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

1. **Item in private:** The Committee will consider whether to take agenda item 8 in private.

2. **Delegated powers scrutiny:** The Committee will consider a response to points raised on the following bill —

   Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill at Stage 1.

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

   the Avian Influenza (Preventive Measures) (Scotland) Regulations 2005, *(SSI 2005/530)*
   
   the Avian Influenza (Preventive Measures in Zoos) (Scotland) Regulations 2005, *(SSI 2005/531)*
   
   the Food Labelling Amendment (No. 3) (Scotland) Regulations 2005, *(SSI 2005/542)*.

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

   the Fundable Bodies (Scotland) Order 2005, *(SSI 2005/draft)*
   
   the Scotland Act 1998 (Modifications of Schedule 5) (No.3) Order 2005, *(SSI 2005/draft)*
   
   the Contaminated Land (Scotland) Regulations 2005, *(SSI 2005/draft).*
5. **Instruments subject to approval:** The Committee will consider the following—

   the Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (Orkney) (Scotland) Order 2005, *(SSI 2005/548)*.

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

   the Glasgow School of Art (Scotland) Amendment Order of Council 2005, *(SSI 2005/525)*

   the Teachers’ Superannuation (Scotland) Amendment Regulations 2005, *(SSI 2005/543)*

   the National Health Service (Superannuation Scheme, Injury Benefits, Additional Voluntary Contributions and Compensation for Premature Retirement) (Civil Partnership) (Scotland) Amendment Regulations 2005, *(SSI 2005/544)*

   the Education (Graduate Endowment, Student Fees and Support) (Scotland) Amendment (No.2) Regulations 2005, *(SSI 2005/545)*

   the Electricity from Non-Fossil Fuel Sources (Scotland) Saving Arrangements Order 2005, *(SSI 2005/549)*

   the Common Services Agency (Membership and Procedure) Amendment (Scotland) Regulations 2005, *(SSI 2005/550)*

   the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Amendment Order 2005, *(SSI 2005/552)*

   the Local Government Pensions Etc. (Civil Partnership) (Scotland) Amendment Regulations 2005, *(SSI 2005/554)*

   the Plant Health (Fees) (Scotland) Amendment Regulations 2005, *(SSI 2005/555)*.

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

   the Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (Orkney) (Scotland) Revocation Order 2005, *(SSI 2005/547)*

   the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No.10) (Scotland) Partial Revocation Order 2005, *(SSI 2005/551)*.

8. **Inquiry into the regulatory framework in Scotland:** The Committee will consider the main themes arising from evidence to date 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 - 7**

Legal brief (Private)  
SL/S2/05/31/1

**Agenda Item 2**

Executive response – to follow  
SL/S2/05/31/2

**Agenda Item 3**

Executive responses  
SL/S2/05/31/3

**Agenda Items 4 - 7**

Copies of instruments (circulated to Members only)

**Agenda Item 8**

Inquiry Themes paper (Private)  
SL/S2/05/31/4

Note on the publication of Scottish Statutory Instruments  
SL/S2/05/31/5
THE AVIAN INFLUENZA (PREVENTIVE MEASURES) (SCOTLAND) REGULATIONS 2005, (SSI 2005/530)

On 8th November the Committee asked the Executive for an explanation of the following-

1. “The Committee notes that provisions concerning powers of entry usually provide limits to the exercise of the power, for example, specifying the time within which the power is to be exercised, and asks the Executive for clarification of why no similar limits are specified in relation to the power in regulation 9 of this instrument.”

The Executive responds as follows:

Regulation 9 allows a veterinary inspector or inspector to enter any premises on producing, if requested, some duly authenticated document showing their authority, to ascertain whether the Regulations or any declaration, notice or licence under them are being complied with. There is, however, no restriction placed on the time within which the power may be exercised due to the virulent, fast spreading nature of the Avian Influenza virus, certain sub-types of which are capable of infecting humans. The Scottish Ministers do not wish to place any time restrictions on entry to premises as entry may be required at any time to ensure all required steps are being taken to prevent the transmission of the virus. This power to enter at any time is considered to be necessary in the interests of protecting the health of both animals and humans.

Wherever possible the Scottish Ministers will seek to exercise the power at a reasonable hour. However, for the above reasons the flexibility provided by the provision is considered essential.

The provision as currently drafted allows entry at any time and, while the phrase “at any time” is commonly used in provisions conferring powers of entry to specify this, the omission of that phrase is not considered to lead to any uncertainty or defect in the drafting.
On 8 November 2005, the Subordinate Legislation Committee, having considered the above instrument, sought an explanation of the following matters:-

1. The Committee expressed concern as to whether regulation 5(2) meets the requirement that vaccination must be carried out “under the supervision of an official veterinarian of the competent authorities”, imposed by Commission Decision 2005/744/EC.

