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

1. **Police, Public Order and Criminal Justice (Scotland) Bill**: The Committee will continue consideration of the Bill at Stage 2 (Day 5).

2. **Subordinate legislation**: Hugh Henry MSP (Deputy Minister for Justice) to move the following motion—

   S2M-4210 That the Justice 2 Committee recommends that the draft Maximum Number of Part-Time Sheriffs (Scotland) Order 2006 be approved.

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

   - The Police Grant (Scotland) Order 2006 (SSI 2006/91)
   - The Prisons and Young Offenders Institutions (Scotland) Rules 2006 (SSI 2006/94)
   - The Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments) (Scotland) Order 2006 (SSI 2006/129)

4. **Legislative Consent Memorandum on the Police and Justice Bill (in private)**: The Committee will consider a draft report on memorandum LCM (S2) 4.1 on the Police and Justice Bill, currently under consideration in the UK Parliament.
Papers for the meeting—

Agenda Item 1

5th Marshalled List of Amendments for Stage 2

5th Groupings of Amendments for Stage 2

Members are reminded to bring with them copies of the Bill, Explanatory Notes and Policy Memorandum, available from Document Supply or from the Parliament’s website (http://www.scottish.parliament.uk/business/bills/46-policePublic/index.htm) together with any papers from the Stage 1 process that are considered relevant (such as the Committee’s Stage 1 Report).

Letter from Tavish Scott MSP on regulating orders

J2/S2/06/10/1

Agenda Item 2

Cover note (including SSI and Explanatory Notes)

J2/S2/06/10/2

Agenda Item 3

Cover note (including SSI, Explanatory Notes and letter from SE)

J2/S2/06/10/3

Cover note (including SSI and Explanatory Notes)

J2/S2/06/10/4

Cover note (including SSI and Explanatory Notes)

J2/S2/06/10/5

Cover note (including SSI and Explanatory Notes)

J2/S2/06/10/6

Agenda Item 4

Draft report (PRIVATE PAPER)

J2/S2/06/10/7

Letter from the Scottish Executive on LCM, 5 April 2006

J2/S2/06/10/8

Documents circulated for information only—

Letter from Scottish Executive Justice Department on Police, Public Order and Criminal Justice (Scotland) Bill 2006 – Marches and Parades, 31 March 2006

Correspondence from Professor Sheila Bird to Andrew McLellan, Her Majesty’s Chief Inspector of Prisons, 27 March 2006 (including Decision 053/2006 of the Scottish Information Commissioner)

European and External Relations Committee Sift of European Documents 28 March 2006

Forthcoming meetings—

- Tuesday 25 April 2006, 2pm, Committee Room 4
- Tuesday 2 May 2006, 2pm, Committee Room 5
5th Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

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Amendments marked * are new (including manuscript amendments) or have been altered.

Section 75

Hugh Henry

217 In section 75, page 42, line 15, leave out <for the purpose of establishing> and insert <which the officer may subject to analysis intended to reveal>

Hugh Henry

218 In section 75, page 43, line 3, leave out <for the purpose of establishing> and insert <to reveal>

Hugh Henry

219 In section 75, page 45, line 1, at beginning insert <Subject to subsection (7A),>

Hugh Henry

220 In section 75, page 45, line 2, at end insert—

<(7A) Where an analysis of the sample reveals that a relevant Class A drug is present in the person’s body, the sample may be retained so that it can be used, and supplied to others, for the purpose of any proceedings against the person for an offence under section 79 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 00); but—
(a) the sample may not be used, or supplied, for any other purpose; and
(b) the sample shall be destroyed as soon as possible once it is no longer capable of being used for that purpose.>

Hugh Henry

221 In section 75, page 45, line 4, leave out <one of>
Section 76

Hugh Henry

222 In section 76, page 45, line 36, leave out from beginning to <Ministers> in line 37

Hugh Henry

223 In section 76, page 45, line 38, leave out <may be> and insert <is>

After section 76

Colin Fox

224 After section 76 insert—

<Duty to refer arrested persons for treatment

(1) This section applies where—

(a) a person has undergone a drugs assessment under section 76;

(b) that drugs assessment has established that the person is dependent on, or has a propensity to misuse, any relevant Class A drug; and

(c) the drugs assessor thinks that the person might benefit from treatment or assistance (or both) in connection with this dependency or propensity.

(2) The drugs assessor must refer that person to a drug treatment or rehabilitation service that seems to the assessor to be appropriate to the person’s needs.

(3) On making such a referral the drugs assessor must—

(a) give, or send by registered post or the recorded delivery service, a copy of the referral to that person; and

(b) send a copy of the referral to the provider of the treatment or rehabilitation.>

Section 78

Hugh Henry

225 In section 78, page 47, line 13, leave out <give> and insert <change the date, time or place of the assessment by serving on>

Hugh Henry

226 In section 78, page 47, line 14, leave out from <any> to <assessment> in line 15 and insert <the change>

Hugh Henry

227 In section 78, page 47, line 16, at end insert—

<(4) For the purpose of subsection (3), a notice is served on a person if—

(a) given to the person; or

(b) sent to the person by registered post or a recorded delivery service.>
(5) A certificate of posting of a notice sent under subsection (4)(b) issued by the postal operator concerned is sufficient evidence of the sending of the notice on the day specified in the certificate.

(6) In subsection (5), “postal operator” has the meaning given by section 125(1) of the Postal Services Act 2000 (c.26).

Section 80

Hugh Henry

228 Leave out section 80

Section 81

Hugh Henry

229 In section 81, page 48, line 40, leave out <80> and insert <79>

Section 82

Hugh Henry

230 In section 82, page 49, line 4, leave out <80> and insert <79>

Section 83

Hugh Henry

236 In section 83, page 49, line 18, leave out <may> and insert <must>

Hugh Henry

237 In section 83, page 49, line 23, at end insert—

<(3A) If the court passes a sentence which is not less than it would have passed but for the assistance given or offered, it must state in open court its reasons for doing so.>

Hugh Henry

238 In section 83, page 49, line 27, at end insert—

<( ) Subsection (3A) does not apply if the court thinks that it would not be in the public interest to disclose that the case was one in which the court had a duty under subsection (2); but in such a case the court must give written notice of its reasons for not passing a discounted sentence to the prosecutor and the offender.>

Hugh Henry

239 In section 83, page 49, leave out line 38 and insert—

<prevents, or restricts, the court, in fulfilment of its duty under subsection (2), from passing on the offender the sentence it considers appropriate.>
In section 83, page 50, line 1, leave out from beginning to <it> in line 2 and insert <Subsection (2) does not prevent the court, in determining what sentence to pass on the offender,>.

In section 83, page 50, line 28, at end insert—

( ) the reference, in subsection (5)(b), to imprisonment includes a reference to detention imposed under section 205(2), and detention in a young offenders institution imposed under section 205(3), 205A(2)(b) or 207 of the 1995 Act;

In section 83, page 50, line 29, leave out first <a reference> and insert <the reference, in subsection (6)(c),>.

In section 84, page 51, line 16, at end insert—

( ) For the purposes of subsection (4)(a), an offender sentenced to a term of imprisonment who is released (whether on licence or unconditionally) under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) before the date on which the offender would (but for the release) have served the sentence in full is to be treated as still serving the sentence until that date.

In section 86, page 52, line 35, at end insert—

(3) The Scottish Ministers may, by order, make provision as to how—

(a) any period in custody served under a sentence for which another sentence is substituted under section 84(6), (8) or (10); and

(b) any period during which a person was on release on licence or unconditionally under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) in respect of such a sentence before the date on which the person would (but for the release) have served the sentence in full, is to be taken into account, for the purposes of the later sentence, in the calculation of periods of time under Part 1 of that Act.

(4) An order under subsection (3) may, in particular, modify that Act.

After section 87

After section 87, insert—
Appeals against sentence: undisclosed information

(1) Where, under subsection (2) of section 87, a court in passing sentence takes into account information contained in a report mentioned in that subsection and the person sentenced appeals against the sentence passed, the High Court, in any proceedings in relation to the appeal—
   (a) must not disclose the information or the existence of the report to any person other than the prosecutor, the appellant and, with the appellant’s agreement, the appellant’s counsel or solicitor; and
   (b) must not disclose to any person whether the sentence passed by the lower court is less than the sentence it would have passed but for the assistance given by the appellant.

(2) If, in any other case, the High Court, in any proceedings in relation to an appeal, becomes aware of information contained in a report mentioned in subsection (2) of section 87 or that a court in passing sentence has, under that subsection, taken that information into account, the High Court must not disclose to any person the information, the existence of the report or whether the sentence passed by the lower court on the person to whom the report relates is less than the sentence it would have passed but for the assistance given by that person.

(3) Rules of court must make provision for the purpose of enabling an appellant referred to in subsection (1) to make representations to the High Court in confidence about the appropriateness of the sentence passed, having regard to the information.

Section 88

Hugh Henry
245 In section 88, page 53, line 29, leave out <(an “immunity> and insert <(a “conditional immunity>

Hugh Henry
246 In section 88, page 53, line 34, leave out <an> and insert <a conditional>

Hugh Henry
247 In section 88, page 53, line 37, leave out <An> and insert <A conditional>

Hugh Henry
248 In section 88, page 53, line 37, after <notice> insert <—
   ( ) must specify the conditions to which its application is subject; and
   ( )>

Hugh Henry
249 In section 88, page 53, line 38, leave out <or conditions to which its application is subject>

Hugh Henry
250 In section 88, page 54, line 1, leave out <an> and insert <a conditional>
Hugh Henry
251 In section 88, page 54, line 6, leave out second <an> and insert <a conditional>

Hugh Henry
252 In section 88, page 54, line 8, after second <the> insert <conditional>

Hugh Henry
253 In section 88, page 54, line 14, leave out second <an> and insert <a conditional>

Hugh Henry
254 In section 88, page 54, line 17, after second <the> insert <conditional>

Hugh Henry
255 In section 88, page 54, line 24, after second <the> insert <conditional>

Hugh Henry
256 In section 88, page 54, line 29, leave out subsection (8) and insert—
<( ) Where—
    (a) a conditional immunity notice has ceased to have effect; and
    (b) proceedings are brought against the person to whom the notice was given in
        respect of any offence specified in the notice,
        the fact that, before the notice ceased to have effect, communications took place
        between the prosecutor or anyone else and the person to whom the notice was given
        which would not or might not have taken place but for the notice is not a ground for the
        court to determine that the proceedings should not have been brought, or should not be
        continued, against that person.>

Hugh Henry
257 In section 88, page 54, line 34, leave out <an> and insert <a conditional>

Hugh Henry
258 In section 88, page 54, line 37, after second <the> insert <conditional>

Hugh Henry
259 In section 88, page 54, line 38, leave out <an> and insert <a conditional>

Hugh Henry
260 In section 88, page 54, line 40, leave out <An> and insert <A conditional>

Hugh Henry
261 In section 88, page 55, line 17, after second <the> insert <conditional>
Hugh Henry
262 In section 88, page 55, line 20, after first <the> insert <conditional>

Hugh Henry
263 In section 88, page 55, line 22, after second <the> insert <conditional>

After section 88

Hugh Henry
264 After section 88, insert—

<Enforcement of Sea Fisheries (Shellfish) Act 1967

Enforcement of Sea Fisheries (Shellfish) Act 1967

(1) After section 4 of the Sea Fisheries (Shellfish) Act 1967 (c.83) there is inserted—

“4A Powers of sea-fishery officers in relation to fishing boats to enforce regulated fishery

(1) For the purpose of enforcing restrictions imposed by, or regulations made by, an order under section 1 conferring a right of regulating a fishery, a British sea-fishery officer may exercise the powers conferred by subsections (2) to (7) in relation to—

(a) a Scottish fishing boat wherever it may be;

(b) any other fishing boat in the Scottish zone.

(2) The officer may go on board the boat, with or without persons assigned to assist in the duties of that officer, and may, for that purpose or for the purpose of disembarking from the boat, require the boat to stop, and anything else to be done which will facilitate the boarding of, or as the case may be, disembarking from, the boat.

(3) The officer may require the attendance of the master and any other person on board the boat and may make any examination and inquiry which appears to the officer to be necessary for the purpose of enforcing such restrictions or regulations.

(4) In particular under subsection (3) the officer may—

(a) search the boat for shellfish or fishing gear;

(b) examine any shellfish on the boat and the equipment (including the fishing gear) of the boat, and require persons on board the boat to do any thing which appears to the officer to be necessary for facilitating the examination;

(c) require any person on the boat to produce any relevant document in the person’s custody or possession;

(d) for the purpose of ascertaining whether an offence under section 3(3) has been committed, search the boat for any relevant document and may require any person on board the boat to do anything which appears to the officer to be necessary for facilitating the search;
(e) inspect, take copies of and retain possession of, while any search, examination or inspection provided for under this subsection is being carried out, any relevant document produced to the officer or found on board;

(f) require the master or any person for the time being in charge of the boat to render any relevant document on a computer system into visible and legible form and to produce it in a form in which it may be taken away; and

(g) where the boat is one in relation to which the officer has reason to suspect that an offence under section 3(3) has been committed, seize and detain any relevant document produced to the officer or found on board, for the purpose of enabling the document to be used as evidence in proceedings for the offence.

