SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

INTRODUCTION

Purpose

1. This supplementary Memorandum has been prepared by the Scottish Executive to explain changes to the powers to make subordinate legislation under the Animal Health and Welfare (Scotland) Bill made as a consequence of amendments at Stage 2. It describes the purpose of each amended provision conferring powers to make subordinate legislation. This supplementary Memorandum should be read in conjunction with the original Memorandum.

Amendments to delegated powers

2. During the Stage 2 proceedings, a number of amendments were made altering delegated powers in both the Animal Health and Animal Welfare parts of the Bill. In particular, in Part 1 of the Bill, the parliamentary procedure relating to certain orders making provision for compensation was amended following recommendations by the Subordinate Legislation Committee. In addition, sections 1, 2, 3, and 8 providing class 3 procedure for certain orders were also amended to provide that such orders must include an explanation of why they had been made.

3. The rationale for each of the changes is set out below.

PART 1: ANIMAL HEALTH

Section 1 – Slaughter for preventing spread of disease

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: for paragraph 6, affirmative procedure of the Scottish Parliament (class 1 or, if an emergency order, class 3) for paragraph 8, negative resolution of the Scottish Parliament (class 5)

4. A new sub-paragraph (3) has been added to paragraph 8 of inserted Schedule 3A. It provides that an order, made under paragraph 8(1) of Schedule 3A, prescribing the amount of compensation for animals slaughtered under any of the powers of slaughter in Schedule 3A, is subject to class 5 (negative procedure) rather than class 7 procedure. The latter procedure does
not require the instrument to be laid before the Parliament. If any of the powers of slaughter in Schedule 3A were to be exercised by Scottish Ministers, compensation orders would be subject to Parliamentary scrutiny.

5. A new sub-paragraph (6A) has been added to paragraph 9 of inserted Schedule 3A. It requires that an emergency order, to specify diseases of animals and to describe animals which may be slaughtered under paragraph 6 of Schedule 3A, must include a description of the emergency giving rise to the need to use the emergency procedure for the making of the order.

6. Both of these changes were made in response to recommendations by the Subordinate Legislation Committee to enhance the level of Parliamentary scrutiny.

Section 2 – Slaughter of treated animals

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: for section 16B(2), affirmative procedure of the Scottish Parliament (class 3)
for section 16B(6), negative resolution of the Scottish Parliament (class 5)

7. A new subsection (7A) has been added to inserted section 16B. It provides that an order, made under section 16B(6) prescribing the amount of compensation for animals slaughtered under section 16B, is subject to class 5 (negative procedure) rather than class 7 procedure. The latter procedure does not require the instrument to be laid before the Parliament. If the slaughter powers in section 16B(4) were to be exercised by Scottish Ministers, compensation orders would be subject to Parliamentary scrutiny.

8. A new subsection (11A) has been added to inserted section 16B. Section 16B provides for the slaughter of treated or vaccinated animals in order to secure (or to contribute to the securing of) disease free status. Subsection (2) provides that the Scottish Ministers may by order specify diseases of animals in addition to those specified in subsection (1) to which this power of slaughter will apply. The new subsection (11A) will require that such an order must refer to the circumstances giving rise to the need for that order.

9. Both of these amendments were made in response to recommendations by the Subordinate Legislation Committee to enhance the level of Parliamentary scrutiny.

Section 3 – Biosecurity codes

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative procedure of the Scottish Parliament (class 1 or if an emergency order class 3)

10. Subsection (2) of inserted section 6C has been amended to provide that biosecurity codes may be made to prevent the interspecies spread of causative agents of diseases of animals
This document relates to the Animal Health and Welfare (Scotland) Bill as amended at Stage 2
(SP Bill 47A)

(meaning any mammal except man) as well as the spread of causative agents of disease among
particular species or to humans. Causative agents in relation to a disease are defined in
subsection (3) as including any virus, bacterium and any other organism or infectious substance
which may cause or transmit the disease.

11. Inserted section 6D(1) specifies when an “emergency” biosecurity order, subject to class
3 procedure, can be made. Subsection (1) has been amended so as to insert the word “other”.
This is a simple drafting improvement.

12. A new subsection 6D(6) has also been added to require that an emergency biosecurity
order must include a description of the emergency giving rise to the need to use the emergency
procedure for the making of the order. This amendment was in response to recommendations by
the Subordinate Legislation Committee to enhance the level of Parliamentary scrutiny when
class 3 orders are made.

Section 5 – Animal gatherings

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution procedure of the Scottish Parliament
(class 5)

13. Subsection (3) of inserted section 8A has been amended to extend the definition of
“animal gathering” to include the gathering of any species of bird. Under section 8A, as
introduced, the Scottish Ministers could licence the gathering of poultry (meaning domestic
fowl, turkeys, geese, ducks, guinea fowls, pigeons, pheasants and partridges). This has now been
extended to any species of bird in response to concerns relating to avian influenza and the
susceptibility of all species of birds to it to varying degrees.

14. A new subsection (6A) has been added to section 8A. This non-Executive amendment
provides that an order made under subsection (1) of section 8A must prohibit the charging of any
fee in connection with the granting or renewal of a licence for the holding of an animal gathering
and for any disease risk assessment of an animal gathering.

15. A new subsection (6B) has also been added to clarify that an order made under subsection
(1) may include measures for preventing the spread of disease. This amendment has been made
to remove any doubt regarding the nature of conditions which may be imposed on a licence.

Section 7 – Seizure of carcases etc.

