The Committee will meet at 9.45 am in Committee Room 6.

1. **Subordinate Legislation**: Rhona Brankin MSP (Deputy Minister for Environment and Rural Development) to move S2M-4734—

   **Cathy Jamieson**: *The Draft Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2006*— That the Justice 1 Committee recommends that the draft Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2006 be approved.

2. **Subordinate Legislation Committee inquiry**: The Committee will consider its response to the Subordinate Legislation Committee’s Draft Report on its Inquiry into the Regulatory Framework in Scotland.

   Callum Thomson
   Clerk to the Committee
Papers for the meeting—

Agenda item 1

Note by the Clerk on the Draft Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2006

Agenda item 2

Note by the Clerk on the Subordinate Legislation Committee inquiry into the Regulatory Framework in Scotland

Documents for information—

The following documents are circulated for information:

- Correspondence between the Convener and Robert Brown MSP, Deputy Minister for Education and Young People, on the Scottish Commissioner for Human Rights Bill;
- Letter from Minister for Justice, Draft Tribunals, Courts and Enforcement Bill – Proposed Legislative Consent Motion; and
- Report of Progress on the second phase of the implementation of recommendations from the Report, “Protection of Public Service Workers; When the Customer isn’t Right”.

Documents not circulated—

Copies of the following documents have been supplied to the clerk:

- Scottish Executive, Part 1 Land Reform (Scotland) Act 2003 – Summary of Responses to the Consultation on Draft Regulations and Summary of Responses to the Consultation on the Draft Code of Practice;
- Scottish Court Service, Agency Review of the Scottish Court Service;
- Scottish Public Services Ombudsman, Annual Report 2005-2006;
Scottish Executive, National Youth Work Strategy Consultation: “Youth Work – Opportunities for all;"


HMIP, *Report on HMP and YOI Cornton Vale*;

COPFS, *Strategic Plan, 2006-08*; and

Scottish Executive Social Research, *Police occupational health: support for specialist postholders*.

**Forthcoming meetings—**

Wednesday 20 September, Committee Room 1;
Tuesday 26 September, Committee Room 3;
Wednesday 27 September, Committee Room 2;
Tuesday 3 October, Committee Room 5;
Wednesday 4 October, Committee Room 1;
Tuesday 24 October, Committee Room 1;
Tuesday 31 October, Committee Room 1; and
Wednesday 1 November, Committee Room 5.
SSI Cover Note For Committee Meeting

SSI title and number: The Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2006

Type of Instrument: Affirmative

Meeting: 30th Meeting, Wednesday 13 September 2006

Date circulated to members: Friday 8 September 2006

Minister to attend Justice 1 Committee meeting Rhona Brankin MSP, Deputy Minister for Environment and Rural Development

SSI drawn to Parliament’s attention by Sub Leg Committee: No

Affirmative Instrument – Procedure

1. The Justice 1 Committee has been designated lead committee and is required to report to the Parliament by 2 October 2006.

2. The draft Order was laid on 29 June 2006. Under Rule 10.6.1(b), the Order is subject to affirmative resolution before it can be made, it is for the Justice 1 Committee to recommend to the Parliament whether the Order should be approved. The Minister for Justice has, by motion S2M-4734 (set out in the agenda), proposed that the Committee recommends the approval of the Order. The Deputy Minister for Environment and Rural Development will attend in order to speak to and move the motion. The debate may last for up to 90 minutes.

3. At the end of the debate, the Committee must decide whether or not to agree to the motion, and then report to the Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendation.

4. The motion will be considered by the Parliament on 3 October 2006.
Justice 1 Committee

SLC Inquiry on the Regulatory Framework in Scotland

Note by the Clerk

Background and purpose

1. The Convener of the Subordinate Legislation Committee (SLC) has written to the Conveners of all other committees attaching copies of the SLC’s recently-published draft report, The Regulatory Framework in Scotland\(^1\) (21st Report, 2006). The letter invites committees to respond to a number of specific questions and to comment on the draft report and the recommendations it makes. The deadline for committee comments is 22 September. A copy of the letter is attached at the Annexe.

2. The draft report outlines a number of perceived problems with the current procedures for scrutiny of statutory instruments, and proposes a comprehensive new system – described as the Scottish Statutory Instrument Procedure (SSIP).

3. Clerks circulated the SLC Report to Committee members in July.

Current procedures for Parliamentary scrutiny of statutory instruments

4. The framework for current procedures is provided by one of the “transitional orders” under the Scotland Act. These are orders made by UK Ministers under the 1998 Act in order to provide an initial statutory framework for certain aspects of the working of the Parliament. All such orders were intended to be temporary, and each one provides for it to cease to have effect when it is replaced in due course by the Parliament (usually in the form of an Act).

5. These statutory requirements are then amplified by the Rules in Chapter 10 of the standing orders, which provide in detail for the process of Parliamentary scrutiny – including the separate roles of the SLC in carrying out technical scrutiny of instruments and of lead committees in carrying out scrutiny of the substance.

6. Under this system, the large majority of SSIs are subject either to “affirmative” or “negative” procedure:
   
   - under affirmative procedure, the SSI is normally laid in draft and cannot be made until the Parliament has passed a resolution approving it;
   
   - under negative procedure, the SSI is normally laid as a made instrument and either cannot come into force or cannot remain in force if the Parliament (within 40 days) passes a resolution to annul it.

\(^{1}\) The SLC Draft Report is available via the Parliament’s website, at: http://www.scottish.parliament.uk/business/committees/subleg/reports-06/sur06-21-00.htm
7. In each case, under the present system, the type of procedure to which the individual SSI is subject is determined by the enabling provisions in the “parent” Act.

SLC recommendations

8. The main recommendations of the SLC draft report are as follows:

General

• The various existing forms of Parliamentary scrutiny (affirmative, negative, etc.) will be replaced by the unified SSI procedure – so the procedure applied to any particular instrument will no longer be determined by the parent Act.

• Within the SSIP, there will be a “general” procedure for most instruments, plus an “exceptional” procedure for specific cases.

• The Executive should be required to provide regular programmes indicating the SSIs it expects to lay over the next 3 months, enabling committees to plan ahead better than at present.

