The Committee will meet at 2.30 pm in Committee Room 4.

1. **Subordinate legislation**: The Committee will take evidence on the *Interpretation and Legislative Reform (Scotland) Act 2010 (Consequential Provisions) Order 2011 (SSI 2011/draft)*; the *Scottish Statutory Instruments Regulations 2011 (SSI 2011/draft)*; and the *Interpretation and Legislative Reform (Scotland) Act 2010 (Savings and Transitional Provisions) Order 2011 (SSI 2011/88)* from—


2. **Subordinate legislation**: Bruce Crawford MSP to move S3M-7878— That the Subordinate Legislation Committee recommends that the *Interpretation and Legislative Reform (Scotland) Act 2010 (Consequential Provisions) Order 2011 (SSI 2011/draft)* be approved.

3. **Subordinate legislation**: Bruce Crawford MSP to move S3M-7880— That the Subordinate Legislation Committee recommends that the *Scottish Statutory Instruments Regulations 2011 (SSI 2011/draft)* be approved.

4. **Subordinate legislation**: The Committee will consider the following negative instrument—

   the *Interpretation and Legislative Reform (Scotland) Act 2010 (Savings and Transitional Provisions) Order 2011 (SSI 2011/88)*.

5. **Decision on taking business in private**: The Committee will decide whether to take item 10 in private.

6. **Draft instruments subject to approval**: The Committee will consider the following—
the Public Services Reform (General Teaching Council for Scotland) Order 2011 (SSI 2011/draft);
the Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 (SSI 2011/draft).

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

- the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011 (SSI 2011/57);
- the Road Works (Inspection Fees) (Scotland) Amendment Regulations 2011 (SSI 2011/91);
- the Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 (SSI 2011/102);
- the Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2011 (SSI 2011/71);
- the Reporting of Prices of Milk Products (Scotland) Amendment Regulations 2011 (SSI 2011/81);
- the Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Amendment Regulations 2011 (SSI 2011/82);
- the Dairy Produce Quotas (Scotland) Amendment Regulations 2011 (SSI 2011/83);
- the Drinking Milk (Scotland) Regulations 2011 (SSI 2011/84);
- the Rural Development Contracts (Land Managers Options) (Scotland) Amendment Regulations 2011 (SSI 2011/85);
- Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2011 (SSI 2011/86);
- the Official Feed and Food Controls (Scotland) Amendment Regulations 2011 (SSI 2011/93);
- the Healthy Start Scheme (Prescribed Description of Food) (Scotland) Regulations 2011 (SSI 2011/101);
- the Rural Development Contracts (Rural Priorities) (Scotland) Amendment Regulations 2011 (SSI 2011/106);
- the Individual Learning Account (Scotland) Regulations 2011 (SSI 2011/107);
- the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Devolved Public Bodies and Stipulated Time Limit) and the Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order 2011 (SSI 2011/113);
- the Electricity Act 1989 (Requirement of Consent for Hydro-electric Generating Stations) (Scotland) Revocation Order 2011 (SSI 2011/115);
- the Environmental Liability (Scotland) Amendment Regulations 2011 (SSI 2011/116);
- the British Waterways Board (Forth and Clyde and Union Canals) (Reclassification) Order 2011 (SSI 2011/118);
- the Building (Scotland) Amendment Regulations 2011 (SSI 2011/120);
- the National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2011 (SSI 2011/123);
- the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2011 (SSI 2011/124);
the Public Services Reform (Scotland) Act 2010 Social Care and Social Work Improvement Scotland (Transfer of Staff) Order 2011 (SSI 2011/125);
the Edinburgh Tram (Line One) Act 2006 (Extension of Time for Land Acquisitions) Order 2011 (SSI 2011/126);
the Edinburgh Tram (Line Two) Act 2006 (Extension of Time for Land Acquisitions) Order 2011 (SSI 2011/127);
the Sale and Hire of Crossbows, Knives and certain other Articles to Children and Young Persons (Scotland) Order 2011 (SSI 2011/129);
the Licensing (Local Licensing Forum) (Scotland) Order 2011 (SSI 2011/130);
the Advice and Assistance and Civil Legal Aid (Special Urgency and Property Recovered or Preserved) (Scotland) Regulations 2011 (SSI 2011/134);
the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2011 (SSI 2011/135);
the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2011 (SSI 2011/138);
the Bankruptcy Fees (Scotland) Amendment Regulations 2011 (SSI 2011/142);
the Children’s Hearings (Scotland) Act 2011 (National Convener Appeal against Dismissal) Regulations 2011 (SSI 2011/143);
the Town and Country Planning (Marine Fish Farming) (Scotland) Amendment Regulations 2011 (SSI 2011/145);
the Disclosure (Persons engaged in the Investigation and Reporting of Crime or Sudden Deaths) (Scotland) Regulations 2011 (SSI 2011/146);
the CRC Energy Efficiency Scheme (Amendment) Order 2011 (SI 2011/234).

