The Committee will meet at 10.15 am in Committee Room 6.

1. **Subordinate legislation:** The Committee will consider the following negative instrument—
   
   the District Courts and Justices of the Peace (Scotland) Order 2007 (SSI 2007/480).

2. **Draft budget scrutiny 2008-09:** The Committee will take evidence from—
   
   Joe Grant, General Secretary, Scottish Police Federation and Professor Arthur Midwinter, Financial Consultant to the Scottish Police Federation;
   
   and then from—
   
   Mike Ewart, Chief Executive and Willie Pretswell, Director of Finance and Business Services, Scottish Prison Service.

3. **Draft budget scrutiny 2008-09 (in private):** The Committee will consider the main themes arising from the evidence session.
The papers for this meeting are as follows:

**Agenda Item 1**

Note by the Clerk on *the District Courts and Justices of the Peace (Scotland) Order 2007 (SSI 2007/480)* J/S3/07/11/1

**Agenda Item 2**

Report by Professor Arthur Midwinter prepared for the Scottish Police Federation J/S3/07/11/2

Submission from the Scottish Police Federation (to follow) J/S3/07/11/3

 Submission from the Scottish Prison Service J/S3/07/11/4

Paper from SPICe and the Adviser (private paper) J/S3/07/11/5

**Documents for information**—

The following documents are circulated for information:

*HM Chief Inspector of Prisons for Scotland: Annual Report 2006-2007*
SSI Cover Note for Committee Meeting

SSI title and number: The District Courts and Justices of the Peace (Scotland) Order 2007, (SSI 2007/480)

Type of Instrument: Negative

Meeting: 11th Meeting, Tuesday 27 November 2007

Justice Committee deadline to consider SSI: 3 December 2007

Motion for annulment lodged: No

SSI drawn to Parliament’s attention by Sub Leg Committee: Yes (extract from the Subordinate Legislation report at Annexe A)

Purpose of Instrument: This Order is being made using an anticipatory exercise of power as provided for in terms of paragraph 10 of the schedule to the Scotland Act 1998. It will ensure the effective operation of those sections which will enter into force on 10 December 2007.

If members have any queries or points of clarification on the instrument which they wish to have raised with the Scottish Government in advance of the meeting, please could these be passed to the Clerk to the Committee as soon as possible, to allow sufficient time for a response to be received in advance of the Committee meeting.
Extract from the Subordinate Legislation Committee’s 10th Report 2007

The District Courts and Justices of the Peace (Scotland) Order 2007, (SSI 2007/480)

1. The Committee asked the Scottish Government for an explanation on the following matters—

(a) why, in article 2, there is no definition of “JP” for the purposes of article 2(1) and article 4;

(b) to clarify its reasons why they consider that article 8 is intra vires, given that section 71(7) and (8) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 do not contain any provision which delegates powers to Scottish Ministers to determine the amounts of payments to members of tribunals from time to time;

(c) to clarify its reasons why it considers that article 10 is intra vires, given that section 71(7) and (8) of the 2007 Act do not contain any provision which delegates powers to a tribunal to determine their own procedures from time to time;

(d) to clarify the effect of article 11(4), in relation to articles 11(1) to (3). In particular, whether it is intended that article 11(4) means that members of the public are excluded from the tribunal, but the JP and anyone acting on his or her behalf may attend to hear evidence;

(e) how the obligation of a tribunal to send to a JP a draft of its findings contained in article 13(1) will be enforced, given that there is no time-limit for implementation attached to it; and

(f) what is the intended effect of the words “On completion of the investigation” at the start of article 14(1), when the tribunal requires to submit a written report? In particular, how does the timing for implementation of this requirement relate to the timing of the requirement in article 13(1), that the tribunal requires to send a draft of its findings on the investigation.

Questions (d) to (f) were asked so that the Committee could determine whether the meaning and effect of the drafting could be clearer.

