The Committee will meet at 1.00pm in Committee Room 2.

1. Declaration of interests: Members will be invited to declare any relevant interests.

2. Choice of Convener: The Committee will choose a Convener.

3. Choice of Deputy Convener: The Committee will choose a Deputy Convener.

4. Legacy papers: The Committee will consider the legacy papers from the previous Justice 1 and Justice 2 Committees.
The following papers are enclosed for this meeting:

Item 1 – Declaration of Interests

Briefing note on the Declaration of Interests J2/S2/03/1/1

Items 2 & 3 – Election of Convener & Deputy Convener

Briefing note on the Election of Convener & Deputy Convener J2/S2/03/1/2

Item 4 – Legacy paper

The legacy papers of the Justice 1 and 2 Committee are contained within the Introductory Briefing Pack (Page 14 – 31) J2/S2/03/1/3
JUSTICE 2 COMMITTEE

1st Meeting 2003 (Session 2)

Tuesday 10 June 2003

Declaration of Interests

Background

1. Article 5 of the Members’ Interests Order provides that before participating in proceedings (otherwise than by attending or voting) a member must make an oral statement or declaration of any registered interests which would prejudice or give the appearance of prejudicing the Member’s ability to participate in a disinterested manner.

2. It is the responsibility of the individual Member to judge whether a registered interest is sufficiently relevant to particular proceedings to require a declaration. The Code of Conduct advises at paragraph 5.2.12 that Members should ‘err on the side of caution’. Members may also seek advice from the Standards Committee Clerks.

3. Members are not required to declare interests which they have registered on a voluntary basis (i.e. those appearing in the “Miscellaneous” category on the Register).

Declaration of Interests at the First Committee Meeting

4. In the previous Parliamentary session, it was established that Members should make an initial declaration of interests at the first meeting of each committee to the extent of that committee’s remit. Paragraph 5.3.3 of the Code of Conduct states that

   It has been established as good practice that Members should declare interests relevant to the remit of that committee at the first meeting of the committee or on the first occasion on which they address the committee, irrespective of the business before the committee at that meeting.

5. At the first meeting of the Justice 2 Committee, the oldest Member who will be in the chair will invite Members to declare any relevant registrable interests. The declaration should be brief but sufficiently informative to enable a listener to understand the nature of the Member's interest. It is not necessary to rehearse all the details of an interest as it appears in the Member's entry in the Register of Interests if this is more than required to explain the nature of the interest.

6. If Members have any questions about what might constitute an interest relevant to the remit of the Justice 2 Committee, they should contact the Clerk to the Committee prior to the meeting. The Standards Committee Clerks are also happy to provide advice.
Declaration of Interests at Subsequent Committee Meetings

7. Members are also required to declare any registered interests which may be relevant to business discussed at subsequent committee meetings. Where a Member has an interest relevant to the proceedings, he or she must make a declaration of interest at each meeting in which he or she participates, other than by simply attending or voting. This is to allow the public attending any committee meeting to be aware of the Member’s interest. The declaration should be made at the start of the relevant agenda item or as soon as the Member is able to make the declaration, but before otherwise participating in those proceedings. A declaration must be made whether a committee meets in public or in private. Where a relevant matter is discussed in both private and public at any single committee meeting, the declaration should, as good practice, be made during the public session even if it has already been made in private session.

8. Members should, as good practice, also declare any business or personal relationships they might have with any advisers or witnesses to the committee.

Further Guidance

9. Further guidance on declaring registrable interests may be found in section 5 of the Code of Conduct. The Standards Committee Clerks are also happy to provide advice to Members.

Committee Office
June 2003
JUSTICE 2 COMMITTEE

1st Meeting 2003 (Session 2)

Tuesday 10 June 2003

Choice of Convener and Deputy Convener

Introduction
1. This paper is designed to inform Members of the procedure for choosing a Convener and Deputy Convener at the first meeting of the Committee.

Oldest Member
2. Standing Orders oblige all committees to choose a Convener at their first meeting. Rule 12.1.6 states that the meeting is to be chaired by the Oldest Committee member until a Convener is chosen. The “Oldest Committee Member” is defined as the oldest member of the committee present at the meeting and who has indicated to the Clerk that he or she agrees to chair the meeting.

Choice of Convener
3. On Wednesday 4 June, the Parliament agreed to motion S2M-107 which resolved that members of the Scottish Conservative and Unionist Party are eligible to be chosen as Convener of the Justice 2 Committee. The Oldest Committee Member will, following the declaration of interests, invite nominations from members of that party for the convenership. There is no requirement for nominations to be submitted in advance of the meeting or to be seconded.

4. If only one nomination is received, Members will be asked to agree to the appointment.

5. In the event that more than one nomination is received, the Oldest Committee Member will call a division, putting the question on each nomination in turn and declaring the nominee with a majority support to be the Convener.

6. On being chosen by the Committee, the Convener will immediately take the chair and will chair the remainder of the meeting.

Choice of Deputy Convener
7. The procedure for choosing a Deputy Convener is the same as that for the Convener and will be conducted by the newly-chosen Convener.

Role of Convener and Deputy Convener
8. The duties and responsibilities of the Convener and Deputy Convener of a Parliamentary Committee are set out in Rule 12 of Standing Orders. Further detail is provided in paragraphs 4.7 to 4.13 of the Guidance for the Operation of Committees (Second Edition) which can be found at http://www.scottish.parliament.uk/business/q-committee/cg-1.htm#8

Committee Office
June 2003
Scottish Parliament
Justice 2 Committee
Introductory Briefing Pack
BRIEFING PACK CONTENTS

Page Number

CORE INFORMATION

Committee Remit and Membership  3
Committee Clerking Team  4

BACKGROUND BRIEFING

Division of Committee Time  5
Authorisations  6
Anticipated Legislation  7
Information on Predecessor Committees’ Activity  9
Committee Legacy Papers
Justice 1 Committee  14
Justice 2 Committee  26

SPICe Briefing  Separate Document

GUIDANCE DOCUMENTS

Guidance on the Operation of Committees  Separate Document
Guidance on Public Bills  Separate Document
Guidance note on Subordinate Legislation  Separate Document
JUSTICE 2 COMMITTEE REMIT AND MEMBERSHIP

Remit

The following remit has been agreed for the Committee by the Parliament:

To consider and report on matters relating to the administration of civil and criminal justice, the reform of the civil and criminal law and such other matters as fall within the responsibility of the Minister for Justice, and the functions of the Lord Advocate other than as Head of the systems of criminal prosecution and investigations of deaths in Scotland.

Membership

<table>
<thead>
<tr>
<th>MSP Name</th>
<th>Party</th>
<th>Constituency/List representative for:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annabel Goldie</td>
<td>Scottish Conservative &amp; Unionist Party</td>
<td>West of Scotland</td>
</tr>
<tr>
<td>Karen Whitefield</td>
<td>Labour Party</td>
<td>Airdrie &amp; Shotts</td>
</tr>
<tr>
<td>Scott Barrie</td>
<td>Labour Party</td>
<td>Dunfermline West</td>
</tr>
<tr>
<td>Jackie Baillie</td>
<td>Labour Party</td>
<td>Dumbarton</td>
</tr>
<tr>
<td>Nicola Sturgeon</td>
<td>Scottish National Party</td>
<td>Glasgow</td>
</tr>
<tr>
<td>Mike Pringle</td>
<td>Scottish Liberal Democrat Party</td>
<td>Edinburgh South</td>
</tr>
<tr>
<td>Colin Fox</td>
<td>Scottish Socialist Party</td>
<td>Lothians</td>
</tr>
</tbody>
</table>
JUSTICE 2 COMMITTEE CLERKING TEAM

Contact No:  Address:

Clerks to the Committee (Job Share)
Gillian Baxendine/Lynn Tullis  0131 348 5054  Rm 3.9 Committee Chambers
Email: gillian.baxendine@scottish.parliament.uk / lynn.tullis@scottish.parliament.uk

Senior Assistant Clerk
Irene Fleming  0131 348 85220  Rm 3.10 Committee Chambers
Email: irene.fleming@scottish.parliament.uk

Assistant Clerk
Richard Hough  0131 348 5047  Rm 3.10 Committee Chambers
Email: richard.hough@scottish.parliament.uk

Committee Assistant
Tony Reilly  0131 348 5228  Rm 3.1 Committee Chambers
Email: tony.reilly@scottish.parliament.uk
DIVISION OF COMMITTEE TIME

Introduction

Over the course of the 1st session of the Parliament the time devoted to different activities varied significantly between committees. The main reason for this was the varying levels of bills, subordinate legislation and petitions with which they had to deal.

The table below shows where relevant an estimate of the division of time spent by the Justice and Home Affairs, Justice 1 and Justice 2 Committees during the 1st Parliamentary session. It is for information.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Percentage of Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inquiries and Reports</td>
<td>35%</td>
</tr>
<tr>
<td>Bills</td>
<td>55%</td>
</tr>
<tr>
<td>Subordinate Legislation</td>
<td>5%</td>
</tr>
<tr>
<td>Petitions</td>
<td>5%</td>
</tr>
</tbody>
</table>
AUTHORISATIONS

There are a range of Committee activities which may require agreement from the three main bodies – the Conveners Group (CG), the Parliamentary Bureau (Bureau) and the Scottish Parliament Corporate Body (SPCB).

The table below summarises these:

<table>
<thead>
<tr>
<th>Activity</th>
<th>CG</th>
<th>Bureau</th>
<th>SPCB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adviser – ‘fast-track’</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Adviser - other</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Case Study in Scotland</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Committee meeting outwith Edinburgh</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Committee member travelling outwith</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Scotland</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Committee member travelling outwith</td>
<td>✓</td>
<td>✓</td>
<td>✓ (for</td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td>information)</td>
</tr>
<tr>
<td>Case Study outwith Scotland</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>External Research</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civic Participation event</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Before a Committee can make a submission to any of the above bodies, the Committee must have formally endorsed the proposal. This, together with the approval cycles of the various bodies means that the process, for instance, getting authorisation for a meeting outwith Edinburgh, can take considerable time.

A number of activities (as outlined above) require approvals from more than one body. This is generally because they are examining different aspects of a proposal e.g. for a meeting to be held outside Edinburgh, authorisation must be sought from the CG, which controls the budget for these activities, and from the Bureau, which examines whether it will interfere with other Parliamentary business.

In relation to external research and civic participation events, there is a quarterly bidding process when all bids for these budgets should be made. This means, in practise, that the Committee needs to bid some months in advance in order to secure the budget prior to committing expenditure. There is a fast track procedure for civic participation events costing under £1000 which enables such bids to go to the next available CG meeting.
Within the Justice Committee remit, it is anticipated that the Scottish Executive will introduce legislation in the following areas. The legislation, once introduced to Parliament, can be referred to either of the Justice Committees as lead committee. Some of these proposals could be referred to either Justice Committee as a secondary committee.

- **Protection for victims and vulnerable witnesses bill**
  Before the summer recess, the Executive intends to introduce a bill to provide new statutory protection for vulnerable witnesses—including automatic special provision for children under the age of 16, abolition of the competence test, and improved support for victims and witnesses.

- **Court reform bill**
  In June the Executive will publish a consultation paper setting out wide-ranging proposals for the reform of the High Court, following the review carried out by Lord Bonomy. The consultation will be followed by the introduction in the autumn of a court reform bill that aims to modernise High Court practice and procedure, speed up processes and cut down on wasted time for victims, witnesses, the police and the courts themselves.

- **Antisocial behaviour bill**
  Before the end of June, the Executive intends to publish its proposals on antisocial behaviour. It is anticipated that the Bill itself will be introduced in the autumn and will include measures such as new antisocial behaviour orders for under-16s; community reparation orders; powers for the courts to make civil orders requiring parents to act in the best interests of their children, with appropriate sanctions if they do not; the introduction of electronic monitoring of children as an alternative to secure accommodation; and the banning of the sale of spray paint to under-16s. Local authorities will be given additional powers to tackle nuisance fireworks and fly tipping, and to deal with noise nuisance and graffiti.

- **Fire service reform bill**
  Last year the Executive published a consultation paper, "The Scottish Fire Service of The Future", which set out proposals for modernising and updating current fire service legislation. The Executive intends to introduce a bill in the first year of this session that will lead to a safer and more efficient service that will increase local decision making, enhance public protection and give fire authorities and fire brigades a statutory responsibility for fire prevention and community fire service work.

- **Sentencing commission**
  The Executive announced in its partnership agreement that it would set up a new sentencing commission for Scotland to review sentencing and make recommendations. Although setting up the commission does not require legislation, the Executive intends to introduce any necessary legislation to implement its recommendations during the lifetime of this parliamentary session.
ANTICIPATED LEGISLATION

Other proposals and initiatives highlighted within the Partnership Agreement include:

- establishing a single agency to deliver both custodial and non-custodial sentences in Scotland and to cut re-offending rates
- establishing an independent police complaints body
- conducting a review of the summary justice system
- revising the law on bankruptcy and civil diligence
- placing the judicial appointments system on a statutory footing

In addition, it is possible that legislation could be introduced in the following areas:

- Establishment of a Scottish Human Rights Commission
- Tenement law
- liquor licensing review
- family law
- civil registered partnerships (proposed Members’ bill –Patrick Harvie)
**INFORMATION ON PREDECESSOR COMMITTEES’ ACTIVITY**

**Introduction**

During the 1st session of the Parliament the Justice Committees undertook the following activity. You may also find further information about their activities in the legacy papers.

**Inquiries and Reports**

<table>
<thead>
<tr>
<th>Justice &amp; Home Affairs Committee</th>
<th>Justice 1 Committee</th>
<th>Justice 2 Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Report on Petition PE14 from the Carbeth Hutters’ Association</td>
<td>• Legal Aid Inquiry</td>
<td>• Crown Office consultation on the appointment and role of advocate deputes</td>
</tr>
<tr>
<td>• Proposal for a Protection from Abuse Bill</td>
<td>• Prison Estates Review Inquiry</td>
<td>• Petition PE336 on civil justice for asbestos victims</td>
</tr>
<tr>
<td></td>
<td>• Regulation of the Legal Profession Inquiry</td>
<td>• Crown Office and Procurator Fiscal Service Inquiry</td>
</tr>
<tr>
<td></td>
<td>• Inquiry into Alternatives to Custody</td>
<td></td>
</tr>
</tbody>
</table>

**Bills**

<table>
<thead>
<tr>
<th>Justice &amp; Home Affairs Committee</th>
<th>Justice 1 Committee</th>
<th>Justice 2 Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Abolition of Feudal Tenure etc</td>
<td>• Convention Rights (Compliance)</td>
<td>• International Criminal Court</td>
</tr>
<tr>
<td>• Adults with Incapacity</td>
<td>• Freedom of Information</td>
<td>• Sexual Offences (Procedure and Evidence)</td>
</tr>
<tr>
<td>• Abolition of Poindings &amp; Warrant Sales</td>
<td>• Title Conditions</td>
<td>• Land Reform</td>
</tr>
<tr>
<td>• Regulation of Investigatory Powers</td>
<td>• Council of the Law Society of Scotland</td>
<td>• Criminal Justice</td>
</tr>
<tr>
<td>• Bail, Judicial Appointments etc.</td>
<td>• Protection from Abuse</td>
<td></td>
</tr>
<tr>
<td>• Leasehold Casualties</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Lead Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Justice &amp; Home Affairs Committee</td>
</tr>
<tr>
<td>• Protection of Wild Mammals</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Secondary Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Justice &amp; Home Affairs Committee</td>
</tr>
<tr>
<td>• Protection of Wild Mammals</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
INFORMATION ON PREDECESSOR COMMITTEES’ ACTIVITY

Subordinate Legislation

<table>
<thead>
<tr>
<th>Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Act of Sederunt (Fees of Sheriff Officers) 2000</td>
</tr>
<tr>
<td>• Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2000</td>
</tr>
<tr>
<td>• Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2003</td>
</tr>
<tr>
<td>• Draft Part-Time Sheriffs (Removal Tribunal) Regulations 2001</td>
</tr>
<tr>
<td>• Draft Justices of the Peace (Tribunal) Regulations 2001</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Legal Aid</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Advice and Assistance (Scotland) Amendment Regulations 2002</td>
</tr>
<tr>
<td>• Advice and Assistance (Scotland) Amendment Regulations 2003</td>
</tr>
<tr>
<td>• Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2002</td>
</tr>
<tr>
<td>• Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2003</td>
</tr>
<tr>
<td>• Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 2002</td>
</tr>
<tr>
<td>• Civil Legal Aid (Scotland) Amendment Regulations 2001</td>
</tr>
<tr>
<td>• Civil Legal Aid (Scotland) Amendment Regulations 2002</td>
</tr>
<tr>
<td>• Civil Legal Aid (Scotland) Regulations 2002</td>
</tr>
<tr>
<td>• Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2001</td>
</tr>
<tr>
<td>• Criminal Legal Aid (Fixed Payments) (Scotland) Amendments (No. 2) Regulations 2002</td>
</tr>
<tr>
<td>• Criminal Legal Aid (Fixed Payments) (Scotland) Amendments Regulations 2002</td>
</tr>
<tr>
<td>• Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 2002</td>
</tr>
<tr>
<td>• Criminal Legal Aid (Fixed Payments) (Scotland) Amendments Regulations 2002</td>
</tr>
<tr>
<td>• Criminal Legal Aid (Fixed Payments) (Scotland) Amendments (No. 2) Regulations 2002</td>
</tr>
<tr>
<td>• Criminal Legal Aid (Fixed Payments) (Scotland) Amendments (No. 3) Regulations 2001</td>
</tr>
<tr>
<td>• Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 2001</td>
</tr>
<tr>
<td>• Draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2001</td>
</tr>
<tr>
<td>• Draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 3) Regulations 2001</td>
</tr>
<tr>
<td>• Draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003</td>
</tr>
<tr>
<td>• Draft Advice and Assistance (Financial Conditions) (Scotland) Regulations 2003</td>
</tr>
<tr>
<td>• Draft Advice and Assistance (Financial Conditions) (Scotland) (No. 2) Regulations 2002</td>
</tr>
<tr>
<td>• Draft Advice and Assistance (Financial Conditions) (Scotland) Regulations 2001</td>
</tr>
<tr>
<td>• Draft Advice and Assistance (Financial Conditions) (Scotland) Regulations 2002</td>
</tr>
<tr>
<td>• Draft Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2002</td>
</tr>
<tr>
<td>• Draft Civil Legal Aid (Financial Conditions) (Scotland) (No. 2) Regulations 2002</td>
</tr>
<tr>
<td>• Draft Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2001</td>
</tr>
<tr>
<td>• Draft Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2003</td>
</tr>
<tr>
<td>• Draft Legal Aid (Scotland) Act 1980 Amendment Regulations 2002</td>
</tr>
<tr>
<td>• Legal Aid (Employment of Solicitors) (Scotland) Regulations 2001</td>
</tr>
<tr>
<td>• Legal Aid (Scotland) Act 1986 (Availability of Solicitors) Regulations 2001</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Health</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Adults with Incapacity (Supervision of Welfare Attorneys by Local Authorities (Scotland) Regulations 2001</td>
</tr>
</tbody>
</table>
INFORMATION ON PREDECESSOR COMMITTEES’ ACTIVITY

- Adults with Incapacity (Certificates from Medical Practitioners) (Accounts and Funds) (Scotland) Regulations 2001
- Adults with Incapacity (Certificates in Relation to Powers of Attorney) (Scotland) Regulations 2001
- Adults with Incapacity (Countersignatories of Applications for Authority to Intromit) (Scotland) Regulations 2001
- Adults with Incapacity (Evidence in Relation to Dispensing with Intimation or Notification) (Scotland) Regulations 2001
- Adults with Incapacity (Non-compliance with Decisions of Welfare Guardians) (Scotland) Regulations 2002
- Adults with Incapacity (Public Guardians’ Fees (Scotland) Amendment Regulations 2002
- Adults with Incapacity (Public Guardians’ Fees) (Scotland) Regulations 2001
- Adults with Incapacity (Recall of Guardians’ Powers) (Scotland) Regulations 2002
- Adults with Incapacity (Reports in Relationship to Guardianship and Intervention Orders) (Scotland) Regulations 2002
- Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Regulations 2002

