RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

AGENDA

1st Meeting, 2012 (Session 4)

Wednesday 11 January 2012

The Committee will meet at 10.00 am in Committee Room 4.

1. Declaration of interests: Claudia Beamish and Margaret McDougall will be invited to declare any relevant interests.

2. Decision on taking business in private: The Committee will decide whether to take item 5 and future consideration of evidence heard on the Agricultural Holdings (Amendment) (Scotland) Bill in private.

3. Agricultural Holdings (Amendment) (Scotland) Bill: The Committee will take evidence on the Bill at Stage 1 from—

   David Barnes, Deputy Director, Fiona Leslie, Land Tenure Branch Policy Officer, Agriculture and Rural Development Division, and Caroline Mair, Solicitor, Rural Affairs, Directorate for Legal Services, Scottish Government.

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

   the Control of Volatile Organic Compounds (Petrol Vapour Recovery) (Scotland) Regulations 2011 (SSI 2011/418);
   the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Revocation Regulations 2011 (SSI 2011/428);
   the Police (Retention and Disposal of Motor Vehicles) (Scotland) Amendment Revocation Regulations 2011 (SSI 2011/429).

5. Agricultural Holdings (Amendment) (Scotland) Bill: The Committee will consider the evidence it heard earlier in the meeting.
Lynn Tullis
Clerk to the Rural Affairs, Climate Change and Environment Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5240
Email: racce.committee@scottish.parliament.uk
The papers for this meeting are as follows—

**Agenda item 3**

PRIVATE PAPER

*RACCE/S4/12/1/1 (P)*

*Link to responses received on the call for views*

**Agenda item 4**

Cover note

*RACCE/S4/12/1/2*

*The Control of Volatile Organic Compounds (Petrol Vapour Recovery) (Scotland) Regulations 2011 (SSI 2011/418)*
*The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Revocation Regulations 2011 (SSI 2011/428)*
*The Police (Retention and Disposal of Motor Vehicles) (Scotland) Amendment Revocation Regulations 2011 (SSI 2011/429)*
Rural Affairs, Climate Change and Environment Committee
1st Meeting, 2012 (Session 4), Wednesday, 11 January 2012

Subordinate legislation cover note SSI 2011/418, 2011/428 and 2011/429

Procedure

1. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Subordinate Legislation Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

2. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Subordinate Legislation Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

SSI 2011 418

<table>
<thead>
<tr>
<th>Title of Instrument</th>
<th>The Control of Volatile Organic Compounds (Petrol Vapour Recovery) (Scotland) Regulations 2011 (SSI 2011/418)</th>
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<td>Yes</td>
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Purpose

3. These Regulations transpose Directive 2009/126/EC of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations so far as is required in order for that Directive to be
implemented through an authorisation under Part II of the Pollution Prevention and Control (Scotland) Regulations 2000.

4. A copy of the Explanatory Note and the Executive Note are included with the papers.

Subordinate Legislation Committee
5. The Subordinate Legislation Committee considered this instrument at its meeting on 13 December 2011 and agreed to draw the instrument to the attention of the Parliament. The Committee’s recommendation in relation to this instrument is set out below.

Recommendation
6. The Committee is invited to consider whether it wishes to raise any issues in reporting to the Parliament on this instrument.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2 amends the Environmental Protection (Prescribed Processes and Substances) Regulations 1991 (S.I. 1991/472) (the “PPS Regulations”) so that processes relating to the storage and unloading of petrol are no longer capable of being authorised under those Regulations as well as under the PPC Regulations (see also regulation 5).

Regulation 3 makes consequential amendments to the Environmental Protection (Applications, Appeals and Registers) Regulations 1996 (S.I. 1996/507) needed as a result of the changes to the PPS Regulations.

Regulation 4 amends the PPC Regulations so that activities subject to requirements introduced by the PVR II Directive require to be authorised by the dates specified in regulation 26 of those Regulations.

A Business and Regulatory Impact Assessment has been prepared, and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Environmental Quality Division, Scottish Government, Victoria Quay, Edinburgh EH6 6QQ.

