The Committee will meet at 2.00 pm in Committee Room 2.

1. **Petition PE862:** The Committee will consider a petition by Margaret Ann Cummings calling for the Scottish Parliament to urge the Scottish Executive to conduct a full review of the current system for dealing with and monitoring convicted child sex offenders.

2. **Subordinate legislation:** Cathy Jamieson MSP (Minister for Justice) to move the following motions—
   
   S2M-4473 That the Justice 2 Committee recommends that the draft International Criminal Court (Immunities and Privileges) (No. 2) Order 2006 be approved.
   
   S2M-4474 That the Justice 2 Committee recommends that the draft International Criminal Court (Immunities and Privileges) (No. 1) Order 2006 be approved.

3. **Justice and home affairs in Europe:** The Committee will take evidence on justice and home affairs issues in Europe from Cathy Jamieson MSP, Minister for Justice.

4. **Subordinate legislation:** The Committee will consider the following negative instrument—
   

5. **Legal Profession and Legal Aid (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

   Tracey Hawe/Alison Walker
Papers for the meeting—

**Agenda Item 1**

Cover note by Clerk J2/S2/06/17/1

Written update from Scottish Executive

**Agenda Item 2**

Cover note by Clerk (including SSI and Executive Note) J2/S2/06/17/2

Cover note by Clerk (including SSI and Executive Note) J2/S2/06/17/3

**Agenda Item 3**

Lines of questioning (PRIVATE PAPER) J2/S2/06/17/4

Briefing paper from Scottish Executive J2/S2/06/17/5

Updated Scottish Executive Hague action plan programme J2/S2/06/17/6

**Agenda Item 4**

Cover note by Clerk (including SSI and Explanatory Memorandum) J2/S2/06/17/7

**Agenda Item 5**


Draft report (PRIVATE PAPER) J2/S2/06/17/8

SPICe Briefing (PRIVATE PAPER) – to follow J2/S2/06/17/9

Supplementary submission from Royal and Sun Alliance J2/S2/06/17/10

**Documents circulated for information only—**

European Committee sift documents – if members wish to see any of the documents mentioned please contact the Clerks

Pre-Council Agenda: Justice and Home Affairs Council 1-2 June 2006

**Basis on which Fines are Determined**, report by the Sentencing Commission for Scotland, June 2006
Letter from Scottish Executive to Justice 2 Committee on Funding for Police Bill Provisions relating to Public Processions, dated 5 June 2006


Forthcoming meetings—

- Tuesday 20 June 2006, Committee Room 6
- Tuesday 27 June 2006, Committee Room 3
Justice 2 Committee  
Petition PE862 by Margaret Ann Cummings  
Cover note by Clerk

Introduction

1. This petition was lodged on 7 June 2005 by Mrs Margaret Ann Cummings. The petitioner is calling for the Scottish Parliament to urge the Scottish Executive to conduct a full review of the current system for dealing with and monitoring convicted child sex offenders. In the ‘Background Information’ to the petition, the petitioner states that:

“We would like to see a full review of the current system for dealing with convicted child sex offenders, which would include:

- examining the housing allocation process which allows convicted child sex offenders to take up residence alongside young families, taking into consideration that areas where housing demand is low receive a disproportionate amount of housing applicants who have served a prison term for sex offences against children;
- recognising that evidence has highlighted that a large number of registered child offenders are unable to respond to treatment and that a life sentence should mean life;
- examining the current sentencing policy for dealing with child sex offences and introducing measures to ensure that Court Judges are given additional sentencing powers to serve on those who commit sex offences against children;
- introducing legislation that would legally require offenders to take part in treatment programmes whilst serving their prison sentence and to prevent registered child sex offenders from assuming an alias name;
- investigating the possibility of introducing legislation that would allow local communities to be advised of sex offenders residing in their local area (similar to Megan's Law in America), and
- conducting an investigation into the current system for monitoring child sex offenders.”

A copy of the petition is attached as Annex A.

2. Before being formally lodged, this petition was hosted on the e-petition site where, in the period 14 January 2005 to 28 February 2005 it gained 32 signatures. In addition, the Public Petitions Committee was presented with 6000 signatures in support of the petition.

3. At its meeting on 19 April 2006 the Public Petitions Committee formally referred the petition to the Justice 2 Committee for consideration.

4. The Justice 2 Committee considered the petition at its meeting on Tuesday 30 May 2006. The Committee agreed to write to the Minister for
Justice to seek an update on progress made in relation to the issues raised by the petitioner. The Committee further agreed that the Convener should hold discussions with the Minister for Parliamentary Business and the Public Petitions Committee on how best to progress the issues raised in the petition, given the workload of the Committee. The Convener agreed to report back to the Committee on these discussions at its next meeting.

Background

5. In June 2003, the petitioner’s son, Mark Cummings was murdered by a convicted sex offender who was on the sex offenders register and was being monitored by the police. The offender, Stuart Leggate, was subsequently jailed for a minimum of 20 years in October 2004. Since these events Margaret Ann Cummings has been campaigning for public access to the sex offenders register.

6. In November 2004, as a result of Leggate’s conviction, Cathy Jamieson, Minister for Justice, announced an independent review of the operation of the sex offender registration system, to be carried out by Professor George Irving. His report, ‘Registering the Risk’, was published in October 2005.

Parliamentary consideration of the petition

7. The Public Petitions Committee asked the Scottish Executive for its views on the petition. The SE replied in November 2005 (attached as Annex B) setting out its views, and its work with regard to the management of child sex offenders so far.

8. This work has included progressing the recommendations in Professor Irving’s report via legislation (see sections headed Management of Offenders etc. (Scotland) Act and Police, Public Order and Criminal Justice (Scotland) Bill below), changes to police operational activity, bringing forward reform of the early release arrangements as they apply to sex offenders, the introduction of the Risk of Sexual Harm Order (RSHO) (which courts can impose on individuals even if they have not been convicted of an offence), the development of a national accommodation strategy for sex offenders, and the commissioning of research to underpin this strategy.

Management of Offenders etc. (Scotland) Act

9. The Justice 2 Committee was the lead committee in relation to the Management of Offenders etc. (Scotland) Bill which was passed by the Parliament on 3 November 2005. The Management of Offenders etc (Scotland) Act 2005 makes various changes in relation to the assessment and management of risk. These include placing a duty on the responsible authorities within a local authority to establish joint arrangements for the assessment and management of risks posed by certain categories of offender, including those subject to the sex offender notification requirements under Part 2 of the Sexual Offences Act 2003. In the case of a mentally disordered offender who meets both the risk criteria for an Order for Lifelong
Restriction and the criteria for a Compulsion Order, gives a court the power to choose between these two disposals. In addition, the Act gives the courts greater powers to take action against those who fail to comply with the terms of the sex offenders' registration scheme, for example by failing to register their address or change of address.

10. It also ends the unconditional release of sex offenders sentenced to between six months and four years in prison. These offenders will be released on licence and subject to supervision.

*Police, Public Order and Criminal Justice (Scotland) Bill*

11. Members will be aware that the Executive brought forward amendments during Stage 2 consideration of the Police, Public Order and Criminal Justice (Scotland) Bill in order to implement some of the Irving report's recommendations. These amendments:

- Extended the range of information sex offenders must supply to the police. Specifically, offenders must supply the police with their passport details and financial information, and a regulation-making power has been introduced to require offenders to notify further information to the police;
- Introduced a power to allow police to take DNA samples from offenders if these have not already been taken when charged or convicted;
- Give the police power to enter and search an offender's accommodation in order to assess the risk of re-offending posed by the offender;
- Introduced a regulation-making power to specify the type of personal information about offenders that prisons and hospitals will be required to pass on to police.

12. During Stage 3 proceedings the Bill was amended to allow for the taking of samples from those subject to a Risk of Sexual Harm Order.

*Sentencing Commission Report on Early Release from Prison*

13. The Sentencing Commission published its report on Early Release from Prison in January 2006. The key recommendations included were:

- Those sentenced to more than 12 months would serve the whole of a minimum period in jail. Whether or not a part of the sentence would be served in the community would depend on the risk presented by the prisoner;
- There should be a separate regime for those sentenced to custodial terms of 12 months or less, involving discretionary release from prison on electronically-monitored Home Detention Curfew after not less than half the term has been served;
- Steps being taken, by statute or otherwise, to make it explicit that the term of custody imposed on an offender should be the minimum period that requires to be served to satisfy the criminal justice requirements of punishment and deterrence and the protection of the public;
- The continued need for custodial sentences to be proportionate to the gravity of the offending.
The Scottish Executive intends to bring forward legislation to enact these recommendations.

**National Accommodation Strategy for Sex Offenders**

14. The Scottish Executive has provided funding to the Chartered Institute of Housing to take forward work on a national strategy and updated guidance for all housing providers on the housing of sex offenders to be supported by an education and training programme. The guidance will form part of a national strategy on the housing of sex offenders being created by an Executive-led multi-agency group.

**Margaret Ann Cummings’ response to the Scottish Executive’s letter**

15. The Public Petitions Committee sought the views of the petitioner on the Executive’s response. This is attached as Annex C. In her letter, Margaret Ann Cummings identifies a number of outstanding areas of concern.

16. Firstly, the petitioner identifies the need for child sex offenders to be prevented from assuming an alias. She states that the adoption of an alias enabled Stuart Leggate to evade the monitoring of police and social workers.

17. Secondly, the petitioner welcomes Professor Irving’s recommendation of a system of ‘targeted disclosure’ in relation to information relating to sex offenders living and working in the community. If a sex offender ignores the instructions of the police in their choice of accommodation, employment, or any other activities, the police would issue a warning to the offender that information about the offender would be released to third parties. If this and a final warning was ignored by the offender, information would be shared with selected third parties.

18. However the petitioner points out that her petition asks that parents and carers are given a right to know how many registered sex offenders are living in their area, rather than details of names and addresses. She believes that there is a need to consider and research comparable systems abroad.

19. The petitioner also believes that there is also a need to consider the adequacy of sentences for child sex offenders and further consider whether the full sentence should be served for such crimes. In addition, the petitioner suggests that there should be a re-classification of child sex offenders to make a distinction between paedophiles and sex offenders, in order to reduce confusion in dealing with sex offences against adults and sex offences against children. The petitioner also suggests that specific courts with specific sentencing powers could be established to deal with child sex offenders.

20. Finally, the petitioner also wishes to seek clarification on what new measures are to be implemented to end the practice of placing paedophiles in proximity to vulnerable families. She also notes the need for better staff training and appropriate information sharing.
Options

21. As noted above, the Committee considered the petition on 30 May and agreed to defer further consideration of its approach to pending discussions with the Public Petitions Committee and the Minister for Parliamentary Business.

22. In the meantime the Committee agreed to write to the Minister for Justice to request a written update on progress relating to the issues identified in the Minister’s letter to the Public Petitions Committee of November 2005. A reply is expected from the Scottish Executive by 12 June and will be circulated to members as soon as it is received.

23. The Convener and Clerks have discussed the need to progress consideration of the petition with the Public Petitions Committee. Members are asked to note that the Public Petitions Committee no longer accepts referral of petitions from subject committees to them for further examination. This revised approach has been agreed by the Conveners’ Group.

24. The Convener and Deputy Convener are meeting with the Minister for Parliamentary Business on Thursday 8 June to discuss the current work commitments of the Committee. This meeting will inform consideration of the petition on 13 June and the Convener will report back to the Committee at this meeting. Members may wish to note the current and future legislative work commitments of the Committee. Should the Committee decide to take a significant amount of evidence, it may be necessary to meet twice a week in the autumn term in order to accommodate this.

