The Committee will meet at 2.15 pm in Committee Room 5.

1. **Decision on taking business in private**: The Committee will decide whether to take item 7 in private.

2. **Draft instruments subject to approval**: The Committee will consider the following—
   
   *the National Scenic Areas (Consequential Modifications) (Scotland) Order 2010 (SSI 2010/draft).*

3. **Instruments subject to annulment**: The Committee will consider the following—
   
   *the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2010 (SSI 2010/392);*
   *the Fire Safety (Scotland) Amendment Regulations 2010 (SSI 2010/393);*
   *the National Health Service (General Medical Services Contracts) (Scotland) Amendment Regulations 2010 (SSI 2010/394);*
   *the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2010 (SSI 2010/395).*

4. **Instruments not laid before the Parliament**: The Committee will consider the following—
   
   *Act of Adjournal (Criminal Procedure Rules Amendment No. 3) (Scottish Criminal Cases Review Commission) 2010 (SSI 2010/386);*
   *the Planning etc. (Scotland) Act 2006 (Commencement No. 10) Order 2010 (SSI 2010/400).*

5. **Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill**: The Committee will consider the delegated powers provisions in this Bill at Stage 1.
6. **Certification of Death (Scotland) Bill:** The Committee will consider the delegated powers provisions in this Bill at Stage 1.

7. **Private Rented Housing (Scotland) Bill:** The Committee will consider the contents of a draft report.

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Edinburgh  
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The papers for this meeting are as follows—

Legal Brief (private) SL/S3/10/32/1
Summary of Recommendations SL/S3/10/32/2

**Agenda Items 2 and 4**

Instrument Responses SL/S3/10/32/3

**Agenda Item 5**

Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (as introduced)

Delegated Powers Memorandum

Briefing Paper (private) SL/S3/10/32/4

**Agenda Item 6**

Certification of Death (Scotland) Bill (as introduced)

Delegated Powers Memorandum

Briefing Paper (private) SL/S3/10/32/5

**Agenda Item 7**

Draft Report (private) SL/S3/10/32/6

Correspondence from the Scottish Government SL/S3/10/32/7
SUBORDINATE LEGISLATION COMMITTEE

32nd Meeting, 2010 (Session 3)

Tuesday 23 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.

Agenda Item 2  Draft instruments subject to approval

The National Scenic Areas (Consequential Modifications) (Scotland) Order 2010 (SSI 2010/draft)

The Committee may wish to be content with this instrument. The Committee welcomes the Government’s quick response to replace the original draft of the instrument with a corrected instrument in response to the Committee’s comments.

Agenda Item 3  Instruments subject to annulment

The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2010 (SSI 2010/392)

The Fire Safety (Scotland) Amendment Regulations 2010 (SSI 2010/393)

The National Health Service (General Medical Services Contracts) (Scotland) Amendment Regulations 2010 (SSI 2010/394)

The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2010 (SSI 2010/395)

The Committee may wish to consider if it is content with these Instruments.
Agenda Item 4  Instruments not laid before the Parliament

Act of Adjournal (Criminal Procedure Rules Amendment No. 3) (Scottish Criminal Cases Review Commission) 2010 (SSI 2010/386)

The Committee may wish to report, under the general reporting ground, that there is a minor drafting error in this instrument which does not impinge on its substance or policy. The Lord President’s Private Office acknowledges this and intends to correct it in early course.

The Planning etc. (Scotland) Act 2006 (Commencement No. 10) Order 2010 (SSI 2010/400 C. 26))

The Committee may wish to be content with this Order.

Agenda Item 5  Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill

Section 3(7)(c) - Power to specify a person, or a person falling within a description of persons, as a relevant third party

The Committee may wish to ask the Scottish Government for a fuller explanation as to why it has chosen negative rather than affirmative procedure in relation to the power under section 3(7)(c). Ministers have clearly considered it important to restrict the persons who have an automatic right to apply for an order. Why is altering the class of persons who have this right not of significant public interest so as to merit affirmative procedure?

Section 10(1) - Power to apply Part 1 to civil partnerships

The Committee may wish to report that it is content with the power under section 10(1) in principle and that it is subject to affirmative procedure.
Section 11 – Guidance

The Committee may wish to ask the Scottish Government to explain whether it considers that guidance made under section 11 should be laid before the Scottish Parliament in the interests of transparency and in order that the Parliament is aware of its terms.

Section 15(1) - Power to make ancillary provision

The Committee may wish to report that it is content with the power under section 15(1) in principle and that it is subject to affirmative procedure where primary legislation is textually amended but otherwise subject to negative procedure.

Section 18(2) - Power to appoint the day(s) on which the provisions comes into force

The Committee may wish to report that it is content with the power in section 18(2) and that it is not subject to parliamentary procedure.

Agenda Item 6 Certification of Death (Scotland) Bill

Section 2: Power of Scottish Ministers to give directions to the Registrar General

The Committee may wish to find that the power in section 2 (inserting section 24A(5) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 is acceptable in the form of directions.

Section 2: Suspension of referral of certificates for review during emergencies

In relation to section 2 (inserting the new section 24A(7) of the 1965 Act), the Committee may wish to ask for clarification why, given that this power is designed for an emergency situation, it has been considered appropriate to propose negative procedure in place of the “Class 3” emergency affirmative procedure?

The “Class 3” procedure could enable an order to come into force immediately (without a breach of the 21 day rule requiring explanation), and also secure that the
order may remain in force for a sufficient long period before requiring approval, to enable any order over a longer Parliament recess. Why then is this procedure, tailored for emergency situations, not preferred?

Section 4(5)(e): Specification of additional interested persons

The Committee may wish to find that the power in section 4(5)(e) is acceptable in principle, and that it is subject to negative procedure.