2. The Scottish Government’s response is at Appendix 1.

3. The Committee draws this instrument to the attention of the lead Committee and Parliament on the grounds that an explanation has been sought from and provided by the Scottish Government with which it is satisfied.
The District Courts and Justices of the Peace (Scotland) Order 2007, (SSI 2007/480)

The Scottish Government responds as follows—

FIRST QUESTION

General background

3. The term “JP” is defined for the purposes of Part 4 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”). Section 59(9) provides, among other things, that in Part IV of that Act:

“a “JP court” is a justice of the peace court, a “JP” is a justice of the peace.”

4. This definition is imported into the Order by virtue of paragraph 8 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (SSI 1999/1379).

5. Articles 6 to 14 of the Order make provision in respect of tribunals which will investigate the conduct of certain JPs. It was therefore thought useful to provide a specific definition of JP for the purposes of those articles to make it clear which JP was being referred to and to make the Order easier to read. That definition is set out in article 2(2) of the Order.

Article 2(1)

6. The reference to JP in article 2(1) is found in the definition of the term “sheriff principal”. It is stated that ““sheriff principal” means a sheriff principal for the sheriffdom for which the JP is appointed”. It was not thought necessary to define this reference to JP in more specific terms. Given the context in which “sheriff principal” is used in articles 6 to 14 of the Order, it would not make sense to read “the JP” as being anyone other than the JP that was under investigation and appointed to that sheriff principal’s sheriffdom.

Article 4

7. In article 4 it was not intended for the terms JP and JP Court to attract any meaning other than that given in respect of Part 4 of the 2007 Act as described above. It was therefore not thought necessary to make specific provision in that regard.

8. We appreciate that including a general definition of “JP” in the Order may have been helpful to the reader. However, when considering those who were likely to be relying on and referring to the Order on the most frequent basis (i.e. JPs themselves; those dealing with administrative matters relating to JPs in the Scottish Government, the Scottish Court Service or local authorities; and the tribunals set up under section 71 of the 2007 Act), on balance we considered that this was unnecessary.
SECOND QUESTION

9. The Scottish Government would agree that specific authority in a parent Act would be required to enable it to make provision in a SSI for the imposition of a fee or a charge. However, it is our view that specific authority is not necessary for the purposes of paying out amounts of money from the Scottish Consolidated Fund. The generality of the power at section 71(7)(a) is such that, in our view, the provision of article 8 is *intra vires*.

10. The Committee may also wish to note that this provision follows the precedent found in regulation 4 of the Justice of the Peace (Tribunal) (Scotland) Regulations 2001 which were made under section 9A of the District Courts (Scotland) Act 1975. The enabling power at section 9A(7) of that Act bears resemblance to the powers used to make the current Order.

THIRD QUESTION

11. The Scottish Government takes the view that it is not necessary for there to be express provision in the enabling power in this regard. The principal enabling power in section 71(7) gives the Scottish Ministers a wide power to make any order as respects the tribunal. Thereafter section 71(8) offers some permissive powers to further narrate proceedings if that is thought necessary.

12. Given the broad and investigative nature of the tribunal it is not thought desirable for the Order to set out detailed procedural rules to try and cover every eventuality. So far as it is thought necessary and desirable to do so the Scottish Ministers have set out the relevant procedure that the tribunal should follow.

13. Again, the Committee may wish to note that this provision follows the precedent found in regulation 6 of the Justices of the Peace (Tribunal) (Scotland) Regulations 2001.

FOURTH QUESTION

14. The effect of article 11(4) is that a tribunal should not be open to members of the public. It is envisaged that the JP and his or her representative would, if they so wished, be present at oral evidence sessions.

FIFTH QUESTION

15. It seems to the Scottish Government to be inappropriate and unnecessary to include any provision as to enforcement of this provision. The tribunal is an administrative body charged with making a decision as to the suitability of a person to act as a JP. The tribunal could be expected to comply with requirements imposed on it within a reasonable time.

16. Any failure to follow this step within a reasonable time could render a decision of a tribunal open to successful challenge by way of judicial review.
SIXTH QUESTION

17. The intended effect is that the tribunal shall not submit a report to the sheriff principal until it has completed its investigation of the JP. This investigation would include having regard to any comments a JP may have on a draft set of findings.

18. In other words, the investigation will not be complete until the requirements of article 13 have been complied with. So, generally speaking, a tribunal would gather any relevant evidence in an investigation, draft a report, send that report to the JP and receive any comments from the JP. The tribunal would then send out its final report as required by article 14.

