The Scottish Parliament

JUSTICE 1 COMMITTEE

AGENDA

10th Meeting, 2006 (Session 2)

Wednesday 29 March 2006

The Committee will meet at 9.45 am in Committee Room 4.

1. **Subordinate Legislation:** The Committee will take evidence from James Laing and Elizabeth Sadler, Justice Department, and Alison Coull, Office of the Solicitor to the Scottish Executive, Scottish Executive, on the following negative instruments—

   - the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006, (SSI 2006/96); and
   - the Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2006, (SSI 2006/97).

2. **Subordinate Legislation:** The Committee will consider the following negative instruments—

   - the Civil Partnership Family Homes (Form of Consent) (Scotland) Regulations 2006, (SSI 2006/115); and

3. **Northern Ireland (Miscellaneous Provisions) Bill (UK Parliament Legislation):** The Committee will consider the legislative consent memorandum lodged by Cathy Jamieson, Minister for Justice (LCM(S2) 5.1).

4. **Scottish Criminal Record Office inquiry:** The Committee will consider the timetable and potential witnesses for the inquiry.

5. **Criminal Proceedings etc. (Reform) (Scotland) Bill (in private):** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

Callum Thomson
Clerk to the Committee
Papers for the meeting—

Agenda item 1
Note by the Clerk on SSI 2006/96
Note by the Clerk on SSI 2006/97

Agenda item 2
Note by the Clerk on SSI 2006/115
Note by the Clerk on SSI 2006/109

Agenda item 3
Legislative Consent Memorandum on Northern Ireland (Miscellaneous Provisions) Bill (LCM(S2) 5.1)
Note by the Clerk on LCM(S2) 5.1

Agenda item 4
Note by the Clerk on approach to the Scottish Criminal Record Office Inquiry (to follow)
Correspondence from Mr Kenneth Macintosh MSP to Convener, 22 March 2006

Agenda item 5
Approach paper to the scrutiny at Stage 1 of the Criminal Proceedings etc. (Reform) (Scotland) Bill (PRIVATE PAPER)

Documents for information—
The following documents are circulated for information:


Forthcoming meetings—
Wednesday 19 April, Committee Room 4;
Wednesday 26 April, Committee Room 5.
SSI Cover Note For Committee Meeting

SSI title and number: The Police Act 1997 (Criminal Records) (Scotland) Regulations 2006, (SSI 2006/96)

Type of Instrument: Negative

Meeting: 10th Meeting, 2006 (Session 2)
Wednesday 29 March 2006

Date circulated to members: Friday 24 March 2006

Justice 1 Committee deadline to consider SSI: Monday 24 April 2006

Motion for annulment lodged No

SSI drawn to Parliament’s attention by Sub Leg Committee: Yes

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

The Subordinate Legislation Committee considered the instrument at its meetings on 14 March 2006 and 21 March 2006, and draws the attention of the lead Committee to its concern, as detailed in the 14th Report, 2006 (Session 2):

The Police Act 1997 (Criminal Records) (Scotland) Regulations 2006, (SSI 2006/96)

The Committee reports to the Parliament as follows—

1. The Committee asked the Executive, in relation to regulations 9 and 17, to explain the purpose and effect of the words “for the purposes of section 113B (2)(b)” and the words “for the purposes of section 119(3)(7)” respectively, given that these sections appear to be simply regulation-making powers.

2. The Executive, in its response printed in Appendix 3, explained that the words are used in each case to identify the provisions in the Police Act 1997 to which each regulation relates and to link the regulations to the relevant provisions in the Act.
3. The Committee agrees that the words “for the purposes of” are used when an enabling power confers a power to prescribe a matter for a particular purpose. However, in respect of section 9 and 17 the Committee considers that the words are unnecessary and do not appear to add anything to the regulations.

4. The Committee draws the attention of the lead Committee and the Parliament to these Regulations on the grounds of failure to follow proper legislative practice.

APPENDIX 3

The Police Act 1997 (Criminal Records) (Scotland) Regulations 2006, (SSI 2006/96)

On 14th March 2006 the Committee asked the Executive for an explanation of the following matters:-

In relation to regulations 9 and 17, to explain the purpose and effect of the words “for the purposes of section 113B(2)(b)” and the words “for the purposes of section 119(3)(7)” respectively, given that these sections appear to be simply regulation-making powers.

The Scottish Executive responds as follows:

1. As regards question (a) the words “for the purposes of section 113B(2)(b)” and for the purposes of section 119 (3)(7)” in regulations 9 and 17 respectively are used in each case to identify the provisions in the Police Act 1997 to which each regulation relates and to link the regulations to the relevant provisions in the Act. We are slightly confused by Committee’s concerns as the phrase “for the purposes of ....” is used commonly in subordinate legislation when an enabling power confers a power to prescribe a matter for a particular purpose.
SSI Cover Note For Committee Meeting

SSI title and number: The Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2006, (SSI 2006/97)

Type of Instrument: Negative

Meeting: 10th Meeting, 2006 (Session 2)
Wednesday 29 March 2006

Date circulated to members: Friday 24 March 2006

Justice 1 Committee deadline to consider SSI: Monday 24 April 2006

Motion for annulment lodged No

SSI drawn to Parliament’s attention by Sub Leg Committee: Yes

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

The Subordinate Legislation Committee considered the instrument at its meetings on 14 March 2006 and 21 March 2006, and draws the attention of the lead Committee to its concern, as detailed in the 14th Report, 2006 (Session 2):

The Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2006, (SSI 2006/97)

The Committee reports to the Parliament as follows—

1. The Committee asked the Executive whether the definition of “statutory office holder” in regulation 2(1) will include persons appointed under Acts of the Scottish Parliament.

