The Committee will meet at 2.00 pm in the Chamber, Assembly Hall, the Mound, Edinburgh.

1. Item in private: The Committee will consider whether to take item 6 in private.

2. Subordinate legislation: Nicola Sturgeon MSP to move (S2M-00630)—That the Justice 2 Committee recommends that nothing further be done under the Scottish Legal Aid Board (Employment of Solicitors to Provide Criminal Legal Assistance) Amendment Regulations 2003 (SSI 2003/511).

3. Antisocial Behaviour etc (Scotland) Bill: The Committee will take evidence at Stage 1 from –
  
  Michael Kellet and David Doris, Development Department, Antisocial Behaviour Unit, Catherine Brown, Justice Department, Police Division, Gillian Russell and Robert Marshall, OSSE, Brian Cole and Sharon Grant, Justice Department, Community Justice Services Division, Kit Wyeth, Education Department, Young People and Looked After Children Division.

4. Mainstreaming equality: The Committee will consider correspondence from the Convener of the Equal Opportunities Committee about mainstreaming equality in the work of committees of the Parliament.

5. Fingerprint evidence: The Committee will consider correspondence from Alex Neil MSP.

6. Proposed youth justice inquiry: The Committee will consider the appointment of an adviser.
The following papers are enclosed for this meeting:

**Item 2 – Subordinate legislation**

Note by the Clerk (SSI 511 attached) J2/S2/03/15/1
Letter from Scottish Executive Legal Aid Branch J2/S2/03/15/2
Letter from the Law Society J2/S2/03/15/3

**Item 3 – Antisocial Behaviour etc (Scotland) Bill**

Note by the Clerk J2/S2/03/15/4
Timetable for Stage 1 J2/S2/03/15/5

**Item 4 – Mainstreaming Equality**

Note by the Clerk (Letter from the Convener of the Equal Opportunities Committee attached) J2/S2/03/15/6

**Item 5 – Fingerprint evidence**

Note by the Clerk (Letter from Alex Neil MSP attached) J2/S2/03/15/7

**Item 6 - Youth Justice Inquiry**

Note by the Clerk J2/S2/03/15/8

**Forthcoming Meetings:**

Tuesday 2 December - Justice 2 Committee meeting (afternoon)
Tuesday 9 December - Justice 2 Committee meeting (afternoon)
Tuesday 16 December - Justice 2 Committee meeting (afternoon)
OVERVIEW

The original framework document for the establishment of the Edinburgh PDSO set out two basic aims:

1. To set up a workable public defender project in Scotland providing criminal legal assistance to eligible clients.
2. To provide a basis for comparison of the delivery of criminal legal assistance provided by PDSO with that provided by private practice to identify ways in which the efficiency and effectiveness of the current system might be improved.

The Edinburgh pilot was established by Section 50 of the Crime and Punishment (Scotland) Act, 1997 and opened on 1 October 1998 in York Place, Edinburgh. The statute required that an independent research project would report to parliament by 2001. To facilitate this earlier research cases were to be directed to PDSO by the date of birth of the accused. This meant that persons born in January or February of any year could only obtain criminal legal aid in summary matters from the PDSO in Edinburgh.

From 1 July, 2000, the researchers having ingathered sufficient data for their purpose, a number of changes were introduced. The most important of these was that the system of direction was abolished. It was agreed that PDSO would attract cases through returning business, word of mouth and a share of the summary duty scheme in Edinburgh. The “duty scheme” provides a solicitor being available for people appearing from custody who do not have a solicitor of their own. Thus from 1 July 2000 the only people to use PDSO have been people that have chosen its service. There has been no compulsion upon anyone since that date.
STAFFING OF THE EDINBURGH PDSO

Initially, the PDSO opened with a full complement of 6 legal staff together with supporting secretarial staff. It was anticipated that direction of clients would produce a large number of cases very quickly and so it was necessary to have a fully manned office from day one. In fact, the direction scheme did not produce as many cases as was expected and the PDSO operated with substantial spare capacity in the first 18 months of its existence.

Since July 2000, the PDSO has operated with a legal team of 5 solicitors (including the director) which has been an appropriate number for the level of business. This situation has remained fairly constant throughout the remainder of the first 5 years.

