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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

a. any—
   i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   ii. [deleted]
   iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

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

c. general questions relating to powers to make subordinate legislation;

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

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

f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

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

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

i. any Consolidation Bill as defined in Rule 9.18.1 referred to it by the Parliamentary Bureau in accordance with Rule 9.18.3.
Committee Membership

**Convener**
Nigel Don  
Scottish National Party

**Deputy Convener**
John Mason  
Scottish National Party

**Richard Baker**  
Scottish Labour

**John Scott**  
Scottish Conservative and Unionist Party

**Stewart Stevenson**  
Scottish National Party
Introduction

1. At its meeting on 8 December 2015, the Committee agreed to draw the attention of the Parliament to the following instruments—

   Seed Potatoes (Scotland) Regulations 2015 (SSI 2015/395)
   Management of Offenders etc. (Scotland) Act 2005 (Commencement No. 8 and Consequential Provisions) Order 2015 (SSI 2015/397 (C.49)
   Community Right to Buy (Scotland) Regulations 2015 (SSI 2015/400)
   Community Empowerment (Scotland) Act 2015 (Commencement No. 3 and Savings) Order 2015 (SSI 2015/399 (C.50))

2. The Committee’s recommendations in relation to the above instruments are set out below.

3. The Committee determined that it did not need to draw the Parliament’s attention to the instruments which are set out at the end of this report.
Points raised: instruments subject to negative procedure

Seed Potatoes (Scotland) Regulations 2015 (SSI 2015/395) (Rural Affairs, Climate Change and Environment)

4. This instrument revokes and replaces the Seed Potatoes (Scotland) Regulations 2000 (SSI 2000/201). Those Regulations have transposed the requirements of the Directive 2002/56/EC on the marketing of seed potatoes, and had provided for the certification and marketing of Scottish seed potatoes by reference to a national classification scheme. The main purpose of these Regulations is to transpose the requirements of that principal Directive again, and 3 recent Implementing Directives (2013/63/EU, 2014/20/EU and 2014/21/EU). The Regulations introduce a new certification and grading scheme for Scottish seed potatoes, by reference to the “Union grades”.

5. The Regulations also transpose a Decision (2004/3/EC) authorising in respect of the marketing of seed potatoes in certain Member States, more stringent measures against certain diseases than are provided for in the principal Directive 2002/56/EC. By virtue of this Decision, the Scottish Ministers may restrict the marketing of seed potatoes in Scotland to those seed potatoes meeting the standards of the Union grades for basic seed potatoes.

6. The Regulations are subject to the negative procedure. They come into force on 1 January 2016.

7. In considering the instrument the Committee asked questions of the Scottish Government in relation to a drafting error in regulation 18(1). The correspondence is reproduced at Annexe A.

8. The Committee draws the Regulations to the attention of the Parliament on the general reporting ground, as they contain a drafting error. In regulation 18(1) (information regarding seed potatoes), the words “and of” are inserted in error.

9. The Committee notes that the Scottish Government has undertaken to amend this provision “at the next available opportunity”. The Committee furthermore notes that a breach of the requirements in regulation 18(1) is an offence, in accordance with section 16(7) of the Plant Varieties and Seeds Act 1964. In light of that, the Committee calls on the Scottish Government to lay an amendment as soon as possible.
Management of Offenders etc. (Scotland) Act 2005 (Commencement No. 8 and Consequential Provisions) Order 2015 (SSI 2015/397 (C.49)) (Justice)

10. Section 10 of the Management of Offenders etc. (Scotland) Act 2005 (“the 2005 Act”) requires the police, local authorities, health boards and the Scottish Prison Service as the “responsible authorities” to establish multi-agency arrangements, to assess and manage the risk posed by certain categories of offender. Commencement of relevant provisions of the 2005 Act has already taken place in respect of registered sex offenders and mentally disordered restricted patients.

11. The Multi-Agency Public Protection Arrangements (“MAPPA”) provide these arrangements through guidance issued by the Scottish Ministers under section 10(6) of the 2005 Act. MAPPA provides a framework for agencies to share information, jointly assess risk and apply resources proportionately, to manage the risk of serious harm posed to the public by relevant offenders.

