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

1. **Items in private:** The Committee will consider whether to take agenda item 6 in private.

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

   - the Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2005, *(SSI 2005/323)*
   - the Cereal Seed (Scotland) Regulations 2005, *(SSI 2005/328)*
   - the Fodder Plant Seed (Scotland) Regulations 2005, *(SSI 2005/329)*
   - the Local Authorities’ Traffic Orders (Procedure) (Scotland) Amendment Regulations 2005, *(SSI 2005/338)*
   - the Pollution Prevention and Control (Scotland) Amendment (No.2) Regulations 2005, *(SSI 2005/340)*
   - the Education (Graduate Endowment, Student Fees and Support) (Scotland) Amendment Regulations 2005, *(SSI 2005/341)*
   - the Fire (Additional Function) (Scotland) Order 2005, *(SSI 2005/342)*

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

   - The Advice and Assistance (Assistance by way of Representation) (Scotland) Amendment (No.2) Regulations 2005, *(SSI 2005/draft)*
4. **Instruments subject to annulment:** The Committee will consider the following—

the Requirements for Teachers (Scotland) Regulations 2005, **(SSI 2005/355)**.

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

the Serious Organised Crime and Police Act 2005 (Commencement No.1) (Scotland) Order 2005, **(SSI 2005/358)**.

6. **Inquiry into the regulatory framework in Scotland:** The Committee will further consider an approach paper in relation to phase 2 of its inquiry.

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

**Agenda Items 2 – 5**

Legal Brief (Private) – to follow

**Agenda Item 2**

Executive responses

**Agenda Items 3 to 5**

Copies of instruments (circulated to Members only)

**Agenda Item 6**

Approach paper (Private)

Background paper from the Adviser (Private)
The Executive refers to the Committee's letter of 21 June 2005 in which the Subordinate Legislation Committee asks the following question:

The Committee asks the Executive for explanation of the delay between Regulation (EC) No. 1774/2002 becoming applicable and the coming into force of this instrument.

The Scottish Executive responds as follows:

The Executive notes the delay between Regulation (EC) No. 1774/2002 becoming applicable and the coming into force of this instrument on 1 July 2005, and regrets that delay. However, before this instrument could be made there required to be cross-departmental consultation in relation to the issue of the “fit” between it and the scheme for the management and control of waste by landfill. The instrument was made as quickly as possible.
On 21 June 2005 the Subordinate Legislation Committee requested an explanation of the following matters-

1. The Executive is asked to explain why section 17 of the 1964 Act has not been cited as an enabling power.

2. The Committee seeks clarification from the Executive as to whether the reference to regulation 21(5) in paragraph 12 of Part VI of Schedule 6 to the Regulations is correct.

3. The Executive is asked to clarify why paragraph 16 of Part VI of Schedule 6 imposes both an objective test at sub-paragraph (a) and a subjective test at sub-paragraph (b) in relation to the same subject matter.

The Scottish Executive responds as follows-

1. With the exception of subsection (5) which may be disregarded for the purposes of this response, Section 17 of the Plant Varieties and Seeds Act 1964 ("the 1964 Act") only has effect insofar as explicitly provided for, or applied by, seeds regulations. Regulation 24 of the Cereal Seed (Scotland) Regulations 2005 ("the Regulations") does so. Section 17 is not, in the Executive’s view, an enabling power. The Regulations are made under the authority of enabling powers in sections 16 and 36 of the 1964 Act. However, the formula adopted for the wording of section 17 is “if and so far as seeds regulations provide/apply”. In effect, section 17 must be triggered by the Regulations. The Committee may wish to note in passing that the Regulations are consistent with the Cereal Seed (England) Regulations 2002 (S.I. 2002/3173) in this regard.

2. The Executive confirms that reference to regulation 21(5) in paragraph 12 of Part VI of Schedule 6 to the Regulations is incorrect. The reference should in fact be to regulation 22(6). The reconciliation of printing records is an established practice that is under the direct control of the Scottish Ministers. This provision is used by the Scottish Ministers and by licensed seed samplers and the Executive does not consider that it will cause confusion to users pending amendment. The reference will be amended at the next available legislative opportunity.

3. In respect of paragraph 16 of Part VI of Schedule 6, the Executive considers that sub-paragraph (b) is superfluous. If the requirements of sub-paragraph (a) have in fact been met, then the Scottish Ministers will be duly satisfied and accordingly there is no pressing need to remove sub-paragraph (b) now. The Executive intends to remove sub-paragraph (b) at the next available legislative opportunity.
THE FODDER PLANT SEED (SCOTLAND) REGULATIONS 2005 (S.S.I. 2005/329)

On 21 June 2005 the Subordinate Legislation Committee requested an explanation of the following matters-

4. The Executive is asked to explain why section 17 of the 1964 Act has not been cited as an enabling power.

5. The Committee seeks clarification from the Executive as to whether the reference to regulation 21(5) in paragraph 13 of Part VI of Schedule 6 to the Regulations is correct.

