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

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

   the Edinburgh Tram (Line One) Bill at preliminary stage.

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

   the Edinburgh Tram (Line Two) Bill at preliminary stage.

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

   the Holyrood Park Amendment Regulations 2004, *(draft)*

   the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (Prescribed Periods) Order 2004, *(SSI 2004/478)*.

4. **Draft instruments subject to approval**: The Committee will consider the following—

   the Tenements (Scotland) Act 2004 (Consequential Provisions) Order 2004, *(draft)*.

5. **Instruments subject to approval**: The Committee will consider the following—

   the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No.13) (Scotland) Order 2004, *(SSI 2004/484)*.

6. **Draft instruments subject to annulment**: The Committee will consider the following—
the Holyrood Park Amendment Regulations 2004, (draft).

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

   the Public Finance and Accountability (Scotland) Act 2000 (Economy, efficiency and effectiveness examinations) (Specified bodies etc.) Order 2004, (SSI 2004/482)

   the Police Pensions Amendment (Scotland) Regulations 2004m (SSI 2004/486)

   the Plant Health (*Phytophthora ramorum*) (Scotland) Order 2004, (SSI 2004/488)

   the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004, (SSI 2004/489)


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

   Act of Adjournal (Criminal Procedure Rules Amendment No.5) 2004, (SSI 2004/481)


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

**Agenda Items 1-7**

Legal Brief (for members only) – to follow  
SL/S2/04/31/1

**Agenda Item 1 & 2**

Delegated powers memo  
SL/S2/04/31/2

**Agenda Item 3**

Executive responses  
SL/S2/04/31/3

**Agenda Items 4 - 8**

Copies of instruments (circulated to Members only)

**Papers circulated for information:**

Minutes of 30th meeting, 2004 (Session 2)  
SL/S2/04/30/M
1. The promoter has been asked to set out the delegated powers that are proposed in the Edinburgh Tram (Line One) Bill and the justification for them. This document sets out the extent of each power and its justification in the form of a table.

2. For the purposes of this document, a delegated power is a provision in an Act giving power to a person or organisation to create legislation at a later date without requiring a further Act of the Scottish Parliament. Statutory instruments are an example of such legislation, and are made by Scottish Ministers, but delegated powers are not limited to these. This Bill, for example, confers a power to make byelaws on the authorised undertaker (i.e. the body that is constructing or operating the tram system).

3. The procedure for all statutory instruments under the Act is set out at section 79, which means that the instrument will come into force unless a motion is passed by the Parliament annulling it (commonly called the ‘negative’ procedure). The procedures for byelaws and for noise insulation grant schemes are set out at the relevant sections, 59 and 61 respectively.

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1 The delegated powers provisions covered in this document are identical to those for the Edinburgh Tram (Line Two) Bill. This memorandum therefore applies equally to that Bill as to the Edinburgh Tram (Line One) Bill.
## Delegated legislation powers in the Edinburgh Tram (Line One) Bill

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Who</th>
<th>Extent of power</th>
<th>Justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>39</td>
<td>Extension of time</td>
<td>Scottish Ministers</td>
<td>Extension, or further extension, of the time limit for acquiring land under the Bill beyond five years.</td>
<td>The power to acquire land is to be exercised within five years of the Bill receiving royal assent in the first instance. However, if the authorised undertaker persuades Scottish Ministers that there is a good reason for extending this time, this is allowed to happen by means of a statutory instrument. The reason is likely to be related to events outside the authorised undertaker’s control. A similar power is contained in the City of Edinburgh (Guided Busways) Order Confirmation Act 1998, section 59.</td>
</tr>
<tr>
<td>42</td>
<td>Operation of Part 3</td>
<td>Scottish Ministers</td>
<td>Bringing Part 3 of the Bill (provisions relating to penalty fares) into force.</td>
<td>This is essentially a power of commencement. The remaining provisions of the Bill come into force upon the receipt of royal assent. The part of the Bill concerned with penalty fares is self-contained and it is intended to be brought into force only when Scottish Ministers are satisfied that the tram system is ready for it.</td>
</tr>
<tr>
<td>44(3)</td>
<td>Amount of penalty fare</td>
<td>Scottish Ministers</td>
<td>Increasing the maximum amount of a penalty fare from the original limit of £40 or ten times the fare, whichever is the greater.</td>
<td>This is a common use of delegated powers to allow increases in financial limits in line with inflation or changes in penal policy. The limit could be index-linked but this would be more cumbersome.</td>
</tr>
<tr>
<td>59</td>
<td>Power to make byelaws</td>
<td>Authorised undertaker</td>
<td>Making byelaws to regulate the use of the tram, subject to confirmation by Scottish Ministers. Among other things, the power allows offences to be created punishable by a fine of up to level 3 on the standard scale (currently £1000).</td>
<td>It is a common provision that the operator of a transport undertaking (whether a tram or light rail system, harbour or toll bridge) should be allowed flexibility to regulate its undertaking. This is subject to approval by the Scottish Ministers to ensure that the byelaws are appropriate.</td>
</tr>
<tr>
<td>61</td>
<td>Insulation against noise</td>
<td>Authorised undertaker</td>
<td>With the approval of the Council, making a scheme for payment of grants towards the insulation of buildings against noise affected, or expected to be affected, by the tram system</td>
<td>This power is a useful addition for tackling the effect of noise on those living close to the tram. It will mean that if noise problems occur they can be addressed. Similar provisions are in force in relation to the Leeds and Nottingham trams.</td>
</tr>
<tr>
<td>62</td>
<td>Order for insulation of new buildings</td>
<td>Scottish Ministers</td>
<td>Requiring new buildings in the area and of the type covered by a scheme under section 61 to be adequately insulated for noise.</td>
<td>Where section 61 applies to existing buildings, this section allows Scottish Ministers to require new buildings to be adequately insulated. If implemented it should address noise problems with new buildings before they occur.</td>
</tr>
<tr>
<td>63</td>
<td>Repeal of sections 61 and 62</td>
<td>Scottish Ministers</td>
<td>Repealing sections 61 and 62.</td>
<td>If a national scheme is brought into force for insulating buildings in a similar way to sections 61 and 62, then it would be appropriate for those sections to be abolished so that two similar, but unlikely to be identical, schemes are not in existence at the same time.</td>
</tr>
</tbody>
</table>
SUBORDINATE LEGISLATION COMMITTEE