(5) But subsection (4)(g) does not permit any document required by law to be carried on a boat to be seized and detained except while the boat is detained in a port.

(6) In subsection (4), “relevant document” means a document relating to—

(a) the boat; or

(b) the catching, landing, transportation, transhipment, sale or disposal of shellfish.

(7) Where it appears to a British sea-fishery officer that an offence under section 3(3) has at any time been committed the officer—

(a) may take, or require the master of any boat in relation to which the offence took place to take, the boat and its crew to the port which appears to the officer to be the nearest convenient port; and

(b) may detain, or require the master to detain, the boat in the port.

(8) Where a British sea-fishery officer detains or requires the detention of a boat under subsection (7)(b), the officer must serve notice in writing on the master stating that the boat is or, as the case may be, is required to, be detained until the time mentioned in subsection (9).

(9) That time is when the master is served with a notice in writing signed by a British sea-fishery officer stating that the previous notice ceases to have effect.

4B Powers of sea-fishery officers on land to enforce regulated fishery

(1) For the purpose of enforcing restrictions imposed by, or regulations made by, an order under section 1 conferring a right of regulating a fishery, a British sea-fishery officer may exercise the powers conferred by subsections (2) to (11) of this section in relation to—

(a) any premises (other than a dwelling-house) used for—

(i) carrying on any business in connection with the operation of fishing boats;

(ii) an activity connected with or ancillary to the operation of fishing boats; or

(iii) the treatment, storage or sale of shellfish;
(b) any vehicle which the officer has reasonable cause to believe is being used—
   (i) to dredge, fish for or take shellfish; or
   (ii) to transport shellfish.

(2) The officer may enter and inspect, at any reasonable time, the premises or vehicle (and, in the case of a vehicle, for that purpose require the vehicle to stop or require the operator to take the vehicle to a particular place).

(3) The officer may, in exercising the power conferred by subsection (2), take with the officer such other persons as appear to the officer to be necessary and any equipment or materials.

(4) The officer may examine any shellfish on the premises or vehicle and require persons on the premises or vehicle to do anything which appears to the officer to be necessary for facilitating the examination.

(5) The officer may on the premises or vehicle carry out such other inspections and tests as may reasonably be necessary.

(6) The officer may require any person not to remove or cause to be removed any shellfish from the premises or vehicle for such a period as may be reasonably necessary for the purposes of establishing whether an offence under section 3(3) has at any time been committed.

(7) The officer may require any person on the premises or vehicle to produce any relevant document in the person’s custody or possession.

(8) The officer may, for the purpose of establishing whether an offence under section 3(3) has been committed, search the premises or vehicle for any relevant document, and may require any person on the premises or vehicle to do anything which appears to the officer to be necessary for facilitating the search.

(9) The officer may inspect and take copies of any relevant document produced or found on the premises or vehicle.

(10) The officer may require any person to render any relevant document on a computer system into a visible and legible form and to produce it in a form in which it may be taken away.

(11) If the officer has reasonable grounds to suspect that an offence under section 3(3) has been committed, the officer may seize and detain any relevant document produced or found on the premises or vehicle, for the purpose of enabling the document to be used as evidence in proceedings for the offence.

(12) A sheriff may, if satisfied by evidence on oath as to the matters mentioned in subsection (13), grant a warrant authorising a British sea-fishery officer to enter premises (if necessary using reasonable force), accompanied by such persons as appear to the officer to be necessary.

(13) Those matters are—
   (a) that there are reasonable grounds to believe that anything which a British sea-fishery officer has power under this section to examine or inspect is on the premises and that the examination or inspection is likely to disclose evidence of the commission of an offence under section 3(3); and
(b) that any of the following is the case—
   (i) admission to the premises has been or is likely to be refused and
       that notice of intention to apply for a warrant under subsection (12)
       has been given to the occupier;
   (ii) an application for admission, or the giving of such notice, would
        defeat the object of entry;
   (iii) the premises are unoccupied or the occupier is temporarily absent
        and it might defeat the object of entry to await the return of the
        occupier.

(14) A warrant under subsection (12) of this section is valid for the period of one
      month beginning with the date on which it is granted or for such shorter period
      as the sheriff may specify.

(15) In this section—
      “premises” includes land; and
      “relevant document” means a document relating to the catching, landing,
      transportation, transhipment, sale or disposal of shellfish.

4C  Powers of British sea-fishery officers to seize fish and fishing gear

(1) A British sea-fishery officer may seize—
   (a) in Scotland or in the Scottish zone; or
   (b) on a Scottish fishing boat wherever it may be,
      any shellfish and any net or other fishing gear to which subsection (2) applies.

(2) This subsection applies to—
   (a) any shellfish in respect of which the officer has reasonable grounds to
       suspect that an offence under section 3(3) has been committed;
   (b) any net or other fishing gear which the officer has reasonable grounds to
       suspect has been used in the commission of such an offence.

(3) In this section—
   (a) “Scotland” has the meaning given by the Scotland Act 1998 (c.46); and
   (b) references to shellfish include any receptacle which contains shellfish.

4D  Sections 4A to 4C: supplementary

(1) A British sea-fishery officer, or a person assisting such an officer by virtue of
     section 4A(2) or 4B(3) or (12), is not liable in any civil or criminal proceedings
     for anything done in the purported exercise of a power conferred by section
     4A, 4B or 4C if the court is satisfied—
     (a) that the act was done in good faith;
     (b) that there were reasonable grounds for doing it; and
     (c) that it was done with reasonable skill and care.

(2) A person who—
(a) fails without reasonable excuse to comply with any requirement imposed on the person by a British sea-fishery officer under a power conferred by section 4A or 4B;

(b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with such a requirement; or

(c) obstructs such an officer in the exercise of any of those powers or the powers conferred by section 4C,

shall be guilty of an offence.

(3) A person who commits an offence under subsection (2) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.”.

(2) In section 22 of the Sea Fisheries (Shellfish) Act 1967 (c.83) (interpretation), after the definition of “sea fishing boat” there is inserted the following definition—

“‘Scottish fishing boat’ means a fishing vessel registered in the register maintained under section 8 of the Merchant Shipping Act 1995 (c.21) whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging;”.

(3) In section 15 of the Sea Fisheries Act 1968 (c.77) (amendment of Sea Fisheries (Shellfish) Act 1967), after subsection (2) there is inserted—

“(2A) The reference in section 3(1) of the Sea Fisheries (Shellfish) Act 1967 to an order under section 1 of that Act conferring on the grantees a right of regulating a fishery which imposes restrictions on, or makes regulations respecting, the dredging, fishing for and taking of shellfish shall be construed as including a reference to an order under section 1 of that Act conferring on the grantees such a right which enables the grantees, with the consent of the appropriate Minister, to impose such restrictions or make such regulations; and the references in sections 3(1)(a), (2) and (3) of that Act to restrictions and regulations shall be construed as including a reference to restrictions so imposed and regulations so made.

(2B) The references in sections 4A(1) and 4B(1) of the Sea Fisheries (Shellfish) Act 1967 to restrictions imposed by, or regulations made by, an order under section 1 of that Act conferring a right of regulating a fishery, shall be construed as including a reference to restrictions imposed by, or regulations made by, the grantees by virtue of an order under section 1 of that Act which enables the grantees, with the consent of the appropriate Minister, to impose such restrictions or make such regulations.”.

Section 89

Hugh Henry

231 In section 89, page 55, line 36, at end insert <;and

“the 2003 Act” means the Sexual Offences Act 2003 (c.42).>
Schedule 5

Hugh Henry

65 In schedule 5, page 74, line 26, after <(be)> insert <, or service such as is mentioned in paragraph (bea),>.

Hugh Henry

265 In schedule 5, page 74, line 34, at end insert—

<( ) in paragraph (b), the words “on which a person is engaged with the consent of the appropriate authority” are repealed;>

Hugh Henry

66 In schedule 5, page 75, line 3, at end insert—

<(bea)service as Director or Deputy Director of the Scottish Crime and Drug Enforcement Agency on which a person is engaged with the consent of the appropriate authority;>

Hugh Henry

67 In schedule 5, page 75, line 7, after <“2002”> insert—

<( ) after subsection (5) there is inserted—

“(5A) If, when engaged on relevant service to which subsection (1)(bea) applies, a person is promoted by virtue of paragraph 1(6B) or 2(4B) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006, paragraphs (a) and (b) of subsection (5) of this section apply as if the person had been promoted in his police force.”;>

Hugh Henry

68 In schedule 5, page 75, line 8, after <(be),> insert <(bea),>.

Hugh Henry

232 In schedule 5, page 75, line 24, at end insert—

<The Criminal Procedure (Scotland) Act 1995 (c.46)>

In section 19A(3) of the 1995 Act (limitation on exercise of power to take samples etc from persons convicted of sexual and violent offences), for “19(1)(a) of this Act” there is substituted “subsection (2) of section 19 of this Act in a case where the power conferred by that subsection was exercised by virtue of subsection (1)(a) of that section”.

Hugh Henry

266 In schedule 5, page 75, line 24, at end insert—

<The Police Act 1997 (c.50)>

(1) The Police Act 1997 is modified as follows.
(2) In section 93 (authorisations to interfere with property)—
   (a) in subsection (3), after paragraph (e) there is inserted—
   
   “(f) if the authorising officer is within subsection (5)(j), by a police member of the Scottish Crime and Drug Enforcement Agency appointed in accordance with paragraph 6 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 00).”;

   (b) in subsection (5), after paragraph (i) there is inserted—
   
   “(j) the Director of the Scottish Crime and Drug Enforcement Agency.”; and

   (c) in subsection (6), after paragraph (cb) there is inserted—
   
   “(cc) in relation to the Director of the Scottish Crime and Drug Enforcement Agency, means Scotland.”.

(3) In section 94 (authorisations given in absence of authorising officer)—
   (a) in subsection (2), after paragraph (g) there is inserted—
   
   “(h) where the authorising officer is within paragraph (j) of that subsection, by a person mentioned in subsection (5).”;

   (b) in subsection (4)—

   (i) in paragraph (a), the words “or (d)” and “or, as the case may be, section 5(4) of the Police (Scotland) Act 1967” are repealed; and

   (ii) after that paragraph there is inserted—

   “(aa) in the case of an authorising officer within paragraph (d) of section 93(5), means the person holding the rank of—

   (i) deputy chief constable and, where there is more than one person in a police force who holds that rank, who is designated as the officer having the powers and duties conferred on a deputy chief constable by section 5A(1) of the Police (Scotland) Act 1967; or

   (ii) assistant chief constable who is designated to act under section 5A(2) of that Act.”; and

   (c) after subsection (4) there is inserted—

   “(5) The person referred to in subsection (2)(h) is—

   (a) the chief constable whose relevant area (within the meaning of section 93(6)(b)) is the area to which the application for authorisation relates; or

   (b) his designated deputy (within the meaning of subsection (4)(aa)); or

   (c) where it is not reasonably practicable for the chief constable or his designated deputy to consider the application, a person holding the rank of assistant chief constable in the chief constable’s police force.”.

(4) In section 95(7) (designated deputy permitted to exercise authorising officer’s powers), for “or (d)” there is substituted “(d) or (j)”.

(5) In section 107(4) (power of Prime Minister to exclude matters from a report), after paragraph (b) there is inserted—

   “(ba) the functions of the Scottish Crime and Drug Enforcement Agency.”.
<The Regulation of Investigatory Powers Act 2000 (c.23)

In section 76A(11) of the Regulation of Investigatory Powers Act 2000 (foreign surveillance operations: definitions) for paragraph (c) of the definition of “United Kingdom officer” there is substituted—

“(c) a police member of the Scottish Crime and Drug Enforcement Agency appointed in accordance with paragraph 6 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 00);”>

Hugh Henry

267 In schedule 5, page 75, line 29, at end insert—


(1) The Regulation of Investigatory Powers (Scotland) Act 2000 is modified as follows.

(2) In section 9 (special provision for the Scottish Crime Squad)—

(a) subsection (1) is repealed;

(b) in subsection (2), for “Scottish Crime Squad and constables seconded to it” there is substituted “Scottish Crime and Drug Enforcement Agency”;

(c) in subsection (3), for “Scottish Crime Squad” there is substituted “Scottish Crime and Drug Enforcement Agency”;

(d) in subsection (4)—

(i) for “Scottish Crime Squad” there is substituted “Scottish Crime and Drug Enforcement Agency”; and

(ii) for “constable seconded to that Squad” there is substituted “police member of that Agency”;

(e) subsections (5) and (6) are repealed; and

(f) the section heading becomes “Special provision for the Scottish Crime and Drug Enforcement Agency”.

