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

1. **Decision on taking items in private**: The Committee will decide whether to take items 2, 3 and 4 in private and any future items relating to the draft report for the tourism inquiry and the stage 1 report on the Scottish Register of Tartans Bill in private.

2. **Tourism inquiry - Growing pains: can we achieve a 50% growth in tourist revenue by 2015?**: The Committee will discuss an outline of its tourism report.

3. **Scottish Register of Tartans Bill**: The Committee will discuss a draft stage 1 report.

4. **Budget process 2009-10**: The Committee will consider whether it wishes to seek to appoint an adviser to assist with its scrutiny of the Scottish Government’s Draft Budget 2009-10.
The papers for this meeting are as follows—

**Agenda Item 2**

Paper by the Clerk – PRIVATE PAPER  
EET/S3/08/13/1(P)

**Agenda Item 3**

Draft Report – PRIVATE PAPER (to follow)  
EET/S3/08/13/2(P)

Subordinate Legislation Committee report  
EET/S3/08/13/3

Finance Committee letter  
EET/S3/08/13/4

Supplementary Evidence  
EET/S3/08/13/5
1. Members will find attached a copy of the report from the Subordinate Legislation Committee relating to the Scottish Register of Tartans Bill.
Subordinate Legislation Committee

Scottish Register of Tartans Bill at Stage 1

The Committee reports to the lead Committee as follows—

Introduction

1. At its meetings on 29 April and 13 May 2008, the Subordinate Legislation Committee considered the delegated powers provisions in the Scottish Register of Tartans Bill at Stage 1. The Committee submits this report to the Economy, Energy and Tourism Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

2. The Member in charge provided the Parliament with a memorandum on the delegated powers provisions in the Bill.\(^1\)

3. The Committee’s correspondence with the Member in charge is reproduced in Annexes 1 and 2.

Delegated Powers Provisions

4. The Committee considered each of the delegated powers provisions in the Bill. The Committee approves sections 4 and 18 without further comment.

Section 14: Fees

5. The Committee is content that the powers taken to fix fees for the following functions listed in the Bill:

   - Section 4(3)(a) – the inspection of documents or physical things held by the Keeper or the copying of any such document;
   - Section 4(3)(c) request for information or research;
   - Section 4(3)(d) – such other services to the public in relation to the Register as the Keeper thinks fit
   - Section 6(10) – making an application for an entry in the Register

\(^1\) Delegated Powers Memorandum
Section 8(2)(c) – a request to reconsider an application following its refusal by the Keeper (fee refundable if request granted);

Section 9(5) – obtaining a copy of a certificate of registration;

Section 10(6) – a request to amend an entry in the Register; and

Section 13(3) - obtaining a copy of an amended certificate of registration.

and that additional matters in relation to the Register in respect of which a fee may be made payable in the future, are suitable to be exercised under delegated powers.

6. The Committee requested an explanation however from Mr McGrigor in relation to the provisions contained in sections 14(4)(b) and 14(5). Section 14(4) provides that different fees may be specified (by order) for different purposes and the order may also specify the circumstances in which no fee is payable. Section 14(5) empowers the Keeper to waive a fee which has been specified by order under the Bill in such circumstances as the Keeper may specify with the approval of the Scottish Ministers. The Delegated Powers Memorandum does not explain why both provisions are necessary and how it is intended they will be used.

7. The Committee found the response provided by Mr McGrigor to be very helpful in explaining the intention behind these provisions and how it is proposed that they will operate in practice.

8. The Committee is content for Ministers to have the ability to exempt fees in particular circumstances. While the effect of waiving fees would increase the burden on the public purse, the Parliament would have the sanction of annulment of the order if it found this to be objectionable.

9. The Committee also considers that it is appropriate to provide discretion to the Keeper to waive fees in individual circumstances. A reasonable example of circumstances in which the Keeper may choose to exercise that discretion is given in Mr McGrigor’s response. The Committee notes that the exercise of this power of waiver requires the consent of Ministers. Although Parliament has no role to play in that process, having consented to it on the face of the Bill, the Committee is content that this seems to be an administrative matter which can properly be left in the hands of Ministers and the Keeper as the administrator of the register.