25. The Committee is invited to decide how it wishes to take forward consideration of this petition. In particular the Committee may wish to:

   a) Seek further written evidence in relation to any of the matters raised by the petition;

   b) Hold an evidence session with the Minister for Justice to examine the progress that the Executive has made in relation to the issues raised by the petitioner;

   c) Seek oral evidence from the petitioner and/or other wider interest groups on the issues raised by the petition if this option is taken it is suggested that the clerks and SPICe be asked to report back to the Committee before the summer recess with a suggested programme of evidence and proposed timings for any such inquiry;

   d) Identify the issue in a ‘legacy’ paper to a successor committee as an outstanding issue that warrants further scrutiny by the successor committee; or

   e) Take any other competent action that it thinks appropriate.
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:
Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available

Margaret Ann Cummings
149 Royston Road
Flat 3/2
Glasgow
G21 2QL

Text of petition:
The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

The petitioner requests that the Scottish Parliament urges the Scottish Executive to conduct a full review of the current system for dealing with and monitoring convicted child sex offenders.

Additional information:
Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.
Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

We held a large successful march on 30 October 2004 at George Square. We have held residents’ meetings, open meetings and have had meetings with Paul Martin MSP for Springburn, and with Divisional Commander Kevin Smith of Strathclyde Police 'E' division and his officers. They think we are doing a good job and wish us well.

Request to speak:

Petitioners may request to appear before the Public Petitions Committee in support of their petition, although it should be noted that requests to speak will only be granted if the Convener considers that a brief statement from the petitioner would be useful in facilitating the Committee’s consideration of the petition. Due to the large volume of petitions being considered the Committee will usually only hear presentations on up to 4 new petitions at each meeting.

Please indicate below whether you wish to request to make a brief statement before the Committee when it comes to consider your petition.

Yes / No*

*Delete as appropriate

Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature

Date 27.5.2005

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186   Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk
Thank you for your letter of 21 September seeking the Scottish Executive’s view on matters relating to PE862. I am pleased to respond to the petition by Mrs Margaret Ann Cummings, which calls for a review of the current system for dealing with and monitoring convicted child sex offenders. The Committee also asked for particular details about how the Executive intends to address the issues of disclosure, housing, sentencing tariffs, and bail, again, as they relate to sex offenders.

As you know, following the murder of 8-year-old Mark Cummings by registered sex offender Stuart Leggate, I announced on 6 December 2004 that Professor George Irving would carry out an independent review of the operation of Scotland’s sex offender registration system. Professor Irving started his work in January 2005. I am now enclosing a copy of his report, which was published on 24 October 2005.

As you will see, Professor Irving makes 36 recommendations addressed to various parts of the criminal justice system. There has been growing concern about the risk that sex offenders pose in the community and their effective management is without doubt of considerable importance. This is therefore a critical and timely review and I have already placed on record my thanks to Professor Irving for the work that he has undertaken on my behalf. I fully support Professor Irving’s conclusion that more efficient risk assessment and more effective risk management would make a significant improvement in the overall arrangements for this group of offenders. Indeed, and as Professor Irving himself acknowledges, many of his recommendations anticipate the fact that interagency working and information exchange will be greatly improved when the provisions in the Management of Offenders etc (Scotland) Bill, which was passed by the Parliament on 3 November and will come into force in early 2006.

We have considered Professor Irving’s report very carefully and I attach a grid outlining how we intend to take each of these forward. Some of the recommendations will be implemented through legislation, as soon as practicable. A significant number of the recommendations are made in...
Annex B

relation to police operational activity. All of these recommendations are very important in terms of increasing the profile of sex offending monitoring within the police service and will be taken forward with the Association of Chief Police Officers (Scotland) (ACPOS) through the sex offenders working group made up of representatives from each force in Scotland. ACPOS also welcome this report and the recommendations contained therein.

As far as introducing further legislation, we plan to extend the range of information that convicted sex offenders are required to provide (beyond the current requirements of name(s), date of birth, address(es), and national insurance number), to require sex offenders to provide the police with details of their passports, bank accounts and credit card details, and samples of DNA, if not already taken at time of charge or conviction. We are also planning to legislate to allow the police to apply to the courts for powers of entry and search to accommodation to enable them to assess and manage the risk posed by that offender.

In terms of disclosure, it is important to note all Professor Irving has to say about disclosing information about sex offenders to communities. He is clear that there is evidence that when such information has become available in communities, some sex offenders have been driven into hiding. As a result, child protection and criminal justice agencies have lost contact with them and supervision has ceased. That view is widely accepted by the many independent studies and reviews conducted, including the Expert Panel on Sex Offending, chaired by Lady Cosgrove. It is a double-edged sword that can rapidly result in a media witch-hunt, public disorder and the hounding of people from their homes. For his part, Professor Irving calls for a formal warning system in relation to the disclosure of information on sex offenders living or working in the community. Accordingly, if sex offenders wilfully ignore the instructions of the police in their choice of accommodation, employment or other activities then the police will give warning that information regarding the sex offender will be shared with third parties. If this warning and a final warning are rejected then disclosure could take place to carefully selected third parties. We and ACPOS have accepted this recommendation, and are confident that the necessary arrangements can be put in place to achieve the outcome Professor Irving clearly envisages.

As you would expect we are now progressing several strands of work in relation to Professor Irving’s report and sex offenders generally. In recognition of the public’s genuine concerns about sex offenders, we brought forward amendments at Stages 2 and 3 of the Management of Offenders Bill to end the unconditional release of sex offenders sentenced to between six months and four years in prison. When these arrangements come into force, these offenders will be released on licence and be subject to supervision. The licence conditions will reflect the circumstances of the offence and the offender such as a requirement to undertake counselling or take part in rehabilitation programmes. Breach of licence conditions can result in swift recall to custody for the remainder of the sentence. This means that those being released on or after that time will be subject to the new arrangements.

However, this is essentially an interim measure to address a pressing issue. Scottish Ministers have already committed to reform the current early release arrangements for all offenders. We have said that building on the report from the Sentencing Commission expected at the end of the year, we will move quickly to bring forward comprehensive proposals for Parliament’s consideration. Any new regime that will have the dual goals of public safety and reducing re-offending at its heart.

On the issue of bail, courts can already impose on an accused any reasonable special bail condition relevant to the circumstances of the case. The issue is therefore not so much about giving courts wider powers, as of determining what further additional conditions would genuinely reduce risk. Accordingly, we are reviewing the options for conditions and supervision on bail. We want to ensure that police and courts are clear how best to deal with difficult situations where someone has
Annex B

not yet been convicted – or even, in some cases, charged– but the risk to children in particular is nonetheless assessed as being high. The recently introduced Risk of Sexual Harm Orders (RSHOs) now give Chief Constables a new option in this context. To explain, under the Protection of Children and Prevention of Sexual Offences (Scotland) Act, which came into force on 7 October 2005, the courts are now able to impose RSHOs - on individuals who have displayed inappropriate behaviour towards children and are thought to pose a risk of sexual harm, even if they have not been convicted of an offence.

As well as the Management of Offenders etc. (Scotland) Bill, the findings from the recently completed review of the arrangements for managing registered sex offenders that I ordered following the North Lanarkshire inquiry will also have a bearing on future policy in this challenging area.

Finally, I know that the housing of sex offenders is an extremely sensitive and contentious issue, not least because we have to balance the need to protect our communities and meet the housing needs of sex offenders. With that in mind you will wish to know that the Executive has provided funding to the Chartered Institute of Housing (CIH) to take forward work to inform the development of a national accommodation strategy. As part of this work, CIH commissioned research from Glasgow University – “Towards a national accommodation strategy”. This report, together with a statement detailing wider action by the Executive, is available on the CIH website.

Building on this research, a short life Group is finalising work on a national accommodation strategy. This Group involves housing, justice, police and social work interests and includes representation from the Convention of Scottish Local Authorities (COSLA), Scottish Federation of Housing Associations (SFHA), Communities Scotland and the Chartered Institute of Housing to ensure a comprehensive multi-agency approach. The accommodation strategy will be implemented next year.

The Executive has also commissioned the CIH to work with COSLA and the SFHA in updating the 1999 CIH Practice Note on the Housing of Sex Offenders in Scotland. The updated practice guidance is being finalised in parallel with the accommodation strategy to support implementation of the strategy.

I believe that the measures I have set out, and the recommendations from Professor Irving’s review, once implemented, will further strengthen the existing framework in which we assess and manage the risk from sex offenders and that they demonstrate my commitment to safeguarding the public as far as is achievable from these difficult and challenging offenders.

I recognise that improvements to the way we manage sex offenders in the community will be of little comfort to those who have lost a child or seen their family torn apart through such crimes. We must also, as a society, accept and understand that there will always be an element of risk attached to an offender when he is released – no matter how good the supervision and monitoring is.

What we can do is to continue to work to reassure the public that this small group of offenders are in our sights, that local agencies are alive to those risks, and that they are working effectively across professional and organisational boundaries to minimise those risks.
Scottish Parliament Public Petitions Committee – Consideration PE862

Thank you for your letter outlining the Executive’s response to my petition calling for a review of the current system for dealing with and monitoring convicted child sex offenders. I have detailed my response to the issues raised below.

Firstly, I would like to consider the references to Professor Irving’s report by way of a response to my petition. I welcome many of the recommendations but feel there are still issues that must be addressed. While the movements of paedophiles are to be more closely monitored via passport details and DNA samples, there is still a need to create legislation preventing registered child sex offenders from assuming an alias. In the case of Stuart Leggate, the adoption of an alias enabled him to evade police and social workers trying to monitor his movements.

I feel there is still a need for proposals to tighten the legislation in this respect.

Regarding disclosure, I welcome Professor Irving’s recommendation of a system of Targeted Disclosure as a step in the right direction, which goes further than measures requested in my petition.

My petition simply asks that parents and carers are afforded the right to know how many registered child sex offenders are living in their area. We have never asked for the disclosure of names and addresses despite repeated misunderstandings. Targeted Disclosure however could make families aware of a paedophile’s name and exact address details when the offender is viewed as a threat.

The accusation levelled at the notion of giving parents, who wish to know, numbers of child sex offenders in their area is that this information could lead to witch-hunts. However, if parents have no details of offenders’ names and addresses this is a very unlikely outcome.

I would also like to point out that our Mark’s Law campaign, which as you are no doubt aware has been highly emotive, has seen no vigilante attacks or violent incidents.

I feel there needs to be further work in this respect to address the specific point on disclosure within my petition. Additionally, I feel there is an obvious need to examine and thoroughly research international examples such as Megan’s Law in America before coming to a conclusion on this issue.
Margaret Ann Cummings  
Flat 3/2  
5 Broompark Drive  
Dennistoun  
Glasgow  
10-Mar-06

Michael McMahon MSP  
Convenor of the Public Petitions Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

Scottish Parliament Public Petitions Committee – Consideration PE862

Thank you for your letter outlining the Executive’s response to my petition calling for a review of the current system for dealing with and monitoring convicted child sex offenders. I have detailed my response to the issues raised below.

Firstly, I would like to consider the references to Professor Irving’s report by way of a response to my petition. I welcome many of the recommendations but feel there are still issues that must be addressed. While the movements of paedophiles are to be more closely monitored via passport details and DNA samples, there is still a need to create legislation preventing registered child sex offenders from assuming an alias. In the case of Stuart Leggate, the adoption of an alias enabled him to evade police and social workers trying to monitor his movements.

I feel there is still a need for proposals to tighten the legislation in this respect.

Regarding disclosure, I welcome Professor Irving’s recommendation of a system of Targeted Disclosure as a step in the right direction, which goes further than measures requested in my petition.