Each solicitor working within the PDSO handles a varied criminal caseload. Each undertakes cases in the Edinburgh courts, advising clients and appearing for them in court throughout proceedings.

The workload has remained constant in overall numbers, although the quality of caseload has improved as the office has taken on a greater number of more serious cases. As indicated above, PDSO initially had a substantial amount of spare capacity. This position has improved over the intervening time although we still carry capacity to undertake more cases than we do at present should the need arise. The public defence solicitor employed are well able to cope with current business levels.

The role of a public defence solicitor in a court case is very much the same as any other solicitor from private practice. We will accept initial instructions from a client either through his attendance at the office or by meeting the client in a custody situation. The solicitors in this office apply for criminal legal aid.

Thereafter, we undertake the investigation and representation of cases consistent with what should be expected of a private solicitor. All cases are investigated thoroughly. The PDSO is subject to audit by the Scottish Legal Aid Board for its compliance with the code of practice in the same way as any other firm.

RESEARCH ISSUES

As members of the committee will be aware, the initial PDSO research reported to Parliament in 2001. This meant that it could only cover cases which had been opened before the end of 1999. This was a very early period for research to be carried out, although the time frame was laid down by the Westminster Parliament prior to devolution. At that stage the office was
running under capacity and was less cost effective than is the case now. It was therefore not surprising the research report suggested that at that stage there was no significant difference in price or case outcome, although it did report that the PDSO had potential to be substantially cheaper.

The main financial benefits brought out by the report at that early stage were that the shorter trajectory of PDSO cases (PDSO cases involved fewer court hearings) meant that the most significant savings were to the courts and the prosecution service, estimated to be as much as 16% overall, and also in terms of a reduction in wasted witness time.

COST AND WORKLOAD OF PDSO

After the first 18 months or so business costs have fallen year on year. As members can see the PDSO now costs substantially less than at the time of the research.

**Total spend on PDSO (per SLAB annual report)**

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<tbody>
<tr>
<td>Amount</td>
<td>£405,000</td>
<td>£430,000</td>
<td>£390,000</td>
<td>£364,000</td>
<td>£319,000</td>
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**Number of cases handled by PDSO**

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<tbody>
<tr>
<td>Cases</td>
<td>417</td>
<td>1034 (of which 1 solemn)</td>
<td>1202 (of which 26 solemn)</td>
<td>1194 (of which 34 solemn)</td>
<td>1123 (of which 25 solemn)</td>
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In addition to the above PDSO caseload, the PDSO has put through a large number of cases at the custody court for other solicitors as part of our service when operating as duty lawyers.

CONCLUSION

The proposed locations of the new PDSO offices will be of assistance to the Scottish Legal Aid Board in a number of ways. Having a base in each of these places can assist in ensuring that there is access to justice throughout Scotland. Following the introduction of fixed fees in summary cases there have been instances where solicitors in private practice have been unwilling to take on cases in certain places. The ability of a Public Defence Solicitor to travel from one of the 3 proposed offices would ensure that no member of the public eligible for legal aid would be unable to obtain a solicitor. This is of course of assistance in meeting the requirements of ECHR in respect of a fixed-fee legal aid scheme.
Additionally, following the passage of the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002, an accused person cannot represent himself in a sexually related case. There may be areas of the country where private solicitors will not want to undertake cases where they have been appointed by the court. As a public service office, the PDSO will undertake such appointments where necessary. Accordingly, the operation of the PDSO from the 3 proposed bases provides a degree of assurance to parliament that the provisions of the Act can be practicably implemented in any court in the country.

Additionally, operation of 3 PDSO offices ought to drive efficiency of the service. It allows direct comparison to be made between one office and another. It also increases choice to the public in terms of a provider type that they wish to use. Since direction was abolished in 2000, many clients choose to use this office because they are attracted to the public service ethos.

The repeal of the section of the regulations specifying Edinburgh as the location of the PDSO is a necessary requirement if the other offices are to be opened in implementation of the Criminal Justice (Scotland) Act 2003. A repeal of the location is the simplest method by which PDSO would have the flexibility to address any issues of unmet need in areas outwith the 2 proposed locations. It is also a way of ensuring that the Inverness office is used as a base for providing a service to the wider rural community.