19. We understand that this is how matters have progressed in the four tribunals which have been held under the Justices of the Peace (Tribunal) (Scotland) Regulations 2001. Regulations 9 and 10 of those regulations make similar provision to articles 13 and 14 of the current Order.

20. The Scottish Government would submit that reading articles 13 and 14 in any other way would be an unnatural interpretation of the provisions, and as a consequence there is no need to make any more specific provision about timings in this regard.
EXECUTIVE SUMMARY

1. This report reviews trends in police funding in Scotland in the post-devolution period.

2. It shows that the Barnett Formula had no direct impact on police funding, as it operates in the form of an unhypothecated block grant which the Executive can allocate according to its priorities. Within the block, Scotland receives full comparability with police spending changes in England.

3. The report also shows that public spending in the Scottish Budget grew by 5.6% per annum in this period, and that Scotland’s share of the UK budget remained stable.

4. However, the research also shows that police spending per capita is the lowest of all four nations of the UK with England spending 20% more, and Wales 13% more. This is inconsistent with other major public services for which Scottish spending is significantly higher, reflecting higher needs and higher unit costs in rural Scotland.

5. This results in Scotland having very low levels of spending on support staff costs, running costs and capital expenditure.

6. The report also shows that police funding has been growing by 2.2% less per annum than the Scottish Budget, and the police share of the Budget has fallen consistently since devolution.

7. By contrast, police funding in local authority budgets has grown in line with other local services.

8. In conclusion, expenditure on policing is the lowest in the UK. This has not arisen because of the financial framework for devolution, but because policing has been a low budget priority for the Scottish Executive since 1999, and because of the low baseline expenditure inherited from the pre-devolution system.
[1] INTRODUCTION

1. This report provides an independent analysis of police funding in Scotland in the post-devolution period. It has been prepared for the Scottish Police Federation, who asked me to assess the impact of the Barnett Formula on police expenditure; and to compare police funding levels with other police services in the UK, and other major public services in Scotland.

2. The Barnett Formula is much misunderstood, and subject to persistent misinterpretation and misrepresentation. Yet it is only a minor element of the financial arrangements for Scottish devolution, which applies only to annual changes in expenditure (normally increases), and it operates on a simple, objective basis. This report begins by setting out the role of the Barnett Formula in the public spending framework.

3. The report then analyses trends in police funding on two levels – across the United Kingdom - and within Scotland. This permits a comprehensive mapping of budgetary allocations to the Scottish Police Service.

[2] THE PUBLIC SPENDING FRAMEWORK

4. Public finance in the UK operates on two key principles regarding expenditure and taxation. Firstly, resource allocation is based on relative need, with the objective of funding broadly similar standards of public services across the UK. Responsibility for resource allocation across the UK – including funding for Whitehall departments and devolved administrations – lies with the UK Treasury.

5. Whilst expenditure need is often expressed through a needs assessment formula, it can also be determined on a simple judgemental basis. In Scotland’s case, this has been operationalised in practice by using English spending levels as a benchmark, and then considering additional Scottish needs.
The Treasury’s Needs Assessment Study of 1979 (1), concluded that the task involves complex and politically sensitive judgements, and no neat formula could be devised for distributing resources between the four nations of the UK. The key points were that:

- in no service was it possible to express the main policies in terms of the achievement of clearly defined standards;
- provision according to needs does not mean that identical provision is made in all areas;
- not all factors taken into account were quantifiable;
- it is not therefore reasonable to construct a single coherent model of policies, standards and levels of service to which could be related all the objective information needed to determine relative expenditure needs;
- the results were by no means final; and
- the departments who have carried out the study agree that the methods of assessment are a long way from providing a wholly definitive means of expressing the relative expenditure needs of the four countries.

In short, whilst needs-based allocations can draw considerably on objective data to inform the decision-making process, the art of needs assessment remains imperfect, and decisions in the final analysis reflect political judgement, and resource allocation formulae where applied rest on their political acceptability (2).