12. The general purpose of this Order is to extend MAPPA beyond registered sex offenders and restricted patients, by providing the responsible authorities with the ability to include in the arrangements certain high risk offenders managed in the community, where they assess that a risk of serious harm to the public exists, which requires an active multi-agency response.

13. The Order implements that objective by commencing section 10(1)(e) and 10(2)(b) of the 2005 Act, insofar as they are not already in force, and in respect of the latter for the purposes of section 10(1)(e) only. The provisions are commenced with effect from 31 March 2016. (Articles 2 and 3).

14. The commencement of those provisions applies the duty to cooperate which the responsible authorities have, in respect of any person who has been convicted of an offence if, by reason of that conviction, the person is considered by them to be a person who may cause serious harm to the public. Section 10(2)(b) provides that it is immaterial where the offence considered under section 10(1)(e) was committed.

15. The Order also makes a consequential amendment to the Management of Offenders etc. (Scotland) Act 2005 (Specification of Persons) Order 2007. This makes provision that the bodies which are currently under a duty to cooperate, with the responsible authorities regarding the management of relevant offenders, will do so in respect of those brought into the arrangements through the further commencement of section 10(1)(e) of the 2005 Act. (Article 4).

16. When considering the instrument, the Committee asked questions of the Scottish Government in relation to the enabling powers to make the consequential amendment in article 4, as well as on a drafting error. The correspondence is reproduced at Annexe B.
17. The Committee considered why it is proposed that, and the Order has been
drafted on the basis that, it is subject to the negative procedure. Section 33 of the
Interpretation and Legislative Reform (Scotland) Act 2010 is relevant. Section 33
permits a combined use of powers in a Scottish statutory instrument. Where a
commencement of provisions which is subject to “laid only” procedure (as for
articles 2 and 3 of this instrument) is combined with a use of power which is
subject to either the negative or the affirmative procedure, the instrument may
combine the provisions. In that event however, the whole instrument requires to
be subject to the higher scrutiny level.

18. The Scottish Government has confirmed in response to the Committee that (on
reflection) the consequential amendment which is made by article 4 is an
amendment to an ‘enactment’. As provided for by the powers contained in section
22(2) and (4) of the 2005 Act, the consequential amendment requires to be
subject to the affirmative procedure. The Scottish Government has acknowledged
that the provision should therefore have been laid in draft, only to be made after
approval by the Parliament by resolution, in order to be intra vires (within the
powers enabled by the 2005 Act). The Scottish Government will remedy this by
means of corrective legislation. The Committee agrees that there is doubt as to the
vires of article 4 of the instrument.

19. The Scottish Government has also confirmed that it will address a drafting error in
article 3 of the instrument, by means of corrective legislation. The error is
explained in paragraph 23 below.

20. The Committee therefore draws the Order to the attention of the Parliament
on the following reporting grounds:

21. Firstly, on ground (e) as there appears to be a doubt whether article 4 is
intra vires. Article 4 makes a consequential amendment of the Management
of Offenders etc. (Scotland) Act 2005 (Specification of Persons) Order 2007,
by virtue of the powers contained in section 22(2) and (4) of the 2005 Act.

22. By virtue of those powers as read with section 29 of, and Schedule 3 to, the
Interpretation and Legislative Reform (Scotland) Act 2010, the consequential
amendment must be subject to the affirmative procedure and the provision
laid in draft. There is a doubt as to the vires of article 4, given that the Order
has been made prior to laying, and not laid in draft for approval by
resolution of the Parliament.

23. Secondly, on the general ground as it contains a drafting error. Article 3
brings into force section 10(2)(b) of the 2005 Act in so far as not already in
force, but only for the purposes of section 10(1)(e) of the 2005 Act. In article
3 the qualification “for the purposes of section 10(1)(e)” is duplicated, which
confuses the provision.
24. The Committee notes that the Scottish Government has undertaken to lay corrective legislation to remedy both of these issues. It is understood that this would come into force on 31 March 2016, the same time as the Order.

25. The Committee does not find this satisfactory.

26. The Committee considers that it is unacceptable for a provision which is of doubtful vires to remain on the statute book. Correcting the errors identified by the Committee is welcomed, but this should happen as a matter of some urgency and should entail the removal of the consequential amendment at article 4 from the statute book.

