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 6 in private.

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

   - the Criminal Justice and Licensing (Scotland) Act 2010 (Consequential and Supplementary Provisions) Order 2011 (SSI 2011/draft);
   - the Advice and Assistance (Assistance By Way of Representation) (Scotland) Amendment Regulations 2011 (SSI 2011/draft);

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

   - the Vegetable Seeds Amendment (Scotland) Regulations 2010 (SSI 2010/425);
   - the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 (SSI 2010/426);
   - the Registration Services (Fees) Amendment (Scotland) Regulations 2010 (SSI 2010/427);
   - the Registration of Births, Deaths and Marriages (Fees) (Scotland) Order (SSI 2010/428);
   - the Scallops (Luce Bay) (Prohibition of Fishing) Variation Order 2010 (SSI 2010/429);
   - the Planning etc. (Scotland) Act 2006 (Saving and Transitional Provisions) Order 2010 (SSI 2010/431);
4. **Instruments not laid before the Parliament:** The Committee will consider the following—

- the Planning etc. (Scotland) Act 2006 (Commencement No. 11) Order 2010 (SSI 2010/430 (C. 29));
- the Housing (Scotland) Act 2006 (Commencement No. 9) Order 2010 (SSI 2010/436 (C. 30));
- the Crofting Reform (Scotland) Act 2010 (Commencement, Saving and Transitory Provisions) Order 2010 (SSI 2010/437 (C. 31));
- the Wild Birds (Special Protection in Severe Weather) (Scotland) (No. 2) Order 2010 (SSI 2010/438).

5. **Public Records (Scotland) Bill:** The Committee will consider the delegated powers provisions in this Bill at Stage 1.

6. **Double Jeopardy (Scotland) Bill:** The Committee will consider the contents of a draft report.

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

Legal Brief (private) SL/S3/10/35/1

Summary of Recommendations SL/S3/10/35/2

**Agenda Item 2**

Insturment Responses SL/S3/10/35/3

**Agenda Item 5**

Public Records (Scotland) Bill (as introduced)

Delegated Powers Memorandum

Briefing Paper (private) SL/S3/10/35/4

**Agenda Item 6**

Draft Report (private) SL/S3/10/35/5

Correspondence from the Scottish Government SL/S3/10/35/6
SUBORDINATE LEGISLATION COMMITTEE

35th Meeting, 2010 (Session 3)

Tuesday 14 December 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 Criminal Justice and Licensing (Scotland) Act 2010 (Consequential and Supplementary Provisions) Order 2011 (SSI 2011/draft)

The Committee may wish to consider if it is content with the response provided by the Scottish Government and with the instrument.

The Advice and Assistance (Assistance By Way of Representation) (Scotland) Amendment Regulations 2011 (SSI 2011/draft)


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

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**Agenda Item 3  Instruments subject to annulment**

The Vegetable Seeds Amendment (Scotland) Regulations 2010 (SSI 2010/425)

The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 (SSI 2010/426)

The Registration Services (Fees) Amendment (Scotland) Regulations 2010 (SSI 2010/427)

The Registration of Births, Deaths and Marriages (Fees) (Scotland) Order 2010 (SSI 2010/428)
The Scallops (Luce Bay) (Prohibition of Fishing) Variation Order 2010 (SSI 2010/429)

The Planning etc. (Scotland) Act 2006 (Saving and Transitional Provisions) Order 2010 (SSI 2010/431)

The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 (SSI 2010/434)

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

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

The Planning etc. (Scotland) Act 2006 (Commencement No. 11) Order 2010 (SSI 2010/430 (C. 29))

The Housing (Scotland) Act 2006 (Commencement No 9) Order 2010 (SSI 2010/436 (C.30))

The Crofting Reform (Scotland) Act 2010 (Commencement, Saving and Transitory Provisions) Order 2010 (SSI 2010/437 (C. 31))

The Wild Birds (Special Protection in Severe Weather) (Scotland) (No 2) Order 2010 (SSI 2010/438)

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

**Agenda Item 5 Public Records (Scotland) Bill**

Section 2(2) – Power to amend the list of public authorities to which Part 1 applies

To the extent that that an order under section 2(2) may, in terms of subsection (7), include supplementary or incidental provision, and can modify an enactment, the Committee may wish to ask the Scottish Government for further explanation as to why these particular powers are required.

Section 14(2) – Requirement to consult the Keeper before making provision about the transmission of Court of Session and High Court records
The Committee may wish to be content with the consultation requirement which is provided for in section 14(2) and that no requirement for Parliamentary procedure results in that regard.

Section 15(1) – Power to commence the Bill by order

The Committee may wish to be content with the commencement power contained in section 15(1) and that it is subject to no Parliamentary procedure.
DRAFT INSTRUMENTS SUBJECT TO APPROVAL

The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential and Supplementary Provisions) Order 2011 (SSI 2011/draft)

On 2 December 2010 the Scottish Government was asked:
With reference to paragraph 10 of the schedule whether the reference to section 227ZI (remote monitoring) should be a reference to section 245C as applied to restricted movement requirements by section 227ZI since it appears that the primary basis for entering into monitoring arrangements is found in section 245C of the 1995 Act?

The Scottish Government responds as follows:
Paragraph 10 of the Schedule substitutes a reference to section 230A(5) with a reference to section 227ZI in the Schedule to SSI 2007/92. In the Schedule to SSI 2007/92 there is a reference to section 245C of the 1995 Act, as the primary basis for entering into monitoring arrangements. In addition, in that Schedule the existing reference to section 230A(5) is preceded by the words “section 245C(1) of the 1995 Act, as applied by-“. It is the Scottish Government's view that these qualifying words apply equally to the substituted reference to section 227ZI and so the reference is to section 245C as applied to restricted movement requirements by section 227ZI.
DOUBLE JEOPARDY (SCOTLAND) Bill

I am writing in response to queries raised by the Committee following its 30 November meeting on the Double Jeopardy (Scotland) Bill. These points were raised in relation to section 4 of the Bill, which sets out a power for Scottish Ministers to make an order to modify the list of offences to be covered by the new evidence exception to the rule against double jeopardy.

The Committee questioned whether exercise of the power so as to add or remove offences should be subject to a consultation requirement.

I am grateful to the Committee for raising this point and would like to consider it further. I am due to give evidence to the Justice Committee on the Bill on 21 December and will endeavour to write to the Subordinate Legislation Committee at that time to provide a full response on this issue.

I am copying this letter to the Convenor of the Justice Committee.

KENNY MACASKILL
CABINET SECRETARY FOR JUSTICE