The Committee will meet at 2.00 pm in Committee Room 1.

1. **Subordinate legislation**: The Committee will consider the following negative instruments—

   The Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2007 (SSI 2007/58)


2. **Subordinate legislation**: Johann Lamont MSP (Deputy Minister for Justice) to move the following motions—

   S2M-5619 That the Justice 2 Committee recommends that the draft Advice and Assistance (Financial Limit) (Scotland) Amendment Regulations 2007 be approved.

   S2M-5620 That the Justice 2 Committee recommends that the draft Advice and Assistance (Financial Conditions) (Scotland) Regulations 2007 be approved.

   S2M-5622 That the Justice 2 Committee recommends that the draft Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2007 be approved.

3. **Custodial Sentences and Weapons (Scotland) Bill**: The Committee will consider the Bill at Stage 2 (Day 4).

4. **Legacy paper**: The Committee will consider a legacy paper which will provide advice to its successor Committee, based on its experience of the second Parliamentary Session.

5. **Serious Crime Bill (UK legislation) (in private)**: The Committee will consider a draft report on memorandum LCM 13.1 on the Serious Crime Bill, currently under consideration in the UK Parliament.
Tracey Hawe
Clerk to the Committee
Papers for the meeting—

Agenda Item 1
Cover note by Clerk (including SSI and Explanatory Notes) J2/S2/07/6/1
Cover note by Clerk (including SSI and Explanatory Notes) J2/S2/07/6/2

Agenda Item 2
Cover note by Clerk (including SSI and Explanatory Notes) J2/S2/07/6/3
Cover note by Clerk (including SSI and Explanatory Notes) J2/S2/07/6/4
Cover note by Clerk (including SSI and Explanatory Notes) J2/S2/07/6/5

Agenda Item 3
Marshalled List
Groupings (to follow)

Letter from Deputy Minister for Justice to Convener, Justice 2 Committee, on Custodial Sentences and Weapons (Scotland) Bill, dated February 2007

Members are reminded to bring with them copies of the Bill, Explanatory Notes and Policy Memorandum, available from Document Supply or from the Parliament’s website (http://www.scottish.parliament.uk/business/bills/80-custsentwea/index.htm) together with any papers from the Stage 1 process that are considered relevant (such as the Committee’s Stage 1 Report).

Agenda Item 4
Draft paper J2/S2/07/6/6
Briefing paper from SPICe on Session 2 legislation J2/S2/06/6/7

Agenda Item 5
Draft report (PRIVATE PAPER) J2/S2/07/6/8

House of Lords Select Committee on Constitution - Report on the Serious Crime Bill J2/S2/07/6/9

Letter from Deputy Minister for Justice on Serious Crime Bill J2/S2/07/6/10

Documents circulated for information only—
- Scottish Executive response to the Justice 2 Sub-Committee report, dated 20 February 2007
- Letter from Minister for Health and Community Care to Convener, Health Committee, on action on alcohol problems, dated 22 February 2007 (a copy of the plan can be found at: http://www.scotland.gov.uk/Publications/2007/02/19150222/0)
• Letter from Minister for Justice to Trish Godman MSP on human trafficking, dated February 2007
• Correspondence from the Commission for Equality and Human Rights

Documents not circulated—
Proposals for a Judiciary (Scotland) Bill, Scottish Executive document, published 14 February 2007 (an electronic copy can be found at: http://www.scotland.gov.uk/Publications/2007/02/13115213/0)

Forthcoming meetings—
• Tuesday 6 March 2007, 2pm, Committee Room 6
JUSTICE 2 COMMITTEE

6th Meeting 2007 (Session 2)

Tuesday 27 February 2007

SSI title and number: The Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2007 (SSI 2007/58)

Type of Instrument: Negative

Meeting: 27 February 2007

Date circulated to members: 22 February 2007

Justice 2 Committee deadline to consider SSI: 12 March 2007

Motion for annulment lodged No

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

1. The Subordinate Legislation Committee considered this instrument at its meeting on 20 February 2007. No points arose.

2. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk of the Committee as soon as possible, to allow for sufficient time for a response to be received in advance of the Committee meeting.

Clerk to the Committee
22 February 2007
1. The Subordinate Legislation Committee considered this instrument at its meeting on 20 February 2007. No points arose.

2. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk of the Committee as soon as possible, to allow for sufficient time for a response to be received in advance of the Committee meeting.

Clerk to the Committee
22 February 2007
JUSTICE 2 COMMITTEE

6th Meeting 2007 (Session 2)

Tuesday 27 February 2007

SSI title and number: The draft Advice and Assistance (Financial Limit) (Scotland) Amendment Regulations 2007

Type of Instrument: Affirmative

Meeting: 27 February 2007

Date circulated to members: 22 February 2007

Justice 2 Committee deadline to consider SSI: 12 March 2007

Deputy Minister for Justice to attend Justice 2 Committee meeting? Yes

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

1. The Subordinate Legislation Committee considered this instrument at its meeting on 20 February 2007. No points arose in relation to the instrument.

2. The Deputy Minister for Justice will attend this Committee meeting and make a short opening statement. This will be followed by an opportunity for members to ask any factual questions or ask for clarification whilst officials are seated at the table with the Minister. The Deputy Minister will then be asked to move the motion to open the debate. The Committee will then formally debate the motion. Officials cannot take part in that debate. The debate is limited to a maximum of 90 minutes (Rule 10.6.3), but may be much shorter. At the end of the debate, the Committee must decide whether or not to agree the motion and report to the Parliament accordingly.

3. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk to the Committee as soon as possible.

Clerk to the Committee
22 February 2007
JUSTICE 2 COMMITTEE
6th Meeting 2007 (Session 2)
Tuesday 27 February 2007

SSI title and number: The draft Advice and Assistance (Financial Conditions) (Scotland) Regulations 2007

Type of Instrument: Affirmative

Meeting: 27 February 2007

Date circulated to members: 22 February 2007

Justice 2 Committee deadline to consider SSI: 12 March 2007

Deputy Minister for Justice to attend Justice 2 Committee meeting? Yes

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3. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk to the Committee as soon as possible.

Clerk to the Committee
22 February 2007
Custodial Sentences and Weapons (Scotland) Bill

4th Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

<table>
<thead>
<tr>
<th>Sections 43 to 46</th>
<th>Section 1</th>
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<tr>
<td>Schedule 1</td>
<td>Sections 2 to 42</td>
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<td>Sections 47 to 49</td>
<td>Schedule 2</td>
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<tr>
<td>Section 50</td>
<td>Schedule 3</td>
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<td>Long Title</td>
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Amendments marked * are new (including manuscript amendments) or have been altered.

**Section 36**

**Bill Aitken**

53 In section 36, page 15, line 35, leave out from beginning to end of line 3 on page 16, and insert—

<during the period—

(a) commencing on the day after the prisoner has served three-quarters of the prisoner’s sentence, and

(b) ending on the day falling 14 days before the expiry of the custody part.>

**Section 49**

**Cathy Jamieson**

84 In section 49, page 28, line 37, at end insert—

<(3) Schedule (Transitory amendments of the Prisoners and Criminal Proceedings (Scotland) Act 1993) (which contains certain transitory amendments of the Prisoners and Criminal Proceedings (Scotland) Act 1993) has effect.>

**Schedule 2**

**Cathy Jamieson**

85 In schedule 2, page 33, line 17, leave out from <, and> to end of line 19

**Cathy Jamieson**

86 In schedule 2, page 33, line 19, at end insert—

<(  ) In subsection (3)—

(a) for “specify” substitute “include”, and

(b) for “specified” substitute “included”>
Section 50

Colin Fox

83 In section 50, page 29, line 3, at beginning insert <Subject to subsection (2A),>

Colin Fox

82 In section 50, page 29, line 4, at end insert—

<(2A) An order in respect of any provision of Part 2 may not be made until the Scottish Ministers have secured publication of a report, to be carried out by a person not otherwise accountable to them, on the cost effectiveness of that Part in terms of its likely effect on—

(a) levels of offending and re-offending, and
(b) the size of the prison population.

