JUSTICE 2 COMMITTEE

AGENDA

12th Meeting, 2003 (Session 2)

Tuesday 28 October 2003

The Committee will meet at 2.30 pm in Committee Room 2.

1. **Items in private:** The Committee will consider whether to take item 5 in private and whether to take any discussion of the draft Stage 1 report on the Vulnerable Witnesses (Scotland) Bill in private at any future meeting.

2. **Petitions:** The Committee will consider the following petitions—

   **PE200** Petition by Mr Andrew Watt, calling for the Scottish Parliament to review the working methods of the Legal Aid Board particularly in relation to the collection and disbursement of compensation monies collected.

   **PE375** Petition by Mrs Elaine Crawford, calling for the Scottish Parliament to carry out a review of criminal injuries compensation procedure and policy, and a review of sentencing policy on violent crime.

   **PE347** Petition by Mr Kenneth Mitchell calling for the Scottish Parliament to investigate the practice of shoeing Clydesdale Horses to introduce legislation to make such a style of shoeing illegal unless sanctioned, for medical reasons, by a Veterinary Surgeon.

   **PE565** Petition by Miss Jacqueline Shields, calling for the Scottish Parliament to take the necessary steps to provide a protective mechanism to ensure that the welfare concerns of minors is paramount in Scottish law.

3. **Subordinate legislation:** The Committee will take evidence from Joyce Lugton, Scottish Executive Justice Department, Norman Macleod, Office of the Solicitor to the Scottish Executive and Edythe Murie, Office of the Solicitor to the Scottish Executive on the following negative instruments—

   The Lands Tribunal for Scotland (Relevant Certificate) (Fees) Rules 2003 (SSI 2003/451);
The Lands Tribunal for Scotland Rules 2003 (SSI 2003/452);


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

   The Advice and Assistance (Scotland) Amendment (No.2) Regulations 2003 (SSI 2003/421).

5. **Vulnerable Witnesses (Scotland) Bill:** The Committee will consider a draft Stage 1 report.

    Gillian Baxendine / Lynn Tullis
    Clerks to the Committee, Tel 85054
The following papers are enclosed for this meeting:

**Item 2 – Petitions**

Note by the Clerk (Petition PE200 attached) J2/S2/03/12/1
Note by the Clerk (Petition PE375 attached) J2/S2/03/12/2
Note by the Clerk (Petition PE347 attached) J2/S2/03/12/3
Note by the Clerk (Petition PE565 attached) J2/S2/03/12/4

**Item 3/4 – Subordinate legislation**

Note by the Clerk (SSI 421 attached) J2/S2/03/12/5
Note by the Clerk (SSI 451 attached) J2/S2/03/12/6
Note by the Clerk (SSI 452 attached) J2/S2/03/12/7
Note by the Clerk (SSI 453 attached) J2/S2/03/12/8

**Item 5 – Vulnerable Witnesses (Scotland) Bill**

Draft Stage 1 Report (PRIVATE PAPER) J2/S2/03/12/9
Letter from Scottish Executive J2/S2/03/12/10
Letter from the Faculty of Advocates J2/S2/03/12/11

All written submissions to the Vulnerable Witnesses (Scotland) Bill are available online at: [http://www.scottish.parliament.uk/justice2/call/j203-evidence-01.htm](http://www.scottish.parliament.uk/justice2/call/j203-evidence-01.htm).

The following papers are enclosed for information:

**Forthcoming Meetings:**

Tuesday 4 November – Joint meeting with Justice 1 Committee (afternoon)
Tuesday 4 November – Justice 2 Committee meeting (afternoon)
Tuesday 11 November – Justice 2 Committee meeting (afternoon)
Tuesday 25 November – Justice 2 Committee meeting (afternoon)
JUSTICE 2 COMMITTEE

12th Meeting 2003 (Session 2)

Tuesday 28th October 2003

Petition PE200 by Andrew Watt
Note by the Clerk

Background

1. Petition PE200 (attached with relevant papers) by Andrew Watt calls for the Scottish Parliament to review the working methods of the Scottish Legal Aid Board (SLAB), particularly in relation to the collection and disbursement of compensation monies collected. The petition is prompted by the petitioner’s own difficulties in obtaining compensation monies awarded to him. The petition is supported by Patricia Ferguson MSP.

