The Committee will meet at 10.30am in the Chamber, Assembly Hall, The Mound, Edinburgh.

1. **Subordinate legislation**: The Committee will consider the following negative instruments—
   - the Police (Scotland) Amendment (No.2) Regulations 2003 (SSI 2003/220)
   - the Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2003 (SSI 2003/246)
   - the Criminal Legal Aid (Youth Courts) (Scotland) Regulations 2003 (SSI 2003/249).

2. **Budget process 2004-05**: The Committee will consider its approach to the budget process 2004-05.

3. **Work programme**: The Committee will consider its work programme.
The following papers are enclosed for this meeting:

Item 1 – Subordinate legislation

Note by the Clerk (SSI 2003/220 attached) J1/S2/03/2/1
Note by the Clerk (SSI 2003/246 attached) J1/S2/03/2/2
Note by the Clerk (SSI 2003/249 attached) J1/S2/03/2/3

Item 2 – Budget process 2004-05

Note by the Clerk J1/S2/03/2/4
SPICe briefing

Item 3 – Work programme

Note by the Clerk J1/S2/03/2/5
Background

1. The purpose of these regulations is to amend the Police (Scotland) Regulations 1976 which will facilitate changes to police pay and conditions which were agreed by the Police Negotiating Board (PNB) in May 2002. Scottish Ministers are required under section 62 of the Police Act 1996 to consult with the PNB when regulations deal with matters such as hours of duty, leave, pay and allowances, pensions or the issue, use and return of police clothing, personal equipment and accoutrements. The regulations make various changes to hours of duty, allowances and expenses which are listed in full detail in the Executive’s explanatory note (attached).

Consolidation

2. The Committee may also wish to note that these regulations will be the 13th amendment to the principal regulations, the Police (Scotland) Regulations 1976 (the ‘1976 regulations’). The Subordinate Legislation Committee has recommended repeatedly in the first parliamentary Session that instruments should be consolidated after five amendments. The Executive recognises the need to consolidate the 1976 regulations and is committed to do this within this Parliamentary Session (see attached Executive note).

Subordinate Legislation Committee

3. The Subordinate Legislation Committee considered this instrument at its meeting of 17 June 2003 and determined that the attention of Parliament need not be drawn to it.

Procedure

4. The instrument was laid on 29 March 2003 and was subject to annulment under the Parliament’s standing orders until 11 June 2003. The instrument was not examined within the usual timescale by Parliament due to the dissolution period. This means that the customary scrutiny procedure of this negative instrument cannot take place as the time to deal with the instrument has passed. However, the Committee can still consider the instrument and highlight any issues to the Executive retrospectively.

5. The main procedural issue to consider regarding this instrument is that it has not complied with Article 10(2) of the Scotland Act 1998 (Transitory and Transitional
Provisions) (Statutory Instruments) Order 1999 (SI 1999/1096) (the ‘1999 Order’). The 1999 Order states that negative instruments should be laid before the Parliament not less that 21 days before the instrument is due to come into force (the ‘21 day rule’). The main purpose of the rule is to help to ensure that there is at least some time for Parliamentary scrutiny before the provisions in an instrument are brought into force. When the rule is breached in this manner, the Executive must, under the 1999 Order, provide an explanation by letter to the Presiding Officer. A letter has been provided in this instance and is attached.

6. The Executive gives various reasons for this delay in the Executive Note (attached) which centre around timing and the retrospective aspect of the changes. The Executive states that although it was initially intended to run in parallel with the Home Office regulations, the Home Office timetable prevented this and the subsequent decision was made to make all the legislative changes retrospectively. However the Police (Scotland) Act 1967 (which allows Ministers to make such changes) states that reductions in pay and allowances (such as those proposed in these regulations) cannot be made retrospectively. After receiving advice from the PNB that implementation of these changes could not be delayed, the Minister for Justice decided to bring regulations into force on 1 April 2003. This was done in the belief that the breach of Parliamentary procedure was preferable to allowing the legislation to be out of step with the agreement with the PNB and the payments being made to police officers.

**Options**

7. This instrument has become operational prior to the Committee’s consideration of it. The Committee may wish to:

- take no action, or
- make comment to the Minister for Justice on the timescale for laying the instrument which resulted in a lack of opportunity for the Parliament to scrutinise this instrument in the usual manner.
JUSTICE 1 COMMITTEE

2nd Meeting 2003 (Session 2)

Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2003 (SSI 2003/246)

Note by the Clerk

Background

1. The instrument has been made in accordance with the powers conferred on Scottish Ministers by section 40 of the Sheriff Courts (Scotland) Act 1907 (c.51). The instrument is attached. There is no Executive Note with this instrument.

