The Committee will meet at 1.45pm in the Hub, Castlehill, Edinburgh.

1. **Item in private:** The Committee will consider whether to discuss its legal aid inquiry in private at its next meeting.

2. **Subordinate Legislation:** The Committee will consider the following negative instruments—

   - The Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2002

   - The Scottish Legal Services Ombudsman (Compensation) (Prescribed Amount) Order 2002.

3. **Freedom of Information (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 4).

4. **Appointment of an adviser:** The Committee will consider a proposal for the appointment of an adviser for its inquiry into alternatives to custody.
5. **Appointment of an adviser:** The Committee will consider a proposal for the appointment of an adviser on the forthcoming Criminal Justice Bill.

Alison Taylor
Acting Clerk to the Committee, Tel 85195

**The following papers are attached for this meeting:**

Agenda item 2:
Note by the Clerk *(SSI attached)*
Note by the Clerk *(SSI attached)*

Agenda item 4:
Note by the Clerk

Agenda item 5:
Note by the Clerk

**Papers not circulated:**

**Item 3:**
Committee members may wish to consult the Bill and accompanying documents (available from Document Supply or on the Scottish Parliament website at: [www.scottish.parliament.uk/parl_bus/legis.html#36](http://www.scottish.parliament.uk/parl_bus/legis.html#36)). Copies of the marshalled list will be available from Document Supply, and groupings will be available from the Committee Clerks in Room 3.11, Committee Chambers (both available on Monday 4 March).

Copies of draft regulations and draft guidance for local authorities for the Marriage (Scotland) Bill are available from the Clerks in Committee Chambers, Room 3.11.

**Papers for information circulated for the 8th meeting, 2002**

Note by the Clerk (private paper)
Correspondence from the Minister for Justice regarding the Prison Estates Review
Correspondence from the Minister for Justice regarding the Criminal Procedure (Amendment) (Scotland) Bill
Correspondence from the Scottish Executive Justice Department regarding the Ministerial Report On Women’s Offending “A Better Way”
Minutes of 6th meeting, 2002
Background

These regulations relate to Part 5 of the Police Act 1997 ("the 1997 Act"), and deal with the registration process for applications for criminal record certificates and enhanced criminal record certificates. Such certificates are issued by the Scottish Ministers to mainly assist in considering a person’s suitability for appointment to particular positions, and must be countersigned by a person registered under section 120 of Part 5 of the 1997 Act.

The regulations specifically provide for:

(a) the information to be included in the register maintained by the Scottish Ministers under section 120 of the 1997 Act;
(b) the removal, subject to prescribed safeguards, of persons from that register; and
(c) the payment of a fee of £150 for inclusion in that register and £10 for each additional signature recorded in the register for the purposes of counter-signing applications for criminal record and enhanced criminal record certificates.

The Scottish Executive invited over 600 organisations to comment on an earlier draft of these regulations. Some of those who replied stated that the fees might prove to be a burden for them although Committee members should be aware that one registered body could act for several organisations under these regulations. Other organisations also commented that the grounds for deregistration should be widened and the Scottish Ministers have indicated that they intend to amend the 1997 Act in the forthcoming Criminal Justice Bill to provide for this.

The Subordinate Legislation Committee considered this instrument at its meeting on 5 February 2002 and determined that the attention of the Parliament should be drawn to it (Subordinate Legislation Committee, 9th Report, 2002).

It appeared to the Subordinate Legislation Committee that regulation 4(6)(a) seems to exclude the mentally or physically handicapped as a class from benefits of the appeal provisions relating to removal from the register in paragraphs (2) and (5). The Subordinate Legislation Committee was concerned as to this unusually wide use of the powers in the enabling Act and to possible issues of compatibility with the ECHR (Article 6 and Article 8) which it potentially raises. The Subordinate Legislation Committee therefore sought further explanation of regulation 4(6)(a) from the Scottish Executive in so far as it related to the physically and mentally handicapped.