2. The petition was originally referred to the Justice and Home Affairs Committee on 31 May 2000. This petition was considered by the Justice 1 Committee during the last session of Parliament. When Parliament dissolved the Justice 1 Committee recommended that this, and a number of other outstanding petitions, be referred to a successor committee for further consideration in the new session. The PPC therefore agreed to formally refer a number of petitions to both of the newly established Justice Committees, in order that they may consider whether they would wish to give further consideration to the issues raised and thereafter reallocate each petition to the appropriate Justice Committee. It has therefore been agreed that this petition will be considered by the Justice 2 Committee.

3. Although it is not the Committee’s role to examine the specific details of the petitioner’s own case, Members may find the following details helpful in addressing the broader issues raised by the petition.

4. In 1988, when he was eight years old, the petitioner was mauled by a Rottweiler. The owner of the dog was tried at a criminal trial, which became time-barred. The petitioner’s parents then took forward a private prosecution, which was successful. Compensation was awarded to Andrew for his injuries and payments by the owner of the dog were made towards that compensation and costs which were awarded at the time of the case.

5. The payments were erratic and although the capital sum that was awarded to Andrew Watt had been collected, the costs and expenses were not. It is SLAB practice not to release monies collected on behalf of those awarded compensation until the full amount, including interest and expenses, has been received. SLAB was not therefore able to pay any of the money to Andrew Watt (although it was eventually persuaded to release to him the interest that had accrued on the capital sum that it had held for him).
6. The petitioner is therefore calling for an examination of the ways in which the SLAB collects money and how it disburses money in cases such as his.

Consideration by the Justice 1 Committee, Session 1

7. The Justice 1 Committee of the previous Parliament considered this petition on several occasions. Since the petition was lodged SLAB has reviewed its policies on how property recovered or preserved is dealt with in legally aided cases. SLAB wrote to the previous Committee in May 2002 enclosing its ‘Guidance on Property Recovered or Preserved’ which was issued to all legal aid practitioners on 18 April 2002. This guidance clarifies the position regarding property recovered and preserved and aims to ensure that solicitors understand and follow the appropriate procedures. In addition, SLAB wrote to the Committee on 24 May 2002 advising that senior counsel had confirmed that “the Board’s practice was essentially correct and consistent with the approach taken by the Legal Services Commission” (indicating that there is a unanimity of approach in relation to clawback across the UK).

8. The Committee published its report on Legal Aid Inquiry on 7 November 2001.¹ The previous Committee made a commitment to examine the guidance to be issued by SLAB on property recovered or preserved in due course and decide whether to make any recommendations on this issue at that time. A more detailed history of the background of this petition is available in Justice 1 Committee paper J1/02/43/3.

9. The Committee last considered the petition at its meeting of 17 December 2002, when it agreed to:

- write to the Executive asking if it has any proposals to change the law in this area to allow SLAB to disburse compensation monies faster;
- write to SLAB to establish timescales for the production of guidance on property recovered and preserved aimed at applicants.

10. The Executive and SLAB responses are summarised below.

Response received from the former Minister for Justice

11. The former Minister for Justice, Jim Wallace, responding to an earlier letter from the former Convener of Justice 1, Christine Grahame, stated that the Scottish Legal Aid board would not retain all the compensation that had been awarded by the Court or agreed by the parties but only a sum equivalent to the legal aid costs, either in payment of the costs or, if expenses have also been awarded, until those expenses have been paid. In the case regarding the petitioner, the legal aid costs paid to his solicitor were much greater than the compensation awarded by the Court and consequently the board retained all of the compensation until the expenses were paid. To pay any part of the compensation would only serve to increase the sum due to the taxpayer.

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¹ Justice 1 Committee, 8th Report 2001, Report on Legal Aid Inquiry SP Paper 437
12. The statutory obligations of Scottish Legal Aid Board in respect of the recovery of legal aid costs are set out in Section 17 (2B) of the Legal Aid Scotland) Act 1986. This states that ‘legally assisted persons may be required to contribute to the fees and outlays incurred … in respect of any proceedings in connection with which they are granted civil legal aid. A legally assisted person’s contribution … shall be determined by the board …’

13. The former Minister of Justice was not convinced that an amendment to the legislation was warranted as the primary responsibility for collection of compensation and expenses lies with the assisted person’s solicitor as the role of the Scottish Legal Aid Board is restricted to protecting taxpayer’s interests.