**EXECUTIVE NOTE**

**Background**

The regulations make further provision for the transposition into domestic legislation of Council Directive 2009/126/EC on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations (PVR II). The purpose of PVR II is to reduce the amount of petrol vapour that escapes to the atmosphere as vehicle tanks are filled.

In 2008 the Scottish Government amended the Pollution Prevention and Control (Scotland) Regulations 2000 to require PVR II controls for certain service stations so that existing service stations with an annual petrol throughput of 3,500m³ or more, and new stations with an annual throughput of 500m³ or more are subject to PVR II controls. Similar legislation was introduced by the other UK administrations.

The requirements of the Directive extend these controls from 1 January 2012, to cover:

- new service stations below permanent living quarters or working areas with throughput above 100m³ from 1 January 2012;
- existing service stations undergoing a major refurbishment with an actual or intended throughput at the time of refurbishment of above 500m³ (or 100m³ if below permanent living quarters/working areas) from 1 January 2012; and
- existing service stations with an annual petrol throughput of 3,000m³ a year by 31 January 2018.

A transposition note has not been prepared, and in the Scottish Government's view the resources required to produce such a note are greater than can be justified by the resulting added benefit to the reader.

**Policy objectives**

VOCs contribute to the formation of ground level ozone which can affect human health, damage plants and is a major component of summer smog. Petrol vapour also contains other substances detrimental to health, such as the carcinogen benzene. The major sources of VOCs, such as road transport and industrial solvents, are being effectively addressed through initiatives and legislation such as the EU Solvents Emissions Directive. Whilst the more minor sources account for a relatively small proportion of the total emissions – service stations account for about 2% - these will become increasingly significant as the major sources continue to decline.

The UNECE 1991 VOC Protocol aims to reduce VOC emissions and also ground level ozone concentrations resulting from these emissions. One of the obligations
the UK has under the Protocol is to apply measures to control VOC emissions from vehicle refuelling. The 2008 regulations allow this obligation to be met and the Directive provisions further strengthen the controls.

VOCs evaporate from liquid petrol inside the fuel tank of a vehicle, filling the air space above the liquid. When a vehicle is refuelled, the VOCs are forced out by the incoming liquid and, unless controlled, escape into the atmosphere. PVR II requires systems to be fitted to pump dispensers, which will capture up to 90% of the VOCs and return them to the pump. This has benefits both for health and for retailers who can resell the captured VOCs. Losses through VOC escape amount to approximately one litre for every 1,000 litres of petrol dispensed.

Transposition options considered

The PPC Regulations as amended in 2008 go further than the Directive requirements in the short term, in that they require PVR II compliance for existing service stations from 2012 with an annual throughput equal to or greater than 3,500m³, in addition to new and refurbished ones. Given this, views were sought during the transposition consultation on whether the requirements of the 2008 regulations should be altered to tie in with the Directive i.e. existing service stations no longer required to comply with PVR II until 31 December 2018.

Petrol vapour levels already comply with National Emissions Ceilings Directive requirements and this situation is unlikely to change, therefore postponement of the PVR II requirements would not have any adverse impact on our obligations under that Directive or on air quality generally. At the same time, most operators of the relevant service stations have already started to make the necessary changes to their equipment. Feedback from petrol industry representative organisations suggested that there would be little benefit in postponing the requirements, given that there is a financial advantage to operators from resale of petrol which condenses back into the holding tanks, along with the less tangible but still potentially beneficial projection of good environmental credentials.

A cost benefit analysis suggested that the savings from suspension of domestic PVR II requirements for the industry on a UK wide basis, in terms of reduced permit and administration costs, would be a relatively low 300K. Taking all of this into account, it was decided jointly by the UK administrations not to take this course of action.

Financial considerations

SEPA estimates that between 400 and 500 petrol stations in Scotland will be required to comply with PVR II, the final number being dependent on the petrol throughput over the three years leading up to January 2012. A UK wide Impact Assessment which accompanied the transposition consultation shows a total present value benefit of between £22-71 million arising from transposition, against a total cost of £53-79m.

