The Committee will meet at 2.15 pm in Committee Room 6.

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.

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


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

   the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2009 (SSI 2009/203);
   the Radioactive Contaminated Land (Scotland) Amendment Regulations 2009 (SSI 2009/202);
   the National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2009 (SSI 2009/209);
   the Children’s Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211);
   the Town and Country Planning (Inquiries Procedure) (Scotland) Amendment Rules 2009 (SSI 2009/212);
   the Town and Country Planning (Temporary Stop Notice) (Scotland) Regulations 2009 (SSI 2009/213);
   the Smoke Control Areas (Exempt Fireplaces) (Scotland) Order 2009 (SSI 2009/214);
   the Police Act 1997 (Criminal Records) (Scotland) Amendment (No. 2) Regulations 2009 (SSI 2009/216);
   the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009 (SSI 2009/220);
the Planning etc. (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009 (SSI 2009/222);
the Seed (Scotland) (Amendments for Conservation Varieties) Regulations 2009 (SSI 2009/223);
the Animals and Animal Products (Import and Export) (Scotland) Amendment Regulations 2009 (SSI 2009/227);
the Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2009 (SSI 2009/228);
the Control of Salmonella in Poultry (Breeding, Laying and Broiler Flocks) (Scotland) Order 2009 (SSI 2009/229);
the Zoonoses and Animal By-Products (Fees) (Scotland) Regulations 2009 (SSI 2009/230);
the Rural Development Contracts (Rural Priorities) (Scotland) Amendment (No. 2) Regulations 2009 (SSI 2009/233);
the Debt Arrangement Scheme (Scotland) Amendment Regulations 2009 (SSI 2009/234).

4. **Instruments not laid before the Parliament:** The Committee will consider the following—

the Planning etc. (Scotland) Act 2006 (Commencement No. 9) Order 2009 (SSI 2009/219);
the Serious Crime Act 2007 (Commencement No. 2) (Scotland) Order 2009 (SSI 2009/224).

5. **Draft report on SSIs laid in 2008:** The Committee will consider a draft report on SSIs laid in 2008.

Shelagh McKinlay
Clerk to the Subordinate Legislation Committee
Room T2.60
Scottish Parliament
Edinburgh
Tel: 0131 348 5212
Email: shelagh.mckinlay@scottish.parliament.uk
The papers for this meeting are as follows—

**Agenda Items 1-4**

Legal Brief  
Summary of Recommendations  

**Agenda Item 3**

Government Responses  

**Agenda Item 5**

SSI Report 2008
SUBORDINATE LEGISLATION COMMITTEE

20th Meeting, 2009 (Session 3)

Tuesday 16 June 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.

Agenda Item 2  Draft instruments subject to approval

The Judiciary and Courts (Scotland) Act 2008 (Consequential Modifications) Order 2009 (SSI 2009/draft)

The Committee may wish to consider if it is content with this instrument.

Agenda Item 3  Instruments subject to annulment

The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2009 (SSI 2009/203)

The Committee may wish to consider reporting this instrument to the lead Committee and to the Parliament on the basis that regulation 2(1) gives regulations 4, 6 and 7 retrospective effect, when the Legal Aid (Scotland) Act 1986, under which these Regulations are made, confers no express authority to do so.

The Radioactive Contaminated Land (Scotland) Amendment Regulations 2009 (SSI 2009/202)

The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2009 (SSI 2009/209)

The Children's Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211)

The Town and Country Planning (Inquiries Procedure) (Scotland) Amendment Rules 2009 (SSI 2009/212)
The Committee may wish to consider if it is content with these instruments.

Agenda Item 4 Instruments not laid before Parliament

The Planning etc. (Scotland) Act 2006 (Commencement No. 9) Order 2009 (SSI 2009/219)

The Serious Crime Act 2007 (Commencement No. 2) (Scotland) Order 2009 (SSI 2009/224)
The Committee may wish to consider if it is content with these instruments.
SUBORDINATE LEGISLATION COMMITTEE

20th Meeting, 2009 (Session 3)

Tuesday 16 June 2009

Scottish Government Responses

The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2009 (SSI 2009/203)

On 9th June, the Scottish Government was asked “to confirm what power in the parent Act authorises the retrospective effect of the provision made in regulation 2(1), which concerns the application of regulations 4, 6 and 7.”

The Scottish Government responds as follows.

Regulation 2(1) provides for regulations 4, 6 and 7 to apply in respect of work done and outlays incurred on or after 1st April 2008. The Government does not dispute that regulation 2(1) gives those regulations retrospective effect.

Parliament’s concern about the vires of legislating with retrospective effect by virtue of the powers conferred by the Legal Aid (Scotland) Act 1986 has previously been addressed by the Government on a number of occasions. It was addressed in oral evidence to the Justice 1 Committee in relation to the Criminal Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2005 (SSI 2005/584). Jane McLeod (a solicitor in the Scottish Government Legal Directorate, then known as the Office of the Solicitor to the Scottish Executive) explained to the Committee that in determining whether retrospective legislation is ultra vires the Government has regard, in particular, to whether its effects are detrimental to those whom it affects (SP OR J1 7 December 2005, col 2643).

The Regulations do not have a detrimental effect on those affected. The Regulations amend the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (“the principal Regulations”). Regulation 4 increases the value of 1 unit, with the effect of increasing the fee to which a solicitor is entitled in accordance with Schedule 6 to the principal Regulations. Regulation 6 replaces a table of fees in the principal Regulations with the effect of increasing the fees which solicitors are entitled to in respect of summary cause proceedings. Regulation 7 increases the fees which solicitors are entitled to in accordance with Schedule 5 to the principal Regulations.

The Scottish Government is therefore content that the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2009 are intra vires.