 JUSTICE 1 COMMITTEE

AGENDA

15th Meeting, 2006 (Session 2)

Wednesday 10 May 2006

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

1. **Criminal Proceedings etc. (Reform) (Scotland) Bill:** The Committee will take evidence at Stage 1 of the Bill in round table format from—

   Rodger Neilson JP, Chairman, District Courts Association;
   
   Graham Coe JP, Chairman of Training Committee, District Courts Association;
   
   Johan Findlay JP, Chairman of Communications Committee, District Courts Association;
   
   Andrew Lorrain-Smith JP, Past Chairman, District Courts Association;
   
   Phyllis Hands, Secretary to the District Courts Association;
   
   Nicola Brown, Chairman of Associates, District Courts Association;
   
   Kay Polson, Secretary to Training Committee, District Courts Association; and
   
   Cliff Binning, Head of Operations and Policy Unit, Scottish Court Service, Noel Rehfisch, Bill Team Leader and Richard Wilkins, Bill Team Member, Scottish Executive.

2. **Annual Report:** The Committee will consider a draft annual report for the Parliamentary year from 7 May 2005 to 6 May 2006.

3. **Criminal Proceedings etc. (Reform) (Scotland) Bill (in private):** The Committee will consider the main themes arising from the evidence sessions to date on the Criminal Proceedings etc. (Reform) (Scotland) Bill, in order to inform the drafting of its Stage 1 report.

Callum Thomson
Clerk to the Committee
Papers for the meeting—

**Agenda item 1**
Note by the Clerk and SPICe J1/S2/06/15/1
Submission from District Courts Association J1/S2/06/15/2
Submission from District Courts Association Associates Group J1/S2/06/15/3
Correspondence from Scottish Executive Justice Department J1/S2/06/15/4

**Agenda item 2**
Draft Annual Report J1/S2/06/15/5

**Documents for information—**
The following document is circulated for information:

- Letter from Deputy Minister for Justice, Family Law (Scotland) Bill
- Letter from Deputy Minister for Health and Community Care, Licensing (Scotland) Bill

**Documents not circulated—**
Copies of the following documents have been supplied to the clerk:

- Scottish Executive, Report by the Research Working Group on the Legal Services Market in Scotland; and
- Scottish Executive, Vulnerable Witnesses (Scotland) Act 2004 – Being a Witness – Booklets for Adult Witnesses.

This document is available for consultation in Room T3.60. Additional copies may also be obtainable on request from the Parliament’s Document Supply Centre.

**Forthcoming meetings—**
Wednesday 17 May, Committee Room 6;
Tuesday 23 May, Venue TBC;
Wednesday 24 May, Committee Room 4;
Tuesday 30 May, Venue TBC;
Wednesday 31 May, Committee Room 5.
Justice 1 Committee

Criminal Proceedings etc. (Reform) (Scotland) Bill

Round table evidence session, 10 May

Background

1. At its meeting on 29 March 2006, the Committee agreed to conduct its third evidence session on the Bill at Stage 1 in a ‘round table’ format.

2. This evidence session will concern evidence solely in relation to part 4 of the Bill – JP Courts and JPs. This part of the Bill can be broadly seen as independent from the rest of the Bill and has elicited a number of different views expressed in the written evidence that has been received. Using the round table format for this part of the Bill will better allow the broad range of opinion to be heard by the Committee.

Witnesses

3. The following witnesses will take part in the round table evidence session and will be seated amongst Committee members around the table to encourage discussion:

   District Courts Association
   Rodger Neilson JP, Chairman of DCA
   Graham Coe JP, Chairman of Training Committee
   Johan Findlay JP, Chairman of Communications Committee
   Andrew Lorrain-Smith JP, Past Chairman of DCA
   Phyllis Hands, Secretary to DCA
   Nicola Brown, Chairman of Associates
   Kay Polson, Secretary to Training Committee

4. In addition to these witnesses, representatives from the Scottish Executive Bill Team, including the Scottish Court Service, will also attend the session. The primary purpose of the session is to facilitate a dialogue between the DCA witnesses and the Committee, but Executive officials will be present to offer clarification on any particular issues that arise in relation to the policy intention of the Bill. The following officials will attend:

   Scottish Executive officials
   Cliff Binning, Director of Policy and Operations, Scottish Court Service
   Richard Wilkins, Bill Team
   Noel Rehfisch, Bill Team

Format and running order

5. The round table evidence session will be conducted as a public evidence session and so will be recorded by the Official Report and broadcast as normal.
There will, however, be some other differences in the way that this ‘discussion format’ will be conducted.

**Format**

6. Using a discussion format means that witnesses will be able to comment on each others’ contributions and it is intended that everyone will afforded an opportunity to speak. Although the aim is to generate discussion, all contributions should be made one-at-a-time through the Convener. Witnesses and Members should indicate to the Convener that they wish to speak. The Convener will announce the person’s name before they speak.

7. At the start of the meeting, the Convener will make a short introductory statement welcoming witnesses and outlining the format for the meeting. The Convener will invite all Members and witnesses to introduce themselves around the table.

8. The Convener will then lead the round table through the relevant parts of the Bill, as outlined at Annex A. The Convener will pose the suggested discussion topics and invite witnesses to comment.

9. As the discussion develops Members may wish to ask questions of one witness or of the whole meeting, or may simply wish to make contributions to the discussion. Members are encouraged to listen to contributions from all witnesses before seeking to speak. Executive officials may also seek to contribute to the discussion where this would be helpful.

**Layout**

10. Witnesses will be seated amongst Committee members around the committee table. This will encourage dialogue and distinguish the meeting from a traditional oral evidence session. A seating plan is attached at Annex B.

Lewis McNaughton  
Assistant Clerk to the Justice 1 Committee

Graham Ross  
Senior Research Specialist, SPICe
**Impact on role of lay judiciary**

The McInnes Committee highlighted a sharp decline in the number of cases coming before the District Courts and put forward a number of possible reasons for this: a substantial decrease in recorded crime; the introduction of a wider range of alternatives to prosecution for use by the police and the procurator fiscal; and a lack of confidence in the district courts amongst some procurators fiscal which resulted in some minor cases being sent to the sheriff courts for disposal. Concerns have been raised that proposals contained in the Bill will further decrease the workload of the District Courts. The following issues could be discussed:

- The Bill provides for an extension in the range of penalties which could be offered as alternatives to prosecution. Is there concern that increased use of such alternatives will substantially decrease the workload of the District Courts?

**Court Unification**

Whilst the proposal to unify the administration of all summary courts under the Scottish Courts Service (SCS) has been welcomed by a majority of respondents, others have expressed concerns in a number of areas. Those in favour have argued that unification will result in greater efficiency and effectiveness in the delivery of summary justice and will remove the difficulties which exist currently in what is perceived as a disjointed administrative set-up. Those against unification were concerned that although the McInnes Committee did not find a “system in crisis” and stated that “there were few voices demanding a revolutionary change”, it had nonetheless recommended unification. It was felt this could lead to disruption and a loss of community participation in the justice system. The following issues could be discussed:

- Concern has been expressed about the programme of court unification, which currently schedules Glasgow District Court for unification around 2014. What is your view on this proposed schedule?

- The Bill gives Ministers the power to decide whether a JP court is necessary within a sheriff court district and also to relocate or disestablish JP courts. In view of promoting greater efficiency, is it reasonable to require that a JP Court should be established in each sheriff district court?

- The importance of having relevant background information on an offender before deciding on an appropriate disposal has been highlighted by many organisations who have responded to the Bill. This has been seen as one of
the benefits of community involvement in the lay justice system. Will this be eroded by the provisions in the Bill on court unification and how is this balanced with the ability of JPs to impose sentences on people living in their local area?

- The McInnes Committee considered that the current system of fines collection and enforcement could be improved by centralising the system and thus making it more consistent. Do you agree that court unification will assist in achieving this aim?

- Concerns have also been raised about the potential loss of courts and/or staff should unification go ahead. Is this likely and, if so, how would this impact on the delivery of justice in the lower-tier summary courts?

**Appointment, Training and Appraisal of JPs**

Concerns have been raised by many organisations and individuals over provisions in the Bill relating to the appointment and training of JPs. Of particular concern is the intention to offer 5-year appointments to all justices under the age of 69 regardless of previous ability to perform bench duties and regardless of whether they have ever received appropriate training. The following issues could be discussed:

- It has been stated in written evidence that some JPs may not currently be fit to take up bench duties. The Bill, as introduced, would offer 5-year appointments to all current JPs. How much of a concern is this and how can confidence in the overall expertise of JPs be heightened?

- Although many of the details of the arrangements for the training and appraisal of JPs are not contained on the face of the Bill, it is stated that committees may be established to adopt or develop suitable training schemes or courses of instruction and appraisal systems. What, in your view, are the minimum training requirements for sitting JPs?
Justice 1 Committee

Criminal Proceedings etc. (Reform) (Scotland) Bill

Written submission from District Courts Association

SUMMARY

The District Courts Association (DCA) in broad terms welcomes the bill believing that it will result in an improvement to the delivery of summary justice in Scotland. The proposed legislation setting up the Justice of the Peace Courts should put in place the structure to deliver more consistent standards for training of justices of the peace and in the delivery of justice. However, it will be important that the current level of expertise and experience of those who clerk the district courts and provide legal advice to the justices in the district courts is retained within the unified structures.

While broadly welcoming the Bill, we remain concerned at the extent to which non-court disposals are being introduced. Our reasons are:

1. It is not clear how the Procurator Fiscal will take into consideration a person’s ability to pay, which the court is always required to do. In the DCA’s opinion the case has not been made for significant increases in the levels of fiscal fines or the introduction of fiscal compensation orders or work orders.

2. The public will want to be assured that regular offenders are dealt with in court.

3. There is the possibility that if this leads to a reduction in business before the JP court then pressure may be exerted to close some courts making justice less accessible to people.

RESPONSE IN DETAIL

PART 1: BAIL

Section 1. Determination of questions of bail.
The DCA welcomes the proposed changes, which make it clear that, in determining the question of bail, the court must consider whether the public interest could be secured by the imposition of bail conditions rather than detention. Knowledge of an accused person’s previous convictions, which would show whether he or she had previously breached bail, is essential in weighing up whether there is a “substantial” risk of an adverse outcome.

Section 2. Ball and bail conditions.
The DCA welcomes the addition to standard bail conditions whereby the requirement is that the accused should not cause alarm or distress to witnesses.
Section 3. Breach of bail conditions.
The DCA maintains its position, as previously submitted to the Sentencing Commission for Scotland, that committing an offence while on bail should lead to a separate charge rather than an aggravation of the original offence. This would better underline the gravity of committing an offence while on bail.

