The Committee will meet at 2.00 pm in Committee Room 1.

1. **Items in private:** The Committee will consider whether to take items 4 and 5 in private.

2. **Christmas Day and New Year’s Day Trading (Scotland) Bill:** The Committee will take evidence on the Bill from—

   Reverend Graham Blount, Scottish Churches Parliamentary Office;  
   and  
   Ivan Middleton, Humanist Society of Scotland;  

   and then from—

   Mandy Miller, Debenhams, Edinburgh and Sheila Govilpillai, Debenhams, Leith;  

   and then from—

   David Ramsden, Chairman, Deregulate.

3. **Regulatory Framework Inquiry:** The Committee will consider a note by the clerk in relation to the Subordinate Legislation Committee Inquiry into the Regulatory Framework in Scotland.

4. **Budget Process 2006 - 2007:** The Committee will consider its approach to the budget process.

5. **Work Programme:** The Committee will consider its work programme.
6. **Christmas Day and New Year's Day Trading (Scotland) Bill (in private):**
   The Committee will consider the main themes arising from the evidence session, to inform the drafting of its Stage 1 report.

Tracey Hawe/Alison Walker
Clerks to the Committee
Papers for the meeting—

Agenda Item 2

Members are reminded to bring with them copies of the Bill, Explanatory Notes and Policy Memorandum, available from Document Supply or from the Parliament's website:
http://www.scottish.parliament.uk/business/bills/59-xMasDay/index.htm

Response from Mothers’ Union to Member’s consultation J2/S2/06/21/1
Submission from Humanist Society of Scotland J2/S2/06/21/2
Submission from Deregulate J2/S2/06/21/3
Lines of questioning (PRIVATE PAPER) J2/S2/06/21/4

Agenda Item 3

Note by Clerk J2/S2/06/21/5

Agenda Item 4

Note by Clerk (PRIVATE PAPER) J2/S2/06/21/6

Agenda Item 5

Note by Clerk (PRIVATE PAPER) J2/S2/06/21/7

Documents circulated for information only—

Scottish Executive response to the Justice 2 Committee’s Stage 1 Report on the Legal Profession and Legal Aid (Scotland) Bill

Letter from Minister for Justice on justice and home affairs, dated 7 September 2006

Forthcoming meetings—

- Tuesday 19 September 2006, Committee Room 6
- Tuesday 26 September 2006, Committee Room 1
Consultation on a proposal to regulate shop opening on Christmas Day and New Year’s Day in Scotland by Karen Whitfield MSP

A Response from the Mothers’ Union

The Mothers’ Union is an Anglican voluntary organisation with over three million members in seventy-six countries worldwide. Through its members, the Mothers’ Union aims to promote conditions in society that are favourable to the well being of all families. Mothers’ Union members in Scotland have been consulted on the issues raised by this consultation and their collective comments, experiences and understanding of Scottish society form the basis of this response. For the purposes of our response, the consultation questions have been grouped together and, as the original question numbers have been retained, they are not necessarily in sequence.

1. Do you agree in principle with maintaining the special nature of Christmas Day and New Year’s Day?
2. Do you believe that large stores should be prohibited, by law, from opening on Christmas Day and New Year’s Day, to protect the special nature of these days?
5. Are there any equality or religious issues arising from the proposal?

The special religious nature of Christmas Day is different from the special nature of New Year’s Day, which is a traditional Scottish winter celebration. Some members questioned the logic of one piece of legislation dealing with both occasions. In the case of Christmas Day, the Mothers’ Union, as a faith based organisation, places much importance on the observation of religious festivals and on the need for the families of all faiths to have the opportunity to worship and mark such occasions together. Although Christmas has not traditionally been a holiday in Scotland, the majority of MU members believe that there should be some form of legislation against large stores opening on Christmas Day. In the same way, retail workers from minority faith backgrounds should have the possibility to celebrate their major festivals with their families without being forced to work on those days.

New Year’s Day has traditionally been a holiday in Scotland and many MU members are keen to keep it that way. Concern was expressed that legislation prohibiting shop opening on New Year’s Day could be detrimental to the growing tourist industry based around Hogmanay celebrations that brings in much revenue for Scottish cities. However, the Mothers’ Union is worried that current trends in the retail industry are purely consumer focussed and that too little importance is placed on the needs and rights of its workers. Although current consumer habits do not expect shops to open on Christmas Day and New Year’s Day, if trading were to become common on these days then habits would change and shops would be obliged to open so as not to lose out to their competitors.