2. The Executive, in its response printed in Appendix 4, paragraph 1, confirmed that this will include persons appointed under Acts of the Scottish Parliament.

3. “Statutory office holder” is defined in regulation 2(1) as meaning “a person appointed to an office by virtue of an enactment”. “Enactment” is not defined
and will therefore attract the same meaning as it has in the parent Act. The
term is not defined in the parent Act (nor in any relevant amendment to that
Act) so because it is an Act of the UK Parliament the definition of the term in
Schedule 1 to the Interpretation Act 1978 Act as inserted by paragraph 16 of
Schedule 8 to the Scotland Act will apply. This specifically excludes Acts of
the Scottish Parliament. The Committee is concerned therefore that the
Regulations as drafted do not reflect the stated policy intention and that there
would be doubt about the *vires* of a provision in Regulations that attempted to
extend the definition in this way because of the limitations of the parent Act.

4. **The Committee draws the attention of the lead Committee and the
Parliament to these Regulations on the grounds of defective drafting on
this point.**

5. The Committee also sought an explanation from the Executive, with respect to
regulations 7 and 10, and the purpose and effect of the words “for the
purposes of section 120A(7)” and the words “for the purposes of section
120(3)(ac)” given that these sections are simply regulation-making powers.

6. In its response printed in Appendix 4, paragraph 2, the Executive explained
that the words are used in each case to identify the provisions in the Police
Act 1997 to which each regulation relates and to link the regulations to the
relevant provisions in the Act.

7. The Committee accepts that the words “for the purposes of” are used when
an enabling power confers a power to prescribe a matter for a particular
purpose. In respect of regulations 7 and 10 however, it considers that the
words are unnecessary and do not appear to add anything to the regulations.

8. **The Committee draws the attention of the lead Committee and the
Parliament to these Regulations on the grounds of failure to follow
proper legislative practice on this point.**

9. The Committee also asked the Executive to explain the reference to
“appropriate police authority” in regulation 7 which does not appear to be a
term used in section 120(5) of the Police Act 1997.

10. The Executive, in its response printed in Appendix 4, paragraph 3, agrees
with the Committee that the reference to “appropriate police authority” does
not appear to be a term used in section 120(5). Instead, that reference should
refer to “police authority” and the relevant section should be section 120A(5).
The Committee welcomes the Executive’s commitment to amend the
Regulations in the future when it will correct the reference.

11. **The Committee draws the attention of the lead Committee and the
Parliament to these Regulations on the grounds of defective drafting on
this point, as acknowledged by the Executive.**

APPENDIX 4

The Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations
2006, (SSI 2006/97)
On 14th March the Committee asked the Executive for an explanation of the following matters:

The Committee asks the Executive the following questions:

(a) with reference to the definition of “statutory office holder” in regulation 2(1) whether this will include persons appointed under Acts of the Scottish Parliament;

(b) with respect to regulations 7 and 10, to explain the purpose and effect of the words “for the purposes of section 120(7)” and the words “for the purposes of section 120(3)(ac)” respectively given that these sections are simply regulation-making powers; and

(c) also with respect to regulation 7 to explain the reference to “appropriate police authority” which does not appear to be a term used in section 120(5).

The Scottish Executive responds as follows:

1. On question (a), the Executive confirms that this will include persons appointed under Acts of the Scottish Parliament.

2. As regards question (b) we assume the Committee is referring to “for the purposes of section 120A(7)” rather than section 120(7). The words “for the purposes of section 120A(7)” and “for the purposes of section 120(3)(ac)” in regulations 7 and 10 respectively are used in each case to identify the provisions in the Police Act 1997 to which each regulation relates and to link the regulations to the relevant provisions in the Act. We are slightly confused by Committee’s concerns as the phrase “for the purposes of ....” is used commonly in subordinate legislation when an enabling power confers a power to prescribe a matter for a particular purpose.

