Delegated Powers and Law Reform Committee

Subordinate Legislation
## Contents

**Introduction** 1

**Points raised: Instruments subject to negative procedure** 2

- Asset Transfer Request (Procedure) (Scotland) Regulations 2016 (SSI 2016/357) (Local Government and Communities) 2
- Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358) (Local Government and Communities) 4
- Asset Transfer Request (Appeals) (Scotland) Regulations 2016 (SSI 2016/359) (Local Government and Communities) 8
- Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016 (SSI 2016/360) (Local Government and Communities) 10
- Community Empowerment (Registers of Land) (Scotland) Regulations 2016 (SSI 2016/362) (Local Government and Communities) 12
- Land Reform (Scotland) Act 2016 (Consequential and Saving Provisions) Regulations 2016 (SSI 2016/366) (Rural Economy and Connectivity) 14

**No points raised** 16

**Annexe A** 17

**Annexe B** 19

**Annexe C** 22

**Annexe D** 24

**Annexe E** 27

**Annexe F** 28
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;

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;

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 in accordance with Rule 9.18.3.

www.parliament.scot/delegated-powers-committee
DPLR.Committee@scottish.parliament.uk
0131 348 5175

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Committee Membership

**Convener**
John Scott  
Scottish Conservative and Unionist Party

**Deputy Convener**
Stuart McMillan  
Scottish National Party

**Alison Harris**
Scottish Conservative and Unionist Party

**Monica Lennon**
Scottish Labour

**David Torrance**
Scottish National Party
Introduction

1. At its meeting on 29 November 2016, the Committee agreed to draw the attention of the Parliament to the following instruments—

   Asset Transfer Request (Procedure) (Scotland) Regulations 2016 (SSI 2016/357)

   Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358)

   Asset Transfer Request (Appeals) (Scotland) Regulations 2016 (SSI 2016/359)

   Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016 (SSI 2016/360)

   Community Empowerment (Registers of Land) (Scotland) Regulations 2016 (SSI 2016/362)

   Land Reform (Scotland) Act 2016 (Consequential and Saving Provisions) Regulations 2016 (SSI 2016/366)

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 that are set out at the end of this report.
Points raised: Instruments subject to negative procedure

**Asset Transfer Request (Procedure) (Scotland) Regulations 2016 (SSI 2016/357)**  
(Local Government and Communities)

4. These Regulations make provision in relation to how an asset transfer request is to be made under the Community Empowerment (Scotland) Act 2015 (“the Act”).

5. Part 5 of the Act provides community transfer bodies with a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, certain Scottish public bodies or the Scottish Ministers (i.e. “relevant authorities”). This is known as an “asset transfer request”.

6. Certain requirements in relation to asset transfer requests are set out on the face of the Act. Sections 81 and 82 of the Act also confer power on the Scottish Ministers to make further provision about how asset transfer requests may be made, and about how such requests are to be dealt with by the relevant authority.

7. The Regulations make such provision, covering how requests are to be made; what information must be included; when and how a relevant authority is to acknowledge receipt of the request; notification and publication of the request; provision as to representations; when and how a decision notice must be given and published; and provision as to how the community transfer body may be contacted.

8. The Regulations are subject to the negative parliamentary procedure and come into force on 23 January 2017.


10. In considering the Regulations, the Committee sought an explanation in writing from the Scottish Government regarding the clarity or otherwise of certain regulations within the instrument. The correspondence is reproduced at Annex A.

11. The Committee’s conclusions below as to the drafting clarity of regulations 12 and 13 are equivalent to those for regulations 18 and 19 of the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358). We refer to the comments in this report for that instrument at paragraphs 26 to 35 of this report.

12. There are also similar conclusions in relation to SSI 2016/359 and SSI 2016/360, which instruments are considered separately in this report.
13. The Scottish Government has not undertaken in its written response to the Committee to improve the clarity of regulations 12 and 13, by means of laying an amending instrument.

14. The Committee draws the instrument to the attention of the Parliament on reporting ground (h), as the meaning of regulations 12 and 13 could be clearer in the following respects:

(a) Regulation 13(1) could be made clearer, to clearly give effect to the policy intention that there may be one or more contact addresses determined in accordance with this regulation.

(b) Regulations 12 and 13 could be made clearer, to clearly give effect to the policy intention that, when a community transfer body sends an electronic communication from an address other than a contact address or addresses contained in an asset transfer request, or as subsequently notified in accordance with regulation 13(2), that does not alter the contact address or addresses.

15. The Committee calls on the Scottish Government to lay an amending instrument which would improve the clarity of regulations 12 and 13. This amendment should take effect timeously for these Regulations coming into force on 23rd January 2017.
Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358) (Local Government and Communities)

16. The Regulations make provision for procedures to be followed in relation to the internal review of decisions on asset transfer requests under the Community Empowerment (Scotland) Act 2015.

17. The Regulations mainly provide for the local authority review process, which is then tailored in how it applies to a review conducted by the Scottish Ministers. In summary, the Regulations provide that the relevant authority may make a decision on the papers, invite the community transfer organisation and/or other interested parties to submit further written submissions, or hold a hearing.

18. The instrument is subject to the negative procedure and comes into force on 23 January 2017.

19. In considering the Regulations, the Committee sought written clarification from the Scottish Government on an apparent drafting error and the clarity of the Regulations more generally. The correspondence is reproduced at Annexe B.

20. In light of that correspondence, the Committee considers that the following issues arise:

Regulation 12(1)

21. Regulation 12(1) provides that “where an application for review is made the Scottish Ministers must appoint three persons, no more than one of whom is a member of the staff of the Scottish Ministers, to consider the asset transfer request and report to them on it ("the review panel")."