The Mothers’ Union believes it is vital to balance formal work with other aspects of life, such as family responsibilities, voluntary activities and leisure pursuits. This is for the benefit of individuals, their families, employers and the wider community. Traditional and religious holidays are mechanisms that society has established to make each aspect of life universally viable and in particular to provide an opportunity for families to spend time together. Most large retailers already forbid their staff from taking any holiday on the run-up to the Christmas and New Year period and, if trading does increase on Christmas Day and New Year’s Day, the special nature of these days would not only be lost for workers in the retail industry but also for society as a whole. The constant demands for more availability and flexibility of commerce...
must not be adhered to when they are detrimental to the needs of family and community life.

As one member wrote: "I hope very much that in the future families will be able to depend on the chance to be together on Christmas Day and New Year's Day. Having experienced the sadness of the alternative over my childhood and seen the harm to family values and health that keeping open on these days causes, I believe that the unique significance of Christmas can only be realised when it is not a day for 'business as usual'."

3. Please comment on whether the benefits of prohibiting large stores from opening on Christmas Day and New Year's Day would outweigh any disadvantages?

6. What are the possible financial implications of this proposal?

Although trading on Christmas Day and New Year's Day may initially increase profits for retailers, any advantage would be lost in the long term and would simply mean that these days would become normal trading days. Retailers should not let their desire for short-term profits outweigh the needs and wishes of their staff to have two days off during an already busy commercial period. In particular, prohibiting large stores from opening on Christmas Day and New Year's Day would be beneficial to the following retail workers and their families:

- **Staff whose partners also work in the retail industry**
  Families where both parents work in the retail industry would be able to spend the day together, an occurrence that is becoming increasingly rare as employees are contracted to work on any five out of seven days, diminishing the chances of both parents being free at the weekends for example.

- **Women and non-managerial retail staff**
  Women would particularly benefit from such legislation, as it is women who make up the majority of employees in the retail industry. It has been shown that women, the traditional primary carer within the family, still do the majority of domestic work even when both partners work. Legislation would therefore mean that women would not be expected to provide their families with a traditional Christmas or New Year on top of a day at work. In addition, it would ensure that not only managers but lower-paid staff, who are also more likely to be women than men, would be entitled to some holiday over the winter season.

- **Staff from low-income families**
  If there were no legislation against shop opening on Christmas Day and New Year's Day, retail workers from poor families would be denied the choice of whether to work or not, irrespective of their faith background or desire to observe these festivals with their family. Single parents struggling to make ends meet would particularly be at a disadvantage, as they would be torn between working and celebrating with their children. Pay incentives for working on Christmas Day and New Year's would force

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1 About 2.6 million people are employed in the UK retail industry...67% are women.
Juliet Webster, 2003, *Achieving Equality in the UK Retail Industry*

2 EOC, 2004, *Delivering quality services, meeting different needs*

3 "73% of all sales and retail assistants in Scotland are women."
EOC Scotland, 2004, *Women and Men at Work*
poor families to work in order to earn more, even though finding alternative child care on these days would, in turn, be more expensive.

Arguing against banning shops from opening on Christmas and New Year’s Day in order to enable poorer families to earn more on these days is unjustifiable and actively excludes families facing economic hardship from the chance to take part in national holidays. Families would be much more likely to be lifted out of poverty if retailers paid their staff more over the total course of the year, or if the Government was to raise the minimum wage. In any case, the Mothers’ Union is concerned that, without this proposed legislation and despite promises from retailers, wage incentives would soon disappear and pressure would be put upon all workers in the retail industry to work, as happened in England and Wales after the 1994 Sunday Trading Act.

4. Is the definition of large shops – i.e. retail stores over 280 square metres/3,000 square feet – an appropriate one? If not, please elaborate.

Mothers’ Union members in Scotland are of the opinion that family businesses should not be prohibited from opening because they would not require non-family members to work. The proposed legislative distinction between the size of shop floor space would go some way to protecting smaller businesses from being forced to open in order to compete with the larger retailers. However, large retailers would be able to find ways around such a definition, for example by closing less-profitable sections in a department store, or by increasingly opening garage or airport stores which are generally small in nature. As a result, fewer retail workers would benefit from the legislation if it were passed. It may be more effective to base a distinction in legislation on the size of annual turnover of each retailer, rather than on the physical floor space of each individual shop. This would mean that large retailers, with many staff and many outlets, would be prevented from opening no matter how small their actual shops were, and that smaller businesses would be free to choose whether to open or not.

