The Committee will meet at 10.30am in Committee Room 5.

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

   Scottish Schools (Parental Involvement) Bill at Stage 1.

2. **Delegated powers scrutiny:** The Committee will consider the delegated powers provisions in the following bill—

   Family Law (Scotland) Bill as amended at Stage 2.

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

   - the Feeding Stuffs (Scotland) Regulations 2005, *(SSI 2005/605)*
   - the Meat (Official Controls Charges) (Scotland) Regulations 2005, *(SSI 2005/607)*
   - the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005, *(SSI 2005/608)*

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

   - the Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order 2006, *(SSI 2006/draft)*
5. **Instruments subject to approval:** The Committee will consider the following—

   - the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No.18) (Scotland) Order 2005, *(SSI 2005/626)*

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

   - the Adults with Incapacity (Management of Residents’ Finances) (Scotland) Regulations 2005, *(SSI 2005/610)*
   - the Plant Health (Scotland) Order 2005, *(SSI 2005/613)*
   - the Smoke Control Areas (Authorised Fuels) (Scotland) Amendment Regulations 2005, *(SSI 2005/614)*
   - the Smoke Control Areas (Exempt Fireplaces) (Scotland) Order 2005, *(SSI 2005/615)*
   - the Official Feed and Food Controls (Scotland) Regulations 2005, *(SSI 2005/616)*
   - the National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment (No.3) Regulations 2005, *(SSI 2005/617)*
   - the National Health Service (Pharmaceutical Services) (Scotland) Amendment (No.2) Regulations 2005, *(SSI 2005/618)*
   - the Organic Aid (Scotland) Amendment Regulations 2005, *(SSI 2005/619)*
   - the Rural Stewardship Scheme (Scotland) Amendment Regulations 2005, *(SSI 2005/620)*
   - the Less Favoured Area Support Scheme (Scotland) Amendment (No.2) Regulations 2005, *(SSI 2005/624)*
   - the Avian Influenza (Preventive Measures) (Date for Identification of Poultry Premises) (Scotland) Regulations 2005, *(SSI 2005/625).*
7. **Instruments not subject to Parliamentary procedure:** The Committee will consider the following—

the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No.9) (Scotland) Revocation Order 2005, *(SSI 2005/627)*

the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No.10) (Scotland) Revocation Order 2005, *(SSI 2005/628)*.

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

**Agenda Items 1 - 7**

Legal brief (Private) – to follow  
SL/S2/05/35/1

**Agenda Item 1**

Executive response  
SL/S2/05/35/2

**Agenda Item 2**

Supplementary delegated powers memorandum  
SL/S2/05/35/3

Bill as amended at Stage 2 (circulated to Members only)

**Agenda Item 3**

Executive responses  
SL/S2/05/35/4

**Agenda Items 4 - 7**

Copies of instruments (circulated to Members only)
Thank you for your letter of 6 December, concerning the Subordinate Legislation Committee’s consideration of the Scottish Schools (Parental Involvement) Bill. I trust the following response will prove helpful in clarifying the points you have raised.

**Section 8(7) – functions of a Parent Council**

This section provides Ministers with a power to add to, or to alter, the functions of a Parent Council. We note that the Committee asks for clarification of the Executive’s policy intention with regard to the width of the power to “alter” the Council’s statutory functions.

The Council’s statutory functions focus on promoting partnership between parents and the school and on the Council’s responsibility to the Parent Forum and its role as the Forum’s representative voice. This power allows Ministers to alter these functions, if necessary, in the light of the experience of the new Councils themselves as they are established and develop. It also allows for a Parent Council’s functions to be added to, in response to any future changes in education policies. It may be helpful also to draw the Committee’s attention to section 22(3) of the Bill which requires any statutory instrument being made under section 8(7), amending Parent Councils’ functions, to be laid in draft before, and approved by resolution of, the Parliament.

The Committee asks if Parent Councils should be formally consulted on any amendment to their statutory functions before any order is made.

The Executive is committed to working closely with stakeholders in the education sector. We would, as a matter of course and good practice, consult with stakeholders in accordance with the Scottish Executive’s Good Practice Guidance on Consultation.

**Section 19 – general power to issue guidance**

We note that the Committee considers that the issuing of guidance under this provision ought to be subject to some form of Parliamentary scrutiny, or at least laid before Parliament.

We note the Committee’s view that this would be important because the guidance would be directed not only to local authorities, but also to Parent Councils. It may be helpful for the Committee to know that it would be the Executive’s intention, in line with the Good Practice Guidance on Consultation, to involve key stakeholders, in
drawing up any guidance under section 19 of the Bill. The nature of any guidance is an issue which we would expect would be considered further in the light of discussions as the Bill progresses through Parliament.
SUBORDINATE LEGISLATION COMMITTEE

35th Meeting, 2005 (Session 2)

Tuesday 13th December, 2005

Supplementary Memorandum on Delegated Powers

Family Law (Scotland) Bill as amended at Stage 2

Purpose

1. This supplementary Memorandum has been prepared by the Scottish Executive to accompany the Family Law (Scotland) Bill following Stage 2 which commenced on 5th October 2005 and concluded on 30th November 2005. It details further provisions in the Family Law (Scotland) Bill that confer powers to make subordinate legislation, and a power which has been removed from the Bill, introduced by way of amendment at Stage 2. It describes the persons upon whom these powers are conferred, the form in which the powers are to be exercised, the Parliamentary procedure to which the powers are to be subject and why it is considered necessary to delegate the powers. It explains why it is considered necessary to remove a delegated power from the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Further delegated powers

Section 13A Postponement of decree of divorce where religious impediment to remarry exists

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

2. Section 13A confers on Scottish Ministers the power to make regulations prescribing religious bodies for the purpose of the definition of “religious marriage” contained in the section.