Section 4. Bail review and appeal.
The DCA welcomes clarification of the evidence which will be required when an individual seeks a review of the decision to refuse bail, or of the bail conditions imposed. The DCA considers it to be a significant improvement that, in future, the court which reviews the original decision will only be able to grant bail, or alter an existing bail order, where there is material change in the person’s circumstances, or the person puts before the court material information which was not available to the court which made the original order.

PART 2: PROCEEDINGS

Section 6. Liberation on Undertaking.
The DCA agrees that the proposed changes will allow greater flexibility and speed up proceedings.

Section 7. Electronic proceedings.
The DCA welcomes the proposals of using modern technology to produce faster communication within the legal system.

Section 8. Manner of citation.
The DCA believes the above proposals create greater flexibility in the manner of citation. Notes 63 and 65 outline that there is an element of protection for an accused and witnesses in using electronic methods of citation. However, it should be borne in mind that a high proportion of accused persons and witnesses may not have access to modern technology and for that reason the existing methods should be retained pro tem.

Section 9. Procedure at first calling.
In the case of a clear “Not Guilty” plea this is an administrative matter of setting the date of the Trial and the Intermediate Diet which is presently arranged by the Clerk and fiscal and we have no objection to this not requiring a judge.

Section 10. Intimation of diets etc.
In the interests of justice the DCA believes that everyone is entitled to a fair trial. However, we are aware of the time wasted by accused persons not appearing at the Intermediate Diet and more seriously on the day of the Trial. The measures suggested may be considered by some as extreme but we agree action must be taken to deal with accused persons who do not respect the court.
The DCA welcomes the above proposals which will provide the Court with much needed information on an accused person’s character.

Section 13. Complaints triable together.
The DCA endorses the new proposals which should speed up matters particularly when dealing with persistent offenders.

The DCA is opposed to a trial going ahead in the absence of the accused. It may be appropriate for proceedings of an uncontroversial nature to take place in the absence of an accused to expedite the business of the court. We believe that it would not be in the interests of justice for trials in absence to take place except in the most exceptional cases where the accused is being deliberately obstructive or disruptive in the court.

Section 15. Failure of accused to appear.
Failure to appear at the district court is a regular occurrence at most court sittings. We therefore feel that an increased penalty for failure to attend would be justified.

Section 16. Obstructive Witnesses.
These measures appear to have been effective in solemn proceedings and the DCA endorses the proposals for summary justice.

Section 17. Prosecution of Companies etc.
Prosecution of companies makes up only a small part of district court business. However cases of this nature arise from time to time and the amendments to section 143 of the 1995 Act are duly noted by the DCA.

Section 18. Intermediate Diets.
The DCA welcomes these proposals which will allow greater flexibility.

Section 19. Notice of Defences.
The DCA finds the additions to the 1995 Act regarding a special defence to be noteworthy.

Section 21. Service of documents through solicitor etc.
The DCA endorses the above new requirements which should increase efficiency in preparation for trial.

Section 22. Transfer of proceedings.
While the DCA would like to think the reasoning behind these proposals is to tighten up the system, there is a concern that this would further reduce the business that comes before the JP court, as the provision does not appear to allow for business to be transferred from the Sheriff to the JP court. Concern is expressed that where particular matters are being addressed in the JP court that these will be fully considered by the judge in any transferred case. It
would also be helpful if provision could be made for a ‘feedback’ to the original court or judge.

**Section 25. Summary appeal time limit.**
The DCA welcome the proposed changes and the involvement of the Sheriff Principal.

**Section 31. Recovery of documents.**
The DCA welcomes the introduction of power to the sheriff court to grant orders for the recovery of documents and for the production of documents, particularly that such orders can be in respect of the JP courts in that sheriff court district. Matters being dealt with at local level should speed up proceedings.

**PART 3: PENALTIES**

**Section 36. JP court: power to increase penalties**
While sections 33-35 and 37 increase the sentencing powers of sheriffs to 12 months maximum imprisonment and the prescribed sum for sheriffs from £5,000 to £10,000, section 36 does no more than give Scottish Ministers powers to amend by order the maximum penalties in the JP court, which is restricted to six months imprisonment and a fine of £5,000.

The DCA is concerned that the introduction of the alternatives to prosecution detailed in sections 39 and 40 will give the Procurator Fiscal powers that exceed those of the Justice. The DCA would welcome the extension of community based disposals in the JP Court thereby enabling them to deal with the cases before them in the appropriate manner before the introduction of work orders being offered by the Fiscal as an alternative to prosecution.

**Sections 39 and 40. Fixed penalties, compensation orders and work orders**
The DCA is not convinced that an extension of Fiscal Fines and the introduction of Fiscal Compensation Orders are necessary or appropriate. Justice must be seen to be done, and there is a lack of transparency about the process, which allows too much power to the prosecutor, who only has a one-sided police report of the incident. We consider that such a system would fail the victims of crime, who may wish to see the perpetrator dealt with in a public forum.

The DCA also wishes to oppose the administrative arrangements, whereby silence means guilt as the failure to respond leads to the offer being deemed to be accepted. Such offers will often be made to the most vulnerable in society, who often live a transient life and who may never receive the documentation. Although there is a provision for recall, it must be no later than 7 days after the date the expiry of the period allowed for payment and claims that he did not receive the offer. We wonder how the recipient would know to make a request for recall if he never received the offer in the first place. Power is then to be given to the clerk of court to uphold the fixed penalty or compensation offer or recall it. The court can then review the clerk’s decision,
but since the clerk may well be sitting as a legal adviser in that court. This would surely be contrary to natural justice.

We would propose the continuation of the current arrangements whereby a failure to respond to a fiscal fine or compensation order results in prosecution. We consider that the disposal by way of a community work order should require mandatory judicial participation.

It is a matter of some concern that the fiscal will have powers beyond those that are available to the judiciary in the JP court, particularly as they will not be trained in the art of judicial behaviour and the consideration of all people without fear, favour, ill-will or affection.

It is also noted that some of the offers envisaged would encroach upon the current jurisdiction of the sheriff and cases may eventually fall to be prosecuted there.

Sections 39 and 40 see a continuing and increasing emphasis on alternatives to prosecution, in effect the decriminalisation of a range of offences which we have always argued are dealt with and disposed of more appropriately and effectively in the District Court. The explanatory notes with the Bill (para. 236) make clear that such disposals should not be regarded as criminal convictions in any circumstances. We have a concern that these proposals might lead to an unhelpful blurring of the distinction between judge and prosecutor.

When Fiscal Fines were first introduced the explanatory notes indicated that this would enable business from the lower end of the sheriff’s summary powers to be brought into the district court thereby freeing Sheriffs to deal with more serious matters. The same argument is being used on this occasion. The DCA feels strongly that, with the increase in the level of Fiscal Fines, this process should now be implemented.

**Section 43. Fine Enforcement**

Many District Courts deal with fine enforcement efficiently and effectively. The DCA intimated its opposition to a separate fine enforcement agency in the earlier consultation and reinforces that view today. To separate the imposition of a penalty from its collection or enforcement diminishes the power of the court.

The intention to provide powers to such an enforcement agency that are not within the powers of the court and do not appear to be available to them in the future is a matter of great concern. The consideration of the imposition of such penalties without independent judicial intervention is contrary to the principles of natural justice.
PART 4: JP COURTS AND JPs

Section 46. Establishing JP courts.
The DCA welcomes the establishment of JP courts. Where the minister seeks to disestablish, relocate or vary the requirement to establish at least one JP court per sheriff court district it should be a requirement to consider the inconvenience to court users of any extra travel that may be involved. If courts are to be closed, ministers must consider the effect such a move might have on witnesses or on victims.

Section 49. Area and territorial jurisdiction of JP courts

Section 49 (5) provides that a JP can sign anywhere in Scotland. JPs will require guidance on what they can sign and where.

Section 50. Constitution and powers etc. of JP courts
Subsection (2) allows ministers to amend 6(2) of the 1995 act to provide that one JP will constitute a JP court only. The DCA wants it recognised that there are many areas where the multiple bench works efficiently and effectively. It is also seen as an excellent medium for training new Justices in court craft. The DCA recommends that a Sheriff Principal, before making any alteration to the operation of JP Courts in his Sheriffdom, will consult with the Local Criminal Justice Committees etc and take into account the historical and local practice before making any decisions in respect thereof.

Subsections (3, 4 and 5) deal with the Clerk of the court. Historically the clerk, or legal assessor, has contributed greatly to the performance of the district court. This contribution goes further than the supply of appropriate legal or procedural advice to the bench. The DCA sees it as important that the clerks’ job description will allow them to make a contribution to JP training as well as the efficient administration of the court. There should be an opportunity, even if only informally, to capture their comments on appraisal issues.

Section 53. Transitional arrangements for proceedings.
It is to be hoped that clerks not transferring to the SCS will be consulted in the initial stages to help create a smooth transition.

Section 54. Appointment of JPs
The DCA is in favour of a single age at which all members of the judiciary should retire.

Section 56. Training and Appraisal
The DCA welcomes the proposals for training and appraisal. The fact that the bill is dealing with the training and appraisal of volunteers should not obviate the need for “Best Practice” in terms of agreement of appraisal outcomes and an appeal structure.

Consideration must also be given to the training and appraising of the legal advisors in court and those other members of the judiciary currently excluded from such a scheme.
The DCA also considers that a scheme for the appraisal of appraisers to be integral in the whole process.

The investment of Scottish Ministers in this system is of paramount importance and it would therefore seem more appropriate that the bill should make it incumbent upon them to train justices, if not all members of the judiciary to the required standard as assessed against an agreed set of competences.

**Section 57. Reappointment of JPs**
The DCA is opposed to the introduction of a five-year appointment for Justices. This is seen as a retrograde step in the security of tenure for a Justice. Whilst we appreciate that there must be a robust system in place for the removal of justices that do not meet the required standards, both in competence based terms and in their personal life, this is addressed by the introduction of the tribunal to remove such justices. The removal of such justices should be like the justice they dispense – swift and effective. It may be that the introduction of a five-year term would encourage the delay of such removal.

Some would be Justices may feel that the disruption to their lives for what may only be a short while is not worth the effort and refrain from taking up or applying for such an appointment.

**Section 58. Removal of JPs**
The DCA recommend that an appeals procedure should be introduced for justices who have been removed and wish to contest that decision.

**Section 63. Signing functions**
The DCA agrees that there should be someone locally to whom a person can go to have personal documents authenticated. However we wonder why local authority members should be preferred to JPs who are over the age of 70 for signing duties. The training of JPs for signing duties will have been completed as part of their general training and it might be argued that their judicial experience gives them a more impartial view and enables them to take a more pragmatic attitude to requests that are unreasonable. The DCA recommends that there should be a single age at which all public signatories retire from duty. This would avoid the current confusion of who is eligible to sign what and enable the introduction of training for such duties where it is felt it is appropriate.

Prepared by and on behalf of the DCA Membership.

