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

1. **Custodial Sentences and Weapons (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).

2. **Prisoner escort and court custody services contract:** The Committee will consider a paper by the Clerk.

3. **Serious Crime Bill (UK legislation):** The Committee will consider the legislative consent memorandum lodged by Cathy Jamieson MSP, Minister for Justice (LCM (S2) 13.1).

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

   - The Drugs Assessor (Qualifications and Experience) (Scotland) Regulations 2007 (SSI 2007/8)
   - The Antisocial Behaviour (Fixed Penalty Offence) (Prescribed Area) (Scotland) Regulations 2007 (SSI 2007/15)

Tracey Hawe
Clerk to the Committee
Papers for the meeting—

Agenda Item 1
Scottish Executive response
Marshalled List
Groupings

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/80-custsentwea/index.htm) together with any papers from the Stage 1 process that are considered relevant (such as the Committee’s Stage 1 Report).

Agenda Item 2
Paper by clerk and annexes J2/S2/07/3/1
Submission from Professor Sheila Bird J2/S2/07/3/2

Agenda Item 3
Paper by clerk and copy of Bill and Explanatory Notes J2/S2/07/3/3

Agenda Item 4
Note by Clerk (including SSI) J2/S2/07/3/4
Note by Clerk (including SSI) J2/S2/07/3/5
Note by Clerk (including SSI) J2/S2/07/3/6

Documents not circulated—


Home Office consultation on establishing a Migration Advisory Committee http://www.ind.homeoffice.gov.uk/6353/6356/17715/macconsultation.pdf

Forthcoming meetings—

- Tuesday 13 February 2007, 2pm, Committee Room 5
- Tuesday 20 February 2007, 2pm, Committee Room 6
Issue
1. This note updates the Committee on the developments in relation to the prisoner escort and court custody contract and invites members to decide whether they wish to take any further action in relation to the contract.

Background
2. In November 2003 the Scottish Prison Service (SPS) signed a contract with Reliance Secure Task Management Ltd (Reliance) for the provision of prisoner escort and court custody services. The contract covers the transport of prisoners to and from prisons, police stations, courts and some other locations (for example, hospitals). The contract is estimated to be worth £126 million (over seven years), the actual value depending on future escort volumes. Implementation of the new contract began in April 2004, and the new service was fully rolled out by 21 February 2005. The contract will run until December 2011, with the option of a 3 year extension.

3. The main reasons given by SPS for contracting out prisoner escort and court custody services were:
   (a) to make better use of resources, by removing duplication and allowing police and prison officers to concentrate on their core duties and to achieve better value for money; and
   (b) to provide a consistent service throughout Scotland, based on best practice, and better information on how well the service is delivered.

4. A number of significant difficulties were experienced in the earlier stages of the contract, such as prisoner release in error or late arrival at courts. Due to these difficulties the later phases of the contract were rolled out over a period of time, and involved an assessment of the relevant agencies readiness to proceed.

5. Reliance is currently negotiating a variation in the contract to reflect the higher than anticipated prisoner movement volumes under the contract.
Committee Consideration

6. The Committee took oral evidence on the operation of the contract in June 2004, from Reliance, the Scottish Prison Service and the Minister for Justice. The Committee also received a report on the findings of the multi-agency review into problems with the current system of dealing with outstanding warrants and considered the Auditor General’s findings on the audit of the award of the contract.

7. In June 2005 the Committee considered a report from the SPS on the implementation of the contract, which included performance data for the first 9 months. The report also outlined the steps being taken to address the findings of the multi-agency working group on outstanding warrants and the efforts being made to ensure that there is inter-agency consultation. The Committee agreed at that time to consider another update once the planned post-implementation review of the contract became available. That post-implementation review (PIR) was published in January 2007, and a copy is appended to this paper for information.

Conclusions of the post-implementation review

8. The purpose of the PIR was to consider whether the benefits envisaged by the original business case had materialised during the operation of the contract to date. The SPS states that it consulted with relevant partners such as ACPOS, COPFS, and the Scottish Court Service and District Court Service during the preparation of the report.

9. The business case for entering into the contract was “to free up police and prison officers to secure better value for money through a phased implementation of a contracted out prisoner escort and court custody service throughout Scotland”.

10. The contract set out to deliver this by:
   - Requiring and maximising the effective use of resources across the range of activities associated with prisoner escorting and court custody requirements within the Scottish Criminal Justice System;
   - Providing better value for money by using appropriate staff to conduct court custody and escort work activity. Such staff did not require to be police officers or prison staff;
   - Removing the duplication and consequent inefficiency from existing arrangements;
   - Providing uniformity and consistencies of service delivery throughout Scotland;
   - Obtaining better management information about the delivery of service with a focus on continual improvement;
   - ‘Joining up’ agencies in a way that delivered a complex project and improved multi agency working between key partners; and
   - Delivering ‘Best Value’ and making use of the best practice learned from established providers in the prisoner escort service sector.
**Freeing up police resources**

11. The PIR states that the implementation of the contract has freed up at least 200 police from court duties and an estimated 100 further officers from escorting duties. In all, the PIR estimates that around 300 officers were re-deployed to front-line duties and it notes that some stakeholders reported additional efficiencies in backroom co-ordinating functions. The PIR states that prisons have benefited from increased stability and consistency of delivery, allowing for improved delivery of constructive programmes for prisoners. Costs associated with maintaining a vehicle fleet have also reduced.