The reply from the Scottish Executive explained that the purpose behind paragraph 4(6)(a) is to avoid persons being invited to make representations where the Scottish Ministers are privy to information that it is clearly inappropriate to extend such invitation, and that considerable distress might be caused to families by such an
inappropriate invitation. The Scottish Executive also explained that a person may not be refused registration or removed from the register simply by reason of physical impairment or mental disorder. The Scottish Ministers may only remove a person with physical impairment or mental disorder from the register without giving the opportunity to make representations where they are satisfied that the person is "incapable" of countersigning applications. This is a higher standard than "unlikely" to countersign in regulation 4(1). The Executive is satisfied for the reasons given in its response that no issues of compatibility with ECHR arise in connection with regulation 4(6).

The Subordinate Legislation Committee considers that the Executive’s response deals adequately with its concerns.

Procedure

Under Rule 10.4, this instrument is subject to negative procedure which means that it comes into force and remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

The instrument was laid on 28 January 2002 and is subject to annulment under the Parliament’s standing orders until 13 March 2002.

In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee.
JUSTICE 1 COMMITTEE

The Scottish Legal Services Ombudsman (Compensation) (Prescribed Amount) Order 2002

Note by the Clerk

Background

Where the Scottish Legal Services Ombudsman has completed an investigation under the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997, a report shall be written. This report may recommend that the professional organisation concerned pay compensation, either of a “stated amount” or a “prescribed amount”, to the person making the complaint for loss suffered by him, or inconvenience or distress caused to him as a result of the way in which the conduct complaint was handled by that organisation. The “stated amount” is such an amount as may be specified by the Ombudsman providing it does not exceed the “prescribed amount”. This will be £1000 or a greater amount, which may be varied by Scottish Ministers. The Scottish Legal Services Ombudsman (Compensation) (Prescribed Amount) Order 2002 seeks to increase the maximum level of compensation from £1,000 to £1,200.

The Subordinate Legislation Committee considered this instrument at its meeting on 12 February and in its 10th Report 2002 and determined that the attention of the lead committee and the Parliament be drawn to this instrument on the ground of failure to comply with proper legislative practice by reason of an inadequate Explanatory Note.

Procedure

Under Rule 10.4, this instrument is subject to negative procedure which means that it comes into force and remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

The instrument was laid on 31 January 2002 and is subject to annulment under the Parliament’s standing orders until 16 March 2002.

In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee.
Justice 1 Committee

Specification for Adviser on Inquiry into Alternatives to Custody

Note by the Clerk

Introduction

At its meeting on 5 February 2002, the Committee agreed to conduct an inquiry into alternatives to custody. The Committee is invited to agree to appoint an adviser on the inquiry, subject to the agreement of the Parliamentary Bureau. The Committee is also invited to consider the terms of reference for the adviser set out in the paper.

Role

To assist the Justice 1 Committee in carrying out an inquiry into alternatives to custody.

Adviser duties

The adviser will:

- Brief the Committee on alternatives to custody in Scotland, and on specific aspects as required by the Committee (including comparative material from other countries);
- Assist in formulating the detailed terms of reference;
- Set out a framework for gathering evidence;
- Assist in the identification of relevant witnesses;
- Prepare lines of questioning for witnesses;
- Sift the evidence gathered;
- Analyse the results of the sift;
- Assist in the drafting of the Committee's report (including any interim reports);
- Provide specialist expertise to answer any ad hoc enquiries from the Convener and other Committee members during the course of the inquiry;
- Meet regularly with Clerking and Research Services staff, in Edinburgh, to agree the detailed approach and discuss progress;
- Attend Committee meetings as required.

Reporting

The adviser will report to the Committee through the Clerk.

Timescale

It is anticipated that the contract will be for 12 months from March 2002 to March 2003 or until the completion of the final report.
Specification

**Experience:** The adviser will have an understanding of sentencing and alternatives to custody. The adviser will also be expected to have a wider understanding of the operation of the criminal justice system as a whole.

**Skills/Abilities:** The adviser must have proven analytical and interpretative skills and the ability to analyse evidence from a wide range of sources. The adviser must have good communication skills, the ability to present information in an accessible style and to work to short deadlines.

**Neutrality:** The adviser must be able to advise the Committee dispassionately on the basis of available evidence without seeking to persuade it of any particular outcome or approach that he or she may favour, and should not be involved in any capacity that would compromise his or her ability so to act.