Rodger Neilson, Chairman.
Phyllis Hands, Secretary.
7 April 2006
Justice 1 Committee

Criminal Proceedings etc. (Reform) (Scotland) Bill

Written submission from District Court Association Associates Group

The group broadly welcome the ethos of the draft legislation and its giving effect to the principles expressed by the McInnes Report in reforming summary procedure to ensure effective and expeditious case management. Legal advisers are committed to providing Justices with the training, help and advice necessary to ensure effective implementation of the provisions. Given the numerous sections the group have focussed on those most worthy of comment and expression.

Part 2

Section 6
The group agree the need for reform in connection with police dealing with accused persons in custody and acknowledges the greater use of liberation on undertaking to appear as an appropriate use of powers and resources. One area of concern is that, in practice, communication and liaison will be required between the police forces and courts to ensure court resources are available to meet demand. Whilst this issue does not require legislative provision it is worthy of comment to ensure local agreements are effected at the earliest opportunity.

Sections 7 and 8
Any moves towards electronic transmission of data is eminently sensible and the provisions set out an adequate framework for this. However, the experience of the group gained through ISCJIS compliance, has raised practical concerns as to the viability of some of the proposals. For instance, it is envisaged citation is deemed to have been effected where electronic transmission has been made by the Procurator Fiscal to an address. In practice communications by e-mail would require to have a receipting system to allow the court to be satisfied the transmission has been received. The capability of COP II and DCAS would require to be investigated to ensure functionality. The group feels greater clarification and discussion is required. In addition proposed sections 5B and 7A appear to be contradictory in terms and amendment is required.

Section 12
This section is wholeheartedly welcomed. In practice either the Procurator Fiscal or court software would need to be updated to allow this provision to be used to its greatest effect.

Section 14
This provision is likely to be very effective and addresses the concerns of victims in respect of unnecessary delay in reaching conclusion in court cases. There are undoubtedly huge legal implications in utilising the provision, particularly in the face of legal requirements such as identification.
Nevertheless, advisers are willing to provide advice, training and guidance in this complicated area.

**Section 19**
This section is viewed as necessary to keep pace with disclosure requirements as detailed in recent case law developments (Holland, Sinclair) and represents an equality of arms between Crown and Defence.

**Sections 21, 22 and 32**
These are all effective provisions to ensure expeditious and practical solutions to everyday problems.

**PART 3**

**Section 38**
It is noted sentencing powers are to be enhanced to allow compensation to be awarded in cases involving alarm or distress to the victim (and thus contradicting case law to the contrary). Guidance will be given to Justices by advisers on this issue which is likely to be welcomed by all criminal justice agencies.

**Section 39**
This section has wide-reaching implications for the criminal justice system as a whole and has caused greatest concern to the group. Our prosecution process has recently taken great strides to ensure transparency, in particular, to witnesses and victims and funding has been made available to ensure communication is effected by the prosecution authorities to victims. The ethos of increasing alternatives to prosecution flies in the face of this and results in no accountability to the victim. Our system will be the poorer as a result and the increased use of these offers offends principles of natural justice.

In addition, the most vulnerable will simply not understand the principle of "opting in" resulting in inequality. It is the practical experience of district courts which process a plethora of fixed penalties that, irrespective of the level of information and detail provided in the offer, the recipients frequently fail to comprehend the most basic of information. Statistics provided to the McInnes Committee reflect this therefore it is startling that this evidence is being ignored.

Practical difficulties will result from the failure to provide for a proper receipting system for delivery of the offers. The well-publicised vagaries of the postal service dictate only recorded delivery or certified personal service of the offer will suffice and this would place an additional burden on the concept. Indeed it would render the unrealistic timescales detailed for challenge not sensible. One possible solution would be to change the provisions to amend "deemed acceptance" to positive acceptance although this would require the use of the service methods above detailed. Another would be to look at the West Lothian Criminal Justice Board's increased use of liberation on undertaking - when offenders attend at court they are either served with a complaint of a fixed penalty.
Furthermore, the provisions for recall of the offers fail to recognise the legal adviser in JP courts perform a different role to Sheriff Clerks. In particular it is likely advisers will require to assess a request for recall and, if rejected, provide advice to a Justice on the same offer at a later stage in proceedings.

Obviously this represents a fundamental breach of Human Rights legislation. Finally the extension of time-bar provisions on this issue contradicts the ethos of the McInnes Committee in ensuring summary proceedings are summary in nature and are not subject to delay.

Section 43
The experience of Glasgow District Court who participated in a similar scheme to recover fine income was that any such scheme cannot succeed. Failure in communication between the agency and the court and poor levels of success in fine recovery were but two of the problems the scheme failed to overcome. Nothing in the provisions address these issues and the way forward is to set up a pilot scheme to evaluate the viability of this measure. In addition fixed penalties are now offered by a variety of agencies and have a variety of consequences in the event of non-payment. The pilot project running in the Tayside police area allows police officers to issue fixed penalty notices for anti-social offences as detailed in Part 11 of the 2004 legislation. The consequences of non-payment are the same as for non-payment of a court fine (i.e. imprisonment). Confusion and disparity will result if this provision is implemented and which only serve to increase bureaucracy.

PART 4

These proposals are welcomed as a consolidation and strengthening of the efforts of dedicated Clerks of Court over the last 25 years. The retention of the Justice of the Peace Court is a recognition of the value the unique relationship between lay justice and legally qualified advisers brings to the criminal justice system. The advisers relish the challenge in assisting Justices to develop and perform their role fully in light of the provisions.

Finally, it is noted the combined effect of sections 50(1) and 68 is that Justices' powers to deal with common law offence will be restricted to the offence of theft only. Clearly this is an oversight and must be addressed by amendment.

District Court Association Associates Group
April 2006
Dear Callum

CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) BILL
FOLLOW UP TO OFFICIAL EVIDENCE – 19 APRIL

Thank you for giving us the opportunity to submit oral evidence to the Justice 1 Committee on 19 April in respect of this Bill. A number of issues were raised during the session on which we undertook to follow up in writing. This letter provides further information on those issues which I trust will be of assistance as the Committee continue to take evidence on the Bill.

For ease of reference I attach three annexes, dealing with the issues raised during the session:

- **Annex 1** responds to the Committee’s desire to see the Bill’s proposals in the context of the overall work underway on summary justice reform, so that they can satisfy themselves that a speedier and more efficient system will be achieved. We also promised to consider whether there should be further legislative provision relating to the management of summary criminal business in addition to that currently enacted and proposed in the Bill (with particular reference to the intermediate diet) and the annex picks up this issue also;

- **Annex 2** responds to a number of points made by the Committee in other areas of the Bill. It covers:
  - The objectives of the Executive’s Bail and Remand provisions, in the light of the Committee’s concerns about the reference in the Policy Memorandum to ‘codification’ and about the use of an non-exhaustive list of considerations relevant to the grant of bail;
  - Further detail on the provisions in the Bill relating to alternatives to prosecution – particularly the 'work order' and the operation of disclosure of accepted fiscal fines;
  - Concerns raised by Committee members about the operation of the proposed power for a Fines Enforcement Officer to seize a vehicle; and
  - Some additional points in relation to lay justice reform.
Annex 3 is a draft of the regulations that Ministers intend to make under the powers conferred by sections 54 and 56 of the Bill to make provision for the appointment, training and appraisal of JPs, with a covering explanation of how we envisage these regulations will work in practice. I note that a number of those submitting written evidence express a desire for more information on training and appraisal issues in particular. I hope this additional level of detail is helpful to the Committee in preparing for the ‘round table’ evidence session on lay justice on 10 May.

I hope this response is helpful and would be happy to provide any further information that the Committee may require

Yours sincerely

WILMA DICKSON
Head of Criminal Procedure Division
ANNEX 1 - IMPROVING SPEED AND EFFECTIVENESS IN PROCESSING CASES THROUGH THE SUMMARY JUSTICE SYSTEM

1. Committee members sought clarification as to how the reforms will lead to summary cases being dealt with more quickly and effectively in future. Ministers are of the view that this will be achieved by taking forward work on two fronts in parallel – legislative change to improve procedures and create capacity within the system, coupled with a programme of joint work between the agencies whose task it is to make the system operate effectively, ensuring that those agencies are prepared for changes in the law and that those changes will deliver practical results.

Legislative change to improve procedures and create capacity within the system

2. In its report the McInnes Committee identified a number of the detailed procedural changes required in the summary justice system by considering the trajectory of a summary criminal case and making recommendations for change aimed at eliminating waste and promoting good practice at every stage of the system. The majority of those recommendations have now been adopted as measures in the Bill. Each of these will, at its own point in the process, provide for more effective case handling and promote the speedy disposal of summary business. Without repeating those measures in detail examples include:

- provision allowing written pleas of not guilty to be dealt with administratively, freeing up judicial time for other cases;
- provision allowing outstanding cases to be combined against a single accused in a wider range of circumstances, reducing the number of outstanding cases in respect of a single accused; and
- bringing the procedure in relation to the agreement of uncontroversial evidence in summary cases into line with the position in solemn cases, ensuring that only those who genuinely need to give evidence in a case are cited to attend the trial.

3. Changes such as these will, cumulatively, play their part in ensuring that there is no incentive for cases to “churn” in the system and will also free up court time, allowing other business to be heard as quickly as possible. More fundamentally the proposal to increase the jurisdiction of the Sheriff sitting summarily will allow a number of appropriate cases to be managed through a less intensive process in future – freeing up further capacity in the system to deal quickly with cases. The use by the Crown of a wider range and level of alternatives to prosecution in future will also create capacity in the summary court system – ensuring that those cases which genuinely require prosecution are processed as quickly as possible and frees up legal time to allow fiscals to communicate with defence agents about cases.

4. Taken individually, therefore, a number of the Bill’s provisions will help to promote increased speed and effectiveness in the summary justice system.

5. The Committee expressed a desire for more detailed description of summary justice case handling, particularly in relation to the use of the intermediate diet. We are of the view that where an intermediate diet has been deemed necessary it should:

- Be held at the right time – so that the defence can come to it fully prepared but there is sufficient time before the trial to complete any further work without rescheduling the trial diet; and
• Like the preliminary hearing in the High Court, and the first diet in the sheriff court, be used to best effect by all parties, including the court, to ensure that parties are prepared for the trial diet.

6. Much of the work underway between stakeholders (see below) is focused on ensuring that the intermediate diet achieves the purposes identified for it in section 148 of the Criminal Procedure(Scotland) Act 1995 – establishing whether the case is ready to go to trial, clarifying the plea and ascertaining whether evidence has been agreed as far as possible. As with the High Court reform, buy-in from all the stakeholders, particularly from judges and the legal profession, will be critical to ensuring that there is real change on the ground.