Reported by:

Alistair G Watson
Director, PDSO

5 November 2003

As can be seen, the caseload throughout has remained fairly constant despite the removal of any compulsion upon the public in the middle of 2000.
JUSTICE 2 COMMITTEE

15th Meeting 2003 (Session 2)

Tuesday 25th November 2003

The Scottish Legal Aid Board (Employment of Solicitors to Provide Criminal Legal Assistance) Amendment Regulations 2003 SSI 2003/511

Note by the Clerk

Background

In 1998 the Public Defence Solicitors Office began operation in Edinburgh using solicitors directly employed by the Scottish Legal Aid board to provide criminal legal assistance.

On 20 October 2003 the Minister for Justice announced that two more Public Defence Solicitors Offices are to be opened in Glasgow and Inverness. The Executive indicated that “Extending the pilots outwith Edinburgh to bring in Glasgow and Inverness courts will enable us to make better comparisons between public defence and private solicitors in terms of cost, quality, client satisfaction and the wider impact on the criminal justice system.”

These Regulations remove from the Scottish Legal Aid Board (Employment of Solicitors to Provide Criminal Legal Assistance) Regulations 1998 the provision that restricts solicitors in the Public Defence Solicitors’ Office to being used only in the Sheriff Court district of Edinburgh.

The Public Defence Solicitors’ Office is effectively a part of the Scottish Legal Aid Board, although the solicitors operate independently. The Public Defence Solicitors’ Office was asked to provide a background paper on its operation (attached).

Procedure

The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 1 December 2003.

The Subordinate Legislation Committee considered the instrument at its meeting on 4 November 2003 and agreed to approach the Scottish Executive to establish what if any prior consultation was carried out before these Regulations were made.

The Justice 2 Committee previously considered this instrument at its meeting on 11 November 2003 when it agreed to write to the Scottish Executive about the concerns raised by the Subordinate Legislation Committee in relation to consultation. In particular, the Subordinate Legislation Committee was concerned that parties who might be able to claim that they had a legitimate expectation to be consulted were not and that this failure to consult may raise questions as to the vires of the instrument.

The Scottish Executive response to the concerns is attached (J2/S2/03/15/2). The Law Society has also been asked to comment and is expected to so in advance of the meeting.

1 Scottish Executive News Release, 20/10/2003
The instrument was laid on 28 October 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.

In order to annul a negative instrument, an MSP must, (whether or not a member of the lead committee), lodge a motion proposing to the lead committee that it recommend that “nothing further is done” under the instrument. This is called a motion for annulment (Rule 10.4).

If the lead committee makes a recommendation to annul, the Bureau, under Rule 10.4.4, must propose by a motion in the chamber that the instrument be annulled, also no later than 40 days after the instrument is laid, under the Statutory Instrument Order (SI 1999/1096). The resolution must be passed within the 40 days.

Clerk to the Committee
6 November 2003
EXECUTIVE NOTE

The Scottish Legal Aid Board (Employment of Solicitors to Provide Criminal Legal Assistance) Amendment Regulations 2003  S.S.I. 2003/511

The above instrument will be made in exercise of the powers conferred on the Scottish Ministers by Section 28A (1) and (5) of the Legal Aid (Scotland) Act 1986. The instrument is subject to negative resolution procedure.

Policy Objectives

The purpose of this instrument is to remove the present geographical restriction on the Public Defence Solicitors Office (PDSO) that it may only operate in the Sheriff Court District of Edinburgh.

Background

In 1998, the PDSO began operation in Edinburgh to pilot a different way of providing criminal legal assistance using solicitors directly employed by the Scottish Legal Aid Board and in October 2001, Scottish Ministers published research (The Public Defence Solicitors Office in Edinburgh: An independent evaluation).

On 28 February 2002, the Justice Minister – Jim Wallace- announced his intention to continue with the Edinburgh pilot and to create one or two more pilots.

On 20 October 2003, the Justice Minister – Cathy Jamieson – announced that the new PDSO locations would be in Glasgow and Inverness, with the latter covering Dingwall, Dornoch, Elgin, Nairn, Tain, and Wick.