3. In relation to question (c) the Committee is correct to point out that the reference to “appropriate police authority” does not appear to be a term used in section 120(5). Instead that reference ought to refer to “police authority” and further the relevant section should be section 120A(5). We thank the Committee for drawing this to our attention however given that regulation 7 clearly refers to section 120A(7) which in turn refers to subsection (5) we are satisfied that if required a court would interpret the reference to section 120(5) as a reference to section 120A(5). Further we are of the view that the word “appropriate” whilst superfluous will not affect the operation of the provision as it is quite clear that the police authorities listed in the regulations are those prescribed for the purposes of section 120A(7). It is likely that the Regulations will be amended at some point in the future and we will take the opportunity at that point to correct the reference.
SSI Cover Note For Committee Meeting

SSI title and number: The Civil Partnership Family Homes (Form of Consent) (Scotland) Regulations 2006 (SSI 2006/115)

Type of Instrument: Negative

Meeting: 10th Meeting, 2006 (Session 2)
          Wednesday 29 March 2006

Date circulated to members: Friday 24 March 2006

Justice 1 Committee deadline to consider SSI: Monday 24 April 2006

Motion for annulment lodged: No

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

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

SSI title and number: The Abolition of Feudal Tenure etc. (Scotland) Act 2000 (Specified Day) Order 2006, (SSI 2006/109)

Type of Instrument: Negative

Meeting: 10th Meeting, 2006 (Session 2)
          Wednesday 29 March 2006

Date circulated to members: Friday 24 March 2006

Justice 1 Committee deadline to consider SSI: Monday 24 April 2006

Motion for annulment lodged: No

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

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

NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) BILL

1. The Minister for Justice invites the Parliament to note that the Executive does not intend to lodge a legislative consent motion to seek consent for certain provisions of the Northern Ireland (Miscellaneous Provisions) Bill which would legislate in devolved areas. This Bill was introduced in the House of Commons on 16 February 2006. These provisions amend the Serious Organised Crime and Police Act 2005 to include certain Northern Ireland offences in section 61 of that Act. It is anticipated that these provisions will be modified by Government amendment so that they do not extend to Scotland. It is proposed, subject to procedure in the Scottish Parliament, to introduce equivalent provisions by using order-making powers already conferred upon Scottish Ministers by the Serious Organised Crime and Police Act 2005.

Background

2. This memorandum has been lodged by Cathy Jamieson, Minister for Justice, under Rule 9B.3.1(a) of the Parliament’s Standing Orders. The Northern Ireland (Miscellaneous Provisions) Bill can be found at:

http://www.publications.parliament.uk/pa/cm200506/cmbills/131/2006131.htm

3. Most of the provisions of the Bill relate to Northern Ireland only. The Bill makes provision about registration of electors and the Chief Electoral Officer for Northern Ireland; to amend the Northern Ireland Act 1998; and about donations for political purposes. It also extends the amnesty period for arms decommissioning in Northern Ireland; and makes miscellaneous amendments in the law relating to Northern Ireland.

4. The purpose of this memorandum is to inform Parliament that provisions that would legislate in devolved areas in respect of amendments to the Serious Organised Crime and Police Act 2005 (SOCAP) are contained within the Northern Ireland (Miscellaneous Provisions) Bill. It is proposed that these amendments be withdrawn by Government amendment at Westminster and introduced by way of Scottish Ministers order making powers. The Executive believes that this is a more appropriate way to proceed.

Consultation

5. The main provisions of the Bill as they relate to Northern Ireland were foreshadowed in a number of UK Government publications and announcements.

6. The provisions which are the subject of this memorandum are changes to legislation which had already been subject to a legislative consent motion when that legislation was created. These changes have not been subject to general consultation procedures specific to Scotland but the Crown Office has been consulted and would welcome the extension of the investigatory powers in SOCAP to Northern Ireland offences.
Financial Implications

7. The Bill is expected to have neutral cost implications in Scotland.

Provisions in the Bill relating to devolved powers

8. The following paragraphs describe the specific provisions introduced by the Bill. They also provide background on their application in Scotland.

Amendment to the Serious Organised Crime and Police Act 2005

Clause 27 and Schedule 3: Extension to Northern Ireland of provisions of SOCAP 2005

Policy intent

9. SOCAP conferred certain powers upon the Lord Advocate to issue disclosure notices in relation to certain offences in Great Britain. This Bill would extend those powers to a similar range of offences in Northern Ireland.

Background

10. The Northern Ireland (Miscellaneous Provisions) Bill contains provisions which amend SOCAP. The provisions that currently apply to Scotland were included in the Sewel motion that was passed in connection with SOCAP.

11. Section 60 of SOCAP confers powers upon the Director of Public Prosecutions and the Lord Advocate to issue disclosure notices in relation to certain offences. This allows the Lord Advocate, if he believes that a person may have information relative to an offence listed in section 61 of SOCAP, to issue a notice requiring that person to provide information or answer questions. A prosecutor may act on behalf of the Lord Advocate in exercising this function.

12. At present, section 61 of SOCAP lists a wide range of offences under the laws of Scotland, England and Wales. The GB wide extent of the provisions means that, at present, the Lord Advocate could issue a disclosure notice to any person in Scotland even though the notice may relate to an offence under the law of England and Wales.

13. The effect of the Bill’s amendments would be to introduce certain Northern Ireland offences into section 61 of SOCAP so allowing the Lord Advocate to issue disclosure notices to individuals who might have information about such crimes. It is important to ensure that the effect of these changes is incorporated into Scots law, thus ensuring that serious crimes committed in, or associated, with Northern Ireland are handled in the same way as happens elsewhere in the United Kingdom.
Order Making Powers

14. Section 61 of SOCAP provides an order making power for Scottish Ministers to add to or remove any offences listed in the section in so far as the provision applies to Scotland. The intention is to use this power to add the Northern Ireland offences to section 61 in so far as it applies to Scotland.