My petition simply asks that parents and carers are afforded the right to know how many registered child sex offenders are living in their area. We have never asked for the disclosure of names and addresses despite repeated misunderstandings. Targeted Disclosure however could make families aware of a paedophile’s name and exact address details when the offender is viewed as a threat.

The accusation levelled at the notion of giving parents, who wish to know, numbers of child sex offenders in their area is that this information could lead to witch-hunts.

However, if parents have no details of offenders’ names and addresses this is a very unlikely outcome. I would also like to point out that our Mark’s Law campaign, which as you are no doubt aware has been highly emotive, has seen no vigilante attacks or violent incidents.

I feel there needs to be further work in this respect to address the specific point on disclosure within my petition. Additionally, I feel there is an obvious need to examine and thoroughly research international examples such as Megan’s Law in America before coming to a conclusion on this issue.
In respect of work carried out by the Sentencing Commission there are also outstanding issues that require further consideration.

Firstly, the length of sentences have yet to be tackled. At present, sentences given to child sex offenders are grossly inadequate and in need of a full-scale review.

Stuart Leggate committed a string of sex offences against children but only served two years for further lewd and licentious acts against yet another child.

Clearly if he had served an appropriate sentence he would not have been free to murder my son.

Following on from this, the question of Automatic Early Release needs to be further examined.

I understand the Executive have put an end to Unconditional Automatic Early Release so that offenders are not released into the community without proper checks, monitoring and risk assessment.

However, it seems more relevant to end the system of Automatic Early Release in its entirety for child sex attackers so that the full sentence handed down for the crime is actually served.

Having looked at the work done re the housing of sex offenders, I feel clarification is required as to exactly what new measures are to be implemented to end the practice of placing paedophiles in cheap, available housing next to vulnerable families.

Training of staff on the issue and a better level of information sharing between authorities is clearly useful but the practicalities of housing offenders must be tackled.

After my son’s murder it became apparent that several registered sex offenders were living in our area, an amount that seemed disproportionate with other areas of the city.

Clearly the housing of offenders is a difficult issue but one that needs urgent attention so that the same mistakes surrounding my son’s death are not repeated.

I would also like to add two further points for your consideration.

Firstly, that there is a re-classification of child sex offenders to make the clear distinction between paedophiles and sex offenders.

Often there is confusion between how we should handle those committing offences against adults and those who have harmed a child.

Secondly, that specific courts for handling such paedophiles be established with separate sentencing powers, which could translate to tougher sentences.

This could also mean the time in which cases are dealt with could be much speedier, resulting in a reduction in cases waiting months to be heard.

I would like to add that I fully appreciate all efforts made so far to respond to my petition.

As you can thankfully only imagine, losing my son in these circumstances has been a horrendous experience I struggle to cope with on a daily basis.

I have tried to follow the correct and peaceful procedures to try and effect the change needed and get justice for Mark. My hope is that my response detailed here is given due consideration.
The outstanding issues I have raised are some of the most important in my petition and although difficult, must be tackled head on to try and make our communities a safer place for our children.

Yours sincerely

Margaret Ann Cummings
Petition PE862 by Margaret Ann Cummings

Thank you for your letter of 1 June seeking an update on matters relating to Petition PE862. I am pleased to provide such an update and also to respond to the points in Mrs Cummings’s letter of 10 March to the Petitions Committee.

Irving Report

Firstly, I note and welcome all that Mrs Cummings has to say about our efforts to take forward the recommendations in Professor Irving’s review of the sex offenders’ notification regime. The Police, Public Order and Criminal Justice (Scotland) Bill - which was approved by the Scottish Parliament on 25 May 2006 - contains a range of provisions to help the police in monitoring sex offenders in the community.

Assuming an Alias

Understandably Mrs Cummings asks that we do more. She asks us to consider introducing legislation preventing child sex offenders from assuming an alias. You will want to note that Section 83 of the Sexual Offences Act 2003 already provides that an offender must notify to the police upon initial notification, their name, and any other names used on the date of their conviction and those used on the date of notification. Should offenders assume an alias, they must notify the police within 3 days of such a change taking place. Failure to do so could result in the offender being liable to a term of imprisonment of up to five years. It should be remembered that the requirement to provide information to the police is not a punitive measure. The notification requirements relate only to basic information relating to the offender and are simple to achieve. An offender subject to the notification requirements is not prohibited from doing anything. I hope you will understand that when we weigh the obligations we place upon offenders against the importance of the aims of the notification regime these obligations must be proportionate.
Community notification

With regard to disclosure of the number of sex offenders on the register, you should be aware that since 31 January 2006, the Scottish Criminal Record Office (SCRO) has published registered sex offenders statistics – to Force level only as part of SCRO’s Publication Scheme. Details can be found at http://www.scro.police.uk/foi/?id=28.

Providing details of the number of sex offenders in a particular area is more problematic. Determining the geographic scope of such an area would present difficulties. Where would the boundaries of such areas begin and end? Also, as I said earlier, the notification requirements are not punitive and as such they do not prohibit the free movement of offenders. Offenders can and do move address. On any given day the number of registered sex offenders in a particular area could change, almost on a daily basis. Moreover, while a number of sex offenders are subject to the notification requirements indefinitely i.e. for life, many sex offenders are only on the register for a specific period. This is set out in the legislation and relates to the sentence or order imposed by a Court and can vary from the duration of a probation order, to 5 years, 7 years, 10 years, or, as I said earlier, for life.

While both sex offender registration and community notification are designed to promote community safety, there is a real concern that they could create a false sense of security in communities. For example, members of communities may feel that they are safe and do not have to worry about their children’s safety as long as they keep their children away from one particular area. We know that the danger to children comes not just from known sex offenders but often occurs within family situations. I know that this is an uncomfortable fact but it is what we know from people’s own experiences.

In the USA, where community notification schemes have been running for some time, it is believed that the broad based availability of sex offender registration information may be discouraging some victims from reporting their abuse and/or encouraging some victims to recant out of fear for the offender’s wellbeing or the disclosure of their own identity. This reflects the unfortunate reality of intra-familial sexual abuse.

The overwhelming view of Home Office funded research endeavour and the independent reviews commissioned by the Executive, was that community notification was almost invariably undesirable, while disclosure to specific individuals or agencies (such as immediate neighbours or local schools) should generally be treated as a ‘last resort’ and should not be undertaken without very careful consideration of the likely consequences. It is also accepted that the decision to disclose, and the process of disclosure itself, should ultimately be a police responsibility, albeit after multi-agency consultation.

For our part we have made clear on a number of occasions our belief that disclosure of information about sex offenders is best undertaken on a case-by-case basis by the police and social work services. The police already notify relevant individuals in the community of the presence of sexual offenders against children where they consider that circumstances warrant it.

Professor Irving endorsed the earlier conclusion of the Expert Panel on Sex Offending that the duty to protect communities and the public lies with criminal justice agencies and his report endorses to identify further methods by which this can be achieved. In this connection, Recommendations 22 and 23 (warning system and disclosure) of Professor Irving’s report whilst falling short of calling for legislation, considers that the existing disclosure powers of the police should be enhanced with the formal introduction of a warning system. We and the Association of Chief Police Officers in Scotland (ACPOS) are currently working together to develop an appropriate ‘warning system’ that
will sit alongside the operational guidance currently being worked up to inform the working arrangements in relation to the Management of Offenders etc. (Scotland) Act 2005.

Ending Automatic Early Release

As you know, Scottish Ministers committed last year to ending unconditional release for sex offenders sentenced to terms of imprisonment of 6 months or more. The necessary changes to the law were made through the Management of Offenders etc (Scotland) Act 2005 and the changes came into force in February this year. We have also said that we will go further and end unconditional automatic early release. Plans for this are being drawn up at the moment and legislation will be presented to Parliament in the autumn.

It is also worth noting that it is planned that the Order for Lifelong Restriction directed at serious sexual and violent offenders will come into force shortly. Offenders who are sentenced to an Order for Lifelong Restriction will be treated as life sentence offenders and will be on licence for life.

Reclassify sex offenders

Ms Cummings' letter also requests a reclassification of sex offenders to make clear the distinction between those who commit offences against adults and those who commit offences against children. Some sexual offences are, by definition, offences that can only be committed against children but others are offences whatever the age of the victim. The Scottish Law Commission is undertaking a review of rape and other sexual offences, and I expect them to report next year. The notification requirements in the Sexual Offences Act 2003 in some cases also depend on the age of the victim.

I can see some issues for public protection in creating a two-tier sex offenders register. All those on the register pose some degree of risk to the public, and are therefore subject to monitoring requirements. We are aware that some offenders may pose a risk to children even though their previous convictions have been for offences against adults. A differentiated register could work to obscure the threat from these individuals and could also generate the impression that offending against adults was in some way more acceptable than offending against children.

I remain in favour of an approach where the court sentences according to the type and gravity of offence, taking into account factors such as the age and vulnerability of the victim. The measures we introduced in the Criminal Justice (Scotland) Act 2003 help to ensure that those who work with offenders have more information about the nature of the offences that have been committed and this information is taken into account in managing those considered to pose a risk.

Housing of sex offenders

In my correspondence of 9 November last year, I acknowledged that the housing of sex offenders is an extremely sensitive and contentious issue, not least because we have to balance the need to protect our communities and meet the housing needs of sex offenders. I advised then that, following research commissioned for the Executive through the Chartered Institute of Housing (CIH) a multi-agency Working Group was finalising a draft national strategy for the accommodation of sex offenders. This work is well-advanced and the strategy will be published later this year, again to tie in with the commencement of the new provisions in the Management of Offenders etc (Scotland) Act 2005.

The strategy will provide a clear national framework for the accommodation of sex offenders, including child sex offenders, in the community. It is designed to ensure housing services and providers, who will be placed under a new statutory “duty to cooperate”, are integrated into the wider programme of Executive reforms for the management of sex offenders in Scotland.
The strategy specifies very clearly the responsibilities of all of the key agencies involved in respect of their role in the accommodation of sex offenders. It sets out the contribution of housing agencies to the management of the risks posed by sex offenders in the community. It will also introduce a standard approach at local authority level for coordination of the housing role and contribution, to ensure consistent practice across the country.

Its practical effect will be to tighten the joint working between the statutory “Responsible Authorities” and housing services and providers. This means that the risk assessment of a sex offender undertaken by the Responsible Authorities will directly inform the decisions and management arrangements put in place for the accommodation and supervision of that offender in the community. Updated Practice Guidance on the Housing of Sex Offenders will be published with the strategy, to support its delivery. This will give clear practical direction to local authority housing services and Registered Social Landlords in how they should engage with the housing of sex offenders in the community, with a view to ensuring that inappropriate allocations of housing to sex offenders do not occur in future.

Separate Courts

Finally, we set up the Expert Panel on Sex Offending to undertake a major review of the arrangements for reducing the risk to our children and to communities. This was chaired by the Hon Lady Cosgrove, the eminent High Court judge. The Panel’s recommendations are being taken forward and creating a more cohesive framework for managing the risk which sex offenders pose. Whilst the Panel did not recommend the setting up of separate courts, it did recommend improvements to the procedures in our courts for dealing with these cases; better information, guidance and training for prosecutors and the judiciary to increase understanding of the nature and special features of sex offending and its prosecution; and the provision of joint training to facilitate the development of shared understanding and effective communication. In addition, we have implemented its recommendation to set up joint arrangements between Chief Constables and Chief Social Work officers to assess and manage sex offenders in the Management of Offenders etc (Scotland) Act 2005. This will result in new multi agency public protection arrangements (MAPPAIs) which will provide a more robust infrastructure for joint agency working to assess and manage the risk from sex offenders.