The Intermediate Diet

7. Section 148 of the 1995 Act already contains detailed provisions in relation to intermediate diets:

• the diet is for the purpose of ascertaining whether the case is likely to proceed to trial on the appointed date
• the court is to ascertain the state of preparation of the parties
• the court should confirm whether the accused intends to adhere to the plea of not guilty (in practice the court generally asks the accused to tender a plea, and the Act provides that a plea of guilty can be tendered)
• the court should explore the extent to which the parties have complied with their duty to identify and agree non-contentious evidence
• the court can ask any question of the parties for these purposes
• it can also operate as an interim diet for the purposes of prosecution of sexual offences

8. In addition, the Bill makes a number of changes which would further reinforce the intermediate diet:

• amendment to provide that the court “may”, rather than “shall”, adjourn a trial diet where it considers that the case is unlikely to proceed (s18). This is in line with the recommendation of the McInnes Report (para 20.14). The Committee was of the view that this change was consistent with the more proactive role it envisaged for the judiciary in management of intermediate diets;

• certain special and other defences can only be relied on if these are intimated by the intermediate diet (s19). This amends the position currently to be found in ss149 and 149A of the 1995 Act. Particulars of the defence, together with details of witnesses to be called, require to be given. This should help to ensure that defence solicitors are fully and properly instructed by the intermediate diet, and reflects also the proposed increase in summary sentencing power in the Bill;

• provision in connection with uncontroversial evidence (s20). This brings the position in summary cases into line with that in solemn cases, as amended by the ‘Bonomy’
legislation. Section 258 of the Act is amended to provide, in short, that a party can serve a notice of uncontroversial evidence on the other parties; that the time period for service of such a notice, and challenge of a notice, is to be calculated by reference to the intermediate diet; and that the court can disregard a challenge to a notice if it regards it as unjustified. In most cases the intermediate diet would provide the ideal opportunity to deal with these matters, having regard to the time limits involved;

- a duty on solicitors engaged by accused persons for the purposes of their defence at a trial to notify the court and the prosecutor of the fact that they have been engaged (s21). The purpose of this duty is to allow for the service of documents on the solicitor, which should help to ensure that the case is in a better state of preparation by the intermediate diet. It will also assist the Crown in discharging its obligations in relation to disclosure of evidence, which in turn should ensure better defence preparation by the intermediate diet.

It can therefore be seen that many of the provisions which will be introduced by the Bill form part of a framework for greater and more proactive judicial management of intermediate diets.

9. It may also be worth noting that as the Vulnerable Witnesses (Scotland) Act 2004 is rolled out to summary proceedings, provisions will come into effect making clear that the intermediate diet is to be used to ascertain whether special measures for vulnerable witnesses are required.

10. When considering further amendment, we are keen to avoid creating unnecessary bureaucracy. Summary cases can range from the simple breach of the peace to the complex fraud.

11. The breach of the peace case may involve two eye-witnesses, the evidence of both of whom may be disputed by the accused. At the intermediate diet in such a case, the court will wish to confirm if the accused maintains his plea of not guilty. If he does, there will be no scope for the agreement of evidence and the court will wish simply to ensure that both parties are prepared for trial and that the witnesses are cited and available to attend.

12. In the complex fraud case, however, there may be tens of witnesses, including some expert witnesses. The evidence of some may be formal and uncontested, while that of others will be contentious. There may be many productions and certificated evidence procedures may be invoked. There may be forensic evidence. At the intermediate diet, the court will wish to explore, in some detail, issues such as the extent to which evidence may be agreed and witnesses excused attendance and also the likely duration of the trial.

13. The reforms being introduced are intended to recognise that a “one size fits all” solution might not apply to all summary cases.

14. We will, however, consider further with Ministers and the judiciary the scope to include more detail about the conduct of the intermediate diet on the face of the Bill, or through Act of Adjournal. One option might be to introduce through Act of Adjournal a form for the court to complete to confirm that the various steps identified for the hearing have been completed. This would also serve to focus on the role of the judge in successful management of intermediate diets. And it could pick up certain points which represent current good practice but are not specified on the face of the 1995 Act, such as confirmation that the accused is aware of the terms of section 196 (which provides that, when passing sentence, the court must take account of the stage at which the offender indicated an
intention to plead guilty). The McInnes report recommended that this latter point be addressed at an intermediate diet, but made no recommendation in relation to formal legislative change.

15. In terms of amendments to the Bill, legislation for both preliminary hearings and first diets requires parties to confirm that they have identified the witnesses they regard as essential for trial. This could be extended to summary proceedings.

16. The Committee will appreciate that this area will require further consideration with other stakeholders, including the judiciary, and that we cannot give them an immediate reply on how we intend to proceed. We can, however, undertake to write to the Committee in advance of Stage 2 to let them know whether we intend to make further provision in legislation or through Act of Adjournal in relation to the intermediate diet.

Joint work to ensure that change is delivered on the ground

17. With our partners in the justice system, we are working to ensure that the Bill will deliver the changes sought on the ground. This work is informed by some of the lessons learned from the local system redesign work in West Lothian and Grampian, and builds on the experience which criminal justice agencies have acquired in delivering specialist courts such as the Youth Court and the Drug Court. It is being carried out under the auspices of the National Criminal Justice Board.

The National Criminal Justice Board

The Board was set up in November 2003 on the recommendation of the report on “Proposals for the Integration of the Aims, Objectives and Targets in the Scottish Criminal Justice System” by the then Crown Agent, Andrew Normand. It exists to oversee at a strategic level the operation and performance of the criminal justice system and to ensure co-ordinated and consistent planning. The Board is chaired by the Head of the Justice Department at the Scottish Executive and consists of the chief officers of Scotland’s criminal justice agencies, representatives from ADSW, ACPOS SCRA and the District Courts Association, the Sheriffs Principal and senior officials from the Justice Department.

The Board’s strategy for the criminal justice system is based around four goals:

- The public have confidence that the criminal justice system is accessible, effective and serves all communities fairly;
- Victims and witnesses receive a consistent, high standard of service from all criminal justice agencies;
- Continuous improvement is delivered by using more efficient and effective processes; and
- To contribute to the reduction of re-offending by efficient case handling and robust enforcement of appropriate disposals.

18. The proposed changes to the summary justice system which are contained within the Bill provide the opportunity to look at the processes and practices of all partners in the criminal justice system, and if necessary to change them to achieve the maximum benefits from the proposals. In addition the recent cases of Holland and Sinclair, which demand full disclosure by the Crown, have a major impact on how the system works.
19. As the Committee will know, summary justice covers the vast majority of cases. In 2004 – 2005, 795 cases were determined in the High Court, 3874 cases in Sheriff Solemn courts, and over 139,000 cases in the summary courts. In considering summary case handling our work seeks to balance the importance of a more streamlined procedure with the need to retain some flexibility. Not every case requires an intermediate diet, for example, and it is important for courts to have discretion to deal only with issues relevant to the particular case. As discussed at the Committee, different sheriffdoms and local courts face different challenges, and it is important to leave scope for local protocols in relation to case handling. Local criminal justice boards (see box for details) are working across Scotland to improve joint local case handling; the work to which the Committee referred in Grampian and West Lothian reflects local initiative and we want to leave scope for that initiative as we move forward.

| Local Criminal Justice Boards | take a joint approach to promote a more efficient and effective criminal justice system. There are eleven criminal justice boards across Scotland: Argyll & Clyde, Ayrshire, Central, Dumfries & Galloway, Fife, Glasgow, Grampian, Highlands & Islands, Lanarkshire, Lothian & Borders and Tayside. The core membership consists of the Sheriff Principal (as chair), the Area Procurator Fiscal, the Court Service Area Director and the Chief Constable or Assistant Chief Constable from the local police force. Some local boards have sought to expand their membership to include, for example, Directors of Social Work. The boards meet 3 or 4 times per year and focus on continuous improvement to court and criminal justice processes. |

20. For example, we will work towards developing recognised procedures formalising the opportunity for communication between procurators fiscal and the defence before the intermediate diet in larger jurisdictions – this already happens in many areas and we will seek to build on existing good practice. No such change may be required in smaller jurisdictions, where lines of communication can be easier to maintain.

21. We are, however, in no doubt that the summary justice system must operate on the basis of a substantial common core of good practice committing partners to more effective ways of joint working, and this is what those partners are all working together to create.

22. To deliver this work, the National Criminal Justice Board has set up a System Model Project Board. The group is chaired by the Secretary to the National Board and contains representation from ACPOS, COPFS, Scottish Court Service, SLAB, the District Courts Association, the Association of Directors of Social Work and officials from the Justice Department. The remit of the System Model Project is to develop an over-arching model of how the summary justice system will operate in practice and allow agencies to develop their own task instructions on that basis. Its basic aims are to:

- Reduce “wasted” court hearings;
- Increase pleas at first calling;
- Provide a more meaningful intermediate diet;
- Continue to provide victims and witnesses with a high standard of service; and
- Introduce more efficient and effective processes.

23. The programme of work is being developed in three distinct workstreams. These are:
• ACPOS/COPFS workstream – broadly speaking dealing with the cases which are reported to the procurator fiscal, how decisions are made, how cases are commenced and disclosure of evidence;
• Courts workstream – dealing mainly with issues of court programming. The Sheriffs Principal and Sheriffs Association have been invited to contribute; and
• Legal Aid workstream – looking at whether changes to the legal aid regulations can support the system.

24. It is expected that recommendations as to the basic model will be completed by the end of June. This timetable was designed to enable us to share this work in progress with the Committee in advance of Stage 2 of the Bill.

25. The starting point of the work of the System Model Project Board is to look at how cases are initiated. The Summary Justice Review Committee identified that there is currently a delay between the commission of an offence by an accused and the first calling of the case in court because most cases start by citation of the accused to court. An alternative means to start a case is by an undertaking, where the police release the accused from the police station to attend at court on a specified date. Undertakings are currently used to “fast-track” certain types of case, often drink drive cases. As we discussed with the Committee, we are considering ways in which we can make more and better use of undertakings to appear in order to reduce the time between the commission of the offence and first calling of the case. This work also involves reviewing the capacity of the police, the courts and the Crown to deal with a system which is ‘front-loaded’ in this way; as the Committee noted, there is no point in simply shifting delay from the pre-court to the court stage. So this is part of a wider review of the capacity of the system as a whole.

26. The expected outcomes of this stream of work will be clarity about the types of case which are suitable for the use of undertakings and agreed timescales for the handling of such cases - in particular, for police reporting of undertakings to the Procurator Fiscal, and for Procurator Fiscal decision making on cases reported.

27. In order that the best possible decisions can be taken at this stage work is going on between ACPOS and COPFS in the context of the System Model Project Board to find ways of making best use of the police reporting process. This work will include looking at ways to include the dates when civilian witnesses are available to give evidence. This will be vital when trials are being fixed as there will be more certainty that the trial can go ahead and will not have to be postponed due to the fact that witnesses cannot attend.