Scottish Executive
2 March 2006
Legislative Consent Memorandum: Northern Ireland (Miscellaneous Provisions) Bill

Note by the Clerk

Purpose

1. The attached legislative consent memorandum (LCM) from the Scottish Executive concerns the Northern Ireland (Miscellaneous Provisions) Bill currently before the UK Parliament. The memorandum states that the Executive does not intend to lodge a legislative consent motion as it is anticipated that the provisions of the Bill in relation to devolved areas will be modified by Government amendment so that they do not extend to Scotland.

2. This paper invites the Committee to note the terms of the LCM.

Background

3. The memorandum has been lodged by Cathy Jamieson, Minister for Justice, under Rule 9B.3.1(a) of the Parliament’s Standing Orders. The Northern Ireland (Miscellaneous Provisions) Bill can be found at:

http://www.publications.parliament.uk/pa/cm200506/cmbills/131/2006131.htm

4. Most of the provisions of the Bill relate to Northern Ireland only. The Bill makes provision about registration of electors and the Chief Electoral Officer for Northern Ireland; to amend the Northern Ireland Act 1998; and about donations for political purposes. It also extends the amnesty period for arms decommissioning in Northern Ireland; and makes miscellaneous amendments in the law relating to Northern Ireland.

5. The Executive states that the purpose of the memorandum is to inform Parliament that provisions that would legislate in devolved areas in respect of amendments to the Serious Organised Crime and Police Act 2005 (SOCAP) are contained within the Northern Ireland (Miscellaneous Provisions) Bill. It is proposed that these amendments be withdrawn by Government amendment at Westminster and introduced by way of Scottish Ministers order making powers. The Executive believes that this is a more appropriate way to proceed.

Timetable

6. As there is no motion associated with the LCM seeking Parliamentary consent there is no specific deadline by which the Committee must consider the memorandum.

Report

7. Under Rule 9B.5 of Standing Orders, the lead Committee is required to consider and report on the LCM. In this somewhat unusual case, the report
need only be a short confirmation that the Committee has considered the memorandum.

**Conclusion**
8. The Committee is invited to consider and, if satisfied, note the memorandum.

Clerk to the Committee
March 2006
From following the discussion the committee have been having, I suspect you will want to have a focussed inquiry rather than one covering all the issues that this case has touched on. If that is so, my plea would be that you go to the heart of the matter and ask some of the fingerprint experts to come and present their case to you in person. Ask those who have no confidence in SCRO to present their evidence and their case - and ask the SCRO experts and individuals such as Peter Swann who have become inextricably involved, to present their case. I would specifically ask if each could talk to the disputed fingerprints in the Mckie case as they seem to be the only ones there is any dispute about.

This would allow the Committee members to see for themselves what lies at the heart of the current arguments. I believe it would allow the Committee to take a measured view as to whether we can continue to have confidence in SCRO and fingerprint evidence generally. Again, my apologies for not being able to make it in person to your meeting, but I would be happy if you wished to make my views known to colleagues on the Committee.

Letter of 20 February attached at Annexe.
From: Kenneth Macintosh MSP  
MSP for Eastwood

To: Pauline McNeill MSP  
Convener, Justice 1 Committee

20th February 2006

Dear Pauline,

I would like to ask the Justice Committee to consider establishing a Parliamentary Inquiry into the Shirley Mckie affair. I believe that there are many calls at the moment for a public inquiry but I would like to explain why I believe your Committee is well placed to look into this matter and what it could achieve.

As you know, three of the four fingerprint officers who made the original identifications in the case live in my constituency and I believe they have been badly served by the justice system. While court action was being considered by the Mckies against the Executive and until last year against them as individuals too, they were not only bound by the case being sub judice but they were in fact instructed by their employers not to speak publicly. They had to put up with all sorts of wild and damaging allegations against themselves in the media but were able to do so comforted by the fact that the Executive would defend their interest and that they would have the opportunity to put the record straight and state their case clearly on oath in a court of law. That opportunity has now been denied them and a settlement has been agreed between the Executive and the Mckies that does not reflect their views nor the facts as they know them.

More than anything, I believe my constituents would like to put their case in public before a fair and independently minded body so that their integrity and professionalism can be examined. They have no doubt and I share their confidence, that anyone who is willing to look beyond the entirely one-sided coverage of this affair in the media will recognise the truth of what they have to say. I believe the Parliament's Justice Committee is well placed to fulfil that role.

As to the terms of the inquiry, I believe they should be drawn as widely as possible if we are to establish the facts of what has happened in this case. I would hope that you would wish to hear not only from the four officers, but from all the fingerprint experts involved in this case: From Peter Swann and Malcolm Graham, the first two independent experts brought in by the Mckies and by the orginal defendant in the murder trial, both of whom it should be noted confirmed the identification made by my constituents. I would hope you would also wish to hear from those others who have offered an opinion on the fingerprints in this case such as Pat Wertheim and Allan Bayle. I believe that
we need to look dispassionately at the work of the Scottish fingerprint service to see whether it is suspect or whether in fact it remains the thorough and effective source of evidence it has historically been. However, I do not believe the inquiry should focus entirely on the fingerprint service and that it is important that you hear from all those involved in this case: From the Police, from the Executive or Crown Office and of course from the Mckies.

