The Committee will meet at 2.00 pm in Committee Room 3.

1. **Items in private:** The Committee will consider whether to take items 5, 6 and 7 in private.

2. **Tenements (Scotland) Bill:** The Committee will take evidence on the general principles of the Bill at Stage 1 from—
   
   Mary Mulligan MSP, Deputy Minister for Communities, Joyce Lugton, Bill Team Manager, Edythe Murie, Solicitor and Norman MacLeod, Solicitor, the Scottish Executive.

3. **Prisoner Escort and Court Custody Services Contract:** The Committee will consider what, if any, action to take in light of the Minister for Justice's recent statement.

4. **Constitutional Reform Bill:** The Committee will consider correspondence from the Lord Advocate.

5. **Youth Justice Inquiry:** The Committee will consider a report on its recent youth justice seminar.

6. **Tenements (Scotland) Bill:** The Committee will review the evidence received and consider its approach to its Stage 1 report.

7. **Procedures Committee inquiry on timescales and stages of Bills:** The Committee will consider a draft letter to the Procedures Committee.

Gillian Baxendale / Lynn Tullis
Clerks to the Committee
Tel 0131 348 5054
The following papers are enclosed for this meeting:

**Agenda item 2 – Tenements (Scotland) Bill**

Proposed areas for questioning (PRIVATE PAPER – MEMBERS ONLY) J2/S2/04/15/1
Written submission from Graeme Cruickshank J2/S2/04/15/2

**Agenda item 4 – Constitutional Reform Bill**

Correspondence from the Lord Advocate J2/S2/04/15/3

**Youth Justice Inquiry**

Draft report on Youth Justice Inquiry seminar (PRIVATE PAPER – MEMBERS ONLY) J2/S2/04/15/4

**Agenda item 5 – Tenements (Scotland) Bill**

Note by the Clerk (PRIVATE PAPER – MEMBERS ONLY) (TO FOLLOW) J2/S2/04/15/5
Stage 1 Report by the Subordinate Legislation Committee (PRIVATE PAPER – MEMBERS ONLY) J2/S2/04/15/6
Stage 1 Report by the Finance Committee (PRIVATE PAPER – MEMBERS ONLY) J2/S2/04/15/7

**Agenda item 6 – Procedures Committee inquiry on timescales and stages of Bills**

Draft letter (PRIVATE PAPER – MEMBERS ONLY) J2/S2/04/14/8

**Forthcoming Meetings:**

- Wednesday 28 April - Joint Justice 1 & 2 Committee Meeting (AM)
- Tuesday 4 May - Joint Justice 1 & 2 Committee Meeting (PM)
- Tuesday 11 May - Joint Justice 1 & 2 Committee Meeting (PM)
- Tuesday 11 May Justice 2 Committee Meeting (PM)
- Tuesday 25 May Justice 2 Committee Meeting (PM)
I warmly welcome the introduction of this Bill, and would like to comment on its two main objectives, with particular regard to houses of multiple occupation.

1. **To clarify rules governing the ownership of various parts of a tenement**

   a) Using the roof area for recreational purposes, when the title deeds prohibit access except for maintenance and other necessary purposes, which causes damage, the repairs having to be borne communally;
   
   b) making major alterations to a roof to facilitate its use as outlined above, without building warrant, repairs to the damage caused having to be borne communally;
   
   c) using the attic space at the top of the tenement for storing items, some flammable, which are privately owned;
   
   d) using passageways and landings for the storage of items which are privately owned;
   
   e) damaging shared property (e.g. knocking lumps out of beams to install central heating, when the same beams support the floor of one flat and the ceiling of another).

I may add that I have direct experience, as the owner of the flat above mine has been guilty of all those listed above. It should be noted that Edinburgh Council’s Regulatory Committee recently reversed an earlier decision and awarded the owner in question an house of multiple occupation licence. This illustrates why legislation is essential – it is pointless for the Executive merely to provide Councils with certain powers if they then opt not to use them.