**Process Improvement and Reducing Inefficiency**

12. The PIR states that assessment of the benefits of the contract is hindered by the lack of reliable data on pre-contractual performance delivery. Indeed, the PIR cites the better recording, monitoring and publishing of information under the contract as a benefit of the contract. SPS notes that ‘anecdotal reports….present a pretty positive picture of service delivery, and, if not a perfect service, one which is continually improving its level of delivery against a range of performance measures’.

13. The PIR does not contain detailed performance data. There are 33 performance measures in the contract and each has a minimum standard, which increases over the life of the contract. The PIR states that Reliance has matched or exceeded the minimum requirement in all but a few months, despite a 15% increase in the volume of escort transactions (with peaks at times 40% above the volumes originally forecast). The report notes that performance for the year to date currently stands at ‘around 90%’ on-time deliveries. Matters relating to the publication of contractual and performance information are expanded on below.

**Management Information, Multi-Agency working and Best Value**

14. The PIR states that the use of a single contractor has improved lines of accountability and removed duplication of effort between agencies. A multi-agency liaison group was formed in 1995 by the SPS and this group monitors performance, engages in problem solving, reviews incidents and advises on any new requirements under the contract.

15. The SPS believes that the contract reflects best value principles in both its development and its subsequent deployment. The SPS believes that the tendering process ensured VFM by selecting an experienced provider presenting the best service solution at the best price. The SPS also notes that the structure of the contract is designed to secure continuous improvement within the life of the contract.

**Conclusion**

16. The PIR concludes that the benefits envisaged by the contract have been achieved and that potential still exists for further improvements in service delivery.
Availability of contractual and performance information

The Contract

17. In 2004, Nicola Sturgeon MSP requested that the Minister for Justice (and SPS) release the full text of the contract between SPS and Reliance. This request was refused, and Ms Sturgeon appealed this refusal. The case was reviewed by the Scottish Information Commissioner. The SPS advised that it was relying on exemptions (under the Code of Practice which preceded the operation of the Freedom of Information (Scotland) Act) to withhold information relating to performance under the contract. The SPS also relied on a confidentiality clause in the contract, which effectively allows Reliance to refuse to consent to the publication or release of information. The Commissioner did not believe that the SPS had made a compelling case for applying the exemptions under the code, or that they had demonstrated that withholding the information was in the public interest. However, he noted that the contractual confidentiality clause entitled SPS to withhold the information, although he stated that the inclusion of this clause in the contract did not represent best practice in line with the guidance available. The Commissioner believes that companies bidding for public contracts should expect to operate under reasonable terms of scrutiny and openness.

Performance against the contract

18. Reliance is required to report monthly against the 33 performance measures outlined in the contract. Some performance measures have been published on the SPS web-site. These relate to volumes of prisoner movements, on-time deliveries, prisoners unlawfully at large and payments made to the company. Professor Sheila Bird requested that further performance based information (in the form of the monthly reports required by the contract) be provided to her. She appealed the SPS refusal to release this information to the Scottish Information Commissioner. The SPS argued that disclosure may prejudice the commercial interests of Reliance, in turn affecting their ability to implement the contract, retain staff, etc. It was also argued that publication of the figures would constitute an actionable breach of confidence with the company.

19. The Commissioner did not accept that the information being released would prejudice substantially the interests of the company, or that the public interest in withholding it outweighed that in disclosing it. He did accept that the disclosure of such information could have constituted an actionable breach of confidence under s 36 of the Act, with the exception of information relating to death or suicide in custody, which would already be in the public domain. That information was ordered to be released.

20. The Commissioner commented that private companies delivering public services should be scrutinised to the same level as public services. He did not regard it as being in the public interest for a lower
level of scrutiny to be applied and noted that authorities should commission contracts on the basis that non-disclosure would be an exception and not the rule. He stated that both contractors and authorities should work on the basis that confidentiality will not be the norm and that the majority of information relating to the contract and its performance will be in the public domain.

21. Professor Bird has continued to criticise the confidentiality clause under the contract and the lack of publicly available performance data. An updated submission from Professor Bird is attached for information. She urges that any contractual renegotiation that takes place regarding prisoner numbers should not be subject to any similar confidentiality clause. She argues that information on the other performance measures, (including information on death or serious incident of self harm in custody, assaults, prisoner disorder, key or lock compromise, or late collection/return of prisoners) should also be published on a monthly basis, along with the performance thresholds which apply. She also wishes to ascertain what the projected prisoner numbers under the contract were; along with the membership of the multi-agency liaison group (public access to the minutes of this group is also requested).

For Decision

22. The Committee is asked to
• Note the publication of the post-implementation review of the prisoner escort contract;
• Note the contents of the review;
• Consider whether it wishes to seek any further oral or written evidence in relation to the contract or the review;
• Consider whether it wishes to raise any outstanding issues with the Minister or the Scottish Prison Service; and
• Consider whether it wishes to take any other further action in relation to the matter, such as flagging up any issues to a successor committee by way of legacy paper.

Clerk to the Committee
February 2006
PRISONER ESCORT AND COURT
CUSTODY SERVICES CONTRACT (PECCS)

POST IMPLEMENTATION REVIEW
(PIR)

DECEMBER 2006
EXECUTIVE SUMMARY

The Prisoner Escort and Court Custody Services Contract (PECCS) became fully operational on 21 February 2005. This document forms the Post Implementation Review (PIR) for the project and covers a year and a half of the new contract operation. The purpose of the review is to confirm whether the benefits envisaged by the original business case have materialised in practice.