6. The Executive is asked to clarify why paragraph 17 of Part VI of Schedule 6 imposes both an objective test at sub-paragraph (a) and a subjective test at sub-paragraph (b) in relation to the same subject matter.

7. The Committee asks the Executive for clarification of the drafting of the reference in paragraph (c)(i) of the definition on “Basic Seed” in regulation 3, given that the requirements in paragraph (a) and (b) appear to be cumulative, not alternatives.

8. Finally, the Committee asks for explanation of the reference in regulation 9(1)(b)(ii) to Articles 6(1)(a) and 6(1)(b) of the Fodder Plant Seed Directive given that no such articles appear to exist in that Directive.

The Scottish Executive responds as follows-

1. With the exception of subsection (5) which may be disregarded for the purposes of this response, section 17 of the Plant Varieties and Seeds Act 1964 (“the 1964 Act”) is not, in the Executive’s view, an enabling power. Section 17 only has effect insofar as explicitly provided for, or applied, by seeds regulations. In effect, section 17 must be triggered by Regulations. Regulation 24 of the Fodder Plant Seed (Scotland) Regulations 2005 (“the Regulations”) does so. The Regulations are made under the authority of enabling powers in sections 16 and 36 of the 1964 Act.

2. The Executive confirms that reference to regulation 21(5) in paragraph 13 of Part VI of Schedule 6 to the Regulations is incorrect. The reference should in fact be to regulation 22(6). The reconciliation of printing records is an established practice that is under the direct control of the Scottish Ministers. This provision is used by the Scottish Ministers and by licensed seed samplers and the Executive does not consider that it will cause confusion to users pending amendment. The Executive intends to amend the provision at the next available legislative opportunity.

3. In respect of paragraph 17 of Part VI of Schedule 6, the Executive considers that sub-paragraph (b) is superfluous. Pending future amendment, if the requirements of sub-paragraph (a) have in fact been met then the Scottish Ministers will be duly satisfied and accordingly there is no pressing need to remove sub-paragraph (b) now. The Executive intends to remove sub-paragraph (b) at the next available legislative opportunity.
4. The Executive agrees that the definition of “Basic Seed” in relation to a component of a hybrid variety of fodder kale is unclear. The intention, correctly provided for by the use of “and” at the end of paragraph (b), is that paragraphs (a) and (b) should be cumulative. However in paragraph (c)(i) it is erroneously provided that the Scottish Ministers should have certified or confirmed that either (a) or (b) is satisfied, although the use of “conditions” in the plural does again suggest the cumulative nature of those requirements. There should be no reference to “paragraph (c)” in paragraph (c)(i). The Executive’s view is that the cumulative nature of paragraphs (a) and (b) is unaffected and will continue to form the basis on which official certificates and breeder’s confirmations are issued by the Scottish Ministers in respect of Basic Seed in relation to a component of a hybrid variety of fodder kale. The Executive intends to amend the provision at the next available legislative opportunity together with the similar provision at paragraph (c)(ii) of the same definition.

5. The Executive agrees that the references in regulation 9(1)(b)(ii) to Articles 6(1)(a) and 6(1)(b) of the Fodder Plant Seed Directive are incorrect. The references should be to Articles 4a.1(a) and 4a.1(b). Given that Articles 6(1)(a) and 6(1)(b) do not exist and that the basis of the authorisations referred to in regulation 9(1)(b)(ii) can readily be interpreted from the overall terms of the provision to mean references to Articles 4a.1(a) and 4a.1(b), the Executive does not consider that the provision will cause confusion prior to amendment. It is the Executive’s intention to amend the provision at the next legislative opportunity. The Executive is grateful to the Committee for drawing this matter, and the matters referred to earlier, to its attention.
The Local Authorities’ Traffic Orders (Procedure) (Scotland) Amendment Regulations 2005, (SSI 2005/338)

9. On 21st June the Committee sought an explanation from the Executive of the following matters:

“1. The Committee seeks clarification of regulation 2(3), in particular whether there is any limitation on extensions following the 6 month period allowed for the first extension of the 2 year time limit.

2. Clarification would also be welcomed as to whether an application for an extension must be made before the expiry of the 2 year limit or whether it could be made after that date.”

The Executive responds as follows:

The regulations provide that the Scottish Ministers can extend the 2 year time period contained within regulation 16(3) of S.I 1999/614. A further 4 extensions can thereafter be sought and each extension can be for a period of up to 6 months. Although the Regulations do not explicitly state that the application for an extension has to be made within the 2 year time limit specified in regulation 16(3) of S.I. 1999/614 this would be implicit within regulation 16(3). The order cannot be made after 2 years unless paragraph 4 as incorporated by these Regulations applies. The order will therefore fall unless the application for an extension has been made.
In its letter of 21 June to Catherine Hodgson, the Committee requested an explanation of the following matters-

“The Executive is asked to explain why regulation 5 states that new paragraph (1) is subject to paragraph (4) and (5) as paragraph (5) appears to be a separate condition in its own right.

