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

1. **Petition PE862:** The Committee will consider the proposed arrangements for the establishment, duration, remit and membership of a sub-committee to examine the issues arising from this petition and whether to conclude formal consideration of the petition as a result of the establishment of this Committee.

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

Tracey Hawe/Alison Walker
Clerks to the Committee
Papers for the meeting—

Agenda Item 1

Paper by Clerk J2/S2/06/19/1

Agenda Item 2

Members are reminded to bring with them copies of the Bill, Explanatory Notes and Policy Memorandum, available from Document Supply or from the Parliament’s website: http://www.scottish.parliament.uk/business/bills/56legalProfession/index.htm

Draft report (PRIVATE PAPER) J2/S2/06/19/2

Documents circulated for information only—

Sheriff Court Rules Council Consultation on the Sheriff Court and Alternative Dispute Resolution, published 21 June 2006

Letter from Minister for Justice to Justice 2 Committee Convenor on HMP Addiewell, dated 20 June 2006


Parole Board for Scotland Annual Report 2005 (Please note that this report is embargoed until 11am on Friday 23 June 2006)

Forthcoming meetings—

- Tuesday 5 September 2006, TBC
- Tuesday 12 September 2006, TBC
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.

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

3. At its meeting on Tuesday 13 June the Committee received an oral update from the Convener along with a written update from the Minister for Justice. The Committee agreed to explore whether an ad hoc committee could be established in order to examine the issues raised by the petition. The Committee considered the issue again at its meeting on Tuesday 20 June, and formally agreed to recommend to the Parliamentary Bureau that a sub-committee be set up in order to examine the issues raised by the petition.

4. The Parliamentary Bureau is to consider a proposal from the Justice 2 Committee for the establishment of a sub-committee at its meeting on Tuesday 27 June. This proposal sets out the proposed remit, membership and duration of the Committee. A draft motion setting out these matters is also attached as annex A to this paper.

5. Members are asked to consider the attached draft motion, so that any comments can be fed back to the Parliamentary Bureau which will meet at 2.30 pm.

Further consideration of the petition
6. The petitioner called 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. As outlined above, members have agreed to propose that a sub-committee be set up to examine these issues and report back to this Committee.

7. Where a Committee agrees to conduct an inquiry to take forward issues raised by a petition, it is normal practice for a Committee to close formal consideration of the petition, as the issues raised will be dealt with in the inquiry.

8. Members are therefore asked to consider concluding formal consideration of PE 862 given the pending inquiry by the sub-committee.
Annex A

Draft Text of Motion:

That the Parliament agrees to establish a sub-committee of the Justice 2 Committee as follows:

Name of Committee: Justice 2 Sub-Committee

Remit: To inquire into and report to the Justice 2 Committee on—

- The extent of information which local communities should receive on child sex offenders within their locality;
- The way in which housing is allocated to sex offenders;
- Whether steps need to be taken to distinguish sexual offences against children from such offences against adults;
- Whether changes need to be made to the way in which sexual offences against children are considered and disposed of by the courts, and in particular, whether adequate sentencing options exist.

Duration: Until the end of December 2006

Convenership: The Convener will be a member of the Labour Party and the Deputy Convener a member of the Scottish National Party.

Membership: to be agreed by Business Managers
Dear Consultee

The Sheriff Court and Alternative Dispute Resolution

The Mediation Committee of the Sheriff Court Rules Council ("the Council") has carried out a review as to what the function of the sheriff court should be in relation to the use by parties to an action of alternative dispute resolution and has made a number of recommendations to the Council. One recommendation made was:

"that a wide consultation process should be conducted among court users as a preliminary to drawing up an Act of Sederunt for the approval of the Lord President of the Court of Session"

The Council accepted this recommendation and decided to continue its consideration of the other recommendations made until after such consultation had been carried out.

