JUSTICE 2 COMMITTEE

AGENDA

30th Meeting, 2004 (Session 2)

Tuesday 9 November 2004

The Committee will meet at 2.00 pm in Committee Room 4.

1. **Subordinate legislation:** Hugh Henry MSP (Deputy Minister for Justice) to move motion S2M-01959—

   that the Justice 2 Committee recommends that the draft Abolition of Feudal Tenure etc. (Scotland) Order 2000 (Consequential Provisions) (Scotland) Order 2004 be approved.

2. **Justice and Home Affairs In Europe:** The Committee will take evidence from—

   Mrs Valerie Macniven, Head of Civil and International Group, Danny Jamieson and Fergus McNeill, Criminal Procedure Division and EU JHA Team, the Scottish Executive.

3. **Fire (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 Report.

Gillian Baxendine / Tracey Hawe
Clerks to the Committee
Tel 0131 348 5054
Agenda item 1 – Subordinate Legislation

Note by Clerk – draft SSI

J2/S2/04/30/1

Agenda item 2 – Justice And Home Affairs In Europe

Note by the Clerk

J2/S2/04/30/2

Statement by the Minister for Justice on Ministerial priorities for the Dutch Presidency

J2/S2/04/30/3

Scottish Executive Response to the European Commission Green Paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union

J2/S2/04/30/4

Proposed areas for questioning (PRIVATE PAPER – MEMBERS ONLY)

J2/S2/04/30/5

Letter from the Convener of European and External Relations Committee and pre-Council report for meeting on 25 October

J2/S2/04/30/6

Agenda item 3 – Fire (Scotland) Bill

Draft Report PRIVATE PAPER – JUSTICE 2 COMMITTEE MEMBERS ONLY

J2/S2/04/30/7

“pre-consultation” draft of the proposed Fire and Rescue Framework for Scotland

J2/S2/04/30/8

Letter from the Scottish Executive on Section 11, Emergency Directions

J2/S2/04/30/9

Letter from Karen Whitefield MSP, Convener, Communities Committee

J2/S2/04/30/10

Members are reminded to bring with them copies of the Fire (Scotland) Bill and accompanying documents.

The following documents are circulated for information only:


The following documents have not been circulated but are available from the Clerk:

- Family Matters: Improving Family Law in Scotland, Report from three events held by the Scottish Civic Forum;
- Improving Family Law in Scotland: Analysis of Written Consultation Responses, Scottish Executive Social Research;
- Family Law Consultation Interactive Focus Group Exercise, Scottish Executive Social Research

Forthcoming meetings:

- Wednesday 10 November – 10am – Joint meeting to consider draft budget report
JUSTICE 2 COMMITTEE
30th Meeting 2004 (Session 2)
Tuesday 9 November 2004

The draft Abolition of Feudal Tenure etc. (Scotland) Act 2000 (Consequential Provisions) Order 2004
Note by the Clerk

Background

1. As a consequence of the Abolition of Feudal Tenure etc. (Scotland) Act 2000, this instrument makes modifications to the Land Registers (Scotland) Act 1868, the Titles to Land Consolidation (Scotland) Act 1868 and the Law Reform (Miscellaneous Provisions (Scotland) Act 1980.

Procedure

2. The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 22 November 2004.

3. The Subordinate Legislation Committee considered the instrument at its meeting on 26 October 2004 and had no comment to make.

4. The instrument was laid on 5 October. Under Rule 10.6, the draft Order being subject to affirmative resolution, it is for the Justice 2 committee to recommend to the Parliament whether the instrument should come into force. The Minister for Justice has, by motion S2M-0959 (set out in the Agenda), proposed that the Committee recommends the approval of the Order. The Minister will attend to speak to and move the motion. The debate may last for up to 90 minutes.

5. At the end of the debate, the Committee must decide whether or not to agree to the motion, and then report to the Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendation.

Clerk to the Committee

4 November 2004
Background

1. At its meeting on 21 September 2004, the Committee agreed to invite Executive officials to provide an update on work being undertaken by the Executive in the field of Justice and Home Affairs in Europe and specifically to provide an update on the two Green Papers and the Framework Decision noted previously as being of interest to the Committee.

2. To date, the Justice 1 Committee has looked at issues relating to civil law whereas this Committee has been more interested in criminal law matters. However it has not been the intention for there to be a civil / criminal split between the two committees.

Ministerial Priorities for Dutch Presidency

3. In anticipation of today’s evidence taking session, the Executive has provided a helpful update of the Ministerial priorities for the remainder of the Dutch Presidency (due to conclude at the end of the year), enclosed as paper J2/S2/04/30/3.

Framework Decision on Certain Procedural Rights in Criminal Proceedings

4. Following consultation on a Green Paper in 2003, the Commission adopted a proposal on the rights of defendants and suspects in criminal proceedings throughout the EU. The proposal covers access to legal advice before and after a trial, access to interpretation and translation and suggests that a Letter of Rights (a short written statement of basic rights under common headings showing national provisions) should be given to all suspects before any questioning can take place. The Framework Decision can be accessed by following this link:

http://europa.eu.int/smartapi/cgi/sqa_doc?smartapidcelexapidprod!CELEXnum

5. The Executive wrote to key stakeholders seeking comments by 27 September to assist its contribution to the UK negotiating line. In its scrutiny of the paper, the House of Commons Select Committee on European Scrutiny was “concerned about the wide scope of the proposal, since it will affect the criminal procedure generally and not just those cases where some cross-border element arises.”
**Green Paper on Sentencing**

6. The Green Paper on sentencing was published on 30 April 2004 under the formal title Green Paper on Approximation, Recognition and Enforcement of Criminal Penalties can be accessed by following this link


7. The Green Paper seeks views on whether national differences in criminal penalties are an obstacle to protection in areas of freedom, security and justice and whether existing differences in sentencing between Member States lead to problems for judicial co-operation. The paper contains 39 questions to which answers are sought.

8. The Executive has recently responded formally to this Green Paper following a mini-consultation with stakeholders. The response is enclosed as paper J2/S2/30/4 and includes an Annex setting out the background to sentencing in Scotland and to inter-jurisdictional transfers between the different jurisdictions within the UK.

**Green Paper on Bail**

9. The Green Paper on Bail (formal title - Green Paper on the Mutual Recognition of Non-Custodial Pre-Trial Supervision Measures) was published on 17 August 2004 together with a detailed Commission Staff Working Paper which provides some analysis of current legal frameworks. The Green Paper seeks answers to 6 main questions listed at the end of the paper. The paper can be accessed by following this link:

   [http://europa.eu.int/comm/off/green/index_en.htm](http://europa.eu.int/comm/off/green/index_en.htm)

10. The various alternatives to pre-trial detention that currently exist within the different Member States (e.g. reporting to police authorities or travel prohibition) cannot presently be transferred across borders. The aim of the Commission is to make it possible for a criminal suspect arrested in an EU Member State in which he/she is not resident to be subject to non-custodial supervision measures there. The Green Paper states at present “owing to risk of flight, non-resident suspects are often remanded in custody, while residents benefit from alternative measures.” (Para 1.1)

11. The Executive is presently formulating its response to this Paper working to a deadline of the end of November.

Clerk to the Committee
November 2004
Statement by the Minister for Justice

1. Prospects for the Dutch Presidency for Justice and Home Affairs (JHA)

1.1 The top priorities as stated by the Presidency

The Dutch Presidency has presented a programme of work in which it makes clear its top priority in JHA will be to agree the next five year JHA programme (“Tampere II”). – Update: now known as Hague Programme The Tampere II programme will cover counter terrorism; police and judicial co-operation; asylum, immigration and integration; civil judicial co-operation and homeland security (focussing on how to respond to emergencies). We expect the Programme to be formally agreed at the November European Council, when the Presidency will address the new Commission for the first time. The Presidency plans to make the distinction between different fields of Justice and Home Affairs and accord levels of priority to them. Terrorism will take priority followed by the establishment of a Common Asylum System and Police Co-operation. In Police Co-operation the Dutch will focus on practical on the ground co-operation rather than legislation.

The Dutch programme confirms that the Presidency will seek to:

- Focus on effective operational co-operation that delivers results on the ground; to connect better between the Member States by learning from one another.
- Improve security for Europe's citizens by implementing action plans and work programmes including those directed to combating organised crime, drugs and terrorism as well as other forms of crime which pose a threat to the security to the citizens of the EU. Also making full use of Europol, the European Police College (CEPOL) and the Police Chief's Task Force. The emphasis will be on strengthening the police and judicial co-operation at the practical level, including use of the European Arrest Warrant and Joint Investigation Teams.
- The anti-terrorist agenda will be a priority for the Dutch Presidency particularly as the recently appointed Counter-Terrorism Co-ordinator is a former Dutch Minister. The Presidency will aim to ensure that targets set in the Action Plan and various Council Conclusions are met and will press for the completion of measures, such as those relating to orders freezing property or evidence by December 2004.

1.2 Important issues for the Executive to be dealt with by the Presidency

Justice Department Priorities in JHA

The Minister for Justice, where appropriate in conjunction with the Lord Advocate, will work to ensure that EU JHA legislation is compatible with the principles of Scots criminal and civil law, that Scotland can play its full part in promoting cross border access to justice and in cooperation to combat organised crime and that Scotland does not become a safe haven for
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criminals. Work will also be undertaken to develop the exchange of best practice with EU partners on areas such as tackling crime and cross border access to justice.

Scottish Justice Ministers will attend Council meetings during the Dutch Presidency, where this is appropriate as was the case during the Irish Presidency when the Minister for Justice attended the JHA Council on 30 March 2004. **Update – Minister for Justice attended 25/26 October JHA Council as part of the UK Delegation along with the Home Secretary and Caroline Flint MP. At this Council Ministers discussed the Hague Programme in advance of it being submitted to European Council on 5 November.**

Civil Judicial Co-operation

- There will be further discussions on The Regulation on the law applicable to non-contractual obligations (Rome II). The regulation will decide which country’s law would apply to resolve an international dispute concerning a non-contractual obligation – anything from a negligence action arising from a road traffic accident to defamation to a claim based on environmental pollution. The most difficult area is likely to be defamation because of the need to balance freedom of expression against protection of reputation in a way which is acceptable across Europe. However, the outgoing Irish and incoming Dutch Presidencies have produced a revised provision which would apply the law of the forum in defamation cases, and this is likely to be much less objectionable to media interests than previous suggestions. **Update – A final set of discussions during the Dutch Presidency will take place later this month (November). On the issue of defamation the revised provision tabled by the Dutch Presidency is still being considered by the Working Group.**

- **Update: Executive has submitted to UKRep its response to Green Paper on Maintenance Obligations**

- There will be further discussions on the European Order for Payment Procedures. This is a proposal for a simplified procedure for obtaining and enforcing a judgment in uncontested claims. The draft regulation currently being considered applies to both cross border and internal cases. The treaty base for such a regulation has been questioned by a number of member states. Whilst the Scottish Executive fully supports the proposal in so far as it relates to cross border cases it has, along with the other jurisdictions in the United Kingdom, sought to restrict this proposal to cross border cases only, questioning the treaty base for the proposal as it presently stands. Further, the need for such a procedure for internal cases is doubted. There are other similar procedures in each of the UK jurisdictions which are simple and bring about speedy judgements in uncontested claims. – **Update: Proposal being discussed in Working Group meetings. Executive officials working closely with colleagues from Department for Constitutional Affairs (DCA) on UK negotiating line.**

- A proposal for a European Small Claim is scheduled to be presented in September and will be discussed at meetings scheduled for October and November. The aim of this proposal is to simplify and speed up litigation concerning small claims and to abolish intermediate measures with a view to enabling recognition and enforcement of judgments in these cases in other member states. – **Update: Working Group on 29 October discusses Commission proposal. Executive officials in close contact with DCA officials and contributing to negotiations.**
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• We expect the Commission to present a White Paper on Rome II on the law applicable to divorce during the Presidency. This is likely to discuss the possibility of common European rules regulating which country’s law would apply to a “multinational” divorce. At present courts in the UK jurisdictions do not apply foreign law in family cases, so this dossier will require to be closely monitored. **Update – We now expect the Commission to present its White Paper in 2005**

• A Green Paper on Wills and Succession is expected to be published and the Executive will be submitting a response. The Green Paper is expected to look at issues such as mutual recognition of the title of executors to administer estates, and common rules on which country’s law should apply to succession in an international case. This is a very complex area which has already been the subject of unsuccessful attempts at worldwide regulation. An EU solution would be difficult to arrive at, but would add value. **Update – This Green Paper is not expected to be published until 2005**

• We expect a proposal on Alternative Dispute Resolution (ADR) to be presented by the Commission and a draft Directive has been issued on certain aspects of mediation in civil and commercial matters. The Executive generally welcomes the proposals but considers a number of points require to be clarified before the Directive is finalised. A draft code of conduct for mediators has also recently been prepared by Stakeholders and was launched at a conference in Brussels on 2nd July. The Executive is also generally supportive of this code but again considers that its status and effect requires further clarification. **Update: Proposal has been presented by the Commission and Executive officials, where appropriate, will attend Working Group meetings in Brussels with DCA officials.**

Criminal Law

• The Commission has published a Green Paper on Sentencing to which the Executive will be responding. As part of this process, an Executive official and Professor Christopher Gane of Aberdeen University attended an experts meeting in Brussels in June as part of the UK delegation. **Update: The Executive has responded to the Sentencing Green Paper and will be responding to the GP on Bail that was published during the summer by 30 November.**

• The Executive, including Crown Office, will also be involved in discussions with the Home Office on establishing the UK negotiating line on the Framework Decisions on the European Evidence Warrant and on Minimum Standards in Criminal Proceedings. The European Evidence Warrant is an order which would be issued by a judicial authority in one Member State to obtain evidence in another Member State, based on the principle of mutual recognition, and would have repercussions for the way in which mutual legal assistance is provided within the EU. However, the creation of a separate Central Authority in Scotland (see below) will make such future changes much simpler to implement. The Framework Decision on Minimum Standards in Criminal Proceedings will also be important as there are likely to be implications for Scots Law in a range of areas arising from these particular proposals. Where it is appropriate the Executive will field officials as part of the UK delegation at the Working Groups in Brussels which will be discussing these draft Framework Decisions. **Update: Executive officials have been involved in the formulation of the UK negotiating line.**
MINISTERIAL PRIORITIES FOR THE DUTCH PRESIDENCY

- We also expect the Commission to publish proposals for Framework Decisions on Combating participation in a criminal organisation and penalties for combating counterfeiting. – Update: These items have gone down the Commission’s priority list and are unlikely to appear during the Dutch Presidency and are more likely to appear during the early stages of the Luxembourg Presidency.

- It is anticipated that the Commission will now bring forward a White Paper in the field of mutual recognition, proposing legislative instruments on the subject of disqualifications and on previous convictions. – Update: In advance of the White Paper the Commission have tabled a short term measure with the aim of improving the exchange of information on convictions in the EU within the scope of the 1959 Convention on mutual legal assistance in criminal matters. JD officials have been fully engaged with the Home Office in developing the UK line on this initiative.

Police Co-operation

Key issues for the Executive during the Dutch Presidency will focus on their desire to improve practical, operational police co-operation, including strengthening police co-operation by removing obstacles to cross-border actions of police forces. For example:

- further work on promoting the use of Joint Investigation Teams, which can be established involving two or more EU Member States for any criminal investigation involving the Member States concerned.

- Update -The Presidency has developed a Draft Council Decision on reinforcing law enforcement co-operation at the internal borders of the EU, which it intends submitting during November. Limited applicability for the UK for obvious geographical reasons

- combating motor vehicle crime with cross border implications and the further handling of the relevant draft Council Decision. – Update: The UK has negotiated a number of changes that make the draft a clearer document including, in particular, an amendment to Article 4(co-operation between competent authorities) which was accepted by the Presidency in October.

- combating violence and disorder at sports events, in the context of the EC Football and the Olympic Games, as well as to the Conclusions of the Council on police co-operation for combating football hooliganism. - Update: Remains work in progress, but there have been useful information exchanges within the Police Co-operation Working Group following Euro 2004 in Portugal and also the Olympic Games in Athens.

The Dutch Presidency also attaches much value to the integrity of European police forces. To that end, the Council of Europe adopted in 2002 a ‘Code of Ethics’. The Presidency would like to discuss how such a code could be further shaped within the EU.

The Dutch Presidency is also believed to be keen to press ahead with work on profiling the European Police Chiefs’ Task Force and on building the new institution CEPOL (the European Police College, consisting of a network of existing national training institutes.
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within the EU), and these will also be important areas of work for the Executive.- Update: The Secretariat of CEPOL is based at Bramshill and an officer from the Scottish Police College has been seconded to the Secretariat. During the UK Presidency of the EU the Director of the Scottish Police College will take the Chair of the CEPOL Board and the Board meeting will take place in Scotland in December.

These policing issues will be considered primarily in the Police Co-operation Working Group in Brussels. Where appropriate the Executive will field an official at this Working Group in Brussels and contribute to the UK negotiating position; and the frequency of our attendance will increase in the lead up to next years’ UK Presidency. –Update: Our increased participation has continued where the Agenda has merited meaningful involvement.

Asylum and Immigration

This is a key area in the JHA field with the Dutch Presidency giving impetus to negotiations on readmission agreements. The Presidency will build on work establishing a Common Asylum System and will prioritise work on integration. Although asylum and immigration is reserved there may be implications for Scotland from some of the proposals, e.g. for legal aid, and Executive officials are keeping in close touch with the Home Office on relevant dossiers.

2. Implementation

Recent measures that have been agreed and are or are in the process of being implemented in Scotland include:

- The Regulation on Parental Responsibility which will apply from March 2005, and we are currently working on its implementation. This is likely to require an SSI, new Rules of Court and, more importantly, awareness raising with relevant interest groups, especially the legal professions. The Regulation itself is concerned with setting common rules of jurisdiction and ensuring rapid recognition and enforcement of court orders relating to matrimonial issues or residence of/contact with children.
- The European Order for Payment will apply from October 2005 and the Executive is considering its implementation.
- The Framework Decision on the European Arrest Warrant, which was agreed on 13 June 2002, has been implemented into Scots law by means of the Extradition Act 2003. The new Act came into force in 1 January 2004 and aims to simplify procedures for seeking extradition across the EU. The Crown Office is now a designated Central Authority for the operation of the European Arrest Warrant and is already seeing the advantages of closer and more direct contact with our European neighbours.
- The principal provisions of the Crime (International Co-operation) Act 2003 were brought into force on 26 April 2004, and the Lord Advocate (through the International Cooperation Unit in Crown Office), is now the Central Authority for mutual legal assistance in criminal matters in Scotland. The Crown Office is now working with Scottish enforcement bodies to ensure the benefits of the new simplified process can be properly realised.
- The directive to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid in such disputes has to be implemented
MINISTERIAL PRIORITIES FOR THE DUTCH PRESIDENCY

by 30 November 2004. Changes to the legal aid regulations to give effect to this directive in Scotland are currently under consideration. – **Update: Regulations in the process of being laid before Scottish Parliament.**

3. **Best Practice**

We are undertaking a number of measures in the order to exchange best practice with other Member States:

- Through the Scottish Police College, in partnership with Northern Ireland, in a twinning project to improve the training and development of the Latvian State Police
- Closer links with the Commission through visits, presentations to DG JHA on Scots Law and facilitating a visit to Scotland. A Scots lawyer from the Procurator Fiscal Service will be seconded to DG JHA for 6 months from September O4, to be followed by a lawyer from OSSE on a further 6 month secondment. – **Update: Rob McAndrew from COPFS has now begun work in the Criminal Judicial Co-operation Unit of the Commission.**
- Hosting Justice related events as part of the Scotland in the Netherlands programme in The Hague and University of Leiden in October 2004. – **Update: Event successfully took place on 7th and 8th October**
- Working on seminars to take place during the UK Presidency of the EU in Scotland, which will include the conference on policing with young people which was originally to take place this year. – **Update: Executive officials are working with Whitehall colleagues on UK Presidency**

CATHY JAMIESON
European Commission
Green Paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union

Scottish Executive Response
General comments

1. The Scottish Executive welcomes the opportunity which this Green Paper (GP) presents to discuss matters of fundamental importance to individual legal jurisdictions within the European Union. As you are aware, Scotland has a distinct legal system within the UK.

