The Scottish Parliament

SUBORDINATE LEGISLATION COMMITTEE

AGENDA

9th Meeting, 2005 (Session 2)

Tuesday 15th March, 2005

The Committee will meet at 10.30am in Committee Room 4.

1. Inquiry into the regulatory framework in Scotland: The Committee will take evidence from—

   Martin Reid, Business Manager, Food Standards Agency Scotland,
   Sandy McDougall, Branch Head, Food Standards Agency Scotland,
   Dave Gorman, Operations Coordinator, Scottish Environment Protection Agency,
   Janice Milne, Environmental Development Manager, Scottish Environment Protection Agency.

2. Delegated powers scrutiny: The Committee will consider a response from the Executive on the delegated powers provisions in the following Bill—

   Family Law (Scotland) Bill at Stage 1.

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

   the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2005, (SSI 2005/90)

   the Plastic Materials and Articles in Contact with Food Amendment (Scotland) Regulations 2005, (SSI 2005/92)

   the Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2005, (SSI 2005/93)

   the Colours in Food Amendment (Scotland) Regulations 2005, (SSI 2005/94).
4. **Instruments subject to annulment:** The Committee will consider the following—

- the Antisocial Behaviour (Amount of Fixed Penalty) (Scotland) Order 2005, *(SSI 2005/110)*
- the Advice and Assistance (Scotland) Amendment Regulations 2005, *(SSI 2005/111)*
- the Civil Legal Aid (Scotland) Amendment Regulations 2005, *(SSI 2005/112)*
- the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2005, *(SSI 2005/113)*
- the Community Care (Direct Payments) (Scotland) Amendment Regulations 2005, *(SSI 2005/114)*
- the NHS Quality Improvement Scotland (Amendment) Order 2005, *(SSI 2005/115)*
- the Feeding Stuffs (Establishments and Intermediaries) Amendment (Scotland) Regulations 2005, *(SSI 2005/116)*
- the Agricultural Subsidies (Appeals) (Scotland) Amendment Regulations 2005, *(SSI 2005/117)*
- the National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 2005, *(SSI 2005/118)*
- the National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2005, *(SSI 2005/119)*
- the NHS Quality Improvement Scotland (Establishment of the Scottish Health Council) Regulations 2005, *(SSI 2005/120)*
- the National Health Service (Dental Charges) (Scotland) Amendment Regulations 2005, *(SSI 2005/121)*
- the Dissolution of Local Health Councils (Scotland) Order 2005, *(SSI 2005/122)*
- the Road Traffic (NHS Charges) Amendment (Scotland) Regulations 2005, *(SSI 2005/123)*
- the National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2005, *(SSI 2005/124)*
- the Gender Recognition (Disclosure of Information) (Scotland) Order 2005, *(SSI 2005/125)*
the National Health Service (General Opthalmic Services) (Scotland) Amendment Regulations 2005, (SSI 2005/128)

the Intensive Support and Monitoring (Scotland) Regulations 2005, (SSI 2005/129)

the Antisocial Behaviour (Fixed Penalty Notice) (Additional Information) (Scotland) Order 2005, (SSI 2005/130)

the Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) Amendment Order 2005, (SSI 2005/140)

the Bail Conditions (Specification of Devices) and Restriction of Liberty Order (Scotland) Amendment Regulations 2005, (SSI 2005/142)


5. **Instruments not subject to Parliamentary procedure:** The Committee will consider the following—


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


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

**Agenda Items 1-**

Briefing Paper (Private) SL/S2/05/9/1
Food Standards Agency Scotland response SL/S2/05/9/2
Scottish Environment Protection Agency response SL/S2/05/9/3

**Agenda Items 2-6**

Legal Brief (Private) – to follow SL/S2/05/9/4

**Agenda Item 2**

Executive response SL/S2/05/9/5

**Agenda Item 3**

Executive response SL/S2/05/9/6

**Agenda Items 3-6**

Copies of instruments (circulated to Members only)
RESPONSE BY THE FOOD STANDARDS AGENCY SCOTLAND TO THE SUBORDINATE LEGISLATION COMMITTEE’S CONSULTATION PAPER ON ITS INQUIRY INTO THE REGULATORY FRAMEWORK IN SCOTLAND

1. As an organisation with a significant regulatory role within Scotland, The Food Standards Agency Scotland (FSAS) welcomes the opportunity to respond to this consultation exercise. The Agency fully supports the objectives of improving the quality of new regulation, considering the methods for improving existing regulations and of having effective structures in place to support these aims.

2. In address these issues, part 5 of the consultation document highlights some particular discussion points under each of these proposed objectives. This response does not attempt to address all of the many points that have been identified, but instead focuses on some of the main issues on which the Agency feels it can offer constructive feedback.

**Improving Regulatory Quality of a new Regulation**

**Regulatory Impact Assessment (RIA)**

3. On the issue of Regulatory Impact Assessments, FSAS notes that it has been identified as one of the departments leading the way in Scotland in respect of the preparation of RIAs to support its regulatory proposals. As a UK government department, the Agency is perhaps particularly aware of the guidance issued by the Cabinet Office (which the IRIS Unit in Scotland recommends is followed). As such, FSAS works closely with colleagues around the UK to adhere to a common approach and standards, whilst recognising and addressing the slight differences in Scottish RIA requirements (the “micro test” and the “Test Run” of business forms).

4. It is difficult to argue against the principle of producing an RIA in areas of significant new, or revision of, policy where there is a significant impact on a group of stakeholders. Arguably it is not possible to say whether or not a full impact assessment is required before carrying out some sort of initial impact assessment (which may be quite informal). It should therefore be possible to provide a justification based on this where a judgement is reached that a full RIA is not required.

5. One of the difficulties and frustrations of RIAs is the relative lack of response received from stakeholders. Pre-legislative consultation is the normal route used by FSAS to attempt to gather information to inform the final RIA, but levels of response are poor at best, casting uncertainty over the robustness of the data.

6. It is not our view that it would be helpful to indicate in the final RIA changes that have been made to the regulation as a result of going through the RIA process. The RIA should simply reflect the impact of the regulations. If such explanation is needed then a separate executive note could be provided.
7. On the question of commencement dates for new regulation, FSAS tries wherever possible to co-ordinate its activities with the rest of the UK. Variances in parliamentary procedures, particularly when dealing with EU derived legislation, can lead to slight variances, but by and large these can be overcome within the department. The Committee may be interested to know that the Agency has recently undertaken a Regulatory Process Review that addresses this very point and which is intended to improve co-ordination on this issue, amongst others.

