JUSTICE 2 COMMITTEE

AGENDA

3rd Meeting, 2006 (Session 2)

Tuesday 31 January 2006

The Committee will meet at 2.00 pm in Committee Room 2.

1. **Item in private:** The Committee will consider whether to take item 5 in private.

2. **Subordinate legislation:** The Committee will consider the following negative instruments—
   
   - The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2006 (SSI 2006/5); and
   - The Intensive Support and Monitoring (Scotland) Regulations 2006 (SSI 2006/15).

3. **Petition:** The Committee will consider the following petition—
   
   PE890 by James A. Mackie on an independent police complaints commission.

4. **Scottish Prison Complaints Commissioner:** The Committee will consider correspondence from the Scottish Executive.

5. **Police, Public Order and Criminal Justice (Scotland) Bill:** The Committee will consider arrangements for consideration of the Bill at Stage 2.

Tracey Hawe/Gillian Baxendale
Clerks to the Committee
Papers for the meeting—

**Agenda Item 2**

Cover Note (including SSI 2006/5)  J2/S2/06/3/1

Cover Note (including SSI 2006/15 and Executive Note)  J2/S2/06/3/2

**Agenda Item 3**

Cover Note (including copy of petition)  J2/S2/06/3/3

**Agenda Item 4**

Cover Note (including correspondence from the Scottish Executive)  J2/S2/06/3/4

**Agenda Item 5**

Note by the Clerk (PRIVATE PAPER)  J2/S2/06/3/5

Documents circulated for information only—

The following documents are circulated for information:


Documents not circulated—

The following document has been supplied to the clerk:


If Members wish to obtain a copy of this report please contact the clerk.

Forthcoming meetings—

- Tuesday 21 February 2006, 2pm, Committee Room 6
- Tuesday 28 February 2006, 2pm, Committee Room 1
1. At the Subordinate Legislation Committee’s meeting on 24 January 2006, it was agreed that the instrument be brought to the attention of the lead committee and to the Parliament on the basis that the Scottish Executive had failed to follow proper legislative practice, in not supplying an Executive Note for the instrument.

2. The Subordinate Legislation Committee considers that in this instance the lack of provision of an Executive Note constitutes a failure to follow proper legislative practice. The SLC agreed to report on these grounds within its deadline but has also agreed to seek further clarification from the Executive as to why in this particular instance an Executive Note was not supplied.

3. The relevant extract from the Subordinate Legislation Committee Official Report is attached as Annex A, and the Scottish Executive’s original response to the Subordinate Legislation Committee’s comments is attached as Annex B.

4. Members may also recall that the Scottish Prison Service wrote to the Justice 2 Committee on 11 January 2006 regarding the instrument. A copy of this letter, and an SPS news release, are attached for information as Annexes C and D respectively.
The Convener: There was no formal Executive note for the rules. If I remember correctly, that is because the Executive thought that we did not need one. Members will see from the legal advisers' briefing that the difference between an explanatory note and an Executive note is spelled out quite clearly; it would be only rarely that we would not want both.

Mr Maxwell: It is odd that the Executive has given us that answer, given the clear explanation that we have in our legal advice of the difference between an explanatory note and an Executive note. Perhaps we should send the Executive a copy of that explanation, just to be helpful.

The Convener: We could say that we want to clarify our understanding of the aim of an explanatory note and of an Executive note, and ask the Executive to explain why, in this case, it felt that an Executive note was not needed.

Mr Maxwell: I will take your guidance on that, convener.

The Convener: Do members agree to that?

Members indicated agreement.

The Convener: This is quite important. The fact that we have not had Executive notes is one of the issues that we have flagged up a number of times. The clerk has pointed out that we need to report to the lead committee and to the Parliament. We are simply reporting that there has been a failure to follow proper legislative practice in this case.

Gordon Jackson: In this case, would the Executive note have contained the same information as the explanatory note?

The Convener: That is what we will ask the Executive.

Gordon Jackson: I just thought that our legal adviser might be able to say that, in this case, it would have contained the same information.

The Convener: I thought that it was implicit from our legal advice that the information would not be the same, and I see that the adviser concurs with that.

Gordon Jackson: I see that. I am just thinking out loud.

The Convener: We will report to the lead committee and to the Parliament.
Annex B

The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2006, (SSI 2006/5)

On 17 January 2006 the Committee asked the Executive why no formal Executive Note was provided with this instrument.

The Scottish Executive responds as follows:
The Executive does not consider it necessary to provide a separate Executive Note where the Explanatory Note provides all of the information that would be included in an Executive Note. In this case the effect of the instrument is fully explained in the Explanatory Note and in the Executive’s view nothing further would be added in an Executive Note. Consequently the Executive considered it unnecessary to provide an Executive Note.
Ms Tracey Hawe  
Clerk to Justice 2 Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

Dear Ms Hawe

THE PRISONS AND YOUNG OFFENDERS’ INSTITUTIONS (SCOTLAND) 
RULES 1994

I am writing to offer you some background and further information on a Statutory 
Instrument which Ministers are laying before Parliament to amend the above Rules. 
The purpose of the amendment is to increase the period of short (home) leave that 
may be granted to a prisoner, in terms of Rule 120, from 3 nights to 7 nights.

In May 2004 the Minister for Justice announced a package of measures to improve 
prison conditions and make more effective use of custody following Lord Bonomy’s 
judgment in the Napier case. As part of this package Ms Jamieson announced that 
Ministers had agreed to enhance home leave arrangements for low risk long-term 
prisoners nearing the end of their sentences. I am pleased to attach the news release 
that accompanies the laying of the Statutory Instrument. This explains its purpose 
and outlines the considerable progress that has been made since the Minister’s 
announcement 18 months ago. Following on from the physical improvements which 
have been made to the prison estate, and the passage of the Management of 
Offenders Act with its focus on reducing re-offending, the time is now right to put in 
place the arrangements for enhanced home leave.

We are conscious that the 1994 Rules have been amended on a number of occasions 
and that the Committee may wish to understand what work is underway on 
consolidation. The Scottish Prison Service (SPS) and the Office of the Solicitor to the 
Scottish Executive (OSSE) are working on a consolidation of the Rules but have not 
yet been able to complete the task – not least because of the work involved in the 
court cases following the Napier judgement and other legal challenges raised on 
behalf of prisoners.

SYO00206  
An Agency of the Scottish Executive Justice Department
A consolidation of the Rules will require the existing Rules to be renumbered. We have had some concern about confusion arising if certain of the Rules are renumbered, for example the current Rule 80 which deals with the removal of prisoners from association. The numbering of these Rules is well known to prisoners and any change may give rise to apprehension by prisoners (at least in the short term) that we had changed the Rules rather than just renumbered them. A change to rule numbers would also require us to amend certain forms and paperwork commonly used within prisons. We are working to resolve these and other practical issues and to identify the best way to ensure the Rules are consolidated on a regular basis.

I hope this is helpful.

Yours sincerely

RACHEL GWYON
Director of Corporate Services
NEWS RELEASE

Making more effective use of Custody

In May 2004 the Minister for Justice announced a package of measures to improve prison conditions and make more effective use of custody following Lord Bonomy’s Judgement in the Napier case. These measures included:

- additional investment in the prison estate to help eradicate slopping out;
- the creation of an additional 200 places in rapid build units on existing SPS sites;
- the use of electronic tagging to reduce remands; and
- enhanced arrangements for home leave for prisoners nearing the end of their sentences.

Considerable progress has been made since the Minister’s announcement 18 months ago. SPS ended slopping out in HMP Barlinnie in July 2004 after more than 100 years and at HMP Edinburgh in June 2005 after more than 80 years. SPS’s redevelopment of HMYOI Polmont continues and slopping out is planned to end there in 2006. New accommodation has also now been opened in HMP Glenochil.