I hope that this information demonstrates that the Executive continues to give a very high priority to the protection of our children. But we must assess carefully how best this can be achieved. The risks posed by sex offenders are serious but they must not be allowed to create a climate of fear. Children need a safe environment in which to grow and develop. Our task, with the expert law enforcement agencies, is to create that environment.

I hope this is helpful.

Best wishes,

CATHY JAMIESON
JUSTICE 2 COMMITTEE

17th Meeting 2006 (Session 2)

Tuesday 13 June 2006

SSI title and number: The draft International Criminal Court (Immunities and Privileges (No. 2) Order 2006

Type of Instrument: Affirmative

Meeting: 13 June 2006

Date circulated to members: 8 June 2006

Justice 2 Committee deadline to consider SSI: 19 June 2006

Minister for Justice to attend Justice 2 Committee meeting? Yes

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

1. The Minister for Justice 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 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
8 June 2006
JUSTICE 2 COMMITTEE

17th Meeting 2006 (Session 2)

Tuesday 13 June 2006

SSI title and number: The draft International Criminal Court (Immunities and Privileges (No. 1) Order 2006

Type of Instrument: Affirmative

Meeting: 13 June 2006

Date circulated to members: 8 June 2006

Justice 2 Committee deadline to consider SSI: 19 June 2006

Minister for Justice to attend Justice 2 Committee meeting? Yes

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

1. The Minister for Justice 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 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
8 June 2006
Purpose

To provide the Justice Committees with a brief update on selected key JHA dossiers in advance of the evidence session with the Minister for Justice on Tuesday 13 June 2006. The paper also discusses the review of the Hague Programme Action Plan and touches on anticipated Finnish Presidency priorities.

Current EU JHA priorities – selected dossiers - Civil Judicial Co-operation

Regulation Establishing a European Small Claim Procedure
The Commission presented a revised proposal for a Regulation Establishing a European Small Claim Procedure. This followed a 2003 Green Paper consultation where the Executive contributed to the UK response. The aim of the proposal is to simplify and speed up litigation concerning small claims. Consideration of the text at working group level is nearing an end. As there is, in broad terms, general consensus amongst the delegates over the text of the proposal, the Austrian Presidency has submitted a compromise text to Coreper for consideration on 24 May 2006 and seeking their agreement to submit the text to the JHA Council which is due to meet on 1 and 2 June 2006. The compromise text adheres to the proposed 2000 Euro limit and the earlier debated definition of cross-border cases. There remains controversy over the scope of the type of action that can be raised as a small claim. For our part we have indicated that we are content for the proposed additions to the list of exclusions and have suggested two further, additions, namely actions of interdict and of performance of an obligation. These issues will be further discussed at meetings scheduled for 4 and 18 July.

European Order for Payment Procedures
The aim of this proposal is to create a simplified procedure for obtaining and enforcing a judgement in uncontested claims in cross border cases. The Scottish Executive fully supports this proposal. There are already similar procedures in each of the UK jurisdictions which are simple and bring about speedy judgements in uncontested claims. On 21 February the JHA Council agreed the text of the regulation. The legal language experts have considered the text to ensure that all language versions mean the same. A further working group meeting, to consider the text of the regulation, took place on 23 May.

Proposed EU Directive on Mediation
The European Parliament is not yet convinced a legislative proposal is the way forward. The rapporteur, Arlene McCarthy MEP, invited a number of experts to attend the Legal Affairs Committee at the end of April. Much of the debate focussed on the issue of scope and whether the Directive should be limited to cross-border situations or not. Experts also discussed the various considerations involved in relation to the different sectors where mediation is used, for example, mediation
between a consumer and a company demands a different approach to that between two companies. Other issues discussed were whether the Commission’s Code of Conduct should be incorporated into the Directive and whether mediation should be voluntary or compulsory. The experts agreed that it should be voluntary. Agreement was also reached on the subject of confidentiality. It was vital for mediation that the process be confidential. The final discussion centred on how to ensure that mediation, little used in some Member States, could be publicised to potential users. This would be a question of training of lawyers and court staff and raising public awareness. The Rapporteur will consider the views of the experts in drafting her report which is due in June 2006.

**Law Applicable to Non-contractual Obligations (Rome II)**
The ‘Rome II’ proposal on the law applicable to non-contractual obligations was first published by the Commission in 2003. The draft Regulation is designed to govern which country’s law should apply to a civil dispute about a non-contractual obligation which has an international element. Broad agreement was reached on the main issues in the Council of Ministers on 27-28 April, and further political agreement on the recitals in Rome II will be sought at the June Council, with a full common position in Council expected later this year. The UK intends to pursue any outstanding concerns with the Parliament in the run-up to its second reading of Rome II in late 2006 or early 2007.

**Service Regulation - Service of Judicial and Extra-judicial Documents in Civil and Commercial Matters**
The Commission’s proposal amending the existing ‘Service Regulation’, which governs the service of judicial and extra-judicial documents in civil and commercial matters, has been considered during the UK and Austrian Presidencies in working group, and is currently being considered in Council. The amendments seek to further tighten up and enhance the EU cross-border provisions on the service of documents for transmitting and receiving agencies and addressees, in particular. Executive officials are in frequent contact with DCA colleagues and Scottish stakeholders on this dossier. The amended Regulation is now being considered in Council in the week beginning 29 May.

**Draft Proposal on a Regulation on Applicable Law and Jurisdiction Relating to Maintenance Obligations**
The maintenance negotiations working group met on 24 May for the third time since the Commission’s draft proposal on a Regulation on applicable law and jurisdiction relating to maintenance obligations issued in December 2005. Delegations in working group are still completing their first reading of the applicable law and jurisdiction provisions at this stage. The Executive official with lead responsibility responded to Justice 1 Committee’s request for an update on negotiations on Friday 12 May. This correspondence detailed the UK’s decision not to formally opt into the negotiations using the UK’s Title IV protocol arrangements. The UK will be able to take a final decision on whether it opts into the finalised instrument at the completion of negotiations, which are likely to take several more years in working group. The UK is firmly committed to fully participating in working group negotiations and helping shape the development of the final Regulation. The next meeting is scheduled for mid-July under the Finnish Presidency.
Draft Regulation on the Law Applicable to Contractual Obligations (Rome I)
Council working group negotiations began on 18 May on the draft Regulation on the law applicable to contractual obligations ("Rome I"). The Commission’s draft proposal aims to establish uniform rules as to which country’s law should apply in cross-border cases concerning contractual issues and was published in December 2005. After much consultation with key stakeholders and further consideration, Ministers decided to use the Title IV protocol arrangements to the Treaty and not opt into the negotiations on 8 May. This decision was based on key provisions in the draft proposal which would currently detract from legal certainty for UK interests. Therefore, it was decided that the UK would be better placed to make a fully informed decision on its opt into the instrument when negotiations had concluded. The UK has made it very clear to Member States and other EU partners that it will continue its commitment to full participation in the working group meetings, and play its role in the development of the shape of the Regulation. The next meeting will take place in July under the Finnish Presidency.

EU Fundamental Rights Agency
In 2004 the Commission published proposals for a European Fundamental Rights Agency (FRA) and a draft Council Regulation to create the FRA is currently under consideration. The Commission hopes that the FRA will start work on 1 January 2007, and the present Austrian Presidency has therefore made progress on the FRA a priority. The FRA would replace the existing European Monitoring Centre on Racism and Xenophobia, and its main purpose would be to improve the compliance with fundamental rights of EU institutions and laws (including implementation of EU law by Member States). It would do so primarily through collecting and analysing data, and by issuing guidance and advice. The intention is that it should be essentially an advisory and promotional body without enforcement or formal investigatory powers. The proposals would not create any complications for plans to establish a Scottish Commission for Human Rights or place significant additional duties on Scottish Ministers. The UK Government and the Executive support the proposals, on the basis that the FRA will be expected to give priority to areas such as anti-discrimination and should not duplicate the work of existing national and other institutions. We continue to work closely with Whitehall Departments in contributing to the UK’s response to the proposals.

Green Papers
The Commission published two Green Papers on Succession and Wills and Applicable Law and Jurisdiction in Divorce (‘Rome III’) in March 2005. The consultation paper on Succession and Wills considers issues such as mutual recognition of the title of executors to administer estates, and common rules on which country’s law should apply to succession in an international case. This is a very complex area which has already been the subject of unsuccessful attempts at worldwide regulation in the Hague and an EU solution would also be difficult to arrive at. Executive officials have consulted widely with key Scottish stakeholders and are fully engaged with Department of Constitutional Affairs colleagues in finalising the consolidated UK Government response, which is due to issue to the Commission in the immediate future. The UK responded to the ‘Rome III’ Green Paper in October last year and highlighted its serious concerns around applying foreign law to cross-border divorce situations, of which Scotland and the other UK jurisdictions have no experience of applying, and if applied would add cost and delay to the process for
citizens in all UK jurisdictions. The paper also considers amending the current jurisdictional rules which govern cross-border divorce in the Brussels II a Regulation ((EC) No 2201/2003). Whilst the UK has called for caution in unpicking the jurisdictional rules of this relatively recent Regulation in the absence of hard statistical evidence of any problems, the UK delegation has also indicated that it could be open to exploring the merits of reviewing the rules at a future point.

**Criminal Judicial Co-operation**

**European Evidence Warrant (EEW)**
The general aim of this proposal for a Framework Decision, first published by the Commission in November 2003, is to establish a mechanism to facilitate obtaining evidence in cross-border cases, based on mutual recognition principles. The underlying idea is that the EEW is an Order which would be issued by a judicial authority in one Member State to be directly recognised and enforced by a judicial authority in another Member State. It is intended as a first step in replacing traditional mutual legal assistance and improving on these provisions within the EU, by, for example, stipulating deadlines and limiting grounds for refusal of requests. However, as a first step, it does not include all types of evidence, excluding, for example, conducting interviews, carrying out bodily examinations and the provision of 'real time' information, such as intercepting communications. It is anticipated that the full range of evidence will be dealt with in further initiatives. As an introduction of the principle of mutual recognition to a new area, lengthy and detailed negotiations have been necessary. Among remaining issues which require final agreement are the definition of offences for which dual criminality requirements will be limited and refusal of requests on grounds of territoriality, i.e., where the alleged offence was committed in the requested State. The Austrians are still hopeful of arriving at a general approach before the end of their Presidency.

**Procedural rights in criminal proceeding throughout the EU**
This proposal for a Framework Decision was first published by the Commission in April 2004. Its aim was to set common minimum standards as regards certain procedural rights applying in criminal proceedings throughout the EU. The areas which the Commission proposal focused on were access to legal advice; access to free interpretation and translation; ensuring that persons who are not capable of undertaking or following proceedings receive appropriate attention, the right to communicate, inter alia, with consular authorities in the case of foreign suspects; and notifying suspected persons of their rights. Negotiations in the working group have been long and protracted, perhaps reflecting the difficulty in arriving at a common approach on matters of detail, when criminal procedure may differ in its substance from jurisdiction to jurisdiction. There is also the consideration of consistency with ECHR, where any lack of concurrence could have the potential to cause confusion for practitioners and the courts. A concern for the Scottish Executive has been to try to ensure that any EU provision does not compromise the current 6 hour period which the police have available for initial questioning, prior to release or charge, during which time there is no automatic right to legal advice, with the implications for the provision of such advice and the effect on legal aid costs. There are a number of other concerns over definitions which need to be considered further, but appear also to be of concern to the UK as a whole. The Presidency reported on the state of play of negotiations at the JHA Council in April 2006. This meeting agreed that
outstanding issues should be referred to an ad hoc group of experts for further examination.

**Recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences committed against children**

This draft Framework Decision, an initiative of Belgium published in November 2004, proposed the application of the mutual recognition principle between Member States to temporary or permanent prohibition from exercising professional activities related to the supervision of children, where that prohibition was consequent upon a criminal conviction for one of the offences connected to the sexual exploitation of children and child pornography contained in the Framework Decision (2004/68/JHA) on that matter of 22 December 2003. Although working group negotiations commenced under the UK Presidency in 2005, progress has been slow. This is mainly because, when serious discussions commenced, it soon became clear that Member States have very diverse systems in place for barring individuals from working with children, which would have made straightforward mutual recognition very difficult. For example, while some have specific banning orders made by the courts, others rely on detailed scrutiny of the criminal records on a case by case basis when individuals apply for such jobs. The working group has recently been considering whether progress can be made by improving exchange of information on the relevant criminal convictions, which could then be subject to a process of assimilation in the receiving Member State to whatever system each had for ensuring that individuals with such convictions did not get inappropriate employment.

**Application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement. (Transfer of prisoners)**

The aim of this proposal for a Framework Decision, an Austrian initiative of January 2005, supported by Sweden and Finland, is to support the European Arrest Warrant by providing a simple and speedy process that would enable EU residents to be transferred to their countries of origin/association to serve their sentences following extradition and conviction. This initiative has been a priority of the Austrian Presidency and, although good progress is being made, it is unlikely that the negotiations will conclude before the end of June. Matters requiring the further attention of the working group are the precise provisions with regard to dual criminality and the role of prisoner consent.

**Organisation and content of the exchange of information extracted from criminal records between Member States**

The Commission published this proposed Framework Decision in January 2006, since when it has undergone brief, initial consideration at working group level under the Austrian Presidency. It seeks to build on the limited improvements made to exchange of information from criminal records procedures by the Council Decision of 21 November 2005. A key principle which the draft seeks to establish is that a record of convictions against a particular individual in the EU should be centralised in the State of nationality of the individual concerned, regardless of where the offence(s) took place. A second strand deals with exchange of information from the criminal record and proposes a “standardised format” founded on a computerised electronic exchange network. This standard format envisages a system which will allow information to be exchanged in a uniform, easily machine translatable form. As
there are many technical as well as policy details to be considered, it seems likely that this proposal will require a significant amount of working group time over the next 18 months.

**Taking account of previous convictions in new criminal proceedings**

This proposal for a Framework Decision, which was presented by the Commission in March 2005, has a relatively limited scope. Where there may be new criminal proceedings on the basis of new facts (i.e. a new criminal case) against an individual, it seeks to set out some minimum conditions for taking into account previous criminal convictions from another EU Member State. The key principle it proposes is that such previous convictions should in general be treated in the same fashion as equivalent domestic convictions. While this initiative entered the working group in January 2006, it has not been a priority of the Austrian Presidency. Discussions to date have centred around the precise implications for the receiving State in terms of giving equivalent effect to foreign previous convictions.

**European Court of Justice decision in case C-176/03**

The ECJ on 13 September 2005 gave judgment in case C-176/03 concerning the correct Treaty base for legislating in the EU on criminal law issues to ensure the effectiveness of measures taken to protect the environment. The Court found that the Council had, in that case, legislated incorrectly, in the Third Pillar, and annulled the measure in question. This judgment has implications beyond the protection of the environment and reads across to all areas where it may be necessary to have criminal law provisions to ensure effective implementation of a Community policy. Thus, legislation to achieve those ends will in future likely take place in the First Pillar, under qualified majority voting (QMV) and co-decision with the European Parliament. The precise implications of the judgment have yet to be clarified and the Executive has been monitoring developments in this matter to assess what the implications might be for the criminal law.

**Green Papers**

The Commission has in recent times published two short Green Papers, one on international **conflicts of jurisdiction** and the **ne bis in idem** principle, and another, more recently, on the **presumption of innocence**. On situations where there may be more than one jurisdiction with an interest in cross border cases, after consulting Scottish practitioner experts, the Scottish Executive concluded that the case had not been made for further EU legislation in this matter at the moment. Eurojust’s remit allows it to assist in such situations in a practical manner which retains flexibility. With regard to ne bis in idem principle, the Scottish Executive was not persuaded either that there was any need at this time for further EU provision beyond that which is already contained in the Schengen Convention. (A previous draft Framework Decision on the matter stalled at working group stage after lengthy negotiations due to fundamental disagreements about the potential nature of any such further provision.) The Scottish Executive position on these issues was included in the UK response to the Green Paper. The response to the Green Paper on the presumption of innocence is still being considered at the time of writing.
**Working Groups, the Hague Programme Action Plan and the Finnish Presidency**

**Attendance at working groups**
Scottish Executive officials attend working groups in Brussels on a regular basis where key policy interests have been identified which require this – and are also in regular contact with UK officials in developing the UK negotiating line.

**Review of the Hague Programme Action Plan**
The Hague Programme Action Plan, published in June 2005 as a frame of reference for work in JHA over the next 5 years, aimed to retain a degree of flexibility “in order to take the greatest possible account of the demands of current events.” It stated that the Action Plan would be updated therefore at the end of 2006, and, as part of this process, the Commission are currently working on their first annual report, which is expected to be published in late June 2006. When it is published and the Action Plan is subsequently updated, the Scottish Executive will examine the outcomes closely along with UK Government colleagues to assess which areas appear to require further attention in forward plans.

**The Finnish Presidency**
Finland takes on the Presidency of the Council of the European Union from 1 July until 31 December 2006. The foundation for present co-operation in Justice and Home Affairs was created during the previous Finnish Presidency at the European Council meeting in Tampere in 1999. The Finns have indicated that they intend to continue development of this policy section strongly, on the basis of the Hague Programme. They have also indicated that they think the mid-term review of the Programme, which, as mentioned above, takes place during their Presidency, will provide significant opportunities to influence future developments.

In addition to continuing legislative work, Finland plan to move the focus to effective implementation and enforcement of decisions. An attempt will also be made to enhance co-operation between Member States in combating international crime. In JHA, the focus during the Presidency will be on projects promoting the implementation of the mutual recognition principle.

With regard to criminal judicial co-operation, the following dossiers of interest to the Scottish Executive may be taken forward. Depending of course on what further progress is made during the last months of the Austrian Presidency, it would seem likely that, as a co-sponsor of the initiative along with Austria and Sweden, Finland will wish to see the draft Framework Decision on transfer of prisoners through to its conclusion. The JHA Council has stated on several occasions that the EEW should be progressed as a matter of priority. Finland will probably therefore need to continue negotiations towards a general approach, if this has not been achieved by the end of June, and thereafter see to finalisation of the text and development of the standard form for the Warrant. On more recent initiatives, that on the organisation and content of the exchange of information extracted from criminal records will more than likely require significant working group attention. It is also anticipated that the draft Framework Decision on pre-trial detention (bail) will finally be published during the Finnish Presidency. This is likely to be a project of some importance. The Finns may also give some attention to the initiatives on mutual recognition of prohibition from working with children, depending on progress on technical...
background papers which are being developed, and mutual recognition of previous convictions.

With regard to civil judicial co-operation early intelligence from Finnish colleagues indicates that their Presidency is likely to focus on the Rome I dossier, the draft maintenance Regulation proposal and the negotiations on the Small Claims procedure.

EU JHA Strategy Unit
31 May 2006
<table>
<thead>
<tr>
<th>Subject</th>
<th>Initial Assessment Devolved/Reserved</th>
<th>SEJD Lead</th>
<th>Priority</th>
<th>Current Position</th>
<th>Anticipated Completion</th>
<th>Means of Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green Paper on wills and successions</td>
<td>Devolved</td>
<td>Private International Law</td>
<td></td>
<td>The consultation paper on Succession and Wills considers issues such as mutual recognition of the title of executors to administer estates, and common rules on which country’s law should apply to succession in an international case. Executive officials have consulted widely with key Scottish stakeholders and are fully engaged with Department of Constitutional Affairs colleagues in finalising the consolidated UK Government response, proposal now not expected until 2007.</td>
<td>Proposal now not expected until 2007</td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Means of Implementation</td>
</tr>
<tr>
<td>---------</td>
<td>-------------------------------------</td>
<td>-----------</td>
<td>----------</td>
<td>------------------</td>
<td>------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>which is due to issue to the Commission in the immediate future.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Means of Implementation</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>--------------------------</td>
<td>----------</td>
<td>----------------------------------------------------------------------------------</td>
<td>--------------------------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td><strong>Green Paper on conflict of laws and jurisdiction on divorce matters (Rome III)</strong></td>
<td>Devolved</td>
<td>Private International Law</td>
<td></td>
<td>The UK Government’s consolidated response to the ‘Rome III’ Green Paper, accommodating the Scottish position, issued in October last year and highlighted the UK’s serious concerns around applying foreign law to cross-border divorce situations, of which Scotland and the other UK jurisdictions have no experience of applying, and if applied would add cost and delay to the process.</td>
<td>Proposal not expected until late summer 2006</td>
<td></td>
</tr>
<tr>
<td><strong>Proposal to establish an EU Fundamental Rights Agency</strong></td>
<td>Reserved</td>
<td>Civil Law Division</td>
<td></td>
<td>In 2004 the Commission published proposals for a European Fundamental Rights Agency (FRA) and a draft Council Regulation to create the FRA is currently under consideration. The Commission hopes that the FRA will start work on 1 January 2007, and the present Austrian Presidency has therefore</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Means of Implementation</td>
</tr>
<tr>
<td>---------</td>
<td>-------------------------------------</td>
<td>-----------</td>
<td>----------</td>
<td>------------------</td>
<td>------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>made progress on the FRA a priority. The FRA would replace the existing European Monitoring Centre on Racism and Xenophobia, and its main purpose would be to improve the compliance with fundamental rights of EU institutions and laws (including implementation of EU law by Member States). It would do so primarily through collecting and analysing data, and by issuing guidance and advice. The intention is that it should be essentially an advisory and promotional body without enforcement or formal investigatory powers. The proposals would not create any complications for plans to establish a Scottish Commission for Human Rights or place significant additional</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Means of Implementation</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------------------------</td>
<td>-----------</td>
<td>----------</td>
<td>------------------</td>
<td>------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Proposal on small claims</td>
<td></td>
<td></td>
<td></td>
<td>duties on Scottish Ministers. The UK Government and the Executive support the proposals, on the basis that the FRA will be expected to give priority to areas such as anti-discrimination and should not duplicate the work of existing national and other institutions. We continue to work closely with Whitehall Departments in contributing to the UK’s response to the proposals.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The aim of the proposal is to simplify and speed up litigation concerning small claims.</td>
<td>Devolved</td>
<td>Civil Justice</td>
<td>The Commission presented a revised proposal for a Regulation Establishing a European Small Claim Procedure. This followed a 2003 Green Paper consultation where the Executive contributed to the UK response. The aim of the proposal is to simplify and speed up litigation concerning small claims.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Means of Implementation</td>
</tr>
<tr>
<td>---------</td>
<td>-------------------------------------</td>
<td>-----------</td>
<td>----------</td>
<td>------------------</td>
<td>------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Consideration of the text at working group level is nearing an end. As there is, in broad terms, general consensus amongst the delegates over the text of the proposal, the Austrian Presidency submitted a final compromise text to Coreper for consideration on 31 May 2006 seeking their agreement to submit the text to the JHA Council which was due to meet on 1 and 2 June 2006. At the JHA Council meeting the text was agreed and was referred to the European Parliament for sanction. The compromise text adheres to the proposed 2000 Euro limit and the earlier debated definition of cross-border cases. There remained controversy over the scope of the type of action that can be raised as a small claim. For our</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Means of Implementation</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-------------------------------------</td>
<td>----------------------------------</td>
<td>----------</td>
<td>----------------------------------------------------------------------------------</td>
<td>------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Proposal on Maintenance Obligations</td>
<td>Devolved</td>
<td>Private International Law</td>
<td></td>
<td>part we had indicated that we were content for the proposed additions to the list of exclusions and had suggested two further, additions, namely actions of interdict and of performance of an obligation but these were not pursued by the Austrian Presidency</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