27. The Committee urges the Scottish Government to take all steps necessary to remedy the issues raised by the Committee and to do so as soon as possible.

28. The Committee will return to this issue when it considers the amending instruments and will reflect at that point on the Scottish Government’s response to its concerns.
Community Right to Buy (Scotland) Regulations 2015 (SSI 2015/400) (Rural Affairs, Climate Change and Environment)

30. This instrument replaces the existing regulations regarding the community right to buy as provided for in Part 2 of the Land Reform (Scotland) Act 2003 (“the 2003 Act”). The right to buy process was amended substantially by the Community Empowerment (Scotland) Act 2015 (“the 2015 Act”). The instrument replaces with amendments (and subject to savings) the existing regulations in this area taking account of the changes made by the 2015 Act.

31. In considering the instrument the Committee asked several questions of the Scottish Government. The correspondence is reproduced at Annexe C.

32. The Scottish Government has acknowledged that there is an error in regulation 1(3)(d)(ii) in that it refers to “15th April 2015” instead of “15th April 2016”. The Committee considers that, in specifying an incorrect date, regulation 1(3)(d)(ii) is defectively drafted. The Committee welcomes, however, the fact that the Scottish Government proposes to lay a further instrument to correct this error prior to the commencement of the regulations on 15th April 2016.

33. The Committee draws the regulations to the attention of the Parliament under reporting ground (i) as regulation 1(3)(d)(ii) is defectively drafted. The reference to “15th April 2015” should be to “15th April 2016”. The Committee welcomes the Scottish Government’s commitment to amend this error by laying a further instrument before these regulations come into force on 15th April 2016.

34. Regulation 20(2) relates to the conduct of a further ballot. It requires the Scottish Ministers to provide a copy of a community body’s modified memorandum, articles of association, constitution or registered rules. The Committee considers that regulation 20(2) is unclear to the extent that it does not specify to whom these documents are to be provided. The Scottish Government has confirmed that the documents are to be provided to the ballotter and has indicated that it will clarify the meaning of regulation 20(2) at the same time as it corrects the error identified in relation to regulation 1(3)(d)(ii).

35. The Committee draws the regulations to the attention of the Parliament as the meaning of regulation 20(2) could be clearer. Regulation 20(2) does not specify to whom the Scottish Ministers must provide a copy of a community body’s modified memorandum, articles of association, constitution or registered rules for the purpose of a further ballot. The Committee welcomes the Scottish Government’s undertaking to clarify the provision by laying a further instrument to specify the ballotter as the person to whom these documents must be provided.

36. Regulations 1 and 23 relate to, respectively, application and savings. Their effect is that these regulations will apply in respect of community rights to buy deriving from an application which is “made” by a community body on or after 15th April
2016. The existing legislative regime, which is revoked by these regulations, is saved in respect of applications which are “made” prior to that date. The regulations do not contain any provision which specifies when an application is “made”. The Scottish Government considers that it is clear from both the context and from section 98 of the 2003 Act that an application is only made when it is made to Scottish Ministers in accordance with section 37 of the 2003 Act. The Committee notes, however, that section 98 of the 2003 Act refers to the “effective date” of an application, which is not the terminology used in the regulations.

37. The Committee draws the regulations to the attention of the Parliament under reporting ground (h) as the meaning of regulations 1 and 23 could be clearer. Regulations 1 and 23 do not contain any interpretative provision specifying when an application by a community body is “made”. The Committee considers that there are a range of possible dates, including the date the application is signed, the date it is posted and the date it is received by the Scottish Ministers. The date when an application is “made” is central to determining which set of rules will apply. The Committee accordingly considers that the meaning of regulations 1 and 23 is unclear, to the extent that they do not specify when an application is “made”.

38. Section 52(3) of the 2003 Act enables the Scottish Ministers to prescribe the form of return to be used by a ballotter for the purpose of notifying the Scottish Ministers and various other parties of the information specified in section 52(3)(a)-(f). Section 52(3)(a) specifies “the result” of the ballot as a piece of information which must be so notified by the ballotter, however the form prescribed in Schedule 11 to the regulations does not contain an entry whereby the ballotter may notify the result of the ballot.