31st Meeting, 2004 (Session 2)

Tuesday, 16th November 2004

Executive Responses

- the Holyrood Park Amendment Regulations 2004, (draft)

THE HOLYROOD PARK AMENDMENT REGULATIONS 2004, (DRAFT)

1 On 9th November the Committee asked the Executive for an explanation of the following matters.

2 The Executive is asked to explain why it considers these Regulations are within devolved competence given the reservation of the Crown Estates in Part 1 of Schedule 5 to the Scotland Act.

3 The Executive is asked to explain who will collect the excess charge set out in new section 4B and what the monies collected in payment of those charges will be used for.

4 The Executive is asked to explain the purpose and effect of new regulation 4B(4) given that section 47(4) of the Road Traffic Regulation Act 1984 which as read with section 62 of that Act provides the vires for the provision does not extend to Scotland. Furthermore the phrase “recoverable as a penalty” appears to be an English term of art (See Halsbury’s Laws of England Vol. 3 paragraph 805 and 810) that appears to have no equivalent in Scots law.

The Scottish Executive responds as follows:

First Question

The Executive considers that the reservation of the management of the Crown Estate by Part I of Schedule 5 to the Scotland Act 1998 is not relevant to the Scottish Ministers’ powers to make the Regulations. Holyrood Park is not part of the Crown Estate. The Crown Estate comprises the property, rights and interests under the management of the Crown Estate Commissioners. The Crown Estate Commissioners are not responsible for the management of Holyrood Park nor were they so responsible prior to devolution. Management of Holyrood Park is governed not by the Crown Estate Act 1961 but by the Parks Regulation Acts 1872 and 1926. Prior to devolution the function of management of the Holyrood Park rested with the Secretary of State and were transferred to the Scottish Ministers under the Scotland Act 1998 on 1st July 1999.

Second Question

The excess charge set out in new regulation 4B will be collected by Historic Scotland and monies collected will be used in connection with the fulfilment of Historic Scotland functions.

Third Question

The Executive consider that the necessary powers to make the Regulations are contained in section 62 of the Road Traffic Regulation Act 1984. Section 62 extends to Scotland. Section 62 confers a power to include provisions in the Regulations corresponding to the provisions of section 47(4). The Executive, however, recognises that the phrase “recoverable as a penalty” found in section 47(4) is used in the context of English law and does not have a direct equivalent in Scots law. The Executive are therefore withdrawing the draft Regulations with the intention that the draft Regulations will be amended and re-laid.
1. On 9th November the Committee asked the Executive for an explanation of the following matters.

2. The Executive is asked to justify the *vires* of article 2, which prescribes two dates for two different purposes, given that there appears to be nothing in the enabling powers that permits different provision to be made for different circumstances.

**The Scottish Executive responds as follows:**

1. Section 45(2) of the Act requires that the application to the court or to the tribunal for a determination that a notice or agreement submitted for registration and rejected by the Keeper of the Registers of Scotland is registrable must be made within such period as the Scottish Ministers may prescribe. Section 45(2) refers to the particular application rather than to all applications for such a determination. Article 2 of the Order prescribes different periods in respect of different applications, namely applications relating to notices or agreements rejected by the Keeper on or before 28th November 2004 and those rejected after that date.

2. The Executive do not consider that the wording of section 45(2) requires the same period to be prescribed for all applications. Section 45(2) refers back to the individual application which results in a determination under section 45(1). The Executive consider that wording of section 45(2) permits different periods to be prescribed in respect of different applications. While the Executive recognise that there is no provision in the Act which expressly states that different periods can be prescribed for different circumstances, the Executive consider that such an express provision is not required in the context of the wording of section 45.