10. The Committee draws these provisions to the attention of the lead committee on the basis that in light of the response received from Mr McGrigor it is content with the powers available under section 14 and that they are subject to negative procedure.

Section 16: Ancillary provision
11. Section 16(1) of the Bill provides that the Scottish Ministers may, by order, make such consequential or incidental provision as they consider necessary or expedient for the purposes of, in consequence of or for giving full effect to, any provision of this Act.

12. Section 16(2) provides that such an order may make different provision for different purposes, and may modify any enactment.

13. Section 16(3) and (4) provides that such an order shall be subject to negative resolution procedure, except where it adds to, replaces or omits the text of an Act, when the order shall be subject to affirmative procedure.

14. The Committee is content with the scope of the ancillary powers as these are framed only to enable consequential or incidental provisions for the purposes of, in consequence of, or for giving full effect to, the provisions of the ASP.

15. In relation to the procedure applied, the Committee agrees with the view in the Delegated Powers Memorandum that the separation between negative procedure and affirmative procedure (for ancillary modifications of enactments) is appropriate. However, the Committee noted that the Bill provided for affirmative procedure only in respect of modifications which add to, replace or omit any part of the text of the Act in question. Such a restriction would permit future modifications of the effect or application of an Act, other than by textual amendment, by negative procedure.

16. The Committee observed that the Act itself would make a number of modifications to enactments without making actual textual amendments. It considered that it could transpire at a later date that there are other provisions concerning the Keeper’s existing statutory duties which should be disapplied and which, in contrast, the Parliament would not have the opportunity to approve. The Committee therefore asked for an explanation as to why affirmative procedure should not also apply in the circumstances where the ancillary provisions provide for the modification or disapplication of Acts without making textual amendments.

17. In his response, Mr McGrigor stated “In this case, however, any changes to primary legislation (whether textual or not) will be minor because of the narrow limits of the power in section 16(1). In these cases it is arguable that draft affirmative procedure even for textual amendment does not strike the correct balance. If the Committee agrees, I would be happy to consider amending the Bill to remove section 16(4) so that all exercises of the power in section 16(1) are subject to negative procedure.”

18. While there is a general presumption in favour of affirmative procedure where power is taken to amend primary legislation the Committee accepts that this is not an absolute rule. As in relation to any delegated power, it considers that a balance requires to be struck between administrative efficiency, expediency, best use of Parliamentary time and proper scrutiny of
the content of the measures brought forward having regard to its significance or effect.

19. The Committee notes that the subject matter of this Bill in essence concerns the creation of a particular register which has a narrow purpose. The ancillary powers available under section 16(1) relate to making consequential or incidental provision necessary or expedient for the purpose of giving full effect to the Bill. There must therefore be some clear connection to the purposes of the Bill and the register before the ancillary powers are available and the Committee accepts that the scope of the ancillary powers in this case are therefore restricted in scope. Nevertheless, in relation to amendments to the text of primary legislation, there is to be added to the factors to be weighed in considering any departure from the general presumption, the value of Parliament (as the source of primary legislation) being afforded the opportunity to consent to changes to it.

20. The Committee remains of the view that draft affirmative procedure should apply to textual amendment of primary legislation arising out of the exercise of ancillary powers under this Act. The Committee is however persuaded that modifications of the application of primary legislation may be subject to negative procedure given the restricted scope of the power.

21. The Committee draws these provisions to the attention of the lead committee on the basis that –

(a) it is content with the scope of the ancillary powers as these are framed only to enable consequential or incidental provisions for the purposes of, in consequence of, or for giving full effect to, the provisions of the Act;

(b) it is content that justification has been provided in this case for the departure from the general presumption that modifications of the application of primary legislation should be subject to affirmative procedure; it remains of the view however that textual amendment of primary legislation should be subject to affirmative procedure; it does not agree with Mr McGrigor’s suggestion that all modifications to primary legislation should be subject to negative procedure.
ANNEX 1

Letter from the Subordinate Legislation Committee to Jamie McGrigor MSP

1. The Subordinate Legislation Committee considered your Bill today and seeks further information from you in relation to the delegated powers in Sections 14 and 16.