(3) In section 10 (authorisation of intrusive surveillance)—

(a) in subsection (1), after “force” there is inserted “and the Director of the Scottish Crime and Drug Enforcement Agency”; and

(b) in subsection (2), for “chief constable” there is substituted “person”.

(4) In section 11 (grant of authorisations)—

(a) in subsection (2), at the beginning there is inserted “Subject to section 12A below,”;

(b) for subsection (3) there is substituted—

“(3) The Director of the Scottish Crime and Drug Enforcement Agency shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by a police member of that Agency.”;

(c) in subsection (4)—
(i) in paragraph (a), after “force” there is inserted “or is a police member of the Scottish Crime and Drug Enforcement Agency”; and

(ii) in paragraph (b), for “a police force,” there is substituted—

“(i) where that individual is a member of a police force, a police force; or

(ii) where that individual is a police member of the Scottish Crime and Drug Enforcement Agency, that Agency;”; and

(d) in subsection (5), after “section” there is inserted “and section 12A below”.

(5) In section 12 (grant of authorisations in cases of urgency)—

(a) in subsection (1), after “application” there is inserted “(other than an application to which section 12A below applies)”;

(b) in subsection (4), after “rank of” there is inserted “deputy chief constable or”; and

(c) in subsection (5), for the words from “assistant” to the end there is substituted—

“(a) deputy chief constable and, where there is more than one person in a police force who holds that rank, who is designated as the officer having the powers and duties conferred on a deputy chief constable by section 5A(1) of the Police (Scotland) Act 1967 (c.77); or

(b) assistant chief constable who is designated to act under section 5A(2) of that Act.”.

(6) After section 12 there is inserted—

“12A Grant of authorisations in cases of urgency: Scottish Crime and Drug Enforcement Agency

(1) This section applies in the case of an application to the Director of the Scottish Crime and Drug Enforcement Agency for an authorisation for the carrying out of intrusive surveillance where the case is urgent.

(2) If it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by the Director or the Deputy Director of that Agency, the application may be made to and considered by—

(a) the chief constable of the police force to which subsection (3) below applies;

(b) a person (if there is one) who is entitled, as a designated deputy of that chief constable, to exercise the functions in relation to that application of that chief constable; or

(c) if it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by a person such as is mentioned in paragraphs (a) or (b) above, any person who is entitled under subsection (4) of section 12 above to act, for the purposes of that section, for that chief constable.

(3) This subsection applies to a police force if—

(a) in the case of an authorisation for the carrying out of intrusive surveillance in relation to any residential premises, those premises are in; and
(b) in the case of an authorisation for the carrying out of intrusive surveillance in relation to any private vehicle, the chief constable of that police is satisfied that the operation will commence in,

the area of operation of that police force.

(4) In this section “designated deputy” has the same meaning as in section 12 above.”.

(7) In section 14(5)(b) (meaning of “most senior relevant person”), for the words from “member” to the end there is substituted “police member of the Scottish Crime and Drug Enforcement Agency, the Director of that Agency.”.

(8) In section 15(7) (persons receiving a report when authorisation is quashed), after paragraph (a) there is inserted—

“(aa) in the case of an authorisation granted under section 12A above, to the chief constable mentioned in subsection (2)(a) of that section;”.

(9) In section 16(1) (appeals), after “force” there is inserted “or the Director of the Scottish Crime and Drug Enforcement Agency”.

(10) In section 18 (information to be provided to the Surveillance Commissioners), for paragraph (b) there is substituted—

“(b) the Director, the Deputy Director and every police member of the Scottish Crime and Drug Enforcement Agency,.”.

(11) In section 20(6) (meaning of “deputy” in relation to cancellations)—

(a) the words from “in”, where it second occurs, to “constable”, where it second occurs, become paragraph (a); and

(b) after those words there is inserted—

“(b) in relation to the Director of the Scottish Crime and Drug Enforcement Agency, to the Deputy Director of that Agency”.

(12) In section 23(5)(b) (conduct taking place in challengeable circumstances), after “force” there is inserted “or to the Scottish Crime and Drug Enforcement Agency”.

(13) In section 24(2)(b) (powers and duties in relation to which codes of practice must be issued), after “force” there is inserted “or to the Scottish Crime and Drug Enforcement Agency”.

(14) In section 31(1) (interpretation), after the definition of “police force” there is inserted—

““police member”, in relation to the Scottish Crime and Drug Enforcement Agency, means a person appointed as such a member in accordance with paragraph 6 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 00);”.”

Hugh Henry

131 In schedule 5, page 75, line 29, at end insert—

<The Scottish Public Services Ombudsman Act 2002 (asp 11)

(1) The Scottish Public Services Ombudsman Act 2002 (asp 11) is amended as follows.

(2) In schedule 2 (listed authorities)—
(a) the entry numbered 14 is repealed; and
(b) after the entry numbered 32 there is inserted—

“32A The Police Complaints Commissioner for Scotland.”.

(3) In schedule 4 (matters which the Ombudsman must not investigate)—

(a) for paragraph 1(b) there is substituted—

“(c) the Police Complaints Commissioner for Scotland.”; and

(b) after paragraph 15 there is inserted—

“16 Action taken—

(a) by a local authority in discharge of its functions as a police authority, or

(b) by any other person in discharge of the functions of a local authority as a
police authority, by virtue of section 56(1) of the Local Government
(Scotland) Act 1973 (c.65).”.

Hugh Henry

269 In schedule 5, page 75, line 32, after <information>> insert <—

( ) there is inserted after the entry numbered 52 the following entry—

“52A The Scottish Police Services Authority, but only in respect of information
relating to the provision of the police support services within the meaning of
section 3(2) of the Police, Public Order and Criminal Justice (Scotland) Act
2006.”; and

( )>

Hugh Henry

132 In schedule 5, page 75, line 38, leave out from beginning to end of line 2 on page 76

Hugh Henry

270 In schedule 5, page 76, line 5, at end insert—

<_The Serious Organised Crime and Police Act 2005 (c.15)_

(1) The Serious Organised Crime and Police Act 2005 is modified as follows.

(2) In section 3(5)(d) (meaning of “special police force”), for “Scottish Drug Enforcement
Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”.

(3) In section 23 (mutual assistance between SOCA and law enforcement agencies: voluntary arrangements)—

(a) for subsection (5) there is substituted—

“(5) In subsection (4)(a), “constables or members of staff” in relation to the Scottish
Crime and Drug Enforcement Agency means police members or support staff
members of that Agency.”;

(b) in subsection (7), for paragraph (b) there is substituted—

“(b) a police member or support staff member of the Scottish Crime and Drug
Enforcement Agency,”;
(c) in subsection (10)(b) for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and

(d) in subsection (11)—

(i) after the definition of “police force” there is inserted—

““police member”, in relation to the Scottish Crime and Drug Enforcement Agency, means a person appointed as such a member in accordance with paragraph 6 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 00);”;

(ii) in paragraph (f) of the definition of “relevant police authority”, for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and

(iii) after the definition of “relevant police authority” there is inserted—

““support staff member”, in relation to the Scottish Crime and Drug Enforcement Agency, means a person appointed as such a member in accordance with paragraph 7 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006;”.

(4) In section 24(2)(b) (bodies to which section 24 applies), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”.

(5) In section 25 (directed arrangements: Scotland)—

(a) in subsection (2)(b), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”;

(b) in subsection (3)(b)—

(i) for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and

(ii) for “constables or other persons” there is substituted “police members or support staff members”;

(c) in subsection (4), in both paragraphs (a) and (b), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and

(d) after subsection (4), there is inserted—

“(5) In this section, “police member” and “support staff member” have the same meaning as in section 23.”.

(6) In section 31(5)(d) (meaning of “relevant authority” in section 31), for “Scottish Drug Enforcement Agency, means” there is substituted “Scottish Crime and Drug Enforcement Agency, means the Director of”.

(7) In section 42 (interpretation)—

(a) in subsection (1), in paragraph (g) of the definition of “chief officer”, for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and

(b) subsection (2) is repealed.

(8) In section 47 (person having powers of constable: exercise of such powers in Scotland and Northern Ireland)
(a) in subsection (3)(a), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and

(b) in subsection (7), the definition of “the Scottish Drug Enforcement Agency” and “the Director” is repealed.

(9) In section 82(5) (persons who are protection providers), in paragraph (f), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”.

(10) In section 94 (interpretation of Chapter 4), subsection (9) is repealed.

(11) In Schedule 5—

(a) in paragraph 20—

(i) in sub-paragraph (1), the words “is or” are repealed and for “Scottish Drug Enforcement Agency” there is substituted “organisation known as the Scottish Drug Enforcement Agency and established under section 36(1)(a)(ii) of the Police (Scotland) Act 1967 (c.77), that is to say a person who was engaged on central service (as defined by section 38(5) of that Act) and was appointed by the Scottish Ministers to exercise control in relation to the activities carried out in exercise of that organisation’s functions”; and

(ii) in sub-paragraph (2), the words “is or” are repealed; and

(b) after paragraph 20 there is inserted—

“20A (1) A person who is or has been the Director of the Scottish Crime and Drug Enforcement Agency.

(2) A person who is or has been under the direction and control of the Director of the Scottish Crime and Drug Enforcement Agency.”.

Hugh Henry

271 In schedule 5, page 76, line 5, at end insert—

<PART

SUBORDINATE LEGISLATION


In the Schedule to the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Order 2000, for “The Operational and Intelligence Group of the Scottish Drug Enforcement Agency” there is substituted “The Scottish Crime and Drug Enforcement Agency”.

Section 93

Mr Stewart Maxwell

7 In section 93, page 56, line 24 at end insert—

< ( ) a statutory instrument containing regulations under section (Health Boards to maintain register of non-accidental injuries)(1);>
Hugh Henry

272 In section 93, page 56, line 25, leave out from beginning to <Act> in line 26
5th Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments still to be debated set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Verifying presence of Class A drugs in sample given by arrested person**

217, 218, 223, 228, 229, 230

**Retention of samples taken for testing for certain Class A drugs**

219, 220, 221

**Assessment following positive test for Class A drugs**

222, 225, 226, 227

**Positive drugs test: treatment**

224

**Assistance by offender: requirement to take into account**

236, 239, 240

**Assistance by offender: giving of reasons**

237, 238

**Assistance by offender: meaning of “imprisonment”**

241, 242

**Assistance by offender: review of sentence**

243, 244, 272

**Appeals against sentence: information not to be disclosed**
273

Conditional immunity notice
245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263

Regulated fisheries: enforcement
264

1967 Act: when “central service” constitutes “relevant service”
265

Agency: amendment of provisions on surveillance
266, 267, 268, 271 Authority: freedom of information
269

Amendment of Public Appointments and Public Bodies (Scotland) Act 2003 in consequence of establishment of Police Complaints Commissioner
132

Agency: amendment of Serious Organised Crime and Police Act 2005
270

Amendments debated previously

Control of sex offenders, etc (day 4)
231

Agency: director and deputy director and police members (day 1)
65, 66, 67 and 68

Power to take samples from sex offenders (day 4)
232

Functions of Scottish Public Sector Ombudsman in relation to police complaints (day 2)
131

Offensive Weapons: register of non-accidental injuries (day 4)
7
Amendments in debating order

Verifying presence of Class A drugs in sample given by arrested person

Section 75

Hugh Henry

217 In section 75, page 42, line 15, leave out <for the purpose of establishing> and insert <which the officer may subject to analysis intended to reveal>

Hugh Henry

218 In section 75, page 43, line 3, leave out <for the purpose of establishing> and insert <to reveal>

Hugh Henry

223 In section 76, page 45, line 38, leave out <may be> and insert <is>

Section 80

Hugh Henry

228 Leave out section 80

Section 81

Hugh Henry

229 In section 81, page 48, line 40, leave out <80> and insert <79>

Section 82

Hugh Henry

230 In section 82, page 49, line 4, leave out <80> and insert <79>

Retention of samples taken for testing for certain Class A drugs

Hugh Henry

219 In section 75, page 45, line 1, at beginning insert <Subject to subsection (7A).>

Hugh Henry

220 In section 75, page 45, line 2, at end insert—
<(7A) Where an analysis of the sample reveals that a relevant Class A drug is present in the person’s body, the sample may be retained so that it can be used, and supplied to others, for the purpose of any proceedings against the person for an offence under section 79 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 00); but—

(a) the sample may not be used, or supplied, for any other purpose; and

(b) the sample shall be destroyed as soon as possible once it is no longer capable of being used for that purpose.>

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**Hugh Henry**

221 In section 75, page 45, line 4, leave out *<one of>*

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Assessment following positive test for Class A drugs

**Section 76**

**Hugh Henry**

222 In section 76, page 45, line 36, leave out from beginning to *<Ministers>* in line 37

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**Section 78**

**Hugh Henry**

225 In section 78, page 47, line 13, leave out *<give>* and insert *<change the date, time or place of the assessment by serving on>*

**Hugh Henry**

226 In section 78, page 47, line 14, leave out from *<any>* to *<assessment>* in line 15 and insert *<the change>*

**Hugh Henry**

227 In section 78, page 47, line 16, at end insert—

- *(4)* For the purpose of subsection (3), a notice is served on a person if—
  - (a) given to the person; or
  - (b) sent to the person by registered post or a recorded delivery service.