SPS has reduced the number of places without access to night sanitation, from 1,905 in 2001 to 375 in 2006. This now means that 94% of all prisoner places have access to night sanitation. No prisoner now shares a cell in slopping out conditions.

The quick build accommodation at HMP Castle Huntly and HM Institution Cornton Vale have also been completed and are now occupied. In total this represents an investment of approximately £260m in Scotland’s prisons since the conclusion of the Prisons’ Estates Review in 2002.

Following on from the physical improvements which have been made to the Prison Estate and to promote the most effective use of custody, enhanced arrangements for home leave for prisoners at the end of their sentences are being put in place. This will mean an increase in the maximum period of home leave from 3 to 7 days.

Prior to prisoners being eligible to participate in these arrangements they will, as at present, have to meet a number of defined criteria and be subject to a rigorous risk assessment. Only those prisoners who are deemed to be a low risk will be allowed to participate.

As well as helping to address the issues arising from Lord Bonomy’s judgment there are some additional benefits arising from these arrangements:
• it will assist in maintaining family relationships, which is widely considered to be of great value in reducing re-offending;

• all long-term prisoners should have an allocated social worker from the area they are returning to. Increased home leave gives a potential of more frequent contact with these social workers pre-liberation; and

• it will also help offenders build links with other services in their home area, which will support their re-integration back into the community.

Tony Cameron (Chief Executive of the Scottish Prison Service) said, “I am pleased with the progress that we have made in delivering the commitments made by the Minister in her announcement in May 2004. We have made considerable progress to realising our vision of a prison estate that is fit for purpose for the 21st century. After a great deal of preparatory work we are now in a position to implement further reforms in making more effective use of our prisons through these enhanced arrangements for home leave.

Tom Fox
Head of Communications
Scottish Prison Service
Tel: 0131 244 8463
Fax: 0131 244 8648

Note to News Editors

1. The Justice Minister announced the package of measures to reform prison conditions in response to PQ S2W-08152 answered on 12 May 2004.

2. Enhanced home leave makes provision for prisoners to spend up to a maximum 7 days at a time at home preparing for release.

3. All prisoners will be subject to strict license conditions and can be returned to custody at any time.

4. This initiative will effect a maximum of 6% of the prison population.
SSI title and number: The Intensive Support and Monitoring (Scotland) Regulations 2006 (SSI 2006/15).

Type of Instrument: Negative

Meeting: 31 January 2006

Date circulated to members: 26 January 2006

Justice 2 Committee deadline to consider SSI: 27 February 2006

Motion for annulment lodged: No

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

1. This petition was lodged on 3 October 2005 by James A. Mackie. The petitioner calls for the Scottish Parliament to support the creation, within the (then) forthcoming Police Bill, of an independent police complaints commission to ensure that complaints against the police by members of the public are properly investigated and acted upon and that any investigative powers should be retrospective. A copy of the full petition is attached as Annex A.

Background

2. The Public Petitions Committee, at its meeting on 26 October 2005, agreed to refer the petition to the Justice 2 Committee, as the lead committee on the Police, Public Order and Criminal Justice (Scotland) Bill.

3. This Committee considered the petition, and the petitioner’s response to the provisions in the Bill (attached as Annex B), at its meeting on 6 December 2005, and agreed to continue consideration until the Stage 1 report on the Bill had been agreed and published.

4. In its Stage 1 report on the Police, Public Order and Criminal Justice (Scotland) Bill, published on 23 January 2006, the Committee expressed, by majority, its support for the provisions in the Bill relating to the Police Complaints Commissioner for Scotland.

For decision

5. As the Committee has now published its Stage 1 report on the Bill, the Committee is invited to decide what action it wishes to take with regard to this petition; either to:

   (a) note and conclude consideration of the petition, and write to the petitioner to advise him accordingly;

   (b) explore any issues raised by the petition through correspondence with the Minister for Justice; or

   (c) take any other action it sees fit.

Clerk to the Committee
January 2006
Public Petitions Committee – a template for e-petitions

Should you wish to submit an e-petition allowing signatures to be gathered online on the Public Petitions Committee e-petitioner web pages please complete the template below. Before submitting your e-petition please consult the Guidance on submission of public petitions for advice on what is and is not admissible. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:
Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to.

James A. Mackie
3 Braehead
Lornshill Park
Alloa
Clackmannanshire
FK10 2EW

Text of petition:
The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.
The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

Petition by James Mackie calling for the Scottish Parliament to support the creation, within the forthcoming Police Bill, of an independent police complaints commission (as agreed by the partnership) to ensure that complaints against the police by members of the public are properly investigated and acted upon and that any investigative powers should be retrospective.

Period for gathering signatures:
Please enter the closing date for gathering signatures on your petition, which we would usually recommend is a period of between 4-6 weeks

Closing date: 26 September 2005
The Petitioner is a former police constable, former Inspector of Fisheries, a private investigator, former Chairman of a Community Council, Co-ordinator of a Neighbourhood Watch Scheme and a former researcher to an MSP.

Police officers are public servants, paid for from the public purse but apparently answerable to no one. Under current procedures there is no vehicle to investigate the operational role of the police where there is clear evidence a force is inefficient, has poor management and police officers appear to be insufficiently trained, inexperienced and not properly supervised. The current role of Her Majesty’s Chief Inspector of Constabulary would appear to be just to check systems are in place, not how they are operated and what final service is available to the public. If the police, under the current system, refuse to take a complaint from the public – whether it is against a police officer or a member of the public, there is no mechanism for that unaccepted complaint to be investigated. It would appear that the role of the Police Board is to appoint senior officers and to agree the annual budget for that force. Under the current system, where such complaints as above are not investigated the standing of the police in the local community is much lower than it should be. This encourages antisocial behaviour while giving the police an over valuation of their own abilities. Bad policing stops honest citizens from reporting crime and confiding in the police thus aiding those who have antisocial behaviours. Bad policing encourages vigilantes.

It used to be the procedure that police officers were promoted through the ranks because of their street experience and knowledge. Modern policing overly relies on departments specialising in every aspect of policing, social life and activity. Most ranks would appear to be promoted within or through departments that are removed from front line police duties. This process leaves far too few police constables and ranking officers actually on the street to deal with all issues. It also means that senior police officers have few skills in policing and are becoming system managers. An example of such departments is a “Collision Prevention Unit” of the Traffic Management Department.

This has a number of bad effects. Police officers are inexperienced because there is no senior constables to tutor them, there are fewer on the street seen by the public and available to speak to the public. Fewer constables on the beat mean that fewer complaints are attended to by the police. I have details of complaints where it took the police over three days to attend 1) an assault and 2) a housebreaking where property was stolen. Such delays infuriates the public, makes them hostile towards the police who then react in a similar vein. The fewer complaints/problems the police officer deals with the less experience they get.

This causes a breakdown in communication between the public and the police force thus a reduction in the amount of information given to the police. Published crime statistics can no longer be relied on to show a true reflection of what is actually happening. If there is no police officer for an individual to make a complaint to, there is a chance they will not bother to report it. With Scottish Police Forces moving over to call centres manned by civilians to take calls from the public, the public are less willing to make complaints to these centres. Many of these call centres are at a great distance from the location of the caller. For example calls to the police in Elgin are answered in Aberdeen, a distance of over 60 miles. If it is a serious incident, remote call centre operators do not know the locality and waste valuable time trying to get a location while at the same time infuriating and distancing the complainer from the service.