39. The Scottish Government considers that the result of the ballot cannot be summed up in the answer to one question, but is to be arrived at having regard to the other information notified by the ballotter, such as the number of persons eligible to vote in the ballot, the number who did vote and the number of spoiled ballot papers. The Scottish Government accordingly considers that the result of the ballot is a combination of the answers to the questions in the form and that it is not a question of a straight ‘yes’ or ‘no’ vote.

40. Section 52(3)(a) of the 2003 Act marks the result of the ballot out as a piece of information to be notified separately to the information in section 52(3)(b)-(f). The power appears to anticipate the reporting of the overall result of the ballot, namely whether the community has approved the exercise by the community body of its right to buy in accordance with section 51 of the 2003 Act, as a piece of information separate from the reporting of the information in section 52(3)(b)-(f).

41. The Committee accordingly draws the regulations to the attention of the Parliament under reporting ground (g) as there appears to have been an unusual use of the enabling power in section 52(3) of the 2003 Act. The power enables the Scottish Ministers to prescribe the form of return to be
used by a ballotter for the purpose of notifying the Scottish Ministers and various other parties of the information specified in section 52(3)(a)-(f). Section 52(3)(a) specifies “the result” of the ballot as a piece of information which must be so notified by the ballotter, however the form prescribed in Schedule 11 to the regulations does not contain an entry whereby the ballotter may notify “the result” of the ballot.
Points raised: instruments not subject to any parliamentary procedure

**Community Empowerment (Scotland) Act 2015 (Commencement No. 3 and Savings) Order 2015 (SSI 2015/399 (C.50))** (Rural Affairs, Climate Change and Environment)

42. This instrument commences further provisions in the Community Empowerment (Scotland) Act 2015 (“the 2015 Act”) on 15th April 2016. The instrument also makes savings provision.

43. In considering the instrument the Committee asked questions of the Scottish Government. The correspondence is reproduced at Annexe D.

44. Article 3 provides that the modifications of Parts 2 and 4 of the Land Reform (Scotland) Act 2003 made by the provisions of the Community Empowerment (Scotland) Act 2015 commenced by the Order have no effect in relation to a number of rights, interests and powers deriving from a community interest in land where the application to register that interest was “made” by a community body before 15th April 2016. The instrument does not contain any interpretative provision specifying when an application is “made”. The Scottish Government considers that it is clear from both the context and from section 98 of the 2003 Act that an application is only made when it is made to Scottish Ministers in accordance with section 37 of the 2003 Act. The Committee notes, however, that section 98 of the 2003 Act refers to the “effective date” of an application, which is not the terminology used in the Order.

45. The Committee draws this instrument to the Parliament’s attention under reporting ground (h). Article 3 refers, for the purpose of the savings provision, to the date a community body “made” its application to register a community interest in land. The regulations do not contain an interpretative provision specifying when an application is “made” for these purposes. The Committee considers that there are a range of possible dates, including the date the application is signed, the date it is posted and the date it is received by Scottish Ministers. The Committee accordingly considers that the meaning of Article 3 is unclear, to the extent that it does not specify when an application is “made”.
No points raised

46. At its meeting on 8 December 2015, the Committee considered the following instruments. The Committee determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit:

**Education and Culture**

Continuing Care (Scotland) Amendment Order 2016 [draft].

**Rural Affairs, Climate Change and Environment**

Community Empowerment (Scotland) Act 2015 (Consequential Modifications and Savings) Order 2016 [draft];

Seed Potatoes (Fees) (Scotland) Regulations 2015 (SSI 2015/396).
Annexe A

Seed Potatoes (Scotland) Regulations 2015 (SSI 2015/395)

On 26 November 2015, the Scottish Government was asked:

In regulation 18(1) (information regarding seed potatoes), is there any omitted wording or drafting error in—“particulars of the crops grown or relating to and of the marketing of the produce of those crops”?

If so, is corrective action proposed? Please explain otherwise why this provision is considered to be clear and appropriate.