2. This Act of Sederunt increases the fees payable to shorthand writers for work done in the Sheriff Court by about 2.6%. These are annual increases, and the previous Justice 2 Committee had no comment to make in the previous Parliamentary Session when it considered the 2002 instrument at its meeting on Wednesday 4 September 2002. The previous increase in fees payable to shorthand writers was 3.25%. The Order came into force on 1 June 2003, from when the new fees will be applicable.

Subordinate Legislation Committee

3. The Subordinate Legislation Committee considered this instrument at its meeting of 17 June 2003 and determined that the attention of Parliament need not be drawn to it.

Procedure

4. The instrument was laid on 12 May 2003 and was subject to annulment under the Parliament’s standing orders until 20 June 2003. The instrument was not examined within the usual timescale by Parliament due to the dissolution period. This means that the customary scrutiny procedure of this negative instrument cannot take place as the time to deal with the instrument has passed. However, the Committee can still consider the instrument and highlight any issues to the Executive retrospectively.

Options

5. This instrument has become operational prior to the Committee’s consideration of it. The Committee may wish to:
   - take no action, or
• make comment to the Minister for Justice on the timescale for laying the instrument which resulted in a lack of opportunity for the Parliament to scrutinise this instrument in the usual manner.
background

1. the first pilot youth court was recently instigated at hamilton sheriff court in june 2003 and will run for a trial period of 2 years. it introduced a fast track process to deal with persistent young offenders who will make their first appearance before court no more than ten days from the date of charge. there are four designated sheriffs sitting on a rotational basis who have access to community disposals which are specifically designed for persistent young offenders. the executive note states that the cost of the proposals of these regulations will be about £100,000 per annum which will be taken from the funding for the pilot project.

2. the purposes of the criminal legal aid (youth courts) (scotland) regulations 2003 are to:
   • allow the solicitor of choice to represent an accused in custody court;
   • prescribe that the solicitor of choice and the duty solicitor will be paid normal criminal legal aid rates for appearances and work, and
   • prescribe that a fee of £50 per appearance under fixed payments will apply to appearance associated with a community supervision order.

3. this instrument seeks to amend the criminal legal aid (scotland) (fees) regulations 1989 (the ‘1989 regulations’) by removing the capped maximum fee that can be earned by a duty solicitor when representing an accused person in a designated youth court following a guilty plea in respect of additional interviews or appearances in court. it is understood that the cap has been removed to allow the duty solicitor to continue to represent the accused throughout the process.

4. the instrument also seeks to amend regulation 5 of the criminal legal aid (scotland) regulations 1996 which relates to the provision of duty solicitors for the sheriff court district and district court district. regulation 5 states that the scottish legal aid board shall make arrangements for duty solicitors to be available for set purposes. this instrument amends regulation 5 so that section

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1 Statutory Instruments laid before the House of Commons have amended the 1989 regulations seven times. The Subordinate Legislation Committee has recommended repeatedly that instruments should be consolidated after five amendments.
Section 31 (1) of the Legal Aid (Scotland) Act 1986 (the ‘1986 Act’) will apply in youth court cases. Section 31 (1) of the 1986 Act allows a person receiving legal aid or advice and assistance to select their solicitor.

5. The instrument also amends the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 by amending paragraph 6 of part I of Schedule 1(b). In doing so it will ensure a fixed payment of £50 for each appearance by a solicitor on behalf of the assisted person in respect of a youth court hearing in consideration of a community supervision order.

6. The Committee may wish to note that the Executive is intending to lay affirmative instruments in the near future to bring into effect the other changes to legal aid regulations made necessary by the establishment of the Youth Court. A Justice Committee will have the opportunity to consider these instruments after the summer recess.

Subordinate Legislation Committee

7. The Subordinate Legislation Committee considered these regulations at its meeting of 17 June 2003 and determined that the attention of Parliament need not be drawn to it.

Procedure

8. The instrument was laid on 12 May 2003 and was subject to annulment under the Parliament’s standing orders until 20 June 2003. The instrument was not examined within the usual timescale by Parliament due to the dissolution period. This means that the customary scrutiny procedure of this negative instrument cannot take place as the time to deal with the instrument has passed. However, the Committee can still consider the instrument and highlight any issues to the Executive retrospectively.

Options

9. This instrument has become operational prior to the Committee’s consideration of it. The Committee may wish to:

- take no action, or

- make comment to the Minister for Justice on the timescale for laying the instrument which resulted in a lack of opportunity for the Parliament to scrutinise this instrument in the usual manner.
Background
1. The budget scrutiny process is designed to enable subject committees to have a say in the development of the Executive’s forward budget in their particular subject area. It is also intended to provide a mechanism for the public and interested groups to contribute to the Budget development process.