These Regulations remove the geographical restriction on the PDSO and allows the Office to operate elsewhere in Scotland.

Consultation

The Executive does not normally conduct public consultation on detailed secondary legislation on legal aid.

Financial Implications

As the staff of the PDSO will be paid salaries from the Legal Aid Fund, and this will be instead of private solicitors being paid for the same cases, it is not expected that the new locations will increase public expenditure

Ian Allen
Scottish Executive
Justice Department
October 2003
Thank you for your e-mail asking whether the Executive had any further comments on the consultation.

I think that it might be helpful if I explain the background to the direct employment of solicitors by the Scottish Legal Aid Board to provide criminal legal assistance, also known as the (Public Defence Solicitors Office (PDSO)).

On 1 October 1998, a pilot office was set up in Edinburgh to compare criminal defence delivered by directly employed solicitors with that provided by private solicitors; and in September 2001, substantial research was published into the operation of the Office in Edinburgh. Subsequently, on 28 February 2002, Scottish Ministers announced their intention to continue to pilot the scheme and the necessary statutory changes were incorporated in Section 73 of the Criminal Justice (Scotland) Act 2003. The policy Memorandum to the (then) Bill said at paragraph 299

"The Scottish Ministers propose to continue with the Edinburgh office of the PDSO and to create up to 2 more offices in different areas."

And at paragraph 300

"Create more offices: This is the preferred option. It would not add to the pressure in Edinburgh; would give an opportunity to see whether the Edinburgh lessons can be replicated elsewhere; would provide an opportunity for increasing the workload without severely affecting local businesses (the PDSO would simply be another competitor); and would enable us to examine whether a public defence service would make sense in a rural setting."

Ministers asked the Board to consider - in the light of the Policy Memorandum - and make recommendations about future locations. Recommendations were submitted to Ministers and after, very careful consideration, they decided to locate additional pilots in Glasgow and Inverness, with the latter dealing with a number of courts in the surrounding area.

The Board is presently in discussion with the Law Society and the local Faculties of solicitors about the operational issues surrounding the Ministerial decision.
We would, of course, be happy to discuss this matter further, if that would be helpful.

Scottish Executive Legal Aid Branch
Mr Richard Hough  
Assistant Clerk to Justice 2 Committee  
Scottish Parliament  

Richard.Hough@scottish.parliament.uk  

By e-mail  

Dear Mr Hough  

SCOTTISH LEGAL AID BOARD (EMPLOYMENT OF SOLICITORS TO PROVIDE CRIMINAL LEGAL ASSISTANCE) AMENDMENT REGULATIONS 2003 (SSI 2003/511)  

I refer to my email of 18th November 2003 with regard to the above.  

I note that the Justice 2 Committee considered the Scottish Legal Aid Board (Employment of Solicitors to Provide Criminal Legal Assistance) Amendment Regulations 2003 (SSI 2003/511) at its meeting on 11th November 2003. Further, I note that the Scottish Parliament Subordinate Legislation Committee had raised with the Committee its concerns in relation to Consultation on these Regulations. I understand from your email of 13th November 2003 to Mrs Anne Keenan at the Society that the Subordinate Legislation Committee was concerned that parties who might be able to claim that they had a legitimate expectation to be consulted were not and that this failure to consult may raise questions as to the vires of the Instrument.  

I understand that the Convener of the Justice 2 Committee asked you to approach the Society to see if the Society had any comments to make on the Consultation.  

The Society was not consulted other than in the context of the Criminal Justice (Scotland) Act 2003 about the decision to expand the PDSO. It was not consulted about where the pilots should be established after the Act came into force. We received the above Regulations from the Scottish Executive on 14th November 2003.  

However, although the Society was not consulted regarding the venues of the proposed expansion or about the terms of the proposed expansion, there is no obligation for the Scottish Executive to have consulted it on these issues under the Criminal Justice (Scotland) Act 2003.
I hope this is helpful. Should you require any further assistance from the Society, please do not hesitate to contact me.

