The Committee will meet at 9.45 am in Committee Room 6.

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

   James Chalmers, University of Aberdeen

   and then from

   Rachel Gwyon, Director of Corporate Services, and Eric Murch, Director of Partnerships and Commissioning, Scottish Prison Service

   and then from

   Tim Richley, Criminal Justice Adviser, Safeguarding Communities, Reducing Offending (SACRO); and

   David McKenna, Chief Executive, and Neil Paterson, Director of Operations, Victim Support Scotland.

2. **Criminal Proceedings etc. (Reform) (Scotland) Bill:** The Committee will consider whether to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in relation to the Bill.

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 SPICe and Committee Adviser (PRIVATE PAPER) J1/S2/06/16/1
Submission from James Chalmers J1/S2/06/16/2
Submission from Scottish Prison Service J1/S2/06/16/3
Submission from Safeguarding Communities, Reducing Offending (SACRO) J1/S2/06/16/4
Submission from Victim Support Scotland J1/S2/06/16/5

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

- **Provisional Agenda, EU Justice and Home Affairs Council.**

**Documents not circulated**—
A copy of the following document has been supplied to the clerk:

- **HM Inspectorate of Prisons, Report on HMP Greenock.**

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**—
Tuesday 23 May, Committee Room 2;
Wednesday 24 May, Committee Room 4;
Tuesday 30 May, Venue TBC;
Wednesday 31 May, Committee Room 5;
Wednesday 7 June, Committee Room 2;
Wednesday 14 June, Committee Room 6.
Thank you for your letter of the 1st March inviting me to submit evidence in respect of the above Bill. As I explained in my email of the 7th April, I was unable to submit evidence by the deadline of the same date due to illness, and I am grateful for the opportunity to submit evidence by today’s date. In the event, I wish only to express broad support for the Bill and to make specific comments on one of the eight policy areas, as follows:

**Increasing the criminal sentencing powers of the summary courts (sections 33-38 of Part 3 of the Bill)**

As a general principle, the sentencing powers of courts tend to increase in line with the safeguards provided to the accused person. Such safeguards – particularly jury trial and legally qualified / more senior judges – necessarily involve time and expense and there is an understandable pressure to allow for greater penalties without the application of such safeguards. Scotland has not historically attached the same significance to trial by jury as the other parts of the United Kingdom, in that an accused never has the “right” to insist on trial by jury. It has, however, recognised the significance of trial by jury in another way, by severely limiting the power of a court to sentence any person to imprisonment following on from non-jury (“summary”) proceedings.

In raising the normal maximum penalty in summary proceedings from three to 12 months, the Bill would significantly erode the safeguard of trial by jury. I would personally be relaxed about such a change, but I am concerned that relatively little consideration has been given to justifying it. The Policy Memorandum does not appear to mention trial by jury, and I note that the McInnes Committee said merely:

“There is a need to relieve pressure on the higher courts, which requires the lower courts to take on more serious cases. Hence at least some increase in sentencing powers for the judges in these courts is required.” (The Summary Justice Review Committee, *Report to Ministers* (2004), para 7.72 part iv).

This does not follow as a matter of strict logic: relieving pressure on the higher courts requires *either* an increase in resources to those courts (to expand capacity) *or* increased sentencing powers to enable the lower courts to take on more serious cases. If trial by jury is viewed as an important safeguard, then that points towards the first of those possible responses rather than the second. The McInnes’ Committee’s approach – reflected in the Bill – appears to regard the increase in summary sentencing powers as a mere matter of administrative convenience rather than as one of principle.

On a more specific point, section 34 would amend the maximum penalties available for a number of offences including assaulting or impeding persons...
such as police officers and other emergency workers. One important rationale for having specific offences directed at assaults on such persons was that the summary courts had stronger sentencing powers than was normal where these offences were involved. Because the Bill will substantially increase the normal sentencing powers of the sheriff summary court, it might be questioned whether there is any continuing need for some of these specific offences. Their continued existence can perhaps be justified on the basis that they cover not only assaults, but also conduct such as obstructing or hindering, which is not always clearly caught by common law offences.

An anomaly does arise, however, in relation to section 41 of the Police (Scotland) Act 1967 (assaults on constables, etc). At present, such an offence attracts the normal maximum penalty for a sheriff summary offence (three months), which is raised to nine months where the accused has been convicted of an offence under section 41 in the previous two years. Under the Bill, it appears to be proposed to raise the nine month period to 12 months, but to leave the three month period unchanged (section 34(1)). It seems to me that it would be more consistent with (a) the general scheme of the Bill and (b) the treatment of other specific offences mentioned in section 34 for the maximum penalty under section 41 to be raised to 12 months in all circumstances, regardless of any prior conviction.