There appears to be two systems of logging complaints. One system logs the complaint in a way that gives a crime report number for the complainer to give to the insurance company while not logging it as an “actual” crime for sake of the statistics. The other system seems to only log complaints where there is a chance of tracing an offender. Statistics are used for publicity purposes by police forces to try and impress a sceptical public and politicians. Senior police officers now appear to play to the gallery rather than the needs of the community. Central Scotland Police boasts in its publicity that 95% of nonessential calls to the police are answered within 10 seconds. What they do not say is that the calls are answered by an automated system and it can take three or more minutes to speak to somebody – a civilian.

I am told that the people that answer the telephone call do not have access to a police radio therefore have to note full details before passing them to another to pass on
to a police officer. To put this system in operation, the Chief Constable pulled all police office clerks out of local police stations as well as closing all police stations, including police headquarters, to the public between 12 midnight and 8 am. This surely must be one of the best ways ever to stop people making complaints of any kind to the police. It is the experience of many people when they go to a police station and ask to see an officer of the rank of inspector or above, these ranks refuse to speak to the public. After being questioned by a civilian the member of the public is lucky if they get to speak to a constable. This would not be tolerated in any other part of Great Britain and/or Northern Ireland.

The Petitioner requests that:

That there should be a completely independent body to investigate complaints against the police service;

The proposed Police Commission be predominantly lay members, not retired police officers, and have the powers to investigate and rectify:

Complaints of illegal acts by police officers;

The refusal by the police service to take complaints of any kind;

Major operational changes being made by police forces that affect the police’s ability to work within a community e.g. call centres and closing of stations;

To examine that a police force is delivering an efficient and effective service to the public and that there is sufficient police officers on the beat to interface with the public;

That a police force is not becoming top heavy with high ranking officers and unnecessary departments.

A review of the practice of “fast tracking” police officers through the ranks.

Additional information (continued...)
Action taken to resolve issues of concern before submitting an e-petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern, by for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MSPs. Details of those approached should be entered.

Correspondence with HM Chief Inspector of Constabulary, Cathy Jamieson MSP, Brian Montieth MSP, Clerk to the Central Scotland Joint Police Board, Central Scotland Police Force, members of the legal profession and local councillors.

Comments to stimulate on-line discussion:

Please provide at least one comment to set the scene for an on-line discussion on the petition, not exceeding 10 lines of text.

Police forces are public servants. Under current procedures there is no vehicle to investigate the operational role of the police where there is clear evidence that a force is inefficient, has bad management and police officers are untrained, inexperienced and not properly supervised. The current role of Her Majesties Chief Inspector of Constabulary would appear to be just to check systems are in place, not how they are operated and what final service is available to the public. If the police refuse to take a complaint from the public, there is no mechanism for that complaint to be investigated. It would appear that the role of the Police Board is to appoint senior officers and to agree the annual budget for that force. Where complaints are not investigated the standing of the police becomes lower than it should be. Bad policing stops honest citizens from reporting crime and confiding in the police thus aiding those who have antisocial behaviours as well as encouraging vigilantes.

Petitioners appearing before the Committee

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee’s consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support
of their petition.

Please indicate below if you do NOT wish to make a brief statement before the Committee when it comes to consider your petition.

I do NOT wish to make a brief statement before the Committee

Signature of principal petitioner:
When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature

Date

For advice on the content and wording of your e-petition please contact:

The Clerk to the Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk

Note
Completed e-petition forms should also be sent to petitions@scottish.parliament.uk
Annex B

Dear Sir,

Re my Petition Number 890 and the above draft bill.

I have read the draft Bill and explanations. I do not see how the proposed powers of the proposed Commissioner differ from those already in place and enforceable by the HMIC. The powers detailed appear to just force police authorities to reconsider complaints against and not instigate full investigations into the type of complaints which are contained in the documentation attached to my Petition.

The Commissioner should have the power to instruct a member of staff from the HMIC's Office to carry out a detailed investigation into a police force irrespective of whether the complaint is against a police officer (including the Chief Constable) as well as the operational policies of the Force. The proposed Commissioner should have the power/authority to submit any report of an investigation direct to the Lord Advocates Office to ensure that independent legal scrutiny can be made of any complaint lodged against a police officer/force.

To transfer inadequate powers from one statutory body to another does not serve the interests of the public or the police nor meet the Executive's policy of an independent Police Complaints Body.

Regards,

Jim Mackie
Background

1. As members will recall, the Committee took evidence from Vaughan Barrett, the Scottish Prison Complaints Commissioner at its meeting on 6 December 2005.

2. During the session the Commissioner outlined to Committee his proposal that the office be put on a statutory footing. This proposal had been submitted to the Minister for Justice in January 2005, but no progress had yet been made. A copy of the proposal is attached as Annex B, for information.

3. The Committee agreed to write to the Minister for Justice to find out whether any further progress had been made regarding the Commissioner’s proposal.

4. The response from the Minister for Justice is attached as Annex A. The Minister notes that it is possible that consideration of the proposal could be included as part of a wider review of the levels of scrutiny that exist in the public sector.

For decision

5. The Committee is invited to consider what further action, if any, should be taken. Options that the Committee may wish to consider include:

   (a) to note the letter from the Minister for Justice, and take no further action; or

   (b) to copy the Minister’s letter to the Scottish Prison Complaints Commissioner and await his comments; or

   (c) to explore any additional issues arising out of the letter with the Minister for Justice through further correspondence.

Clerk to the Committee
January 2006
Dear Annabel:

Thank you for your letter of 13 December regarding the Scottish Prisons Complaints Commissioner’s (SPCC) appearance before the Justice 2 Committee. I was interested to read the Official Report of the Commissioner’s appearance.

The Commissioner has been helpfully keeping me in touch with his views on placing the Commission on a statutory footing. As you note, I wrote to him in February of last year confirming that the matter was being reviewed. Scottish Ministers are looking at the possibility of carrying out a review, to take place in 2006, of the levels of scrutiny affecting the public sector. This could include complaints handling and the way that evidence is used. This would allow the SPCC, together with other relevant bodies, to be looked at in the context of a properly structured framework.

In the meantime I am confident that the Commissioner will continue to fulfil his office’s remit and to make progress in the areas he has highlighted in his report.

I hope this is helpful.

Best wishes

CATHY JAMIESON
PROPOSAL FOR STATUTORY BASIS FOR THE

SCOTTISH PRISONS COMPLAINTS COMMISSION
PROPOSAL FOR STATUTORY BASIS FOR THE SCOTTISH PRISONS COMPLAINTS COMMISSION

In January, 2005 the Scottish Prisons Complaints Commissioner met with the Minister for Justice for Scotland and submitted a proposal that the Scottish Prisons Complaints Commission be given a statutory footing. The following is an updated copy of the proposal.

Proposal

It is recommended that the Scottish Prisons Complaints Commission (hereafter referred to as the Commission or the SPCC) be granted a statutory footing either in primary or secondary legislation. Such a footing would enhance the effectiveness of the Commission’s operations, foster awareness amongst members of the public, the Executive and the Scottish Prison Service (SPS) of the Commission’s remit and reflect the Scottish Executive’s commitment to the Commission’s operations.

BACKGROUND

The SPCC was created in 1994 fulfilling a commitment within the Justice Charter for Scotland. Its function is to conduct independent reviews of complaints made by prisoners which are not resolved by the internal complaints system of the SPS.

A number of prison disturbances in the late 1980’s and early 1990 provided impetus for the creation of an independent system of review for prison operations. In response to the Strangeways prison riot the Government appointed Lord Woolf and the then HMCIP, Judge Stephen Tumim, to head an inquiry and make recommendations for change. The resulting Woolf Report held:

“… the presence of an independent element within the Grievance Procedure is more than just an ‘optional extra’... A system without an independent element is not a system which accords with proper standards of justice.”

The Commission and its counterpart the Office of the Prisons and Probations Ombudsman for England and Wales were created largely in response to the conclusions drawn by Lord Woolf.