Yours sincerely,

Mrs. Moira Shearer  
Secretary to Legal Aid Committee
JUSTICE 2 COMMITTEE

15th Meeting 2003 (Session 2)

Tuesday 25th November 2003

Antisocial Behaviour etc (Scotland) Bill – Stage 1

The Scottish Executive bill team officials will be present at the meeting to give evidence on the Antisocial Behaviour Bill. The Minister will give evidence to the Committee at a later date in the Stage 1 process. Committee Members are therefore encouraged to avoid questioning officials on matters of policy which are best addressed by the Minister. At this Stage in proceedings, the Committee is primarily interested in the general principles of the Bill.

In order to avoid duplication of effort with the Communities Committee (who took oral evidence from the bill team on Wednesday 19 November) Members are encouraged to restrict their questioning to the following parts of the Bill which are of particular relevance to the justice remit. Members are therefore encouraged to seek views on the following points—

- the need for and likely effectiveness of the new enforcement powers and sanctions created by the Bill;
- the extent to which these are likely to be complementary to and consistent with existing powers and initiatives in the criminal justice area;
- the implications of the proposals in the Bill for the courts, procurator fiscal service, children’s hearings system and police.

The Committee agreed at its meeting on 11 November that it would focus on the following parts of the Bill:

**Part 2 - Antisocial behaviour orders**

The Bill contains proposals to extend the use of ASBOs so that they could apply to those aged 12 to 15 as well as to those aged 16 and over (section 4). At present local authorities or Registered Social Landlords (RSLs) who apply for an order must consult the police beforehand. However, the Executive intends that, in the case of young people under 16, local authorities and RSLs would be required also to consult the children’s Reporter (sections 4(8) and 15).

**Part 3 - Dispersal of groups**

The Bill contains proposals to give the police power to disperse groups of 2 or more people where their presence or behaviour has resulted, or is likely to result, in a member of the public being alarmed or distressed and where there is a significant and persistent problem in the area.
Part 4 - Closure of premises

The Bill creates a new power for the police, under the direction of the court and following consultation with the local authority, to close down premises which are the centre of illegal activity, disorder or other anti-social behaviour.

Part 9 - Parenting orders

The Bill makes provision for a new type of civil order called a ‘Parenting Order’. Parenting Orders are concerned with the behaviour of the parent/guardian in relation to the behaviour of their child and will only be applied for after the parent has been offered appropriate services to assist with the process but has not engaged with those services. The PO will require parents/guardians to undertake actions that will reduce the level of anti-social behaviour being exhibited by their child or to improve the welfare of the child. The Executive is therefore proposing that a PO could be granted without a child having committed an offence.

The Bill provides that a parenting order may be made by a court on the application of the Principal Reporter to the children’s panel or the local authority for the area in which the child of the parent normally resides.

Part 10 - Further criminal measures

The Bill makes provision for the introduction of a new type of disposal known as a ‘Community Reparation Order’ (CRO) which will require an offender to undertake an activity that makes visible reparation to the community (section 89). The intention is that a CRO will be used as a disposal of first instance for ASB offences.

To cover the situation where children are being dealt with by the criminal justice system, the Bill contains proposals to extend the scope of ‘Restriction of Liberty Orders’ (monitored by electronic tagging) to under 16s (section 90).

Part 12 - Children’s hearings

A ‘supervision requirement’ can be imposed by children’s hearings and requires the child in question to reside in a certain place or places or to comply with a condition contained in the requirement. The Bill amends existing legislation to enable children’s hearings to impose, as a condition of a supervision requirement, a ‘movement restriction condition’ which can be monitored by electronic tagging (section 103).

The Executive wishes to encourage the greater use of restorative justice measures, including reparation to the community, in the Children’s Hearings System. In the consultation document the Executive proposes to develop specific information and training for panel members on reparation as a condition of a supervision requirement.
JUSTICE 2 COMMITTEE

15th Meeting 2003 (Session 2)

Tuesday 25th November 2003

Antisocial Behaviour etc (Scotland) Bill
Timetable for Stage 1

16 December Oral evidence:
Dr Lesley McAra and Professor David Smith
Scottish Human Rights Centre
Scottish Children’s Reporter Administration
Scottish Children’s Hearing Chairs

