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 7 in private.

2. **Alcohol etc. (Scotland) Bill:** The Committee will take evidence on the delegated powers provisions in this Bill at Stage 1 from—

   Gary Cox, Head of Licensing Team, and Rachel Rayner, Senior Principal Legal Officer, Scottish Government.

3. **Home Owner and Debtor Protection (Scotland) Bill:** The Committee will consider the Scottish Government's response to points raised on the delegated powers provisions in this Bill at Stage 1.

4. **Forth Crossing Bill:** The Committee will consider the delegated powers provisions in this Bill at Stage 1.

5. **Instruments subject to approval:** The Committee will consider the following—

   - the A90 (Aberdeen Western Peripheral Route) Trunk Road Order 2010;
   - the A96 (Aberdeen Western Peripheral Route) Trunk Road Order 2010;
   - the A956 (Aberdeen Western Peripheral Route) Trunk Road Order 2010;
   - the A90 (Aberdeen Western Peripheral Route) Special Road Scheme 2010;
   - the A90 (Aberdeen Western Peripheral Route) (Craibstone Junction) Special Road Scheme 2010;
   - the A956 (Aberdeen Western Peripheral Route) Special Road Scheme 2010;
   - the CRC Energy Efficiency Scheme Order 2010 (SI 2010/draft).

6. **Instruments subject to annulment:** The Committee will consider the following—
the National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2010 (SSI 2010/1); the Official Feed and Food Controls (Scotland) Amendment Regulations 2010 (SSI 2010/5).

7. **Marine (Scotland) Bill**: The Committee will consider the delegated powers provisions in this Bill after Stage 2, and the contents of a draft report.

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

**Agenda items 4 -7**

Legal Brief SL/S3/10/3/1 (P)

**Agenda items 3, 5 and 6**

Summary of Recommendations SL/S3/10/3/2

**Agenda item 2**

Paper by the Clerk SL/S3/10/3/3 (P)

**Agenda item 3**

Paper by the Clerk SL/S3/10/3/4

Scottish Government response SL/S3/10/3/5

*SLC Stage 1 Report*

**Agenda item 4**

*Forth Crossing Bill*

*Forth Crossing Bill Delegated Powers Memorandum*

**Agenda item 6**

Instrument Responses SL/S3/10/3/6

**Agenda item 7**

*Marine (Scotland) Bill Supplementary Delegated Powers Memorandum*
The Committee will be invited to consider the following recommendations at the meeting. Decisions are a matter for the Committee.

### Agenda Item 3
**Home Owner and Debtor Protection (Scotland) Bill**

The Committee may wish to note the Government response to its Stage 1 report.

### Agenda Item 5
**Instruments subject to approval**

- The A90 (Aberdeen Western Peripheral Route) Trunk Road Order 2010
- The A96 (Aberdeen Western Peripheral Route) Trunk Road Order 2010
- The A956 (Aberdeen Western Peripheral Route) Trunk Road Order 2010
- The A90 (Aberdeen Western Peripheral Route) Special Road Scheme 2010
- The A90 (Aberdeen Western Peripheral Route) (Craibstone Junction) Special Road Scheme 2010
- The A956 (Aberdeen Western Peripheral Route) Special Road Scheme 2010
- The CRC Energy Efficiency Scheme Order 2010 (SI 2010/draft)

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

### Agenda Item 6
**Instruments subject to annulment**

The National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2010 (SSI 2010/1)
The Committee may wish to report to the Parliament and to the lead committee that the Scottish Government’s response has been helpful in clarifying the intended effect of regulation 3(a) as permitting payment of the reduced price if applications are received on or after 1 April regardless of whether they were made before that date.

The Official Feed and Food Controls (Scotland) Amendment Regulations 2010 (SSI 2010/5)

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

1. Under Rule 9.6.2 of Standing Orders, the Committee submitted its report on the delegated powers provisions in the Home Owner and Debtor Protection (Scotland) Bill to the Local Government and Communities Committee, as lead committee for the Bill, on 29 October 2009.

2. On 20 January 2010, David Fergusson, Head of the Home Owner and Debtor Protection (Scotland) Bill team, wrote to the Clerk of the Subordinate Legislation Committee, responding to its Stage 1 report.¹

Scottish Government Response

3. The response indicates that the Scottish Government intends to seek to amend the Bill in line with the Subordinate Legislation Committee’s recommendations on the delegated powers contained in sections 9 and 15.