2. **To provide a statutory system for the management of tenements**

   This has become essential because of the explosion of houses of multiple occupation towards the end of the 20th century, with particularly high densities in certain areas e.g. Marchmont in Edinburgh. This has been exacerbated by the policy of Edinburgh City Council (unlike Glasgow) of permitting, even encouraging, the unfettered proliferation of houses of multiple occupation. The Councils serious under-estimate of houses of multiple occupation in this area is the result of their flawed method of gathering their data.
When I moved into this stair in Marchmont twenty-seven years ago, the eight flats contained eight families; for the last five years, I have been the sole resident owner. I gather that some stairs now have 100% house of multiple occupation composition – they can sometimes be recognised by the front door hanging off its hinges, a hole in the wall where the entryphone used to be, and a pile of garbage bags at the foot of the stairwell.

In the early 1980s the residents of the stair formed an Association, with a bank account and a Committee of chairman, secretary and treasurer. This acted efficiently and effectively as a stair management committee, arranging, among other things, for common repairs to be made as necessary. How different things are now. For several years past, I have been acting as an unpaid factor on behalf of seven absentee owners. Not only is this hugely time consuming, but it is becoming increasingly ineffective. In addition to the rogue owner already referred to, who has refused to pay his share of essential matters such as stair cleaning and roof repairs, even when the Council have issued a statutory notice, two agents new to the system are proving uncooperative. This places me under even more strain. Edinburgh Council operates a Stair Partnership which would relieve me of these problems, but it only operates with the agreement of all owners.

The Council’s policy has resulted not just in the collapse of the social fabric of the stair, but in a deterioration of its physical fabric as well. Petty vandalism is a frequent problem (committed, I believe, more often by visitors rather than residents), and I feel in a very vulnerable position, as I am now the only person on the stair likely to complain. A statutory tenement management scheme would therefore be a tremendous boon.

I should add that I see this Bill as part of an ongoing programme of legislation to curb the detrimental effects stemming from the enormous growth of houses of multiple occupation in recent years.

Graeme Cruickshank

18 April 2004
Annabel Goldie MSP  
Convener  
Justice 2 Committee  
The Scottish Parliament  
George IV Bridge  
Edinburgh  
EH99 1SP  

25th April 2004

I am writing to you in connection with the Scottish aspects of the DCA proposals for the creation of a new Supreme Court. Since this Bill was introduced on 24 February, it has been referred to a Special Select Committee of the House of Lords.

In view of the reference to the Special Select Committee, the Executive considers that it is premature to submit a Memorandum for the Sewel Motion. It will do so once the Committee has reported to the House and the final shape of the legislation becomes clearer.

However, I share your desire (originally set out in your letter to the Minister for Justice of 23 February) to ensure that a proper opportunity is given for Members of the Parliament to assess and consider these proposals. It was indeed for that reason that the Executive sought a debate in connection with these proposals on 29 January, ahead of the opportunity to debate the Sewel Motion.

I am keen to ensure that the views of the Executive are heard both by the Justice Committees of the Scottish Parliament and by the Special Select Committee of the House of Lords.
I am aware that your Committee has started the process of considering the proposals. In addition to providing a Memorandum for the Sewel Motion, I would be pleased to make myself available to give evidence to your Committee in relation to the DCA proposals for the new Court, as they impact on Scotland. I am conscious that I was unable to participate in the debate on 29th January due to court commitments but it might be appropriate for me to do so, either at this stage or, perhaps more usefully, at the point at which the findings of the Special Select Committee are known.

Moving on to the Special Select Committee, the position is slightly different. The Executive has not had the opportunity to set out its thinking to that Committee. I have written today to the Clerk with a submission on behalf of the Scottish Executive. I expect to give evidence myself to the Committee. I enclose a copy of the submission. I hope that this document is useful to your Committee when it resumes consideration of these proposals.

I am copying this letter to Pauline McNeill MSP.

Yours ever,

COLIN BOYD
Background

1. The purpose of this minute is to provide written evidence on behalf of the Scottish Ministers in relation to that part of the Constitutional Reform Bill proposing the establishment of a new UK Supreme Court which is the subject of consideration by this Special Select Committee of the House of Lords.