(2B) A report under subsection (2A) must be published and laid before the Scottish Parliament within 12 months of the passing of the Bill for this Act.>

After schedule 3

Cathy Jamieson

87 After schedule 3 insert—

<SCHEDULE
(introduced by section 49(3))

TRANSITORY AMENDMENTS OF THE PRISONERS AND CRIMINAL PROCEEDINGS (SCOTLAND) ACT 1993

1 Until their repeal by this Act, sections 1 and 9 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) have effect as follows.

2 In section 1 (release of short-term and long-term prisoners), in subsection (3), for paragraphs (a) and (b) substitute “shall,”.

3 In section 9 (persons liable to removal from the United Kingdom), subsection (1) is repealed.>
During the Stage 2 consideration of the Custodial Sentences and Weapons (Scotland) Bill on 13 February, I indicated I would write to the Committee to clarify points that arose on the day. These are dealt with below under a broad description of the points raised during the Committee’s consideration of amendments.

**Mr Colin Fox MSP – Power to vary the minimum custody part**

Mr Fox asked about the circumstances under which Scottish Ministers might use this order making power to vary the minimum custody part at section 6(3). Members will be aware that the provisions in the Bill to make secondary legislation are described in full in the Delegated Powers Memorandum. The power under section 6(10) (amended by Amendment 23 to insert it as a new section after section 6) allows Scottish Ministers to amend the proportion of the sentence specified as a custody part. In other words, it would allow the 50% point to be changed. The Delegated Powers Memorandum explains that the power to amend the proportion of the sentence is required to enable the Scottish Ministers to increase or decrease the minimum custody part should it prove necessary, without the need for primary legislation. Situations where this may prove necessary could be changes in future sentencing patterns or where evidence showed that certain types of offender might be more effectively dealt with, and resources better targeted, by a shorter custody element and a longer community element. The maximum custody period cannot however be extended beyond 75% of the sentence. Any change to the minimum custody part would be subject to Parliamentary procedure.
The issue was also raised in the Committee’s Stage 1 Report. Members might recall that the Minister for Justice responded to this in her interim response, dated 8 January 2007, confirming the position explained in the Delegated Powers Memorandum. However, she also confirmed that, whatever changes to the thresholds may come about in the future, the policy will still be that all community and custody prisoners will spend a period on licence in the community in order to assist offenders in rehabilitating into the community, while subject to a number of relevant and testing licence conditions.

Mr Jeremy Purvis MSP – Court reports and information handling

Mr Purvis wondered what controls were in place to safeguard information contained in reports used for sentencing, sentence management and risk assessment and management. As I pointed out at the Committee meeting on Tuesday, material of this nature is already produced and shared by the relevant criminal justice agencies such as the courts, the Scottish Prison Service, local authority social work departments and the Parole Board. The proposed new arrangements for transferring relevant information would build on the existing structures and would of course have to take account of the law on disclosure and retention of information, including the requirements of the Rehabilitation of Offenders Act 1974.

We recognise the importance of this matter and are already considering in the Custodial Sentences Planning Group, how to manage data transfer and retention efficiently, effectively and legally.

JOHANN LAMONT
Justice 2 Committee Legacy Paper (draft)

Background

1. This paper provides an overview for the successor Justice Committees of the work undertaken by the Justice 2 Committee during the second session of the Scottish Parliament and highlights any work to be taken forward.

2. The main work of the Committee has been scrutinising legislation. Certain policy areas covered by the Justice Committees have given rise to a heavy legislative programme in both the first and second sessions of the Parliament and the scrutiny of legislation has therefore tended to dominate the work of the Justice 2 Committee. During the course of 2005, the Committee did undertake a wide-ranging inquiry into youth justice and this is covered in more detail at paragraph 15.

Conveners Group Legacy Paper

3. In its legacy paper, the Conveners Group expressed serious concerns about the number of bills introduced and referred to committees in the second session. It noted that this could adversely affect the ability of some committees to undertake other work, particularly the scrutiny of the Executive through inquiries, with the result that large and important areas of Executive policy and administration might not receive the appropriate levels of scrutiny by Parliamentary committees.

4. The Group recommended that Standing Orders should provide that committees have an allocation of time to undertake work of their own choosing and that this should take priority over the need to consider Bills; that the Executive should try to avoid a build-up of Executive Bills being introduced in the final year of a parliamentary session and that the Bureau should work closely with conveners to agree reasonable timescales for consideration of Bills at stages 1 and 2.

Legislation

5. The following Bills were scrutinised by the Justice 2 Committee:

Executive Bills
Vulnerable Witnesses (Scotland) Bill
Antisocial Behaviour (Scotland) Bill (secondary committee)
Fire (Scotland) Bill
Tenements (Scotland) Bill
Licensing (Scotland) Bill (secondary committee)
Management of Offenders (Scotland) Bill
Police Public Order and Criminal Justice (Scotland) Bill
Legal Profession and Legal Aid (Scotland) Bill
Custodial Sentences and Weapons (Scotland) Bill
Members Bills
Civil Appeals (Scotland) Bill
Christmas Day and New Year’s Day Trading (Scotland) Bill

6. Of the legislation considered, three of the Executive Bills are suggested as providing opportunities for an incoming committee to undertake post-legislative scrutiny during the parliament’s third session.

7. The Antisocial Behaviour etc (Scotland) Act 2004 was primarily scrutinised by the Communities Committee. However at stage 1, the Justice 2 Committee was a secondary committee and reported to the Communities Committee. Subsequent to the Bill’s passage, there was a change in Ministerial responsibilities and this policy area now falls within the Minister for Justice’s remit. The Executive is undertaking some post-legislative analysis and a number of reports are expected during the course of 2007. It may be that an incoming Committee would wish to review the outcome of this analysis.

8. The Management of Offenders etc (Scotland) Act 2005 created Community Justice Authorities (CJA) and established a Home Detention Curfew Scheme for low risk prisoners. Community Justice Authorities come into full operation this year and will be central to ensuring joined-up working amongst the various agencies involved in criminal justice. An incoming Committee may want to maintain a watching brief on how well the CJAs are bedding in, along with scrutinising the introduction of multi-agency protection arrangements (MAPPA) for the management of violent and sexual offenders which also formed part of the Bill.

9. The Legal Profession and Legal Aid (Scotland) Act 2007 received a great deal of interest, particularly from the legal profession, but also from members of the public. The Act creates a Scottish Legal Complaints Commission with responsibility for dealing with “service” complaints. The professions will still deal with matters of conduct. During scrutiny, there was concern that this system did not wholly remove complaints handling from the profession and a 'hybrid' system could cause confusion. The Regulatory Impact Assessment which accompanied this Bill states that a full post-implementation review will take place within three years of the Commission becoming operational. This is something that an incoming Committee will wish to take an interest in.

Post-legislative Scrutiny Undertaken

Adults with Incapacity (Scotland) Act 2000
10. This Act was passed in 2000 and provides for decisions relating to property, financial affairs, medical treatment or personal welfare to be made on behalf of adults who lack the legal capacity to do so themselves.