Response received from the Scottish Legal Aid Board

14. The Scottish Legal Aid Board submitted a report (attached) to the present Justice 1 Committee on 29 August 2003 which was the outcome of an initiative where the Board extended the period over which people in receipt of civil legal aid can pay their contributions.

15. In regard to the issue of “clawback” (property recovered or preserved), which had been raised by the previous Justice 1 Committee, the Board has produced improved information and guidance on the subject. Legal aid practitioners received this information in April 2002 and draft guidance has been produced for the public which is being reviewed by the Plain Language Commission and should be available shortly.

16. Guidance issued in March 2001 to all legal aid practitioners confirmed that it was not necessary for all sums obtained by an assisted person to be paid to the Board and that only the amount required to meet the net liability to the fund need be sent, and any balance can be released immediately to the assisted person. The limit which is exempt from ‘Clawback’ has been increased by £1775 from £2500 to £4,275.

Procedure

17. The Standing Orders make clear that, where the Public Petitions Committee refers a petition to another committee, it is for that committee then to take “such action as they consider appropriate” (Rule 15.6.2(a)).

Options

18. Given that the arrangements for property recovered or preserved have moved on considerably since May 2000 when the petition was originally referred to the justice committee and, in particular, given the improved information and guidance produced by the Legal Aid Board in relation to compensation awards, the Committee may consider the points raised in the petition have now been answered. If so, the Committee may wish to close consideration of this petition. In closing the petition the Committee is invited to forward to the
petitioner the report submitted by the Scottish Legal Aid Board in August 2003.

Clerk to the Committee                                       October 2003
Background

1. Petition PE375 (attached) by Mrs Elaine Crawford calls for the Scottish Parliament to carry out a review of criminal injuries compensation procedure and policy, and a review of sentencing policy on violent crime.

2. This petition was considered to the Justice 1 Committee during the last session of Parliament. When Parliament dissolved the Justice 1 Committee recommended that this, and a number of other outstanding petitions, should be referred to a successor committee for further consideration in the new session. The Public Petitions Committee has now formally referred this petition.

3. The petitioner submitted the petition following the death of her husband from a violent attack and her subsequent experience of the Criminal Injuries Compensation Authority (CICA). It appears that the CICA took the decision that Mrs Crawford’s husband had intervened to protect others and this resulted in reducing the eligibility of Mrs Crawford and her children for criminal injuries compensation.

4. The petitioner is also concerned about the approach to sentencing of some violent offenders, which she considers to be light. This is based on the sentences given to her husband’s attackers (community service is cited as an example by the petitioner).

Previous Consideration by the Public Petitions Committee

5. The Public Petitions Committee sought the views of the Scottish Executive on the petitioner’s request to review the policies and procedures of the CICA. The PPC sought to clarify whether criminal injuries compensation is a reserved matter. Subsequently the Minister for Justice confirmed that this is the case. The CICA administers the Criminal Injuries Compensation Scheme which provides the criminal injuries compensation payments, and the function of amending the scheme is exercisable only by the Home Secretary who is obliged to consult Scottish Ministers.

6. The PPC recommended that the Justice 1 Committee of the previous Parliament should only examine the sentencing policy section of the petition.
Consideration by the previous Justice 1 Committee

7. In June 2001 the Justice 1 Committee of the previous Parliament commissioned NFO System Three to conduct a research study into public attitudes towards sentencing and the use of imprisonment in Scotland. The issues raised within the petition were considered within the context of this broader piece of research. The findings of this research were published on 11 March 2002.1 In September 2001 the Committee agreed to consider the issue of sentencing policy once its research on attitudes to sentencing was complete. The Committee’s report on the inquiry into Alternatives to Custody was subsequently published in March 2003.