4. The Committee had asked for the powers at section 4 to be restricted, as it considered that they had been drawn too widely. If restrictions were not brought forward by the Government, the Committee considered that they should at the very least be subject to the super-affirmative procedure, affording greater scrutiny than is currently drafted. The Government has stated that it will bring forward amendments to this section which, it hopes, will reassure the Committee, restricting the power, although not going as far as the Committee had recommended.

Progress of the Bill

5. The Bill passed Stage 1 on 17 December 2009. Stage 2 will be held on 27 January 2010. Stage 3 is scheduled for 11 February 2010, and as such, the Committee will be considering the Supplementary Delegated Powers Memorandum at its meeting on either 2 or 9 February 2010.

Recommendation

6. Members are invited to note the Scottish Government’s response to the Subordinate Legislation Committee’s report on the Home Owner and Debtor Protection (Scotland) Bill at Stage 1.

Dougie Wands
Clerk to the Committee
As Bill Manager to the Home Owner and Debtor Protection (Scotland) Bill, I am writing in reply to the Subordinate Legislation Committee Report from 29 October 2009. I seek to address each of the recommendations from the Committee in turn, indicating what action the Scottish Government intend to take at Stage 2 to address these concerns.

### Section 4 – pre-action requirements

“The Committee considers that the powers in section 24A(8)(b) and (d) of the 1970 Act and section 5B(8)(b) and (d) of the 1894 Act (inserted by section 4 of the Bill) are too wide... and recommends that significant restrictions should be placed on the scope of this power, to limit it appropriately.”

The Scottish Government replies as follows:

As we explained in our letter to the Committee on 13 October, it was considered appropriate for the Bill to contain a power which will permit Ministers to make changes to the pre-action requirements as and when they consider it necessary to do so, in light of experience of the operation of these provisions in practice. Since these changes cannot be anticipated, it was felt that a broad power was needed, though in practice it is more likely to be used to amend the requirements rather than to revise them completely.

We have considered the Subordinate Legislation Committee’s recommendation that significant restrictions should be placed on the scope of these powers. On balance, and having given careful consideration to the likely use of these powers and the need for Scottish Ministers to have the flexibility to make changes to the pre-action requirements as and when necessary, we have decided to bring forth Stage 2 amendments to section 4. These amendments will omit the reference to adding further pre-action requirements and remove the power to modify enactments, thereby addressing the Committee’s recommendation.

“If such restrictions are not brought forward, the Committee recommends that orders exercising those powers should be subject to super-affirmative procedure...”

The Scottish Government replies as follows:

It should be noted that we are not taking an amendment to make these powers subject to super-affirmative procedure. We note that super-affirmative procedure is only appropriate in rare instances when the highest level of Parliamentary scrutiny is
required; the amendment we are taking forth to restrict the scope of these powers is such that we consider makes such scrutiny unnecessary.

Consultation with interested bodies

“Before exercising these section 4 powers, the Committee considers that there should be a statutory requirement to consult specified bodies or persons, as representative of the interests of debtors, creditors, the money advice sector and any other interests affected by the proposals.”

The Scottish Government replies as follows:

After careful consideration, we have decided against following the Subordinate Legislation Committee’s recommendation to table an amendment to introduce a statutory consultation requirement. Such a requirement would be disproportionate in light of the anticipated use of the powers; these are likely to be exercised from time to time to update administrative or technical details in relation to compliance with the pre-action requirements, or to respond to changes in the regulatory and economic landscape.

Whilst we appreciate the Committee’s reasons for making this recommendation, on the basis of its understanding that these powers might be used to bring about a wholesale revisal of the pre-action requirements, we note that the power was never intended to be used in that way and that in any case the scope of the power will be restricted if the amendments outlined above are made. We consider that it would be inappropriate to submit every minor amendment to a statutory consultation. We hope that the Committee will be reassured by the fact that Scottish Ministers have been working closely with stakeholders throughout the development of the Bill and are committed to doing the same in developing subordinate legislation.