11. In 2003, the Committee sought views from a number of organisations on the effectiveness of the Act, whether the intended policy outcomes had been realised and whether further legislative change was needed. An
Executive-funded project was set up to monitor the implementation of the Act and to make recommendations for improvement. The Committee received written and oral updates from the Deputy Minister for Justice and legislative changes were identified and taken forward by way of statutory instrument and in the Smoking, Health and Social Care (Scotland) Act and the Adult Support and Protection (Scotland) Act.

12. In the view of the Committee, its involvement in the post-legislative scrutiny of this Act ensured continued focus by the Executive on the highlighted problems and brought about improvements in the effectiveness and operation of the Act. The Committee’s approach to the post-legislative scrutiny was not labour-intensive. Notwithstanding this, the Committee assisted in bringing about the much-needed changes. The Committee therefore commends this approach to its successors.

Legislation expected in the next session of Parliament
13. Although it will be for the new administration to determine its legislative programme, the Committee is aware that the Executive has published proposals for a future Judiciary Bill with the intention of having a Bill ready for any incoming administration. There is likely to be further legislation in the area of legal aid and access to justice and additionally the Lord Justice Clerk is undertaking a review of the civil courts and their operation.

14. During 2004, members of both justice committees met with Lord Dervaird, to discuss his proposals for a draft Arbitration Bill. At that time, the Minister advised that the Executive had no plans to include legislation on arbitration in its programme but that longer term, this was an area of civil justice that the Minister would be keen to look at. Arbitration may be an area covered by the Lord Justice Clerk’s review.

Committee-Initiated Inquiries

Youth Justice
15. During 2004 / 2005 the Committee undertook a wide-ranging inquiry into youth justice with a remit “to review the effectiveness of multi-agency working in the youth justice field and to identify and assess the impact of gaps in service provision in the youth justice field”.

16. The Committee took evidence from a wide range of organisations and individuals and published its report in 2005. On multi-agency working, the Committee suggested that the Executive should consider placing a stronger legal duty on local authorities for the corporate responsibility of young offenders and that the local authority justice strategy groups needed clearer direction. The Committee’s report highlighted gaps in diversionary services, mental health services and addiction services and drew attention to the considerable concerns about lack of stability in funding of support services.

17. This was a complex inquiry and an incoming committee might wish to consider seeking an update on the Executive’s work in this area. It is
understood that the Executive intends to legislate in the next session to reform the Children’s Hearings system, although this legislation is likely to be referred to the Education Committee.

**Management of child-sex offenders**

18. Of particular note was the work undertaken in relation to Petition PE862 – in the name of Margaret Ann Cummings which called for a review of the current system for dealing with and monitoring convicted child sex offenders. This petition raised a number of complex cross-cutting issues which the Committee felt could not be given proper consideration in the time available to it. In recognition of this, the Parliament’s first formal sub-committee was established with the sole remit of considering the issues raised by this petition.

19. The sub-committee was established in June 2006 with a remit to inquire and report to this Committee on—

- The extent of information which local communities should receive on child sex offenders within their locality;
- The way in which housing is allocated to sex offenders;
- Whether steps need to be taken to distinguish sexual offences against children from such offences against adults;
- Whether changes need to be made to the way in which sexual offences against children are considered and disposed of by the courts, and in particular, whether adequate sentencing options exist.

20. The sub-committee appointed an adviser and gathered evidence at meetings, internationally via video-conferencing and through visits. Its report was published on 15 December 2006 and made 33 recommendations. The Justice 2 Committee agreed to adopt the report and to seek a formal written response from the Minister for Justice.

21. The Justice 2 Committee took evidence from the Minister for Justice and considered the Executive’s response to this report at its meeting on 6 March 2007. [To be completed once evidence from Minister considered.]

**Prisoner Escort and Court Custody Contract**

22. In 2003, the Scottish Prison Service entered into a contract with Reliance Secure Task Management Ltd for the provision of prisoner escort and court custody services. The contract is estimated to be worth £126m over 7 years. Due to significant difficulties in the implementation of the early stages of the contract, the Committee has received regular updates on this matter, and has scrutinised the post-implementation review of this contract.

23. A number of FOI requests have also been lodged seeking publication of the full contract and all performance management data pertaining to the contract. Several of these requests have been the subject of judgements by the Scottish Information Commissioner, who has commented adversely
on the use of a confidentiality clause which entitled SPS to withhold certain information in relation to this contract.

24. The Committee sought the Minister’s assurance that the comments of the Scottish Information Commissioner would be taken into account when negotiating (or re-negotiating) any contract where a private contractor is responsible for the delivery of public services and emphasised that the reporting requirements should be a matter of public record.

25. Given the concerns expressed about the availability of information relating to performance under this contract and the Committee’s comments about future contracts for public services, an incoming committee may wish to keep this matter under review.

Legislative Consent Memoranda (Sewel Motions)

26. During the first session of the Parliament, it was not usual practice for Committees to scrutinise such motions, however changes to the parliament’s standing orders now provide for a formal role for committees to consider legislative consent memoranda and to report their views to the Parliament prior to the motion being considered.

27. During the second session, the Justice 2 Committee looked at 9 legislative consent memoranda. The Committee’s scrutiny of the Constitutional Reform Bill was especially noteworthy as, unusually, and in recognition of the importance of the issues under consideration, the Lord President gave oral evidence to the Committee.

28. The main issue for the Committee was the establishment of a UK supreme court and the concerns expressed by the Judiciary that the existence of a UK supreme court would over time dilute the separate identity of Scots law. Following representations made, not least by the Lord President, the Bill was amended to ensure that a decision in an appeal coming from England would not be determinative of Scots law and that the Supreme Court would respect the continued separate existence and identity of the two legal systems.

29. A number of the Committee’s reports on LCMs identified problems with timing, particularly the lack of notice given and the short period within which the Committee was expected to take evidence and make its report. The Committee understands that the new procedures were bedding in and it is hoped that a greater exchange of information between the Executive and Westminster will prevent such problems arising in the third session.

Budget Scrutiny

30. Scrutiny of the Justice and related elements of the budget is usually undertaken jointly by the two Justice Committees, as both are likely to want to take evidence from the same witnesses during the same
timeframe. The Committees are of the view that this is the most efficient use of time, both for members and witnesses.

31. For its most recent scrutiny, the Committees did not seek the appointment of an adviser, although it should be noted that last year’s budget scrutiny was a shorter process because of the postponement of the UK spending review until this year. It may be that this year, consideration should be given to appointing a suitably qualified adviser.

32. The joint report of the Committees on the 2007/08 draft spending plans did not make any recommendations for changes to programme expenditure. However, in the context of scrutiny of the prisons budget, the Committees urged the Minister to ensure that the tendering process for the new prison be completed in as short a time as possible; recommended that research be undertaken into the underlying reasons for the surge in short-term prisoner numbers; that a priority for the incoming administration in May should be to address the prison situation in the Northeast and that the Justice Committees should be regularly updated on progress made towards settling cases arising from “slopping out”. In the context of the police budget, the Committees formed the view that central management of police pensions would be beneficial and asked the Minister to advise when a decision is taken on this.

33. These are all matters which an incoming Committee will wish to follow up in forthcoming budget scrutiny.

**Scrutiny of Justice and Home Affairs in Europe**

34. The Committee has maintained a watching brief throughout the second session on relevant developments in Europe and had had a number of evidence sessions with the Minister and officials, some of which were held jointly with the Justice 1 Committee.