• There will be no change in the division between technical and policy scrutiny of instruments as currently carried out by the SLC and lead committees, respectively.

• The Standing Orders should make provision to allow the SLC and the lead committee to consider an instrument simultaneously; and the lead committee will not be obliged to consider the SLC’s report before reporting to the Parliament itself.

• The SLC is critical of the lack of consolidation of subordinate legislation since devolution and recommends a specific procedure for the consolidation of SSIs.

SSIP General procedure

• Under the general procedure, the instrument must be laid in draft for a 40-day scrutiny period, during which it can be “disapproved” (i.e. voted down) by the Parliament, on a recommendation either of the SLC or a lead committee.

• During the same period, the Executive may make technical amendments to the draft without this requiring the instrument to be withdrawn and re-laid – i.e. the 40-day clock would keep ticking.

• If the 40 days expires without the Parliament “disapproving” the instrument – or if both the SLC and lead committee record that they are content with the draft earlier in the 40-day period – the instrument may be made forthwith.
SSIP Exceptional procedure

- This would apply to emergency instruments (e.g. food protection orders) or other urgent instruments (e.g. those required to be brought into force quickly to co-incide with parallel legislation in the rest of the UK).

- Such instruments would be laid after being made, and then subject to annulment by the Parliament within 40 days. Only emergency instruments would be capable of being brought into force before being laid; with urgent instruments not normally coming into force within 21 days of being laid.

Consolidation procedure

- A Consolidation Working Group should be set up, which would be responsible for bringing forward proposals for consolidation of SSIs and would report to the SLC.

- Any area of law governed by SSI should normally be consolidated after it has been amended 5 times.

- The SLC distinguishes between:

  “pure consolidation” – i.e. a new SSI that does nothing more than restate the provisions of previous SSIs in a single document, subject only to amendments "necessary to produce a satisfactory consolidation", but with no changes of substance; and

  “rolling consolidation” – i.e. an SSI that both consolidates previous SSIs (as in a pure consolidation) but also makes changes of substance.

- The SLC recommends that pure consolidation SSIs would be subject to the “general procedure” under SSIP but with scrutiny only by the SLC and not also the lead committee; whereas "rolling consolidation" SSIs would have the “new law” clearly indicated (e.g. in bold text) and subject also to scrutiny by the lead committee.

Consultation questions

9. The SLC seeks committees’ views on the following specific questions:

1. Should all the existing procedures be replaced by the proposed SSIP under which all Scottish Statutory Instruments, with certain exceptions, would be laid in draft before the Parliament?

2. Should there be parallel consideration of instruments by both the Subordinate Legislation Committee and the lead Committee?

3. (a) Should the instruments laid in draft under the general procedure of SSIP be subject to being disapproved by the Parliament within 40 days?
(b) Should the period be reduced to 30 days?

4. Should the Parliament be able to take a motion to disapprove a draft instrument or to annul an instrument for 10 days beyond the 40 day period?

5. Should the Executive be required to provide the Parliament every 3 months with a forward programme of instruments which it plans to make during that period?

6. Should the SLC be able to recommend to the Parliament that an instrument is annulled or that a draft instrument is disapproved but only on the ground that there are serious doubts about the legal validity of the instrument?

7. Should a draft instrument laid before the Parliament be able to be amended by the Executive, with the agreement of the SLC, to take account of technical changes without affecting the original timetable for consideration?

8. (a) Should emergency instruments be subject to the exceptional procedure?

(b) Should emergency instruments be defined as proposed?

9. Should the exceptional procedure be confined to emergency and other instruments of an urgent nature?

10. Should consolidation instruments be subject to the modified general procedure under which the lead Committee will not be entitled to consider “pure” consolidations and only substantive amendments in a “rolling” consolidation?

11. Should commencement orders be subject to the modified general procedure under which the lead Committee will not be entitled to consider them?

12. (a) Should Scottish Statutory Instruments (SSIs) continue to be defined as at present?

(b) Should local instruments cease to be made by statutory instrument?

(c) Should local instruments be defined as proposed?

13. Should rules of court cease to be made by statutory instrument?

14. (a) Should an instrument which requires to be laid after being made (the exceptional procedure) be required to be laid as soon as practicable after being made and in any event not later than 7 days after making?
(b) Should an instrument which is made without either a draft being laid under the general procedure or the instrument being laid after making under the exceptional procedure (as required above) be treated as never have had any legal effect, subject to the following exception?

(c) Where an emergency instrument or other urgent instrument is brought into force within the 7 day period but are not laid within that period, should that invalidate the instrument the day after that period expires?

15. (a) Should the SSIP apply to all SSIs and to all other statutory instruments which are subject to procedure in the Scottish Parliament?

(b) Should it apply in all cases (both past and future) where there is a power to make such instruments?

**Next steps**

10. Following receipt of consultation responses, the SLC plans to take oral evidence during October and November 2006. Looking further forward, the SLC expects to introduce a Committee Bill to give effect to its proposals some time in Session 3.

**Recommendation**

11. Members are invited to consider the specific questions above and whether they wish to respond in writing to the SLC’s consultation.
Dear Convener,

As you will know, the Subordinate Legislation Committee has been undertaking an inquiry into the Regulatory Framework in Scotland.

The Committee has now completed its consideration of all of the evidence it received during Phase 2 of the inquiry, including that from Committees, and has come to conclusions which it has included in a draft report.

On the basis of the evidence the Committee received, and its own experience of scrutinising subordinate legislation over the last 7 years, the Committee has concluded that there should be a simplified system which is fit for purpose and where scrutiny is open and transparent and within realistic timescales.

It has always been the Parliament’s intention to replace the current transitional procedures. The Committee therefore recommends in its draft report that the current system of scrutiny should be replaced with a new system which it has called the Scottish Statutory Instrument Procedure (SSIP). This is the procedure which forms the main recommendation in the Committee’s draft Report.

Given the innovative nature of the SSIP and the wide-ranging implications for the Parliament, the Executive and those on whom subordinate legislation has an impact, the Committee has decided to publish the draft report in order to consult upon its recommendations before finally making up its mind on what to propose to Parliament.

The purpose of this letter is to invite your Committee’s comments on the draft report and the recommendations that it makes.

