1. **Decision on taking business in private**: The Committee will decide whether to take item 6 in private.

2. **Budget (Scotland) (No.2) Bill**: The Committee will consider the delegated powers provisions in this Bill at Stage 1.

3. **Draft instruments subject to approval**: The Committee will consider the following—
   - the Private Landlord Registration (Modification) (Scotland) Order 2009 (SSI 2009/draft);
   - the Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009 (SSI 2009/draft);
   - the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 (SSI 2009/draft);

4. **Instruments subject to annulment**: The Committee will consider the following—
   - the Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2008 (SSI 2008/415);
   - the Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2008 (SSI 2008/425);
   - the Legal Profession and Legal Aid (Scotland) Act 2007 (Handling Complaints and Specification of Interest Rates) Order 2008 (SSI 2008/428);
   - Act of Sederunt (Fees of Sheriff Officers) 2008 (SSI 2008/430);
5. **Instruments not subject to parliamentary procedure:** The Committee will consider the following—

- Act of Sederunt (Fees of Messengers-at-Arms) 2008 (SSI 2008/431);
- Act of Sederunt (Sheriff Court European Small Claims Procedure Rules) 2008 (SSI 2008/435);
- Act of Sederunt (Sheriff Court European Order for Payment Procedure Rules) 2008 (SSI 2008/436).

6. **Response to Standards, Procedures and Public Appointments Committee**
The Committee will consider a further draft response to SPPA on possible changes to Standing Orders, in connection with the Scottish Parliamentary Pensions Bill.

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The papers for this meeting are as follows—

**Agenda Items 2-6**

- Legal Brief               SL/S3/09/2/1 (P)
- Summary of Recommendations SL/S3/09/2/2
- Government Responses      SL/S3/09/2/3
SUBORDINATE LEGISLATION COMMITTEE

2nd Meeting, 2009 (Session 3)

Tuesday 13 January 2009

Summary of Recommendations

The Committee will be invited to consider the following recommendations under consideration at today’s meeting. Decisions are a matter for the Committee.

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**Agenda Item 2**  Budget (Scotland) (No.2) Bill

The Committee may wish to consider if it is content with the delegated power in Section 7, and that this is subject to affirmative procedure.

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**Agenda Item 3**  Draft instruments subject to approval

- The Private Landlord Registration (Modification) (Scotland) Order 2009 (SSI 2009/draft)
  
  The Committee may wish to draw this instrument to the attention of the lead committee and to Parliament on the grounds that, in the context of ‘ownership’ in section 83(1)(b) of the 2004 Act and the nature and extent of an insolvency practitioner’s interest in heritable property, which may differ according to the type of insolvency practitioner concerned, the scope and application of exemption (m) are not clear.

- The Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009 (SSI 2009/draft)

- The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 (SSI 2009/draft)

- The Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009 (SSI 2009/draft)

  The Committee may wish to consider if it is content with these instruments.
Agenda Item 4  Instruments subject to annulment

The Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2008 (SSI 2008/415)

The Committee may wish to consider whether the response offered by the Government is satisfactory, and if so, to report accordingly to the lead committee and the Parliament.

The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2008 (SSI 2008/425)

The Legal Profession and Legal Aid (Scotland) Act 2007 (Handling Complaints and Specification of Interest Rates) Order 2008 (SSI 2008/428)

Act of Sederunt (Fees of Sheriff Officers) 2008 (SSI 2008/430)

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (SSI 2008/432)

The Committee may wish to consider if it is content with these instruments.

Agenda Item 5 Instruments not subject to parliamentary procedure

Act of Sederunt (Fees of Messengers-at-Arms) 2008 (SSI 2008/431)

Act of Sederunt (Sheriff Court European Small Claims Procedure Rules) 2008 (SSI 2008/435)

Act of Sederunt (Sheriff Court European Order for Payment Procedure Rules) 2008 (SSI 2008/436)

The Committee may wish to consider if it is content with these instruments.
The Private Landlord Registration (Modification) (Scotland) Order 2009 (SSI 2009/draft)

On 17 December 2008 the Scottish Government was asked:

To explain the meaning and effect of the word 'owned' in the context of persons acting as insolvency practitioners in the new subsection (m) in section 83 of the Antisocial Behaviour (Scotland) Act 2004, having regard to the nature and scope of the functions of an insolvency practitioner and his status, rights and powers with respect to heritable property.