22. The Committee wrote to the Scottish Government asking it to clarify whether it is intended that one of the three persons who must be appointed must be a “member of the staff of the Scottish Ministers”, or whether the Ministers are capable of appointing three persons none of whom are such members of staff.

23. The Scottish Government responded that it considers that regulation 12(1) does not operate to require the Scottish Ministers to appoint a member of their own staff. The intention is that no more than one of the review panel is a member of staff of the Scottish Ministers.

24. However, for the avoidance of doubt, the Scottish Government has undertaken to clarify this issue by laying an amending instrument. The amendment would also amend regulation 18(2), as considered at paragraphs 36 to 38 of this report. The amendment would take effect before these Regulations come into force on 23 January 2017. The Committee welcomes this action from the Scottish Government.

25. The Committee considers that there is a lack of clarity in the current provision, as the drafting of regulation 12(1) does not make wholly clear whether the Scottish
Ministers must appoint a member of staff of the Scottish Ministers to the review body, or whether it can determine that no members of staff are appointed.

**Regulation 18(1)**

26. Regulation 18(1) provides for “the” contact address to be chosen by the community body to which any document relating to the review is to be sent. The contact address is initially to be specified on the application, but can change by virtue of regulation 18(2) (i.e. where the Scottish Ministers are informed of a change (on which see paragraphs 36 to 38 of this report)).

27. Regulation 18(1) refers to “any” address for the purposes of electronic communication within the meaning of regulation 19. Regulation 19(3) refers to “any person” sending a document by electronic communication for all purposes relating to the review.

28. The Committee wrote to the Scottish Government asking it to confirm the following:

   (a) How regulation 19(3) applies to determine “the” contact address, in circumstances where two or more addresses are deemed to be agreed under regulation 19(3)(b), given that that regulation contains no restriction as to the number of addresses that may be used for all purposes relating to the review.

   (b) Supplemental to (a), whether two or more addresses could be deemed to be agreed in terms of regulation 19(3)(b) where a community transfer body sends emails from more than one email account. It was queried whether, alternatively, is the policy intention is that the email address which is deemed to be agreed by means of sending a first document would be “the contact address” under regulation 18.

   (c) If therefore the provisions could be made clearer.

29. The Scottish Government responded that “the contact address” expressed in the singular would include the plural. It would be open to the community transfer body to provide more than one address (whether postal, email, or both).

30. The Committee considers that the Scottish Government’s contention that “the” contract address can also mean several addresses (if that is what the community transfer body decides to provide) depends on an argument that section 22 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies. That section provides that in an Act of the Scottish Parliament or a Scottish instrument words in the singular include the plural, and vice versa. However (by virtue of section 1 of the 2010 Act) that rule does not apply if (a) the Act or instrument provides otherwise, or (b) the context of the Act or instrument otherwise requires.

31. The Committee considers that, given that regulation 18(1) refers to “the” contact address whereas regulation 19 allows for one or more email addresses for correspondence, it is not made wholly clear whether one or more contact addresses may be used. Regulation 18(1) could simply have expressed that there may be one or more contact addresses.
32. The Scottish Government also contends that regulation 19 does not operate to alter “the contact address”. It explains that this would need to be done by notice under regulation 18(2). The Scottish Government also considers that regulation 19(3) merely clarifies that the relevant authority may reply to an email from the community transfer body at that email address, rather than having to use only the contact address notified in the application (or as subsequently amended by notice under regulation 18(2)). That email address may be different from an email address given as the “contact address”, without changing the contact address. It is considered to be a matter for the community transfer body to decide how it arranges any electronic communication with the relevant authority.

33. The Committee considers that regulations 18 and 19 are capable of being read together to mean that sending a document by an electronic communication is deemed (by virtue of the terms of regulation 19(3)(a)) to change the contact address for all purposes relating to the review, if the address from which the communication is sent is different from an earlier notified “contact address”. The Committee’s view is that in this respect regulations 18 and 19 are not entirely coherent and consistent.

34. The Committee considers that regulations 18 and 19 could be made clearer, to more clearly implement the policy intention that when the community transfer body sends an email from an address other than the “contact address” contained in the application or as later notified in accordance with regulation 18(2), regulation 19(3)(a) does not have effect to alter the contact address or addresses determined in accordance with regulation 18.

35. The Scottish Government does not intend to amend regulations 18 or 19. However, it has undertaken to bring forward an instrument with amendments to address the issues in respect of regulation 12(1) (see paragraphs 21 to 25 of this report above) and regulation 18(2) (see paragraphs 36 to 38 below), before these Regulations come into force on 23 January 2017.

**Regulation 18(2)**

36. Regulation 18(2) provides that the community transfer body’s “contact address” is as stated in the application for review, unless the community transfer body has subsequently informed the Scottish Ministers of a change to the contact address.

37. The Committee wrote to the Scottish Government asking it if the reference to the “Scottish Ministers” should be a reference to the “relevant body”. This is because it would not appear to make sense to inform the Scottish Ministers of a change of the community transfer body’s address in relation to a local authority review.

38. The Scottish Government has agreed that the reference to the “Scottish Ministers” should be a reference to the “relevant body”. The Scottish Government has undertaken to address this in the proposed amending instrument.
39. The Committee draws the instrument to the attention of the Parliament on reporting ground (h), as the meaning of the Regulations could be clearer in the following respects:

   (a) Regulation 12(1) could be made clearer, to clearly give effect to the policy intention that there is no requirement for the Scottish Ministers to appoint a member of their own staff to a review panel.