The Committee would prefer to receive comments electronically. These should be sent to: subordinate.legislation@scottish.parliament.uk.

The general closing date for responses is Friday 8 September 2006. However, the Committee would welcome Committee’s responses by Friday 22 September 2006.

Sylvia Jackson MSP
Convener
23 May 2006
Dear Robert

Scottish Commissioner for Human Rights Bill

Thank you for your letter of 6 September and for lodging amendments to the Bill in line with the timetable that I had suggested. The paper that you attached summarising the Executive amendments will also be a helpful guide for Members of the Committee.

Thank you also for your offer to meet with the Committee to discuss any aspect of the amendments or the Bill more generally. Having had a chance to look over the amendments, they appear to be readily understandable and therefore I do not think that it will be necessary for you to attend next week’s meeting of the Committee.

Turning to Stage 2 proceedings (on 20 September), it will not be necessary for you to make an opening statement at the start of Stage 2 proceedings because I will ensure that there will be ample opportunity within the debates on the groups of amendments for you to set out the context to the Executive’s amendments.

Furthermore, I am keen that Members should have the chance to fully explore all relevant matters before the Committee has to decide on how individual amendments will be disposed of.

I am copying this letter to Margaret Curran and Cathy Jamieson.
Dear Pauline

Scottish Commissioner for Human Rights Bill

Thank you for your letter of 31 August in reply to mine of 30 August.

We have since spoken further about the arrangements for Stage 2 of the SCHR Bill, and I confirm that the Executive amendments were lodged today. This is in line with the timetable suggested in your letter, and so I trust that this will give Members of the Committee sufficient time to consider the amendments before formal consideration begins on 20 September. Most of the amendments are to deliver commitments given by the Executive at Stage 1 or otherwise to address points raised during consideration of the Bill, and so I hope will be welcomed by the Committee. However, as I said in my previous letter, I remain happy to discuss any aspect of the amendments or of the Bill generally with Committee Members formally or informally, and collectively or individually, before the start of formal Stage 2 consideration if that would be thought to be helpful.

In the meantime, I attach a paper summarising the Executive amendments. This is aimed at explaining their purpose, including where appropriate showing how they would deliver the commitments given by the Executive at Stage 1. When we spoke you agreed that this would be helpful, and I am glad to offer it to Members of the Committee.

I am copying this letter to Margaret Curran and Cathy Jamieson.

ROBERT E BROWN
SCOTTISH COMMISSIONER FOR HUMAN RIGHTS BILL: STAGE 2 AMENDMENTS

The table below summarises the effect of the Executive amendments lodged on 6 September, with reference where appropriate to the commitment by the Executive at Stage 1 that they are aimed at delivering.

<table>
<thead>
<tr>
<th>AMENDMENT NUMBER</th>
<th>PURPOSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-3, 7-9, 12-18, 21-37, 39-50, 52-53, 55-60, 62, 64, 66-69, 71-72, 74-81, 83-88, 90-95, 97, 100-103</td>
<td>These are all drafting amendments, to make changes consequential on the decision to move from creating a Commissioner to a Commission, e.g. by changing references to “Commissioner” to instead read “Commission” – for substantive explanation see amendment 89 below.</td>
</tr>
<tr>
<td>4, 6</td>
<td>To clarify and refocus SCHR’s general duty in response to adverse comments at Stage 1 by stating it as being to promote, and encourage best practice in relation to, human rights; with “promote” defined as being to promote awareness and understanding of, and respect for, those rights.</td>
</tr>
<tr>
<td>5</td>
<td>To remove the specific obligation on SCHR to “encourage” public authorities to comply with section 6 of the Human Rights Act, in response to the need for this being questioned at Stage 1.</td>
</tr>
<tr>
<td>10</td>
<td>To meet the desire for SCHR to address needs of those whose human rights needs are not sufficiently recognised at present, e.g. “disadvantaged” people and groups.</td>
</tr>
<tr>
<td>11, 19</td>
<td>To recast the specific duty on SCHR to monitor the law and the policies and practices of public authorities, in response to concerns expressed at Stage 1 by the Law Society of Scotland and the Committee, to make it clear that this would relate to areas of the law rather than the law as a whole and be discretionary and subsidiary to the SCHR’s general duty rather than a free-standing obligation. The intention that this should be an adjunct to the SCHR’s main promotional and awareness-raising functions will be shown by this provision (currently section 3) being placed after the current section 4, which sets out the SCHR’s power to engage in education etc activities, instead of before that section as in the Bill as introduced.</td>
</tr>
<tr>
<td>20</td>
<td>To impose a duty on the SCHR to produce a strategic plan, as promised by the Executive in its response to the Stage 1 Report. Each such plan would cover a period of 4 years, so as to coincide with the life of each Parliament. The plans would set out the SCHR’s objectives and priorities, the activities or kinds of activities in which it proposes to undertake, and expected timetables for these. The SCHR would be required to consult the Parliamentary corporation and others before laying such plans before the Parliament. (This is broadly similar to the equivalent duty placed on the GB Commission for Equality and Human Rights by the Equality Act 2006,</td>
</tr>
</tbody>
</table>
To disapply for the purpose of the SCHR’s power to obtain information the restriction on disclosure of information by the Scottish Legal Aid Board contained in section 34 of the Legal Aid (Scotland) Act 1986: this change has been requested by SLAB and a similar provision appears in the Scottish Public Services Act 2002.

To address drafting points in relation to section 11, to make clear that the provisions relating to the SCHR’s statutory power of intervention in civil proceedings will apply without prejudice to any ability to intervene in any type of proceedings under existing law and practice.

To remove the requirement for SCHR annual reports to include a summary of the actions the SCHR proposes to take in the following year in pursuance of its general duty. This is because this information will now be included in the strategic plan that the SCHR is to be obliged to produce. Amendment 70 is purely a drafting change to require annual reports to include a summary of “activities undertaken” rather than “action taken”, to secure consistency with the proposed new strategic plan provision.

To move section 14 (which gives the SCHR power to co-operate with other bodies, and enjoins it to avoid unnecessary duplication) to after section 4 so as to give it more prominence on the face of the Bill and thus a greater emphasis.

