment and Rural Development Committee

1st Meeting, 2006

Wednesday 11 January 2006

The Committee will meet at 10.00 am in Committee Room 6.

1. **Animal Health and Welfare (Scotland) Bill (in private):** The Committee will consider the evidence received to date at Stage 1.

Not before 10:30am

2. **Animal Health and Welfare (Scotland) Bill:** The Committee will take evidence at Stage 1 from—

Panel 1

Libby Anderson, ANNEX Consultancy;

Siobhan Mullan, Senior Clinical Training Scholar in Animal Welfare Science, Ethics and Law, University of Bristol Veterinary School; and

Panel 2

Ross Finnie MSP, Minister for Environment and Rural Development.

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

the Organic Aid (Scotland) Amendment Regulations 2005, (SSI 2005/619)

and will take evidence from Ross Finnie MSP, Minister for Environment and Rural Development.

4. **Subordinate legislation:** The Committee will consider the following negative instruments—

the Plant Health (Scotland) Order 2005, (SSI 2005/613);

the Rural Stewardship Scheme (Scotland) Amendment Regulations 2005, (SSI 2005/620);

the Avian Influenza (Preventive Measures) (Date for Identification of Poultry Premises) (Scotland) Regulations 2005, (SSI 2005/625);

the Products of Animal Origin (Third Country Imports) (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/645);

the Avian Influenza (Preventive Measures) (Scotland) Amendment Regulations 2005, (SSI 2005/646); and

the Avian Influenza (Preventive Measures in Zoos) (Scotland) Amendment Regulations 2005, (SSI 2005/647).

Mark Brough
Clerk to the Committee
Direct Tel: 0131-348-5240

The following papers are attached:

<u>Agenda Item 1</u>	
Paper from the Clerk (<i>for members only</i>)	ERD/S2/06/1/1a
<u>Agenda Item 2</u>	
Briefing paper (<i>for members only</i>)	ERD/S2/06/1/2a
Submission from Libby Anderson	ERD/S2/06/1/2b
Submission from Siobhan Mullan	ERD/S2/06/1/2c
Letter from the Minister on equalities issues	ERD/S2/06/1/2d
<u>Agenda Item 3</u>	
The Organic Aid (Scotland) Amendment Regulations 2005, (SSI 2005/619)	ERD/S2/06/1/3a
Submissions from: Soil Association Scotland, NFU Scotland, SAC, Scottish Organic Producers Association and Scottish Environment LINK	ERD/S2/06/1/3b
<u>Agenda Item 4</u>	
The Plant Health (Scotland) Order 2005, (SSI 2005/613)	ERD/S2/06/1/4a
The Rural Stewardship Scheme (Scotland) Amendment Regulations 2005, (SSI 2005/620)	ERD/S2/06/1/4b
Extract from the Subordinate Legislation Committee's 48th Report.	ERD/S2/06/1/4c
The Avian Influenza (Preventive Measures) (Date for Identification of Poultry Premises) (Scotland) Regulations 2005, (SSI 2005/625)	ERD/S2/06/1/4d
Extract from the Subordinate Legislation Committee's 47th Report.	ERD/S2/06/1/4e
The Products of Animal Origin (Third Country Imports) (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/645)	ERD/S2/06/1/4f
The Avian Influenza (Preventive Measures) (Scotland) Amendment Regulations 2005, (SSI 2005/646)	ERD/S2/06/1/4g
The Avian Influenza (Preventive Measures in Zoos) (Scotland) Amendment Regulations 2005, (SSI 2005/647)	ERD/S2/06/1/4h

SUBMISSION FROM LIBBY ANDERSON
Annex Consultancy

**Animal Health and Welfare (Scotland) Bill: Stage 1 General Principles
Submission to the Environment and Rural Development Committee
Libby Anderson 18 November 2005**

1. Introduction

1.1 Revision of Scotland's animal welfare laws is timely and welcome. The science of animal welfare is continually developing, and public opinion, informed by tradition, culture and varying degrees of objective knowledge, follows behind.

1.2 The Bill is well-drafted, clear and comprehensive given its remit, and has been the subject of extensive and accessible consultation procedures. In terms of reforming animal welfare protection, the creation of a duty of care for animal owners in Part 2 is particularly important and welcome.

2. PART 1: ANIMAL HEALTH

2.1 It is regrettable that the exigencies of timetabling have required valuable welfare provisions to be linked with animal health measures which consist in very large part of creating powers to slaughter animals. The primary value of animals in Part 1 is economic, economic considerations outweigh compassion and the only redress required in times of mass slaughter is financial.

2.2 While logic dictates that the outcome of all commercial livestock rearing is bound to be slaughter, the management of mass slaughter has, in the past, raised serious welfare issues. The power, now created by Section 1, for Ministers to order the slaughter of any animals, birds or amphibians brings other commercial animals and domestic pets within the purview of the Bill. This may not adequately reflect the public's emotional attachment to animals and their concern about ill-treatment of individuals.

2.3 The Section 1 amendments to the Animal Health Act 1981 "(the 1981 Act)", will permit the killing of any animals in the country, regardless of whether or not the animals are affected with the relevant disease; are suspected of being affected; are or have been in contact with affected animals; have been exposed to the infection; or have been treated with vaccine or serum or both against the disease.

2.4 This places great importance on the assurance given in paragraph 4 of the consultation paper that most of the legislative powers in the draft Bill would be for use only "in the event of a serious and fast-spreading disease outbreak". However, the consultation paper is not binding on this or future Executives.

2.5 Powers of this nature did not exist during the 2001 FMD outbreak, prompting criticism that the disease control measures implemented by MAFF were *ultra vires*. The Animal Health Act 2002 addressed this anomaly as far as England and Wales were concerned, although some commentators considered that powers to deprive animal owners of their property when an alternative (vaccination) was available to the state, and to deny the opportunity for a hearing by an independent and impartial tribunal, were excessive.

2.6 During the 2001 foot-and-mouth disease epidemic, some sanctuary owners moved their animals indoors but these were still culled or scheduled for culling. In one instance, the owner's application to the Court of Session was considered by the judge to have merit although he was not prepared to order suspension of the operation. It was stated (in the consultation on the first draft Bill) that Ministers would always act on veterinary advice, and at this stage it would be useful to learn whether such advice would include consideration of precautions already taken, such as movement restrictions and biosecurity measures implemented by individual owners.

2.7 The first line of defence against virulent exotic disease must be prevention, and that prevention must include consideration of rearing, transport and marketing practices, and of alternative control measures such as vaccination.

2.8 The Bill contains valuable pre-emptive measures such as biosecurity codes and robust penalties for the deliberate infection of animals. Section 5, on licensing of animal gatherings, has attracted comment to the effect that it could create a licensing regime for events such as dog shows and gymkhanas. However, as long as the animals covered are those listed in Section 87(1) of the 1981 Act – cattle, sheep, goats, pigs and specified ruminants – and any extension to other species would require an order under Section 87 (2) or (3), the provision will only cover livestock markets, and is a welcome reform.

2.9 It is assumed that the aim of "8A(4)" is to cater for the use of common grazings as used by crofters and perhaps other agricultural arrangements between landowners and tenants or licensees. However, the definition does appear wide and it would be worth exploring whether it is the Executive's intention also to include here land where members of, for example, a dog club, would have a right of use.

PART 2: ANIMAL WELFARE

3. Purpose of animal welfare legislation

3.1 The legal status of domestic and farm animals, and wild animals which have been tamed or are kept in captivity, is that of property. Legislation that protects animal welfare very often does so as a by-product of the economic or property motive, rather than an intrinsic desire to prevent suffering.

3.2 Part 2 of the Bill will considerably improve the legal protection of animals in Scotland. The comments that follow inevitably focus on individual issues

where the author has had a query or concern, but this is not intended to imply a generally negative view. Where a Section of the Bill is not mentioned, that is either because the author agrees with its aim and detail, or does not feel qualified to comment.

4. S 14 Animals to which Part 2 applies

4.1 Good arguments have been made for including certain invertebrates such as lobsters (protected in other countries from cruel killing methods), cephalopods (already subject to certain protections under the Scientific Procedures Act 1986) and some larval forms (such as the axolotl). However, it is accepted that the ability for Ministers to make further provision does allow for future extension of protection.

5. S15 Protected animals

5.1 While the definition of protected animal is comprehensive, a question may arise over interpretation of 15(b), which refers to an animal permanently or temporarily under the control of man. It appears that this is intended only to cover an animal over which physical control is being exerted at the time of an offence against it. However, an animal may be vulnerable to control in other ways that the law could appropriately address. Where this is due to the deliberate action of man – for example, by wounding the animal or by knowingly altering its immediate environment so that it cannot control its own state as regards that environment, and its welfare is thereby compromised – there is an argument for requiring people to take responsibility.

6. S17 Unnecessary suffering

6.1 The current definition of cruelty assumes that the infliction of suffering on an animal is not illegal if it is “necessary”. Judges over the years have taken a wide variety of views on what it is necessary for people to do to animals.

6.2 “Necessity” is in part justified for commercial or management motives, and different values are accorded to the suffering of different animals. The law permits a degree of suffering in wild animals – and, to an extent, farm animals – that would not be legal if inflicted on companion animals. This is scientifically untenable, and the Committee might wish to consider whether, and to what extent, they could mitigate this, either in the context of this Bill or in future consideration of regulations. In this context it would be valuable for the Committee to have before it a reliable science-based definition of animal welfare¹.

6.3 For individual animals, “unnecessary suffering” has stood up relatively well to courtroom scrutiny. However there will be always be divergent views on whether certain agricultural husbandry and breeding practices, and drastic disease control measures are “necessary”. For example, pigs are tail-docked to prevent tail-biting, which is more a product of the intensive rearing system, than a particular vice of the pig in its natural environment. Long-distance transport of farm livestock is considered necessary because it is the most economic approach. Mass slaughter to eradicate disease, rather than

¹ See for example ANIMAL WELFARE: CONCEPTS AND MEASUREMENT
D. M. Broom J Anim Sci 1991. W4167-4175, which refers to the measurable state of the individual in relation to its environment.

vaccination, is considered necessary because the export market requires disease-free status.