It is difficult to find anyone who has not been damaged in some way by their involvement in this case. I do not believe we can right the many wrongs that have been done, but I do believe that the Justice Committee can shed some light on this affair and can go someway to restoring faith and public confidence in a shaken system.

I would be happy to provide further information for the Committee should you require it.

Yours sincerely,

Kenneth Macintosh
Ms Pauline McNeill
Convener
Justice 1 Committee
The Scottish Parliament

16 March 2005

Dear Pauline

Please find attached some additional comments from the Northern Ireland Human rights Commission which I hope may be of some value to the Justice 1 Committee’s deliberations on the Scottish Commissioner for Human Rights Bill. They have been prepared in response to the Committee’s first Report on the Bill and are tendered in the hope that the practical experience of the Northern Ireland Commission over the past seven years may add some value to your discussion.

Concerns identified by the Committee of potential overlap with other regulatory bodies and clarity on the particular role and function of a human rights commission(er) have been challenges to this Commission also.

We have made efforts to share infrastructure arrangements with other organizations in areas where there is no possibility of compromising our independence – such as sharing IT support with the Children’s Commissioner and the Equality Commission. The statutory review procedure after two years gave us and others, an opportunity to highlight weaknesses in our powers and functions as originally designated. The tardy response by government to our Commission’s review does not diminish the intrinsic value of such a process.

I hope these comments are helpful and am happy to discuss any aspect of our work or views at any time.

With best wishes,

Yours sincerely,

Ms Paddy Sloan
Chief Executive
Response from the Northern Ireland Human Rights Commission to the Justice 1 Committee of the Scottish Parliament on their first Report on the Scottish Human Rights Commissioner Bill

1. Over the past six years, the Northern Ireland Human Rights Commission has followed with interest the progress of the establishment of a human rights commission for Scotland. Indeed we have followed the proposals with some envy, given the obvious and regularly stated commitment by the Scottish Parliament to the protection of human rights. We have given our views formally in the past and recently by way of a magazine article, on the detail of the proposals and are presuming to do so again, uninvited but well intended. I trust that the comments will be received in the spirit in which they are submitted, that of a shared commitment to the promotion and protection of human rights and in the light of our experience in the Northern Ireland Commission.

2. It may be of interest to the Committee in its deliberations to consider some of the practical outworkings of the genuine and understandable reservations expressed in your report.

3. There is unlikely to be a more crowded field of regulatory bodies than that which exists in Northern Ireland. This Commission has potential overlap of functions with very many bodies, including those mentioned in your report, among others – the Children’s Commissioner, the Prisons Ombudsman, the Equality Commission, the Police Ombudsman, the Victims’ Commissioner, the Office of Law Reform, the Criminal Justice Inspectorate, the Legal Services Commission, not to mention an active NGO sector and committed academics. It is however, important to acknowledge the unique and critical standing of a human rights institution as a body created by and with the authority of statute but independent from government and from all other influences, NGO, political parties, faith communities, working on the basis of internationally agreed human rights standards. While in the abstract, there appears to be confusion, in practice there is none. We have Memoranda of Understanding with most of the other bodies, which can help, but in practice it is clear who takes the lead and regular communication allows mutual support where we have common cause and respect for individual positions where appropriate.
4. For example, on international treaty monitoring reports this Commission comments on government’s reports and submits shadow reports reflecting the experience of interest groups, and encourages and facilitates NGOs to submit comments. We work with the Children’s Commissioner on the UN Convention on the Rights of the Child and with the Equality Commission on CEDAW. Without this coordinating and proactive function, the situation in Northern Ireland, often governed by different legislation than the rest of the UK, was often not included in the treaty monitoring reports which are prepared in London.

5. A one-stop-shop is difficult to envisage and could cause confusion in a way that is not the case when individual agencies can promote their own core message and functions. Similarly to combine a human rights function with a pre-existing institution would severely reduce the impact of establishing a commission and is unlikely to register in the public perception as a new and potentially valuable resource. There is a particular risk of associating human rights with maladministration claims. It has been our experience, particularly among public sector bodies feeling threatened by the Human Rights Act, that their interest lies in how to avoid litigation rather in the more positive aspect of establishing a human rights culture, or instinctive way of behaving which is compliant with human rights standards. Demystifying this concept and reducing the fears of litigation will be important roles for the commissioner.

6. The Northern Ireland Commission has worked closely with several government departments in helping to do this, and with the police. The Police Service in Northern Ireland, PSNI, has had an impressive rate of progress in mainstreaming human rights into its policies and practices. The police are sometimes considered to be over-scrutinised, (regulatory bodies include the Policing Board, the Police Ombudsman and the Oversight Commissioners, among others) but have become more open and cooperative with organizations like ourselves, and having engaged human rights advisers to evaluate their procedures, they are moving towards making human rights a priority in their decision making in a way that is not replicated in police forces elsewhere in the UK.

