The Committee will meet at 10.00am in Committee Room 5.

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

   the Seed Potatoes (Scotland) Amendment Regulations 2005, *(SSI 2005/280)*

   the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment (No.2) Regulations 2005, *(SSI 2005/281)*

   the Registration of Fish Sellers and Buyers and Designation of Auction Sites (Scotland) Regulations 2005, *(SSI 2005/286)*.

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

   the Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005, *(SSI 2005/draft)*.

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

   the Electricity (Applications for Consent) Amendment (Scotland) Regulations 2005, *(SSI 2005/295)*

   the Adam Smith College, Fife (Establishment) Order 2005, *(SSI 2005/298)*

   the Air Quality Limit Values (Scotland) Amendment Regulations 2005, *(SSI 2005/300)*
the Loch Crinan Scallops Several Fishery Order 2005, (SSI 2005/304)
the Nitrate (Public Participation etc.) (Scotland) Regulations 2005, (SSI 2005/305)
the Charities (Designated Religious Bodies) (Scotland) Order 2005, (SSI 2005/306)
the Honey (Scotland) Amendment Regulations 2005, (SSI 2005/307)
the Wildlife and Countryside Act 1981 (Variation of Schedule) (Scotland) Order 2005, (SSI 2005/308)
the Mental Health (Content and amendment of care plans) (Scotland) Regulations 2005, (SSI 2005/309)
the Mental Health (Social Circumstances Reports) (Scotland) Regulations 2005, (SSI 2005/310)
the Sea Fishing (Enforcement of Community Quotas and Third Country Fishing Measures) (Scotland) Order 2005, (SSI 2005/311)
the Mental Health (Content and amendment of Part 9 care plans) (Scotland) Regulations 2005, (SSI 2005/312)
the Student Loans (Information Requests, Maximum Threshold, Maximum Repayment Levels and Hardship Loans) (Scotland) Regulations 2005, (SSI 2005/314)
the Local Government Pension Scheme (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/315)
the Genetically Modified Organisms (Transboundary Movements) (Scotland) Regulations 2005, (SSI 2005/316)
the Falkirk College of Further and Higher Education (Change of Name) Order 2005, (SSI 2005/317)
the Regulation of Care (Social Service Workers) (Scotland) Order 2005, (SSI 2005/318)
the Gaming Act (Variation of Fees) (Scotland) Order 2005, (SSI 2005/319)
the Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2005, (SSI 2005/320)
the False Monetary Instruments (Scotland) Order 2005, (SSI 2005/321)
the Housing (Scotland) Act 2001 (Payments out of Grants for Housing Support Services) Amendment Order 2005, (SSI 2005/322)
the Financial Assistance for Environmental Purposes (Scotland) Order 2005, (SSI 2005/324)

the Additional Support for Learning (Appropriate Agencies) (Scotland) Order 2005, (SSI 2005/325)

the National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/326)

the National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2005, (SSI 2005/327)

the Prevention and Monitoring of Cetacean Bycatch (Scotland) Order 2005, (SSI 2005/330)

the Plant Protection Products (Scotland) Regulations 2005, (SSI 2005/331)

the Eggs (Marketing Standards) (Enforcement) (Scotland) Regulations 2005, (SSI 2005/332)

the National Health Service (Primary Medical Services Performers Lists) (Scotland) Amendment Regulations 2005, (SSI 2005/333)

the National Health Service (Service Committees and Tribunal) (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/334)

the National Health Service (Tribunal) (Scotland) Amendment Regulations 2005, (SSI 2005/335).

4. **International conference**: The Committee will consider a note from the Clerk in relation to the proposed international conference on the scrutiny of delegated legislation.

   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/S2/05/20/1

**Agenda Item 1**

Executive responses  SL/S2/05/20/2

**Agenda Items 2-3**

Copies of instruments (circulated to Members only)

**Agenda Item 4**

Note from the Clerk  SL/S2/05/20/3
THE SEED POTATOES (SCOTLAND) AMENDMENT REGULATIONS 2005, (SSI 2005/280)

On 7 June 2005, the Subordinate Legislation Committee requested an explanation of the following matters-

1. “The Committee notes that it appears that the amendment intended by regulation 15(e) appears to have been achieved by regulation 25(6)(b) of SI 2001/3510 and asks the Executive for an explanation.