28. Work is also under way on the best use of the intermediate diet. Customarily the intermediate diet is held approximately two weeks before the trial. Often if a problem which may affect whether the trial goes ahead is discovered, there is insufficient time between the intermediate diet and the trial to get things back on track. Consequently the trial cannot go ahead, victims and witnesses are inconvenienced, and the trial is delayed. Consideration is being given to what time period between intermediate and trial diets might best allow issues of this nature to be addressed and allow sufficient time for most problems to be cleared up, so there will be greater certainty that the trials will go ahead on the date fixed. This will help to minimise the churn of cases and increase the speed of the criminal justice system.

29. As we emphasised at the Committee session, we recognise that for the intermediate diet to work most effectively the defence needs to be fully aware of the case against their client. The Crown
is working on the premise that disclosure to the defence should ordinarily take place a minimum of 28 days prior to the intermediate diet. This would give the defence solicitor four weeks to consider the full Crown case with his or her client. As such, solicitors should be in a position where they are able to state definitively whether their client is pleading guilty or not guilty at the intermediate diet, as they will have had one month to consider the Crown case with their client, and all practitioners and the judiciary will be aware of this fact. Our goal is reduced “churn” of cases at intermediate diets, and an increase in pleas of guilty prior to the trial diet, thus reducing the average time it takes to dispose of a case, and more importantly resulting in less inconvenience to victims and witnesses.

30. It is crucial that intermediate diets are treated with the importance that they deserve. They present an opportunity for the accused to plead guilty with minimum inconvenience to victims and witnesses. By doing so it is likely that they will attract a sentence discount in terms of section 196 of the 1995 Act.

31. We are working closely with the Scottish Legal Aid Board to develop a package of proposed changes to summary criminal legal aid regulations to complement the system model. These changes will take into account the significant changes already made to the summary criminal system such as sentence discounting and early disclosure by the Crown. They will also encourage early preparedness and early disposal of cases where appropriate. This is likely to mean changes to many aspects of the current legal aid system including the operation of the duty solicitor scheme (currently to be piloted in work being carried out in Grampian and West Lothian) and the structure of the feeing arrangements to ensure that early preparation and progress is appropriately rewarded. We propose to consult with the Law Society of Scotland on these proposals as they are developed.

32. As we have mentioned to the Finance and Justice Committees, a parallel priority is to establish better ‘real time’ management information about the system, so that at national and local level blockages can be addressed quickly and decision makers at both levels have the information they need to make choices which ensure that the criminal justice system operates efficiently and effectively. Work is underway on a management information scorecard to meet this need. It is anticipated that the live version of phase one of the scorecard will be available by November 2006.

Further information to the Committee

33. We hope this is helpful in setting out more fully the work underway to ensure that summary justice reform delivers more efficient, effective justice in relation to the less serious offences dealt with through alternatives to prosecution and in Scotland’s summary courts.

34. As noted above, we will ensure that before Stage 2 of the Bill we share with the Committee the emerging results of the work on the system model. We envisage that that will be helpful to the Committee in its consideration of any further provision which it considers to be required on the face of the Bill.

35. If the Committee would like a more formal oral presentation of the work described above at any stage, we should be happy to provide one.
ANNEX 2 - SPECIFIC POINTS RAISED BY COMMITTEE MEMBERS ON ASPECTS OF THE BILL

The Bail proposals in the Bill; ‘codification’ and the non-exhaustive list in new Section 23C(2)

1. The Committee clearly felt that the use of the word ‘codification’ in the accompanying documents suggested an exhaustive approach, with every detail set out on the face of legislation. There was therefore concern about the non-exhaustive list in section 23C(2). The point was made that there was some risk of a ‘two tier’ approach, in which the considerations listed in section 23C(2) were seen as having more weight than others which might be relevant in a particular case, but which were not specifically mentioned. We note related concerns from at least one consultee, whose concerns focused on the need to avoid impinging on judicial discretion.

2. It might be helpful to say upfront that in using the word ‘codification’ in the accompanying documents, we were simply trying to reflect the fact that the Bill puts on the face of legislation the general right to bail and the grounds recognised in Scots common law and ECHR case law for refusal of bail. At present, as the Explanatory Notes say, statute determines the process for bail (which offences are bailable, when bail may be sought and the conditions on which it may be granted) but is silent on the reasons for grant or refusal of bail. The Bill seeks to set all aspects of the framework for bail on the face of the law.

3. This was not intended to mean that every detail not just of the framework, but also of the considerations which the court was entitled to take into account, was prescribed on the face of the Bill. If the use of the word ‘codification’ has therefore been misleading, we apologise. Under ECHR the court as an independent and impartial tribunal considering a decision on bail must be able to take all relevant considerations into account – and must be able to take its own decision in the context of ECHR case law as to what those relevant considerations are. As Ministers said in the Bail and Remand Action Plan

   “We will illustrate the matters which the court could take into account when assessing whether reasons for refusal of bail exist – for example, the circumstances of the offence and the accused’s history of convictions, background and circumstances. But there will be no erosion of the court’s right to take all the facts and circumstances into account and to take the final decision to bail or remand in every case.”

4. So new Section 23C sets out the reasons which ECHR has recognised for refusal of bail and also a non-exhaustive list of potentially relevant considerations for the court. The list reflects the principal considerations which have been recognised in ECHR case law, and was intended to be helpful both to the court and also to members of the public who sought to understand the basis on which bail decisions were taken.

5. In the Bail and Remand Action Plan Ministers set out their strategy for making the bail system more transparent. Requiring reasons to be given for all bail decisions was part of that strategy, as was setting out the bail framework on the face of the law. The non-exhaustive list was intended to be a helpful contribution to increased transparency.

6. More generally, we agree with comments made by the Committee to the effect that the provisions in section 1 of the Bill which set out the reasons for refusing bail and the non-exhaustive list of the considerations which a court may take into account do not change the law. They reflect the
law as it stands, taking into account Scots common law and ECHR case law. They are intended to make clear to all – including members of the public – what the ECHR reasons for grant or refusal of bail are and what kind of considerations are relevant when the court is making its bail decision. But as the Bail and Remand Action Plan underlines, they do not alter the right of the court to take the bail decision in every case.

Alternatives to prosecution - the 'work order' and disclosure of fiscal fines

The work order (section 40)

7. The work order is an alternative to prosecution. While the offences for which it may be appropriate are a matter for the Lord Advocate and prosecution policy, it follows that it will be used in respect of low tariff offences which can be dealt with appropriately other than by prosecution. The view of the Crown is that the work order will be appropriate for low level offences which can be viewed as offences against the community. Depending on the nature of the work available in each area, work orders may be particularly useful in dealing with offences such as breach of the peace or minor vandalism.

8. The intention is that it should be another option for the procurator fiscal in cases where s/he takes the view that an alternative would be appropriate.

9. Procurators fiscal will be trained and receive guidance from the Lord Advocate on the use of work orders.

10. The Bill provides that the maximum number of hours in a work order is 50. This is different to community service orders, which comprise a minimum of 80 hours and a maximum of 240 or 300 hours depending on whether the order is in relation to a summary or solemn matter. In addition, of course, a community service order can only be imposed on conviction. A work order does not require a finding or admission of guilt, and a completed work order will not result in a conviction.

11. The type of work to be carried out under such an order can be prescribed by the Scottish Ministers. The Lord Advocate has stated to Parliament that he envisages that communities may be consulted about the type of work to be done. This could operate in a similar way to the arrangement for community consultation in the operation of community reparation orders.

12. The nature of the cases in which work orders will be imposed will be a matter for COPFS policy. A decision to offer a work order will be taken, on the basis of the nature of the offence and the circumstances of the offender – for instance his or her record of previous offending - as to whether the case is one which merits prosecution, or which properly can be dealt with on the basis of an alternative to prosecution. If the view is that an alternative is appropriate, a decision will thereafter be taken on which alternative option is most appropriate in the circumstances of the case. This would again include consideration of the nature of the offence and the circumstances of the accused. At this stage it might be appropriate to take into account the means of the accused.

13. As with all alternatives to prosecution, however, it has to be borne in mind that these initially are offers made by the prosecutor; they are no more than that, until accepted. We consider that there are advantages in procurators fiscal being able to offer this alternative in appropriate circumstances, which might include a situation where someone with little money might be able to avoid an unnecessary appearance in court, or someone in a job might seem an appropriate candidate for a
short period of unpaid work. As with all prosecution decisions, each case will be considered on its merits. It is not intended that accused people should be offered a choice of alternatives, so it is quite possible that someone with means will nonetheless be offered a work order. In any case the principal determining criterion for using work orders will be the nature of the offence.

14. The work order will operate in much the same way as other alternatives to start with – the offer will be made by the Procurator Fiscal. If the order is completed satisfactorily, no conviction will be recorded against the accused, and the community will have had the benefit of unpaid work. It should therefore represent swift and restorative justice.

15. As with other alternatives, the Bill makes provision for the information which must be contained in any offer of a work order.

16. If the offer is declined, or the order is not completed, the case will be referred back to the Procurator Fiscal to decide what further action to take. In most cases it is anticipated this will mean that prosecution ensues.

17. The offer will, however, be on the same terms as the present regime for alternatives – the accused will require to take positive action to accept. If no action is taken, refusal will be deemed. Time limits for this procedure are in the Bill.

18. If the offer is accepted, responsibility for supervision of the order will fall to the relevant local authority. There will be a need, it is anticipated, for some form of assessment of the accused to take place. It may be that supervision by fully qualified staff will not always be necessary. There may be an issue around having convicted and non-convicted persons on the same work placement. These and other issues are under consideration, and will be worked through with stakeholders.

19. The work order will be piloted. It is anticipated that there will be two pilots – one in an urban area, and one in a rural area. Pilot sites have not yet been identified, but work is ongoing in that regard. Pilots will not be able to start until the legislation is available, so we would anticipate that they will run from 2007, with full evaluation which would be made available to the Committee and other stakeholders.

20. The effect of a completed work order will be the same as for any other accepted alternative. Prosecution will not be possible. No conviction will be recorded. The Procurator Fiscal will be advised whether or not the order has been completed, so that further action can take place where appropriate.

Disclosure of fiscal fines in subsequent proceedings and other appropriate circumstances

21. The Bill proposes that accepted alternatives to prosecution (such as fiscal fines) should be capable of being treated as if they were previous convictions for a period of two years after acceptance, if the accused offends again and comes before a court. This is done simply by amending those parts of the Criminal Procedure (Scotland) Act 1995 which refer to the laying of previous convictions before the court on conviction.

22. The intention is that on conviction in court, the prosecutor, in addition to giving the court a list of previous convictions will also provide details of accepted alternatives which fall within the relevant period. This is in line with the recommendation of the McInnes Committee (paras 11.15-
11.17). There is no provision in the Bill that the new offence requires to be analogous to the matter which attracted the alternative. As with a previous conviction, the procurator fiscal can always exercise discretion not to disclose a particular matter if s/he regards it as inappropriate to do so.