Section 14: Fees

2. The Committee asks why it is thought necessary to provide for both—

• the circumstances in which fees provided by order are not payable (section 14(4)(b)); and
• the power of the Keeper to waive a fee which has been specified by order (section 14(5)); and

for an explanation as to the circumstances in which the member envisages each of these powers being exercised.

Section 16: Ancillary provision

3. The Committee also asks why the draft affirmative procedure should not apply in the circumstances where the ancillary provisions modify or disapply any enactment (without a textual amendment of the Act), given that the Bill contains examples of such provision and more may subsequently be required.
ANNEX 2

Response from Jamie McGrigor MSP

1. Thank you for your letter of 29th April. I welcome the Subordinate Legislation Committee’s consideration of my Bill. You are seeking further information in relation to the delegated powers in sections 14 and 16.

Section 14: Fees

2. The Committee asks why it is thought necessary to provide for both—

- the circumstances in which fees provided by order are not payable (section 14(4)(b)); and
- the power of the Keeper to waive a fee which has been specified by order (section 14(5)); and

for an explanation as to the circumstances in which the member envisages each of these powers being exercised.

3. I would respond as follows—

4. These provisions are not mutually exclusive. Section 14(4)(b) enables Ministers to identify circumstances where a person does not have to pay a fee which would otherwise be required under section 14(1) (in effect, creating an exemption or exception to the general matter so specified). In relation to the inspection of documents and other physical things underpinning the register for which a fee is payable (section 4(3)(a)(i)) the power in section 14(4)(b) might be used to exempt school children or pensioners or the inspection of all documents and other physical things on certain days, for example for “open days”, exhibitions or other promotional activity planned by the Keeper.

5. Section 14 (5), by contrast, operates where a fee is payable, i.e. in relation to a matter specified by order as chargeable and where no exemption or exception has been provided for. Subsection (5) gives the Keeper discretion to waive the fee, perhaps to ensure equity in the circumstances of a particular case (but of course only with Ministers’ approval). We suggest this could apply where the Keeper has received a request to amend the register under Section 10 to correct minor errors to an existing entry or to update an entry, perhaps where an applicant has subsequently noticed an administrative, clerical or other minor error, either in the application or the registration. It could be argued that a fresh request – and fee - is unwarranted and disproportionate in such instances.

Section 16: Ancillary provision

6. On ancillary provision, the Committee asks why the draft affirmative procedure should not apply in the circumstances where the ancillary provisions modify or disapply any enactment (without a textual amendment of
the Act), given that the Bill contains examples of such provision and more may subsequently be required.

7. I would respond by saying that the power in section 16(1) is more limited than equivalent powers in many Acts of the Scottish Parliament (ASPs) in that it permits only consequential or incidental provision to be made. Negative procedure would normally be considered appropriate for such a limited power.

8. It is common for ASPs conferring ancillary powers to require draft affirmative procedure to apply where the powers are exercised so as to textually amend primary legislation. This is done as it is considered appropriate to allow the Parliament the opportunity to consider and vote on any proposed changes to primary legislation.

9. In this case, however, any changes to primary legislation (whether textual or not) will be minor because of the narrow limits of the power in section 16(1). In these cases it is arguable that draft affirmative procedure even for textual amendment does not strike the correct balance. If the Committee agrees, I would be happy to consider amending the Bill to remove section 16(4) so that all exercises of the power in section 16(1) are subject to negative procedure.

10. I trust this answers the points raised by the Committee and please let me know if there is further information the Committee would find useful.
SCOTTISH REGISTER OF TARTANS BILL

1. Members will find attached in annexe A, a copy of the letter from the Finance Committee relating to the Scottish Register of Tartans Bill.

