The Committee will meet at 2.15 pm in Committee Room 4.

1. **Decision on taking business in private:** The Committee will decide whether to take items 4 and 5 in private.

2. **Draft instruments subject to approval:** The Committee will consider the following—
   - the Budget (Scotland) Act 2009 Amendment Order 2010 (SSI 2010/draft);
   - the Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2010 (SSI 2010/draft);
   - the Housing Support Grant (Scotland) Order 2010 (SSI 2010/draft).

3. **Instruments subject to annulment:** The Committee will consider the following—
   - the Scottish Road Works Register (Prescribed Fees) Regulations 2010 (SSI 2010/23).

4. **Forth Crossing Bill:** The Committee will consider the Scottish Government's response to points raised on the delegated powers provisions in this Bill at Stage 1, and the contents of a draft report.

5. **Alcohol etc. (Scotland) Bill:** The Committee will consider a draft report on the delegated powers provisions in this Bill at Stage 1.

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—

Legal Brief

Summary of Recommendations

**Agenda item 4**

Scottish Government Response

**Agenda item 5**

Draft Report
The Committee will be invited to consider the following recommendations at the meeting. Decisions are a matter for the Committee.

**Agenda Item 2  Draft instruments subject to approval**

The Budget (Scotland) Act 2009 Amendment Order 2010 (SSI 2010/draft)

The Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2010 (SSI 2010/draft)

The Housing Support Grant (Scotland) Order 2010 (SSI 2010/draft)

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

**Agenda Item 3  Instruments subject to annulment**

The Scottish Road Works Register (Prescribed Fees) Regulations 2010 (SSI 2010/23)

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

5th Meeting, 2010 (Session 3)

Tuesday 9 February 2010

Scottish Government Response

Forth Crossing Bill at Stage 1

Section 11(4): Special Roads
The roads listed in schedule 3 are to be special roads which shall serve the new Bridge Crossing as a national development. Section 143A of the Roads (Scotland) Act 1984 provides that a scheme under section 7 of that Act which authorises the carrying out of a national development is subject to “made affirmative” procedure.

Can the Government explain why it has been considered appropriate that an order which could be made by the Scottish Ministers by virtue of section 11(4), to vary or revoke a special roads scheme, should be subject to no Parliamentary procedure, rather than made affirmative procedure under section 7 of the Roads (Scotland) Act 1984?

The Scottish Government replies as follows:
The Bill lists in Schedule 3 the roads which are part of this national development. The Government contends that Bill scrutiny is of itself sufficient scrutiny without additional scrutiny via a later made affirmative order. It is not like a normal order under section 7 of the 1984 Act which could identify any road in Scotland and which would be the first time the Parliament became aware of the proposal in relation to that road. In that light it is the Government’s view that it is appropriate for any revocation or variation to be made under the terms of section 145 of the 1984 Act.

Section 76: Ancillary provision
These ancillary powers enable an order to make any supplementary, incidental or consequential provisions considered appropriate in connection with the Bill, which modify any enactment (including the Bill itself), or instruments, some of which may have been subject to the affirmative procedure. Such provisions also appear capable of affecting or interfering with private interests affected by the Bill.

Can the Scottish Government provide a full justification as to why, in relation to some of the ancillary powers in section 76(1), negative procedure is considered an appropriate level of Parliamentary scrutiny?

The Scottish Government replies as follows:
The ancillary powers need to be considered in the context of the Bill. The Bill is of limited scope. It is not like a large public Bill covering a wide policy area which potentially could be in place for a very long time. It is only about the acquisition of land and the construction of roads within a small geographical area. The main powers can only be used for 5 years. So the power would not be used to carry out anything which would not be within the contemplation of the Parliament while it is scrutinising and becoming familiar with the matters covered by the Bill, during the passage of the Bill. The Bill is of course subject to the extensive hybrid procedures.
Private interests could be affected by such an order, but not in a fundamental way. Use of the power would be consistent with the stated policy for those private interests during the passage of the Bill and the power would be subject to other legal constraints. As regards the appropriate procedure in relation to private interests, neither negative nor affirmative procedure affords the opportunity for a person affected to object. So that would be another constraint for the Government to consider when contemplating use of the power, whatever procedure was applied.

**Section 77(1) – Crown application**

(a) Why does the power in section 77(1) require to be conferred on an “appropriate authority” to agree that any modifications of the Bill’s provisions can be made, in relation to the application of the provisions to Crown interests?

(b) Given that any such modifications can only be agreed for the purposes of the Bill, acknowledged in the DPM to be restricted in scope to the detailed authorisation of the works to achieve the new Crossing, could this power to modify not be more narrowly drawn?

(c) Given that the effect of section 77(1) is to allow an “appropriate authority” to modify any provision in its application to Crown interests, without further Parliamentary scrutiny, with whom is agreement required under this sub-section? Should this be specified and so made clear in the provisions?

The Scottish Government replies as follows:

Section 77 of the Bill makes provision as to the application of the Bill in relation to Crown land. In particular it provides a mechanism for the appropriate authority (as defined) to agree to the application of the Bill in certain regards where there is a Crown interest in land. The appropriate authority can include amongst others the Crown Estate Commissioners and UK Government Departments.

The Bill provides for the acquisition of land. Some of that land is Crown land which may not be acquired compulsorily (Paragraph 3 of Schedule 5 to the Scotland Act 1998 prohibits the compulsory acquisition of Crown land.) To the extent that land required for the Forth crossing project is held or used by a Minister of the Crown or government department, purchase of that land may be undertaken by voluntary agreement.

The provision also takes into account a situation where a party might have an interest in Crown land (e.g. an access right over Crown land). This would not be picked up if such land was acquired by agreement with the appropriate authority.

An appropriate authority therefore has to be identified so that the Scottish Ministers may by agreement acquire such land and the terms of that acquisition could be similar to that of compulsory acquisition by means of a general vesting declaration which provides for a clean title to the land without any encumbrances. If an appropriate authority were not identified then there would be difficulty in the Scottish Ministers identifying who could provide the authority in respect of the Crown and thereby give effect to such an acquisition in the terms as stated.
Any agreement made under section 77 will be between the appropriate authority and the Scottish Ministers. The Government contends that the provision as drafted makes this arrangement clear.