7. Is enforcement under the criminal law appropriate? What penalties should apply for non-compliance?

The majority opinion among the Mothers’ Union in Scotland was that enforcement under the criminal law was appropriate as long as it was limited to fines, and not imprisonment. In order to make fines fairer for differently sized retailers, fine levels could be set at a certain percentage in relation to the profit or turnover of the offending outlet. If the proposed legislation is not passed, then many members felt it would be necessary to legislate instead against retailers that forced its staff to work on Christmas Day or New Year’s Day.
Submission from Humanist Society of Scotland for the Christmas Day and New Year’s Day Trading (Scotland) Bill

The Humanist Society of Scotland supports the principle of the Bill, that there should be two days in the year when other human values are placed ahead of the commercial interests of big business. We feel that the whole run-up to 25th December has become a consumerist extravaganza and that this is one of the less pleasant aspects of our modern society in which conspicuous consumption has become an end in itself.

We would also suggest that in our multi-cultural society the state should not be celebrating religious festivals, even when these fall on a traditional holiday. Therefore 25th December should be referred as the midwinter holiday, the winter solstice festival or just by the date, particularly as this is the traditional birthday of saviour gods and Christians can provide no proof that Jesus was born on 25th December, but just took over the existing midwinter festival.
Submission from Deregulate for the Christmas Day and New Year's Day Trading (Scotland) Bill

We refer to your request for written evidence on the above Bill. Deregulate is an organisation particularly established to promote better regulation in the retail sector and elsewhere. Its main current activity is to lead the campaign, My Sunday My Choice to complete the de-restriction of shop opening hours in England and Wales on Sundays. In that respect, over the last 12 months we have carried out a substantial amount of research on the issue of opening hours provisions not only in England, Wales and Scotland but also in Europe and elsewhere in the world. As such, our research enables us to deal with some authority on the issues raised in your request for evidence.

Deregulate oppose any legislation to restrict retailers opening their shops on either Christmas Day or New Year's Day in Scotland. Our position is based on the following propositions:

- The issue of when retailers open shops should be left solely to retailers, consumers and their staff to decide. There is no place for the State in this issue. We have carried out extensive polling of consumers in England, Wales and Scotland over the last six months using two very well known and reputable polling organisations, Populus and YouGov. In all of those polls at least 80% of those polled agreed that shop opening hours were a matter for consumers and retailers and not for politicians and Government. We support that situation.

- Our polling also showed that of all the regions in the United Kingdom, consumers in Scotland supported longer shopping hours more than consumers elsewhere. To prevent retailers from responding to any demand that there might be in Scotland for trading on either of these two days is contrary to the wishes and needs of consumers.

- There is no logic in restricting “large” shops from opening on Christmas Day and New Year’s Day but allowing “small” shops to do so. Small in this respect does not equate to independent. The Scottish Parliament may like to consider carefully the make-up of an average shopping centre in Scotland and identify what percentage of stores in those shopping centres would not be prevented from opening under this legislation. The very large majority of those “small” stores would be owned by major multiples and are not owned by independents. Restriction by store size has no logic.

- The store size being chosen (280 sq metres or less) is an historical relic dating from the Sunday Trading Act 1994. No research has been done as to the relevance of this size in the modern retailing area.

- There is no public policy reason which supports preventing retail workers from working on these two days but allowing them to be employed in other commercial activities e.g. call centres, the leisure industry, pubs, clubs and restaurants or indeed working in the very shops which cannot open for the purposes of stocking shelves etc.

- To do so, denies those who want to work on these days from doing so, particularly students and lone parents who want to maximise their income. Alternatively, forces them to work in smaller retail outlets where generally terms and conditions and pay are worse. This is particularly so in the grocery sector.

- If the perceived need for this legislation is staff protection, i.e to prevent retail staff from being obliged to work on either or both of these two days, then it is disproportionate to close large shops rather than to introduce employment protection measures to design to prevent staff from being so compelled. (The right of opt out from Sunday work in the retail sector is an example of this sort of legislation).

- Even if such need exists (which we doubt) in any event the Scottish Parliament should first consider whether the industry might properly regulate itself in this respect.
rather than impose unnecessary regulation. We understand the SRC have proposed a Code of Practice which would properly meet the shopworker concerns of those promoting this Bill.

- If it is perceived that there are wider needs for this legislation, as the consultation document suggests, we would consider that such wider objectives are discriminatory in a multiple cultural society. It cannot be right that the State seeks to regulate the days when retailers can trade and workers can work, by reference to certain religious norms, but not others.

- Suggesting that public holidays, which by definition are there to give leisure time to the majority of the population should be times when the retail sector is not open raises serious competition concerns given that the retail sector is in competition with the remainder of the leisure industry.