Budget Process for 2004-2005
2. The normal scrutiny of the budget involves a 3 stage scrutiny process, with subject committees having a role at the first and second stages. The process is set out in more detail in the attached SPICe Briefing. This year, due to the election, the subject committees’ scrutiny of the budget will take place in one stage. It will involve taking evidence on the Executive’s draft budget for 2004-05 before reporting to the Finance Committee.

3. The draft budget for 2004-05 will be published at the end of August and subject committees are likely to be required to report to the Finance Committee by the beginning of November 2003. The Finance Committee will then draw its conclusions from the reports received from subject committees and report to the Parliament.

Options
4. In scrutinising the budget Committees are invited to—
   • identify the level of resources the Executive is planning to commit to their area;
   • identify the intended policy outcomes; and
   • comment on whether they think the allocation is appropriate and adequate.

5. The remit of the Justice Committees includes scrutiny of the functions of the Lord Advocate as well as matters which fall within the responsibility of the Minister for Justice. Therefore, as part of the process the Committees will be required to scrutinise the budget of the Crown Office and Procurator Fiscal Service as well as the Justice budget.

6. It is for the Committee to decide the level and nature of the consideration of the Budget. In the last session of the Parliament, the two Justice Committees decided, with the agreement of the Bureau, to meet jointly to scrutinise the budget proposals. This decision took account of the fact that each committee gained a different range of information and expertise from its work during the
year. It also allowed the Committees to fully consider the financial aspects of the areas that they were scrutinising or inquiring into in more detail.

7. In the previous session the Justice Committees also benefited from the appointment of an adviser to assist in the process.

Conclusion
8. The Committee is invited to—
   • agree that permission should again be sought from the Bureau to meet jointly to consider the draft budget this year.
   • agree that an adviser should be appointed to assist with the budget scrutiny. A specification for an adviser is attached at Annex A and the Committee is invited to consider and agree to it. If this is agreed, once a shortlist of names has been drawn up, the clerks will arrange a joint meeting of the two Justice Committees to consider it.
   • agree to invite the Minister and the Lord Advocate to give evidence on the Executive and Crown Office spending priorities. The Committee could also consider whether the Minister and the Lord Advocate should be invited to produce papers which set out the changes in budget priorities within the Executive and Crown Office over the past 4 years and their priorities for the next 4 years, in line with the recommendations of last session’s Justice 1 Committee in its legacy paper.
JUSTICE 1 & JUSTICE 2 COMMITTEES

Adviser on the Budget Process 2004-05

Proposed Specification

Adviser Duties

1. The role of the adviser will be to assist the Committees in:

   • assessing the Executive’s proposals;
   • comparing these proposals with last year’s plans;
   • identifying areas for evidence;
   • advising on lines of questioning;
   • preparation of the report to the Finance Committee.

Person specification

2. It would be desirable for them to have primarily economic or financial expertise but with some relevant knowledge of justice and home affairs.
Justice 1 Committee

Short term forward programme

Note by the Clerk

Background

1. Following discussions between the Conveners of the Justice Committees, it has been agreed that the Justice 1 Committee will scrutinise the forthcoming bill to reform High Court procedures and that the Justice 2 Committee will scrutinise the Vulnerable Witnesses (Scotland) Bill.

2. It is anticipated that the High Court reform bill will be introduced to the Parliament in early October, therefore the Committee may wish to consider its short term work programme for the month of September. The Committee should note that it will have an opportunity to discuss in full its long term work programme at its away day in early September.

3. There is a presumption that Committees should meet fortnightly as a general rule (although some legislation or inquiries may require more frequent meetings). This means that there are likely to be three meeting slots prior to the introduction of the High Court reform bill. Some of the time available will be dedicated to the annual budget process. The Committee is invited to consider the following options for its short term work programme.

European matters

4. There was a high level of interest expressed by members of both justice committees in relation to scrutinising European justice issues during the committees’ first meetings and clerks’ individual meetings with members. There will be an opportunity for the Committee to discuss its strategic approach to European matters at the away day. As a starting point, it is suggested that the Executive be invited to provide an oral briefing on its involvement with developing, monitoring and implementing European proposals and legislation which may have an impact on Scots law.

5. The Committee is invited to consider whether the Executive should be asked to provide an oral briefing on European justice issues.

6. As the briefing will be of benefit to both Committees it is suggested that the Justice 1 Committee and the Justice 2 Committee meet jointly for the briefing.

Procedure for meeting jointly

7. Before the Justice 1 Committee and the Justice 2 Committee can meet jointly to consider items of business, both Committees have to agree to
this in principle. The Bureau then has to formally agree to the Committees meeting jointly.