**Availability:** The adviser must be able to demonstrate that he or she has sufficient time to undertake the work over the life of the inquiry. It is anticipated that a maximum of fifteen days will be required over the period of the inquiry.

**Confidentiality:** The adviser’s duties may involve handling confidential and sensitive material. The adviser will be required to maintain absolute confidentiality about the matters under consideration or which come before him or her. The successful candidate will be required to declare any interests, relevant to the subject matter of the inquiry, pecuniary or otherwise, in advance of the award of any contract.
JUSTICE 1 COMMITTEE

Appointment of adviser on the Criminal Justice Bill

Note by the Clerk

1. The Executive’s Criminal Justice Bill is likely to be introduced before the Easter recess and will be allocated to one of the Justice Committees as lead committee. The proposed content of the Bill is outlined in two Scottish Executive White Papers “Making Scotland Safer: Improving the Criminal Justice System” (published on 13 December 2001) and “Serious Violent and Sexual Offenders – Criminal Justice” (published on 11 June 2001).

2. The Bill will be a long and wide-ranging one and it is suggested that the lead committee might find it helpful to have an expert adviser to assist in drawing up the Stage 1 report. The role of the adviser could include:

- briefing the Committee on the background to, and technical/procedural aspects of, the Bill;
- drawing up a list of people from whom to invite written evidence;
- summarising the issues arising from written evidence;
- advising the Committee on witnesses for oral evidence and suggesting lines of questioning;
- drawing out key issues for the Stage 1 report;

The adviser’s assistance would probably not be required in relation to Stage 2 although it would be possibly to hold a couple of days of their time in reserve in case of any new or complex issues arising at this stage.

3. The Bureau has not yet recommended to the Parliament which Justice Committee should lead on the Criminal Justice Bill. It is necessary to appoint an adviser ahead of this decision but clearly, if the Bill were to go to the Justice 2 Committee, the adviser could simply work to that Committee instead. Once the Bureau has given its permission for the appointment, we will provide a short list of names for the Committee to consider.

4. The Committee is asked to agree to the appointment of an adviser to assist in consideration of Stage 1 of the Criminal Justice Bill.
Dear Christine,

Thank you for your letter of 7 February.

I understand that the Committee rightly take a keen interest in the issue of the Estates Review. As you will appreciate, we wish to consider the implications for the criminal justice system before moving to consultation on this issue. I hope that the Justice 1 Committee would fully support the need for this wider picture to be explored.

This work is ongoing and so I am unable to give a definite date for the issue of the consultation but certainly hope the it would commence within the next 2 months. I can confirm that the consultation period will be the normal 12 weeks. I hope this is helpful in arranging the Committee’s schedule.

Yours sincerely,

Jim

JIM WALLACE
CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) BILL

You are no doubt aware of the Appeal Court judgement in the case of Reynolds v Procurator Fiscal Linlithgow and the potentially serious situation that this has created. I am writing to let you know how the Executive proposes to deal with this matter.

The above Bill, which we are planning to bring forward as an emergency measure on Wednesday 27 February, seeks to remedy the problem created by the Reynolds judgement. As you will know, intermediate diets are hearings set by courts for the purpose of ascertaining, so far as is reasonably practicable, whether the case is likely to proceed to trial on a date assigned as a trial diet, and in particular the state of preparation of the accused and the prosecutor, and whether the accused intends to adhere to a not guilty plea.

If the accused does not appear as required for an intermediate diet, the court may grant the issue of a warrant for his or her arrest. In the case of Reynolds v Procurator Fiscal Linlithgow, the Appeal Court held that where such a warrant was issued, it did not, by implication, discharge the trial diet. If this was not done explicitly and the case was not called on the day appointed for the trial diet the instance would fail. It would not then be competent for the court to hear further proceedings in relation to the complaint in question.

The Appeal Court judgement was contrary to widespread practice in the summary courts, where it had been assumed that the issue of an arrest warrant in the described circumstances had the effect of
automatically discharging the trial diet, and there was therefore no requirement to record this fact in the court minute. The effect of the ruling, if the situation is not remedied as a matter of urgency, is that a potentially large number of similar cases will be lost. It is believed that there are currently some 5000 live cases that may be affected and of course there are considerably more concluded cases that may be affected.