2. The Secretary of State for Constitutional Affairs and Lord Chancellor provided written evidence to the Committee and gave evidence on 1 April. Given the particular implications of the creation of the new Court in Scotland and the Scottish legal system, the Scottish Executive hope that it is helpful to the Committee to set out their view in relation to the proposals of the UK Government for the creation of the new Court.

View of the Scottish Executive

3. In its response to the DCA consultation document issued last July proposing the establishment of the new Court, the Scottish Executive welcomed the proposals. The Executive agreed that the right of appeal to the House of Lords on civil matters which exists at present has served the Scottish justice system well, building up a tradition of high quality and durable decisions ensuring valued and valuable consistency throughout the UK. It also noted the existence, since 1 July 1999, of a UK-wide jurisdiction in devolution issues for the Judicial Committee of the Privy Council, deriving from the Scotland Act.

4. The Executive agrees with the DCA that, as a point of principle, the separation of the roles of the Law Lords as judges and legislators should be made explicit. This is consistent with Lord Bingham of Cornhill’s view as to the importance of establishing a Court visibly separate functionally, institutionally and geographically from either House of the legislature.

5. That separation should be transparent and be sufficient to eliminate any concerns - whether real or perceived – that Judges are not independent, impartial or free from prejudice or bias.

6. The Executive has made clear (and in doing so agrees with DCA) that there is no suggestion that the independence of the Law Lords has been compromised. However, having Law Lords sitting both as judges and as legislators gives rise to a risk that the separation of their roles may not be perceived or properly understood.
7. The Scottish Parliament had the opportunity on 29 January to debate the proposals on an Executive motion and voted to support the establishment of the Supreme Court.

Implications for Scotland

8. The Scottish Executive has given close scrutiny to the proposals, having regard to their implications on the Scottish legal system and to the need and desirability of preserving the independence and integrity of Scots law.

9. At a constitutional level, the preservation of the independence and integrity of Scots law is rooted in the continuation of the separate existence of Scots law, as provided for in the Act of Union.

10. The Executive believe that the Constitutional Reform Bill properly respects the separate nature of Scots law and the protections set out in the Act of Union. The Executive agrees with the analysis by the Lord Advocate of the assertion that the establishment of a Supreme Court would not infringe the Claim of Right and/or the Treaty of Union. His views were set out in a lecture to the Law Society of Scotland on the 21st January. (a copy is appended).

11. There are two strands to this which are of particular importance. Firstly, the Scottish Executive has carefully considered the administrative structures proposed with a view to ensuring that, in terms of legal analysis, Scots law does not become subservient to the law of England and Wales by virtue of these proposals.

12. A concern has been raised in this respect in connection with governance arrangements for the court proposed by the DCA. This concern arises at a general (as opposed to a peculiarly Scottish) level and was addressed by the written and oral evidence given by the Secretary of State and Lord Chancellor to the Special Select Committee.

13. The DCA has responsibility for the administration and financing of the court system for England and Wales but as the Secretary of State and Lord Chancellor has made clear in his evidence to this Committee, the separate governance arrangements for the Supreme Court do not, on any assessment, have the effect of placing the Supreme Court (and so Scots law) subservient to the court system for England and Wales. For that reason, the Scottish Executive do not consider that the proposals, in relation to governance, are contrary to the Act of Union.

14. Secondly, the Scottish Executive is alert to the fact that, as a general proposition, the current civil jurisdiction of the Appellate Committee is not a unified jurisdiction throughout the whole of the United Kingdom but comprises three separate jurisdictions – Scotland, England and Wales, and Northern Ireland – dependent on the court from which the appeal to the House of Lords is taken.

15. In view of the Scottish Executive, the transfer of the jurisdiction of the Appellate Committee to the new Supreme Court does not in itself have the effect, as a matter of law, of merging those streams of jurisdiction. Accordingly, in future, it will remain the position (to the same extent as at present) that a decision in a case
emanating from Scotland will be binding in relation to Scotland but only persuasive in relation to England and Wales (and vice versa).

16. As a transfer of the existing jurisdiction in itself would not, in the view of the Executive, impact or impinge upon those jurisdictions, the Bill does not at present have or require an express provision preserving the current position.