22 December - 2 January CHRISTMAS RECESS

6 January All day evidence session:
Scottish Child Law Centre
ACPOS
Police Federation
SACRO
APEX
Children First

13 January Final oral evidence session:
Law Society of Scotland
Sheriffs’ Association
Minister for Justice

20 January Consideration of any additional written evidence received

27 January Consideration of first draft report

(30 January Communities Committee deadline for written evidence)

3 February Agree final report

5 February Send report to Communities Committee

16-20 February RECESS

5 March Communities Committee publish report

11 March Stage 1 debate
Background

Correspondence from the Convener of the Equal Opportunities Committee
1. On 2 October 2003, the Convener of the Equal Opportunities Committee (EOC) wrote to conveners of all committees of the Parliament seeking feedback on any steps committees plan to take in respect of recommendations 2, 5 and 7 of the former Equal Opportunities Committee's 1st Report 2003 (session 1): Mainstreaming equality in the work of committees of the Scottish Parliament. The text of this letter is included at annex A.

Recommendations 2, 5 and 7

Recommendation 2
2. The EOC recommends that the equality guidelines in annex B be adopted by all committees in their work and used in drawing up their work programmes for the session 2003-07.

Recommendation 5
3. The EOC further recommends that lead committees, as a useful starting point, utilise the equalities checklist in annex C during stage 1 consideration of legislation.

Recommendation 7
4. The EOC agrees with the Procedures Committee recommendation that, in their annual reports, committees specifically address how they have mainstreamed equality and highlight specific practices that they wish to comment on.

Proposed action

5. The Committee is invited to consider and agree to the EOC's recommendations.
Letter to the Convener from the Convener of Equal Opportunities Committee

2 October 2003

Dear Convener

Mainstreaming equality in the work of committees of the Scottish Parliament

Following the Committee debate on mainstreaming which took place in the Chamber on 1st October and to assist the Committee in its consideration of its ongoing work on mainstreaming, the Equal Opportunities Committee is keen to receive feedback from you on any steps your Committee has taken or intends to take in response to recommendations 2, 5 and 7 of the Equal Opportunities Committee’s 1st Report 2003 (see Annex A).

These recommendations are the result of a lengthy inquiry into mainstreaming by the Equal Opportunities Committee which has also resulted in the production of equality guidelines and implementation notes to support committees in delivering mainstreaming. Both the guidelines and implementation notes have already been circulated to all Conveners.

It would be helpful if we could have a response by Friday 21 November 2003.

Cathy Peattie MSP
Convener
Equal Opportunities Committee

Annex A: Recommendations from the Equal Opportunities Committee’s 1st Report 2003

Recommendation 2

The Committee recommends that the Equality Guidelines in Annex B be adopted by all committees in their work and used in drawing up their work programmes for the session 2003-2007.

Recommendation 5

The Committee recommends that lead committees, as a useful starting point, utilise the equalities checklist attached at Annex A during Stage 1 consideration of legislation.

Recommendation 7

The Committee agrees with the Procedures Committee recommendation that in their annual report, committees specifically address how they have mainstreamed equality and highlight specific practices they wish to comment on.
EQUALITY GUIDELINES

Equal Opportunities Committee—1st Report 2003 (session 1):  
*Mainstreaming equality in the work of committees of the Scottish Parliament*

**Equality Guideline 1 - Primary Legislation**

**Background**

Equal Opportunities criteria should be considered at all stages of the legislative process, including the policy development process preceding the introduction of the bill. Equality proofing during legislation should not be seen a standalone process but rather as part of an on-going process of work which begins at the policy development stage.

The following sets out guidelines for the various types of legislative activity and the main stakeholders.