23. The Bill provides only for disclosure of accepted alternatives to prosecution to the court and does not impact on the mechanism of other disclosure regimes. It is significant that this provision will not impact on the majority of individuals to whom offers are made, but rather on the minority who re-offend, in which case relevant previous accepted offers will be made known to the court.

Fines Enforcement Officer’s powers to seize a vehicle

24. Members raised some concerns regarding the provision in section 43 of the Bill empowering Fines Enforcement Officers (FEOs) to seize a vehicle as a sanction aimed at securing payment of outstanding fines. Those concerns centred on protecting the interests of third parties who may claim to be the genuine “owner” of a vehicle which is registered in the fine defaulter’s name.

25. As you will be aware, section 43 of the Bill inserts a new section 226D into the Criminal Procedure (Scotland) Act 1995, which makes provision in respect of the seizure of vehicles by FEOs. The effect of section 226D(3)(a) is that a FEO is only able to seize a vehicle if it is registered with the DVLA in the fine defaulter’s name. Subsections (10) and (11) of section 226D provide for the Scottish Ministers to make regulations in respect of the detailed operation of seizures under section 226D (including provisions ‘…for protecting the interests of owners of vehicles apart from offenders’). Section 226H provides the fine defaulter with the right to apply to court for a review of an FEO’s decision to make a seizure order.

26. Two issues have been raised in connection with these powers:

- Are there sufficient safeguards for the fine defaulter, who must be the vehicle’s registered keeper? and
- Are there sufficient safeguards for the owner of the vehicle, where he or she is not also its registered keeper?

27. On the first, the provisions as introduced provide a number of safeguards for the fine defaulter should s/he wish to dispute the actions of the FEO in seizing a vehicle. Those safeguards include, for example, the defaulter being able to make contact with the FEO and discuss outstanding fines in advance of any seizure taking place and (where seizure does take place) the right to seek review of that decision in court and provide evidence in respect of personal or family circumstances that make the seizure or disposal of a vehicle an unreasonable course of action for the FEO to take, in spite of the outstanding fines due. It would be for the court to determine, in light of all the information put before it, whether to confirm, revoke or vary the actions of the FEO in such a situation.

28. On the second, we agree with the Committee that, in the absence of any regulations under subsection (10) the current drafting of section 226D would, in theory, allow the court to dispose of a vehicle where the fine defaulter is the registered keeper, but someone else has paid for or owns the vehicle (e.g. a company car). We are considering the best way to ensure that these provisions allow the FEO to seize a vehicle in appropriate circumstances but also ensure that someone other than the fine defaulter cannot be deprived of their property.
29. In this context consideration has been given to the approach taken to this procedure in England and Wales (where fines officers were given the power to seize vehicles following the introduction of the Courts Act 2003 and associated regulations). The position taken was to refer to the registered keeper of a vehicle in the Act itself and provide, through regulations, the right for any interested third party to make submissions to the court in respect of any seizure made by the fines officer, with a view to upholding or setting aside that course of action. This approach protects the rights of third parties while ensuring that FEOs can exercise seizure powers in appropriate circumstances. In the absence of such powers, the FEO may be left with little choice but to return the case to court, where imprisonment may eventually be imposed in default of the fine.

30. We can confirm that the rights of third parties can and will be protected. Regulations under 226D(11)(c) could, for example, require the FEO to make reasonable enquiries to determine whether the vehicle is owned by the offender. They could also provide an appeal mechanism for third parties, possibly along the lines of that in the English model. We are looking at the options for making the necessary provision, whether by regulations, further amendment on the face of the Bill, or both.

31. It would be our intention to give the Committee the details of our proposed approach in advance of consideration of this section of the Bill at Stage 2.

Lay Justice Reform – Additional Points

32. We have noted the committee’s concern about the possibility that the legislation, as currently drafted, could allow some full JPs who do not have recent experience of sitting on the bench to take up an appointment, without there being sufficient safeguards in place to ensure that such JPs would be able to perform their judicial functions to a high standard. Several stakeholders have also, independently, made their concerns about that point known to us. We are currently investigating possible ways of amending the legislation to provide additional safeguards in this area. (There is of course a need, in doing this, to ensure that people who hold judicial office are not, in effect, removed from that office without good reason.)

33. We are also aware, from the session on 19 April and from the written evidence submitted to the committee, that some concerns have been expressed about the impact on district court business of an increased use in alternatives to prosecution. One point which is not covered within the Bill, but is mentioned in the Policy Memorandum and which is worth highlighting, is that Ministers wish justices of the peace to have broader powers to disqualify people from driving, something that they can currently only do in “totting-up” cases. This would allow them to proceed straight to disqualification regardless of the number of “points” already on an individual’s licence, and should allow a transfer of business from the sheriff courts to district courts. This requires an amendment to section 50 of the Road Traffic Offenders Act 1988, which is reserved legislation. We are therefore taking steps to secure a section 104 order in order to make this amendment.
ANNEX 3 - DRAFT OF THE JUSTICES OF THE PEACE (SCOTLAND) ORDER 2007

BACKGROUND INFORMATION

Content of the draft Justices of the Peace (Scotland) Order 2007

1. The draft order contains clauses relating to the appointment, training and appraisal of JPs.

2. This annex summarises the content of the draft order. Several of the provisions of this order relating to the composition and functions of the training and appraisal committees are similar to provisions which apply in England and Wales under the Justices of the Peace (Training and Appraisal) Rules 2005. In particular, those rules provide for an elected committee of JPs to oversee the appraisal of JPs, and for a legal assessor and district judge to sit on the Magistrates’ Area Training Committee. One difference between our order and the 2005 Rules is that under the English and Welsh 2005 rules, training committees have a wider territorial jurisdiction than the appraisal committees, whereas under our order both the training and the appraisal committees will have responsibilities across their sheriffdom.

Appointment

3. The order makes it clear that Ministers may only appoint somebody as a JP if that person has been recommended for appointment by the JPAC for the sheriffdom. In making appointments, JPACs must act in accordance with recruitment procedures which have been agreed by the Judicial Appointments Board. These procedures (which are likely to cover such issues as public advertisement and structured interviews) are intended to ensure that the recruitment process for JPs operates across the country according to consistent standards of transparency and rigour.

4. The order makes it mandatory for somebody to have completed a training scheme approved by the Lord President before the JPAC can recommend them for appointment.

5. There will be one JPAC in each sheriffdom. Each JPAC will be chaired by the Sheriff Principal. In addition to the sheriff principal, there will be 7-10 other committee members. At least half of these other members must be justices of the peace. At least three members must be lay members- meaning that they must not hold any judicial office, or be a solicitor or an advocate.

6. JPAC members will sit for a maximum of two five-year terms. They will be chosen by an interview panel comprising the sheriff principal or a sheriff and two justices of the peace who have held office for at least five years. All “lay” vacancies must be publicly advertised within the sheriffdom, and all JP vacancies must be brought to the attention of all JPs within the sheriffdom.

Appraisal

7. The order makes provision for each sheriffdom to have a justices’ appraisal committee. Each committee shall have six members, who will be JPs, and who will be appointed by a vote of all of the JPs within the sheriffdom. The fact that the committee is comprised entirely of JPs reflects the point that, in order to safeguard judicial independence, the appraisal of justices of the peace should be kept entirely within the judiciary.
8. Each appraisal committee will be required to select the JPs within the sheriffdom who will be responsible for conducting appraisals. The appraisal committee will also be responsible for establishing a procedure for conducting appraisals. This procedure will take account of the need to notify a JP that they are going to be appraised; the need for a JP to be able to challenge the assessment of their performance which is made during the course of the appraisal; and the possible need for the appraising justice to notify the appraisal committee of any follow up action which is required as a result of the appraisal.

9. If a JP’s appraisals suggested that they were unable to adequately perform the functions of a JP, we envisage that the appraisal committee would be able to recommend to the sheriff principal that he request the establishment of a tribunal to investigate whether the JP should be removed from office under section 58(5)(2) of the Bill. An order will be drafted under section 58(6) of the Bill to cover the procedures for the tribunal. This order will replace the existing Justices of the Peace (Tribunal) (Scotland) Regulations 2001. Under section 58(6)(b) of the Bill the new order will be able to authorise the appraisal committee within each sheriffdom to make a recommendation to the sheriff principal that they request the establishment of the tribunal.

Training

10. The order states that there will be a justices’ training committee in each sheriffdom. All members of the justices’ appraisal committee will be members of the training committee. This is because there are strong links between appraisal and training; in particular, the outcomes of appraisals are likely to inform the training committee’s assessment of the training which is required within the sheriffdom.

11. In addition to the JPs on the appraisal committee, each training committee will also have a legal adviser (assessor) to the JP court and a sheriff. Section 8(4) of the draft order allows a member of the Scottish Court Service (SCS) to attend meetings of the training committee, without being a member of the committee. This ensures that SCS is kept informed of decisions about training which may have resource implications for it.

12. The training committee will be required to provide an annual training plan, setting out what types of training it intends to make available over the next year. It is also required to publish a report on the training which has been carried out within the sheriffdom during the previous years. These plans and reports must be provided to the Sheriff Principal of the relevant sheriffdom and the Lord President – allowing the Judicial Studies Committee to assess the amount of training which is being provided in each area.

13. We envisage that both the training and the appraisal committees will receive guidance from the Lord President (through the Judicial Studies Committee) on how they exercise their functions. In addition, the Lord President can specify a minimum amount of approved training which JPs must undertake during their term of appointment. The Lord President will also approve the course of “refresher” training which all JPs must undertake within two years of starting to act as a JP for the sheriffdom. Discussions with the Judicial Studies Committee and the District Courts Association will take place before the total amount of training required of JPs – and the likely split between nationally prescribed and locally determined training – is decided.
2007 No.

CRIMINAL LAW

The Justices of the Peace (Scotland) Order 2007

Made - - - - 2007
Laid before the Scottish Parliament - - 2007
Coming into force - - 2007

The Scottish Ministers, in exercise of the powers conferred by sections 54(5) and (6), 56 and 68(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2006 and all other powers enabling them in that behalf, and with the approval of the Lord President, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Justices of the Peace (Scotland) Order 2007 and shall come into force on 2007.

Interpretation

2. In this Order—
   “the Act” means the Criminal Proceedings etc. (Reform) (Scotland) Act 2006;
   “appointed member” means a member of a JPAC appointed by the sheriff principal;
   “the Board” means the body known as the Judicial Appointments Board for Scotland which provides advice to the Scottish Ministers concerning judicial appointments;
   “JAC” means a Justices’ Appraisal Committee established in accordance with this Order;
   “JPAC” means a Justice of the Peace Advisory Committee established in accordance with this Order;
   “JTC” means a Justices’ Training Committee established in accordance with this Order.