2. The Committee also asked the Executive to explain how the conditions in Annex II of the Decision are to be enforced.

The Scottish Executive responds as follows:-

1. The Executive welcomes the opportunity to explain the operation of regulation 5(2) to the Committee. That regulation requires vaccination to be carried out by, or under the supervision of, the Scottish Ministers. The Scottish Ministers must exercise their functions under that regulation in a manner which is compatible with Community law. In matters relating to animal health, the Scottish Ministers are advised by the Chief Veterinary Officer (Scotland). Therefore, in carrying out their functions under regulation 5(2), the Scottish Ministers are required to take the advice of the Chief Veterinary Officer (Scotland) in relation to the manner in which vaccination is carried out. The requirement that vaccination is carried out under the supervision of an official veterinarian of the competent authorities is therefore met.

2. In relation to how the conditions in Annex II of the Decision are to be enforced - where not carried out by the Scottish Ministers, vaccination must be carried out in accordance with the instructions of the Scottish Ministers, and these instructions would necessarily require compliance with Annex II to the Decision. In the Executive’s view, failure to comply with the instructions (given under the authority of the regulations) without lawful authority or excuse would be an offence under section 73(b) of the Animal Health Act 1981 as read with regulation 7(1)(g). In terms of regulation 7(5), the Regulations fall to be enforced by the local authority unless otherwise directed by the Scottish Ministers.
In its letter of 8 November to Catherine Hodgson, the Committee requested an explanation of the following matter –

“The Committee asks the Executive for further explanation of why these Regulations were not made available free of charge.”

The Food Standards Agency responds as follows –

In accordance with Scottish Executive policy, the Agency will issue Regulations free of charge where Regulations are made to correct a defect in an earlier instrument which existed at the time that instrument was made.

Those circumstances did not apply to the case in point. The Food Labelling Amendment (No. 2) (Scotland) Regulations 2005 ("the No.2 Regulations") accurately transposed Commission Directive 2005/26/EC as it stood on the day of making, 15th September 2005.

Commission Directive 2005/26/EC was subsequently amended on 3rd October 2005 by Commission Directive 2005/63/EC and that amendment required to be given effect by 25th November 2005. These Directives are now transposed into Scots law by virtue of the No.3 Regulations.
SUBORDINATE LEGISLATION COMMITTEE

31st Meeting, 2005 (Session 2)

Tuesday 15th November 2005

Publication of Scottish Statutory Instruments

1. At present, neither the Parliament nor the Executive websites include the texts of Scottish Statutory Instruments, although both include links to –

**OPSI website (Office of Public Sector Information)**

http://www.opsi.gov.uk/

2. The OPSI site (formerly the HMSO site) includes the following legislation online:

- UK Acts 1988-2005
- UK Statutory Instruments 1987-2005
- Draft Statutory Instruments 1997-2005
- Scottish Statutory Instruments 1999-2005
- Draft Scottish Statutory Instruments 2001-2005

3. Northern Ireland and Wales legislation is also included.

4. UK Legislation prior to 1988 and subordinate legislation prior to 1987 is only available in hard copy. This includes Acts and SIs which apply only to Scotland either fully or in part.

5. From October 2005, all new legislation is also available in PDF format, which makes it easier to print off as it comes as a complete document.

6. The Acts/ASPs and SIs/SSIs are not shown as amended. Acts/ASPs will only be shown as amended when the Statute Law Database which is to be published by the Statutory Publications Office comes into force next year.

**The Statute Law Database**

http://www.dca.gov.uk/lawdatfr.htm

7. Access to the current Statute Law Database (SLD) is restricted to those working within Government/Parliament who have a password and an approved computer.

8. The Statutory Publications Office (SPO), an office within the Lord Chancellor's Department, is producing a Statute Law Database of UK legislation which will be
publicly accessible. This was due to be in place in the summer, however it will now be next year (timing not yet known).

9. As we understand it, it is proposed that access to the up to date text of Acts will be free, however still under consideration is whether there should be free access to historical versions of an Act, showing what the state of an Act was at any particular point in time.

10. The new SLD will not show the up to date texts of SIs/SSIs (i.e. incorporating amendments) but only “as made”. Although secondary legislation is not being updated, the enquiry system will facilitate the identification of any legislation that amends or repeals it.

**Netregs**

http://www.netregs.gov.uk/netregs

11. Members will recall oral evidence from SEPA who referred to a website that they and the Environmental Agency operate which they and other environmental agencies use to access subordinate legislation. This is called “netregs” and is publicly accessible.

12. This gives details of environmental legislation for business and provides links to relevant legislation. The links to the legislation on this site take the viewer to the OPSI website. They plan to have a link to the SLD when it is operational.

November 2005