Public Consultation

8. Again, FSAS closely follows Cabinet Office guidance in this area and seeks to provide a full 12-week consultation on all regulatory proposals (legislative or otherwise) whenever possible. Criticism has been directed at the Agency in general over the number of consultations it has carried out, but further examination has confirmed that stakeholders would rather have the option to ignore a consultation than not receive it at all. The Agency also makes extensive use of its website and e-mail to avoid sending large volumes of consultation documents through the post, whilst increasing accessibility.

9. When responding to consultation letters all consultees are given the opportunity to say whether the information they have provided can be made publicly available, or not.

10. The Agency recognises that if stakeholders are going to have a genuine say in developing policy, then this must be done at an early stage. To consult at the stage of introducing legislation for example, particularly EU derived measures, is too late to have any great influence over the final policy direction. Equally, however, stakeholders must take responsibility for ensuring that they are networking effectively with policy makers (domestically and internationally) if they wish to protect their interests. It is too simplistic to say that one consultation is sufficient. However, recognition that consultation cannot be defined simply as a standard 12-week exercise is crucial. Policy makers should not be criticised for undertaking shorter consultation where this is needed, for example, to inform the UK negotiating position in Brussels.

Easily Understood

11. The Agency would support the proposition that regulations should, as far as is practically possible, be written in clear, plain language. Enforcement guidance is already provided to support most legislation and the consultation document is not clear as to whether the suggestion on clear guidance is intended for laymen or professionals. if what is suggested is the production of ‘consumer’ guides, then this would result in a considerable additional burden and the benefits would require careful consideration. Again the Committee may wish to note that the Agency is already in the process of preparing what it has termed a “plain man’s guide” to the new EU consolidation of hygiene directives package. However, this is the most significant review of European food legislation ever undertaken with an enormous group of stakeholder interests and the benefits here are perhaps more obvious than might be the
case and the benefits here are perhaps more obvious than might be the case with ‘normal’ legislation – certainly of the subordinate variety.

Enforcement

12. Protocols are in place to promote and monitor consistency of food and feed law enforcement both within Scotland and between Scotland and the rest of the UK. Section 40 of the Food Safety Act 1990 provides Ministers with powers of direction as to the enforcement of legislation made under the Act. These powers have been exercised to provide a series of 20 published enforcement codes of practice aimed at achieving consistency of approach and based on good enforcement practice. These Codes are currently under review and it is intended that a Consolidated and updated Code will be submitted to Scottish Ministers for consideration later this year.

13. The Food Standards Agency Framework Agreement on Food Law Enforcement was developed by FSA in partnership with Local Government organisations to provide and agreed protocol for the provision of UK food and feed law enforcement services. This document provides the basis for audit of enforcement services by the Agency. It includes requirements for local authorities to have in place procedures to ensure compliance with the enforcement Codes of Practice, for provision of enforcement data by authorities and for Authorities to produce publicly available enforcement policies and complaints procedures. Over the past 3 years, all aspects of Local Authority Food Law enforcement have been audited in Scotland at all 32 authorities and the audit reports have been published on the FSA web site. There is close liaison between auditors in Scotland and their counterparts in other parts of the UK and there have been exchanges of staff to aid consistency of the audit approach.

14. The Codes of Practice and the audit process provide specific measures to determine whether enforcement is being applied equitably across Scotland and the UK. In addition, all EU member states are subject to audit by Inspector’s from the Commission’s Food and Veterinary Office. This process is aimed at ensuring equitable enforcement of the requirements of European food legislation within all parts of the EU.

15. Meat hygiene legislation in licensed fresh meat premises is enforced by the Meat Hygiene Service (MHS), an Executive Agency of the Food Standards Agency (FSA). Operating in Scotland, England and Wales, the MHS is a single independent enforcement agency, applying consistent standards and providing consistent inspection and enforcement services. The MHS’s aim is to safeguard public health and, on behalf of the GB Agriculture Departments, animal welfare through fair, consistent and effective enforcement of hygiene, inspection and welfare regulations in Great Britain.

16. The MHS’s objectives are to provide supervision, inspection and health marking in all licensed fresh meat premises, to deliver value for money in the provision of efficient and high quality services, to promote best practice in hygiene of operation and animal welfare, to apply principles of the
Government’s Service First programme, in particular to maintain or improve the quality of services to customers and to achieve the financial and performance targets set by the FSA’s Board.

17. The MHS is accountable to the FSA and to Parliament via Health Ministers for a service essential to protect public health and animal welfare at slaughter, and promote consumer confidence. It provides a unified inspection service under veterinary supervision that is acceptable to EU and third country trading partners. As a single agency, it is best placed to manage changes/developments in meat inspection and risk management.

Periodic Review

18. The Agency would certainly agree that periodic review of policy should form part of normal good practice. It is less keen to support the statutory provision of such clauses, particularly sunset, and would rather that such provision was contained within policy guidance. The required frequency of policy review is quite difficult to determine in broad terms due to the hugely variable nature of policy issues subject to regulatory provisions. Individual areas will need individual consideration as to what a reasonable period might be before a review is required. Guidance could attempt to stipulate some broad parameters that officials should consider when thinking about review periods, but inclusion of statutory provision would introduce constraints when often what is required is professional judgement.

Improving Regulatory Quality of Existing Regulations

Accessibility

19. The Agency’s main observation here is in respect of consolidation of legislation. The key issue is not the number of amendments that have been made to legislation, but rather the extent to which the original legislation has been altered. Again the point is that policy officials should, in consultation with stakeholders, as part of the review process, consider and make a professional judgement on whether or not a consolidation exercise is also required. Consideration also has to be given to what is known about forthcoming EU legislation. If for example, it is known that a piece of Scottish legislation is going to be updated via legislation of EU origin within the next 12-18 months, then there would seem little point in carrying out a consolidation exercise ahead of the introduction. As an aside to this, the role of guidance also has to be considered. When legislation is updated, then the corresponding guidance should be likewise updated. Arguably, if there is clear guidance (for enforcers, industry and possibly consumers), then the case for consolidating legislation is perhaps less compelling.