Appointment of JPs

3.—(1) Subject to paragraph (2), the Scottish Ministers may appoint a person as a JP for a sheriffdom only if that person has been recommended for appointment by the JPAC for that sheriffdom.
   (2) Paragraph (1) does not apply to—
      (a) an appointment under section 54(7)(b) of the Act; or
      (b) a reappointment under section 57(2) of the Act.
   (3) In making decisions as to which persons to recommend for appointment as JPs, a JPAC—
      (a) shall act in accordance with procedures approved by the Board;
      (b) may have regard to recommendations submitted to it by other persons.
A JPAC may not recommend a person for appointment as a JP unless that person has undertaken a course of training approved for the purposes of this paragraph by the Lord President.

**Formation of a JPAC**

4.—(1) There shall be a JPAC for each sheriffdom.

(2) The sheriff principal of the sheriffdom shall be the convener of that sheriffdom’s JPAC and shall appoint the other members of it.

**Appointments to JPAC**

5.—(1) The sheriff principal shall from time to time make appointments so that, in addition to the sheriff principal, there are no less than seven, and no more than ten, members of the JPAC.

(2) In making appointments under paragraph (1), the sheriff principal shall ensure that—

(a) the number of appointed members of the JPAC who are JPs is equal to, or greater than, the number of such members who are not JPs; and

(b) at least 3 appointed members of the JPAC are persons who are not—

(i) a JP;

(ii) the holder of any other judicial office;

(iii) a solicitor; or

(iv) an advocate.

(3) The sheriff principal may not appoint a sheriff to be a member of the JPAC whilst another sheriff is such a member.

(4) No person may be appointed as a member of a JPAC if that person is—

(a) a Member of Parliament;

(b) a Member of the Scottish Parliament; or

(c) a local authority councillor,

and a person shall cease to be a member of a JPAC on becoming a person described in sub-paragraph (a), (b) or (c).

**JPAC – terms of appointment**

6.—(1) Subject to paragraph (2), every appointed member of a JPAC shall be appointed for a term of 5 years and, on the expiry of that term, may be re-appointed for one further term of 5 years only.

(2) An appointed member of a JPAC shall cease to act as such on attaining 70 years of age.

**Appointments to JPAC – procedure**

7.—(1) No person may be appointed as a member of a JPAC without having been interviewed by a panel comprising—

(a) the convener of that JPAC, or a sheriff having jurisdiction in the relevant area nominated by the convener; and

(b) two JPs for the relevant area, each of whom has been a JP for 5 years.

(2) In sub-paragraphs (a) and (b) of paragraph (1), the “relevant area” is the sheriffdom in respect of which the JPAC is formed except that, in the case of an interview under paragraph (1) held prior to [ ], the “relevant area” in sub-paragraph (b) of that paragraph is a commission area any part of which falls within that sheriffdom.

(3) In making appointments to the JPAC, the sheriff principal—

(a) shall bring the existence of a vacancy to the attention of—
(i) all JPs appointed for the sheriffdom; or
(ii) in the case of a vacancy arising before [________], all JPs appointed for a
commission area any part of which falls within the sheriffdom,
if the vacancy is one which the sheriff principal intends should be filled by a JP; and
(b) shall arrange for the existence of a vacancy to be advertised in a newspaper circulating in
the sheriffdom if the vacancy is one which the sheriff principal intends should be filled by
a person who is not the holder of a judicial office.

Formation of a JTC

8.—(1) There shall be a JTC for each sheriffdom.

(2) The members of a JTC shall be—

(a) the members of the JAC for the sheriffdom in question;

(b) a sheriff having jurisdiction in the sheriffdom nominated by the sheriff principal of that
sheriffdom;

(c) a person nominated by the Scottish Ministers who is—

(i) under section 50 of the Act the clerk of a JP court within the sheriffdom; or

(ii) so long as that section is not in force in the sheriffdom, the clerk of a district court
within that sheriffdom under section 7 of the District Courts (Scotland) Act 1975.

(3) The person referred to in sub-paragraph (c) of paragraph (2) is to act as legal adviser to the
JTC.

(4) In respect of each JTC, the Scottish Ministers are to appoint a person who will be entitled to
attend meetings of that JTC but will not be a member of it.

Functions of a JTC

9.—(1) The JTC for a sheriffdom shall—

(a) consider the training needs of the JPs in that sheriffdom; and

(b) no later than the end of February each year, provide to the Lord President and the sheriff
principal of that sheriffdom a training plan for the period of the following April to March.

(2) The training plan shall include information as to—

(a) the proposed types of training;

(b) the number of JPs who are to receive training;

(c) the place or places where the training is likely to be provided; and

(d) the proposed dates of the training.

(3) No later than 30th September each year, the JTC for a sheriffdom shall provide to the Lord
President and the sheriff principal of that sheriffdom an annual report on training which was
undertaken in the preceding April to March.

(4) The annual report shall include information as to—

(a) the types of training which have taken place in that period;

(b) evaluating the training which has taken place;

(c) the cost of the training;

(d) the number of JPs who attended the training; and

(e) any substantial respects in which the training which has taken place has differed from the
training which was proposed in the training plan for that period.
Training requirement – existing JPs

10.—(1) The requirement in paragraph (2) applies in the case of a JP who ceases to hold office as described in section 54(7)(a) of the Act and who is appointed as a JP for a sheriffdom.

(2) Within 2 years of starting to act as a JP for a sheriffdom, the JP shall undertake a training course of a type approved for the purposes of this paragraph by the Lord President.

(3) The requirement specified in paragraph (2) shall not apply in the case of a JP who—

(a) has, prior to starting to act as a JP for a sheriffdom, undertaken a training course such as is described in that paragraph; or

(b) is aged 67 or over on starting to act as a JP for a sheriffdom.

Training requirement

11.—(1) Every JP shall, during each term of appointment, undertake at least such minimum period of approved training as is set down from time to time by the Lord President.

(2) In paragraph (1), “approved training” is training of a type approved for the purposes of this article by the Lord President.

Formation of a JAC

12.—(1) There shall be a JAC for each sheriffdom.

(2) A JAC shall have six members who shall be appointed by a vote of all JPs for the sheriffdom.

(3) A person may be appointed as a member of a JAC for a sheriffdom only if that person is a JP for that sheriffdom.

(4) A person shall cease to be a member of a JAC for a sheriffdom when that person is no longer a JP for that sheriffdom.

JAC – terms of appointment

13.—(1) Paragraphs (2) and (3) apply as regards the terms of appointment of the first members of a JAC following its establishment.

(2) 2 members shall hold office for a term of 1 year, 2 members for a term of 2 years, and the remaining 2 members for a term of 3 years.

(3) The members of a JAC shall decide which members are to serve for which terms referred to in paragraph (2) and, if they are unable to agree, the length of their terms shall be determined by lot.

(4) Except as provided for in paragraphs (1) and (2), every member of a JAC shall be appointed for a term of 3 years.

JAC – procedures

14.—(1) A JAC meeting shall be quorate if there are 3 members at the meeting.

(2) A JAC may arrange for any of its functions to be carried out by a sub-committee appointed by it.

(3) A person may not be appointed by a JAC of a sheriffdom to be a member of one of that JAC’s sub-committees unless that person is a JP for that sheriffdom.

Appraisal of JPs

15.—(1) Every JAC shall establish a scheme to appraise the performance on the bench of JPs.

(2) The JAC shall select JPs to conduct appraisals (“the appraising justices”) and it may also arrange for a JP for another sheriffdom to conduct appraisals.
(3) The JAC shall determine the intervals at which justices are to be appraised.

(4) The JAC shall establish a procedure for conducting appraisals, which shall include the following elements—

(a) the notification that will be given to the justice to be appraised (“the appraised justice”); 
(b) a procedure for the appraising justice to record his assessment and for notifying the appraised justice and the JAC of that assessment; 
(c) a procedure for enabling the appraised justice to discuss the assessment with the appraising justice and a procedure enabling the appraised justice to challenge the assessment to a person other than the appraising justice; 
(d) a procedure for the appraising justice to notify the convener of the JAC of any action required following the appraisal; and 
(e) the time limits for these procedures.

(5) The JAC shall publish its scheme to the JPs.

St. Andrew’s House, 
Edinburgh 2007

A member of the Scottish Executive
Introduction

1. This Report covers the work of the Justice 1 Committee during the Parliamentary year from 7 May 2005 to 6 May 2006. Together with the Justice 2 Committee, the Committee plays a key role in scrutinising Scotland’s justice system. During the course of the Parliamentary year much of the Committee’s time has been devoted to legislation, including scrutiny in relation to three major bills.

Bills

2. The Committee carried out thorough scrutiny of the Family Law (Scotland) Bill and the Scottish Commissioner for Human Rights Bill, producing comprehensive Stage 1 reports after the consideration of substantial volumes of written and oral evidence. The Committee also began scrutinising the Criminal Proceedings etc. (Reform) (Scotland) Bill at Stage 1 and expects to report in the next Parliamentary year.

3. The Family Law Bill included, amongst other things, major reforms to the law on divorce as well as the granting of rights to people who had previously been in a cohabiting relationship. In addition to line-by-line scrutiny of the Bill, the Committee was determined to focus on addressing real life problems with how existing family law works in practice, in relation to issues including domestic violence and the rights of non-resident parents. The Committee engaged in a positive dialogue with the Executive and the Bill was significantly refined during its parliamentary passage. In addition, various non-legislative measures were initiated as a direct result of the Committee’s concerns. These included the initiation of a three year pilot project to create “Family Contact Facilitators” and additional funding being given for local mediation and counselling services.

4. The Committee expressed serious concerns on the Scottish Commissioner for Human Rights Bill, particularly in relation to the lack of clarity of the Commissioner’s role as well as issues to do with accountability and governance. The Committee declined to endorse the general principles of the Bill. In its response to the Committee’s report, the Executive indicated that it is prepared to
bring forward amendments to deal with many of the problems highlighted by the Committee.

5. In addition, the Committee considered a Legislative Consent Memorandum on the Northern Ireland (Miscellaneous Provisions) Bill.

Inquiries and Reports

6. As a result of scrutiny of the Family Law Bill, the Committee agreed to initiate an inquiry into the provision of family support services in Scotland, which is being taken forward by Mary Mulligan MSP, as Committee Reporter. Responding to public disquiet over recent events, the Committee also launched an inquiry into the efficient running of the Scottish Criminal Record Office and Scottish Fingerprint Service.

7. The Committee also took an active role in the scrutiny of EU justice and home affairs matters. Following scrutiny of two European Commission green papers on Succession and Wills and Applicable Law in Divorce, the Committee submitted a response to the Commission. The Committee felt strongly that the implications of the Green Papers should be brought to Parliament’s attention, and a Committee debate was held in the Chamber on 16 March 2006. This led to the Parliament formally calling on the Scottish Executive to urge the UK Government not to opt in to any draft EC Instruments which may emerge from the consultation process.

