The Committee will meet at 10:30am in Committee Room 3, Committee Chambers, Edinburgh.

1. **Delegated powers scrutiny:** The Committee will consider the delegated powers provisions in the following Bill—

   Breastfeeding etc. (Scotland) Bill at Stage 1.

2. **Executive responses:** The Committee will consider the responses from the Scottish Executive to points raised on the following—

   - the Police (Scotland) Regulations 2004, *(SSI 2004/257)*
   - the Shrimp Fishing Nets (Scotland) Order 2004, *(SSI 2004/261)*
   - the Advice and Assistance (Scotland) Amendment (No.2) Regulations 2004, *(SSI 2004/262)*
   - the Criminal Legal Aid (Fixed Payments) (Scotland) Amendment (No.3) Regulations 2004, *(SSI 2004/263)*
   - the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2004, *(SSI 2004/264)*
   - the Food Labelling Amendment (Scotland) Regulations 2004, *(SSI 2004/269)*
   - the Education Maintenance Allowances (Scotland) Regulations 2004, *(SSI 2004/273)*
   - the Waste Management Licensing Amendment (Scotland) Regulations 2004, *(SSI 2004/275)*
the Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2004, (SSI 2004/276)


the Beef Carcase (Classification) (Scotland) Regulations 2004, (SSI 2004/280)

the River Findhorn Salmon Fishery District (Baits and Lures) Regulations 2004, (SSI 2004/259)


3. Instruments subject to annulment: The Committee will consider the following—

the TSE (Scotland) Amendment Regulations 2004, (SSI 2004/277)

the Pig Carcase (Grading) Amendment (Scotland) Regulations 2004, (SSI 2004/279)

the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2004, (SSI 2004/281)

the Criminal Legal Aid (Scotland) Amendment Regulations 2004, (SSI 2004/282)

the Conservation of Seals (Scotland) Order 2004, (SSI 2004/283)

the National Health Service (Borrowing and Loans from Endowments) (Scotland) (No. 2) Regulations 2004, (SSI 2004/284)

the National Health Service (Transfer of Property between Health Boards) (Scotland) (No.2) Regulations 2004, (SSI 2004/285)

the Mental Health Tribunal for Scotland (Appointment of Legal Members) Regulations 2004, (SSI 2004/286)

the Victim Statements (Prescribed Offences) (Scotland) Amendment (No.2) Order 2004, (SSI 2004/287)

the Environmental Protection (Restriction on Use of Lead Shot) (Scotland) Regulations, (SSI 2004/289)

the National Health Service (Vocational Training for General Dental Practice) (Scotland) Regulations 2004, (SSI 2004/292)

4. **Instruments not laid before the Parliament**: The Committee will consider the following—

   the Homelessness etc. (Scotland) Act 2003 (Commencement No.2) Order 2004, *(SSI 2004/288)*

   Act of Sederunt (Rules of the Court of Session Amendment No.4) (Personal Injuries Actions) 2004, *(SSI 2004/291)*.

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Alasdair Rankin
Clerk to the Committee
Tel: 0131 348 5212
The following papers are attached for this meeting:

**Agenda Items 1-4**

Legal Brief (for members only) – to follow

**Agenda Items 1, 3-4**

Copies of Bill at Stage 1 and Instruments (circulated to Committee members only)

**Agenda Item 2**

Executive Responses

**Papers circulated for information:**

Minutes of 21st meeting, 2004 (Session 2)
SUBORDINATE LEGISLATION COMMITTEE

22\textsuperscript{nd} Meeting, 2004 (Session 2)