7. We have, for example, developed a guide for teachers and educationalists on compliance; contributed to materials for the school curriculum citizenship module; advised the prison
service, following major investigations, on the regime for women in prison; investigated and secured changes to the detention of children and young people in the criminal justice system; exposed concerns about the treatment of immigration detainees; challenged the death investigation procedures in hospital – and many other similar pieces of work which have been done in cooperation with (to varying degrees) a range of public authorities.

8. There is no other body which would see this kind of work as core to their function. In some instances, due to a defect in our original governing legislation, we have had to resort to the court to gain access or cooperation, or, by taking or supporting a case, to highlight a concern. This is a vital tool in awareness raising and complements the contribution we make to human rights training in the public sector through devising materials, direct delivery and monitoring provision. It is our experience that a dedicated organization is needed to provide a consistent message which is non-threatening but has statutory authority, coming from an independent position to promote international human rights standards and ensure that they have relevance locally.

9. In Scotland, due to the particular arrangements described in the Equality Bill, there will be no obvious champion for human rights on devolved issues. This is a major gap. This Commission has identified some reservations we see in the proposed governing legislation, which we are happy to discuss in more detail should that be considered useful. However the Bill has a lot to commend it and it would be overly radical to abandon the concept at this stage. Throughout the world national institutions are being created to protect citizens and monitor state actions, particularly at a time when counter-terrorism measures are increasingly eroding civil liberties. There need be no concerns about interfering with the sovereignty of parliament, at UK or national level. The legislature retains ultimate responsibility. Social and economic rights cannot dictate budget allocation. There is however a strong need for guidance from the principles of international standards, which has been shown to work well in countries around the world where economic and social rights are incorporated into their constitution or bill of rights. There is little to fear from the Human Rights Act in this respect.

10. Increasing awareness of the rights of others and of the constant need to balance those positions leads to dialogue and increased understanding of difference. It is a slow
process, needing illustration by local examples which bring to life the application of international standards. A human rights commission can and should be able to provide those examples by supporting cases and challenging systemic abuses to help promote an accurate understanding of what is meant by human rights. No agency with other duties will have the breadth of focus to pursue such examples, to research and investigate, go to court if necessary and engage the media attention critical to making an impact on the wider public.

11. Good governance is intrinsically linked to the promotion and protection of human rights. Many of the public authorities are now coming to accept this in their work and are devising, in consultation with us to varying degrees, a human rights impact assessment tool to gauge their compliance with the Human Rights Act, not as means solely of avoiding litigation, but because they are discovering that it works. Care staff want guidance on restraint; doctors, nurses and families don’t want police questioning straight after a patient has died; prison staff don’t want to have to deal with people with mental illness; policemen don’t want to use baton rounds. This requires attention to policies and legislation however and is not dealt with by individual claims of maladministration. The Prisons Ombudsman deals with individual complaints from prisoners and we look at systemic human rights concerns relating to the regime; the Police Ombudsman deals with complaints against individual officers and we look at their policies and human rights training; the Commission has a particular and complementary role to all the various regulatory bodies and an oversight of the totality of provision relative to international human rights standards.

12. In the autumn, we will be subject to a Landscape Review by government. This essentially looks at whether or not we are needed and what contribution we make. It will be important to be able to justify our existence by example and to be confident of our credibility, locally and internationally. It provides us with an opportunity both to review our own standing and to focus our resources on the particular added value of a national institution. It may be beneficial for the Scottish Commissioner Bill to include a statutory review date, which, if given appropriate attention, could provide an opportunity to identify any shortcomings or anomalies in the legislation which become evident once the organization is operational. Such reviews do have to be undertaken with some commitment however. Despite a two year statutory requirement to review our powers and effectiveness, seven
years after establishment we still await the legislative amendments identified to secure the powers necessary to operate to full effect. The principle however of such a statutory review process is a sound one and worth considering in the Scottish Bill.

3. The extensive work undertaken to date on developing the Scottish Commissioner for Human Rights Bill and the commitment shown to the promotion and protection of human rights in Scotland should ensure the establishment of an effective organisation. The Northern Ireland Commission is happy to share any further information that may, at any stage, be deemed useful.
JUSTICE 1 COMMITTEE

Scottish Criminal Record Office

Approach to inquiry

Introduction

1. The purpose of this paper is to seek agreement to the approach and timings for the Committee inquiry into the Scottish Criminal Record Office and Scottish Fingerprint Service.

Inquiry remit

2. At its meeting on 22 March the Committee agreed the following remit for the inquiry—

To consider the efficient running of the Scottish Criminal Record Office and Scottish Fingerprint Service (this would leave terms of reference flexible enough to look at past and present practice); the implications of the McKie case; the operation of SCRO and within that the fingerprint service and public confidence in the standards of fingerprint evidence in Scotland; to scrutinise the implementation of recommendations of Her Majesty’s Inspectorate of Constabulary primary inspection report of 2000 and to ensure that their service is efficient and effective; and to scrutinise the Action Plan announced by the Minister for Justice for improvements in fingerprint and forensics services in Scotland.

