The Committee will meet at 9.15 am in Committee Room 3.

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

   the National Bus Travel Concession Scheme for Older and Disabled Persons (Scotland) Amendment Order 2010 (SSI 2010/draft).

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

   the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2010 (SSI 2010/63);
   the Police Grant (Scotland) Order 2010 (SSI 2010/64);
   the Firefighters' Pension Scheme (Scotland) Order 2007 Amendment Order 2010 (SSI 2010/65);
   the Firefighters' Pension Scheme Amendment (Scotland) Order 2010 (SSI 2010/66);
   the Road Works (Inspection Fees) (Scotland) Amendment Regulations 2010 (SSI 2010/68);
   the Food Hygiene (Scotland) Amendment Regulations 2010 (SSI 2010/69);
   the Seed Potatoes (Scotland) Amendment Regulations 2010 (SSI 2010/71);
   the Recovery of Expenditure for the Provision of Social Care Services (Scotland) Regulations 2010 (SSI 2010/72);
   the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2010 (SSI 2010/73).

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

   the Schools (Consultation) (Scotland) Act 2010 (Commencement) Order 2010 (SSI 2010/70).
SUBORDINATE LEGISLATION COMMITTEE

8th Meeting, 2010 (Session 3)

Wednesday 10 March 2010

Summary of Recommendations

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

Agenda Item 1  Instruments subject to approval

The National Bus Travel Concession Scheme for Older and Disabled Persons (Scotland) Amendment Order 2010 (SSI 2010/draft)

The Committee may wish to accept as satisfactory the Scottish Government’s confirmation of what it is intended can be modified consequent on a determination of an assessment panel.

The Committee may wish to accept as satisfactory the Scottish Government’s explanation for the need for a definition of “capped level of funding” and “reimbursement rate” in a new article 12(8).

The Committee may wish to draw this instrument to the attention of the Parliament on the ground that, in the opinion of the Committee, the inclusion in the preamble of references to sections 40(3) and 40(4) of the 2005 Act (which are not stand alone enabling powers) is not in accordance with normal drafting practice, but this does not affect the validity and effect of the instrument.

The Local Government Finance (Scotland) Amendment Order 2010

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

Agenda Item 2  Instruments subject to annulment

The Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2010 (SSI 2010/63)

The Police Grant (Scotland) Order 2010 (SSI 2010/64)
The Firefighters' Pension Scheme (Scotland) Order 2007 Amendment Order 2010 (SSI 2010/65)

The Firefighters’ Pension Scheme Amendment (Scotland) Order 2010 (SSI 2010/66)

The Road Works (Inspection Fees) (Scotland) Amendment Regulations 2010 (SSI 2010/68)

The Seed Potatoes (Scotland) Amendment Regulations 2010 (SSI 2010/71)

The Recovery of Expenditure for the Provision of Social Care Services (Scotland) Regulations 2010 (SSI 2010/72)

The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2010 (SSI 2010/73)

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

AGENDA ITEM 3 INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT

The Schools (Consultation) (Scotland) Act 2010 (Commencement) Order 2010 (SSI 2010/70)

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

8th Meeting, 2010 (Session 3)

Wednesday 10 March 2010

Instrument Responses

DRAFT INSTRUMENTS SUBJECT TO APPROVAL

The National Bus Travel Concession Scheme for Older and Disabled Persons (Scotland) Amendment Order 2010 (SSI 2010/draft)

On 25 February 2010 the Scottish Government was asked:

Article 2(2) of the instrument provides that in article 2(1) of SSI 2006/107 (interpretation) in the definition of “reimbursement arrangements” the words “and (2)” are to be omitted. Does the Scottish Government intend that the definition of “reimbursement arrangements” is therefore to be restricted to what is described in article 12(1) of SSI 2006/107, and, if so, what is considered to be the effect of this restriction, given that article 12(1) sets out an objective with respect to reimbursement, with the reimbursement arrangements themselves being set out in the remainder of article 12 (as amended by articles 2(4) and 2(5) of this instrument)? Given that “reimbursement arrangements” are referred to only in article 9 is it intended that this general objective is what may be modified following a determination by the assessment panel?

To explain why definitions of the expressions “the capped level of funding” and “reimbursement rate” are provided in new article 12(8) of SSI 2006/107 when new articles 12(2B) and (2C) also appear to provide for what these expressions are to mean for the purposes of article 12(2A). What is the cumulative effect of these provisions?

Section 52(3) of the 2005 Act identifies section 40(1) of the Act as engaging affirmative procedure. The preamble refers to exercising powers in section 40(3) and (4). Given the reference to only subsection (1) of section 40 in section 52 is it considered that this is the power exercised and that section 40(3) and (4) only provide clarification as to the scope of the primary power? If so should section 40(3) and (4) be referred to in the preamble?

The Scottish Government responded:

The Scottish Government intends for the definition of “reimbursement arrangements” to be restricted to what is described in article 12(1) of SSI 2006/107 rather than what is currently described in article 12(1) and (2). New article 12(2), (2A), (2B), (2C) and (8) together with existing article 12(3) to (7) provide for the mechanism of reimbursement for the scheme.

The intention of the amendment in article 2(2) of the instrument is to restrict that which may be modified following a determination by the assessment panel, to the reimbursement arrangements described in article 12(1), not the mechanism for calculating reimbursement in paragraph (2).
The new article 12(2B) provides for how to calculate the “capped level of funding” i.e. how to arrive at “a sum” as described in new article 12(2B)(a) which is the amount of the capped level of funding. In the Scottish Government’s view that is different from the definition in new article 12(8) of the meaning of "capped level of funding". There is not considered to be any confusion in the cumulative effect of the provisions. The first describes the amount, the second the meaning. The same argument applies to the new article 12(2C) which sets out the percentage of the reimbursement rate. In new article 12(8) is found the meaning of “reimbursement rate”. Again there is not considered to be any confusion in the cumulative effect of these provisions. The first describes the percentage of the reimbursement rate, the second the meaning of reimbursement rate.

The Scottish Government agrees that an Order under section 40(1) of the 2005 Act triggers affirmative procedure. Section 40 (3) and (4) clarify the scope of the primary power but it is considered that when cited and therefore read together with section 40(1) it makes clear where the authority is derived for what is being done in the instrument. These were also the powers referred to in the preamble of SSI 2006/107 Order.