6.4 A more sustainable approach to these issues would be to consider whether they might in fact be replaced by others which are more humane. There is no realistic prospect that this Bill will be the vehicle for change of this nature. However, when considering cruelty and the general principles of the Bill, the Committee might care to question the Minister on how he defines cruelty, why it is not defined on the face of the Bill, whether he believes that all the animals subject to both Parts of the Bill have the same capacity to suffer and an equal right to protection, and what “necessity” would over-ride the need to protect certain animals from suffering.

6.5 It is noted that the offence of omission has been deleted from the original 17(1) (and from Section 22(1) on the duty of care) referring to persons in general rather than responsible persons. Consideration might, however, be given to circumstances where a non-responsible person could cause unnecessary suffering by an act of omission. An example of this might be knowingly or negligently failing to ensure checking of premises where animals are known to become trapped.

6.6 The provisions at 17(1)(b) and 17(2)(b) for knowing that an act “would have caused suffering or be (*sic*) likely to do so” are welcome. It will be stated below that the author considers the new welfare offence of abandonment (S26) to be weaker than the current offence, but that may be redressed by the use of these sections.

6.7 The Executive has stated that the considerations at 17(4) for determining whether suffering is unnecessary are not exhaustive, and are certainly open to wide interpretation.

7. S18 Mutilation

7.1 The intention of this section is welcome and the definition of the term is appropriate. Mutilation for cosmetic purposes, such as tail-docking of dogs, causes suffering that is unnecessary by any standard. Other mutilations, as has been said, could be rendered unnecessary by changes in husbandry techniques, but without change of that status quo, it is assumed that current practices will continue to be permitted.

8. S21 Animal fights

8.1 The definition of offences appears comprehensive, and prohibition on possession of equipment for fighting, without requiring the authorities to prove intent to use it, is welcome – as are the robust penalties for animal fighting provided by Section 42.

9. S22 Ensuring welfare of animals

9.1 This is the key reform of the Bill and entirely welcome. The only cavil arises from the drafting of 22(1) which contains two qualifications of an individual’s responsibility towards his animal – firstly, that he must not fail to *take such steps as are reasonable*, and secondly, that its needs must be met *to the extent required by good practice*. This double qualification appears unduly weak.

10. S23 Provision for ensuring welfare

10.1 The approach of creating an enabling bill with relatively little prescriptive detail on the face is appropriate. There is a need for flexibility in this evolving area, providing the principles are correctly established. It is valuable that Ministers' powers to make regulations, the nature of these regulations, the powers of inspectors, the creation of offences and penalties, and the charging of fees will all be subject to consultation.

10.2 It has been stated that existing welfare regulations, such as those made under the Agriculture (Miscellaneous Provisions) Act 1968 will be repealed and replaced. It is particularly welcome that the Executive proposes also to regulate the trade in young pet animals by dealers. This has caused immense public concern and is connected in some cases with the import of puppies from puppy farms in the Republic of Ireland, where welfare conditions are extremely poor. The Executive's forecast that this will only produce the requirement for around six new licences may, however, be an underestimate.

11. S24 Licensing etc of activities involving animals

11.1 It is noted that licensing and registration of activities under this section will be for welfare purposes, unlike the purposes for regulations under S23, which also take in issues such as hygiene.

11.2 The primary provision is very welcome but it is necessary to comment on the Executive proposals for secondary legislation under this section; and also to consider the mechanisms for enforcement of Orders. Without wishing to be side-tracked at this stage, forthcoming consultations may not be sufficiently long or flexible to allow full airing of some of the issues before Orders are laid by the Minister, after which it would not be possible for the Parliament to amend them.

11.3 The Executive's decision to require registration, rather than licensing, of both livery stables and animal sanctuaries, should be reviewed. (The measures proposed under the English Bill provide for licensing of livery stables and registration of sanctuaries.) This is a departure from the draft RIA which referred to full licensing for livery yards on an 18-month licence. Registration of establishments would require no prior inspection and would cost local authorities less to maintain, but would not provide effective sanctions or penalties for breach.

11.4 The decision to require registration of the 50 largest sanctuaries in Scotland misses the point of representations that have been made on this issue over several years. It is not the well-established, reasonably well-resourced large sanctuaries such as dog and cat homes, Scottish SPCA, Dogs Trust, ILPH centres and so on, that are the problem. Many of these are subject already to monitoring under other regimes such as boarding licences, in any case. It is in smaller, entirely unregulated establishments including domestic premises that animals can be kept in enormous numbers and subjected to conditions of squalor and disease.

11.5 Consideration also needs to be given to the proposal for the extension of new regime licences from the traditional 12 months' duration to three years

(five years for premises which are merely registered). The intended effect of this extension may be to offset the extra financial burden on local authorities of having a considerably larger number of premises to inspect than previously. The Policy Memorandum states that this will be combined with a risk-based assessment to ensure that sufficient inspections are carried out to protect welfare. While this approach may chime with the wider government agenda of reducing the regulatory burden, and indeed may be appropriate when dealing with inanimate subjects, it is far less tenable where the protection of animals is concerned. Animal welfare can deteriorate extremely quickly, and regular, expert inspections are an essential protection.

11.6 It would be helpful if the Committee could ask local authority representatives how they would assess which premises represent high, medium and low risks, particularly in the early days.

11.7 It is impossible not to speculate on possible financial pressures on this aspect of the Bill. In this context, the remarks of the Farm Animal Welfare Council, in response to the first draft Bill, are worthy of note:

“Council is concerned about the apparent lack of any additional financial resources from Government to support this major initiative. A Regulatory Impact Assessment suggesting no additional funding for the work of Local Authorities and other enforcement agencies understates and weakens the potential benefits that this legislation could bring to the welfare of animals. In order for the law to have the impact it deserves it must be effectively enforced and this will require funding from Central and Local Government.”

11.8 Clearly, local authority spending priorities must remain entirely at the discretion of each authority, but the Committee might wish to enquire into proposals for funding the extensive new regimes, powers and responsibilities being created by the Bill.

12. S26 Abandonment

12.1 This section is likely inadvertently to reduce the protection currently available to animals. It attempts to set guidelines which are extremely susceptible to interpretation and debate, and do not take unforeseen circumstances into account. Representations were made on this subject in the previous Scottish SPCA submission, with which the author was associated, and it is regrettable that these have not been accepted. Making abandonment a welfare, rather than a cruelty, offence, does not adequately recognise the serious consequences that it can have, often resulting in prolonged animal suffering, nor the abdication of responsibility that it implies.

13. S29 Animals in distress

13.1 The powers available to constables, and to inspectors appointed under this and following sections, will be valuable in alleviating animal suffering. Clarification is required as to the provision of training and resources for inspectors, and the expected division of labour between the different agencies from which the inspectors will be drawn – local authorities, State Veterinary Service and Scottish SPCA.

13.2 Certain organisations have queried the knowledge of local authority inspectors to assess particular situations². This comment requires qualification. While it is true that trading standards or environmental health officers do not necessarily have detailed knowledge of animal handling, husbandry or legislation, there are also councils where a high degree of specialist knowledge exists.

13.3 Local authorities do not all have wide experience of enforcing current animal welfare legislation - for example, many do not currently list the Protection of Animals (Scotland) Act 1912 among the statutes which their officers are required to enforce.

13.4 That is not to say that local authorities could not exercise the powers being conferred on them by the Bill, but it would be helpful to have confirmation that there has been adequate prior consultation between the Executive and local authorities regarding resourcing and delivery of the new enforcement powers.

13.5 The Hampton Report³ recommended the future establishment of a new national (UK) animal health inspectorate, and it would be interesting to learn how or whether this has been taken into account in the Bill.

13.6 It is very welcome that the Minister has agreed to appoint Scottish SPCA Inspectors as inspectors under the Bill. This followed detailed representations to the Executive that, without such provision, Scottish SPCA Inspectors would no longer be able to carry out some of their current functions and that that would be detrimental to animal welfare.

13.7 See also comment on S44 below.

14. S31 Disposal orders where animals taken

14.1 Necessary powers are provided for the courts to order treatment, destruction, sale or other disposal of an animal taken under S29. It is welcomed that the court may not order destruction without evidence from a veterinary surgeon that this would be in the best interest of the animal (31(6)); and hoped that this could not be undermined by 31(8) which has regard to commercial value and expenses.

15. SS 35 – 39 Post-conviction orders

15.1 Particularly welcome among these provisions is the extension of disqualification orders so that a convicted person cannot circumvent them, as before, by passing ownership to another member of the household or business (S36(3)). The requirement for a court to state reasons for deciding not to impose orders will also be very useful in ensuring that courts and

² See SEERAD, Analysis of responses to the Draft Animal Health and Welfare (Scotland) Bill Consultation, Sept 2005 pp 75 - 78

³ HM Treasury, Final report of the Hampton Review on regulatory inspections and enforcement, March 2005.

prosecutors have regard to the penalties available to them as disqualification, in particular, has been insufficiently used in the past.

15.2 There is, however, a concern that disqualification orders will not be imposed for breaches of S26 on abandonment of animals – further weakening the nature of this offence.

16. S42 Penalties for offences

16.1 The first draft of the Bill provided for two distinct tiers of penalties: the higher penalties were to be made available for offences involving animal fighting and “offences involving deliberate cruelty”. It is noted that the current draft no longer provides for any “aggravated” offence, such as that involving deliberate cruelty. Advice from the Executive is that the concept of aggravated offences is alien to Scots law, which is accepted, and that the more serious offence was removed in order to allow Sheriffs full discretion. It would be regrettable, however, to lose the ability to impose higher penalties on the more serious cruelty offences (consider torture of an animal, or offences involving large numbers of animals), as these can only now attract the same penalties as the lesser welfare offence.

16.2 It is hoped that evidence can be provided to support a Stage 2 amendment on this subject.

17. S44 Inspectors and constables

17.1 Explicit provision that inspectors will not be subject to civil or criminal liability for actions carried out in the course of their functions under the Bill has been removed from this section. Schedule 1, on the powers of Inspectors, does set out Inspectors’ powers and obligations, but there would surely be no harm in retaining the protection at Section 44. Scottish SPCA Inspectors, in particular, might be vulnerable to vexatious challenges and a clear indication in the main Bill would be helpful. The Westminster Bill contains a statement of this nature.