- *(5)* A certificate of posting of a notice sent under subsection (4)(b) issued by the postal operator concerned is sufficient evidence of the sending of the notice on the day specified in the certificate.

- *(6)* In subsection (5), *“postal operator”* has the meaning given by section 125(1) of the Postal Services Act 2000 (c.26).>
Positive drugs test: treatment

After section 76

Colin Fox 224

After section 76 insert—

<Duty to refer arrested persons for treatment

(1) This section applies where—

(a) a person has undergone a drugs assessment under section 76;

(b) that drugs assessment has established that the person is dependent on, or has a propensity to misuse, any relevant Class A drug; and

(c) the drugs assessor thinks that the person might benefit from treatment or assistance (or both) in connection with this dependency or propensity.

(2) The drugs assessor must refer that person to a drug treatment or rehabilitation service that seems to the assessor to be appropriate to the person’s needs.

(3) On making such a referral the drugs assessor must—

(a) give, or send by registered post or the recorded delivery service, a copy of the referral to that person; and

(b) send a copy of the referral to the provider of the treatment or rehabilitation.>

Assistance by offender: requirement to take into account

Section 83

Hugh Henry 236

In section 83, page 49, line 18, leave out <may> and insert <must>

Hugh Henry 239

In section 83, page 49, leave out line 38 and insert—

<prevents, or restricts, the court, in fulfilment of its duty under subsection (2), from passing on the offender the sentence it considers appropriate.>

Hugh Henry 240

In section 83, page 50, line 1, leave out from beginning to <it> in line 2 and insert <Subsection (2) does not prevent the court, in determining what sentence to pass on the offender,>
Assistance by offender: giving of reasons

Hugh Henry

237 In section 83, page 49, line 23, at end insert—

<(3A) If the court passes a sentence which is not less than it would have passed but for the assistance given or offered, it must state in open court its reasons for doing so.>

Hugh Henry

238 In section 83, page 49, line 27, at end insert—

<( ) Subsection (3A) does not apply if the court thinks that it would not be in the public interest to disclose that the case was one in which the court had a duty under subsection (2); but in such a case the court must give written notice of its reasons for not passing a discounted sentence to the prosecutor and the offender.>

Assistance by offender: meaning of “imprisonment”

Hugh Henry

241 In section 83, page 50, line 28, at end insert—

<( ) the reference, in subsection (5)(b), to imprisonment includes a reference to detention imposed under section 205(2), and detention in a young offenders institution imposed under section 205(3), 205A(2)(b) or 207 of the 1995 Act;>

Hugh Henry

242 In section 83, page 50, line 29, leave out first <a reference> and insert <the reference, in subsection (6)(c).>

Assistance by offender: review of sentence

Section 84

Hugh Henry

243 In section 84, page 51, line 16, at end insert—

<( ) For the purposes of subsection (4)(a), an offender sentenced to a term of imprisonment who is released (whether on licence or unconditionally) under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) before the date on which the offender would (but for the release) have served the sentence in full is to be treated as still serving the sentence until that date.>
Section 86

Hugh Henry

244 In section 86, page 52, line 35, at end insert—

<(3) The Scottish Ministers may, by order, make provision as to how—

(a) any period in custody served under a sentence for which another sentence is
substituted under section 84(6), (8) or (10);

(b) any period during which a person was on release on licence or unconditionally
under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)
in respect of such a sentence before the date on which the person would (but for
the release) have served the sentence in full,

is to be taken into account, for the purposes of the later sentence, in the calculation of
periods of time under Part 1 of that Act.

(4) An order under subsection (3) may, in particular, modify that Act.>

Hugh Henry

272 In section 93, page 56, line 25, leave out from beginning to <Act> in line 26

Appeals against sentence: information not to be disclosed

After section 87

Hugh Henry

273 After section 87, insert—

<Appeals against sentence: undisclosed information

(1) Where, under subsection (2) of section 87, a court in passing sentence takes into account
information contained in a report mentioned in that subsection and the person sentenced
appeals against the sentence passed, the High Court, in any proceedings in relation to the
appeal—

(a) must not disclose the information or the existence of the report to any person other
than the prosecutor, the appellant and, with the appellant’s agreement, the
appellant’s counsel or solicitor; and

(b) must not disclose to any person whether the sentence passed by the lower court is
less than the sentence it would have passed but for the assistance given by the
appellant.

(2) If, in any other case, the High Court, in any proceedings in relation to an appeal,
becomes aware of information contained in a report mentioned in subsection (2) of
section 87 or that a court in passing sentence has, under that subsection, taken that
information into account, the High Court must not disclose to any person the
information, the existence of the report or whether the sentence passed by the lower
court on the person to whom the report relates is less than the sentence it would have
passed but for the assistance given by that person.
(3) Rules of court must make provision for the purpose of enabling an appellant referred to in subsection (1) to make representations to the High Court in confidence about the appropriateness of the sentence passed, having regard to the information.

Conditional immunity notice

Section 88

Hugh Henry
245 In section 88, page 53, line 29, leave out <(an “immunity)> and insert <(a “conditional immunity>

Hugh Henry
246 In section 88, page 53, line 34, leave out <an> and insert <a conditional>

Hugh Henry
247 In section 88, page 53, line 37, leave out <An> and insert <A conditional>

Hugh Henry
248 In section 88, page 53, line 37, after <notice> insert <— ( ) must specify the conditions to which its application is subject; and ( )>

Hugh Henry
249 In section 88, page 53, line 38, leave out <or conditions to which its application is subject>

Hugh Henry
250 In section 88, page 54, line 1, leave out <an> and insert <a conditional>

Hugh Henry
251 In section 88, page 54, line 6, leave out second <an> and insert <a conditional>

Hugh Henry
252 In section 88, page 54, line 8, after second <the> insert <conditional>

Hugh Henry
253 In section 88, page 54, line 14, leave out second <an> and insert <a conditional>

Hugh Henry
254 In section 88, page 54, line 17, after second <the> insert <conditional>
Hugh Henry
255 In section 88, page 54, line 24, after second <the> insert <conditional>

Hugh Henry
256 In section 88, page 54, line 29, leave out subsection (8) and insert—

< ( ) Where—

(a) a conditional immunity notice has ceased to have effect; and
(b) proceedings are brought against the person to whom the notice was given in respect of any offence specified in the notice,

the fact that, before the notice ceased to have effect, communications took place between the prosecutor or anyone else and the person to whom the notice was given which would not or might not have taken place but for the notice is not a ground for the court to determine that the proceedings should not have been brought, or should not be continued, against that person.>

Hugh Henry
257 In section 88, page 54, line 34, leave out <an> and insert <a conditional>

Hugh Henry
258 In section 88, page 54, line 37, after second <the> insert <conditional>

Hugh Henry
259 In section 88, page 54, line 38, leave out <an> and insert <a conditional>

Hugh Henry
260 In section 88, page 54, line 40, leave out <An> and insert <A conditional>

Hugh Henry
261 In section 88, page 55, line 17, after second <the> insert <conditional>

Hugh Henry
262 In section 88, page 55, line 20, after first <the> insert <conditional>

Hugh Henry
263 In section 88, page 55, line 22, after second <the> insert <conditional>
Regulated fisheries: enforcement

**After section 88**

Hugh Henry

264 After section 88, insert—

"Enforcement of Sea Fisheries (Shellfish) Act 1967"

Explanatory and Special Provisions Act 1989 (c.40) makes provision for the repeal of Part I of the Sea Fisheries (Shellfish) Act 1967 (c.83)

**Enforcement of Sea Fisheries (Shellfish) Act 1967**

(1) After section 4 of the Sea Fisheries (Shellfish) Act 1967 (c.83) there is inserted—

"4A Powers of sea-fishery officers in relation to fishing boats to enforce regulated fishery"

1. For the purpose of enforcing restrictions imposed by, or regulations made by, an order under section 1 conferring a right of regulating a fishery, a British sea-fishery officer may exercise the powers conferred by subsections (2) to (7) in relation to—

(a) a Scottish fishing boat wherever it may be;

(b) any other fishing boat in the Scottish zone.

2. The officer may go on board the boat, with or without persons assigned to assist in the duties of that officer, and may, for that purpose or for the purpose of disembarking from the boat, require the boat to stop, and anything else to be done which will facilitate the boarding of, or as the case may be, disembarking from, the boat.

3. The officer may require the attendance of the master and any other person on board the boat and may make any examination and inquiry which appears to the officer to be necessary for the purpose of enforcing such restrictions or regulations.

4. In particular under subsection (3) the officer may—

(a) search the boat for shellfish or fishing gear;

(b) examine any shellfish on the boat and the equipment (including the fishing gear) of the boat, and require persons on board the boat to do anything which appears to the officer to be necessary for facilitating the examination;

(c) require any person on the boat to produce any relevant document in the person's custody or possession;

(d) for the purpose of ascertaining whether an offence under section 3(3) has been committed, search the boat for any relevant document and may require any person on board the boat to do anything which appears to the officer to be necessary for facilitating the search;

(e) inspect, take copies of and retain possession of, while any search, examination or inspection provided for under this subsection is being carried out, any relevant document produced to the officer or found on board;
(f) require the master or any person for the time being in charge of the boat to render any relevant document on a computer system into visible and legible form and to produce it in a form in which it may be taken away; and

(g) where the boat is one in relation to which the officer has reason to suspect that an offence under section 3(3) has been committed, seize and detain any relevant document produced to the officer or found on board, for the purpose of enabling the document to be used as evidence in proceedings for the offence.

(5) But subsection (4)(g) does not permit any document required by law to be carried on a boat to be seized and detained except while the boat is detained in a port.

(6) In subsection (4), “relevant document” means a document relating to—

(a) the boat; or

(b) the catching, landing, transportation, transhipment, sale or disposal of shellfish.

(7) Where it appears to a British sea-fishery officer that an offence under section 3(3) has at any time been committed the officer—

(a) may take, or require the master of any boat in relation to which the offence took place to take, the boat and its crew to the port which appears to the officer to be the nearest convenient port; and

(b) may detain, or require the master to detain, the boat in the port.

(8) Where a British sea-fishery officer detains or requires the detention of a boat under subsection (7)(b), the officer must serve notice in writing on the master stating that the boat is or, as the case may be, is required to, be detained until the time mentioned in subsection (9).

(9) That time is when the master is served with a notice in writing signed by a British sea-fishery officer stating that the previous notice ceases to have effect.

4B Powers of sea-fishery officers on land to enforce regulated fishery

(1) For the purpose of enforcing restrictions imposed by, or regulations made by, an order under section 1 conferring a right of regulating a fishery, a British sea-fishery officer may exercise the powers conferred by subsections (2) to (11) of this section in relation to—

(a) any premises (other than a dwelling-house) used for—

(i) carrying on any business in connection with the operation of fishing boats;

(ii) an activity connected with or ancillary to the operation of fishing boats; or

(iii) the treatment, storage or sale of shellfish;

(b) any vehicle which the officer has reasonable cause to believe is being used—

(i) to dredge, fish for or take shellfish; or

(ii) to transport shellfish.
(2) The officer may enter and inspect, at any reasonable time, the premises or vehicle (and, in the case of a vehicle, for that purpose require the vehicle to stop or require the operator to take the vehicle to a particular place).

(3) The officer may, in exercising the power conferred by subsection (2), take with the officer such other persons as appear to the officer to be necessary and any equipment or materials.

(4) The officer may examine any shellfish on the premises or vehicle and require persons on the premises or vehicle to do anything which appears to the officer to be necessary for facilitating the examination.

(5) The officer may on the premises or vehicle carry out such other inspections and tests as may reasonably be necessary.

(6) The officer may require any person not to remove or cause to be removed any shellfish from the premises or vehicle for such a period as may be reasonably necessary for the purposes of establishing whether an offence under section 3(3) has at any time been committed.

(7) The officer may require any person on the premises or vehicle to produce any relevant document in the person’s custody or possession.

(8) The officer may, for the purpose of establishing whether an offence under section 3(3) has been committed, search the premises or vehicle for any relevant document, and may require any person on the premises or vehicle to do anything which appears to the officer to be necessary for facilitating the search.

(9) The officer may inspect and take copies of any relevant document produced or found on the premises or vehicle.

(10) The officer may require any person to render any relevant document on a computer system into a visible and legible form and to produce it in a form in which it may be taken away.

(11) If the officer has reasonable grounds to suspect that an offence under section 3(3) has been committed, the officer may seize and detain any relevant document produced or found on the premises or vehicle, for the purpose of enabling the document to be used as evidence in proceedings for the offence.