35. Early on, the Committee identified three dossiers as being of particular interest, namely the *draft framework decision on Procedural Rights in Criminal Proceedings*, the *Proposal for a Council Framework Decision on the European Supervision Order in Pre-Trial Procedures Between Member States in the European Union* and the *Green Paper on Sentencing (approximation, mutual recognition and enforcement of criminal sanctions in the European Union)*. The role of the Committee has been mainly to seek regular updates from the Minister and officials on the progress of these dossiers. In addition to these 3 dossiers, the Committee has also suggested that the recently proposed *Framework Decision on Witness Protection* also be tracked. An incoming Committee will wish to be kept informed of progress on these dossiers.

36. In April 2006, the Committee undertook a very successful visit to Brussels attending meetings and briefings with a number of key Commission and Scotland Office officials. The visit was co-ordinated by the Parliament’s Europe Officer and was of benefit to members in clarifying the roles of the
main players and the various processes in the development of policy initiatives.

37. Depending on the membership of the new Committees, it may be that a familiarisation visit to Brussels would be useful.

Other Matters

Scottish Prison Complaints Commissioner
38. Following correspondence received from Vaughan Barratt, the Scottish Prisons Complaints Commissioner, the Committee took evidence on the work of his office. During that session, Mr Barratt stated that in his view the office of SPPC would benefit from being placed on a statutory footing.

39. The Committee raised this issue with the Minister who advised that this was under consideration and would be considered as part of a wider review of scrutiny levels in the public sector. This review is due to report in 2007, and an incoming Committee may wish to scrutinise both this issue and the wider results of the review.

Visits etc
40. Over the course of session 2, the Committee undertook a number of visits, e.g. to Reliance Monitoring Centre, the Centre for Forensic Science, the Scottish Criminal Records Office and the Violence Reduction Unit in Glasgow. Members visited a number of prisons, various courts and the Crown Office and also undertook a number of visits that were directly relevant to Committee inquiries, such as visits to youth justice projects and attendance at two football matches (the latter in connection with the proposal to introduce football banning orders). The Committee found such visits to be very useful and would recommend that any successor committee continue to undertake similar activities.

Petitions and Subordinate Legislation
41. The Committee considered 12 petitions, and these are listed in the annexe to this paper. The Committee notes that petitions can often raise substantial issues, such as issues raised in relation to the management of child-sex offenders. It is important that Committees are able to find sufficient time to examine these issues, and the Committee has at times struggled to do so whilst scrutinising Executive-led work such as Bills and Legislative Consent memoranda.

42. The Committee has also considered over 32 affirmative instruments and 92 negative instruments during the course of this session, and the time needed to consider these matters should not be underestimated. (update with end year figures once available).
Conclusion

43. The Committee has, of necessity, met weekly for most the session. The volume and timing of Executive legislation has meant that it has not been possible for the Committee to undertake much in the way of other work. Some significant pieces of legislation have been considered by the Committee and it is hoped that an incoming committee will take this work forward by way of post-enactment scrutiny.
Petitions (in chronological order)

PE578 – Mr Donald MacKinnon calling for rights available to those complaining about public bodies to be extended to young and vulnerable people reporting abuse.

PE200 – Mr Andrew Watt calling for a review of the working methods of the Legal Aid Board particularly in relation to the collection and disbursement of compensation monies collected.

PE375 – Mrs Elaine Crawford calling for review of criminal injuries compensation procedure and policy, and review of sentencing policy on violent crime.

PE347 – Mr Kenneth Mitchell calling for investigation of shoeing Clydesdale Horses and introduction of legislation to make such shoeing illegal unless sanctioned for medical reasons.

PE565 - Ms J Shields calling for mechanisms to ensure that welfare concerns of minors are paramount in Scottish law.

PE659 - Mr Graham Sturton calling for a review of sentencing policy on violent crime in Scotland.

PE682 – Mr Bill Alexander calling for the Scottish Executive to establish a transparent correspondence handling procedure that can be accessed by the public.

PE763 – Ms Julia Clarke, on behalf of the Consumers’ Association, calling for implementation of the findings of Justice 1 Committee’s inquiry into the regulation of the legal profession.

PE890 - James A Mackie calling for the creation, within the Police etc (Scotland) Bill, of an independent police complaints commission.

PE862 – Margaret Ann Cummings calling for a review of current system for dealing with and monitoring convicted child sex offenders.

PE863 - Mr Bill Alexander calling for an amendment of the Solicitors (Scotland) Act 1980 to allow limited companies to be given the right to apply for legal aid or the right to represent themselves in court.

PE893 - Paul Macdonald, on behalf of Save our Swords Campaign, calling for Scottish Parliament to oppose introduction of a ban on sale or possession of swords used for legitimate historical, cultural, artistic, sporting, economic and religious purposes.
JUSTICE COMMITTEES

BRIEFING PAPER ON SESSION 2 LEGISLATION

This paper provides the following information on Scottish Parliament Bills considered by the two Justice Committees during the second session of the Parliament:

1. Parliamentary Progress and Royal Assent: The date on which the Bill was introduced together with the date on which it was passed, fell or was withdrawn (details of the latest stage are provided where the Bill is still progressing through Parliament at the time of writing this paper). Also, where applicable, the date on which the Bill received Royal Assent.

2. Commencement: Information on any major provisions of the Act which have been brought into force and when this happened. Where available, information is also included on future commencement plans (including information on planned commencement arrangements for Bills still being considered by the Parliament).

3. Post-legislative Analysis: Information on any analysis which has been undertaken, is being undertaken or is planned in relation to the impact of the legislation (including the costs of implementation).

JUSTICE 1 COMMITTEE

Criminal Procedure (Amendment) (Scotland) Act 2004

1. Parliamentary Progress and Royal Assent: The Bill was introduced on 7 October 2003 and passed on 28 April 2004. It received Royal Assent on 4 June 2004.

2. Commencement: The main provisions of the Act were brought into force on various dates between 4 October 2004 and 1 February 2005, although it was also provided that no preliminary hearing should take place before 1 April 2005 (see SSI 2004/405).

3. Post-legislative Analysis: Information on the costs of implementing the Act’s provisions was sought in the following parliamentary question:

   S2W-29580 - Derek Brownlee (South of Scotland) (Con) (Date Lodged 3 November 2006): To ask the Scottish Executive what the (a) initial set up and (b) annual costs to (i) the Executive, (ii) local authorities, (iii) other public sector organisations or bodies and (iv) other individuals, organisations and bodies of the Criminal Procedure (Amendment) (Scotland) Act 2004 were projected to be
in the Financial Memorandum to the Bill and what the actual (1) initial set up costs were and (2) annual costs have been in each year since the Act came into force, in each category.

Answered by Cathy Jamieson (4 December 2006): The Financial Memorandum to the bill is available on the Parliament’s website. Comparable actual costs are not readily available. However, an evaluation of the High Court procedural reforms introduced by the act has been carried out and the report of the evaluation is likely to be published in early 2007. The evaluation report will include an annex, compiled by the relevant justice agencies, on the financial impacts of the reforms.

Some initial findings on the impact of changes introduced by the Act were set out in the Scottish Executive new release ‘High court reforms prove beneficial’ (2006). The evaluation referred to in the above parliamentary question has been carried out by a group of academics at the School of Law, Aberdeen University. It is anticipated that the report of this evaluation will be published around the end of February 2007.

Criminal Proceedings etc (Reform) (Scotland) Bill

1. Parliamentary Progress and Royal Assent: The Bill was introduced on 27 February 2006 and passed on 18 January 2007. It is currently awaiting Royal Assent.

2. Commencement: The Act provides that its main provisions shall come into force on such day as the Scottish Ministers may by order appoint.