2. The Green Paper has two stated aims, firstly, to raise the issue as to whether differences in criminal penalties within the EU are an obstacle to attaining the objective of an area of freedom, security and justice, and secondly, whether these differences also cause problems with regard to judicial co-operation and mutual recognition.

3. The Scottish Executive believes that it is important to maintain a distinction between these two strands of work, particularly where there is consideration of approximation / harmonisation. Harmonisation of offences and penalties, where this is justified, in the fight against serious international criminal activity, may raise different issues compared to consideration of what might be desirable in connection with mutual recognition of judgements. In that respect, we agree with the principle which is elaborated in the introduction to the GP, that approximation is not a sine qua non for mutual recognition – and would add that the purpose of mutual recognition is surely to enable different criminal justice systems to work together while respecting their individual legal traditions.

4. The Scottish Executive is concerned, therefore, that in certain respects, the GP appears to discuss the possibility of general intervention and approximation with regard to the details of criminal law and procedure e.g. to the procedures governing prosecution policy, the definition of aiding and abetting, the details of how previous convictions should be used, arrangements for community sentences, and provisions in relation to maximum sentences. In this respect, we believe that fundamental regard has to be had to the principles of subsidiarity and proportionality, which are acknowledged in the GP. We take these together to mean that pro-active, detailed, intervention at EU level should only be contemplated where this can add value; that decisions should be taken as closely as possible to the citizen; and that, when justified, EU intervention should not go beyond what is strictly necessary to achieve the objectives in mind. As far as the TEU is concerned, for example, it is our view that articles 29 and 31 set clear limits as far as approximation is concerned, for example, 31(e), which provides for the setting of minimum rules relating to the constituent elements of criminal acts and to penalties only in the specified fields of organised crime, terrorism and illicit drug trafficking.
The response of the Scottish Executive to the individual questions at ANNEX IV

**Question 1**: (see point 4.1.): To what extent do the differences between sentencing systems raise barriers to the establishment of the area of freedom, security and justice such as:

1. criminals relocating their activities owing to disparities between the way the offences are defined, prosecuted and punished; or
2. barriers to the free movement of persons?

5. There is of course a theoretical possibility that significant differences in the way in which offences are defined, prosecuted and punished, might lead to a relocation of activities if they are perceived to create a weaker regime. However, there are equally a number of other factors which may be of greater importance, such as the likelihood of being detected and apprehended, and for legal persons, the nature of other regulations within their field of operation, and their implementation. We believe, therefore, that any proposed EU intervention based on this theoretical premise would need to be supported by clear empirical evidence of the problem to be addressed.

6. From a Scottish perspective, we are not aware of any evidence from within our jurisdiction, that, for example, criminals are relocating here from other areas specifically due to factors related to the definition of offences, prosecution policy or punishment. Of course, as a general principle, the Scottish Executive will move to plug gaps in the law which could potentially be seen as weaknesses by criminals, and is alert to such matters.

7. Equally, with regard to question 1(2), we have no reason to believe in the Scottish experience that differences in sentencing systems are a barrier to the general free movement of persons in the terms that it is discussed in paragraph 4.1.

**Question 2** (see point 4.1.1.1.): How can major divergences between Member States as regards the decision to prosecute be avoided, at least for offences that are harmonised in the Union?

8. This question appears to have as its premise that there may be significant problems with regard to prosecution policy within the EU. Again, however, the GP approaches this matter from a theoretical angle alone, making an assumption that the fact that some jurisdictions adopt a mandatory approach whilst others use the discretionary principle is, on the face of things, an obstacle to tackling cross border crime.

9. The paper also fails to provide a reasoned argument for favouring mandatory systems, simply stating that a majority were in favour of such an approach in relation to the EPP at a public meeting in 2002, and that “there is no doubt something to be said for there being no major divergence between Member States as regards the decision to prosecute.”

10. Yet there is also an acceptance, in the background discussion on page 26, paragraph 3.1.1.1., that the differences may be more apparent than real – and that, for example, the availability of sufficient evidence may be a compelling and more significant factor in both systems. And so within the paper itself there is a suggestion that there is no such divergence – certainly no evidence to suggest that there is. That does not provide the basis for interfering with such a fundamental element of Member States’ prosecution/justice systems.
11. In Scotland the independence and discretion of the public prosecutor are fundamental tenets that underpin the justice system. The independence of the Lord Advocate as head of the system of prosecution has a constitutional base.

12. A fundamental element within this is the discretion that exists with regard to decisions to prosecute. That discretion applies in relation to decisions about cases reported as a result of a complaint made. But the prosecutor also has discretion to act where there has been no complaint. The prosecutor can require the police to investigate a matter and submit a report. And once the decision to prosecute has been taken, discontinuation is a matter entirely within the discretion of the prosecutor, even where a complainer indicates a desire to withdraw a complaint.

13. Thus the prosecutor is independent of both the government and of individual members of the public.

14. It is important to be clear in this context about the meaning of “prosecution”. In Scotland, the prosecutor has a number of options for action short of prosecution, and in some respects exercises a quasi-judicial power, including the power to offer an accused person the opportunity to pay a financial penalty in lieu of prosecution. A number of other alternatives to prosecution – in the nature of interventionist programmes and mediation – are also available. That is a model the Scottish Executive wishes to develop further as a more effective mechanism for dealing with offences at the lower end of the spectrum of seriousness, and to build in to that an element of community justice – locally determined programmes appropriate to the offence and the context in which it was committed. The paper does not explore where these alternatives would fit in a mandatory system.

15. There are also clear criteria in Scotland to be applied in relation to decisions not to take action, including:

- Insufficient credible, reliable and/or, admissible evidence;
- Mitigating circumstances relating to the offence/offender;
- Triviality of offence;
- A civil remedy is more appropriate;
- Delay in submission of report.

But central to all of this is that the prosecutor must act in the public interest: that is the overriding criterion which must govern the decision making process.\(^1\)

16. With regard to the offences that are harmonised within the Union, referred to in the question, these usually relate to serious criminal activity with a cross border element. In Scotland, these crimes are subject to vigorous attention by the prosecution service, in cooperation with colleagues in other jurisdictions where this is necessary.

17. In conclusion, the Scottish Executive would have fundamental reservations about any moves at EU level to impose a mandatory prosecution system on the Scottish legal system.

\(^1\) In Scotland the test of “reasonable prospect of a conviction” is not applied – but this can be the practical effect of applying the “insufficient credible, reliable and/or admissible evidence” and/or the “public interest” test.


**Question 3 (see point 4.1.1.2.): To what extent could European sentencing guidelines be developed, that is to say basic principles for sentencing, without interfering with the courts’ room for discretion?**

18. As before, this question appears to make the assumption that differences in sentencing traditions may be a key factor in hindering mutual recognition/encouraging criminality. This once more raises the issue of evidence based policy making.

19. Also, the principle under consideration is whether there should be detailed EU intervention or not in these matters, and not whether sentencing guidelines are in themselves desirable or otherwise.

20. Leaving those considerations aside, it is also important to consider what may be meant by the term “sentencing guidelines” in this context, and what is potentially to be included within the scope of discussion. These issues, and related matters, appear to be raised at several junctures – page 11, pages 26 to 32 and page 48. In some respects the scope would appear to be very broad, with mention of factors such as levels of participation and completion, aggravating and mitigating factors, recidivism and concurrent offences. There is also mention of custodial penalties, financial penalties, confiscation, sanctions for legal persons and alternative sentences.

21. The GP notes that criminal courts, as a general rule, have considerable discretion in sentencing and that it would therefore not be correct to lay down mandatory rules. The Scottish Executive agrees that mandatory EU rules on sentencing, which is a matter of considerable importance in domestic policy, would be inappropriate. Beyond that, however, the concept of sentencing guidelines as used in the GP appears to lack some clarity. In paragraph 4.1.1.2, which is the immediate reference point given above, the concept is referred to in relation to the academic study “Harmonisation of criminal penalties in Europe”, which, it is said, envisages soft law instruments recommending “the adoption of penalties lying in a range between a minimum and a maximum (sentencing guidelines) or areas for common application in standard cases.” However, sentencing guidelines are then defined in the question above as “basic principles for sentencing, without interfering with the court’s room for discretion.”

22. Basic EU principles/guidelines for sentencing could, potentially, cover a lot of ground, and depending on their status, could also be very difficult to manage – not to say controversial. Would they, for instance, cover all types of sentences, including custodial and alternative? Would they cover, for example, statements of principle on the use of previous convictions, the weight to be attached to aggravating/mitigating factors, etc?

23. Given the extent to which this could be a very complicated exercise, a clear rationale and case would have to be presented, setting out more detailed arguments. In the context of the overarching purpose of this GP i.e. whether greater approximation is needed to deter criminality and enable the mutual recognition of sentences, the Scottish Executive does not think that such a rationale and case has been made.

24. Finally, under the principle of separation of powers, the Executive and the Legislature in Scotland has, as a rule, restricted its involvement in sentencing matters to setting general maximum sentence levels, with the role of the judiciary being to decide and arbitrate in individual cases. In this respect, the position in Scotland would not, in general, be
compatible with that envisaged in the study referred to in the GP, “Harmonisation of penalties in Europe”, which, as mentioned, is understood to have recommended the adoption of a system of penalties lying in a range between a minimum and a maximum. It is noted, however, in this regard, that Declaration No 8 of the Amsterdam Treaty states that a Member State which does not provide for minimum penalties cannot be obliged to do so.

25. In conclusion, the Scottish Executive could not support EU sentencing guidelines as proposed in the GP. We believe that it is of fundamental importance that individual jurisdictions reserve the right to determine general sentencing policy in keeping with the needs of their own criminal justice policy.
**Question 4** (see point 4.1.1.2.): Should studies of the sentencing practice of the Member States’ courts be carried out?

26. The Scottish Executive would in principle welcome studies and research as a contribution to evidence based policy making. However, given the potential complexities of any such projects, it is likely that it would be more manageable and of greater assistance if it were to have a limited focus, perhaps looking at sentencing in relation to serious cross border crime. Methodology is also a key factor that would have to be carefully considered before any work was commissioned. We would also refer to our response to question 3 and re-iterate our view that any such study should not be set up on the assumption that it was a first stage in establishing EU wide guidelines.

**Question 5** (see point 4.1.1.2.): Would it be helpful to establish a sentencing information system to provide guidance for the courts?

27. The Scottish Executive notes with interest the reference in the GP to the Sentencing Information System in Scotland. It should be noted, however, that it is not available to all Scottish courts as indicated in the GP, being restricted to judges of the High Court and to crimes that have been tried in that court. The system in itself is purely descriptive, so although it provides information on a database for judges about what has been done in the past, it does not purport to provide general guidance on the appropriate approach to sentencing in individual cases. So it would be more accurate to describe its function as being the provision of information, rather than guidance, in the strict sense of the word.

28. This question is related, of course, to questions 1, 3 and 4, and so we would refer to those answers by way of background to our approach to this question.

29. Therefore, a principled consideration would raise, inter alia, the following issues. What are the problems that a proposal of this nature would help to solve? What status would such a system have, and who would monitor its usage in individual jurisdictions? Who would monitor the system for accuracy of input of data? What strategy would be needed to ensure compatibility of information which would be drawn from across a diversity of jurisdictions, that is, the provision not simply of raw data, but also the detailed background information that would be necessary to enable meaningful comparisons to be made? What costs would be attached to the development and maintenance of such a system and who would pay?

30. In conclusion, in the view of the Scottish Executive, the rationale for EU wide sentencing guidelines has not been clearly presented (see question 3) and therefore an EU wide sentencing information system to provide guidance for the courts in this matter would also appear to be superfluous.

**Question 6** (see point 4.1.1.5): Is it enough to recognise a final criminal judgment given in other Member State (and/or treat it in the same way as a national judgment) for it to be taken into account in a national court for recidivism purposes?

31. Under the terms of recent Scottish legislation (section 57 of the Criminal Justice (Scotland) Act 2003), previous convictions from within the EU can now be taken into account in Scottish procedure.
32. The Scottish Executive believes that this kind of approach is proportionate with regard to foreign convictions i.e. to facilitate their use in domestic proceedings in a similar manner to domestic previous convictions, and would also support measures to ensure that accurate information can be passed quickly between jurisdictions with minimum procedure.

**Question 7** (see point 4.1.1.5): Should there first of all be a degree of approximation of legislation in matters such as:
- determination of the offences to be taken into account systematically as the beginning of a series of repeat offences (establishment of a special European recidivism system);
- determination of the type of final criminal judgments to be taken into account for recidivism purposes (type of decision and authority, type and quantum of penalty);
- the period during which final criminal judgments should be taken into account as the beginning of a series of repeat offences in another Member State and the circumstances that might neutralise the effect of a conviction for recidivism purposes?

33. The Scottish Executive does not agree that it is necessary or proportionate for the EU to propose what would be approximation of the finer details of criminal procedure within Member States in this regard. It is adequate to propose that foreign previous convictions be given equal status to domestic previous convictions. Thereafter it should be for individual jurisdictions to apply the measures that they would normally apply under domestic law.

**Question 8** (see point 4.1.2.): To what extent should the divergences between national rules on the procedures for enforcement of custodial penalties be reduced, particularly with a view to avoiding the risks of discrimination against non-resident offenders in the application of such penalties?

34. The main focus of paragraph 4.1.2., and presumably also therefore question 8, is life imprisonment. In particular, it is argued that it should be abolished and replaced instead by common maximum penalties throughout the EU, of perhaps 20 to 30 years for the most serious offences. It is said that this would not only avert difficulties for the enforcement of custodial penalties imposed in the sentencing State in a State where they are unknown, but that it would also be justified in broader terms, because, it is argued, life imprisonment is not conducive to rehabilitation or reintegration.

35. With regard to the discussion of life imprisonment in relation to this question (see also page 29 of the GP), it should be observed that in Scotland such a sentence is not exclusively “reserved for very serious crimes”. A life sentence can also be used in relation to individuals who present a risk to society, the life tariff allowing the authorities to make provision for supervision on release for individuals in this category – which can in fact represent an important element in rehabilitation or reintegration. As a general point, in Scotland, all prisoners in this category will become eligible for release on parole after a period specified by the court when the sentence is passed. While there may be difficulties attached to transferring back the presumably small subset of individuals in this category who had committed their crimes away from home, where such a sentence was not recognised in their country of origin, it is to be questioned whether this in itself is sufficient justification for the abolition of the life sentence proposed in the GP. For the Scottish Executive, the matter of the life sentence is an important part of domestic policy and we could not therefore agree to its abolition on the grounds outlined in the GP.
36. There may be another issue, however, in relation to enforcement, with regard to individuals who have in fact served their sentences in a foreign jurisdiction and then become eligible for early release, with conditions, and where it may be desirable to transfer these post release supervision requirements to another jurisdiction. The Scottish Executive would welcome further consideration of this matter. It may be that this is a related issue to the recognition of previous convictions and disqualifications, where there may be a specification, for instance, that an individual should not associate or work with children.

**Question 9 (see point 4.1.2.): Are there categories of offences on the list in Article 2(2) of the Framework Decision on the European arrest warrant and/or the proposal for a Framework Decision on the application of the principle of mutual recognition to financial penalties for which the penalties (and the definitions of the offences) should be harmonised as a matter of priority?**

37. As these lists are generic, descriptive, and deliberately general and flexible, their prime purpose being to enable issuing States to be able to say that the matter in question is an offence when asking for assistance, the Scottish Executive takes the view that they may be of limited assistance in considering what further action is required or justified at EU level to combat serious cross border criminal activity. Such considerations should be informed instead by information gathered from, for example, practitioners and law enforcement agencies as to what real problems are being encountered on a day to day basis.

**Question 10 (see point 4.1.3): To what extent should criminal fine systems be approximated (for example in relation to economic crime, including offences committed by legal persons)?**

38. The GP makes the point that it may be desirable to consider approximation of financial penalties where there is a failure to comply with Community provisions in the context of a Union policy.

39. The Scottish Executive believes that there may be a case for considering this issue separately for natural and legal persons.

40. For natural persons it is probably neither desirable nor practical to envisage EU wide approximation for several reasons. Firstly, there are differences between jurisdictions, which have been highlighted in the GP, where some have the daily rate system and others the more traditional fixed amount. Approximation would doubtless require, in the interests of consistency, that some countries give up one system and switch to another. This is unlikely to be either convenient or desirable. Secondly, and perhaps more importantly, there are still wide differences in economic conditions across the Union. In that context it would be difficult to devise a fair system. It is thus more desirable and equitable that each jurisdiction be left to determine according to local circumstances what are “effective, proportionate and dissuasive” financial penalties as far as natural persons are concerned. Thirdly, and most fundamentally, the Scottish Executive believes that approximation of penalties, where justified, should only be in relation to certain serious international criminal activity. As fines are unlikely generally to be a major element in the punishment of individuals for such crimes, in comparison to imprisonment and forfeiture of assets, then approximation for natural persons is also unjustified on those grounds.

41. For legal persons, there may be a more persuasive case. Firstly, legal persons may be operating across jurisdictions and be less likely to be affected by purely local economic
factors. Secondly, where they are found guilty of serious criminal activity, then fines are likely to be a large element of the punishment. However, the Scottish Executive believes that it would be important to consider matters on a case by case basis.

**Question 11** (see point 4.1.6.): To what extent should divergences between national rules governing the criminal or administrative liability of legal persons be narrowed, particularly to avert the risk of criminals relocating their activities in the field of financial crime?

42. In Scotland it is possible to ascribe criminal liability to legal persons, but it is understood that in some jurisdictions there is a strong view that it is not possible under their systems to have anything other than administrative liability. The key principle, however, is presumably that there is legal liability available in each Member State, so that in practical terms with regard, for example, to combating financial crime in areas where there are harmonisation measures, the effective outcome is the same regardless of the judicial route followed.

**Question 12** (see points 2.1.9 and 4.1.6.): Could the same range of sanctions as provided for by the current Framework Decisions apply on a general basis to legal persons?

43. It is understood that this refers to sanctions such as the temporary or permanent closure of establishments used to commit the offence. The Scottish Executive believes that any consideration of this matter would need to be on a case by case basis.

**Question 13** (see point 4.1.7.): To what extent should divergences between national rules governing alternative sanctions be narrowed, in particular to avoid them being applicable in practice only to residents?

44. It is perhaps recognised that the matter of the alternative sentences, however defined, is a difficult area. (With regard to definitions, the one which appears to be favoured on page 21 of the GP “penalties imposed on natural persons or accepted by them on the course of a mediation or out of court settlement procedure” would seem to be unsatisfactory in that it would appear specifically to exclude penalties which are given by the court.) The Commission’s communication of July 2000 on the mutual recognition of final decisions itself states that “whereas in principle the mutual recognition of alternative sanctions should follow the same guidelines as that of custodial or pecuniary penalties, it seems legitimate, due to the wide range of types and modalities of measures that could fall within that category, to leave more discretion to the Member States concerned.” The comment in the introduction to the Tampere Programme of Measures that mutual recognition comes in various shapes and should be applied differently depending on the nature of the decision or penalty imposed, may also be appropriate in this context.