Tuesday, 22\textsuperscript{nd} June 2004

Executive Responses

- the Police (Scotland) Regulations 2004, (SSI 2004/257)
- the Shrimp Fishing Nets (Scotland) Order 2004, (SSI 2004/261)
- the Advice and Assistance (Scotland) Amendment (No.2) Regulations 2004, (SSI 2004/262)
- the Criminal Legal Aid (Fixed Payments) (Scotland) Amendment (No.3) Regulations 2004, (SSI 2004/263)
- the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2004, (SSI 2004/264)
- the Food Labelling Amendment (Scotland) Regulations 2004, (SSI 2004/269)
- the Education Maintenance Allowances (Scotland) Regulations 2004, (SSI 2004/273)
- the Waste Management Licensing Amendment (Scotland) Regulations 2004, (SSI 2004/275)
- the Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2004, (SSI 2004/276)
- the Beef Carcase (Classification) (Scotland) Regulations 2004, (SSI 2004/280)
- the River Findhorn Salmon Fishery District (Baits and Lures) Regulations 2004, (SSI 2004/259)
THE POLICE (SCOTLAND) REGULATIONS 2004, (SSI 2004/257)

On 15 June 2004 the Committee asked the Executive for an explanation of the following matters:-

1. “The Committee notes that subsection (5A) of section 26 of the Police (Scotland) Act 1967 (“the Act”) provides that regulations under the section as to conditions of service “shall secure that appointments for fixed terms are not made except where the person appointed holds the rank of superintendent or a higher rank”. Regulation 11 makes provision for fixed term appointment in respect of assistant chief constable, deputy chief constable and chief constable. The Committee seeks explanation from the Executive as to why there is no provision in the Regulations to secure that no provision is made by determination or otherwise for appointments for a fixed term other than in respect to the rank of superintendent and above.

2. The Committee notes that subsection (5) of section 26 of the Act provides that:
   “regulations under this section shall provide for the making of such arrangements as to the hours of duty of constables as shall secure the every constable …shall be allowed at least 52 days in a year on which he is not required to perform police duty, save on occasions of emergency such days being distributed throughout the year with the object of securing so far as practicable to every such constable one day’s rest in every seven”.

   The Committee asks the Executive where provision for this purpose is to be found in the Regulations.

3. The Committee notes that regulation 46(1) makes provision for consultation with the Police Negotiating Board. The PNB is a cross-border public authority under the Scotland Act to which section 88 and 89 of that Act apply. The Committee therefore asks the Executive to explain why it considers that the words from “and subsection (2)” to the end of regulation 46(1) are within devolved competence.

4. The Committee asks the Executive for its view on whether in the light of the provisions relating to chief constables that section 4(1) of the 1967 Act should have been referred to in the preamble or in a footnote.

5. The Committee asks the Executive to explain the purpose of regulation 1(d) given that it does not seem to have been thought necessary to make similar provision for example in relation to the Ministry of Defence Police.

6. The Committee asks the Executive to explain why the drafting of regulation 2(2) does not follow the normal style whereby amendments are referred to only in footnotes.

7. The Committee asks the Executive to explain the effect of words “other than such a person who transferred to the force having completed the required period of probation therein” are omitted from regulation 12(1) by
regulation 6(7) in relation to part time service. The Committee is concerned as to whether this might constitute indirect discrimination for the purposes of legislation relating to equal opportunities

8. The Committee asks the Executive to explain why there is no definition of “spouse” in regulation 8(6).

9. The Committee asks the Executive to explain the phrase “not more than 10 years older” in regulation 15(2)(b).

10. The Committee asks the Executive to explain the reference “as given in accordance with a determination under regulation 33(4)” in regulation 24(3)(g). There appears to be no provision in regulation 33(4) for the giving of a determination under that regulation.

11. The Committee asks the Executive why the proviso in regulation 46(3) regarding retrospection was considered necessary given regulation 4(2).

12. The Committee notes that the Executive Note gives the impression that paragraph 2 of Schedule 1 imposes a requirement to the effect that the consent of the chief constable must be obtained before a constable takes in a lodger in the circumstances described in the Schedule. However that paragraph simply requires a constable to give notice of an intention to take in a lodger. There seems to be nothing in the Regulations that would require the chief constable to consent to such an arrangement. The Executive is asked for its comments.