3. Post-legislative Analysis: No information at this stage.

Emergency Workers (Scotland) Act 2005

1. Parliamentary Progress and Royal Assent: The Bill was introduced on 22 March 2004 and passed on 22 December 2004. It received Royal Assent on 1 February 2005.

2. Commencement: The Act was brought fully into force on 9 May 2005 (see SSI 2005/229).

3. Post-legislative Analysis: Information on the costs of implementing the Act’s provisions was sought in the following parliamentary question:

S2W-29589 - Derek Brownlee (South of Scotland) (Con) (Date Lodged 3 November 2006): To ask the Scottish Executive what the (a) initial set up and (b) annual costs to (i) the Executive, (ii) local authorities, (iii) other public sector organisations or bodies and (iv) other individuals, organisations and bodies of the Emergency Workers (Scotland) Act 2005 were projected to be in the Financial Memorandum accompanying the Bill and what the actual (1) initial set up costs were and (2) annual costs have been in each year since the Act came into force, in each category.

Answered by Mr Tom McCabe (17 November 2006): The Financial Memorandum to the bill is available on the Scottish Parliament’s website. The
Executive is not aware of any significant costs having been incurred as a result of the act.

Scottish Executive officials have indicated that no formal analysis has, thus far, been undertaken into the implementation of the Act. However, they have also advised that information available from the Crown Office and Procurator Fiscal Service’s case management database indicates that, as at 14 September 2006, a total of 392 charges under the Act had been prosecuted. In addition they noted that: (a) latest available figures indicate that 77% of the 249 prosecutions so far completed have resulted in a conviction; and (b) preliminary information available for 2005-06 shows that custodial sentences imposed where the main offence involved was an offence under the Act ranged from two months to eight months.

Executive officials also highlighted the fact that the Executive is working with the STUC to tackle violence against all workers serving the public and is now in the third year of an awareness raising campaign. Further information is available on the campaign website.

Family Law (Scotland) Act 2006


3. Post-legislative Analysis: Post-legislative analysis is planned in the longer term. However, the Scottish Executive has indicated that its first priority is to try and fill in gaps in the data currently available about issues associated with the Act (this was also identified as a priority by the Justice 1 Committee in its Stage 1 Report on the Bill). Information on the costs of implementing the Act’s provisions was sought in the following parliamentary question:

S2W-29604 - Derek Brownlee (South of Scotland) (Con) (Date Lodged 3 November 2006): To ask the Scottish Executive what the (a) initial set up and (b) annual costs to (i) the Executive, (ii) local authorities, (iii) other public sector organisations or bodies and (iv) other individuals, organisations and bodies of the Family Law (Scotland) Act 2006 were projected to be in the Financial Memorandum to the Bill and what the actual (1) initial set up costs were and (2) costs have been to date since the Act came into force, in each category.

Answered by Johann Lamont (21 November 2006): The Financial Memorandum to the bill is available on the Scottish Parliament’s website. The act came into force in May 2006. Actual costings are not therefore available yet.

Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

2. Commencement: The Act was brought fully into force on 7 October 2005 (see SSI 2005/480).

3. Post-legislative Analysis: Information on the costs of implementing the Act’s provisions was sought in the following parliamentary question:

   S2W-29595 - Derek Brownlee (South of Scotland) (Con) (Date Lodged 3 November 2006): To ask the Scottish Executive what the (a) initial set up and (b) annual costs to (i) the Executive, (ii) local authorities, (iii) other public sector organisations or bodies and (iv) other individuals, organisations and bodies of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 were projected to be in the Financial Memorandum to the Bill and what the actual (1) initial set up costs were and (2) annual costs have been in each year since the Act came into force, in each category.

   Answered by Cathy Jamieson (20 November 2006): The Financial Memorandum to the bill is available on the Scottish Parliament’s website. No material costs have been incurred as a result of the act since it came into force.

Scottish Executive officials have indicated that there are no plans to carry out post-legislative impact analysis covering the whole of the Act. They noted that the Act introduced a variety of new provisions and that any work looking at the effects of some of these provisions might be best carried out in conjunction with similar work on related provisions in other pieces of legislation. They did not, however, highlight any plans for such work at this stage. Executive officials did indicate that there have been three convictions on indictment for the grooming offence in section 1 of the Act, and that further prosecutions are under way for both that offence and for offences under section 9 of the Act (paying for sexual services of a child). Executive officials also indicated that there have been a few applications for Risk of Sexual Harm Orders.

The Scottish Executive (2006) has published guidance for use by those with a role to play in the protection of children and investigation, enforcement and prosecution of the Act.

Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill

1. Parliamentary Progress and Royal Assent: The Bill was introduced on 27 September 2006. The Stage 1 debate was held on 1 February 2007.

2. Commencement: The Deputy Minister for Justice undertook at Stage 1 to amend the Bill, at Stage 2, so that its provisions will apply to claims settled on or after 20 December 2006, instead of from seven days after Royal Assent. Such a provision would allow existing claimants to begin proceedings under the terms of the legislation, before the legislation is passed by the Parliament.

3. Post-legislative Analysis: No information at this stage.
Scottish Commission for Human Rights Act 2006

1. Parliamentary Progress and Royal Assent: The Bill was introduced on 7 October 2005 and passed on 2 November 2006. It received Royal Assent on 8 December 2006.

2. Commencement: Not known at present. According to section 22, the Act (except section 21 on the preparation for the Commission – discussed below) comes into force on such day as Her Majesty may by Order in Council appoint. Such an order has not yet been made. Under section 22, the provisions of the Act may be commenced in stages – this is likely to be the case.

Most of the work will be done after this year's Scottish Parliament election. The role of the Scottish Executive is to provide the £1m budget (in addition to the SPCB annual budget), for the setting up of the Commission. It is the SPCB that will determine the budget of the Commissioner, and be responsible for both budget and initial appointments, although once set up, the Commission will assume that responsibility and be accountable to Parliament. The Act provides (section 21) that the SPCB may undertake preparatory work. This has taken the form of communication between the SPCB and the UK Commission for Equality and Human Rights (CEHR) about the possibility of co-location (in Glasgow) and sharing of services. This would be in line with the duty in the Act to co-operate. It is understood that the CEHR is receptive to the idea.

3. Post-legislative Analysis: No information at this stage.
Antisocial Behaviour etc (Scotland) Act 2004

1. Parliamentary Progress and Royal Assent: The Bill was introduced on 29 October 2003 and passed on 17 June 2004. It received Royal Assent on 26 July 2004.

2. Commencement: The provisions of the Act were brought into force on various dates between October 2004 and July 2006. For example: (a) most of the provisions in Part 1 (Antisocial Behaviour Strategies), Part 2 (Antisocial Behaviour Orders), Part 3 (Dispersal of Groups), Part 4 (Closure of Premises), Part 6 (The Environment) and Part 11 (Fixed Penalties) were brought into force in October 2004; (b) the provisions in Part 5 (Noise Nuisance) were brought into force in December 2004; and (c) the provisions in Part 9 (Parenting Orders) were brought into force in April 2005.