James Chalmers
12 April 2006
Justice 1 Committee

Criminal Proceedings etc. (Reform) (Scotland) Bill

Written submission from Scottish Prison Service

Thank you for your letter of 1 March inviting written comments from SPS on the following parts of the Bill:

1. Reform to the system of bail and remand.
2. Changes in the law relating to procedure in summary and solemn cases.
3. Increasing the criminal sentencing powers in the summary courts.
4. Extending the range of alternatives to prosecution that can be offered.
5. Reform of the way in which fines are collected and enforced.
7. Reform of the procedures for appointment and training of JPs.
8. Placing the Inspectorate of Prosecution on a statutory footing.

We have considered the impact of these measures on the business of SPS and we are commencing on items 1, 3, 4 and 5 which might be considered to have some effect on SPS. We have separately considered the resource implications of these proposals and completed a questionnaire provided by the Finance Committee for this purpose. A copy of our response is attached for the Committee’s information.

Reforms of bail and the way in which fines are collected and enforced

The reforms of the system of bail and remand provide clarity. We estimate it is possible that SPS would see an increase in around 25-35 prisoners as a result of these changes.

This potential increase in our prison population should be balanced against consideration of the fine enforcement changes. We estimate that it is possible that the number of prisoners sentenced for fine default could fall as a result of the new measures. In the last year we had 6,098 receptions for fine default. With a gross sentence length of 11 days for such an offence the average prison population each day for fine default was 61. If the new fine enforcement arrangements are more effective it is possible that the reduction in such prisoners could net off against the anticipated increase in remand population.

Alternatives to prosecution and sentencing powers

In general SPS would note that the prison population increased for a long period during which recorded crime also increased. In recent years however despite a significant reduction in recorded crime the prisoner population continued to increase. A number of factors appear to contribute to this
including investigation success, decisions within the Crown Office and sentencing decisions. There appears to be no single driver of the prisoner population.

SPS welcomes the availability of a wide range of disposal options. Given the very negative impact that prison has on the life of an offender and their family the very act of imprisonment can reduce the positive factors which would contribute to reduce re-offending in the future. For example the offender is removed from any employment, suffers disruption to the relationships and controls offered by their family and community, and can lose access to housing. It therefore seems right to take every opportunity to find effective disposals which stop or reduce offending and re-offending as soon as possible. A wider range of alternatives to prosecution offers the chance to divert minor or first offenders from the “conveyor belt” of the criminal justice system and effective use of community disposals offers the opportunity to tackle offending behaviour without the added negative impact that prison produces.

I am copying this letter to the Finance Committee for information and to the Minister for Justice.

Tony Cameron
Chief Executive
10 April 2006
ANNEX

CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) BILL – FINANCIAL MEMORANDUM

QUESTIONNAIRE

SCOTTISH PRISON SERVICE

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes, SPS participated in the consultation exercise and provided comments on the estimated impact of the proposals on the prisoner population and associated financial implications.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes, the Financial Memorandum accurately reflects the financial implications for SPS based on the estimated changes to the prisoner population and the assumption that such changes would be accommodated within existing capacity.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Yes

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Yes, the Financial Memorandum accurately reflects the financial implications for SPS based on the estimated changes to the prisoner population and the assumption that such changes could be accommodated within existing capacity.
6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes. Paragraph 386, in relation to the bail and remand proposals, states that provided that the likely maximum impact of the overall package on prisoner numbers can be met from within existing capacity, the cost of these prisoner places can be met from within existing resources. Paragraph 431 also states, in relation to the enforcement of fines proposals, that greater use of sanctions such as arrestment of earnings and deductions from benefits will reduce the number of people sent to prison. Implementation of these proposals should help to offset some of the likely increase in prisoner numbers that will be generated by the bail and remand proposals.

In the event that the increase in prisoner numbers resulting from these proposals cannot be accommodated within existing capacity, the estimated cost of providing additional capacity will be around £40k per place per annum.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

N/A

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

No.
Sacro welcomes this opportunity to submit views on the Bill. This brief submission relates to those sections that relate to matters of interest to us because of direct experience and policy interests.