Section 4(7): Suspension of applications under section 4 during emergencies

The Committee may wish to ask for clarification why, given that this power is designed for an emergency situation, it has been considered appropriate to propose negative procedure in place of the “Class 3” emergency affirmative procedure?

The “Class 3” procedure could enable an order to come into force immediately (without a breach of the 21 day rule requiring explanation), and also secure that the order may remain in force for a sufficient long period before requiring approval, to enable any order over a longer Parliament recess. Why then is this procedure, tailored for emergency situations, not preferred?

Section 4(8): Applications for review

The Committee may wish to find that the power in section 4(8) is acceptable in principle, and that it is subject to negative resolution procedure.

Section 8(5): Conduct of review

The Committee may find the power in section 8(5) acceptable in principle, and that it is subject to negative resolution procedure.

Section 17(4): Form, content and procedure of application and authorisation

The Committee may wish to find that the power in section 17(4) is acceptable in principle, and that it is subject to negative resolution procedure.
Section 18(4): Application for post-mortem examination

The Committee may wish to find that the power in section 18(4) is acceptable in principle and that it is subject to negative resolution procedure.

Section 22(3): Annual report

The Committee may wish to find that the power in section 22(3) is acceptable in principle, and that it is subject to negative procedure.

Section 23(3): Fees

In relation to the power to set amounts of fees and prescribe arrangements for collection by regulations under section 23(3), could the Government clarify why it has proposed that draft affirmative procedure should be applied to this power, rather than negative procedure? Would the Government consider that prescription of fee levels and collection arrangements, in general, are more usually subject to negative resolution procedure?

Section 24: Documentation for disposal of a body

The Committee may wish to find that the power in section 24(2) is acceptable in principle, and that it is subject to negative resolution procedure.

Section 25(1): Prescribed content of still-birth certificates

The Committee may wish to find that the power in section 25(1) is acceptable in principle, and that it is not subject to any parliamentary procedure.

Section 25(2): Prescribed content of medical certificate of cause of death

The Committee may wish to find that the power in section 25(2) is acceptable in principle, and that it is not subject to any parliamentary procedure.
Section 27: Consequential amendments etc

The Committee may wish to find that the ancillary powers contained in section 27 are acceptable in principle, and that they are subject to negative procedure, except where there is textual amendment of an Act, when draft affirmative procedure applies.

Section 31(3): Commencement

The Committee may wish to find that the commencement powers in section 31(3) are acceptable and that they are subject to no procedure.

Schedule 1: Qualifications of medical reviewers

The Committee may wish to find that the power in Schedule 1 (inserting paragraph 7A(3)(c) of Schedule 5A to the National Health Service (Scotland) Act 1978 is acceptable in principle, and that it is subject to negative resolution procedure.
SUBORDINATE LEGISLATION COMMITTEE

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Instrument Responses

INSTRUMENTS NOT LAI D BEFORE THE PARLIAMENT

Act of Adjournal (Criminal Procedure Rules Amendment No. 3) (Scottish Criminal Cases Review Commission) 2010 (SSI 2010/386)

On 12 November the Lord President's Private Office was asked:
Article 2(3)(b) of this Act of Adjournal inserts a new sub-paragraph (2A) into rule 19B.1 of the Criminal Procedure Rules 1996 after sub-paragraph (2). However, there is already an existing sub-paragraph (2A) within rule 19B.1 which is not re-numbered by this Act of Adjournal. Is it considered that this may cause confusion to users of the rules and is it intended to amend the numbering of Rule 19B.1?

The Lord President's Private Office responds as follows:
The Lord President's Private Office is grateful to the Committee's legal advisers for pointing out this error, which occurred as a result of a late editorial change in this Act of Adjournal. Given that there is no cross-reference to rule 19B.1(2A) elsewhere in the Rules, it is not felt that this is liable to give rise to confusion in the minds of users of the Rules. It is however anticipated that Chapter 19B will require to be amended in early course in light of other legislative developments and the matter will therefore be addressed appropriately at that time.
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Correspondence from the Scottish Government dated 15 November 2010

Private Rented Housing (Scotland) Bill at Stage 1

Thank you for your letter of 9 November in connection with the above, which has been passed to me for reply.

Section 31(4) (inserts section 28B into the Housing (Scotland) Act 2006) – Landlord application to private rented housing panel: further provision

Q. The Scottish Government is asked whether the power to make further provision about the making or deciding of landlord applications could be used to deal with a range of matters, potentially involving rather more than administrative detail, and that it would be appropriate that it be subject to affirmative procedure?

The Scottish Government notes the Committee’s concerns about the range of matters that could be covered by regulations under this power and agrees that there are aspects which could potentially address more than administrative detail. The Scottish Government is therefore reviewing the position with a view to bringing forward amendments to the Bill to address this.

Section 35 – Commencement

Q. The Scottish Government is asked why an order made under section 35, where it includes transitional, transitory or saving provision, should be subject to no procedure, in contrast to an order containing such provision where made under section 33, which would be subject to negative procedure? Should an order under section 35, in those circumstances where it deals not simply with matters of commencement, but also includes transitional, transitory or saving provision, be subject to negative procedure, rather than no procedure?

The Scottish Government notes the Committee’s comments. However, the Scottish Government considers that it is appropriate to include transitional, transitory or savings provision with commencement orders which take no procedure on the basis that such provision is by its very nature temporary and time-limited and is closely related to the section to be commenced, which the Parliament has already closely scrutinised.

The use of such powers in the context of section 33 will tend to be for more substantive matters where the negative procedure is more appropriate.

I hope this information is helpful, but please let me know if you require any further clarification.