- In any event, this Bill fails to understand the close relationship between retailing in the High Street on the one hand and the emergence of coffee shops, bars, restaurants and cafes, all of whom support the right of retailers to open at the times best to meet the needs of their consumers. Without the footfall generated by these retailers, the regeneration of City Centres and particularly those where there are now substantial numbers of coffee shops, bars and restaurants is substantially due to the footfall generated by retailers.

- The closing of stores on New Year’s Day in respect of those which are particularly designed for the Scottish tourist industry would clearly damage it.

- Should this ill-considered legislation proceed, our final comment would be that the proposed fine of £50,000 (presumably lifted from the Sunday Trading Act 1994) is totally disproportionate to the alleged offence as against penalties prescribed for other breaches of regulatory rules of this type.

For all these reasons, we would urge the Committee to conclude that there are no good public policy reasons for the imposition of this regulation. The imposition of the Regulation would be contrary to the Scottish Executive’s wish for simplification and better regulation. We urge the Committee not to support the passing of this proposed legislation.
Subordinate Legislation Committee Inquiry into the Regulatory Framework in Scotland

Note by Clerk

Since July 2005 the Subordinate Legislation Committee has been considering the effectiveness of the current system for the scrutiny of statutory instruments in the Scottish Parliament, as part of its inquiry into the regulatory framework in Scotland.

The Committee has published a draft report on its Inquiry into the Regulatory Framework in Scotland, which sets out a new procedure for the scrutiny of statutory instruments (SSIP). The Committee has decided to consult both stakeholders and parliamentary committees on this procedure before making final recommendations to the Parliament.

The new Scottish Statutory Instrument Procedure

The SLC recommends a number of changes to existing procedures. In particular, it recommends that current 8 varieties of instruments should be streamlined, and the negative and affirmative procedures for considering instruments, should be replaced by two procedures, a general procedure and an exceptional procedure.

General procedure

- The SLC propose all instruments should be laid in draft before the Parliament for a maximum period of 40 days. (The period of 40 days is a maximum and can be reduced if the Parliament is content with the draft before then);

- after 40 days (or the reduced period) if the draft instrument is not disapproved it can be brought into force without any further Parliamentary procedure;

- during this 40 day period the Executive may (with the approval of the Parliament) amend the draft and replace it with an amended draft. In this case the 40 day period would stop and would start again with the amended draft. This procedure will allow the Executive to respond to technical concerns raised by the SLC, which form the majority of the grounds on which instruments are currently reported to the lead committee;

- Both the SLC and the lead committee will continue to scrutinise draft instruments. However, consideration of the instrument can now take place in 'parallel' rather than consideration by the lead Committee following that of the SLC as at present. The SLC suggests that this would give the lead Committee more time to consider particular instruments;
Both the lead committee and the SLC will report to the Parliament; and both committees can recommend to the Parliament that an instrument should not be made;

The SLC may only make such a recommendation when it is in serious doubt of the legal validity of an instrument, and only a member of the SLC may propose that such a recommendation be made. Policy matters remain for the consideration of the subject committee;

Where, during this 40 day period, where the SLC or the subject committee recommend that an instrument be not made it is for the Parliament to determine whether to accept this recommendation.

A motion to disapprove a draft may be taken by the Parliament outwith the 40 day period, provided that the lead Committee or the SLC has made a recommendation for disapproval within that period; and that the motion is considered within 10 days after the expiry of that period.

**Exceptional procedure**

The two sorts of instrument that would be exceptions to the general procedure would be emergency instruments and urgent instruments.

An emergency instrument is defined by the SLC as an instrument which—

- in the case of future Acts, where a Parent Act authorises the making of that instrument as an emergency instrument; or
- in the case of past Acts, is subject in the parent Act to the Class 3 (draft affirmative) procedure; or
- in the case of past Acts, is subject in the parent Act to the Class 5 (negative) procedure and that Act has been amended to identify that instrument as an emergency instrument.

The SLC proposes that the where the Executive adopts the exceptional procedure for instruments other than emergency instruments, it should be required to explain to the Parliament why it has done so. The SLC may report to the parliament if it believes in any case that this was unnecessary.

The SLC defines urgent instruments as those which the Executive considers are of such urgency as to require to be made before they are laid or before the expiry of the 40 day period. The SLC gives an example of an urgent instrument as one which needs to be brought into force at the same time as instruments elsewhere across the UK, but given the need for co-ordination may not be ready in time to be laid under general procedure. Whereas emergency instruments might come into force any time after being made or before being laid, an urgent instrument would not normally come into force within 21 days after being laid.
Instruments subject to these exceptions would be laid ‘as soon as practicable’ after being made and would be subject to being annulled by Parliament within 40 days. After an instrument is laid, it should be subject to parallel consideration by both the lead Committee and the SLC; and both Committees will be able to recommend that an instrument should be annulled. The SLC can only recommend this on the grounds that there is a serious doubt about the legal validity of the instrument and only a member of the SLC will be able to propose such a motion.