To carry out mainstreaming activities effectively and ensure that equal opportunities considerations are included in all of their work involving legislative activity, committees need to consider the following:

**Primary Legislation - Stage 1**

*Bill Sponsor*

- has the Bill sponsor assessed the implications of the Bill for all equal opportunities categories as identified in the remit of the Equal Opportunities Committee, including the impact on all key stakeholders;

- have any differential impacts on particular categories been quantified, discussed and justified;

- what consultation has been carried out with the stakeholders;

- how clearly have the intended effects of the Bill been set out in accompanying documentation;

- what additional information on the Bill is made available e.g. previous consultation exercises, draft guidance, equality impact assessments, disaggregated data etc;

*Committee activity*

- to what extent equal opportunities issues have been addressed in selecting witnesses and advisers and analysing evidence; and

- have the equal opportunities criteria been adequately considered at all stages of the legislative process.
Primary Legislation - Stage 2

At Stage 2 there are no formal requirements. However, equal opportunities implications may arise at this stage. The following recognises that there are amendments which are largely technical in nature, or drafted primarily to stimulate debate. Broadly, in discussion of amendments, committees would be encouraged to address:

- if amendments address concerns raised earlier at Stage 1, and how;
- if amendments introduce new policy issues; and,
- if a new policy issue, has an analysis (similar to Stage 1, i.e. impact analysis) been done.

Equality Guideline 2 - Information Base

Equal opportunities criteria should be considered at all stages of the legislative process. In order to carry out mainstreaming activities effectively and ensure that equal opportunities considerations are included in all of their work, committees need to have access to high quality information including:

- disaggregated statistics and other relevant information on equal opportunities categories as identified in the Scotland Act;
- develop EOC database of EO contacts and consultees, accessible to all committees;
- SPICe briefings on Bills should include reference to equal opportunities issues;
- briefing papers on changes to equality legislation;
- briefing notes from relevant external groups;
- legal advice.

Monitoring

Ensure that information resources are regularly updated and relevant training is carried out.

Equality Guideline 3 - Consultation

Committees regularly consult with a variety of individuals and organisations in the course of their work. Equal Opportunities criteria should underpin the processes and mechanisms which facilitate these consultations/inquiries. Specifically, Committees should aim to include equal opportunities criteria in:

- deciding what to consult upon
- deciding who to consult with
- deciding the format of each consultation/inquiry

Committees should include equal opportunity considerations as part of their overall criteria for choosing an inquiry topic. For example, in deciding topics of consultations
and inquiries Committees may wish to identify, by impact analysis, how the proposed topic impacts upon "equal opportunities" as defined in the remit of the Equal Opportunities Committee.

Committees should include equal opportunity considerations as part of their overall criteria for selecting witnesses. For example, Committees should aim to ensure as wide a representation as possible of stakeholders.

Committees should include equal opportunity considerations in deciding the format of a consultation/inquiry. For example, equal opportunities criteria should be adopted in advertising a consultation/inquiry while sufficient time should be allowed for responses in order to allow less well resourced groups to participate.

Committees should include equal opportunity considerations in deciding who to appoint as Committee advisers.

**Monitoring**

Monitor and evaluate levels of participation, particularly in order to identify groups who are under-represented. Ensure that witness databases are regularly updated to include widespread representation of minority groups.
EQUALITIES CHECKLIST

Equal Opportunities Committee—1st Report 2003 (session 1):
*Mainstreaming equality in the work of committees of the Scottish Parliament*

Introduction

The Equal Opportunities Committee of the Scottish Parliament has endorsed the following checklist it wishes to be used when considering any policy or legislative issue.

It is important to bear in mind that the definition of equal opportunities in the Scotland Act 1998 is as follows:

“the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.”

It is therefore expected that ALL of these areas should be considered when using this checklist.

Please note that this is not meant to be all encompassing guidance on equalities proofing, but it is recommended that this be the minimum standard to be attained.

What is Mainstreaming\(^1\)

- “‘Mainstreaming’ equality is essentially concerned with the integration of equal opportunities principles, strategies and practices into the everyday work of Government and other public bodies from the outset, involving ‘every day’ policy actors in addition to equality specialists. In other words, it entails rethinking mainstream provision to accommodate gender, race, disability and other dimensions of discrimination and disadvantage, including class, sexuality and religion.

- It is a long-term strategy to frame policies in terms of the realities of people’s daily lives, and to change organisation cultures and structures accordingly. It puts people, and their diverse needs and experiences, at the heart of policy-making.

- It leads to better government through better informed policy-making and a greater transparency and openness in the policy process and helps to tackle democratic deficit by encouraging wider participation in the policy process through effective consultation mechanisms.