(12) A sheriff may, if satisfied by evidence on oath as to the matters mentioned in subsection (13), grant a warrant authorising a British sea-fishery officer to enter premises (if necessary using reasonable force), accompanied by such persons as appear to the officer to be necessary.

(13) Those matters are—

(a) that there are reasonable grounds to believe that anything which a British sea-fishery officer has power under this section to examine or inspect is on the premises and that the examination or inspection is likely to disclose evidence of the commission of an offence under section 3(3); and

(b) that any of the following is the case—

(i) admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under subsection (12) has been given to the occupier;
(ii) an application for admission, or the giving of such notice, would defeat the object of entry;

(iii) the premises are unoccupied or the occupier is temporarily absent and it might defeat the object of entry to await the return of the occupier.

(14) A warrant under subsection (12) of this section is valid for the period of one month beginning with the date on which it is granted or for such shorter period as the sheriff may specify.

(15) In this section—

“premises” includes land; and

“relevant document” means a document relating to the catching, landing, transportation, transhipment, sale or disposal of shellfish.

4C Powers of British sea-fishery officers to seize fish and fishing gear

(1) A British sea-fishery officer may seize—

(a) in Scotland or in the Scottish zone; or

(b) on a Scottish fishing boat wherever it may be,

any shellfish and any net or other fishing gear to which subsection (2) applies.

(2) This subsection applies to—

(a) any shellfish in respect of which the officer has reasonable grounds to suspect that an offence under section 3(3) has been committed;

(b) any net or other fishing gear which the officer has reasonable grounds to suspect has been used in the commission of such an offence.

(3) In this section—

(a) “Scotland” has the meaning given by the Scotland Act 1998 (c.46); and

(b) references to shellfish include any receptacle which contains shellfish.

4D Sections 4A to 4C: supplementary

(1) A British sea-fishery officer, or a person assisting such an officer by virtue of section 4A(2) or 4B(3) or (12), is not liable in any civil or criminal proceedings for anything done in the purported exercise of a power conferred by section 4A, 4B or 4C if the court is satisfied—

(a) that the act was done in good faith;

(b) that there were reasonable grounds for doing it; and

(c) that it was done with reasonable skill and care.

(2) A person who—

(a) fails without reasonable excuse to comply with any requirement imposed on the person by a British sea-fishery officer under a power conferred by section 4A or 4B;

(b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with such a requirement; or
(c) obstructs such an officer in the exercise of any of those powers or the powers conferred by section 4C,
shall be guilty of an offence.

(3) A person who commits an offence under subsection (2) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.”.

(2) In section 22 of the Sea Fisheries (Shellfish) Act 1967 (c.83) (interpretation), after the definition of “sea fishing boat” there is inserted the following definition—

““Scottish fishing boat” means a fishing vessel registered in the register maintained under section 8 of the Merchant Shipping Act 1995 (c.21) whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging;”.

(3) In section 15 of the Sea Fisheries Act 1968 (c.77) (amendment of Sea Fisheries (Shellfish) Act 1967), after subsection (2) there is inserted—

“(2A) The reference in section 3(1) of the Sea Fisheries (Shellfish) Act 1967 to an order under section 1 of that Act conferring on the grantees a right of regulating a fishery which imposes restrictions on, or makes regulations respecting, the dredging, fishing for and taking of shellfish shall be construed as including a reference to an order under section 1 of that Act conferring on the grantees such a right which enables the grantees, with the consent of the appropriate Minister, to impose such restrictions or make such regulations; and the references in sections 3(1)(a), (2) and (3) of that Act to restrictions and regulations shall be construed as including a reference to restrictions so imposed and regulations so made.

(2B) The references in sections 4A(1) and 4B(1) of the Sea Fisheries (Shellfish) Act 1967 to restrictions imposed by, or regulations made by, an order under section 1 of that Act conferring a right of regulating a fishery, shall be construed as including a reference to restrictions imposed by, or regulations made by, the grantees by virtue of an order under section 1 of that Act which enables the grantees, with the consent of the appropriate Minister, to impose such restrictions or make such regulations.”.

1967 Act: when “central service” constitutes “relevant service”

Hugh Henry

265 In schedule 5, page 74, line 34, at end insert—

<( ) in paragraph (b), the words “on which a person is engaged with the consent of the appropriate authority” are repealed;>

Agency: amendment of provisions on surveillance

Hugh Henry

266 In schedule 5, page 75, line 24, at end insert—
The Police Act 1997 (c.50)

(1) The Police Act 1997 is modified as follows.

(2) In section 93 (authorisations to interfere with property)—

(a) in subsection (3), after paragraph (e) there is inserted—

“(f) if the authorising officer is within subsection (5)(j), by a police member of the Scottish Crime and Drug Enforcement Agency appointed in accordance with paragraph 6 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 00).”;

(b) in subsection (5), after paragraph (i) there is inserted—

“(j) the Director of the Scottish Crime and Drug Enforcement Agency.”; and

(c) in subsection (6), after paragraph (cb) there is inserted—

“(cc) in relation to the Director of the Scottish Crime and Drug Enforcement Agency, means Scotland.”.

(3) In section 94 (authorisations given in absence of authorising officer)—

(a) in subsection (2), after paragraph (g) there is inserted—

“(h) where the authorising officer is within paragraph (j) of that subsection, by a person mentioned in subsection (5).”;

(b) in subsection (4)—

(i) in paragraph (a), the words “or (d)” and “or, as the case may be, section 5(4) of the Police (Scotland) Act 1967” are repealed; and

(ii) after that paragraph there is inserted—

“(aa) in the case of an authorising officer within paragraph (d) of section 93(5), means the person holding the rank of—

(i) deputy chief constable and, where there is more than one person in a police force who holds that rank, who is designated as the officer having the powers and duties conferred on a deputy chief constable by section 5A(1) of the Police (Scotland) Act 1967; or

(ii) assistant chief constable who is designated to act under section 5A(2) of that Act;”;

and

(c) after subsection (4) there is inserted—

“(5) The person referred to in subsection (2)(h) is—

(a) the chief constable whose relevant area (within the meaning of section 93(6)(b)) is the area to which the application for authorisation relates; or

(b) his designated deputy (within the meaning of subsection (4)(aa)); or

(c) where it is not reasonably practicable for the chief constable or his designated deputy to consider the application, a person holding the rank of assistant chief constable in the chief constable’s police force.”.

(4) In section 95(7) (designated deputy permitted to exercise authorising officer’s powers), for “or (d)” there is substituted “(d) or (j)”.

(5) In section 107(4) (power of Prime Minister to exclude matters from a report), after paragraph (b) there is inserted—
In schedule 5, page 75, line 29, at end insert—

<The Regulation of Investigatory Powers Act 2000 (c.23)

In section 76A(11) of the Regulation of Investigatory Powers Act 2000 (foreign surveillance operations: definitions) for paragraph (c) of the definition of “United Kingdom officer” there is substituted—

“(c) a police member of the Scottish Crime and Drug Enforcement Agency appointed in accordance with paragraph 6 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 00);”>

Hugh Henry

In schedule 5, page 75, line 29, at end insert—

<The Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11)

(1) The Regulation of Investigatory Powers (Scotland) Act 2000 is modified as follows.

(2) In section 9 (special provision for the Scottish Crime Squad)—

(a) subsection (1) is repealed;
(b) in subsection (2), for “Scottish Crime Squad and constables seconded to it” there is substituted “Scottish Crime and Drug Enforcement Agency”;
(c) in subsection (3), for “Scottish Crime Squad” there is substituted “Scottish Crime and Drug Enforcement Agency”;
(d) in subsection (4)—

(i) for “Scottish Crime Squad” there is substituted “Scottish Crime and Drug Enforcement Agency”; and
(ii) for “constable seconded to that Squad” there is substituted “police member of that Agency”;
(e) subsections (5) and (6) are repealed; and
(f) the section heading becomes “Special provision for the Scottish Crime and Drug Enforcement Agency”.

(3) In section 10 (authorisation of intrusive surveillance)—

(a) in subsection (1), after “force” there is inserted “and the Director of the Scottish Crime and Drug Enforcement Agency”; and
(b) in subsection (2), for “chief constable” there is substituted “person”.

(4) In section 11 (grant of authorisations)—

(a) in subsection (2), at the beginning there is inserted “Subject to section 12A below,”;
(b) for subsection (3) there is substituted—

“(3) The Director of the Scottish Crime and Drug Enforcement Agency shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by a police member of that Agency.”;
(c) in subsection (4)—

(i) in paragraph (a), after “force” there is inserted “or is a police member of the Scottish Crime and Drug Enforcement Agency”; and

(ii) in paragraph (b), for “a police force,” there is substituted—

“(i) where that individual is a member of a police force, a police force; or

(ii) where that individual is a police member of the Scottish Crime and Drug Enforcement Agency, that Agency,”; and

(d) in subsection (5), after “section” there is inserted “and section 12A below”.

(5) In section 12 (grant of authorisations in cases of urgency)—

(a) in subsection (1), after “application” there is inserted “(other than an application to which section 12A below applies)”;

(b) in subsection (4), after “rank of” there is inserted “deputy chief constable or”; and

(c) in subsection (5), for the words from “assistant” to the end there is substituted—

“(a) deputy chief constable and, where there is more than one person in a police force who holds that rank, who is designated as the officer having the powers and duties conferred on a deputy chief constable by section 5A(1) of the Police (Scotland) Act 1967 (c.77); or

(b) assistant chief constable who is designated to act under section 5A(2) of that Act.”.

(6) After section 12 there is inserted—

“12A Grant of authorisations in cases of urgency: Scottish Crime and Drug Enforcement Agency

(1) This section applies in the case of an application to the Director of the Scottish Crime and Drug Enforcement Agency for an authorisation for the carrying out of intrusive surveillance where the case is urgent.

(2) If it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by the Director or the Deputy Director of that Agency, the application may be made to and considered by—

(a) the chief constable of the police force to which subsection (3) below applies;

(b) a person (if there is one) who is entitled, as a designated deputy of that chief constable, to exercise the functions in relation to that application of that chief constable; or

(c) if it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by a person such as is mentioned in paragraphs (a) or (b) above, any person who is entitled under subsection (4) of section 12 above to act, for the purposes of that section, for that chief constable.

(3) This subsection applies to a police force if—

(a) in the case of an authorisation for the carrying out of intrusive surveillance in relation to any residential premises, those premises are in; and
(b) in the case of an authorisation for the carrying out of intrusive surveillance in relation to any private vehicle, the chief constable of that police is satisfied that the operation will commence in, the area of operation of that police force.

(4) In this section “designated deputy” has the same meaning as in section 12 above.”.

(7) In section 14(5)(b) (meaning of “most senior relevant person”), for the words from “member” to the end there is substituted “police member of the Scottish Crime and Drug Enforcement Agency, the Director of that Agency.”.

(8) In section 15(7) (persons receiving a report when authorisation is quashed), after paragraph (a) there is inserted—

“(aa) in the case of an authorisation granted under section 12A above, to the chief constable mentioned in subsection (2)(a) of that section;”.

(9) In section 16(1) (appeals), after “force” there is inserted “or the Director of the Scottish Crime and Drug Enforcement Agency”.

(10) In section 18 (information to be provided to the Surveillance Commissioners), for paragraph (b) there is substituted—

“(b) the Director, the Deputy Director and every police member of the Scottish Crime and Drug Enforcement Agency,”.

(11) In section 20(6) (meaning of “deputy” in relation to cancellations)—

(a) the words from “in”, where it second occurs, to “constable”, where it second occurs, become paragraph (a); and

(b) after those words there is inserted—

“(b) in relation to the Director of the Scottish Crime and Drug Enforcement Agency, to the Deputy Director of that Agency”.

(12) In section 23(5)(b) (conduct taking place in challengeable circumstances), after “force” there is inserted “or to the Scottish Crime and Drug Enforcement Agency”.

(13) In section 24(2)(b) (powers and duties in relation to which codes of practice must be issued), after “force” there is inserted “or to the Scottish Crime and Drug Enforcement Agency”.

(14) In section 31(1) (interpretation), after the definition of “police force” there is inserted—

““police member”, in relation to the Scottish Crime and Drug Enforcement Agency, means a person appointed as such a member in accordance with paragraph 6 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 00);”.

Hugh Henry

271 In schedule 5, page 76, line 5, at end insert—

<PART

SUBORDINATE LEGISLATION

In the Schedule to the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Order 2000, for “The Operational and Intelligence Group of the Scottish Drug Enforcement Agency” there is substituted “The Scottish Crime and Drug Enforcement Agency”.

