The Committee will meet at 10:30am in Committee Room 6.

1. **Delegated powers scrutiny:** The Committee will consider responses from the Scottish Executive to points raised on the following Bill—
   
   Fire (Scotland) Bill at Stage 1.

2. **Delegated powers scrutiny:** The Committee will consider responses from the Scottish Executive to points raised on the following Bill—
   
   Water Services (Scotland) Bill at Stage 1.

3. **Executive responses:** The Committee will consider the responses from the Scottish Executive to points raised on the following—
   
   the Building (Scotland) Regulations 2004, *(SSI 2004/406)*.

4. **Instruments subject to approval:** The Committee will consider the following—
   
   the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No.10) (Scotland) Order 2004, *(SSI 2004/412)*

   the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No.4) (Scotland) Order 2004, *(SSI 2004/417)*

   the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No.11) (Scotland) Order 2004, *(SSI 2004/418)*.

5. **Instruments subject to annulment:** The Committee will consider the following—
   
   the Victim Notification (Prescribed Offences) (Scotland) Order 2004, *(SSI 2004/411)*
the Miscellaneous Food Additives Amendment (Scotland) Regulations 2004, (SSI 2004/413)
the Feeding Stuffs (Sampling and Analysis) Amendment (Scotland) Regulations 2004, (SSI 2004/414)
the Public Service Vehicles (Registration of Local Services) (Scotland) Amendment Regulations 2004, (SSI 2004/415)
the Sale of Spray Paint (Display of Warning Statement) (Scotland) Regulations 2004, (SSI 2004/419)
the Controlled Waste (Fixed Penalty Notices) (Scotland) Order 2004, (SSI 2004/426)

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

   the Debt Arrangement and Attachment (Scotland) Act 2002 (Commencement No.2 and Revocation) Order 2004, (SSI 2004/416)


7. **Inquiry into the regulatory framework in Scotland**: The Committee will consider the options for taking the inquiry forward.

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

Agenda Items 1-6

Legal Brief (for members only) SL/S2/04/27/1

Agenda Item 1

Executive response SL/S2/04/27/2

Agenda Item 2

Executive response SL/S2/04/27/3

Agenda Item 3

Executive responses SL/S2/04/27/4

Agenda Items 4-6

Copies of Instruments (circulated to Committee members only)

Papers circulated for information:

Minutes of 26th meeting, 2004 (Session 2) SL/S2/04/26/M
SUBORDINATE LEGISLATION COMMITTEE

27th Meeting, 2004 (Session 2)

Tuesday, 5th October 2004

Executive Response:
Fire (Scotland) Bill at Stage 1

FIRE (SCOTLAND) BILL AT STAGE 1

Thank you for your letter of 28 September in which you sought further explanation on two matters within the Fire (Scotland) Bill.

Further clarification and explanation in respect of these issues is detailed below.

Section 41  Directions for public safety purposes

The Committee is seeking further justification for the use of the negative procedure proposed for this power. As we indicated in our earlier letter of 23 September, this power is only likely to be exercised at a time of concern for public safety.

Taking again the example of a period of industrial action, where the required emergency cover has to be provided by an alternative source, e.g. the military, timing is critical. In our recent experience the length of time between a ballot for industrial action being announced and the first potential strike date is around 28 days. This is based on 3 weeks for the ballot process and result being announced and then the statutory 7 day notification period.

Based on the requirement for a 40 day period (excluding longer periods of recess) for Committees to consider instruments subject to the affirmative procedure we believe this would inhibit the Executive from reacting within the required timescale to ensure that equipment can be provided in time. The critical factor is the Executive’s responsibility to take measures to protect the public in the event of industrial action in the fire service. On that basis we continue to consider that the use of the negative resolution procedure is appropriate.

Section 54  Power to make regulations about fire safety

The Committee has also queried the drafting of section 54(2) (l). This power specifically enables the Executive to create criminal offences in regulations. The regulations which are to be brought forward under section 54 will concern fire safety on relevant premises. Requirements or prohibitions in those regulations will be backed up by criminal sanctions. For example, a provision may be included concerning fire-fighters’ switches for luminous tube signs. It is the policy of the Executive that an offence will be committed where an individual fails, without reasonable excuse, to install such apparatus in a manner that is compliant with regulations.
We do not agree with the SLC’s view that important points of principle and technical drafting points are raised by the provision. The form of the provision is determined by the policy it seeks to implement and we do note that no specific ‘technical drafting points’ are identified.