To effect the move from a Commissioner to a Commission, in pursuance of the commitment given by the Executive in its response to the Stage 1 Report, by replacing Schedule 1 to the Bill (which sets out the detailed provisions to govern the operation and accountability of the SCHR) in its entirety. Much of the new Schedule 1 repeats provisions in the existing version, but there are some substantive differences most of which are aimed at delivering other Stage 1 commitments. Particular points to note:

- the SCHR is to comprise a Chair and up to 4 other members, with the Chair being appointed by Her Majesty on the nomination of the Parliament as was proposed for the Commissioner in the Bill as introduced, with the other members being appointed by the parliamentary corporation(paragraph 1)

- as promised at Stage 1, the grounds on which members can be removed from office will be specified on the face of the legislation. Also, a Parliamentary resolution for removal of a member will require to be voted for by at least two-thirds of MSPs voting. Both of these changes are in line with recommendations of the Procedures Committee’s Report on Crown Appointments that was published earlier this year;

- the requirement for the SCHR to have a chief executive would be removed, again as promised at Stage 1: as a consequence, the SCHR’s accountable officer (who was to have been the chief
- the express prohibition on members of the SCHR holding other offices or employment without the Parliamentary corporation’s consent would be removed, so as to remove any apparent (and unintended) implication that all members should be full-time;

- also as promised at Stage 1, there will be an explicit requirement for the SCHR’s expenditure plans to be submitted to, and approved by, the Parliamentary corporation; and

- the SCHR would be brought within the remits of the Scottish Public Services Ombudsman and the Scottish Information Commissioner.

### 96, 98-99

To remove the requirement in Schedule 3 of the Bill for the SCHR to give notice before exercising its power to enter places of detention in connection with inquiries, in response to the criticism of this requirement in the Stage 1 Report. As a consequence the provision allowing a person to whom such notice has been given to seek its cancellation by a sheriff on certain specified grounds would also be removed. However, the Bill currently requires a person seeking to exercise this power to provide evidence of his entitlement to do so, and amendment 98 would clarify this by providing that the power cannot be exercised until such evidence is produced.
Dear Robert

**Scottish Commissioner for Human Rights Bill**

Thank you for your letter of 30 August.

I am disappointed that you have not responded more positively to the Committee’s request for a short session with you and your officials on 13 September to discuss the Executive's current thinking on the Bill and to answer any queries that Members may have. Due to other commitments it is extremely unlikely that a discussion, whether formal or informal, can be arranged for next week.

As I said in my previous letter, given the gap in proceedings and the expectation that the Executive will be lodging a considerable number of amendments to the Bill to give effect to your response to the Stage 1 report and the commitments you made during the Stage 1 debate, the proposed meeting on 13 September was intended to assist Committee members in deciding whether to lodge amendments of their own at Stage 2.

Following discussions between the clerks and your officials, I understand that the Executive expects to be in a position to formally lodge amendments to the Bill on Wednesday 6 September. In the circumstances, I consider it essential that Members are given a minimum of two weeks to consider these prior to the first Stage 2 session. I have, therefore, decided to begin Stage 2 consideration on Wednesday 20 September. The target for consideration on this day will be the whole Bill although a further session on Wednesday 27 September is available if required.
I am copying this letter to Margaret Curran and Cathy Jamieson.

Yours sincerely

Pauline McNeill MSP
Convener, Justice 1 Committee
Minister for Justice
Cathy Jamieson MSP

Pauline McNeill MSP
Convener
Justice 1 Committee
Scottish Parliament
Edinburgh
EH99 1SP

Drew Pauline

4 August 2006

SCOTTISH EXECUTIVE

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DRAFT TRIBUNALS, COURTS AND ENFORCEMENT BILL - PROPOSED LEGISLATIVE CONSENT MOTION

I wish to advise the Committee that the Department for Constitutional Affairs (DCA) has on 25 July published in draft a Tribunals, Courts and Enforcement Bill, a link to which can be found at http://www.official-documents.co.uk/document/cm68/6885/6885.asp. I am not yet able to advise on possible introduction dates for this Bill. My purpose in writing now is to allow any observations and input from the Committee to be taken on board as early as possible, both by the Executive and the DCA.

As members of the Committee may know, in March 2003 the UK Government announced proposals for reform of the centrally administered tribunals system, following a report of Sir Andrew Leggatt and others published in 2001. In June 2004 a White Paper was published setting out the UK Government’s proposals in more detail. The reform programme involves two main streams of work. The first was to set up a new Executive Agency within the DCA, the Tribunals Service, designed in due course to bring together the administration of the tribunals administered by central government. The agency, the establishment of which did not require primary legislation, was launched on 1 April 2006. The Tribunal Service deals with the administration of some of the largest and most important of the reserved tribunals such as Social Security Tribunals, Asylum and Immigration Tribunals and Taxation Tribunals. These new arrangements coincide with the creation of the Judicial Appointments Commission which took on responsibility (also from 1 April) for making recommendations in relation to the appointment of members of certain reserved tribunals.

The second stream of work, which requires primary legislation, involves the creation of a unified tribunals structure, including a first instance tier and an appellate tier, each with a single judicial office. The UK Government is committed to introducing a Bill for this purpose as soon as Parliamentary time allows. These are the proposals which are the subject of the current DCA draft Bill.
My officials have worked closely with DCA to ensure that the draft Bill properly reflects the Scottish context as far as reserved matters are concerned, and to consider the extent to which the proposals could potentially in due course be applied to devolved tribunals in Scotland. There are two aspects of the DCA Bill proposals which, if introduced, would require a Legislative Consent motion before the Scottish Parliament, as they involve the UK Parliament legislating in devolved areas. These are, firstly, the replacement of the Council on Tribunals with an Administrative Justice and Tribunals Council and, secondly, changes in relation to the Criminal Injuries Compensation Appeals Panel. The Annex to this letter sets out the position in detail, as well as providing background in relation to proposed future arrangements for appointments of Scottish General Commissioners of Taxation.