The power to issue guidance in terms of section 24A(7) of the 1970 Act, and 5B(7) of the 1894 Act, as inserted by section 4

“The Committee considers that as the statutory guidance could contain matters of sufficient import, it should be laid by the Scottish Ministers before the Parliament before issue.”

The Scottish Government replies as follows:

We appreciate the Subordinate Legislation Committee’s suggestion and agree that guidance is likely to be of significant practical help in interpreting the legislation. However, on balance, we do not feel it is necessary to follow the recommendation by the Committee that the guidance should be laid before Parliament before issue and that Scottish Ministers should be obliged to have regard to any resolution made by Parliament in relation to it. Our reasoning is set out in the following paragraphs, which we hope will reassure the Committee.

There is precedent for statutory guidance providing examples of what might or might not satisfy legislative criteria; which give guidance as to general principles and of which Sheriffs may make use in considering cases. It is not uncommon for legislation to
provide that certain persons must have regard to guidance and Sheriffs are well aware of the status of such guidance. It is, however, rare for such guidance to be made subject to Parliamentary scrutiny. Any guidance offered will of course require to be consistent with primary and secondary legislation, and within the powers vested in Scottish Ministers.

It may be necessary to issue guidance on aspects of the legislation from time to time in a reactive way, to assist users of the legislation. If any such guidance were to be required to be laid before Parliament before issue, this would hamper Scottish Ministers’ ability to provide such assistance quickly, as and when it was considered necessary. Such unintended consequences would be contrary to the spirit of the power to issue guidance and should be avoided.

Section 9 – certificate for sequestration

“The Committee recommends that, as the Government has indicated in its response that it is intended the scope of the power in section 5B(5)(e) (as inserted by section 9) will only relate to formalities of process and advice and information requirements, and not additional substantive conditions, this power could be drawn more narrowly to reflect that limited scope.”

The Scottish Government replies as follows:

In light of the Committee’s recommendation, we examined the need for sections 5B(5)(e) and (f) and concluded that they were not necessary. We have, therefore, tabled an amendment to remove these sections from the Bill. We consider that we can rely on the remainder of the power to meet the policy intention.

Section 15 – ancillary provision

“The Committee recommends that the power in section 15(1)(a) to make supplemental etc. ancillary provisions which modify Acts should be subject to affirmative resolution procedure, whether or not such modifications are in the form of textual amendment of an Act.”

The Scottish Government replies as follows:

In light of the Committee’s recommendation we have tabled an amendment to section 15(3) so that any order under section 15(1)(a) making supplementary, incidental or consequential provision would be subject to affirmative procedure, whether or not such provision is made by way of textual amendment.
INSTRUMENTS SUBJECT TO ANNULMENT

The National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2010 (SSI 2010/1)

On 14 January 2010 the Scottish Government was asked:
 Does the Scottish Government intend that in exception (a) in regulation 3 (Transitional provisions) the word “only” should appear after the word “apply” in line 2, given that in the absence of the word ‘only’ the exception would appear to serve no purpose. If so, what does the Scottish Government consider is the effect of this omission?

The Scottish Government responds as follows:

The Government does not intend for the word “only” to appear after the word “apply” in line 2. The effect of regulation 3(a) is to displace the general date for the application of the reduction in price for pre-payment certificates i.e. if the date of payment is on or after 1st April 2010 the price reduction is applicable. Regulation 3(a)’s effect is that the change in price provided for in regulation 2(5) shall apply to an application, in terms of regulation 8(1) of the principal Regulations (i.e. one sent by post to a Health Board), for a pre-payment certificate when the date that the application is received by a Health Board is on or after 1st April 2010.

This is in contrast to pre-payment certificates which are issued by doctors or pharmacists (under regulation 8(4)(b) of the principal Regulations) where the relevant date is the date of payment i.e. the general rule in the introductory part of regulation 3 applies. In light of this, the purpose and effect of the provision is to provide a different date for the application of the reduction in price for applications for pre-payment certificates under regulation 8(1) of the principal Regulations and, as a result, the omission of "only" has no effect.

Without this provision we believe this may allow Health Boards to require patients to pay the charge applicable on the date the application is made, not when received. For example, if a patient posted the application on 29th March 2010, received by the Board on 1st April 2010, they would be liable to pay the charge applicable on 29th March, i.e. the date the application was made.