2. The Executive is also asked to explain why, given this, the Explanatory and Executive Notes state that the principal Regulations “have not previously been amended”.

The Scottish Executive responds as follows-

1. The Executive agrees that the amendment intended by regulation 15(e) of the Seed Potatoes (Scotland) Amendment Regulations 2005 has already been achieved by regulation 25(6)(b) of S.I. 2001/3510 and is grateful to the Committee for drawing this matter to attention. S.I. 2001/3510 revoked and replaced the Seeds (National Lists of Varieties) Regulations 1982 (S.I. 1982/844, as amended). That required a minor consequential amendment to a reference to S.I. 1982/844 contained in the Seed Potatoes (Scotland) Regulations 2000 (S.S.I. 2000/201) (“the principal Regulations”). The fact that the amendment had already been achieved by S.I. 2001/3510 was overlooked by the Executive. Accordingly regulation 15(e), which depends on a reference that no longer exists, has no practical effect. The Executive intends to remove the provision at the next legislative opportunity.

2. As a result of regulation 25(6)(b) of S.I. 2001/3510 having been overlooked, the Explanatory and Executive Notes both incorrectly state that the principal Regulations have not previously been amended. The Explanatory Note will be corrected in the annual volume as will the footnote to the reference to the principal Regulations contained in regulation 2. No action is required insofar as the Executive Note is concerned, as the error has no substantive effect on the principal Regulations.
On 7 June 2005, the Subordinate Legislation Committee requested an explanation of the following matter-

“The Committee notes that thirty nine footnotes are listed in the table to Schedule 1 but the body of the text in Schedule 1 makes reference only to footnotes 1 to 6 and 17. As there is no reference in the Schedule to the remaining footnotes it is not clear to what they refer. In addition, there is a reference in the body of the text of the Schedule to numbers 46 to 49, yet these are not footnoted. The Executive is asked for an explanation.”

The Scottish Executive responds as follows-

1. The Executive notes that footnotes 1 to 6 which are referred to in the body of the text in Schedule 1 are included at the end of the table and that those using the legislation will be able to refer to those footnotes.

2. Otherwise, the Executive notes that errors have been made in relation to the footnotes. The Executive regrets this, and thanks the Committee for drawing this to its attention. The Executive considers that these errors will not however cause those using the legislation any real difficulty.

3. The principal Regulations are subject to a rolling programme of amendments and further amendment of the principal Regulations will be required before the end of this year. The Executive will take the opportunity to correct the position with the footnotes relating to Schedule 1 at that time.
On 7th June the Committee asked the Executive for an explanation of the following matters-

“The Committee notes that while a defence has been provided for offences under regulation 11(1), there is no such provision in relation to offences under regulation 4(2). The Executive is asked for clarification.

It appears to the Committee that the effect of regulation 8(2) would be that the exemption set out in Article 22(2) of Council Regulation 2371/2002 applies only to persons who buy less than 50 kilogrammes of fish in a day. As the exemption is not limited in this way in the Regulation, the Committee requests an explanation of the vires of this provision.”

The Scottish Executive responds as follows:

First question

1. In the case of the offence under regulation 11(1) the Executive gave consideration to how easy it would be for a potential purchaser to ascertain whether or not a fishing vessel is properly registered and licensed by the competent authorities. Although information relating to the ownership of fishing vessels is available from the Registrar of Shipping and Seamen on request, there is an application process and associated fee to obtain the relevant information. It is therefore difficult to quickly obtain reliable information on whether an individual vessel is licensed or not.

2. In contrast, in the case of an offence under regulation 4, the fact that a particular person is a registered fish seller or a registered fish buyer will be published and available to all through the internet and the local fishery office network. Where first sale fish is sold from a vessel the master, owner or charterer will therefore be in a position where they can easily verify whether the buyer of the fish is a registered fish buyer.

3. As a result the Executive is of the view that it was appropriate to include the statutory defence only in relation to an offence under regulation 11(1).

Second question

4. The derogation in Council Regulation 2371/2002 provides that a buyer acquiring products which are not thereafter placed on the market but used only for private consumption shall be exempt from the requirements of Article 22(2).

