The Committee will meet at 11.00 am in Committee Room 2.

1. **Prisons:** The Committee will take evidence on HM Chief Inspector of Prisons for Scotland’s *Report for 2003-2004* from—

   Dr Andrew McLellan, HM Chief Inspector of Prisons, and Rod MacCowan, HM Deputy Chief Inspector of Prisons, HM Prisons Inspectorate for Scotland.

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

   the International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) Regulations 2004 ([SSI 2004/437](#)).

3. **Protection of Children and Prevention of Sexual Offences (Scotland) Bill:** The Committee will consider its approach to the Bill.

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Alison Walker
Clerk to the Committee
Tel: 0131 348 5195
Papers for the meeting—

Agenda item 1
Note by the Clerk (private paper)  J1/S2/04/35/1
HM Chief Inspector of Prisons for Scotland, Report for 2003 - 2004  J1/S2/04/35/2

Agenda item 2
Note by the Clerk  J1/S2/04/35/3

Agenda item 3
Note by the Clerk  J1/S2/04/35/4

Papers for information—
Scottish Executive, *re:duce, re:habilitate, re:form – Analysis of Responses – Executive Summary*  J1/S2/04/35/5
Scottish Executive, *re:duce, re:habilitate, re:form – Analysis of Consultation Responses*  J1/S2/04/35/6
Scottish Executive, *re:duce, re:habilitate, re:form – In-street Interviews and Public Discussion Events*  J1/S2/04/35/7
Scottish Executive, *re:duce, re:habilitate, re:form – Focus Groups*  J1/S2/04/35/8
Correspondence from the Scottish Prison Service regarding the Committee’s inquiry into the effectiveness of rehabilitation programmes in prisons
Scottish Executive, *Improving Family Law in Scotland: Analysis of Written Consultation Responses*  J1/S2/04/35/9
Scottish Civic Forum, *Family Matters: Improving Family Law In Scotland – Report from three events held by the Scottish Civc Forum in: Glasgow, 10 June 2004; Perth, 14 June 2004; Dumfries, 22 June 2004*  J1/S2/04/35/10

Documents not circulated—
Copies of the following have been supplied to the clerk—


Copies of these documents are available for consultation in room T3.60. Additional copies may also be obtainable on request from the Document Supply Centre.

Forthcoming meetings—
Wednesday, 17 November 2004, CR3;
Wednesday, 24 November 2004, CR1;
Wednesday, 1 December 2004, CR4;
Wednesday, 8 December 2004, CR2;
Wednesday, 15 December 2004, CR1;
Wednesday, 22 December 2004, CR3.
Purpose of the draft instrument

1. These regulations revoke the International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) Regulations 2004 (SSI 2004/360).

Background

The International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) Regulations 2004 (SSI 2004/360)

2. The International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) Regulations 2004 (SSI 2004/360) (“the principal regulations”) were laid on 31 August 2004 and were considered by the Justice 1 Committee at its meeting on 29 September 2004, following consideration by the Subordinate Legislation Committee at its meetings on 14 and 21 September 2004. The note considered by the Committee on 29 September 2004 is attached at annex A for information.

3. The Subordinate Legislation Committee raised concerns in respect of the regulations’ vires and the relative enforceability of any ICC order made under the terms of the regulations.

4. At its meeting on 29 September, the Justice 1 Committee noted concerns raised by the Subordinate Legislation Committee in its 33rd Report 2004 (Session 2) and invited the Convener of the Subordinate Legislation Committee, Dr Sylvia Jackson, to speak to those concerns. The Committee then agreed to write to the Scottish Executive, expressing its agreement with the Subordinate Legislation Committee, emphasising the seriousness of the concerns and requesting that the Executive take urgent action to address the concerns.

The International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) (Revocation) Regulations 2004 (SSI 2004/437)

5. The Scottish Executive’s response is attached at annex B. In it, the Minister for Justice undertakes to revoke the principal regulations in order to allow further consideration and discussion of the legal issues. The International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) (Revocation) Regulations 2004 (SSI 2004/437) are the resulting instrument.