Police
- Combined Police Area Amalgamation Schemes 1995 (Amendment) (Scotland) Order 2002
- Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2002
- Police Grant (Scotland) Order 2003

Family
- Births, Deaths, Marriages and Divorces (Fees) (Scotland) Amendment Regulations 2000
- Divorce etc. (Pensions) (Scotland) Amendment (No. 2) Regulations 2000

Other
- Combined Fire Services Area Administration Schemes Variation (Scotland) Order 2002
- Diligence Against Earnings (Variation) (Scotland) Regulations 2001
- Draft Criminal Justice Act 1988 (Offensive Weapons) Amendment (Scotland) Order 2002
- Draft Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003
- Draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2003
- European Communities Service of Judicial and Extra Judicial Documents (Scotland) Regulations 2001
- Parole Board (Scotland) Rules 2001
- Pensions Appeal Tribunals (Scotland) (Amendment) Rules 2001
- Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Amendment Regulations 2001
- Restriction of Liberty Order (Scotland) Amendment Regulations 2002
- Scottish Legal Services Ombudsman (Compensation) (Prescribed Amount) Order 2002
- Zoo Licensing Act 1981 Amendment (Scotland) Regulations 2003

Justice 2 Committee
### INFORMATION ON PREDECESSOR COMMITTEES’ ACTIVITY

**Courts**
- Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002
- Act of Sederunt (Fees of Sheriff Officers) 2001
- Act of Sederunt (Fees of Sheriff Officers) 2002
- Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2001
- Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment No. 2) 2002
- Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment No. 3) 2002
- Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment No. 4) 2002
- Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2001
- Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2002
- Act of Sederunt (Fees of Witnesses and Shorthand Writers in the Sheriff Court) (Amendment) 2002
- Court of Session etc Fees Amendment Order 2002
- Sheriff Court Fees Amendment Order 2002
- Sheriff Court Fees Amendment Order 2003
- Number of Inner House Judges (Variation) Order 2001

**Police**
- Combined Police Amalgamation Schemes 1995 Amendment (No. 2) (Scotland) Order 2002
- Discontinuance of Legalised Police Cells (Ayr) Rules 2002
- Discontinuance of Legalised Police Cells (Portree) Rules 2001
- Police Act 1997 (Criminal Records) (Scotland) Regulations 2002
- Police Act 1997 (Enhanced Criminal Record Certificates) (Protection of Vulnerable Adults) (Scotland) Regulations
- Police and Police (Special Constables) (Scotland) Amendment Regulations 2003
- Police Grant (Scotland) Order 2001
- Police Grant (Scotland) Order 2002

**Gaming**
- Gaming Act (Variation of Fees) (No.2) (Scotland) Order 2001
- Gaming Act (Variation of Fees) (Scotland) Amendment Order 2002
- Gaming Act (Variation of Fees) (Scotland) Order

**Family**
- Births, Deaths, Marriages and Divorces (Fees) (Scotland) Amendment Regulations 2002
- Births, Deaths, Marriages and Divorces (Fees) (Scotland) Amendment Regulations 2003
- Registration of Births, Deaths and Marriages (Fees) (Scotland) Order 2002
- Child Support Appeals (Jurisdiction of Courts) (Scotland) Order 2003
- European Communities (Matrimonial Jurisdiction and Judgements) (Scotland) Regulations 2001

**Proceeds of Crime**
INFORMATION ON PREDECESSOR COMMITTEES’ ACTIVITY

Investigatory Powers
- Regulation of Investigatory Powers (Cancellation of Authorisations) (Scotland) Regulations 2002
- Regulation of Investigatory Powers (Covert Human Intelligence Sources - Code of Practice) (Scotland) Order 2003
- Regulation of Investigatory Powers (Covert Surveillance - Code of Practice) (Scotland) Order 2003
- Regulation of Investigatory Powers (Juveniles) (Scotland) Order 2002
- Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Amendment (No.2) Order 2003
- Regulation of Investigatory Powers (Source Records) (Scotland) Regulations 2002

Sex Offenders
- Sex Offenders (Notice Requirements) (Foreign Travel) (Scotland) Regulations 2001
- Sex Offenders (Notification Requirements) (Prescribed Police Stations) (No.2) Regulations 2001

Other
- Civil Defence (Scotland) Regulations 2001
- Damages (Personal Injury) (Scotland) Order
- Extended Sentences for Violent Offenders (Scotland) Order 2003
- Firemen’s Pension Scheme (Pension Sharing on Divorce) (Scotland) Order 2001
- General Commissioners of Income Tax (Expenses) (Scotland) Regulations 2003
- International Criminal Court (Immunities and Privileges) Order 2001
- Limited Liability Partnerships (Scotland) Regulations
- Members of the Parole Board (Removal Tribunal) Regulations 2003
- Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2002

Petitions

Public Petitions considered by lead committees

<table>
<thead>
<tr>
<th>Committee</th>
<th>Number of Petitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education, Culture and Sport</td>
<td>28</td>
</tr>
<tr>
<td>Enterprise &amp; Lifelong Learning</td>
<td>5</td>
</tr>
<tr>
<td>Equal Opportunities</td>
<td>4</td>
</tr>
<tr>
<td>European</td>
<td>2</td>
</tr>
<tr>
<td>Health &amp; Community Care</td>
<td>58</td>
</tr>
<tr>
<td>Justice &amp; Home Affairs</td>
<td>12</td>
</tr>
<tr>
<td>Justice 1</td>
<td>19</td>
</tr>
<tr>
<td>Justice 2</td>
<td>11</td>
</tr>
<tr>
<td>Local Government</td>
<td>20</td>
</tr>
<tr>
<td>Rural Affairs</td>
<td>10</td>
</tr>
<tr>
<td>Rural Development</td>
<td>32</td>
</tr>
<tr>
<td>Social Inclusion, Housing &amp; Voluntary</td>
<td>13</td>
</tr>
<tr>
<td>Social Justice</td>
<td>10</td>
</tr>
<tr>
<td>Transport &amp; Environment</td>
<td>61</td>
</tr>
</tbody>
</table>
JUSTICE 1 COMMITTEE, SESSION 1 LEGACY PAPER

Background

1. This legacy paper is intended to provide guidance to the successor justice committee, or committees, about on-going Justice 1 Committee (and Justice and Home Affairs Committee) issues from the first Parliamentary session.

2. Over the last 4 years the Committee, and the former Justice and Home Affairs Committee, has undertaken a substantial workload covering legislation, inquiries, petitions, visits and a civic participation event. During the course of the Committees’ work there were a great many recommendations made and decisions taken. It is hoped that this paper will assist in familiarising an incoming committee with a number of issues that have not been resolved, or recommendations/commitments which are in their infancy, or have not been implemented as yet.

3. It is recognised that it will be for the in-coming committee(s) to consider their work programme and decide whether to pick-up on any issues outlined in this paper. However, the Committee considers that this paper provides an important link that will help to ensure the continuity of scrutiny by highlighting issues that may need to be monitored or developed throughout the next Parliamentary session.

Legislation

Legislation considered by the Justice Committees

4. The Committees (Justice 1 Committee and Justice and Home Affairs Committee) have scrutinised the following pieces of primary legislation:

- Regulation of Investigatory Powers (Scotland) Bill
- Abolition of Feudal Tenure etc. (Scotland) Bill
- Adults with Incapacity (Scotland) Bill
- Abolition of Poindings and Warrant Sales (Scotland) Bill
- Bail, Judicial Appointments etc. (Scotland) Bill
- Leasehold Casualties (Scotland) Bill
- Convention Rights (Compliance) (Scotland) Bill
- Protection from Abuse (Scotland) Bill (pre-introduction inquiry only (Committee Bill))
- Freedom of Information (Scotland) Bill
- Title Conditions (Scotland) Bill
- Council of the Law Society of Scotland Bill

Scrutiny of the implementation of legislation

5. The Committee considers that post-legislative scrutiny is very important for an effective legislature. There are a number of policy areas where legislation which has been enacted by the Parliament would benefit from scrutiny of its implementation and operational effectiveness once it has been in place for a reasonable period of time. The following paragraphs highlight particular pieces of legislation which might require post-legislative scrutiny.
Adults with Incapacity (Scotland) Act 2000

6. The Act was passed by the Scottish Parliament on 29 March 2000 and received Royal Assent on 9 May 2000. The purpose of the Act is to provide for decisions to be made on behalf of adults who lack the legal capacity to do so themselves because of mental disorder or inability to communicate. The decisions may concern the adult’s property or financial affairs or personal welfare, including medical treatment. The Act was implemented between April 2001 and April 2002.

7. It should now be possible to gather evidence from medical practitioners, social workers, guardians, etc. on whether the Act has achieved its objectives and is operating in the way envisaged.

Abolition of Feudal Tenure etc. (Scotland) Act 2000 and Title Conditions (Scotland) Bill

8. The Act abolishes the feudal system of land tenure and replaces it with a system of simple ownership. It abolished feudal superiors, and the rights of the superior to collect feuduty and to enforce feudal real burdens. The Act was passed by the Parliament on 3 May 2000 and received Royal Assent on 9 June 2000. This Act is part of a wider package of legislation relating to land reform which includes the Title Conditions (Scotland) Bill and the Land Reform (Scotland) Bill (scrutinised by the Justice 2 Committee).

9. As previously highlighted, the Title Conditions (Scotland) Bill also forms part of the package of legislation reforming the system of land ownership in Scotland. The Bill has two main objectives: to achieve greater clarity of property law by restating the law in a clear codified form; and to reduce the number of outdated conditions on land by making it easier to discharge or vary them. The Bill was introduced on 6 June 2002 and was passed by the Parliament on 26 February 2003.

10. Both pieces of legislation should come fully into effect in Autumn 2004. The successor Committee may wish to engage in post-legislative scrutiny and consider whether local authorities, law practitioners, land owners and other interested parties were able to prepare for the changes brought about by the legislation and whether they have experienced any particular problems concerning the implementation of the Acts.

11. Although not part of the land reform package per se, the incoming Committee should be aware of plans to bring forward a bill dealing with tenement properties. The Committee considers this Bill to be an integral part of reform of property law and will complete the Executive’s reform proposals.

Protection from Abuse (Scotland) Act 2001

12. This Bill was the first Bill to be initiated by a Parliamentary Committee, rather than the Executive or a member. The principal effect of the Bill 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. 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 in May this year.

13. The successor committee may also wish to pursue the issue about the scale and type of promotion the Act has received. There is 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, “by a child who is bullied in the playground or against a neighbour who constantly breaches an interdict.”

Legislation expected in the next session of Parliament
14. Although it is not possible for the Committee to ascertain which legislation can be expected during the next Parliamentary session (it will be for the next administration to decide its legislative programme), the Committee can give an indication of areas that the present administration has been working on.

15. The legislation covering tenement properties has already been referred to in this paper. In addition to this the Executive has been looking at a Family Law Bill which would draw together the many statutory provisions on family law, along with those few family law provisions which still depend on the common law, into one single family law statute for Scotland. The Committee is disappointed in the delay in bringing forward legislation in this area. Other areas which may require legislation is the proposal to establish a Scottish human rights commission and also some matters raised by the Honourable Lord Bonomy’s ‘Review of the Practices and Procedure of the High Court of Justiciary’. In 2000, the Scottish Executive commissioned a scoping study to explore the requirements for more detailed research to examine the impact of business-related bankruptcy on business start-up and growth in Scotland. This may also lead to legislation, depending on the next administration’s priorities.

Sewel motions
16. Sometimes the UK Government and the Executive take the view that it would be more practical and appropriate for provisions which affect Scotland to be contained in a UK Bill, rather than a separate Scottish Bill. In such circumstances, the practice is for the Executive to invite the Parliament formally to agree to allow the UK Parliament to legislate on the relevant devolved matters. This is done on a motion known as a “Sewel motion”. Committees do not normally consider Sewel motions.

17. Sewel motions are normally considered by the whole Parliament. However, both the Justice and Home Affairs Committee and the Justice 1 Committee have considered Sewel motions for the Insolvency Bill and the Armed Forces Bill, respectively. The Committee suggests that the future committee might like to consider debating Sewel motions relating to the justice remit in Committee as a way of assessing the impact and the effect of the UK Bill and the Scottish provisions on Scotland using its experience in justice matters. Given that as a general rule the Parliament debates these motions, the future justice Committee

¹ Convener, 17 September 2002, Justice 1 Committee, Official Report Col. 226
might like to urge for a change in procedures so that Sewel motions are referred to the relevant subject committee.

Inquiries

18. The Justice and Home Affairs Committee was unable to undertake any inquiries due to the high number of Bills it scrutinised. Justice 1 Committee has however carried out inquiries into:

- Legal aid
- Regulation of the legal profession
- Scottish prisons estates review
- Alternatives to custody

19. The Committee’s reports on these inquiries make clear a number of issues which would benefit from further scrutiny in the future. The Committee wishes to highlight a few particular areas which the successor Committee should be aware of.

Legal Aid

20. The Justice 1 Committee published its report on its inquiry into legal aid in November 2001. The terms of reference of the inquiry were an assessment of the impact of recent changes in the legal aid system (both civil and criminal), and the likely impact of possible and prospective changes, on the contribution made by that system to securing access to justice. A number of recommendations were made covering: availability of services; fixed fees for solicitors; sanction of experts; quality assurance for civil legal aid; granting urgent legal aid; awarding of expenses to the successful unaided party; property recovered or preserved; legal aid regulations; a strategic approach to the provision of legal services and review of the civil justice system.

21. It was originally envisaged that the Committee would issue a further report on legal aid setting out the progress made and any additional recommendations following further written evidence and oral evidence from the Deputy Minister for Justice and the Scottish Legal Aid Board. Due to the timescales involved it has not been possible to issue another report, so this paper serves as a way to draw attention to the Committee’s recommendations and outstanding issues concerning legal aid.

22. Many of the Committee’s recommendations on matters such as, increasing the amount of winnings exempted from “clawback” in matrimonial cases; making legal aid available for a wider range of proceedings; and changes to financial eligibility, have been taken forward by the Executive. However, there are a number of outstanding matters which the successor committee may wish to pursue.

23. Further evidence was taken from the Deputy Minister for Justice and the Scottish Legal aid Board (SLAB) by the Committee on 25 February. The Committee was concerned about the current position with respect to eligibility and means testing...
and recommended that as a matter of urgency the lower capital limit should be
uprated in line with inflation since 1983 and uprated on an annual basis
thereafter.² On 13 March 2002 the Deputy First Minister announced his intention
to increase the capital limit for advice and assistance from £1,000 to £1,300 as
well as increase the lower capital limit for civil legal aid from £3,000 to £6,000 and
the upper limit from £8,500 to £10,000. Those increases were higher than the
rate of inflation. The committee welcomes this substantial increase in eligibility
levels. In order to avoid limits falling so low again the Executive was going to
examine mechanisms to ensure limits are uprated on a regular basis.³ Annual
uprating would require primary legislation and it would be for the next
administration to decide to take this forward. However, the successor
Committee may wish to address this issue by promoting a Committee Bill
or alternatively a member may wish to sponsor a member’s bill.

24. The Committee recommended that a tapering system of contributions should be
introduced to allow eligibility to be extended further up the income scale. SLAB is
undertaking the preliminary technical work on this and it is hoped that the future
administration will continue with this advancement. In terms of the Committee’s
recommendations on treatment of benefits within the legal aid system, the
Minister announced “that all state benefits should be disregarded when assessing
eligibility for advice and assistance”.⁴ The Committee welcomes this
commitment, and the Executive’s assurance to extend this policy to civil
legal aid.

25. The uptake in civil legal aid was an area the Committee considered in its Report.
SLAB is expected to report on its research findings in the coming months.⁵ The
Committee recommended that SLAB and the Law Society develop and
implement proposals to help people identify solicitors with expertise in specific
areas. SLAB explained that the Law Society has agreed to contact local faculties
to ask them to keep in touch with their local Citizens Advice Bureaux (CABx) to
produce a better-informed route for the referral of individuals from CABx to
practitioners.⁶ The Committee welcomes this progress however suggests
that wider representative groups be consulted, such as, the Social Welfare
Law Practitioners.

26. Work on the Community Legal Service is also developing and the Executive will
update the Committee and the Parliament soon on the progress being made.
When the final proposals are available, the future Committee may wish to take
evidence on the operation of the Community Legal Service.

27. The Executive has laid regulations which provides for a new scheme for civil legal
aid fees. The Committee welcomes the new scheme and the associated
quality assurance measures but was concerned that wider consultation,
particularly with the end users representative bodies did not take place and

---
² Report on Legal Aid Inquiry, Justice 1 Committee, SP Paper 437, page 12, para 40
³ Deputy First Minister, 13 March 2002, OR Col 10171
⁴ Deputy Minister for Justice, Justice 1 Committee, 25 February 2003, OR Col 4656
⁵ Scottish Legal Aid Board, Justice 1 Committee, 25 February 2003, OR Col 4657
⁶ Scottish Legal Aid Board, Justice 1 Committee, 25 February 2003, OR Col 4658
recommends that substantial changes to the legal aid system should be consulted on more widely than has been the practice.

28. Notwithstanding all of the advances made by the Executive with regard to access to civil legal aid, the Committee shares the Scottish Consumer Council’s view “that there is a need for a wide-ranging review of the entire civil justice system….towards an approach based on the needs of those who use the civil justice system”. Indeed, the Committee made a recommendation in its Report to that effect.8

29. Another aspect of the legal aid system where the Committee made recommendations was in relation to criminal legal aid. The Minister advised that civil legal aid has been the priority but that the Executive understood the Committee’s concerns and would deal with them after proper research and as resources permitted.9 This is potentially an area the incoming committee may wish to monitor.

Regulation of the legal profession
30. The Committee also conducted an inquiry into the regulation of the legal profession. The inquiry focussed primarily on the system of complaints against members of the legal profession. During November 2002, the Committee published its report, recommending the creation of a single gateway for complaints about the legal profession and the extension of the Ombudsman’s powers. Both these recommendations will require the Executive to bring forward primary legislation to address these issues. Some of the other recommendations have been adopted by the Council of the Law Society, such as, ensuring that each complaints committee should be made up of at least 50% lay people and that committees of the Law Society, rather than the Council of the Law Society, investigate conduct complaints as well as complaints of inadequate professional service. These areas will need to be monitored to evaluate the impact of these changes. The Executive has broadly welcomed the Committee’s Report, although it does not support the Committee’s view that there should be a single gateway for the handling of complaints. However, the Committee is disappointed at the negativity of the Law Society of Scotland’s response to the Report. The future committee may wish to revisit the recommendations with the next administration.

Scottish prisons estates review
31. This inquiry investigated the Scottish Executive’s proposals for the Scottish Prison Service estate in accommodating the projected future prisoner population and ending slopping out. The Executive proposed that there should be investment in HMP Barlinnie with a reduction of places in the medium term and that HMP Low Moss and HMP Peterhead should close. The Review also suggested that 3 new prisons should be built using the private build, private operate model. Having considered the evidence, the Committee recommended that HMP Peterhead should remain open and that further work should be done on

---

7 Scottish Consumer Council, J1/03/7/7, Justice 1 Committee, 18 March 2003, page 2
8 Justice 1 Committee, Report on Legal Aid Inquiry, SP Paper 437, page 24, para 119
9 Deputy Minister for Justice, Justice 1 Committee, 25 February 2003, OR Col 4669
the costing of the various build/operate models before a decision could be taken on how the additional prisoner places are provided.