   (b) Regulation 18(1) could be made clearer, to clearly give effect to the policy intention that there may be one or more contact addresses determined in accordance with this regulation.

   (c) Regulations 18 and 19 could be made clearer, to clearly give effect to the policy intention that, when a community transfer body sends an electronic communication from an address other than a contact address or addresses contained in the application or as subsequently notified in accordance with regulation 18(2), that does not alter the contact address or addresses.

40. The Committee also draws the instrument to the attention of the Parliament on the general reporting ground, as there is a drafting error in regulation 18(2). The reference to the “Scottish Ministers” should be a reference to the “relevant body”.

41. The Scottish Government has undertaken to rectify regulation 12(1) and the drafting error in regulation 18(2), by laying an amending instrument. This would take effect timeously for these Regulations coming into force on 23 January 2017.

42. In light of the undertaking to lay an amending instrument, the Committee calls on the Scottish Government to include in that instrument provision to improve the clarity of regulation 18(1) and regulations 18 and 19 taken together (i.e. to address the matters described in paragraph 39(b) and (c) above).
43. These Regulations make provision for the procedures to be followed in connection with appeals to the Scottish Ministers, in relation to decisions on asset transfer requests under the Community Empowerment (Scotland) Act 2015 (“the Act”). The Regulations initially provide for the process of appeal direct to the Scottish Ministers, under section 85(2) of the Act.

44. By means of that section, a community transfer body which has made an asset transfer request to a “relevant authority” under the Act may appeal the decision of the authority to the Ministers, unless the relevant authority is the Ministers themselves, a local authority or other persons who may be specified by order.

45. Part 4 of the Regulations sets out how they apply to an appeal made under section 88(2) of the Act, following a review by a local authority of the earlier decision of the authority on an asset transfer request.

46. The Policy Note explains that the appeal procedures follow a model similar to that used in planning, and seek to ensure that anyone with an interest in the request has the opportunity to see and comment on all the evidence submitted. An outline of the appeal processes is included in the Policy Note for the instrument.

47. The Regulations are subject to the negative procedure and come into force on 23 January 2017.

48. In considering the Regulations, the Committee sought an explanation in writing from the Scottish Government regarding the clarity or otherwise of certain regulations within the instrument. The correspondence is reproduced at Annexe C.

49. Regulations 16 and 17 of the Regulations are very similar to regulations 18 and 19 of the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358) which are considered above. The Committee therefore reports, on a similar basis, that the meaning of regulation 16 and 17 could be clearer in certain respects.

50. The Committee therefore draws the instrument to the attention of the Parliament on the reporting ground (h), as the meaning of regulations 16 and 17 could be clearer in the following respects.

(i) Regulation 16(1) could be made clearer, to clearly give effect to the policy intention that there may be one or more contact addresses determined in accordance with this regulation.

(ii) Regulations 16 and 17 could be made clearer, to clearly give effect to the policy intention that, when a community transfer body sends an electronic communication from an address other than a contact address or addresses contained in a notice of appeal, or as subsequently notified in
accordance with regulation 16(2), that does not alter the contact address or addresses.

51. The Committee calls on the Scottish Government to lay an amending instrument which would improve the clarity of regulations 16 and 17. This amendment should take effect timeously for these Regulations coming into force on 23rd January 2017.
Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016 (SSI 2016/360) (Local Government and Communities)

52. These Regulations make provision for appeal procedures to be followed in relation to appeals to the Scottish Ministers, where a “relevant authority” and a community transfer body have failed to conclude a contract, following agreement to an asset transfer request under section 79 of the Community Empowerment (Scotland) Act 2015 (“the Act”).

53. The Regulations also make provision for applications to the Scottish Ministers under section 83(8) of the Act, for directions to extend the time to agree a contract, or under section 90(5) to require a “relevant authority” to conclude the contract following an appeal.

54. The procedures for other appeals and reviews in relation to asset transfer requests are set out in the Asset Transfer Request (Appeals) (Scotland) Regulations 2016 (SSI 2016/359) which are considered above. Unlike such other appeals and reviews, the procedures in this instrument do not allow for third party representations or publication of documents, as the negotiation of a contract is likely to be complex and include commercially sensitive information.

55. The Regulations are subject to the negative procedure and come into force on 23 January 2017.

56. In considering the Regulations, the Committee sought written clarification from the Scottish Government on an apparent drafting error and the clarity of the Regulations more generally. The correspondence is reproduced at Annexe D.

57. Regulations 5(1), 18 and 19 of the Regulations are very similar to regulations 12(1), 18 and 19 of the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358) which are considered above. The Committee therefore reports, on a similar basis, that the meaning of regulation 5(1), 18 and 19 could be clearer, in certain respects.

58. There is also a minor drafting error in the Regulations, as explained at paragraph [53] below.

59. The Committee therefore draws the instrument to the attention of the Parliament on reporting ground (h), as the meaning of the Regulations could be clearer in the following respects:

(a) Regulation 5(1) could be made clearer, to clearly give effect to the policy intention that there is no requirement for the Scottish Ministers to appoint a member of their own staff to a review panel.

(b) Regulation 18(1) could be made clearer, to clearly give effect to the policy intention that there may be one or more contact addresses determined in accordance with this regulation.
(c) Regulations 18 and 19 could be made clearer, to clearly give effect to the policy intention that, when a community transfer body sends an electronic communication from an address other than a contact address or addresses contained in a notice of appeal or application, or as subsequently notified in accordance with regulation 18(2), that does not alter the contact address or addresses.