Reform and Simplification

20. It is highly important in considering any proposed programme of reform or simplification that consideration is given to activity at an EU level. The vast majority of the regulatory elements of the Agency’s work in Scotland relates to
the implementation of EU measures. The EU is more and more seeking to use the route of Regulation rather than Directive to implement EU policy. As such there is an increasing raft of directly applicable legislation resulting in less national regulation other than those provisions relating to sanctions, enforcement or where specific provision is provided for the development of national rules. It may therefore be that the EU agenda is sufficiently advanced, at least in the area of food hygiene, to suggest that a specific Scottish simplification programme is not required to be considered until such time as the impact of current EU thinking (and ongoing action) is more widely assessed and understood.

**Effective Structures for Improving Regulatory Quality**

**Role of IRIS**

21. By way of a brief remark before coming on to more specific points, the Agency in Scotland is in regular contact with the IRIS Unit and has received good quality guidance and feedback on the preparation of many of the RIAs that have so far been prepared. The Agency was generally unaware of the extent of the lack of development of RIAs within the Scottish Executive and, as such, would argue that there would seem to be a case for increasing the profile and powers of the IRIS Unit. On the issue of the role of IRIS, it would be a significant new departure if IRIS were asked to effectively carry out a quality check on all new regulations, and where would this rule stop? In many cases the guidance is just as important as the legislation and in both cases, other than at a technical level, quality could not be checked without some knowledge of the subject area.

22. On the question of reporting activity levels annually, this would seem a reasonable approach to monitoring progress on parliamentary objectives.

**Role of the Parliament**

23. The Agency considers that it would be reasonable for the SLC to have a role in assessing any new regulation in terms of meeting the standards of good regulation and for it to be able to report to the lead Committee where a failure is identified. The question of the preparation of the RIA at a technical level may be something that the SLC feel proficient to advise on, but this may be something that the lead Committee could equally carry out when considering the proposed regulatory proposal and RIA in the wider context. in considering review timetable etc and adherence to them, the SLC would have to liaise closely with the lead Committees.

24. Finally, it would seem appropriate for the SLC to take the lead role for the Parliament in considering any annual report from the IRIS Unit and in commenting of the level of compliance across the Scottish Executive and those other departments which serve the Scottish Parliament.

**Food Standards Agency Scotland**

15 July 2004
Inquiry into the Regulatory Framework in Scotland

SEPA Response

Regulatory Impact Assessment (RIA)

1. Whether there are any cases since devolution where it is thought (a) that a partial or final RIA should have been produced but it has not been or (b) where it has been produced but that has not been used effectively to improve the quality of policy decisions about the regulation.

Contribution
To the best of SEPA’s knowledge RIAs have been produced for all SEPA related significant legislative changes.

In practical terms the distinction between partial and final RIAs is not always clear. SEPA staff have been approached to contribute to the drafting of RIAs. For all legislation any relevant enforcing agency such as SEPA should be involved in the development of the RIA.

There should be improved guidance for the production of RIAs, concentrating more on quality of content rather than format and process. For all legislation, potential environmental impacts or benefits should be a formal part of the RIA. Consideration should also be given to the effect of the regulation on the Regulatory body as different regulatory options can affect the Regulatory body in different ways.

2. Whether an RIA should be prepared (a) only in those cases where it may be thought that the regulation may have an impact upon business, charities and the voluntary sector – as at present – and, if so, how should business be defined or (b) in all cases where regulation is proposed (except in any case where it is not thought appropriate).

Contribution
SEPA would support an RIA in all cases subject to specific exemptions, which should be clearly set out in the guidance on applying RIAs. Perhaps consideration should also be given to social impacts.

SEPA also believes that an RIA should address the environmental benefits and disbenefits of a particular regulation and should also consider the costs of doing nothing.

3. Whether, in any case where an RIA is not prepared, a statement should be made giving reasons for not doing so and whether this statement should be given to IRIS, the Minister and the Parliament, along with the regulation.

Contribution
SEPA agrees that such statements should be made where an RIA is not prepared. This should be set out in the guidance on conducting RIAs.
4. Whether the final RIA should indicate what changes have been made to the regulation as a result of going through the RIA process.

Contribution
The final RIA should indicate what further changes if any are proposed as a result of going through the RIA process. This would provide sufficient guidance to those responsible for managing the consultation.

5. Whether the requirement to prepare an RIA should be made statutory or whether it should remain, as at present, only a matter of policy guidance.

Contribution
SEPA believes it should remain as a matter of policy guidance but with justification needed when decision taken not to prepare one. This should be clear in the guidance.

6. Whether the requirement to prepare an RIA should, as at present, be upon the policy makers and whether they ought to be required in any cases to consult IRIS and the relevant subject Committee in the Parliament.

Contribution
Given that the RIA should inform the policy makers, there should be a liaison between those preparing an RIA and IRIS and the relevant subject Committee in Parliament.

Such liaison would make sense to aid consistency in approach in successive RIAs and promote a common body of experience.

7. Whether the existing questions in the RIA are the correct questions and, in particular, whether the micro-business test is working effectively as a test.

Contribution
No comment.

8. Whether there should be a common commencement date, that is a single date or dates for commencing for new regulation in different areas of devolved matters, such as different areas of environmental law.

Contribution
SEPA’s main experience of legislation is in the environmental field. Nearly all such legislation in recent years has had its origins in a European Directive/Regulation. In all cases a European Directive will set a date by which member states must comply with a Directive. In this respect the latest possible commencement date for European driven legislation is already set. In terms of national legislation SEPA considers it is not necessarily helpful for the regulated or regulator to have a common commencement date for a particular area of environmental law. This approach has the potential to overwhelm both the regulator and the regulated. Sufficient lead-in time must be provided when drafting legislation to allow SEPA to introduce and/or amend charging schemes and we would strongly recommend transition periods between regulations being made and taking effect to allow the regulator and regulated to prepare for and amend practices.
Any new environmental legislation requires considerable preparation internally by SEPA including development of IT systems, charging schemes, application forms, template licenses, guidance for the regulated etc. There are some examples where the regulator and regulated have had little time to prepare. SEPA had experience on 1 April 2003 of a number of significant pieces of environmental legislation coming into effect on the same date including the Waste Incineration (Scotland) Regulations (SSI 2003/170); the Landfill (Scotland) Regulations 2003 (SSI 2003/235) (actually delayed for a few days), The Anti-Pollution Works (Scotland) Regulations 2003 (2003/168), and regulations which amended the Pollution Prevention and Control Scotland Regulations 2000 (SSI 2003/146) and the Waste Management Licensing Regulations 1994 (SSI 2003/171). This was very difficult for SEPA to manage in terms of resource. It might not be a problem for a larger organisation, but in SEPA the same individual members of staff would not, for example, be able to work on several sets of complex guidance on various pieces of legislation simultaneously to an identical deadline.