Financial consequences

6. The Scottish Executive’s note states that the instrument has no financial effects on the Executive, on local government or on business.
Subordinate Legislation Committee

7. The Subordinate Legislation Committee considered this instrument at its meeting on 26 October 2004 and determined that the attention of the Parliament need not be drawn to it (Subordinate Legislation Committee, 37th Report, 2004 (Session 2)).

Procedure

8. This instrument is subject to negative procedure. Under Rule 10.4 of the Standing Orders, this means that it comes into force and remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

9. The instrument was laid on 7 October 2004 and is subject to annulment under the Parliament’s Standing Orders until 27 November 2004.

10. In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee. The instrument came into force on 9 October 2004.
Implementing regulations for the International Criminal Court

Justice 1 Committee

30th Meeting 2004 (Session 2)

The International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) Regulations 2004 (SSI 2004/360)

Note by the Clerk

Purpose of the draft instrument

11. These regulations make provision for the enforcement in Scotland of fines and forfeitures ordered by the International Criminal Court ("the ICC") and of orders by the ICC against convicted persons specifying reparations to, or in respect of, victims.

Background

International Criminal Court

12. The ICC was established by the Rome Statute of the International Criminal Court on 17 July 1998, when the 120 states participating in the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, including the United Kingdom, adopted the statute.

13. The court was set up to investigate and, where appropriate, prosecute individuals for “the most serious crimes of international concern”, i.e. genocide, crimes against humanity and war crimes. The statute sets out the ICC’s jurisdiction, structure and functions and provides for its entry into force 60 days after 60 states have ratified or acceded to it. The 60th instrument of ratification was deposited with the Secretary General on 11 April 2002 and, accordingly, the statute entered into force on 1 July 2002. Anyone committing any of the crimes under the statute after that date will be liable for prosecution by the court.

International Criminal Court (Scotland) Act 2001

14. The International Criminal Court Act 2001 and the International Criminal Court (Scotland) Act 2001 made the necessary provisions to enable the United Kingdom to comply with its obligations under the Rome statute.

15. Under the statute, the ICC may impose fines, the forfeiture of proceeds, property and assets derived directly or indirectly from the crime for which the person has been convicted and reparation orders in respect of victims, including compensation.

16. These regulations are made under section 26 of the International Criminal Court (Scotland) Act 2001 in order to put into place the arrangements needed to enforce ICC orders in Scotland.
Financial consequences

17. The Scottish Executive’s note states that the instrument has no financial effects on the Executive, on local government or on business.

Subordinate Legislation Committee

18. The Subordinate Legislation Committee considered this instrument at its meetings on 14 and 21 September 2004 and determined that the attention of the Parliament should be drawn to it (Subordinate Legislation Committee, 33rd Report, 2004 (Session 2)).

19. An extract of the Subordinate Legislation Committee’s report is annexed to this note. The Committee raises concerns in respect of the instrument’s vires and the relative enforceability of any ICC order made under the terms of these regulations.

Procedure

20. This instrument is subject to negative procedure. Under Rule 10.4 of the Standing Orders, this means that it comes into force and remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

21. The instrument was laid on 31 August 2004 and is subject to annulment under the Parliament’s Standing Orders until 25 October 2004.

22. In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee. The instrument is due to come into force on 1 October 2004.
Dear Pauline,

I refer to my letter of 30 September on the International Criminal Court (Enforcement of Fines, Forfeitures and Reparation Orders) (Scotland) Regulations, in which I indicated that I would get back to you today with my further views on the points raised by the Committee.

Without prejudice to our future position, I propose to revoke the Regulations to allow further consideration and discussion of the complex legal issues involved. On that basis, I have instructed officials to prepare the revoking instrument and they will liaise with Committee Clerks on timescales for laying etc.

Best wishes,

CATHY JAMIESON
Protection of Children and Prevention of Sexual Offences (Scotland) Bill

Approach to Stage 1 consideration of the Bill

Note by the Clerk

Background

1. The Protection of Children and Prevention of Sexual Offences (Scotland) Bill was introduced to the Parliament on 29 October 2004. The Justice 1 Committee has been designated as the lead committee on the Bill.