The Scottish Government responded as follows:

We accept there is an error in the drafting of this provision in that the words “and of” are superfluous in that provision. We will therefore amend the provision at the next available opportunity.
Annexe B

Management of Offenders etc. (Scotland) Act 2005 (Commencement No. 8 and Consequential Provisions) Order 2015 (SSI 2015/397 (C.49))

On 25 November 2015, the Scottish Government was asked:

1. Article 4 makes a consequential provision by virtue of the power in section 22(1) of the 2005 Act, to amend the Management of Offenders etc. (Scotland) Act 2005 (Specification of Persons) Order 2007 (“the 2007 Order”). Section 22(2) of the Act enables the order to amend any “enactment” (including any provision of the Act). Section 22(4) provides that an order made by virtue of section 22(2) is subject to the affirmative procedure (having regard to Schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010). This Order is drafted and has been made on the basis that it is subject to the negative procedure.

It appears that “enactment” for those purposes is not defined within the 2005 Act. We assume that “enactment” as used in section 22 has the same meaning as in section 10(1)((b)(ii), and (4) of the Act which (in general terms) refers to supervision of offenders’ functions of the Scottish Ministers under any enactment, and the functions of persons as specified in section 10(3) and responsible authorities’ functions under “any enactment”.

We also note that a previous Order, the Management of Offenders etc. (Scotland) Act 2005 (Members’ Remuneration and Supplementary Provisions) Order 2008 (SSI 2008/30) was, in accordance with section 22(4) of the 2005 Act and another provision, laid in draft and made after approval by resolution. That Order amended subordinate legislation (SSI 2006/182), rather than an Act.

Please explain therefore why it has been considered that the consequential modification of the 2007 Order is not a modification of an “enactment” which in accordance with section 22(2) and (4) of the 2005 Act requires the Order to be subject to the affirmative procedure (and so requiring an Order to be laid in draft)?

2. The explanatory note to the Order states that article 3 brings into force section 10(2)(b) in so far as not already in force but only for the purposes of section 10(1)(e) of the Management of Offenders etc. (Scotland) Act 2005 (“the 2005 Act”). However article 3 duplicates those purposes- “for the purposes of section 10(1)(e) of that Act in so far as not already in force for the purposes of section 10(1)(e).”

Would you agree this is an error, and if so, would corrective action be proposed?
The Scottish Government responded as follows:

1. The Scottish Government agrees that the consequential modification of the Management of Offenders etc. (Scotland) Act 2005 (Specification of Persons) Order 2007 (“the 2007 Order”) is an amendment to an ‘enactment’. Under section 22(4) of the Management of Offenders etc. (Scotland) Act 2005 (“the 2005 Act”) any amendment to the 2007 Order via section 22(2) of the 2005 Act requires to be subject to the affirmative procedure and laid in draft and approved by the Scottish Parliament, in order to be intra vires.

As this has not been done, the Scottish Government will bring forward appropriate legislation to commence the relevant provision in section 10 of the 2005 Act and to amend the 2007 Order. The intention remains for this to come into force on 31st March 2016.

2. The second point made by the Committee will be addressed by the Scottish Government when bringing that legislation forward.
Annexe C

Community Right to Buy (Scotland) Regulations 2015 (SSI 2015/400)

On 26 November 2015, the Scottish Government was asked:

1. Regulation 1(3)(d)(ii) refers to “15th April 2015”. Should this refer instead to “15th April 2016”? If so, is corrective action proposed?

2. Regulation 20(2) relates to the conduct of a further ballot and provides that “In any case where Ministers have given their consent in writing under section 35(1) of the Act, Ministers must provide a copy of the community body’s modified memorandum, articles of association, constitution or registered rules not later than 14 days after the date on which Ministers sent notification in accordance with regulation 19(5)(c)”. Regulation 20(2) does not specify to whom the copy of the modified articles of association etc. are to be provided. Is this to the ballotter? Standing the absence of this information, is regulation 20(2) considered to be sufficiently clear?

3. Section 52(7) of the 2003 Act as amended provides that provision may be prescribed for or in connection with requiring a further ballot to be conducted on such a basis, “and by such persons or description of persons” as may be prescribed. Regulation 20(1) provides that the further ballot must be conducted by “a ballotter” in accordance with the requirements of regulations 15, 16 and 17(1). Who is “a ballotter” for the purpose of conducting a further ballot? How is that person to be appointed?