The PECCS Project Initiation Document (PID) set out the following expected benefits for the new arrangements:

- More effective use of resources;
- More appropriate deployment of police and prison officers to the delivery of front line services;
- Less duplication of effort and greater uniformity of service;
- More clarity on delivery and performance with better management information;
- Better and ‘joined up’ service delivery from a multi-agency project; and
- Delivery of ‘best value’ using best practice from the prisoner escort service sector.

In summary the Review concludes that the main business benefits identified have been achieved:

- The new arrangement has released about 300 police and 200 prison officers to undertake core duties in addition to delivering efficiencies including in back-room co-ordinating functions; and
- The management information available has improved in terms of accuracy, consistency and quantity. Performance information is now made available on the SPS website.

Further improvements to performance will be monitored and managed, by the SPS, through the ongoing contract management process.
INTRODUCTION

Purpose of the Review

This Post Implementation Review (PIR) concludes the project cycle for the Prisoner Escort and Court Services Contract (PECCS). The purpose of the review is to confirm whether the benefits envisaged by the original business case have materialised during the operation of the contract to date.

The PIR has been undertaken in line with Office of Government Commerce guidance and marks the conclusion of the project process. Service delivery is now fully managed through SPS contract management structures and processes.

In conducting the review the Scottish Prison Service has consulted with relevant partners.

THE PECCS BUSINESS CASE

The Drivers for Change

By 2001 most agencies involved in the court custody and prisoner escort processes were expressing growing dissatisfaction with existing arrangements. The main factors leading to the restructuring of the service delivery mechanism were:

- A growing and shared sense that arrangements were not working as well or as efficiently as they might;
- A belief that the existing arrangements could be significantly improved;
- Growing demands to maximise deployment of police officers to front line services;
- Inconsistent regime delivery in prisons due to increased and variable escort demands diverting prison officers from delivering constructive activities for prisoners;
- Increased awareness around the inefficiencies of deploying police officers and prison officers to roles that did not require their full range of skills or powers;
- Increased dissatisfaction with the duplication of effort, nugatory work and inefficiency of the extant arrangements, aggravated by a lack of coordination between the agencies involved;
- Frustration at arrangements and systems that did not allow for the recording of accurate data on either performance or incidents, making performance improvement difficult; and
• Alternative service provision in England and Wales had shown potential benefits in terms of performance, new working practice and technology. This suggested a mature and experienced market existed to provide a new service.

Background to PECCS

In 2003/2004 there were around 140,000 prisoner escorts across Scotland. About two-thirds of these were undertaken by the eight Scottish police forces and the remainder by the Scottish Prison Service. The process was relatively uncoordinated which resulted in operating inefficiencies for all parties.

Following a multi agency review, in January 2002 a procurement process was launched to engage a single operator for court custody and prisoner escort services.

In November 2003 the SPS signed a contract on behalf of Scottish Ministers with Reliance Secure Task Management Ltd (Reliance) for the provision of prisoner escort and custody services. Implementation commenced in April 2004 and the PECCS contract became fully operational on 21 February 2005.

The contract is available on the SPS website at [www.sps.gov.uk](http://www.sps.gov.uk) and will run until December 2011 (with the option of a three year extension.)

The contract itself covers a range of prisoner transport and security related services which are delivered to a number of agencies, namely:

- SPS;
- Scottish Court Service;
- District Courts (Local Authorities);
- Eight Scottish police forces; and
- The State Hospital and other NHS secure Units.

The Business Benefits

The PECCS Project Initiation Document (PID) summarised the Business Case for the project as being:

‘To free up police and prison officers to secure better value for money through a phased implementation of a contracted out prisoner escort and court custody service throughout Scotland.’

In summary the Project set out to deliver this by:

- Realising and maximising the effective use of resources across the range of activities associated with prisoner escorting and court custody requirements within the Scottish Criminal Justice System;
• Providing better value for money by using appropriate staff to conduct court custody and escort work activity. Such staff did not require to be police officers or prison staff;

• Removing the duplication and consequent inefficiency from existing arrangements;

• Providing uniformity and consistencies of service delivery throughout Scotland;

• Obtaining better management information about the delivery of service with a focus on continual improvement;

• ‘Joining up’ agencies in a way that delivered a complex project and improved multi agency working between key partners; and

Delivering ‘Best Value’ and making use of the best practice learned from established providers in the prisoner escort service sector.

REVIEW OF BENEFITS REALISED

Value for Money and Effective Use of Resources

The major business benefit envisaged for the project was more efficient service delivery through more effective use of resources.

In line with projections the implementation of the PECCS contract freed up at least 200 police from court duties and an estimated further 100 from escorting duties. In all, around 300 police officers were redeployed to front line duties across Scotland’s eight forces. In addition stakeholders report some additional efficiencies in their backroom co-ordinating functions.

Within prisons the number of prison officers released from escort duties was around 200 many of which were given up as efficiency savings or to allow reinvestment for improvements to services.

The main benefit to prisons was the increased stability and consistency of delivery of regimes. In local prisons escort variability had frequently resulted in the restriction of regime activity. The new contract allowed for improved delivery of constructive activity for prisoners.

The Police and SPS further report that they have reduced the costs associated with maintaining the vehicle infrastructure necessary to deliver a high volume prisoner escorts.
Process Improvement and Reducing Inefficiency

Any assessment of the benefits delivered by the PECCS contract is hindered by the lack of detailed, reliable data in relation to ‘pre-contractual’ service delivery. Much of the evidence of benefit, therefore is from anecdotal reports but these present a pretty positive picture of service delivery and, if not a perfect service, one which is continually improving its level of delivery against a range of performance measures.