18. Conclusion

18.1 As has been said earlier, Part 2 of the Animal Health and Welfare (Scotland) Bill will represent a significant contribution to animal protection; and its reflection of many modern animal welfare precepts must be recognised. The Committee may wish to consider where this work will sit within the wider canon of animal legislation, and the author would be pleased to provide information about animal welfare laws in other countries, if that would be helpful.

SUBMISSION FROM SIOBHAN MULLAN BVMS MRCVS DWEL
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University of Bristol Veterinary School

Introduction

1. This submission refers to part 2 of the Bill.
2. The revision of current animal welfare law is welcome. In particular, as well as continuing to outlaw animal cruelty the great potential of this Bill is in promoting good welfare through the creation of the 'duty of care'. More recent EU and UK animal welfare legislation has defined some standards of animal welfare for laboratory and farmed animals and this Bill would extend these types of obligations to other species.

Definition of an animal (clause 14)

3. The restriction of the scope of this bill (and the English Bill) to born/hatched vertebrates is out of step with other legislation in the UK e.g. A(SP)A 1986 and also with the recent New Zealand Animal Welfare Act 1999 (NZAWA 1999). The guidance given by the NZ government states that 'the range of animals protected by legislation has been widened to include all animals that are capable of feeling pain'. They also include:

'Any octopus, squid, crab, lobster, or crayfish (including freshwater crayfish);'

'any mammalian foetus, or any avian or reptilian pre-hatched young, that is in the last half of its period of gestation or development;' and

'any marsupial pouch young'

4. Whilst it is recognised that the Minister can extend the definition in accordance with scientific evidence of the ability to experience pain, clearly the NZ ministers were convinced by the scientific evidence for other species.

Protected animals (clause 15)

5. This is essentially identical to the English Bill and covers the majority of situations where humans have a responsibility towards animals. However, there are situations where people have a moral obligation not to cause harm to animals they are interacting with which may not be covered by the Bill. For example, if someone feeds wild animals in such a way as to increase fighting between them or make them less able to function in the wild.

Unnecessary suffering (clause 17)

6. This phrase has been widely used in existing animal cruelty prosecutions and as such there is case law guiding its usage in the UK. It is helpful to retain it in the Bill. Currently it encompasses a notion of both physical and mental suffering- albeit in outdated language. It would be helpful if this aspect of mental suffering could be specified in the Bill.
7. One of the main problems with this clause is the issue of 'reasonableness'. If the test is whether a 'reasonably competent and humane person' (or animal keeper) would have done such a thing then it is very difficult to move away from what is common practice- even though it may cause unnecessary suffering. For example, in my research on pet rabbits I found that many rabbits were kept in very small hutches, often smaller than laboratory standards, were fed an inadequate diet. For the minority of rabbits that had no access to another environment I have no doubt that they were suffering. Their suffering could be argued to be unnecessary as there are other methods/ hutches available for keeping rabbits, however, even a 'reasonably competent and humane person' might keep a rabbit in an inadequate hutch, bought for the purpose from a pet shop, as this is common practice.
8. In the case of farming practices it would be difficult to see how some of the husbandry methods that cause suffering and have been banned in other EU countries continue to be 'necessary' in the UK except that these methods are common practice.
9. A second problem could arise if the codes of conduct in effect endorse something that results in 'unnecessary suffering' as compliance with the codes is considered relevant in determining whether the suffering was unnecessary. This will be considered further below.
10. In comparison, in the NZAWA 1999 the equivalent offence of cruelty is covered much less comprehensively:

28. Wilful ill-treatment of animals—

(1) A person commits an offence who wilfully ill-treats an animal in such a way that—

(a) The animal is permanently disabled; or

(b) The animal dies; or

(c) The pain or distress caused to the animal is so great that it is necessary to destroy the animal in order to end its suffering.

Mutilation (clause 18)

11. In general, I feel very strongly that mutilations should continue to be termed so and that our aim as a country should be to discourage all mutilations. Not only do many mutilations cause suffering but they disrespect the 'telos' of an animal- i.e. the cowness of the cow. If we have animals that are not 'intact' then by virtue of that fact they cannot have the 'whole' welfare that could be afforded to a 'whole' animal in that situation.
12. It is very welcome that the Policy Document states an intention to ban cosmetic tail docking in dogs. This would bring the legislation into line with many EU and other countries. If this is not brought about in England and Wales then there could potentially be some problems with compliance, however, it would be important for Scotland on a matter of principle not to see this as a sufficient reason for retraction of the ban.

Ensuring welfare of animals (clause 22)

13. This promotion of a duty of care towards animals should make the biggest impact on improving animal welfare and is widely endorsed by many organisations. It is symbolic of a change in attitude away from seeing animals merely as possessions and respecting them for their intrinsic value.
14. I am not sure of the significance of the discrepancy in wording between the English bill where a person must take '....such steps as are reasonable in *all* the circumstances....'. The reliance on 'good practice' as the yardstick for deciding which of an animals needs must be met could be confusing. Who will define good practice? Is this the same as common practice? Will this be the same as any 'minimum standards' in codes of practice- surely one doesn't consider minimum standards and good practice to be the same? Earlier drafts- at least of the English Bill contained the phrase 'in an appropriate manner' which I prefer- not least because it seems to refer to the animal rather than husbandry system.
15. The NZAWA 1999 puts certain obligations on owners that also include reference to scientific knowledge aswell as good practice.

10. Obligation in relation to physical, health, and behavioural needs of animals—

The owner of an animal, and every person in charge of an animal, must ensure that the physical, health, and behavioural needs of the animal are met in a manner that is in accordance with both—

(a) Good practice; and

(b) Scientific knowledge.

This at least gets round the problem of common practice not moving forward with scientific advances.

16. Section 22(3). I would be happier to see an explicit reference to the mental state of an animal within these needs- the five freedoms include the 'freedom from fear and distress' which does not appear to have anything equivalent in the Bill.

17. The NZAWA 1999 is in some ways weaker than the proposals of this Bill for definitions of needs:

*4. Definition of "physical, health, and behavioural needs"—
In this Act, unless the context otherwise requires, the term "physical, health, and behavioural needs", in relation to an animal, includes—*

(a) Proper and sufficient food and water: Although this is equivalent to 22(3b) it may be preferable to specify water as part of the diet.

(b) Adequate shelter: This is weaker than our wording of a 'suitable environment' in 22(3a)

(c) Opportunity to display normal patterns of behaviour: Equivalent to 22 (3c).

(d) Physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress: This does at least acknowledge that animals can suffer distress although it is only concerned with that caused by physical handling.

(e) Protection from, and rapid diagnosis of, any significant injury or disease,—
Weaker than 22 (3e)

Provision for securing welfare (clause 23)

18. The flexibility of an enabling bill is entirely useful in the context of changing knowledge about animal welfare. The generic regulations for farm animals in Schedule 1 of the Welfare of Farmed Animals (Scotland) Regulations 2000 provide a bridge between the welfare offence and the codes. They outline in more detail more specific requirements such as inspection of animals, management of sick animals and suitability of housing conditions that are clearer than defined in the 'needs' of the Bill. There would be a great benefit to producing such regulations for companion animals in addition to welfare codes.

19. In order to be able to assess the impact of the new legislation it is important that animal welfare is measured in some way. This could be written into new regulations to strengthen this requirement. Whilst there are obviously financial implications to this, effective legislation is a combination of principles and practicalities which can then be monitored for achieving the final aims- in this case of promoting animal welfare.

Animal Welfare Codes (clause 34)

20. Although welfare codes would have a certain legal status their prime benefit is as an educational tool. In broad terms they can explain the needs of an animal. In more detail they can also define the husbandry provisions that should be given to the animals. They should also give an indication of what the husbandry system should achieve in-terms of animal-based outcomes. For example they can define a suitable diet and explain that an effective diet is one which achieves a certain body condition. Welfare codes can also define when an owner should seek advice from a veterinary surgeon.
21. Even though codes are primarily educational they also should relate with legal requirements. Codes have an important role in educating owners on their legal responsibilities concerning both cruelty and welfare offences. They should summarize their responsibilities and give an indication of how this can be achieved. Welfare codes need not, however, be a comprehensive text book providing a detailed account of what needs to be provided.
22. The dissemination of these messages is therefore important as owners need to be made aware of these obligations. This dissemination may or may not have a legal component as with farm animals which require owners to have access, have read and received instruction upon them.
23. Codes can define what is not permitted but also what is permitted. It is important to note that interpretation of legal requirements may not always strengthen the welfare requirement. For example the legal requirement (WFAR 2003, sch 6 par 16) states that "...all pigs must have permanent access to a sufficient quantity of material such as straw, hay, wood, sawdust, mushroom compost, peat or a mixture of such...". However, the DEFRA welfare code (PB7950, 2003) states that objects such as footballs and chains can be used but that long term use of such items on their own is not "recommended". In this case a legal requirement has been watered down to a recommendation.
24. In summary welfare codes should detail the following :
- *Legal requirements: what owners **must** do*
 - *Recommendations: what owners **should** do*
 - *Best practice: what owners **could** do*

In order to maximise the impact of welfare codes an optimum structure would be to split each section of a code dealing with a certain need (as defined in the welfare offence) into Must, Should and Could.

ANIMAL HEALTH AND WELFARE BILL EQUAL OPPORTUNITY QUESTIONS

1. What is the policy for? Who is the policy for? What are the desired and anticipated outcomes?

Part 1 (the health part) of the Bill seeks to enhance the ability of the Scottish Ministers to respond to fast spreading animal disease outbreaks and/or to minimise the risk of disease spreading. It is aimed at protecting Scotland's livestock, their related industry and the wider rural economy and society which would be most impacted by an animal disease outbreak.. This would be achieved by amending the Animal Health Act 1981. In addition to supporting the disease control response the health part also includes provisions aimed at increasing the level of biosecurity (management practices to reduce the possibility of disease occurring or spreading) within the Scottish agriculture and related industries. There are also provisions to deal with the possible emergence of a Transmissible Spongiform Encephalopathy (TSE) in any livestock. It is hoped that the majority of the measures contained in part 1 of the Bill will never have to be used, as they supplement existing animal disease provisions contained in the 1981 Act.

