The Committee will meet at 10.30am in Committee Room 3.

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

   - the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2005, (SSI 2005/64)
   - the Possession of Pesticides (Scotland) Order 2005, (SSI 2005/66)

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

   - the Potatoes Originating in the Netherlands (Notification) (Scotland) Order 2005, (SSI 2005/73)
   - the Potatoes Originating in the Netherlands (Scotland) Revocation Regulations 2005, (SSI 2005/74)
   - the Police (Retention and Disposal of Motor Vehicles) (Scotland) Regulations 2005, (SSI 2005/80)
3. **Instruments not laid before the Parliament:** The Committee will consider the following—

   Act of Sederunt (Fees in the National Archives of Scotland) 2005, (SSI 2005/77).

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

Agenda Items 1-3

Legal Brief (Private) – to follow  SL/S2/05/7/1

Agenda Item 1

Executive responses  SL/S2/05/7/2

Agenda Items 2-3

Copies of instruments (circulated to Members only)
SUBORDINATE LEGISLATION COMMITTEE

7th Meeting, 2005 (Session 2)

Tuesday 1st March, 2005

Executive Responses

- The Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2005, (SSI 2005/64)
- The Possession of Pesticides (Scotland) Order 2005, (SSI 2005/66)
- The Annual Close Time (Esk Salmon Fishery District) Order 2005, (SSI 2005/72)
THE LESS FAVOURED AREA SUPPORT SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2005, (SSI 2005/64)

On 22\textsuperscript{nd} February the Committee asked the Executive for an explanation of the following matters-

"In relation to regulation 15(a) the Committee asks the Executive to clarify that it is the Code of Good Agricultural Practice that is relevant for the purposes of Part 1 of Schedule 2, rather than the Order approving the Code.

Again with reference to regulation 15(a), the Committee asks whether it is the intention that only those parts of the Code that apply to water pollution are relevant.

The Committee also asks for clarification as to whether, in regulation 13 new regulation 24(4), it is the intention that the requirement to notify determinations by recorded delivery should apply in relation to the Scottish Ministers as well as to applicants."

The Scottish Executive responds as follows:

\textbf{First question}

2. Regulation 15(a) inserts into Schedule 2 of the principal regulations the Water (Prevention of Pollution) (Code of Practice) (Scotland) Order 2005. This Order approves the Code of Good Practice for the Prevention of Environmental Pollution from Agricultural Activity. It is the Code which contains practical guidance to persons engaged in agriculture with respect to activities that may cause water pollution.

\textbf{Second question}

3. All of the Code of Good Practice for the Prevention of Environmental Pollution from Agricultural Activity which has been approved by the Water (Prevention of Pollution) (Code of Practice) (Scotland) Order 2005 is relevant. That is, all sections of the Code other than sections 3 and 13.

\textbf{Third question}

4. It is not the intention that the requirement to notify determinations by recorded delivery should apply in relation to the Scottish Ministers.
THE POSSESSION OF PESTICIDES (SCOTLAND) ORDER 2005, (SSI 2005/66)

The Subordinate Legislation Committee considered the above instrument on 22 February and sought an explanation of the following matters -

“The Executive is asked whether, in its view, the Order constitutes a new Technical Standard within the meaning of Directive 98/34/EC and, if so, to confirm that the Order has been notified to the Commission as required.

The Committee asks the Executive to confirm that the requirements of section 26(4) of the Wildlife and Countryside Act 1981 have been complied with.

The Committee would also be grateful for an explanation as to why a statement with regard to compliance with section 26(4) has not been included in the preamble to the Order.”.

The Scottish Executive responds as follows –

First Question

1. The Executive is of the view that the Order does not constitute a new technical standard within the meaning of Directive 98/34/EC.

2. The purpose of the Technical Standards Directive is to avoid the creation of new technical barriers to trade within the EC. The Order does not create any barrier to trade within the EC. The Order does not prevent the sale of existing pesticides or change the conditions of approval relating to pesticides. Lawful use of pesticides containing the prescribed ingredients, i.e. use in accordance with conditions of the approval relating to the product, is not affected by the Order.

Second Question

3. The Executive confirms that the requirements of section 26(4) of the Wildlife and Countryside Act 1981 have been complied with. A wide ranging consultation exercise was carried out and local authorities affected, other bodies with an interest and other persons with an interest were given the opportunity to submit objections or representations in accordance with section 26(4)(a). Scottish Natural Heritage was consulted in accordance with section 26(4)(b).

Third Question

4. The Executive accepts that the preamble should have recited the fulfilment of the statutory conditions which the enabling Act requires to be met before the instrument can be made. The Executive regrets this omission, however, as outlined above, section 26(4) has been complied with and the fact a
statement to this effect has not been included in the preamble does not affect the validity of the Order.
On 22nd February 2005 the Committee asked the Executive for an explanation of the following matter –

“The Committee asks the Executive why the Explanatory Note refers to only one close time when the Designation Order prescribed two such periods.”

The Scottish Executive responds as follows:

First Question

1. Paragraphs (1) and (2) of article 4 of the Designation Order prescribe different annual close times for different parts of the Esk Salmon Fishery District. The Explanatory Note to the Annual Close Time (Esk Salmon Fishery District) Order 2005 (“the Order”) refers only to the annual close time prescribed by article 4(2) of the Designation Order. The failure of the Explanatory Note also to refer to the close time prescribed by article 4(1) of the Designation Order is the result of an oversight. The Executive is grateful to the Committee for bringing this oversight to its attention.

2. Notwithstanding the failure of the Explanatory Note to refer to the annual close time prescribed in article 4(1) of the Designation Order, given that the Explanatory Note correctly specifies the annual close time prescribed for the whole of the Esk Salmon Fishery District by article 2(a) of the Order, the Executive is of the view that there is little likelihood of any confusion arising.

3. Nevertheless, the Executive has written to the Queen’s Printer in Scotland requesting that the Explanatory Note to the Order be rectified in the annual published volume of Scottish Statutory Instruments and on the HMSO website so that it also refers to the annual close time prescribed by article 4(1) of the Designation Order. A correction slip shall also be issued.