Justification for taking this power

3. Section 13A was introduced into the Bill by way of non-Executive amendment at Stage 2. The section inserts a new section 3A into the Divorce (Scotland) Act 1976 to give the court the power, where a party in an action of divorce is prevented by a religious impediment from undertaking a religious marriage, to postpone the grant of decree until the other party to the action has acted to remove or to assist in the removal of the impediment if he or she is able to do so. For the purposes of the section a religious marriage will be a marriage solemnised by a marriage celebrant of a religious body prescribed in regulations made by the Scottish Ministers. The section is intended to assist those who, as a matter of faith, can only remarry within their religion but who are currently prevented from doing so until an impediment is removed.
4. In terms of section 3A(9) of the Divorce (Scotland) Act 1976, as inserted by section 13A of the Bill, such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny for a provision of this nature. It is appropriate that this matter be dealt with by secondary legislation to provide for flexibility and the opportunity to consult with interested parties on the technical detail required in this area.

Section 14A(3) Financial provision on divorce and dissolution of civil partnership: Pension Protection Fund

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

5. Section 14A(3)(d) provides for the Scottish Ministers to make regulations prescribing a method for the verification and apportionment of compensation payable by the Board of the Pension Protection Fund which forms part of matrimonial property.

Justification for taking this power
6. In terms of the Pensions Act 2004 the Board of the Pension Protection Fund will, in respect of the pension schemes provided for in that Act, pay compensation to persons who have lost their pension as a result of the scheme having been wound up. Section 14A of the Bill seeks to amend section 10 of the Family Law (Scotland) Act 1985 so that where such compensation is payable it will form part of matrimonial property. The regulation making power will allow the Scottish Ministers to provide for verification of the compensation payable and the proportion which shall form part of matrimonial property for the purposes of financial provision on divorce. This power will sit alongside the existing power in section 10(8) and (8A) for Scottish Ministers to make regulations in relation to the calculation and verification of benefits in respect of a pension which forms part of matrimonial property.

7. In terms of section 10(9) of the Family Law (Scotland) Act 1985, such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The technical nature of these provisions is more appropriately dealt with by secondary legislation. The negative resolution procedure is considered to offer an appropriate balance between, on the one hand, expedition and convenience in what is essentially a very technical area of the law and, on the other, the need for scrutiny for a provision of this nature.

Section 14A(4) Financial provision on divorce and dissolution of civil partnership: Pension Protection Fund

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament
9. In the event that the Board of the Pension Protection Fund assumes responsibility for a pension scheme, section 14A(4)(a) makes provision for the Scottish Ministers to prescribe any modifications necessary to an order made under section 12A(2) of the Family Law (Scotland) Act 1985 to enable that order to be implemented by the Board.

Justification for taking this power
10. There may be cases where, at the time when the Board of the Pension Protection Fund assumes responsibility for a pension scheme, an order which has been made under section 12A(2) of the Family Law (Scotland) Act 1985 has not yet been implemented by the trustees or managers of that scheme. The regulation making power is necessary to ensure that in all cases where the Board has assumed responsibility for a pension scheme a court order made under section 12A(2) can be implemented by the Board.

11. In terms of section 12A(9) of the Family Law (Scotland) Act 1985, such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny for a provision of this nature.

Section 32A Ancillary provision

12. Section 32A provides for the Scottish Ministers by order to make such consequential, transitional or saving provision as they consider appropriate in consequence of or to give full effect to the Family Law (Scotland) Bill as enacted.

Justification for taking this power
13. This order-making power is necessary to ensure that full effect can be given to the Bill once it is enacted. The power will allow the Scottish Ministers to make any modifications to primary legislation or subordinate legislation which are consequential on the Bill. It will ensure that any transitional or savings provisions which are necessary in relation to existing statutory rights or obligations can be made.

14. An order under this section which amends or modifies subordinate legislation will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny for a provision of this nature.

15. An order under this section which modifies primary legislation shall not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament. The affirmative resolution procedure is considered to offer the appropriate level of scrutiny for a provision of this nature.
16. In consequence of the new ancillary provision at 32A of the Bill section 34(4) of the Bill is no longer required as the commencement order will not include any transitional or savings provisions. These, if required, will be made by a separate negative instrument and accordingly section 34(4) has been removed.