45. There is also the philosophical consideration that, at least with a percentage of alternative sentences, those which may be termed “community sentences”, the purpose of the punishment is to require the individual to make some recompense to the community which he/she has damaged, so there would have to be some doubt as to what the purpose would be of transferring such a penalty to another jurisdiction. The same could be said no doubt with regard to mediation/restorative justice, and a further point could be made that, in Scotland at least, mediation connotes the mutual agreement of victim and offender to take part. It is difficult to envisage, therefore, (returning to a central theme of the GP, the enforcement of sanctions) “enforcing” restorative justice in another jurisdiction when it cannot be enforced as such in the State of judgement. Lastly, there is also the complicating factor to take into
account that, in some respects at least, an alternative sanction may not actually be a final decision, in that breach by an individual can usually lead to the imposition of further sanctions.

46. There must also be considerable doubt as to what the mandate is for the kind of detailed EU prescription with regard to alternative sanctions which appears to be being proposed in this section of the GP. The degree to which the consideration of this appears to breach the principles of subsidiarity and proportionality is reflected in the third paragraph of indent 4.1.7., which states that a **minimal** approach would be to regulate the following:

- conditions in which these penalties may be imposed;
- duration of the penalty;
- conditions of implementation;
- nature of the work to be done, including the practical arrangements for community service, even down to the level of consideration as to whether there should be hospital work for the person who has caused grievous bodily harm or work in an old people’s home for a young person who has attacked an elderly person;
- monitoring and penalties in case of breach; and
- probation conditions.

47. Nonetheless, if mutual recognition of decisions in this complicated area is to be contemplated, then it should be: (a) on the basis of maximum flexibility on the part of the requested jurisdiction to adapt the sanction; and (b) discretion to refuse, if for example, the sanction in question is totally unknown e.g. some countries may simply not be able to provide electronic surveillance. Based also on the assumption that there is no legal base for the approximation in this matter envisaged by the GP, it is suggested that further consideration should be made initially in terms of exploring whether progress can be made via the more flexible Convention route. The following comments are offered therefore in that context.

48. Courts in Scotland have access to a range of community disposals, which have been extended considerably in recent years. They are designed to deal with offenders whose offending does not require a custodial sentence to be imposed, or where the court considers a community sentence to be in the best interests of the offender and of the wider community. Details of the community disposals available in Scotland are set out in annex, under non-custodial disposals. Community disposals (excluding fines) now represent approximately 12% of penalties imposed by Scottish courts on persons with charge proved.

49. The disposals now available are designed to reflect the circumstances of offending in Scotland and the Scottish criminal justice system. Whilst certain disposals such as Community Service Orders bear strong similarities to sentences in other jurisdictions, others, such as Supervised Attendance Orders, which are designed to deal with those who have defaulted on their fines, are unlikely to be replicated elsewhere. We are of the view that the most productive approach might be to focus on a restricted number of alternative sanctions (possibly no more than one or two) in the first instance with a view to identifying the

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2 This would not, of course, preclude individual jurisdictions entering into bi/multilateral arrangements, where there was a need and where it proved convenient. In that respect, the jurisdictions within the UK have detailed arrangements which permit the mutual recognition of alternative sanctions between them. (See also the similar point made in our response to question 17).
potential for mutual recognition. A phased approach is felt more likely to improve the prospect of mutual recognition and enforcement of community disposals across jurisdictions.

**Question 14** (see point 4.1.7.): What mechanisms might be envisaged to reduce the legal and practical difficulties potentially precluding the mutual recognition and enforcement of alternative sanctions in another Member State?

50. The following comments are offered against the background of the general position of the Scottish Executive outlined in question 13.

51. Adoption of a phased approach, which focused in the first instance on the most commonly used community disposals by Member States, could permit consideration perhaps of the development of a pilot project and for the lessons learned to be applied subsequently to other alternative sanctions. It would be necessary, of course, for ongoing evaluation and monitoring to be carried out to allow a considered judgement to be made as to feasibility and workability and as to whether it would be possible to roll-out the same approach to other community disposals.

**Question 15** (see point 4.1.7.): Is it necessary to take measures at European Union level, other than those laid down in Article 10 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, to harmonise certain conditions and practical arrangements for mediation in criminal cases, to facilitate the recognition of measures and arrangements arising from mediation procedures and their implementation in another Member State? Should a minimum framework govern:

- the categories of offence concerned?
- the mediation procedure?
- the status of mediators, including the extent of their independence from the courts?
- training and conditions of eligibility for mediators?

52. In Scotland mediation, as opposed to other alternative sanctions, is used comparatively rarely in adult criminal cases i.e. for offenders aged 16 or over, and our criminal justice system has relatively little experience of this approach.

53. However, certain areas of Scotland have access to mediation and counselling services as part of the options available to procurators fiscal (prosecutors) for offences of a less serious nature, which can be dealt with by means other than prosecution through courts. It is also commonly used for those young persons i.e. under 16, who are dealt with through the Children’s Hearings system rather than through courts. The Scottish Executive is currently consulting on ways of reducing re-offending in Scotland. This consultation will take into account the role of victims in mediation processes aimed at reducing offending behaviour.

54. However, the Scottish Executive does not agree that it is either desirable, proportionate or necessary for the EU to propose approximation of this detailed nature with regard to the criminal justice systems of Member States, particularly if it would lead to the imposition of arrangements that were unfamiliar and perhaps unsuited to the traditions of individual jurisdictions.

**Question 16** (see point 4.1.7.): To what extent should measures be taken at European Union level to take account of the interests of victims - including those who do not reside in the
Member State in which the offence was committed - when imposing alternative sanctions? If so, what should they be?

55. See general comments in question 13 in respect of alternative sentences.

56. Each Member State will no doubt have different arrangements for helping victims, both formal and informal, and this of course is a matter of the detail of criminal justice systems in individual jurisdictions. However, the Scottish Executive agrees that it is important to take into account the needs of victims and would consider any proposals beyond those agreed in the Framework Decision of 15 March 2001 that will actually help to meet those needs.

Question 17 (see point 4.1.8.): To what extent should measures be taken at European level to provide for approximation of certain conditions of eligibility and implementation of early release, to facilitate the recognition of prison sentences and their enforcement in another Member State? Should minimum standards govern:

- regarding life sentences, the possibility of periodic review with a view to early release?
- regarding sentences to specific periods, the minimum period of imprisonment that should be served before early release can be allowed? If so, how long should it be? Are there any prospects of approximation along the lines that, for non-life sentences, early release should be possible after half the sentence has been served in normal circumstances and two thirds in repeat offence cases?
- the criteria for allowing or refusing early release?
- the release procedure? Should procedural standards be provided for?
- supervisory arrangements and the duration of the trial period?
- penalties for failure to comply with the conditions for early release?
- the procedural safeguards for offenders?
- victims’ interests? Should the European Union provide that early release can be allowed only if the victim or victims have been compensated or the offender has made serious efforts to compensate them, or can be revoked if this condition is not met?

57. The proposal is that Member States’ early release provisions should be approximated to facilitate transfer of prisoners. This question would also appear to be related to question 8, on the matter as to whether there should be approximation of the enforcement of sentences, and we would refer therefore to the response to that question in relation to this question also.

58. The Scottish Executive would comment firstly in this regard that, in the Scottish experience, the 1983 Council of Europe Convention on the transfer of sentenced persons generally works well. Following on from this we also believe, therefore, that any improvements which are identified as being desirable should be taken forward using this route. In other words, we do not believe that it is necessary for the EU to initiate a separate measure. (This does not preclude, of course, Member States and jurisdictions establishing other bi/multilateral arrangements where there is a need and where it may prove convenient. In this connection, the different jurisdictions within the UK have the Crime Sentences Act 1997, which facilitates the transfer of prisoners within the UK, and also released prisoners subject to supervision. For information, details of this arrangement are included in the annex.)

3 During the last 3 calendar years there have been 4 UK nationals repatriated to Scotland under the 1983 Convention. No foreign nationals were transferred out during this period. Additionally, 70 serving prisoners were transferred to England under the provisions of the 1997 Act referred to above, with 83 coming to Scotland on a permanent basis.
59. The Scottish Executive is of the view that early release must be viewed in its overall context. It is important in relation to a number of important elements of national policy, and notwithstanding that divergence in early release provision may at times lead to some difficulties with regard to transfer, the Scottish Executive is not persuaded that this alone provides sufficient justification for widespread approximation in this regard. We could not agree therefore to the list of approximation measures listed in the question.

60. The Scottish Legal Aid Board have raised the issue of what is meant by the reference to procedural safeguards for offenders with regard to this subject. They have commented that if the reference is to the same type of procedural safeguards which were discussed in the Green Paper of last year and subsequent draft Framework Decision, then there may be implications for legal aid.

61. A general observation could be made that there are already significant EU wide procedural safeguards in respect of individuals deprived of their liberty through, for example, article 5(4) ECHR, which requires that a person deprived of his/her liberty has access to a court or court-like body which can determine the legality of continued detention, and where appropriate, order the release of the offender.

**Question 18** (see point 4.2.1.1.): What categories of sentenced persons should be eligible for transmission of enforcement in the State of enforcement: nationals of the State of enforcement, persons who habitually reside there, sentenced persons who are in the territory of the State of enforcement where they are serving or are due to serve a custodial sentence? Should there be specific conditions for minors and mental patients to be eligible also?

62. The Scottish Executive would see no difficulties, in line with the Council of Europe Recommendation (88) 13, of including within the criteria individuals who were habitually resident, as well as nationals. In fact, under current arrangements in Scotland, it is already possible to recognise the right of non-nationals imprisoned abroad to seek transfer to Scotland to serve their prison sentences. The Repatriation of Prisoners Act 1984 provides for the transfer to the UK of a British citizen or where "the transfer appears to the Secretary of State to be appropriate having regard to any close ties which that person has with regard to the United Kingdom." This would include those who have close family resident here and those whose habitual residence is in Scotland.

63. Presently, mentally disordered offenders may be returned to Scotland and detained under the 1983 Convention on the Transfer of Sentenced Persons. The provisions of the Repatriation of Prisoners Act 1984 also apply. The Scottish Executive is content with these arrangements and would wish them to be maintained were there to be any revisions to the 1983 Convention. (See response to question 17) We also consider that the policy should be to allow the provisions to be extended to include the transfer of offenders who are dealt with via court through the mental health system rather than prison.

64. There are no objections either to continuing to cover minors within the arrangements, as they are also included in the 1983 Convention provisions.

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4 Only two individuals have transferred to Scotland under these arrangements in recent years.
Question 19 (see point 4.2.1.2.): Is there a need to make agreements emerging from criminal mediation and settlement procedures in the Member States more effective? What is the best solution to the problem of recognition and enforcement of such agreements in another Member State of the European Union? For instance, should specific rules be adopted to make such agreements enforceable? If so, what guarantees should apply?

65. As a general principle, the Scottish Executive does not believe that there should be approximation with regard to mediation - see also the response to question 15 – but has a few comments to offer in relation to one of the specific situations raised in this question with regard to the position in Scotland.

66. The GP sets this in the particular context of measures and arrangements emerging from criminal mediation and settlement which require the offender to compensate or pay the victims damages, whether they can be treated as equivalent to agreements covered by civil law, and if so whether their recognition in other Member States would be governed by the rules described in the Green Paper of 19 April 2002 on alternative dispute resolution in civil and commercial law.

67. In Scotland, as a general rule, financial compensation to the victim does not arise as a result of mediation. Any compensation which the offender is required to pay is usually ordered by the court as part of the sentence. Compensation orders take precedence over any other financial penalty imposed by the court, and where there is failure to pay, the court has at its disposal the same enforcement provisions which are available to it in respect of fines.

Question 20 (see point 4.2.2.1.): Should it be possible only for the sentencing State to ask for transmission of enforcement, or should it also be possible for the State of enforcement?

68. At present, the 1983 Council of Europe Convention on the Transfer of Sentenced Persons allows for both the sentencing State or the administering State (State of enforcement) to request a prisoner’s transfer. However, the transfer has to be agreed by both States and the prisoner. As a general principle the Scottish Executive considers this to be appropriate.

Question 21 (see point 4.2.2.2.): What are the grounds that the State of enforcement could legitimately put forward for refusing recognition and enforcement in its territory of a criminal penalty imposed in another Member State?

69. See the responses to questions 13 and 17, which are also partly relevant to this question.

70. The GP suggests that the grounds for refusal should be very limited, and proposes that they should be based on those to be found in the European Arrest Warrant. The Scottish Executive is not convinced, however, that that would be the most appropriate route to follow.

71. Taking consideration forward from the points made in our response to questions 13 and 17, we are generally content, for example, to continue through the 1983 Convention route for transfer of prisoners. This being the case, if further examination of the issues determined that it was appropriate to refine arrangements in this regard, then the matter should be taken forward through the 1983 Convention.

72. The position with regard to alternative sanctions is possibly more complex and would require further detailed consideration. For example, where a jurisdiction does not have
electronic surveillance, could it be required to accept a judgement which had that as part of its provisions? As previously mentioned, in the view of the Scottish Executive, if progress is to be made with the mutual recognition of alternative sentences, then it will be necessary for any arrangements to permit a good deal of adaptation and discretion.

**Question 22** (see point 4.2.2.2.): Where national legislation allows financial penalties to be imposed concurrently with prison sentences, given the prospect of the adoption of the Framework Decision on the application of the principle of mutual recognition to financial penalties, should the sentencing State be entitled to refuse to transfer enforcement until the sentenced person has paid the fine?

73. Provided that, upon adoption of the Framework Decision on the application of the principle of mutual recognition to financial penalties, the systems of mutual recognition and enforcement prove to operate successfully, it is unlikely that the existence of a fine concurrent with a prison sentence would in itself lead the sentencing State to refuse transfer of the sentence, as a suitable means of enforcing the fine would exist in the enforcing State.

74. However, as provided for in the 1983 Convention, the sentencing State should ultimately retain the right to refuse transfer, taking into account all the relevant circumstances in each individual case.

**Question 23** (see point 4.2.2.2.): Given the differences between the Member States’ legislation on early release, a sentenced person may be released immediately after transfer to the requested State. Could this be seen in the relevant Member States as a legitimate ground for refusing to transfer?

75. Currently, prisoners repatriated to Scotland are required to serve the balance of their sentence, less the relevant early release provisions applicable in Scotland. Therefore, they will always be required to serve some time in custody before release.

76. As far as outgoing prisoners are concerned, the Scottish Prison Service would take into account whether there was the likelihood of immediate release, and if there was this possibility, would not consent to the transfer.

77. The Scottish Executive believes that these arrangements are appropriate and would wish to see them continue.

**Question 24** (see point 4.2.2.2.): Should a minimum period be set in the European Union during which the sentenced person would continue to serve his sentence in the convicting Member State so as to avoid situations in which he might be released immediately on transfer to the State of enforcement or serve a much lighter sentence than in the sentencing State? How long should that period be? Would the introduction of a minimum period jeopardise flexibility and preclude case-by-case solutions? Would determining a period compatible with the needs of justice, as proposed by the Committee of Experts on the operation of the Council of Europe Conventions on criminal law (see point 3.2.1.5.d.), be preferable?

78. See also the answer to question 23.

79. The Scottish Prison Service have made the following points.
80. Both the Council of Europe Convention on the Transfer of Sentenced Persons and the policy for Inter-jurisdictional Transfers under the Crime (Sentences) Act 1997 stipulate that prisoners should have, at the time of receipt of the request for transfer, at least 6 months of their sentence left to serve. However, both agreements also allow for consideration to be given to the transfer of a prisoner if the time to be served is less than 6 months in exceptional cases. From a practitioner’s point of view, both agreements provide sufficient flexibility.

**Question 25** (see point 4.2.2.3.): Where the type or duration of the penalty imposed in the State of judgment is incompatible with the legislation of the State of enforcement, should the latter State enjoy the possibility of adapting the penalty imposed in the State of judgment into a penalty provided for by the State of enforcement for comparable offences?

81. See also the response to question 13, which is in part relevant to this question.

82. As the GP points out this is most likely to be problematical with respect to alternative sanctions, where there is likely to be a diversity and divergence of provision across the EU.

83. So far as is achievable adapting the penalty should be the underpinning principle.

**Question 26** (see point 4.2.2.3.): Should provision be made in the European Union for the possibility of adapting, converting or substituting penalties, or should the State of enforcement be left with full powers of discretion?

84. See also the responses to questions 13 and 25.

85. If achievable the preference would be to adapt penalties to allow for a more consistent approach across Member States. However, this is likely to take some considerable time to achieve and, given the relatively small numbers of individuals likely to be involved, a more practical interim solution might be to leave States with full powers of discretion. Discretion would have to ensure that any adaptation, conversion or substitution of a penalty did not impose, in the interests of justice, a more severe penalty on the offender, or in the interests of the credibility of the law in the State of judgement or the public perception, a less severe penalty than the laws in the State of judgment intended.

**Question 27** (see point 4.2.2.3.): Would the approach proposed by the Max Planck Institute of Foreign and International Criminal Law in Freiburg, which consists of making a functional comparison between (alternative) sanctions or measures in the State of judgment and the State of enforcement by a certain analysis and evaluation method provide a solution? What shortcomings does this approach have? How can they be remedied?

86. See also the general comments in the response to question 13.

87. It does provide a potential if elaborate solution. Potential cross-border transfers outwith Scotland for those offenders made the subject of community disposals are estimated to be relatively few in number, with other areas of the UK currently being the receiving areas. It is not always possible to fit the existing Scottish community disposals into the set of “functional categories” described e.g. Supervised Attendance Orders in dealing with fine defaulters. In addition, alternative sanctions are imposed only after the judgement stage. It might be worthwhile considering, as a first step, piloting the approach in a restricted number of
Member States. This might assist in ascertaining whether it was workable and capable of wider extension.

**Question 28** (see point 4.2.2.4.): Should the transfer of enforcement of a criminal judgment be subject to the request, the consent or merely the consultation of the person sentenced? Would the answer to this question be different if the person sentenced has already begun serving his sentence in a prison in the sentencing State?

88. The 1983 Council of Europe Convention on the Transfer of Sentenced Persons requires the consent of the prisoner concerned before a transfer can take place.

89. The Scottish Executive agrees with this principle. As the overall aim is to increase the prospects of rehabilitation of the individual, then, of course, his/her views, including on the matter of consent, are essential.

**Question 29** (see point 4.2.2.5.): How can the victim’s interests be taken into account in the transfer of enforcement of the penalty? Should provision be made for information for the victim (as to the existence of a request for recognition and transfer and the outcome of the proceeding), consultation or even consent, as a possible condition for the recognition and transfer of enforcement?

90. In principle we agree with the general desirability of keeping victims informed and, where appropriate, involved in issues related to custodial sentencing and release (when the sentence is for four or more years), and conditions associated with the latter. For example, in certain circumstances, victims are entitled to have their views on release taken into account by the Parole Board in Scotland.

91. Although in general it might be assumed that transfers would lead to the offender being moved farther away from the victim, to another country, it may be nonetheless that there is a good case to be made for exploring ways in which information could be made available to the victim about transfer decisions. The Scottish Executive would wish to explore how any such scheme would work before committing itself to arrangements that might not fit in with our own system.

92. On a specific point, however, transfer should not be dependent on the consent of the victim.

93. On a point of information, Scotland’s Victim Notification Scheme applies to prisoners who are transferred out of the jurisdiction to England, or other parts of the UK, providing that the victim has joined the Scheme. The victim is advised to which jurisdiction the prisoner is being transferred and provided with a contact number for them to call. In England, once the prisoner is transferred, it is the local Probation Service which then provides details to the victim and which handles any queries from them. The Scottish Prison Service, however, does not currently notify victims of the repatriation of prisoners, but will do so from November.