The performance data collated by SPS supports this.

The 33 performance measures in the contract set out a minimum standard to be achieved against each one. This standard increases during the life of the contract. RCS have matched or exceeded the required standards in all but a few months. This despite a 15% increase in the volumes of escort transactions, with peaks at times when the volumes have been 40% more that the contract initially envisaged.

Escort volumes have increased in line with the general increase in the prison population, which over the same period, has continued to rise dramatically.

Performance for the year to date stands at around 90% ‘on time deliveries’ with an average of 15,594 escort movements per month.

So the contract is delivering improvements in performance despite significantly higher transaction volumes.

In addition the delivery of prisoner escort services by a single contractor has improved accountability and removed duplication of effort between agencies. Feedback from partners has confirmed that the introduction of the contract has rationalised the service at a national level. Not only has this resulted in savings, attributable to former backroom personnel but it has clarified reporting lines and promoted an improvement culture.

Better Management Information

The Auditor General’s Report of September 2004 commented that there was no accurate pre-tender data available. This is now no longer the case with RCS maintaining databases covering a wide range of information previously unavailable. This means better strategic decision making is possible. The SPS also maintains records in relation to key contract performance data. Performance data is shared with partners at the Multi-Agency Liaison Group and management information in relation to the contract is published on the SPS website for increased transparency.

This includes statistics on RCS performance across 33 performance measures, which includes a Release in Error statistic which was not previously systematically recorded.
Multi Agency Working

The Multi-Agency Liaison Group (MALG) was formed in November 2005 by the SPS. The MALG comprises of representatives of the key stakeholders and provides a multi-agency vehicle for:

- Monitoring performance;
- Joint problem solving;
- Review of incidents; and
- Advising the contractual authority on new requirements.

The PECCS contract has shown that complex multi-agency contracts can be delivered and has promoted consultation and information sharing between all partners, in setting up and in the subsequent management of the contract.

Joint working has been further developed by the development of a multi-agency approach to contract monitoring. The police currently have a secondee opportunity as part of the Contract Monitoring Team.

Best Value

Since April 2002 there has been a duty of Best Value placed on Accountable Officers. The SPS believes that the PECCS contract reflects the principles of ‘best value’ both in development and subsequent deployment.

Previous sections have outlined benefits around economy, efficiency and effectiveness and the benefits realised in the delivery of the contract. The tendering process has assured VFM by ensuring that an experienced provider presenting the best service solution at the best price had been selected.

The structure of the contract and the performance management process are also designed to secure continuous improvement on the life of the contract. Improved management information allows for better:

- Alignment of service to business strategy;
- Joint working to ensure continued service satisfaction; and
- More sustainable service with a contract that can adapt to changes in demands from partners.

So the SPS are satisfied that feedback to date suggests that the PECCS Contract reflects many of the principles of a best value solution.

CONCLUSION

In September 2004 the Auditor General stated:

“The SPS set clear objectives for the project based on perceived difficulties with the existing system and consistent with achieving best value for money but it is too early to say whether these objectives have been achieved. It is therefore important that
SPS’s post implementation review considers the extent to which the original aims of the project have been achieved and in particular, the success of the new arrangements on releasing police and prison officers to undertake their core duties.”

This review concludes that the benefits originally envisaged have been achieved. In particular the delivery of 300 police officers from court and escort work. SPS also mentioned efficiencies equivalent to about 200 prison officers. The review suggests that the level of performance delivered by RCS has consistently improved and that potential exists for even further improvements in service delivery.

Consultations with partner organisations have produced favourable comments in relation to the overarching benefits of the new arrangements and have suggested improvements that will be taken forward as part of ongoing contract management and in conjunction with the ongoing work of the MALG.
Bibliography

Auditor General for Scotland Report (September 2004)
Scottish Prison Service Web Site (www.sps.gov.uk/keydocs)
Post Implementation Review Questionnaire

Comments received from:-

- ACPOS
- Crown Office and Procurator Fiscal Service
- District Court Service
- Scottish Court Service
- HM Prison Kilmarnock
- HM Prison Perth
- HM Prison Barlinnie
- HM Prison Greenock
- HM Prison Edinburgh
- HM YOI Polmont

Parliamentary Questions
(http://www.scottish.parliament.uk/webapp/wa.search)

HMCIP Reports

Reports on individual prisons between June 2004 - March 2006

Red Folder correspondence

Multi Agency Liaison Group Minutes
Reliance performance data (from SPS website at 29 January 2007)

Comments from Professor Sheila M. Bird

Movement totals (15,984) and prisoners unlawfully at large (4) and % deliveries late to court (7%) in March 2006 were posted on SPS website on 29 January 2007. Final payout to Reliance re March 2006 and back-pay for preceding months have not yet been disclosed.

What do the new data tell us? Actual total for prisoner movements in financial year 2005/06 was 166,945 (mean of 13,900 per month – to nearest 100), of whom 20 prisoners were unlawfully at large with Reliance culpable (financial penalty of £20K to £25K is exacted from Reliance in respect of each such prisoner), or 1.2 unlawfully at large with Reliance culpable per 10,000 prisoner movements (95% CI: 0.7 to 1.8).