4. Regulations 1 and 23 relate to, respectively, application and savings. The regulations apply to a community body’s application or any rights flowing from that application where the application is made on or after 15th April 2016. The previous legislative regime will continue to apply in respect of applications made before 15th April 2016. The critical date for determining which set of rules applies is therefore the date the community body “made” its application to register a community interest in land. There does not appear to be any interpretative provision identifying when an application is “made” for the purposes of regulations 1 and 23. Is it the date the application is signed by the community body, the date it is received by the Scottish Ministers, or some other date? Standing the absence of any such provision, are regulations 1 and 23 considered to be sufficiently clear and precise?

5. Regulation 23 saves the existing law in respect of “a community interest in land which relates to an application to register a community interest in land made before 15th April 2016”. Please can you clarify whether this saving (or any other saving) is intended to cover subsequent re-registrations of an interest where the
original application was made prior to 15th April 2016 but where the community body opts to re-register the interest after 15th April 2016? Which set of rules applies in these circumstances?

6. Schedule 11 sets out the form of return to be used by a ballotter for the purpose of giving notification in the terms required by section 52(3) of the Act (and is introduced by regulation 17(2)). The form prescribed does not include a space where the ballotter may notify Ministers of the result of the ballot as required by section 52(3)(a). Please explain how the ballotter can comply with the obligation to give notification of the result of the ballot “in the prescribed form” where the prescribed form does not make provision for the inclusion of this information? Why is it considered competent to prescribe a form using the power in section 52(3) but not to include space for all of the information required to be included in that form?

The Scottish Government responded as follows:

1. Regulation 1(3)(d)(ii) should refer to 15th April 2016. This will be corrected by laying a further SSI at the earliest opportunity and in any event before the coming into force of the Regulations.

2. The ballot provisions at regulation 20 concern the conduct of a further ballot. Under regulation 20(1) the further ballot is conducted in accordance with the requirements of regulation 15, 16 and 17(1) which lay down the conduct of the original ballot. There is also a requirement in regulation 13(b) that Ministers must provide modified memorandum, articles of association, constitution or registered rules to the ballotter. This is part of the process of an original ballot. It is correct that regulation 20(2) does not indicate specifically that Ministers must provide a copy of modified memorandum and articles etc. to the ballotter.

In practice since this is an obligation on Ministers to provide this information to the ballotter which is clearly understood by them (and which information is in any event a matter of public record), it is our view that the Regulations do not contain significant ambiguity over the recipient of these documents.

However since an amending instrument will be brought forward to deal with the point raised at 1 above, the opportunity will be taken to also clarify the wording of regulation 20(2) to place the requirement to provide documents to the ballotter beyond any doubt.

3. Section 52(7)(c) of the Land Reform (Scotland) Act 2003 (the 2003 Act) allows Ministers to prescribe provision for requiring any further ballot to be conducted by such persons or descriptions of persons as may be prescribed. Regulation 20(1) states that the further ballot must be conducted by a ballotter. Section 51A of the 2003 Act states that the “ballotter” is a person appointed by Ministers who appears to them to be independent and to have knowledge and experience of conducting ballots. Section 24 of the Interpretation and Legislative Reform (Scotland) Act
2010 (which applies to these Regulations by virtue of section 1(1)(b), (4)(a) and (5)(c) of that Act) states that a word or expression used in a Scottish instrument has the same meaning as it has in the Act of the Scottish Parliament by virtue of which the instrument is made. Therefore, it is considered sufficiently clear that the reference to the “ballotter” in regulation 20(1) is a reference to the ballotter as defined by section 51A of the 2003 Act. Therefore regulation 20(1) in its current form, when read with the relevant definition is considered to be sufficiently clear and precise and does not need further clarification or amendment.

4. Regulations 1 and 23 relate to, respectively, application and savings. It is correct that the critical date for determining which set of rules applies is the date the community body “made” its application to register a community interest in land. The wording of regulation 1 and 23, in each case, refers to an application to register a community interest in land made on or after or before the relevant date, i.e. 15th April 2016. The term “application to register a community interest in land” is defined in regulation 1(2) and means “an application to register a community interest in land under section 37(1) of the 2003 Act”. Section 37(1) of the 2003 Act is clear and refers to an application being made by a community body to Ministers in the prescribed form and including prescribed information. It is clear from the context therefore that an application is only made when it is made to Ministers. Section 98(6) and (7) clarify the effective date of any application. Hence regulation 1 and 23, in their current form, when read with the relevant definition and section 37 and 98 of the 2003 Act are considered to be sufficiently clear and precise and do not need further clarification or amendment.