Under the Instrument of Appointment, the Complaints Commissioner has the power to investigate all matters within the control of the SPS where a prisoner remains dissatisfied after having exhausted the internal complaints mechanism. Excluded from the remit are questions of conviction or sentence and matters under the control of outside bodies i.e. the police, immigration authorities, the Parole Board and the Scottish Minister’s. Issues of professional judgement by medical, social work and related personnel in penal establishments are also excluded, but problems arising in obtaining access to such services are included.
Annex B

By the Instrument of Appointment, the Commissioner has the power to investigate cases in whatever way he deems appropriate. It is intended that he be guaranteed access to all papers and persons he considers necessary to conduct investigations on cases which fall within the Commission’s remit. Following its investigations the Commission's decisions are reported to the complainant. If the Commission concludes that there is a need for remedial action one of its staff will enter into discussions with SPS authorities at the local level (the prison where the complaint was initiated) in an effort to resolve the problem. This approach may include a full discussion on the law or a simple sharing of ideas in an attempt to reach a compromise acceptable to all parties. If the issues remain unresolved at the local level the Commission may make recommendations to the Chief Executive of the Scottish Prison Service that corrective action be taken. A summary of the Chief Executive’s response is forwarded to the complainant.

LEGAL POSITION OF THE COMMISSION

The Commission is a creation of administrative policy and does not have the defined independence that statute would confer. The independence of the Commissioner derives from his appointment and the respect and recognition given to that independence by Ministers and the SPS. To date there have been three Prisons Complaints Commissioners, Dr. Jim McManus (professor of Law at Caledonia University and ex Chairman of the Scottish Parole Board), Ms. Joan Aitken (current Traffic Commissioner) and Mr. Vaughan Barrett the current Commissioner. Each of the Commissioners has noted the problems inherent in managing a policy-created investigative body and has held the conviction that a statutorily defined remit would greatly facilitate the Commission’s operations and enhance and protect the role of the Commissioner.

ADVANTAGES OF STATUTORY ENTRENCHMENT

1. A statutory footing would help the SPCC in its dealings with:

a) SPS STAFF

It is often the case that SPS staff is unaware of the SPCC’s right to access all documentation and to interview staff during its investigations. On such occasions the Governors are asked to advise their staff that this is part of the SPCC’s remit but the SPCC is unable to refer to specific authority to confirm this. Further, prison staff have questioned the impartial and independent role that the SPCC brings to the complaints process. It is often necessary to assure staff that the SPCC does not act as a prisoner’s advocate.

Of further concern is that the lack of statutory footing may weaken the SPCC’s position in negotiating the resolution of complaints with SPS senior management. The number of SPCC’s formal recommendations accepted by the SPS is disappointingly low and a statutory footing would not only help to increase its profile and credibility but could embrace the principle that there is a reasonable expectation
that the SPCC’s decisions and recommendations would be accepted and complied with.

Recently, Ms. Ann Abraham, Parliamentary and Health Service Ombudsman responded to the Northern Ireland Prison Services’ consultation process for its proposed new Prisons Ombudsman post by stating:

“I believe that there should be a reasonable expectation that the Ombudsman’s recommendations should always be complied with. In addition, as set out in the BIOA criteria, I think that, in all those cases where their recommendations are not complied with the Ombudsman should have the power to publicise, or require the publication of such non-compliance at the expense of those investigated.”

b) PRISONERS AND THEIR FAMILIES

Despite the SPCC’s efforts to increase its profile in the prisons (posters in the Halls and leaflets available in each prison) prisoners and their family members often contact its office to make enquiries on its remit. Responding to such enquiries has on occasion proven quite time consuming for its staff. Prisoners express surprise to learn that the SPCC essentially provides a prison ombudsman’s service as they assumed it to be either a prisoners’ advocacy group or a branch of the SPS. It is essential for the SPCC’s operations that it be viewed by prisoners and SPS staff as independent and impartial. A statutory footing would greatly help to clarify its role.

c) THE SCOTTISH EXECUTIVE

SPCC staff has concluded that many (perhaps most) MSPs seem unaware of the existence of the SPCC. Given the acknowledgment, interest and respect shown by MSPs to the HMCIP’s operations this lack of awareness of the SPCC is both surprising and disappointing. The SPCC staff is committed to being accountable to the legislature and (by implication) to the public for their efforts and a statutory footing would help to raise the awareness and interest of MSPs.

Further, amongst many MSP’s who are aware of the SPCC there are misunderstands over its functions. Members of the public have been referred to the SPCC’s office by MSPs and Scottish Executive staff to discuss and help resolve problems that are outside of its remit. On such occasions those referred often express frustration and even anger that their problems remain unresolved and that they feel shuffled from one office to another. It is to be expected that the SPCC will regularly receive angry correspondence and phone calls from prisoners in relation to the subject matters of their complaints. Having to also deal with the anger of persons incorrectly referred to its office can only add to the stress of its operations. Raising the profile of the SPCC within the Executive would help to address this problem and statutory recognition would greatly assist in achieving that goal.
Annex B

2. A Statutory footing for the SPCC would reflect the Scottish Executive’s commitment to its operations. The Commission has been in operation since 1994 and has established itself as a viable and preferable alternative to litigious resolutions of complaints. However, there is consensus amongst a number of prisoners that the lack of a statutory footing for the SPCC’s operations evidences a lack of commitment by the Executive to the principle of an independent investigative body to review prisoner’s complaints. This perception has led many prisoners to conclude that the SPS will be disinclined to accept the SPCC’s recommendations and thus there is little advantage in their filing complaints with it. This impression is clearly detrimental to the SPCC’s credibility and ability to operate effectively.

3. Entrenching the SPCC in statute will provide benefits to the public normally associated with codification. In the Apex Scotland’s 2004 Annual Lecture Mr. Duncan Murray WS, the President of the Law Society of Scotland summarised the advantages of codification by noting that the principle argument in its favour is accessibility. Further, an integral part of accessibility is the clarity that codification can provide. He stated:

“Not only is there a desire to make a system more accessible and certain for those using it, there is also a desire to ensure that the assistance available to those within criminal justice continues to be of a quality standard.”

SPCC staff believe that the Rule of Law, which was the focus of Mr. Murray’s presentation, is served if access to venues and forums for airing complaints of alleged violations of personal rights is clearly established by codification.

4. A statutory footing will help to clarify and secure the Commissioner’s tenure. At present the Commissioner can be dismissed at will by the First Minister. Although the possible reasons for termination include those established for all Executive employees, with a particular emphasis on performance, there are no safeguards in place to ensure that the very body whose decisions and policies the Commissioner is charged to investigate (the SPS) would play no role in a decision to terminate the Commissioner’s position. Schedule 1 to the British and Irish Ombudsman Association (BIOA) Rules notes that the grounds on which an ombudsman’s dismissal can be made should always be stated and that those subject to investigation by the Ombudsman should not be allowed to exercise any authority on the termination of an Ombudsman’s appointment. The Schedule also states that the jurisdiction, the powers and the method of appointment of the Ombudsman should be matters of public knowledge. This Schedule is accepted as authoritative on Ombudsman’s schemes and is included as an Annex to the Ombudsman Schemes: Guidance for Departments issued by the Cabinet Office and the Department for Constitutional Affairs.
Annex B

TIMING

Statutory entrenchment of the Prisons and Probation Ombudsman Office for England and Wales is in its final stage. As well, the Northern Ireland Prisons Ombudsman’s Office is now operational and was immediately statutorily entrenched in the Prison Rules (secondary legislation) and discussions are under way to have its remit drafted into primary legislation. In short, by the end of 2005 Scotland may be the only part of the UK that has not provided a statutory footing for its prisoner complaints body. Legislation already drafted in England, Wales and Northern Ireland can serve as templates for similar legislation in Scotland. The SPCC has copies of these drafts. Both the England and Wales and the Northern Ireland offices have also had their remits expanded to include death in custody investigations and there is no reason that such a move cannot be contemplated in Scotland as well. An SPCC investigation could work in parallel with or as an alternative to the procurator fiscal’s investigations.