Sentencing Commission

8. On 1 September 2003 Lord MacLean was appointed to the Chair of the new Sentencing Commission. The Commission is intended to “tackle head-on the public’s ongoing concerns about sentencing - and form a central plank in building public trust in the justice system.” Specifically, the Commission will examine:

- The scope to improve consistency of sentencing;
- The effectiveness of sentences in reducing re-offending;
- The arrangements for early release from prison, and supervision of short term prisoners on their release;
- The basis on which fines are determined.2

Procedure

9. The Standing Orders make clear that, where the Public Petitions Committee refers a petition to another committee, it is for that committee then to take “such action as they consider appropriate” (Rule 15.6.2(a)).

Options

10. As criminal injuries compensation is reserved, and as this part of the petition has not been referred, the Committee may wish to take no further action on this issue.

11. Given the work carried out by the previous Justice 1 Committee on sentencing and the very recent establishment of the Sentencing Commission the Committee may wish to note the petitioner’s concerns in relation to sentencing and pass the petition to the Sentencing Commission for information.

Clerk to the Committee                                  October 2003

1 http://www.scottish.parliament.uk/S1/official_report/cttee/just1-02/j1r02-pats-01.htm
2 Scottish Executive press release, 1 September 2003
Background

Petition

1. Petition 347 (attached, annex A) calls for the Scottish Parliament to investigate the practice of shoeing Clydesdale Horses and to introduce legislation to make such style of shoeing illegal unless sanctioned, for medical reasons, by a veterinary surgeon.

2. Show shoeing (or couping) 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 the show ring. The late petitioner alleged that couping can cause both short- and long-term medical problems and may shorten the life of the horse. Two motions calling for a ban of couping were lodged during the first session of the Parliament on 17 November 2000: S1M-1366 by Dr Sylvia Jackson and S1M-1365 by Nick Johnston.

3. Committee members are reminded to note that the petitioner, Mr Kenneth Mitchell, a registered farrier, has died since submitting this petition. Mr James W Sharp is now the primary contact for the petition.

4. The petition was referred to the former Justice 1 Committee because its subject matter is dealt with by the Scottish Executive’s Justice Department under its responsibilities for criminal sanctions in relation to the protection of domestic and captive wild animals, which is covered mainly by the Protection of Animals (Scotland) Act 1912. It has been referred by the Public Petitions Committee on 25 June 2003 to the new Justice 2 Committee for further consideration.

Consideration by the former Justice 1 Committee

5. The consideration of the petition by the former Justice 1 Committee is set out in note J1/03/3/14 (attached, annex B). This note was considered by the former Committee at its 3rd Meeting, 2003 (Session 1), when it last considered the petition. At that meeting, the Committee, having previously explored a number of options and agreed that the practice of couping is inappropriate and cosmetic, agreed to ask the Scottish Executive that practices associated with the breeding and showing of animals that may lead to cruelty to animals be included when it next considers legislation on animal welfare. The Committee also agreed to ask the Executive to extend the applicability of the Farriers (Registration) Act 1975 ("the 1975 Act") to include the Highlands and the Isle of Skye region so that all farriers in Scotland are

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1 Public Petitions Committee, 2nd Meeting 2003 (Session 2), 25 June 2003.
registered. The Committee also considered that this matter could be addressed by a member’s bill.

Recent correspondence

The Scottish Executive

6. In response to the former Justice 1 Committee, the former Minister for Justice wrote to the former Committee’s Convener on 1 March 2003; this letter is attached (annex C). In it, the former minister refers to a review of animal welfare legislation being undertaken by the Department of the Environment, Fisheries and Rural Affairs in which the Executive has been involved; states that there is awareness of the welfare issues arising from breeding and showing animals, and agrees that it is appropriate to consider the practice of couping in the context of animal welfare legislation.

7. In relation to the undertaking of farriery in the Highlands and Islands by persons not registered with the Farriers Registration Council, the former minister indicated that the Executive will consider the conclusion of the council’s review of the current position.

8. Following the Scottish Parliament elections in May 2003, the Scottish Executive indicated that it planned to introduce a bill on the protection of animals\(^2\).