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

the Children's Hearings (Scotland) Act 2011 (Commencement No.2) Order 2011 (SSI 2011/111 (C.10));
the Public Services Reform (Scotland) Act 2010 (Commencement No.4) Order 2011 (SSI 2011/122 (C.11));
the Tobacco and Primary Medical Services (Scotland) Act 2010 (Commencement No.1, Consequential and Saving Provisions) Amendment Order 2011 (SSI 2011/131);
the Town and Country Planning (Marine Fish Farms Permitted Development) (Scotland) Order 2011 (SSI 2011/144).

9. Instruments not subject to parliamentary procedure: The Committee will consider the following—

the Crofting Counties Agricultural Grants (Scotland) Variation Scheme 2011 (SSI 2011/72).

10. Domestic Abuse (Scotland) Bill: The Committee will consider the delegated powers provisions in this Bill after Stage 2, and the contents of a draft report.
The papers for this meeting are as follows—

Legal Brief (private) SL/S3/11/6/1
Summary of Recommendations SL/S3/11/6/2

**Agenda Items 1 to 4**

Briefing Paper (private) SL/S3/11/6/3

**Agenda Item 7**

Instrument Responses SL/S3/11/6/4

**Agenda Item 10**

*Domestic Abuse (Scotland) Bill (as amended at Stage 2)*

Briefing Paper (private) SL/S3/11/6/5
SUBORDINATE LEGISLATION COMMITTEE

6th Meeting, 2011 (Session 3)

Tuesday 1 March 2011

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 6 Draft instruments subject to approval

The Public Services Reform (General Teaching Council for Scotland) Order 2011 (SSI 2011/draft)

The Committee may wish to report as follows:

(1) there appears to be a doubt whether the following functions conferred on the General Teaching Council (GTCS) to make rules or schemes, are intra vires, by reason of breaching the prohibition in section 20(1) of the 2010 Act that the order may not confer or transfer functions of legislating on persons other than the Scottish Ministers, the First Minister or the Lord Advocate:

- the functions of making rules in relation to the registration of teachers in article 15;
- the functions of making schemes under articles 26, 31 and paragraphs 2 and 7 of Schedule 2;
- the function of making rules under schedule 4, paragraph 1.

(2) there appears to be a doubt whether the provisions in Schedule 2 which have the effect of transferring to another person the existing function of the Scottish Ministers of appointing 6 members of the GTCS are intra vires, by reason of breaching the prohibition on such transfer contained in section 20(7) and (8) of the 2010 Act.

The Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 (SSI 2011/draft)

The Committee may wish to report as follows:

- that there appears to be a doubt as to whether article 3 which replaces the “two-man unit” test with a “viable unit” test is within vires. The Committee
doubts that the failure of the two-man unit to operate in a way which delivers the desired policy can properly be described as a burden within the meaning of section 17 of the 2010 Act, in the form of an obstacle to efficiency, productivity and profitability;

• the function of the test is to determine between two competing private interests who is to be entitled to occupation of the holding. Clearly the operation of the test will operate to the financial detriment of one party and the financial benefit of the other party. In whatever manner a test which operates in this way is framed the characteristic of detriment to one party will remain. For that reason doubts remain as to what burden as regards efficiency, productivity and profitability will be removed by refinement of the test in the manner proposed by article 3.

Agenda Item 7  Instruments subject to annulment

The Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011 (SSI 2011/57)

The Committee may wish to report (under its general reporting ground) that this Order contains the following 3 drafting errors, which are not likely to affect the operation of this Order.

• The reference to article 4 in article 4(3) should refer to article 5.

• The reference to paragraph (4)(c) in article 15(3)(c) is superfluous, as there is no subparagraph (c).

The reference to “the 2009 Act” in the definition of “an MPA” in regulation 3 should refer to “the Act”, which is the defined term.

The Road Works (Inspection Fees) (Scotland) Amendment Regulations 2011 (SSI 2011/91)

The Committee may wish to report under the general reporting ground that this instrument contains a minor drafting error in not specifying in the operative text which instrument is being amended by regulation 3. The Committee accepts the Scottish Government’s view that this is unlikely to have any practical effect on the operation of the instrument.

The Committee may wish to welcome the Government’s undertaking to remove redundant definitions at the next available opportunity.
The Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 (SSI 2011/102)

The Committee may wish to report this instrument in respect that its meaning could be clearer, so far as the reference which article 2 makes to article 2(b) of the Additional Support for Learning (Sources of Information)(Scotland) Order 2010, is erroneous. It may however wish also to note that this is not considered to be a matter likely to affect the validity or operation of the instrument.