In relation more generally to devolved tribunal issues, we are conscious of the potential for the improvement of the public services involved through sharing of services and facilities across this sector. However, the circumstances in Scotland are structurally different from those in the rest of the UK and therefore may not necessarily lend themselves to the adoption of the same model here as the DCA has adopted for reserved tribunals. We have a much smaller population base and the make-up of devolved tribunals is rather different. In terms purely of numbers, cases heard by Scottish devolved tribunals are a small percentage of tribunal cases throughout the UK and there is a heavy numerical dominance of a small number of large devolved tribunals. The largest two are the Mental Health Tribunals only recently set up and the Children’s Hearing System. In relation to the latter, at present the executive proposes moving support arrangements onto a regional basis, requiring local authorities to provide support to members of the children’s panel against national standards (on recruitment, training and support). Any changes will be contained in the draft Bill to implement *Getting it Right for Every Child* which will be presented for consultation towards the end of the year.

Therefore in welcoming the work done by DCA, we need to give full consideration to the effectiveness of these proposals in practice in the Scottish context and the means by which the right solution could be found to the very different circumstances applicable to devolved tribunals.

I hope that this letter sets out the position of the Executive is helpful to the Committee and I am happy to respond to any questions arising from its consideration of these issues.

I am copying this letter to the Convenor of Justice 2 Committee for information.

CATHY JAMIESON

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[Signature]

BEST WISHES

CATHY JAMIESON
ANNEX

PROPOSED TRIBUNALS, COURTS AND ENFORCEMENT BILL
ISSUES RELEVANT TO THE LEGISLATIVE CONSENT MOTION

General

1. The main aim of the tribunal provisions within the proposed Tribunals, Courts and Enforcement Bill is to create a new overarching statutory framework for reserved tribunals. The Bill would contain two measures which would be within the legislative competence of the Scottish Parliament and which in consequence require consideration by the Parliament of a Legislative Consent Motion or, in one area, where an analogous issue arises because of an impact on an executively devolved function. This Annex sets out these issues in detail.

Replacement of the Council on Tribunals with an Administrative Justice and Tribunals Council

2. The Bill proposes the replacement of the Council on Tribunals with a new body to be called the Administrative Justice and Tribunals Council (AJTC). The Council on Tribunals is a cross-border public authority under the Scotland Act and, as it operates on a GB wide basis and carries out functions in relation to both reserved and devolved tribunals, the abolition of the Council and replacement by the AJTC, if contained in the Bill, would trigger a Legislative Consent Motion.

3. The AJTC will not be a cross-border public authority, but structurally is intended to operate in a similar way to the Council on Tribunals. It is proposed to have a different range of supervisory functions from the Council on Tribunals, relating to supervision of the system of administrative justice and reviewing the constitution and working of Tribunals. It will be empowered to comment on proposed legislation relating to Tribunals. It is proposed to operate in Scotland in relation to devolved tribunals in principle in the same way as it would in relation to reserved tribunals.

4. If these GB-wide arrangements were not put in place, Scotland would be placed in a disadvantageous position for two reasons. Firstly, until we had the opportunity ourselves to legislate, there would be no equivalent supervisory body which could operate in relation to Scottish devolved tribunals, hence creating an unsatisfactory imbalance of tribunal scrutiny. Secondly, we would lose the experience gained from the scrutiny carried out by the AJTC across the reserved/devolved divide, bearing in mind that most of the tribunals (and the largest ones) operating in Scotland deal with reserved matters eg Social Security, Tax, Asylum and Immigration.

5. In order to regulate properly the over-arching inter relationship of the AJTC with the Scottish Ministers (in relation to devolved matters), powers would need to be conferred in relation to issues such as appointment and removal by the Scottish Ministers of Council members of the AJTC; designation by the Scottish Ministers of Scottish Committee members of the AJTC; exercising advisory functions for the AJTC to advise the Scottish Ministers on the development of (and changes in) the administrative justice system in Scotland; exercising referral functions in relation to receipt of reports in such matters; commenting on proposed Scottish or UK legislation; publication of reports on Scottish matters; attendance at devolved tribunal hearings; and the laying of Annual Reports before the Scottish Parliament.
6. The need for Order making powers for the Scottish Ministers is limited. As part of the arrangements for the establishment of the AJTC however, it will be necessary to specify, by Order, the list of tribunals which will be subject to supervision by the Council. It is proposed that this list will initially be the same as the list of devolved tribunals under the existing legislation which are subject to supervision by the Council on Tribunals. It can be added to when new devolved tribunals are created in future. This Order making function is proposed to be exercised by the Scottish Ministers, subject to Scottish Parliamentary scrutiny.

**Functions in relation to the Criminal Injuries Compensation Appeals Panel**

7. In dealing with what might generally be described as the reserved tribunal system, the Bill will contain no provisions which deal with devolved tribunals (except so far as relating to the Administrative Justice and Tribunals Council). However, it is proposed to transfer the substantive appeals jurisdiction of the Criminal Injuries Compensation Appeals Panel into the new Tribunal Service. This would be done by using the order making powers in the Bill in due course to transfer the appeal right to the First Tier Tribunal, within the integrated Tribunal Service.

8. The Panel is a cross-border public authority since the Criminal Injuries Compensation Authority operates on a Great Britain wide basis and the Panel was designated as such at the time of devolution. The functions of the Panel were modified to reflect the reserved/devolved divide and one of the statutory modifications at that time was to confer upon the Scottish Ministers the power of appointment of not fewer than five members of the Panel in consultation with UK Ministers. In contrast to the clearly reserved nature of the functions relating to Commissioners of Taxation (see below), the Panel exercises in effect mixed functions and therefore the appointment functions of the Scottish Ministers as part of the operational requirements of the Panel can truly be regarded as devolved.

9. The unusual position of the Panel is worthy of comments in two respects. Firstly is that DCA have recognised that the Scottish power of appointment of Panel members should be retained because of its essentially devolved nature. Scottish Ministers will therefore continue to exercise the functions of appointing at least five members of the Panel, in consultation with UK Ministers. This does not fall within the general transfer of reserved tribunals appointments functions to the Judicial Appointments Commission as from 1 April.

10. Secondly, although the appointments process will maintain its Scottish Ministerial involvement, it is proposed in due course to transfer all other appeal functions of the Panel into the new structure proposed to be established under the Bill. This will allow Panel users in Scotland as well as England & Wales to enjoy the benefits of inclusion within the new integrated Tribunal Service. For reserved tribunals, this will be achieved by the Bill conferring on the Lord Chancellor the power to transfer tribunal functions from the existing tribunals to the First Tier or Upper Tier tribunals established by the Bill. In relation to the Panel, consent of the Scottish Ministers will be required before this can be done.