Having said that, there will be occasions where some method of assessing the collective impact of all legislation affecting any particular area should be devised. This could be done by having one coming into force date for all legislation relating to a particular area. This would also make spotting potential de-regulatory issues easier.

Where legislation is nearly identical throughout the UK commencement dates should be the same in Scotland as elsewhere in the UK.

Public Consultation

9. Whether there should be a general requirement to consult the public upon any proposal for regulation and any persons affected by it (except in any case where this is not thought appropriate and a statement is given explaining this) or whether this would result in consultation fatigue.

Contribution

In the environmental field public consultation requirements in relation to the development of legislation in relation to environmental matters are driven by the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25 June 1998 and commonly referred to as the “Aarhus Convention”. This Convention has been signed by the UK but not yet ratified. This requires public participation in decisions on specific activities (article 6) but also public participation in plans, programmes and policies relating to the environment (article 7) and during the preparation of executive regulations and/or generally applicable legally binding normative instruments (article 8). The requirement in article 8 is to promote effective public participation at an appropriate stage, and while options are still open, for regulations etc that may have a significant impact on the environment. The following steps are set out:

- Time-frames for effective participation should be fixed;
- Draft rules should be published or otherwise made public;
- The public should be given the opportunity to comment, directly or through representative consultative bodies.

The result of the public participation should be taken into account as far as possible.
Therefore there is a requirement in environmental legislation to consult on legislation that has a significant impact on the environment. In these days of open government it is SEPA’s view that effective consultation by the SEexec or specialist bodies/agencies like SEPA, those upon whom the legislation is likely to have a direct impact and the wider public is essential and will improve the quality of legislation. It may be worth considering whether the spirit of the Aarhus Convention requirements should usefully be extended to other areas.

To improve public access and awareness of consultations these should be logged on the website of the potential regulator in addition to the current practice of logging consultations on the SEexec’s own website. In each case a summary of the general principles should be included to facilitate public understanding.

There are some concerns that Scottish comments may not be fully taken into account where a UK wide consultation is undertaken simultaneously by Westminster and each of the devolved administrations. The SEexec often has a later closing date than Westminster. A recent example saw a Westminster consultation paper closing two weeks prior to the SE consultation and subsequent draft Regulations completed before the Scottish consultation period had closed.

10. Whether there should be a general requirement that the public and interested parties should get access to the comments made by those consulted (except in any case where it would not be appropriate to do so – such as because of commercial confidentiality) and how account was taken of them.

**Contribution**

It is essential in order to run a meaningful consultation exercise and genuinely to encourage full participation that people have access to comments made by others and to have a summary document made available by government of how in broad terms the consultation responses were dealt with. This document need not address every comment but should give an indication of how groups of comments were dealt with.

11. Whether any such general requirements should be statutory or, as at present, only a matter of policy guidance.

**Contribution**

SEPA considers that this sort of requirement is perhaps better left in guidance since that gives flexibility as to what is appropriate for each piece of legislation. Where guidance is not followed in a particular circumstance there should be a requirement to justify the decision. There is probably sufficient statutory backing to such policy anyway, such as through human rights and freedom of information legislation.

12. Whether consultation should be a one-off event or whether it should take place at appropriate stages during the making of the regulation and, if so, what those stages might be.

**Contribution**
Given that most Scottish environmental legislation transposes EU law, it is important that agencies such as SEPA are consulted during the development of the originating European proposals to ensure that these are practicable, enforceable and deliver the desired outcome. Similarly, there is arguably a greater need for SEPA to input to the prior assessment of the impact, costs and benefits of new approaches and laws i.e. as part of the regulatory impact assessment. The earlier the consultation, the easier it is to inform the overall principles.

In terms of the public it is important, as set out in Aarhus Convention, that they are consulted at a stage when the options are still open. Again, this might suggest best practice for other legislation.

The specific process and timing of consultation should be agreed at the point of initiating any new legislation.

13. Whether the consultation process should continue to follow the Cabinet Office Code of Practice on Consultation and, in particular, that the minimum consultation period should be 12 weeks.

**Contribution**
The Cabinet Office Code of Practice on Consultation should be reviewed and amended as appropriate to fit the Scottish context and institutions.

In terms of timing there should be more scope to shorten the consultation period in appropriate cases.

14. How the consultation process in relation to Bills, amendments to Bills and subordinate legislation can be handled in an effective manner.

**Contribution**
No Comment except to say that regulators such as SEPA should be involved prior to any consultation phase and in the consultation process.

**Easily Understood**

15. Whether there should be a general requirement that the text and structure of the regulation should be written in plain language and be simple to use and to understand.

**Contribution**
SEPA considers that as far as possible the text and structure of the regulation should be written in plain language and be simple to use and understand. However, as most of the environmental legislation is derived from Europe SEPA finds that there are many cases where the language of the text is already largely set at the European level and there is little flexibility at the national level to improve clarity. SEPA participates in an informal European Union network for the implementation and enforcement of environmental law (IMPEL). One of the aims of the network is to look at the effective implementation and enforcement of environmental legislation. The IMPEL network had a recent project looking at better legislation which produced a report in 2003. This report states that
when drafting legislation, ‘There needs to be a thorough evaluation as to what terms need definition. Definitions must be clear and unambiguous, and particularly when they determine the scope, or define key regulatory requirements (for example the definition of disposal versus recovery). Technical definitions should be, as far as possible, identical in terms of units and scientific meaning. Non-technical definitions generally should be consistent, and where this is not the case it should be made clear why. Technical annexes must also be produced with care.’ SEPA participated in this project. Further information is available on the IMPEL website:
http://europa.eu.int/comm/environment/impel/

In terms of structure SEPA considers from its own experience that the transposition of environmental directives at the national level can result in more than one set of regulations and several directions from the SExec under the Environment Act 1995. In addition these regulations are likely to be interfacing with an earlier set of regulations such as the Pollution Prevention and Control Scotland Regulations 2000 (SSI 2000/323). An example is the implementation of the Waste Incineration Directive which was implemented through the PPC Regulations and the Environmental Protection Act 1990 and required a set of regulations and three directions from the SExec. This type of transposition makes the structure of legislation complex for SEPA and those whom it regulates. It is often necessary to have more than one piece of legislation open at one time to understand the full legislative position. This reduces the accessibility of the legislation for many.