The Committee may also wish to welcome the statement by the Scottish Government that it will take the next available opportunity to correct the error.

The Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2011 (SSI 2011/71)

The Reporting of Prices of Milk Products (Scotland) Amendment Regulations 2011 (SSI 2011/81)

The Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Amendment Regulations 2011 (SSI 2011/82)

The Dairy Produce Quotas (Scotland) Amendment Regulations 2011 (SSI 2011/83)

The Drinking Milk (Scotland) Regulations 2011 (SSI 2011/84)

The Rural Development Contracts (Land Managers Options) (Scotland) Amendment Regulations 2011 (SSI 2011/85)

Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2011 (SSI 2011/86)

The Official Feed and Food Controls (Scotland) Amendment Regulations 2011 (SSI 2011/93)

The Healthy Start Scheme (Prescribed Description of Food) (Scotland) Regulations 2011 (SSI 2011/101)

The Rural Development Contracts (Rural Priorities) (Scotland) Amendment Regulations 2011 (SSI 2011/106)

The Individual Learning Account (Scotland) Regulations 2011 (SSI 2011/107)

The Ethical Standards in Public Life etc (Scotland) Act 2000 (Devolved Public Bodies and Stipulated Time Limit) and the Freedom of Information (Scotland) Act 2001 (Scottish Public Authorities) Amendment Order 2011 (SSI 2011/113)

The Electricity Act 1989 (Requirement of Consent for Hydro-electric Generating Stations) (Scotland) Revocation Order 2011 (SSI 2011/115)
The Environmental Liability (Scotland) Amendment Regulations 2011 (SSI 2011/116)

The British Waterways Board (Forth and Clyde and Union Canals) (Reclassification) Order 2011 (SSI 2011/118)

The Building (Scotland) Amendment Regulations 2011 (SSI 2011/120)

The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2011 (SSI 2011/123)

The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2011 (SSI 2011/124)

The Public Services Reform (Scotland) Act 2010 Social Care and Social Work Improvement Scotland (Transfer of Staff) Order 2011 (SSI 2011/125)


The Sale and Hire of Crossbows, Knives and certain other Articles to Children and Young Persons (Scotland) Order 2011 (SSI 2011/129)

The Licensing (Local Licensing Forum) (Scotland) Order 2011 (SSI 2011/130)

The Advice and Assistance and Civil Legal Aid (Special Urgency and Property Recovered or Preserved) (Scotland) Regulations 2011 (SSI 2011/134)

The Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2011 (SSI 2011/135)

The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2011 (SSI 2011/138)

The Bankruptcy Fees (Scotland) Amendment Regulations 2011 (SSI 2011/142)

The Children’s Hearings (Scotland) Act 2011 (National Convener Appeal against Dismissal) Regulations 2011 (SSI 2011/143)

The Town and Country Planning (Marine Fish Farming) (Scotland) Amendment Regulations 2011 (SSI 2011/145)

The Disclosure (Persons engaged in the Investigation and Reporting of Crime or Sudden Deaths) (Scotland) Regulations 2011 (SSI 2011/146)

The CRC Energy Efficiency Scheme (Amendment) Order 2011 (SSI 2011/234)
The Committee may wish to be content with these instruments.

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**Agenda Item 8**  
Instruments not laid before the Parliament

- The Children's Hearings (Scotland) Act 2011 (Commencement No. 2) Order 2011 (SSI 2011/111) (C.10)
- The Public Services Reform (Scotland) Act 2010 (Commencement No. 4) Order 2011 (SSI 2011/122)
- The Tobacco and Primary Medical Services (Scotland) Act 2010 (Commencement No. 1, Consequential and Savings Provisions) Amendment Order 2011 (SSI 2011/131)
- The Town and Country Planning (Marine Fish Farms Permitted Development) (Scotland) Order 2011 (SSI 2011/144)

The Committee may wish to be content with these instruments.

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**Agenda Item 9**  
Instruments not subject to Parliamentary procedure

- The Crofting Counties Agricultural Grants (Scotland) Variation Scheme 2011 (SSI 2011/72)

The Committee may wish to be content with this instrument.
INSTRUMENTS SUBJECT TO ANNULMENT

The Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011 (SSI 2011/57)

On 11 February 2011 the Scottish Government was asked:

1. What is the effect of the erroneous reference to article 4 in article 4(3), and is this intended to refer to article 5?

2. What is the effect of the erroneous reference to paragraph (4)(c) in article 15(3)(c)? Was a paragraph (c) intended to be added, or is it a superfluous reference?

3. What is the effect of the erroneous reference to “the 2009 Act” in the definition of “an MPA” in regulation 3, as the defined term for the 2009 Act is “the Act”?