Authority: freedom of information

Hugh Henry

269 In schedule 5, page 75, line 32, after <information)> insert —

( ) there is inserted after the entry numbered 52 the following entry—

“52A The Scottish Police Services Authority, but only in respect of information relating to the provision of the police support services within the meaning of section 3(2) of the Police, Public Order and Criminal Justice (Scotland) Act 2006.”; and

( )>

Amendment of Public Appointments and Public Bodies (Scotland) Act 2003 in consequence of establishment of Police Complaints Commissioner

Hugh Henry

132 In schedule 5, page 75, line 38, leave out from beginning to end of line 2 on page 76

Agency: amendment of Serious Organised Crime and Police Act 2005

Hugh Henry

270 In schedule 5, page 76, line 5, at end insert—

<The Serious Organised Crime and Police Act 2005 (c.15)

(1) The Serious Organised Crime and Police Act 2005 is modified as follows.

(2) In section 3(5)(d) (meaning of “special police force”), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”.

(3) In section 23 (mutual assistance between SOCA and law enforcement agencies: voluntary arrangements)—

(a) for subsection (5) there is substituted—

“(5) In subsection (4)(a), “constables or members of staff” in relation to the Scottish Crime and Drug Enforcement Agency means police members or support staff members of that Agency.”;

(b) in subsection (7), for paragraph (b) there is substituted—

“(b) a police member or support staff member of the Scottish Crime and Drug Enforcement Agency,”;
THIS IS NOT THE MARSHALLED LIST

(c) in subsection (10)(b) for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and

(d) in subsection (11)—

(i) after the definition of “police force” there is inserted—

“police member”, in relation to the Scottish Crime and Drug Enforcement Agency, means a person appointed as such a member in accordance with paragraph 6 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 00);”;

(ii) in paragraph (f) of the definition of “relevant police authority”, for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and

(iii) after the definition of “relevant police authority” there is inserted—

“support staff member”, in relation to the Scottish Crime and Drug Enforcement Agency, means a person appointed as such a member in accordance with paragraph 7 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006;”.

(4) In section 24(2)(b) (bodies to which section 24 applies), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”.

(5) In section 25 (directed arrangements: Scotland)—

(a) in subsection (2)(b), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”;

(b) in subsection (3)(b)—

(i) for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and

(ii) for “constables or other persons” there is substituted “police members or support staff members”;

(c) in subsection (4), in both paragraphs (a) and (b), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and

(d) after subsection (4), there is inserted—

“(5) In this section, “police member” and “support staff member” have the same meaning as in section 23.”.

(6) In section 31(5)(d) (meaning of “relevant authority” in section 31), for “Scottish Drug Enforcement Agency, means” there is substituted “Scottish Crime and Drug Enforcement Agency, means the Director of”.

(7) In section 42 (interpretation)—

(a) in subsection (1), in paragraph (g) of the definition of “chief officer”, for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and

(b) subsection (2) is repealed.

(8) In section 47 (person having powers of constable: exercise of such powers in Scotland and Northern Ireland)—
(a) in subsection (3)(a), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and

(b) in subsection (7), the definition of “the Scottish Drug Enforcement Agency” and “the Director” is repealed.

(9) In section 82(5) (persons who are protection providers), in paragraph (f), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”.

(10) In section 94 (interpretation of Chapter 4), subsection (9) is repealed.

(11) In Schedule 5—

(a) in paragraph 20—

(i) in sub-paragraph (1), the words “is or” are repealed and for “Scottish Drug Enforcement Agency” there is substituted “organisation known as the Scottish Drug Enforcement Agency and established under section 36(1)(a)(ii) of the Police (Scotland) Act 1967 (c.77), that is to say a person who was engaged on central service (as defined by section 38(5) of that Act) and was appointed by the Scottish Ministers to exercise control in relation to the activities carried out in exercise of that organisation’s functions”; and

(ii) in sub-paragraph (2), the words “is or” are repealed; and

(b) after paragraph 20 there is inserted—

“20A (1) A person who is or has been the Director of the Scottish Crime and Drug Enforcement Agency.

(2) A person who is or has been under the direction and control of the Director of the Scottish Crime and Drug Enforcement Agency.”.
Tavish Scott MSP

David Davidson MSP,
Convener of the Justice 2 Committee,
The Scottish Parliament,
Edinburgh, EH99 1SP

29th March 2006

Dear David,

I understand that, on the 18th April, your committee is to consider the Scottish Executive amendment to the Police, Public Order and Criminal Justice (Scotland) Bill which will allow the proper enforcement of Regulating Orders. I thought that committee members might find the experience of the Shetland Regulating Order, which has been in force since 2000, useful in understanding the issues behind the amendment.

The Shetland Regulating Order is managed by the Shetland Shellfish Management Organisation, (SSMO), which successfully applied for a Regulating Order to allow it to maintain and improve the fisheries for shellfish, (excluding nephrops), within six miles of Shetland’s coast. The SSMO is run by directors representing fishermen, fish processors, the Islands Council and Community Councils, Scottish Natural Heritage and fisheries scientists. It is an excellent example of local sustainable fisheries management. To fish for shellfish within the waters covered by the Regulating Orders, a fisherman needs a licence issued by the SSMO which regulates the fishery to make sure that fishing effort is in balance with the stocks.

However, right from the start the SSMO experienced a problem policing the Regulating Order. The initial problem was that, to keep the cost of licences to an acceptable level, the SSMO had to run a lean organisation, employing only one land based officer. It was clear that the land based officer could not collect the quality of evidence needed for a successful prosecution of a fisherman fishing for shellfish within the six mile limit, but a request for help, put to the Scottish Fisheries Protection Agency, (SFPA), had to be turned down, as the SFPA did not have the powers to police Regulating Orders.

The SSMO then attempted to overcome the problem by working with the police and the Procurator Fiscal’s office, but the outcome was the discovery that even the SSMO did not have the powers to enforce their Regulating Order.

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The result is that the credibility of the Regulating Order has been undermined, and a number of boats have fished for shellfish within the waters it covers without licences and with no regard to the conservation measures imposed by the SSMO. Meanwhile, the SFPA officers, both land based and at sea, police shellfish boats operating around Shetland, enforcing Scottish, UK and EU regulations, but unable even to ask a boat to produce an SSMO licence. Without action, the Shetland Regulating Order is in danger of collapse. The amendment proposed will overcome this problem as it gives the SFPA the powers it needs to allow it to enforce Regulating Orders.

The amendment also allows Minister’s to give enforcement powers to selected officers of the grantee of a Regulating Orders. In the case of the SSMO, I understand that they will not seek enforcement powers for their officer. This is because, without considerable expenditure on a vessel and other equipment, he could not collect the quality of evidence needed for a successful prosecution, evidence which the SFPA are already fully equipped to collect. The SSMO will instead work with the SFPA. It is not envisaged that this will lead to any significant increase in the SFPA’s workload since, as mentioned above, they already enforce other fisheries regulations and so carry out routine checks on shellfish boats fishing around Shetland.

I note that, when the committee discussed the principles of the amendment on the 15th March, concerns were expressed about the extension of enforcement powers to the grantees of Regulating Orders. While I would fully understand the concerns if the amendment introduced a blanket extension of enforcement powers, this is not what it will do. Instead, ministers have to approve each and every application from a grantee for enforcement powers for one of its officers. Ministers will have to decide whether or not to grant the powers on the merits of the case the grantee makes. In many cases, indeed I suspect in most cases, grantees will not seek enforcement powers for their officers, and certainly, as I mention above, the SSMO has no plans to do so.

I would hope that, when the amendment is considered on the 18th April, your committee will feel able to support it so that the SSMO will get the help it needs to police the Shetland Regulating Order. The Shetland Regulating Order is a good example of constructive sustainable local fisheries management, and as such deserves Parliament’s support. By passing the amendment, your committee will allow the SSMO to work with the SFPA and so secure the future good management of the shellfish fishery round Shetland.

Tavish Scott MSP
JUSTICE 2 COMMITTEE

10th Meeting 2006 (Session 2)

Tuesday 18 April 2006

SSI title and number: The draft Maximum Number of Part-Time Sheriffs (Scotland) Order 2006

Type of Instrument: Affirmative

Meeting: Tuesday 18 April 2006

Date circulated to members: Wednesday 12 April 2006

Justice 2 Committee deadline to consider SSI: 8 May 2006

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

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

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

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

Clerk to the Committee
31 March 2006
JUSTICE 2 COMMITTEE

10th Meeting 2006 (Session 2)

Tuesday 18 April 2006

SSI title and number: The Police Grant (Scotland) Order 2006 (SSI 2006/91)

Type of Instrument: Negative

Meeting: Tuesday 18 April 2006

Date circulated to members: Wednesday 12 April 2006

Justice 2 Committee deadline to consider SSI: 24 April 2006

Motion for annulment lodged: No

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

1. In advance of the Committee’s consideration of the instrument the Convener requested that the Scottish Executive provide the following information:

   - What discussions took place with each of the eight police authorities on the aggregate amount to be paid to the police authorities and the amount of grant payable to each of the eight authorities?
   - Assuming discussions did take place, what were the views of each authority?

2. The Scottish Executive response is attached as Annex A.

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

Clerk to the Committee
31 March 2006
Dear Mr Davidson

THE POLICE GRANT (SCOTLAND) ORDER 2006 (SSI 2006/91)

I understand that the Justice 2 Committee will consider the above Order at its meeting on 18 April. Prior to the Committee's consideration of the Order, you have asked what discussions took place with each of the eight police authorities on the aggregate amount to be paid to the police authorities and the amount of grant payable to each of the eight authorities; and assuming discussions did take place, what the views of each authority were.

Police Grant Aided Expenditure (GAE) is an estimate of the expenditure required by police forces to provide the required levels of service. Police authorities set the budgets for their respective forces and those budgets may be set at, above or below GAE. For 2006-07, all authorities have either set their budgets at or above the level of GAE.

The aggregate Police GAE level for 2006-07 was set following the 2004 Spending Review and the distribution of GAE between forces was agreed with the Association of Chief Police Officers (ACPOS) shortly thereafter. No discussions took place with individual police authorities. Further discussions took place between the Executive and ACPOS to ensure that each force will receive sufficient funding in 2006-07 to cover:

- forces’ estimates of their requirements for pensions and commuted sums;
- a component for each forces’ requirement for Airwave;
- a component for Accelerated Recruitment, apportioned to authorities by agreement with ACPOS;
- the remainder was regarded as core GAE. £3,000,000 of this total was allocated to those authorities which the Police GAE Working Group recommended should receive a higher share of police GAE. £1,000,000 was divided, on the advice of ACPOS, to cover police authorities’ costs for Finance Analysts.
Annex A

The amount of grant payable to each of the eight authorities is dictated by the level of budgets set by the individual authorities and subject to a cash limit. The report to the Order details the Police GAE amounts and the process of calculating the grant at 51%.

I hope this is helpful.

Yours ever,

Alastair Merrill
Head of Police Division 1
**JUSTICE 2 COMMITTEE**

**10th Meeting 2006 (Session 2)**

**Tuesday 18 April 2006**

SSI title and number: The Prisons and Young Offenders Institutions (Scotland) Rules 2006 (SSI 2006/94)

Type of Instrument: Negative

Meeting: Tuesday 18 April 2006

Date circulated to members: Wednesday 12 April 2006

Justice 2 Committee deadline to consider SSI: 24 April 2006

Motion for annulment lodged: No

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

1. The Subordinate Legislation Committee drew attention to the Rules in its 14th Report 2006, on the grounds that clarification was requested from and supplied by the Scottish Executive on the issue of why there was no specific power to amend or revoke any Direction issued under the Rules. The relevant extracts from the Subordinate Legislation Committee report are attached as Annex A.

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

Clerk to the Committee
31 March 2006
Annex A

The Prisons and Young Offenders Institutions (Scotland) Rules 2006, (SSI 2006/94)

1. The Committee noted in Rule 165 that there is no specific power to amend or revoke any Direction issued under the Rules. The Committee asked the Executive to explain why there is no such power in the Rules.

2. The Executive, in its response printed in Appendix 1, informed the Committee that it does not consider it necessary to include express provision that enables Scottish Ministers to amend or revoke Directions given under the Rules. It considers that the provisions of section 14 of the Interpretation Act 1978, when read in conjunction with section 23 of that Act, give Scottish Ministers sufficient power to amend or revoke any Direction given under the Rules without making express provision to that effect in the Rules.

3. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds that clarification was requested from and supplied by the Executive.

Appendix 1

The Prisons and Young Offenders Institutions (Scotland) Rules 2006, (SSI 2006/94)

On 14 March 2006 the Committee asked for an explanation of the following matter –
With regard to Rule 165, the Committee noted that there is no specific power to amend or revoke any Direction issued under the Rules. The Committee seeks an explanation from the Executive on why there is no such power in the Rules.