11. These, and other consequential changes, re-define the constitution of the Panel and would require the consent of the Parliament. If that consent were not given (with the effect that the Panel was not able to be brought within the new Tribunal Service), the benefits of increased integration and transparency would be lost to an important body in its decision making processes affecting appellants often in vulnerable positions.
Appointment function of Scottish Ministers in relation to General Commissioners of Taxation

12. The Scottish Ministers have responsibility for appointing General Commissioners of Taxation in relation to Scotland, under executive devolution arrangements. These functions were conferred under the Taxes Management Act 1970 and were executively devolved to the Scottish Ministers in 1999.

13. The Bill contains a power for the Lord Chancellor by Order to transfer tribunal functions from the existing tribunal decision makers to one of the two new tribunals under the unified Tribunal Service, established by the Bill, namely the First Tier or Upper Tier Tribunal. It is anticipated that he will do so in due course in relation to the functions of General Commissioners for Income Tax. That will in effect abolish that office.

14. Given the likelihood of eventual transfer into the new overarching Tribunal Service (causing the office of General Commissioner for Income Tax to cease to exist) and since this power relates clearly to the reserved function of taxation, we do not believe that it is sensible for the Executive to retain this function.
Report of Progress on the second phase of the implementation of recommendations from the Report ‘Protection of Public Service Workers; When the Customer isn’t Right’

1. This report is an assessment of the second phase of the work of the Scottish Executive Steering Group on Protection of Workers serving the Public which covers the period from January to December 2005. The Steering Group is tasked with the implementation of the recommendations in the Executive report Protection of Public Service Workers; When the Customer isn’t Right.

2. It aims to summarise the work done by providing a brief background of the work prior to 2005 before outlining that done since including the part played by the STUC, Steering Group and Task Group members and the tasks in hand for 2006 in relation to the original recommendations.

3. Since the completion the first assessment of work over the period from the publication of the report in 2004 up to December of the same year, which outlined actions and lines taken in implementing its recommendations, significant further progress has been made. The Steering Group which was established to oversee the implementation of the report’s recommendations, and the rolling out of the 3 year programme of work that this entails has continued to meet quarterly throughout 2005. Three Task Groups, made up of Steering Group members and representatives of other interested organisations have met on various occasions to take forward priorities agreed at the March Steering Group meeting.

4. The membership of the Steering Group is mainly drawn from the Group initially set up to oversee the compilation of the report. The following bodies are represented:

- Association of Chief Police Officers
- Crown Office and Procurator Fiscals Service
- Confederation of Passenger Transport
- CoSLA
- Health and Safety Executive
- Scotland Office
- Scottish Business Crime Centre
- Scottish Centre for Healthy Working Lives
- Scottish Executive Anti Social Behaviour Team
- Scottish Executive Health Department
- Scottish Executive Transport Group
- Scottish Retail Consortium
- Society of Personnel Directors
- STUC
- Youth Link Scotland

5. Unfortunately, Learning and Teaching Scotland (LTS) took the decision at the beginning of 2005 to withdraw from the group due to lack of participation from other representatives of the Education sector. Whilst LTS were extremely supportive of the work of the Group they felt unable to take on the mantle of the sole representative of Education specialists and working with young people in schools. The Steering Group deeply regretted the fact that LTS felt it necessary to withdraw but understood their position and are working to encourage
representatives from the Education sector to play an active and prominent role in its work in the future.

6. Summary of Report up until December 2004

6.1 The first awareness campaign was carried out over the last three months of 2004 and took the approach of raising awareness of the unacceptability of verbal and physical abuse with a view to forming the basis on which a second phase could encourage those working with the public to report to employers and where appropriate the Police. The Steering Group were strongly of the opinion that it would have been counter productive to encourage reporting when there had not been the opportunity to ensure that there was support in place for employers and employees to do this effectively.

6.2 The Scottish Executive Safer Scotland logo with its lighthouse emblem is used on all campaign materials and the punchbag image has been shared with other agencies, who have received campaign artwork tailored to their respective specific sectoral interests.

6.3 Safe and Healthy Working which is now incorporated into the Scottish Centre for Healthy Working Lives, a free and confidential occupational health and safety service targeted at small and medium sized enterprises in Scotland provided and continues to provide support for the work of the Steering Group on the issue of work related violence. They also provide a contact point for anyone following up on the posters and television advertising campaign.

6.4 The STUC and its affiliated organisations worked with the Steering Group and the Task Groups and promoted the campaign and campaign materials through a number of initiatives from take up of posters to workshops and sessions and conferences and seminars.

6.5 Steering Group members circulated materials and provided resources both for the awareness campaign and all matters associated with the Steering Group.

7. Completion of Work Plan for 2005

7.1 Awareness Campaign – a second awareness campaign from October until December 2005 was carried out using original advertising material from 2004 with the addition of a voice-over encouraging workers to report abusive behaviour. This contained a link to the Executive website www.infoscotland.com/violenceatwork which contains advice for employees and employers on tackling the issue and links to other organisations who can provide assistance. The website also provides the facility for members of the public to contact the Executive for further information. There have been a number of requests for support from both members of the public and employers who have been offered appropriate links to information and outside organisation that may be of assistance.

7.2 Campaign posters have been developed to include other sectors and this has been taken up with suitable strap lines applied in transport, supermarket chains, fire and rescue services and various smaller organisations. The posters for this year also had the above web site details and contact telephone numbers for Crimestoppers. Generic posters have also been produced which are aimed at shop workers in small local stores and the licensed trade as well as one aimed at informing employers of their legal responsibilities to staff.
7.3 This was supported by a Public Relations campaign which included articles in Scottish and local press following the experiences of workers from various sectors who experience verbal and sometimes physical abuse on a regular basis. Case studies sourced mainly through the STUC have come from many sectors including retail, transport, emergency workers. It is intended to carry this on beyond the television campaign period by using Scottish Radio Holdings ‘Life Matters’ series during a week in February to discuss the issue through their local radio networks. Information is displayed on their website (http://www.forth2.co.uk/Article.asp?id=38615).