The SPCC staff holds the firm belief that its operations help to reduce hostility and tension in Scottish prisons and the frustration and anger that prisoners experience. It is self evident that it is in the best interests of the safety of the Scottish public if prisoner hostility is minimised when they are released into the community. In that regard the SPCC’s operations have an important role to play in adding to public safety and helping to reduce re-offending. A statutorily defined remit for the SPCC fully accords with the reduction of re-offending initiatives currently being undertaken in Scotland.

In his presentation at the Apex 2004 Annual Lecture Mr. Murray observed:

“the Scottish Executive has driven the most fundamental review of the criminal justice system in over a decade. The Scottish Parliament is taking this work forward with both Justice Committees devoting considerable time and effort in their scrutiny of criminal legislation”

Parliament’s review of all aspects of the Justice System presents as a most fortuitous time to consider the SPCC’s proposal.

SUGGESTED PROVISIONS

It is respectfully submitted that statutory provisions for the SPCC could:

1. Be drafted to conform to the BIOA Criteria for Recognition of Ombudsman Offices.


3. Change the name of the Commission to that of the Prisons Ombudsman for Scotland to help clarify the role it plays.
Annex B

4. Confirm the Commission’s independence and note that there is a reasonable expectation that its decisions and recommendations will be complied with. In those cases where its recommendations are not complied with the Commission should have the power to publicise, or require the publication of, such non-compliance at the expense of the SPS.

5. Confirm the Commission’s investigative powers and its right to interview SPS staff and access all relevant information coupled with the expectation that the SPS will make all reasonable efforts to help facilitate its investigations.

6. Confirm that the SPCC would be answerable solely to a special multi-party Committee of the Legislature and the expectation that the Commissioner would provide evidence on the SPCC’s operations on an annual basis to that Committee.

7. Include an expansion of the Prisons Complaints Commission’s remit to include death in custody investigations. The current practice in Scotland of assigning this role exclusively to the procurator fiscal’s office raises questions on the impartiality of those investigations.

8. Confirm the method of appointment, tenure and dismissal of the Commissioner. The factors to be considered for dismissal should be defined and the length of tenure should be brought in line with other ombudsman’s offices.

Over the past year SPCC staff has discussed the need for statutory entrenchment with representatives of government and private agencies. A number of these agencies have provided the SPCC with letters of support and the Commissioner provided copies of these letters to the Justice Department.
Dear Colleague

CONSULTATION ON PROPOSED LEGISLATION GIVING POWERS TO ENFORCE REGULATING ORDERS

Effective local management through Regulating Orders made under the Sea Fisheries (Shellfish) Act 1967 is one of the ways we can work towards a sustainable and viable fishing industry for future generations and I am committed to ensuring that they are as fully effective as possible means of managing local shellfisheries. I recognise that existing legislation is not fully effective in ensuring compliance with the provisions of Regulating Orders and, as a result, I welcome the proposals outlined in this consultation paper which aim to improve the enforcement of such orders.

As part of this drive for improved enforcement of Regulating Orders, we indicated in the Partnership Agreement that we would “legislate to permit enforcement of Regulating Orders within the range of activities of the Scottish Fisheries Protection Agency (SFPA)”.

This paper sets out our proposals to provide the necessary enforcement powers through the Police, Public Order and Criminal Justice (Scotland) Bill, to ensure compliance with the provisions of Regulating Orders. In particular, it sets out a number of options to confer further enforcement powers on grantees of Regulating Orders and makes provision to enable the SFPA to apply its existing powers in relation to Regulating Order areas. The intention behind our proposals is that, whilst the onus for ensuring that Regulating Order enforcement arrangements are in place rests with the grantee, the SFPA is able to carry out enforcement should the circumstances require it to do so, subject to a memorandum of understanding between it and the grantee.

This issue has been under discussion with stakeholders for some time. The formal consultation will be open until Wednesday 15 February 2006. It is designed to provoke discussion and, if there is sufficient demand we will hold meetings locally to foster these
discussions and to elicit comments. Details on how to submit your comments are set out in the attached consultation paper.

This is your chance to tell us what you think in relation to the enforcement of Regulating Orders and I urge you to share your views with us. Those views will be fully considered in finalising our proposals for making positive changes to the enforcement of Regulating Orders. I look forward to receiving your response and I would like to take this opportunity to thank you for taking part.

Yours sincerely

ROSS FINNIE
CONSULTATION ON PROPOSED LEGISLATION GIVING POWERS TO ENFORCE REGULATING ORDERS

CONTENTS

1. Purpose
2. Process for Responding
3. Background and Context
   3.1 What is a Regulating Order?
   3.2 Relationship between Regulating Orders and Inshore Fisheries Groups
   3.3 Current and Proposed Regulating Orders
   3.4 Current Enforcement Position
4. General Policy Intention
5. Proposed Options for Change
   5.1 How Should Compliance with Regulating Orders be ensured?
   5.2 Proposed Enforcement Powers
6. Other Issues
7. Conclusions and Next Steps

Annex A The Scottish Executive Consultation Process
Annex B Respondent Information Form
Annex C List of Consultees
1. **Purpose**

This document invites your comments on proposals for amending existing fisheries legislation to improve the enforcement of Regulating Orders (ROs) and, therefore, strengthen their impact and effectiveness as a local fisheries management tool. It sets out some background on the enforcement of ROs and explains why we are holding this consultation. Crucially, it also set out some options for change.

Each option for change is followed by a question or questions seeking your views. You do not have to answer the questions; we are equally happy to receive your responses in the form of a letter or email which covers issues of particular interest to you.

2. **Process for Responding**

2.1 **Responding to this consultation**

Please respond by Wednesday 15 February and be sure to include the Respondent Information Form attached at Annex B with your response.

Comments should be sent to:

Regulating Order Consultation  
Inshore Fisheries Team  
Scottish Executive  
Room 510  
Pentland House  
47 Robbs Loan  
Edinburgh  
EH14 1TY

or to:

inshorefisheries@scotland.gsi.gov.uk

If you have any queries please contact Josie Swan on 0131 244 6383. Further information about the Scottish Executive consultation process is set out in Annex A.

2.2 **Handling your response**

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form attached at Annex B as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, subject to the paragraph below and we will treat it accordingly.

All respondents should be aware that the Scottish Executive is subject to the provisions of the Freedom of Information Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.
2.3 **Meetings**

If you would like to take part in a meeting to discuss the issues raised in this paper, please write to Gill Wylie at the address set out at the end of this paper or email Gill at gill.wylie@scotland.gsi.gov.uk giving your name, address, organisation (if appropriate) and preferred location(s) for a meeting. While we are keen to hear your views and we will try to hold local meetings, we can do so only if there is sufficient local interest to justify the costs involved.

3. **Background and Context**

3.1 **What is a Regulating Order?**

Regulating Orders are made under section 1 of the Sea Fisheries (Shellfish) Act 1967 (“the 1967 Act”) to encourage the maintenance and regulation of local, natural shellfisheries through permits and other management measures.