The Scottish Executive responds as follows –
1. The Executive does not consider it necessary to include express provision that enables Scottish Ministers to amend or revoke Directions given under the Rules. The Executive considers that the provisions of section 14 of the Interpretation Act 1978, when read in conjunction with section 23 of that Act, give Scottish Ministers sufficient power to amend or revoke any Direction given under the Rules without making express provision to that effect in the Rules.
JUSTICE 2 COMMITTEE

10th Meeting 2006 (Session 2)

Tuesday 18 April 2006

SSI title and number: The Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments) (Scotland) Order 2006 (SSI 2006/129)

Type of Instrument: Negative

Meeting: Tuesday 18 April 2006

Date circulated to members: Wednesday 12 April 2006

Justice 2 Committee deadline to consider SSI: 24 April 2006

Motion for annulment lodged No

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

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

Clerk to the Committee
31 March 2006
JUSTICE 2 COMMITTEE

10th Meeting 2006 (Session 2)

Tuesday 18 April 2006


Type of Instrument: Negative

Meeting: Tuesday 18 April 2006

Date circulated to members: Wednesday 12 April 2006

Justice 2 Committee deadline to consider SSI: 15 May 2006

Motion for annulment lodged: No

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

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

Clerk to the Committee
31 March 2006
Dear Gillian and Tracey

Legislative Consent Motion (LCM): Police and Justice Bill

Anne Peat’s email of 15 March asked for an update on this LCM, including specifically:

- sight of the amendments on NPIA, referred to in my letter of 9 March addressed to Gillian;
- further information on the amendments to the Extradition Act 2003, specifically some background information on the court judgements and interpretations of certain provisions that gave rise to the need for amendments; and
- an update on any further issues of relevance to Scotland being discussed between the Scottish Executive and the Home Office. However, there are no further issues which the Executive is planning to consider within this LCM.

NPIA: draft amendments

As notified in our memorandum, amendments are being prepared to paragraph 46 of Schedule 1. These will provide that the power conferred by sub-paragraph (1) is exercisable by the Scottish Ministers (instead of the Secretary of State) where the provision to be made amends or repeals any legislation which is within the legislative competence of the Scottish Parliament. Any such order will be subject to affirmative resolution in the Scottish Parliament. The Scottish Ministers will require prior consultation with the NPIA, the Scottish Police Services Authority, ACPOS and the Scottish police authorities, and the prior consent of the Secretary of State.

The amendments will also provide that where the Secretary of State proposes under this paragraph to make any order which affects (or may affect) policing in Scotland, he will require to obtain the consent of the Scottish Ministers prior to making such an order.

These amendments are to be lodged at report stage in the Commons, expected in early May. They have not yet been finalised in every detail, but I attach for your information the latest draft, so that Committee members can see how the policy intention described above is likely to be fulfilled in the legislation.
Further information about the proposed amendments to the Extradition Act 2003

The amendments to the Act are contained in Schedule 12 of the Police and Justice Bill as introduced in Westminster. The opportunity is being taken in the Bill to amend the Act as a result of experience of its operation since coming into force in January 2004. Generally speaking the amendments focus on Parts 1 and 2 of the Act which set out the legal frameworks in the UK for dealing with requests from, respectively, other EU Member States and other states with which the UK has extradition relations. The amendments proposed are largely technical in nature and are designed to improve the UK’s ability to meet its international obligations.

The Legislative Consent Memorandum explained that some of the amendments to the Act have been prompted by court judgements and interpretations of provisions, essentially in England and Wales, and you have requested more background about this. A number of the amendments in the Bill come under this heading, but only one of these affects the powers of the Scottish Ministers and is described in paragraph 35e of the Memorandum. It is part of wider amendments relating to the term “unlawfully at large”.

There is a requirement in both Parts 1 and 2 of the Act that a request for the return of a person must contain a statement that the person is either accused of an offence or is alleged to be unlawfully at large after conviction of an offence. The latter requirement is causing difficulties for the UK’s extradition partners as the term is understood differently in different countries. The lack of such an explicit statement in a request was raised in two cases in the Divisional Court in England and Wales. In the case of R on the application of Bleta v The Secretary of State for the Home Department [2004] EWHC 2034 (Admin) it was held that the “statement” could be inferred from other material included in the request. In the case of Augusto Pinto v The Governor of HM Prison Brixton [2004] EWHC 2986 (Admin) Lord Justice Tuckey warned that the requirement to provide a statement that a person is unlawfully at large “is a potential trap for our unwary European partners”. A number of amendments are included in the Schedule to clarify this requirement, including the one affecting the powers of the Scottish Ministers in this reserved area, as described in paragraph 35e.

Although it has not been a problem in Scotland and does not feature in the LCM, the Committee may be interested in a further example, of an interpretation of the Act which has caused difficulties in England and Wales. The term “the appropriate judge” occurs over 100 times in the Act. It is defined in sections 67 (for Part 1 cases), 139 (for Part 2 cases) and 149 (for Part 3 cases). Although it was not intended to be interpreted in such a way, Bow Street Magistrates’ Court (which deals with extradition cases in England and Wales) has taken the view that the effect of these provisions is that the same judge must hear each extradition case in its entirety, because that individual is “the appropriate judge” for the purposes of that case. This is causing grave listing problems in that Court and it adds delay and complications to cases. It has therefore been felt necessary to amend the Act to clarify the use of the term. This clarification will also apply in Scotland but the amendments do not feature in the LCM because the subject matter is reserved and the powers of the Scottish Ministers will not be affected.

The amendments detailed in 35a-35d of the Memorandum also correct anomalies that have been identified in the legislation.

I hope this information is helpful to the Committee.

Yours sincerely,

Bill Barron
Police Bill team
Police and Justice Bill

Draft amendments to Schedule 1, paragraph 46 and clause 40

Hazel Blears

Schedule 1, page 51, line 29, leave out ‘Secretary of State’ and insert ‘appropriate authority (see sub-paragraph 3(A))’.

Hazel Blears

Schedule 1, page 52, line 11, at end insert –

‘(3A) Power of the appropriate authority under sub-paragraph (1) –
(a) so far as it is power to make provision falling within sub-paragraph (3B), is power of the Scottish Ministers, and
(b) so far as it is power to make provision not falling within sub-paragraph (3B) is power of the Secretary of State.

(3B) the provision falling within this sub-paragraph is provision that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.

(3C) Power of the Scottish Ministers under sub-paragraph (1) is exercisable only with the consent of the Secretary of State.

(3D) Power of the Secretary of State under sub-paragraph (1)(a), (b) and (c), so far as it is power to made provision falling within sub-paragraph (3E), is exercisable only with the consent of the Scottish Ministers.

(3E) The provision falling within this sub-paragraph is provision –
(a) that affects any of the persons mentioned in paragraph 4(2) (police forces, and other policing bodies, in Scotland), or
(b) that affects the rights and powers of the Scottish Ministers.

(3F) Power of the Secretary of State under sub-paragraph (1)(d), so far as it is power to impose obligation on any of the persons mentioned in paragraph 4(2), is exercisable only with the consent of the Scottish Ministers.’.
Hazel Blears

Schedule 1, page 52, line 20, at end insert –

‘(4A) Before making an order under sub-paragraph (1), the Scottish Ministers must consult –

(a) the Agency,
(b) the Scottish Police Services Authority,
(c) persons whom the Scottish Ministers consider to represent the interests of chief constables of police forces in Scotland, and
(d) persons whom the Scottish Ministers consider to represent the interests of –
   (i) police authorities for police areas in Scotland, [and
   (ii) joint police boards [constituted by schemes under section 19][constituted or reconstituted by amalgamation schemes within the meaning] of the Police (Scotland) Act 1967 (c.77)].’.

Hazel Blears

Schedule 1, page 52, line 29, after ‘including’ insert ‘, without prejudice to the generality of section 20(2) of the Interpretation Act 1978 (c.30),’.

Hazel Blears

Clause 40, page 34, line 5, at end insert –

‘( ) A statutory instrument containing an order under paragraph 46 of Schedule {j101s} made by the Scottish Ministers may not be made unless as draft has been laid before, and approved by a resolution of, the Scottish Parliament.’.
Dear Tracey,

**THE POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) BILL 2006 – MARCHES AND PARADES**

At my appearance before the Committee on 28 March I agreed to write to advise of our position in relation to COSLA’s recent letter to the Convenor on the resource implications of the Financial Memorandum to the Bill. COSLA maintains that the Executive has significantly underestimated the resources required to fund the changes resulting from the provisions in the Bill relating to marches and parades.

My first observation is that the costings paper attached to COSLA’s letter gives a misleading picture. It shows the costs incurred by Glasgow City Council for the planning of the “Bloody Sunday” parade held earlier this year. This is one of the biggest Irish republican events to plan for in the marching calendar and one which generates a considerable amount of interest and a strong response from the communities affected. While that parade is unquestionably difficult to prepare for and will have required a considerable amount of time and effort on the part of the police and the local authority to negotiate, it is unrepresentative of the vast majority of notifications that local authorities will have to deal with on a day to day basis under the existing or new rules.

Secondly, and as I said at my session with Committee, the COSLA paper sets out what happens currently rather than what would happen under the new legislation. The paper fails to pinpoint any additional things that would need to happen over and above what already takes place. Conversely, the planning arrangements for this parade should be seen in the context of the pilot programme that Glasgow City Council is operating. This utilises some of Sir John Orr’s recommendations, such as holding precursory meetings with the police and the organisers; holding post event meetings and providing better information to communities. It is therefore likely that COSLA’s paper includes costings for some of the changes being brought about by the Bill, but these do not seem to be of enough significance to merit being specifically highlighted in the paper.

The results in the report that we have seen on the Glasgow City Council pilot programme, which began in April 2005, are encouraging. They point to a number of improvements as a direct consequence of the changes that have been introduced. In particular, there was a 12% reduction in
the overall number of parades from 338 in 2004 to 301 in 2005, and there is evidence of more co-
operation by march organisers on timing and routes, resulting in less time required to resolve dis-
putes and queries. Glasgow City Council’s report indicates that the benefits of the pilot should
increase over the years as their processes improve and organisers begin to embrace their
responsibilities. This bodes well for the implementation of the new processes set out in the Bill and
in guidance.

In conclusion, we are not persuaded that COSLA has provided any new or credible evidence that the
Financial Memorandum has fundamentally underestimated the resource implications of the Bill for
marches and parades. If COSLA can produce new and compelling evidence that there will be
significantly higher additional costs from the provisions in the Bill than we have estimated, we
would of course be happy to review the situation. We have contacted COSLA to advise them of this
position.

I hope this information is helpful.

Yours ever,

Alastair Merrill
Head of Police Division 1
Dr Andrew RC McLellan  
Her Majesty’s Chief Inspector of Prisons  
Saughton House  
Broomhouse Drive  
EDINBURGH EH11 3XD

Dear Andrew

Monthly performance statistics for prisoner escort and court custody services contract

Reliance took up its escort duties in April 2004. Since then, there has been no inspection by HMCIP. The go-live date for the Reliance contract was delayed, but the contract has been fully operational for over a year. When I checked with Reliance on 8 February 2006, no date had been set for your inspection in 2006/07 and no request had been received from HMCIP for sight of Reliance’s monthly performance statistics in 2004/05 or 2005/06. However, I understand that you will meet with Reliance staff on 28 March 2006 to discuss your forthcoming inspection.

The Reliance contract requires the Service Provider to co-operate with and provide information (as requested by Her Majesty’s Chief Inspector of Prisons for Scotland) to enable HMCIP to review and to provide reports regarding Services delivered under this Contract. I interpret the Reliance contract to have carefully reserved the data acquisition and publication powers of HMCIP. You have not yet tested these powers, but the decision on 24th March 2006 by Scotland’s Information Commissioner should propel you so to do.

On March 24 2006, the Scottish Information Commissioner, Mr. Kevin Dunion, rejected the Scottish Prison Service’s case for non-disclosure of the above monthly performance statistics on two key grounds. Rejected was SPS’s argument based on substantial prejudice to commercial interests, section 33 (1) (b). Also rejected was exemption on the ground of substantial prejudice to the effective conduct of public affairs, section 30 (c).

These are landmark decisions on the democratic accountability of Scottish Ministers for their stewardship of Scotland’s public services – even when a public service, such as prisoner escort (in this case) or electronic tagging of offenders or prisons, has been...
contracted out to private firms, there should be public disclosure of the monthly performance statistics by which delivery of that public service is judged.

However, as in the Nicola Sturgeon judgment in November 2004, the Commissioner could not - but your reserved powers may - circumvent section 36(2): actionable breach of confidence.

In March 2006, as previously in November 2004, Mr. Dunion questioned whether the relevant confidentiality clause in the Reliance contract was:

a) compatible with Scottish Ministers’ Code of Practice on the Discharge of Functions by Public Authorities under FOI Scotland Act (the Section 60 Code), and

b) in line with the guidance for entering into contracts under the Code of Practice on Access to Scottish Executive Information.

Accordingly, in practice, Mr. Dunion could only require disclosure on the deaths (including by suicide) of prisoners under escort because deaths are anyway a matter of public record. Indeed, these data had been elicited by Alex Neil MSP in a parliamentary answer, but his requests for quarterly data on other performance statistics such as incidents of self-harm or assaults on staff were blocked on grounds of ‘actionable breach of confidentiality’.

