The Committee will meet at 12.45 pm in Committee Room 4.

1. Decision on taking business in private: The Committee will decide whether to take item 3 in private.

2. Subordinate legislation: The Committee will consider the following negative instrument—

   the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2009 (SSI 2009/412).

3. Crofting Reform (Scotland) Bill: The Committee will consider candidates for appointment as adviser for Stage 1 scrutiny of the Bill.
The papers for this meeting are as follows—

**Agenda Item 2**

The Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2009 (SSI 2009/412)  
RAE/S3/10/1/1

Extract from Subordinate Legislation Committee report  
RAE/S3/10/1/2

**Agenda Item 3**

Paper from the Clerk (private)  
RAE/S3/10/1/3

Paper from the Clerk (private) (to follow)  
RAE/S3/10/1/4
# SSI DESIGNATION FORM

<table>
<thead>
<tr>
<th>SSI Title &amp; No:</th>
<th>The Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2009 (SSI 2009/412)</th>
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<tr>
<td>Responsible Minister</td>
<td>Richard Lochhead, Cabinet Secretary for Rural Affairs and Environment</td>
</tr>
<tr>
<td>Standing Order</td>
<td>Affirmative</td>
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<tr>
<td></td>
<td>10.6.1(a)</td>
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<tr>
<td></td>
<td>10.6.1(b)</td>
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<td></td>
<td>10.6.1(c)</td>
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<tr>
<td>Lead Committee</td>
<td>Rural Affairs &amp; Environment</td>
</tr>
<tr>
<td>Purpose of Instrument</td>
<td>These Regulations amend the Less Favoured Area Support Scheme (Scotland) Regulations 2007 (&quot;the principal Regulations&quot;).</td>
</tr>
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| Laid Date | 25 November 2009 | 20 day date | 15 December 2009 |
| 1st SLC Meeting | *8 December 2009 | 40 day date | 18 January 2010 |
| Lead Committee Report Due | 11 January 2010 | Other Committee Report Due |

| SE Contact | Alison Greig, ext 46417 |
| Committee Contact | Peter McGrath, ext 85240 |

## For SLC use:

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<tr>
<th>Article 10 Compliance</th>
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<th>Breaks 10(2) rule</th>
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<td>Revocations</td>
<td>Revokes</td>
<td>See Purpose of Instrument</td>
<td>Partially Revokes</td>
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<td>Executive Note</td>
<td>✓</td>
<td>Regulatory Impact Assessment</td>
<td>European Regulations/ Directives</td>
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<tr>
<td>Additional Information</td>
<td><em>Date subject to change.</em></td>
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INSTRUMENTS SUBJECT TO ANNULMENT

The Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2009 (SSI 2009/412) (Rural Affairs and Environment Committee)

1. This instrument makes technical amendments to the Less Favoured Area Support Scheme (Scotland) Regulations 2007 (SSI 2009/439) ("the principal 2007 Regulations").

2. The Executive Note with the Regulations explains that the main purpose is to increase by 19 percent the payment rates (to farmers) for the less favoured areas ("LFAs") classified as "Fragile" and "Very Fragile". This was part of a package announced by the Cabinet Secretary for Rural Affairs and the Environment in June 2009, in response to a recommendation to step up support for the hills. The North and West equate to the "Fragile" and "Very Fragile" areas within the LFA Support Scheme.

3. It appeared that provisions in these amending Regulations, contrary to the position in the principal 2007 Regulations, are time limited to cover only the "Scheme Years" 2008 and 2009. In Regulation 3, the substitution of the definitions of "cross compliance" and "holding" applies only for those Years, whereas it was not so limited under the principal 2007 Regulations.

4. Regulation 6 substitutes a new schedule 3, which in the columns is restricted to providing the payment rates for the Scheme Years 2008 and 2009. The rates are increased from the 2008 rates for land categorised in the Very Fragile and Fragile categories. This only specifies the payment rates for the Scheme up until 31 December 2009, which is just some two weeks after the Regulations come into force.

5. Correspondence between the Committee and the Government is reproduced at Appendix 1.

6. The Committee queried whether the intended effect was to time limit those provisions, only to apply to the end of the Scheme Year at 31 December 2009, and, if so, how the provisions have effect from 1 January 2010, and if the position might be made clearer.

7. The Government clarified that the effect of the provisions is intended to be temporary – only to apply to payments in respect of the Scheme Years 2008 and 2009. It might have been useful to the Committee, and readers generally, if this had been explained in the Explanatory Note or the Executive Note with the instrument.

8. The Committee noted that new principal Regulations are intended to replace SSI 2007/439, and are expected to be made in March 2010. These
new principal Regulations will bring in new rates to be paid for the Scheme Year 2010, and payments from this will not be made until January 2011.