The Scottish Executive responds as follows:

General

1. The Executive is grateful to the Committee for its careful scrutiny of the Regulations. As the Committee acknowledges, the consolidation has taken a considerable amount of time, given the number of amending instruments and the need for updating which has added to the complexity of the process. The consolidation process had in fact been ongoing for a number of years and the Executive took the view that, in order to progress matters, it was necessary for there to be certain limitations, namely that it should be a fairly strict consolidation whilst taking account of all recommendations made by the PNB which were reflected in PNB circulars up until the end of 2003. A number of suggestions for amendments arose during the consolidation process and it was agreed that these should be considered at the earliest opportunity once the consolidation had been completed.

2. In this connection, one or two of the comments made by the Committee raise policy issues which fall into this category and which the Executive will look at along with other suggestions for amendments which have been held over for later consideration.

First Question
3. The Executive considers that the requirements of section 26(5A) are satisfied since the only ranks for which provision is made in the Regulations for appointment for a fixed term are the senior officer ranks, namely a chief constable, a deputy chief constable or an assistant chief constable. There is no determination power that could be used to enable fixed term appointments to be introduced for other ranks and in the absence of similar provision to regulation 11 for other ranks it is not considered that forces could “otherwise” introduce fixed term appointments.

Second question

4. Provision to this effect is currently set out in regulation 21A and 23 of the Police (Scotland) Regulations 1976 (SI 1076/1073) As the Committee have pointed out there is no similar express provision in the Regulations. Provision to secure the rights of constable in this matter to ensure compliance with section 26(5) will be contained in the determination under regulation 22. The Executive considers that this is permissible with reference to section 26(2B) which enables discretionary powers to be conferred in relation to any matter as to which provision may be made in regulations.

Third question

5. The effect of the relevant provision in regulation 46(1) is to require Scottish Ministers to take account of recommendations made by the PNB, and to supply the Board with a copy of the determinations. Regulation 46(1) also applies section 62(2) of the Police Act 1996 to PNB recommendations made for the purpose of the determination and it is this provision that the Committee has concerns about. The application of section 62(2) of the 1996 Act has the effect of ensuring that the arrangements made by the PNB in section 61(3) apply for the purpose of reaching agreement on recommendations for the purposes of determinations that are to be made by Scottish Ministers with respect to hours of duty, leave, pay and allowances, the issue, use and return of police clothing, personal equipment and accoutrements.

6. Although the PNB is a cross-border public authority (“XBPA”) under the Scotland Act, the Executive does not consider that this gives rise to any difficulty of devolved competence. In particular, the Executive does not consider that there is any bar in the Scotland Act to the Executive legislating so as to affect or even confer functions specifically on a XBPA. In each case, the question of whether such provision is within competence is to be determined by the application of the rules in section 29(3) and not by reference to the characteristics of the body itself. In this case, it is considered that the purpose of the provision is clearly related to the devolved matter of determining the pay and conditions of members of Scottish police forces and the
provision does not have anything other than a marginal effect on the functions and operation of the PNB.

Fourth question

7. The Executive does not consider that it should have referred to section 4(1) of the 1967 Act in the preamble or a footnote since the provisions of section 4 simply ensure that this section is to be read as subject to any regulations under section 26 and section 4 is not to be regarded as a separate power.

Fifth question

8. Regulation 1(d) was intended to ensure that where a member of a police force had served with the Port of Tilbury Constabulary from 1st September 2002 then that service could be reckoned as service for the purposes of reckoning pay. This reflects similar changes that were made for England and Wales. However, the Executive has looked at this again, and considers that the provision was in fact unnecessary because the reference to the Port of Tilbury Police is simply an updating of the previous reference to Port of London Authority officers and the provision reflects the existing provisions in regulation 34. The Executive does not consider that any harm has been caused by the unnecessary retrospective application.