In our view there is no doubt that the power to create an offence includes power to specify the penalties. Punishment is of the essence of an offence: if a person does X he shall be liable to Y. The fact is that there are examples of provisions limiting mode of trial and level of penalty. For example, section 44(8)(a) of the Transport (Scotland) Act 2001 (asp 2)) confirms the proposition that, absent such a limitation, the power can be exercised so as to make provision about those matters.

We do not agree with the assertion that provisions of this sort are rare and invariably subject to restrictions. There are quite a few examples in the statute book of the sort of provision made by the Bill, for example section 121(2)(b) of the Building Societies Act 1986 (c.53), section 102(3)(b) of the Friendly Societies Act 1992 (c.40), section 79(1)(d) of the Employment Rights Act 1996 (c.18), section 129(2)(a) of the Political Parties, Elections and Referendums Act 2000 (c.41), section 2(3)(b) of the Industrial and Provident Societies Act 2002 (c.20) and section 7(2) of the European Parliamentary Elections Act 2002 (c.24). Under this last example regulation 26 of the European Parliamentary Elections Regulations 2004/293 creates an offence with penalty and although other enabling powers are cited, the offence is created by virtue of section 7 of the 2002 Act.

We do not therefore consider that this provision requires any further justification.

We trust the foregoing is of assistance to the Committee, and thank them for their comments.

Yours sincerely

IAN SNEDDEN
Fire Services Division
SUBORDINATE LEGISLATION COMMITTEE

27th Meeting, 2004 (Session 2)

Tuesday, 5th October 2004

Executive Responses

- the Building (Scotland) Regulations 2004, \( \text{(SSI 2004/406)} \)
THE BUILDING (SCOTLAND) REGULATIONS 2004 (SSI 2004/406)

On 28th September 2004 the Committee asked the Executive for an explanation of the following matters –1. The Committee notes that sections 3(3) and 8(8) of the Building (Scotland) Act 2003 are cited among the enabling powers in the preamble to the instrument but are not among the regulation-making powers commenced by SSI 2004/404. The Executive is asked for an explanation of why it has chosen to commence only some and not all of the relevant powers.

2. In relation to both Schedule 1 and Schedule 3, which contain a number of paragraphs that provide for exceptions from their provisions, the Executive is asked to clarify whether the exceptions apply to all the items following the word “Except” or only to the first.

3. The Executive is asked to explain why there is no citation for BS Circular on Energy referred to in paragraph 6.1 of Schedule 5 or an indication in the Explanatory Note, or footnote form, of where it may be obtained.

The Scottish Executive responds as follows:

First question

1. The Executive accepts that there is a mismatch between the powers cited and the provisions which have been commenced and also accepts that that is confusing and that it would have been better avoided. However the Executive does not consider that this point should give rise to any real difficulty.

The Executive considers that sections 3(3) and 8(8) do not, strictly speaking, confer a power at all. Power to make these regulations is conferred by section 1(1) of the Building (Scotland) Act 2003. Regulations made in exercise of that power are, for the purposes of that Act, referred to as “building regulations”. That is reflected in the definition of “building regulations” in section 56(1) of that Act. It makes clear that that term, in that Act, means regulations under section 1(1).

So, sections 3(3) and 8(8) do not actually confer a power to make building regulations. Rather they make clear what will be the effect, in terms of the Act, of specifying certain matters in building regulations.

The citation of those provisions in the preamble to these regulations was made for completeness.

However, even if the view is taken that section 3(3) or section 8(8) might to some extent confer a power, the Executive takes the view that, to the extent that these regulations rely on any such power, they may still competently come into force on 1st May 2005 in reliance upon paragraph 10 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc of Acts of the Scottish Parliament) Order 1999.

Second Question

2. In the Executive’s view, the word “except” in any paragraph applies to all of the words coming after “except” in that paragraph.
Third Question

3. The Committee is advised that the Circular can be found in the Technical Handbook which is being published in late October 2004 to provide guidance on complying with the instrument. The Executive will in addition take steps to ensure that the printed version of the instrument contains a footnote with the appropriate citation.