See replies at 17. At the very least there should be a statutory requirement for the SExec to provide plain English guidance alongside legislation. There may for example be situations where plain English in the legislation could actually introduce ambiguity.

16. Whether such a requirement should be part of the RIA and, if so, how can it be made effectively.

Contribution
The issue of the content and structure of legislation is an issue which goes beyond the RIA in SEPA’s opinion. It requires almost a cultural change by the legislature. It would require comparisons to be made with other Countries who already take a plain language approach to legislation.

17. Whether, if, exceptionally, it may not be possible to use simple language in the regulation, there should be a requirement that guidance, written in plain terms, should accompany the regulation.

Contribution
This may be an option that could be borne in mind for complex pieces of legislation. However, there may be practical difficulties in simplifying, in guidance, concepts and drafting which has not proved capable of being simplified in the legislation. In the environmental field guidance is often provided on the legislation: examples can be seen accompanying the Pollution Prevention and Control (Scotland) Regulations 2000, the Waste Incineration Directive implementation and the Solvents Emissions Directive implementation.
The NetRegs website - www.netregs.gov.uk - has been developed by the UK environmental regulators, including the Scottish Environment Protection Agency (SEPA); to help small and medium-sized enterprises (SMEs) understand their environmental obligations by giving advice in plain English.

**Enforcement**

18. Whether the Scottish Ministers should have a power to establish a statutory code of good enforcement practice in relation to devolved matters as UK Ministers have under section 9 of the Regulatory Reform Act 2001 in relation to reserved matters.

**Contribution**

In principle SEPA considers that Scottish Ministers should have the power to establish a statutory code. At least this would open the door to closer consideration of whether existing guidance has proven sufficient in the past, and if necessary provide a statutory based remedy.

19. Whether the Enforcement Concordat is working effectively.

**Contribution**

SEPA can only consider the effectiveness of the enforcement concordat from its own experience. SEPA has signed up to the Enforcement Concordat and aims to ensure that SEPA's enforcement and policy and practice complies with the Enforcement Concordat. SEPA is currently undertaking a review of its enforcement policy to ensure that it is in line with the Enforcement Concordat. This would bring SEPA more in line with the openness principle of the Enforcement Concordat. SEPA has also incorporated the principles of good enforcement set out in the Enforcement Concordat into its Principles of Regulation. These are high-level and process principles which are intended to provide a framework for SEPA's regulatory activity. The high-level principles are sustainable development, precautionary principle, sound science and information, integrated environmental protection, compliance with statute, value for money. The process principles are environmental benefit, proportionality, fairness, consistency and legal correctness, transparency and accountability, awareness raising and good practice. Therefore, SEPA's principles of regulation are similar to the principles of good enforcement set out in the Enforcement Concordat. SEPA consulted on it's principles of regulation in a document entitled “Protecting and Improving the Environment through Regulation - SEPA’s Vision for Regulation” (January 2003). Copies are available on SEPA's website.

SEPA has found the Enforcement Concordat a useful document which provides a starting point for the development of more detailed polices on both enforcement and regulation more generally.

20. What measures should be in place by the SExec to assess how compliance with any regulation is to be measured and to determine whether compliance is equitably enforced within all parts of Scotland and, if a similar regulation is in place in other parts of UK or elsewhere in the EU, within all parts of the UK or EU.
Contribution

SEPA considers that the development of measures to ensure compliance with regulations is important. SEPA is aware that the Commission works on assessing compliance by Member States with European legislation through a number of formal and informal mechanisms. The Commission publishes annually a document entitled “The Annual Survey on the Implementation and Enforcement of Community Environmental Law”. The Commission has just published the fifth annual survey covering 2003. A copy can be obtained from their website at http://europa.eu.int/comm/environment/law. The Commission monitors compliance through desktop checking of Member States transposing legislation and questionnaires and by investigating complaints by citizens. The SExec are involved in this process.

Informally IMPEL exchanges information and best practice on the implementation and enforcement of environmental laws across the EU. This is recognised as a tool for improving implementation. IMPEL is a key instrument in discussing the practical application of legislation. SEPA participates in this network.

Perhaps some system reflecting the principles of the EU model could be introduced in Scotland. The SExec should look to the regulators (police, SEPA, Local Authorities etc) for information on compliance.

Any such system in Scotland should seek to be consistent and mappable to similar UK and European processes.

21. Whether there should be procedures available to enable users to complain about the unequal or unfair enforcement of regulation and, if so, what those procedures should be.

Contribution

There is in place within SEPA a customer service complaints procedure which is the first port of call for any complaints in relation to the unequal or unfair enforcement of environmental legislation. SEPA investigates fully all complaints of this nature. The mechanisms would seem to be in place to adequately address this type of complaint (in addition to the possibly more limited aims of appeal processes built in to, for example, most environmental legislation). If the complainant is not happy with the response of SEPA there is the office of the Scottish Public Service Ombudsmen, which has the aim of creating a one stop shop for complaints across public services in Scotland. This includes complaints about the unequal or unfair enforcement of regulation. The office was established in October 2002 and would seem to be the mechanism to address this type of complaint rather than setting up a further system for complaint. As mentioned above it is also possible for an individual to complain to the European Commission if the complaint involves the application of environmental law. There is also, in appropriate circumstances, the legal remedy of judicial review of an enforcement decision of the public body. The Aarhus Convention also seeks to address access to justice for environmental matters (article 9).

Periodic Review
22. Whether there should be a general requirement that all new regulation (or regulation of a specified kind, such as those which impact significantly upon business – and, if so, how should that be defined) should be subject to review after a certain specified period of time and, if so, whether that period of time should be 3, 5 or 10 years.

**Contribution**
Ideally all regulation should be reviewed periodically, which would tie in with a rolling performance and compliance check of the regulations.

The time scale may be dependent on the nature of the regulation in question. There is some evidence that there is a gap between pre regulation assessed costs and actual costs (and indeed benefits). There should be post implementation review in addition to RIA assessment of regulatory impact and this should do two things: inform the development of new regulations (by exploring the sources of cost and benefit within live regulation), and inform the construction of RIA for future regulations.