Sixth question

9. The Executive considered that in this case it was appropriate to refer to the amending provisions on the face of the regulation. The Executive observes that the same approach had been taken in the 1976 Regulations and in the equivalent 2003 Regulations for England and Wales (SI 2003/527).

Seventh question

10. The provisions in regulation 12(1) as affected by 6(7) reflect the position in the 1976 Regulations and mirror those used in the 2003 England and Wales Regulations. Pay and conditions of service are agreed nationally, for the UK, at the PNB and the policy provision would have to be discussed at that forum. The Executive notes the comments of the Committee about the potential for discrimination and recognises that there is a case for looking at the policy justification for the provision. As noted above this is a matter which is considered to be outside the scope of the current consolidation exercise. The Executive will raise this with the Home Office and PNB in due course with a view to amending the Regulations.

Eighth question
11. The Executive did not consider it necessary to have a definition of the term spouse which it considers would have its normal meaning of husband and wife. Again, the usage of the term ‘spouse’ reflects both the 1976 Regulations and those in place in England and Wales (see regulation 8 of the 2003 Regulations for England and Wales) and any change to the current position was not considered to be within the scope of the current exercise. Having said that, the policy behind Regulation 8 is to prevent officers being victims of undue influence or corruption via family members’ business interests, and the Executive considers that there is also a case for looking again at the policy since non-married co-habiting partners and same sex partners can no doubt exert the same undue influence on police officers. This is also a matter that will be raised with the relevant police associations.

Ninth question

12. The requirement should be a photograph that is “not more than 10 years old”. The reference to “not more than 10 years older” is a typographical error but the Executive considers that it does not affect the meaning that would be given to the provision since any other meaning would not make sense.

Tenth question

13. The reference should have been to regulation 33(7) and the Executive notes that the same point arises in relation 24(3)(f). The Executive apologises for the errors, which will be corrected at the next appropriate opportunity.

Eleventh question

14. The Executive considered that given the importance of regulation 46 in setting out the procedures for determinations under the Regulations and since this provision allows determinations to be made with retrospective effect, it was appropriate to make it clear on the face of the regulation that the power could not be used to enable retrospective reduction of pay or allowances. The Executive accepts that regulation 4(2) on its own would probably have achieved the same result.

Twelfth question

15. The Executive agrees that paragraph 9 of the Executive note may give a misleading impression that prior consent of the chief constable is needed. As the Committee has pointed out, the requirement is to give prior notice.

Scottish Executive Justice Department
THE SHRIMP FISHING NETS (SCOTLAND) ORDER 2004 (SSI 2004/261)

On 15th June the Committee asked the Executive for an explanation of the following matters-

“The Committee asks the Executive for an explanation for the delay on this Order given that enforcement measures should have been in force in terms of the Regulations on 1 July 2002 and the equivalent English and Welsh provisions were made in November 2002 and January 2003 respectively.”

The Scottish Executive responds as follows:

1. As the Committee implies, Council Regulation 850/98 required Member States to introduce the enforcement measures contained in the Order by 1 July 2002. The Executive aimed to bring the Order in force in tandem with the rest of the UK. The Executive initially consulted on the proposals for the Order in June 2002.

2. In considering the implementation of Council Regulation 850/98 an issue arose in relation to the interpretation of the relevant Community legislation. That resulted in the UK contacting the Commission to raise the matter in early 2003. The Executive took the decision not to make the Order in the meantime, in the knowledge that no or a very small number of vessels were active in the affected fishery. Following further consideration in the latter part of 2003 the Executive took the view that it was in a position to proceed with the Order but, given the length of time which had elapsed since the first consultation on the proposals, the Executive felt it was appropriate to carry out further consultation on the Order and further consultation took place in March of this year. After that further consultation had been carried out the Executive made the Order.