The Scottish Government responds as follows:

It would perhaps assist the Committee first to set out the background and policy which underlies the exemption being proposed.

Part 8 of the Antisocial Behaviour (Scotland) Act 2004 institutes a register of private landlords and makes it an offence for the owner of a relevant property to do various things if that owner is not on the register. There are exceptions to that general requirement, including those at section 83(6) and Scottish Ministers have a power, with Parliamentary approval, to modify that subsection. However, in practice that power could only be used to increase exemptions or to remove an exemption that had already been created. The structure of the legislation does not allow that power to be used to extend the scope of the requirement to register, at least to the extent of increasing its application to persons other than owners.

In 2007 the Scottish Government commissioned a review of the implementation of the legislation. The issue about insolvency practitioners was raised by interested parties who had become aware that, when tenanted property vested in a Trustee other than the Accountant in Bankruptcy, in some circumstances that Trustee would require to register. The Accountant in Bankruptcy does not require to register, having Crown immunity. A requirement for other practitioners to register if they briefly became owners, appeared anomalous compared with the statutory exemption for transitory ownership of property by executors and heritable creditors, where registration cannot apply until after 6 months have elapsed.

The draft SSI was prepared against that background. The Scottish Government considers that the term "owner" could cover the relationship that will exist over a property with a trustee in bankruptcy or a trustee in a protected trust deed. It is likely to catch a situation where assets vest in a trustee, though it would of course be for the courts to interpret the exact coverage of the term in the context of any specific set of circumstances. The Scottish Government therefore considers it desirable to provide the
exemption being proposed, as there will be cases where otherwise registration would be
required. Insolvency practitioners acting as liquidators or administrators would not
require to register, as neither take ownership of assets. The Accountant in Bankruptcy
continues to be exempt.

However, the proposal is only to exempt transient ownership. If the Trustee continues
as owner beyond the 6 month period, the Scottish Government considers that the
protections offered by the Act to tenants should apply.
On 19 December 2008 the Scottish Government was asked to explain:

(1) whether, in so far as regulation 2 makes provision for increased payments to councillors for the year ending 31st March 2009 with effect from the coming into force date of 10 February 2009,

- it is intended that the increases should have any effect for the period from 1st April 2008 to 9 February 2009,
- if so, the basis on which this is permitted by the enabling powers,
- if not, whether this is sufficiently clear from regulation 2 as drafted, and on what basis that view is taken,
- whether a transitional provision for the period to the end of the 2008 financial year would have provided greater clarity;

(2) in relation to the reference in the preamble to section 18 of the Local Government and Housing Act 1989, why the powers conferred by that section are required to make this instrument, in addition to the powers in sections 11 and 16(2) of the Local Governance (Scotland) Act 2004?

The Scottish Government responds as follows:

1. It is intended that the increases will, as they state, have effect for the current financial year. Neither the current regulations nor the amending regulations provide figures for particular periods within that year. The second, third and fourth questions asked are therefore not applicable.

By way of background, the Scottish Local Authorities Remuneration Committee recommended that the proposed remuneration increases be backdated. However, the Scottish Ministers recognise that they have no powers to make retrospective legislation on this matter.

The Regulations are intended to come into force on 10th February 2009. They can only increase the relevant remuneration amounts for council leaders, councillors and certain conveners from that date onwards. The remuneration of civic heads, senior councillors and certain other conveners is determined by local authorities, subject to prescribed maxima. Whether and to what extent any increased remuneration is paid to them in the current financial year will be for individual local authorities to determine.

2. Section 18 of the Local Government and Housing Act 1989 gives a power to provide basic, attendance and special responsibility allowances for local authority members. It is a slightly different power from section 11 of the Local Governance (Scotland) Act 2004, which gives powers in relation to remuneration of local authority members. Regulation 2(6) of the present Regulations provides new remuneration arrangements for members of some joint boards (in contrast to regulation 2(7) which provides new remuneration arrangements...
figures). Although the remuneration is paid by the authority of which the councillor is a
member, arguably making new arrangements goes beyond what section 11 empowers.
It was therefore considered better practice to refer to the 1989 Act power explicitly,
rather than just allow it to apply as necessary through the "all other powers" reference in
the preamble.