7.4 Previous success in publishing articles from the Minister for Finance and Public Service Reform in trade and trade union magazines has been built on. The following trades unions and trades magazines have carried articles either from the Minister, himself or abridged versions: ASLEF, Fire Brigades Union, Royal College of Nursing, Prospect, RMT, UNISON, Usdaw and the Communications Workers Union as well as the Scottish Trades Union Review. They have also been carried by the British Cleaning Council, CoSLA Connections, Fire Magazine, the Institute of Conflict Management newsletter, Health and Safety Practitioner, Nursing Standard, Fleet News, Confederation of Passenger Transport newsletter, Scottish Business Crime Centre newsletter, National Union of Students magazine, Youthlink magazine and the Zero Tolerance newsletter. Discussions are continuing with a number of other trade unions who have indicated a willingness to carry similar articles.

7.5 A number of these have also published information and articles on the campaign on various websites across Scotland as well as other parts of the UK. Most of these have been trade union websites although organisations such as Young Scot and YouthLink have also carried similar information.

7.6 STV’s and Grampian’s Talking Scotland has featured case studies from the previous year’s campaign - a firefighter, a council worker and a bus driver discussing the impact of verbal and physical abuse has on them as individuals and the service they provide. This has been supplemented this year by young workers recounting experiences of working in retail, a call centre and the public sector. This is available electronically via www.talkingscotland.com.

7.7 The campaign was evaluated by TNS, an independent research agency commissioned by the Scottish Executive, immediately after the television advertising had concluded over the period 24th November – 1st December 2005. 939 interviews were conducted using Computer Assisted Personal Interviewing. This demonstrated that the campaign had been very successful in achieving its stated aim of making the strategy more proactive by offering information/resources to employers and employees on how to report incidents of abuse, as well as reinforcing the message that violence against public-facing workers is totally unacceptable.

7.8 The sample at the latest wave was weighted to be representative of the adult population of Scotland. Remarkably, the survey also highlighted that of the 42% of respondents who worked with the public 10% claimed to have been physically abused in the last twelve months and 38% verbally abused.

7.9 Independently of the awareness campaign a leaflet targeted at employers in Scotland who employ between 5 and 10 people was prepared. This highlights the issue, giving advice on legal responsibilities of employers and how to handle work related violence and where to get information and support and was launched in January 2006.
8. Participation of the STUC in the Partnership

8.1 A number of trade union affiliates of the STUC have been committed to supporting the work of the Steering Group by providing case studies for press events, distributing campaign materials, facilitating meetings with employers or providing feedback from workers in the front line who have overall responded very positively.

8.2 The STUC Women’s Committee has provided time at their annual conference to discuss the issue and inform delegates of the work of the partnership and also hosted a joint conference at Victoria Quay in the Scottish Executive on 7th October 2005 to discuss the overall campaign and the impact this may have on women workers.

8.3 The conference was attended by delegates from trade unions, training organisations and Steering Group members. Speakers from the Executive, the Health and Safety Executive, the Suzy Lamplugh Trust and the Crown Office and Procurators Fiscal Service provided an informed background to the event before delegates broke into work groups to discuss the issue in more detail. The STUC Have provided a report of the conference which contains recommendations for trades unions, employers and the Executive.

8.4 The Women’s Committee have also taken the opportunity to promote the partnership working with other United Kingdom trade union organisations through both through affiliates and directly when meeting with other TUC women’s committees in the United Kingdom.

8.5 The STUC Young Workers Committee have been active in investigating the emerging anecdotal evidence that young workers may be more vulnerable to verbal and physical abuse at work (rather than the perception that young people are perpetrators) and have included working with the Steering Group and directly with the campaign advertising agencies in their workplan for 2006. In July, they also provided the opportunity to survey the delegates to their annual conference on experiences of workplace violence. Although some of the results were disturbing considering the age and range of work experience, the results were useful in promoting the issue of the vulnerability of young workers to violence for the Public Relations Campaign.

8.6 Through interest in the campaign a member of the Youth Committee formulated a bid for the Scottish Executive Youth Challenge Fund using Information Technology to survey young people in schools on their experiences of workplace violence and engage with them on its unacceptability as well as making them aware that it need not be tolerated and where to go for assistance. Unfortunately the bid was not successful and attempts are being made to seek support from other sources.

9. Steering Group

9.1 As part of a consultation exercise to determine a workplan for 2005, Executive officials met individual members of the Steering Group early in the year to discuss priorities for 2005 and ascertain how best individual organisations could assist in promoting the campaign and facilitating joint working within the Steering Group and with their own affiliates or members.

9.2 A paper was produced for the March Steering Group meeting which drew together all of the resources that could be made available to the Steering Group and made recommendations
for priorities for the year. These were promoting robust reporting procedures; working with young people and encouraging retail organisations to participate in the campaign. The Group resolved to take this forward by:

- Updating the remit of the Group to committing resources of all participating organisations
- Working with Scottish Executive media agencies to advise and support the work of the awareness campaign
- Set up three Task Groups were set up to take forward identified priorities

9.3 Steering Group members have provided resources and contacts for the awareness campaign as well as encouraged take up of posters and campaign materials.

9.4 Links have also been maintained with the HSE Partnership on Work Related Violence which has kept a keen interest in its work and reports of initiatives in the rest of the U.K. are regularly reported at meetings of the Steering Group and vice versa.

9.5 A number of initiatives aimed at promoting best practice in training were commenced in 2005 and are currently ongoing.

9.5.1 Training of trade union health and safety reps in dealing with violence in the workplace has been developed in conjunction with the TUC and to the first trial of the course will take place in May 2006.

9.5.2 Early in 2005 talks began with management and trade unions at Edinburgh Airport to discuss the implementation of training for airport staff. Research carried out prior to the commencement of the campaign had identified airport workers as a group of people who can be considered by certain sections of the public to be ‘fair game’ for at least verbal abuse.

9.5.3 As a result training officers at the airport have since been trained in the methods approved by the Suzy Lamplugh Trust and this is being rolled out to supervisors in the Security section. It is intended that eventually all staff in the airport will receive this training.