Part 2 (the welfare part) of the Bill seeks to modernise, strengthen and consolidate Scottish animal welfare legislation for domestic and captive animals. This will include a duty to ensure the welfare of animals for which people are responsible and enable steps to be taken to remove animals at risk of suffering, thus preventing animal cruelty before it actually happens.

The desired outcomes of the Bill are outlined in the policy memorandum. For the health part, they are:

- To protect Scotland's livestock industry from the worst effects of fast spreading diseases;
- To continually improve biosecurity, both during a disease outbreak and in order to prevent the spread of disease within Scotland; and
- To provide the legislative framework to deal with TSEs should they emerge in other livestock species.

For the welfare part, they are:

- To ensure animals are protected from abuse and unnecessary suffering; and
- To introduce a new duty of care to ensure that animals are adequately housed, properly fed and able to exhibit normal behaviour.

2. Do we have full information and analyses about the impact of the policy upon all equalities groups? If not, why not?

The Animal Health and Welfare (Scotland) Bill is not considered to have a differential impact on any equality groups. Its remit is to protect Scotland's animals. The Executive has made every effort to make sure that there has been a transparent approach towards developing all the policies in this Bill. Additionally, the Executive held a number of consultation meetings where the legislative proposals could be discussed. Copies of the consultation paper and draft Bill were sent to all the main national equality groups and no equalities issues were raised during these consultations.

The Executive also consulted on part 2 of the Bill in *Proposals to Revise Existing Animal Welfare Legislation*, published March 2004. It was not thought that this was a policy area that was likely to have a differential impact on equalities groups, and the consultation exercise turned up no comments on equalities issues.

3. Has the full range of options and their differential impacts on all equality groups been presented?

As the implementation of the powers provided in part 1 of the Bill requires a legal base, other policy methods for achieving a similar outcome were not extensively considered. The experience of tackling recent fast spreading diseases, including Foot and Mouth Disease and the increase in the international movement of animals and their products, has resulted in pressure to update the Animal Health Act 1981. Providing greater flexibility to deal with outbreaks of fast spreading animal diseases is not believed to have differential impacts on any equality group.

Given that the Protection of Animals (Scotland) Act 1912 is the basis for most animal welfare legislation and has been amended several times since it came into force and that this Act has been supplemented by a series of Acts produced during the 20th century, it is sensible to take this opportunity to consolidate animal welfare legislation into a single Bill with extensive order making powers. No other option was considered feasible and it is not believed that the consolidation of existing legislation will have a negative or differential impact on any equality group.

4. What are the outcomes and consequences of the proposals? Have the indirect as well as the direct, effects of the proposals been taken into account?

Both parts of the Bill have been subject to extensive consultation (see response to question 2) and their outcomes and consequences are well understood. The only equality issues which have been identified following consultation relate to the dissemination of information, and consultation process relating to the secondary legislation which will be provided under the Bill. The Scottish Executive will act in accordance with best possible practice in this area.

Following the publication of the draft Animal Health and Welfare (Scotland) Bill for consultation in May 2005 the issue of religious slaughter was raised. There are long-standing provisions in our law which, subject to specific requirements, permit the slaughter of animals without stunning to meet Jewish and Muslim religious requirements. The Bill will not remove that exemption.

The Welfare of Animals (Slaughter or Killing) Regulations 1995 (as amended) (WASK) require that all animals are stunned before slaughter, using the methods of stunning prescribed by the Regulations, subject to specific exemptions. One of these exemptions refers to slaughter without the infliction of unnecessary suffering by the Jewish method for the food of Jews; or by the Muslim method for the food of Muslims, provided the requirements for the licensing of slaughtermen under the Regulations are met.

Whilst the Scottish Executive would prefer that all animals were stunned before slaughter, it recognises the needs of certain communities and accepts the importance which they attach to the right to slaughter animals for food in accordance with their beliefs. Since an amendment to the legislation was made in 1999, religious slaughter must be carried out only in licensed or other officially regulated slaughterhouses.

Section 23 of the Bill provides that Scottish Ministers may by regulations make provisions to secure the welfare of animals. This includes requirements and prohibitions which may relate to how animals are prepared for killing and are killed (section 23 (3)(f)). However any regulations made under this section would need to comply with the WASK regulations and the Scottish Executive does not intend to prohibit religious slaughter. Therefore, there should be no direct or indirect effects on minority religious groups due to the proposals contained in the Bill.

5. How have policy makers in the Executive demonstrated they have mainstreamed equality?

The Executive has consulted extensively with a wide a range of stakeholders and potential stakeholders throughout the legislative process, including the policy development process preceding the introduction of the Bill. The consultation documents were sent as a matter of course to the following groups:

- Age Concern
- Commission for Racial Equality
- Disability Rights Commission Scotland
- Equal Opportunities Commission Scotland
- Scottish Human Rights Centre

The following groups were identified as having particular interest in the proposed legislation and were also provided with consultation documents:

- Guide Dogs for the Blind Association
- Hearing Dogs for the Deaf
- Riding for the Disabled Association
- Royal National Institute for the Blind
- Royal National Institute for the Deaf
- Scottish Gypsy Traveller Association
- Scottish Human Rights Centre
- Women's Farmers Union

Internal advice was also sought to ensure that the proposals complied with the Executive's equality strategy.

No specific equality issues were raised during the consultation process and Guide Dogs for the Blind Association responded with generally favourable comments on the welfare part of the Bill.

6. How will policy be monitored and evaluated? How will improved awareness of equality implications be demonstrated?

Many of the proposals in part 1 of the Bill might not be implemented even if there is another fast spreading disease outbreak – wide powers already exist under the Animal Health Act 1981 and the specific nature of the disease would have to be carefully considered at the time. Ministers will have the ability to issue guidance on the day-to-day measures which will include biosecurity codes and provisions to license animal gatherings. The Executive is committed to ensure that the mainstreaming of equality issues will continue during the implementation of the legislation. Anyone who feels that they have been discriminated against will have recourse to the usual channels of complaint.

For Part 2 of the Bill, Scottish Ministers will issue guidance to accompany the Bill once it is enacted. This guidance will comply with the good practice equality requirements of the Scottish Executive. Part 2 contains many enabling provisions which will come into force via Scottish Statutory Instruments made under the Bill. The Scottish Executive will be required to consult with relevant parties and this will include equality interests. The consultations will be directed to as wide a representation as possible of stakeholders.

Agenda Item 2
**Environment and Rural
Development Committee**

11 January 2006
ERD/S2/06/1/2d



SCOTTISH EXECUTIVE

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November 2005

EQUALITY GUIDELINES – ANIMAL HEALTH AND WELFARE (SCOTLAND) BILL

Thank you for your letter of 27 October, requesting more information on how the Scottish Executive has assessed the impact of the Animal Health and Welfare (Scotland) Bill on the specific equality groups referred to in Schedule 5 of the Scotland Act.

Please find further information on the 6 equality questions suggested by the Equal Opportunities Committee attached at Annex A.

I hope you find this information useful.

ROSS FINNIE

SSI DESIGNATION FORM

SSI Title & No:	The Organic Aid (Scotland) Amendment Regulations 2005, (SSI 2005/619)						
Responsible Minister	Rhona Brankin, Deputy Minister for Environment and Rural Development						
Standing Order	Affirmative	10.6.1(a)		Negative	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		Other	NL		NP	
Lead Committee	Environment and Rural Development		Other Committee				
Purpose of Instrument	These Regulations amend the Organic Aid (Scotland) Regulations in line with the introduction of the Single Farm Payment and with revisions proposed following consultation with stakeholders. The Regulations, among other amendments, alter grant rates, update the definitions of certain land types and clarify eligibility for fruit and vegetable payments.						

Laid Date	1 st December 2005	40 day date	25 th January 2006
1st SLC Meeting	13 th December 2005	20 day date	21 st December 2005
Lead Committee Report Due	16 th January 2006	Other Committee Report Due	

SE Contact	Kirsten Beddows, ext. 44176
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule		PO Letter dated		PO Letter received	
Revocations	Revokes			Partially Revokes				
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives	EC/1257/1999			
Additional Information								

SUBMISSIONS ON THE ORGANIC AID (SCOTLAND) AMMENDMENT REGULATIONS 2005, (SSI 2005/619)

SUBMISSION FROM SOIL ASSOCIATION SCOTLAND

1. Soil Association Scotland

Soil Association Scotland is the devolved arm of the national charity that exists to research and campaign for the practical application of organic food and farming principles. The organisation in Scotland has staff in place working in the key areas of education, producer services, local food work, information and awareness, aquaculture and policy.

2. Context

– **European Action Plan.**

The European Action Plan 2004 seeks to outline an overall strategic vision for organic farming's contribution to the Common Agricultural Policy (CAP). The plan highlights the dual societal role of organic farming.

Organic food marketing responding to demands of consumers and therefore supported through the market.

And

Organic Land management delivery of public goods, primarily environmental, but also rural development and animal welfare. From this angle development should be driven by society.

The main proposals of the action plan concentrate on; an information led development of the organic food market, making public support for organic farming more effective, and improving and reinforcing the Community's organic farming standards.

– **Scottish Organic Action Plan 2003.** The Scottish Organic Action Plan makes the following specific commitments.

Achieving our aim of building a prosperous and sustainable organic sector will rely on many factors, including individual decisions by individual businesses, and by consumers. For its part, the Executive will act, within the powers and resources available to it, to remove barriers and create conditions to help the sector to develop such that: For products where Scotland's climate supports organic production, Scottish organic products can secure a market share at least the same as that attained by Scottish non-organic produce. Only an estimated 35% of organic produce sold is currently provided from domestic sources (as opposed to around 70% for non-organic products). We want to see Scottish organic products grow in market penetration so that they can meet at least 70% by value of overall Scottish consumer

demand for organic products which can be sourced in Scotland, as well as succeeding in the broader UK and international markets. There can be a doubling of the area of arable land and improved grassland in organic conversion or production, with a view to these areas comprising 30% of Scotland's organic area by 2007, against a current 15%.