**Question 30** (see point 4.2.3.): Should the European Union make provision for a time-limit for processing requests for recognition of criminal penalties, and in particular for processing requests for transfer of prisoners, and if so what limit?
94. The Scottish Prison Service have made the following comments.

95. As stated in paragraph 4.2.3.1 of the GP, requests for repatriation generally range between a year to 18 months. Whilst it is understandable that a time-limit for processing requests is proposed as being a possible solution, given the complex legal nature of such requests, it is to be doubted whether it would be a practical proposition. However, if a time limit was to be set it is suggested that it should be along the lines that a sentenced person may only request transfer where he/she has at least a year of his/her sentence left to serve. This would not only give the respective States time to give full consideration to such a request but also, if transfer went ahead, ensure that the prisoner spent a reasonable period of time in custody in the administering State prior to being released.

96. However, the Scottish Executive does not agree that it is necessary for the EU to make any provision in this regard. In keeping with our general approach on the transfer of prisoners if, after further discussion, any such refinements were thought to be appropriate, then these matters should be taken forward through seeking to amend the 1983 Convention.

**Question 31** (see point 4.2.3.): Given the administrative burden of processing a request for transfer of a prisoner, should the European Union provide that only prisoners sentenced to at least a specified term of imprisonment or who still have a specified minimum time to serve should be eligible for transfer? If so, what would be a proper period?

97. See the response to question 30.

**Question 32** (see point 4.2.3.): Should the European Union make provision for a time-limit for responding to a request for information needed in connection with the recognition of criminal penalties, and in particular for the transfer of prisoners?

98. See the response to question 30.

**Question 33** (see point 4.2.3.): Given the complexity of judicial and administrative structures in the Member States and the differences between them, what simple and effective structures should be provided to implement the mutual recognition of criminal penalties and the transfer of prisoners?

99. The Scottish Prison Service have made the following comments.

100. The easiest way to simplify the repatriation of prisoners process (within the 1983 Convention) would be to separate the eligibility criteria for transfer from the conditions of transfer, much in the same way as is done with UK inter-jurisdictional transfers under the Crime (Sentences) Act 1997, but without imposing a restricted or unrestricted transfer. (Further information on the criteria for transfers under the Crime (Sentences) Act 1997 is provided in the annex submitted along with this response.)

101. For example, if the eligibility criteria for transfer were as follows:

- The person is a national of the administering State;
- The judgement is final;
- The person has still a year left of sentence to serve at the time of making application; and
- The person consents to the transfer.
102. Regardless of what sentence is imposed for the crime committed in the sentencing State, the sentence should be enforced in the administering State, with the administering State’s early release provisions applying to the balance of that sentence.

103. This would provide a simple, speedy and flexible mechanism for the repatriation of prisoners. It would also be within the aims of the Convention by allowing foreigners, who are deprived of their liberty as a result of the commission of a criminal offence, to be given the opportunity to serve their sentences within their own society.

Question 34 (see point 4.2.3.): Should there be a standard form in the European Union to facilitate the implementation of the recognition of criminal penalties and the transfer of prisoners?

104. The Scottish Prison Service have commented in this regard that a standard form in relation to the transfer of prisoners would be useful in helping to speed up the system. A useful element of such a form would be the inclusion of information in it which would guide countries as to which key information was required to facilitate the request.

105. However, it should be made clear that, as we are content to continue operating within the terms of the 1983 Convention, then any proposals to improve information flow should be taken forward at that level, and not as a separate EU measure.

Question 35 (see point 4.2.3.): Should the State of enforcement be able to ask for reimbursement of expenditure incurred in the enforcement of penalties that it has recognised?

106. From an administrative point of view, reimbursement of expenditure incurred in the enforcement of penalties would be another intensive process added to the already laborious repatriation process and would, therefore, probably be neither desirable nor practical.

107. It is also noted in the GP, for example, that no reimbursement is envisaged with regard to the operation of the Framework Decision on the mutual recognition of confiscation orders, and, in general, this seems a reasonable principle to adhere to throughout.

Question 36 (see point 4.2.3.): Should a network of contact points be set up to facilitate – and perhaps even help to evaluate – the practical application of a European Union legislative instrument on the mutual recognition of criminal penalties and the transfer of prisoners?

108. While the Scottish Executive does not envisage a fresh EU legislative instrument (see the responses to questions 13 and 17), the Scottish Prison Service have commented, however, that from a practitioner’s perspective, they could see merit in a network of contact points to facilitate the practical application of transfer requests under the current system. In general, a useful function it could have would be to review standards, processes and outcomes. This might highlight difficulties and facilitate improvements to the system.

109. Rather than set up another new bureaucracy, however, it may be desirable to see if such a network could be added to the functions of any of the others already in existence. Again, any such proposals to improve information flow should be taken forward through the 1983 Convention.
Question 37 (see point 4.2.4.): Where a custodial penalty or an alternative penalty is recognised, are there any reasons for departing from the rule that enforcement should be governed entirely by the law of the State of enforcement?

110. The Scottish Executive agrees, that as a general principle, enforcement should be governed by the State of enforcement. There are very good practical reasons for taking this position. For example, many of the issues in question will relate to day to day matters and, if there was a requirement for consultation with the State of judgement on them, that could lead to very bureaucratic procedures having to be put in place.

111. With regard to the specific matter of the transfer of prisoners, for example, the State of judgement is, under current arrangements, provided with full details of how a prisoner’s sentence will be treated in the State of enforcement. Once the repatriation has been agreed, the State of enforcement is responsible for all matters relating to the prisoner. As stated above, we cannot think of any good reasons for departing from this rule.

112. The Scottish Legal Aid Board have raised the issue of the availability of legal aid if an alternative penalty was transferred, then breached. Under current domestic legislation legal aid is available for certain breach proceedings arising under the Criminal Procedure (Scotland) Act 1995, for example breach of community service and breach of probation. If the transferred alternative sentence could not be brought within the scope of domestic legislation in this regard, then legal aid would obviously not be available. The Scottish Legal Aid Board have further commented that they believe that this will be an issue in other jurisdictions throughout the EU. This specific point of detail illustrates the degree of complexity attached to the matter of the potential transfer of alternative sanction between jurisdictions and perhaps underlines the need in this area to have a maximum degree of discretion and possibility of adapting sentences to fit in better with domestic arrangements.

Question 38 (see point 4.2.4.): If the conditions attached to a suspended sentence are supervised by the State of enforcement, should the State of judgement be given the possibility of ensuring that the sentenced person complies with the conditions? What mechanisms should be envisaged for that purpose?

113. Suspended sentences are not currently used in Scotland. However, the same principles that are outlined in question 37 should no doubt apply also to the enforcement of this type of sentence.

Question 39 (see point 4.2.4.): Which of the two States should be able to exercise the right to give an amnesty or pardon?

114. In Scotland, the Royal Prerogative of Mercy (RPM) is an extraordinary power which is used to pardon or remit punishment in exceptional cases in which the due process of the law has produced a result that clearly involves an unjust conviction or punishment for which that process has no remedy. It is exercised by Her Majesty The Queen on the advice of Ministers. Each case has to be looked at on its own merits, though against the background of precedent and convention as to the use of the Prerogative. It would not be appropriate to envisage that this function could be transferred to another jurisdiction.
115. However, with regard to “amnesty” in the broader sense of the word e.g. early release, etc, then that should be exercised, as previously indicated, by the State of enforcement.
ANNEX

SENTENCING IN SCOTLAND - BACKGROUND

General
The independence of the judiciary is a fundamental principle of the Scottish legal system and this extends to judicial discretion in sentencing. It is therefore for the courts in Scotland to decide on the most appropriate sentence, either within the limits provided for by Parliament in statute, or then within common law. The governing principle is that each case is unique and only the court hears all the facts and circumstances surrounding offence and offender. In addition to the general circumstances of the case, in passing sentence, the court will also take into account the offender’s personal circumstances and whether there is a previous criminal record.\(^5\) A maximum sentence would not normally be imposed for a first offence. There are, in addition, a number of specific statutory considerations which the court is obliged to consider, namely, the offender’s age, if under 21; whether there has been any previous custodial sentence; any guidance provided by the High Court; time spent in custody pending trial; a guilty plea; whether there is a statutory minimum sentence; racial aggravation or aggravation by religious prejudice; and victim statements, which are currently being piloted.\(^6\) Where a number of persons are convicted together it would normally be the case that they would be sentenced together, to try to ensure consistency. Before sentence is passed an opportunity is given to the accused, or his or her legal representative, to make a plea in mitigation.

Mode of trial/prosecution policy
The options are:

- summary trial only, by a justice (lay), or a stipendiary (professional) magistrate in the District Court, or in a Sheriff Court\(^7\) sitting without a jury
- trial either summarily or on indictment (with jury)\(^8\), depending on individual circumstances
- trial on indictment only, either in the Sheriff Court or the High Court

The majority of proceedings before the courts in Scotland are summary complaints, at the less serious end of the scale. Indictment only offences include common law offences such as murder, culpable homicide, rape and, for example, the statutory offence of causing death by dangerous driving. It is a fundamental tenet of Scots criminal law that prosecutors (procurators fiscal answerable to the Lord Advocate) have discretion as to (a) whether a prosecution should proceed, based, \textit{inter alia}, on the judgement of whether there is sufficient evidence and if it would be in the public interest to do so (b) which level of court the case should be heard in.

Penalties
Levels of available penalty in each case are determined in the first instance by which level of court in Scotland the proceedings are taking place. In the lower courts, the level of fine is

\(^5\) Under the terms of section 57 of the Criminal Justice (Scotland) Act 2003, this can now also include convictions in other MS of the European Union.

\(^6\) Victim statements are currently being piloted in Edinburgh, Ayr and Kilmarnock Sheriff Courts, and the High Court in Edinburgh and when it sits on circuit in Kilmarnock. The pilots will run for two years, following which a decision will be taken whether to roll out victim statement schemes across Scotland.

\(^7\) The principal inferior court in Scotland, presided over by the Sheriff.

\(^8\) A jury in Scotland consists of 15 people, a simple majority of 8 sufficing for a guilty verdict.
restricted and imprisonment limited to 60 days (district courts) or 3 months (stipendiary
magistrate/Sheriff summary). However, in some circumstances related to repeat offences
Sheriff summary courts can potentially sentence up to 6 months, or other periods where
specified by statute. On indictment cases, the Sheriff Court has, however, the option,
according to the circumstances of each case, to impose an unlimited fine/up to 5 years
imprisonment. The High Court of Justiciary, which deals with the most serious criminal
cases, on indictment only, can according to individual circumstances impose an unlimited
fine/up to life imprisonment. The only custodial sentence available in Scotland for persons
over 21 is imprisonment.

The general level of penalty available to the courts is either prescribed by statute (e.g. causing
death by dangerous driving attracts a maximum sentence of 10 years) or then provided for by
common law, and with respect to the latter the maximum available punishment for all
offences is an unlimited fine/life imprisonment. Setting a maximum penalty is usually the
only part that the Scottish Executive and the Scottish Parliament play in determining
sentencing policy for particular offences. Thus, within the court level framework and the
common law/maximum penalties provided for by statute, it is entirely for the courts to decide
the appropriate sentence in each case which comes before them. The instances in Scotland
where there is a mandatory punishment are very limited. One such instance is murder, where
if found guilty, the offender must be given life imprisonment.

Substantial periods of imprisonment may be imposed according to the seriousness of the
offence. Other than murder, for example, this will usually be where the offence has taken
place in circumstances where there is a clear threat to public safety or public order, where
personal violence is involved, or where there is substantial loss or damage to property. Only
adults over the age of 21 may be sentenced to imprisonment. Offenders between 16 and 21
are usually detained in a Young Offenders Institution. The Scottish Ministers have a
statutory responsibility for placing children convicted on indictment and sentenced to
detention. In those instances children are usually detained in secure units which provide fit
for purpose care. Before sentencing young offenders/children to detention the court must be
satisfied that this is the most appropriate disposal and a social enquiry report drawn up by
social workers assists in this assessment. For first offenders over 21 similar considerations
apply.

Fines
As with custodial sentences, where fines are provided for in statute they too simply set out
the maximum available. Summary only fines are on a 5 point scale, with a current maximum
of £5,000. However, the Sheriff in certain summary cases can impose greater financial
penalties, where some limited exceptional circumstances apply. On indictment, the
maximum is an unlimited fine. However, non payment of a fine may lead to imprisonment, or
a supervised attendance order. Supervised attendance orders can be used as an alternative to
fines for individuals who might not have the means to pay.

Non – court disposals
In recent years in Scotland the range of non-court disposals available to the prosecutor
(procurator fiscal) has increased, so that offences of a less serious nature can be dealt with by
means other than prosecution. Thus it is for the prosecutor to decide whether to take no
further action; to issue a warning letter or personal warning; to divert an accused to a social
work scheme; to make a conditional offer of a fixed penalty (certain road traffic offences) or
an offer of a fiscal fine. Fiscal fines are usually thought to be appropriate as an alternative to
prosecution in minor cases and can be up to £100. If payment is made no prosecution is brought and no conviction is recorded against the accused. Social work diversion schemes in certain instances are based on a reparation and mediation approach but in all cases adopt a deferred model approach i.e. the accused may still be liable to prosecution at the end of the 3 months diversion period if he/she has failed to meet the terms of the diversion.

Non custodial court disposals (other than fines)
The courts in Scotland have available to them a range of community disposals, also known as alternatives to custody. They are intended to deal with individuals whose offending does not warrant a custodial sentence or where it can be dealt with better by sentences and disposals in the community.

Community Service Orders (CSOs)
An offender given a community service order is required to carry out unpaid work of benefit to the community for between 80 and 240 hours in summary proceedings and up to 300 hours in solemn (trial with jury). The law restricts CSOs to offences which would otherwise have resulted in imprisonment or detention. The work undertaken can range from an individual placement providing assistance to elderly or disabled people, to group work on outdoor environmental improvement projects. There is a framework of National Objectives and Standards which requires offenders to comply with various conditions in terms of both their personal conduct and work performance. Failure to comply can lead to the offender being returned to court and in such cases the order may be revoked and the offender dealt with in any way which may have been appropriate to the original offence, including the imposition of a custodial sentence.

Probation Orders
The main purpose of probation is to work with offenders to prevent or reduce their re-offending. The period of probation can last between 6 months and 3 years. A Probation Order will have an action plan in which the offender agrees to address his/her offending behaviour and its underlying causes. Probation Orders can be used flexibly by the courts and additional conditions can be attached in relation, for example, to unpaid work, place of residence, curfew, financial recompense to the victim or attendance at a specialist programme such as alcohol or drug treatment.

Supervised Attendance Orders (SAOs)
SAOs have become established in Scotland as an alternative to imprisonment for people who default on court imposed fines. SAOs substitute the unpaid portion of the fine for a period of constructive activity designated by the local social work department. They will often include elements of social education, financial management and community service.

Drug Treatment and Testing Orders (DTTOs)
DTTOs are viewed in Scotland as a high tariff disposal for use with drug misusing offenders who might otherwise have received a custodial sentence. The intention is to tackle those people whose offending behaviour is a direct result of their drug misuse i.e. addicts who steal to fund their habit. They are not intended for serious drug dealers. The DTTO has two objectives:

- to reduce the amount of acquisitive crime committed to fund drug misuse
- to reduce the level of drug misuse itself
DTTOs include the requirement for regular reviews by the court to enable the sentencers to monitor progress and a requirement that the offender consent to regular, random drug tests. Importantly, DTTOs do not assume or require immediate total abstention and a positive test result will not immediately constitute a breach. Due to the complexity and resource intensive nature of DTTOs, introduced in 1999, they are not yet available everywhere in Scotland. However, it is hoped to have full coverage by mid 2005.

Restriction of Liberty Orders (rlos - Electronic Tagging)
A restriction of liberty order is an alternative to custody, compliance with which is electronically monitored. Current provision is that offenders must be over 16. They must also give their consent. An rlo requires an offender:

- to be restricted to a specific place for a maximum period of up to 12 hours per day for up to a maximum of 12 months
- and/or from visiting a specified place/places for 24 hours a day for up to 12 months

Before deciding on an rlo the court must find out the relevant information about the places involved and the attitudes of the people living there. Overall, the objective behind this provision is to give offenders the opportunity to break their cycle of offending, to stabilise daily routines, to remain with their families and to rebuild relationships. Legislation has now been passed by the Scottish Parliament which will permit the use of electronic monitoring as a condition of probation, bail, Drug Treatment and Testing Orders, and early release on licence.

Sentencing guidelines
There are no sentencing guidelines in Scotland as such. However, the High Court, which, sitting as an Appeal Court, hears all appeals in criminal proceedings in Scotland, in disposing of an appeal, may pronounce an opinion on the sentence or other disposal or order. A court thereafter in passing sentence in a similar case is required to have regard to the opinion of the High Court. However, it has not attempted to formulate any general position across the range of crimes and offences. The High Court in Scotland has access to a Sentencing Information System, which provides certain information to judges about what sentences have been imposed on similar offenders in broadly similar circumstances. However, the system relates only to High Court cases and is accessible exclusively to judges of that Court.

The Appeal Court has recently given a guideline judgement [Du Plooy] relating to sentence discounting for a guilty plea.

Early release from prison
Under the present law short term prisoners (i.e. those sentenced to less than 4 years) are automatically released at half sentence unconditionally unless they have an extended sentence or supervised release order. Long term prisoners (i.e. those sentenced to 4 years or more) are reviewed by the Parole Board for early release on licence at half sentence and if they are not released on the direction of the Board, they are automatically released on licence at two thirds of sentence. The licence will run until the end of the sentence. Where a sentence of life imprisonment has been passed the court, at time of sentence, must specify the part of the life sentence – known as the punishment part – that it considers appropriate to satisfy the requirements for retribution and deterrence. This is the minimum period the offender must spend in custody before he/she can be considered by the Parole Board for release on life licence.
Offenders released on licence (life licence or for the remainder of a determinate sentence) must adhere to the conditions specified in their licence. Failure to do so can result in recall to custody. Where a person is recalled to prison, the Parole Board, on reviewing the case, is empowered to direct the person’s immediate re-release or direct their continued detention.

The law at present further provides the courts with the power to order that a person convicted of an imprisonable offence committed before the end of the original sentence to serve the balance of the original sentence in addition to a custodial sentence for the new offence.

**Sentencing Commission**
A Sentencing Commission has been established by the Scottish Executive with a remit to examine the following subjects and make recommendations:

- the use of bail and remand
- the basis on which fines are determined
- the effectiveness of sentences in reducing re-offending
- the scope to improve consistency of sentencing
- the arrangements for early release from prison, and supervision of short term prisoners on their release.

The Scottish Executive has invited the Commission to review the use of bail and remand and the arrangements for the early release of prisoners as matters of priority. It is expected that the Commission will consider the scope for consistency in sentencing during 2006.
INTER-JURISDICTIONAL TRANSFERS BETWEEN THE DIFFERENT JURISDICTIONS WITHIN THE UK

Under the terms of Schedule 1 to the Crime (Sentences) Act 1997, prisoners in England and Wales, Scotland, Northern Ireland, the Isle of Man and the Channel Islands may request a transfer to another United Kingdom jurisdiction (or to one of the islands).

The provisions provide for prisoners to be transferred to another jurisdiction on either an unrestricted or a restricted basis. In the case of an unrestricted transfer, the administration of the prisoner’s sentence will become a matter entirely for the receiving jurisdiction. A restricted transfer will be subject to conditions whereby the sending jurisdiction will continue to administer certain specified aspects of the sentence.