The enclosed consultation paper sets out these recommendations, along with a draft rule and draft form of notice, and the Council would welcome your views on these, and in particular your response to the specific questions set out in the questionnaire.

The arrangements for the consultation process are set out on page 1. From this you will see that any views and comments should be submitted by 27 September 2006. The enclosed Respondent Information Form should be completed and returned with your response to ensure that we deal with your response appropriately. All responses will be made available to the public on the Scottish Court Service website in due course unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being placed on the website. An electronic version of the form and further copies of the consultation paper can be downloaded from:


If you have any queries about the consultation please contact Alistair Hackett on 0131 244 4844

We look forward to receiving your views.

Yours sincerely,

ANN OXLEY
Assistant Secretary to the Sheriff Court Rules Council
SHERIFF COURT RULES COUNCIL

CONSULTATION

on

The Sheriff Court and Alternative Dispute Resolution
Consultation Arrangements

The Mediation Committee ("Committee") of the Sheriff Court Rules Council ("Council") has carried out a review as to what the function of the court should be in relation to the use by parties to an action of alternative resolution procedures and made a number of recommendations to the Council. The Committee's Report and the minutes of its various meetings can be viewed and downloaded at:


This paper sets out these recommendations together with a proposed draft rule and form of notice to be given by parties to an action. The Council is asking for your views and comments on the recommendations. The Council has not yet formed any views on the recommendations made to it by the Committee. Views and comments should be made before 27 September 2006:

by e-mail to: SCRCMed@scotland.gsi.gov.uk

in writing to: The Secretariat
Sheriff Court Rules Council
Scottish Executive Justice Department
Civil Court Procedure & Sheriff Court Jurisdiction
2 West
St Andrew's House
Edinburgh
EH1 3DG

telephone: 0131 244 4844
fax: 0131 244 4848

Please note comments by e-mail would be preferred as this aids in the analysis process. A full list of questions is contained at Annex A and each question is highlighted in the appropriate section in the text. It would be helpful if, in responding, comments could be cross referred to the question numbers in the paper although you do not need to respond to all the questions.

If you would like your responses to be treated as confidential please indicate this clearly. Responses from those who reply in confidence will only be included in numerical totals and names and text will not appear in the list of respondents.

All respondents should be aware that the Sheriff Court Rules Council is a statutory body and is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Further copies of this paper can be downloaded from:


Requests for the paper in different formats will be considered.

INDIVIDUALS AND ORGANISATIONS ARE INVITED TO SUBMIT VIEWS AND COMMENTS BY 27 September 2006.
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1 Introduction

1.1 This consultation follows a review by the Mediation Committee ("Committee") of the Sheriff Court Rules Council ("Council") as to what the function of the court should be in relation to the use by parties to an action of alternative dispute resolution procedures (ADR). It seeks views on the recommendations made by the Committee to the Council. The Committee's Report and the minutes of its various meetings can be viewed and downloaded at:


1.2 The phrase "alternative dispute resolution" or "ADR" is employed in this paper to cover both mediation and any other form of dispute resolution.

1.3 The Committee presented its Report to the Council in December 2005. The Council decided to continue its consideration of the recommendations contained in the Report until after consultation with court users had been carried out.

Origins and Scope of Review

The Sheriff Court Rules Council

1.4 The Sheriff Court Rules Council ("the Council") was set up by section 33 of the Sheriff Courts (Scotland) Act 1971 to keep under review the procedure and practice in civil proceedings in the sheriff court. It regularly prepares draft rules of procedure and submits them to the Court of Session for approval and enactment as an Act of Sederunt.

1.5 To assist it in the discharge of its functions, the Council may invite representations on any aspect of the procedure or practice in civil proceedings in the sheriff court. Representations may also be made by individual members of the Council or by any member of the public on any matter within the remit of the Council. The Council considers any representations received.

1.6 In June 2003 the Council was asked to consider representations concerning mediation that had been received by the secretariat. Given the far reaching implications of the issues raised it was decided by the Council that a Committee be formed to consider them and report its findings to the Council (then under the chairmanship of Sheriff Principal ID Macphail QC, as he then was).

