JUSTICE 1 COMMITTEE

AGENDA

4th Meeting, 2003 (Session 2)

Wednesday 3 September 2003

The committee will meet at 10.00am in Committee Room 3.

1. **Item in private:** The committee will consider whether to take item 3 in private.

2. **Subordinate legislation:** The committee will consider the following negative instruments—
   
   - the Criminal Justice (Scotland) Act 2003 (Saving and Transitional Provisions) Order 2003 (SSI 2003/287);
   
   - the Drugs Courts (Scotland) Order 2003 (SSI 2003/290).

3. **Proposed bill to reform the High Court of Justiciary:** The committee will consider whether to appoint an adviser.

Alison Taylor
Clerk to the Committee
Tel: 0131 348 5195
The following papers are attached for this meeting:

**Agenda item 2**

Note by the Clerk (SSI 2003/287 attached) J1/S2/03/4/1
Note by the Clerk (SSI 2003/290 attached) J1/S2/03/4/2

**Agenda item 3**

Note by the Clerk (private paper) J1/S2/03/4/3
Also attached—
Scottish Executive: *Modernising Justice in Scotland: The reform of the High Court of Justiciary*
Scottish Executive Social Research: *Improving Practice – A Summary of Responses to the Consultation on the 2002 Review of the Practices and Procedure of the High Court of Justiciary*

**Documents not circulated**

Copies of the following have been provided to the Clerk:
- Judicial Studies Committee for Scotland: *Annual Report to 31 March 2003*
- Judicial Studies Committee for Scotland: *Business Plan for Three Years Commencing 1 April 2003*
- Scottish Legal Aid Board: *Annual Report 2002-2003: Developing…*
- Scottish Prison Service: *Annual Report & Accounts 2002-03*
- The Judicial Appointments Board for Scotland: *Annual Report 2002-2003*
- Scottish Executive Social Research Unit: *The Fife Drug Court in Action: The First Six Months*
- Scottish Drug Enforcement Agency: *Annual Report 2002-2003*

Copies of these documents are available for consultation in room 3.11 CC. Some may be obtainable on request from the Document Supply Centre. Scottish Executive documents are available on the Executive’s website (http://www.scotland.gov.uk/).
**JUSTICE 1 COMMITTEE**

The Criminal Justice (Scotland) Act (Saving and Transitional Provisions) Order 2003 (SSI 2003/287)

Note by the Clerk

**Background**

1. The purpose of the Criminal Justice (Scotland) Act (Saving and Transitional Provisions) Order 2003 is to preserve the Scottish Ministers’ discretion in respect of recommendations from the Parole Board of Scotland for the release on licence of long-term prisoners sentenced to 10 years or more and of children sentenced to detention under solemn proceedings\(^1\), and licence conditions in respect of these classes that were sent by the Board to the Scottish Ministers prior to the provisions of sections 27, 28 and 38 of the Criminal Justice Scotland Act 2003 (‘the 2003 Act’) coming into force.

**Sections 27, 28, and 38 of the 2003 Act**

2. The Criminal Justice (Scotland) Act 2003 (Commencement No.1) Order 2003 (SSI 2003/288) brought into force sections 27, 28 and 38 of the 2003 Act on 27 June 2003. Sections 27, 28 and 38 make provision for the Scottish Ministers to be bound to accept a recommendation from the Parole Board for the early release on licence of long-term prisoners sentenced to 10 years or more and of children sentenced to detention under solemn proceedings. It further makes provision for the Scottish Ministers to be obliged to accept a recommendation from the Board in relation to the conditions contained in a release licence in respect of these individuals. (The law already obliged the Scottish Ministers to accept such recommendations in the case of long-term prisoners sentenced to less than 10 years and the Board has the power to direct the release of all life sentence prisoners.)

3. The saving\(^2\) provided for in this Order will operate when Scottish Ministers receive a relevant recommendation from the Parole Board prior to the commencement of sections 27, 28 and 38 and will have effect until immediately after Scottish Ministers have taken their decision to release the prisoner or to decide upon the conditions that should be in the prisoner’s licence.

**Section 54 of the 2003 Act**


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\(^1\) Solemn proceedings: Solemn cases proceed on indictment in either the Sheriff Court or the High Court of Justiciary. Solemn cases are heard with a jury of 15 persons.