5. Regulation 23 saves the existing law in respect of “a community interest in land which relates to an application to register a community interest in land made before 15th April 2016”. This saving does not cover subsequent re-registrations of an interest where the original application was made prior to 15th April 2016 but where the community body opts to re-register the interest after 15th April 2016. The re-registration is an application made after the relevant date and so the saving will not apply in those circumstances. Section 44 the 2003 Act is clear that a registered community interest has a specific duration of 5 years. Section 44(2) allows community bodies to re-register their interest in the last 6 months of that duration. Section 44(2) is also clear that the re-registration must be done by a new application under section 37. In order to re-register, a new application must be made under section 37 and such an application would be an application to register a community interest in land made after the relevant day. The savings provision refers to an “application to register a community interest in land” made before 15th April 2016. The term “application to register a community interest in land” is defined and means “an application to register a community interest in land under section 37(1) of the 2003 Act”. Therefore it is clear, when reading the savings provision together with that definition and section 44 of the 2003 Act, that the saving would not apply to re-registrations after the relevant date. This is consistent with regulation 4 of the Regulations which refers to section 37(1) of the 2003 Act for both re-registrations and new applications. As such, regulation 23, in
its current form is considered to be sufficiently clear and precise on the issue of re-
registrations and hence does not require further clarification or amendment.

6. Section 52 of the 2003 Act deals with ballot procedure. Section 52(3)(a) requires
the ballotter to notify Ministers of the result of the ballot. The result of the ballot is
not just a question of a straight yes/no vote. The “result” of the ballot cannot be
summed up in just one question, but is a combination of the answers in the form.
The “result” of the ballot is made up of the answers to some of the questions set
out in Schedule 11, such as—

Question 5 - How many people were eligible to vote in the ballot?

Question 6 - How many persons who were eligible to vote voted in the ballot?

Question 8 - How many votes were spoilt?

Question 9 - What was the number of votes cast for the proposition that the
community body buy the land?

The answers to these questions, when read together, make up the “result” of the
ballot.

In filling in questions 5, 6, 8 and 9 of the prescribed form, the ballotter complies
with his obligation to give notification of the result of the ballot. On the basis of the
explanation above, particularly that the answers to questions 5, 6, 8 and 9 of the
form set out in Schedule 11 make up the ballot “result”, it is considered that the
form, as prescribed, fulfils the requirements of section 52(3)(a) of the 2003 Act.
Annexe D

Community Empowerment (Scotland) Act 2015 (Commencement No. 3 and Savings) Order 2015 (SSI 2015/399 (C.50))

On 26 November 2015, the Scottish Government was asked:

Article 3 makes savings provision. Its effect is that the modifications of Parts 2 and 4 of the 2003 Act will not be affected by the commencement of the provisions of the 2015 Act set out in the Schedule in circumstances where a community body’s application was made before 15th April 2016. Can you explain when an application is “made” for these purposes? Is it the date the application is signed by the community body, the date it is received by the Scottish Ministers, or some other date? Is Article 3 in its current form considered to be sufficiently clear and precise standing the absence of any provision explaining when an application is “made”?

The Scottish Government responded as follows:

Article 3 makes savings provision. It is correct that the effect of the savings provision is that the modifications of Parts 2 and 4 of the 2003 Act will not be affected by the commencement of the provisions of the 2015 Act set out in the Schedule in circumstances where a community body’s application was made before 15th April 2016. The wording of Article 3, in each case, refers to the provisions having no effect in relation to, or in circumstances connected back to, an application to register a community interest in land made before 15th April 2016. The term “application to register a community interest in land” is defined in article 1(2) and means “an application to register a community interest in land under section 37(1) of the 2003 Act”. Section 37(1) of the 2003 Act is clear and refers to an application being made by a community body to Ministers in the prescribed form and including prescribed information. It is clear from the context therefore that an application is only made when it is made to Ministers. Section 98(6) and (7) clarify the effective date of any application. Therefore Article 3, in its current form, is considered to be sufficiently clear and precise and does not need further clarification or amendment.