- **Partnership agreement 2003.** The agreement endorses the action plan as follows;

We will support the more rapid development of environmentally sustainable farming that provides consumers with quality products.
and

We will implement the Organic Action Plan to develop the infrastructure needed to increase Scotland's share of the organic food market and increase the proportion of organic food available in Scotland. We will increase the finance available for farmers wishing to convert to organic farming.

and

We will support local marketing schemes, with clear accreditation and labelling of local produce to increase consumers' power to identify and choose Scottish produce. We will work with supermarkets and farming representatives to encourage greater sourcing and clear labelling of local food items and food produced by organic and sustainable farming methods.

- **Sustainable Development Commission Choosing Our Future: Scotland's Sustainable Development Strategy. 2005.**

Actions for the Future.

The Scottish Executive will:

Work with the Enterprise Networks and the Scottish Food and Drink Industry Strategy Group to ensure the effective integration of sustainable development principles in policies and strategies for supporting the Scottish food and drink sectors.

Work with food retailers and producers, caterers, schools and others to promote consumer interest in and understanding of the environmental, health and social impacts of food, through better labelling and initiatives such as *Healthy Neighbourhood Shops* and *Fairtrade*.

Work with partners to disseminate information on access opportunities for local suppliers to sell to the public sector, including schools.

Consult during 2006 on legislative proposals to build on the progress of *Hungry for Success* by, for example, putting nutritional standards for school meals on a statutory footing and promoting the take up of school meals.

Work with Community Planning Partnerships to improve local food access in communities across Scotland.

Work through the Scottish Food and Health Council to ensure that sustainable development continues to complement policies on the health aspects of food.

Monitor progress in delivering food for a sustainable future as part of the reporting arrangements for this strategy.

- **The Scottish Organic Action Plan and Strategy Integration.**
The Forward Strategy for Scottish Agriculture, The Scottish Diet Action Plan, The Scottish Food and Drink Strategy, The National Transport Strategy and others would all benefit from a more integrated process with development of the Organic Action Plan. We would like to see a thorough revision of the FSSA developed after the next Scottish Parliamentary elections but carried out in association with the other processes. This would be an appropriate time to thoroughly review of the Scottish Organic Action Plan.

- **Scottish Rural Development Regulation/ Plan. Land Management Contracts.**
The Soil Association has been working with the Scottish Executive and has highlighted the opportunities that exist for the sector to contribute to the policy priorities of the Scottish Executive. Notably and most obviously these are the natural resource issues of climate change and energy use, soil quality enhancement, water condition, and farmland biodiversity. There is obviously the opportunity here for organic husbandry, through Land Management Contracts to deliver integrated management that not only delivers foodstuffs that are in increased demand but may also contribute to statutory obligations such Biodiversity Action plans and the The Water Framework Directive.
The Soil Association will also be submitting its views to the development of the other strands of the SRDP, Axes 1 and 3. The organic sector is recognised as leading in the development of local food systems with its emphasis on strategic economic localisation. The organic sector is ideally placed to continue this work and other areas of rural and urban development.

- **The Scottish Climate change programme.**
Organic husbandry depends on enhancement of soil condition by organic matter management and can therefore contribute significantly to Scotland's carbon storage capacity. Additionally organic husbandry avoids all of the serious emissions of nitrous oxide and Carbon dioxide associated with artificial fertiliser manufacture and application. These are serious GHG emissions. Organic farming can also potentially contribute to much enhanced on farm energy efficiency.

3. Organic Farming in Scotland.

Scottish Environment Link recently commissioned a report on the state of Scotland's agri-environment. The draft report is quoted below.

*Arable land and improved grassland under organic conversion or production decreased from 47,875 ha in 2003 (the year the Organic Action Plan (SEERAD 2003) was implemented) to 43,395 ha in the following year. In relation to the commitment and target of the Scottish Executive to increase the share of arable land and improved grassland Scotland's total organic area to 30 percent, this share has only slightly increased from 14 percent in 2003 to 16 percent 2004 (SEERAD 2005a). **Given these latest figures, a significant change in the amount of arable land and improved grassland converted to organic production is required (about a yearly increase of 4.66 percent in the share) to fulfil the commitment that these areas comprising 30% of Scotland's organic area by 2007.** However, with the decoupling of direct payments from production and the introduction of the Single Farm Payment (SFP) in 2005, farmers began to express more interest in converting to organic production. The next couple of years will show to what extent the introduction of the SFP has had a positive impact on the development of organic farming.*

– See Annex 1 for relevant quotes from the 2005 Action Plan report.

4. The Organic Aid (Scotland) Amendment Regulation 2005.

Soil Association Scotland would wish to see no obstacle placed in the way of passing the proposed amendment. We do have concerns over possible difficulties of application of the scheme particularly with regard to new entrants on short-term leases and other similar arrangements. However we also recognise that the amendment should proceed as rapidly as possible and that there are other arenas in which to discuss any concerns that we may have.

We would commend both the revised Conversion payments and the Maintenance Payments as a step in the right direction. We do have comments on the budget and the potential monitoring of the schemes. Below.

5. The OAS budget

The Rural Development spending plans as outlined in the Scottish Executive draft budget 2006/2007 shows that the organic aid scheme has in the past drawn down over £8 million pounds in support. This has decreased to £2.3m according to the 2005/2006 budget and is written in at £2.6m for the 2006/7 and 2007/8 spending plans.

Much of this decline is due to a drop out of extensive hill sheep farmers who drew down significant sums as a result of a badly constructed and imbalanced aid scheme.

It is hoped that the work carried out by SEERAD and the Organic Stakeholder Group in which the scheme has been largely reconstructed will deliver a better balance of farm type.

In addition the recent intense review of the Agri-environment funding rates has delivered better rates of support for organic farmers and growers both in the conversion phase and by means of a maintenance contract payment as detailed in the amendment. The Executive must ensure that the targets that have been set are reviewed on an annual

basis. We would assume that as the targets are achievable then it would be appropriate to revise the spending plans to align them with the targets that have been set and with the new revised payment rates. There is a danger that the already limited budget for Agri-environment schemes is further squeezed will have a damaging effect on growth of the organic sector. It is essential that sufficient funds are assigned to development of the sector.

The application for OAS funding is discretionary. It is very important that application of the discretionary mechanism is reviewed to ensure that the right criteria are utilised in assessing eligibility.

Main Points

- There has been a reduction in the total land area in organic production. This is primarily hill land from a legacy of a poorly constructed Organic Aid Scheme.
- Arable land and improved grassland under organic conversion or production decreased from 47,875 ha in 2003 (the year the Organic Action Plan (SEERAD 2003) was implemented) to 43,395 ha in the following year.
- In relation to the commitment and target of the Scottish Executive to increase the share of arable land and improved grassland Scotland's total organic area to 30 percent, this share has only slightly increased from 14 percent in 2003 to 16 percent 2004
- A significant change in the amount of arable land and improved grassland converted to organic production is required (about a yearly increase of 4.66 percent in the share) to fulfil the commitment that these areas comprising 30% of Scotland's organic area by 2007
- There has been a fall in the number of organic farmers supported by the organic aid scheme in line with the fall in area.
- The next couple of years will show to what extent the introduction of the SFP has had a positive impact on the development of organic farming.
- The ranking process for applicants to the maintenance scheme has excluded some applicants with proven organic farming abilities and track records.
- The reduction in organic hill land, whilst not in of itself catastrophic to the provision of a balanced Scottish organic supply chain, is concerning in terms of the numbers and speed of dropout and must be halted.
- The aim to increase the balance of arable, improved grassland that was planned is not likely to be achieved at the rate that was predicted.
- The new rates proposed and subject to approval under this proposed amendment are a step in the right direction but must be subject to further monitoring.
- The Organic Aid Scheme is discretionary and therefore in competition for funding with other agri-environment schemes. It is

also likely to be under pressure with potential further revision of the CAP.

- The outline budget as published, if indicative of spending plans, will not fulfil the objectives of the Organic Action Plan or the Partnership agreement.

Recommendations.

- The committee should endorse the amended regulation. It should also take the opportunity to endorse the approach that organic farmers subscribe to. That is to strengthen the association between a healthy natural environment and human health via healthy food.
- The committee should insist that the published budget is drafted in such a way as to allow sufficient funding even in draft form to fulfil the aspirations of the organic action plan.
- The committee should ensure that the aims and ambitions of the statutory and voluntary vehicles mentioned are adhered to in policy formulation. The organic sector is recognised as maintaining food production systems that are the gold standard in terms of sustainability. The sector should therefore be encouraged to develop and fulfil these opportunities. In particular further development should note the aspirations of the European Action Plan, The Scottish Organic Action Plan and Scotland's Sustainable Development Strategy. In particular natural resource issues of climate change and energy use, soil quality enhancement, water condition, and farmland biodiversity are implicated.
- The Organic Action Plan should be revised post 2007 in association with an integrated review of other appropriate strategies and programmes.
- The organic sector is also recognised as leading development of local food systems and local economies. The organic sector is ideally placed to continue this work and further play a leading edge role in integrated sustainable food systems.
- The committee should recognise that Land Managers operating to an organic whole farm system already adhere to a independently audited land management contract that should be given a higher profile in the further development of the Land Management Contract model being developed as part of the SRDP.
- The committee should recognise and promote the role that the *Food for Life* Initiative can play as the natural development of *Hungry for Success*. This need is highlighted in the Sustainable Development strategy and should therefore be adopted officially by the Executive as an indication of serious intent to deliver sustainable food systems.

ANNEX 1

Scottish Organic Action Plan Annual Report 2005

Number of Organic Aid Scheme Agreements in Place

- 2.4 The number of Organic Aid Scheme agreements increased substantially in the period between 31st March 1999 and 31st March 2000, with a large number of hill farmers joining the scheme at this time. The reduced number of agreements in 2005 reflects the majority of these producers reaching the end of their five year agreements.