In the application of environmental legislation we would support a statutory review of all new legislation after three years to ensure the regulation is fit for purpose. Thereafter legislation should be reviewed on a periodic basis appropriate to the legislation.

23. Whether such a requirement should be statutory or contained in policy guidance.

**Contribution**
This should be statutory and embedded in the regulations. This allows the approach to be appropriate to each piece of legislation. Furthermore it enables input from regulated parties and regulators at the appropriate times.

24. Whether there should be a blanket use of “sunset” or review clauses or whether there should be a presumption that, except where an exception can be justified, such clauses should be used in the cases identified in the Mandelkern Report, namely where the regulation—
- was introduced at short notice or
- was based on a precautionary motive or
- was based upon technology or market conditions which are liable to change or
- was a pilot project or
- conferred rights upon the State

**Contribution**
The use of “sunset clauses” would seem to be unnecessary in most cases. There are exceptional cases as identified by Mandelkern. Widespread use of these clauses would cause loss of the ability to prioritise reviews where really necessary and exacerbate resource problems.

The Mandelkern proposals seem appropriate.
25. Whether the Scottish Ministers should be invited to request the Scottish Law Commission to prepare a comprehensive programme for the consolidation of all primary legislation relating to devolved matters and, after consultation with the Parliament, to approve any such programme.

Contribution
Clearly this is desirable. There seem to be the legal mechanisms in place to give the Scottish Law Commission power to do this and resources seems to be the issue. SEPA considers that wide consultation on the programme for consolidation would be desirable to ensure that priorities are properly assessed.

26. Whether the SExec should be invited to prepare, in consultation with the Parliament, a comprehensive programme for the consolidation of all secondary legislation relating to devolved matters.

Contribution
SEPA considers that this would also be essential and would strongly support any such process. In the environmental field, SEPA finds increasingly that legislation is implemented through a wide range of enabling acts and regulations (example: the PPC Act and the PPC Regulations, the PPC Regulations have then been amended by the subsequent sets of regulations, the Landfill Regulations, the Waste Incineration Directive Regulations, the Solvent Emission Regulations, as well as 2 sets of PPC amendment regulations). One of the benefits of using secondary legislation is that amendments can be made fairly easily to regulation and therefore there is almost more of a need for consolidation of the secondary legislation. SEPA has had discussions with the SExec in relation to the desirability of consolidation in relation to the PPC Regulations. A lack of consolidation makes the regulations very un-user friendly for SEPA officers and more importantly the regulated industry and the public.

It is important to note that the different processes for consolidating primary and secondary legislation should be carefully coordinated.

27. Whether, if the SExec cannot devote the necessary resources for the work involved in the preparation of such consolidations, such work should be out-sourced.

Contribution
SEPA considers there may be scope to outsource the purely mechanistic legal work of consolidating legislative texts. This is largely an administrative process. It would however not necessarily be a cheaper option than employing more legal staff to carry out this exercise.

However, in either case SExec and Parliamentary time will also be needed since they are ultimately responsible for legislation.

28. Whether, when an Act of the Scottish Parliament makes a number of amendments to another Act or part of it, it should contain a “Keeling Schedule” which shows that other Act (or part of it) as so amended.
Contribution
This seems a sensible approach where production of a full scale consolidation is not warranted.

29. Whether users encounter difficulties in accessing regulation (whether contained in primary or subordinate legislation), which has been amended.

Contribution
There are difficulties in not being able to access official versions of consolidated texts. There is no problem in accessing individual amending Acts and SSIs on the HMSO website. There is a problem with accessing directions from the Scottish Ministers on the HMSO website which seems to be a gap in the provision of information particularly in the environmental field. As set out above, many implementations of European environmental law involve the legal mechanism of a direction under section 40 of the Environment Act. The precise legal status of a direction is not perhaps clear: it is a quasi-statutory instrument but often without a copy of the direction to SEPA the implementing regulations make no sense (even though a direction is binding on SEPA rather than those who SEPA regulates however).

The Commission is increasingly providing consolidated texts of European Directives on its website. These are electronically based. It would be helpful if the text were accompanied by a short note as to whether particular sections/regulations are in force or not.

30. Whether there should be procedures available to enable users to complain about the difficulties in accessing regulation and, if so, what those procedures should be.

Contribution
It is probably unnecessary to have a dedicated complaints procedure. If you have official consolidated texts, then the need for any complaints procedure should disappear [See 29].

31. Whether, when a set of subordinate legislation has been amended more than, say, 5 times, it must be consolidated and whether there are any circumstances in which it ought to be consolidated before then.

Contribution
This would depend on the particular type of amendment. Consolidation is probably only necessary where the amendment is substantial. It may be difficult to develop hard and fast rules. If the review programme works this should be unnecessary.

32. Whether there should be facilities available, such as on the HMSO website, to enable the public to access, free of charge, the consolidated legal texts or the texts as amended.
Contribution
This would be helpful, both to SEPA and regulated industry.
See comments at number 29

Reform and Simplification

33. Whether the SExec should prepare, in consultation with the Parliament, a programme for the reform and simplification of all the existing legislation, whether primary or secondary, relating to devolved matters, along the lines recommended by the Mandelkern Report.

Contribution
Yes, provided there is a rational timetable, clear process and engagement with necessary parties and the aims and objectives of the programme of reform and simplification are clearly established.

34. Whether consideration should be given to having a Bill that would confer upon the Scottish Ministers powers to make orders to give effect to the reforms suggested in that programme. Such a Bill might be similar to, or more extensive than, the provisions in the Regulatory Reform Act 2001.

Contribution
No comment.

35. Whether, until such a Bill is enacted and to the extent that it could not be implemented by orders under the De-regulation and Contracting Out Act 1994, a start could be made on implementing that programme by means of Bills and SSIs.

Contribution
No comment.

Role of IRIS

36. Whether IRIS should be re-located as part of the office of the First Minister or at least as part of the Constitutional and Parliamentary Secretariat.

Contribution
No comment.

37. Whether a Minister and an official unit within each department of the SExec should be charged with being responsible for good regulatory practice within that department.

Contribution
Yes. Reform of this nature needs a champion and would require specific departmental resourcing and driving.
38. Whether IRIS should be charged with ensuring that departments within the SEExec deliver better regulation through full compliance with the RIA process and with monitoring and assessing the level of compliance with that process by means of 6 monthly reviews.