The Mediation Committee

Remit of the Committee

1.7 The remit given by the Council to the Mediation Committee and agreed by the Committee was:

1 To consider what the function of the court should be in relation to the use by the parties to an action of alternative dispute resolution procedures; and in particular to consider:
(a) whether the court should be required to encourage the parties to use such a procedure in all or any of:
   ~ ordinary cause procedure;
   ~ summary cause procedure;
   ~ small claim procedure;
   ~ summary application procedure;

(b) if so, at what stage or stages of the cause the court should be required to do so;

(c) whether the court should also be required to facilitate the use of such procedure:

(d) if so, by what means the court should facilitate the use of such procedure.

2 To obtain such information as to the legal systems of other countries as appears to the Committee likely to assist their consideration of these matters.

3 To consider whether, in summary cause and small claim procedure, the sheriff should continue to be required to seek to negotiate and secure settlement of the action between the parties (Summary Cause Rules 2000, Rule 8.3(2) (b); Small Claim Rules 2000, Rule 9.2(2) (b)).

4 To report to the Council with recommendations.

Membership of the Committee

1.8 The Membership of the Committee is set out below.

**Sheriff Court Rules Council Members:**

Sheriff Principal B A Kerr QC (Chairman)
Mr Ronnie Conway, Solicitor
Mr Simon Di Rollo QC
Mr Joseph d'Inverno, Solicitor-Advocate
Mr Joseph Murphy, Sheriff Clerk
Mr Paul Cackette, Scottish Executive Justice Department

**Members Co-opted by the Council:**

Sheriff N M P Morrison QC
Professor John Sturrock QC
Ms Lesley Napier, Scottish Executive Justice Department

**Previous members of the Committee:**

Mrs Caroline Flanagan, Solicitor
Ms Barbara Brown, Scottish Executive Justice Department
Mr Alan Adams, Consumer and Trading Standards, Glasgow City Council
The Scottish Executive Civil Justice Division provided secretariat services to the Committee.

Since its inception the Committee met on ten occasions to produce its report and, in accordance with its remit, it has considered information on mediation from other jurisdictions, attended conferences and invited speakers to address Committee Members.
2 Mediation Committee Recommendations

2.1 In accordance with its remit and following deliberations, the Committee made five recommendations to the Council along with a draft rule and draft form of notice. The fifth recommendation made was

That a wide consultation process should be conducted among court users as a preliminary to drawing up an Act of Sederunt for the approval of the Lord President of the Court of Session.

As stated at paragraph 1.3, the Council decided to continue its consideration of the recommendations made until after consultation with court users had been carried out.

2.2 In relation to point 2 of its remit, in order to aid its considerations and discussions, the Committee obtained from a variety of sources a large amount of information on ADR and the use that is made thereof by the legal systems of other countries. The Committee also invited speakers to address it, considered various papers and publications on the subject matter and members attended mediation conferences and seminars.

2.3 The remaining recommendations are set out below and explained. The draft rule and form of notice is set out in sections 3 and 4 below.

Recommendation One

That there be incorporated into each set of rules applicable to the conduct of civil business in the sheriff court a new rule concerning mediation in the terms set out in the draft rule below (section 3) or in terms similar thereto, adapted as necessary to the context of the set of rules in which it appears. Rule 33.22 of the Ordinary Cause Rules 1993 (OCR) would thereby be superseded.

2.4 The Committee after long consideration came to the view that in Scotland some greater recognition is now required in the sheriff court rules of the rôle which mediation and other forms of ADR may play in resolving disputes. The court should encourage rather than compel parties to seek resolution of matters in dispute between them by ADR or by negotiation before committing themselves to litigation or during the course of proceedings. A resolution of their differences by judicial decision of the court usually produces a winner and a loser.