TABLE 1: NUMBER OF AGREEMENTS IN FORCE AS AT 31 MARCH EACH YEAR

1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
13	24	35	54	139	383	509	627	662	608	453

Land covered by the Organic Aid Scheme

- 2.6 Due to the extended deadline for scheme applicants to register with an organic private inspection body, which was introduced in 2004, all 2004 applicants have not yet been fully processed and approved. Therefore the following 2005 figures are an estimate of hectares covered by the conversion and maintenance scheme as at 31st May 2005. The total land covered by the scheme is 171,206 hectares (134,486 rough grazing, 19,675 improved grassland, 16,961 arable and 84 fruit & vegetable).

- 2.7 Changes introduced to the scheme in 2004 were targeted towards attracting low ground conversion, with a view to these areas comprising 30% of Scotland's organic area by 2007. The 2005 figures demonstrate a reduction in rough grazing land entering the scheme and an increase in the proportion of quality arable land to 21% of Scotland's organic area.

TABLE 3: HECTARES UNDER AGREEMENT AS AT 31 MARCH EACH YEAR

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Rough Grazing	11727	12240	14215	18718	84074	185785	227962	296231	291103	225194
Improved Grassland	310	571	1135	2010	7479	17937	23846	30062	30175	25914
Arable	328	463	571	866	1633	8210	11776	15849	17700	17481
Total	12365	13274	15921	21593	93187	211932	263584	342142	338979	268588

Total Number of Organic Farmers in Scotland

- 2.8 The figures in Tables 1 to 3 refer to land and agreements in the Organic Aid Scheme. The following statistics reflect the total number of organic farmers in Scotland including those out with the Organic Aid Scheme. The figures are compiled by Defra and based on certifying bodies membership and inspections.
- 2.9 As at 1st January 2005 there were 632 producers and 166 processors and or importers in Scotland. The land in conversion is 15,199 ha and the fully organic land is 344,416 ha. The total of in conversion and fully organic land in Scotland has decreased by 3% on the previous year.

The level of interest in converting to organic farming in Scotland remained more or less static for most of 2004, but towards the end of the year, prior to and after the decoupling of statutory support from production and the introduction of the Single Farm Payment on 1 January 2005, farmers began to express more interest in converting. This led to an upsurge in telephone enquiries in early 2005 from farmers considering extensifying production and converting to organic. These farmers were mostly mixed arable/livestock farms. In the final quarter of the year the number of enquiries was double the number received in the equivalent period in the previous year.

SUBMISSION FROM NFU SCOTLAND

The general position of NFUS on agri-environment schemes as a whole is that entry should be non discretionary, i.e. all eligible projects should be supported. This would, of course, oblige an extension of funding to accommodate potential demand of uncertain size. (Note that applications, especially for the RSS, at present are tailored to the competitive system.) A potential funding device would be to secure European Commission approval for application of additional own resources, rather than modulation receipts, to RDR subjects outwith the SRDP. Note that there is an issue about accommodation of agri-environment spending if the EU obliges the loss of national modulation receipts from 2008.

NFUS supported the production of the Scottish Executive's Organic Action Plan as a means of ensuring that members who wish to undertake that form of production should have equitable conditions relative to producers elsewhere, both in terms of overall policy towards organic production and of market access. Support payments for organic conversion should be viewed in that wider context.

Conditions for organic producers in Scotland

NFUS has said previously that the way forward for the sector in Scotland must be to:

strengthen the supply chain;
improve information provision and its delivery to farmers; and
help farmers to take advantage of the Scottish brand and any organic premium.

However, there should also be effort to ensure that organic standards are appropriate for Scottish production conditions and that they enable farmers in this country to compete fairly with their EU counterparts. The terms under which produce may be described as organic in EU markets, including the UK, give rise to unfair trade. This is because organic standards, especially the period of qualification, varies. Access to markets as organic produce does not vary.

Within the wider context of the Forward Strategy for Scottish Agriculture, there needs to be development of ideas - and their implementation - that will increase demand for organic products (which are capable of being produced here). Among the supportive operating conditions which do not discriminate against domestic production, we welcomed the Scottish Executive's attention, through the Organic Stakeholders Group, to public procurement.

These expressions of support for the sector should not obscure the NFUS view that support for organic production should go no further than compensation for costs incurred and income foregone through any net effect of reduced output - as with other producers' participation in agri-environment schemes. We are not yet at a stage of development of EU agri-environment

policy where farmers may be paid for the value of environmental benefits delivered to the public.

The Union wishes its members who are engaged in organic production to be treated equitably, relative to organic farmers elsewhere in the UK, in the EU and in the rest of the world - but not to the extent of an unfair position compared to conventional farmers. All farming is organic – it is a matter of degree and/or bureaucratic process as to whether produce qualifies for an organic label. It would be unfair to discriminate in favour of certified “organic” producers

The OAS addresses the transition costs for switching to organic production. There are parallel aids in other EU Member States. However, other member states have, for some time, offered support payments to organic production beyond the transition period. The previous absence of such aid in Scotland was therefore discriminatory and placed members at a competitive disadvantage.

Capital projects

Recognising that organic producers who are not in RSS are providing environmental benefits, they should be eligible for environmental capital projects. However, proposals for such works should be treated on the same basis as RSS applicants for equivalent awards.

The position of capital works associated with primary production or with subsequent processing is of a different kind. Organic producers have the opportunity in the Objective One transition area of applying to the Agricultural Business Development Scheme (ABDS) and producers elsewhere may be eligible for assistance under the Farm Business Development Scheme (FBDS). In both areas, organic producers have been notably successful applicants for the Processing and Marketing Grants Scheme (PMGS). These should continue, without special favour.

Current Issues

On the details, of the present and prospective OAS schemes, our objective is that production under organic certification in Scotland should not be placed at a disadvantage, relative to producers elsewhere in Europe. To that end, we support:

- changing the number of entry points from 1 to 4 per annum, as per England and Wales;
- bringing payments forward because they are in practice being paid 12 to 18 months in arrears;
- a 5/10 year payment period with set rates, as per LMCs, to apply to RSS and OAS entrants from now on;
- compatibility of OAS support and RSS agreements on the same land;
- derogations for certification rules in the Highlands and Islands to allow more non-organic sourced animal feeds where supplies may be disrupted by bad weather.

SUBMISSION FROM THE SCOTTISH AGRICULTURAL COLLEGE

Changes in payment rates

The main changes being proposed in this amendment relate to the payment rates, particularly the rates for the Maintenance Payment Scheme. The new rates will be welcomed by all organic farmers. There are a number of reasons why this increase in payment rates is justified:

a) For a number of years, some sections of the organic sector in Scotland have been in a fragile state, with some farmers leaving the sector. The total number of registered producers has fallen from 707 in December 2002 to 601 at end September 2005, a net drop of 106 (Younie, 2003, 2004, 2005). The total area of registered land has fallen from 424,618ha at end December 2002 to 290,345 ha at end September 2005, a fall of 134,273 ha. This has resulted, at least in part, from a failure of the market, e.g. poor price premiums, lack of availability of local processors and market outlets resulting in high transport costs or sale of organic product into the conventional food chain at conventional prices. Organic food sales have increased in the final quarter of 2005, which have helped the grain, milk, finished beef and finished lamb sectors, but not the store stock sectors, and poor market infrastructure remains a problem. Costs have also increased particularly since the change in the derogation permitting the feeding of some non-organic livestock feed. This has been reduced from 10% to 5% for ruminants, and from 20% to 15% for non-ruminants, both on an annual basis. Further reductions in these allowances will be made from 31 December 2007.

These factors affect the livestock sector in particular (poor or non-existent premium prices for milk, store cattle and lambs, lack of local volume processors for finished stock) and so the improved maintenance payments for improved grassland and for rough grazing will be particularly welcome. The livestock sector in Scotland has a stratified structure, in the organic as well as in the non-organic sectors, and so in order to ensure a buoyant and sustainable organic livestock sector it is important that SEERAD policy should ensure a satisfactory balance of hill, upland and lowground organic farmers, rather than just focusing on lowground farms. The structural changes currently taking place in the organic sector suggest that it is primarily hill farms which are dropping out of organic production. A crude calculation of average farm size from the figures in the previous paragraph indicates that average farm size of those leaving the sector is 1267ha i.e. relatively large (probably hill) farms.

b) The proposed new payment rates will bring Scottish organic producers up to parity with producers in England in terms of support. This is vitally important, given that the main market for Scottish produce is in England, and that Scottish producers have the additional cost of transporting produce (often primary product rather than processed product, as indicated above), and very

often of transporting inputs such as livestock feed. The new payments will help to maintain the competitiveness of Scottish producers, therefore.

c) The new payment rates also provide recognition of the substantial public goods provided by organic farmers, particularly environmental benefits (Shepherd *et al*, 2003, Fuller *et al*, 2005; Hole *et al*, 2005). In addition to the potential wildlife benefits it has been estimated by Pretty *et al* (2000) that the external costs of agriculture (e.g. contamination of drinking water with pesticides and nitrates, damage to hedgerows, wildlife, soil erosion, etc) maybe of the order of £130-140/ha higher for conventional than for organic farming (Anon, 2000, Pretty *et al*, 2000).

d) The improved payment rates will also provide compensation for the additional management skill required by organic farmers, and for the additional paperwork involved in the annual process of inspection and certification. Evidence for the existence of these additional burdens has recently been obtained from a survey of organic producers in Central Scotland who were reaching the end of their five-year SEERAD OAS conversion agreement. Hill and upland farmers in particular found that management skills and paperwork involved in the conversion to organic farming were greater than they had anticipated (Clay, 2005).

References:

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SUBMISSION FROM SCOTTISH ORGANIC PRODUCERS ASSOCIATION

SOPA is satisfied with the new regulations for Organic Aid in Scotland, but notes below a few concerns raised by our members as to the supply of organic produce from Scotland meeting the ever growing organic demand. There is increased demand with absolutely no guarantee of a premium for the product to the producer.