32. The Minister for Justice made an announcement to Parliament on 5 September 2002 in response to the Committee’s report, stating that HMP Peterhead would be kept open and that only two new prisons would be required. The first would be privately built and operated, the Minister issued a challenge to the public sector to tender for the second prison saying that if the bid provided value for money then he would take that project forward. The successor Committee will wish to consider the outcome of the bid and monitor progress as this area develops over the coming years, particularly as the Review provoked concern across all the parties. There are also a number of other outstanding issues where the Executive has yet to respond to the Committee. These include the Committee’s request for production of reliable data on participation in rehabilitation programmes and throughcare; the Committee’s concern about methods used to compare the costs for building and operating a prison in the private sector with a prison built by the public sector; and the Executive’s investigation into the feasibility of not-for-profit organisations providing prisons in Scotland.

Alternatives to custody
33. The Committee published its report into alternatives to custody on 21 March 2003. The report is viewed as a scoping report, paving the way for a more in-depth investigation on alternatives to imprisonment. This area is drawing increasing attention as prisoner numbers rise and recidivism continues to be an issue. The Executive will not have had a chance to respond to the Committee’s report during this Parliamentary session. The Committee believes that this is an area where continued investigation would be worthwhile and therefore recommends that the successor committee adopt the report on alternatives to custody and request a Parliamentary debate on the Report early in the next session.

34. On a general point the Committee wishes to emphasise the importance of scoping inquiries properly at the outset, as this can have a subsequent impact on the length of time taken, and the level of examination that can be given to a particular matter within the chosen subject area. The Committee believes that concise, tightly drawn remits produce more robust outcomes.

Petitions
35. The Committees have considered many petitions. A number of these have been subsumed into the Committees’ scrutiny of legislation or particular inquiries. There are a number of possible areas for a future committee to consider, including:

---

Public Petition PE14
36. This is one of the very first petitions considered by the committees of the Parliament. The petition was raised by the Carbeth Hutters' Association and called for a statutory system of rent control and arbitration and increased security of tenure. The Justice and Home Affairs Committee investigated the petition and published a report in May 2000 which recommended that the Executive consider ways of providing legislative protection for hutters. The Executive issued a consultation paper, to which overwhelming support was received for legislating in this area. As yet there has been no movement towards legislation as the Executive considers that there are substantial drawbacks with legislation protecting hutters. The Committee has written to the Executive asking for details of these difficulties. The Committee awaits this information.

37. It is important to note that both the Justice and Home Affairs Committee and the Justice 1 Committee have endeavoured to pursue a solution to these issues throughout the first session of the Scottish Parliament. The Justice 1 Committee believes that a Committee Bill could successfully address this issue. The information that will be provided by the Executive should provide a useful steer should the future committee decide to pursue this course of action.

Public Petitions PE29, PE55, PE299, PE331 and PE111
38. All of these petitions relate to road traffic offences which have resulted in a fatality or serious injury. Again, both Committees have pursued the issues raised with the Executive and the Crown Office over a period of years. The Department of Transport, Local Government and the Regions (DTLR) published a report ‘Dangerous Driving and the Law’ which made a number of recommendations. A steering Group was set up to consider the recommendations. The Committee has considered the report and further correspondence from the petitioners, the Minister for Justice and the Lord Advocate.

39. The Committee agreed to consider the petition further when the Steering Group has reached conclusive decisions on the report by the DTLR. The Committee also agreed to consider a progress report by the Lord Advocate on the 80 recommendations outlined in the Review of the Investigation of Road Deaths in Scotland by the Crown Office and Procurator Fiscal Service when this is available. The Committee further agreed to request that the Minister for Justice keeps the Committee informed of any developments with the ISIJ (Integration of Scottish Criminal Justice Information Systems) improved data collection on serious injuries caused by careless driving. As this information is unlikely to be forthcoming before dissolution, the incoming committee may wish to monitor progress on these matters.

Public Petition PE347
40. The Committee has been considering petition PE347 by Mr Kenneth Mitchell on couping of horses\(^\text{11}\). The Committee does not believe that it has received

\(^{11}\) Couping (or show shoeing) is a method of shoeing horses that supports only the front of the hoof and causes the back of the hoof to drop. It is used primarily at horse shows and exhibitions to create an exaggerated version of the Clydesdale’s natural stance which is regarded as a desirable feature in
sufficient evidence to reach a definitive view on this issue. The Committee agreed to ask the Scottish Executive that the practices associated with the breeding and showing of animals which may lead to cruelty to animals be included when the Executive next considers legislation on animal welfare. The Committee also agreed to ask the Scottish Executive to extend the applicability of the Farriers (Registration) Act 1975 to include the Highlands and the Isle of Skye region so that all farriers in Scotland are registered. The Executive agrees that it is appropriate to consider the practice of couping within its review of animal welfare legislation and is awaiting a response from the Farriers Council on the extension of the 1975 Act to the Highlands and Islands. The successor Committee may wish to monitor progress. The future Committee should also be aware that this matter could be addressed by a Member’s Bill.

Other outstanding petitions
41. There are a few other outstanding petitions which the Committee has been examining, it may be useful to outline briefly the progress of these petitions and any unresolved actions. Petition PE124 is a petition by Grandparents Apart Self Help Group on grandparents’ rights to contact with their grandchildren. The Committee agreed to write to the Scottish Child Law Centre and the Scottish Reporter’s Administration to ask for further information on recent cases in the European Court of Human Rights involving grandparents and the right to privacy in family life as highlighted by the British Association of Social Workers (Scotland). The successor Committee may wish to monitor the Minister’s investigation of family mediation for grandparents and the wider family and consider any available academic studies on the effects on children who do not have access to their grandparents.

42. Petition PE200 is concerned with the working methods of the Scottish Legal Aid Board. The Committee wrote to SLAB to establish timescales for the production of guidance on property recovered and preserved aimed at applicants, and to the Executive asking if it has any proposals to change the law in this area to allow SLAB to disburse compensation monies faster. Any other related issues are being dealt with under the remit of the legal aid inquiry.

43. The successor Committee will wish to be aware that the Justice and Home Affairs Committee had been referred Petition PE176. This called for the Scottish Parliament to create an independent body to investigate and prosecute complaints against the Police, where the Crown Office and Police Complaints Department have failed to fully investigate complaints. The Committee was attracted to investigating the police complaints procedure, however the Executive issued a consultation document on creating an independent element in the police complaints procedure. The deadline for responses was October 2001. It is understood that responses are still being analysed. The future Committee may wish to monitor progress in this area, and might still consider it as an area suitable for investigation.
European scrutiny
44. The Justice 1 Committee has carried out very little work on European documents as its workload has not permitted time to pursue this area in any detail. However, given the importance of justice and home affairs in the context of the EU and the distinctiveness of the Scottish judicial system from the rest of the UK, the Committee is keen for any future committee to develop its European scrutiny role. The Committee suggests that the new committee may wish to consider commissioning a paper which should set out the current justice and home affairs issues; the role of the Scottish Parliament in relation to European matters; and a mechanism for keeping the committee informed, so as to aid scrutiny of policy proposals, legislative proposals, and agreed measures ready to be implemented in Scotland.

Budget scrutiny
45. The Committee has clear views on the scrutiny of the Scottish Executive’s spending plans. In the context of two justice committees operating with the same remit, the Committee considered it essential that the justice committees consider the budget jointly so that the Committees could fully consider the financial aspects of the areas they were scrutinising or inquiring into. However this raised attendance issues for those serving on other committees, as separate joint budget meetings have to be held in addition to regular committee meetings.

46. The Justice 1 Committee felt that it was only just beginning to scrutinise the Executive’s spending proposals with any accomplishment towards the end of the Parliamentary session. In examining the budget it was helpful to have an expert adviser to assist in the process and to retain an adviser for a number of years if possible to maintain continuity and experience, not least because the timetable for scrutiny is incredibly tight leaving very little time for committees to gather evidence.

47. It was generally accepted by the Committee that in order to influence spending proposals a committee must take difficult decisions and spell out where cuts should be made to fund an increase in spending.

48. Financial information is central not just to the consideration of the Executive’s budget proposals, but strategically for all the areas the Committee considers. It is therefore suggested that the future Committee should consider inviting the Minister for Justice (and the Lord Advocate) to produce a paper which sets out the Executive’s (and the Crown Office’s) changes in priorities over the past 5 years and its priorities for the next 4 years which should provide useful historical and planning information. To supplement this the new Committee should also consider taking evidence from the Minister for Justice (and the Lord Advocate) on long-term trends, possibly as part of the ‘taking stock’ meeting normally held in early September.
Operational issues

Evidence gathering

49. The successor committee might find it beneficial to consider which approaches or working practices the Committee thought were effective or could be utilised to a greater extent. Using a diverse range of methods of taking evidence is considered to be constructive and beneficial to committees, such as the use of reporters to gather detailed evidence from a greater range of individuals/organisations than formal evidence sessions. Formal meetings utilising video conferencing facilities are useful when taking evidence from international experts. The Justice 1 Committee held a very successful formal video conferencing meeting to hear evidence on sex offenders from a world expert in this field based in Canada. The Committee considered generally that greater use should be made of international research and experts.

50. Another approach which the Committee found very effective was fact-finding visits, e.g. to prisons, alternatives to custody projects and courts. The Committee believes this form of evidence gathering is invaluable, especially as it allows the Committee to speak directly to those affected. Informal briefing sessions are also particularly useful to provide members with an opportunity to familiarise themselves with complex, technical subject matter and for informal information sharing.

51. In preparation for the Committee’s inquiry into alternatives to custody, the Committee held a civic participation event where roughly 90 citizens were asked their views on sentencing and alternatives to imprisonment. They also took part in workshops which examined in more depth the circumstances surrounding the crimes they were asked to comment on. The information gathered from this event provided a useful basis for the Committee to move forward to its inquiry. The future Committee, when embarking on an inquiry, may also wish to broaden the range of organisations from which written evidence is sought.

Justice Committee structure

52. Parliament decided that there should be two justice committees in place of the Justice and Home Affairs Committee. This was essentially because of the volume of legislation in the justice remit. Justice 1 Committee and Justice 2 Committee were established in January 2001. Both committees share the same remit covering the administration of civil and criminal justice, the reform of the civil and criminal law and such other matters as fall within the responsibility of the Minister for Justice.

53. The Committee discussed the structure of the justice committees. Of the current membership of Justice 1 Committee, three were members of the predecessor Justice and Home Affairs Committee. The Committee expressed a general preference for a single justice committee in the next Parliament. It was considered that the legislative workload had not dropped significantly and may even have increased since the establishment of two justice committees. Members were concerned that their knowledge and experience in the justice remit was being diluted. The Criminal Justice (Scotland) Bill was cited as an
example. Members of the Committee did not have the opportunity, in practice, to scrutinise the Bill, which they believed would lead to a gap in knowledge which would be useful when scrutinising subsequent criminal justice matters, such as alternatives to custody. Another example is the package of land reform legislation. The Justice 1 Committee considered the Abolition of Feudal Tenure etc. (Scotland) Bill and the Title Conditions (Scotland) Bill, while the Land Reform (Scotland) Bill was considered by the Justice 2 Committee. This could impact on the Committee’s ability to effectively scrutinise legislation relating to tenement property.

54. One large justice committee with possibly 15 members, which could make use of use of sub-committees and reporters was considered to be a much more pragmatic approach. Such sub-committees could be established on an ad-hoc basis or as ‘standing’ committees. To date the Scottish Parliament has not made use of this option, but the UK Parliament has made use of sub-committees. Some Westminster committees have used what could be described as ‘standing’ sub-committees which are established and have a fixed remit, and run for the duration of the main committee unless otherwise decided.

55. The Committee also considers that the number of bills referred to the justice committee could be substantially reduced if some bills were referred instead to other subject committees that had a major interest, thus relieving some of the pressure from legislation. Future decision-makers should have regard to preserving the equilibrium between inquiries and legislation, particularly as any justice committee also has an important role to play in developing policy within the committee’s remit.
Introduction

1. This paper highlights for a future Justice Committee areas of the Justice 2 Committee’s work and experience which may be of assistance and interest.

Policy issues

Legislation

2. The Committee considered a number of bills and identified some legislation which would benefit in time from review of how it has been implemented. In particular:

- **Sexual Offences (Procedure and Evidence) (Scotland) Act 2002**
  Concerns were expressed to the Committee about whether the provisions in this Act, restricting the evidence which could be led about alleged victims in sexual offence cases, would be implemented properly in practice. The Executive agreed that rigorous monitoring of the impact of this legislation should be undertaken. We think that review of the research findings by a future Committee would be worthwhile. This might be linked to a wider review of sexual offences legislation as suggested by a number of witnesses on this bill (and as already undertaken in England and Wales in 2002/3).

- **Land Reform (Scotland) Act 2003**
  This legislation was among the most intensively debated in the first session. The Access Code – the key document in implementing the new access rights – is being consulted on until June 2003 and the new Committee might consider an early look at whether the Code delivers the commitments made during the Bill’s passage. We also suggest that it would be desirable in two to three years time to investigate the impact and effectiveness of the access provisions.

Inquiries

3. The Committee undertook a substantial inquiry into the Crown Office and Procurator Fiscal Service. The Committee was clear that its report was only an interim step and that further scrutiny of the implementation of planned changes to the department was crucial. The report highlights a number of issues which we feel would benefit from further scrutiny in the future. Many of these will be relevant to the annual budget scrutiny as well as merit further consideration in their own right.

Petitions

4. The Committee undertook an extensive inquiry into a petition on civil court proceedings in personal injury cases for victims of asbestos exposure. We made recommendations about monitoring new procedures for speeding up personal injury cases (procedures which will come into force on 1 April 2003 and whose full impact should be felt within 2-3 years). We also recommended a

---

12 Justice 2 Committee 4th report 2003
13 Justice 2 Committee 2nd report 2003 on petition PE336
faster track procedure for mesothelioma cases. Although our recommendations
were not accepted in full there were indications that new personal injury cases,
where the person was terminally ill, could be dealt with in much less than the 12
months which will be the new standard timetable for personal injury cases. We
think it is important that this is closely monitored to ensure the changes are
actually achieving what was intended.

5. There were two further petitions where we noted further work which might
usefully be done in future:

- a petition on the wilful alienation of siblings following parental separation led us to
suggest a review of the effectiveness of the Children (Scotland) Act 1995;

- a petition on the display of obscene material led to a commitment from the
Executive to include in its programme research on the links between violence and
pornography. A future committee might usefully review the outcome of this
research and consider whether amendments to legislation in this area are
required.14

**European scrutiny**

6. The Committee considered towards the end of the session how it might improve
its scrutiny of European Union justice matters. We recognise that it will always be
difficult to find adequate time to scrutinise the huge and increasing volume of
European proposals. There is nevertheless scope to improve the present
arrangements.

7. We recommend that a future committee should establish a system of regular
summary briefings from the Executive on relevant developments in areas within
the Committee’s remit; and arrange regular updates with the Minister for Justice
to discuss specific matters of particular interest to the Committee. We hope that
such a system would enable earlier warning of, and more scope for the
Committee to influence, European legislative proposals. We also suggest that a
future committee should develop improved direct contacts with the European
Commission and the European Parliament. Any such approach should be co-
ordinated with the work of the European Committee.

**International comparisons**

8. The Committee has had comparatively little opportunity to compare Scotland with
other jurisdictions and learn from international best practice. We consider that
availability of such information to committees could enhance the quality of policy-
making. We stress that this need not involve international travel although that
may be entirely justifiable on occasion. For example, it could involve making
more use of the research capacity in SPICe, the research budget and committee
advisers, and also using new technology such as teleconferencing.

---

14 PE476 by Ms Catherine Harper on behalf of Scottish Women Against Pornography
Budget scrutiny

9. The Committee, like many others, noted the difficulty in carrying out effective scrutiny of the Executive’s budget proposals alongside its other workload. We strongly recommend the appointment of an adviser to assist in this process. We consider that more work has still to be done to improve the clarity, transparency and consistency of the Executive’s presentation of the budget proposals and particularly the information needed to track and measure cross-cutting initiatives.

10. The structure of the justice committees is discussed below but, if two justice committees are established in the next Parliament, we strongly recommend that they bring their joint expertise together to undertake scrutiny of the budget.

Operational issues

Committee membership

11. The first session has seen a high level of turnover in committee membership. This can have a very destabilising effect since time is needed to build up expertise in the subject matter and a good working relationship between members including, for example, awareness of each other’s areas of interest and knowledge. We recommend that, as far as possible, Members appointed to a committee should serve on it for a minimum of a year with moves to another committee before that time being the exception.

Advisers

12. The Committee appointed advisers to assist with its inquiries and with scrutiny of the Criminal Justice Bill. We found this invaluable, especially given the technical complexity of the remit. We strongly recommend the use of advisers on all major inquiries and bills.

13. However, we also found that there were smaller pieces of work such as subordinate legislation or Sewel motions where expert advice would have made effective scrutiny much easier. Advice in these cases is often needed in a very short timescale. We suggest that the new committee should give serious consideration to the appointment of a panel of standing advisers who could be called on to give advice as required.

Ministers and officials

14. The relationship between a Committee and its Ministers is crucial. We have noted that, over the course of the first session, the relationship between the Committee and Ministers has matured. We commend the greater willingness we have seen to consider Committee proposals in an open-minded way and accept them where they have merit. This has perhaps been assisted by the Committee’s willingness to question rigorously and not to rubber stamp legislative proposals (primary or secondary) until its questions have been answered satisfactorily.

15. We note that officials have appeared before the Committee less regularly than Ministers but we stress our expectation that those who do appear should be genuinely expert in the issues under discussion.
JUSTICE 2 COMMITTEE, SESSION 1 LEGACY PAPER

16. It is generally the case that, on both legislation and inquiries, the Committee concludes by hearing from the Minister. This allows previous evidence to be tested and the Executive’s position to be clearly understood before the Committee finalises its view. Our experience is that these sessions are regularly curtailed before all the issues have been explored; or else the session is extended at the Minister’s discretion and under the shadow of his next diary commitment. We strongly recommend that generous time is allocated for questioning the relevant Minister and, if this cannot be accomplished in a single session, further sessions should be scheduled so that all members’ questions can be adequately answered.

Relationships with outside organisations

17. We sought views from some key organisations about the Committee’s work in the first session and attach responses received from the Faculty of Advocates and police organisations.

18. The Committee has welcomed the constructive relationships that have developed with outside organisations and the time and effort they have contributed to advising and informing the Committee. It has been helpful to build informal links as well as in formal committee meetings. We would encourage those organisations for whom it is appropriate – such as the Faculty of Advocates, who made this suggestion - to encourage their membership to register as potential committee advisers.

Primary legislation

19. The Committee had more experience than most of scrutinising legislation. While much has worked well, we think that there are further steps which could be taken to improve the quality of scrutiny and ease the burden on members and clerks. We would encourage a future Procedures Committee to commission a thorough review of the processes supporting scrutiny of legislation. From our own experience, we hope that such a review would look at:

- timescales and deadlines at Stage 2 and 3. Although these have been revised during this session, we feel strongly that by the time amendments have been published and grouped there is insufficient time for members to prepare properly for the debates on amendments. The constraints also impact on external organisations and we note and share the concerns raised by the Faculty of Advocates in their response to the Committee. A review could also encompass the extent to which the Executive has met its informal 5 day target for submitting amendments.
- paperwork provided to assist members. Our own ideas for possible improvements include:
  - provision of a regular “Marshalled List to date” in advance of the final one, rather than having to keep track of many daily lists;
  - provision of a list of amendments in group/debate order, alongside the Marshalled List;
  - particularly in Committee, Members (and the Minister/Member in Charge) might benefit from having a copy of the Convener’s marked up
Marshalled List which shows the decisions to be taken, pre-emptions, etc;
- where a Bill is heavily amended at Stage 2, preparation of updated Explanatory Notes by the Executive/Member in charge.
- role of Committees after Stage 3. While some Stage 3s are straightforward, others can result in a heavily amended Bill which differs substantially in content and impact from the Bill as originally introduced. Where this is the case, we suggest that there may be a need for a reviewing mechanism to ensure that – setting aside whether or not members agree with the policy intention – the Bill as passed will work effectively as intended and that there are no obvious procedural or drafting flaws. Referral back to the Stage 2 Committee, with a restricted role of reviewing the cumulative effect of the Stage 3 amendments, would be one way of addressing this since that committee will already have in-depth knowledge of the Bill.