Modified general procedure

There are two cases where the Committee considers that the general procedure should be modified so that a draft instrument should not be subject to consideration by the lead Committee. These are the cases of commencement orders and consolidation instruments.

Commencement orders

The SLC considers that it should not be open to those opposed to certain legislation to recommend that commencement orders should be disapproved on policy grounds. The SLC proposes that a lead committee should not consider commencement orders except where the draft contains other provisions, such as transitional or consequential provisions. Where this is the case it should only consider those provisions.

Consolidation orders

The SLC differentiates between ‘pure’ consolidation orders which re-enact subordinate legislation (‘subject only to any amendments which are necessary to produce a satisfactory consolidation’) and ‘rolling’ consolidation orders which are subject to substantive amendments. The SLC proposes that only substantive amendments should be subject to lead Committee consideration.

Wider recommendations

In addition, the SLC recommends that the Executive should put in place a co-ordinated approach across all the departments. The SLC propose that at the beginning of each three month period, the Executive should provide the Parliament with a programme of likely subordinate legislation, including the likely content and proposed parliamentary procedure for each instrument.

The SLC also believes that the quality of information provided by the Executive in relation to consultation carried out in respect of individual SSIs should be improved. In particular, the SLC considers that Executive Notes should not only include details of who has been consulted, but that these should also provide information on the content of responses to the consultation. This would allow lead Committees to assess views on the policy and the potential for taking evidence when considering an instrument.

The SLC is also considering producing and publishing annually a report itemising commitments made by the Executive to the Committee following its
reports, and detailing the action that has been or has not been taken by the Executive.

**Recommendation**

The Committee is invited to consider these proposals and provide comments to the SLC on them. The detailed questions that the SLC is asking are reproduced below.

Clerk to the Committee
August 2006

*Subordinate Legislation Committee consultation*

The SLC is consulting on its proposals, and as well as asking for general comments on the SSIP, sets out the following questions in its report:

1. Should all the existing procedures be replaced by the proposed SSIP under which all Scottish Statutory Instruments, with certain exceptions, would be laid in draft before the Parliament?

2. Should there be parallel consideration of instruments by both the Subordinate Legislation Committee and the lead Committee?

3. (a) Should the instruments laid in draft under the general procedure of SSIP be subject to being disapproved by the Parliament within 40 days?

3. (b) Should the period be reduced to 30 days?

4. Should the Parliament be able to take a motion to disapprove a draft instrument or to annul an instrument for 10 days beyond the 40 day period?

5. Should the Executive be required to provide the Parliament every 3 months with a forward programme of instruments which it plans to make during that period?

6. Should the SLC be able to recommend to the Parliament that an instrument is annulled or that a draft instrument is disapproved but only on the ground that there are serious doubts about the legal validity of the instrument?

7. Should a draft instrument laid before the Parliament be able to be amended by the Executive, with the agreement of the SLC, to take account of technical changes without affecting the original timetable for consideration?

8. (a) Should emergency instruments be subject to the exceptional procedure?
8. (b) Should emergency instruments be defined as proposed?

9. Should the exceptional procedure be confined to emergency and other instruments of an urgent nature?

10. Should consolidation instruments be subject to the modified general procedure under which the lead Committee will not be entitled to consider “pure” consolidations and only substantive amendments in a “rolling” consolidation?

11. Should commencement orders be subject to the modified general procedure under which the lead Committee will not be entitled to consider them?

12. (a) Should Scottish Statutory Instruments (SSIs) continue to be defined as at present?
12. (b) Should local instruments cease to be made by statutory instrument?
12. (c) Should local instruments be defined as proposed?

13. Should rules of court cease to be made by statutory instrument?

14. (a) Should an instrument which requires to be laid after being made (the exceptional procedure) be required to be laid as soon as practicable after being made and in any event not later than 7 days after making?
14. (b) Should an instrument which is made without either a draft being laid under the general procedure or the instrument being laid after making under the exceptional procedure (as required above) be treated as never having had any legal effect, subject to the following exception?
14. (c) Where an emergency instrument or other urgent instrument is brought into force within the 7 day period but are not laid within that period, should that invalidate the instrument the day after that period expires?

15. (a) Should the SSIP apply to all SSIs and to all other statutory instruments which are subject to procedure in the Scottish Parliament?
15. (b) Should it apply in all cases (both past and future) where there is a power to make such instruments?