The Committee notes that a number of amendments add the words “mobile plant” after the word “installation” but that a similar amendment has not been made to regulation 17(8). The reason for this is not obvious and the Committee would welcome clarification from the Executive.”

The Scottish Executive responds as follows:

1. The Executive notes the Committee’s comments regarding new paragraph (1) (regulation 5). The intention in making that paragraph “subject to” paragraph (5) was to make plain that there was no implied authority in all cases to proceed with the “change in the operation” of the installation or mobile plant referred to in paragraph (1) simply by virtue of having given the notice required. We consider that in that sense paragraph (1) is indeed subject to paragraph (5) which precludes giving effect to such change. We do not consider therefore that the words “subject to paragraph…(5)” in any way adversely affect the operation of the regulation.

2. The Executive is grateful to the Committee for bringing to attention regulation 17(8) in the context of amendments which add a reference to “mobile plant” after the word “installation”. The Executive agrees that such a consequential amendment to regulation 17(8) would be helpful and intends to bring that forward at the next appropriate opportunity.
THE EDUCATION (GRADUATE ENDOWMENT, STUDENT FEES AND SUPPORT) (SCOTLAND) REGULATIONS 2005, (SSI 2005/341)

On 21 June the Committee asked the Executive for an explanation of the following matters –

10. The definition of “national of a member state of the European Community” in regulation 2(2)(c) is used only once. Additionally, the definition includes the United Kingdom within its scope but when it is used, in new paragraph 9(a) of Schedule 1 to the principal Regulations, it excludes the United Kingdom from its scope. The Committee seeks clarification from the Executive of the drafting and purpose of this definition.

11. The Committee seeks an explanation for the inclusion of the definition “relevant day” in regulation 2(2)(c) as this amendment appears to have already been achieved by regulation 2(2)(b) of SSI 2005/217.

12. The Executive is asked to explain the wording inserted by regulations 4(2) and (3) into Schedules 1 and 2 to the principal Regulations, given that, unlike other paragraphs of those Schedules, the words “excepted student” and “excepted candidate” are not specified.

The Scottish Executive responds as follows:

First question

1. In drafting these regulations which effect similar amendments to seven different sets of existing regulations it has been normal practice to use one equivalent. In the case of the Nursing and Midwifery Student Allowances (Scotland) Regulations 1992 this has been achieved by the insertion of the new definition referred to. It is accepted that the expression is used only once which is however consistent with the existing (pre amendment) approach in terms of, for example, the Education Authority Bursaries (Scotland) Regulations 1995 and the Students’ Allowances (Scotland) Regulations 2004.

2. When actually used in new paragraph 9(a) of Schedule 1 the expression specifically excludes the United Kingdom.

3. It is explained in the Executive Note that the purpose of these regulations is to take account of the requirement for settled status is incompatible with Community Law. It is for that reason that UK nationals are excluded from the scope of the new category of eligible persons introduced in terms of the new paragraph 9(a) of Schedule 1.

Second question

4. The Executive is grateful to the Committee for drawing to its attention that there is a duplication of the definition of “relevant day” which had already been achieved by regulation 2(2)(b) of SSI 2005/217. This was due to an oversight for which the Executive apologises. It is accepted that amending regulations will require to be brought forward in response to the Committee’s third point and the Executive will remove the duplication at that time.
Third question

5. The Executive is again grateful to the Committee for drawing this point to its attention. It is regretted that in drafting these regulations it was not picked up that the standard form of words used in relation to the new category of eligible student is not apt in relation to Schedule 1 to the Education Fees and Awards (Scotland) Regulations 1997 and the amendment is as a result ineffective. The Executive considers that the drafting defect does not affect the validity of the regulations and that the meaning remains clear. The Executive will however bring forward amending regulations to cure this drafting defect at the earliest suitable opportunity.
On 21 June the Subordinate Legislation Committee considered the above instrument and sought an explanation of the following matters—

“The Committee notes that regulation 8 consists of one paragraph, numbered “(1)”. It is therefore not clear to the Committee whether there should be further paragraphs in this regulation and the Executive is asked for clarification.”

The Scottish Executive responds as follows:

1. The Executive confirms that article 8 only consists of one paragraph. The paragraph does not, therefore, require to be numbered “(1)”; the numbering should have been removed during the drafting process. The Executive is grateful to the Committee for drawing this to its attention.

2. Although it is acknowledged that the numbering is superfluous, it is not considered that its inclusion alters the legal effect of the instrument, nor is it considered that it will confuse or mislead the reader. The Executive will, however, amend this printing error for the annual edition and the Office of Public Sector Information website.