Note: Even if you answer "no" to question 1a it would be very helpful to have your views on all remaining questions.

Q. 1a Do consultees consider that such a rule is necessary or desirable?

Q. 1b Please provide comments to explain your reasons.

2.5 The Committee reached the view that a rule in mandatory terms would be inappropriate or even ineffective since ADR is a voluntary process. However, to leave matters as they currently stand with no rule in place concerning ADR would be unsatisfactory in the twenty-first century and the right note for the sheriff court in Scotland would be struck by giving the court power, on its own initiative if not at the request of a party
to the action, to require parties to consider resolving their differences by some means other than court proceedings. If none of the parties to the action seek leave to refer the matter to ADR the court would consider whether the particular dispute appeared suitable for resolution by some other means and if so it would require the parties to consider it.

Q. 2a Should the rule encourage rather than compel parties to seek resolution of matters in dispute by way of ADR before resorting to litigation?

Q. 2b Please provide comments to explain your reasons.

Q. 3a Should the court have the power to require parties to an action to consider ADR?

Q. 3b Please provide comments to explain your reasons.

Q. 4a Should the parties to the action be required to give notice with reasons in writing as to whether or not they consent to a referral to mediation?

Q. 4b Please provide comments to explain your reasons.

2.6 The Committee were of the opinion that consideration of settlement or referral to dispute resolution should take place within the constraints of the current court timetable i.e. the timetable which applies at the stage in the action when parties are considering the settlement of the dispute or referral to dispute resolution.

Q. 5 Do consultees have any comments to make in relation to this part of the recommendation?

2.7 The Committee recommended that where the court considers that the dispute in question appears suitable for another means of resolution as opposed to litigation, and parties to such an action cannot agree that the disputed matter(s) or some of them should be referred to ADR, the basis on which one or more parties had elected to withhold agreement might in due course become a ground on which an award of expenses could be made. It therefore included a reference to the court's consideration of "any unreasonable conduct of any party" in dealing with a motion for expenses in the draft rule. The rationale for its suggested inclusion is that its presence would act as a "flag" to remind those considering whether matter(s) in dispute should be referred to mediation or some other form of dispute resolution that such a power exists in the court and might be exercised in appropriate circumstances. The arguments for its exclusion are that a "flagging up" of a power to award expenses carries with it, at least arguably, an undesirable implication that mediation is intended to be a procedural "default option" and that the court already has such an inherent power in any event (for which reason reference to such a power does not generally appear in other rules of court). Questions may also arise as to how "unreasonable conduct" falls to be interpreted.

Q. 6a Do consultees consider it appropriate to have an express reference in the rule relative to the awarding of expenses?

Q. 6b Please provide comments to explain your reasons.
Q. 7a Is it appropriate to include a reference to ADR in each set of court rules namely
- Ordinary Cause Rules 1993
- Summary Applications, Statutory Applications and Appeals etc. Rules 1999
- Summary Cause Rules 2002
- Small Claim Rules 2002?

Q. 7b Please indicate with reasons whether the reference should be incorporated into all, some or none of the court rules.

Q. 7c If you think that the reference should only be incorporated into some of the court rules please indicate, with reasons, which set(s) of court rules.

2.8 During its deliberations the Committee noted that currently the only reference to mediation is contained in rule 33.22 of the Ordinary Cause Rules 1993 (OCR). This rule relates to referral to family mediation in a family action in which a court order in relation to parental responsibilities or parental rights is in issue and would appear to empower the sheriff to refer such an issue to mediation without the agreement of the parties. If the proposed all-encompassing rule in relation to mediation is accepted, this arguably would mean that OCR 33.22 should be superseded as involving an element of compulsion.

Q. 8a Do consultees consider that rule 33.22 should be deleted from the OCR in the event of the all-encompassing rule being introduced?