At the outset, Reliance’s workload was variously envisaged as 140,000 (cited by Auditor general for Scotland) to 150,000, BUT no proper projection was made of how workload was likely to increase over the 7-years of the Reliance contract. Already, 2005/06 represents a 19% increase on 140,000; and 11% increase on the rather better 150,000 guesstimate by former HM Chief Inspector of Prisons for Scotland, Clive Fairweather.

Comparison between April to October 2005/06 and 2006/07 shows that prisoner movements are up again – by a further, dramatic 16.5%. Reliance is re-negotiating its pay-bands BUT there has been no Ministerial confirmation that this re-negotiation will come at a price exacted from Reliance, namely: timely, public disclosure of monthly outcomes on all of Reliance’s KEY PERFORMANCE INDICATORS. Reliance’s hidden key performance measures include:

- suicide/other death in custody,
- serious incidents of self-harm,
- prisoner-on-prisoner assaults,
- assaults against staff and/or others,
- concerted disorder,
- key/lock compromise or loss,
- late return to any location, and
- late collection from any location.

What remains UNCLEAR (because of missing payout for March 2006) is whether Reliance’s bill has gone up proportionately, or disproportionately, to the observed increase in prisoner movements. Ongoing negotiations may suggest the latter.

Comparison between April to October 2005/06 and 2006/07 - when prisoner movements went up by 16.5% - shows that % late deliveries to court went up from 6.7% to 10%. Moreover, by its own admission, Reliance builds lateness into its operational planning by ensuring that the late arrivals predominantly affect afternoon court sessions. There may be a knock-on consequence of late deliveries back to prisons, one of Reliance’s hidden Key Performance Indicators. Reliance minimizes the sanctions it faces from courts when business is disrupted, but others in criminal justice who have no sanctions to impose may be left to field the logistical consequences.
<table>
<thead>
<tr>
<th>Month of full operation</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Movements</td>
<td>Movements</td>
</tr>
<tr>
<td></td>
<td>(% late to court; unlawfully at large)</td>
<td>(% late to court; unlawfully at large)</td>
</tr>
<tr>
<td></td>
<td>Payout to Reliance so far . . .</td>
<td>Payout to Reliance so far . . .</td>
</tr>
<tr>
<td>January</td>
<td>Not fully operational</td>
<td>14,486 ( 6%; 1)</td>
</tr>
<tr>
<td>February</td>
<td>Not fully operational</td>
<td>13,970 ( 6%; 2)</td>
</tr>
<tr>
<td>March</td>
<td>14,447 (11%; 2)</td>
<td>£1,623,000</td>
</tr>
<tr>
<td>April</td>
<td>12,400 ( 7%; 1)</td>
<td>£1,714,000</td>
</tr>
<tr>
<td>May</td>
<td>13,007 ( 8%; 1)</td>
<td>£1,712,000</td>
</tr>
<tr>
<td>June</td>
<td>13,047 ( 5%; 1)</td>
<td>£1,713,000</td>
</tr>
<tr>
<td>July</td>
<td>11,758 ( 5%; 1)</td>
<td>£1,714,000</td>
</tr>
<tr>
<td>August</td>
<td>14,441 ( 7%; 3)</td>
<td>£1,688,000</td>
</tr>
<tr>
<td>September</td>
<td>14,155 ( 9%; 1)</td>
<td>£1,708,000</td>
</tr>
<tr>
<td>October</td>
<td>14,436 ( 6%; 1)</td>
<td>£1,709,000</td>
</tr>
<tr>
<td>November</td>
<td>15,472 ( 5%; 1)</td>
<td>£1,709,000</td>
</tr>
<tr>
<td>December</td>
<td>13,789 ( 5%; 3)</td>
<td>£1,688,000</td>
</tr>
</tbody>
</table>

Mean totals for 7 months of April to October compared between financial years 2005/06 & 2006/07:

- **7-month actual totals**
  - 13,321 (6.7%; 1.3) £1,708,286
  - Versus prior projected or threshold
  - 11,667 (< 5%; < 1) £1,500,000

- **Projected financial year 12-month movements & minimum payout had Reliance been fully operational throughout 2005/06 (nearest 1000)**
  - 160,000 £20,499,000

- **Versus prior projected . . .**
  - 140,000 £18,000,000
  - ｡ movements up 14% on projection; minimum payout ALSO up 14%

**ACTUAL TOTALS for 2005/06**

- 166,945
- 6.3% late to court: unweighted
- 20 unlawfully at large: R-culpable
- £18,723,000 + March 06 payout

Mean for 9 months of 2006 for which data have been disclosed

- **Actual totals**
  - 15,515 (9%; 1.6) £1,682,429
  - Versus prior projected or threshold
  - 11,667 (< 5%; < 1) £1,500,000
  - **Movements UP 16.5% on same period in 2005/06 but LOWER minimum payout to Reliance & HIGHER % late to court**
  - **7-month actual totals**
    - 15,515 (10%; 1.6) £1,682,429
  - **Versus prior projected or threshold**
    - 11,667 (< 5%; < 1) £1,500,000

**Movements UP 16.5% on same period in 2005/06 but LOWER minimum payout to Reliance & HIGHER % late to court**

- **Projected financial year 12-month movements & minimum payout (nearest 1000)**
  - 186,000 £20,189,000

- **Versus prior projected . . .**
  - 140,000 £18,000,000
  - ☹ movements up 33% on prior projection; BUT minimum payout up only 12%: WHY?

