The Committee will meet at 9.15 am in Committee Room 2 to consider the following agenda items:

1. **Subordinate Legislation:** Allan Wilson (Deputy Minister for Environment and Rural Development) to move motion S1M-3560—

   that the Transport and the Environment Committee recommends that the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 be approved.

2. **Subordinate Legislation:** The Committee will consider the following negative instrument—

   The Large Combustion Plants (Scotland) Regulations 2002, (SSI, 2002/493)

3. **Water Environment and Water Services (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 3).

Callum Thomson
Clerk to the Transport and the Environment Committee
Room 3.5, Committee Chambers
0131 348 (8)5208
e-mail Callum.Thomson@scottish.parliament.uk
The following papers are attached for this meeting:

<table>
<thead>
<tr>
<th>Description</th>
<th>Reference</th>
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<tbody>
<tr>
<td>Covering note on the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002, (2nd draft) (Agenda item 1)</td>
<td>TE/02/33/1</td>
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<tr>
<td>Copy of the instrument (plus executive note) (Agenda item 1)</td>
<td>TE/02/33/2</td>
</tr>
<tr>
<td>Covering note on The Large Combustion Plants (Scotland) Regulations 2002, (SSI 2002,493) (Agenda item 2)</td>
<td>TE/02/33/3</td>
</tr>
<tr>
<td>Copy of the instrument (plus executive note) (Agenda item 2)</td>
<td>TE/02/33/4</td>
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</tbody>
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Papers not circulated:

**Agenda item 3**
In addition to the above papers, the Water Environment and Water Services (Scotland) Bill and Accompanying Documents are also relevant to this meeting. Copies of the Marshalled List of Amendments and the groupings of amendments will be available at the start of the meeting in Committee Room 2.
Affirmative Instrument – Procedure

1. The instrument is laid under an affirmative procedure which means that Parliament must approve the instrument before its provisions may come into force. The sponsoring Minister (Ross Finnie MSP, Minister for Environment and Rural Development) has accordingly lodged a motion that the Transport and the Environment Committee recommend approval of the instrument (S1M-3560).

2. The Committee has adopted the practice of holding an informal session before the formal debate on affirmative instruments to raise technical points of clarification. Minister’s officials may take part in the informal discussion.

3. After the informal discussion, the Minister will be invited to formally move the motion. Committee members will then be invited to formally debate the motion (S1M-3560). The Minister will then be given an opportunity to respond to points raised in the debate and make any concluding remarks.

4. The question will then be put to the Committee as to whether the motion should be agreed to. Only members of the Committee can vote on the motion. If the motion is agreed to, the Committee has decided to approve the instrument, if the motion is disagreed to, the Committee has decided not to approve the instrument.

5. Under Rule 10.6 the Committee is required to report to the Parliament with its recommendation on whether to approve the instrument.

6. If members have any queries or points of clarification on the instrument which they wish to have raised with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk to the Committee as soon as possible, to allow sufficient time for a response to be received in advance of the Committee meeting.
Extract from 42nd Report of the Subordinate Legislation Committee

The Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (draft)

Background
1. The Committee asked the Executive three questions on this instrument. These draft Regulations have now been corrected and relaid in consequence of one of the errors identified by the Committee.

Question 1
2. In regulation 2(1) the words "unless the context otherwise requires" appear. The Executive was asked to explain where in the Regulations the context requires the words defined in regulation 2(1) to have a different meaning from that contained in that regulation.

Answer 1
3. The reply from the Scottish Executive Environment and Rural Affairs Department is reproduced at Appendix 1. The Department states that the words "unless the context otherwise requires" were used in regulation 2(1) because of the risk of circularity in the definition of "environmental risk assessment" (which includes the term "environmental risk assessment") and in the definition of "genetically modified organisms" (which includes the term "genetically modified organisms").

Report
4. The Committee finds the Department's response unconvincing. It is, in any event, bad drafting practice to include in a definition the terms defined by that definition. The words "unless the context otherwise requires" refer to the use of the defined terms in another part of the instrument to mean something different from the definition (as for example the definition of "child" in regulation 6 of the Civil Legal Aid Regulations on which the Committee reports below.)