\(^1\) EOC/CRE document – Questions on Mainstreaming
- As a process it tackles the structures in society which contribute to, or sustain, discrimination and disadvantage.

- The application of a mainstreaming approach can avoid the adoption of policies and programmes which replicate discrimination and exacerbate existing inequalities.

- Mainstreaming complements lawful positive action designed to address the historic and current impact of discriminatory structures and practices.”

Questions to Consider when equality proofing

1. **What is the policy for? Who is the policy for? What are the desired and anticipated outcomes?**

   Does the policy properly consider the needs of diverse groups of women and men? Remember that members of the same social group may have different needs; and that some people face multiple discrimination, for example, ethnic minority women.

   Have equalities dimensions been explicitly addressed?

   Keep in mind the goals and outcomes of policies can either perpetuate or overcome existing inequities between women and men and amongst different social groups.

2. **Do we have full information and analyses about the impact of the policy upon all equalities groups? If not, why not?**

   Is the data you have been provided with broken down by gender, race and disability?

   Assume that there is an equalities impact then look for information to prove or disprove that assumption

   Who has been consulted? There is a need for both experts and ‘ordinary’ voices to be heard. Has the fact that it is harder for some groups than others to speak out been taken into account?

3. **Has the full range of options and their differential impacts on all equality groups been presented?**

   What is the impact of values, assumptions and stereotypes on the options presented and the options favoured?

   How might your own values, opinions and experiences influence your understanding of the issue?
4. What are the outcomes and consequences of the proposals? Have the indirect, as well as the direct, effects of proposals been taken into account?

5. How have the policy makers demonstrated they have mainstreamed equality?

6. How will the policy be monitored and evaluated? How will improved awareness of equality implications be demonstrated?
AN/IN

12th November 2003

Annabel Goldie MSP
Convenor of Justice Committee
Scottish Parliament HQ
George IV Bridge
EDINBURGH
EH99 1SP

Dear Annabel

FINGER PRINT EVIDENCE

Further to our brief conversation two weeks ago with Ian Hamilton QC and my exploratory meeting with Colin Boyd QC, The Lord Advocate, I am writing to request that the Justice Committee investigate the issues surrounding the future of the finger print service provided by the Scottish Criminal Records Office.

In particular I would suggest that the following issues need to be addressed:

1. The extent to which the recommendations arising from the McKie case have now been successfully implemented.

2. The implications for the justice system of the introduction of “non numeric” fingerprint evidence by the SCRO in conjunction with the Crown Office. In particular I would suggest that the introduction of this new “standard” of finger print evidence which will no longer require 16 character proof will lead to a substantial increase in the number of challenges to such evidence; will call further into question the safety of finger print evidence; and could lead to a substantial increase in expenditure from the Legal Aid Budget as a result of challenges having to be funded on behalf of defendants.

3. What are the other implication, if any, of the introduction of this new system of finger print evidence.

I would suggest that this is a very serious issue and one that requires fairly urgent attention and I would appreciate it if your Committee can address the situation.

Meantime in appreciation

Yours sincerely

Alex Neil MSP
Background

1. The Committee is invited to consider the attached correspondence from Alex Neil MSP regarding the fingerprint service provided by the Scottish Criminal Records Office (SCRO).

2. In his letter Alex Neil calls for the Justice 2 Committee to investigate the issues surrounding the future of the service, in particular—
   - the implementation of recommendations arising from the McKie case;
   - the implications for the justice system of the introduction of “non numeric” fingerprint evidence by the SCRO in conjunction with the Crown Office; and
   - any other implications of the introduction of the new fingerprint evidence system.

Next steps

3. It is proposed to write to the Lord Advocate seeking his views on these issues. The Committee may then want to consider inviting him to give oral evidence in light of his response, subject to Committee time being available.

Options

4. The Committee is invited to note this paper and the attached letter and agree the proposed approach.

Clerk to the Committee

20 November 2003
12th November 2003

Annabel Goldie MSP
Convenor of Justice Committee
Scottish Parliament HQ
George IV Bridge
EDINBURGH
EH99 1SP

Dear Annabel

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Meantime in appreciation

Yours sincerely

Alex Neil MSP