The Farriers Registration Council

9. The Farriers Registration Council has undertaken a public consultation to determine the level of support for an extension of the 1975 Act to the Highlands and Islands and, in July 2003, the council’s Registrar wrote to Committee to draw its attention to the consultation, enclosing copies of the consultation documents sent to veterinary practices, registered farriers and equine welfare organisations; the letter and enclosures are attached (annex D). The outcome of the consultation is awaited.

Representative of the late petitioner

10. The representative of the late petitioner, Mr James W Sharp, has submitted further material in support of a statutory ban on couping of Clydesdale horses. This material is attached (annex E) and includes a joint submission by a veterinary surgeon and a registered farrier. Mr Sharp also questions the value of voluntary codes and comments on differences between the position in Scotland and that in England and around the world.

Correspondence relating specifically to extending the 1975 Act

11. Following the decision of the former Justice 1 Committee to ask the Scottish Executive to consider extending the 1975 Act to include the Highlands and Islands, Mr Robin Smart of Morvern, by Oban, wrote to the former Committee to voice concerns about the implications of such an extension; his letter is attached (annex F). Whilst expressing support for cessation of couping Clydesdale horses, Mr Smart believes that extending the 1975 Act to the Highlands and Islands would have a detrimental effect on horses and horse owners, owing to the small number of registered farriers in remote and outlying areas.

12. Dr Sylvia Jackson MSP has been involved in this petition since it was lodged, both as a constituency member and as a member of the cross-party group on animal welfare. Whilst recognising that the Farriers Registration Council and the Clydesdale Horse Society have taken steps to improve farriery standards in respect of Clydesdale horses, she supports the views of the petitioner and believes that the issue merits the attention of the Parliament. Recent correspondence from Dr Jackson, received on 6 October 2003 (attached, annex G), welcomes the former Justice 1 Committee’s support for the aims of the petition and indicates that she is considering lodging a member's bill proposal on this issue, depending on whether it is covered by the forthcoming Scottish Executive bill on the protection of animals.

13. According to the Standing Orders, where the Public Petitions Committee has referred a petition to another committee, that committee may take such action as it considers appropriate.3

14. Although the various organisations involved with Clydesdale horses believed that existing guidelines were sufficient and did not support the view of the former Justice 1 Committee that the practice of couping should be banned, there was support for extending the regulation of farriers to the Highlands and Islands region and the Farriers Registration Council has since embarked on a public consultation on this matter. The Scottish Executive is awaiting the result of this consultation and plans to introduce a bill on the protection of animals. This bill may include legislation in respect of couping of Clydesdale horses; if it does not, Sylvia Jackson MSP has indicated that she is likely to propose a member's bill on the matter.

15. In light of the consideration of this petition by the former Justice 1 Committee and of the further information received, the Committee is invited to agree to write to the late petitioner's representative and forward all recent correspondence regarding the petition, explaining that the petition has been examined thoroughly and that, in view of current legislative plans, it plans to take no further action.

Former Justice 1 Committee papers for reference

- J1/03/3/14 (attached, annex B)
- J1/02/28/9
- J1/02/36/5

3 The Scottish Parliament, Standing Orders, Rule 15.6.2(a)
JUSTICE 2 COMMITTEE

12th Meeting 2003 (Session 2)

Tuesday 28th October 2003

Petition PE565 by Ms J Shields
Note by the Clerk

Background

1. Petition PE565 (attached with relevant papers) by Ms J Shields calls for the Scottish Parliament to take the necessary steps to provide a protective mechanism to ensure that the welfare concerns of minors is paramount in Scottish law. The petition is prompted by the petitioner’s own experiences of separation from her father, elder brother and sister.

2. Although it is not the Committee's role to examine the specific details of the petitioner's own case, Members may find the following details helpful in addressing the broader issues raised by the petition.

3. When Jacqueline Shields, the petitioner, gave evidence to the Public Petitions Committee on 3 December 2002 she was 12 years old. She had been fighting in the courts to stay with her father and felt that the wrong decisions were made on her behalf and that, as she was a minor, she did not have the right to her own lawyer and therefore felt that her views were not adequately represented.