5. Private consumption is not defined in the Council Regulation. Unless the fish bought is used for private consumption a buyer of fisheries products from a fishing vessel at first sale requires to be registered with the authorities (see Article 22(2)(b) of the Council Regulation).

6. The Executive believes it is necessary to limit the quantities for which the exemption can be claimed in respect of private consumption to make it clear to those
buying fish when they require to be registered and when they do not, given that it is
an offence under the Regulations to buy fish in contravention of Article 22(2)(b) of
the Council Regulation. The Executive believes the provision made in regulation
8(2) is necessary to ensure certainty for fish buyers and to ensure the effective
control of fish landings. The call for a limit to be placed on the quantities available
for private consumption came primarily from industry.

7. The Executive is of the view that section 2(2)(b) of the 1972 Act provides the
vires for this provision as the provision is made for the purpose of dealing with
matters arising out of or related to any Community obligation, or the coming into
force, or the operation from time to time, of section 2(1) of the 1972 Act. The
Executive is of the view that the provision is sufficiently related to the obligations in
the Council Regulation and is necessary in order to ensure effective enforcement of
the Community obligations in the Council Regulation and as a result is within the
vires of section 2(2) of the 1972 Act.

8. The Executive would however like to take this opportunity to draw attention to
a further matter relating to regulation 8(2). It has become apparent that the
consensus (including the views of the industry) is that the 50kg limit set in the
Regulations is too high and should be reduced to 25kg. The Executive intends to
bring forward an amending instrument to make this change. It is understood that the
equivalent regulations in the rest of the UK will also make provision for a 25kg limit.
SUBORDINATE LEGISLATION COMMITTEE

20th Meeting, 2005 (Session 2)

Tuesday 14th June, 2005

International conference on delegated legislation

Introduction
1. The Committee considered the attached proposal for the Scottish Parliament to host an international conference on delegated legislation at its meeting of 24 May 2005. Following this consideration, the Committee agreed that the Clerk should investigate whether resources would be in place for the conference to be hosted in 2006, before the Committee made a final decision on the proposal.

Resources and timescale
2. The scale of the event could be a very significant undertaking. It is proposed that the Committee would wish to consider using the debating chamber to full capacity and arrange supporting hospitality similar to that provided at previous conferences. Should the Committee agree this format, expenses could be considerable. Approximately 100 delegates attended the delegated legislation conference in Sydney in 2001 and the final estimated loss was 19,000 Australian dollars.

3. It is also estimated that the associated resources that would be needed to support the conference to the required standard would exceed the staff resources available for event administration, especially as the Subordinate Legislation team will still be stretched supporting both the weekly load of SSIs and bills and the ongoing inquiry/bill. It is therefore very likely that all of the basic administration and organisation would have to be outsourced. In order to meet with current policies and ensure open competition, it is also likely that a procurement exercise would have to be undertaken.

4. If outsourcing was agreed, parliament staff resources would still be required to: instruct the contract specification, run a procurement exercise, manage the contract, identify speakers, liaise with other participating parliaments, organise hospitality, arrange receptions, and draft some speeches and briefing notes. While it is not impossible to deliver on all of those fronts the majority of this work has not been factored in to current work plans.

5. In terms of finance, the Parliament would also be required to fund any outsourcing and a degree of hospitality. While it has previously been forecast that charging for the event itself could absorb some costs, formal bids would be required to be made to cover the initial outlays and it has been established that budgets for this financial year could not cover these costs. It is not too late to make a budget bid as the most of the procurement and other non-staff costs would be incurred in the following financial year.
Decision

6. It is still possible to host an event in 2006. However, work would have to begin very soon and it is estimated that it would put a severe strain on resources, not least on the committee team. The Committee is therefore requested to consider and agree to the proposal that the Parliament hosts an international conference on delegated legislation in 2008. This would allow a better opportunity to plan and run a properly resourced and informed project which should in turn deliver better results.

7. Should the Committee agree to this proposal, it would be expected that members of the current Committee would approve the structure, design and timetabling of the event. It would also be expected that the Committee would support an outline budget proposal.

Clerk to the Committee
9 June 2005