Negotiations began in February 2006 and will probably continue until at least early 2008.
<table>
<thead>
<tr>
<th>Subject</th>
<th>Initial Assessment</th>
<th>SEJD Lead</th>
<th>Priority</th>
<th>Current Position</th>
<th>Anticipated Completion</th>
<th>Means of Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Committee’s request for an update on negotiations on Friday 12 May.</td>
<td></td>
<td></td>
<td></td>
<td>Correspondence detailed the decision taken not to formally opt into the negotiations using the UK’s Title IV protocol arrangements to the Treaty. UK is firmly committed to fully participating in working group negotiations and helping shape the development of the final Regulation. The next meeting is scheduled for mid-July under the Finnish Presidency.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adoption of Rome II proposal on conflicts of laws regarding non-contractual obligations</td>
<td>Devolved</td>
<td>Private International Law</td>
<td></td>
<td>The ‘Rome II’ proposal on the law applicable to non-contractual obligations was first published by the Commission in 2003. Draft Regulation is designed to govern which country’s law should apply to a civil dispute about a non-contractual obligation.</td>
<td>Late 2006/ probably early 2007</td>
<td>Implementation date likely to be late 2007/2008 approx. Will require amendments to the Private International Law (Miscellaneous Provisions) Act 1995, probably to be done by SSI</td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Means of Implementation</td>
</tr>
<tr>
<td>---------</td>
<td>-------------------------------------</td>
<td>-----------</td>
<td>----------</td>
<td>------------------</td>
<td>------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Adoption of the Payment Order Regulation</td>
<td></td>
<td></td>
<td></td>
<td>obligation which has an international element. Broad agreement was reached on the main issues in the Council of Ministers on 27-28 April, and further political agreement on the recitals in Rome II was achieved at the 1-2 June Council, with a full common position in Council expected later this year. UK intends to pursue any outstanding concerns with the Parliament in the run-up to its second reading of Rome II in late 2006 or early 2007.</td>
<td></td>
<td>under the European Communities Act 1972.</td>
</tr>
</tbody>
</table>

This is a proposal for a simplified procedure for obtaining and enforcing a judgement in uncontested claims. The UK is seeking to restrict the proposal to cross-border cases. Still being discussed in Working Group where Executive Officials have been attending meetings and working closely with DCA on UK negotiating line.
<table>
<thead>
<tr>
<th>Subject</th>
<th>Initial Assessment Devolved/Reserved</th>
<th>SEJD Lead</th>
<th>Priority</th>
<th>Current Position</th>
<th>Anticipated Completion</th>
<th>Means of Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>UK jurisdictions which are simple and bring about speedy judgements in uncontested claims. On 21 February the JHA Council agreed the text of the regulation. The legal language experts have considered the text to ensure that all language versions mean the same. A further working group meeting, to consider the text of the regulation, took place on 23 May. At that meeting most of the jurist-linguists' changes were either accepted or changed. However one issue remains outstanding and may have to be referred to COREPER. It is hopped that the Presidency can resolve this issue without the need to refer it to COREPER.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Adoption of Directive on Alternative Dispute Resolution - Mediation

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

<table>
<thead>
<tr>
<th>Subject</th>
<th>Initial Assessment Devolved/Reserved</th>
<th>SEJD Lead</th>
<th>Priority</th>
<th>Current Position</th>
<th>Anticipated Completion</th>
<th>Means of Implementation</th>
</tr>
</thead>
</table>
| Adoption of Directive on Alternative Dispute Resolution - Mediation | Devolved | Civil Justice | | The European Parliament is not yet convinced a legislative proposal is the way forward. The rapporteur, Arlene McCarthy MEP, invited a number of experts to attend the Legal Affairs Committee at the end of April. Much of the debate focussed on the issue of scope and whether the Directive should be limited to cross-border situations or not. Experts also discussed the various considerations involved in relation to the different sectors where mediation is used, for example, mediation between a consumer and a company demands a different approach to that between two companies. Other issues discussed were whether the Commission’s Code of Conduct should be incorporated into the Directive and whether | }
mediation should be voluntary or compulsory. The experts agreed that it should be voluntary. Agreement was also reached on the subject of confidentiality. It was vital for mediation that the process be confidential. The final discussion centred on how to ensure that mediation, little used in some Member States, could be publicised to potential users. This would be a question of training of lawyers and court staff and raising public awareness. The Rapporteur will consider the views of the experts in drafting her report which is due in June 2006.
<table>
<thead>
<tr>
<th>Subject</th>
<th>Initial Assessment Devolved/ Reserved</th>
<th>SEJD Lead</th>
<th>Priority</th>
<th>Current Position</th>
<th>Anticipated Completion</th>
<th>Means of Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green Paper on minimum standards for some aspects of procedural law.</td>
<td>Devolved</td>
<td></td>
<td></td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Means of Implementation</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>--------------------------------------</td>
<td>--------------------------------</td>
<td>----------</td>
<td>------------------</td>
<td>------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Evaluation of the possibility of the suppression of exequatur and legislative proposals as appropriate.</td>
<td>Devolved</td>
<td>Private International Law</td>
<td>N/A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Commission would in the long term like to see all civil law decisions from any MS being automatically recognised and enforced in all other MS. The evaluation will look at the progress already made and the prospects for achieving that ultimate goal.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Establishment of a specific Programme on Judicial Co-operation in civil and commercial matters.</td>
<td>Devolved</td>
<td>Private International Law</td>
<td>The Commission’s proposal amending the existing ‘Service Regulation’, which governs the service of judicial and extra-judicial documents in civil and commercial matters, has been considered during the UK and Austrian Presidencies in working group, and is currently being considered in Council. The amendments seek to further tighten up and enhance the EU cross-border provisions on the</td>
<td>Likely to complete later in 2006</td>
<td>For the Commission.</td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Means of Implementation</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>--------------------------------------</td>
<td>------------------------------------------</td>
<td>----------</td>
<td>------------------</td>
<td>------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>service of documents for transmitting and receiving agencies and addressees, in particular. Executive officials are in regular contact with DCA colleagues and Scottish stakeholders on this dossier. The amended Regulation has just been successfully considered in Council on 1-2 June.</td>
<td>Devolved</td>
<td>Private International Law</td>
<td>N/A</td>
<td></td>
<td>Green Paper expected no later than 2007.</td>
<td></td>
</tr>
<tr>
<td>Green Paper on the effective enforcement of judicial decisions</td>
<td>Devolved</td>
<td>Private International Law</td>
<td>N/A</td>
<td></td>
<td>Expected no later than 2007.</td>
<td></td>
</tr>
<tr>
<td>Proposal for the amendment of regulation 1348/2000 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters.</td>
<td>Devolved</td>
<td>Private International Law</td>
<td>The Commission’s proposal amending the existing ‘Service Regulation’, which governs the service of judicial and extra-judicial documents in civil and commercial matters, has been considered during the UK and Austrian Presidencies in working</td>
<td>Likely to complete in 2006.</td>
<td>Probably 2007. May require changes to court rules.</td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/ Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Means of Implementation</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------</td>
<td>-----------</td>
<td>----------</td>
<td>-----------------</td>
<td>------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Proposal on conflicts of laws regarding contractual obligations (Rome I).</td>
<td>Devolved</td>
<td>Private International Law</td>
<td>Council working group negotiations began on 18 May on the draft Regulation on the law applicable to contractual obligations (&quot;Rome I&quot;). Commission’s draft proposal was published in December 2005 and aims to establish uniform</td>
<td>Completion probably late 2007/2008. Finns are keen to progress this work.</td>
<td>Implementation date maybe late 2008/2009 May require amendments to the Contracts (Applicable Law) Act 1990 (by SSI under the European Communities Act 1972).</td>
<td></td>
</tr>
</tbody>
</table>
rules as to which country’s law should apply in cross-border cases concerning contractual issues. Ministers decided to use the UK’s Title IV protocol arrangements to the Treaty and not opt into the negotiations on 8 May. Decision was based on key provisions in the draft proposal which would currently detract from legal certainty for UK interests. UK has made it very clear to Member States and other EU partners that it will continue its commitment to full participation in the working group meetings, and play its role in the development of the shape of the Regulation. Next meeting will take place in July under the Finnish Presidency.
<table>
<thead>
<tr>
<th>Subject</th>
<th>Initial Assessment Devolved/Reserved</th>
<th>SEJD Lead</th>
<th>Priority</th>
<th>Current Position</th>
<th>Anticipated Completion</th>
<th>Means of Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Implementation</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>--------------------------</td>
<td>----------</td>
<td>----------------------------------------------------------------------------------</td>
<td>------------------------</td>
<td>-----------------------------------------------------</td>
</tr>
<tr>
<td>Framework Decision on Financial Penalties.</td>
<td>Devolved</td>
<td>Criminal Law Division</td>
<td>Moderate</td>
<td>Published in November 2000. Working Group negotiations are now complete.</td>
<td>Anticipated to be 2 years from entry into force.</td>
<td></td>
</tr>
<tr>
<td>Framework Decision on Mutual Recognition of Confiscation Orders.</td>
<td>Devolved</td>
<td>Criminal Law Division</td>
<td>Moderate</td>
<td>Published in November 2000. Working Group negotiations are now complete.</td>
<td>Anticipated to be 2 years from entry into force.</td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/ Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Implementation</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------------------------</td>
<td>-----------</td>
<td>----------</td>
<td>------------------</td>
<td>-----------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Framework Decision on the European Evidence Warrant.</td>
<td>Thought to be mainly devolved – but final version will require thorough analysis</td>
<td>Criminal Procedure Division. International Co-operation Unit, Crown Office</td>
<td>High</td>
<td>Published 14 November 2003. COM(2003) 688 Final. Working Group negotiations commenced July 2004. Amongst issues which required finalising lately were certain of the grounds for refusal and definition of offences for which dual criminality will not apply.</td>
<td>A general approach was reached at the JHA Council on 2 June. However, it is not yet clear when it will be finally adopted and published as further work is required on the recitals, forms etc</td>
<td>Implementation would be required some 2 years after adoption. Deadline will probably be therefore late 2008, or into 2009.</td>
</tr>
<tr>
<td>Draft Framework Decision on the European Enforcement Order and</td>
<td>Devolved</td>
<td>Scottish Prison Service</td>
<td>Moderate</td>
<td>Published 24 January 2005.</td>
<td>Possible completion</td>
<td>Depends on progress in the</td>
</tr>
</tbody>
</table>
the transfer of sentenced persons between EU Member States. This initiative deals with the conditions under which a custodial sentence imposed in one Member State can be enforced in another.