**NB: hidden key performance indicators and unreported back-payments**

* may be 16,148 movements in November 2006 since SPS cites mean of 15,594 escort movements per month for ‘the year to date’.
Justice 2 Committee

3rd Meeting 2007 (Session 2)

Legislative Consent Memorandum - Serious Crime Bill

Note by the Clerk

Purpose
1. The attached legislative consent memorandum (LCM) from the Scottish Executive concerns the Serious Crime Bill currently before the UK Parliament. This includes a draft motion, which will be lodged by the Minister for Justice, asking the Parliament to agree that the UK Parliament should consider certain provisions in the Bill which will legislate in devolved areas.

2. The Serious Crime Bill will:

- introduce Serious Crime Prevention Orders (SCPOs) a new type of civil order, capable of being imposed against individuals or organisations, covering a wide range of potential prohibitions or requirements;
- provide for the merger of the Assets Recovery Agency with the Serious Organised Crime Agency;
- put in place a statutory mechanism to enable public sector bodies to share information between themselves and with the private sector on suspected frauds;
- place the Audit Commission’s National Fraud Initiative, which matches data across a range of public sector bodies to identify fraud, on a statutory footing and expand its scope;
- create new offences of encouraging or assisting crime to plug perceived gaps in criminal law; and

3. Many of the provisions of the Bill are only relevant to England and Wales or Northern Ireland, or if they extend to Scotland, relate to reserved matters. The parts of the Bill which would require the Scottish Parliament’s consent to a Legislative Consent Motion are the application of the offence of breaching a Serious Crime Prevention Order issued in England, Wales or Northern Ireland to Scotland; the extension of production orders and search warrants under POCA for detained cash investigations to Scotland; and the authorisation of the use of force in executing search warrants in Scotland under POCA provisions.

4. This paper sets out a possible timetable for consideration of the LCM and invites the Committee to agree its approach.
Background
5. The Serious Crime Bill was introduced in the House of Lords on 16 January 2007 and can be found on the UK Parliament website at:

http://www.publications.parliament.uk/pa/pabills/200607/serious_crime.htm

Timetable
6. The LCM was lodged on 25 January 2007 and was considered by the Parliamentary Bureau on Tuesday 30 January. It has been referred to the Justice 2 Committee for consideration.

7. It is not yet clear what the timetable for consideration of the Bill is in the House of Lords. It is normal for the Parliament’s consent to be sought before the final amending stage in the Lords.

8. Standing Orders provide that a motion will not normally be taken in the Scottish Parliament earlier than the fifth sitting day after the day on which the lead committee’s report is published (rule 9B.2.3). A suggested timetable, which would allow the Committee to report in good time for Parliament to consider the motion, is set out below.

   6 February Committee considers its approach to the Bill
   7 February Committee requests any written evidence required
   20 February Committee takes any oral evidence
   27 February Committee considers draft report (any amendments to the draft report would then have to be agreed by correspondence)
   1 March Committee’s report published
   w/c 5 or 12 March Motion considered by Parliament

Oral and Written Evidence
9. The Committee will presumably wish to take evidence from the Minister for Justice. The Committee will also wish to consider whether it wishes to hear oral evidence from anyone else.

10. Organisations we have identified who might have an interest are:
   - The Association of Chief Police Officers in Scotland and the Scottish Crime and Drug Enforcement Agency could be asked for their views on the operational implications of the proposals for Scottish police forces.
   - The Law Society of Scotland could be asked for views in relation to the human rights aspects of the proposals.
11. The timetable for hearing any further oral evidence would be fairly limited given the Committee’s commitment to considering legislation. However, some of the session on 20 February could be given over to taking oral evidence.

- Does the Committee wish to seek oral evidence from the Minister for Justice?
- Does the Committee wish to seek any oral or written evidence in addition to this?

Conclusion
12. The Committee is invited to agree its approach to this memorandum and to note the timetable required in order to complete its consideration of the memorandum.

Clerk to the Committee
February 2007
Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Minister for Justice, is:

   “S2M-XXXX Cathy Jamieson: Serious Crime Bill Legislative Consent Motion – UK Legislation - That the Parliament endorses the principle that the offence of breaching a Serious Crime Prevention Order should be extended to Scotland and that amendments to the Proceeds of Crime Act 2002 relating to the use of force in executing search warrants in Scotland under section 387 of that Act and the extension of production orders and search warrants to include cash seizures as set out in the Serious Crime Bill should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by Cathy Jamieson, Minister for Justice, under rule 9B.3.1(a) of the Parliament’s standing orders. The Serious Crime Bill was introduced in the House of Lords on 16 January 2007. The Bill can be found at:

   http://www.publications.parliament.uk/pa/pabills/200607/serious_crime.htm

3. The Serious Crime Bill will:
   - introduce Serious Crime Prevention Orders (SCPOs), a new type of civil order capable of being imposed against individuals or organisations, covering a wide range of potential prohibitions or requirements;
   - provide for the merger of the Assets Recovery Agency with the Serious Organised Crime Agency;
   - put in place a statutory mechanism to enable public sector bodies to share information between themselves and with the private sector on suspected frauds;
   - place the Audit Commission’s National Fraud Initiative, which matches data across a range of public sector bodies to identify fraud, on a statutory footing and expand its scope;
   - create new offences of encouraging or assisting crime to plug perceived gaps in criminal law; and
Merger of Assets Recovery Agency with Serious Organised Crime Agency

4. The merger of the Assets Recovery Agency with the Serious Organised Crime Agency is one of the key features of the Serious Crime Bill. The Bill will transfer certain functions and staff of the Director of the Assets Recovery Agency to the Serious Organised Crime Agency. The Assets Recovery Agency operates for England and Wales and has no operational powers for Scotland except for Revenue purposes, which is a reserved matter. The transfer of functions to the Serious Organised Crime Agency therefore does not have any effect for operational issues relating to policing and criminal justice. In Scotland civil recovery and criminal confiscation will continue to be pursued through the Civil Recovery Unit and the Crown Office and Procurator Fiscal Service.