The decision on whether or not to transfer the prisoner is made by the Minister in the sending authority in the light of the available information. The views of the receiving authority are also relevant and in practice, a transfer will not be made if the receiving jurisdiction does not consent. Normally, transfer requests will be approved only where the prisoner has at least six months left to serve in the receiving jurisdiction before his or her release date at the time of making the request, and where the prisoner has no outstanding appeal against conviction or sentence, is not charged with further criminal proceedings, and is not liable to any further period of imprisonment in lieu of payment of any outstanding monetary orders made by a court.

Each application will be assessed on its individual merits, taking into consideration;

i) the purpose for which the transfer is requested;

ii) whether the prisoner was ordinarily resident in the jurisdiction to which transfer is sought prior to the imposition of the current sentence; or whether members of the prisoner’s close family are resident in the jurisdiction and there are reasonable grounds for believing that the prisoner will receive regular visits from them; or whether the prisoner has demonstrated through preparations that he has made for his life following his release from prison that he intends to reside in the receiving jurisdiction upon release and he is in the later stages of his sentence;

iii) whether there are grounds for believing that the prisoner may disrupt or attempt to disrupt any prison establishment, or pose an unacceptable risk to security; and

iv) any compelling or compassionate circumstances.

When considering whether to make a transfer from Scotland restricted or unrestricted, the Scottish Ministers will take into account the period and terms of the transfer requested by the prisoner and whether, as a consequence of an unrestricted transfer, there would be any effect on the length of time which the prisoner would be required to serve, or on any post release supervision requirement. A request which meets the transfer criteria and has no effect on the sentence (either in terms of a reduction or increase in time to serve) or any post release supervision requirement, will normally be granted on an unrestricted basis.
Where an unrestricted transfer is granted, the sending jurisdiction relinquishes all control over the prisoner. The prisoner will serve the remainder of his sentence in the receiving jurisdiction as if that sentence had been passed there, and will be subject for all purposes to the statutory and other provisions applying to prisoners within the receiving jurisdiction.

A prisoner granted a restricted transfer will automatically remain, for the duration of his or her transfer, subject to the law of the sending jurisdiction governing detention, ultimate release, post release supervision and recall. In addition, any other condition relating to the terms of a prisoner’s detention as the Minister in the sending jurisdiction may deem appropriate in any particular case or class of case may be attached to the transfer.

Unless the transfer is time limited, a prisoner transferred on a restricted basis will normally become subject for all purposes, other than those specified in any conditions attached to the transfer, to the prison rules and procedures applying to prisoners in the receiving jurisdiction (including, for example, such matters as categorisation and temporary release).

Prisoners transferred on a restricted basis may be required to return to the sentencing jurisdiction at any time in connection with the administration of their sentence (for example, in connection with parole or supervision procedures). However, post release supervision will normally take place in the receiving jurisdiction, and no further application requires to be submitted in order for this to take place.

The Crime (Sentences) Act 1997 also provides for the transfer between jurisdictions (on an unrestricted or restricted basis) of responsibility for post release supervision. Following release, information about such transfers can be obtained from supervising officers.

Currently prisoners who are or will be subject to supervision following release within Scotland can apply under the terms of the Crime Sentences Act 1997 for transfer of that supervision to another supervising authority within the UK and Islands jurisdictions. All prisoners are eligible to apply for transfer but have no automatic right of transfer. Each request is considered on its individual merits and also considering whether the prisoner has:

- close family or residential ties in the jurisdiction to which transfer is sought
- the intention to reside in the jurisdiction following completion of the period of supervision and whether
- the transfer would have an adverse affect on the protection of the public, prevention of re-offending or the rehabilitation of the offender.

The receiving authority must be able to comply with any additional or special conditions attached to the supervision. If the receiving authority are not able to accept transfer then no transfer is made.
Dear Convener,

SUBJECT: Sift of European documents

Please find attached a note of recent European JHA documents received by the Parliament and considered by the European and External Relations Committee during its meeting of the 26 October 2004 together with a pre-council report for the meeting on 25 October.

The list is sent to you for your attention only. In doing so, the European and External Relations Committee are not proposing any course of action on your part. However, if you consider a document potentially to be of interest to you or your committee, the Members and staff of the European and External Relations Committee would be very happy to advise you further (contact Kathleen Wallace, tel x85191).

If you wish a copy of a European document itself, or the corresponding Explanatory Memorandum produced by the lead Whitehall department, these can be obtained directly from the European and External Relations Committee clerks. Additionally, where one exists, a briefing paper produced by the UK Government’s Representation in Brussels (UKRep), can be found on the SPICe pages of the parliament’s intranet.

I hope you find this list of interest.

Also attached is a copy of the paper considered by the Committee on the 28th September 2004 entitled “Pre- and Post-Council Scrutiny”, the purpose and content of which is described in the Introduction.

Yours sincerely,

John Swinney MSP
Convener

cc  Senior Assistant Committee Clerk

enc  Sift List from Meeting of 26 October 2004

Background
This document contains the list of EC/EU JHA documents received by the European and External Relations Committee for this meeting. The document is sent by the
European and External Relations Committee to each of the Scottish Parliament’s committees for their attention.

There are no documents of special importance flagged this time.

Meeting 26-Oct-2004

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<td>1521</td>
<td>ENFOPOL 32</td>
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<td>Draft Council Decision on tackling vehicle crime with cross-border implications.</td>
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Pre-Council Report - Justice and Home Affairs, 25 October
Please note that this Pre Council Report is based on a provisional agenda set in July 2004. The agenda may be subject to substantial change.

**Asylum and Immigration**

*(poss)* Proposal for a Directive on the conditions of entry and residence of third country nationals for the purpose of scientific research – political agreement

*(Poss)* Draft Regulation on the establishment and operation of a Visa Information System (VIS) – presentation by the Commission

*(poss)* Regulation restructuring the Common Manual on External Borders

*(poss)* Community readmission agreements – orientation debate

*(Poss)* Modification of Regulation EC 539/2001 on visa reciprocity – orientation debate

*(poss)* Preparation of the Inter Ministerial Conference on integration – orientation debate

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

**GENERAL**

**Multi-Annual Programme Justice and Home Affairs - adoption**

This will be the final opportunity for Justice and Home Affairs Council to discuss the new multi-annual programme before it goes to the European Council in November for agreement by Heads of State. The JHA Ministers have agreed that the exchange of information between law protection agencies must be improved and that it must be a rule to share required information with other interested parties in order that they may fulfil their tasks. Topics on the agenda of the new multi-annual programme will include the fight against terrorism, security, co-operation in civil law, immigration, borders and asylum.

The Executive has worked closely with Whitehall colleagues on the UK contribution to the multi-annual programme.

**CRIMINAL AND JUDICIAL CO-OPERATION**

**Terrorism**

The EU Anti-Terrorism Co-ordinator will give his regular briefing to the Council.

**Proposal for a Council Decision on the exchange of information and co-operation concerning terrorist offences**

*We are unsighted on this item. It has not been discussed in Working Group and therefore it is unlikely that this will be on the final agenda. It is however part of the new multi-annual programme and we can expect to see some detail soon.*

**Development of a strategy on the combating of organised crime – political agreement**

*We are unsighted on this item.*
Proposal for a Council Decision on the information exchange, risk-assessment and the control on new narcotic drugs and new synthetic drugs

(poss) Proposal for a Council Framework Decision to strengthen the criminal law framework for the enforcement of the law against ship source pollution

Unlikely to be on final agenda. This dossier has been around for since 2003. The FD seeks to approximate criminal sanctions for the unlawful discharge of polluting substances into the environment by shipping across the EU. The FD as drafted requires Member States to conduct a criminal investigation when informed of a suspected offence within its state and also details the criminal procedures to be followed during investigation. The Executive and COPFS have been liaising the Home Office on this dossier.


This dossier emerged during the Italian Presidency of the EU. It is currently at a very early stage in negotiations and it is highly unlikely that it will appear on the final agenda. No real issues for Scotland. We supportive of the general principle of the proposal which is to the mechanisms of Mutual Legal Assistance.
Fire and Rescue Framework for Scotland

Pre-consultation draft

2 November 2004
Ministerial Foreword

[to follow]
Chapter 1: Introduction

Purpose

1. The purpose of this document, the first Fire and Rescue Framework for Scotland, is to set out policies, objectives and guidance for fire and rescue authorities and joint fire and rescue boards so that the public are properly protected from fire and other emergencies. The Framework will make clear what Ministers, on behalf of the people of Scotland, expect from the Scottish Fire and Rescue Service, and the support which the Scottish Executive will give to ensure that those expectations can be met. The Framework sets standards for the service and, in some specific circumstances, indicates how the service should undertake particular functions.

2. Ministers recognise that fire and rescue authorities primarily provide a local service to their communities. Local democratically-elected politicians serving on fire and rescue authorities are, rightly, accountable to those communities for the provision of the service. The Executive has no wish to undermine those arrangements. But at a time when the role of the Fire and Rescue Service is having to change to meet new challenges, not least the increased threat of terrorism, Ministers take the view that greater strategic direction from the centre is required. The aim of the Framework is to provide that strategic direction.

The overall context

3. Since devolution, the Scottish Parliament and the Scottish Ministers have had legislative and policy responsibility for the Scottish Fire and Rescue Service. For the first time, this gives Scotland the opportunity to provide a statutory base and overall direction for the service. That opportunity has been taken, firstly through the publication of our policy paper “The Scottish Fire Service of the Future” in April 2002 and, flowing from that document, the Fire (Scotland) Bill currently before Parliament.

4. But Scotland’s Fire and Rescue Service does not exist in isolation. The service belongs to, and is paid for, by the people of Scotland and is not a fiefdom for particular stakeholders. A Partnership for a Better Scotland makes clear the Executive’s commitment for a safer stronger Scotland, and improvements in public services. The Fire and Rescue Service is a crucial part of that agenda.

“People deserve and expect public services that are of the highest possible quality and offer the greatest possible choice. We will continue to use the record level of investment in our public services to secure new and better facilities, particularly for our schools and hospitals. We will also match this investment with continued reform so that our public services are designed and delivered around the needs of individuals and the communities within which they live.”

A Partnership for a Better Scotland: Partnership Agreement

The need for a Framework

5. Our vision for the Fire and Rescue Service is of an organisation that ‘continually improves its performance to secure Best Value’. This is now a statutory duty for fire authorities, since commencement of the Local Government in Scotland Act 2003. Our
key aim is to strengthen service delivery. That requires Fire and Rescue Services to be clear about their objectives and priorities at both national and local level.

6. The Independent Review of the Fire Service was critical of the lack of strategic direction offered to the fire service by successive governments. In our policy paper “The Scottish Fire Service of the Future”, we indicated that there would be ‘an expectation of clear performance improvements aligned to achieving safer communities and efficiencies linked to the Best Value agenda’.

7. The framework within which the Fire and Rescue Service has operated for decades past is inappropriate and restrictive for the needs of modern Scotland. It is underpinned by the current recommended National Standards of Fire Cover, which dictate how resources should be used and deployed locally. This has been further restricted by the Section 19 provisions in the Fire Services Act 1947, which bring Ministers into the decision process about the location of fire stations, vehicles, equipment and personnel. Decisions on these matters should be taken at local level following consultation with those most affected.

8. While our view is that the Fire and Rescue Service should remain as a locally delivered service it must operate within a national framework which sets out clear and consistent objectives for the Service throughout Scotland.

9. The Framework strengthens the responsibility of Fire and Rescue Authorities to deliver the service in a flexible way to their local communities. Fire and Rescue Authorities’ duties in respect of Community Planning provide the necessary platform for consultation and delivery at local level, particularly in the area of fire prevention and fire safety, which clearly involve other key local partners.

10. The focus on national priorities in the Framework is particularly important on matters of national resilience or national service delivery, where it is vital that all Fire and Rescue Authorities achieve what is required. Scottish Ministers are, therefore, seeking to take reserve powers of direction as a means of ensuring that delivery of those priorities in the National Framework is not undermined.

The legislative background

11. Section 36 of the Fire (Scotland) Bill currently before Parliament will require Scottish Ministers to prepare, and consult on the Fire and Rescue Framework for Scotland., to keep the Framework under review and to consult on any proposed significant revisions to it. The Framework (and any significant revisions) will come into effect by order. As well as prior consultation on the draft Framework with stakeholders, the Scottish Parliament will therefore have the opportunity to scrutinise (and to veto) the Framework before it can be finalised.

12. Section 37 of the Bill requires Fire and Rescue authorities to have regard to the Framework when carrying out their functions. The Scottish Ministers have the power to intervene if authorities fail to act in accordance with the Framework by setting out, by order, an obligation for an authority to act in accordance with the Framework where they consider that the authority is failing to do so. Before making such an order, the Scottish Ministers must consult the authority. Ministers have made clear that those powers of direction are very much a matter of last resort.
13. Section 38 of the Bill requires the Scottish Ministers to report to the Parliament on the extent to which Fire and Rescue authorities are acting in accordance with the Framework and any action they have taken to ensure the authorities do so.

14. Scottish Ministers are committed to full consultation on the draft Framework and any significant revisions to it. It is Ministers’ intention to consult on the draft Framework during the passage of the Fire (Scotland) Bill and, if the Bill is enacted, to bring forward the necessary Scottish Statutory Instrument to give effect to the Framework as soon as possible thereafter.

**Advisory structure**

15. We made clear in our document “The Scottish Fire and Rescue Service: proposals for legislation” that we proposed to abolish the Scottish Central Fire Brigades Advisory Council and replace it with a more effective advisory structure. We have subsequently made clear that we expect the new structure to be non-statutory. However, we will be consulting further on the new structure, and will set out the new arrangements in the Framework.
Summary of the Framework

[to be added on completion of the draft Framework]
Chapter 2 – fire prevention and risk management

Introduction

1. Deaths from fire in Scotland are well above the UK average. In 2002, there were 77 deaths from fire in Scotland, representing a fatality rate of 15 per million population. This compares with fatality rates of 9 per million in England. Whilst effective response to fires will always be a vital part of the Fire and Rescue Service’s responsibilities, research shows that many fire deaths occur before the alarm has been raised. It follows that fire prevention has a pivotal role in reducing deaths and injuries from fire. If we can reduce the number of fires that start in the first place, we will be able to make a huge contribution to reducing fatalities and injuries. This chapter sets out the priorities for the service in this area.

2. This chapter also deals with the management of the whole range of risks and emergencies for which the Service has responsibility.

The statutory duty

3. The Fire (Scotland) Bill will, if enacted, place Fire and Rescue authorities under a new statutory duty to promote fire safety in their areas. This will give statutory backing to the existing fire safety work which all brigades currently undertake, and put even greater emphasis on preventative activity.

Integrated Risk Management Plans

4. The increased emphasis on prevention will be reflected in the development by Fire and Rescue Authorities of Integrated Risk Management Plans (IRMPs). The old, national recommended standards of fire cover, which set out the speed and weight of response to fires depending on building density, were insufficiently flexible to allow Fire and Rescue Authorities to respond to the needs of their communities. They focused exclusively on risk to property rather than risk to life, and did not take account of the serious non-fire incidents to which the Service responds. Nor did they take account of fire prevention activity and fire detection and suppression facilities. From April 2005, local Integrated Risk Management Plans will replace national standards. All Fire and Rescue Authorities must produce an IRMP.

5. IRMPs will set out each Fire and Rescue Authority’s strategy for:

- reducing the number and severity of fires, and in collaboration with other agencies, road traffic accidents and other emergency incidents occurring in the area for which it is responsible;
- reducing the severity of injuries in fires, road traffic accidents and other emergency incidents;
- sustaining and improving the safety of Fire and Rescue Service staff and the general public
- reducing the commercial, economic and social impact of fires and other emergency incidents;
6. An IRMP must set out an authority's assessment of local risk to life and, in line with this analysis, how it is going to deploy its resources to tackle these risks and improve the safety of all sections of society. The IRMP should identify the ways in which the authority can work in partnership with neighbouring authorities and other agencies to deliver improved public safety. It should develop these relationships and build upon the lessons learned. It must also set out the targets an authority will set itself and the standards it will apply to meet the specific pattern of local risk. This will be done in the context of its statutory duty to secure continuous improvement and achieve best value for its local council taxpayers. The IRMP itself should be a strategic, forward-looking document with the approach and detail of business and change management plans. Annual action plans, which may be produced separately or integrated with the main plan, will set out what the authority plans to do in the year ahead. Fire and Rescue Authorities should ensure that their IRMPs are both accessible - to the public, business and other stakeholders - and easy to understand.

7. Authorities are in the process of drawing up their first IRMPs, and will be consulting their local communities on them over the first quarter of 2005. After taking account of the responses to consultation, authorities will begin to implement their first year action plans as from 1 April 2005. Authorities should keep their IRMPs under review, and revise them on a regular basis when new evidence or analytical tools become available.

8. In summary, Fire and Rescue Authorities must each have in place and maintain an IRMP which reflects local need and which sets out plans to tackle effectively both existing and potential risks to communities. They should also:

- produce annual action plans on which they have fully consulted their local communities and stakeholders (including Fire and Rescue staff), allowing twelve weeks for the consultation;
- take account of Scottish Executive or HM Fire Services Inspectorate guidance in producing their plans; and
- make efficient and effective use of resources to implement the IRMP and the action plan, including using more efficient and flexible working practices where appropriate.

9. The Executive recognises that authorities need support in developing and maintaining their IRMPs. We provided guidance on preparing and maintaining IRMPs in 2003, including training for Fire and Rescue Service staff and fire authority elected members. Further guidance will be issued as new issues and demands arise. During the past year we have also:

- undertaken a 'one-off' incident data cleansing exercise on behalf of all authorities that wished to avail themselves of the service, to help ensure that local risk can be reliably located and measured; and
- made available free of charge the Fire Service Emergency Cover (FSEC) toolkit which is based on years of research into risk based fire cover.
Community Fire Safety

10. All fire authorities in Scotland are actively pursuing community fire safety initiatives. We want authorities to build on the significant progress already made, working in partnership, and sharing good practice, with other agencies. In particular, fire and rescue authorities should target resources at those groups most at risk from fire.

11. Research shows that those most likely to be at risk from fire are those in the lower socio-economic groups, the elderly, and families with young children - who are often concentrated in deprived neighbourhoods. For a variety of reasons these groups may be particularly hard to reach with fire safety advice and unable or unwilling to take action in response. In many cases this will require innovative methods and as part of the IRMP process joint working with partners in health, social services, housing, education, the voluntary sector and other emergency services. Working with partners where appropriate, Fire and Rescue Authorities should develop a planned programme of community fire safety work, including evaluation, which responds to the needs and risks identified in their communities by the IRMP, and targets resources on vulnerable communities. This planned programme should include agreement between all authorities on a national strategy for promoting community fire safety, overseen by the Scottish Fire and Rescue Service Community Fire Safety Champion.

12. The Executive will continue to support community fire safety activity in a number of ways:

- National fire safety publicity campaigns under the “Don’t Give Fire a Home” brand, including TV advertising and a dedicated website
- Supplying “Don’t Give Fire a Home” publicity material to fire and rescue authorities, including posters, leaflets, promotional items etc. Total spending on the TV, website and publicity materials amounted to around £380,000 in 2003/04, with similar or increased amounts in 2004/05
- Funding of a Community Fire Safety Co-ordinator for Scotland, supporting the Scottish Community Fire Safety Champion

Working with young people

13. In our policy paper we recommended that the fire service should have closer involvement with young people, to enable them to realise their potential, with the aim of promoting responsible citizenship. We are aware that many brigades have been involved in local initiatives with young people, and we want the service to develop these further through their Community Fire Safety programmes. The Community Fire Safety Co-ordinator will assist brigades with this both in terms of co-ordinating the overall strategy, working together with community safety partnerships, and identifying possible sources of new funding.