<p>| 5597/05 COPEN 13. This FD has received a lot of working group time in the first half of 2006. Amongst matters requiring further negotiation are the extent to which dual criminality should be a factor when considering transfers and also the extent to which prisoners themselves should have a say. | 2006 as this is a priority of the Austrian Presidency, although a general approach is not now expected before their Presidency, and work will continue therefore into the Finnish Presidency. | Working Group and on final adoption. Possibly 2008/9. |</p>
<table>
<thead>
<tr>
<th>Subject</th>
<th>Initial Assessment Devolved/ Reserved</th>
<th>SEJD Lead</th>
<th>Priority</th>
<th>Current Position</th>
<th>Anticipated Completion</th>
<th>Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Draft Framework Decision on Mutual Recognition of Non-Custodial Pre-Trial Supervision Measures. It is anticipated that this FD will propose some sort of mutual recognition of bail decisions.</td>
<td>Devolved</td>
<td>Criminal Procedure Division</td>
<td>Moderate</td>
<td>Not yet published. Expected now at some point in 2006.</td>
<td>Depends on entry into and progress in the Working Group. It would seem likely that this initiative will require substantial negotiation. May be late 2007 depending on progress, but more likely into 2008.</td>
<td>Depends on progress in the Working Group and on final adoption. Unlikely before 2009/10.</td>
</tr>
<tr>
<td>Draft Framework Decision on the Recognition and Enforcement in the European Union of Prohibitions arising from convictions for sexual offences committed against children. This FD proposes the mutual recognition of prohibitions from working with children as a result of implementation of the penalties in the FD of 2003 on sexual exploitation of children.</td>
<td>Devolved</td>
<td>SEED, Children and Families</td>
<td>High</td>
<td>Published 5 November 2004 14207/04 COPEN 133. Progress has been slow mainly because negotiations have revealed a wide disparity of provision with regard to disqualification between MS, thus leading to practical problems with mutual recognition.</td>
<td>Most unlikely to be 2006 now – possibly 2007.</td>
<td>Depends on progress in the Working Group and on final adoption. Possibly by 2009/10.</td>
</tr>
<tr>
<td>Draft Framework Decision on the</td>
<td>Reserved</td>
<td>Criminal Law</td>
<td>Low</td>
<td>Advertised publication date</td>
<td>Depends on</td>
<td>Depends on</td>
</tr>
</tbody>
</table>
**Mutual Recognition of Driving Disqualifications.**

It is anticipated that this FD will propose, as stated, that a driving disqualification handed out in one MS will have effect throughout the EU.

|----------|---------|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|

**5.**
<table>
<thead>
<tr>
<th>Subject</th>
<th>Initial Assessment Devolved/Reserved</th>
<th>SEJD Lead</th>
<th>Priority</th>
<th>Current Position</th>
<th>Anticipated Completion</th>
<th>Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>White Paper on the Exchanges of Information on Convictions and the Effect of such convictions in the EU</td>
<td>Devolved</td>
<td>Criminal Procedure Division</td>
<td>Low</td>
<td>Published 25 January 2005 COM(2005) 10 Final</td>
<td>No implementation needed as such – but new proposals will emerge from the White Paper which will require attention in due course.</td>
<td></td>
</tr>
<tr>
<td>Framework Decision on the Transmission to and Keeping by the Member State of Nationality of Information on Criminal Convictions.</td>
<td>Devolved</td>
<td>Police Division</td>
<td>Moderate</td>
<td>Published as a draft Framework Decision by the Commission on 12 January 2006 as COM(2005)690 Final/2. Has now entered the working group in March 2006. Initial assessment in that there will be many technical issues to deal with, so negotiations possibly at some point in 2007, depending on priority given by future Presidencies.</td>
<td>Unlikely to be before 2009/10. Technological work also required to enable electronic exchange.</td>
<td></td>
</tr>
<tr>
<td>may take sometime.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Implementation</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>--------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
<td>----------</td>
<td>----------------------</td>
<td>------------------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Council Decision on Exchange of Information on Criminal Records. This initiative tightens up pre existing provisions to be found in the 1959 Convention as mutual legal assistance principally by providing for deadlines for the exchange of information.</td>
<td>Devolved</td>
<td>Police Division</td>
<td>High</td>
<td>Published 13 October 2004, COM(2004) 664 Final. Working Group negotiations are now complete.</td>
<td>Formally adopted 21 November 2005 (CD 2005/876/JHA</td>
<td>Implementation within 6 months of adoption. No immediate legislation required. Will be repealed in due course by the FD on transmission of information on criminal convictions.</td>
</tr>
<tr>
<td>Communication on Mutual Recognition of Decisions in Criminal Matters and Reinforcement of Mutual Trust between Member States</td>
<td>Devolved</td>
<td>Criminal Procedure Division,</td>
<td>Moderate</td>
<td>Published 19 May 2005 COM(2005) 195 Final.</td>
<td></td>
<td>No implementation needed as this is a Discussion Paper</td>
</tr>
<tr>
<td>Communication on the creation of an Index on Non-EU Nationals convicted in an EU Member State</td>
<td>Devolved</td>
<td>Police Division</td>
<td>Moderate</td>
<td>Not yet published – possibly at some point in 2006.</td>
<td>Depends on the details of the proposal and the extent to which national</td>
<td>Depends on the nature of the proposal and the extent to which national</td>
</tr>
<tr>
<td>Working Group negotiations required. Possibly 2006/7.</td>
<td>implementing measures, if any, are required. Unlikely to be before 2008/9.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Implementation</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>-----------------------------------------------</td>
<td>----------</td>
<td>-------------------------------------------------------</td>
<td>------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>Communication on Disqualification.</td>
<td>Devolved</td>
<td>Moderate</td>
<td>Published 21/2/2006 as COM (2006)73 final</td>
<td>None required as this is an information/discussion paper.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>This paper summaries the currently limited scope of EU wide disqualification arising from criminal convictions and proposes a sector by sector subject specific approach for future developments.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report on the implementation of the Framework Decision on the execution in the EU of orders freezing property or evidence</td>
<td>Devolved</td>
<td>Criminal Law Division, International Co-operation Unit, Crown Office, Criminal Procedure Division</td>
<td>Low</td>
<td>Not yet published. Implemented in the UK in the Crime (International Co-operation) Act and further provision may be made under an enabling power in the Serious Organised Crime Act.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/ Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Implementation</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------</td>
<td>------------</td>
<td>----------</td>
<td>------------------</td>
<td>------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td><strong>APPROXIMATION</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Framework Decision on the fight against organised crime.</strong>&lt;br&gt;This FD seeks to add value to the EU 1998 joint action by specifically penalising participating in and directing a criminal organisation and through some approximation of penalties.</td>
<td>Devolved/ Reserved</td>
<td>Criminal Law Division/Crown Office</td>
<td>Medium</td>
<td>Published by the Commission on 19 January 2005. COM(2005)6 Final. Entered Working Group (MDG) in March 2005. Discussions have focused on very technical matters such as the definitions of “participating” and “directing”. A key issue for the UK has been the interface with domestic conspiracy provisions in criminal law. A general approach was achieved at the April JHA Council.</td>
<td>Recent progress means a formal adoption may be possible at some point in 2006.</td>
<td>Depends on final progress towards adoption. Deadline likely to be 2008, however. Early analysis, subject to confirmation, is that Scots law is probably already compliant with the FD provisions. Final view subject to finalised version of the FD and further analysis.</td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Implementation</td>
</tr>
<tr>
<td>---------------------------------------------------</td>
<td>--------------------------------------</td>
<td>---------------------------------</td>
<td>----------</td>
<td>----------------------------------------------------------------------------------</td>
<td>--------------------------------------</td>
<td>----------------------------------------</td>
</tr>
</tbody>
</table>
| Framework Decision on Minimum Standards in Criminal Proceedings. This FD is aimed at setting common minimum standards with regard to certain procedural right throughout the EU, including:  
  - Access to legal advice  
  - Access to free interpretation/translation  
  - Assuring that persons incapable of following proceedings receive attention  
  - The right to communicate with consular authorities | Devolved                            | Criminal Procedure Division     | High     | Published in 2004, document COM(2004) 328 Final, 2004/0113 (CNS). First appeared in the Working Group in September 2004, but progress has been slow mainly due to the difficulty in arriving at a common approach where procedure may vary in its detail across the different jurisdictions in the EU. | Not clear due to slow working group progress. Most unlikely now to be 2006. | Depends on future progress in the Working Group. |
<table>
<thead>
<tr>
<th>Subject</th>
<th>Initial Assessment Devolved/Reserved</th>
<th>SEJD Lead</th>
<th>Priority</th>
<th>Current Position</th>
<th>Anticipated Completion</th>
<th>Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Framework Decision and Directive on Intellectual Property offences. This FD seeks to approximate criminal law measures for counterfeiting intellectual property.</td>
<td>Thought to be mainly reserved</td>
<td>ETLLD</td>
<td>Medium</td>
<td>Published as combined package COM(2005)276 Final on 12 July 2005. The Commission has now published a new proposed Directive on 26 April 06, replacing the previous combination of Directive/FD, in line with the their interpretation of ECJ Case C 176/03. The UK has questioned the need for any new measures arguing that sufficient approximation has already been achieved through the Directive on the Enforcement of Intellectual Property Rights 2004/48/EC.</td>
<td>Entered the Working Group in October 2005. Depends on progress in the Working Group and complications of negotiating a Directive and Framework Decision at the same time under different legal bases. However, this may change as a result of Commission’s challenge and the new Directive.</td>
<td>Depends on progress in the working group. Little discussion has yet taken place.</td>
</tr>
<tr>
<td>Green Paper and draft Draft Framework Decision on Conflicts of Jurisdiction and the ne bis idem principle.</td>
<td>Devolved</td>
<td>Criminal Procedure Division and Crown Office</td>
<td>Medium</td>
<td>Advertised publication date for the FD is 2006. May depend on results of consultation on a</td>
<td>Depends on entry into the Working Group and the</td>
<td>Depends on progress in the Working Group and date of final</td>
</tr>
</tbody>
</table>
The Green Paper seeks to promote discussion on what approach ought to be taken within the EU where it turns out that more that one Member State would be able to exercise jurisdiction and bring a prosecution.