**Contribution**
Yes in principle, but SEPA has had no view on the frequency of the reviews. SEPA does, however, feel that the IRIS role could be widened beyond the narrow confines of compliance with RIA procedures. This should in effect be an independent auditing role. See response to number 39.

39. Whether IRIS should be given a wider strategic role to ensure that all new regulation meets the required standards for good regulation and to draw up programmes and timetables for the consolidation of existing regulation and for its reform and simplification.

**Contribution**
Yes, a central function dealing with such matters would be welcome.

40. Whether the powers of IRIS should be strengthened by requiring all new regulation to approved by it as meeting the required standards for good regulation as a formal part of the decision making process.

**Contribution**
No. SEPA believes IRIS should be a monitoring and auditing body which may produce appropriate guidance for the legislative development process. The proposal to require all new regulation to be approved by IRIS would be over prescriptive.

41. Whether IRIS should be required to produce an annual report, to be laid before the Scottish Parliament, of its activities, of the level of compliance with the RIA process within the SEExec and of the progress made towards regulatory review and reform.

**Contribution**
Yes.

42. Whether there should be independent advisory bodies established in Scotland, similar to BRTF, to advise IRIS on matters relating to regulatory reform.

**Contribution**
SEPA believes that there may be benefits in an independent advisory body. However to avoid unnecessary duplication its role in relationship to IRIS should be given careful consideration.
Role of Parliament

43. Whether the remit of the Subordinate Legislation Committee should be amended to give it a specific role to consider matters of regulatory reform, including, in particular,
• assessing whether any new regulation (whether contained in Bills or in subordinate legislation) meets the required standards of good regulation, with power to report the regulation to the lead committee if it fails to do so;
• ascertaining whether a RIA accompanied any new regulation (or a statement explaining why it was not) and whether the RIA appears to have been properly prepared;
• considering any programmes and timetables drawn up by the Scottish Law Commission or the SExec for the consolidation of existing regulation or for its reform and simplification and assessing whether and to what extent such programmes and timetables are adhered to;
• considering the annual report of IRIS and the level of compliance by the SExec with the RIA process.

Contribution

SEPA can see a role for this committee to scrutinise matters of regulatory reform. However, it is important that any such role for the committee does not generate a bottleneck in the effective delivery of legislation.

I trust the answers and contributions provided in the attached annex adequately address the issues raised. I would be happy to consider these points further, if that would be helpful.
SUBORDINATE LEGISLATION COMMITTEE

9th Meeting, 2005 (Session 2)

Tuesday 15 March, 2005

Family Law (Scotland) Bill at Stage 1 – Executive Response
FAMILY LAW (SCOTLAND) BILL AT STAGE 1

In its letter of 8 March to Catherine Hodgson the Committee after consideration of the above Bill, sought explanation of the following matters.

Section 17(3): Parental responsibilities and parental rights of unmarried fathers (PRRs)

The Committee notes that the intention of 17(3) as set out in the policy memorandum is that it would allow for PRRs to be granted to fathers who registered as the child’s father under equivalent legislation in other countries. However, it would appear to the Committee that it would be possible for regulations made under the new power to extend PRRs to a father who had not registered anywhere as the father of the child and thereby materially alter the effect of the provision. The Executive is asked for comment.

Section 34: Short title and commencement

Section 34 provides for the Scottish Ministers by order to appoint a day when the provision of the Bill shall come into force. Such an order may appoint different days for different purposes and include such transitional or savings provision as the Scottish Ministers consider necessary or expedient in connection with the coming into force of the provisions brought into force. The Committee acknowledges the Executive’s attempts to include both commencement and transitional and savings provision in one instrument. However it questions whether this can be properly achieved given the need for different levels of scrutiny. The Committee considers that it would not be appropriate to subject the commencement to parliamentary procedure, nor would it be appropriate for transitional or savings provisions to be subject to no parliamentary procedure. The Executive is asked for comment.

The Executive comments as follows:

1. The intention of subsection 17(3) is to provide that regulations may provide for parental responsibilities and rights to be granted to fathers who are registered as a child’s father under overseas legislation. It would be impossible to list every type of overseas legislation that might be recognised for this purpose –this is appropriately being left to secondary legislation. There is no intention on the part of the Executive to alter the effect of this provision by doing anything other than recognising the rights of a father who has been registered as such in overseas legislation. The Regulations themselves will be subject to Parliamentary scrutiny and the Committee will have a further opportunity at that stage to reassure themselves that the effect of the provision has not been materially altered by extending PRRs to individuals who have not registered anywhere as the father of a child.

2. As regards the second point, section 34 confers commencement powers and subsection 3 (b) of that section provides that the powers include power to make transitional or savings provision. The powers are exercisable so far as
necessary or expedient in connection with the coming into force of the provisions brought into force. Section 34(4) of the Bill provides that if a commencement order includes such transitional or savings provisions then the order will be subject to negative resolution in the Scottish Parliament. If however the commencement order does not include such provision the usual practice of there being no Parliamentary procedure will be followed. We trust this will resolve the Committee’s concerns.
SUBORDINATE LEGISLATION COMMITTEE

9th Meeting, 2005 (Session 2)

Tuesday 15th March, 2005

Executive Responses

- The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2005, (SSI 2005/90)
- The Plastic Materials and Articles in Contact with Food Amendment (Scotland) Regulations 2005, (SSI 2005/92)
- The Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2005, (SSI 2005/93)
- The Colours in Food Amendment (Scotland) Regulations 2005, (SSI 2005/94)
THE SEA FISHING (RESTRICTION ON DAYS AT SEA) (SCOTLAND) ORDER 2005, (SSI 2005/90)

1. On 8th March the Subordinate Legislation Committee considered the above instrument and sought an explanation of the following matters -

“The Committee asks the Executive to explain the meaning of “designated port” in article 24(1)(b). The term “designated port” is not defined although article 11(4) refers to ports and landing locations designated for the purposes of Regulation 423/2004 as set out in the Schedule to the Order. However article 11 and the Schedule appear to relate only to cod whereas article 24 bears to apply both to cod and to sole.

The Committee asks the Executive to explain why the first paragraph of article 33 is not numbered.

The Committee asks the Executive whether given the revocation of SSI 2004/44 (as amended by SSI 2004/81) by regulation 35 it is intended that the amendments made to SSI 2000/7 by article 8 of SSI 2004/44 should be replaced in their entirety by the amendments made by article 25 of the present Order.”