The typical capital costs of installing PVR II controls are estimated to be around £30,000 for a new service station (or an existing service station installing controls as part of a major refurbishment) with annual throughput of 3,000 to 3,500m³.
Annualised costs for such service stations are estimated at around £4,000 per year, giving a cost per tonne of VOC emissions abated of £700 to £1,300 per tonne (depending upon whether the value of the recovered fuel is included).

Besides the potential for resale of recovered petrol, there are benefits that cannot be easily monetised such as reduced ozone damage to crops and ecosystems, reduction in climate change effects from a lower warming potential of VOCs and benefits for human health.

**Equality impacts**

Potential equality impacts were considered during the consultation and it is not expected that transposition will have any impact on race, disability or gender.

**Small business impacts**

No small or medium sized petrol stations in Scotland are likely to have the annual petrol throughput necessary for PVR II compliance.
EXTRACT FROM THE SUBORDINATE LEGISLATION COMMITTEE’S 20th REPORT OF 2011

Control of Volatile Organic Compounds (Petrol Vapour Recovery) (Scotland) Regulations 2011 (SSI 2011/418)

These Regulations are subject to the negative procedure and will come into force on 31 December 2011.

These Regulations introduce new permit requirements for certain specified service stations, in order to give effect to Directive 2009/126/EC (on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations (“the 2009 Directive”)) on time. This is being achieved by extending the controls which are already required under the Pollution Prevention and Control (Scotland) Regulations 2000 (“the 2000 Regulations”).

The new requirements under the 2000 Regulations, as amended by these Regulations, are as follows.

From 1 January 2012, a permit will be required for:

- new or significantly refurbished service stations situated below permanent living quarters or working areas, where the petrol refuelling throughput in any 12 month period (“throughput”) is or is intended to be above 100m³;
- significantly refurbished service stations where the throughput is or is intended to be above 500m³.

Furthermore, by 31 December 2018, a permit will be required for:

- existing service stations with a throughput above 3000m³.

These Regulations also make consequential amendments to various other specified regulations, where necessary in order to avoid duplication with the amended 2000 Regulations.

The Scottish Government was asked to explain why regulation 9G of the 2000 Regulations, as inserted by regulation 4(2) of these Regulations, is not included in the definition of “hybrid permit” under regulation 2 of the 2000 Regulations.

Furthermore, the Scottish Government was asked why the conditions required under regulation 9G are not expressly included under regulations 7(2)(a), 10(2), 10A, 13(1) and (4) and 22(11) of the 2000 Regulations. This correspondence is reproduced as an Appendix.

In its response, the Scottish Government conceded that all of the specified omissions are errors. It has undertaken to correct these at the first available opportunity.

The Committee considered that the omission of certain references to regulation 9G has a bearing upon the effective operation of the instrument. Particularly significant
is the failure to refer to regulation 9G in regulation 7 (which confers power on the Scottish Environment Protection Agency to grant or refuse permits) and regulation 13 (which confers power on SEPA to vary the conditions of permits) of the 2000 Regulations.

The Scottish Government was asked to explain the effect of the omission of reference to regulation 9G in the instances set out above.

The Scottish Government considers that the courts will read in the missing references where necessary, particularly in light of the duty on the courts to interpret national measures so as to comply with EU law. However, the Committee takes the view that the courts could equally consider that the references to regulation 9G had been purposely omitted, on the basis that these Regulations explicitly insert the new regulation 9G but make no provision about cross-referencing it. The Committee considers that without express authority it may be questionable whether SEPA has power to impose regulation 9G conditions when granting or varying permits.

Accordingly, the Committee concludes that it appears that the intention of these Regulations, namely that permits should in appropriate cases be subject to the conditions set out in regulation 9G, is frustrated.