14. Working with young people in the community is the subject of a joint thematic report by HM Fire Service Inspectorate. This report contains information which may assist Fire and Rescue Authorities develop opportunities for their work with young people and gives examples of good practice. The report can be accessed on the Internet at
Community planning and partnership working

15. Fire and Rescue Authorities are under a statutory duty to participate in the community planning process introduced by the Local Government in Scotland Act 2003. The legislation provides a framework for better delivery of public services and requires the corporate planning and prioritising of service provision aimed at achieving sustainable social and economic improvement. It is based upon the principles of partnership, collective responsibility, crime reduction, social inclusion and regeneration and by providing a mechanism for community consultation and engagement it shapes services around the needs of individuals and communities. Community Planning Partnerships provide a vehicle for meaningful consultation and dissemination of information on developments within the service that affect local people or local delivery of service. Consultation and engagement on Integrated Risk Management and Community Fire Safety planning are good examples of the contribution Scottish Fire and Rescue Services can make towards meeting the strategic aims and objectives of community planning.

16. Fire and Rescue Authorities should encourage Local Authorities to acknowledge the high social, economic and environmental cost of fire and actively seek opportunities to contribute towards determining local priorities for action, particularly within socially disadvantaged or deprived areas. It is intended to provide service-specific guidance to the Fire and Rescue Services on Community planning and partnership working, as improved engagement, consultation and collaboration will be essential to the strategic development of the service.

Wilful fire raising

17. In our policy paper, we stated that we would consider the recommendations of the Wilful Fire-Raising thematic inspection undertaken jointly by HM Fire Services Inspectorate and HM Inspectorate of Constabulary. The report, entitled Fire: Raising the Standard was issued in May 2002 and contained 13 recommendations. The report recommendations are directed at a number of different parties, and included a recommendation envisaging a national forum to provide leadership and organisation to all parties concerned. Whilst many of the recommendations in the report have been actioned by individual Authorities the Scottish Central Fire Brigades Advisory Council has approved the establishment of a National Body. The body will draw upon a variety of agencies and not just from the Fire and rescue service.

Building Regulations

18. Building Regulations in Scotland apply to new buildings and to alterations, extensions and conversions of existing buildings. They are made principally to ensure the health, safety and welfare of people in and around buildings, but also deal with energy conservation and sustainability.
19. A new Building Standards system will be introduced in Scotland in May 2005. One of the features of the new system is a move to totally functional fire safety standards which allow flexibility in the method of achieving the intent of the standards. These functional standards are principally concerned with life safety and effectively provide the minimum legislative level of safety required in the design and construction of buildings in the event of an outbreak of fire.

20. The move to functional standards increases flexibility and allows the potential for different compliance methods and alternative fire safety strategies. This increased flexibility increases the importance of liaison between Local Authority Building Standards Departments and Fire and Rescue Authorities. Accordingly, the new system introduces a requirement for the Building Standards Verifier (local authority) to consult the Fire and Rescue Authority, as the enforcing authority for fire safety law, for certain categories of building.

Fire and Rescue Authorities are expected to:

- work closely with the Local Authority Building Standards verifier to ensure that any potential conflict between building regulation compliance and fire safety law compliance, in respect of individual buildings, can be identified and resolved at an early stage, and
- use information available on building work and developments within their area to inform their intervention strategies and IRMP where appropriate.

21. A new functional standard (2.15) for Automatic life safety fire suppression systems will be introduced on 1 May 2005. All new high rise domestic buildings, sheltered housing complexes and residential care buildings will require auto-suppression systems such as sprinklers to be installed. The intention is to provide added protection for the more vulnerable groups in society and standard 2.15 is seen as the first step.

Fire Safety in Non-Domestic Premises

22. The Fire (Scotland) Bill will fundamentally reform fire safety law in the workplace and other non-domestic premises. The new framework will complement the wider prevention agenda and the integrated risk management approach to emergency cover. The approach is aimed at saving lives and ensuring that commercial and industrial property will receive appropriate protection. The new regime will incorporate requirements from relevant EC Directives and will ensure that we meet our obligations under EC legislation in respect of fire safety.

23. One of the aims of the proposed reform is to reduce burdens on business that are caused by the existence of multiple, overlapping general fire safety regimes – and consequently overlap of the responsibilities of enforcing authorities. The reform will consolidate and rationalise much existing fire safety law (currently scattered across a large number of statutes and secondary legislation) into one Bill and associated regulations. In doing so it would reduce the number of enforcing authorities dealing with general fire safety matters.
The reform will maintain and enhance the protection afforded to users of premises (and others who might be affected by a fire on the premises) by the existing legislation.

**Role of the Fire and Rescue Authority**

24. The reform should be seen as an important part of our programme to switch the emphasis towards preventing fires from happening in the first place, and putting risk assessment at the heart of our approach to the work of the Fire and Rescue Service.

25. Fire and Rescue Authorities will be given a core duty to be the principal enforcing authority for the new fire safety legislation and the Bill places a duty on enforcing authorities to enforce the fire safety elements of the Bill. In doing so, they must have regard to any guidance Scottish Ministers may issue on the subject.

26. Fire and Rescue Authorities will be expected to:
   - Ensure that enforcement of the fire safety legislation and an associated programme of inspection and audit, forms part of their Integrated Risk Management Plans;
   - Ensure that their fire safety enforcement programme is targeted to address risk, with the premises which pose the greatest risk to people from fire, receiving the highest priority.
   - Fulfil their enforcement role in line with the provisions of the Fire (Scotland) Bill and the Regulations and Guidance issued by Scottish Ministers.
   - Engage in partnership working, relevant stakeholders such as other enforcing authorities, licensing authorities and other registration organisations.
   - Collaborate with the other Scottish Fire and Rescue Authorities to assist in achieving consistent enforcement within Scotland and as an aid to achieving Best Value.
   - Embrace the principles of good enforcement as specified in the Cabinet Office Enforcement Concordat

**Role of the Scottish Executive**

27. Through the Fire (Scotland) Bill, the Scottish Executive is simplifying, rationalising and consolidating existing legislation. It is providing for a risk based approach to fire safety allowing more efficient, effective enforcement by the fire and rescue service and other enforcing authorities.

The Scottish Executive will:

   - Following consultation with stakeholders, issue and keep up to date, guidance documents for the purpose of providing practical advice to relevant businesses and other duty holders.
   - In consultation with stakeholders, keep the regime under review and ensure that, where necessary through Regulation, changes are brought forward to maintain and improve fire safety standards and conform with our EC obligations.
• Ensure that obligations under the Fire (Scotland) Bill e.g., Determination of Disputes, are carried out in line with the provisions of the Bill and associated regulations and guidance.

Crown premises

28. Enforcement Officers within HM Fire Service Inspectorate will enforce fire safety law in Crown premises i.e., premises owned or occupied by the Crown. Although the Crown cannot be held criminally liable, the Fire (Scotland) Bill provides for recourse to the Court of Session to declare unlawful, a contravention by the Crown.

29. Intelligence available from Fire and Rescue Authorities as a consequence of attending emergency incidents will benefit HM Fire Service Inspectorate Enforcement Officers when determining their enforcement priorities for Crown premises. Similarly, Fire and Rescue Authorities can seek information regarding Crown premises from HM Fire Service Inspectorate Enforcement Officers, and this will inform their risk management plans and also inform intervention strategies for firefighters.

30. Fire and Rescue Authorities should therefore work closely with HM Fire Service Inspectorate Enforcement Officers to exchange relevant information.
Chapter 3: Intervention

Introduction

1. The Scottish Fire and Rescue Service has a deserved reputation for providing an effective and professional response to fires and other incidents.

2. Although Fire and Rescue Authorities will now place greater emphasis on preventing fires from happening in the first place, the need for a prompt and effective response to incidents that do occur will remain. Fire and Rescue Authorities will need to develop their capacity to respond to new challenges such as terrorist incidents in accordance with the emerging needs of the national New Dimension programme.

Statutory duties

3. The Fire (Scotland) Bill places two core intervention duties on Fire and Rescue authorities: the extinguishing of fires, with the aim of protecting life and property, and responding to road traffic accidents. In addition, the Bill gives Ministers the power to make an order conferring additional functions on the service so that it is under a duty to respond to other, non-fire emergencies, such as terrorist incidents, flooding, and major transport accidents. Ministers intend to make such an order as soon as possible, subject to the passage of the Bill through Parliament, and will be consulting stakeholders in advance.

Effective response

4. In some areas it may be appropriate to retain current operational procedures and practices; in others, it will be necessary to make changes. Fire and Rescue Authorities should ensure a professional and effective response is available to meet the range of incidents which they may encounter, working together as appropriate. This includes ensuring that:

- staff are trained to professional standards, and are familiar with risks;
- effective command and control systems are in place;
- incident commanders have the appropriate training and experience; and
- the right equipment is available.

Management of Health and Safety

5. Health and safety legislation is largely reserved to the UK Parliament, and applies to Scottish Fire and Rescue Authorities. Fire and Rescue authorities are expected to care for the safety and health of all staff, and of others at risk from operations, particularly when dealing with emergency incidents.
6. It is important that good practice is shared between Fire and Rescue Authorities, managers and front-line staff, across Scotland and with Fire and Rescue authorities observing the same generic requirements in other parts of the UK.

7. HMFSI will work together with the HSE and the Chief Fire Officers' Association (CFOA) on an ongoing basis to provide a national lead and co-ordination in the generation of health and safety guidance. This is particularly appropriate in the case of generic risks and in the identification of common solutions to emerging challenges. In conjunction with ODPM, we aim to risk assess the Operational Training and Development Manual in Autumn 2004; revise guidance on dynamic and generic risk assessment in Spring 2005; and improve the quality of accident and injury data and its collection arrangements in Autumn 2005.

8. The UK Health and Safety Task Group\(^1\), chaired by the HMFSI for England and Wales - and on which HMFSI (Scotland) and all major UK stakeholders are represented - meets quarterly and reports against an agreed business plan. The Group aims to develop policies and strategies to support the management of health and safety in the Fire and Rescue Service; and ensure that the risks arising from Fire and Rescue Service activities are properly managed.

9. Fire and Rescue Authorities should have regard to guidance produced by the Health and Safety Task Group, share local good practice and explore opportunities for effective collaboration.

**Utilisation of resources**

10. The Executive believes that there is scope to improve the efficiency of Fire and Rescue Authorities in responding to incidents while maintaining the highest standards.

11. Traditionally, pumping appliances, with predetermined numbers of firefighters and officers, offered the initial response to emergency incidents. Occasionally specialist vehicles such as aerial appliances supplemented the response.

12. This overly prescriptive, blanket response can over-provide, particularly where hoax calls, signals from automatic fire alarm systems and fires clearly defined as being of limited extent are concerned. It can also mean that fewer resources remain available for incidents where the risk to life and injury is greatest - often in the home – and for other vital duties such as community fire safety.

13. Because of the introduction of IRMPs and the removal of the nationally recommended standards of fire cover and associated guidance, authorities will in future have more

\(^1\) Further information about the work of the group can be obtained from Diane Bell (020 7944 5449 or diane.bell@odpm.gsi.gov.uk).
flexibility. Modern, intelligent information systems mean that risks can be assessed more
effectively allowing a more appropriate and better-targeted response. Fire and Rescue
Authorities should:

- have regard to HMFSI (Scotland) Guide to Reducing the Number of False Alarms from
  Fire Detection and Fire Alarm Systems

- where appropriate, working with other Fire and Rescue Authorities, other emergency
  services and other relevant agencies, take steps to drive down the number of hoax calls
  and unwanted signals from automatic fire alarms; and

- log the callers and properties that create the greatest demand, assess the risks associated
  with them, and decide upon action to achieve improvement, which may include
  consultation with the person responsible for the property, increased fire prevention work
  or a changed level of response.

14. The principal aim of an emergency response is to save lives and reduce the number and
severity of injuries. If outcomes can be improved by adapting services or working with
other service providers this should be pursued. For example, some authorities are already
using defibrillation equipment and are engaged in co-responder schemes, which could
save the lives of people who have suffered cardiac arrest, including firefighters. Fire and
Rescue Authorities should therefore explore the benefits of implementing co-responder
schemes in partnership with other agencies.

Mutual assistance

15. Fire and Rescue Authorities have for many years provided mutual support across borders
for fire-related emergencies through the shared availability of fire crews and appliances.

16. It is important that this best practice is universally applied. Local, regional and national
boundaries should not stop Fire and Rescue Authorities from delivering the most speedy,
effective and efficient response possible.

17. Authorities should, therefore, design their IRMPs to ensure that, so far as practical, there
is greater shared use of resources, particularly, for example: the services of senior
officers; pumping and non-pumping appliances, such as those used for aerial access;
equipment used in traffic accident response and the bulk supply of water; and specialist
support services such as rope rescue teams.

Incident Management Protocols

18. Major fire-related incidents, terrorist attacks or large environmental disasters have no
respect for authority boundaries. Nor can they be dealt with by one emergency service
working in isolation. Increasingly, they demand coordinated planning, operational co-
operation and compatibility in response management between Fire and Rescue Authorities and other emergency and non-emergency responders, such as local authorities, environmental agencies or the Maritime and Coastguard Agency.

19. Fire and Rescue Authorities have an increasing role to play in dealing with these incidents. If enacted, the Fire (Scotland) Bill will give statutory effect to the wider role of Fire and Rescue Authorities in responding to emergency incidents other than fire. And the proposed Civil Contingencies Bill (see chapter 6) includes provision to require Fire and Rescue Authorities to work with other emergency services in producing comprehensive plans for major and catastrophic incidents.

20. Common emergency management policies, practices and procedures are essential. To ensure a consistent operational approach the Service should adopt the principles and procedures detailed in the Fire Service Manual Vol. 2: Fire Service Operations - Incident Command. This will ensure the adoption nationwide of common arrangements and the safe and effective management of operations. CFOA and HMFSI will work together to maintain the Manual's currency in response to new threats and emerging issues. The Manual, together with the publication, Dealing with Disaster Together provides the template for regular inter-service training and exercising and will form an integral part of the training at the Scottish Fire Services College. The UK Fire Service College will also provide a centre of specialist expertise in urban search and rescue and related major emergency incident techniques.

21. In accordance with the Civil Contingencies Bill, Fire and Rescue Authorities, where appropriate, should:

- work with other emergency services, authorities and agencies in the development of major emergency response management and recovery plans, and review all existing operational plans and policies;
- employ national incident command management systems to enable safe and effective emergency operations and joint service training; and
- adopt recognised good practice.

Fire Investigation

22. Fire investigation can provide an invaluable insight into the behaviour of fire, and therefore useful evidence on ways to manage risk.

23. Few Fire and Rescue Authorities are able to deploy adequate resources, at all times, to ensure effective fire investigation. This activity is one of many that should be delivered more effectively by Fire and Rescue Authorities working together through collaborative arrangements.

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24. In the case of deliberate fires the lead authority will ultimately be the Police. In other cases the lead authority will depend on the circumstances and the initial fire investigation results. A degree of flexibility is necessary to allow the leadership at various stages of the investigation process to be shared, with the most relevant agency assuming the lead role as required. Formal protocols and Memoranda of Understanding are essential foundations for ensuring that the needs of all partners are considered. Subject to Parliamentary approval, the Fire (Scotland) Bill will provide formal powers for Fire and Rescue Authorities to investigate the causes of fires and the reasons for fire spread.

25. The Scottish Fire Investigation Forum are developing a national agreement on fire investigation between the Police, Fire and Rescue Service and the Forensic Science laboratories. This agreement will provide a framework for the development of local fire investigation protocols. Once this agreement is issued, Fire and Rescue Authorities should ensure that they have in place an appropriate local fire investigation protocol.

**Contingency planning for any future industrial action**

26. Drawing on the experiences of the recent national industrial action, contingency arrangements for the provision of emergency fire and rescue cover have been reviewed. Fire and Rescue Authorities will, in future, play a more significant part in contingency provision, including the supply of appliances and equipment and the effective deployment of available personnel. The Fire (Scotland) Bill provides the necessary powers for the purposes of public safety.

**Control Rooms**

27. Following an independent review of the future of fire control rooms in Scotland by the consultants Mott MacDonald, the Scottish Executive embarked on a public consultation on the report’s recommendation of a rationalisation from the present eight control rooms to one, two or three. Any changes in the light of the consultation will be taken forward in discussion with Fire and Rescue Authorities and other stakeholders.
Chapter 4 : the workforce

Introduction

1. The Executive recognises that Fire and Rescue Authorities’ most valuable resource in the delivery of the new prevention and intervention agenda is the workforce. Fire and Rescue authorities’ staffing requirements will in future be driven by the need to implement their Integrated Risk Management Plans. Against that background, this chapter sets out the steps the Executive will take, and what we expect of Fire and Rescue authorities, to ensure that: employment opportunities within the Fire and Rescue Service are open to all those who can make an effective contribution; that all those working within the service have opportunities to fulfil their potential; and that all staff are treated fairly.

The Integrated Personal Development System (IPDS)

2. As noted above, IRMPs will determine authorities’ staffing requirements. To ensure that those requirements can be met by new trainees and existing staff with the right skills, the service is moving away from its traditional rank-based structure to a competence-based structure defined by seven “roles”.

3. The Integrated Personal Development System (IPDS) is a major UK initiative to provide a framework that will allow the Service to implement “best practice” human resource development processes. The Scottish Executive recognises the benefits of the IPDS and views its implementation across the Scottish Fire & Rescue Service as a key issue.

4. The IPDS is a framework designed to encompass the development needs of all Fire & Rescue Service staff from the point of attraction and entry to retirement. It embraces the full range of the service’s activities and is intended to enable people to attain and maintain the level of competence required for the demands of their role.

5. The Scottish Executive encourages a collaborative approach to the implementation of the system and has provided the Scottish Fire & Rescue Service with central support and advice via an ‘IPDS Team’. The ‘Team’ is based at the Scottish Fire Services College.

6. The ‘Team’ is managed and administered by the Scottish Executive and together with staff seconded from the Service, they work in partnership with nominated staff from each of the eight Scottish F&RSs. The partnership model includes the administration of one Approved Centre for the awarding of Scottish Vocational Qualifications (SVQs) and the development of Programmes to agreed national standards as part of a Scottish Learning and Development Strategy.

7. The Learning and Development Strategy was published by the Director of Fire Service Training* in October 2003. This strategy sets out a series of objectives for the implementation of the IPDS (Annexe x refers).

8. In providing continuing support for the implementation of the IPDS, the Scottish Executive expects Fire & Rescue Authorities to:
• maintain a collaborative approach to the implementation of the IPDS in order to maximise the benefit from available resources;
• consider the objectives in the Learning & Development Strategy when preparing their annual plans;
• ensure that systems are adopted and managers are trained in order that staff can be assessed fairly against national standards;
• record workplace assessment using the Scottish browser based personal development record system;
• adopt nationally agreed criteria for the assessment of an individual’s potential for entry to the service and for their ability to perform in future roles
• prepare 3-5 year plans for the recruitment of staff in order to inform the SFSC planning process for the provision of induction training.

Recruitment, appointments and promotion

9. We have previously made clear our intention to open up the service so that it is more representative of the communities it serves. Women and people from ethnic minorities are currently under-represented in the service. Fire and Rescue Authorities should therefore take steps to publicise recruitment opportunities with the aim of attracting more applicants from those sections of society.