The actual dates for provision of the Act being brought into force were –

- 5 November 2004: sections 55, and 122–125
- 1 December 2004: sections 41–54, and schedule 1
- 31 January 2005: sections 135–137
- 4 April 2005: sections 13, 98, 102–117, and 121
- 29 January 2006: sections 83, 88A, and 97
- 31 March 2006: section 70
- 5 July 2006: sections 85, and 92A

3. Post-legislative Analysis:

(a) Antisocial Behaviour Orders (ASBOs) in Scotland – National data is collected on the use and effectiveness of ASBOs. This involves case studies on the circumstances of use in four high-use areas (Dundee, Dumfries & Galloway, North Lanarkshire, and Edinburgh) together with annual survey data from local authorities. Survey reports are published on the Scottish Executive’s website:

- final report due to be published in late Spring 2007

(b) Dispersal orders in Scotland – An evaluation of the use of dispersal powers (including good practice lessons) draws on: (a) statistics of dispersal authorisations, breaches and sentences; (b) interviews with police, local authorities, residents, perpetrators and other stakeholders; and (c) focus groups with members of the public in locations where the powers have been used. A report on this topic was a requirement of the legislation (section 24) and is to be published by October 2007.
(c) Review of antisocial behaviour outcome agreements – This involves a review of 2006 antisocial behaviour annual reports to identify good practice in reporting and to provide recommendations for future reporting frameworks. This is due to be completed by late Spring 2007.

(d) Evaluation of parenting orders – An evaluation of the national pilot of Parenting Orders was commissioned (by the Scottish Executive’s Education Department) in April 2005. The evaluation consists of mapping parenting support services through local authorities, as well as monitoring and assessing local authority planning and service provision. The evaluation focuses on the application procedures and implementation processes as well as assessing costs. This research is expected to be complete in late Summer 2007.

(e) Fixed penalty notices – An independent evaluation report of a 12 month pilot in Tayside was published on February 2007. The evaluation found that Fixed Penalty Notices had proved successful in Tayside and recommended a national roll-out of the scheme. The Scottish Executive has announced that all police forces in Scotland will be able to issue Fixed Penalty Notices for antisocial behaviour by the end of 2007. Further details can be found in the Executive news release ‘New police powers to tackle disorder’ (2007).

(e) Information on the costs of implementing the Act’s provisions was sought in the following parliamentary question:

S2W-29583 - Derek Brownlee (South of Scotland) (Con) (Date Lodged 3 November 2006): To ask the Scottish Executive what the (a) initial set up and (b) annual costs to (i) the Executive, (ii) local authorities, (iii) other public sector organisations or bodies and (iv) other individuals, organisations and bodies of the Antisocial Behaviour etc (Scotland) Act 2004 were projected to be in the Financial Memorandum to the Bill and what the actual (1) initial set up costs were and (2) annual costs have been in each year since the Act came into force, in each category.

Answered by Johann Lamont (29 November 2006): The Financial Memorandum to the bill is available on the Parliament’s website. Comparable actual costs are not however readily available. The act is broken down into 12 parts with associated costs being incurred across a wide range of budgets. Disaggregating budgets to identify, with a meaningful degree of accuracy, the proportion of costs directly attributable to the act would be a time consuming and expensive exercise for all the parties involved. Those organisations affected by the act publish accounts which allow effective scrutiny of their overall expenditure, in the context of Best Value, as opposed to looking at the costs of one piece of legislation or other in isolation.

Christmas Day and New Year’s Day Trading (Scotland) Bill

1. Parliamentary Progress and Royal Assent: The Bill was introduced on 20 March 2006. Stage 2 has been completed. At the time of writing, it is anticipated that the Stage 3 debate will be held in March 2007.
2. **Commencement:** As things stand (ie subject to any relevant Stage 3 amendments) commencement of the Act would be on Royal Assent. This would mean that if the Bill is enacted in its current form, the ban on large shops trading would begin on Christmas Day 2007 and New Year’s Day 2008. Amendments lodged at Stage 2 would have given Scottish Ministers powers to lay an order introducing a ban on trading on New Year’s Day. However, these amendments were defeated.

3. **Post-legislative Analysis:** No legislative impact or monitoring studies have been planned. Some amendments put forward at Stage 2 would have required Scottish Ministers to conduct an impact study (looking at the likely economic impact and the impact on family life) before introducing an order to introduce a ban on New Year’s Day trading. However, the relevant amendments were defeated.

**Civil Appeals (Scotland) Bill**

1. **Parliamentary Progress and Royal Assent:** The Bill was introduced on 29 September 2006 and fell on 20 December 2006.

2. **Commencement:** Not applicable.

3. **Post-legislative Analysis:** Not applicable.

**Custodial Sentences and Weapons (Scotland) Bill**

1. **Parliamentary Progress and Royal Assent:** The Bill was introduced on 2 October 2006 and is currently being considered at Stage 2.

2. **Commencement:** The Bill as introduced provides for its main provisions to come into force on such day as the Scottish Ministers may by order appoint.

3. **Post-legislative Analysis:** No information at this stage.

**Fire (Scotland) Act 2005**

1. **Parliamentary Progress and Royal Assent:** The Bill was introduced on 28 June 2004 and passed on 23 February 2005. It received Royal Assent on 1 April 2005.

2. **Commencement:** Various provisions of the Act were brought into force during 2005, with the Act being brought fully into force on 1 October 2006 (see SSI 2006/458).

3. **Post-legislative Analysis:** Scottish Executive officials have advised that, given that some of the Act was only brought into force in October 2006, no post-legislative analysis has been carried out as yet. There is, however, a dedicated website which has been set up for information and guidance on the Act.

In November 2005 the Scottish Executive published ‘Fire and Rescue: Framework for Scotland 2005’. Section 40 of the Act requires the Scottish Ministers to prepare and consult on the Framework, to keep it under review and to consult on any proposed
significant revisions to it. The Framework (and any significant revisions) will come into effect by order.

Section 41 of the Act requires fire and rescue authorities to have regard to the Framework when carrying out their functions. The Scottish Ministers have the power to intervene if they consider that authorities are failing, or are likely to fail, to act in accordance with the Framework. They can do this by setting out, by order, an obligation for an authority to take a particular action or to refrain from taking a particular action, to ensure compliance with the Framework. Before making such an order, the Scottish Ministers must consult the authority. Ministers have indicated that such powers of direction will only be used as a matter of last resort.

Section 42 of the Act requires the Scottish Ministers to report to the Scottish Parliament on the extent to which fire and rescue authorities are acting in accordance with the Framework, and also on any action they have taken to ensure the such compliance.

Information on the costs of implementing the Act’s provisions was sought in the following parliamentary question:

\[ S2W-29591 -\text{ Derek Brownlee (South of Scotland) (Con) (Date Lodged 3 November 2006): To ask the Scottish Executive what the (a) initial set up and (b) annual costs to (i) the Executive, (ii) local authorities, (iii) other public sector organisations or bodies and (iv) other individuals, organisations and bodies of the Fire (Scotland) Act 2005 were projected to be in the Financial Memorandum accompanying the Bill and what the actual (1) initial set up costs were and (2) annual costs have been in each year since the Act came into force, in each category. Answered by Johann Lamont (21 November 2006): The Financial Memorandum to the bill is available on the Scottish Parliament’s website. Much of the work relating to the projected annual costs is still in progress. Comparable figures for actual costs are not therefore available yet.} \]

Legal Profession and Legal Aid (Scotland) Act 2007

1. Parliamentary Progress and Royal Assent: The Bill was introduced on 1 March 2006 and passed on 14 December 2006. It received Royal Assent on 19 January 2007.

2. Commencement: It is anticipated that there will be a phased commencement with the first provisions being brought into force in March 2007, a further batch in August 2007 and the remainder on dates which are not yet finalised. The Act is unlikely to be fully in force until 2008.

3. Post-legislative Analysis: The Regulatory Impact Assessment associated with this piece of legislation states that a full post-implementation review shall take place within three years of the Commission becoming operational. The review will assess relevant issues such as: whether the policy objectives have been met; that consequences have been as expected; and whether compliance levels indicate that
the enforcement powers of the Commission and the professional bodies under the new arrangements are effective.