The Regulations are intended to ensure compliance with an EU Directive, and do so by inserting a new regulation 9G into the Pollution Prevention and Control (Scotland) Regulations 2000. However, the Scottish Government accepts that cross-references to the new regulation 9G have been omitted in error, in particular in the provisions which confer power on the Scottish Environment Protection Agency to grant and vary permits for certain purposes. It accordingly appears to be doubtful whether the Scottish Environment Protection Agency has power to grant permits subject to the conditions in regulation 9G, or to vary permits to make them subject to those conditions. Accordingly, the Regulations appear to be defectively drafted. As such, the Committee draws the instrument to the attention of the Parliament on reporting ground (i).

In so doing, the Committee calls on the Scottish Government to correct these errors at the earliest possible date, instead of waiting for the next available opportunity.

APPENDIX

On 1 December 2011 the Scottish Government was asked:

To explain why regulation 9G of the Pollution Prevention and Control (Scotland) Regulations 2000 (“the 2000 Regulations”) as inserted by regulation 4(2) of the Control of Volatile Organic Compounds (Petrol Vapour Recovery) (Scotland) Regulations 2011 (“regulation 9G”) is not included in the definition of “hybrid permit” under regulation 2 of the 2000 Regulations. Is it intended that a hybrid permit may not be granted which contains one or more standard rules conditions together with the conditions required under regulation 9G?
To explain why the conditions required under regulation 9G are not expressly included under:

- regulation 7(2)(a) of the 2000 Regulations, which relates to the conditions subject to which a permit may be granted;
- regulation 10(2) of the 2000 Regulations, which relates to the conditions to which standard rules should comply;
- regulation 10A, which relates to the conditions to which a standard rules permit may be subject;
- regulations 13(1) and (4) of the 2000 Regulations, which relate to the basis for which SEPA might vary the conditions of a permit; and
- regulation 22(11) of the 2000 Regulations, which relates to appeals determined by the Scottish Ministers in exercise of the powers specified in regulations 22(4)(b) and (c) of the 2000 Regulations;
- given that in order to adequately transpose the provisions of Council Directive 2009/126/EC, the conditions set out in regulation 9G must be implemented.

What effect does the omission of reference to regulation 9G have in each case?

**The Scottish Government responded as follows:**

The failure to insert a reference to new regulation 9G into the definition of “hybrid permit” in regulation 2 of the 2000 Regulations is an error which the Scottish Government regrets. It will be corrected at the first available opportunity.

The failure to insert references to new regulation 9G in the specified provisions of the 2002 Regulations is a further error, which again will be corrected at the first available opportunity.

New regulation 9G partly transposes obligations in the two Volatile Organic Compound Directives as referred to in that regulation.

The Scottish Government considers that the intended effect of new regulation 9G is clear in the context of the scheme provided for under the 2000 Regulations. It is therefore reasonable to expect that the courts will read in the missing references to the operative parts of the 2000 Regulations in proceedings in which they require to interpret those Regulations. This is made even more likely given the duty on the courts to interpret national measures so as to give effect to EU law.

In any event, SEPA is considered to be an emanation of the Member State for this purpose. It is therefore already required to implement EU law so far as doing so is within the scope of a relevant function. So, for example, SEPA already impose such conditions as are needed to give effect to the first VOC Directive in any relevant PPC permit, and will do so from 31 December 2011 in respect of the second VOC Directive when it comes into force.

The main effect is therefore that the 2000 Regulations as amended are not as clear as they should be because of the missing reference in the specified provisions. It is for that reason that the Scottish Government intends to correct the errors.
SSI 2011 428

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**Purpose**

7. These Regulations revoke the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Regulations 2011 (SSI 2011/394), which would but for the revocation have come into force on 22nd December 2011.

8. A copy of the [Explanatory Note](#) and the [Executive Note](#) are included with the papers.

**Subordinate Legislation Committee**

9. The Subordinate Legislation Committee considered this instrument at its meeting on 20 December 2011 and agreed to draw the instrument to the attention of the Parliament. The Committee’s recommendation in relation to this instrument is set out below.

**Recommendation**

10. The Committee is invited to consider whether it wishes to raise any issues in reporting to the Parliament on this instrument.