20. We also note that for all new Members, but for Justice committee members in particular, training in the detailed mechanics of the legislative process is essential.

Subordinate legislation
21. The Committee has had a number of concerns about the process of scrutinising subordinate legislation. The very tight timescale set down for scrutinising instruments means that the Committee has regularly had to decide whether or not to approve an instrument without being satisfied that all its questions were answered.

22. We would therefore welcome an inquiry by a future Procedures Committee into the time limits and procedures for scrutinising subordinate legislation. Within the constraints of the current procedures, however, we would also encourage our successor committee to:
- make sure that the Executive is made very aware of the standard and detail of briefing required by the committee;
- be willing (as this committee has done on occasion) to use its powers call for the withdrawal of an instrument in preference to approving an instrument about which there are unanswered questions;
- encourage the Executive to identify instruments which appear to be controversial or complex and to give the committee sight of such instruments in draft before they are laid – particularly where there has been extensive consultation, to allow time for the committee to consider comments made;
- where appropriate, take evidence from the relevant officials in advance of considering an instrument formally.

Justice committee remits
23. The Committee notes that the future structure of committees to scrutinise the Justice remit will be a matter for the next Executive, Bureau and Parliament. Our view is that there is self-evidently too much work to be carried out by a single Committee unless it was resourced and structured very differently to the original Justice and Home Affairs Committee. Despite the initial concerns of some members, our experience of two Justice committees with the same remit is that it
JUSTICE 2 COMMITTEE, SESSION 1 LEGACY PAPER

has worked surprisingly well. There have been relatively few conflicts or overlaps and there are examples of extremely effective and challenging scrutiny undertaken by each Committee.
JUSTICE ISSUES – SUBJECT PROFILE

SARAH DEWAR, FRAZER MCCALLUM, AILEEN MCLEOD & GRAHAM ROSS

This subject profile contains short, self-contained sections providing outlines of a range of justice issues (or at least topics which include potential justice issues).

The various sections include background material and reference to recent policy developments, including reference to relevant commitments contained in the partnership agreement published by the Scottish Labour Party and the Scottish Liberal Democrats (2003) (hereafter referred to as the ‘Partnership Agreement 2003’) and the statement by the First Minister on 28 May 2003 outlining the Executive’s programme for the coming year (SP OR 28 May 2003, cols 81-90) (hereafter referred to as the ‘Statement on the Executive’s Programme 2003’).

Readers may find it useful to read this profile in conjunction with ‘legacy papers’ produced, shortly before the end of the first parliamentary session, by the Justice 1 Committee (Scottish Parliament Justice 1 Committee, 2003) and Justice 2 Committee (Scottish Parliament Justice 2 Committee, 2003) of the Scottish Parliament. These were prepared to help inform the work of future committees dealing with justice issues.
CONTENTS

Alternatives to Custody ........................................................................................................................................... 3
Charity Law .............................................................................................................................................................. 4
Courts ....................................................................................................................................................................... 5
Criminal Justice System ........................................................................................................................................... 8
Drug Misuse ............................................................................................................................................................ 9
Enforcement of Civil Obligations ............................................................................................................................. 11
European Union ....................................................................................................................................................... 12
Family Law ............................................................................................................................................................. 14
Human Rights Commission .................................................................................................................................... 15
Legal Information and Advice Provision ................................................................................................................ 17
Police ...................................................................................................................................................................... 19
Prisons ...................................................................................................................................................................... 21
Property Law .......................................................................................................................................................... 23
Religious Prejudice and Sectarianism ...................................................................................................................... 25
Victims of Crime and Witnesses ............................................................................................................................. 27
Youth Justice – Overview ....................................................................................................................................... 28
Youth Justice – Initiatives ......................................................................................................................................... 30
Bibliography ............................................................................................................................................................ 33
ALTERNATIVES TO CUSTODY

Community disposals and fines

There are currently five principal community sentences available to courts in Scotland. These are probation orders; community service orders; restriction of liberty orders; drug treatment and testing orders (‘DTTOs’); and supervised attendance orders. All of these disposals are now available across Scotland, with the exception of DTTOs which are in the process of being rolled out across the country (see section on Drug Misuse for more details).

Community disposals are supported by programmes consisting of a variety of local interventions designed to focus on offending behaviour. Such programmes are often delivered by voluntary agencies such as Barnardo’s Scotland and SACRO (Safeguarding Communities and Reducing Offending).

The Criminal Justice (Scotland) Act 2003 includes provisions to encourage the introduction of arrest referral schemes to assist drug-misusing accused; makes available structured deferred sentences; and extends the use of supervised attendance orders.

Despite the availability of community disposals, the imposition of a fine is still by far the most common disposal in the Scottish criminal courts. The following statistics are based on figures published by the Scottish Executive in its Criminal Justice Series of Statistical Bulletins (Scottish Executive 2002). Fines were the main penalty imposed in relation to 63 per cent of convictions in 2001 (two percentage points down on the proportion in 2000 and 13 percentage points below the 76 per cent figure recorded for 1991). The average fine imposed by the courts in 2001 was £198 (an increase of 8 per cent on the average of £183 recorded for 2000). Fifty-six per cent of convictions resulting in a fine in 2001 were for over £100, whilst 15 per cent were for £50 or less.

Pre-court measures

Community disposals such as diversion from prosecution schemes, reparation and mediation schemes, and arrest referral schemes are available before a case goes to court. They provide measures for early intervention to address offending behaviour. Diversion from prosecution schemes are generally considered suitable for more minor offending – where dealing with the underlying problem is in the public interest.

Costs of prison compared with the costs of community disposals

Scottish Executive expenditure on Criminal Justice Social Work in 2000/01 was £48.7 million, as against £199.7 million on the Scottish Prison Service. A six month prison sentence costs around £14,000 per prisoner, whereas community disposals cost on average (figures taken from Scottish Parliament Justice 1 Committee 2003, para 14):

- community service = £1,325;
- probation = £1,250;
- DTTO = £5,000 to £6,000; and
- restriction of liberty order = £4,860.

The Scottish Parliament’s Justice 1 Committee, in its report on an Inquiry into Alternatives to Custody (2003), stated that whilst financial considerations are not relevant to sentencers when deciding upon the most appropriate disposal for an offender, that the promotion of community...
disposals as an alternative to short term prison sentences (where a longer custodial sentence is clearly not appropriate) would result in significant savings to the public purse. The Committee recommended that there should be more investment in community disposals, to ensure adequate and consistent provision of programmes across Scotland.

**Future commitments**

The *Partnership Agreement 2003* (p 34) includes commitments to:

- extend the availability of DTTOs and other community penalties;
- extend reparation by offenders;
- expand the role of restorative justice; and
- reduce the number of offenders sent to prison by more use of supervised attendance orders.

**CHARITY LAW**

This section summarises the current law and recent developments in the field of charity law. For more detailed information on the issues covered see the SPICe Briefing *Charity Law Reform* (Payne and Dewar 2003).

**The current law**

There is currently no Scottish legal definition of what constitutes a charity. Organisations in Scotland are recognised as charities if the Inland Revenue, using the English definition of a charity, decides they are charities for the purposes of awarding tax relief. The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 is the principal piece of legislation governing organisations recognised as charities in Scotland. The 1990 Act obliges charities to prepare annual accounts and to make them available to the Scottish Ministers, and members of the public, on request. The 1990 Act also confers powers on the Scottish Ministers to investigate charities and to take remedial action through the courts if necessary.¹

**Proposals for reform**

There have been calls for charity law reform, particularly from the voluntary sector, for many years. In March 2000, the Scottish Executive set up the Scottish Charity Law Review Commission, chaired by Jean McFadden (‘the McFadden Commission’), to review, and make recommendations for the reform of charity law. The *Report of the Scottish Charity Law Review Commission* was published in May 2001, containing over 100 recommendations.


**The Scottish Executive’s response to the McFadden Commission**

Taking into account both of the above reports, the Scottish Executive published a formal response to the McFadden Commission, entitled *Charity Regulation in Scotland*, in December 2002. Its proposals included:

¹ It should be noted that in practice the powers of the Scottish Ministers are exercised by the Scottish Charities Office (a branch of the Crown Office).
• the establishment of a new regulator of charities by early 2004, constituted as an Executive agency and having wide ranging functions;
• the creation of a modern definition of a charity, consistent throughout the UK, with the Inland Revenue continuing to confer charitable status for Scottish charities;
• the development of a comprehensive register of Scottish charities.

The Executive envisaged that, so far as possible, these changes would take place within the current legislative framework. However, it undertook to keep the need for further legislation under review.

Reactions to the Scottish Executive’s proposals

In February 2003, the Scottish Council for Voluntary Organisations (SCVO), the main umbrella body for voluntary organisations in Scotland, published its response to the Executive’s proposals, entitled Charity Scotland: What Happened to Scottish Charity Law Reform? It argued that further reforms were necessary, for example, placing the regulator on a statutory footing and granting it power to confer charitable status.

On 19 March 2003 there was a Members’ business debate (SP OR 19 March 2003, cols 19710-19726) in the Scottish Parliament on the following motion:

“That the Parliament shares the Scottish Executive’s commitment to progressing the reform of charity law; recognises that this will assist in developing the contribution of charities to their communities; notes the voluntary sector’s call for a charities bill, and welcomes the Executive’s commitment to keep the need for such legislation under review”. (S1M-3961)

Several members were supportive of the need to introduce a charity law reform bill during the second parliamentary session.

The second parliamentary session

The Partnership Agreement 2003 (p 42) includes a commitment to legislate on charity law. Furthermore, the Communities Minister Margaret Curran, in a statement to Parliament on 28 May 2003, stated that the Executive is committed to bringing the non-statutory regulator for charities into operation “as soon as possible” (SP OR 28 May 2003, cols 133-143) and that it is considering carefully whether the regulator should be placed on a statutory footing in the future. When questioned on the timescale for the proposed bill on charity law she confirmed that it would be introduced “not in the coming year, but as soon as possible”.

On 30 May 2003, Jackie Baillie MSP lodged a proposal for a Members’ Bill – ‘Proposed Charities (Scotland) Bill’ – with the stated aim of setting out the defining principles for recognition of a Scottish charity and establishing a body to regulate registration and monitor compliance with charity law.

COURTS

Summary justice review

The Scottish Executive announced (in a statement, on 19 September 2001, by the Deputy First Minister to a joint meeting of the Parliament’s Justice Committees) its intention to establish a
committee under Sheriff Principal McInnes to examine the operation of the summary criminal justice system. This followed on from an earlier commitment to review the work of the district courts. The Committee’s remit is:

“To review the provision of summary justice in Scotland, including the structures and procedures of the sheriff courts and district courts as they relate to summary business and the inter-relation between the two levels of court, and to make recommendations for the more efficient and effective delivery of summary justice in Scotland.” (Summary Justice Review Committee 2002, p 3)

Information about the Committee and its work, including membership and consultation undertaken, can be found on the Summary Justice Review website.

Consultation to date has included publication of the consultation paper – The Review of Summary Justice: Consultation on First Order Issues (Summary Justice Review Committee 2002) – in relation to which responses were sought by 7 June 2002. The consultation paper described ‘first order issues’ as “the main philosophical questions facing the committee, such as the use of lay justices in the summary courts and the jurisdictional boundaries between levels of court” (p 4). ‘Second order issues’ are described as “issues, such as administration, appointments and procedural matters [which] can be seen to follow naturally from the consideration of first order issues” (p 4) – and thus considered later in the life of the Committee. (The consultation paper also provides a useful description of the present criminal court system, particularly as it relates to summary cases.)

The above consultation paper goes on to state (p 5) that, in considering first order issues, the Committee is particularly interested in six main issues:

“(a) what should the aims of the summary justice system in Scotland be?
(b) what shortcomings or defects are there in the present system of summary justice in Scotland?
(c) what should be done to improve it?
(d) what types of court should deal with summary criminal cases in future?
(e) what should the maximum powers of these courts be?
(f) which types of case may appropriately be dealt with without there being a prosecution?”

Further consultation has included the circulation of a paper (Review of Summary Justice – Practitioner Workshops: Background Paper) to court practitioners. (This paper is due to be published on the Summary Justice Review website.) The paper sets out the Committee’s initial views on changes which might be made to certain aspects of the summary justice system. It looks at topics such as: issues of delay, encouraging early pleas, and fine management.

A Scottish Executive news release – ‘Summary Justice Review Committee’ (30 November 2001) – noted that the review was expected to take about 18 months. The Committee is currently aiming to report by the end of this year. The Partnership Agreement 2003 (p 36) includes a commitment to take forward the review of summary justice.

High Court review

The Scottish Executive initiated a review of the High Court of Justiciary in late 2001, with the memberships of a Review Team and a Reference Group, both working under the overall direction of Lord Bonomy, being announced in December 2001 (see Scottish Executive news release – ‘High Court Review’, 18 December 2001). The remit of the review was:
“To review the arrangements for High Court business at first instance\(^2\) in the light of the increasing demands made on the Court; to review the practices of the Court and those serving the Court and the rules of criminal procedure as they apply to the High Court; and to make recommendations with a view to making better use of Court resources in promoting the interests of justice.” (Bonomy 2002, para 1.2)

The Report of the review, *Improving Practice: 2002 Review of the Practices and Procedure of the High Court of Justiciary* (Bonomy 2002), was published in December 2002. It sets out various recommendations, covering issues such as the use of preliminary diets, time limits (including the ‘110-day rule’), sentencing and case management. Some but not all of these recommendations would require legislation. Further information on the recommendations and the Executive’s initial response to the Report can be found in the following Executive news releases – ‘Lord Bonomy’s Review of High Court Practice’ and ‘Radical changes signalled for High Courts’ (both 11 December 2002).

Following its publication, the Executive consulted on the Report (closed 11 April 2003). The *Consultation Letter* (Scottish Executive 2002a), together with a summary of the Report (prepared by the Executive), is available on the Executive’s website.

The *Partnership Agreement 2003* (p 36) includes a commitment to legislate to reform the operation of the High Court. In addition, the First Minister announced in May 2003 (*Statement on the Executive’s Programme 2003*, col 88) that the Executive will:

“publish a consultation paper [in June 2003] setting out wide ranging proposals for the reform of the High Court, following the review that we asked Lord Bonomy to carry out and the report that he produced. The consultation will pave the way for the introduction in the autumn of a court reform bill that will modernise practice and procedure across the whole range of High Court business, speed up processes and cut down of wasted time for victims, witnesses, the police – crucially – and the courts themselves”.

In relation to the proposed court reform bill, also see Scottish Executive news release – *‘Court Reform: Modernising Justice’* (28 May 2003).

**Court statistics and general information**

The Scottish Court Service (SCS) administers the supreme and sheriff courts throughout Scotland. Statistics and other information relating to these courts can be found on the Scottish Courts website. Publications available on this site include the latest annual report and accounts of SCS. District courts are managed by local authorities. General information on district courts can be found on the District Courts Association website.

Further sources of statistical information on the work of the courts can be found in various Scottish Executive publications, including:

- *Civil Judicial Statistics Scotland 2001* (Scottish Executive 2002b);
- *Costs, Sentencing Profiles and the Scottish Criminal Justice System, 2000* (Scottish Executive 2003);

---

\(^2\) The work of the High Court at ‘first instance’ means work from the commencement of proceedings against an accused up to the point at which the accused is either sentenced or acquitted. Thus, the remit of the review did not cover the work of the High Court as a court of criminal appeal.
CRIMINAL JUSTICE SYSTEM

This section highlights a number of topics relating to the criminal justice system which are not covered by other sections of this briefing (eg sections on Courts, Police, Prisons and Youth Justice).

**Criminal Justice System Objectives Review**

The Deputy First Minister and Lord Advocate commissioned, in March 2002, a review with the aim of producing proposals for the integration of the aims, objectives and targets of the principal agencies involved in the criminal justice system. For the purpose of this Review, the principal agencies were stated to be the police, prosecution and court services. The terms of reference for the Review were:

> “Having appropriate regard to the interests of justice, to make proposals for the integration of the aims, objectives and targets of the principal agencies which make up the criminal justice system in Scotland, in order to ensure the more efficient, effective and joined-up operation of the system and to secure delivery of the criminal justice priorities of the Scottish Executive.”

(Scottish Executive 2003, para 1.2)

The Review included consultation with the police, prosecution and court services as well as comparative material from other countries. It led to the publication of a report produced by the Crown Agent (published in March 2003) – *Proposals for the Integration of Aims, Objectives and Targets in the Scottish Criminal Justice System* (Normand 2003). The Report includes a number of recommendations together with points for consideration under the headings of: (a) aims, objectives and values; (b) targets; and (c) co-ordination and liaison (summarised at pages v to ix of the Report).

In publishing the Report the Executive announced that it planned to establish a National Criminal Justice System Board, made up of the chief officers of the main criminal justice agencies, to make recommendations on the overall aims, objectives and targets for the criminal justice system and to monitor the performance of the system (see Scottish Executive news release – ‘National Criminal Justice Board’, 19 March 2003). The Executive also announced that it would be undertaking wider consultation on the contents of the Report. This is due to close on 30 June 2003.

**Crown Office and Procurator Fiscal Service**

The Justice 2 Committee of the Scottish Parliament carried out a substantial inquiry into the Crown Office and Procurator Fiscal Service (COPFS) during the first parliamentary session. The remit of the inquiry was announced by the Committee in May 2001:

> “To investigate whether the resources available to the Crown Office and Procurator Fiscal Service, including members of staff and the experience levels of senior prosecutors, are sufficient to meet its stated aim of thorough, critical and accurate investigation, preparation and presentation of cases, while having sensitivity to the needs of victims and witnesses.”

(Scottish Parliament Justice 2 Committee, 2003a, para 1)

The Committee’s Inquiry Report was published in January 2003 as *Crown Office and Procurator Fiscal Service Inquiry* (Scottish Parliament Justice 2 Committee 2003a). The Committee noted that the area of its inquiry had been subject to significant developments during the course of the inquiry. These included:
• The publication of two reports following the murder of Surjit Singh Chhokar – *The Report of an Inquiry into Crown Decision-Making in the Case of the Murder of Surjit Singh Chhokar* (Campbell 2001) and the report of the *Inquiry into liaison arrangements following the murder of Surjit Singh Chhokar* (Jandoo, 2001).

• A management review leading to the publication of a report – *Review of the Planning, Allocation and Management of Resources in the Crown Office and Procurator Fiscal Service* (COPFS 2002a) – and the announcement by the Lord Advocate of measures aimed at modernising the COPFS (see Scottish Executive news release – ‘Major shake-up for criminal justice system’, 4 March 2002).

• A review of the internal Crown Office procedures for carrying out High Court Work, leading to the publication of a report, *Review of Crown Office and Procurator Fiscal Service systems for the processing, preparation and prosecution of High Court cases* (COPFS 2002b).

• Consultation leading to a report on the appointment and role of Advocate Deputies – *Modernising the Effective Prosecution of Serious Crime – Appointment and Role of Advocate Deputes: the Way Forward* (COPFS 2002c). Also see Scottish Executive news release – ‘Changes to court prosecution system’ (17 December 2002).