5. In the present context, the words appear to serve no useful purpose and, as such, are, in the view of the Committee, jargon that proper drafting practice indicates should be avoided in legislation. The Committee therefore draws the attention of the lead committee and the Parliament to the instrument the ground that the instrument departs from good drafting practice in that respect.

Question 2
6. Regulation 26(1) makes reference to [sub] paragraph (e) of that paragraph. However, the Committee noted that there is no such subparagraph contained within paragraph (1) and asked for clarification from the Executive as to whether this reference is intended to be a reference to subparagraph (c).

Answer 2
7. The reference to subparagraph (e) of regulation 26(1) should, as the Committee notes, be a reference to subparagraph (c). However, there is no subparagraph (e) and no other reference to subparagraph (c). The same point arises at regulation 24(1). Although it may be reasonable to expect the reader to realise that
subparagraph (c) and not (e) is the correct reference, the Department is grateful to the Committee for noting this and has arranged for the withdrawal of the instrument and the re-laying of corrected Regulations.

Report
8. The Committee notes the acknowledgement that the instrument is defectively drafted that the error has been corrected and the instrument relaid. Accordingly, no further action seems appropriate on the point. **The Committee therefore draws the attention of the lead committee and the Parliament to the instrument on the ground of defective drafting in the above respect, acknowledged and corrected by the Department.**

Question 3
9. The Committee notes that regulation 37 purports to amend SI 2002/800, an Order in Council made under section 93 of the Scotland Act. The Executive was asked for further explanation as to how this provision is within devolved competence.

Answer 3
10. As the Committee will be aware, the Executive is of the view that what may be done by way of section 93 of the Scotland Act may also be done in relevant circumstances by utilising the powers in section 2(2) of the European Communities Act 1972. Which route is followed in a particular case will be decided by reference to all the relevant facts and circumstances. The Executive refers to the answer given on 18 January 2001 to the same question from the Committee in relation to agency arrangements contained in the Cattle (Identification of Older Animals) (Scotland) Regulations 2001 (SSI 2001/1).

11. The above Regulations can, however, only have application in or as regards Scotland. In order to ensure full coverage in respect of the whole of the UK (as the earlier section 93 Order had) regulations are being drafted by the Department for Environment, Food and Rural Affairs for laying before the UK Parliament which will mirror the amendments to be made in regulation 37 and Schedule 6.

Report
12. This is a point on which the Executive and the Committee have agreed to differ. The Committee retains a concern about the use of section 2(2) to overrule the express provisions of the Scotland Act. In the present case, as previously mentioned, it might be argued that, in so far as the Regulations merely update references in the section 93 Order, then this is acceptable. If, however, the Regulations go any further then it appears to the Committee that, notwithstanding the Executive’s arguments, there must remain a doubt as to whether the Regulations are within devolved competence to this extent. **The Committee therefore draws the attention of the lead committee and the Parliament to regulation 37 on the ground that there is a doubt as to whether the Regulations are within devolved competence as indicated.**

13. Although these draft Regulations have now been amended to take account of the drafting defects on point 2 and relaid, points 1 and 3 remain relevant to the relaid instrument.
14. The Executive relaid this draft of the Regulations with corrections in response to point 2 raised by the Committee on the first draft as reported above. **The Committee draws this second draft of the Regulations to the attention of the lead committee and the Parliament on the other grounds at points 1 and 3 in relation to the first draft above.**
Appendix 1

THE GENETICALLY MODIFIED ORGANISMS (DELIBERATE RELEASE) (SCOTLAND) REGULATIONS 2002, (DRAFT)

1. On 12 November the Committee asked the Executive for an explanation of the following matters-

"1. In regulation 2(1) the words "unless the context otherwise requires" appear. The Executive is asked to explain where in the Regulations the context requires the words defined in regulation 2(1) to have a different meaning from that contained in that regulation.