Delegated power removed from the Bill

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

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

17. Section 17(3) of the Bill as introduced conferred on the Scottish Ministers the power to make regulations making provision for or in connection with specifying cases in which a father—

(a) who was not married to the mother at the time of the child’s conception or subsequently; and

(b) is not registered as the child’s father under any of the enactments mentioned in section 3(1A) of the Children (Scotland) Act 1995 (as inserted by section 17(3) of the Bill)

shall have parental responsibilities and rights in relation to the child.

Justification for removing the power

18. The regulation making power at section 17(3) was intended to allow the Scottish Ministers to make regulations to recognise the parental responsibilities and rights of fathers of children whose births were registered outside the United Kingdom, as long as the registration was made with the mother’s consent and conferred equivalent parental responsibilities and rights in the jurisdiction concerned. It was decided that this power is unnecessary as the concept of parental responsibilities and rights as enacted in the Children (Scotland) Act 1995 and similar legislation in other parts of the United Kingdom is unlikely to be replicated in similar form in other jurisdictions and accordingly such a power would never be used.
SUBORDINATE LEGISLATION COMMITTEE

35th Meeting, 2005 (Session 2)

Tuesday 13th December, 2005

Executive Responses

The Feeding Stuffs (Scotland) Regulations 2005, (SSI 2005/605)

To follow
The Meat (Official Controls Charges) (Scotland) Regulations 2005, (SSI 2005/607)

In its letter of 6 December to Catherine Hodgson, the Committee requested an explanation of the following matters –

1. “In relation to paragraph 9 of schedule 2 to the Order, the Committee noted that where an operator does not agree that an additional charge is justified, the operator may ask for the question to be determined by a person nominated for that purpose by the Agency. Paragraphs 9(3)(d) and (e) provide that the decision made by this person is binding on both parties and that the Agency shall give effect to the decision notified. The Committee is concerned that these provisions could be considered as an attempt to exclude the jurisdiction of the courts and the Executive is therefore asked to explain the effect of paragraphs (d) and (e) of paragraph 9(3) of Schedule 2, particularly as regards the right of access to a court. The Committee takes the view that these provisions would not exclude the possibility of judicial review but seeks confirmation from the Executive.”

2. “The Committee also asks the Executive for explanation of why it chose to use section 2(2) of the European Communities Act 1972 as the enabling power, rather than section 56 of the Finance Act 1973.”

The Food Standards Agency responds as follows –

1. The procedure for resolving disputes as to the amount of the additional charge levied under paragraph 9 of Schedule 2 is intended to provide a quick and effective remedy which minimises the costs to business operators. The Agency confirms that this procedure does not exclude the opportunity for judicial review of a decision made by the person nominated to determine the charge under paragraph 9.

2. The Regulations provide for the continued implementation of Directive 85/73 as modified by Directive 2004/41 and with reference to the new Community regime of Hygiene controls. In the context of the transposition of that new regime across a number of instruments it was considered appropriate to use the powers under section 2(2) of the European Communities Act 1972 for the purpose of imposing charges. It was not considered appropriate to draw down, in addition or substitution, powers contained in section 56 of the Finance Act 1973 in these circumstances where the services for which charges are being levied are being provided by the Food Standards Agency and not a Government Department within the meaning of that term for the purposes of section 56 of the 1973 Act.
The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005, (SSI 2005/608)

In its letter of 6 December to Catherine Hodgson, the Committee requested an explanation of the following matters –

3. “The Committee noted that regulation 35 does not include a provision in relation to an unincorporated association. The Committee seeks clarification as to whether this is a deliberate omission.”

4. “The Committee also asks the Executive for explanation of why it chose to use section 2(2) of the European Communities Act 1972 as the enabling power, rather than section 56 of the Finance Act 1973.”

The Food Standards Agency responds as follows –

1. Regulation 35 is intended to provide parity of treatment of offences relating to feed under the Regulations with the provisions on offences set out in sections 36 and 36A of the Food Safety Act 1990 which apply in relation to food. It is not considered necessary to extend the application of these provisions to unincorporated associations with no distinct legal personality in order to provide for the proper enforcement of the Regulations.

2. The Regulations provide for a charge to be payable in respect of applications made to local authorities for approval of establishments to conduct certain activities. The requirement for approval is an integral aspect of the regulatory regime set out in Regulation (EC) 183/2005 which the Regulations implement. It was therefore considered within the powers under section 2(2) of the European Communities Act 1972 to impose charges in the circumstances contemplated in the Regulations. It was not considered appropriate in these circumstances to draw down, in addition or substitution, the power contained in section 56 of the Finance Act 1973 which relates to fees charged in respect of authorisations by Government departments.
On 6th December the Committee asked the Executive for an explanation of the following:

1. “The Committee notes that in Schedule 5 to the Order there are references to provisions of the Salmon Acts that are now repealed by the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 but that this Act is not included in the Schedule. The Executive is asked for clarification.”

The Executive responds as follows:

1. Schedule 5 to the Order should indeed have referred to the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 alongside the other Salmon Acts. This was an oversight. It is considered unlikely, however, that this oversight will give rise to difficulties in practice. The likelihood of property seized under the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 becoming the subject of an external request under the Order is considered remote. Notwithstanding this, the Executive will monitor the situation and seek to amend the Order if necessary.