Written evidence

3. It is proposed that a call for written evidence be published on the Parliament’s website and given further publicity by a press release.

4. The committee is invited to agree the draft call for written evidence contained in Annexe A with a view to publication on 30 March.

5. Although it is normally considered good practice to allow 6 or 8 weeks for responses to a written call for evidence, given that the first oral evidence session is scheduled for Wednesday 26 April, it is proposed that a 4-week period should be set to respond to the call for evidence.

6. The committee is invited to agree a 4-week period for receipt of written evidence.

Action plan for Scottish Fingerprint Service
7. In her letter of 1 March, the Minister for Justice confirmed that Deputy Chief Constable David Mulhern, the interim Chief Executive of the Scottish Police Services Authority, had been asked to bring forward by the end of March an action plan to develop the Scottish Fingerprint Service as an integrated part of the new Scottish Forensic Science Service from April 2007. The Minister stated that in preparing the action plan, DCC Mulhern would draw on the best available international scientific advice, expertise in organisational development and human resource management and the best contemporary practice in fingerprinting and forensic science.

8. In her letter of 9 March, the Minister stated that she expected the action plan to be validated by experts of international standing. The names of these experts is to be confirmed by the Scottish Executive once the action plan is published.

9. Scottish Executive officials have confirmed that the action plan will be submitted to the Minister for her consideration on 31 March. It is expected that the Minister will make it available to the Committee following Easter recess.

10. The Committee is invited to consider whether it wishes to request that the Minister provide the action plan to the Committee at an earlier date in order to allow additional time for scrutiny in advance of the first oral evidence session on 26 April.

Fact-finding visit to SCRO

11. SCRO Director, John McLean, wrote to me on 15 March inviting Committee members to visit SCRO at a convenient time to allow them to see the organisation in operation.

12. The Committee is invited to consider whether to accept the invitation to visit the SCRO and, if so, to agree a date for the visit.

Oral evidence

13. The meeting on Wednesday 26 April has been cleared for an initial oral evidence session. Given the relatively short period between now and 26 April a decision will be required on witnesses to call to give evidence at that meeting. Suggested witnesses for that meeting are—

14. When agreeing its remit, the committee agreed that oral evidence would be taken from any person or body which the committee considered relevant to fulfil the remit of the inquiry.

15. Two dates have already been identified for oral evidence – 26 April and 7 June.
16. Whether these 2 dates will be sufficient, will depend on the number of witnesses identified by the committee. However, given the relatively short period between now and 26 April, a decision will be required on the witnesses to give evidence at the first meeting.

17. I propose that the witnesses for that meeting are –

Panel 1
DCC David Mulhern, Interim Chief Executive of the Scottish Police Common Services Agenc
Mr John McLean, Head of SCRO
Mr Ewan Innes, Head of Scottish Fingerprint Service
Other SCRO staff with specialist fingerprint knowledge

Panel 2
International fingerprint experts (those validating the Action Plan prepared by DCC Mulhern)

Panel 3
ACPOS

18. The Committee will also wish to consider options which other individuals and organisations it wishes to call to give oral evidence.

19. The committee may consider it inappropriate to make a final selection of witnesses to give oral evidence until it has had the opportunity to consider any written evidence submitted. However, the committee may wish to give initial consideration to the following list of potential witnesses to give oral evidence taken from the original inquiry remit proposed by Mike Pringle.

The proposed witnesses were—

- the Minister for Justice
- HM Chief Inspector of Constabulary, Andrew Brown
- the Law Society of Scotland
- the Criminal Bar Association
- the Scottish Legal Aid Board.

20. The number of witnesses which the committee decides to call to give oral evidence will determine whether the 2 evidence-taking sessions currently scheduled will be sufficient.

21. The Committee is invited to agree the witnesses to give oral evidence on 26 April and give preliminary consideration to witnesses for other oral evidence sessions.
Timing and impact on other business

22. The Committee is the lead committee at Stage 1 of the Criminal Proceedings etc. (Reform) (Scotland) Bill. On 22 March, the Parliament unanimously agreed that Stage 1 would be completed by 15 September 2006. That timetable will require the Committee to publish the Stage 1 report by the end of June.

23. The Minister for Parliamentary Business has been made aware that the Committee may seek some flexibility in the timetable for the Criminal Proceeding Bill. However, to obtain such flexibility would require the Parliament to agree a later date for the completion of Stage 1 or a suspension of Standing Orders to allow sufficient time between publication of the report and the date of the debate.

24. If the Committee is also required to report on the Criminal Proceedings Bill by the end of June, it may require to meet twice per week.

25. The need to meet twice a week will depend on the number of evidence taking sessions and the overall timetable for the completion of this inquiry.

26. The Committee is invited to agree the number of evidence taking sessions and overall timetable for completion of the inquiry.

27. If the committee wishes to meet twice a week, it would be possible to meet in Holyrood on Tuesday afternoons, Mondays (with the exception of May 1 and 29 which are Bank Holidays) or Fridays.