10. Appointment to the Service is currently specified in statutory regulations, providing for a single point of entry and inflexible arrangements for the accelerated promotion of talented staff. We are in the process of amending the regulations to address those issues. The revised regulations will:

- confirm the principles of IPDS, including the replacement of ranks with roles;
- remove potentially discriminatory requirements e.g. for time-serving in certain ranks;
- remove the single level entry system for operational staff and facilitate multi-level entry, allowing for suitable staff to be recruited directly into roles other than firefighter;
- enable in-service staff with potential to progress more quickly; and
- make possible the introduction of the new standardised national recruitment and selection tests.

11. It is envisaged that the amended regulations will take effect by the end of 2004. Subject to the passage of the Fire (Scotland) Bill, it is our intention to revoke the amended regulations and set out in the final version of the Framework the general approach we expect authorities to adopt in making appointments and promotions, which will be similar to the regime introduced by the revised regulations.

12. Fire and Rescue authorities:

- must adhere to the requirements for the appointment of operational staff as set out in the Fire Services (Appointment and Promotion) (Scotland) Regulations 2004, until such time as they are repealed; and
• should, subject to the enactment of the Fire (Scotland) Bill, act in accordance with the guidance issued by the Executive and employ best practice in the operation of appointments and promotions for all staff in line with legal requirements and the principles of IPDS.

13. The Scottish Executive aims to ensure consistency in recruitment to Fire & Rescue Authorities and will continue to collaborate with the Office of the Deputy Prime Minister (ODPM) on the development of national (UK) firefighter selection tests. The test criteria should be available to Fire & Rescue Authorities from Spring 2005. Fire and Rescue Authorities should adopt the national criteria for selection tests (when available) with a view to them being used as the foundation to the first Assessment & Development Centre (ADC) process within the IPDS framework. ADCs can be resource intensive and Authorities should therefore seek to collaborate in order to ensure consistency of approach.

Diversity, fairness and equality of opportunity

14. Fire and Rescue authorities must comply with the requirements of anti-discrimination legislation. This includes, from 1 October 2004, the employment provisions of the Disability Discrimination Act 1995 (DDA). The DDA requirements have been reflected in revised medical guidance to FRAs issued by the Executive under cover of Scottish Fire Service Circular [x], and in separate guidance issued by the Chief Fire Officers Association in conjunction with the Disability Rights Commission. HMFSI will supply central support to authorities. The Inspectorate has appointed a Diversity and Cultural Change Advisor to assist the Fire and Rescue Service in making progress on the whole range of diversity issues.

15. Discussions are at an advanced stage between the Inspectorate and COSLA re the possible adoption of the Local Government Association “Equality Standard for Local Government”. This policy has already been embraced by the Fire and Rescue services in England and Wales and it appears to be most suitable for Scottish fire and rescue services. Adoption of this Standard would of course reduce duplication of work but most of all would achieve a single standard for the UK fire and rescue services and would also allow for benchmarking across the service. Stakeholders’ views on the adoption of this Standard and the possible resource implications would be most welcome. The Standard can be viewed at [web address].

The Scottish Fire Services College

16. The College will continue to be funded directly by the Scottish Executive as the centre for national training delivery. The College will however take on a new role, working in conjunction with the IPDS ‘Team’ to determine alternative methods of delivery for a wider range of personal development opportunities. Three examples which are worthy of note are;

• the lead partner arrangements that the College has established with the Further Education Sector in Scotland
• the development of a Learning Management System (LMS)
• the development of e-learning modules
17. The SFSC will play a key role in the support framework for the IPDS and will work directly with the IPDS Team in providing a focal point in Scotland for;

- the securing of external quality assurance for the IPDS;
- consistency of approach in the delivery, accreditation and verification of development modules;
- the maintenance of agreed development programmes e.g. Trainee and Firefighter Development Programmes;
- the Scottish browser based personal development system;
- the development of Leadership & Management programmes
- training in Urban Search & Rescue and Mass Decontamination techniques
- the provision of Fire Safety development programmes
- the development of E-learning modules
- the creation of an E-college information platform

The SFSC objectives are detailed within the Learning & Development Strategy (Annex x refers) as published by the Director of Training in October 2003.

18. The Scottish Executive expects Fire & Rescue Authorities to;

- take ownership of the IPDS through continued support for, and participation in, the Scottish partnership model for implementation;
- support the implementation of the IPDS as a framework for personal and organisational development;
- value, plan and support staff development as an integral part of their strategic planning process;
- encourage personnel to value and take responsibility for their own learning and development and to recognise their role in the achievement of organisational objectives;
- commit to workplace and external learning opportunities for personnel undergoing development;
- to provide personnel with adequate access to IT in order to undertake elements of development programmes;
- assist the SFSC in its quest to be at the centre of excellence
- afford secondment opportunities to the SFSC to personnel who demonstrate the ability to develop others

Flexible working

19. The June 2003 Pay and Modernisation Agreement provides for flexible working, including the use of pre-arranged voluntary overtime, mixed crewing of appliances, and for whole-time staff to work on the retained duty system in addition to their whole-time duties. Fire and Rescue authorities should consider the use of these arrangements if it is appropriate to fulfil their Integrated Risk Management Plans. As provided for elsewhere in the June 2003 Agreement, working arrangements will have regard to the special circumstances of individual employees and be family friendly.
Discipline

20. The Fire Services (Discipline) (Scotland) Regulations 1985 would be abolished on enactment of the Fire (Scotland) Bill. From that date Fire and Rescue Service staff will no longer have a right of appeal to the Scottish Ministers on awards of dismissal, the requirement to resign or reduction in rank. Staff against whom a charge has been laid prior to enactment of the Bill will, however, retain the right of appeal. Once the regulations have been abolished, fire and rescue services will be expected to implement disciplinary procedures which are based on Advisory, Conciliation and Arbitration Service (ACAS) best practice guidance.

Absence management / Ill Health retirements

21. For several years, Fire and Rescue Authorities have looked to ameliorate absence levels through sickness by improving the occupational health and fitness of staff. This has included the setting of targets by individual brigades. The Executive will consider whether it would be appropriate to set a national target for reducing sickness absence. Fire and Rescue authorities need to take effective steps to improve sickness management and reduce ill health retirements.

22. Fire and Rescue Authorities should:

- ensure that their occupational health arrangements are efficient and effective;
- ensure that full consideration is given to the health and fitness of staff and that they are assigned to appropriate roles; and
- ensure that any targets set by the Executive for absence management are met.

Pay

23. The Scottish Executive has no direct locus in the arrangements for negotiating pay in the Fire and Rescue Service, which is currently a matter for the local authority employers and the representative bodies. However, as the main source of funding for the service, the Executive has a clear interest in ensuring that the negotiating arrangements operate effectively.

24. We have made clear our view that Scotland should remain part of the UK-wide negotiating machinery for fire-fighter pay – the National Joint Council. We hope that voluntary reforms can be made to the NJC, as envisaged in the June 2003 Pay and Modernisation Agreement. But we have concluded that it would be prudent to make provision for a statutory negotiating body in the event that voluntary reforms do not come about. Accordingly, the Fire (Scotland) Bill would confer a power on Scottish Ministers to establish, and issue guidance to, a statutory negotiating body.

Pensions

25. Whilst primary legislation in respect of pensions is a reserved issue, powers to make an order setting out the details of pension arrangements for fire-fighters have been executively devolved to Scottish Ministers. We have made clear our intention to maintain a UK-wide approach to fire-fighters pensions, and are working closely with the Office of
Deputy Prime Minister in their review of pension arrangements. Work is under way on the development of new pension arrangements which will reflect: the changes in the nature of fire-fighting duties under modernisation proposals; the changes in the regulatory and tax framework for pensions generally; and equality and diversity issues. Proposals for consultation were issued by ODPM on a UK basis on 13 October 2004 and it is envisaged that any new pension scheme would be operational from April 2006.

26. The order-making powers under which Scottish Ministers can set out pensions arrangements have recently been repealed and re-enacted by the UK Parliament. It is likely to be necessary to make an order under the Scotland Act 1998 to give Scottish Ministers the ability to make new statutory arrangements for fire-fighters pensions. However, Scottish Ministers’ powers to modify the current pension scheme remain unchanged.

Fire-fighters on the retained duty system

27. Scotland has a higher proportion of retained and volunteer fire-fighters compared with other parts of the UK. For example, two brigades (Dumfries & Galloway and Highland & Islands) having only one wholetime station, with the vast majority of staff being either on the retained duty system or classified as auxiliaries/volunteers. The Executive greatly values the contribution that these staff can make to the protection of the communities in which they live. It is right that that contribution has been recognised in the June 2003 Pay Agreement which provides for the pay of staff on the retained duty system to be equalised with that of wholetime staff.

28. In recent years, HMFSI has commissioned a programme of research to investigate ways in which firefighters on the retained duty system can become more integrated within the Scottish Fire Service. The second of two reports on this research was published in 2003, and made a number of detailed recommendations (set out at Annex y). We will work with Fire and Rescue authorities to implement those recommendations. In particular, we will expect staff on the retained duty system to be given the same opportunities as their wholetime counterparts to participate in the Integrated Personal Development System and undertake development programmes, commensurate with the requirements of individual authorities’ IRMPs.
Chapter 5 : Finance

Introduction

1. This chapter sets out the core financial support which the Executive will provide to the Fire and Rescue Service over the Spending Review 2004 period, and the arrangements for distribution of those resources. It also describes the Executive’s expectation that authorities generate efficiencies as a result of the modernisation of the service.

Grant Aided Expenditure

2. The overwhelming majority of funding for Fire and Rescue authorities is provided by the Executive through Grant Aided Expenditure (GAE) revenue funding. These resources are intended to cover staff pay costs, running costs and pensions costs. Since devolution, the Executive has provided above-inflation increases in the level of fire GAE.

<table>
<thead>
<tr>
<th>Year</th>
<th>2000/01</th>
<th>2002/03</th>
<th>2003/04</th>
<th>2004/05</th>
<th>2005/06</th>
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<tbody>
<tr>
<td></td>
<td>187m</td>
<td>202m</td>
<td>212m</td>
<td>247m*</td>
<td>262m*</td>
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*excluding transitional funding (see paragraphs 4-6 below)

3. On 29 September 2004, the Executive announced its pending plans for the Spending Review 2004 period – i.e. from 2005/06 to 2007/08. This included increases in the level of fire GAE, as shown in the table below.

<table>
<thead>
<tr>
<th>Year</th>
<th>2005/06</th>
<th>2006/07</th>
<th>2007/08</th>
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<tbody>
<tr>
<td></td>
<td>276m</td>
<td>282m</td>
<td>291m</td>
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These figures include allocations of transitional funding (see paragraphs 4-6 below)/

On the previously announced 05/06 baseline of £262m, this represents an increase of 11.35% over the Spending Review period. In the 10 years to the end of 2007/08, GAE levels will have increased by £114m.

Transitional funding

4. The Executive has always made clear its position that any above-inflation pay increase in the Fire and Rescue Service must be self-financing over time. However, the Executive has acknowledged that there would be additional up-front pay costs to Authorities as a result of the June 2003 Pay and Modernisation Agreement, and that Authorities would not immediately be able to absorb those additional costs. Accordingly, the Executive made a commitment in 2003 that we would provide authorities with transitional funding to assist with those costs. The release of the funding was subject to two conditions: the satisfactory conclusion of negotiations between the local authority employers and the Fire Brigades Union on a number of detailed issues set out in the June 2003 Agreement, and verification by the Accounts Commission that satisfactory progress was being made with the modernisation of the service.
5. Following ratification of the June 2003 agreement in August 2004, and publication of two Accounts Commission reports in March and October 2004 which indicated that progress was being made with modernisation, the Executive has confirmed that it will release a package of transitional funding to cover additional pay costs incurred in the period 2003/04 – 2007/08. The package includes the release of an initial £16.8m in 2004/05, as follows

- £10.0m in respect of wholetime and control staff pay costs
- £1.5m in respect of additional pensions costs
- £2.3m in respect of pay parity for part-time fire-fighters, excluding Highland & Islands
- £3m in respect of Highland & Islands development programme, and pay parity for its part-time fire-fighters

6. Over the Spending Review 2004 period, the transitional funding levels above will be maintained for pensions and retained pay parity, in recognition that it will be difficult for Fire and Rescue authorities to make significant savings in those areas. The phased funding for Highland & Islands’ development programme and pay parity will be subject to the requirements of the Authority’s IRMP. The transitional funding in respect of additional wholetime and control staff pay costs will be gradually reduced over the Spending Review period so that by 31 March 2008 authorities will be expected to have absorbed the additional costs by making savings through modernisation as agreed by the parties to the June 2003 Pay Agreement.

### Distribution of GAE

7. The current arrangements for the allocation of the overall GAE “pot” to individual Authorities are to a large extent based on the number of uniformed staff specified in the Authority’s establishment scheme. In turn, those staff numbers are derived from the need to comply with the recommended national standards of fire cover (see paragraph 4 of chapter 2). With introduction of IRMPs from 1 April 2005, and the withdrawal of the recommended national standards, there will be a need for a fundamental review of the distribution methodology, so that resources are allocated according to the relative needs identified in IRMPs.

8. An official-level Working Group chaired by the Executive and including representatives from the Convention of Scottish Local Authorities and the Chief Fire Officers Association has been established to review the current arrangements. The Working Group has concluded that, until such time as meaningful IRMP data is available, the present methodology should continue to be applied. However, in reaching this conclusion the Group identified an anomaly in the present methodology whereby authorities are financially penalised for reducing the number of uniformed posts. To address this issue, the Group has prepared an interim solution under which GAE allocations for the SR2006 years will be calculated on the basis of establishment figures used for the SR2004 allocations. Over the period, the Group will consider what further reforms are necessary in the light of the implementation of IRMPs.

9. The pensions element of GAE will continue to be determined by a predictive methodology introduced in 2004/05, which replaced the former “historic cost” methodology.
Capital allocations and prudential borrowing

10. The Executive provides capital allocations to Fire and Rescue Authorities for both general capital expenditure and for specific projects. Until 2004/05, these allocations were in the form of consents to borrow under section 94 of the Local Government (Scotland) Act 1973. From 2004/05, a new system for funding Fire and Rescue Authority capital spending was introduced, as provided for in the Local Government in Scotland Act 2003. The new “prudential” arrangements included the abolition of Section 94 consents, and their replacement with cash grants. In addition, each fire and rescue authority is now able to decide its own level of capital spending within broad limits, having taken its own judgement about the affordability of the repayments.

11. Total capital allocations to fire and rescue authorities since 2000 are shown in the table below.

<table>
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<tr>
<th>Year</th>
<th>2000/01</th>
<th>2002/03</th>
<th>2003/04</th>
<th>2004/05</th>
<th>2005/06</th>
</tr>
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<tbody>
<tr>
<td>Amount</td>
<td>19.6m</td>
<td>22.6m</td>
<td>23.6m</td>
<td>23.6m</td>
<td>23.6m</td>
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12. The Executive’s budget announcement on 29 September 2004 included an annual increase in the total capital allocation of £1m to enhance the fire service's response in Scotland to the increased threat from global terrorism. The table below sets out the revised allocation.

<table>
<thead>
<tr>
<th>Year</th>
<th>2005/06</th>
<th>2006/07</th>
<th>2007/08</th>
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</thead>
<tbody>
<tr>
<td>Amount</td>
<td>23.6m</td>
<td>24.6m</td>
<td>24.61m</td>
</tr>
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</table>

Distribution

13. The Executive distributes capital resources in three tranches:

- An amount is “top-sliced” from the total allocation, and authorities are invited to bid for resources to fund specific projects. The total amount of funding available for top-slice bids can vary from year to year. In 2004/05, it amounted to £6.5m,
- Fire and Rescue authorities receive a formula-based allocation. The formula is based on a relative assessment of brigades’ capital needs by taking the numbers of fire stations, vehicles and personnel in each brigade as indicators of long-term needs. The total amount available for formula distribution has remained constant over the Spending Review 2002 period at £15.6m,
- Ministers can decide to retain a portion of the total capital allocation in order to fund projects which will benefit all 8 authorities, e.g. the Firelink radio communications project and the New Dimension programme (see chapter 6).

Fire Central Government

14. This centrally-held budget is used by the Executive to fund the Scottish Fire Services College at Gullane, East Lothian, and for funding attendance by Scottish Fire and Rescue
Service staff at courses held elsewhere in the UK, principally at the Fire Service College in Gloucestershire. The budget is also used to fund the Executive’s community fire safety campaign and promotional fire safety material. The allocations available under this budget heading have been maintained over the SR2002 period at around £7m per annum. Similar amounts will be made available over the Spending Review 2004 years.

**Charging by Fire and Rescue authorities**

15. The range of calls to which Fire and Rescue Authorities respond goes beyond dealing simply with fires. Responding to special service calls, ranging from road traffic accidents to stalled lifts and people locked out of their homes, accounts for around 10% of the calls which the Service attends.

16. Authorities have had a power under section 3 of the Fire Services Act 1947 to charge for dealing with these special service calls. As currently proposed, section 15 of the Fire (Scotland) Bill preserves a power to recover the full costs incurred. We are in the process of confirming all the activities for which a charge is currently made by authorities in Scotland and will specify them in the first Order made under the section 15 power.
Chapter 6: Resilience and New Dimension

Introduction

1. Resilience is defined as the ability to manage disruptive challenges, such as terrorist attacks, major flooding or accidents that can lead to or result in crisis.

2. The Government's and the Executive’s aim in building resilience capacity is to ensure public safety by taking practical steps to reduce the likelihood of such incidents occurring and responding quickly and effectively when they do.

Statutory responsibilities of Fire and Rescue Authorities

Fire (Scotland) Bill

3. If enacted, the Fire (Scotland) Bill will extend duties of Fire and Rescue Authorities to include the promotion of fire safety and response to road traffic accidents, in addition to their traditional fire fighting role. The Bill would also provide the Scottish Ministers with the power to extend further the duties of authorities to deal with other emergencies. The proposed new duties will be set out in an Order, subject to Parliamentary approval, and will place on a statutory basis those emergencies to which authorities respond at present, but for which they have no statutory requirement to plan, train or equip. Authorities are likely, therefore, to be required to make provision for:

- removing chemical, biological or radioactive contaminants from people (using the mass decontamination equipment provided under what is known as the New Dimension programme) and capturing any water used to remove such contaminants;

- incidents involving search and rescue. This would include any terrorist or other incident where there is the potential for persons to be trapped, or where it is necessary to use search and rescue equipment to detect individuals;

- major flooding incidents where there is a serious threat to human health or welfare. For example, firefighters would be needed to assist in the rescue of people trapped by large floods and their transfer to safety. This excludes smaller and more localised flooding events, such as a burst water main; and

- serious transport incidents, other than road traffic accidents.

We will consult widely on proposals before making any Order under the Bill.
4. By Order, following consultation, the Bill would also require authorities to use and maintain any equipment as specified by Scottish Ministers. This would include mass decontamination and search and rescue equipment provided under the New Dimension programme, together with the Firelink radio system (see paragraphs 17-18).

**Civil Contingencies Bill**

5. Part 1 of the Civil Contingencies Bill, currently before the UK Parliament, along with the accompanying regulations and guidance, will provide a statutory basis for development and improvement of the existing framework to reinforce cooperation between the emergency services, local authorities and other front line responders at the local level. The Bill aims to ensure that they can deal with the full range of emergencies from localised major incidents through to catastrophic incidents. Part 1 also creates a statutory duty on the part of local bodies including Fire and Rescue Authorities to work together in preparation for and response to emergencies. Hence, once the Bill is enacted, Fire and Rescue Authorities will be under a duty to work in cooperation with other emergency services, local authorities and other front line responders at the local level to:

- assess the risk of an emergency occurring;
- put in place emergency contingency plans and conduct exercises to ensure that they can both prevent and respond to emergencies;
- establish business continuity management arrangements, so that an authority can function in an emergency;
- share information with other local emergency responders; and
- inform the public about civil protection in order to reduce, control or mitigate the effects of emergencies.