• Reviews examining the operation of the summary criminal justice system and of the High Court of Justiciary (see Courts section of this briefing).

• The commissioning of the Criminal Justice System Objectives Review (see first part of this section).

The Inquiry Report produced by the Justice 2 Committee welcomed much of the work being undertaken to reform the COPFS, but also highlighted a number of areas of continuing concern. It set out a number of tests for assessing whether changes have led to an improved service, as well as setting out a number of recommendations under the headings of: (a) management and resourcing of the service; and (b) relationships with other agencies and the public (see Scottish Parliament Justice 2 Committee 2003a, paras 112–122). The Committee’s *Session 1 Legacy Paper* (Scottish Parliament Justice 2 Committee 2003b) emphasises that the Committee was clear that its Inquiry Report was only an interim step and that further scrutiny of the planned changes would be crucial.

The *Partnership Agreement 2003* (p 37) includes a commitment to continue the process of modernising the COPFS.

**DRUG MISUSE**

Drugs misuse in Scotland has been identified as a major issue involving a number of devolved responsibilities. The focus of this section is on justice issues associated with drugs misuse.

**Key statistics**

The annually updated publication, *Drugs Misuse Statistics Scotland 2002* (Drug Misuse Information Strategy Team 2003), contains the latest information on drug misuse and the criminal justice system, including statistics on drug related offences and court proceedings, seizures of controlled drugs and drug misuse and treatment in Scottish prisons.
**Key policy documents**

In April 1998, the UK Government published its 10-year Strategy for tackling drug misuse. This set out four key aims, including two relating to crime and drug use: (a) to protect communities from drug-related anti-social and criminal behaviour; and (b) to stifle the availability of illegal drugs. In March 1999, the Scottish Office published its own strategy document, *Tackling Drugs in Scotland: Action in Partnership*, outlining specific Scottish objectives in relation to each of the key aims. The Executive’s *Drugs Action Plan – Protecting our Future*, published in May 2000, sets out details of the Executive’s plans to implement the strategy – the Executive publishes an annual report every year reporting on its progress and outlining its plans for future action. The latest Scottish Executive *Annual Report on Drug Misuse* was published in January 2003.

**Key developments in Scotland**

**Drug treatment and testing orders**

In 1998 sections 234B-K were inserted into the Criminal Procedure (Scotland) Act 1995 to make provision for Drug Treatment and Testing Orders (‘DTTOs’). These aim to provide courts with a further community-based option to deal more effectively with some serious drug misusers who commit crimes to fund their drug habits. DTTOs require offenders to attend counselling and other treatment sessions and to undergo mandatory testing for drugs over a six to 36 month period.

DTTOs were piloted in Glasgow from October 1999, in Fife from July 2000, and in Aberdeen and Aberdeenshire from December 2001. Research (Eley et al 2002a) published by the Scottish Executive, on the pilot sites in Glasgow and Fife, reported that DTTOs made a positive impact – both in terms of reducing the level of drug misuse by those subject to the orders and in reducing associated criminal behaviour. Following this positive review, the Executive extended the availability of DTTOs: to Renfrewshire, East Renfrewshire, Inverclyde and Edinburgh in January 2003; to Dundee, Perth & Kinross and Angus in March 2003; and to Midlothian in April 2003. The intention is to activate schemes in South & North Lanarkshire and East, North & South Ayrshire before the end of 2003.

**Drug courts**

In October 2001 a Drug Court was established at Glasgow Sheriff Court. A further such court was established in Fife (covering the sheriff courts in Kirkcaldy and Dunfermline) in September 2002. Drug Courts have the same sentencing powers as sheriffs under summary court procedure but have certain distinguishing features, including a specialist bench and a dedicated multi-agency Drug Court Team to oversee their operation and development. In November 2002 the Executive published an independent report (Eley et al 2002b) by researchers at Stirling University as the first stage of a two-year evaluation of the effectiveness of the Glasgow Drug Court. A further report, containing the outcome of the evaluation of the Glasgow Drug Court, will be submitted to the Executive in the spring of 2004.

---

3 The UK Strategy was updated in 2000. However, as policy on drug misuse is now mainly a devolved matter, the Strategy has limited applicability to Scotland.
Scottish Drug Enforcement Agency

In June 2000 the Scottish Executive set up the Scottish Drug Enforcement Agency (‘SDEA’) – the first organisation in Scotland dedicated to tackling drug crime. The SDEA aims to:

- reduce the availability of drugs in Scotland;
- target organised drug crime;
- arrest drug suppliers and traffickers;
- assist Scottish police forces in the detection of drug-related crime;
- maximise the use of intelligence on drugs/other organised crime;
- enhance and co-ordinate police involvement in wider drug policies.


Future developments

The Partnership Agreement 2003 (p 34) includes the following commitments:

- to reduce drug related crime;
- to continue to expand the SDEA;
- to extend the availability of DTTOs; and
- to use the Drug Courts model across Scotland (where they are needed).

ENFORCEMENT OF CIVIL OBLIGATIONS

During its first session, the main focus of the Scottish Parliament in this area was on the repayment and enforcement of debt, and this briefing considers the subject from this point of view. However, the subject includes the enforcing of orders of the civil courts more generally, including those for the performance or prevention of an act. It should also be noted, when considering legal provisions concerned with enforcing the repayment of debt, that creditors also employ various informal methods of debt collection.

The law of diligence is an important part of the law in this area. In relation to the repayment and enforcement of debt, the term diligence covers a range of procedures which allow a creditor to enforce payment (where the debtor does not pay voluntarily) against the assets of the debtor. These include attachment (replacing poinding), arrestment, earnings arrestment, inhibition and adjudication.

The Debtors (Scotland) Act 1987, implementing many of the recommendations of the Scottish Law Commission in its Report on Diligence and Debtor Protection (1985), represented the first substantial reform of the law of diligence for many years. Consideration of the impact of the reforms introduced by the 1987 Act, and the possible need for further reform, has continued in the intervening years. The process of legislative change was continued in two acts of the Scottish Parliament, the Abolition of Poindings and Warrant Sales Act 2001 (Member’s bill passed by the Parliament in December 2000) and the Debt Arrangement and Attachment (Scotland) Act 2002 (Executive bill passed by the Parliament in November 2002).

The 2001 Act made provision for the abolition of the diligence of poinding (and the connected warrant sale procedure). However, it was repealed in its entirety, before it came into force, by the 2002 Act. The 2002 Act itself repealed the diligence of poinding, replacing it with the new
diligence of attachment. The 2002 Act also sets out some of the main features of a statutory debt arrangement scheme (this part of the 2002 Act awaits commencement – the *Partnership Agreement 2003* (p 41) includes a commitment to implement the 2002 Act) which is intended to allow debtors to repay multiple debts through single regular payments over a manageable period of time. The Scottish Ministers will be empowered to make further provision for the scheme by way of regulations.

In addition to the above mentioned legislative activity, the need for further reform of the law of diligence remains a live issue. In particular, further changes may flow from a wide-ranging review of this area of the law by the Scottish Executive (outlined in a statement to the Parliament on 8 June 2000). This review led to the Executive issuing a consultation document, *Enforcement of Civil Obligations in Scotland* (Scottish Executive 2002a). This document covers a wide range of issues, including reform of: (a) the enforcement system in general – eg the role of sheriff officers/messengers-at-arms and how informal debt collection fits in with formal enforcement measures; (b) debtor protections – eg the 1987 Act procedures of Time to Pay Directions and Orders as well as the new statutory debt arrangement scheme mentioned above; (c) types of diligence – currently available or proposed; and (d) enforcement authorised by a summary warrant. The consultation closed on 23 July 2002. Analysis of the responses, carried out by independent consultants, has been published by the Executive – *Enforcement of Civil Obligations in Scotland: analysis of consultation responses* (Blake Stevenson Ltd 2002).

The *Partnership Agreement 2003* (p 9) includes a commitment to legislate on diligence. In addition, the First Minister announced in May 2003 (*Statement on the Executive’s Programme 2003*, col 82) that the Executive will, during this parliamentary session, consult on and introduce legislation to modernise the laws of diligence (and personal bankruptcy).

Statistics on the use of some forms of diligence are published in *Civil Judicial Statistics 2001* (Scottish Executive 2002b, chapter 5).

The various forms of diligence do not exhaust the range of enforcement procedures/remedies that may be available to a creditor. For example, a creditor may be able to petition for the sequestration of a debtor (liquidation being the approximate equivalent to sequestration where the debtor is a company). Another example includes the situation where the purchaser of a house has, in order to obtain a loan needed for its purchase, agreed under contract with the lender to grant a standard security (or mortgage) over the house. This provides the lender/creditor with the additional powers of repossession agreed in the standard security. The *Mortgage Rights (Scotland) Act 2001* (Member’s bill passed by the Scottish Parliament in June 2001) amended the law in this area.

**EUROPEAN UNION**

Justice and Home Affairs (JHA) is a rapidly expanding area of co-operation within the European Union (EU). It covers areas of common EU interest, such as criminal and civil judicial co-operation, cross-border security, police and customs co-operation, immigration, asylum and visas. Recent treaty amendments (Maastricht, Amsterdam 1997 and Nice 2000) have changed the way in which EU JHA policy operates. At present, JHA issues straddle both the first pillar (European Community) and the third pillar (intergovernmental). The various issues surrounding the implications of the pillar structure for the institutional arrangements and decision-making processes of EU JHA policy are discussed more fully in SPICe Briefing *EU Justice and Home Affairs Policy* (McLeod 2002).
Action (or proposed action) by the EU will, in certain areas of JHA policy, have an impact on Scotland, especially in relation to the judicial system and policing. The Scottish Parliament also has a role to play in scrutinising EU developments in JHA matters. The Parliament’s handling of European matters more generally will be covered in a forthcoming SPICe Briefing on the Scottish Parliament and Europe.

Current and future priorities in JHA of relevance to Scotland

A number of issues currently being discussed at the EU level and which may have implications for Scotland are listed below. These examples will be expanded upon in an updated version of the SPICe Briefing on EU Justice and Home Affairs Policy (see above) which will be available in September 2003.

- **Green Paper on a set of EU procedural safeguards for suspects and defendants in criminal proceedings** (published in February 2003). This consultation closed on 15 May 2003. The Commission is considering bringing forward a framework decision on procedural safeguards in October 2003. The issue will, therefore, be something for the Italian Presidency.

- **Green Paper on Alternative Dispute Resolution (ADR) in commercial and civil matters** (published in April 2002). This covers areas such as the effectiveness of agreements generated by the ADR process, the training of third parties and rules on liability and insurance. A public hearing was held in February 2003 and the European Parliament adopted its opinion on the Green Paper in March 2003.

- **Green Paper on European Payment Orders and Small Claims across borders** (published in December 2002). The consultation closes on 31 May 2003. The Commission is holding a public hearing on 26 June 2003 on possible measures to be taken at the EU level to create a European order for payment procedure (ie a specific, speedy and cost-efficient procedure for claims that are presumed to remain uncontested) which will be available throughout the EU.

- **Draft Council Regulation on the European Enforcement Order for uncontested monetary claims** (published in April 2002). The purpose of this Regulation is to enable uncontested judgements of a court in one Member State to be enforced in other Member States. This proposal is, in general, supported by the UK, although there have been disagreements as to the extent of the common minimum standards necessary in domestic legal systems in granting uncontested judgements. It is unlikely that this proposal will be agreed in time for its planned commencement in January 2004.

- **Draft Council Regulation concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and in matters of parental responsibility**. This issue has been under discussion since July 2000. Agreement has been reached on the issue of children wrongfully removed or retained by a family member. Negotiations are now proceeding on various other aspects of this proposal, including those relating to jurisdiction and co-operation. Adoption is not likely before the commencement of the Italian Presidency.

- **Proposal for a Council Directive on compensation to crime victims** (published in October 2002). This requires Member States to pay minimum levels of state compensation to victims, linked to the levels of compensation awarded by civil courts in personal injury cases. This is likely to be an issue for further discussion under the Italian Presidency.

- **Framework Decision on the application of the principle ‘ne bis in idem’**. This is a Greek Presidency initiative published in February 2003. The principle of ‘ne bis in idem’ – or the
prohibition of double jeopardy – is that no person shall be prosecuted or tried twice for the same offence. It seeks to narrow the scope for Member States to derogate from double jeopardy in that it does not allow a general derogation for all offences committed wholly or in part in the territory of a Member State.


**European Convention proposals**

The European Convention is drafting a European Constitutional Treaty, which is to be presented to the European Council in Athens on 20 June 2003. Draft articles in relation to EU JHA policy (Praesidium, The European Convention, 2003) propose a number of changes, such as the establishment of one Title in the new Treaty called an ‘Area of freedom, security and justice’. This would end the pillar structure and JHA issues would no longer straddle two separate EU pillars. Most (although not all) JHA provisions would also become subject to codecision and qualified majority voting. The role of national parliaments would also be increased in terms of monitoring the application of subsidiarity in this field. There would be a new EU competence over criminal procedures and a European Public Prosecutor is proposed.

One important matter still to be addressed is how the current opt-in/opt-outs (secured in various forms by the UK) in relation to certain JHA issues will fit into the new constitutional structure. The implications of these proposals will be discussed further in an updated version of the SPICe Briefing on EU Justice and Home Affairs Policy (see above).

**FAMILY LAW**

**Current legislation**

Family law is the part of Scots law that regulates the relationships between couples and between parents and children. The main pieces of legislation relating to family law are:

- the Divorce (Scotland) Act 1976 which lays down the grounds on which a divorce can be obtained;
- the Matrimonial Homes (Family Protection) (Scotland) Act 1981 which includes provisions designed to protect a husband or wife who doesn’t own a share in the matrimonial home;
- the Family Law (Scotland) Act 1985 which covers matters such as the financial provision that must be made between a husband and wife on divorce;
- the Children (Scotland) Act 1995 (‘the 1995 Act’) which creates a range of parental rights and responsibilities in respect of children living in Scotland.

**Grandparents**

Under the 1995 Act, grandparents have no automatic right to have contact with their grandchildren but can apply to the court to acquire such rights. During the Scottish Parliament’s first session, the Justice 1 Committee considered a petition (PE124) by Grandparents Apart Self Help (GASH) who were seeking a change to the 1995 Act to specifically name grandparents as having an important role in the lives of their grandchildren. After considering the petition at meetings on 1 October 2002, 17 December 2002 and 18 February 2003 the Committee decided that an amendment to the 1995 Act was not appropriate. However, it suggested further work.
that a successor Committee might wish to pursue, for example monitoring the outcome of the Justice Minister’s undertaking to investigate family mediation for grandparents.

**Draft Family Law Bill**

In 1999 the Scottish Office published a consultation paper entitled *Improving Scottish Family Law* which sought views on a wide range of issues relating to family law. Following on from this, the Scottish Executive published a White Paper entitled *Parents and Children* in 2000 including proposals to:

- reduce the periods of separation constituting grounds for divorce;
- give parental responsibilities and rights (PRRs) to unmarried fathers who jointly register the birth with the child’s mother;
- make it easier for step-parents, who do not automatically have PRRs, to acquire them;
- improve the funding arrangements for voluntary organisations supporting families in transition;
- strengthen the position of cohabitants in relation to property and finances;
- afford better protection to the victims of domestic abuse.

For further information on the Scottish Executive’s proposals see the [Family Law page](http://www.scottish-executive.gov.uk) on the Scottish Executive website.

The *Partnership Agreement 2003* (p 37) includes a commitment to legislate to reform family law.

**Civil partnerships**

In December 2002, the UK Government announced its intention to consult in summer 2003 on whether same sex couples should be able to register their partnerships in England and Wales, with the result that these couples would then acquire many of the rights afforded to married couples. In response, the Scottish Executive stated that it intended to closely follow the consultation south of the border and to make its own position on this matter clear in due course.

On 12 May 2003, Patrick Harvie MSP lodged a proposal for a Members’ Bill – ‘Proposed Civil Registered Partnerships (Scotland) Bill’ – with the stated aim of establishing civil partnership registration available to couples in committed relationships, and to provide civil registered partners with legal protection, rights and responsibilities similar to those provided to married couples.

**HUMAN RIGHTS COMMISSION**

The debate on whether or not a Human Rights Commission should be established in Scotland was continued, either within or outside the Scottish Parliament, for much of the Parliament’s first session. A debate in the Scottish Parliament on 2 March 2000, concerning the European Convention on Human Rights, included consideration of the possibility of establishing a Scottish Human Rights Commission.

The Scottish Human Rights Forum, an informal group of organisations including voluntary organisations, statutory bodies and the legal profession, with the common aim of seeing the establishment of a Scottish Human Rights Commission, published a discussion paper on the subject in March 2000, *A Human Rights Commission for Scotland – discussion paper*. 

*providing research and information services to the Scottish Parliament*
This discussion paper was followed by two Scottish Executive consultation papers on the subject. The first, entitled *Protecting our Rights: a Human Rights Commission for Scotland?* (2001a), was published in March 2001. Responses were sought (by 30 June 2001) on a number of issues, including whether Scotland should have a Human Rights Commission and, if so, what its role, membership and structure should be. Analysis of this consultation was published by the Executive in *Analysis – Protecting our Rights: a Human Rights Commission for Scotland?* (2001b).

The second Scottish Executive consultation paper, *The Scottish Human Rights Commission*, was published in February 2003 with a deadline for responses of 6 June 2003. It refers to the Executive's commitment to set up an independent and statutory Scottish Human Rights Commission, the establishment of which would require legislation during a future Parliament. The paper seeks views on various issues relating to the remit, functions and structure of such a Commission. Topics considered include the potential relationship between a Human Rights Commission and the Commissioner for Children and Young People (to be appointed under the Commissioner for Children and Young People (Scotland) Bill, passed by the Parliament on 26 March 2003).

Holyrood Conferences and Events ran a conference in February 2003, *Establishing our Rights: the Roles of Scotland's Human Rights Commission*, which examined the consultation proposals in some detail. A conference report has subsequently been produced (Holyrood Conferences and Events 2003). The Scottish Executive views this report as part of the consultation process.

Consultation on the topic, and in relation to human rights more generally, has also been carried out by Scottish Civic Forum. The consultation was carried out in August and September 2002, including a question looking at the possible remit of a Scottish Human Rights Commission, and was followed by the publication of a report outlining the responses, *Human Rights in Scotland* (2002).

The *Partnership Agreement 2003* (p 36) includes a commitment to establish a Scottish Human Rights Commission.

In relation to other parts of the UK, a Human Rights Commission was set up in Northern Ireland in 1999. The *Northern Ireland Human Rights Commission* is a statutory body established by the Northern Ireland Act 1998. The Justice 1 Committee, in considering proposals for a Scottish Human Rights Commission, took evidence from the Chief Commissioner of the Northern Ireland Human Rights Commission on 5 June 2001.

The case for a Human Rights Commission has also been considered at Westminster, with the Joint Committee on Human Rights publishing a report (in March 2003) following a two-year long enquiry into the matter – *The Case for a Human Rights Commission*. The Committee concluded that the case for establishing an independent Commission is compelling. It also concluded that, in the light of the existence of the Northern Ireland Human Rights Commission and the intention to establish a Scottish Human Rights Commission, the proposed Commission should be mainly concerned with human rights in England and Wales. It did, however, also highlight the necessity of having a body that could co-ordinate the promotion and protection of human rights at the UK level. The Committee has followed the report with consultation (responses due by 1 May 2003) on various points, including the possible role of a body co-ordinating the approach to human rights at the UK level – see Joint Committee on Human Rights press release ‘A Human Rights Commission: Structure, Functions and Powers’ (19 March 2003).
LEGAL INFORMATION AND ADVICE PROVISION

This section outlines the current problems and key developments relating to legal information and advice provision in the Scottish civil justice system.