60. The Committee also draws the instrument to the attention of the Parliament on the general reporting ground, as there is a drafting error in rule 4(2)(a) in the schedule. The reference to “notice in writing from the review panel person” should omit “person”.

61. The Scottish Government has undertaken to rectify the above matters, apart from in relation to regulations 18 and 19, by laying an amending instrument. This would take effect timeously for these Regulations coming into force on 23 January 2017.

62. In light of that undertaking, the Committee calls on the Scottish Government to include in that instrument provision to improve the clarity of regulations 18 and 19.
Community Empowerment (Registers of Land) (Scotland) Regulations 2016 (SSI 2016/362) (Local Government and Communities)

63. The Regulations specify descriptions of land that need not be included in the register of land to be established and maintained by relevant authorities under section 94(1) of the Community Empowerment (Scotland) Act 2015. In summary, these types of land are:

- Public roads
- Underground railways
- Canals
- Bus stations
- Houses, hostels and lodging-houses
- Land used for the supply of drinking water and disposal of waste water, and certain reservoirs
- Radio masts for the emergency services network
- Sites used for covert policing
- Souvenir plots (i.e. land of inconsiderable size and no practical utility)
- Mineral rights

64. The Regulations are subject to the negative procedure and come into force on 23 January 2017.

65. In considering the Regulations, the Committee sought an explanation in writing from the Scottish Government regarding the clarity of certain provisions within the instrument. The correspondence is reproduced at Annexe E.

66. The Committee considers that in one respect the form of the Regulations could be clearer. There are also two drafting errors in the instrument. The Committee therefore draws the instrument to the attention of the Parliament under reporting ground (h) in respect of the following instance where the form of the Regulations could be clearer.

67. There is an anomaly in relation to the numbering of sub-paragraph (d) and sub-sub paragraphs (i) and (ii) of regulation 2(1). Sub-paragraphs (i) and (ii) should be included under a separate sub-paragraph (e), with the numbering in the remaining sub-paragraphs in regulation 2(1) updated accordingly.

68. The Committee also draws the instrument to the attention of the Parliament under the general reporting ground in respect of the following drafting errors:

1. Sub-paragraph (g) of regulation 2(1) incorrectly refers to the “Police and Fire (Scotland) Act 2012, when it should refer to the “Police and Fire Reform (Scotland) Act 2012.

2. Similarly, sub-paragraph (i) of regulation 2(1) incorrectly refers to the “Land Registration (Scotland) Act 2012”, when it should refer to the “Land Registration etc. (Scotland) Act 2012”.
69. The Committee welcomes that the Scottish Government has undertaken to lay a further instrument to clarify the provisions in respect of all three of the above points, to take effect before the Regulations come into force on 23 January 2017.
Land Reform (Scotland) Act 2016 (Consequential and Saving Provisions) Regulations 2016 (SSI 2016/366) (Rural Economy and Connectivity)

70. The Regulations make a specific modification to the Organic Aid (Scotland) Regulations 1994 (“the 1994 Regulations”). The 1994 Regulations apply to Scotland and make provision for the payment of aid to farmers who undertake to introduce organic farming methods. Regulation 9(6) of those Regulations provides that where, within 3 months from a change of occupation of a farm, a new occupier has not given an undertaking to comply with the obligations assumed by the original beneficiary, the Scottish Ministers have rights to withhold payments of aid under the scheme and to recover payments.

71. Regulation 2 of this instrument updates an exemption from that provision in regulation 9(6) of the 1994 Regulations. The exemption applies where the change of occupation of a farm is the result of the death of the original beneficiary, and after the death the farm was the subject of a bequest that was declared void by the Land Court, or the tenancy was terminated in accordance with certain provisions of the Agricultural Holdings (Scotland) Act 1991.

72. Regulation 3 contains a saving provision, which is outlined in the comments below.

73. The Regulations are subject to the negative procedure and come into force on 23 December 2016.

74. In considering the Regulations, the Committee sought an explanation in writing from the Scottish Government regarding the clarity of certain provisions within the instrument. The correspondence is reproduced at Annexe F.

75. Regulation 3 sets out circumstances in which the modification of the 1994 Regulations made by regulation 2 does not apply.

76. Firstly, the modification has no effect in relation to a lease of an agricultural holding, a limited duration tenancy or a short limited duration tenancy, which is bequeathed in accordance with certain provisions of the Agricultural Holdings (Scotland) Acts 1991 and 2003, and where the will or other testamentary writing containing the bequest was made before 23 December 2016 (when this instrument comes into force).

77. Secondly, the modification is not intended to apply to the succession to an agricultural holding, a short limited duration tenancy, or a limited duration tenancy, where a person died before 23 December 2016, and at the time of death the person had not made a will or other testamentary writing which bequeathed the lease.

78. The Committee enquired with the Scottish Government as to the clarity of that second provision (contained in regulation 3(1)(c) and (2)). It sought clarification whether it is intended, for the saving provision to apply, either:
(a) that the person must have made no will or other testamentary writing containing a bequest of any lease of an agricultural holding, short limited duration tenancy or limited duration tenancy; or

(b) in the circumstance where the estate of a deceased person contains two or more interests as an agricultural tenant, and the person has made a will or other testamentary writing which contains a bequest of some (or one) of the interests and not others, that it applies only in respect of an interest or interests which have not been bequeathed by the will or other writing- even though there may be a bequest of another interest or interests.