Stephen Imrie  
Clerk to the Committee  
May 2008
Dear Tavish

SCOTTISH REGISTER OF TARTANS BILL – FINANCIAL MEMORANDUM

The Finance Committee considered its approach to the Financial Memorandum of the above bill and agreed to adopt level 1 scrutiny.

This level of scrutiny is applied where there appears to be minimal additional costs as a result of the legislation. Applying this level of scrutiny means that the Committee will not take oral evidence, nor will it produce a report. It will, however, seek written comments from relevant organisations through its agreed questionnaire, and then pass these comments to your committee.

One submission was received, from the Keeper of the Records of Scotland (attached). Comments were also sought from various weavers, design houses etc, but no submissions were received.

Please contact Allan Campbell, Assistant Clerk to the Committee, if you have any questions about the Committee’s consideration of the Financial Memorandum.

Yours sincerely

Andrew Welsh MSP
Convener
Questionnaire

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the Financial Memorandum for the Scottish Register of Tartans Bill. In addition to the questions below, please add any other comments you may have which would assist the Committee’s scrutiny.

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes, we discussed the financial assumptions with officials working on the Bill and agreed on the text of the Financial Memorandum.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes

3. Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Yes, the costs to us of operating the Register were discussed in detail and have been accurately reflected in the Financial Memorandum.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Yes, subject to the proviso that a transfer of funds of £75,000 per annum is made from Enterprise to NAS for the 2008-2011 Spending Review period.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes.
Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The Bill and proposed Register are relatively self-contained and costs have been accurately reflected.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

As regards costs falling on the Scottish Administration, NAS aims to integrate operation of the new Register in its existing business, so as to reduce costs and bureaucracy. We are confident that we will be able to operate the Register, as envisaged in the Bill, within the cost provisions outlined. As regards costs falling on other bodies and individuals, the Bill provides for fees to be set for registration of tartans. These are likely to be in the same range as the existing private registers, and are not expected to recover the costs of the service.

George P MacKenzie
Keeper of the Records of Scotland
1. Members will find attached in annexe A, a copy of the supplementary written evidence submitted by Jamie McGrigor MSP in relation to the Scottish Register of Tartans Bill.
Annexe A

The Scottish Register of Tartans Bill – supplementary evidence submitted by the Member in Charge, Jamie McGrigor MSP

Stage 1 Consideration

It gives me great pleasure that the Committee is considering my Scottish Register of Tartans Bill.

As the Committee may have already heard from previous witnesses – my Bill marks the culmination of long and assiduous work by many in the tartan industry in Scotland and many tartan experts and enthusiasts.

I strongly believe my Bill offers a valuable and workable way forwards towards a Scottish Register of Tartans.

It will create the first every publicly held Register on a statutory basis. The key principles are that it will be independent, publicly accessible and sustainable and held permanently and in perpetuity for the Scottish nation.

The Register will fall under the auspices of the National Archives of Scotland, and engage the ongoing support of the tartan industry and the tartan experts we have here in Scotland. And the Keeper of the Records of Scotland will take on the function as Keeper of the Register of Tartans.

The Register of Tartans will be a repository of tartan – and for the first time capture the tartan designs held by the two main private registers in Scotland. That the Scottish Tartans Authority and the Scottish Tartans World Register have agreed to share their tartan collections with the national Register is a major and positive step forward, as there was a previous reluctance to do this. These collections will form the cornerstones of the register.

I would like to put on record my thanks to the STA and the STWR for their foresight in working with the Register project for the common good to preserve and promote tartan and for the benefit of the tartan industry in Scotland. Their input will ensure the Register is comprehensive – and has the credibility that only the ongoing supportive involvement of Scotland’s tartan experts and tartan industry can lend.

Creating a definitive repository of tartans in Scotland will have a number of benefits – including preserving an important and unique archive of tartan designs – which in my view forms a valuable part of Scotland’s cultural heritage.