4. The petition was originally considered by the Public Petitions Committee on 3 December 2002 when it agreed to consult the following organisations:

   - Scottish Executive
   - Scottish Child Law Centre
   - Scottish Alliance for Children’s Rights
   - Scottish Parliament Cross-Party Group on Children and Young People

5. The responses from the Scottish Child Law Centre, the Scottish Alliance for Children's Rights and the cross-party group make the point that the procedures that support children who are involved in civil law and other court proceedings are insufficient. It is claimed that there is a lack of public information to advise children and young people on their right to obtain independent legal representation in private family law cases. Concerns are also expressed that there are few accredited child law specialists and that such accreditation does not require training in child development or child psychology. Questions are also raised about the ability of children to obtain legal aid.

6. Although the responses from these organisations would suggest that legislative change is not necessary, the Public Petitions Committee agreed to refer the petition to a justice committee in order that further consideration might
be given to the concerns expressed regarding the lack of public information available to advise children and young people on their right to obtain independent legal representation in private family law cases, the limited number of accredited child law specialists and the ability of children to obtain legal aid.

Procedure

7. The Standing Orders make clear that, where the Public Petitions Committee refers a petition to another committee, it is for that committee then to take “such action as they consider appropriate” (Rule 15.6.2(a)).

Options

8. The Committee may wish to consider whether it can take a view on the petition based on the information currently available or whether it would be desirable to seek further information on the procedures which support children involved in civil law and other court proceedings to determine whether they are sufficient.

9. The Committee may wish to seek the Executive’s view on the sufficiency of the procedures which support children involved in civil law and other court proceedings, the adequacy of the guidance available to Sheriffs in considering these cases and the availability and accessibility of relevant information directed at children.

10. The Committee may also wish to approach the Law Society of Scotland for its views on the level and appropriateness of advice given to children and young people and the potential for improvement in accessibility to independent legal advice (in particular the scope for additional accredited child law specialists).

11. The Committee may also wish to approach the Scottish Legal Aid Board to clarify the position with respect to the availability of legal aid for children and young people in private family law cases.

Clerk to the Committee October 2003
Background

These regulations relate to the application for legal aid by persons authorised to act on an adult's behalf under the Adults with Incapacity Act 2000. Normally the financial eligibility test for legal aid is applied to the applicant for legal aid. In the case of adults with incapacity, where the application is made on their behalf, the assets of the adult with incapacity, and not those of the applicant, should be assessed. These regulations amend the existing 1996 regulations to ensure that this is the case.

These regulations also extend the range of those able to apply for legal aid by disregarding the new State Pension Credit from the financial eligibility assessment for advice and assistance. In other words, these regulations will permit those in receipt of State Pension Credit to apply for legal aid advice and assistance.

Procedure

The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 27 October 2003.

The Subordinate Legislation Committee considered the instrument at its meeting on 30 September 2003 and no substantial points were raised.

The instrument was laid on 24 September 2003. Under Rule 10.4, the instrument is subject to negative resolution procedure - which means that the Order remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

23 October 2003

Clerk to the Committee
The Lands Tribunal for Scotland (Relevant Certificate) (Fees) Rules 2003
SSI 2003/451
Note by the Clerk

Background

The Lands Tribunal for Scotland is the court responsible for hearing applications for the variation or discharge of title conditions. The Title Conditions (Scotland) Act 2003 proposed a number of reforms to the powers and practices of the Lands Tribunal, collectively designed to make an application to the Tribunal a more viable alternative to obtaining a Minute of Waiver.

These rules set a fee of £25 to be chargeable by the Lands Tribunal for Scotland for applications for a certificate from the Tribunal to the effect that no application in relation to a proposal to register a conveyance has been received.

Procedure

The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 10 November 2003.

The Subordinate Legislation Committee considered the instrument at its meeting on 30 September 2003 and no substantial points were raised.

The instrument was laid on 24 September 2003. Under Rule 10.4, the instrument is subject to negative resolution procedure - which means that the Order remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.
Background

The Lands Tribunal for Scotland is the court responsible for hearing applications for the variation or discharge of title conditions. The Title Conditions (Scotland) Act 2003 proposed a number of reforms to the powers and practices of the Lands Tribunal, collectively designed to make an application to the Tribunal a more viable alternative to obtaining a Minute of Waiver. The Abolition of Feudal Tenure etc (Scotland) Act 2000 also makes provisions relating to Lands Tribunal. These rules set out the various forms for applicants to use when applying to the Tribunal under the new legislation.