1. Probably Delay in grant application/payment is the single biggest frustration to SOPA producers. Applications have to be in before the end of March 2006, producers will be informed of their success or otherwise onto the scheme by September 2006 but will not receive any payment until Autumn of 2007! (A reduction of the period following a successfully application from 12 months to 3 months as with DEFRA's OELS scheme is important).
2. If more application windows were available it would ease the burden on farmers, advisers and SEERAD staff. If a producer decides he would like to start into organic conversion in May of a year they have to wait until the following Spring until the OAS application forms are published (In 2005 & 2006 it has been late January or February with a closing date of the 31st March). This can affect the enthusiasm to go organic by losing the impetus due to the delay - IMPORTANT the ground can not be entered into organic conversion before an application is made to SEERAD.
3. The length of time involved in the application process prevents tenant farmers on Short Duration Tenancies from entering the agri-environment schemes - this has partially been addressed for 2006 if a Landowner agrees to act as guarantor for the completion of a 5 year scheme. This situation would also be helped if there were more application windows.
4. The limit of 300ha for a combination of arable, fruit & vegetable and improved pasture land makes expansion and conversion of extra land more difficult in Scotland (no area limit for DEFRA with OELS). Production of vegetables by its nature requires large rotations and high cost machinery and with cereals these are the types of crops the market needs to be grown here in Scotland. But with a lack of suitable land in Scotland and lack of incentive once a producer has reached the 300ha limit the only option is to rent land south of the Border. Organic cereals have already become in short supply this New Year and the 2006 harvest is still seven months away.
5. The new regulation show good commitment to upland producers who in 2005 felt that their store production must be irrelevant to the expanding organic meat market due to the monies available through OAS at five hundred pound per unit. The supply chains' need for 'store' producers and the environmental benefit of having large areas of land under organic production can not be over emphasized.

6. The Maintenance scheme being discretionary seems harsh when producers have already demonstrated their commitment to organic production by producing organically under SOPA's organic certification for 5 years previously.

7. Small producers have a valuable part to play in the supply of products into the local market place, but because certification has a minimal cost there is too much of a disincentive for producers with small holdings to become certified as organic. Support for smaller producers and producers in more remote areas has to be considered due to the beneficial contribution they make to their local communities and local markets.

Just to add once again that SOPA representatives will be happy to discuss these points further with the Committee.

SUBMISSION FROM SCOTTISH ENVIRONMENT LINK

Scottish Environment LINK and organic farming

Scottish Environment LINK (LINK) is the umbrella forum for Scotland's voluntary organisations working together to care for and improve Scotland's heritage for people and nature. Its member bodies have interests spanning nature conservation, recreation, landscape and archaeology.

LINK member organisations have over 500 000 members across Scotland and have much expertise in farming. Member bodies farm over 70 000 ha for biodiversity, landscape and rural development objectives directly, and through payment to farmers and crofters. We also work with farming and the wider environment by providing advice to land managers, promoting education to schools and colleges, undertaking policy research that places agriculture in the context of sustainable development, and developing dialogue between stakeholders.

LINK recently commissioned an independent audit, "The State of Scotland's Farmed Environment 2005". The draft final report argues:

*"Arable land and improved grassland under organic conversion or production **decreased** from 47,875 ha in 2003 (the year the Organic Action Plan (SEERAD 2003) was implemented) to 43,395 ha in the following year.*

*In relation to the commitment and target of the Scottish Executive to increase the share of arable land and improved grassland in Scotland's total organic area to 30 percent, this share has only slightly increased from 14 percent in 2003 to 16 percent 2004 (SEERAD 2005a). **Given these latest figures, a significant change in the amount of arable land and improved grassland converted to organic production is required (about a yearly increase of 4.66 % in the share) to fulfil the commitment that these areas comprising 30% of Scotland's organic area by 2007.***

However, with the decoupling of direct payments from production and the introduction of the Single Farm Payment (SFP) in 2005, farmers began to express more interest in converting to organic production. The next couple of years will show to what extent the introduction of the SFP has had a positive impact on the development of organic farming."¹

The Organic Aid (Scotland) Amendment Regulation 2005

Scottish Environment LINK would wish to see no obstacle placed in the way of passing the proposed amendment. We do, however, have concerns over

¹ The State of Scotland's Farmed Environment 2005, Macaulay Institute/ LINK, Draft Final Report.

possible difficulties of application of the scheme. In particular we are concerned about competition for what is likely to be very limited funding with other agri-environment schemes, and would not want to see these jeopardised. We are also aware of issues with regard to new entrants on short-term leases and other similar arrangements. However we also recognise that the amendment should proceed as rapidly as possible and that there are other arenas in which to discuss any concerns that we may have. We would commend both the revised Conversion payments and the Maintenance Payments

LINK Recommendations

1. The committee should endorse the amended regulation. It should also take the opportunity to endorse the approach that organic farmers subscribe to. That is to strengthen the association between a healthy natural environment and healthy food.
2. The committee should insist that the published budget is drafted in such a way as to allow sufficient funding even in draft form to fulfil the aspirations of the Organic Action Plan.
3. The committee should ensure that the aims and ambitions of the statutory and voluntary vehicles mentioned are adhered to in policy formulation. The organic sector is recognised as maintaining food production systems that are the gold standard in terms of sustainability. The sector should therefore be encouraged to develop and fulfil these opportunities. In particular further development should note the aspirations of the European Action Plan, The Scottish Organic Action Plan and Scotland's Sustainable Development Strategy. Natural resource issues of climate change and energy use, soil quality enhancement, water condition, and farmland biodiversity are particularly implicated.
4. The Organic Action Plan should be revised post 2007 in association with an integrated review of other appropriate strategies and programmes.
5. The organic sector should be recognised as leading the development of local food systems and local economies. The organic sector is ideally placed to continue this work and further play a leading edge role in integrated sustainable food systems.
6. The committee should recognise that land managers operating to an organic whole farm system already adhere to a independently audited land management contract that should be given a higher profile in the further development of the Land Management Contract model being developed as part of the SRDP.
7. The committee should recognise and promote the role that the Food for Life Initiative can play as the natural development of Hungry for Success. This need is highlighted in the Sustainable Development strategy and should

therefore be adopted officially by the Executive as an indication of serious intent to deliver sustainable food systems.

8. The Amendment should take account of the policy context in which organic farming in Scotland sits, including:
The European Organic Action Plan, The Scottish Organic Action Plan 2003, The Partnership agreement 2003, The Sustainable Development Commission Choosing Our Future: Scotland's Sustainable Development Strategy 2005, The Forward Strategy for Scottish Agriculture, The Scottish Diet Action Plan, The Scottish Food and Drink Strategy, The National Transport Strategy, the Scottish Rural Development Plan, and the Land Management Contract delivery mechanism, and The Scottish Climate change programme.

Background information

1. There has been a reduction in the total land area in organic production. This is primarily hill land from a legacy of a poorly constructed Organic Aid Scheme.

2. Arable land and improved grassland under organic conversion or production decreased from 47,875 ha in 2003 (the year the Organic Action Plan (SEERAD 2003) was implemented) to 43,395 ha in the following year.

3. In relation to the commitment and target of the Scottish Executive to increase the share of arable land and improved grassland Scotland's total organic area to 30 percent, this share has only slightly increased from 14 percent in 2003 to 16 percent in 2004.

4. A significant change in the amount of arable land and improved grassland converted to organic production is required (about a yearly increase of 4.66 percent in the share) to fulfil the commitment that these areas comprising 30% of Scotland's organic area by 2007

5. There has been a fall in the number of organic farmers supported by the organic aid scheme in line with the fall in area.

6. The next couple of years will show to what extent the introduction of the SFP has had a positive impact on the development of organic farming.

7. The ranking process for applicants to the maintenance scheme has excluded some applicants with proven organic farming abilities and track records.

8. The reduction in organic hill land, whilst not in of itself catastrophic to the provision of a balanced Scottish organic supply chain, is concerning in terms of the numbers and speed of dropout and must be halted.

9. The aim to increase the balance of arable, improved grassland that was planned is not likely to be achieved at the rate that was predicted.

10. The new rates proposed and subject to approval under this proposed amendment are a step in the right direction but must be subject to further monitoring.

SSI DESIGNATION FORM

SSI Title & No:	The Plant Health (Scotland) Order 2005, (SSI 2005/613)						
Responsible Minister	Rhona Brankin, Deputy Minister for Environment and Rural Development						
Standing Order	Affirmative	10.6.1(a)		Negative	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		Other	NL		NP	
Lead Committee	Environment and Rural Development		Other Committee				
Purpose of Instrument	This Order revokes and consolidates, with amendments, the Plant Health (Great Britain) Order 1993 as it applies to Scotland. The Order also provides for the implementation of a number of European instruments, namely, Council Directive 2002/89/EC, Commission Directives 2004/103/EC, 2004/105/EC, 2005/16/EC and 2005/17/EC, and Commission Decision 2005/260/EC.						

Laid Date	1 st December 2005	40 day date	25 th January 2006
1st SLC Meeting	13 th December 2005	20 day date	21 st December 2005
Lead Committee Report Due	16 th January 2006	Other Committee Report Due	

SE Contact	Bob King, ext. 41489
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule		PO Letter dated		PO Letter received	
Revocations	Revokes	See Schedule 19		Partially Revokes				
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives				
Additional Information	Transposition note							

SSI DESIGNATION FORM

SSI Title & No:	The Rural Stewardship Scheme (Scotland) Amendment Regulations 2005, (SSI 2005/620)					
Responsible Minister	Rhona Brankin, Deputy Minister for Environment and Rural Development					
Standing Order	Affirmative	10.6.1(a)		Negative	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		Other	NL		NP
Lead Committee	Environment and Rural Development		Other Committee			
Purpose of Instrument	These Regulations provide for the implementation of Commission Regulation EC 817/2004 on support for rural development from the European Agricultural Guidance and Guarantee Fund.					