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: no procedure (class 7)

16. Inserted section 36ZA(2) has been amended to extend the range of items which may be
seized by order made under subsection (1). As introduced, subsection (2) provided that an order
under subsection (1) could provide for the seizure of carcases and of anything obtained from or
produced by an animal. This has now been extended to include those items in relation to a bird or amphibian.

17. Inserted section 36ZB has also been amended to extend the powers of the Scottish Ministers to pay compensation for items seized, by providing that compensation may be paid for the seizure of the carcases of, things obtained from or produced by birds or amphibians.

18. These changes reflect the wider focus of the Bill on preventing the spread of disease and provide that the seizure and compensation powers cover the same range of creatures as the slaughter powers.

Section 8 – Specified diseases

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative procedure of the Scottish Parliament (class 3)

19. A new subsection (7) has been added to inserted section 28I to require that an order, made under section 28I(2) modifying the list of specified diseases in inserted Schedule 2B to the 1981 Act, must also state the reasons for making such an order to modify the list.

20. This amendment was in response to recommendations by the Subordinate Legislation Committee to enhance the level of Parliamentary scrutiny when class 3 orders are made.

Section 10 – Livestock genotypes: specification, breeding and slaughter

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument (section 36O) and order made by statutory instrument (section 36V)
Parliamentary procedure: negative resolution of the Scottish Parliament (class 5) (for both 36O and 36V)

21. Section 36O, inserted by section 10 of the Bill, has been amended to provide that the regulation-making powers in section 36O for ascertaining genotypes and identifying livestock are exercisable by statutory instrument. As introduced, section 36W(1) provided that powers to make orders and regulations under Part 2B of the 1981 Act were exercisable by statutory instrument. Section 91(5) of the 1981 Act already provides that powers to make orders are exercisable by statutory instrument and as such it was not necessary to provide that orders under Part 2B were exercisable by statutory instrument. Accordingly, section 36O was amended to provide that the regulation-making powers it confers were exercisable by statutory instrument and section 36W was amended to remove subsection (1) as technically redundant in consequence.

22. Section 36W has been further amended to provide that compensation orders made under section 36V(1) will be subject to annulment in pursuance of a resolution of the Scottish Parliament. As introduced, section 36W(2) provided that all statutory instruments made under the Part 2B powers, except compensation orders, were to be subject to negative procedure.
Compensation orders were to be made under class 7 procedure and would not therefore require to be laid before the Scottish Parliament. Removing this exception now provides that all statutory instruments made under Part 2B, including compensation orders, will be subject to negative procedure (class 5). This amendment was in response to recommendations by the Subordinate Legislation Committee to enhance the level of Parliamentary scrutiny in relation to compensation orders.

PART 2: ANIMAL WELFARE

Section 18 – Mutilation

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure of the Scottish Parliament (class 1)

23. Section 18(3) as introduced provided that the offences created by section 18(1) and (2) would not apply in such circumstances as the Scottish Ministers specified. This was not considered to be broad enough to exempt the full range of procedures which were intended to be exempt from these offences. Accordingly, section 18 has been amended by the insertion of subsection (5)(b) which provides that the offences do not apply in relation to a procedure which is carried out for a purpose which, in such a manner as, or in accordance with such conditions as the Scottish Ministers may by regulations specify. Subsections (5)(a) and (c) restate provisions that had been placed elsewhere in the section as introduced.

24. Section 18 has been further amended by the insertion of subsection (6) which provides that Scottish Ministers are required to undertake a consultation with people who represent relevant interests and other persons who they consider to be appropriate before they make regulations under subsection (5). These regulations will stipulate the procedures which will continue to be permitted. It was therefore considered appropriate that the exercise of the regulation-making powers should be subject to a statutory consultation requirement to ensure that the wide variety of interested parties have the opportunity to express their views.

Section 25 – Prohibition on keeping certain animals

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure of the Scottish Parliament (class 1)

25. Subsection (2) has been amended to exclude from the term “other premises” the premises of a zoo, to which the Zoo Licensing Act 1981 applies and which is licensed under that Act. This amendment was included following concerns raised during the Stage 1 process that zoos should not be subject to duplicate regulation.

26. A new subsection (4A) has been added which requires that the Scottish Ministers must have regard to the likelihood of adequate care being available for animals in the premises concerned before prohibiting the keeping of animals on such premises. This amendment which informs the use of the regulation-making powers was in response to concerns raised by the
Subordinate Legislation Committee regarding the width of the power conferred on the Scottish Ministers under this section.

**Section 34 – Animal welfare codes**

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<td>Parliamentary procedure:</td>
<td>laid before and approved by a resolution of the Scottish Parliament</td>
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27. Section 34(1) confers on the Scottish Ministers a power to make, revise and revoke codes of practice providing practical guidance in respect of the provisions of Part 2 of the Bill or regulations made under it. Following a recommendation from the Subordinate Legislation Committee, the Bill has been amended to ensure that draft affirmative procedure will apply to the revocation (as well as the making) of an animal welfare code.

**Section 46 – Regulations**

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<td>Parliamentary procedure:</td>
<td>affirmative procedure of the Scottish Parliament (class 1)</td>
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28. Section 46 provides details on the regulation-making powers in Part 2 of the Bill. As introduced, subsection (2)(b) provided that regulations may make different provision for different purposes. This has been amended to provide that different provision may be made also for different cases and classes of case. This was considered useful for the avoidance of doubt over how the regulation-making powers may be used with the required flexibility.
This document relates to the Animal Health and Welfare (Scotland) Bill as amended at Stage 2 (SP Bill 47A)

ANIMAL HEALTH AND WELFARE (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

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