Q. 8b Please provide comments to explain your reasons.

Recommendation Two

That a new para (5A) be inserted into OCR 3.1 in the following terms:-

"(5A) An article of condescendence shall be included in the initial writ averring the steps taken by the parties prior to the raising of the action by other forms of dispute resolution (whether by way of mediation, negotiation or otherwise) with a view to avoiding the need for litigation."

A similar provision should be inserted into each of the other sets of rules applicable to the conduct of the civil business in the sheriff court, adapted as necessary to the context of the set of rules in which it appears.

2.9 The Committee accepted that in some cases the parties to an action may already have considered and/or taken steps to resolve the dispute with a view to avoiding the need for an action. The Committee recommended that at the outset of an ordinary action the initial writ should indicate any steps taken in the articles of condescendence. Similar terms would be placed in each of the other sets of civil court rules.

Q. 9a Do consultees have any comments to make in relation to this recommendation?

Q. 9b Please indicate, with reasons, whether this reference provision should be incorporated into:
(a) All or
(b) Some or
(c) None of the court rules.

Q. 9c If you think that this provision should only be incorporated into some of the court rules please indicate, with reasons, which set(s) of court rules.

Recommendation Three

_That, subject to questions of cost and practicability, the use of mediation or another form of dispute resolution should be facilitated in relation to disputes at all levels by the provision of an in-court mediation service in the manner piloted in the sheriff courthouses of Edinburgh, Glasgow and Aberdeen._

2.10 Points 1(c) and (d) of the Committee’s remit asked that it consider to what extent the court should facilitate mediation or other forms of dispute resolution and if so by what means the court should facilitate the use of such procedure. The view formed by the Committee was that where practicable and the costs of providing such procedure could be met, the use of such procedure should be facilitated in relation to disputes at all levels by the provision of an in-court mediation service such as is currently being piloted in Edinburgh, Glasgow and Aberdeen.

Q. 10 Consultees are invited to provide comments on the terms of recommendation three.

Recommendation Four

_That rule 8.3 of the Summary Cause Rules 2002 and rule 9.2 of the Small Claim Rules 2002 should be amended by the incorporation into each of a new paragraph in the following terms:-_

“8.3(2A)/9.2(2A): In carrying out the duties referred to in paragraph (2) (b), the sheriff may hold discussions in private and not in open court.”;

and that otherwise the said rules 8.3 and 9.2 should remain for the time being unaltered.

2.11 It appears from anecdotal evidence that many sheriffs feel uncomfortable about being expected to act as a negotiator and that difficulties can readily arise if a sheriff, having assumed that rôle without success, is then required to hear the case and adjudicate upon it. On the other hand there is anecdotal evidence that many sheriffs have no problem or difficulty with assuming the negotiator’s rôle nor with thereafter adjudicating upon the case and in any event there exists in many courthouses the possibility of handing the case on to another sheriff for adjudication should that be required after an attempt to negotiate a settlement has been tried and failed. It was apparent also that one of the chief difficulties in
persuading parties to consider and then move to any settlement is the fact that the
negotiation has hitherto had to be conducted in open court often before many onlookers
where many litigants are unwilling or unable to contemplate open discussion of the strengths
or weaknesses of their position with consequent loss of face. Against this background the
Committee took the view that the impetus for the sheriff to seek to achieve a settlement
should for the time being be preserved, as originally envisaged, but that there should in
addition be provision to permit the sheriff to hold discussions with parties in private in order
to meet the chief difficulty so far encountered in practice.

Q. 11a Please indicate, with reasons, whether a new paragraph, in the terms outlined
above, should be incorporated into both:

• Rule 8.3 of the Summary Cause Rules 2002 and
• Rule 9.2 of the Small Claim Rules 2002?

Q. 11b If you think that the reference should only be incorporated into one set of the
court rules please indicate, with reasons, which set(s) of court rules.

Q. 11c Do consultees have any views on the recommendation that rules 8.3 and 9.2
should otherwise remain for the time being unaltered?