Management of Offenders etc (Scotland) Act 2005

1. Parliamentary Progress and Royal Assent: The Bill was introduced on 4 March 2005 and passed on 3 November 2005. It received Royal Assent on 8 December 2005.

2. Commencement: By April 2007 all sections of the Act will be in force, except for certain provisions in relating to Multi-Agency Public Protection Arrangements (MAPPA). The MAPPA arrangements for sex offenders, but not violent offenders, are due to come into force in April 2007. In relation to violent offenders, Scottish Executive officials have indicated that further time is required to develop risk assessment tools for them and to ensure that the MAPPA arrangements are working effectively for sexual offenders, before introducing another group of offenders into this system. The Risk Management Authority is leading on the development of a violence risk assessment tool. As yet there is no specific timetable for the commencement of these remaining provisions.

3. Post-legislative Analysis: The National Advisory Body on Offender Management meets three times a year and is responsible for monitoring the progress of Community Justice Authorities (CJAs) against the aims of the National Strategy on Offender Management. This includes scrutinising CJA area plans submitted under section 3 of the Act. One-year plans have already been scrutinised and approved by the Justice Minister. The first three-year plans will be submitted and scrutinised later in 2007. The National Advisory Body will also receive reports from CJAs as to their performance against nationally set targets and outcomes for reducing re-offending. CJAs are due to submit their first annual reports to the Justice Minister in 2008.

MAPPA arrangements for sex offenders will be included in a Social Work Inspection Agency inspection planned for 2008 which will assess the supervision of sex offenders.

Information on the costs of implementing the Act’s provisions was sought in the following parliamentary question:

S2W-29600 - Derek Brownlee (South of Scotland) (Con) (Date Lodged 3 November 2006): To ask the Scottish Executive what the (a) initial set up and (b) annual costs to (i) the Executive, (ii) local authorities, (iii) other public sector organisations or bodies and (iv) other individuals, organisations and bodies of the Management of Offenders etc (Scotland) Act 2005 were projected to be in the Financial Memorandum to the Bill and what the actual (1) initial set up costs were and (2) annual costs have been in each year since the Act came into force, in each category.

Answered by Cathy Jamieson (20 November 2006): The Financial Memorandum to the bill is available on the Scottish Parliament’s website. Implementation of the provisions in the act is still underway. Comparable figures for actual costs are not therefore available yet.
Police, Public Order and Criminal Justice (Scotland) Act 2006


2. Commencement: A number of provisions were brought into force on 1 September 2006, including provisions on: (a) allowances payable to special constables; (b) football banning orders; (c) offensive weapons; (d) powers of search and arrest in relation to the possession of prohibited fireworks; (e) the control of sex offenders; and (f) police powers to require the giving of certain information. Provisions on the retention of DNA samples were brought into force on 1 January 2007.

The Scottish Executive has indicated that it intends to commence provisions relating to Queen’s Evidence on 1 March 2007. It has also indicated that it intends to commence, on 1 April 2007, provisions relating to: (a) the Scottish Police Services Authority; (b) the Scottish Crime and Drug Enforcement Agency; (c) the Police Complaints Commissioner for Scotland; (d) public processions; and (e) mandatory drug testing of arrested persons.


3. Post-legislative Analysis: Scottish Executive officials have advised that, as the first provisions of the Act only came into force in September 2006 (with other major provisions coming into force in 2007), it is thought to be too early for any post-legislative analysis to have been carried out as yet. However, in relation to the provisions on football banning orders, which came into force in September 2007, Strathclyde Police has established a Football Banning Orders Unit which is monitoring and tracking orders made by the courts.

Information on the costs of implementing the Act’s provisions was sought in the following parliamentary question:

**S2W-29611 - Derek Brownlee (South of Scotland) (Con) (Date Lodged 3 November 2006): To ask the Scottish Executive what the (a) initial set up and (b) annual costs to (i) the Executive, (ii) local authorities, (iii) other public sector organisations or bodies and (iv) other individuals, organisations and bodies of the Police, Public Order and Criminal Justice (Scotland) Act 2006 were projected to be in the Financial Memorandum to the Bill and what the actual (1) initial set up costs were and (2) costs have been to date since the Act came into force, in each category.**

**Answered by Cathy Jamieson (23 November 2006): The Financial Memorandum to the bill is available on the Scottish Parliament’s website. The act received Royal Assent in July 2006. Actual costings are not therefore available yet.**
Tenements (Scotland) Act 2004


2. Commencement: Most of the provisions of the Act were brought into force in October and November 2004. The actual commencement dates for the various provisions in the Act were –

   - 22 October 2004: section 34
   - 23 October 2004: section 25
   - 10 November 2004: sections 13(6), and 31–32
   - 28 November 2004: sections 1–12, 13 (except (6)), 14–17, 19–24, 26–30, 33, and schedules 1–3
   - 24 January 2007: section 18

3. Post-legislative Analysis: The Scottish Executive has nothing planned at present as it considers it too early to assess the impact. Information on the costs of implementing the Act’s provisions was sought in the following parliamentary question:

   **S2W-29586 - Derek Brownlee (South of Scotland) (Con) (Date Lodged 3 November 2006): To ask the Scottish Executive what the (a) initial set up and (b) annual costs to (i) the Executive, (ii) local authorities, (iii) other public sector organisations or bodies and (iv) other individuals, organisations and bodies of the Tenements (Scotland) Act 2004 were projected to be in the Financial Memorandum accompanying the Bill and what the actual (1) initial set up costs were and (2) annual costs have been in each year since the Act came into force, in each category.**

   **Answered by Johann Lamont (21 November 2006): The provisions in the act that would lead to costs being incurred have still to be implemented. Comparable actual costings are not therefore available yet.**

Vulnerable Witnesses (Scotland) Act 2004


2. Commencement: Part 1 of the Act deals with criminal proceedings. It has, in relation to the evidence of child and other vulnerable witnesses, been implemented in respect of High Court and sheriff court solemn cases. Part 1 of the Act will, in relation to sheriff court summary cases, be implemented for child witnesses from April 2007 and for other vulnerable witnesses from April 2008. There are no current plans to extend the provisions of Part 1 to witnesses in district court cases. Part 2 of the Act deals with civil proceedings. Relevant provisions for vulnerable witnesses in relation to civil cases in the Court of Session and sheriff courts (including fatal accident inquiries) are due to be commenced from November 2007. Section 24 of Part 3 of the Act, abolishing the competence test for witnesses in criminal and civil proceedings, has been commenced. Further information is set out in SSI 2005/168.
3. Post-legislative Analysis: The impact of the Act in relation to vulnerable witnesses in solemn criminal proceedings is currently being monitored and evaluated on behalf of the Justice Department – a final report on this phase of monitoring is expected in August 2007. Information on the costs of implementing the Act’s provisions was sought in the following parliamentary question:

S2W-29578 - Derek Brownlee (South of Scotland) (Con) (Date Lodged 3 November 2006) : To ask the Scottish Executive what the (a) initial set up and (b) annual costs to (i) the Executive, (ii) local authorities, (iii) other public sector organisations or bodies and (iv) other individuals, organisations and bodies of the Vulnerable Witnesses (Scotland) Act 2004 were projected to be in the Financial Memorandum to the Bill and what the actual (1) initial set up costs were and (2) annual costs have been in each year since the Act came into force, in each category.