The Scottish Government responds as follows:

The Scottish Government is grateful to the Committee for spotting these errors in the instrument. In article 4(3), “article 4” should have read “article 5”. In article 15(3)(c), “(a), (b) or (c)” should have read “(a) or (b)”. In the definition of “an MPA” in article 3, “the 2009 Act” should have read “the Act”.

The Scottish Government considers that the errors fall within the category of those capable of being put right by correction slip. It will arrange for this to be done.

The Road Works (Inspection Fees) (Scotland) Amendment Regulations 2011 (SSI 2011/91)

On 18 February 2011 the Scottish Government was asked:

1. What is the effect of not specifying the instrument to be amended by regulation 3?

2. Why did the Scottish Government omit to remove the definitions of service pipe and service line rendered obsolete by the amendment made by regulation 3 from regulation 2 of the principal regulations?
The Scottish Government responds as follows:

Both regulations 2 and 3 are drafted under the sub-heading of "Amendment of the Road Works (Inspection Fees) (Scotland) Regulations 2003". In the circumstances, the Scottish Government does not believe that any confusion will result from the instrument to be amended not being specified in regulation 3.

The Scottish Government accepts that that the definitions of "service pipe" and "service line" should have been removed. The Scottish Government thanks the Subordinate Legislation Committee for pointing this out and will ensure that the definitions are removed at the next available opportunity when the principal Regulations are amended.

The Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 (SSI 2011/102)

On 18 February 2011 the Scottish Government was asked:

In relation to this instrument, the Scottish Government is asked what is considered to be the effect of the erroneous reference, in article 2, to article 2(b) of the Additional Support for Learning (Sources of Information) (Scotland) Order 2010, when introducing the amendment? This provides that within article 2(b), specifically, (and not, instead, article 2) of the 2010 Order certain text is to be omitted and replaced with another provision.

The Scottish Government responds as follows:

The Scottish Government agrees that the reference to article 2(b) of the Additional Support for Learning (Sources of Information) (Scotland) Order 2010 in article 2 of the Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 is an error. We are grateful to the SLC for bringing this to our attention. The reference should only have been to article 2 of the 2010 Order.

The Scottish Government is of the view that in considering the effect of the error, a purposive construction of the Order should be applied. The main purpose of the 2011 Order is to specify the Scottish Child Law Centre in addition to the two bodies which were specified in the 2010 Order. However the 2011 Order also adds references to the Scottish charity registration numbers of each of the three bodies, including the two bodies already specified in the 2010 Order, for the purpose of better identification and to update the name by which Children in Scotland trades.

It is suggested that the purposes described are achieved because the three bodies, as more fully described, will still appear in the 2010 Order, as amended. A purposive reading of the 2011 Order would mean that the erroneous reference to article 2(b) should be read as “article 2”, since this provision clearly describes the amendment made as commencing at “(a)” and there is no “(a)” in article 2(b) of the 2010 Order. For the 2011 Order to make sense the reference to “(a)” must mean that article 2(a) in the 2010 Order is being replaced too, because otherwise there would be two slightly different references to Children in Scotland. Even if that purposive construction were not to be favoured, it is submitted that at worst there would be a duplication of the reference to Children in Scotland would not cause any mischief in the meaning of the 2010 Order as amended. It is clear what 3 bodies are specified for the purposes of section 26(2)(i)
of the 2004 Act. The Scottish Government will take the next available opportunity to correct the error.

**Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2011 (SSI 2011/86)**

On 23 February the Lord President’s Private Office was asked:

The Lord President’s Private Office is asked to explain the intended effect of the changes made by the insertion of new subparagraph (aa) in paragraph 16 of Part II of Chapter II of the Table and paragraph 19 of part IIA of Chapter II respectively. In particular, are the new fees to be chargeable in addition to the fee calculated under (a) in each case in respect of any additional day after the first day of preparation?

The Lord President’s Private Office responds as follows:

The Act of Sederunt amends the table of judicial fees that may be claimed on a party/party basis as set out in Schedule 1 to the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993 (SI 1993/3080) (referred to in this letter as the “Table of Fees”).

Paragraph 2(2)(a) of the Act of Sederunt inserts a new subparagraph (aa) in paragraph 16 of Part II of Chapter II (preparation for proof) of the Table of Fees. Until now, a fee was only recoverable under subparagraph (a) in respect of preparation in the lead up to a proof. However, the effect of this change is that where a sheriff court proof runs for more than one day, an additional fee is recoverable under subparagraph (aa) for preparing for the following day. Paragraph 2(3)(b)(i) makes a similar amendment to paragraph 19 of Part IIA of Chapter II of the Table of Fees in respect of defended personal injuries actions. The provision of such fees is consistent with the equivalent table of fees in the Court of Session, although the rates are slightly different to reflect differences in sheriff court practice.

The Lord President’s Private Office considers that the terms of the insertions are appropriate and no amendments are required.