9.5.4 The Transport and General Workers Union is working with the Steering Group to pilot the TUC training amongst their trade union representatives at the airport to ensure a consistent approach to assessing and implementing measures to combat verbal and physical abuse of staff. Once this has been achieved it is hoped to roll out this across other sectors the TGWU is involved with such as taxi drivers and others identified as being particularly vulnerable.

9.5.5 Talks have taken place with the Fire Service College at Gullane with a view to developing online training which can be utilised via their website by others in both the public and private sectors for staff in areas where resources would not normally be available for specific training.

9.6 One of the most challenging sections of the workplan is the recommendation that a forum be developed to examine how to establish a forum to discuss work related violence and the Justice system. The recommendation from the report reads:

_The Scottish Executive should facilitate the establishment of an appropriate_


fürum in which concerns about the criminal justice system by those suffering from WRV or abuse can be aired, awareness of the criminal justice system and evidential requirements can be raised, and the issue of consistency in the reporting of incidents to the police can be addressed.

9.6.1 As part of the process at determining a proposal, the Steering Group agreed that a discussion paper should be drawn up for the December 2005 meeting to draw together suggestions with a view to taking forward the results.

9.6.2 In consultation with Steering Group and Task Group members as well as others identified by Steering Group members a paper was drawn together which outlined the views of all of those who wished to contribute and outlined current Executive initiatives such as the Anti Social Behaviour strategy and the Scottish Strategy for Victims which can assist. As a result, it was identified that:

- the public perception of the ‘Justice System’ is sketchy with general confusion around police, procurator fiscal and court roles in the process
- lack of knowledge around evidence that is required and lack of awareness of the system can result in victims considering that is ‘not worth the bother’
- unrealistic expectations of the system result in victims feeling let down, e.g. there is still a belief that when a crime is reported a Police officer should arrive immediately. When this does not happen victims believe that the system has immediately failed them and so resolve not to report in the future
- there is general lack of awareness of resources that are available to make the process of dealing with the prosecution of a crime easier and more informative for victims and witnesses.

9.6.3 The contents of the paper have been discussed fully and Steering Group members are now expected to reach a conclusion at the next meeting which will take place in the Spring.

10. Task Groups

10.1 Reporting Task Group

10.1.1 The Reporting Task Group is made up of:
- Ian Lavery CoSLA and Institute of Personnel Directors (Chair)
- James Brough Glasgow City Council
- Gary Crawford ACPOS
- Katrina Purell STUC
- Alison Michie COPFS
- George Mair First Group
- Mairi Gaffney –NHS Scotland
- Willie Armstrong Scottish Business Crime Centre
- Linda Shanahan Scottish Executive

10.1.2 Work has been ongoing into how to encourage staff to report work related violence and make current systems more user friendly. It is planned to launch an updated, simple reporting form which will include information required by Police to collate evidence on attackers, etc. This is seen as a way to assist in raising awareness of the evidential requirements to carry through a prosecution.
10.1.3 A conference for local authorities, who not only have employer’s responsibilities towards staff but enforcement powers around Health and Safety issues, is planned for March 2006 at Victoria Quay. In this way it is hoped to tie up with social work issues in which UNISON has been particularly active in lobbying the Executive.

10.2 Retail Task Group

10.2.1 The members of the Retail Task Group are:
- Fiona Moriarty Scottish Retail Consortium (Chair)
- Steve Hogarth Co-Op
- Tom McDougall Scottish Business Crime Centre
- Maxine Fraser Retailers Against Crime
- Brian Connel ACPOS
- Bruce Fraser Usdaw
- Steve Bell Healthy Working Lives
- Johanna Beswick Health and Safety Laboratories
- Linda Shanahan Scottish Executive

10.2.2 Initially the Retail Task Group intended to work with the HSE and others to identify a pilot area in Scotland where existing practice could be tried and tested before being rolled out to retailers around Scotland. However due to the fact that a similar project has now commenced under the auspices of the HSE Laboratory in Westminster in London, the Task Group took the decision to seek an input into this project which was readily accepted and use this as a tool to encourage retailers in Scotland to take up good practice.

10.2.3 The Scottish Retail Consortium, the Scottish Business Crime Centre and Retailers Against Crime are represented on the group and are working to identify good practice and develop a Charter for retailers in how to manage the potential for conflict and aggression and recommend effective and accessible training in the retail sector.

10.3 Youth Task Group

10.3.1 The members of the Youth Task Group are:
- Ian Tasker STUC (Chair)
- Andrew Brady STUC Young Workers’ Committee
- Fiona Barker ACPOS
- Doug Fleming Stagecoach
- Ian Hay YouthLink
- Gregor Urquhart Young Scot
- Jenny Duncan National Union of Students
- Linda Shanahan Scottish Executive

10.3.2 Much of the work of the Task Group has paralleled work being carried out with the STUC Youth Committee who have afforded the Task Group the opportunity to feed in and test ideas such as the formulation of a workplace diary which can be downloaded from web sites and used by young workers to measure the extent of the problem on a personal level. This can then be used as evidence to managers and employers in support of the
implementation of policies and procedures to minimise or control the problem if not eradicate it completely.

10.3.3 The National Union of Students has also been represented on the group and work is in hand to include specific references to workplace violence and rights of young workers in existing NUS literature and web information. Young Scot have also been instrumental in placing advice to young workers on the issue in a national newspaper and have promoted the campaign in many activities they are involved in.

10.3.4 The two outstanding issues the Task Group wishes to be involved in are how to raise the issue of lack of research on young people at work and encourage work in this area and assisting interested organisations in setting up theatre work around the issue for use in schools and youth events.

13. Monitoring and Evaluation

13.1 It is intended to draw together the work of all parties in the campaign over the three years and ask each participant to contribute their views on where the campaign was successful and / or might have been more positive as well as make an assessment of the impact on their own organisation and affiliates or members.

13.2 Part of this exercise will necessarily contain the views of the Steering Group and others on how best the work over the period can be carried forward and the momentum maintained by all partners including the Executive.

13.3 A final report covering the three year period will be prepared and circulated to interested parties and placed on the Executive website along with examples of good practice and advice on resources available to assist employees and employers setup and maintain best practice.

Scottish Executive
February 2006