79. The Scottish Government has confirmed that the policy intention is in accordance with that alternative, (b).

80. The Scottish Government has considered that the drafting (in regulation 3(2)(c)) is sufficiently clear for the purposes of the Regulations. However it accepts that it could be clearer. To remove doubt, the Scottish Government has laid the Land Reform (Scotland) Act 2016 (Consequential and Saving Provisions) Amendment Regulations 2016 (SSI 2016/389) to amend the provisions urgently.

81. The Committee has not agreed with the Scottish Government that regulation 3(1)(c) and (2) are sufficiently clear. There is a lack of clarity - the provisions are unclear as to whether the saving provision would operate as described at (a), or alternatively (b), above.

82. The Committee draws the Regulations to the attention of the Parliament on reporting ground (h), as the meaning of regulation 3(1)(c) and (2) could be clearer.

83. In the circumstance where an estate of a deceased person contains two or more interests as tenant under a lease of an agricultural tenancy, the saving provision in regulation 3(1)(c) and (2) could implement more clearly the policy intention that it applies only in respect of an interest or interests that have not been bequeathed by will or other testamentary writing, even though there may be a bequest of another interest or interests.

84. The Committee welcomes that the Scottish Government has urgently laid a further instrument to clarify the provisions.
No points raised

85. At its meeting on 29 November 2016, 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.

Environment, Climate Change and Land Reform

Air Quality Standards (Scotland) Amendment Regulations 2016 (SSI 2016/376)

Justice

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Commencement No. 2, Transitional and Transitory Provision) Regulations 2016 (SSI 2016/370 (C.34))

Local Government and Communities

Community Empowerment (Scotland) Act 2015 (Commencement No. 4 and Transitory Provision) Order 2016 (SSI 2016/363 (C.32))

Rural Economy and Connectivity

Land Reform (Scotland) Act 2016 (Consequential and Saving Provisions) Amendment Regulations 2016 (SSI 2016/389)
Annexe A

Asset Transfer Request (Procedure) (Scotland) Regulations 2016 (SSI 2016/357)

On 18 November 2016, the Scottish Government was asked:

Regulation 13(1) provides for “the” contact address to be chosen by the community transfer body, to which any document relating to the asset transfer request is to be sent. The contact address is initially specified in the asset transfer request but can change by virtue of regulation 13(2) (i.e. informing the relevant authority of a change). Regulation 13(1) refers to “any” address for the purposes of electronic communication within the meaning of regulation 12. Regulation 12(3) refers to “any person” sending a document by electronic communication for all purposes relating to the asset transfer request.

a. How does regulation 12(3) apply to determine “the” contact address, in circumstances where two or more addresses are deemed to be agreed under regulation 12(3)(b), given that that regulation contains no restriction as to the number of addresses that may be used for all purposes relating to the asset transfer request?

b. Supplemental to (a), is it accepted that two or more addresses could be deemed to be agreed in terms of regulation 12(3)(b), where a community transfer body sends emails from more than one email account? Or is it intended that the email address which is deemed to be agreed by means of sending a first document would be “the contact address” under regulation 13?

c. Accordingly could the provisions be made clearer? Would any corrective action be proposed?

The Scottish Government responded as follows:

(a) and (b) - Regulation 3(1)(a) requires the community transfer body to provide the address to which the community transfer body wishes documents relating to the request to be sent. The singular would include the plural and it would be open to the community transfer body to provide more than one address. For example the community transfer body may provide both a postal address and an email address, or two email addresses. This is a matter for the community transfer body to determine when submitting the asset transfer request.

The community transfer body may subsequently inform the relevant authority of a change to the contact address. It is considered that regulation 13(2) is clear that the contact address is the address as stated in the asset transfer request until the community transfer body has actually informed the relevant authority of a change to the contact address.

Regulation 12 does not operate to alter the contact address. Regulation 12 operates to clarify when electronic communication may be used. There is no restriction on the number of different email accounts or addresses which may be used by the community transfer body. It is open to the community transfer body to send an email to the
relevant authority from an email address other than any email address given as the contact address without changing the usual contact address. Regulation 12(3) merely makes it clear that the relevant authority may reply to the community transfer body at that email address rather than having to use only the usual contact address. Enabling the use of electronic communication in this way does not itself alter the “contact address” which would require the community transfer body to inform the relevant authority of a change to that address. There is no strict requirement that all communication to the community transfer body must be made to the contact address and it is a matter for the community transfer body as to how it arranges any electronic communication with the relevant authority.

(c) - It is not considered that there is any need for clarification of the provisions.
Annexe B

Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358)

On 18 November 2016, the Scottish Government was asked:

1. Regulation 12(1) provides that “where an application for review is made the Scottish Ministers must appoint 3 persons, no more than one of whom is a member of the staff of the Scottish Ministers, to consider the asset transfer request and report to them on it (‘the review panel’).”

   a. Please clarify whether it is intended that one of the 3 persons who must be appointed must be a “member of the staff of the Scottish Ministers”, or whether the Ministers are capable of appointing 3 persons none of whom are such members of staff. Could this be clearer (in relation to the wording “no more than one of whom”)?

   b. Section 51 of the Scotland Act 1998 (the Civil Service) provides that the Scottish Ministers may appoint persons to be members of the staff of the Scottish Administration. The Administration also includes the non-Ministerial officeholders (such as the Keeper of the Registers of Scotland).

   Accordingly should regulation 12(1) have properly referred to the staff of the Scottish Administration, or otherwise please explain why the reference to “the staff of the Scottish Ministers” is considered appropriate?