**EXECUTIVE NOTE**

THE REMOVAL, STORAGE AND DISPOSAL OF VEHICLES (PRESCRIBED SUMS AND CHARGES ETC.) (SCOTLAND) REVOCATION REGULATIONS 2011 SSI 2011/428

The above instrument was made in exercise of the powers conferred by sections 4(5) and (6) and 5(1) of the Refuse Disposal (Amenity) Act 1978 and sections 101(4) and (5) and 102(2) of the Road Traffic Regulation Act 1984 and of all other powers enabling them to do so. The instrument is subject to negative procedure.
Policy Objectives
These regulations revoke the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Regulations 2011 (SSI 2011/394), which would but for the revocation have come into force on 22nd December 2011.

Those Regulations were brought forward without separate consultation on the basis that a UK wide consultation in 2007 showed widespread support for the proposed changes. However, as some key stakeholders have subsequently highlighted concerns about this position, the Scottish Government has decided to make these Regulations to prevent SSI 2011/394 coming into force, so as to allow time for the full implications to be discussed with these key stakeholders before any further measures are introduced.

Consultation
As the purpose of these Regulations is to respond to stakeholder concerns and revoke Regulations that are not yet in force, the Scottish Government has reached the decision that only limited informal consultation through discussion with key stakeholders was required.

Impact Assessments
The Scottish Government also decided that no equality impact assessment was required.

Financial Effects
The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no significant financial effects on the Scottish Government, local government or on business.

Scottish Government
Rural and Environment Directorate
December 2011
EXTRACT FROM THE SUBORDINATE LEGISLATION COMMITTEE’S 22nd REPORT OF 2011

Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Revocation Regulations 2011 (SSI 2011/428)

These Regulations revoke the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Regulations 2011 ("the principal Regulations"), which would otherwise have come into force on 22 December 2011.

These Regulations are subject to the negative procedure, and they come into force on 21 December 2011. The Committee considered the principal Regulations at its 12th meeting on 22 November 2011 and did not draw the instrument to the attention of the Parliament. The principal Regulations set out new charging arrangements for the removal, storage and disposal of abandoned vehicles by local authorities. They replace the current system of flat rates with charges based on the type or size of the vehicle and the circumstances under which it is uplifted by the local authority ("matrix charging").

Before making the principal Regulations the Scottish Ministers were statutorily required to consult with such representative organisations as they thought fit (under section 134(2) of the Road Traffic Regulation Act 1984). A UK wide consultation exercise was conducted by the Home Office in 2007 to establish the most appropriate charges for the removal, storage and disposal of vehicles. This revealed widespread support for matrix charging and as a result such charging arrangements were implemented in England and Wales. As detailed in the executive note to the principal Regulations, the Scottish Government was of the view that since the UK consultation had not attracted any significant opposition, an additional consultation exercise was not required.

However key stakeholders subsequently raised concerns about the decision not to conduct a separate Scottish consultation. Consequently, these Regulations have been made in order to revoke the principal Regulations. The Scottish Government indicates that this will allow time for discussions to be held with key stakeholders prior to the introduction of any further measures.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that a Scottish statutory instrument which is subject to negative procedure must be laid before the Parliament as soon as practicable after it is made, and in any event at least 28 days before the instrument comes into force. A failure to comply with section 28(2) does not render the instrument invalid, but the Scottish Government must explain to the Presiding Officer why the laying requirements have not been complied with.

This instrument comes into force 15 days after it was laid and consequently does not comply with section 28(2).

In the letter to the Presiding Officer, the Scottish Government explains that the laying requirements have not been complied with in order to ensure that the principal Regulations are revoked before the date they are due to come into force (22 December 2011) and that revocation of the principal Regulations is necessary in
order to provide an opportunity for discussion with key stakeholders. The correspondence is attached at the Appendix.

The Committee draws the instrument to the attention of the Parliament on ground (j) as the instrument has not been laid at least 28 days before coming into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

In doing so, however, the Committee accepts the Scottish Government's explanation for failing to comply with section 28(2).