2. Regulation 26(1) makes reference to [sub] paragraph (e) of that paragraph. However, the Committee notes that there is no such subparagraph contained within paragraph (1) and seeks clarification from the Executive as to whether this reference is intended to subparagraph (c).

3. The Committee notes that regulation 37 purports to amend SI 2002/800, which is an Order in Council made under section 93 of the Scotland Act. The Executive is asked for further explanation as to how this provision is within devolved competence."

The Scottish Executive Environment and Rural Affairs Department responds as follows-

The words "unless the context otherwise requires" were used in regulation 2(1) because of the risk of circularity in the definition of "environmental risk assessment" (which includes the term "environmental risk assessment") and in the definition of "genetically modified organisms" (which includes the term "genetically modified organisms").

The reference to subparagraph (e) of regulation 26(1) should, as the Committee notes, be a reference to subparagraph (c). However, there is no subparagraph (e) and no other reference to subparagraph (c). The same point arises at regulation 24(1). Although it may be reasonable to expect the reader to realise that subparagraph (c) and not (e) is the correct reference, the Executive is grateful to the Committee for noting this and is arranging for the withdrawal and re-laying of the Regulations as corrected.

As the Committee will be aware, the Executive is of the view that what may be done by way of section 93 of the Scotland Act may also be done in relevant circumstances by utilising the powers in section 2(2) of the European Communities Act 1972. Which route is followed in a particular case will be decided by reference to all the relevant facts and circumstances. The Executive refers to the answer given on 18 January 2001 to the same question from the Committee in relation to agency arrangements contained in The Cattle (Identification Of Older Animals) (Scotland) Regulations 2001 (SSI 2001/1), the relevant part of which is noted below for the Committee’s ease of reference.

The above Regulations can however only have application in or as regards Scotland. In order to ensure full coverage in respect of the whole of the UK (as the earlier section 93 Order had), regulations are being drafted by the Department
for Environment, Food and Rural Affairs for laying before the UK Parliament which will mirror the amendments to be made in regulation 37 and Schedule 6.

Scottish Executive Environment and Rural Affairs Department

14th November 2002

THE CATTLE (IDENTIFICATION OF OLDER ANIMALS) (SCOTLAND) REGULATIONS 2001 (SSI 2001/1)

On 16 January 2001 the Committee asked-

1. ..... 

2. The Committee asks for further explanation of why regulation 3 is thought necessary and, particularly in the light of section 93 and, in this instance, section 57(1) of the Scotland Act, of the powers that enable Scottish Ministers to confer functions on a Minister of the Crown.

3. ..... 

The Scottish Executive Rural Affairs Department response follows-

1. ..... 

2. In relation to regulation 3, the agency arrangements which may be entered into under that regulation would be made to ensure a coherent and comprehensive system of co-ordinating cattle movement within the UK as a whole for the purpose of enabling the proper implementation of Community obligations. Accordingly, the power to enact regulation 3 is provided in section 2(2)(a) of the European Communities Act 1972.

3. It is not considered that there is anything in Schedule 5 to the Scotland Act which places it outwith competence for Scottish Ministers to provide in subordinate legislation for the possibility of a Minister of the Crown agreeing to exercise functions on their behalf. The existence of section 93 of the Scotland Act cannot serve to narrow the scope of the powers provided by section 2(2) of the European Communities Act 1972. Whilst it would have been possible for a Minister of the Crown to make, by virtue of section 2(2) of the 1972 Act and section 57(1) of the Scotland Act, provision of the sort set out in regulation 3, it was thought preferable to include this in Regulations made by the Scottish Ministers (thus allowing the provision to be scrutinised by the Scottish Parliament).
SSI Cover Note For Committee Meeting

SSI title and number: The Large Combustion Plants (Scotland) Regulations 2002, (SSI 2002/493)

Type of Instrument: Negative

Meeting: 33rd meeting, 27 November 2002

Date circulated to members: 13 November 2002

Motion for annulment lodged: No

T and E deadline to consider SSI: 9 December 2002

SSI drawn to Parliament’s attention by Sub Leg Committee: No