9. The Committee reports that an explanation has been sought and provided by the Scottish Government as to the temporary effects of regulations 3(b), 3(d) and 6. The Committee notes that the Government has confirmed that new principal Regulations are intended to be made in March 2010, which would bring in new rates to be paid for Less Favoured Area support, for the Scheme Year 2010.

APPENDIX 1

The Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2009 (SSI 2009/412)

On 4 December 2009 the Scottish Government was asked:

The definitions of “cross compliance” and “holding” in regulation 3(b) and (d) are substituted to apply for “Scheme Years” 2007 to 2009, and regulation 2 of the principal 2007 Regulations defines this period as from 1 January 2007 to 31 December 2009. Regulation 6 substitutes Schedule 3 of the principal Regulations to provide for payment rates for the Scheme Years 2007 to 2009.

(1) As the provisions in the principal Regulations before these amendments (including regulation 12 determining the payment rates by reference to Schedule 3) do not appear to be time limited, is the intended effect to time limit the provisions in the paragraph above only to apply to the end of the Scheme Year at 31 December 2009?

(2) If so, can it be explained how these provisions shall have effect from 1 January 2010, and could the position be made clearer in effect?

The Scottish Government responds as follows:

(1) The Less Favoured Area Support Scheme (S) Amendment Regulations 2009 are an interim measure to allow an increase in payment rates to be accommodated for LFASS 2009 payment rates. These payments are due to be paid out from late January 2010 but relate to the Scheme year ending 31 December 2009. New principal regulations will replace SSI 2007/439 and are expected to be made in March 2010. The new principal regulations will bring in new rates to be paid for the Scheme Year 2010, however payments from this will not be made until January 2011. Therefore the intended effect is indeed to time limit the provisions in the relevant paragraph to apply to the Scheme Year ending on 31 December 2009. The new principal regulations will also reflect more substantive scheme changes, including further increases in the payment rates, for the 2010 scheme year.

(2) As mentioned above, the start of the Scheme Year and associated payment practice works with roughly a year’s delay. The Scottish Government therefore will bring in new principal regulations to cover the Scheme Year 2010.
INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT

The Control of Salmonella in Turkey Flocks (Scotland) Order 2009 (SSI 2009/417)


11. The Order makes provision for the testing of turkey flocks for salmonella. It also prohibits the use on turkeys of antimicrobials and live salmonella vaccine. The provisions in the Order are enforceable by the local authority.

12. Correspondence between the Committee and the Government is reproduced at Appendix 4.

Question (A) – the instrument procedure

13. The Scottish Government was asked to explain the basis on which the instrument had been submitted under the negative procedure, rather than as an instrument not requiring to be laid. It was also asked to explain, if the instrument did not require to be laid, what the effect of this procedural error was in relation to the terms of the instrument.

14. This was a rather unusual enquiry as to the procedure applying to this Order. The preamble explains that the Order is made under the powers in section 1 and 8(1) of the Animal Health Act 1981 (“the 1981 Act”), which are general powers to make orders for the better execution of the 1981 Act, or to prevent the spread of animal diseases. The exercise of these powers is not subject to procedure, and so an Order made under these powers does not require to be laid.

15. The response confirms that the selection of negative procedure has been an error. The Government agrees that the instrument should not have been laid in the Parliament (although it is considered by the Committee and any issues arising within the Committee’s remit are reported to the Parliament).

16. The response also explains how this error occurred: “An earlier version of the instrument would have been subject to negative procedure but a late change to the preamble had the effect of making the instrument “not laid”.” This explains how the drafting of the instrument was finalised, but does not explain why this late change of approach was considered appropriate, or why the error occurred, given the mechanisms which should be in place to ensure the correct form of instruments. It seems clear to the Committee that the consideration of the procedure to be correctly applied to the instrument is an essential step in the drafting and submission of the Order.

Question (B) – the effect of the error

17. The drafting effect of the error is one of form rather than a more serious issue of substance. The powers used engage no procedure and the operative parts of the instrument are correct. In the italicised heading the words “Laid before the Scottish Parliament.....25th November 2009” are not required. The
italicised heading is not part of the instrument and does not have a substantive effect. The Government has indicated that it shall issue a correction slip, so that the heading shall be corrected by the Office of the Queen’s Printer for Scotland on the published copies of the Order.

18. The Committee considers that this does not affect the validity of the Order, and it is not a drafting error in the operative provisions. Nevertheless, it raises a serious question of quality control.

19. The Committee reports that in relation to this Order there has been a failure to follow proper legislative process. The Order was laid in the Parliament as being subject to negative resolution procedure, but following challenge to this view by the Committee, the Government has confirmed in its response that the correct procedure applying is that the Order is not laid.

20. The Committee also notes that while it considers this has no effect on the validity or the operation of the provisions in the Order, as the resulting error is contained in its italicised heading which is not part of the operative provisions, it is highly critical of the absence of adequate quality control of the drafting process in relation to this instrument.