Scottish Executive Environment and Rural Affairs Department
THE ADVICE AND ASSISTANCE (SCOTLAND) AMENDMENT (No. 2) REGULATIONS 2004 (SSI 2004/262)

THE CRIMINAL LEGAL AID (FIXED PAYMENTS) (SCOTLAND) AMENDMENT (No. 3) REGULATIONS 2004 (SSI 2004/263)

THE CRIMINAL LEGAL AID (SCOTLAND) (FEES) AMENDMENT REGULATIONS 2004 (SSI 2004/264)

On 15th June 2004 the Committee asked the Executive for an explanation of the following matters –

1. The Committee observes that these Regulations are the latest in a series of amendments, and that they replace and amend existing instruments which have not been revoked. The Committee notes that it is generally considered good practice to revoke spent instruments or parts of instruments and this is especially important when an instrument has been subject to as many amendments as the principal Regulations in the present case. The Committee therefore asks the Executive why this practice has not been observed in relation to the above instruments.

2. In relation to SSI 2004/264 the Committee also asks the Executive to confirm that the reference to paragraph (3) in new paragraph (4) of regulation 6 of the principal Regulations inserted by regulation 4 of SSI 2004/264 is correct. Paragraph (4) in its original form refers not to paragraph (3) but to paragraph (2).

The Scottish Executive responds as follows –

First question

The Executive does not consider that it was appropriate to revoke the parts of the earlier instruments which were amended by the three instruments in question. In particular in relation to SSIs 2004/262 and 264, the earlier instruments are amended only in relation to grants made or work done on or after 28 June, as the application provisions in those instruments make clear. In those cases the provisions in the earlier instruments remain in force in respect of grants made or work done before that date and it is quite possible that those provisions will be required for some considerable time. In all three cases the Executive considers that the effect of the amending instruments is clear and that partial revocation is inappropriate.

Second question

The Committee is correct that the reference to paragraph (3) in the new regulation 6(4) of the principal Regulations inserted by regulation 4 of SSI 2004/264 is an error. The reference in regulation 6(4) should be to paragraph (2). The Executive apologises for this error, which will be corrected at the first available opportunity. In the meantime, the Executive will consider whether it would be appropriate to exercise its powers under the 1986 Act to ensure that no solicitor is financially disadvantaged by this error.

Scottish Executive Justice Department
THE FOOD LABELLING AMENDMENT (SCOTLAND) REGULATIONS 2004 (SSI 2004/269)

On 15 June the Committee asked the Executive for an explanation of the following matter –

“The Committee notes that these Regulations amend pre-devolution UK Regulations that have already been amended a large number of times. The Committee asks the Executive what plans there are to consolidate and re-make the Regulations for Scotland.”

The Food Standards Agency responds as follows:

The Agency is currently in the process of preparing regulations which will consolidate and re-make the Food Labelling Regulations 1996 for Scotland. However, work is not yet complete and a public consultation exercise will also require to be conducted. The Agency therefore does not anticipate that the consolidated regulations will be made before the end of this year.

The Agency wishes to advise the Committee of a further amendment to the 1996 Regulations which will require to be made to implement Directive 2003/89 as regards indication of the ingredients present in foodstuffs. In order to implement this Directive timeously this amendment requires to be brought into force by 25 November 2004. Therefore the Agency will be bringing this forward separately later this year in advance of the consolidation. This further amendment will of course be incorporated in the consolidated regulations once these are made.

Food Standards Agency
THE WASTE MANAGEMENT LICENSING AMENDMENT (SCOTLAND) REGULATIONS 2004 (SSI 2004/275)

In its letter of 15 June to Catherine Hodgson the Committee asked the Executive for an explanation of the following matters:

13. The Committee observes that this instrument is the 17th amendment to the principal Regulations. The Committee asks the Executive what if any plans there are for consolidation and remaking on a Scottish only basis especially as the commercial data bases now reflect changes made by each constituent part of Great Britain, which makes the Regulations particularly difficult to understand.