In practice, British Governments have consistently accepted that the three Celtic nations have above-average expenditure needs. For most of the last century, Scotland’s allocations have been determined through a population-based formula. The Goschen Formula applied from 1880 to 1959. For the next twenty years, Scottish spending was agreed through bilateral negotiations with the Treasury, in common with Whitehall departments. Since 1979, it has been determined through the Barnett Formula in which expenditure changes to current baseline reflect population shares.

This approach removed the need for annual negotiations with the Treasury over small amounts of public money in the UK context, giving the former Secretary of State for Scotland freedom to determine the spending mix between departments, as he was not bound to replicate Whitehall’s spending decisions on which the total was determined. This arrangement was continued after devolution.

The second core principle is that overall taxation is broadly progressive, reflecting ability-to-pay. All national taxation is taken into the Treasury, and within a uniform system, there is no specific link between spending and taxation on a territorial basis. Put simply, Scottish expenditure reflects political decisions on spending, and is unrelated to the tax revenues raised in Scotland. Official estimates regularly show public spending in Scotland exceeds the revenues raised, described in the GERS report as a fiscal deficit. It is not the result of economic mismanagement, but reflects the fiscal and budgetary policies of the UK government. In short, public spending decisions are funded on a UK
basis, and reflect judgements over relative need, not revenues raised. Fiscal deficits are not a problem within the UK, and nine of the twelve regions have such deficits.

11. After the 1997 General Election, the New Labour Government adopted a revised fiscal framework to strengthen control of public spending, and public borrowing in particular. On the expenditure side, it was keen to improve financial planning and performance reporting through an objectives and targets approach focussed on expenditure outcomes. (In practice, linking resources to results remains problematic.)

12. Labour introduced multi-year budget plans which operate on a three-year planning cycle. Allocations are fixed for years 1 and 2, and indicative for year 3, which is revisited and becomes year 1 of the next cycle. The process is known as the Spending Review. Labour cancelled the 2006 Spending Review and delayed the 2007 announcement until the Autumn. SR2007 will cover fiscal years 2008-9; 2009-10; and 2010-11. Spending is planned and controlled at the UK level, and on the devolved administrations for Scotland, Wales and Northern Ireland.

13. Within the public spending framework, spending programmes fall into two categories – the Departmental Expenditure Limit (DEL) which covers expenditure deemed to be controllable, and Annually Managed Expenditure (AME) which covers those elements of expenditure which are not readily predictable. In the main, this paper is concerned with the DEL, which is further subdivided into Resource and Capital budgets. This division was introduced to remove the bias against investment in the previous regime (3).

14. Further, budgets are now planned and controlled through a Resource Accounting and Budgeting (RAB) system, a radical departure from the cash-based system applied since the early 1980s. RAB requires a more robust and systematic approach to asset management, in an accounting format which takes account of non-cash economic costs such as annual depreciation and capital charges. It was assumed that this would enhance decision-making by programme managers.

15. There is also now an End-Year Flexibility (EYF) arrangement which allows the Executive to carry forward unused resources from one year to the next, thus eliminating the need for short-term bursts of “quickspend” as the budget year ends to avoid losing unspent monies to the Treasury. Further, to protect capital investment, money cannot be transferred from capital budgets to resource budgets. Capital budgets traditionally have higher levels of spending slippage, and have lost out in the past through being transferred to meet current costs.

16. The Scottish Budget totals are planned within the UK public expenditure targets, and controlled by the Treasury as part of its macroeconomic management function. In aggregate terms, it is known as Total Managed Expenditure, or TME. Within TME, the DEL accounts for around 86% of the budget, and it is the DEL which is determined through the Barnett Formula.

17. The arrangements for planning and controlling devolved expenditure are set out in a Treasury document, the Statement of Funding Policy, which is revised for each Spending Review cycle. The Barnett Formula was first used in the 1978 Public Expenditure Survey, and was retained for devolution on the grounds that it has produced fair settlements for Scotland in annual public expenditure rounds.
18. The Barnett Formula determines changes to the Scottish DEL, not the total allocation, which is mainly based on the historic baseline. Scotland receives a population-based proportion of changes in planned spending on comparable services in England (or on occasion, England and Wales).