Current problems

Research on the Scottish civil justice system suggests that the main problems with the provision of legal advice and information are as follows:

- Many communities view the law and lawyers as part of ‘the system’, and therefore part of the problem rather than a possible solution.
- There is a lack of information on legal rights and responsibilities – a lack of awareness that a problem may be legal, or that there may be the opportunity for legal redress.
- Information and advice is often not enough. The percentage of disputes resolved increases when active assistance is given.
- The high and unpredictable costs of seeking legal advice in the private sector.
- A lack of capacity and resources in the not-for-profit sector can discourage people from persevering – problems include short opening hours, long queues and engaged telephones.
- Language – there are, for people whose first language is not English, few lawyers available from their own communities.

Part V projects

Part V of the Legal Aid (Scotland) Act 1986 empowers the Scottish Legal Aid Board (‘SLAB’) to employ solicitors to work in partnership with local advice giving organisations. Using additional funding from the Scottish Executive of £250,000 per annum, SLAB set up four pilot projects under Part V of the 1986 Act. These came into operation between January and April 2002. Their purpose is to evaluate different methods of improving access to justice. The partnerships are with Citizen’s Advice Bureaux in Inverness and Moray; with advice providers in West Lothian; with ‘Streetwork’ (supporting rough sleepers and young people) in Edinburgh; and with the Ethnic Minorities Law Centre and Castlemilk Law Centre in Glasgow. The intention is that these projects will run until 2005, with the exception of the West Lothian project which is due to finish in 2004.

SLAB is currently in discussions with the Executive as to whether further Part V projects could assist the development of a ‘community legal service’ in Scotland (see below).

Review of legal information and advice provision

In October 2000 the Deputy First Minister announced the establishment of a Working Group (see the Scottish Executive’s Review of Legal Information and Advice Provision in Scotland web site) to consider how to develop a community legal service (‘CLS’) in Scotland, ie a joined-up quality assured network of legal advice and information. The Working Group published its report, Review of Legal Information and Advice Provision in Scotland (Scottish Executive 2001), in October 2001. It did not provide a blueprint for a community legal service but set out principles and guidelines and made a number of key recommendations. In particular, it recommended that there should be:

- a quality assurance scheme in place to protect the advice users;
- a co-ordinating body overseeing the work of the CLS;
- a phase of development work;

providing research and information services to the Scottish Parliament
providing research and information services to the Scottish Parliament

a report to the Scottish Ministers on completion of the development work, containing final recommendations in relation to the CLS.

The Scottish Executive has begun a programme of development work which comprises the following elements:

A programme of research

Research was commissioned by the Scottish Executive’s Central Research Unit in September 2002 to review: (a) available evidence on the use of internet accessible services, telephone helplines and outreach and remote delivery of services generally; and (b) the use of ‘contracting’ in England and Wales. ‘Contracting’ refers to the system where advice providers (including both solicitors and advice centres) can enter into contracts with the Legal Services Commission (which replaced the Legal Aid Board in England and Wales) to provide a service in relation to a specified number of legal cases. The report is due to be published in the summer of 2003.

Needs assessment and supply mapping

‘Needs assessment research’ is to commence in May 2003, assessing the prevalence of legal problems in the Scottish population by a variety of methods. Also, the Executive intends that ‘supply mapping’ exercises will be carried out at a later date, involving a review of the current availability of legal services in the pilot partnership areas (see below).

Pilot partnerships

In March 2003, the Deputy Justice Minister announced the creation of four ‘pilot partnerships’ which are to come into operation in May 2003. Broadly speaking, these partnerships aim to bring together the funders, the service providers (eg advice centres and solicitors) and the users of legal advice services in a particular area, with the aim of ensuring better co-ordination and better referral mechanisms whilst working within existing staffing and funding arrangements (at least at present). Three of these partnerships are geographical (based in Fife, Edinburgh and Argyll & Bute). The remaining pilot is ‘themetic’, considering the legal advice needs of people with a disability, and has been established in co-operation with the Disability Rights Commission.

In-court advice

An in-court advice service has been in existence at Edinburgh Sheriff Court since 1997, enabling unassisted litigants and other court users to access free and independent legal and other advice in small claims cases, summary cause cases (including rent arrears and eviction cases), and ordinary cause cases where the Debtor (Scotland) Act 1987 applies. Representation is offered in emergencies. In March 2002, the Scottish Executive announced £213,000 funding over a three year period to allow the service to continue at Edinburgh Sheriff Court until March 2005.

A similar service is provided in Glasgow by the Legal Services Agency, a leading law centre, although this service is not based full time in the court – instead providing an Advice Desk on days when the court is dealing with actions relating to property. It is funded by Communities Scotland (an Executive Agency) and Glasgow City Council.

In March 2003, the Deputy Justice Minister announced that during this year four further in-court advice projects would be set up in each of the areas where no significant in-court advice service currently exists, namely: (a) Tayside, Central & Fife; (b) North Strathclyde; (c) Grampian,
Highlands & Islands; and (d) South Strathclyde, Dumfries & Galloway. These pilots would be run in different ways and by a variety of different service providers. The Deputy Minister stated that these projects would run initially to March 2006 and thereafter decisions would be taken on their future and on the further ‘roll out’ of in-court advice.

During April 2003 the Scottish Executive was in discussions with Sheriffs Principal, Sheriffs and Sheriff Clerks at various courts, and with legal advice providers, to consider the exact location of the four new projects.

**POLICE**

Scotland has eight ‘territorial’ police forces: Central; Dumfries & Galloway; Fife; Grampian; Lothian & Borders; Northern; Strathclyde and Tayside. The Police (Scotland) Act 1967 provides for a ‘tripartite’ sharing of legal responsibility for policing by: (a) police authorities or joint boards (both made up of local authority councillors);⁴ (b) Chief Constables; and (c) the Scottish Ministers.

Police authorities or joint boards (hereafter referred to as ‘police authorities’) determine the budgets and the resources available to each force. Police authorities also appoint senior police officers (with the agreement of the Scottish Ministers) and determine the number of police officers and civilian support staff for their areas. Although police authorities appoint police officers and civilian support staff, once appointed such staff come under the control of the Chief Constable for the area. The Chief Constable also has sole responsibility for operational decisions about police deployment and enforcing the law in the area.

The Scottish Ministers have policy responsibility for law and order in Scotland and are answerable to the Scottish Parliament for these responsibilities. The Scottish Ministers also have the power to make regulations concerning the terms and conditions of police officers. In exercising these powers they are advised by the Police Negotiating Board (pay and conditions) and the Police Advisory Board for Scotland (other matters).

Further general information can be found in the SPICe Subject Map – *The Scottish Criminal Justice System: the Police* (Ross and Oag 2001).

**Police funding**

Individual police forces receive current expenditure funding from two sources: (a) from the police grant (funded from Grant Aided Expenditure) paid directly by the Scottish Ministers (51%); and (b) from police authorities (49%). The latter is derived from revenue support grant, non-domestic rate income and the council tax. The current proportion of funding derived from the police grant (i.e. 51%) was set out in the Police Grant (Scotland) Amendment Order 1986. This order was made under section 32 of the Police (Scotland) Act 1967, and altered the rate from the previous one of 50% which was set out in the Police Grant (Scotland) Order 1947.

While police authorities have a duty to set a budget for the force and provide the Chief Constable with the resources necessary to police the area adequately, there is no statutory duty

---

⁴ Since the reorganisation of local government into unitary local authorities in 1996, there have been two police authorities (with responsibility for Dumfries & Galloway and Fife police forces) and six joint boards (with responsibility for the other territorial police forces in Scotland). Police authorities and joint boards perform the same functions, the difference being that police authorities cover a single council whilst joint boards cover more than one council.
on them to meet the remaining 49% of assessed expenditure need. The following table shows the level of police grant/Grant Aided Expenditure (GAE) across all forces in Scotland from 2000-01 to 2005-06 (ie only the 51% referred to above).

### Police Grant Aided Expenditure 2000/01 – 2005/06 (£000s)

<table>
<thead>
<tr>
<th></th>
<th>2000/01</th>
<th>2001/02</th>
<th>2002/03</th>
<th>2003/04</th>
<th>2004/05</th>
<th>2005/06</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central</td>
<td>33,468</td>
<td>35,560</td>
<td>36,874</td>
<td>40,304</td>
<td>42,253</td>
<td>44,410</td>
</tr>
<tr>
<td>Dumfries &amp; Galloway</td>
<td>21,318</td>
<td>22,650</td>
<td>23,194</td>
<td>24,664</td>
<td>26,123</td>
<td>27,857</td>
</tr>
<tr>
<td>Fife</td>
<td>41,652</td>
<td>44,010</td>
<td>44,370</td>
<td>49,471</td>
<td>52,883</td>
<td>57,771</td>
</tr>
<tr>
<td>Grampian</td>
<td>62,935</td>
<td>68,470</td>
<td>72,406</td>
<td>78,478</td>
<td>84,229</td>
<td>89,069</td>
</tr>
<tr>
<td>Lothian &amp; Borders</td>
<td>133,752</td>
<td>140,893</td>
<td>149,136</td>
<td>159,810</td>
<td>168,618</td>
<td>178,646</td>
</tr>
<tr>
<td>Northern</td>
<td>39,014</td>
<td>42,550</td>
<td>43,518</td>
<td>46,671</td>
<td>48,840</td>
<td>50,502</td>
</tr>
<tr>
<td>Strathclyde</td>
<td>352,183</td>
<td>370,940</td>
<td>389,140</td>
<td>421,023</td>
<td>443,739</td>
<td>473,935</td>
</tr>
<tr>
<td>Tayside</td>
<td>57,598</td>
<td>61,450</td>
<td>63,484</td>
<td>68,333</td>
<td>71,269</td>
<td>75,364</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>741,920</td>
<td>786,523</td>
<td>822,122</td>
<td>888,754</td>
<td>937,954</td>
<td>997,554</td>
</tr>
</tbody>
</table>

*Source: Scottish Executive, Police Division (Branch 1)*

### Police numbers

In December 2002, the Scottish Executive announced that police numbers in Scotland had reached record levels (see Scottish Executive news release of 4 December 2002). Figures released by the Executive indicated an increase of 648 in the total number of police officers in Scotland between 30 September 1999 and the same date in 2002. The following table sets out information on police strength for each force.

### Police Strength 1999-2002

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Central</td>
<td>709</td>
<td>723</td>
<td>719</td>
<td>732</td>
</tr>
<tr>
<td>Dumfries &amp; Galloway</td>
<td>452</td>
<td>460</td>
<td>474</td>
<td>478</td>
</tr>
<tr>
<td>Fife</td>
<td>845</td>
<td>848</td>
<td>883</td>
<td>917</td>
</tr>
<tr>
<td>Grampian</td>
<td>1,221</td>
<td>1,234</td>
<td>1,274</td>
<td>1,271</td>
</tr>
<tr>
<td>Lothian &amp; Borders</td>
<td>2,586</td>
<td>2,649</td>
<td>2,646</td>
<td>2,708</td>
</tr>
<tr>
<td>Northern</td>
<td>655</td>
<td>657</td>
<td>679</td>
<td>696</td>
</tr>
<tr>
<td>Strathclyde</td>
<td>7,069</td>
<td>7,144</td>
<td>7,298</td>
<td>7,349</td>
</tr>
<tr>
<td>Tayside</td>
<td>1,139</td>
<td>1,155</td>
<td>1,164</td>
<td>1,173</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>14,676</td>
<td>14,870</td>
<td>15,137</td>
<td>15,324</td>
</tr>
</tbody>
</table>

*Source: Scottish Executive news release of 4 December 2002*

### Future commitments

The *Partnership Agreement 2003* (p 34) includes commitments to increase the numbers of police officers on operational duties and to support Chief Constables in meeting their target of an increase of 500 in the number of special constables. There is also a pledge to improve the efficiency of police forces by providing more common support services. In addition, there is a commitment (p 36) to set up an independent Police Complaints Body (a commitment repeated in the *Statement on the Executive’s Programme 2003*, at col 89).
PRISONS

The prison population in Scotland

There are currently 15 adult prison establishments in Scotland, plus four young offender institutions (‘YOIs’), three of which are located on the same sites as adult prisons (all listed in the table below). They range in size from Barlinnie in Glasgow, with over 1,000 places, to Porterfield in Inverness with just over 100 places.5

Shotts Prison includes a unit for prisoners who present particular management problems, as well as the National Induction Centre for prisoners beginning sentences of ten years or more.

A number of the prisons are over 100 years old. The newest prison, Kilmarnock in Ayrshire, opened in the spring of 1999, having been designed, financed and constructed under the Private Finance Initiative. Kilmarnock provides over 500 prisoner places.

In addition to prisons and YOIs, prisoners may be held in Legalised Police Cells (‘LPCs’). LPCs derive historically from a need to make provision for the inaccessibility of courts in more remote areas. They are used to hold locally prisoners who are either awaiting trial in the area or are, after receiving a custodial sentence, awaiting transfer to a prison. LPCs are found in 10 locations: Ayr; Campbeltown; Dunoon; Hawick; Kirkwall, Lerwick; Lochmaddy; Oban; Thurso; and Stornoway.

The following statistics are based on figures published by the Scottish Executive in its Criminal Justice Series of Statistical Bulletins (Scottish Executive 2002a). In 2001, the combined average daily population in Scottish prisons and YOIs totalled 6,137,6 an increase of five per cent when compared with the 2000 figure of 5,869. This represented the highest figure recorded in Scotland. The figure of 6,137 included 960 remand prisoners, 4,526 adult sentenced prisoners and 650 sentenced young offenders.7

Over the ten year period 1992–2001, the average daily prison population (combined male and female) has increased by 17 per cent, from 5,257 in 1992 to 6,137 in 2001. Over the same period the female prison population has increased by 58 per cent, almost four times the growth experienced in the male prison population.

The following table sets out 2001 statistics on the average daily prisoner population at the various prisons and YOIs in Scotland, together with maximum capacity figures for those institutions.

---

5 It should be noted that these are normal capacity figures and thus may differ from figures for the maximum number of prisoners held during any period where there has been overcrowding.
6 Also including the small number held in LPCs.
7 This figure also includes any persons sentenced to a custodial sentence by a civil court and any persons held in custody whilst awaiting deportation.
The Scottish Prison Estates Review

In March 2002, the Scottish Prison Service (‘SPS’) published its report on a review of the Scottish prisons estate (‘the Estates Review’ – Scottish Prison Service 2002). The purpose of the Estates Review was to identify likely pressures on the Scottish prisons estate over the long term (ie 10+ years) and to create a series of options for meeting these. PricewaterhouseCoopers (‘PwC’) verified the Estates Review costs and its separate report, Financial Review of Scottish Prison Service Estates Review (‘the Financial Review’ – PwC 2002), was published at the same time. Key issues identified in the Estates Review included the need to end the practice of ‘slopping out’, avoid overcrowding, the need to refurbish or replace exhausted accommodation, and the need to meet projected future demand for prisoner places.

To address the issues identified above, the Estates Review concluded that a significant number of additional prisoner places would be required. It considered three options for the provision of new places: new houseblocks; refurbished accommodation; and new prisons. Its preferred option, for achieving adequate numbers of prisoner places, was to build three new prisons. The Scottish Executive proposed that these should be provided under a ‘Private Build, Private Operate’ model.

---

8 The original table included a note that components may not add to totals due to rounding.
9 The original table included a note that the figures in these columns cannot be added to produce a total ‘maximum number’ since the individual establishment figures relate to different days within 2001.
10 The total figures include Zeist – the temporary Scottish Prison created in the Netherlands to house prisoners for trial in relation to the Lockerbie bombing.

---

The Scottish Prison Estates Review

In March 2002, the Scottish Prison Service (‘SPS’) published its report on a review of the Scottish prisons estate (‘the Estates Review’ – Scottish Prison Service 2002). The purpose of the Estates Review was to identify likely pressures on the Scottish prisons estate over the long term (ie 10+ years) and to create a series of options for meeting these. PricewaterhouseCoopers (‘PwC’) verified the Estates Review costs and its separate report, Financial Review of Scottish Prison Service Estates Review (‘the Financial Review’ – PwC 2002), was published at the same time. Key issues identified in the Estates Review included the need to end the practice of ‘slopping out’, avoid overcrowding, the need to refurbish or replace exhausted accommodation, and the need to meet projected future demand for prisoner places.

To address the issues identified above, the Estates Review concluded that a significant number of additional prisoner places would be required. It considered three options for the provision of new places: new houseblocks; refurbished accommodation; and new prisons. Its preferred option, for achieving adequate numbers of prisoner places, was to build three new prisons. The Scottish Executive proposed that these should be provided under a ‘Private Build, Private Operate’ model.

---

The Scottish Prison Estates Review

In March 2002, the Scottish Prison Service (‘SPS’) published its report on a review of the Scottish prisons estate (‘the Estates Review’ – Scottish Prison Service 2002). The purpose of the Estates Review was to identify likely pressures on the Scottish prisons estate over the long term (ie 10+ years) and to create a series of options for meeting these. PricewaterhouseCoopers (‘PwC’) verified the Estates Review costs and its separate report, Financial Review of Scottish Prison Service Estates Review (‘the Financial Review’ – PwC 2002), was published at the same time. Key issues identified in the Estates Review included the need to end the practice of ‘slopping out’, avoid overcrowding, the need to refurbish or replace exhausted accommodation, and the need to meet projected future demand for prisoner places.

To address the issues identified above, the Estates Review concluded that a significant number of additional prisoner places would be required. It considered three options for the provision of new places: new houseblocks; refurbished accommodation; and new prisons. Its preferred option, for achieving adequate numbers of prisoner places, was to build three new prisons. The Scottish Executive proposed that these should be provided under a ‘Private Build, Private Operate’ model.

---

The Scottish Prison Estates Review

In March 2002, the Scottish Prison Service (‘SPS’) published its report on a review of the Scottish prisons estate (‘the Estates Review’ – Scottish Prison Service 2002). The purpose of the Estates Review was to identify likely pressures on the Scottish prisons estate over the long term (ie 10+ years) and to create a series of options for meeting these. PricewaterhouseCoopers (‘PwC’) verified the Estates Review costs and its separate report, Financial Review of Scottish Prison Service Estates Review (‘the Financial Review’ – PwC 2002), was published at the same time. Key issues identified in the Estates Review included the need to end the practice of ‘slopping out’, avoid overcrowding, the need to refurbish or replace exhausted accommodation, and the need to meet projected future demand for prisoner places.

To address the issues identified above, the Estates Review concluded that a significant number of additional prisoner places would be required. It considered three options for the provision of new places: new houseblocks; refurbished accommodation; and new prisons. Its preferred option, for achieving adequate numbers of prisoner places, was to build three new prisons. The Scottish Executive proposed that these should be provided under a ‘Private Build, Private Operate’ model.

---

The Scottish Prison Estates Review

In March 2002, the Scottish Prison Service (‘SPS’) published its report on a review of the Scottish prisons estate (‘the Estates Review’ – Scottish Prison Service 2002). The purpose of the Estates Review was to identify likely pressures on the Scottish prisons estate over the long term (ie 10+ years) and to create a series of options for meeting these. PricewaterhouseCoopers (‘PwC’) verified the Estates Review costs and its separate report, Financial Review of Scottish Prison Service Estates Review (‘the Financial Review’ – PwC 2002), was published at the same time. Key issues identified in the Estates Review included the need to end the practice of ‘slopping out’, avoid overcrowding, the need to refurbish or replace exhausted accommodation, and the need to meet projected future demand for prisoner places.