Subordinate Legislation

8. The Committee reported on five affirmative statutory instruments and 33 negative statutory instruments in the course of the Parliamentary year.

Petitions

9. The Committee continued its consideration of issues arising from a number of long-standing petitions on a diverse range of topics, including family law, security of tenure and fatal accident inquiries into sudden deaths on the road.

Visits

10. Members carried out various fact-finding visits in advance of formal consideration of the Criminal Proceedings etc. (Reform) (Scotland) Bill to meet various people working in the criminal justice system. Members met representatives of the police, sheriffs and staff from Linlithgow and Glasgow Sheriff courts, justices of the peace and staff from Livingston District Court and various Procurators Fiscal.

Meetings

11. The Committee met 45 times from 7 May 2005 to 6 May 2006. Four of these meetings were held jointly with Justice 2 Committee. Of the total number of meetings, nine were entirely in private and 16 were partly in private. Of the nine meetings in private, 5 were to consider draft reports.
12. All the meetings were held in Edinburgh. However the Committee also held three video conferences with: the Parliament of Australia House of Representatives Standing Committee on Family and Human Services; the European Commission Directorate-General for Justice, Freedom and Security and the New Zealand Commission for Human Rights.
can access the support available from all of the partner agencies. The partner agencies involved in PAS are One Parent Families Scotland, Capability Scotland, Scottish Adoption Association, Couple Counselling Scotland, Family Mediation Scotland, Scottish Marriage Care, Stepfamily Scotland and the Aberlour Childcare Trust.

6. We have also set up an information portal at the Scottish Executive website: www.scotland.gov.uk/familylaw and are distributing a “flyer” giving an overview of the different publications and the helpline number.

**Ensuring future contact**

7. There is a broad consensus about the need to ensure that – wherever it is safe and appropriate – children should have the benefit of regular and quality contact with both their parents. We discussed at length the difficulties currently facing courts in enforcing breached contact orders, particularly with the child welfare principle in mind and we listened carefully to the concerns which emerged during the passage of the Bill.

**Research**

8. Our data base about contact in Scotland is not sound and before coming to any conclusion about the way ahead we saw a need to undertake research into post-separation contact arrangements. Amongst other things we saw a need to scope the extent and shape of the problem, to understand what works and what doesn’t and to examine the durability of arrangements. Once we have a clear picture of the Scottish position we can start to design solutions.

9. The Executive will shortly be putting out to tender a research project on court based contact. The project will collect and analyse data on the volume, nature and characteristics of child contact actions made within Scottish courts as a result of divorce, dissolution of cohabitation, or other dispute, over a defined period. We are also carrying out a small-scale survey of sheriff clerks to understand to what extent contact breach is an issue for them.

10. On 3 May in partnership with the Economic and Social Research Council (ESRC) the Scottish Executive is staging a seminar on private arrangements for parent-child contact. Two
Family Support Services

12. The Executive values the work undertaken by voluntary sector bodies in the field of family support. The Executive offers grant assistance totalling over £1.2 million in 2006-07 under the Children, Young People and Families Unified Voluntary Sector Fund to family support organisations. In addition, £250,000 will be available this year to the 4 national organisations (Couple Counselling Scotland, Family Mediation Scotland, Scottish Marriage Care and Stepfamily Scotland) to continue with their Change Programme, to promote joint working and integrated practices, for which £500,000 has already been offered in previous years.

13. An additional £300,000 is being made available in 2006-07 for local mediation and counselling services to bid for project grant, with the aim of promoting capacity building, infrastructure development and joined-up working across these services. We have decided that this funding should be passed to the national family support bodies for onward distribution to local family relationship support services, on the basis of competitive bids for project grant assessed against criteria which reflect the aim of promoting capacity building, infrastructure development and joined-up working across local counselling and mediation services. I understand you have already seen a copy of the letter to the national bodies explaining how this is to be distributed.

Scottish Executive
May 2006
Citation and interpretation

1.—(1) This Order may be cited as the Family Law (Scotland) Act 2006 (Commencement, Transitional Provisions and Savings) Order 2006.

(2) In this Order—

(a) "the Act" means the Family Law (Scotland) Act 2006;

(b) "the 1986 Act" means the Law Reform (Parent and Child) (Scotland) Act 1986(b); and

(c) references to sections, subsections and schedules are, unless otherwise stated, references to sections and subsections of, and schedules to, the Act.

Commencement of the Act

2. Subject to the transitional provisions and savings contained in articles 3 to 13, the provisions of the Act shall come into force on 4th May 2006.

Transitional provisions

3. In so far as they relate to periods of non-cohabitation, the provisions of sections 5, 6 and 8, and paragraphs 3 to 5 and 7 of schedule 1 shall not apply where spouses or, as the case may be, civil partners cease to cohabit before 4th May 2006.

4. The provisions of sections 12, 16, 21, 22, 32, and 37 to 42 and paragraph 1 of schedule 2 shall not apply in relation to any proceedings which commenced before 4th May 2006.

5. The provisions of section 19 and paragraph 11 of schedule 1 shall not apply where spouses are divorced or any marriage is annulled or, as the case may be, any civil partnership is dissolved or annulled before 4th May 2006.


7. The provisions of section 29 shall not apply where a cohabitant dies before 4th May 2006.

(a) 2006 asp 2.

(b) 1986 c.9.
8. The provisions of section 35 shall not apply in respect of deaths which occur before 4th May 2006.

Savings provisions

9. Notwithstanding commencement of the amendment in section 21(2)(c) adding subsection (6) of section 1 of the 1986 Act, it shall continue to be competent to bring an action for declarator of legitimacy, legitimation or illegitimacy for the purposes of the determination of any question mentioned in subsection (4) of that section.

10. Notwithstanding commencement of the amendment to section 7 of the 1986 Act in paragraph 6(2) of schedule 2, that section shall continue to have effect on and after 4th May 2006 as it had effect immediately before that date in relation to actions for declarator of legitimacy, legitimation or illegitimacy brought for the purposes of the determination of any question mentioned in section 1(4) of the 1986 Act.

11. Notwithstanding commencement of its repeal in schedule 3, the Legitimation (Scotland) Act 1968(a) shall continue to have effect on and after 4th May 2006 as it had effect immediately before that date for the purposes of the determination of any question as to the succession to or devolution of any title, honour or dignity.

12. Notwithstanding commencement of the repeal in schedule 3 of the words “legitimacy, legitimation, illegitimacy” in section 8(2) of the Civil Evidence (Scotland) Act 1988(b), that section shall continue to have effect on and after 4th May 2006 as it had effect immediately before that date in relation to actions for declarator of legitimacy, legitimation or illegitimacy brought for the purposes of the determination of any question mentioned in section 1(4) or 9(1)(c) or (ca)(e) of the 1986 Act.

13. Notwithstanding the commencement of the repeal in schedule 3 of--
   (a) sections 15 to 17 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981(d); and
   (b) sections 114 to 116 of the Civil Partnership Act 2004(e),

those sections will continue to have effect on and after 4th May 2006 as they had effect immediately before that date for the purposes of powers of arrest granted before that date under section 15 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 or, as the case may be, section 114 of the Civil Partnerships Act 2004.

HUGH HENRY
Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
19th April 2006

(a) 1968 c.22.
(b) 1988 c.32.
(c) Section 9(1)(ca) of the Law Reform (Parent and Child) (Scotland) Act 1986 was inserted by section 21(4)(b) of the Family Law (Scotland) Act 2006.
(d) 1981 c.59.
(e) 2004 c.33.
This Order brings into force the provisions of the Family Law (Scotland) Act 2006 (asp 2) ("the Act") and makes transitional and savings provisions.

Article 2 brings the provisions of the Act into force on 4th May 2006.

Article 3 provides that the amendments made by the Act to the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59) and the Civil Partnership Act 2004 (c.33), which reduce the period of non cohabitation after which spouses and civil partners cease to have occupancy rights, will not apply where spouses or civil partners stop cohabiting before 4th May 2006.

Article 4 provides that where proceedings are pending on 4th May 2006, the amendments and other provisions made by the sections referred to in the article will not apply in relation to those proceedings.

Article 5 provides that the provisions made by the sections referred to in the article in relation to special destinations will not apply where parties end their marriage or civil partnership before 4th May 2006.

Articles 6 and 7 provide that the provisions of the sections referred to in those articles will only be available to cohabitants who separate, or where one cohabitant dies on and after 4th May 2006.

Article 8 provides that the amendments to the Damages (Scotland) Act 1976 (c.13) by the section referred to in the article will not apply where a person dies before 4th May 2006.

Articles 9 to 12 save the competence of actions of declarator of legitimacy, legitimation or illegitimacy, the effect of the Legitimation (Scotland) Act 1968 (c.22), and rules of evidence in the Civil Evidence (Scotland) Act 1988 (c.36) relating to such declarators for the limited purposes of establishing questions in relation to rights to titles of honour, coats of arms or the construction or effect of enactments or deeds dated from before 4th May 2006.

Article 13 saves the effect of sections 15 to 17 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 and sections 114 to 116 of the Civil Partnership Act 2004 so that those provisions can continue to be applied in relation to enforcement of powers of arrest granted before 4th May 2006.
Dear Pauline McNeil 

I am writing to inform the Committee that Fife Constabulary has been selected to pilot the alcohol test purchasing arrangements provided for in the Licensing (Scotland) Act 2005. The selection of Fife Constabulary was announced today to the Scottish Parliament in Parliamentary Question S2W-25501.

As members will know, during Stage 2 of the Licensing (Scotland) Bill the Lord Advocate intimated that he was content for test purchasing to be extended to alcohol and the Bill was amended to allow for this. The Lord Advocate also indicated that before the provisions of the Act fully come into force in 2009 alcohol test purchasing arrangements should be piloted to ensure it is carried out safely, fairly and effectively in a Scottish context. Section 105 of the 2005 Act will be commenced with effect from 1 June to make transitional provision for an alcohol test purchasing pilot scheme to take place in the Fife Constabulary area.

The pilot will be overseen by an Advisory Group which in addition to Scottish Executive and Crown Office officials includes representatives from ACPOS, COSLA and licensed trade and retail interests. It will be subject to an independent evaluation, the results of which will be used to inform the development of common operating protocols and procedures to be adopted by forces across Scotland when the test purchasing arrangements are rolled out more generally.
I anticipate that the pilot will get underway this summer and run for a year. This will allow near blanket coverage of licensed premises in the Fife area, subject to risk assessment, including both “off sales” and “on sales” premises.

Given the problems associated with underage drinking, I am sure that the Committee will welcome this important development.

Yours sincerely

Lewis MacDonald

LEWIS MACDONALD