The Criminal Procedure (Amendment) (Scotland) Bill aims to restore the position in law to that which both the courts and the accused had previously understood the position to be. The Bill will make it clear, therefore, that the issue of a warrant following the failure of an accused to appear at an intermediate diet will automatically discharge the trial diet, unless otherwise ordered by the court. The Bill is retrospective in effect. It may be worth noting that there was previously emergency legislation at Westminster in 1998 to cure a similar defect identified in the procedure associated with intermediate diets (Criminal Procedure (Intermediate Diets) (Scotland) Act 1998) and that this emergency legislation was also retrospective.

I hope that this letter will be of help to you in your consideration of the Bill.

JIM WALLACE
Criminal Procedure (Amendment) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to provide, retrospectively, as to the effect on trial diets in summary proceedings of arrest warrants granted at intermediate diets.

1 Effect of grant of arrest warrant at intermediate diet

(1) In section 150 of the 1995 Act (which, among other things, gives the court power to order the arrest of an accused who fails to appear at certain diets in summary proceedings), after subsection (3) there are inserted the following subsections—

“(3A) The grant, under subsection (3) above, of an intermediate diet of a warrant to apprehend the accused has the effect of discharging the trial diet as respects that accused.

(3B) Subsection (3A) above is subject to any order to different effect made by the court when granting the warrant.”.

(2) The amendment made by subsection (1) above shall be regarded as always having had effect.

(3) Section 338(1) of the 1975 Act (which was re-enacted by section 50 of the 1995 Act) shall be read as having had effect since the coming into force of section 15 of the 1980 Act with the insertion after paragraph (c) of the following paragraphs—

“(ca) the grant, under paragraph (c) above, of an intermediate diet of a warrant to apprehend the accused has the effect of discharging the trial diet as respects that accused;

(cb) paragraph (ca) of this subsection is subject to any order to different effect made by the court when granting the warrant.”.

(4) This section does not operate so as to make incompetent the proceedings at any trial diet which has—

(a) been completed; or

(b) been called, but not completed,

before this section comes into force.

(5) In this section—

the “1995 Act” is the Criminal Procedure (Scotland) Act 1995 (c.46);

SP Bill <X>
the "1975 Act" is the Criminal Procedure (Scotland) Act 1975 (c.21);
the "1980 Act" is the Criminal Justice (Scotland) Act 1980 (c.62).

2 Short title and commencement

(1) This Act may be cited as the Criminal Procedure (Amendment) (Scotland) Act 2002.

(2) Section 1 above comes into force on the day after Royal Assent.
Criminal Procedure (Amendment) (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to provide, retrospectively, as to the effect on trial diets in summary proceedings of arrest warrants granted at intermediate diets.

Introduced by: Mr Jim Wallace
On:
Supported by:
Bill type: Executive Bill

© Copyright The Scottish Parliamentary Corporate Body 2002

EDINBURGH: THE STATIONERY OFFICE
Printed in the United Kingdom by The Stationery Office Limited

Applications for reproduction should be made in writing to the Copyright Unit, Her Majesty’s Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ. Fax 01603 723000.

Produced and published in Scotland on behalf of the Scottish Parliament by The Stationery Office Ltd.

Her Majesty’s Stationery Office is independent of and separate from the company now trading as The Stationery Office Ltd, which is responsible for printing and publishing Scottish Parliament publications.

SP Bill <X> Session <X> (2002)
Dear Convener,

I am writing to advise you that an inspired Parliamentary Question has been arranged for Thursday 28 February to announce the launch of the Ministerial Report On Women’s Offending “A Better Way”.

The Ministerial Group On Women’s Offending was established in December 2000 under the Chairmanship of the then Deputy Minister of Justice, Iain Gray. The Ministerial Group’s remit was to provide a sharp focus in taking forward the work of the Inter-Agency Forum On Women’s Offending (IAF). The IAF’s report had made a number of recommendations which they considered would help reduce the numbers of women being sent to custody.

The Ministerial Report looks at the pressure points in the criminal justice system in respect of women offenders i.e. remands, imprisonment for fine default and short sentences and reports on proposed actions to address each of these problems.

I am sending a copy of this letter to the Committee Clerks.

Elizabeth Carmichael

ELIZABETH CARMICHAEL