PART 1

Section 2  Bail and Bail Conditions

Sacro has operated Bail Supervision schemes in Scotland for a number of years and therefore has direct experience of bail. Bail Supervision is an additional condition that can be added to a Bail Order. Such schemes are well used in the courts where they are available and have a good record in terms of successful completion. It is to be hoped that the Scottish Executive will encourage the new Community Justice Authorities to commission this type of service throughout Scotland.

Sacro provided a detailed paper for the Sentencing Commission during its consideration of this subject. We also provided additional information in response to the Scottish Executive’s Action Plan from which this Bill stems. In our view the Executive proposals in the Bill are welcome and should enhance the credibility and effectiveness of bail provisions, not least in the matter of clarity and transparency.

We have one suggestion that we think would strengthen the Bill. We recommend that an additional subsection be inserted to require the court to ascertain whether or not the accused accepts the offer of bail on the terms outlined. We believe this would reinforce the importance that is attached by the court to adherence to the bail conditions and help to ensure that the accused person is fully aware of this. In court the accused is usually a fairly passive observer of proceedings and many accused do not fully understand what is going on. This measure would require more active inclusion.

The wording could take the form used in relation to the making of probation orders in Section 228(5) of the Criminal Procedure (Scotland) Act 1995 – *and the court shall not make an order unless the offender expresses his willingness to comply with the requirements thereof.*

PART 2

Section 6  Liberation on Undertaking

One of the provisions in this Section empowers police officers to impose conditions on undertakings analogous to those which a court may impose
when granting Bail. Paragraph 66 of the Policy Memorandum accompanying the Bill states:

The conditions which may be imposed include some which reflect standard bail conditions……Special conditions may also be applied where this is necessary to ensure that the standard ones are met. For instance, someone liberated to appear in court in relation to an allegation of shoplifting might be banned from entering the shop or shops concerned.

This is a significant power to be invested in individual police officers. We believe that it will be essential that guidance be issued on what conditions may be appropriate and that practice be monitored. Police will need to consider any potential negative impact that might result from an inappropriate condition. An example of an inappropriate condition would be one that prevented an accused person from entering a shopping centre or other area and thereby prevented the person obtaining essential prescribed drugs. Such a ban might not only put the individual’s health at risk but also make re-offending more likely if the prescription was for prescribed alternatives to illegal drugs.

The Committee might therefore want to seek an assurance from the Executive that steps will be taken to ensure that this provision does not have undesirable and unintended consequences.

PART 3 PENALTIES

Sentencing Powers

Sections 33 – 38 would provide the courts with powers to impose longer and more punitive sentences.

Scotland’s growing prison population is at least in part due to the imposition of more severe penalties in recent years and these provisions may well exacerbate that trend. Increasing maximum powers may lead to “sentencing drift” in an upwards direction. If the Committee is concerned about this, as Sacro is, then it must ask whether the new powers are consistent with policies designed to restrict the size of the prison population.

SACRO
6 April 2006
CRIMINAL JUDICIAL CO-OPERATION


The European Evidence Warrant (EEW) is a draft Framework Decision which would apply the principle of mutual recognition to obtaining certain types of evidence. There is general agreement between Member States that the executing State should be responsible for deciding the method and procedures for executing an EEW, that the issuing State should be obliged to ensure that the EEW is necessary and proportionate and that human rights should be protected by the insertion of a human rights clause.

Although negotiations are well advanced, final agreement has yet to be reached on certain matters, including, the possibility of refusing request on grounds of territoriality and essential national security and definition of offences for which dual criminality is not to apply. It is hoped that it will nonetheless be possible to arrive at a general approach during the Austrian Presidency, with formal adoption at some point in 2006.

A Scottish Executive official has attended Working Group meetings as part of the UK delegation.

Draft Framework Decision on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

All EU Member States have ratified the Council of Europe Convention on the transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved. The aim of this initiative is develop the 1983 Convention provisions further in the EU and to ensure that a custodial sentence imposed in one EU Member State is recognised and enforced in another - with the aim of improving re-socialisation of offenders by allowing them to serve their sentences in countries in which they understand the language and have the most family and other close links. Not withstanding the necessity of providing the sentenced person with adequate safeguards, it is argued that his or her involvement in the proceedings should no longer be dominant by requiring his or her consent to the forwarding of a judgement to another Member State for the purpose of its recognition and enforcement of the sentenced imposed.
The draft Framework Decision was published as an Austrian initiative in January 2005 and made some progress during the time of the UK Presidency last year. Outstanding issues include the extent to which: “dual criminality” (that the behaviour in question is a crime in both the requesting and requested State) should be dispensed with when considering transfers and the extend to which prisoners themselves should have a say in the matter of transfer. The Austrian Presidency has made this a priority and hope to be in a position to reach a general approach to the text by the end of it.