2. Regulation 15(1) makes provision for the “relevant authority” to require any person who has submitted documents, materials or evidence in connection with the review to provide copies of those documents.

   Should there also be a reference to the “review panel” requiring copies to be provided?

3. Regulation 18(1) provides for “the” contact address to be chosen by the community body to which any document relating to the review is to be sent. The contact address is initially specified on the application but can change by virtue of regulation 18(2) (i.e. informing the Scottish Ministers of a change (on which see question 4 below)). Regulation 18(1) refers to “any” address for the purposes of electronic communication within the meaning of regulation 19. Regulation 19(3) refers to “any person” sending a document by electronic communication for all purposes relating to the review.

   a. How does regulation 19(3) apply to determine “the” contact address, in circumstances where two or more addresses are deemed to be agreed under regulation 19(3)(b), given that that regulation contains no restriction as to the number of addresses that may be used for all purposes relating to the review?

   b. Supplemental to (a), is it accepted that two or more addresses could be deemed to be agreed in terms of regulation 19(3)(b), where a community transfer body sends emails from more than one email account? Or is it intended that the email address
which is deemed to be agreed by means of sending a first document would be “the contact address” under regulation 18?

c. Accordingly could the provisions be made clearer?

4. Regulation 18(2) provides that the community transfer body’s “contact address” is as stated in the application for review, unless the community transfer body has subsequently informed the Scottish Ministers of a change to the contact address.

Should the reference to the Scottish Ministers be a reference to the “relevant body”?

5. Would corrective action be proposed in relation to any of the above points?

The Scottish Government responded as follows:

1.(a) - It is considered that regulation 12(1) requires the appointment of 3 persons to form a review panel and operates to restrict the membership of that review panel so that no more than one of the review panel is a member of staff of the Scottish Ministers. It is not considered that it operates to require the Scottish Ministers to appoint a member of their own staff. However, for the avoidance of any possible doubt Ministers will look to clarify this at the next available opportunity.

1.(b) - It is considered appropriate in the context of the regulation of the constitution of a review panel to limit the reference to members of staff of the Scottish Ministers. The review panel is to consider a matter which is before the Scottish Ministers for decision. If the reference were to members of staff of the Scottish Administration then this would, in terms of section 126(7) of the Scotland Act 1998, have caught both the staff of the Scottish Ministers and the staff of holders of non-ministerial offices. The intention is only to refer to the former.

2. – The review is made to the relevant authority and it is considered to be sufficient for the purposes of regulation 15 that the power to require additional copies rests with the relevant authority. The review panel has powers to request further information if needs do so in accordance with Part 3 as applied by regulation 13.

3. (a) and (b) - Regulation 3(3)(a) requires the community transfer body to provide the address to which the community transfer body wishes documents relating to the review to be sent. The singular would include the plural and it would be open to the community transfer body to provide more than one address. For example the community transfer body may provide both a postal address and an email address, or two email addresses. This is a matter for the community transfer body to determine when submitting the application for review.

The community transfer body may subsequently inform the relevant authority of a change to the contact address. It is considered that (subject to the response set out in paragraph 4) regulation 18(2) is clear that the contact address is the address as stated in the application for review until the community transfer body has actually informed the relevant authority of a change to the contact address.
Regulation 19 does not operate to alter the contact address. Regulation 19 operates to clarify when electronic communication may be used for correspondence with any person in connection with the review. There is no restriction on the number of different email accounts or addresses which may be used by the community transfer body. It is open to the community transfer body to send an email to the relevant authority from an email address other than any email address given as the contact address without changing the usual contact address. Regulation 19(3) merely makes it clear that the relevant authority may reply to the community transfer body at that email address rather than having to use only the usual contact address. Enabling the use of electronic communication in this way does not itself alter the “contact address” which would require the community transfer body to inform the relevant authority of a change to that address. There is no strict requirement that all communication to the community transfer body must be made to the contact address and it is a matter for the community transfer body as to how it arranges any electronic communication with the relevant authority.

(c) - It is not considered that there is any need for clarification of the provisions.

4 and 5 – The reference to the Scottish Ministers in regulation 18(2) should be a reference to the relevant authority. The Scottish Government are grateful to the Committee for bringing this to their attention and will bring forward an instrument to make this amendment and will take the opportunity when doing so to address the point raised at paragraph 1(a). The Scottish Government proposes to lay an instrument making these changes in order that the changes will take effect before the Regulations come into force on 23 January 2017.
Annexe C

Asset Transfer Request (Appeals) (Scotland) Regulations 2016 (SSI 2016/359)

On 18 November 2016, the Scottish Government was asked:

Regulation 16(1) provides for “the” contact address to be chosen by the community transfer body to which any document relating to an appeal is to be sent. The contact address is initially specified on the notice of appeal, but can change by virtue of regulation 16(2) (i.e. informing the Scottish Ministers of a change). Regulation 16(1) refers to “any” address for the purposes of electronic communication within the meaning of regulation 17. Regulation 17(3) refers to “any person” sending a document by electronic communication for all purposes relating to the appeal.

(a) How does regulation 17(3) apply to determine “the” contact address, in circumstances where two or more addresses are deemed to be agreed under regulation 17(3)(b), given that that regulation contains no restriction as to the number of addresses that may be used for all purposes relating to the appeal?

(b) Supplemental to (a), is it accepted that two or more addresses could be deemed to be agreed in terms of regulation 17(3)(b), where a community transfer body sends emails from more than one email account? Or is it intended that the email address which is deemed to be agreed by means of sending a first document would be “the contact address” under regulation 16?

(c) Accordingly could the provisions be made clearer?