14. The Committee also notes that there was no Transposition Note to assist in understanding the Regulations.

The Scottish Executive responds as follows:

1. The Department is already in the course of considering its approach to these Regulations for the future. It recognises the need to reconsider not only the form of the Regulations but also their substance. As the Committee will appreciate this is a technically difficult area which will require careful thought. It is currently hoped that a consultation on codification of the measures comprised in the Regulations will be held during 2005. It will be necessary for these Regulations to be amended again in the meantime, however, in order to meet Community obligations.

2. The Department notes the Committee’s comments and regrets any inconvenience which the absence of a transposition note may have caused. As the Committee is aware it is not the Executive’s policy to prepare such a note on each transposition but the Department will bear the Committee’s comments carefully in mind for a future measure of this kind.

Scottish Executive Environment and Rural Affairs Department
On 15th June the Committee asked the Executive for an explanation of the following matter:

“The Committee asks the Executive to confirm that the reference to the Scottish Ministers in paragraph 6(a)(i) of Schedule 1 (page 6) given that the function referred to appears to be reserved to UK Ministers.”

The Scottish Executive responds as follows:

The reference to “Scottish Ministers” in paragraph 6(a)(i) of Schedule 1 should be a reference to “Secretary of State for the Home Department”. The Executive is grateful to the Committee for bringing this drafting error to its attention. This has enabled the Executive to take steps to remedy the defect.

An amending instrument has been prepared to correct the error and it will be made and laid before the Scottish Parliament as soon as possible. It is not possible for the amending instrument, prior to the Parliament’s summer recess, to comply with the 21 day requirement in Article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999.

To allow payments to be made under the education maintenance allowance programme from the start of the school year 2004/2005, it is necessary for regulations to be in force prior to the commencement of the school term in August. In order to allow payments to be made from August to persons in the categories referred to in paragraph 6 of Schedule 1 and to avoid these persons being disadvantaged, the Executive intends to bring the amending instrument into force in breach of the 21 day requirement in Article 10(2).

The Executive intends to bring the amending instrument into force on the same day as the principal Regulations (2nd July) and will be writing to the Presiding Officer to explain the reasons for the amending instrument not complying with Article 10(2).

Scottish Executive Enterprise, Transport and Lifelong Learning
THE INSHORE FISHING (PROHIBITION OF FISHING AND FISHING METHODS) (SCOTLAND) ORDER 2004 (SSI 2004/276)

On 15 June the Committee asked the Executive for an explanation of the following matters -

“The Committee asks the Executive why article 12(2) is thought necessary given section 16(1)/17(2)(b) of the Interpretation Act 1978.

The Committee asks the Executive to explain the wording of the exclusion in article 10(3) given the amendments made to the parent Act by SI 1999/1820 and the effect of SI 1999/1126.”

The Scottish Executive responds as follows:

First question

1. The Executive accepts that sections 16(1) and 17(2) of the Interpretation Act 1978 apply to this instrument. The purpose of article 12(2) is however to assist those using the legislation by making it clear on the face of the instrument that notwithstanding the revocation of S.I. 1989/2307 the latter instrument continues to apply in relation to criminal proceedings in relation to an offence under that instrument.

Second question

2. Given the amendments made to the parent Act by S.I. 1999/1820 and S.I. 1999/1126, the Executive accepts that the exclusion in article 10(3) of the Order is unnecessary. The Executive is grateful to the Committee for pointing this out. In the view of the Executive the otiose words will not cause any confusion to those using the legislation. The Executive will however amend the Order at the next appropriate legislative opportunity.

Scottish Executive Environment and Rural Affairs Department
On 15th June the Committee asked the Executive for an explanation of the following matters:

1. The Committee observes that regulation 4(4) (page 2) refers to an address “specified” by the Ministers. The Committee asks the Executive to explain how the address is to be specified.

2. The Committee asks the Executive to explain the reference in regulation 8(1) to a member of staff of the Scottish Ministers in relation to the powers conferred on the person hearing the appeal by paragraph (2) of that regulation. The Committee asks the Executive whether the express reference to a member of staff in that regulation means that reviews under regulation 5 and in particular hearings under paragraph (2)(c) of that regulation must be carried out by the Ministers in person.