Laid Date	1 st December 2005	40 day date	25 th January 2006
1st SLC Meeting	13 th December 2005	20 day date	21 st December 2005
Lead Committee Report Due	16 th January 2006	Other Committee Report Due	

SE Contact	Ruth Gilpin, ext. 46651
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule		PO Letter dated		PO Letter received	
Revocations	Revokes			Partially Revokes				
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives	EC/817/2004			
Additional Information								

Subordinate Legislation Committee

Extract from the 48th Report, 2005 (Session 2)

Subordinate Legislation

The Committee reports to the Parliament as follows—

Instruments subject to annulment

The Plant Health (Scotland) Order 2005, (SSI 2005/613)

1. It appeared to the Committee that the requirement in articles 42(1) and 43(1) to confirm a notification in writing assumed that the original notice would only be given orally. An explanation was requested from the Executive.
2. The response from the Executive indicated that it is usual for such a notice to be given orally and for this reason the Executive does not consider that it would be appropriate to require the first notification to be given in writing.
3. **The Committee notes the Executive's explanation of the way in which notification works in practice but considers that this could have been clearer in the drafting of articles 42(1) and 43(1). The Committee reports the instrument to the lead Committee and Parliament on the grounds of defective drafting.**
4. The Committee also sought clarification of the meaning of article 7(3) as it appeared to the Committee that there may be some words missing.
5. The Executive has provided an explanation of the intention of article 7(3) which sets out the conditions that would require a phytosanitary certificate to be issued. The Executive considers that the wording of the article is clear.
6. **The Committee considers that the meaning of the provision remains difficult to understand and draws the instrument to the attention of the lead Committee and Parliament on the grounds that its drafting could be clearer.**

The Rural Stewardship Scheme (Scotland) Amendment Regulations 2005, (SSI 2005/620)

7. The Committee asked for explanation of why it was thought necessary to include a reference to these Regulations in the definition of "post-2003 entrant" in regulation 3(e).
8. The Executive explains that the definition is intended to clarify that a post-2003 entrant means, in terms of the principal Regulations, a person who entered

an undertaking under the Rural Stewardship Scheme from 1st January 2003, covering both applicants from 1st January 2003 to now and also future applicants to the Scheme. The wording of the definition seeks to ensure that it could not be interpreted as merely referring to applicants from 1st January 2003 to now.

9. It is not clear to the Committee in what way a provision that referred to a person who entered the scheme on or after 1 January 2003 could be construed to exclude applicants under the present amending instrument.

10. The Committee therefore draws the instrument to the lead Committee on the grounds of defective drafting.

11. The Committee also asked for clarification of the definition in regulation 10(b), particularly with regard to the purpose and effect of the words “at least”.

12. The Executive has explained that the purpose of the provision is that a site should be planted with seed of local provenance but, where this is not possible, it will be acceptable to plant seed which is not of local provenance, but which must originate from within the United Kingdom.

13. The Committee notes the explanation from the Executive and reports the instrument to the lead Committee and Parliament on the grounds that the meaning of regulation 10(b) could be clearer.

ANNEX

The Plant Health (Scotland) Order 2005, (SSI 2005/613)

On 13th December the Committee asked the Executive re the following matters-

“The Committee notes that articles 42(1) and 43(1) impose a duty of notification to the Scottish Ministers of certain matters and that as soon as possible after giving the notice to “confirm it in writing”. It seems to the Committee that this assumes the original notice will be given orally when it could be given in writing. The Executive is asked for an explanation.

The Committee also seeks clarification of the meaning of article 7(3). It appears to the Committee that there may be some words missing.”

The Scottish Executive responds as follows:

In relation to the notification duty in articles 42(1) and 43(1), the Committee’s assumption about the original notice being given orally is correct. It is the usual practice for the person on whom notification is incumbent to seek advice from SEERAD in respect of the plant pest to which notification relates, and this request is invariably made by telephone in the first instance. For this reason, it would not be appropriate to require this first notification to be given in writing, since that would be neither practical nor expeditious in the circumstances.

The wording of article 7(3) sets out the conditions which would require a phytosanitary certificate to be issued where the status of relevant material consigned to Scotland via any third country by way of transit is changed. There are three distinct variables here which could bring about that change of status, *viz*:

- exposure of the material to infection or contamination by any plant pest;
- where the material is not the same material specified in the original phytosanitary certificate which accompanies it; or
- where it is material which has been processed so as to change its nature.

The Executive is of the view that the wording of article 7(3) is clear in its intent and adequately conveys the meaning of the obligation set out therein.

The Rural Stewardship Scheme (Scotland) Amendment Regulations 2005, (SSI 2005/620)

On 13th December the Committee asked the Executive re the following matters-

“In the definition of “post-2003 entrant” in regulation 3(e) it is not clear to the Committee why it is thought necessary to include a reference to the current Regulations and explanation is requested.

The definition in regulation 10(b) is unclear, particularly with regard to the purpose and effect of the words “at least”. The Committee therefore asks the Executive for clarification of this point.”

The Scottish Executive responds as follows:

The definition of “post-2003 entrant” in regulation 3(e) includes a reference to the current Regulations because this definition is being inserted into the principal Regulations (S.S.I. 2001/300) as amended. The definition is intended to clarify that a post-2003 entrant means, in terms of the principal Regulations, a person who entered an undertaking under the Rural Stewardship Scheme from 1st January 2003 onwards. This covers both applicants from 1st January 2003 to now, and also future applicants to the Scheme. The wording of the definition seeks to ensure that it could not be interpreted as merely referring to applicants from 1st January 2003 to now.

The definition in regulation 10(b) of “seed of at least UK stock” is required because regulation 7(d) inserts this phrase into item 8 c of Schedule 2 (Management Activities) to the principal Regulations. Management activity No. 8 concerns the “creation and management of species rich grassland” and 8 c, as amended, will now read:

“The site must be sown with a low productivity grass and herb mix agreed with the Scottish Ministers to create a new sward. Seed of local provenance must be used wherever possible and must be seed of at least UK stock”.

The purpose and effect of this is that a site should be planted with seed of local provenance but, where this is not possible, it will be acceptable to plant seed which is not of local provenance, but such seed must originate from within the United Kingdom and not from abroad.

SSI DESIGNATION FORM

SSI Title & No:	The Avian Influenza (Preventive Measures) (Date for Identification of Poultry Premises) (Scotland) Regulations 2005, (SSI 2005/625)						
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development						
Standing Order	Affirmative	10.6.1(a)		Negative	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		Other	NL		NP	
Lead Committee	Environment and Rural Development		Other Committee				
Purpose of Instrument	These Regulations partially implement Commission Decision 2005/734/EC and specify the date by which a person who keeps 50 or more poultry on commercial poultry premises must notify information relating to those premises to the Scottish Ministers.						

Laid Date	8 th December 2005	40 day date	1 st February 2006
1st SLC Meeting	13 th December 2005	20 day date	13 th January 2006
Lead Committee Report Due	23 rd January 2006	Other Committee Report Due	

SE Contact	Neil Ritchie, ext. 44459
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule	✓	PO Letter dated	7 th December 2005	PO Letter received	✓
Revocations	Revokes				Partially Revokes			
Executive Note	✓	Regulatory Impact Assessment		European Regulations/Directives	2004/734/EC 2005/745/EC			
Additional Information								

Subordinate Legislation Committee

Extract from the 47th Report, 2005 (Session 2)

Subordinate Legislation

The Committee reports to the Parliament as follows—

Instruments subject to annulment

The Avian Influenza (Preventive Measures) (Date for Identification of Poultry Premises) (Scotland) Regulations 2005, (SSI 2005/625)

1. Defects in the drafting of these Regulations and the Regulations they amend were notified to the Executive. The Executive has acknowledged these defects and has undertaken to address them in an instrument that will be forthcoming shortly.
2. **The instrument is drawn to the attention of the lead Committee and Parliament on the grounds of defective drafting.**

SSI DESIGNATION FORM

SSI Title & No:	The Products of Animal Origin (Third Country Imports) (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/645)						
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development						
Standing Order	Affirmative	10.6.1(a)		Negative	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		Other	NL		NP	
Lead Committee	Environment and Rural Development		Other Committee				
Purpose of Instrument	These Regulations provide for the implementation of Commission Decision 2005/832/EC laying down measures to protect the EC from the spread of the Highly Pathogenic Avian Influenza Virus by restricting the import from certain third countries of live birds and products derived from birds.						

Laid Date	15 th December 2005	40 day date	8 th February 2006
1st SLC Meeting	20 th December 2005	20 day date	20 th January 2006
Lead Committee Report Due	30 th January 2006	Other Committee Report Due	

SE Contact	John Peerless, ext. 46555
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule	✓	PO Letter dated	15 th December 2005	PO Letter received	✓
Revocations	Revokes				Partially Revokes			
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives	2005/760/EC 2005/862/EC			
Additional Information								

SSI DESIGNATION FORM

SSI DESIGNATION FORM

SSI Title & No:	The Avian Influenza (Preventive Measures) (Scotland) Amendment Regulations 2005, (SSI 2005/646)						
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development						
Standing Order	Affirmative	10.6.1(a)		Negative	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		Other	NL		NP	
Lead Committee	Environment and Rural Development		Other Committee				
Purpose of Instrument	These Regulations amend SSI 2005/530 to provide for the implementation of Commission Decision 2005/855/EC.						

Laid Date	15 th December 2005	40 day date	8 th February 2006
1st SLC Meeting	20 th December 2005	20 day date	20 th January 2006
Lead Committee Report Due	30 th January 2006	Other Committee Report Due	

SE Contact	Neil Ritchie, ext. 44459
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule	✓	PO Letter dated	15 th December 2005	PO Letter received	✓
Revocations	Revokes				Partially Revokes			
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives	2005/855/EC 2005/734/EC 2005/745/EC			
Additional Information								

SSI DESIGNATION FORM

SSI DESIGNATION FORM

SSI Title & No:	The Avian Influenza (Preventive Measures in Zoos) (Scotland) Amendment Regulations 2005, (SSI 2005/647)						
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development						
Standing Order	Affirmative	10.6.1(a)		Negative	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		Other	NL		NP	
Lead Committee	Environment and Rural Development		Other Committee				
Purpose of Instrument	These Regulations correct an error in regulation 8 by reducing the term of imprisonment, on summary conviction, for offences under the principal Regulations for six months to three months.						

Laid Date	15 th December 2005	40 day date	8 th February 2006
1st SLC Meeting	20 th December 2005	20 day date	20 th January 2006
Lead Committee Report Due	30 th January 2006	Other Committee Report Due	

SE Contact	Neil Ritchie, ext. 44459
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule	✓	PO Letter dated	15 th December 2005	PO Letter received	✓
Revocations	Revokes				Partially Revokes			
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives	2005/855/EC 2005/734/EC 2005/745/EC			
Additional Information								