Scottish Provisions

5. Many of the provisions of the Bill are only relevant to England and Wales or Northern Ireland, or if they extend to Scotland, relate to reserved matters. The parts of the Bill which would require the Scottish Parliament’s consent to a Legislative Consent Motion are;
   • the application of the offence of breaching a Serious Crime Prevention Order issued in England, Wales or Northern Ireland to Scotland;
   • allowing the extension of production orders and search warrants under POCA for detained cash investigations; and
   • the use of force in executing search warrants in Scotland under POCA provisions.

In detail the effect is as follows:-

Serious Crime Prevention Orders

6. Part 1 of the Bill establishes a new system of SCPOs which courts in England and Wales and Northern Ireland will be able to impose. These civil orders will be used to disrupt and prevent the unlawful activities of an individual or an organisation known by law enforcement to be acting unlawfully but who cannot be prosecuted because it is not possible to gather sufficient evidence or because of the costs involved. For example an order might be used to prohibit, restrict or place certain requirements on financial, property or business dealings, an individual’s working arrangements, use of or access to premises or the provision of goods or services by that individual or organisation.

7. An order can contain such terms as the court thinks appropriate for the purpose of preventing serious crime – provided that they are preventative and not punitive in nature. The Bill will impose certain general limits on the types of conditions that can be imposed in order to ensure that the provisions are not too wide-ranging. Breach of an
SCPO without reasonable excuse will be a criminal offence. The penalty for failing to comply with a SCPO is, on summary conviction imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both, or if convicted on indictment, imprisonment for a term not exceeding 5 years or a fine or both.

8. It is not proposed to extend these provisions to Scotland in the Bill. However, in order to ensure that Scotland does not offer a bolt hole for those subject to an English, Welsh or Northern Irish SCPO it would be sensible and beneficial to ensure that it is also an offence in Scotland to breach such an SCPO. As the creation of offences in this area is devolved, consent is being sought for the creation of this new offence to extend to Scotland. Linked to the offence the court is also provided with powers to order the forfeiture of any item in the possession of the subject of an order at the time of the offence, which the court considers to have been involved in the offence.

Amendments to the Proceeds of Crime Act 2002

9. The Bill proposes a number of amendments to the Proceeds of Crime Act 2002, a UK Act which contains a mix of reserved and devolved issues. These are:
   - merger of the Assets Recovery Agency with the Serious Organised Crime Agency;
   - to enable financial investigators who are police staff to exercise more of the powers under POCA;
   - extending the use of production orders to a new category of investigation known as a detained cash investigation;
   - to make explicit the power to use reasonable force in executing search warrants under POCA.

10. The merger of the Assets Recovery Agency with the Serious Organised Crime Agency (discussed at paragraph 4) and the allowing of financial investigators who are civilian police staff to exercise more power under POCA either do not apply or are not necessary for Scotland. Although the financial investigator provisions as drafted do not exclude Scotland, in reality they will not have effect here as the Scottish authorities do not use civilian financial investigators.

11. The POCA provisions in the Serious Crime Bill that affect Scotland are the extension of production orders and search warrants for detained cash investigations and the use of force in executing search warrants. Legislative consent is required for these provisions to take effect in Scotland via the Westminster Bill.

Production Orders and Search Warrants for Detained Cash Investigations

12. The Civil Recovery Unit, who act on behalf of the Scottish Ministers (and the Crown Office and Procurator Fiscal Service for criminal
confiscation matters) make frequent use of production orders when granted in connection with civil recovery and other investigations requiring the production of material beneficial to an investigation. These investigations do not presently extend to cash seized when the police or revenue officers seize cash over £1000 if they have reasonable grounds for suspecting that it is profit of crime or intended for use in unlawful conduct. This is in terms of their powers under section 294 of POCA. Such money can be detained initially for a period of 48 hours. Thereafter, detention needs to be authorised by an order of a sheriff.

13. A production order can be used to obtain a copy of bank statements from financial institutions, which is useful when analysing a person’s finances and determining what income they have received in addition to any legitimate income. A production order is granted by a sheriff following on the application of the Civil Recovery Unit or the Crown Office and Procurator Fiscal Service. Where the cash has been seized because of suspicion surrounding the circumstances in which it is being held rather than as part of a continuing criminal investigation, law enforcement agencies are often limited in the further investigations they can conduct and at present production orders cannot be used when investigating cash seizures. The Scottish Executive would like to see the availability of production orders extended (with the associated ability to apply for search warrants under section 387 of POCA) to cash seizures so that information can be obtained from financial institutions and illegitimate income can be determined. The Serious Crime Bill will make amendments to POCA to achieve this. This will extend powers of investigation in this area and allow for more effective and expedient investigations.

14. Similar provisions are being provided for England and Wales and Northern Ireland. Specific Scottish provisions have been included in the Bill for this purpose. These mirror the provisions being introduced for England and Wales whilst taking account of particular institutional and procedural differences in Scotland from the rest of the United Kingdom. While the Scottish Parliament could legislate in this area there is no suitable legislative opportunity in this Parliament. Legislating for this in the Serious Crime Bill will allow Scottish authorities to have the same powers as their colleagues in England and Wales and Northern Ireland at the same time and ensure that there is no gap in provision in Scotland.