Letter from Scottish Government to the Presiding Officer

Presiding Officer,

The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.)(Scotland) Revocation Regulations 2011 (S.S.I. 2011/428)

The above instrument was made by the Scottish Ministers under sections 4(5) and (6) and 5(1) of the Refuse Disposal Amenity Act 1978 and sections 101(4) and (5) and 102(2) of the Road Traffic Regulations Act 1984 on 5 December 2011. It is being laid before the Scottish Parliament today and is to come into force on 21 December 2011.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with section 31(3) of that Act, this letter explains why.

These regulations revoke The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Regulations 2011 (SSI 2011/394), which would but for the revocation have come into force on 22 December 2011. This is necessary in order to provide an opportunity for discussion with key stakeholders who have raised concerns about the implications of these regulations before any further measures are introduced.

Zero Waste Delivery Team
For the Scottish Government
APPENDIX

On 9 December 2011 the Scottish Government was asked:

The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Regulations 2011 (SSI 2011/394) were laid before the Scottish Parliament on 11 November 2011. The Subordinate Legislation Committee considered those Regulations on 22 November 2011. When was the decision taken to revoke those Regulations?

Section 134(2) of the Road Traffic Regulation Act 1984, as read with section 53 of the Scotland Act, requires the Scottish Ministers to consult with such representative organisations as they see fit before making regulations under that Act. In relation to the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Revocation Regulations 2011, the Executive Note indicates that “…the Scottish Government has reached the decision that only limited informal consultation through discussion with key stakeholders was required.” Craies on Legislation, at paragraph 6.1.3, states that “While a duty to consult falls far short of a duty to comply with the wishes of the consultee, it is also more than a pure formality, requiring the person consulted to give his mind in a genuine way to matters raised by those consulted.”

a. Subsequent to making that decision, did that limited informal consultation take place?

b. On what date was the invitation to consult extended, and by what date were responses required?

c. To whom was that invitation extended?

d. What form did the consultation exercise take?

The Scottish Government responded as follows:

The Scottish Ministers decided to revoke the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Regulations 2011 on 29 November 2011.

The Scottish Ministers complied with the consultation requirement in section 134(2) of the Road Traffic Regulation Act 1984 before making the revocation Regulations on 5th December 2011. In answer to the particular questions-

a. The consultation took place before the decision was made to revoke the Regulations.

b. A formal invitation to consult was not required, and none was extended.

c. See the answer to paragraph (b).

d. Scottish Government officials spoke with the Road Haulage Association on 28 November 2011, and met with the Scottish Vehicle Recovery Association on 29 November 2011, those being the representative organisations that Ministers saw fit to consult. Officials also spoke with those organisations, and with the Association of Chief Police Officers in Scotland, on 24 and 25 November 2011.
Purpose
11. These Regulations revoke the Police (Retention and Disposal of Motor Vehicles) (Scotland) Amendment Regulations 2011 (SSI 2011/395), which would but for the revocation have come into force on 22nd December 2011.

12. A copy of the Explanatory Note and the Executive Note are included with the papers.

Subordinate Legislation Committee
13. The Subordinate Legislation Committee considered this instrument at its meeting on 13 December 2011 and agreed to draw the attention of the Parliament to the instrument on the grounds that these regulations have not been laid at least 28 days before coming into force as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

Recommendation
14. The Committee is invited to consider whether it wishes to raise any issues in reporting to the Parliament on this instrument.
EXECUTIVE NOTE

THE POLICE (RETENTION AND DISPOSAL OF MOTOR VEHICLES) (SCOTLAND) AMENDMENT REVOCATION REGULATIONS 2011

SSI 2011/429

The above instrument was made in exercise of the powers conferred by section 127 of the Antisocial Behaviour etc. (Scotland) Act 2004 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Policy Objectives

These regulations revoke the Police (Retention and Disposal of Motor Vehicles) (Scotland) Amendment Regulations 2011 (SSI 2011/395), which would but for the revocation have come into force on 22 December 2011.

Those Regulations were brought forward without separate consultation on the basis that a UK wide consultation in 2007 showed widespread support for the proposed changes. However, as some key stakeholders have subsequently highlighted concerns about this position, the Scottish Government has decided to lay these Regulations to prevent SSI 2011/395 coming into force, and so to allow time for the full implications to be discussed with those stakeholders before any further measures are introduced.