The Scottish Government responded as follows:

(a) and (b) - Regulation 3(3)(a) requires the community transfer body to provide the address to which the community transfer body wishes documents relating to the appeal to be sent. The singular would include the plural and it would be open to the community transfer body to provide more than one address. For example the community transfer body may provide both a postal address and an email address, or two email addresses. This is a matter for the community transfer body to determine when making the appeal.

The community transfer body may subsequently inform the Scottish Ministers of a change to the contact address. It is considered that regulation 16(2) is clear that the contact address is the address as stated in the notice of appeal until the community transfer body has actually informed the Scottish Ministers of a change to the contact address.

Regulation 17 does not operate to alter the contact address. Regulation 17 operates to clarify when electronic communication may be used by any person in connection with the appeal. There is no restriction on the number of different email accounts or addresses which may be used by the community transfer body. It is open to the community transfer body to send an email to the Scottish Ministers from an email address other than any email address given as the contact address without changing
the usual contact address. Regulation 17(3) merely makes it clear that the Scottish Ministers may reply to that email at that email address rather than having to use only the usual contact address. Enabling the use of electronic communication in this way does not itself alter the “contact address” which would require the community transfer body to inform the Scottish Ministers of a change to that address. There is no strict requirement that all communication to the community transfer body must be made to the contact address and it is a matter for the community transfer body as to how it arranges any electronic communication with the Scottish Ministers.

(c) - It is not considered that there is any need for clarification of the provisions.
Annexe D

Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016 (SSI 2016/360)

On 18 November 2016, the Scottish Government was asked:

1. Regulation 5(1) provides that “where an appeal is made under section 83(6) the Scottish Ministers must appoint 3 persons, no more than one of whom is a member of the staff of the Scottish Ministers, to consider the appeal and report to them on it”.

(a) Please clarify whether it is intended that one of the 3 persons who must be appointed must be “a member of the staff of the Scottish Ministers”, or whether the Ministers are capable of appointing 3 persons none of whom are such members of staff. Could this be clearer (in relation to the wording “no more than one of whom”)?

(b) Section 51 of the Scotland Act 1998 (the Civil Service) provides that the Scottish Ministers may appoint persons to be members of the staff of the Scottish Administration. The Administration also includes the non-Ministerial officeholders (such as the Keeper of the Registers of Scotland).

Accordingly should regulation 5(1) have properly referred to the staff of the Scottish Administration, or otherwise please explain why the reference to “the staff of the Scottish Ministers” is considered appropriate?

(c) For consistency with the several other references to subsections of section 83 of the Act in the instrument, was it intended in regulation 5(1) to add “of the Act” between “under section 83(6)” and “the Scottish Ministers”?

2. Regulation 18(1) provides for “the” contact address to be chosen by the community transfer body to which any document relating to an appeal or application is to be sent. The contact address is initially specified on the notice of appeal or application, but can change by virtue of regulation 18(2) (i.e. informing the Scottish Ministers of a change). Regulation 18(1) refers to “any” address for the purposes of electronic communication within the meaning of regulation 19. Regulation 19(3) refers to “any person” sending a document by electronic communication for all purposes relating to the appeal or application.

(a) How does regulation 19(3) apply to determine “the” contact address, in circumstances where two or more addresses are deemed to be agreed under regulation 19(3)(b), given that that regulation contains no restriction as to the number of addresses that may be used for all purposes relating to the appeal or application?

(b) Supplemental to (a), is it accepted that two or more addresses could be deemed to be agreed in terms of regulation 19(3)(b), where a community transfer body sends emails from more than one email account? Or is it intended that the email address which is deemed to be agreed by means of sending a first document would be “the contact address” under regulation 18?
(c) Accordingly could the provisions be made clearer?

3. In rule 4(2)(a) in the schedule, is there an error as the reference to “notice in writing from the review panel person” should omit “person”?

4. Would corrective action be proposed in relation to any of the above queries?

The Scottish Government responded as follows:

1.(a) – It is considered that regulation 5(1) requires the appointment of 3 persons to form a review panel and operates to restrict the membership of that review panel so that no more than one the review panel is a member of staff of the Scottish Ministers. It is not considered that it operates to require the Scottish Ministers to appoint a member of their own staff. However, for the avoidance of any possible doubt Ministers will look to clarify this at the next available opportunity.

1.(b) - It is considered appropriate in the context of the regulation of the constitution of a review panel to limit the reference to members of staff of the Scottish Ministers. The review panel is to consider a matter which is before the Scottish Ministers for decision. If the reference were to members of staff of the Scottish Administration then this would, in terms of section 126(7) of the Scotland Act 1998, have caught both the staff of the Scottish Ministers and the staff of holders of non-ministerial offices. The intention is only to refer to the former.

1.(c) – The Scottish Ministers accept that it would be consistent with other references in the Regulations to various sections of the Community Empowerment (Scotland) Act 2015 (“the Act”) for the words “of the Act” to have been included. It is, however, not considered, nor indeed suggested, that there is any doubt that the reference in regulation 5(1) to “section 83(6)” is a reference to section 83(6) of the Act.

2. (a) and (b) - Regulation 3(3)(a) requires the community transfer body to provide the address to which the community transfer body wishes documents relating to the appeal to be sent. The singular would include the plural and it would be open to the community transfer body to provide more than one address. For example, the community transfer body may provide both a postal address and an email address, or two email addresses. This is a matter for the community transfer body to determine when making the appeal.