[Please see pages 11 and 12 for questions 12 and 13.]
CHAPTER 9A

ENCOURAGEMENT OF PARTIES BY COURT TO RESOLVE MATTERS IN DISPUTE

9A.1 The sheriff and parties shall seek to secure the speedy and efficient resolution of all matters in dispute.

9A.2 (1) In any defended action the court may, at any stage of the action where it considers it appropriate to do so or on the motion of any party, make an order requiring the parties within such period as may be specified in the order to consider together settlement of the dispute or referral to mediation or to another form of dispute resolution.

(2) An order made under paragraph (1) shall not affect any requirement for a party to comply with any other provision in these rules or any order of the court.

9A.3 (1) Where an order has been made under rule 9A.2 for consideration of referral to mediation or to another form of dispute resolution, the parties shall after such consideration indicate to the court by lodging a notice in Form 011 whether or not they each consent to such a referral.

(2) Where all parties indicate their consent thereto, the court shall forthwith make an order referring some or all of the matters in dispute to mediation or to such other form of dispute resolution as has been agreed.

9A.4 (1) Where an order is made under rule 9A.3 (2), the court may sisti the action for the purpose of such referral for such period as may be specified.

(2) The court may, at any time where it considers it appropriate to do so after hearing parties or on the motion of any party, recall the sist and any referral made by order under rule 9A.3 (2).

9A.5 In considering any motion for expenses, the sheriff may take account of any unreasonable conduct of any party in relation to the provisions of this rule.

Q. 12 Do consultees have any comments about the proposed rule as drafted? It should be clear to which part(s) of the rule the comments relate.
Form of Notice

Proposed Form of Notice

FORM 011

Rule 9A.3(1)

Form of notice indicating response to order of court made under rule 9A.2(1)

NOTICE for Pursuer [or Defender]
in the cause
AB (insert designation and address)
Pursuer

against
CD (insert designation and address)
Defender

The pursuer [AB] (or defender [CD]) having considered the matters ordered by the court to be considered in terms of rule 9A.2(1) of the Ordinary Cause Rules 1993 states to the court that he [or she] consents/does not consent* to the dispute(s) between the parties being referred to mediation or another form of dispute resolution for the reasons given below.

Reasons:-

(Signed)
[AB] Pursuer
or
[CD] Defender
or
Solicitor for pursuer (or defender)

*(delete as appropriate)

Q. 13 Do consultees have any comments to make on the proposed form of notice? It should be clear to which part (s) of the notice the comments relate.
### Summary of Consultation Questions

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<td>Q. 9b Please indicate, with reasons, whether this provision should be incorporated into:</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>(a) All or</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) Some or</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) None of the court rules.</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Q. 9c If you think that this provision should only be incorporated into some of the court rules please indicate, with reasons, which set(s) of court rules.</td>
<td></td>
<td>9</td>
</tr>
<tr>
<td>3</td>
<td>Q. 10 Consultees are invited to provide comments on the terms of recommendation three.</td>
<td></td>
<td>9</td>
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<tr>
<td>4</td>
<td>Q. 11a Please indicate, with reasons, whether a new paragraph, in the terms outlined above, should be incorporated into both:</td>
<td></td>
<td>10</td>
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<td></td>
<td>• Rule 8.3 of the Summary Cause Rules 2002 and</td>
<td></td>
<td></td>
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<td></td>
<td>• Rule 9.2 of the Small Claim Rules 2002?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Q. 11b If you think that the reference should only be incorporated into one set of the court rules please indicate, with reasons, which set(s) of court rules.</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Q. 11c Do consultees have any views on the recommendation that the said rules 8.3 and 9.2 should otherwise remain for the time being unaltered?</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Proposed Rule</td>
<td>Q. 12 Do consultees have any comments about the proposed rule as drafted? It should be clear to which part(s) of the rule the comments relate.</td>
<td></td>
<td>11</td>
</tr>
<tr>
<td>Proposed Form of Notice</td>
<td>Q. 13 Do consultees have any comments to make on the proposed form of notice? It should be clear to which part(s) of the notice the comments relate.</td>
<td></td>
<td>12</td>
</tr>
</tbody>
</table>
List of Consultees