The Scottish Executive responds as follows:

1. When a producer is issued with a decision the letter notifying that decision will provide the producer with the relevant details of who to contact should they be dissatisfied with the decision. The address for receipt of appeals was not specified within the body of the Regulations to avoid the necessity of amending the Regulations should the department responsible for administering appeals change location.

2. The procedure established by these Regulations mirrors that set up under the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000 for producers in Scotland relating to the IACS and Agri-environment and Afforestation schemes. The wording of regulation 8 is adapted from those Regulations. Under regulation 5 the review is an internal review. Members of staff of the Scottish Ministers, under the Carltona principle, are able to conduct such reviews. The review under regulation 8 is an external review by persons appointed by the Scottish Ministers. The provision, clarifying that members of staff of the Scottish Ministers may be appointed to act on this panel, has been included to put beyond doubt the legitimacy of a member of staff sitting on the panel at this second stage review.
On 15th June the Subordinate Legislation Committee asked the Executive for an explanation of the following matter -

"The Committee asks the Executive to explain the reference to “specified premises” in regulation 7(2) as it is not defined in the Regulations.”

The Scottish Executive responds as follows:

The premises will be specified in the licence granted, under regulation 7, to the occupier authorising the occupier to carry out classification by means of automated grading equipment.

Scottish Executive Environment and Rural Affairs Department
On 15th June 2004 the Committee asked the Executive for an explanation of the following matters –

“The Committee notes that the Regulations are made under powers that were consolidated in the Salmon (Consolidation) (Scotland) Act 2003 which received Royal Assent on 1 May 2003. The Committee asks the Executive why this has not yet been commenced”.

**The Scottish Executive responds as follows:**

The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 has not yet been commenced because in the view of the Executive it is preferable to bring both the 2003 Act and the border rivers (Tweed and Border Esk) orders into force on the same date. When the border rivers orders have been made, the Act will be brought into force by means of a commencement order.

Scottish Executive Environment and Rural Affairs Department
THE ASSYNT – COIGACH AREA PROTECTION ORDER 2004 (SSI 2004/260)

On 15th June 2004 the Committee asked the Executive for an explanation of the following matters –

“The Committee notes that the Regulations are made under powers that were consolidated in the Salmon (Consolidation) (Scotland) Act 2003 which received Royal Assent on 1 May 2003. The Committee asks the Executive why this has not yet been commenced.

The Committee has received representations to the effect that objections were lodged to the original proposals for this order which objections were upheld by the Scottish Ministers in 2002 and the order withdrawn. The Committee asks the Executive to confirm what steps were taken in relation to consultation on the revised proposals on which the current order is based and in particular what if any steps were taken to afford people who objected previously adequate opportunity to re-register their objections.”

The Scottish Executive responds as follows:

First Question

1. The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 has not yet been commenced because in the view of the Executive it is preferable to bring both the 2003 Act and the border rivers (Tweed and Border Esk) orders into force on the same date. When the border rivers orders have been made, the Act will be brought into force by means of a commencement order.

Second Question

2. In 2002, proposals for a protection order were considered in accordance with the procedures set out in Schedule 1 to the Freshwater and Salmon Fisheries (Scotland) Act 1976 (“the 1976 Act”). On that occasion the Scottish Ministers refused to make a protection order. A new application for a protection order was submitted in November 2003. Those proposals were also considered in accordance with the statutory procedure. The Scottish Ministers required the persons who submitted the proposals to give notice of the proposals in accordance with paragraphs 1 and 2 of Schedule 1 to the 1976 Act by means of publication in the Edinburgh Gazette and in the Ross-shire Journal and Northern Times; the proposals were also posted on the Assynt Angling Group website.

3. The notice specified the time, being not less than 28 days from the date of first publication of the notice, and manner within which representations or objections with respect to the proposals required to be made.