- Warn the public about emergencies that may occur or have occurred

6. Part 2 of the Bill, Emergency Powers, would give the Secretary of State powers to make temporary legislation requiring Fire and Rescue Authorities, and other local responders, to act in order to deal with the most serious of emergencies. Part 2 seeks to address a much wider range of circumstances than those addressed by the present legislation, which dates from 1920, reflecting the different risks and new threats we face today. It would broaden the definition of an emergency to include events and situations which threaten serious damage to human welfare, or to the environment or security of the United Kingdom. Part 2 of the Bill also proposes a range of safeguards against the possibility of misuse to ensure, amongst other things, compliance with Human Rights legislation and effective parliamentary scrutiny.

**Resilience**

7. At a national level clear coordination arrangements are in place to ensure successful emergency planning. At a UK level the Home Secretary has overall responsibility for safety and security. The Cabinet Office coordinates the development of resilience policy
and procedures across Government and seeks to identify and prevent potential disruptive challenges. In Scotland, Scottish Ministers, in most instances, have a responsibility for leading on planning and responding to emergencies.

8. The Scottish Emergencies Co-ordinating Committee (chaired by the Head of the Justice Department) meets as a core group 3 times annually and brings together central government agencies, Military and representatives of local responders, including the emergency services and local authorities. The SECC works to improve planning and response to emergencies in Scotland and improve communications between the centre and the 8 regional Strategic Co-ordinating Groups and local responders. Participation by representatives of Fire and Rescue Authorities in the SECC continues to help put in place effective arrangements for management of large-scale emergencies. Fire and Rescue Authorities are represented at SECC by the current chair of CFOA in Scotland.

9. In the event of a larger scale emergency or to plan for a specific event, such as G8, a sub-committee of SECC, may be formed to coordinate the Scottish response to an event which has the potential to stretch local responders or to impact over a wide area. If enacted, the Civil Contingencies Bill, Part 2 Emergency Regulations, will enable Ministers to appoint a Scottish Emergency Coordinator, if required, to help coordinate activities under any regulations made in response to an emergency. These structures will provide the platform for coordinating both preparation and response in relation to civil contingencies in Scotland. They will provide coordination and facilitation functions to a disruptive event, while - under direction - any response will remain, for the most part, with local responders.

New Dimension

10. To build resilience in the aftermath of the attacks of 11 September 2001, the UK Government launched the New Dimension programme. This programme seeks to ensure that Fire and Rescue Authorities are sufficiently trained and equipped to deal safely and effectively with major CBRN and conventional terrorist incidents on a national scale. In Scotland, the Executive have invested an initial £5 million to purchase equipment and specialist vehicles to provide the fire service with an enhanced operational capability and a greater level of resilience to safely:

- Undertake large scale search and rescue of people trapped in collapsed structures or fires.
- Rescue persons exposed to chemical, biological or radiological materials.
- Carry out mass decontamination of persons contaminated by chemical, biological or radiological materials in support of the Scottish Executive Health Department and Scottish Ambulance Service.
- Sustain these operations over extended duration across the full range of climatic conditions likely to be encountered.
- Enhance the fire service's ability to deliver its services to the community when dealing with a wide variety of major incidents that occur more regularly, such as road traffic accidents involving heavy vehicles, chemical incidents/releases, gas explosions, collapsed structures and serious flooding.
11. The Scottish fire service collaborative project was designed around providing for an increase in each individual brigade's capacity to make a sustained first response to a variety of incidents either in their own area or in support of another brigade by enhancing the existing provision of:

- Specialist, search and rescue cameras and listening devices.
- Hydraulic cutting, spreading, shoring and heavy lifting equipment.
- Concrete breakers, stone cutters and specialist sawing equipment.
- Decontamination and firefighter, protection and detection.
- Water related safety and rescue equipment.

These resources have also been enhanced by the deployment of new Scottish Major Incident Support Vehicles, based in the Grampian, Lothian and Borders and Strathclyde fire areas, which will provide a flexible response option to a wide variety of incidents by providing more specialist heavy rescue, mass decontamination, protective equipment and specialist shoring, lifting and cutting packs.

12. The Scottish Executive will continue to collaborate and where necessary, support Scottish Fire Authorities in the provision of new vehicles and equipment, on a risk assessment basis strategically around the country to provide an effective, coordinated Scottish and National responses to any large-scale incident.

13. The Executive is keen to ensure a coordinated response from the Fire and Rescue Service in the event of a major emergency and in collaboration with all the Scottish Fire and Rescue Authorities, a Mutual Aid Agreement, which will enable individual authorities to ask for assistance from another authority in the event of a major incident has been developed and Fire and Rescue Authorities will be asked to sign up to this agreement.

14. The Fire and Rescue Services Bill proposes to allow Scottish Ministers to direct a Fire and Rescue Authority to participate in such a scheme, but only where authorities are unable to come to an agreement about forming a scheme and where one of the authorities requests intervention.

Training

15. National New Dimension Urban Search and Rescue training facilities have been built at the Fire Service College, at Moreton-in-Marsh and training courses began in April 2004. These specialist courses enhance the Urban Search and Rescue training which is being provided at the Scottish Fire Service College at Gullane.

16. All New Dimension training for firefighters is based on risk assessment carried out by the New Dimension programme in consultation with local fire and rescue services. Initial and
ongoing centrally provided training on both mass decontamination and urban search and rescue has been funded by the Executive as part of its investment in New Dimension in line with existing arrangements.

Firelink

17. The Executive is committed to assisting Fire and Rescue Authorities in the procurement of a new UK national radio system for the Fire and Rescue Service (the Firelink radio project) in order to increase resilience and provide interoperability within the Service and with the other emergency services. It will replace the radio systems currently owned and managed by authorities. Fire and Rescue Authorities will contribute to the revenue costs of the new radio system. We will discuss with Fire and Rescue Authorities the scale of their contribution upon contract award.

18. It is planned that there will be a phased roll-out of the new radio system over a X year period. Firelink, and New Dimension project teams are working cooperatively to improve the capacity of the Fire and Rescue Service to prepare for and respond to catastrophic incidents. A fully complementary approach to the implementation of the projects has been developed, and they are now being managed as a single programme.
Chapter 7: performance

Introduction

1. This chapter sets out in broad terms the levels of performance that the Executive expects of Fire and Rescue Authorities, arrangements for monitoring performance, specific areas for joint working by Authorities, and the assistance the Executive will provide to Authorities in specified areas.

Reducing deaths and injuries from fire

2. As noted earlier in the Framework, Scotland has an unenviable record of fire deaths. Although the underlying trend over the last 15 years indicates that fire fatalities are decreasing significantly, it must remain a priority for the Fire and Rescue Service, working with its partners, to improve on our position. We believe that the modernisation of the service and the greater emphasis on fire prevention will help to do that.

Targets for reductions in deaths and injuries from fire

3. The Executive welcomes the fact that Fire and Rescue Authorities plan to include targets for reductions in deaths and injuries from fire within their Integrated Risk Management Plans. Authorities should ensure that such targets are kept under annual review, and publish actual performance against those targets.

Response times

4. The recommended national standards of fire cover specify the speed and weight of attach which should be achieved in response to incidents, according to the type of property involved. The Executive will withdraw the recommended national standards from 1 April 2005, when IRMPs will be implemented for the first time in Scotland, and authorities will have greater flexibility to determine the deployment of resources. However, the Executive acknowledges that during the transitional period following the introduction of IRMPs, there may be a need to monitor performance to a common standard until meaningful data is available from IRMPs to facilitate alternative methods of performance assessment. HMFSI is therefore discussing with CFOA the possibility of a “benchmark” speed of response under normal circumstances for the first appliance to attend an incident (fire or non-fire). This would be similar to the current recommended standard. We will set out the recommended benchmark, if appropriate, in the final version of the Framework.

Best value

5. Our policy paper recommended that Fire and Rescue Authorities should be covered in the proposed Best Value regime. Accordingly, the Best Value duty which was subsequently set out in Part 1 of the Local Government in Scotland Act 2003 applies to Fire and Rescue Authorities, as well as to other local authorities. It requires them to make arrangements to secure continuous improvement in the performance of their functions and to have regard to economy, efficiency, effectiveness and equality of opportunity in the delivery of services. The Executive has published statutory and non-statutory
guidance to local authorities on best value, and Fire and Rescue authorities are expected to take full account of the guidance in carrying out their functions.

6. Our policy paper also identified the need to move from local co-operation to a strategic approach if the communities we serve are to be convinced that their needs are being reflected and that service delivery is fully satisfying Best Value. Fire and Rescue Authorities are therefore expected to seek and take opportunities for collaboration with other authorities, stakeholders and the wider community.

Procurement

7. A considerable amount of research has been undertaken into joint procurement. However, the results of this work so far have almost always pointed to the establishment of some kind of Common Services Agency, and this is what we proposed in our October 2003 consultation document. The response to that consultation clearly demonstrated that little support exists for such a body. Accordingly, alternative approaches which would still yield considerable efficiencies and savings are being considered. One such alternative is the recent ODPM proposal for a national Procurement Strategy (Fire Service Circular 42/2004) for England and Wales which is currently promulgated for consultation. We would welcome stakeholders’ views on the appropriateness of the Scottish fire and rescue services being part of this arrangement.

E-procurement

8. The Executive has established an e-procurement system (e-procurement Scot@nd), a hosted, managed eProcurement service which is capable of being used by any public sector organisation in the Scottish public sector. Scottish Ministers believe that the benefits of eProcurement will be maximised by adopting a single system with the potential to be used by any organisation in the Scottish public sector. The service is provided by Cap Gemini Ernst & Young (CGEY) and based on the PECOS system from the technology providers Elcom. A programme team is co-ordinating the delivery of what is the world's first national, public sector electronic procurement service. Fire and Rescue Authorities are encouraged to consider participating in the scheme.

Monitoring performance

9. There are several bodies/agencies which monitor performance in the service. Discussions are taking place to achieve a more joined-up and collaborative approach to this area. HM Fire Service Inspectorate will of course continue to inspect individual F&RSs with the ultimate purpose of advising Ministers on the performance of fire and rescue authorities and their services in terms of meeting their statutory duties. However, the Inspectorate will also be assisting, supporting and, where necessary, encouraging authorities and their services to progress reforms which sustain and where possible improve the safety of the public and F&RS staff, and achieve Best value.

10. Wherever possible, inspections will involve other agencies/bodies. In particular, attempts are being made to combine Best Value Audits by Audit Scotland with the inspection process. Further discussions will take place to seek the views of the Health and Safety Executive on possible combined inspections/audits.
11. The overriding aim of the Inspectorate will not only be to advise Ministers but also to add value to the delivery of safer communities whilst still achieving best Value.

Environment

12. All fire authorities have a responsibility to achieve improved methods of operating which reduce the impact upon the environment. There are already a number of initiatives and policies which are achieving this aim e.g. vehicle types and fuel usage. More specifically, Fire and Rescue Authorities will be aware of the predicted climatic changes and the possibility of increased flooding and wildfire incidents, the impact those sorts of incidents can have upon communities. The economy and the environment are factors that Fire and Rescue Authorities will wish to consider in partnership with other agencies in terms of prevention and appropriate operational response.
Scottish Fire & Rescue Service Learning & Development Strategy

1. In the workforce section of the ‘Scottish Fire Service of the Future’, the Scottish Executive (SE) gave details of the post of Director of Fire Service Training, the creation of a Central Training Advisory Committee (CTAC) and the drafting of a Training Strategy.

2. The CTAC first met in October 2001. Chaired by the SE’s Head of Police and Community Safety Group, the Committee membership is as follows:

- SE Head of Fire Division
- SE Head of Fire Branch
- SE Director of Fire Service Training
- SE Fire Branch Member
- Principal, Scottish Fire Services College
- IPDS Team Manager
- Chief Fire Officers Association
- Institute of Fire Engineers
- Fire Brigades Union
- Retained Firefighters Union
- ODPM observer

3. The post of Director of Training was filled in August 2001. One of the Director’s main references was to produce a Training Strategy for the Scottish Fire Service. A document entitled ‘the Scottish Fire Service Learning & Development Strategy (SFSLDS) was presented to Firemasters and their representatives in October 2003.

4. Within the SFSLDS, a series of objectives are set which relate directly to the references of the Director of Training, the Principal of the Scottish Fire Services College and the IPDS Team Manager.

5. In the Section ‘Implementing the Strategy’, Scottish Fire and Rescue Services are asked to consider the content of the SFSLDS when developing their own service plans in relation to organisational development.
6. The CTAC endorsed the SFSLDS at their meeting in October of 2004 and confirmed that it should be highlighted as best practice within the National Framework. This follows on from Audit Scotland’s direct reference to the SFSLDS and the partnership approach being taken for the implementation of the IPDS. An extract from Audit Scotland’s report ‘Scottish Fire Services: Second Verification of the Progress of Modernisation’ (October 2004) reads:

**Exhibit 8**

**Good practice in relation to IPDS**

The national approach to the implementation of IPDS in Scotland illustrates the benefits of collaborative working. The Scottish Fire Service Learning and Development Strategy lays out strategic aims and objectives for the implementation of IPDS in Scotland, and the IPDS team at the Scottish Fire Services College supports work in all the authorities. All eight authorities have signed up to the partnership model, all are members of the IPDS (VQ) Management Board and all are represented on the Assessment Boards. The Partnership Model is underpinned by SQA Approved Centre Quality Assurance policies and procedures. A website dedicated to IPDS in Scotland (www.IPDS.org.uk), gives access to an e-learning module to raise awareness of IPDS.

7. The current version of the Scottish Fire Service Learning and Development Strategy can be viewed and is available for download on:

   www.scottish-fireservicescollege.co.uk and www.ipds.org.uk.
Dear Miss Goldie

FIRE (SCOTLAND) BILL – SECTION 11 EMERGENCY DIRECTIONS

I understand that the Committee is currently considering the draft Stage 1 report on the Fire (Scotland) Bill and you have indicated that the Committee would appreciate additional information on why we believe the requirement for the Ministerial emergency power of direction contained at Section 11 is necessary.

As the Deputy Minister for Justice said when he gave evidence on 28 September, this power is the only power in the Bill which potentially would not be subject to consultation and Parliamentary process and that he hoped that the power would never be needed. This recognises that we do not envisage the power being invoked often or lightly, if at all. However, we firmly believe the power is necessary to ensure public safety is maintained in the event of a major terrorist attack or a natural disaster which has not been covered by the normal emergency planning undertaken by fire and rescue authorities or the existing cross border working arrangements. For example it may be necessary to instruct a Fire and Rescue Authority not to respond to an incident in its area if another Authority is better equipped to do so. This is particularly important as not every Fire and Rescue Authority will have immediate access to the mass decontamination or high volume pumping equipment provided under the New Dimension programme.

On a day to day basis and in the overwhelming majority of cases, responsibility for handling emergencies will remain with Fire and Rescue Authorities. However, as the tragic events of 11 September 2001 have shown, the potential is always there for an emergency to occur which nobody has foreseen and for which authorities have been unable to plan. Whilst the Scottish Executive accepts that Fire and Rescue Authorities need the necessary autonomy to carry out duties without interference from the centre – it would nevertheless be negligent to rule out the need for central co-ordination during an emergency, such as a terrorist attack, a widespread natural disaster or other catastrophe. In addition the Executive can press the right buttons in the Government machine to bring a range of additional resources to bear in an extreme situation as well as providing a focus for central coordination. Section 11 provides an important safety net for those rare occasions when a measure of central co-ordination is required, particularly to ensure resilience in the face of a terrorist attack. This also recognises that when a large scale emergency occurs which has been largely
unforeseen that there will not be time to make the necessary regulations under section 10 to give authorities the statutory authority to act.

In circumstances where an authority is responding to a section 11 direction, cover for other fires and emergencies in its area will be provided through section 31 and 32 reinforcement schemes. These will make it much easier for authorities to participate in a national mutual aid agreement for non-fire emergencies as well as providing simple cross boundary assistance between authorities in the event of a fire.

Concerns may be expressed that the section 11 power duplicates powers in Civil Contingencies legislation, which provides a framework for planning for and dealing with civil emergencies at the national level, but this is not the case. The focus of the Civil Contingencies Act is on planning and ensuring that responders such as fire and rescue authorities assess the risk of an emergency occurring and maintain plans for the purposes of responding to an emergency. The Fire (Scotland) Bill builds on these planning duties and sets out some of the detail in how a managed and co-ordinated response will be achieved in the event of a major emergency that requires co-operation between different authorities.

I hope this further explanation is helpful to the Committee. I understand that the Committee would also find it helpful to have a note of the consultations the Scottish Executive intend to carry out on matters related to the Bill and a table setting this out is appended for the Committee’s information.

Yours sincerely

[Signature]

I A SNEDDEN

Head of Fire Division
<table>
<thead>
<tr>
<th>Consultation</th>
<th>Timing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue draft National Framework for pre consultation with key stakeholders and make available to the Justice 2 Committee.</td>
<td>To be issued around 5 November for a 4 week consultation period.</td>
</tr>
<tr>
<td>Issue consultation paper on Section 15 – Charging Order.</td>
<td>To be issued on 1 December 2004 as one element of a consultation pack also covering Section 10 Additional Function Orders and the replacement of the Scottish Central Fire Brigades Advisory Council.</td>
</tr>
<tr>
<td>Issue consultation paper on Section 10 – Additional Functions.</td>
<td>To be issued on 1 December 2004 as one element of a consultation pack also covering Section 15 Charging Order and the replacement of the Scottish Central Fire Brigades Advisory Council.</td>
</tr>
<tr>
<td>Issue consultation paper on options for the replacement of the Scottish Central Fire Brigades Advisory Council.</td>
<td>To be issued on 1 December 2004 as one element of a consultation pack also covering Section 10 Additional Function Orders and Section 15 Charging Order.</td>
</tr>
<tr>
<td>Issue first draft Fire Safety Regulations for pre consultation with key stakeholders and make available to the Justice 2 Committee.</td>
<td>To be issued around 7 December for a 4 week consultation period.</td>
</tr>
<tr>
<td>Full consultation on draft National Framework</td>
<td>To be issued around 24 December 2004 for a 3-month period.</td>
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</tbody>
</table>
Dear Annabel

At its meeting of 27 October, the Communities Committee considered two SSIs relating to revised building standards, namely the Building (Scotland) Regulations 2004, (SSI 2004/406) and the Building (Procedure) (Scotland) Regulations 2004, (SSI 2204/428). The Committee took evidence on the regulations from various organisations including the Scottish Association of Building Standards Managers (SABSM) and the Fire Protection Association (FPA).

One of the issues that the Committee considered with SABSM and the FPA was fire prevention within building standards. SABSM suggested that when a fire brigade assesses the adequacy of the building fabric in terms of active fire precautions, e.g., the use of the building, the users of the building and the maintenance of the building, it should also include building standards and control. SABSM emphasized that building standards should include fundamental passive fire precautions in the fabric of the building and that the Fire (Scotland) Bill should address that and take account of the role of building control. These comments were supported by the FPA.
The Communities Committee agreed that it should write to you, as Convener of the Committee with lead responsibility for the Bill, to request that the Justice 2 Committee consider the comments outlined above by SABSM and FPA during its scrutiny of the Fire (Scotland) Bill. I would be grateful if you could consider this request with the Justice 2 Committee members.

Yours sincerely

Karen Whitefield MSP
Convener, Communities Committee

cc  Gillian Baxendine, Clerk to the Justice 2 Committee