These rules replace parts of the Lands Tribunal for Scotland Rules 1971, although the aspects of the existing 1971 rules which refer to matters which are reserved remain in place.

Procedure

The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 10 November 2003.

The Subordinate Legislation Committee considered the instrument at its meeting on 30 September 2003 and no substantial points were raised.

The instrument was laid on 24 September 2003. Under Rule 10.4, the instrument is subject to negative resolution procedure - which means that the Order remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

Scottish Executive officials will be in attendance to answer any questions Members may have.

23 October 2003

Clerk to the Committee
Background
The main purpose of the Title Conditions (Scotland) Act 2003 (“the Act”) is to clarify and reform the law relating to real burdens. A real burden is a form of obligation that either restricts an owner’s use of his or her land, or obliges him or her to do something in relation to that land, and which benefits another piece of land in both instances.\(^1\)

Section 38 of the Act allows the creation of new conservation burdens. A conservation burden is one which preserves or protects, for the benefit of the public, the architectural or historical characteristics of the land or any other special characteristics of the land (for example flora, fauna or general appearance). The Act gives Scottish Ministers the power to designate a list of “conservation bodies” who will be able to enforce certain conditions in the title deeds of property that ensure it will be used with certain conservation objectives in mind.

Subsections (4) to (7) provide for the establishment by the Scottish Ministers of a list of conservation bodies. Subsection (4) provides for the Scottish Ministers to prescribe by subordinate legislation a list of conservation bodies who will be entitled to hold the right to enforce conservation burdens preserved or created in their favour.

Subsection (5) sets out the criteria for a body to be included on the list. The definition of the type of body which may be prescribed as a conservation body is intended to be broad enough to catch all the bodies who have a function or object of preserving or protecting for the benefit of the public the architectural, historical or other characteristics of land.

Procedure

The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 10 November 2003.

The Subordinate Legislation Committee considered the instrument at its meeting on 30 September 2003 and no substantial points were raised.

The instrument was laid on 24 September 2003. Under Rule 10.4, the instrument is subject to negative resolution procedure - which means that the Order remains in force unless the Parliament passes a resolution, not later than 40 days after the

\(^1\) The SPICe Briefing on the subject, the Title Conditions (Scotland) Bill: an overview (02-85), endeavours to demystify the world of title conditions and is available from document supply.
instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

Scottish Executive officials will be in attendance to answer any questions Members may have.

23 October 2003

Clerk to the Committee
Dear Ms. Baxendine,

I am writing in response to the enquiry by Scott Barrie MSP to Shona Barrie, Crown Office and Procurator Fiscal Service at the Justice 2 Committee on 2 September to take evidence on the Vulnerable Witnesses (Scotland) Bill Stage 1. Mr. Barrie asked whether the Crown Office supports the approach set out in the flowchart in section 7, page 16 of the Justice for Children Report. COPFS is one of a number of criminal justice partners represented on the Executive’s Child Witness Support Implementation Group (CWSIG) which is taking forward work in this area. It is in my capacity as Chair of this Group that I have been asked to reply.

The CWSIG supports the principle that processes and procedures within a multi-agency approach need to be established and roles clarified to ensure consistent and co-ordinated support of child witnesses. This was discussed by the group in the context of the consideration of proposals for a Child Witness Support Service as recommended the Lord Advocate’s Working Group on Child Witness Support. Ministers published for consultation on 8 October 2002 a set of documents taking forward the recommendations of the Working Group.

The responses to that consultation confirmed the need for consistent and co-ordinated delivery of child witness support and there was a great deal of consensus on what the key functions of child witness support should be. However, there was no consensus on how best to deliver this. Indeed there were conflicting views about which organisation might best be able to deliver consistent co-ordination across Scotland. The consultation responses also highlighted a perceived fragmentation between work on child witnesses and the legislative proposals on vulnerable witnesses.