The Register will also help make access to those tartan records more accessible – more open - than has previously been the case. Not only will it help raise interest in
tartan but it will also provide a focus for tartan for academic, family and genealogical research – and as the Committee have heard it will act as a stimulus for further academic research into tartan and how they have evolved.

But the Register will also have indirect – but tangible and real economic benefits:

- It will help promote and preserve tartan in Scotland and worldwide.
- It will help the tartan industry in Scotland to capitalise on the commercial opportunities that will flow from the Register.
- It will provide a springboard to promote the Scottish tartan industry – and open up marketing opportunities for the unique, authentic, high value, high quality products that the tartan industry in Scotland produces.

I would also be clear [unlike those who choose to run down the textiles industry or believe Scottish manufacturing is in terminal decline] that I strongly believe the textiles sector in Scotland is – and needs to remain - an important part of Scotland’s economy.

The Committee has already heard evidence that the Scottish tartan industry warmly welcomes that the Bill for the first time recognises tartan as a national resource. The Committee has also heard from evidence that the Bill will contribute enormously to promoting the Scottish tartan industry as the genuine, authentic and real “Made in Scotland” article.

We should therefore use each and every means at our disposal to help it to thrive – including seeking to use the powers of the Scottish Parliament to preserve and promote one of Scotland’s most iconic products.

It will come as no surprise to hear me [a free marketeer from a long line of free marketeers] say I am also pleased that the proposals for the Register will minimise cost to the taxpayer, utilise existing public sector expertise and infrastructure and – importantly - avoid adding to the public sector landscape by creating a new public body.

At the same time the Bill aims to deliver maximum benefits, with minimum bureaucracy it aims to have maximum input from key stakeholders in the tartan industry.

The Committee may know, I started working with key stakeholders on the proposal for a Register many years ago (back in 2001 to be exact).

The Committee will also have heard some of the passionate and deeply held views on tartan – I believe you will have heard from both the “wovenist” view and the “modernist” view.

The approach in the Bill is that the Keeper will accept registrations of tartan designs that are both woven (as the vast majority will be) and non-woven (of which the current registers receive about a handful each year). But if we are serious in the commercial intent to help the industry market itself, we should not discount the commercial and intrinsic value of the non-woven design.
Our way forward will be for the Keeper to devise classification of tartans in the Register that gives due prominence to woven tartans. The Keeper will also apply quite stringent criteria to new applications for registration (including applying the statutory definition, a test of uniqueness of the design, seeking threadcount information and that an individual has a demonstrable link to any name or organisation claimed). This will bring a level quality assurance which will avoid any risk of trivialisation of tartan design and discourage frivolous or speculative registration of tartans in the Scottish Register.

The Committee will I imagine be starting to appreciate that tartan is a very broad church, encompassing many views. I veer towards the realist/pragmatist view and have worked to forge workable and practical proposals in the Bill from disparate and passionately held views.

The Committee has already heard that we continue to work with the industry on an issue by issue basis on the detail of how the Register will work. I strongly believe this is the right way to go and it does not in any way detract from the strong consensus among the industry and tartan experts that my Bill offers a practical and workable way forward.

And there is also consensus that this will meet a cherished, long standing and shared ambition to create a Scottish Register of Tartans.

I think the Committee has previously referred to singing from the same hymn sheet. I think what we have here is a hymn book that contains both ancient and modern hymns – with something for everyone and both parts equally dear to parts of the congregation.

So, in conclusion, this Bill shows that tartan is an important part of the heritage and culture in Scotland, which we can be extremely proud of.

I am delighted Scottish Ministers have agreed to support the Bill.

Scotland’s Parliament now has this opportunity to help tartan obtain official status and to contribute to tartan gaining even wider recognition worldwide. The Scottish Parliament has the opportunity to recognise that this Register will combine the best of the existing private registers and help to give this Scottish icon some of the official status and recognition it deserves. And probably more importantly it will also create opportunities for the Scottish tartan industry to reach new customers.