Consultation

As the purpose of these Regulations is to respond to stakeholder concerns and revoke Regulations that are not yet in force, the Scottish Government has reached the decision that only limited informal consultation through discussion with key stakeholders was required.

Impact Assessments

The Scottish Government also decided that no equality impact assessment was required.

Financial Effects

The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no significant financial effects on the Scottish Government, local government or on business.

Scottish Government
Rural and Environment Directorate
December 2011
1. These Regulations revoke the Police (Retention and Disposal of Motor Vehicles) (Scotland) Amendment Regulations 2011 ("the principal Regulations"), which would otherwise have come into force on 22 December 2011.

2. The Committee considered the principal Regulations at its 13th meeting on 29 November 2011 and did not draw the instrument to the attention of the Parliament. The principal Regulations introduced a new charging system for the removal and retention of vehicles by the police under the Antisocial Behaviour etc. (Scotland) Act 2004. They replaced the current system of flat rates with charges based on the type or size of the vehicle and the circumstances under which it is uplifted ("matrix charging").

3. A UK-wide consultation exercise was conducted by the Home Office in 2007 to establish the most appropriate charges for the removal, storage and disposal of vehicles. This revealed widespread support for matrix charging and as a result such charging arrangements were implemented in England and Wales. As detailed in the executive note to the principal Regulations, the Scottish Government was of the view that, since the UK consultation had not attracted any significant opposition, an additional consultation exercise was not required.

4. However key stakeholders subsequently raised concerns about the decision not to conduct a separate Scottish consultation. Consequently, these Regulations have been made in order to revoke the principal Regulations before they come into force. The Scottish Government indicates that this will allow time for discussions to be held with key stakeholders prior to the introduction of any further measures.

5. These Regulations are subject to the negative procedure, and they come into force on 21 December 2011.

6. Section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 relates to instruments which are subject to negative procedure. Section 28(2) sets out the rule that a Scottish statutory instrument which is subject to negative procedure must be laid before Parliament as soon as practicable after it is made, and in any event at least 28 days before the instrument comes into force. A failure to comply with section 28(2) does not render the instrument invalid, but the Scottish Government must explain to the Presiding Officer why the laying requirements have not been complied with.

7. This instrument comes into force 15 days after it was laid. Consequently it does not comply with section 28(2). A failure to comply with section 28(2) automatically engages reporting ground (j).

8. A formal letter was provided on 6 December to the Presiding Officer by the Scottish Government.
9. The letter explains that the laying requirements have not been complied with in order to ensure that the principal Regulations are revoked before the date they are due to come into force (22 December 2011). The letter states that the revocation of the principal Regulations is necessary in order to provide an opportunity for discussion with key stakeholders.

10. Since the decision to consult has been taken at this late stage, it appears to the Committee that there was little option but to breach the 28 day rule in order to prevent the principal Regulations from coming into force.

11. This instrument has not been laid at least 28 days before coming into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The Committee therefore draws the instrument to the attention of the Parliament on ground (j).

12. In so doing, the Committee accepts the explanation given by the Scottish Government for failing to comply with section 28(2).

Letter from Scottish Government to the Presiding Officer

Presiding Officer,

The Police (Retention and Disposal of Motor Vehicles) (Scotland) Amendment Revocation Regulations 2011 (S.S.I. 2011/429)

The above instrument was made by the Scottish Ministers under section 127 of the Antisocial Behaviour etc. (Scotland) Act 2004 on 5 December 2011. It is being laid before the Scottish Parliament today and is to come into force on 21 December 2011.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with section 31(3) of that Act, this letter explains why.

These regulations revoke The Police (Retention and Disposal of Motor Vehicles) (Scotland) Amendment Regulations 2011 (SSI 2011/395), which would but for the revocation have come into force on 22 December 2011. This is necessary in order to provide an opportunity for discussion with key stakeholders who have raised concerns about the implications of these regulations before any further measures are introduced.

Zero Waste Delivery Team
For the Scottish Government