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 item 5 in private.

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

   - the Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No. 2) (Scotland) Regulations 2010 (SSI 2010/draft);
   - the Arbitration (Scotland) Act 2010 (Consequential Amendments) Order 2010 (SSI 2010/draft);
   - the Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Regulations 2010 (SSI 2010/draft);
   - the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2010 (SSI 2010/draft).

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

   - the Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Services) (Protected Adults) Regulations 2010 (SSI 2010/161);
   - the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (SSI 2010/167);
   - the Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No. 1) (Scotland) Regulations 2010 (SSI 2010/166);
   - the Adoption Agencies (Scotland) Amendment Regulations 2010 (SSI 2010/172);
   - the Adoptions with a Foreign Element (Scotland) Amendment Regulations 2010 (SSI 2010/173).
4. **Guidance not subject to parliamentary procedure:** The Committee will consider the following—


5. **Patient Rights (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, and the contents of a draft report.

Irene Fleming
Clerk to the Subordinate Legislation Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 248 5212
Email: irene.fleming@scottish.parliament.uk
The papers for this meeting are as follows—

Legal Brief
Summary of Recommendations
**Agenda items 3 & 4**
Instrument Responses
**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 Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No. 2) (Scotland) Regulations 2010 (SSI 2010/draft)

The Arbitration (Scotland) Act 2010 (Consequential Amendments) Order 2010 (SSI 2010/draft)

The Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Regulations 2010 (SSI 2010/draft)

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment 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 Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Services) (Protected Adults) Regulations 2010 (SSI 2010/161)

The Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (SSI 2010/167)

In relation to SSI 2010/161, the Committee may wish to report that the instrument could be clearer in that the word “and” before “provision of advice and assistance” in regulations 3 and 4 is intended to mean “or”.
In relation to both instruments, the Committee may wish to express the view that the Scottish Government should give the public 21 days notice in advance of section 44 of the 2007 Act (and consequently this instrument) coming into force.

The Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No. 1) (Scotland) Regulations 2010 (SSI 2010/166)

The Adoption Agencies (Scotland) Amendment Regulations 2010 (SSI 2010/172)

The Adoptions with a Foreign Element (Scotland) Amendment Regulations 2010 (SSI 2010/173)

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

Agenda Item 4  Guidance not subject to parliamentary procedure

Supporting Children's Learning Code of Practice (Revised Edition) 2010 (SG 2010/63)

The Committee may wish to report that an explanation was sought and provided by the Scottish Government as to how the consultation requirements on the draft Code in section 27 of the Education (Additional Support for Learning) (Scotland) Act 2004 have been implemented.

The Committee may wish to accept the explanation provided.
INSTRUMENTS SUBJECT TO ANNULMENT

The Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Services) (Protected Adults) Regulations 2010 (SSI 2010/161)

On 30 April 2010 the Scottish Government was asked:
1. In line three of article 3 the word “and” comes before the words “provision of advice”. Is it intended for the purposes of this article that the service provided by a health body has to concern all of the elements listed in the article, or that the service provided has to concern any of the elements listed? If the latter, does the Scottish Government consider that the use of the word “and” (rather than the use of the word “or”) makes this clear?

The same issue arises with respect to article 4 of the instrument in respect of the use of the word “and” before the word “support” in line 3.

2. Please confirm that section 44 of the 2007 Act will not be brought into force within 21 days of the date on which the instrument was laid (article 10(2) of the Transitional Provisions Order SI 1999/1096 refers).

The Scottish Government responded:
1. The Scottish Government can confirm that it is intended for the purposes of article 3 that the service provided by a health body has to concern any of the elements listed in the article. Therefore “and”, where it comes before the “provision of advice” in line 3 of article 3, is used as a disjunctive preposition not a conjunctive preposition. This means that a service provided by a health body acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978 which concerns any one of the elements listed in the article, will be a prescribed service. The Scottish Government considers that it is sufficiently clear that if a service is one which is provided by a health body acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978 which concerns any of the elements listed in article 3, it will be a prescribed service. It is noted that the draft Order was consulted on in November 2009 in a substantially similar form (in particular, the drafting of the elements listed in both articles 3 and 4 was exactly as it appears in the version of the Order laid on 22 April 2010) and we are not aware from the consultation responses that this drafting caused any confusion. While we think the meaning of article 3 as set out above is clear, this Order is one of many being made under the 2007 Act, and will be accompanied by extensive guidance which has been prepared to aid understanding of the legislation as a whole.

The same point applies with respect to article 4 of the instrument in respect of the use of the word “and” before the word “support” in line 3.
2. The Scottish Government can confirm that section 44 of the 2007 Act will not be brought into force within 21 days of the date on which the instrument was laid. It is intended that section 44 will be brought into force in the autumn this year.

GUIDANCE NOT SUBJECT TO PARLIAMENTARY PROCEDURE

Supporting Children’s Learning Code of Practice (Revised Edition) 2010 (SG 2010/63)

On 30 April 2010 the Scottish Government was asked:

By section 27(3) and (5) of the Education (Additional Support for Learning) (S) Act 2004, before publishing the Code, the Scottish Ministers must consult each education authority, appropriate agency under the Act, and such other persons as they think fit, and Ministers may publish the Code after the expiry of 40 days after the draft is laid in Parliament.

Given that it appears the draft Code does not have an explanation of the consultation undertaken, can it be confirmed how the requirement of section 27(3) has or will be satisfied, and which other persons have or will be consulted?

The Scottish Government responded:


Letters inviting on-line or written responses were issued to a wide range of stakeholders (4451 in all) including all local authority education and social work departments, health boards, all Scottish schools, colleges and universities, community councils and relevant voluntary organisations.

The consultation document set out the proposed legislative changes and sought stakeholders’ views on the proposed changes. Additionally, Children in Scotland, supported by the Scottish Government, hosted a series of five consultation and information events throughout Scotland during November and December 2009.

The consultation exercise ended on 8 January 2010 and 237 responses were received from 65 respondents. Officials have recently completed work on changes to the secondary legislation and the supporting children’s learning code of practice in the light of the consultation. It is anticipated that the provisions contained in the 2009 Act, revised/new regulations and the revised code will commence in August 2010.

The proposals and consultation findings have also been discussed by the Additional Support for Learning Implementation Group, a reference group of expert professionals and stakeholders who advised the Support for Learning Division regarding the implementation of the Education (Additional Support for Learning) (Scotland) Act 2009, the revised supporting children’s learning code of practice and the Regulations which support the 2009 Act.