<p>| Green Paper which was published on 23 December 2005 as COM(2005)696 Final. UK responded that it was generally content with current arrangements for settling potential overlaps in jurisdiction within the EU, mainly through the use of Eurojust. Crown Office was involved in drafting the response. No separate issues arose for Scotland. | extent to which negotiations required. Unlikely to be before 2007. | adoption. Unlikely before 2009/10. |</p>
<table>
<thead>
<tr>
<th>Subject</th>
<th>Initial Assessment Devolved/ Reserved</th>
<th>SEJD Lead</th>
<th>Priority</th>
<th>Current Position</th>
<th>Anticipated Completion</th>
<th>Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green Paper on Presumption of Innocence</td>
<td>Devolved</td>
<td>Medium/Low</td>
<td></td>
<td>Advertised publication date was 2005, but it only finally appeared on 26/4/2006 as COM (2006) 174 final.</td>
<td>Deadline for responses is 9 June. The Executive is still considering its response.</td>
<td>No implementation as such but the GP may lead to further proposals.</td>
</tr>
<tr>
<td>Green Paper on Taking and Handling of Evidence</td>
<td>Devolved</td>
<td>Medium/Low</td>
<td></td>
<td>Advertised publication date is 2006.</td>
<td>Deadline for responses will be set by the Commission on publication.</td>
<td>No implementation as such but the Green Paper may lead to further proposals.</td>
</tr>
<tr>
<td>Green Paper on Default in Absentia Judgments</td>
<td>Devolved</td>
<td>Medium/Low</td>
<td></td>
<td>Advertised publication date is 2006.</td>
<td>Deadline for responses will be set by the commission on publication.</td>
<td>No implementation as such but the Green Paper may lead to further proposals.</td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/ Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Implementation</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>---------------------------------------</td>
<td>-----------------------------------------------</td>
<td>----------------</td>
<td>---------------------------------------</td>
<td>------------------------</td>
<td>-----------------------------------------------------</td>
</tr>
<tr>
<td>Third Report on the Framework Decision on the Standing of Victims in Criminal Proceedings</td>
<td>Devolved</td>
<td>Victims and Witnesses Unit</td>
<td></td>
<td>No current information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Initial Assessment Devolved/ Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
<td>Current Position</td>
<td>Anticipated Completion</td>
<td>Implementation</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------------------------</td>
<td>-----------</td>
<td>----------</td>
<td>------------------</td>
<td>------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>POLICE</td>
<td>Framework Programme “Security and Safeguarding Liberties” under the New Financial Perspectives</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Draft Framework Decision on the establishment of a principle of availability of law enforcement relevant information.</td>
<td>Devolved</td>
<td>Police and Community Safety Group</td>
<td>Moderate</td>
<td>Commission adopted Framework Decision in October 2005. Will be discussed in Multi-Disciplinary Working Group. There has yet been no substantive working group discussion of this dossier. Delegations are continuing to reflect on the general scope of the Commission proposal.</td>
<td>Not clear when substantive discussions will begin.</td>
<td>2 years after final agreement.</td>
</tr>
<tr>
<td>Proposal on the retention of data processed in connection with the provision of public electronic communication services for the detection, investigation and prosecution of criminal offences.</td>
<td>Reserved</td>
<td>Police and Community Safety Group</td>
<td>High</td>
<td>This will now be taken forward as a Directive and was discussed at the final Council of the UK Presidency on 1-2 December 2005.</td>
<td>Final adoption at JHA Council in February 2006.</td>
<td>18 months from adoption.</td>
</tr>
</tbody>
</table>
This Directive aims to harmonise Member States’ provisions concerning the obligations of the providers of communications services or of public communications networks with respect to the retention of certain data which are generated or processed by them, in order to ensure that the data are available for the purpose of the investigation, detection and prosecution of serious crime, as defined by each Member State in its national law.
<table>
<thead>
<tr>
<th>Subject</th>
<th>Initial Assessment</th>
<th>SEJD Lead</th>
<th>Priority</th>
<th>Current Position</th>
<th>Anticipated Completion</th>
<th>Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters provided for by Title IV of the TEU.</td>
<td>Devolved/Reserved</td>
<td>EU JHA Team and Police and Community Safety Group</td>
<td>Moderate</td>
<td>Commission proposal adopted on 4 October 2005. Discussions in the working group have focused on a number of technical issues</td>
<td>It is anticipated that lengthy negotiations may be required. Possibly 2007.</td>
<td>Depends on progress in the working group. Unlikely to be before 2009/10.</td>
</tr>
</tbody>
</table>
JUSTICE 2 COMMITTEE

17th Meeting 2006 (Session 2)

Tuesday 13 June 2006


Type of Instrument: Negative

Meeting: 13 June 2006

Date circulated to members: 8 June 2006

Justice 2 Committee deadline to consider SSI: 19 June 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
8 June 2006
Dear Ms Peat,

Justice 2 Committee Tuesday 23rd May 2006

Thank you for your letter dated 31st May 2006.

As you mention, in my evidence to the Committee on 23rd May I offered to explain the reasons why some claims take longer to settle. Before doing so, I would like to reiterate an important and related point referred to in my evidence, which is that not all claims brought against solicitors insured under the Master Policy are valid. Where the claimant is not able to show financial or other loss resulting from a breach of duty of care owed to the claimant by the insured practice, the claim will fail and will not in consequence be regarded as ‘settled’ nor will it form part of any assessment of ‘time to settle’. I hope this is clear.

In relation to claims which are settled, the following factors can all play a part in influencing the time to settle; one or more of these factors will usually explain why one claim of a certain type or size has taken longer to settle than another:

- The quality of claim correspondence: it is clearly more helpful to us in our first assessment of a new claim and thereafter to have clarity from the claimant or their representative about what is alleged to have gone wrong and the loss which is said to flow from that. In many cases we do not get such clarity, necessitating more correspondence and/or investigation on our part and hence more time;
- The time taken for correspondence to be replied to. We operate to defined service standards which will usually minimise delay at our end. We are not, however, in control of the response times of other parties;
- On a related point, dormant claims: for whatever reason, a proportion of claims will be brought, responded to and then lie dormant in the hands of the claimant before reactivation;
• The availability of information important to assessment of the claim: a proportion of claims will involve events which may have taken place many years before and/or in respect of which information may be difficult to obtain;

• The complexity of the claim: small claims are capable of being very complicated (equally some very large claims can be quite straightforward), thus influencing the time needed to investigate and hence form an assessment of legal liability and quantification of loss;

• On a related point, legal representation and the involvement of other experts (e.g. advocates, surveyors, accountants) whose opinions are required to assist in resolving a more complicated claim will inevitably add to the settlement time when compared to a claim where such assistance is not required;

• The time taken to quantify financial loss, which in some cases may be contingent on events still to occur at the time the claim is brought;

• The number of parties to the dispute: a proportion of claims will feature more than one claimant and/or defendant; this is more likely than not to add to settlement time scales;

• The legal process in the small percentage of claims litigated;

• The expectations of the claimant can be a critical factor: in my evidence to the Committee I alluded to the fact that it is not within R&SA’s power as lead insurer of the Master Policy to compel claimants to settle. If a claimant disagrees with our assessment of what is a fair and reasonable settlement then we cannot force the issue and hence the time to settle will be affected.

This list is not intended to be exhaustive but will, I hope, assist the Committee’s understanding of the factors which typically influence settlement times.

Whilst writing, there is one other point I would like to bring to the Committee’s attention which arises out of the evidence given by myself and my colleague Peter Turrell. At column 2462 of the Official Report which I received today, Mr Maxwell asked whether we have experience of third parties making claims against solicitors. Although we could not immediately think of examples, it is the case that a very small proportion of claims are brought by claimants who have not been in a solicitor – client relationship in respect of the work complained of. Example categories of such claimants include disappointed beneficiaries (e.g. following an error in the drafting of a will), intended successors to agricultural tenancies and those who may have relied to their detriment on negligent misstatements.

Yours sincerely

Trevor Goddard BSc(Hons) ACII
Technical Claims Manager
Professional & Financial Risks
UK Claims
Royal and Sun Alliance
Pre-Council Agenda: Justice and Home Affairs Council  
1-2 June

Provisional Agenda  
Justice and Home Affairs Council (JHA)  
Luxembourg – 1-2 June 2006

Please note that this Pre-council Report is based on a provisional agenda which was published in December and may be subject to change. At this stage we do not know which Ministers will be representing the UK.

CRIMINAL JUDICIAL CO-OPERATION


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

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

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

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

All EU Member States have ratified the Council of Europe Convention on the transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved. The aim of this initiative is develop the 1983 Convention provisions further in the EU and to ensure that a custodial sentence imposed in one EU Member State is recognised and enforced in another - with the aim of improving re-socialisation of offenders by allowing them to serve their sentences in countries in which they understand the
language and have the most family and other close links. Notwithstanding the necessity of providing the sentenced person with adequate safeguards, it is argued that his or her involvement in the proceedings should no longer be dominant by requiring his or her consent to the forwarding of a judgement to another Member State for the purpose of its recognition and enforcement of the sentenced imposed.

The draft Framework Decision was published as an Austrian initiative in January 2005 and made some progress during the time of the UK Presidency last year. Outstanding issues include the extent to which: “dual criminality” (that the behaviour in question is a crime in both the requesting and requested State) should be dispensed with when considering transfers and the extent to which prisoners themselves should have a say in the matter of transfer. The Austrian Presidency has made this a priority and hope to be in a position to reach a general approach to the text by the end of it.

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

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

Eurojust Annual Report 2005

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

Council Decision on Asset Recovery Offices

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

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

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

CIVIL JUDICIAL CO-OPERATION

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

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

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

**Proposal for a Directive of the European Parliament and of the Council on Certain aspects of mediation in civil and commercial matters (poss).**

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

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

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

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

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

**Maintenance Obligations (poss).**

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

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

**POLICE AND JUDICIAL CO-OPERATION**

**Counter-Terrorism.**

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

**Debate on the future of Europol**

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

ASYLUM AND IMMIGRATION

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

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

(poss) Conference on Media, Migration and Asylum (19-21 April 2006)

List of safe countries of origin

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

GENERAL

Reinforcing the EU emergency and crisis response capacities.

External Relations

European Programme for the protection of critical infrastructure

EU JHA Strategy Unit
11 May 2006
Dear Convener

Subordinate Legislation Committee Inquiry into the Regulatory Framework in Scotland

As you will know, the Subordinate Legislation Committee has been undertaking an inquiry into the Regulatory Framework in Scotland.

The Committee has now completed its consideration of all of the evidence it received during Phase 2 of the inquiry, including that from Committees, and has come to conclusions which it has included in a draft report.

On the basis of the evidence the Committee received, and its own experience of scrutinising subordinate legislation over the last 7 years, the Committee has concluded that there should be a simplified system which is fit for purpose and where scrutiny is open and transparent and within realistic timescales.

It has always been the Parliament’s intention to replace the current transitional procedures. The Committee therefore recommends in its draft report that the current system of scrutiny should be replaced with a new system which it has called the Scottish Statutory Instrument Procedure (SSIP). This is the procedure which forms the main recommendation in the Committee’s draft Report.

Given the innovative nature of the SSIP and the wide-ranging implications for the Parliament, the Executive and those on whom subordinate legislation has an impact, the Committee has decided to publish the draft report in order to consult upon its recommendations before finally making up its mind on what to propose to Parliament.

The purpose of this letter is to invite your Committee’s comments on the draft report and the recommendations that it makes.

23 May 2006
The Committee would prefer to receive comments electronically. These should be sent to:

subordinate.legislation@scottish.parliament.uk

The general closing date for responses is Friday 8 September 2006. However, the Committee would welcome Committee’s responses by Friday 22 September 2006.

Yours sincerely

Sylvia Jackson MSP
Convener
Dear Tracey,

POLICE (SCOTLAND BILL: FUNDING FOR PROVISIONS RELATING TO PUBLIC PROCESSIONS

I refer to Councillor Alison Hay’s letter of 30 May to the Convenor of the Justice 2 Committee about the good work that has been done by the Working Group on Marches and Parades in drafting the guidance to local authorities and the Working Group’s report on how the 38 recommendations in Sir John Orr’s report should be taken forward. As the Committee will be aware, I wrote to you on 22 May to provide members with final drafts of both documents. As Chair of the Working Group, I would like to put on record my gratitude for the considerable time and effort put in by all members of the Group in ensuring that, in both cases, we have a product which offers constructive and helpful advice on the way that the statutory and non-statutory changes should be implemented.

I note, however, that COSLA remain of the view that we have underestimated the cost that local authorities will incur to implement the changes to the way that notifications are to be considered and handled. Our position remains as set out in my letter to you of 31 March. As stated, if COSLA can produce any new and compelling evidence that there will be higher additional costs from the provisions in the Bill than estimated for, then we would be happy to review the position again. To date, COSLA have been unable to do so. I see from COSLA’s latest letter, however, that they advise that they will be producing new evidence on marches and parades as a basis for discussion with us. I look forward to receiving that evidence and to meeting with COSLA to discuss it. I will write to you again once we have met with them, to advise you of developments.

I have copied this letter to the Clerk to the Finance Committee.

Yours ever,

Alastair Merrill
Head of Police Division 1