The Scottish Executive responds as follows

First question

In article 24(1) “designated port” means any of the ports specified in the Schedule to the Order.

Article 12(1) of Regulation 423/2004 provides that where more than 2 tonnes of cod are landed from a Community vessel the landing is only to be made at a designated port. Article 12(2) of Regulation 423/2004 provides that each Member State shall designate ports into which any landing of cod in excess of 2 tonnes shall take place. Regulation 27/2004 also provides that the list of designated ports is to be transmitted to the Commission and the Commission is thereafter required to transmit this information to all Member States. Article 11(4) of the Order provides that the ports designated for the purpose of Article 12(2) of Regulation 423/2004 are the ports specified in the Schedule to the Order.

There is no equivalent requirement to Article 12(1) and (2) of Regulation 423/2004 in Annex IVc of Regulation 27/2005 for landings in excess of 2 tonnes of sole to be landed into a designated port. Notwithstanding that fact, article 24(1) of the Order provides that where cod or sole is landed in a designated port i.e. a port designated for the purposes of Article 12(2) of Regulation 423/2004 (being one of the ports listed in the Schedule to the Order), that the top copy of the logbook is handed over to a British sea-fishery officer or deposited in the box provided for that purpose.
The list of designated ports has been made available to fishermen and other organisations with an interest through the Guidance provided in relation to the Order. The Guidance contains a list of designated ports in an Annex to the Guidance to which fishermen are referred to. As a result it does not seem to the Executive that there is any real likelihood of confusion arising amongst fishermen as to what is meant by the term “designated port” in article 24(1) of the Order.

Second question

The failure to number the first paragraph of article 33 is an error. The Executive is of the view that this minor error will cause no difficulty to those who require to use the Order.

Third question

The intention of article 25 of the Order was that the definition of “Annex V” was substituted with a new definition of “Annex IVc”, that the definition of “the Council Regulation” was substituted with a new definition of “the Council Regulation” and that in the Schedule in column 3 of each entry opposite items 2(1), (m), (n) and (o) only the words “paragraph 13 of Annex XVII” were substituted with “Article 9 of Regulation 423/2004 and paragraph 13 of Annex IVc”.

The Executive accepts that given that SSI 2004/44 has been revoked by the Order there may be doubt as to whether the amendments inserted into column 3 of Schedule 1 to SSI 2000/7 (which are not substituted by the Order) remain in force. The Executive is of the view that it would have been preferable if the amendments made by SSI 2004/44 had been wholly replaced by article 25 of the Order or article 8(b) of SSI 2004/44 had not been revoked.

The Executive is however of the view that this issue does not have any effect on the provisions of SSI 2000/7. This is due to the fact that the words in question only appear in Column 3 of Schedule 1 to SSI 2000/7. Column 3 provides in relation to each Community control measure an indication of the subject matter of the measure. Article 2(4) of SSI 2000/7 provides that column 3 of the Schedule shall not be read as limiting the scope of any Community control measure and shall be disregarded in relation to any question arising as to the construction of SSI 2000/7.

The Executive will however take steps to put this issue beyond doubt at the next legislative opportunity. It is envisaged that both the Order and SSI 2000/7 will require to be amended in the near future as a result of further Community legislation.
THE PLASTIC MATERIALS AND ARTICLES IN CONTACT WITH FOOD AMENDMENT (SCOTLAND) REGULATIONS 2005, (SSI 2005/92)

THE COLOURS IN FOOD AMENDMENT (SCOTLAND) REGULATIONS 2005, (SSI 2005/94)

In its letter of 8 March 2004 to Catherine Hodgson, the Committee commented as follows –

2. “The Committee asks the Executive why the preambles make no reference to either the consultation requirement in Article 9 of Regulation (EC) 178/2002 or the consultation requirement in section 48(4) of the parent Act.

3. The Committee also notes the absence of Transposition Notes and asks the Executive for comment.”

The Food Standards Agency responds as follows:

The first question

These Regulations were made using powers under the Food Safety Act 1990 (“the 1990 Act”). Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council applies to a wide range of administrative and legislative measures (including primary legislation) directed towards animal feeding stuffs and food safety and standards. However, as the Committee is aware, it is not the Scottish Executive’s policy to refer to procedural requirements of Community law in the preamble of Scottish statutory instruments. The Agency is advised on these matters by the Executive and has accordingly not considered it appropriate to refer to that consultation requirement contained in Article 9.

The Agency and the Executive do of course refer to provisions in domestic legislation which for example require consultation, in particular, section 48(4) of the 1990 Act. However, as the Committee is aware, section 48 was amended by the Food Safety Act 1990 (Amendment) Regulations 2004 (SI 2004/2990). The effect of that amendment was to disapply those consultation requirements in any case in which consultation is required by Article 9 of Regulation 178/2002. It would therefore be incorrect to refer to section 48(4) in cases such as these where that subsection is disapplied. This new arrangement is explained in the footnote to the 1990 Act on page 1 of the instrument and this is now being done in each case.

The Agency hopes that the Committee is content with this approach which it considers offers a helpful statement to the reader. That statement is of course supported in each case by the Executive Note lodged alongside the instrument which sets out the nature and scope of consultation actually undertaken to comply with Article 9.
The second question

The Agency regrets that a transposition note was not available for the Committee in its consideration of these instruments. The Executive has agreed to provide specimens of such notes in cases in which it is able to do so with a view to agreeing a form and approach to their provision with the Committee. Unfortunately it did not prove possible to include these instruments as part of that project but the Agency will give careful consideration to the provision of such notes for the future.
On 8th March 2005 the Committee asked the Executive for an explanation of the following matter –

“The Committee notes that these Regulations represent the 10\textsuperscript{th} set of amendments to the principal Regulations and asks the Executive what if any progress has been made towards consolidation.”

The Scottish Executive responds as follows –

The Executive is aware that these Regulations have now been amended several times. Reforms have been necessary as a result of modernising and efficiency initiatives together with a number of changes to legislation such as recent reforms of solemn criminal process.

It had been intended that the principal Regulations should be consolidated before now. However the Strategic Review of the Delivery of Legal Aid, Advice and Information is about to start its consultation stage. This may give rise to substantial re-structuring of the legal aid system, including further regulatory changes over the next year or so.

It has therefore been considered prudent to await the outcome of this review before consideration is given to embarking on what would amount to a substantial programme of consolidation.