Orders are granted to a particular person or body (referred to in this document as a “grantee”). They cover named species of shellfish within a specific area of inshore or tidal waters. ROs remain in force for a fixed period not normally exceeding 20 years. They enable the grantee of the RO, with the consent of Scottish Ministers, to impose restrictions and regulations in relation to the dredging, fishing for and taking of shellfish of specified kinds within the defined RO area. There should be clear linkage between stock assessment, the aims of the Order and the proposed regulatory measures. In effect, an RO grants management responsibility for a local shellfishery to the grantee and allows the grantee to issue licences, and/or impose the payment of tolls or royalties before fishermen may be granted access to the regulated fishery.

3.2 **Context - Relationship between ROs and IFGs**

The Strategic Framework for Inshore Fisheries was published in March 2005 and set out proposals for a network of Inshore Fisheries Groups (IFGs) around the Scottish coast and covering all Scottish inshore waters. The IFGs will be a new management framework that will place fishers at the heart of the decision-making process. They will develop local objectives which reflect local priorities and which are complimentary to high level national objectives. In developing these local objectives, where appropriate ROs will be one of the tools at the disposal of IFGs as a useful mechanism for regulating and managing local shellfisheries.

It is envisaged that ROs may be used to further the aims of the inshore strategy as a whole and of the aims of local groups in particular. Ideally, a proposed RO would be supported or put forward by the local IFG.

The first two IFGs were announced on 21 November 2005. They are the Western Isles and the area between Eyemouth and Montrose. Work is underway to roll out the remaining IFGs over the coming months.
3.3 **Current and Proposed Regulating Orders**

The only existing RO is the Shetland RO, granted in 1999. Applications for two other ROs – the proposed Highland and Solway Orders - are currently under consideration.

3.4 **Current Enforcement Position**

The purpose of enforcement of a RO is to ensure compliance with a regulatory system, itself designed to achieve stated local fishery management purposes. The Scottish Executive Environment and Rural Affairs Department (SEERAD) has been aware for some time that, in Scotland, the 1967 Act provides insufficient enforcement powers in relation to ROs.

At present, enforcement of an RO lies solely with the grantee. The 1967 Act confers upon the grantee a general power to carry into effect and enforce any restrictions and regulations made under the RO; but this general power – which would not extend to boarding vessels or to searching premises – is insufficient to allow enforcement to be fully effective. Generally, the Scottish Fisheries Protection Agency (SFPA) is responsible for the monitoring of the fishing industry’s compliance with UK, EU and International fisheries laws and regulations in ports and seas around Scotland but, at the moment, the SFPA’s enforcement officers - British Sea Fishery Officers (BSFOs) – have no powers conferred upon them to enforce any restrictions made under a RO.

Where an offence is committed under the 1967 Act, the Police have power to act as they would in relation to any other offence but this is potentially resource intensive for them.

In summary, enforcement of ROs is not as effective under the existing arrangements as we would like. This consultation paper explores options of making enforcement more effective by amending existing legislation.

4. **General Policy Intention**

Ensuring compliance with ROs would allow for the improved, sustainable management of fisheries covered by these arrangements. With that in mind, “A Partnership for a Better Scotland: Partnership Agreement”, published jointly by the Scottish Labour and Scottish Liberal Democrat Parties in 2003, stated that “we will legislate to permit enforcement of Regulating Orders within the range of activities of the SFPA”.

The policy intention is that the grantee of a RO should retain the onus for ensuring that enforcement arrangements are in place. This could be achieved either by the grantee carrying out enforcement itself, through utilising the resources which may be at its disposal or by making arrangements through a memorandum of understanding for the SFPA to carry out enforcement. Another option is that enforcement is undertaken on a joint basis. There could also be a role for the SFPA in the recruitment, appointment and training of officers who would be employed by or seconded to the grantee.
5. Proposed Options for Change

5.1 How should Compliance with Regulating Orders be ensured?

The aim is to provide sufficient means to ensure as full compliance as possible with the provisions of ROs. This will mean that we will need to broaden the enforcement powers of grantees and make provision to allow the SFPA to play its role.

QUESTION 1 : Should both the grantee and the SFPA have the ability to enforce a RO thus enabling different situations and circumstances to be met?

QUESTION 2 : Is it your view that the grantee should have sole powers to enforce ROs?

QUESTION 3 : Is it your view that the SFPA should have sole powers to enforce ROs?

QUESTION 4 : Would you prefer another arrangement? If so, please provide details.

5.2 Proposed Enforcement Powers

Powers provided for the grantee would be based on the powers already held by the SFPA and on the measures which they are likely to need to ensure compliance under ROs. Anyone carrying out that role, whether that be the grantee or SFPA officers, will require the same means to discharge their functions in terms of their enforcement powers. The powers available to BSFOs in relation to fishing boats and operations on land are set out in the main Fisheries Acts (the Sea Fish (Conservation) Act 1967 as amended, the Sea Fisheries Act 1968 as amended and the Inshore Fishing (Scotland) Act 1984 as amended) and, in relation to EC fisheries obligations, by various Orders made under section 30(2) of the Fisheries Act 1981. All the Fisheries Acts and Orders which grant powers to BSFOs are set out in Annex D of the SFPA’s Annual Report for 2004-05 which can be found at www.sfpa.gov.uk/docs/annual%20report%202004-5.pdf

In summary, the main BSFO powers include the following—

In relation to fishing boats:

- to require a boat to stop and to board the boat with or without persons assigned to assist;
- to search the boat for any fishery products or fishing gear on board the boat;
- to require persons on board the boat to do anything which appears to that officer to be necessary for facilitating the examination;
- to examine fishery products, fishing gear and equipment on board the boat;
- to seize fishery products and fishing gear where an offence is suspected;
- to require the production of any document relating to the boat;
- to inspect and take copies of and retain possession of such documents while any search, inspection or examination is being carried out;
- to seize and detain documents where an offence is suspected;
- to require the master or any person for the time being in charge of the boat to render documents on a computer system into visible and legible form and to produce them in a form that can be taken away;
• where an offence is suspected to require the master of a boat to take the boat, or the officer himself take the boat, to the nearest convenient port and detain it.

On land (land/premises/vehicles):

• to enter and inspect any land/premises/vehicles used for the treatment, storage or sale of sea fish and for carrying out business in connection with the operation of fishing boats or activities connected therewith;
• when inspecting such premises to take with that officer such other persons as appear to that officer necessary and any equipment or materials;
• to examine any fishery products on such land/premises/vehicles and to require any persons on the land/premises/vehicles to do anything which appears to that officer necessary for facilitating the examination;
• to search for or examine fishery products in such land/premises/vehicles;
• to seize fishery products where an offence is suspected;
• to require any persons to produce any documents which are in the custody or possession of that person relating to the catching, landing, transportation, sale or disposal of any fishery products;
• to inspect and take copies of any such document produced or found on the land/premises/vehicles;
• to require any appropriate or responsible person to render documents on a computer system into visible and legible form and to produce them in a form that can be taken away;
• to seize and detain documents where an offence is suspected;
• to stop, and, if necessary, direct a vehicle to some other place to facilitate inspection.

The proposal is that (1) the grantee should have the BSFOs powers described above for use in their own RO area while they are enforcing the provisions of the relevant RO, and that (2) the scope of the BSFO powers described above be extended to SFPA staff for the purpose of enforcing the provisions of ROs.

**QUESTION 5 : Are the powers set out above appropriate powers for enforcing ROs? Alternatively, do you think that some other arrangement should be put in place. Please provide details.**

6. **Other Issues**

Any of the legislative changes canvassed in this consultation paper will be made by the Police, Public Order and Criminal Justice (Scotland) Bill. We are, however, considering whether there is a need to make additional improvements to enforcement powers through further legislation. It would also be helpful, therefore, to have your views on this and any suggestions on possible future changes.

