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 5, 6 and 7 in private.

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

   - the Official Statistics (Scotland) Amendment Order 2010 (SSI 2010/draft);
   - the Budget (Scotland) Act 2010 Amendment (No. 2) Order 2010 (SSI 2010/draft);
   - the Number of Inner House Judges (Variation) Order 2010 (SSI 2010/draft).

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

   - the Regulation of Investigatory Powers (Prescription of Offices, etc. and Specification of Public Authorities) (Scotland) Order 2010 (SSI 2010/350);
   - the Feed (Sampling and Analysis and Specified Undesirable Substances) (Scotland) Regulations 2010 (SSI 2010/354);
   - the National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment (No. 2) Regulations 2010 (SSI 2010/366);
   - the Bankruptcy (Scotland) Amendment Regulations 2010 (SSI 2010/367);
   - the National Health Service (Superannuation Scheme, Pension Scheme, Injury Benefits and Additional Voluntary Contributions) (Scotland) Amendment (No. 2) Regulations 2010 (SSI 2010/369).

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

   - the Education (Additional Support for Learning) (Scotland) Act 2009 (Commencement No. 3) Order 2010 (SSI 2010/368 (C. 22));
the Tobacco and Primary Medical Services (Scotland) Act 2010 (Commencement No. 2) Order 2010 (SSI 2010/372 (C. 23)).

5. **Alcohol etc. (Scotland) Bill:** The Committee will consider the supplementary delegated powers provisions in this Bill at Stage 3.

6. **Domestic Abuse (Scotland) Bill:** The Committee will consider the content of a draft report.

7. **Sexual Offences Act 2003 (Remedial) Order 2010 (SSI 2010/370)** The Committee will consider the procedure for consideration of the Order.

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

PRIVATE PAPER  SL/S3/10/29/1 (P)
Summary of Recommendations  SL/S3/10/29/2

**Agenda Item 3**
Instrument Responses  SL/S3/10/29/3

**Agenda Item 5**
*Alcohol Etc. (Scotland) Bill (as amended at Stage 2)*
Supplementary Delegated Powers Memorandum
Correspondence from the Scottish Government  SL/S3/10/29/4

PRIVATE PAPER  SL/S3/10/29/5 (P)

**Agenda Item 6**
PRIVATE PAPER  SL/S3/10/29/6 (P)

**Agenda Item 7**
PRIVATE PAPER  SL/S3/10/29/7 (P)
SUBORDINATE LEGISLATION COMMITTEE

29th Meeting, 2010 (Session 3)

Tuesday 2 November 2010

Summary of Recommendations

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

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

- The Official Statistics (Scotland) Amendment Order 2010 (SSI 2010/draft)
- The Budget (Scotland) Act 2010 Amendment (No. 2) Order 2010 (SSI 2010/draft)
- The Number of Inner House Judges (Variation) Order 2010 (SSI 2010/draft)

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

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**Agenda Item 3**  Instruments subject to annulment

- The Regulation of Investigatory Powers (Prescription of Offices, etc. and Specification of Public Authorities) (Scotland) Order 2010 (SSI 2010/350)

The Committee may wish to report this Order under the general ground, that there is a drafting error in Schedule 2 which has been acknowledged by the Scottish Government. The title of SSI 2003/50 should end with “(No. 2) Order 2003”.

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- The Feed (Sampling and Analysis and Specified Undesirable Substances) (Scotland) Regulations 2010 (SSI 2010/354)

The Committee may wish to report—

- under the general reporting ground, that regulation 2(1) contains a drafting error, acknowledged by the Scottish Government. This is that the definition of “Regulation 152/2009” should state that it means Regulation 152/2009 rather than Regulation 854/2009 (which does not relate to the official control of animal feed).
The Committee may also report that it considers such an error, which has effect though several references to that definition should be corrected by an amendment, rather than by means of a printing correction slip;

- while the Committee may consider that the response on the point was not entirely helpful, it accepts in this instance the choice of negative resolution procedure under paragraph 2 of schedule 2 to the European Communities Act 1972 for the exercise of powers under section 2(2) of that Act which amend the Agriculture Act 1970; and

- under the general reporting ground, that there is a failure to follow normal drafting practice in respect that most of the amending provisions in the Regulations do not follow the normal practice, in using the drafting approach of “‘X’” is substituted for “‘Y’”, whereas regulations 14 and 15 do adopt the normal approach of “for “X”, substitute “Y””. The normal approach makes the amendments easier for readers to understand.