(poss) Proposal for a council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union.

Aimed at setting common minimum standards with regard to certain procedural right throughout the EU, including: access to legal advice, access to free interpretation and translation, ensuring that persons who are not capable of undertaking or following the proceedings receive appropriate attention, the right to communicate, inter alia, with consular authorities in the case of foreign suspects and notifying suspects of their rights. This Framework Decision would apply not only to individuals who found themselves in another Member State, but as an all encompassing measure applying throughout the EU to all citizens. Published by the Commission in early 2004, this initiative first appeared at working group level in September 2004. Progress in the working group has been slow, mainly due to the difficulty in arriving at a common approach where procedure may vary in its detail across different jurisdictions in the EU. Some delegations still question whether in fact there is a legal base for this initiative within current Treaties.

Eurojust Annual Report 2005

A general discussion is expected on the activities of Eurojust during this period.

Council Decision on Asset Recovery Offices

The Council Decision aims to ensure that Member States set up or designate national Asset Recovery Offices, which through enhanced co-operation, should promote speedy tracing of assets derived from crime, to enable their subsequent freezing, seizure or confiscation by the competent judicial authorities. This Council Decision was published as an initiative of Austria, Belgium and Finland in December 2005. It has since received some working group time and it is anticipated that the Presidency wishes to report progress on and get agreement on certain textual revisions. Negotiations have included matters such as designation of contact points and the relationship with other existing arrangements, such as CARIN, an informal network which has membership beyond the EU.
New Financial Frameworks for the Period 2007-2013, General Programme “Security and Safeguarding Liberties”

The funding for JHA for the period 2007-2013 is covered by 3 frameworks, the Justice and Fundamental Rights framework, The Security and Safeguarding Liberties framework & the “Solidarity” mechanisms” in the fields of immigration and asylum. Each Framework programme contains individual funding programmes within it.

The majority of funds are allocated to the immigration-related programmes, but in comparison to previous financial perspectives, significant sums will be allocated under the ‘security and safeguarding liberties’ and ‘justice and fundamental rights’ framework programmes. Current information is that the Commission has not yet provided a revised breakdown of the amount of money that will be allocated to individual funding programmes under these programmes – but it may be nonetheless that the breakdowns will be provided in time for the JHA Council in June.

CIVIL JUDICIAL CO-OPERATION

Proposal for a Regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II).

The Proposal was first published by the Commission in 2003 and negotiations in the Council Working Group have continued since then. The proposed Regulation would govern which country's law should apply to a civil dispute about a non-contractual obligation which has an international element. Non-contractual obligations cover an extremely wide range of cases, anything from road traffic accidents to liability for defective products to medical negligence. However, the Regulation would not harmonise national laws on these subjects, only their conflict rules determining which country's law should apply when there are international elements to the case.

The most politically sensitive aspect of Rome II is defamation which was discussed at the meeting of Justice and Home Affairs Ministers in April. It was clear from the discussion that there was no sufficient majority in favour of a single positive rule that would govern cases involving defamation and similar issues. The only realistic option for gaining political agreement on this issue (and therefore being able to move on with the rest of the dossier) was to exclude defamation and similar claims from the scope of Rome II altogether. The UK strongly supported this course of action and was proactive in securing eventual agreement to it when the Council of Ministers met again on 27/28 April. Further political agreement on the recitals in Rome II will be sought at the June Council and a full common position in Council is expected later this year. Other contentious issues include the scope of the Regulation and the special rules governing product liability and unfair competition cases. The UK position regarding these special rules will be intimated to the European Parliament in the run-up to their second reading of Rome II in late 2006 or early 2007 (they completed their first reading in June 2005).

Executive officials have attended Council Working Group meetings as part of the UK delegation and have worked closely with DCA colleagues in developing the UK line.

The key objective of this Directive is to facilitate alternative methods of settling disputes and simplify access to justice in civil and commercial matters.