Centre for Scottish Public Policy
Citizens Advice Scotland
Consumer Credit Counselling Services
Money Advice Scotland
Payplan
Poverty Alliance
Scottish Bankruptcy Advice
Scottish Consumer Council
Scottish Tenants Organisation
Shelter Scotland
Scottish Women's Aid
Stepping Stones For Families
Tenant Information Service
Tenant Participation Advisory service
Welfare Rights Service
Which?
Consumer Credit Association
Credit Services Association Ltd
Institute of Credit Management
Property Managers Association Scotland
Scottish Consumer Credit Association
Scottish Trade Union Congress
Association of British Insurers
Community Business Scotland
Confederation of British Industry (Scotland)
Finance and Leasing Association
Institute of Directors Scotland
Scottish Chambers of Commerce
Scottish Council of Development and Industry
Scottish Federation of Small Businesses
Association of Chartered Certified Accountants
Chartered Institute of Bankers in Scotland
Building Societies Association
Committee of Scottish Clearing Bankers
Council of Mortgage Lenders
Institute of Chartered Accountants of Scotland
Bank of Scotland
Clydesdale Bank plc
Lloyds TSB
Royal Bank of Scotland
Society of Law Accountants in Scotland
Royal Society of Edinburgh
British Energy
Scottish and Southern Energy plc
Scottish Gas
Scottish Power
BT Scotland
Scottish Water
Scottish Trade Unions Congress
Scottish Trade Unions Women's Committee
SACRO
Scottish Enterprise
Highland and Islands Enterprise
All Unitary Councils
SOLAR
CoSLA
All Local Faculties of Solicitors
Court of the Lord Lyon
Court of Session Rules Council
Judicial Studies Committee
Lord President of the Court of Session
Faculty of Advocates
In-Court Advice Service
Law Society of Scotland
Legal Services Agency Ltd
Scottish Association of Law Centres
Scottish Law Agents Society
Scottish Law Commission
Scottish Legal Action Group
Sheriff Court Licensed Group
All Sheriffs in Scotland
Part time Sheriffs' Association
Sheriffs Principal
Sheriffs' Association
Society of Solicitors Advocates
SSC Society
WS Society
Advisory Council for Messengers-at-Arms and Sheriffs Officers
Society of Messengers-at-Arms and Sheriffs Officers
Scottish Mediation Network
Core Mediation
Family Mediation Scotland
National Family Mediation
CALM
Couple Counselling Scotland
Centre for Research on Families and Relationships
UK College of Family Mediators
Scottish Parenting Forum
Centre for Effective Dispute Resolution (CEDR)
Catalyst Mediation Ltd
Chartered Institute of Arbitrators
Association of Personal Injury Lawyers
Forum of Insurance Lawyers
Forum of Scottish Claim Managers
Employment Tribunals (Scotland)
Professor Hazel Genn
Professor Gwynn Davis
Professor Carrie Menkel-Meadow
Professor Elizabeth Thorburn
Judge Paul Colline
Clerks to the individual Committees of the Scottish Parliament
All Members of the Scottish Parliament
Scottish Parliament Information Centre
Faculties of Law and Business, Universities
Catholic Bishop's Parliamentary Office
Scottish Churches Parliamentary Office
Scottish Interfaith Council
Relevant Scottish Executive and United Kingdom Government Departments and Agencies

FOR REFERENCE PURPOSES
Advocates Library
House of Commons Library
House of Lords Library
Mitchell Library
National Library of Scotland
June 2006

Dear David

HMP ADDIEWELL

I wrote to your predecessor on 25 August 2005 to let her know that a preferred bidder had been appointed for the proposed prison at Addiewell. I also said that I would write again when the contract had been awarded.