**QUESTION 6 : In addition to the proposals at 5 above, are there any additional changes that you would like to see in relation to enforcement of ROs or fisheries legislation more generally?**
7. **Conclusions and Next Steps**

We welcome your comments on the issues raised in this paper. You can respond by writing a letter or sending an email to us with your comments by **Wednesday 15 February 2006** to either of the addresses set out at paragraph 2.1.

Please ensure that you include the Respondent Information Form at Annex B with your response and **thank you for taking the time to respond**.

Where you have given permission for your response to be made public (see the attached Respondent Information Form at Annex B), these will be made available to the public in the Scottish Executive Library by 14 March 2006. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the SE Library on 0131 244 4565. Responses can be copied and sent to you, but a charge may be made for this service.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on improving the enforcement of regulating orders. We aim to issue a report on this consultation process by 14 March 2006.

If you have any comments about how this consultation exercise has been conducted, please send them to Josie Swan at either of the addresses at paragraph 2.1 above.
ANNEX A - THE SCOTTISH EXECUTIVE CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general, Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Executive encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses1. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

This consultation, and all other Scottish Executive consultation exercises, can be viewed online on the consultation web pages of the Scottish Executive website at http://www.scotland.gov.uk/consultations. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Executive now has an email alert system for consultations (SEconsult: http://www.scotland.gov.uk/consultations/seconsult.aspx). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SE distribution lists, and is designed to allow stakeholders to keep up to date with all SE consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

1 http://www.scotland.gov.uk/consultations
Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.
ANNEX B: RESPONDENT INFORMATION FORM

RESPONDENT INFORMATION FORM: POWERS TO ENFORCE REGULATING ORDERS

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address (including telephone number and email address where possible):

1. Are you responding: (please tick one box)
   (a) as an individual □ go to Q2a/b and then Q4
   (b) on behalf of a group/organisation □ go to Q3 and then Q4

INDIVIDUALS

2a. Do you agree to your response being made available to the public (in Scottish Executive library and/or on the Scottish Executive website)?
   Yes (go to 2b below) □
   No, not at all □ We will treat your response as confidential

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick one of the following boxes)

   Yes, make my response, name and address all available □
   Yes, make my response available, but not my name or address □
   Yes, make my response and name available, but not my address □

ON BEHALF OF GROUPS OR ORGANISATIONS:

3. The name and address of your organisation will be made available to the public (in the Scottish Executive library and/or on the Scottish Executive website). Are you also content for your response to be made available?
   Yes □
   No □ We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

4. We will share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the
future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

Yes ☐
No ☐
ANNEX C – LIST OF CONSULTEES

Aberdeen City Council
Aberdeenshire Council
Aberdeen Fish Curers & Merchants
Aberdeen Fish Producers’ Organisation Ltd
Aberdeen Fish Salesmen’s Association Ltd
Aberdeen Inshore Fishselling co Ltd
Anglo Scottish Shellfishermen’s Association
Anglo-Scottish Fish Producers’ Organisation
Anglo-Scottish Fishermens’ Association
Angus Council
Annan Fishermen’s Association
Arbroath Fishermen’s Association Ltd
Argyll and Bute Council
Association of Scottish Shellfish Growers
Austen Brown
Berneray (North Uist) Fishermen Ltd
Brian Anderson, Acting Superintendent, Dumfries and Galloway Police
Caley Fisheries (Peterhead)
Carradale Fishermen Ltd
Clyde and South West Static Gear Association
Clyde Estuary Forum
Clyde Fishermen’s Association
Community of Arran Seabed Trust (COAST)
Cockenzie & Port Seton Fishermen’s Association
Comhairle Nan Eilean Siar
Convention of Scottish Local Authorities (COSLA)
Croan Seafoods Ltd
Crown Estate Office
DEFRA (Fisheries Directorate)
Denholm Fishselling Ltd (Edinburgh)
Don Fishing Company Ltd
Dumfries and Galloway Council
Dumfries and Galloway Police
East Coast Licensed Small Boats Association
East Lothian Council
Federation of Highland & Islands Fishermen
Fife Council
Fife Creel Fishermen’s Association
Fife Fish Producers’ Organisation Ltd
Fife Fishermen’s Association
Fishermen’s Association Ltd (FAL)
Fishermen’s Fishselling
Fishermen’s Mutual Association (Eyemouth) Ltd
Food Standards Agency
Fraserburgh Inshore Fishermen Ltd
Fraserburgh Trawlers
Galloway Static Gear Fishermen’s Association
Grampian Sea Fishing Ltd
Hebridean Whale and Dolphin Trust
Herring Buyers’ Association
Highlands and Islands Enterprise (HIE)
Highland Council
Highland Shellfish Management Organisation
Highlands & Islands Fishermen’s Association
Hooktone
Kirkcudbright Scallop Gear
Live Shellfish Traders Association
Loch Linnhe Fishermen’s Association
Lochcarron Community Council
Lunar Fishing Co
MacKinnons (Secretaries for SFPA)
Mallaig & North West Fishermen’s Association
Mallaig Harbour Authority
Marine Conservation Society
Marine Laboratory
Moray Seafoods Ltd
Mousset M Michel
Mull and Iona Community Trust
Mull Aquaculture Fisheries Association
Mull Fishermen’s Association
National Federation of Fishermen’s Organisation
North Atlantic Fisheries College
North East of Scotland Fishermen’s Organisation Ltd
North Sea Commission Fisheries Partnership
Northern Producer’s Organisation Ltd
Orkney Creel Fishermen’s Organisation
Orkney Fish Producers’ Organisation
Orkney Islands Council
Ross of Mull and Iona Fishermen’s Association
Royal Society for the Protection of Birds (RSPB)
Royal Society of Edinburgh
Scottish Association of Fish Producers’ Organisations Ltd
Scottish Borders Council
Scottish Coastal Forum
Scottish Enterprise
Scottish Enterprise Dumfries and Galloway
Scottish Environment Link
Scottish Environment Protection Agency (SEPA)
Scottish Fishermens’ Federation
Scottish Fishermen’s Organisation Ltd
Scottish Fishing Services Association
Scottish Food and Drink Federation
Scottish Natural Heritage
Scottish Pelagic Fishermen’s Association
Scottish Scallop Fishermen’s Association
Scottish Seafood Processors Federation (SSPF)
Scottish Shellfish Marketing Group Ltd
Scottish White Fish Producers Association
Sea Fish Industry Authority
Seafood Scotland
Secretary of State’s Advisory Group on Sustainable Development
Scottish Fisheries Protection Agency (SFPA)
Shetland Fish Producers’ Organisation Ltd
Shetland Fish Products Ltd
Shetland Fishermen’s Association
Shetland Islands Council
Shetland Oceans Alliance
Shetland Shellfish Management Organisation
Skye and Lochalsh Fishermen’s Association
Solway Firth Handgatherers & Tractor Dredgers Federation
Solway Firth Partnership
Solway Shellfish Association
Solway Shellfish Hand Operators Federation
Solway Shellfish Management Association
Stornoway fishermen’s Co-operative Ltd
Tarbert-Argyll Fishermen Ltd
Ten Metre and Under Association
Ullapool and Assynt Fishermen’s Association
West Coast Sea Products
West of Scotland Fish Producers’ Organisation Ltd
West of Four Fisheries Management Group
Western Isles Fishermen’s Association
Westray Processors Ltd (Shellfish)
Wigtown Fishermen’s Association
World Wildlife Fund (WWF) Scotland
Youngs Bluecrest Seafood Ltd

All Fishery Offices
Scottish Parliament Information Centre (SPICe)
Scottish Executive Library
Dear Annabel

CONSULTATION ON THE NEXT CENSUS

Censuses are normally carried out every 10 years and the next one is due in 2011. This letter briefs you on early preparations and our plans for formal contact with the Parliament and gives you the chance to comment or to discuss our preparations.