The community transfer body may subsequently inform the Scottish Ministers of a change to the contact address. It is considered that regulation 18(2) is clear that the contact address is the address as stated in the notice of appeal until the community transfer body has actually informed the Scottish Ministers of a change to the contact address.

Regulation 19 does not operate to alter the contact address. Regulation 19 operates to clarify when electronic communication may be used. There is no restriction on the number of different email accounts or addresses which may be used by the community transfer body. It is open to the community transfer body to send an email to the Scottish Ministers from an email address other than any email address given as the contact address without changing the usual contact address. Regulation 19(3) merely makes it
clear that the Scottish Ministers may reply to that email at that email address rather than having to use only the usual contact address. Enabling the use of electronic communication in this way does not itself alter the “contact address” which would require the community transfer body to inform the Scottish Ministers of a change to that address. There is no strict requirement that all communication to the community transfer body must be made to the contact address and it is a matter for the community transfer body as to how it arranges any electronic communication with the Scottish Ministers.

2.(c) - It is not considered that there is any need for clarification of the provisions.

3. and 4. – The reference to “review panel person” in rule 4(2)(a) of the schedule should be a reference to “review panel”. The Scottish Government are grateful to the Committee for bringing this to their attention and will bring forward an instrument to omit “person” and will take the opportunity when doing so to address the points raised at paragraphs 1(a) and (c). The Scottish Government proposes to lay an instrument making these changes in order that the changes will take effect before the Regulations come into force on 23 January 2017.
Annexe E

Community Empowerment (Registers of Land) (Scotland) Regulations 2016 (SSI 2016/362)

On 18 November 2016, the Scottish Government was asked:

1. Sub-paragraph (d) of regulation 2(1) makes provision in respect of a “bus station or associated facilities”. Sub-sub-paragraphs (i) and (ii) of sub-paragraph (d) make provision for a “house” and a “lodging-house or hostel” respectively. Sub-sub-paragraph (ii) is followed by an exception in respect of “a house, lodging-house or hostel which is surplus to the requirements of a relevant authority”. Does the Scottish Government agree that sub-sub-paragraphs (i) and (ii) should be set out under a separate sub-paragraph (e), as appears to have been intended from the Policy Note accompanying the Regulation?

2. Does the Scottish Government agree that the cross-reference to the “Police and Fire (Scotland) Act 2012” in sub-paragraph (g) of regulation 2(1) should be a reference to the “Police and Fire Reform (Scotland) Act 2012” (see footnote (d) on page 2 of the Regulation)?

3. Does the Scottish Government agree that the cross-reference to the “Land Registration (Scotland) Act 2012” in sub-paragraph (i) of regulation 2(1) should be a reference to the “Land Registration etc. (Scotland) Act 2012” (see footnote (e) on page 2 of the Regulation)?

4. Would corrective action be proposed?

The Scottish Government responded as follows:

With regard to question 1, the Scottish Government agrees that the provision referring to a house, lodging-house or hostel should be set out in a separate sub-paragraph (e).

With regard to questions 2 and 3, the Scottish Government agrees that the references should be to “the Police and Fire Reform (Scotland) Act 2012” and “the Land Registration etc. (Scotland) Act 2012”.

The Scottish Government proposes to lay an instrument amending these and other provisions implementing the 2015 Act, which also come into force on 23 January 2017, before they come into force on that date.
Annexe F

Land Reform (Scotland) Act 2016 (Consequential and Saving Provisions) Regulations 2016 (SSI 2016/366)

On 17 November 2016, the Scottish Government was asked:

The last paragraph of the explanatory note states that regulation 3(1)(c) and (2) makes saving provision, so that the modification of the Organic Aid (Scotland) Regulations 1994 made by regulation 2 does not apply to the succession to an agricultural holding, a short limited duration tenancy, or a limited duration tenancy, where the deceased died before 23 December 2016 and at the time of death had not made a will or other testamentary writing which bequeathed “the” lease.

Regulation 3(2) provides that it applies (so that the modification mentioned above has no effect) in relation to an interest of a tenant under a lease of an agricultural holding or under a “relevant lease” if (c) at the time of that person’s death, the person had made no will or other testamentary writing containing a bequest of (i) “a” lease of an agricultural holding, or (ii) “a” relevant lease.

(1) (a) Is it intended for the saving provision to apply (and as the drafting implies) that the person must have made no will or other testamentary writing containing a bequest of any lease of an agricultural holding or any “relevant lease”?

(b) Or alternatively, in circumstances where the estate of a deceased person contains 2 or more interests as tenant under a lease of an agricultural holding or under a relevant lease, and the person has made a will or other testamentary writing which contains a bequest of some (or one) of the interests and not others, is it intended that the saving provision applies only in respect of an interest or interests which have not been bequeathed by the will or other testamentary writing (even though there may be a bequest of another interest or interests)?

(2) If the intention underlying the provision is in accordance with (b) above, could the provision be clearer - or is there an error in not referring to “the lease” and “the relevant lease” in regulation 3(2)(c)(i) and (ii)?

The Scottish Government responded as follows:

1) Where an estate contains 2 or more interests as tenant under a lease of an agricultural tenancy the policy intention is (b), in that the saving in regulation 3(1)(c) and (2) applies only in respect of an interest or interests which have not been bequeathed by will or other testamentary writing (even though there may be a bequest of another interest or interests).

2) The Government considers that the drafting of regulation 3(2)(c) is sufficiently clear for the purposes of the Regulations but accepts that it could be clearer. In order to remove any doubt that the saving provision applies as intended, it is the Government’s intention to lay a further SSI to amend the provision at the earliest opportunity.