To address the issues identified above, the Estates Review concluded that a significant number of additional prisoner places would be required. It considered three options for the provision of new places: new houseblocks; refurbished accommodation; and new prisons. Its preferred option, for achieving adequate numbers of prisoner places, was to build three new prisons. The Scottish Executive proposed that these should be provided under a ‘Private Build, Private Operate’ model.

---

The Scottish Prison Estates Review

In March 2002, the Scottish Prison Service (‘SPS’) published its report on a review of the Scottish prisons estate (‘the Estates Review’ – Scottish Prison Service 2002). The purpose of the Estates Review was to identify likely pressures on the Scottish prisons estate over the long term (ie 10+ years) and to create a series of options for meeting these. PricewaterhouseCoopers (‘PwC’) verified the Estates Review costs and its separate report, Financial Review of Scottish Prison Service Estates Review (‘the Financial Review’ – PwC 2002), was published at the same time. Key issues identified in the Estates Review included the need to end the practice of ‘slopping out’, avoid overcrowding, the need to refurbish or replace exhausted accommodation, and the need to meet projected future demand for prisoner places.

To address the issues identified above, the Estates Review concluded that a significant number of additional prisoner places would be required. It considered three options for the provision of new places: new houseblocks; refurbished accommodation; and new prisons. Its preferred option, for achieving adequate numbers of prisoner places, was to build three new prisons. The Scottish Executive proposed that these should be provided under a ‘Private Build, Private Operate’ model.

---

The Scottish Prison Estates Review

In March 2002, the Scottish Prison Service (‘SPS’) published its report on a review of the Scottish prisons estate (‘the Estates Review’ – Scottish Prison Service 2002). The purpose of the Estates Review was to identify likely pressures on the Scottish prisons estate over the long term (ie 10+ years) and to create a series of options for meeting these. PricewaterhouseCoopers (‘PwC’) verified the Estates Review costs and its separate report, Financial Review of Scottish Prison Service Estates Review (‘the Financial Review’ – PwC 2002), was published at the same time. Key issues identified in the Estates Review included the need to end the practice of ‘slopping out’, avoid overcrowding, the need to refurbish or replace exhausted accommodation, and the need to meet projected future demand for prisoner places.

To address the issues identified above, the Estates Review concluded that a significant number of additional prisoner places would be required. It considered three options for the provision of new places: new houseblocks; refurbished accommodation; and new prisons. Its preferred option, for achieving adequate numbers of prisoner places, was to build three new prisons. The Scottish Executive proposed that these should be provided under a ‘Private Build, Private Operate’ model.

---

The Scottish Prison Estates Review

In March 2002, the Scottish Prison Service (‘SPS’) published its report on a review of the Scottish prisons estate (‘the Estates Review’ – Scottish Prison Service 2002). The purpose of the Estates Review was to identify likely pressures on the Scottish prisons estate over the long term (ie 10+ years) and to create a series of options for meeting these. PricewaterhouseCoopers (‘PwC’) verified the Estates Review costs and its separate report, Financial Review of Scottish Prison Service Estates Review (‘the Financial Review’ – PwC 2002), was published at the same time. Key issues identified in the Estates Review included the need to end the practice of ‘slopping out’, avoid overcrowding, the need to refurbish or replace exhausted accommodation, and the need to meet projected future demand for prisoner places.

To address the issues identified above, the Estates Review concluded that a significant number of additional prisoner places would be required. It considered three options for the provision of new places: new houseblocks; refurbished accommodation; and new prisons. Its preferred option, for achieving adequate numbers of prisoner places, was to build three new prisons. The Scottish Executive proposed that these should be provided under a ‘Private Build, Private Operate’ model.
However, following an Executive consultation on these proposals (Scottish Executive 2002b), and the publication of the Justice 1 Committee’s Report on the Prison Estates Review (Scottish Parliament 2002), the Minister for Justice announced the following decisions to the Scottish Parliament on 5 September 2002:

- A commitment to invest £110m (plus any savings from current expenditure) over three years to modernise public sector prisons.

- The building of two new prisons (with a capacity of around 700) – the first to be privately built and operated; the second being described as a challenge to the public sector to demonstrate that it can bridge the competitive gap between the public and the private sector. (Sites for these prisons have not yet been decided upon. However the aim is for them to be within the Central Belt.)

The Bridging the Gap Project Team is the vehicle by which the joint SPS and Trade Union Side in-house bid for the second new proposed prison will be delivered. The Team met with Ministers early in March 2003 and was tasked with producing a plan outlining how the public sector bid would be formulated. The Team is currently carrying out the scoping studies and fieldwork necessary to deliver these proposals.

In relation to the issue of ‘slopping out’, access to night sanitation is one of the areas in relation to which the SPS is currently facing legal challenge on human rights grounds. It has been alleged that ‘slopping out’ is contrary to Article 3 of the European Convention on Human Rights:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

A test case on this issue (Napier v the Scottish Ministers) is due to be heard by the Court of Session in June/July 2003.

**PROPERTY LAW**

**Key developments in Scotland**

During its first session, the Scottish Parliament passed three pieces of legislation based on reports of the Scottish Law Commission. These were as follows:

- The Abolition of Feudal Tenure etc (Scotland) Act 2000, which will, following commencement of its main provisions (planned for November 2004), abolish the feudal system of land ownership which currently applies to the vast majority of properties in Scotland. This is the system whereby a person can sell land but reserve an interest in that land known as the ‘feudal superiority’. Under the provisions of the Act, land previously held under feudal tenure will be owned outright and superiority interests will disappear.

- The Leasehold Casualties (Scotland) Act 2001, which abolished ‘leasehold casualties’, ie payments that very long leases sometimes stipulated must be made by tenants to landlords in addition to rent.

- The Title Conditions (Scotland) Act 2003 (‘the 2003 Act’), which will, following commencement of its main provisions (also planned for November 2004), codify and reform the law relating to ‘title conditions’. ‘Title conditions’ are conditions which apply to land ownership and affect most land in Scotland. They are set out in the title deeds of land or...
buildings, usually when they are first sold. The 2003 Act will complement and complete the process of feudal abolition and will provide a framework of rules for the creation and enforcement of conditions on property in the future.

**Future projects**

**Tenements**

In March 1998, the Scottish Law Commission published its *Report on the Law of the Tenement* recommending reforms to the law relating to tenement properties, with a draft Bill attached. The Scottish Executive published a *Consultation Paper (2003)* on an updated version of the draft Bill (in March of this year), with the consultation period ending in June. The *Partnership Agreement 2003* (p 41) includes a commitment to reform the law of the tenement.

At present the law affecting tenements takes one of two forms: either the rules governing management and maintenance are set out in the title deeds of the particular property or, where the title deeds are silent or incomplete, a background or default law has been developed by the courts to take their place. These default rules cover who owns certain parts of the tenement, such as the roof and external walls, and determine what obligations there are in relation to repairing a tenement. A number of problems have been identified with these rules. For instance, there is uncertainty as to the division of ownership of certain parts of the tenement (eg the common passage and stair). Furthermore, there is an obligation on the owners of parts of the tenement to maintain those parts where they are essential to the support or shelter of the building as a whole. However, as certain essential parts are owned individually (such as the roof which belongs to the owner of the top flat) this can lead to a heavier burden on some flat owners than on others. Finally, in relation to parts of the tenement owned by the proprietors of all or several flats, decisions about repair and maintenance have to be taken unanimously, a fact which frequently results in no action being taken (or delay in taking action) because of a lack of agreement.

The draft Bill applies to ‘tenements’, which are defined to include a wide range of properties, including office blocks and houses which have been subdivided into upper and lower flats. It seeks to reform the law in two main ways. Firstly, it seeks to re-state the default rules relating to ownership of a tenement in a statutory form and with the removal of uncertainties. Secondly, it creates a ‘Tenement Management Scheme’ which will apply to both existing and future tenements, except where an alternative scheme (suitable for more complex developments) contained in the 2003 Act is opted into instead. The Tenement Management Scheme introduces shared liability for costs relating to the main parts of the tenement that all owners have an interest in (whether owned individually or in common with other owners) and majority decision-making by all the owners on issues relating to these parts. However, certain provisions in the title deeds will continue to prevail. This is where, firstly, the title deeds for each flat in the tenement provide procedures for making decisions and, secondly, where the title deeds provide for how costs of maintenance, repairs, etc should be allocated.

**The Report of the Housing Task Force**

11 Or where there is more than one top flat, each top flat owns the individual section of the roof above it.

12 Except where a repair is deemed ‘necessary’ – where one owner can instruct the repair and recover the costs from the other owners. However, whether or not a repair is ‘necessary’ is a matter that can be open to dispute.

13 See Part 5A of the 2003 Act for the provisions relating to the alternative ‘Development Management Scheme’.
In December 2000, the Scottish Executive set up a Housing Improvement Task Force (‘HITF’) with the broad remit of considering:

“issues relating to housing quality in the private sector and the house buying and selling process” (HITF website)

The HITF (2003) published its final report, Stewardship and Responsibility: A Policy Framework for Private Housing in Scotland in March of this year. The then Minister for Social Justice stated that it was:

“an important source of ideas and options for policy development well into the future.” (HITF 2003, p i)

The Report includes wide-ranging recommendations relating to housing standards, local authority powers and financial assistance to private owners, the privately rented sector, common repair and maintenance and the house buying and selling process. There are several recommendations in the Report which might be of interest to any committee considering justice issues:

- That there should be a shift from the current system whereby individual house buyers commission surveys or valuations in respect of property they are thinking of buying, to an alternative arrangement whereby a single survey is commissioned by the seller, shared amongst all prospective purchasers and paid for by the ultimate buyer.

- That a purchaser’s information pack, containing information such as copies of planning consents and details of obligations in the title deeds to maintain common parts of flatted properties, should be made available at the point when the property goes on the market, as opposed to when the missives (ie the contract between seller and purchaser) are being negotiated, in order to improve the quality of information available to potential purchasers.

- That the Tenements (Scotland) Bill should be introduced as soon as possible but amended in a number of respects to ensure, for example, that owners’ associations can be established in new developments of eight or more flats as formal vehicles for decision making, and that compulsory common building insurance is a requirement for new flatted blocks.

The Partnership Agreement 2003 (p 41) includes commitments to build on the recommendations of the HITF and to introduce a single seller survey.

RELIGIOUS PREJUDICE AND SECTARIANISM

In June 2001 Donald Gorrie MSP lodged a proposal for a Member’s Bill to make sectarian behaviour an aggravation of a criminal offence. The intention of the Bill would have been to attract more punitive sentences for offences which were committed with a sectarian motivation. He also proposed the creation of a code of conduct on tackling sectarian behaviour. The consultation on the proposed Bill drew almost 100 responses, most of which expressed support for the objectives. However, the setting up of the Cross-Party Working Group on Religious Hatred (see below) had the effect of suspending work on drafting the Bill.

In July 2001 Dennis Canavan MSP wrote as convener of the Cross-Party Sports Group to the then First Minister about proposals that had been received from Celtic and Rangers football clubs for tackling sectarianism in football, and in Scottish society more generally. The First
Minister responded by welcoming the approach taken by the clubs and highlighting the need for the different agencies involved to work together. In October 2002 the First Minister met representatives from both clubs and stated that the Executive would work hand in hand with them in order to tackle football-related sectarianism.

**Cross-Party Working Group on Religious Hatred**

The remit of the Cross-Party Working Group on Religious Hatred was to:\(^{14}\)

“Consider the need for legislation to combat religious hatred (in particular the creation of a new category of statutory aggravations and the creation of a new offence of incitement to religious hatred) and if appropriate develop effective and workable proposals for legislation to increase the protection to religious groups in Scotland.

Consider whether non-legislative action could be taken as an alternative.” (Scottish Executive 2002, para 1.13).

In December 2002, the Group published its report, *Tackling Religious Hatred: Report of Cross-Party Working Group on Religious Hatred* (Scottish Executive 2002), setting out its conclusions on possible legislation to tackle religious hatred in Scotland. The overall conclusion of the Group was that there were strong arguments for legislation but that these should not overshadow the need for changes in practice, culture and attitudes to combat religious prejudice on a wider front. The Group recommended that legislation should be considered as part of a package of other measures, including:

- the issuing of detailed guidelines, by the Lord Advocate, to the police on their handling of alleged offences to ensure that any element of religious motivation or hatred is fully recorded in reports to the Procurator Fiscal;
- the updating of Crown Office guidelines to prosecutors to ensure that any religious elements in an offence are brought before the court;
- the commissioning of research by the Scottish Executive to provide a statistical and descriptive baseline of incidents of religious and sectarian hatred;
- the taking of action by football clubs against supporters indulging in insulting sectarian behaviour;
- the sharing of information between the police, Procurators Fiscal and football clubs, in order to better identify and deal with football supporters involved in offences at or near football grounds (including those involving an element of religious hatred);
- the licensing of street traders by local authorities, and the use of local authority powers to attach conditions to such licences prohibiting street traders from selling any offensive sectarian material in the context of football matches;
- inter-agency co-ordination and monitoring at the highest level.

The Executive carried out consultation on the Group’s report (closed on 14 March 2003). The *Partnership Agreement 2003* (p 39) includes a commitment to tackle sectarianism and implement the proposals of the Group on tackling religious hatred.

**Criminal Justice (Scotland) Act 2003**


*providing research and information services to the Scottish Parliament*
Section 59A of the Criminal Justice (Scotland) Bill (now section 74 of the Criminal Justice (Scotland) Act 2003), ‘Offences aggravated by religious prejudice’, was added to the Bill as a result of an amendment brought forward by Donald Gorrie MSP at Stage 2. The section contains specific statutory provision for an offence to be aggravated by reason of religious prejudice.

Robin Harper MSP also put forward an amendment at Stage 2 which would have added prejudice on grounds of sexual orientation, gender, age and disability. However, this amendment was not agreed to. The Executive opposed this particular amendment on the basis that more discussion was needed but agreed to set up a working group to look at how crimes motivated by prejudice on these four grounds should be dealt with.

**VICTIMS OF CRIME AND WITNESSES**

**Victims**

In the *Scottish Strategy for Victims* (Scottish Executive 2000a), the Executive made a commitment to support all victims of crime. At the centre of the Strategy was the recognition of the important role which victims have in the criminal justice system, and the need to put mechanisms in place which would explicitly take into account the needs and concerns of victims within the criminal justice process.

An *Action Plan* (Scottish Executive 2000b) for the Scottish Executive Justice Department sets out how the Department intends to meet its commitments to supporting victims of crime within the overall framework of the Scottish Strategy for Victims. Following evaluation of three pilot victim witness support schemes (Lobley and Smith 1998), similar services have been rolled out to all sheriff courts and an evaluation of the national service is currently taking place. In addition, the Lord Advocate has established a new Victim Information and Advice Service (VIA). Several VIA offices are currently in operation and the Lord Advocate has given an undertaking that there will be a VIA office in each of the 11 new Procurator Fiscal Service Areas by the end of 2003. The offices where the VIA was piloted (Aberdeen and Hamilton) are currently being evaluated.

The Criminal Justice (Scotland) Act 2003 includes provisions on victims’ rights. Areas which are covered include victim statements, a victim’s right to receive information concerning the release of an offender, and the right of victims to receive information and make representations when an offender is released on licence.

The Executive recently published a *Progress Report* (Scottish Executive 2003a) on the Scottish Strategy for Victims, containing information on a number of ongoing developments which seek to improve services and support to victims of crime.

**Witnesses**

In 1997 a Working Group on Vulnerable and Intimidated Witnesses was established to consider, amongst other things, the way in which witnesses in need of special measures are supported (both formally and informally) through the investigation of crimes and any subsequent prosecution. The Group’s recommendations were published in the report, *Towards a Just Conclusion* (Scottish Office 1998). In May 2002, the Scottish Executive published a further consultation paper, *Vital Voices – Helping Vulnerable Witnesses Give Evidence* (2002a), focussing on the law of evidence as it relates to vulnerable and intimidated witnesses. An analysis of responses to this consultation was published later in 2002 (Fitzpatrick 2002).
Research on the operation and effectiveness of the current laws of evidence in relation to vulnerable witnesses is due to be commissioned. It will examine special provisions aimed at assisting such witnesses to give evidence, and seek to provide baseline data which can be used to assess the impact of any future changes in the law of evidence.

The Scottish Executive recently issued a *Policy Statement* (2003b) on the issue of vulnerable witnesses, outlining proposals for change to the services available.

**Child witnesses**

A Working Group on Child Witness Support was established by the Lord Advocate in January 1995 with the aim of improving arrangements for the support, and preparation for court, of child witnesses (see Plotnikoff and Woolfson 2001, at Annex B). In Scotland a child is, for these purposes, defined as someone under the age of 16 years.

A recent Scottish Executive consultation in this area, *Child Witness Support Consultation Document* (2002b), sought responses on various proposals, including the introduction of national guidance due to be implemented in spring 2003 by all the relevant agencies that deal with child witnesses. Proposals detailed in the Consultation Document include:

- proposals for the provision of support services for child witnesses;
- guidance on the conduct of court familiarisation visits;
- guidance on investigative interviewing;
- guidance on the questioning of children in court;
- guidance on the provision of therapy to child witnesses prior to criminal trials and children’s hearings proceedings.

The consultation closed at the end of January 2003. It is intended that the responses will be analysed once appropriate Ministers are in place.

*Partnership Agreement 2003 and Statement on the Executive’s Programme 2003*

The *Partnership Agreement 2003* (p 36) states that the Executive will:

- legislate to protect vulnerable witnesses and improve the support for victims and witnesses with increased privacy protection;
- boost victim support and court support schemes and expand the witness service to the High Court;
- encourage prosecutors to give appropriate information to victims whenever practical, on their reasoning for action taken or discontinued.

The *Statement on the Executive’s Programme 2003* (col 88) includes a commitment to introduce, before the 2003 summer recess, a bill to provide “new statutory protection for vulnerable witnesses – including automatic special provision for children under the age of 16, abolition of the competence test, and improved support for victims and witnesses”. Also see Scottish Executive news release – “Vulnerable Witnesses Bill” (28 May 2003).

**YOUTH JUSTICE – OVERVIEW**
Youth crime was, during the period covered by the first session of the Scottish Parliament, an issue of particular concern to the Scottish Executive. This was in view of the number of young people who become involved in crime and the small but increasing number of persistent young offenders who can cause substantial problems in local communities. An Advisory Group on Youth Crime was established to consider ways of reducing such crime through a combination of prevention, early intervention, and effective services and programmes. The recommendations of the Group were accepted by the Scottish Executive and are now the subject of an action programme, *Scotland's Action Programme to Reduce Youth Crime 2002* (Scottish Executive 2002).

Young offenders under the age of 16 are generally dealt with through the Children's Hearings System which is sponsored by the Scottish Executive Education Department (amongst its broad responsibilities in respect of children and young people). Recent research on Children’s Hearings (Lobley, Smith and Stern 2002) indicated a lack of resources in terms of effective programmes and services to which young people could be referred. The Executive has stated that it is committed to increasing the range of interventions available in relation to Children’s Hearings and, more generally, to early intervention in the lives of young people who get into trouble with the law in order to reduce offending and increase community safety.

The Advisory Group on Youth Crime also recognised that the point of transition between the Children’s Hearings system and the adult criminal justice system (the latter deals with most young offenders aged 16 and over) is difficult and abrupt as young offenders move away from a system focused largely on their welfare needs. The range of disposals available to the courts which are tailored to the particular needs of young offenders are limited. Issues relating to young offenders of 16 and over who are dealt with through the adult criminal justice system are part of the remit of the Justice Department.

Research commissioned by the Scottish Executive has indicated that the effectiveness of certain disposals and programmes with young people are critically affected by the lifestyles of those young people (Levy and McIvor 2001). For example, a pilot of the use of supervised attendance orders at first sentence with 16 and 17 year olds was abandoned because of the high breach rate and the limited options available on breach. However, research indicates that programmes for young offenders based on evidence of what works can be effective in reducing the rate and seriousness of re-offending, as shown, for example, in the evaluation of Barnardo’s Fregarrach programme for persistent juvenile offenders (see Lobley, Smith and Stern 2002).