The Scottish Prison Service has now completed negotiations with the preferred bidder and has awarded a contract to Addiewell Prison Limited (APL) to design, construct, manage and finance the new prison.

Work will commence shortly on site.

CATHY JAMIESON
Comment by the Executive

The Council reached an agreement on the Framework Decision on the European Evidence Warrant, on a Regulation establishing a European Small Claim Procedure and on the establishment, operation and use of the second generation Schengen Information System.

AGENDA ITEMS

Civil Judicial Co-operation

Proposal for a Regulation establishing European Small Claims Procedure

The Council reached a general agreement on a Regulation establishing a European Small Claims procedure.

The Regulation will simplify and speed up litigation concerning small claims in cross-border cases and reduce costs by establishing a European procedure for small claims. It will also eliminate the intermediate measures necessary to enable recognition and enforcement of judgements given in one Member State in European Small Claims Procedure.

The Regulation will apply in cross-border cases in civil and commercial matters whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 2000 at the time the procedure is commenced, excluding all interest, expenses and outlays. It will not apply, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority.

Police & Criminal Judicial co-operation

European Evidence Warrant

The Council reached a general approach on a draft Decision on the EEW for obtaining objects, documents and data for use in proceedings in criminal matters. The aim of this proposal is to establish a mechanism to facilitate the obtaining of evidence in cross-border cases based on mutual recognition principles.

The Council’s agreement was based on a compromise text put forward by the Presidency which addressed the two main outstanding issues – the possibility of a refusal of an EEW because of reasons linked to territoriality, and the definition of offences.

Transfer of Sentenced Persons

The Council examined two questions relating to a proposal for a 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.

The main aim of this draft Framework Decision is to establish cases where the consent of the executing State is not necessary and to limit the need for the consent of the person concerned. After considering proposals on both of the issues the Council sent the Framework Decision
back to the working group to continue its deliberations with regard, in particular, to the definition of residence, with a view to reaching an agreement as soon as possible.

**Procedural Rights in Criminal Proceedings**

The Council held an exchange of views on this proposal in particular on the questions of the legal basis of the instrument and agreed to continue working on the basis of a Presidency compromise based on the principles that:

(a) only minimum standards would be established, beyond which of course Member States could go if they wished, (b) there will be full compliance with the rights enshrined in the European Convention of Human Rights and the case law of the European Court of Human Rights.

**EU Priorities in Fight against Organised Crime**

The Council heard a presentation by the Director of Europol on the 2006 EU organised crime threat assessment and agreed that certain priorities should be set in this regard in connection with smuggling and trafficking of human beings, smuggling of illegal immigrants, drug trafficking, commodity smuggling, production of synthetic drugs money laundering and illicit arms trafficking.

**Counter Terrorism**

The EU Counter terrorism co-ordinator reported on the implementation of the EU-Counter Terrorism Strategy/Action Plan and the EU Strategy on Radicalisation and Recruitment. The report assessed progress since December 2005 and the state of play regarding ratification of the conventions and implementation of the legislative acts regarded as having priority.

**SIS II**

The Mixed Committee (EU & Norway, Poland and Switzerland) reached an agreement on a draft regulation on the establishment, operation and use of the second generation Schengen Information System (SIS II). The draft Regulation defines the conditions and procedures for the processing of alerts entered in the SIS II in respect of third country nationals, the exchange of supplementary information and additional data for the purpose of refusing entry or stay in the territory of the Member States.

**Common Visa Application Centres**

Commissioner Vice-President Frattini presented this recently adopted Commission proposal which is intended to create the legal basis for Member States to take mandatory biometric identifiers.

**Future of Europol**

The Council took note of a report sketching the options to improve the efficiency and accountability of Europol and adopted conclusions on the future of Europol.

**EU JHA Strategy Unit**

22 June 2006