\(^2\) A savings provision retains the existing law for certain limited purposes.
54 of the 2003 Act on 27 June 2003. Section 54 amends section 284 of the Criminal Procedure (Scotland) Act 1995 (Evidence in relation to Fingerprints) to ensure that an accused will have the right to challenge a certificate relating to physical data which has been served upon him by the prosecution (provided that he or she does so not later than 7 days after service of the certificate).

5. There could be cases where trials are due to commence on or shortly after 27 June, and where a certificate has already been served. In such circumstances an accused would be unable to give sufficient notice to the prosecution of any challenge to it. The transitional provision in this Order stipulates that in relation to prosecutions started prior to 27 June that section 54 would apply provided there was at least 11 clear days before the commencement of the trial and 27 June.

Consideration by other Committees

6. The Subordinate Legislation Committee considered the regulations at its 2nd meeting on 17 June 2003. In its 1st Report of 2003, the Subordinate Legislation Committee said that the attention of the Parliament need not be drawn to the instruments.

Procedure

7. This instrument is subject to negative procedure. Under Rule 10.4 of the Standing Orders this 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.

8. The instrument was laid on 6 June 2003 and is subject to annulment under the Parliament’s standing orders until 18 September 2003.

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

4th Meeting 2003 (Session 2)

The Drugs Court (Scotland) Order 2003 (SSI 2003/290)

Note by the Clerk

Background

1. Drugs courts are currently being piloted in Glasgow and Fife. The objectives of this type of court are to:
   - reduce the level of drug related offending behaviour;
   - reduce or eliminate offenders’ dependence on or propensity to misuse drugs.\(^1\)

2. The report of the working group for piloting a drugs court in Glasgow, published in May 2001 (attached to the SSI), describes the working practices of the drugs court in detail. Pilot drugs courts have now been operating in Glasgow since October 2001 and in Fife since September 2002. The courts aim to offer persistent drugs offenders a constructive and motivating process of breaking a cycle of offending\(^2\).

3. These pilot drugs courts have the same powers as a summary sheriff court\(^3\) and operate under existing legislation.

The Drugs Court (Scotland) Order 2003

4. The purpose of this Order is to require both the sheriff principal of the sheriffdom of Glasgow and Strathkelvin and the sheriff principal of the sheriffdom of Tayside, Central and Fife to nominate a drugs court within each of these sheriffdoms. Once nominated, the courts will have the sentencing powers as set out in section 42(4) of the Criminal Justice (Scotland) Act 2003. Section 42(4) of the Act empowers drugs courts to impose interim sanctions such as short periods of custody or short periods of community service for non-compliance with a probation order or drug treatment and testing order whilst allowing the original order to continue.

5. The need for an interim sanction provision was identified by the Working Group on the Glasgow pilot Drugs Court.\(^4\)

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\(^1\) Report of a Working Group for Piloting a Drug Court in Glasgow, Scottish Executive page 6 attached to SSI. Also available at http://www.scotland.gov.uk/library3/justice/wgdc-02.asp

\(^2\) Executive Note, Scottish Executive, page 1 attached to SSI

\(^3\) In summary procedure in Sheriff and District Courts, the judge sits without a jury and decides questions of both fact and law. The offence charged is set out in a document called a summary complaint.
6. The Executive has commissioned various independent studies by the University of Stirling to evaluate the pilot drugs courts. The report of the first six months of the Glasgow pilot court was published in October 2002\(^5\) and states that the pilot has been largely a success with the specific Drugs Court Sheriffs playing a critical role. A similar evaluation of the Fife court was published on 6 August 2003\(^6\) and was also found to be successful. An outcome evaluation of the entire two year pilot for Glasgow by the University of Stirling will be published during the spring of 2004 and a final report (including the results of a reconviction study) is to be published in 2005.

**Subordinate Legislation Committee**

7. The Subordinate Legislation Committee considered these regulations at its 2nd meeting of Session 2 on 17 June 2003 and determined that the attention of the Parliament need not be drawn to the instrument.

**Procedure**

8. This instrument is subject to negative procedure. Under Rule 10.4 of the Standing Orders this 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.

9. The instrument was laid on 6 June 2003 and is subject to annulment under the Parliament’s standing orders until 18 September 2003.

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

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\(^4\) Report of a Working Group for Piloting a Drug Court in Glasgow, Scottish Executive page 5 attached to SSI. Also available at http://www.scotland.gov.uk/library3/justice/wgdc-02.asp