The Census is carried out under the Census Act 1920 by the Registrar General, subject to direction from Scottish Ministers. It is a devolved subject, and the subordinate legislation needed for each Census has to be approved by the Scottish Parliament.

The Census is a major exercise and preparations for 2011 have already started. One of the early steps is a Census Test, which will be carried out on 23 April in 3 parts of Scotland, designed to try new questions and a revised method of enumeration. The Annex to this letter gives more detail about these early preparations and the consultation, with Parliament and other interests, which we plan between now and 2011.

I am writing at this stage to the conveners of the Parliamentary Committees which may have an interest in the subject. The Equal Opportunities Committee has already asked for briefing on the subject and took evidence from the Registrar General on 3 October. The 2 Justice Committees are successors to the Justice and Home Affairs Committee which looked at the subordinate legislation for the 2001 Census. The Local Government and Transport Committee is considering a Bill concerning Registration Services, which has some parallels with the Census (both being the responsibility of the Registrar General). So I have written to all 4 conveners. I, or the Registrar General, would be happy to give evidence to you or to respond to written questions or comments if you wish to make them at this stage.
I look forward to hearing from you – because consultation with the communities affected, including the Parliament, is an important way of ensuring that we get the best possible Census in 2011.

Kind Regards

George

GEORGE LYON
**ANNEX**

2011 CENSUS: EARLY PREPARATIONS

**Introduction**

1. The Census is carried out under the Census Act 1920 which, as amended for devolution, provides for the Scottish Parliament to approve:-

   - An Order in Council made under Section 1(2) of the Act, specifying the date of the Census, the topics to be covered and the persons by whom (and about whom) Census returns are to be made;
   - Regulations made under Section 3 of the Act, which are more detailed and specify the way in which the Census is conducted (including the Census form itself).

2. The last Census was in 2001. The Government’s proposals for the 2001 Census were set out, pre-devolution, in a UK-wide White Paper in March 1999. The necessary Order and Regulations were approved by the Scottish Parliament in March/April 2000 and were amended in June 2000 to take account of the Parliament’s decision to include questions on religion (which required amendment of the 1920 Act) and also more detailed questions on ethnicity.

**Lessons of the 2001 Census**

3. The 2001 Census is generally viewed as a success. However, the results of a follow-up survey, combined with statistical estimation techniques, suggest that about 4% of the population did not complete a Census form – and results had to be imputed to give a complete picture of the population. The number of people who do not complete a Census form has been increasing by about 2% per decade. With that in mind, and because of the importance of accuracy in the results of the Census (which is widely used by government, commerce, the voluntary sector and academia), an important aim in the preparation for the next Census is to maximise the number of people willing to complete the Census form and hence to engage as many interest groups as possible in preparations.

4. There are specific lessons from the 2001 Census which will also be taken into account. Scottish Parliament\(^1\) identified 2 points which could have been improved:-

   - The original Census proposals put before Parliament did not include the question on religion;
   - The ethnicity question mixed colour (e.g. ‘black’) and geography (e.g. ‘Asian’).

5. More generally, the Registrar General considers that the consultation before the 2001 Census was satisfactory as regards users of the Census results (especially in central and local government and the NHS) but did not sufficiently consult wider communities. These, and

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\(^1\) [http://www.scottish.parliament.uk/business/committees/historic/equal/or-00/0302.htm#Col301](http://www.scottish.parliament.uk/business/committees/historic/equal/or-00/0302.htm#Col301) and [http://www.scottish.parliament.uk/business/committees/historic/equal/or-00/0102.htm#Col246](http://www.scottish.parliament.uk/business/committees/historic/equal/or-00/0102.htm#Col246)
other more technical lessons from 2001, are being taken into account in the planning for 2011.

Census Test 2006

6. Preparations are well advanced for a Census Test to be carried out on 23 April, in order to try out new questions and improve enumeration methods. The test is being held in 3 areas of about 12,000 households each - Lochaber and Breadalbane, Glasgow (Sighthill in the north of the city and Pollockshields in the south) and part of West Dunbartonshire. They have been chosen to be typical of areas where under-enumeration has been a problem in the past – because of second homes, high minority ethnic populations and social deprivation.

Consultation on 2011 Census

7. The Registrar General has embarked on a 5 year community liaison and consultation programme, which recognises that everyone should have the opportunity to have their say on the Census. The programme of consultation has been started much earlier, and in a more uniform way, than for the 2001 Census. Four main consultation routes have been followed:-

- A formal consultation document, directed mainly to traditional Census data users, issued in November 2004. The document covered the proposed design for the census-taking as well as the approach to the choice of questions. A 12 week consultation period was initiated by 4 meetings across Scotland.

- A continuous web-based consultation on possible Census questions. This gives communities of interest the best opportunity to influence question content.

- A programme to identify interest groups and encourage them to influence Census questions. Examples are the Disability Rights Commission, the Black and Ethnic Minority Infrastructure in Scotland, the Scots Language Resource Centre and Shelter, together with less formal contact with members of the community of gypsy travellers. This gives an opportunity to explore in depth areas of concern to each community.

- A programme of focus groups and cognitive research with groups of people who are traditionally undercounted and have high service needs. Examples are the Fife Arabic Society, Y-Sort-it young mothers’ club in West Dunbartonshire and Age Concern in Fife. Because of the relatively high percentage of under-enumeration among ethnic communities, particular attention is being given to contacting and working with ethnic community leaders.

8. The largest problem of under enumeration lies with 18-30 year olds – of all ethnicities (but particularly white) and more males than females. About 17% of males aged 20-24 were missed by the 2001 Census. People also think that the Census is not interested in young children and babies. These are harder problems to solve. Minority ethnic community members can be identified, will still belong to these communities in 2011, and often have some sort of representative structure. The same cannot be said for 18-30 year olds, who will not be in the same age group in 2011 – and there are no obvious community leaders for wayward young folk leading an exciting busy mobile lifestyle! Because today’s school pupils will be tomorrow’s Census form fillers, the Registrar General has worked with
Glasgow City Council to prepare material for a schools Census project in modern studies and geography for S3-S5 and ran a competitions for school pupils to pick new Census questions (two of which have been included in 2006 Census Test). Careful attention is being given to targeting young people in the West Dunbartonshire test area which, in 2001, had the highest rate of male unemployment and male imputation in Scotland.

Developing Questions

9. A set of questions to be used in the Census Test has been developed in the light of that process of consultation. Other factors were also taken into account. Some questions must be included to give the basic demographic picture or because of strong user need. It is important to allow comparison with the results of the 2001 Census. Co-operation with the other UK Census Departments (for England & Wales and Northern Ireland) is important to ensure that users’ needs for UK-wide information can be met.

10. The 2006 Census Test form is available on the General Register Office for Scotland website at http://www.gro-scotland.gov.uk/statistics/census/2006-census-test/index.html. Inclusion in the 2006 question set is no guarantee that a question will be included in 2011. Conversely, some essential questions, which have worked well in earlier Censuses, have been excluded from the 2006 form to save space, but will almost certainly be included in 2011. The eventual choice of questions will be difficult because the space on the form is at a premium, while simply lengthening the form would reduce response rates and increase processing costs.

Consultation with Parliament

11. Consultation with Parliament will be an important part of the wider community engagement in the preparations for the Census. That is why contact is being established at this early stage to allow Parliamentary Committees to influence preparations. It is intended to consult the Parliament again in early 2007, on the basis of the next formal consultative document issued by the Registrar General embodying the lessons of the Census Test. It is proposed that a formal ‘White Paper’ will be put to the Parliament in Autumn 2008 and that approval of the necessary subordinate legislation will be sought in early Spring 2010. But these plans are flexible at this stage.

General Register Office for Scotland
17 January 2006