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

1. **Delegated powers scrutiny**: The Committee will consider the response from the Promoter to points raised on the following Bills——
   - the Edinburgh Tram (Line One) Bill at preliminary stage
   - the Edinburgh Tram (Line Two) Bill at preliminary stage.

2. **Executive responses**: The Committee will consider responses from the Scottish Executive to points raised on the following——
   - the Plant Health (*Phytophthora ramorum*) (Scotland) Order 2004, *(SSI 2004/488)*
   - the Tenements (Scotland) Act 2004 (Commencement No.1) Order 2004, *(SSI 2004/487)*.

3. **Instruments subject to annulment**: The Committee will consider the following——
   - the Civil Legal Aid (Scotland) Amendment (No.2) Regulations 2004, *(SSI 2004/491)*
   - the Advice and Assistance (Scotland) Amendment (No.3) Regulations 2004, *(SSI 2004/492)*
   - the Legal Aid (Scotland) Act 1986 Amendment Regulations 2004, *(SSI 2004/493)*.
4. **Draft Guidance subject to annulment:** The Committee will consider the following—

   the Scottish Environment Protection Agency (SEPA) and Sustainable Development, Statutory Guidance to SEPA made under Section 31 of the Environment Act 1995, *(SE/2004/257).*

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

   the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (Commencement) (Scotland) Order 2004, *(SSI 2004/494)*

   the Nature Conservation (Scotland) Act 2004 (Commencement No.2) Order 2004, *(SSI 2004/495).*

6. **Inquiry into the regulatory framework in Scotland:** The Committee will consider its submission to the Conveners’ Group in relation to sending representatives to a delegated legislation conference in Canberra, Australia.

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

**Agenda Items 1-5**

- Legal Brief (for members only) – to follow  
  SL/S2/04/32/1

**Agenda Item 1**

- Promoter responses  
  SL/S2/04/32/2

**Agenda Item 2**

- Executive responses  
  SL/S2/04/32/3

**Agenda Items 3 - 5**

- Copies of instruments (circulated to Members only)

**Agenda Item 6**

- Conveners’ Group submission (PRIVATE)  
  SL/S2/04/32/4

**Papers circulated for information:**

- Minutes of 31st meeting, 2004 (Session 2)  
  SL/S2/04/31/M
Thank you for your letter of 16 November in which you ask for a response to the Committee’s request for further information on certain of the delegated powers contained in the Bills.

Section 39

The Committee is concerned that the power to extend the time limit for compulsory acquisition is unlimited, and is of the view that it would be more suitably exercised by means of the ‘affirmative’ procedure.

As was acknowledged by Committee members at this week’s meeting, the inclusion of a power to extend the period for compulsory acquisition per se is justified, to prevent unforeseen delays or obstructions following the passing of the Bill thwarting its implementation. The promoter also reminds the Committee that it possesses a similarly unlimited power in relation to the City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (section 59). However the promoter understands the Committee’s concern that the power to extend the deadline is unlimited in terms of time. It would therefore be prepared to undertake to introduce an amendment at Consideration Stage (in each Bill Committee) to the effect that the period for compulsory acquisition cannot be extended beyond fifteen years. This does have the potential for delays or obstructions once again to extend beyond this ‘back stop’ deadline, although it would be less likely. The promoter would therefore prefer not to have such a limit, but if the Committee was of the view that the necessity of having a limited power was greater than the potential risk to the scheme, then it would respect the Committee’s decision.

On the issue of which procedure should be used, the promoter is content to undertake to introduce amendments at Consideration Stage to alter this from the negative to affirmative procedure.

Section 44(3)

The Committee is concerned that the power to amend the maximum penalty fare does not make it clear whether this applies to the fixed amount of £40 or the multiplier of ten times the maximum fare, or both (or indeed whether both must be adjusted at once).

The intention of the subsection was that either the fixed amount or the multiplier (or both) could be raised if desired, to reflect changes in penal policy or concerns about the effectiveness of the penalty fare as a deterrent, not just
to compensate for inflation. Again, the power is one already possessed by the promoter in relation to the City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (also section 44(3)). If the Committee would prefer that the power should be exercised by means of the affirmative procedure, it would be content to undertake to introduce amendments at Consideration Stage to this effect.

**Section 63**

7 The Committee is concerned that sections 63(2) and 79(2) appear to overlap in scope while not being identical. The promoter is grateful for bringing this to its attention and undertakes to introduce amendments at Consideration Stage to remove section 63(2).
SUBORDINATE LEGISLATION COMMITTEE

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

Tuesday, 23\textsuperscript{rd} November 2004

Executive Responses

- the Plant Health \textit{(Phytophthora ramorum)} (Scotland) Order 2004, \textit{(SSI 2004/488)}


- the Tenements (Scotland) Act 2004 (Commencement No.1) Order 2004, \textit{(SSI 2004/487)}
THE PLANT HEALTH \textit{(PHYTOPHTHORA RAMORUM)} (SCOTLAND) ORDER 2004, (SSI 2004/488)

The Subordinate Legislation Committee considered the above instrument on 16 November 2004 and seeks an explanation of the following matters.

“Article 5(1)(page 3) provides that the material covered by that article must meet the requirements of Schedule 2. That Schedule however appears to the Committee to impose conditions only relevant to material covered by article 6. The Executive is therefore asked to explain the purpose and effect of the provision. The Committee notes that the English Order does not contain an equivalent requirement.

The introduction to article 14 (page 7) refers only to article 12 but paragraph (d) of that article refers to articles 12 and 13. The Executive is asked to explain the discrepancy.”