8. **The Committee is invited to consider whether to meet jointly with the Justice 2 Committee for the Executive briefing on European matters.**

**Prisons**

9. During the summer recess the HM Chief Inspector of Prisons for Scotland (HMCIP), Andrew McLellan, will publish his annual report for 2002-03. It is the duty of the HMCIP to inspect prisons in Scotland and to report to Scottish Ministers on them. The publication of this report provides the Committee with an opportunity to take evidence on the conditions in Scottish prisons.

10. **The Committee is invited to consider whether to take evidence from HM Chief Inspector of Prisons for Scotland on his annual report.**

11. Again, as the evidence session will be of benefit to both Committees it is suggested that the Justice 1 Committee and the Justice 2 Committee meet jointly to take evidence from HMCIP.

12. **The Committee is invited to consider whether to meet jointly with the Justice 2 Committee to take evidence on HMCIP’s annual report.**

**Protection from Abuse (Scotland) Act 2001**

13. It is suggested that an effective use of the remaining time available would be to undertake an element of post-legislative scrutiny. Given the amount of time available (i.e. one meeting), the most likely option is the Protection from Abuse (Scotland) Act 2001 (‘the 2001 Act’). Members will remember that this was one of the areas highlighted in the former Justice 1 Committee’s legacy paper that would benefit from further consideration. This Act was the result of the first Bill to be initiated by a Parliamentary Committee, rather than the Executive or a member. The principal effect of the Act is to entitle any individual who has obtained an interdict against another individual for the purpose of protection from abuse to apply to the court to have a power of arrest attached to the interdict.

14. The Executive Central Research Unit has been carrying out research to ascertain the influence and effectiveness of the Act. The results of the research are due to be published during the summer recess (the objectives of the research are attached). The predecessor committee suggested that one area that required further consideration was the scale and type of promotion the Act has received. There was a concern that the public is unaware of the broad range of circumstances in which the provisions of the Act can be used, for example in relation to neighbourhood disputes or playground bullying.
The Committee is asked to consider whether it wishes to carry out post-legislative scrutiny of the Protection from Abuse (Scotland) Act 2001 after the summer recess.

Approach to the post-legislative scrutiny of the 2001 Act
16. If the Committee decides to consider the influence and the effectiveness of the 2001 Act it may wish to consider its approach to post-legislative scrutiny.

17. As such the Committee may wish to consider whether to take oral evidence, and if so, from which organisations. The Committee could potentially take evidence from a maximum of 3 sets of witnesses but could also seek written evidence. A list of suggested witnesses is set out below:

- The Executive Legal Studies Research Branch
- Scottish Women’s Aid
- Family Law Association
- Representative police organisations

Sentencing policy

18. A number of members have expressed an interest in sentencing policy. Members may wish to consider inviting Dr Neil Hutton of the University of Strathclyde Law School to give the Committee an oral briefing on sentencing. Dr Hutton is co-Director of the Centre for Sentencing Research and acted as adviser to the Justice 1 Committee on its inquiry into alternatives to custody.

Visits

19. A number of members have expressed an interest in visiting various organisations associated with the justice remit. It is proposed that the following visits will be organised as a priority:

- prison visit;
- visit to the High Court;
- visit to Glasgow Sheriff Court and meeting with sheriffs.
Aims and Objectives of the Research

Through a detailed analysis and comparison of abuse cases brought before the court, the primary aim of this research is to generate a comprehensive evaluation of the influence and effectiveness of the Act, bringing to light any relevant issues this may raise for the new provisions. The specific objectives are to:

- Assess the overall effectiveness of the Act by documenting levels of reported abuse with particular reference to cases brought to court which are outwith the scope of the Matrimonial Homes (Family Protection) (Scotland) Act.

- In particular, identify and compare the features of the parties involved in abuse cases including the specific characteristics of applicants and alleged abusers particularly in terms of their background, their social and economic circumstances, family arrangements, relationship to each other and gender.

- Explore the extent to which new provisions have affected the number of applications for powers of arrest to be attached to interdicts.

- Ascertain the extent to which new powers of arrest are used by the police and the courts by documenting details where there was an arrest and/or conviction or disposal in a civil court.

- Explore the specific effect of the Act on the actions taken by the courts to prevent abuse by examining the circumstances where ordinary interdicts, matrimonial interdicts under the Matrimonial Homes (Family Protection) (Scotland) Act and Non-Harassment Orders under the Protection from Harassment Act 1997 have been granted by the court and where applications have been refused.

- Identify issues emerging on the effectiveness of the Act including whether parties were legally aided and the cases where the Procurator Fiscal did not proceed and document (where possible) the particular circumstances under which an application did not proceed.