28. In the event that additional meetings are required, the Committee is invited to indicate its preferred dates in May and June.

Conclusion

29. I invite members to—

- agree the call for written evidence and the date of publication;
- agree a 4-week period for submission of written evidence;
- decide whether it wishes to request that the Minister provide the action plan at an earlier date;
- agree whether it wishes to undertake a fact-finding trip to SCRO and, if so, to agree a date for the visit;
- agree the witnesses for the first oral evidence session on 26 April;
- give preliminary consideration to additional witnesses to give oral evidence.
• agree the number of evidence taking sessions and overall timetable for completion of the inquiry; and
• agree preferred dates if additional meetings are required in May and June.

Pauline McNeill MSP
Convener
The Justice 1 Committee agreed to launch an inquiry into the efficient running of the Scottish Criminal Record Office and Scottish Fingerprint Service.

Following correspondence with the Minister for Justice, the Committee agreed the following remit—

To consider the efficient running of the Scottish Criminal Record Office and Scottish Fingerprint Service (this would leave terms of reference flexible enough to look at past and present practice); the implications of the McKie case; the operation of SCRO and within that the fingerprint service and public confidence in the standards of fingerprint evidence in Scotland; to scrutinise the implementation of recommendations of Her Majesty's Inspectorate of Constabulary primary inspection report of 2000 and to ensure that their service is efficient and effective; and to scrutinise the Action Plan announced by the Minister for Justice for improvements in fingerprint and forensics services in Scotland.

The Committee would like to invite all interested parties to submit written evidence on the inquiry.

In particular, the Committee would be interesting in views on the following:

- Do you have confidence in the identification processes used by the SCRO? If not, what further changes do you think should be made to ensure future confidence in fingerprint and forensic services in Scotland?

- The recommendations of Her Majesty's Inspectorate of Constabulary primary inspection report of SCRO in 2000 have now been fully discharged. Are you confident in the way in which SCRO is now managed and organised? If not, what changes do you think should be made?

- An Action Plan to develop the Scottish Fingerprint Service as an integrated part of the new Scottish Forensic Science Service is due to be published in early April 2006. Are you content with the terms of the Action Plan? If not, how would you wish to see it revised?
DRAFT CALL FOR EVIDENCE

How to submit written evidence

Please use the specific questions as the basis for your submission. You may wish to respond to any or all of the specific questions. Evidence should be reasonably brief and typewritten (normally no more than 4 sides of A4 in total). Before submitting evidence, please read the section below on “what we will do with your evidence”.

The deadline for receipt of written submissions is XXXX. Owing to the timescale required for the processing and analysis of evidence, late submissions will only be accepted with the advance agreement of the Convener.

The Committee prefers to receive written submissions electronically. These should be sent to:

scroinquiry@scottish.parliament.uk

You may also make hard copy written submissions to:

Justice 1 Committee
Scottish Parliament
Holyrood
Edinburgh
EH99 1SP

What we will do with your evidence

This information lets you know how we will deal with any information you send us in response to this call for evidence and any subsequent correspondence we have with you.

Most people who submit evidence want it to be put in the public domain. In addition, the committees of the Scottish Parliament are committed to being open in their dealings in accordance with the Scottish Parliament’s founding principles.

Our normal practice is to publish the evidence you send to us on our website and we may also include it in the hard copy of any committee report.

However, there may be a few situations where the number of submissions we receive does not make this possible or where we receive a large number of submissions in very similar terms. In that case, we would normally publish only a list of the names of people who have submitted evidence.

In addition, there may be a few situations where we cannot publish or have to edit before publication for legal reasons.

Data Protection Act 1998
DRAFT CALL FOR EVIDENCE

The Parliament must comply with the Data Protection Act 1998. This affects what information about living people we can make public.

When we publish your evidence, we will not therefore publish your signature, your telephone number or your address. We also have to edit information which can identify another living person who has not specifically given their consent to have their information about them made public.

In these situations, committee members will have access to the full text of your evidence, even though it has not been published in full.

The Parliament will not publish defamatory statements or material. If we think your submission contains defamatory material, we will typically return it to you with an invitation to resubmit it without the defamatory material. If the evidence is returned to us and it still contains defamatory material, it cannot be considered by the committee and we will have to destroy it.

Freedom of Information (Scotland) Act 2001

The Parliament is covered by the Freedom of Information (Scotland) Act 2001. This also affects the way that we deal with your evidence.

If you wish your evidence to be treated as confidential or for your evidence to be published anonymously, please contact the Clerk to the relevant Committee, before you submit your evidence. Where your evidence contains personal or sensitive information, we will do all that we can to respect your wishes. In these circumstances, your evidence will be sent to committee members but will not be published more widely or will be published anonymously.

However, you should be aware that if we receive a request for information under the Freedom of Information (Scotland) Act, while we will try to continue to comply with your wishes, we may be legally required to release the information to the person who has made the request.

So, in the circumstances outlined above, while we can assure you that your document / name will not be circulated to the general public in the context of the relevant Committee's current work, we are unable to give you a guarantee that the document will never be released.