17. Concerns have, however, been raised that the creation of a Supreme Court will create a momentum towards the idea of a unified body of UK law which will be inconsistent with the maintenance of those two independent streams of jurisdiction. The Secretary of State and Lord Chancellor, therefore, in his evidence to the Committee has indicated his intention to bring forward an amendment to entrench the current degree of separation of jurisdictional streams. The Scottish Executive support that proposal.

**Number of Scottish Judges**

18. Moving on from constitutional issues, the Scottish Executive would wish to address one further issue concerning the way in which Scottish cases are to be dealt with by the new Supreme Court. This issue relates to the number of Scottish Judges who would sit as Supreme Court Judges and the question of whether there should or could be a Scottish majority in all or some Supreme Court panels hearing cases emanating from Scotland.

19. At present, by convention no fewer than two of the Judges appointed to the House of Lords are Judges who have held high judicial office in Scotland.

20. It is entirely a matter for the Government (subject to the agreement of Parliament) to determine the number of Judges sitting in the Supreme Court from time to time having regard to the level of judicial business. The Scottish Executive are content with the proposal that at commencement the number of such Judges is to be 12 comprising the existing Lords of Appeal in Ordinary. The Scottish Executive agree that, on that basis, there should be no fewer than two suitably qualified Judges from Scotland.

21. The Scottish Executive considers that it is important that, for so long as there are 12 permanent judges in the Supreme Court, the convention should be that at least two should have held judicial office in Scotland. Were the qualifications and practices to allow for lawyers who have not held judicial office being appointed to the Supreme Court, then the requirement would be for someone qualified in Scots Law who has practised and was familiar with Scots Law. In any event the convention should be that there were at least two (out of 12) identifiable Scots lawyers. Were the number to increase then consideration should be given to increasing the number of permanent Scots judges.

22. While the Executive does not consider it necessary to set out a minimum number on the face of the Bill, the Executive is concerned to establish a proper mechanism for continuation of the convention. The Executive notes and welcomes the commitment from the Secretary of State and Lord Chancellor that the convention will
be respected. The Executive is in discussion with the DCA about the mechanisms for
enshrining the convention.

23. In most, though not all, cases before the Privy Council a majority of the Board
have been Scottish judges. This arrangement is a product of the devolution settlement
which recognised the importance, and political sensitivity, of devolution issues. The
Executive believes that this system has worked well.

24. Accordingly the Executive would wish to see a continuation of the
arrangements whereby, where appropriate, a majority of the court hearing a
devolution issue, could be Scottish judges. Where appropriate this can be extended to
other Scottish cases.

25. However the Executive believes that it would be inappropriate to have a rule
requiring that Scottish cases always had a majority of Scottish judges. First the
Executive recognises that this has not been the rule to date. Secondly it would, in
effect, divide the court with the possibility that different approaches were taken by
different majorities of Scottish and English judges. Thirdly it would be very difficult
to arrange where the court sat in larger panels of 7, 9 or even 11 judges.

26. So far as the appointment process is concerned, the Executive agrees that
appointment must be on merit. The Executive agrees that the appointment process
must be more open and transparent and based on recommendations from an
independent appointments board. The Executive considers that it is vital that there
should be a consultation with the senior judiciary in Scotland (ordinarily the Lord
President of the Court of Session) and, at the appropriate point in the process, with the
First Minister. The Executive is in discussion with the DCA on the detail of the
mechanism, particularly on the issue of ensuring a continuation of the convention on
the minimum number of judges, referred to above.

Sewel Motion

27. The DCA proposals in relation to the creation of a new Supreme Court
impinge on the regulation of the Scottish legal system insofar as they modify the
appeal jurisdiction from the Inner House of the Court of Session. Accordingly, the
relevant provisions of the Bill require the agreement of the Scottish Parliament in
accordance with the Sewel convention. The Executive is awaiting the outcome of the
Committee’s consideration of the Bill before seeking the consent of the Scottish
Parliament by means of a Sewel Motion.

Conclusion

28. Subject to that, the Scottish Executive reiterate its support for the creation of a
Supreme Court as an effective measure of reform, modernising the court system and
reaffirming the independence and integrity of Scots law.