In June 2002 Ministers published a 10-point Action Plan (see Scottish Executive news release of 27 June 2002) which included: proposals for a Youth Court feasibility project; Fast Track Children’s Hearings; a review of the potential for using Restriction of Liberty Orders; Anti-Social Behaviour Orders and Community Service Orders for persistent offenders; consideration of a Scotland wide system of police warnings; and national standards for tackling youth crime (which will operate between local authorities, the criminal justice system and the Children’s Hearings system).

Fast Track Children’s Hearings were introduced as pilot schemes on 31 January 2003 in Dundee, Ayrshire, and East Lothian & Borders. They are aimed at a hard core of young offenders responsible for an estimated one-third of youth crime in their communities. It is envisaged that these hearings will deal with the eight per cent of offenders under the age of 16 who commit five or more offences (mostly vandalism, breach of the peace and car-related crime).
Scotland’s first Youth Court is due to be piloted in Hamilton in the spring of 2003. It will target persistent young offenders in the 16-17 year-old age group, with the flexibility to deal with 15 year-olds in certain circumstances.

Further information on the initiatives referred to above can be found in the next section of this briefing.

YOUTH JUSTICE – INITIATIVES

Youth crime review

The Scottish Cabinet held, in November 1999, a strategy session focussing on issues relating to youth crime in Scotland. This led to the commissioning of a Review of Youth Crime (see the Scottish Executive Youth Crime Review website). The Review was commenced in December 1999 under the aegis of an Advisory Group on Youth Crime. The Group’s remit was:

- to assess the extent and effectiveness of options which were currently available to Children’s Hearings and courts in cases involving persistent young offenders;
- to look at the scope for improving the range and availability of options aimed at addressing the actions of persistent young offenders.

In June 2000, the Advisory Group’s report – Report of Advisory Group on Youth Crime (Scottish Executive 2000a) was published.

The Scottish Executive accepted all the recommendations which the Advisory Group put forward (see Scottish Executive 2000b) and, in June 2000, announced a four-year £23.5m investment in preventing youth crime. This allowed for the setting up of a multi-agency youth team in every local authority area. In January 2002 the Executive also announced the publication of an action programme, Scotland’s Action Programme to Reduce Youth Crime 2002 (Scottish Executive, 2002a). This was intended to build on the agenda first identified by the Advisory Group on Youth Crime, by developing the recommendations of the Advisory Group and identifying new areas for action.

Fast Track Children’s Hearings and Youth Courts

In June 2002 the Scottish Executive announced a 10 point Action Plan on Youth Crime (see Scottish Executive news release of 27 June 2002). Scottish Ministers were, in particular, concerned that whilst there had been a reduction in youth crime overall, the number of persistent young offenders had increased. Two action points, in particular, sought to tackle this problem. The first proposed fast track Children’s Hearings to deal with persistent offenders in the under-16 age group. The second proposed a study into the feasibility of Youth Courts to deal with 16 and 17 year olds (currently prosecuted in the adult courts).

Fast Track Children’s Hearings

In January 2003 the Scottish Executive published a Guidance Booklet on the Fast Track Children’s Hearings Pilots. The aim of such fast track hearings is to enable the system to respond more quickly to referrals of young people under 16 who are persistently offending and to take action to reduce and/or end re-offending. The decisions of such Hearings are to be

---

15 The 10 point Action Plan was put forward by an ad hoc ministerial group which looked at the development of the Action Programme (Scottish Executive, 2002a).
based on an assessment of need and will lead to guaranteed places on programmes to reduce offending, secure better outcomes for those referred and identify potential for future action.

The new Hearings, which were introduced (in January 2003) as pilot schemes in Dundee, Ayrshire, and East Lothian & Borders, are aimed at a hard core of offenders responsible for an estimated one-third of youth crime. It is envisaged that the Hearings will deal with the eight per cent of offenders under 16 who commit five or more offences (mostly vandalism, breach of the peace and car-related crime). As of 1 February 2003, any young person who has five or more referrals for offences within a six-month period will, if he/she is covered by one of the pilot schemes, go through the fast track process. The Executive has stated in a news release of 31 January 2003 that:

“The fast-track hearings should take 80 days between the offence being committed to referral to a programme – this is one third quicker than what happens at present”.

New interventions in pilot areas, to support the Fast Track Hearings include new programmes that cover road traffic offending, parenting, mentoring, social skills, anger management and mental health issues. There are also extra intensive support places, educational support places and additional residential and secure accommodation places.

**Youth Court Feasibility Project Group**

The Youth Court Feasibility Project Group, chaired by Sheriff John McInnes, reported to the Deputy First Minister at the end of December 2002. It concluded that the establishment of a pilot Youth Court was feasible under existing primary legislation. The country’s first Youth Court, a two-year pilot based at Hamilton Sheriff Court, became operational on 2 June 2003 (see Scottish Executive news release – ‘Scotland’s first Youth Court opens’, 2 June 2003). The model has three distinctive features:

- a fast track process to deal with the young offenders;
- a group of designated sheriffs for the youth court;
- disposals specially designed for the young offender age group.

The pilot will target persistent young offenders in the 16-17 year-old age group, with the flexibility to deal with 15-year-olds in certain circumstances. The fast-track process is designed to ensure that young offenders are brought to court quickly. The proposal is that, other than in exceptional cases, prospective Youth Court offenders should make their first appearance in court within ten days of the date of charge, a shorter period than the current system generally provides for. The group of sheriffs sitting in the Youth Court will provide supervision of every young offender made the subject of a Youth Court order. The court will have access to:

- a broader and more intensive range of community programmes than currently exist for other courts;
- services aimed at tackling the social problems which can lead to young people re-offending;
- enhanced intervention programmes specifically targeted at the young offender age group.

**Future commitments**

The *Partnership Agreement 2003* (pp 32-35) includes various commitments with regard to youth justice. These include:

- a review of the Children’s Hearings system;
• the introduction of Anti-Social Behaviour orders for under 16 year-olds;
• civil orders requiring parents to act in the best interests of their children (with failure to do so resulting in a parental order – a breach of which will be regarded as an offence);
• a commitment to roll out Youth Courts (subject to successful evaluation).

In a statement to the Scottish Parliament in May 2003 (Statement on the Executive’s Programme 2003, col 89) the First Minister stated that the Executive would, before the end of June 2003, publish proposals on antisocial behaviour – to be followed by the introduction of a bill, including new antisocial behaviour orders for under-16s and civil orders requiring parents to act in the best interests of their children, in the autumn of 2003. Also see Executive news release – ‘Anti-Social Behaviour Bill’ (28 May 2003).
BIBLIOGRAPHY

Introduction


SP OR 28 May 2003, cols 81–90. Available at: http://www.scottish.parliament.uk/plenary/or-03/sor0528-02.htm#Col81.

Alternatives to custody


Charity law


SP OR 28 May 2003, cols 133–143. Available at: http://www.scottish.parliament.uk/plenary/or-03/sor0528-02.htm#Col133.

Courts


**Criminal Justice System**


**Drug Misuse**


Enforcement of civil obligations


SP OR 8 June 2000, col 105. Available at: http://www.scottish.parliament.uk/official_report/session-00/or070201.htm.

European Union


**Family law**


**Human rights commission**


Legal Information and advice provision


Police


Prisons


**Property law**


**Religious prejudice and sectarianism**


**Victims of crime and witnesses**


**Youth justice - overview**


**Youth justice - initiatives**


STATUTORY INSTRUMENTS IN COMMITTEE

A Short Guide

Directorate of Clerking and Reporting
**Introduction**

1. In passing a Bill, Parliament accepts its principles, objectives and general powers. However, Bills often leave much of the detail of implementation, the timing and updating of many provisions to Ministers (in the main) under specific powers in the Act, known as delegated powers provisions. The statutory instrument, (SI in Westminster) or Scottish Statutory Instrument (SSI) is the most usual form of this legislation which is variously known as secondary, delegated or subordinate legislation. The terms of delegated powers in Acts set out the nature and extent of the powers they grant.

2. Most instruments are subject to either approval (affirmative) procedure or to annulment (negative) procedure in the Parliament for a period of 40 days from the date they are laid before the Parliament. Under affirmative procedure, an instrument must be recommended for approval by the lead committee for that instrument and then approved by motion in a meeting of the whole Parliament. Under negative procedure, an instrument becomes law on the date specified on it (the "coming into force date") but will be nullified if a motion to annul it is debated and passed in the lead committee within the 40-day period.

3. The procedure for any instrument is determined by its parent Act. Where the parent Act requires that an instrument be simply laid before the Parliament and is subject to no further procedure, it will be subject to the technical and legal scrutiny of the Subordinate Legislation Committee (SLC) only. A relatively small number of instruments are subject to special procedures or to shorter or longer periods than 40 days.

**Designation of a lead committee**

4. The Consultative Steering Group (CSG), which considered and set out recommended procedure for the Parliament before its establishment, stated in its report that the Scottish Parliamentary system should provide greater opportunity for scrutiny of statutory instruments and their underlying policy intentions than is usual at Westminster. This is the main reason why Standing Orders provide that instruments subject to negative or affirmative procedure are referred to lead committees, which must consider them and report their recommendations to the Parliament. There is also provision for other committees to consider and report on instruments to the lead committee.

5. Lead committees must not reach their recommendations on an instrument until they have taken into account "any recommendations by any other committee" (Rules 10.4.3 and 10.6.4). In practice, there will always be a report from the SLC to take into consideration and sometimes a report, or reports, from another committee or committees. However, this does not prevent a committee from considering an instrument before it has received the reports of other committees if it wishes to do so, provided that it does not reach its recommendations at that stage.

6. Any negative or affirmative instrument, once laid, is referred (usually by the Clerk) to a lead committee and to the SLC for consideration (Rule 10.1.3). Whilst the SLC considers instruments from the legal and technical standpoint only, the lead committee for an instrument is the committee within whose remit the subject matter of the instrument falls (Rule 10.2.1). Where the subject matter falls within the remit
of more than one committee the Parliament, on a motion of the Bureau, will designate one committee to be the lead committee. In practice, Conveners of the committees concerned will often have a hand in this decision.

7. Other committees designated to consider an instrument will receive copies and may make any recommendations they think fit to the lead committee by a date specified in the business bulletin (Rule 10.2.2). Any other committee does not need to wait for the SLC to report before it makes its recommendations to the lead committee.

Instruments taken directly in the Chamber
8. Under Rule 10.1.3, the Parliament may decide, on a Bureau motion, to consider an instrument in the Chamber rather than the usual designation to a lead committee. In these cases, the only direct committee involvement with an instrument will be the technical scrutiny of the Subordinate Legislation Committee.

9. In the first session, instruments considered by the whole Parliament tended to be of particular political interest or were of major financial significance such as the annual Local Government Finance Orders.

Affirmative procedure
10. There are various kinds of affirmative instrument but all require Parliament’s approval by motion. Before a motion in the Chamber, however, an affirmative must secure a recommendation of approval by the lead committee. This motion is first lodged at the Chamber Desk and then moved in committee by a member of the Executive or Scottish Minister, usually the Minister in charge of the instrument, at a meeting of the lead committee. If that motion is successful, the Parliamentary Bureau then puts a motion before the Parliament for the instrument to be approved.

11. Without Parliamentary approval affirmatives either cannot:

(a) be made – an instrument is said to be made when it is signed by a Minister. Some affirmatives are laid in draft, that is, they have not been made and have no legal effect until the Parliament, by motion, approves them and the Minister has signed them.

(b) come into force – an affirmative can be made but not come into force before the Parliament has approved it.

(c) or remain in force beyond a stated period – some affirmative instruments come into force once they are made and must be approved by the Parliament within a specified number of days to remain in force.

Affirmative instruments in committee
12. The lead committee for an affirmative instrument needs to report its recommendations to the Parliament, taking account of any recommendations from any other committee, no later than 40 days after the instrument is laid. For some instruments, those that will lapse after a stated period unless approved, such as 28-day orders, the committee must report within that period.
13. Any member of the Executive or Scottish Minister may by motion propose to the committee that it recommend that the instrument be approved (Rule 10.6.2). In practice this normally will be the Minister in charge of the instrument. The Minister is entitled to attend the committee to debate the motion but not to vote. The debate is limited to 90 minutes (Rule 10.6.3).

14. Any member of the lead committee may speak against the motion to recommend approval of the instrument. A member of the Parliament who is not a member of the lead committee may attend the meeting of the lead committee and may speak in the debate if invited to do so by the Convener but may not vote (Rule 12.2.2).

15. If the lead committee then recommends approval of the instrument the Bureau will propose by motion that the Parliament approve the instrument. Standing Orders provide for only a very restricted debate on the motion in the Chamber (Rule 10.6.5), envisaging that the lead committee will have provided the main opportunity for debate.

Amendments to a motion to approve an instrument
16. If they wish, it is open to members to amend motions to approve instruments. The main constraints on amendments are that committees may only approve or reject instruments and may only approve or reject them in their entirety. Therefore, an amendment seeking qualified approval of an instrument would be inadmissible. An amendment that said, for example, "the committee is largely content to recommend approval but..." would be ruled inadmissible. Nor can an amendment seek to approve only a part or parts of an instrument.

17. On the other hand, amendments as a form of commentary are admissible. An amended motion might therefore say, for example, "the committee, whilst recommending approval of the instrument, regrets that it does not amount to full implementation of the Xyz Report..." or, "In recommending approval of the instrument, the committee thanks the Executive for bringing the legislation forward promptly" and so on. The text of a motion, whether amended or not, should be included in the committee's report of its recommendation to the Parliament.

18. In the event that a committee disagrees to the motion to recommend approval of an instrument, the Standing Orders do not prevent the instrument from proceeding nor do they preclude any member from proposing a motion to approve in the Chamber. Also, the Executive can withdraw the instrument at any time. At this stage, any difficulties in securing approval for the instrument are more political than procedural.

Negative procedure
19. An instrument subject to annulment will become, or remain, law unless the annulment procedure is successfully invoked to prevent it. Draft instruments subject to annulment are relatively rare; they can only be made if no annulment motion is passed within 40 days of the day of laying.
Negative instruments in committee

20. Once an instrument is laid it is referred to the lead committee and the SLC. The lead committee must report to the Parliament with its recommendations (Rule 10.4.3 and Rule 6.2.1). Any member of the Parliament, whether or not a member of the lead committee, may by motion propose to the lead committee that it recommend that nothing further is to be done under the instrument (see motion for annulment – Rule 10.4).

21. Whilst Rule 10.4.1 says that the member may propose the motion no later than 40 days after the instrument is laid, in practice the member will need to propose a motion well within the 40 days. This is necessary to allow time for the subsequent steps in the procedure. Firstly, the lead committee must report a recommendation to annul to the Parliament within the 40-day period. Following a lead committee recommendation to annul, the Bureau, under Rule 10.4.4, must then by motion in the Parliament propose annulment and the resolution passed within the 40 days. Therefore sufficient time needs to be allowed for all the steps in the procedure. Once the procedure is completed, it is then for the Executive to move to revoke the instrument.

22. It is likely that the Executive will pick up on any motion to annul and may well be in contact with the member lodging the motion or the lead committee about the point at issue if the member or committee have not already broached the subject themselves.

21-day rule

23. In addition to the provisions in Chapter 10 of Standing Orders, the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SI 1999/1096) makes further provision in relation to SSIs and other instruments or documents which are required to be laid before the Scottish Parliament.

24. Article 10(2) of the Order provides that negative instruments should be laid before the Parliament not less that 21 days before the instrument is due to come into force. 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. Where an instrument is laid before the Parliament less than 21 days before it is due to come into force, the Executive must, under the Order, explain by letter to the Presiding Officer why the rule has been breached.

25. If a letter to the Presiding Officer does not accompany the instrument in question or is technically faulty, the Subordinate Legislation Committee will raise the matter with the Executive. The reasons set out in the letter for breach of the rule are for the lead committee to consider in the policy context but, in its report, the Subordinate Legislation Committee will provide comment on the Executive’s reasons.

Withdrawal and revocation of instruments

26. Under Rule 10.8 the Executive may withdraw an instrument at any time. The Executive may do this, for example, for its own policy reasons or in response to representations from a member or committee. If an instrument has been made (signed by the Minister) it must be revoked, not withdrawn. One way of doing this is
to include a revocation provision in a subsequent instrument. In either case, the Executive will write to the Chamber Desk clerks to inform the Parliament of its intentions and timings.

Committee scheduling of instruments
27. Standing Orders require that the bulk of both negative and affirmative instruments be considered within 40 days of being laid. The Subordinate Legislation Committee has 20 days to consider each instrument and to report on it. Under Rules 10.4.3 and 10.6.4, the lead committee must take into account the SLC's report before it produces its own report. As already stated, in some circumstances it may be useful for the lead committee to begin its consideration before the SLC has reported. However, it must not decide formally on its recommendations and report on an instrument until it has taken into account the SLC's report and any other committee report on the instrument.

28. Clerks to the SLC, in designating each instrument, allow time for the full parliamentary procedure to be followed should the lead committee decide not to approve an affirmative instrument or that nothing further be done under a negative instrument. This can, unavoidably, reduce the time for the lead committee's consideration significantly, depending on the day it was laid. Clerks of lead committees will be in touch with the SLC clerks about the best way to manage the timetable for any particular instrument in the interests of lead committee scrutiny.

29. The SLC usually has two opportunities to consider an instrument within the 20-day period. If there are no technical concerns, the SLC will report on the instrument after a single consideration. If the SLC does have concerns, it will write to the Executive and consider the Executive's reply at its second consideration of the instrument. It will then report on the instrument in light of the Executive's response. The SLC clerks will ensure that reports are passed to the lead committee as soon as they are cleared for publication.

Effect of recesses on scrutiny periods
30. Under Standing Orders, recesses of more than 4 days are not taken into account in calculating the scrutiny periods of instruments. Therefore, if an instrument is laid, for example, 10 days before a recess its 40-day date will fall 30 days after recess. This also applies to the 21-day rule. So a negative instrument laid 10 days before recess would break the 21-day rule if it came into force during recess. It would comply with the rule if it did not come into force until 11 days after recess.

Lead committee reports
31. Under Standing Orders, committees must report to the Parliament on all instruments referred to them. (Rules 10.4.3 and 10.6.4).

32. Lead committees must reach their recommendation(s) on affirmative instruments and report to the Parliament within 40 days (or such other period that may stated in the parent Act) from the date the instrument was laid.

33. Where a lead committee agrees to a motion that a negative instrument be annulled, it must report its recommendations to the Parliament, within 40 days of the
instrument being laid. However, where the lead committee has no recommendation to make, the Committee may publish such reports periodically, for example fortnightly or monthly.

34. Where a committee approves an affirmative instrument or does not wish to annul a negative it may provide an account of the Committee’s views or any further recommendations in the committee’s report on the instrument. In the case of a negative instrument where a motion to annul has been considered by the committee, the committee report should provide at least an outline of the debate on the motion and the result of the vote.

Directorate of Clerking and Reporting

4th June 2003
Flow Chart for Negative and Affirmative Instruments

Instrument laid at Chamber Desk

Sub Leg receives copies of instrument

SLC considers instrument

Yes

Points to raise?

No

Letter to Executive

Executive responds

Lead committee considers instrument

Negative

Affirmative

No

Motion to annul lodged

Yes

Motion recommending approval debated in committee

Motion not agreed

Motion agreed

Instrument may be withdrawn or subject to Chamber motion

Lead committee reports on instrument to Parliament

Procedure completed

Bureau motion put to full Parliament

Lead committee reports on instrument to Parliament

Decision