Answered by Johann Lamont (23 November 2006): The Financial Memorandum to the bill is available on the Parliament’s website. The act will not be fully implemented until 2008. Comparable actual costings are not therefore available yet.

The Scottish Executive has published guidance on the Act for practitioners which includes information on implementation. Information on the Scottish Executive’s Victims and Witnesses Unit is contained in the unit’s web pages.

Justice, Europe & Parliament Team
SPICe Research
15 February 2007

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LEGISLATIVE CONSENT MOTION – SERIOUS CRIME BILL

When I attended the committee on 20 February to give evidence on the Legislative Consent Motion (LCM) for the Serious Crime Bill (“the Bill”) I undertook to write to the Committee on a couple of points of information. Our response is set out below. I also thought it might be helpful if I offered some further detail on Serious Crime Prevention Orders in general, given the Committee’s interest in these provisions.

**Serious Crime Prevention Orders (SCPOs)**

I think it is worth reiterating that the LCM provides only for the offence of breach of an SCPO to be extended to Scotland and that therefore any action taken here in the Scottish courts turns on that offence. As always, criminal proceedings will only take place in Scotland if the Lord Advocate is satisfied that she is acting in a way that is compatible with Scots Law and the relevant ECHR Convention Rights.

The overriding purpose of SCPOs is to prevent harm before it happens and they are a preventative measure for reducing criminal related behaviour rather than a penalty. Section 1 of the Bill contains a two-part test: the High Court (or Crown Court upon conviction for a serious offence) in England and Wales may make a SCPO if it is satisfied that a person has been involved in serious crime (whether in England and Wales or beyond) **and** it has reasonable grounds to believe that the SCPO would protect the public by preventing, restricting or disrupting involvement by the person in serious crime **in** England and Wales. Similar provision is made to give the High Court in Northern Ireland power to impose SCPOs in respect of persons involved in serious crime affecting that jurisdiction.

A person has been involved in serious crime where that person has committed a serious offence (he or she would therefore have a conviction), where that person has facilitated the commission of a serious offence by someone else or where he or she has conducted themselves in a way that was likely to facilitate the commission of a serious offence by himself or herself or another person. What constitutes a “serious offence” is set out in clause 2(2) and (5) in relation to England and Wales orders and in clause 3(2) and (5) in relation to Northern Ireland orders. A serious offence is one...
which falls within the list set out in Schedule 1 to the Bill (the list in Part 1 for England and Wales and the list in Part 2 for Northern Ireland) or one which “in the particular circumstances of the case” the court considers to be sufficiently serious to be treated as if it did fall within that Schedule.

Although the main route for making an order will be an application to the High Court, the Bill also confers on the Crown Court in England and Wales or Northern Ireland a civil jurisdiction to be able to impose an order. This means that the order may be made in the Crown Court (for reasons of efficiency as the Crown Court will be familiar with the context for the order) but that the order will still be a civil in nature. The Crown Court will be able to impose such an order where a person has been convicted of a serious offence, and the court has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement in serious crime. In England and Wales, the Crown Court's power arises either where a person has been convicted by a magistrates' court and committed to the Crown Court to be dealt with, or convicted by the Crown Court itself.

The intention is that SCPOs will be highly targeted and, importantly in England and Wales, only the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Director of the Serious Fraud Office, or their express delegates will have the power to apply to the courts for these orders. The Director of Public Prosecutions for Northern Ireland will make applications in Northern Ireland. Complex serious organised crime cases may raise issues about whether an application for a SPCO or a criminal prosecution is appropriate and prosecutors are accustomed to applying both the civil and criminal tests (for example the courts already regularly apply the civil test in applications for restraint orders under the Proceeds of Crime Act) and, in multi-defendant cases, different courses of action may be appropriate in respect of different defendants.

Prosecutors are best placed to ensure that decisions taken at early points in investigations concerning some individuals do not prejudice subsequent prosecution of others. SCPOs could also be an additional option in the run up to a criminal prosecution, imposed to restrict the harm the subject can do while the case is being prepared.

Legal aid will potentially be available to the proposed subject of an order or to third parties who can demonstrate that they would be/have been significantly adversely affected by the order. The exact test, and whether this will be based on civil or criminal legal aid, is still under discussion by the UK Government.

The Bill also contains a range of safeguards. For instance, a SCPO does not over-ride legal professional privilege, an individual under the age of 18 years may not be the subject of an SCPO and as mentioned above, there is a restricted number of applicants who may ask the court to make such an order. There is also a number of information safeguards, including restrictions on how any information obtained can be used, an opportunity for third parties to make representations and a right of appeal. SCPOs have a limited duration (no more than 5 years, although orders can be renewed) and can be varied and discharged.

**Examples of similar Orders**

Colin Fox asked for examples of other civil orders backed by criminal sanctions if the subject of the order breaches the order. A list is provided below:

- The Company Directors Disqualification Act 1986 created a civil remedy of disqualification, which enabled the court to prohibit a person from acting as a director; breach of such an order is a criminal offence.
Section 14A of the Public Order Act 1986 (as inserted by section 70 of the Criminal Justice and Public Order Act 1994) provides a power for the police to request that a local authority make an order to prohibit trespassory assemblies which could result in serious disruption of the life of a community or cause damage. By virtue of section 14B of the 1986 Act it is a criminal offence to take part in or organise an assembly which a person knows is prohibited by an order made under section 14A.

The Protection from Harassment Act 1997 created a civil remedy, enabling courts to make a non-harassment order to prevent a person from pursuing conduct which amounts to harassment (as defined in the 1997 Act). Breach of such an order is a criminal offence.

The Crime and Disorder Act 1998 created anti-social behaviour orders (ASBOs) in England and Wales and Scotland. In Scotland provision in respect of ASBOs is now largely found in the Antisocial Behaviour etc. (Scotland) Act 2004. Part 2 of the 2004 Act allows a relevant authority to apply for such an order if the person who will be subject to the order is over 12 years of age, that person has engaged in anti-social behaviour and the ASBO is necessary to protect relevant persons from further anti-social behaviour by that person. Breach of an ASBO is a criminal offence.

The Police, Public Order & Criminal Justice (Scotland) Act 2006 created "football banning orders", designed to prevent known football hooligans from causing further trouble at home and abroad. Breach of a football banning order is a criminal offence.

Part 2 of the Sexual Offences Act 2003 (which repealed the Sex Offenders Act 1997) provides for, amongst other things, "sexual offences prevention orders" (SOPOs) and "foreign travel orders". SOPOs are made by the courts in respect of certain persons where it thought necessary for the purpose of protecting the public from serious sexual harm from that person. Breach of a SOPO is a criminal offence. Foreign travel orders are made by the courts in respect of certain offenders in order to restrict that offender’s movements. Breach of a foreign travel order is a criminal offence.

The Protection of Children & Protection of Sexual Offences (Scotland) Act 2005 established “risk of sexual harm orders” (RSHO) in Scotland. An RSHO can be granted where a sheriff finds that a person has undertaken certain acts and it is necessary to make an order for purposes of protecting children generally or any child from that person. Breach of an RSHO is a criminal offence.

International Dimension

Finally, you asked what considerations had been taken into account, given the international dimension of SCPOs in respect of exchange of information. Because of the nature of serious organised crime, there are already protocols and gateways in place between law enforcement agencies for sharing and using information. In terms of the LCM provision as it applies to Scotland, however, any international considerations would be marginal on the basis that the Scottish courts would be dealing with a breach of an Order which occurred here in Scotland. The only material from another jurisdiction would be the SCPO itself.

I hope this further information is of some assistance to the Committee.

JOHANN LAMONT