Scope of the proposed Directive on Mediation considered by the EU Civil Law Committee throughout 2005. The JURI Committee held a public hearing on mediation in Brussels on 20 April 2006. Arlene McCarthy advised that despite initial doubts about the proposal the Parliament supported mediation and wanted to take a positive approach. (She confirmed later in conversation with the Germans that meant they would not now oppose a Directive. Arlene also said in an earlier conversation the same day with Cathy Ashton that the Parliament was generally opposed to having a split Regulation and Recommendation as it would have no influence over a Recommendation.) They wanted to ensure that any changes they proposed would not cause any problems for Member States’ legal systems. They also wanted to decide whether the proposal was suitable for all types of mediation including family. She hopes to produce her draft report during May 2006. Ian Duncan (the Scottish Parliament’s rep in Brussels) has been asked to produce a report by June for the Scottish Parliament.

(poss.) Proposal for a Regulation establishing a European Small Claims Procedure

This proposal was presented by the Commission on 15 March 2005. It followed a Commission consultation exercise in 2003. The aim of this proposal is to simplify and speed up litigation concerning small claims. It has been agreed by Ministers that the proposal should be limited to cross-border cases. However, agreement on a definition of cross-border is still to be reached by officials. We support this proposal and believe that it will provide an excellent opportunity to deliver a procedure that will bring benefits to citizens across the EU. The UK has been a long-standing advocate of a European Small Claims procedure for cross-border cases having proposed it during our 1998 Presidency. This proposal will help ordinary people to enforce rights economically. This will promote consumer confidence and bring real benefits to citizens and businesses alike. The Austrian Presidency has indicated its intention to finalise this proposal during their presidency. Apart from certain types of claims which it is now proposed will be specified by member states, all monetary and non-monetary claims will be permissible subject to this limit. The Commission has proposed a limit of €2000 for the European Small Claim. The small claims limit for England and Wales is currently set at the much higher level of £5,000 and for this reason DCA colleagues continue to press at working groups for a variable threshold that can be fixed at national level. The majority of member states are opposed to a variable threshold. Dianna Wallace, MEP has, however, raised a motion in the European Parliament seeking to increase the threshold from €2000 to €10,000 but it is understood she is unlikely to find much support.

Executive officials will attend Working Group meetings as part of the UK delegation and have worked closely with DCA on the UK line.

Maintenance Obligations (poss).
The new instrument would add value by providing a more unified and consistent approach to maintenance claims for European citizens who wish to apply where the maintenance debtor is in another EU country.

The European Commission consulted MS by way of Green Paper in 2004 and the SE submitted its own separate response, together with the UK Government response in November 2004. The draft proposal for an instrument is issued from the Commission on 15 December 2005 and Council Working Group negotiations began in February 2006. An Executive official has participated in the UK delegation for both working group meetings to date on this draft Regulation. The meetings have focussed on each delegation’s overall position on the draft instrument, and have also looked at the chapters dealing with scope and definitions; jurisdiction, and applicable law. The UK (and a number of other Member States) has very serious concerns about how the application of foreign law in a maintenance obligation would impact on parties in UK jurisdictions where foreign law must first be proven and averred, thereby adding additional cost and delay for parties, and potentially decreasing legal certainty. The next working group meeting is scheduled for late May 2006.

An Executive official continues to work closely with DCA colleagues as part of the UK delegation to develop the UK line on this draft Regulation.

POLICE AND JUDICIAL CO-OPERATION

Counter-Terrorism.

Legislation in relation to terrorism is reserved – Scottish Executive officials are in contact with Whitehall colleagues as necessary.

Debate on the future of Europol

A High Level Conference on "The Future of Europol" was held in Vienna in February. The Friends of the Presidency Group was also established to prepare an Options paper on the future development of Europol. The UK was actively involved in influencing the draft Council Conclusions. An emerging prevailing view in the Friends of the Presidency Group is that the policy focus should be on ensuring that Europol achieves its full potential within the framework of the existing Europol Convention and associated legal structures. Although there appears to be no philosophical objection to converting the Europol Convention into a more flexible Council Decision, there is a widely supported view that this should not divert attention from the more immediate imperative of credible delivery of expected outcomes within the new Organised Crime Threat Assessment (OCTA) framework.

ASYLUM AND IMMIGRATION

(poss) Communication of the European Commission on a Policy Plan on Legal Migration

(poss) Proposal for council decision on the establishment of mutual information procedure concerning Member States measures in the area of asylum and immigration

(poss) Conference on Media, Migration and Asylum (19-21 April 2006)
List of safe countries of origin

The Executive has a co-ordination role with regard to the provision of services for asylum seekers and refugees. Any change to operations in Scotland will be for the Home Office to implement.

GENERAL

Reinforcing the EU emergency and crisis response capacities.

External Relations

European Programme for the protection of critical infrastructure

EU JHA Strategy Unit
11 May 2006