On 23 September, the Deputy Minister for Justice launched the first 2 guidance documents resulting from the consultation. In doing so, he took cognisance of the fact that the world has moved on since the Lord Advocate’s report. The implementation of that report must now be seen in the context of a wider focus on vulnerable witnesses generally, and the proposals in the Vulnerable Witnesses (Scotland) Bill. To reflect that wider focus, Mr. Henry announced the establishment of a Victims and Witnesses Unit within the Scottish Executive to bring together the various strands of work within the Justice Department into one dedicated co-ordinating unit. The new unit will look further at the establishment of vulnerable and child witness support in consultation with the agencies in the field. In doing so it will consider how a system of child witness support can be created which does not allow children to slip through the gaps.
It will therefore be appropriate within this context to consider the flow chart and its suggested process and organisational arrangements.

I hope this answers your enquiry. Please let me know if you would like any further information or clarification.

Yours sincerely,

MRS M H BRANNAN
WRITTEN RESPONSE FROM FACULTY OF ADVOCATES ON CHILDREN’S JUSTICE SECTION FOLLOWING ORAL EVIDENCE BY SIMON DI ROLLO QC AND JAMIE GILCHRIST AT THE JUSTICE 2 COMMITTEE ON THE VULNERABLE WITNESSES BILL.

The idea of a Children’s Justice Section was suggested originally in a Faculty response to a Scottish Parliament consultation document on the Child Witness Prevention of Delays (Scotland) Bill, which proposed the fast tracking of cases involving child witnesses. We understand that this bill had cross-party support but was never formally introduced.

We also gather that the Executive takes the view that many of the problems that Bill was designed to address will be tackled by the proposals contained in the Bonym Report and the Vulnerable Witnesses Bill.

The idea of a Children’s Justice Section, which was also later adopted by the Faculty in the “Vital Voices” consultation, arose from a discussion of recommendations in the report “Justice for Children.” "Justice for Children" is a group of organisations involved in work with children - Children 1st, Childline Scotland, NCH Scotland and the Child Witness Reform Initiative - who were concerned about the treatment of child witnesses.

Members of the Justice Committee will have seen that report but we enclose one for ease of reference. Please also find enclosed a copy of the Faculty response to the Child Witness Prevention of Delays Bill.

In their report of May 2002 the Justice for Children Group made a series of recommendations, the first of which was that there should be a Children’s Justice Section within the justice service.

The function of the suggested Children’s Justice Section was to protect the interests and welfare of children. The practical responsibility of the Section would be to co-ordinate the conduct of all cases where children were required to give evidence.
This would be with a view to minimising delays, considering the nature of the special measures appropriate to a particular case, and co-ordinating the work of the various agencies including police, social work, health, VIAS (Victim Information and Advice Service) and children's hearing.

It was thought that the Service could oversee the securing of medical and forensic evidence from children. It could be involved in avoiding practical problems such as children being required to attend as witnesses at time when they were sitting important school examinations, or were in situations of particular stress (for example, the death of a relative).

The proposed Vulnerable Witness Support Service recently announced by the Executive goes some way towards meeting the perceived need for a Children's Justice Section. It is welcome and certainly a step in the right direction.

However, that would operate from outside the justice system, whereas the original proposal was for support based within the justice system and including fiscals, police and child care personnel.

The point was to deliver an integrated approach, avoid wasteful and distressing activity and ensure the rapid and effective progress of the case.

Members of the Faculty committees considering the Prevention of Delays Bill and the "Vital Voices" document were convinced by the arguments for a Children's Justice Section put forward in the Justice for Children paper.

That approval was however given in the context of a 'package' of measures, which included adequate resources allocated to the investigation and prosecution of crime, disclosure of documents by the Crown to the defence and legal aid cover in respect of any difficulty over disclosure.

It is difficult to predict with any degree of accuracy the staffing and resource implications that would be involved in setting up a Children's Justice Section because while it might be relatively easy to implement in Glasgow it would be more difficult in, say, Elgin.
That would really be a matter for the Executive rather than the Faculty of Advocates.
However, any Children’s Justice Section should be able to tap into existing resources, while organising them in a different way, and would be in a position to take advantage of expertise which already exists. In that way it should be possible to avoid adding unnecessary layers of bureaucracy to the system.
We hope this will be of some assistance to the committee.