I hope that, if Alex Neil re-poses these questions, the Minister and Reliance will jointly decide to be forthcoming in their answers. If they are not forthcoming, then the Scottish public must rely on you, as Her Majesty’s Chief Inspector of Prisons for Scotland, and your reserved powers.

Commissioner Dunion had indicated to me previously that he was also not in a position to comment on whether or not HM Chief Inspector of Prisons has the power to require the publication of any of the information contained in the above monthly performance statistics reports.

In the light of Mr. Dunion’s decision that - but for a confidentiality clause unwisely entered into – disclosure of the above monthly performance statistics is in the public interest and is substantially prejudicial neither to commercial interests nor to the effective conduct of public affairs, **will you please urgently test whether the reserved powers for HM Chief Inspector of Prisons allow you to access and to publish in the public interest Reliance’s monthly performance statistics?**

*Your powers are enshrined in Section 1.5 of the Reliance contract and, by my reading, allow you to bring into the public domain Scotland’s monthly performance statistics on prisoner escort.*

Delayed inspection of prisoner escort means that, as of 8 February 2006, you had not sought to test your powers of data acquisition from Reliance, and reporting thereof. *I neither can, nor should, dictate what you report publicly,* but Mr Dunion’s decision means that the Prisons Inspectorate can now be in no doubt about the public interest that
attaches to public dissemination of Reliance’s monthly performance statistics. I am aware 
that you meet tomorrow with Reliance

As you will know better than most, my concerns are for the health and safety of prisoners 
under escort, the staff escorting them (are escort staff - like prisoners and prison officers 
but only recently Scotland’s police officers - offered Hepatitis B immunization?), and the public.

I appeal to you to act without delay to establish the extent of your powers to acquire 
and publish monthly performance statistics (versus performance targets) on 
prisoner escort. I am aware that an HMCIP team is meeting with Reliance staff 
tomorrow, 28 March 2006, to discuss the methodology for an inspection in 2006/07 
of Scotland’s prisoner escort. I trust that the Commissioner’s Decision and my letter 
are suitably timely.

I am
Yours sincerely

Sheila M. Bird MA PhD CStat FFPH

MRC Senior Scientist and Visiting Professor: Department of Statistics and Modelling 
Science, University of Strathclyde.

Dear Convener,

SUBJECT: Sift of European documents

Please find attached a list of recent European documents received by the Parliament and considered by the European and External Relations Committee during its meeting of the 28 March 2006. These have been classified according to the most relevant committee(s).

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 28 March 2006 entitled “Pre- and Post-Council Scrutiny”, the purpose and content of which is described in the Introduction.

Yours sincerely,

Linda Fabiani MSP
Convener

Cc: Senior Assistant Committee Clerks
Committee Relevancy: Next Meeting 28-Mar-2006

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22 March 2006
Letter from Cathy Jamieson MSP, Minister For Justice to Pauline McNeill MSP, Convener, Justice 1 Committee, 2 March 2006

I wanted to make you aware of the outcome of the Justice and Home Affairs Council which took place in Brussels on 21 February. Tony McNulty MP, Baroness Ashton of Upholland and I represented the United Kingdom.

Council Agenda

Civil Judicial Co-operation
Proposal for a Regulation of the European Parliament and of the Council on the Law Applicable to Non-Contractual Obligations (Rome II)

This proposal seeks to regulate which country’s law should apply to a dispute with an international element concerning a non-contractual obligation. The Presidency sought to secure agreement to a package of measures with regard to Rome II. There has been difficulty in reaching agreement on whether or not to include defamation within the scope of the Regulation and the discussion at Council focussed on this issue. The Commission will shortly be publishing a revised proposal which would exclude defamation from the scope of the Regulation as a way of facilitating agreement. There was no consensus reached at Council and the Working Group was instructed to consider further the Commission’s revised proposal and draw up a clear approach for agreement at a later Council.

Criminal Judicial Co-operation
Data Retention

The Council adopted the Directive on the retention of electronic communications data by a qualified majority.

Framework Decision on the European Evidence (EEW) for obtaining objects, documents and data for use in proceedings in Criminal Matters

This measure extends the mutual recognition principle to the exchange of evidence between Member States. There was a great deal of progress made on this measure during the UK Presidency but we were unable to secure final agreement. The Council agreed to the provisions on the competent authorities for issuing and executing an EEW, and the grounds for refusal based on privileges and immunities and lack of measures available for execution. The Presidency tabled a compromise to the list of offences for which dual criminality was to be abolished. This followed the model used in the European Arrest Warrant and would attach explanations of the offences in a non-binding Council Declaration. The Council could not reach unanimity on this compromise and there is still further work to be done in the Working Group before that can be achieved. A Scottish Executive Official attends the Working Group meetings that discuss this proposal as part of the UK delegation.
Follow-up to the Court’s Judgement of 13 September 2005 (Case C-1 76/03 Commission v Council)

This item concerned the European Court of Justice judgement annuling the Framework Decision on Environmental Pollution. The Court found that the Council had legislated incorrectly under the 3° Pillar provisions of the Treaty of the European Union rather than under the Treaty of the European Communities, i.e. 1 Pillar. This means that in the future criminal law measures are likely to be agreed under First Pillar (Directives) rather than the current Third Pillar (Framework Decision) rules. The proposal for the handling of First Pillar would be that Coreper II (Ambassadors) will consider any First Pillar proposals that include criminal law measures and refer them for an opinion to JHA experts. The Commission confirmed its intentLon to bring forward new proposals for Directives on environmental crime, counterfeiting of intellectual property rights and ship-source pollution.

Asylum and Immigration
Commission Communication on the Establishment of Structures involving the National Asylum Services of the Member States for Promoting Co-operation

The Commission presented its Communication on strengthening practical co-operation on asylum setting out the three core areas for activity:
• Establishing a single procedure
• Developing a common approach to country of origin information
• Providing assistance to relieve asylum pressure points.

The United Kingdom welcomed the Commission’s Communication but emphasised the need take a practical rather than legislative approach as the ideas set out in the Communication were developed. There was clarification that the proposed “asylum co-operation network” should be a tool rather than a new structure.

List of Safe Countries of Origin

The Commission was undertaking an analysis of country conditions in eleven countries to establish whether they fit the criteria for the safe list. Based Ofl this analysis the Commission would draw up a formal proposal for an initial minimum common list of safe third countries as provided under Article 29 of the Asylum Procedures Directive. After a lengthy discussion the Presidency concluded that the Commission should make a proposal to Council as soon as possible and before the April Council.

Green Paper on European Migration Network

The Commission introduced its Green Paper stressing that its aim was to improve upon existing structures rather than creating new ones. A formal proposal is expected from the Commission by the end of 2006. There was discussion about the role of the Commission in appointing National Contact Points (the Commission proposal would make ational Contact Points independent of Government) and the preference for some Ministers that Member States rather than the Commission should appoint and manage these.
Next Justice and Home Affairs Council

The next Council takes place on 27 and 28 April in Luxembourg.

I am copying this letter to David Davidson and Linda Fabiani.
CRIMINAL JUDICIAL CO-OPERATION

Framework Decision on participation in a criminal organisation.

The Framework Decision proposes to repeal the 1998 EU Joint Action on Participation in a Criminal Organisation and seeks principally to provide for specific offences of directing a criminal organisation and membership of a criminal organisation. Having entered the working group in March 2005, negotiations to date have, however, been very technical. The main issue for the UK is how the proposals in the draft would interface with domestic provisions on conspiracy to commit criminal acts.

Scottish Executive and Crown Office officials have been in contact with Home Office policy leads in developing the UK position as required.

Framework Decision on the application of the principle of mutual recognition to the enforcement of sentences.

This draft Framework Decision on the application of the principle of mutual recognition to the enforcement of sentences was introduced in January 2005, but did not enter the working group until later in the year. The initiative deals with the conditions under which a custodial sentence imposed in one Member State can be enforced in another. As they were one of the co-sponsors, the Austrians during their Presidency have made this dossier a priority. They hope to reach a general approach before the summer, but it is as yet still unclear whether this can be achieved. Amongst the issues requiring further negotiation are the extent to which dual criminality should be a factor when considering transfers and the extent to which prisoners themselves should have a say in the matter of transfer.

A Scottish Prison Service Official is attending the Working Group meetings as part of the UK delegation.

Directive and Framework Decision on counterfeiting

This dossier, which entered the working grouping in October 2005 during the UK Presidency, seeks to approximate criminal law measures for counterfeiting intellectual property. The UK’s position, developed since the end of the UK Presidency, has been to question the need for any new EU legislation in this matter, as it believes that an effective level of approximation has already been achieved, principally by the Directive on the Enforcement of Intellectual Property Rights 2004/48/EC. The UK believes therefore that efforts should focus on better co-ordination of investigations and prosecutions using existing agreements and mechanisms, rather than through attempting further approximation of a complicated aspect of criminal law. Apart from the substance of the proposals, there is also
the issue of whether negotiations ultimately take place in the 1st or 3rd Pillar in the wake of
the ECJ judgment in case C-176/03, which ruled that the wrong legal base (3rd Pillar) had
been used to legislate for the protection of the environment – the issue being that the
implementation of measures to ensure the protection of the environment was a Community
competence. It is thought that the Commission will seek to make similar arguments with
regard to the protection of intellectual property rights across the EU.

Scottish Executive officials are in touch with lead officials at the Home Office on this dossier.

**Council Decision concerning arrangements for cooperation between Asset Recovery
Offices of the Member States within the European Union**

The stated purpose of this Council Decision, published in December 2005 as an initiative of
Austria, Belgium and Finland, is to try to enhance and promote contact between Asset
Recovery Offices and Agencies within the EU. It is hoped that such a network and enhanced
coopération will promote quicker tracing of assets derived from crime – with the ultimate
aim being to enable their subsequent freezing, seizure or confiscation by the competent
judicial authorities at a later stage. (The actual freezing, etc process is not covered in the
scope of the CD.) The draft text has received a certain amount of working group time under
the Austrian Presidency, but as yet a general approach still appears to be some way off.
Amongst the key issues raised in negotiation have been the relationship to other information
exchange provisions within the EU (and possible duplication of function), and also to CARIN
(Camden Assets Recovery Inter-Agency Network). Established in 2004, all except 2 EU
Member States are represented in this network – although it is not an exclusively EU body.

**CIVIL JUDICIAL CO-OPERATION**

**Proposal for a Regulation of the European Parliament and of the Council creating a
European order for payment procedure.**

This is a proposal for a simplified procedure for obtaining and enforcing a judgement in
uncontested claims for cross border cases. The final council of the UK Presidency in
December 2005 approved, in general, the text of the regulation and listed the finalisation and
adoption of it as a priority for 2006. The text of the regulation is currently being considered
by the legal language experts to ensure all language versions mean the same. Adoption of
the Regulation cannot take place until those language changes have been made and the
European Parliament has agreed to the Council text.

Scottish Executive officials have attended Working Group meetings in Brussels as part of the
UK Delegation

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

The proposed Regulation would govern which country’s law should apply to a civil dispute
about a non-contractual obligation which has an international element. Non-contractual
obligations cover an extremely wide range of cases, anything from road traffic accidents to
liability for defective products to medical negligence. However, the Regulation would not
harmonise national laws on these subjects, only their conflict rules determining which
country’s law should apply when there are international elements to the case. The most politically sensitive aspect of Rome II is defamation, where the search continues for a solution which will do justice between parties while protecting freedom of expression of the media. The issues surrounding product liability and the scope of the Regulation are also being resolved in Working Group at this current time.

The Proposal was first published by the Commission in 2003. It is at the later stages of negotiations in Working Group. The European Parliament considered the dossier and proposed amendments earlier in the year. The intention is still that this proposal be finalised and adopted in 2006.

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

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

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

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

POLICE AND JUDICIAL CO-OPERATION

Counter-Terrorism.

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

Principle of availability.

The Hague Programme outlined the concept that the exchange of law enforcement information should be governed by the principle of availability. This concept was to the
effect that throughout the Union a law enforcement officer in one Member State who needs information in order to perform his or her duties should be able to obtain such information from another Member State, where the information is held there, for the stated purpose of the investigation, taking into account the requirements of any ongoing investigations in the requested State. A draft Framework Decision relating to this matter was published by the Commission in October 2005. It proposed direct online access to available information between Member States and to index data for information not available online. Current provisions for the exchange of information between law enforcement authorities in the EU are regulated by the Schengen Convention. There has as yet been no substantive working group discussion of this dossier. Delegations are continuing to reflect on the general scope of the Commission proposal.

Regional Protection Programmes.

ASYLUM AND IMMIGRATION

(poss.) Proposal for a Council Decision on the establishment of a mutual information procedure concerning Member States' measures in the areas of asylum and immigration.

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

GENERAL

(poss.) External relations - Discussion of the first country thematic reports.

(poss.) Proposition de DC relative à l'organisation et au contenu des échanges d'informations extraites du casier judiciaire entre les EM.

(poss.) Proposition de DC sur la prise en compte des condamnations.

Information by the Commission about new Communications.