The National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment (No. 2) Regulations 2010 (SSI 2010/366)

The Bankruptcy (Scotland) Amendment Regulations 2010 (SSI 2010/367)

The National Health Service (Superannuation Scheme, Pension Scheme, Injury Benefits and Additional Voluntary Contributions) (Scotland) Amendment (No. 2) Regulations 2010 (SSI 2010/369)

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

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**Agenda Item 4  Instruments not laid before the Parliament**

The Education (Additional Support for Learning) (Scotland) Act 2009 (Commencement No 3) Order 2010 (SSI 2010/368) (C22)

The Tobacco and Primary Medical Services (Scotland) Act 2010 (Commencement No 2) Order 2010 (SSI 2010/372) (C.23)

The Committee may wish to consider if it is content with these instruments.
INSTRUMENTS SUBJECT TO ANNULMENT

The Regulation of Investigatory Powers (Prescription of Offices, etc. and Specification of Public Authorities) (Scotland) Order 2010 (SSI 2010/350)

On 11 October 2010 the Scottish Government was asked: 
_Could you explain in relation to the reference to SSI 2003/50 in Schedule 2, what the effect is of the apparent error that “(No. 2)” is omitted from the title of this Order being revoked?_

The Scottish Government responds as follows:
The omission of “(No.2)” from the title of SSI 2003/50 is being amended by correction slip. The Scottish Government apologises for this error. Notwithstanding this typographical omission, in the interim we consider the intention and legal effect to be sufficiently clear that the SSI that is being revoked by Schedule 2 is SSI 2003/50, as although the title of this instrument is incorrect, the SSI number is correct. The SSI which had the title detailed in the Schedule has itself already been revoked (by SSI 2003/50). Even if SSI 2003/50 cannot be considered to have been revoked it is no longer of any effect, as SSI 2003/343 which it amended has also been revoked by Schedule 2.
On 15 October 2010 the Scottish Government was asked:
1. In relation to the definition of “Regulation 152/2009” in regulation 2(1) (the Commission Regulation implemented by these Regulations), whether the substantive provision that this means Commission Regulation (EC) 854/2009 is an error? If so, what is the effect of this considered to be?

2. In relation to the Water Quality (Scotland) Regulations 2010, the Committee reported that where there is a choice of draft affirmative or negative procedure available under paragraph 2 of schedule 2 to the European Communities Act 1972, the exercise of powers under section 2(2) of that Act which include amendment of primary legislation and the creation of new offences should normally select draft affirmative procedure as appropriate for Parliamentary scrutiny. Accordingly-

   (a) Is section 2(2) being relied on to make the amendments to the Agriculture Act 1970 in Part 3 (as it appears the cited powers in that Act do not provide for powers to modify the Act)?

   (b) If so, can it be explained to the Committee why in this instance negative procedure has been selected as the appropriate procedure for the Regulations?

3. Why do most of the amending provisions in the Regulations not follow the normal practice, in using the drafting approach ““X” is substituted for “Y””, whereas regulations 14 and 15 adopt the normal approach of “for “X”, substitute “Y””?

The Scottish Government responds as follows:
1. We are grateful to the Committee for identifying this error; the reference should be to “Commission Regulation (EC) No. 152/2009”. We will arrange for this to be amended by correction slip.

2. Section 2(2) of the 1972 Act is being relied on for the amendments to the 1970 Act in Part 3 of these Regulations. The Regulations form a package of measures and negative resolution was chosen because only that procedure is possible for the provisions empowered by the 1970 Act.

3. Those provisions of the Regulations which use the drafting approach ““X” is substituted for “Y”” are modifying the 1970 Act in so far as it applies to feeding stuffs. The provisions are not amending the 1970 Act for all purposes.
ALCOHOL ETC. (SCOTLAND) BILL

This letter provides information on the amendments that the Government intends to bring forward at Stage 3 of the Alcohol etc. (Scotland) Bill which will introduce or amend powers to make subordinate legislation.

Minimum price of alcohol

The Scottish Government has already lodged an amendment imposing a licence condition in premises and occasional licences that alcohol not be sold below a minimum price. This amendment sets out that the minimum price per unit of alcohol is 45p or such other price as Ministers may by order specify. Such an order would be subject to the affirmative resolution procedure.

Sections 10 and 11: licence holders: social responsibility levy

The Scottish Government is proposing to amend section 10(3) of the Bill which sets out the purpose for which the social responsibility may be imposed. The intention is to amend the duty of local authorities in section 10(3)(a)(ii) so that local authorities are not required to agree with relevant health boards the expenditure that the social responsibility levy may be used for but rather they are required to consult with the relevant health board and appropriate chief constable as to this expenditure. We consider this is a more appropriate way of involving health boards in the process of what the levy is spent on. This approach is consistent with the involvement of health boards in the licensing process provided for in section 9A.

Section 10(4)(h) provides that the regulations imposing the social responsibility levy may provide for the payment of the levy to be a condition of the licences held by relevant licence-holders. The Scottish Government is proposing to amend section 11(1) of the Bill to enable regulations under section 10(1) imposing a social responsibility levy to modify the Licensing (Scotland) Act 2005 and the Civic Government (Scotland) Act 1982. Such modifications will be necessary if the regulations under section 10(1) are to provide that payment of the levy is to be a condition of the licences held by relevant licence holders.

The Scottish Government is also proposing to amend section 11(3) to provide that the Scottish Ministers must also consult health boards and chief constables before laying a draft of the regulations imposing the social responsibility levy before Parliament.

I am copying this letter to the clerk to the Health and Sport Committee.

GARY COX
Head of Licensing