2. The Policy Memorandum on the Bill states that the primary policy objective is to better protect children from sex offenders. It goes on to state that it does this by strengthening the law to deal with those offenders who seek to “groom” children for the purpose of committing sexual offences.\(^1\) The Bill also introduces a new order that will impose restrictions on adults who display inappropriate sexual behaviour towards children. The Bill also provides for the use of sexual offence prevention orders to be applied to convicted offenders at the point of sentence rather than following subsequent evidence of inappropriate actions.

Adviser

3. The Committee has agreed to appoint an adviser to assist it in its consideration of the Bill. Professor Christopher Gane of the University of Aberdeen has agreed to take on this role.

Written evidence

4. The Committee has issued a call for written evidence. The deadline for written submissions is 21 December 2004.

\(^1\) Protection of Children and Prevention of Sexual Offences (Scotland) Bill, policy memorandum, paragraph 2
Oral evidence

5. The Committee is invited to consider the following list of witnesses for oral evidence at stage 1 of the Bill. Members should note that this list is subject to the availability of witnesses.

Evidence session 1:
Scottish Executive officials
Crown Office

Evidence session 2:
Barnardo’s
Association of Directors of Social Work (ADSW)
Rachel O’Connell, Director of Research, Cyberspace Research Unit, University of Lancashire

Evidence session 3:
Police organisations: SPF; ACPOS; ASPS [as a panel]
Law Society of Scotland
Professor Andrew Ashworth, University of Oxford

Evidence session 4:
James Chalmers, University of Aberdeen
Minister for Justice

Seminar and informal meeting

6. The Committee may wish to consider holding a seminar with a cross-section of organisations with an interest in the Bill. These could include children’s organisations and legal practitioners. The Committee could use the seminar as an opportunity to discuss issues relating to the Bill with representatives from these organisations. A note of the seminar could be produced by the clerks and used as evidence to inform the Committee’s report.

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2 Barnardo’s is a children’s organisation which has conducted a study and campaign on internet safety.
3 The Committee could take evidence from a panel including representatives from Children and Family Care and Criminal Justice Committees of ADSW.
4 Expert in internet safety issues. Home Office commissioned the Cyberspace Research Unit to carry out research for sub-group F of the Internet Task Force, which resulted in the report "Children and Young People’s Use of Chat Rooms: Implications for Policy Strategies and Programs of Education" that involved nearly 1400 children aged 9 to 16, across 42 schools in the UK.
5 Expert in criminal justice and human rights.
6 Member of the Scottish Law Commission advisory group on the reform of the law of rape and other sexual offences.
7. The Committee may also wish to consider seeking an informal meeting with the Sheriffs’ Association.

**Timetable**

8. It is proposed that the Committee will consider the Bill within the following timetable:

<table>
<thead>
<tr>
<th>Date</th>
<th>Activity</th>
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<tbody>
<tr>
<td>Wednesday 8 December</td>
<td>Evidence session 1</td>
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<tr>
<td>Wednesday 22 December</td>
<td>Evidence session 2</td>
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<tr>
<td><strong>24 December – 7 January - Recess</strong></td>
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<tr>
<td>Wednesday 12 January</td>
<td>Evidence session 3</td>
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<td></td>
<td>Consider written evidence</td>
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<td>Wednesday 19 January</td>
<td>Seminar with relevant organisations</td>
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<td>Wednesday 26 January</td>
<td>Evidence session 4</td>
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<tr>
<td>Wednesday 2 February</td>
<td>Consider issues for stage 1 report</td>
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<td>Wednesday 9 February</td>
<td>First consideration of stage 1 report</td>
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<tr>
<td><strong>12 – 20 February - Recess</strong></td>
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<tr>
<td>Wednesday 23 February</td>
<td>Second and final consideration of stage 1 report</td>
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<tr>
<td>Friday 25 February</td>
<td>Publish stage 1 report</td>
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<tr>
<td>Week commencing 28 February</td>
<td>Stage 1 debate</td>
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