The Scottish Executive responds as follows:-

\textbf{First Question}

The words “and meets the requirements of Schedule 2” have been erroneously included in article 5(1). The Executive is grateful to the Committee for bringing this issue to the attention of the Executive.

In practice this error will have very little practical effect due to the fact that very little (if any) susceptible material originating in the USA or another third country is imported into Scotland. The majority (if not all) of susceptible material imported into Scotland comes from England and the Netherlands and is grown from plants originating in those countries and as a result does not fall within the remit of article 5 of the Order.

In addition guidance will be issued to the industry as a matter of urgency which makes it clear that susceptible material originating in the USA or a third country which is imported into Scotland and subsequently moved within the Community only requires to be accompanied by a plant passport. Plant health inspectors who have powers to enforce the Order are aware that only a plant passport is required when such material is imported into Scotland and then moved within the Community. The Order will be enforced in accordance with the provisions of Community law and there is therefore no question that any person importing material covered by article 5 of the Order will be required to ensure that the material meets the requirements of schedule 2.

Decision 2002/757 which is implemented in the Order requires to be reviewed by 31 December 2004 (see Article 8 of the Decision). It may be that as a result of that review further changes will be made to the EU measures on \textit{Phytophthora ramorum} in the near future which will require to be implemented by the Scottish Ministers as regards Scotland.

Due to the fact that a review will be undertaken in December, the fact that the amount of material covered by article 5 which is actually imported into Scotland is negligible, the fact that plant health inspectors enforcing the legislation are aware of
the correct requirement and that they will enforce only on that basis and the fact that
the industry will shortly receive guidance which will clarify that the material caught by
article 5 only requires to be accompanied by a plant passport, the Executive is of the
view that no difficulties in practice will be caused by the error in the article and that
no person will be prejudiced by it; and so it is not necessary to bring forward an
amending instrument as a matter of urgency. The Executive will, however, ensure
that the error is rectified at the next appropriate legislative opportunity.

Second Question

The Executive is again grateful to the Committee for bringing this error to the
attention of the Executive. The Executive is of the view that the provisions of the
principal Order only need apply to a notice issued under article 12 as under article 13
(1) the requirement is only to give a reasonable period of notice rather than a notice
being issued as is the case under article 12. The reference to article 13 in article
14(d) of the Order is therefore otiose. While the Executive regrets this error the
Executive is of the view that the error will cause no real confusion to those using the
legislation as the introduction to article 14 makes it clear that the specified provisions
of the principal Order only apply to a notice issued under article 12.
THE TENEMENTS (SCOTLAND) ACT 2004 (NOTICE OF POTENTIAL LIABILITY FOR COSTS) AMENDMENT ORDER 2004, (SSI 2004/490)

1 On 16th November the Committee asked the Executive for an explanation of the following matters.

“The Executive is asked to explain why it has not chosen to bring this instrument into force contemporaneously, on 28 November 2004, with the schedule it amends given the potential disadvantage to a purchaser”.

The Scottish Executive responds as follows:

The Executive did consider whether or not to make the amendment to schedule 2 with effect from 28th November 2004, however, at the time which the matter came to the attention of the Executive it would not have been possible to do so without breaching the 21 day rule. The Executive did not consider that there was sufficient urgency to support a breach of the 21 day rule.

In terms of section 12(2) a new owner is liable for all relevant costs for which the seller is liable. Section 12(3) makes a limited exception. This exception is in respect of maintenance or work carried out before the acquisition date. It only applies where a notice is not registered at least 14 days before the date on which the new owner acquires the flat.

This means that new owners are liable for work still to be carried out at the acquisition date. The fact that the current schedule 2 notice only refers to work carried out is not thus an immediate problem. If the work has already been carried out then a notice could be registered immediately. If the work has yet to be carried out then there is no immediate effect on liability, as the new owner is in any event liable for work yet to be carried out.

The Executive do not consider that delaying the amendment of schedule 2 results in any disadvantage to purchasers. Any potential disadvantage is to the current owners of flats within a tenement who are planning to carry out work but have yet to do so. The Executive consider, however, that the potential for disadvantage to be caused by the delay in making the amendment to schedule is minimal. Any disadvantage only arises where work is carried out after the 28th November but before 5th December and a new owner acquires the property in the two weeks following registration of the notice. The owners could register a notice but only once the work described in the notice has been carried out. The new owner would not be liable if he acquired the property in the next two weeks.

The Executive consider that the real issue arises for the future when owners want to plan to do works and want to be sure that new owners will be liable for the cost of the works once done. They should be able to register the notice before the work is done, and the Tenements (Scotland) Act 2004 will enable them to do so.
2 On 16th November the Committee asked the Executive for an explanation of the following matters.

3 The Executive is asked to explain why this Order has been made in the form of a statutory instrument when the relevant section of the Act (section 32) was not commenced on Royal Assent but is commenced by the Order itself.

3 The Executive is also asked if the electronic monitoring system for instruments will ensure that such errors are avoided in the future.

**The Scottish Executive responds as follows:**

The Executive are grateful to the Committee for bringing this matter to their attention. The validity of the order is unaffected by it being made as a statutory instrument. In view of the fact that the Order has already been published as a statutory instrument on the HMSO website it is proposed to leave matters as they stand. The Committee's point will be noted for the future.

In relation to the general point about the Executive's new electronic tracking system for SSIs, this system is intended to assist with the overall management and processing of the large number of SSIs each year. It is intended that this will lead to improvements in planning and management which will have consequential benefits for quality of SSIs generally.