Use of Force in Executing search warrants in Scotland under POCA

15. Under section 387 of POCA a search warrant can be issued in connection with confiscation, civil recovery and money laundering investigations, but there is no explicit power to use force to execute that warrant. This provision puts the use of reasonable force when executing a search warrant beyond doubt.
16. Whilst the Scottish Parliament could pass legislation in this regard in relation to warrants granted in respect of certain civil recovery investigations and some criminal confiscation investigations, the Parliament would not be able to make comprehensive provision here. This is because money laundering and confiscation in relation to drug offences are reserved areas. As these are the most frequent types of investigations for which production orders and hence search warrants are required in criminal investigations it would be unsatisfactory to legislate in Scotland, if these investigations could not be covered. The Bill puts beyond any doubt that the designated proper person (defined in section 412 of POCA as either a constable in a confiscation investigation or a money laundering investigation or the Scottish Ministers or a person named by them, in relation to a civil recovery investigation) can use reasonable force in the execution of a search warrant under POCA.

17. It is the view of the Scottish Ministers that those provisions relating to devolved matters in Scotland will be beneficial in targeting serious crime and will maintain a consistent approach in Scots Law. On SCPOs the extension of the offence to Scotland will ensure that Scotland is not seen as offering a safe haven from prosecution to those persons subject to a SCPO issued elsewhere in the United Kingdom.

Consultation

18. The main provisions of the Bill as they relate to England and Wales were set out in the Home Office consultation paper ‘New Powers Against Organised and Financial Crime’. The consultation period ended on 17 October 2006 and extended to England and Wales. Both the Association of Police Chief Officers (ACPOS) and the Law Society for Scotland responded to that consultation. On SCPOs the Law Society of Scotland raised concerns about the use of such orders mainly from an ECHR perspective and the potential to attach an association with serious crime to an individual on the basis of action they have yet to take and without evidence which meets the current criminal standard. ACPOS are keen to have at their disposal another tool with which to combat serious organised crime but they also highlight the need for consideration to be given to the implications for law enforcement agencies of enforcing such orders.

Financial Implications

19. Production orders for detained cash production order applications will be dealt with by the Civil Recovery Unit. It is difficult to forecast how many applications will be sought each year, but this increased workload will be absorbed by the Civil Recovery Unit. All applications will be lodged with Edinburgh Sheriff Court, with consequent resource implications for Scottish Court Service. The police/HM Revenue and
Customs will be instructed by the Civil Recovery Unit to follow up lines of enquiry which are established through the use of production orders.

Scottish Executive
January 2007
JUSTICE 2 COMMITTEE
3rd Meeting 2007 (Session 2)
Tuesday 6 February 2006

SSI title and number: The Drugs Assessor (Qualifications and Experience) (Scotland) Regulations 2007 (SSI 2007/8)

Type of Instrument: Negative

Meeting: 6 February 2007

Date circulated to members: 1 February 2007

Justice 2 Committee deadline to consider SSI: 19 February 2007

Motion for annulment lodged No

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

1. The Subordinate Legislation Committee asked the Scottish Executive to confirm that the enabling power for the Regulations, section 90 of the Police, Public Order and Criminal Justice (Scotland) Act 2006, would be brought fully into force on or before the date on which the Regulations are due to come into force. The Scottish Executive has confirmed that Section 90 will be fully commenced before this date. The Subordinate Legislation Committee draws the attention of the Justice 2 Committee to this confirmation.

2. The relevant extract from the Subordinate Legislation Committee report is attached as an Annex.

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

Clerk to the Committee
1 February 2007
ANNEX

The Drugs Assessor (Qualifications and Experience) (Scotland) Regulations 2007, (SSI 2007/8)

1. On 23 January the Committee asked the Executive to confirm that the enabling power for the Drugs Assessor (Qualifications and Experience) (Scotland) Regulations 2007 would be brought fully into force on or before the coming into force of the Regulations on Monday 26 February 2006.

The Scottish Executive responds as follows:

2. The Scottish Executive can confirm that section 90 of the Police, Public Order and Criminal Justice (Scotland) Act 2006, under which the Drugs Assessor (Qualifications and Experience) (Scotland) Regulations 2007 have been made, will be fully commenced before the Regulations come into force on 26th February.

3. It is intended that a third commencement order which brings further provisions of the Police, Public Order and Criminal Justice (Scotland) Act 2006 will be sent to the Parliament in due course.
JUSTICE 2 COMMITTEE

3rd Meeting 2007 (Session 2)

Tuesday 6 February 2006

SSI title and number: The Antisocial Behaviour (Fixed Penalty Offence) (Prescribed Area) (Scotland) Regulations 2007 (SSI 2007/15)

Type of Instrument: Negative

Meeting: 6 February 2007

Date circulated to members: 1 February 2007

Justice 2 Committee deadline to consider SSI: 26 February 2007

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
1 February 2007
JUSTICE 2 COMMITTEE

3rd Meeting 2007 (Session 2)

Tuesday 6 February 2006

SSI title and number: The Tenements (Scotland) Act 2004 (Prescribed Risks) Order 2007 (SSI 2007/16)

Type of Instrument: Negative

Meeting: 6 February 2007

Date circulated to members: 1 February 2007

Justice 2 Committee deadline to consider SSI: 26 February 2007

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
1 February 2007