19. There are three factors which effect the changes to the Scottish DEL in a Spending Review. These are:

- The quantity of change in planned spending in UK departments;
- The extent to which the relevant UK programme is comparable with the services carried out by each devolved administration;
- Scotland’s relevant population share.

20. The calculation is made by multiplying these three factors together. The sum of such changes represents the aggregate net change to the Assigned Budget element of the DEL, but it is for the Scottish Parliament to allocate spending within these budgets according to its priorities.

21. AME refers to those programmes of expenditure which are difficult to forecast accurately, and therefore dealt with outside the block, and not subject to EYF. Increases in costs will normally be met by the Treasury, underspending remains with the Treasury, and increases in AME which result from decisions taken by the Executive must be met from within the Scottish Budget. Local Authority Self-Financed Expenditure (LASFE) is classified as AME, as it is not under Executive control.

22. For Treasury control purposes, police expenditure is classified as part of the Public Safety programme, and all budgets are fully comparable (i.e. 100% comparability) for Barnett consequentials (i.e. resources flowing through Barnett based on UK spending decisions). The relevant budgets are: Police Grant; Police Special Grants; Police Capital Grants; Organised and International Crime; Police Complaints Authority; Police Information Technology Organisation; Central Police Training and Development Agency; National Criminal Intelligence Service; National Crime Squad; Organised Crime (Drugs); Crime Reduction; Security Industry Authority; and the Independent Police Complaints Commission.

23. One of the political consequences of devolution has been concern at Westminster that the Barnett Formula is now over-providing Scottish funding levels relating to need, given the improvement in the Scottish economy in recent years. There are intermittent calls for a new needs assessment study, and the devolution legislation, which was endorsed in a referendum, makes it clear that any change to the financial arrangements would only be made following such a study.

24. The Treasury study referred to earlier concluded that Scottish expenditure was 7% above estimated need, but as the assessment was less than robust, the differentials could be entrenched in a population-based formula.

26. It has been argued that in the long term Barnett will result in convergence of Scottish per capita spending with the UK average. This is because the Scottish baseline expenditure in
1978 was 22% above the UK average, but the increment of growth is based on equal amounts of spending per capita, and this will slowly erode the advantage.

27. In practice, however, the differential has been maintained because Scotland’s falling share of the UK population has helped offset the convergence effect. Further, Barnett does not apply to supplementary allocations (known as In-Year Allocations); nor to interdepartmental transfers, which normally increase Scottish funding levels. Spending on Barnett related services has fluctuated between 21% and 27% above the UK average since then, and around 23-24% above since devolution (4).

28. Whilst the Scottish DEL has received lower percentage increases under Labour’s Spending Reviews, in per capita terms, the differential has remained stable. So too has expenditure outwith the Formula. For the past decade, Scotland has received around 10% of Identifiable Public Expenditure, with around 8.5% of the UK population, delivering spending levels of 18% above the UK average over that period. Barnett protects the baseline – as is the norm in UK expenditure planning – and as an incremental method for adjusting spending at the margins, has delivered stability in allocations.

29. Many criticisms of the Barnett Formula are made from a particular territorial perspective, and are based on the dubious assumption that “their area” would undoubtedly benefit from replacing Barnett with a needs-based formula (5). Such an assumption is guesswork. Indeed, Scotland continues to score highly on relevant need indicators, such as poverty, sparsity and ill-health. Needs assessment is not rocket science.

30. Neither Labour nor the Conservatives are committed to a review at UK level, and only the LibDems favour a needs assessment model, but as part of a federal structure. It is well recognised in the Treasury that any excess spending over needs involves small amounts of money in UK terms, making the political merit of such a review dubious.

31. My advice to the Federation would be to assume that the Barnett Formula will continue in the short term, and at least throughout the next Spending Review cycle, but probably much longer. Any replacement approach would require an extensive review and consultation process, with stability factors built into allocations to avoid major disruption. For the present purposes, however, it is clear that Barnett has no direct effect on police expenditure in Scotland as it determines the total allocation, not the mix. Nor has it had any adverse indirect effect, as Scotland’s share of public spending has remained stable.

32. Police expenditure levels are the results of decisions taken by the Scottish Executive and police authorities. Executive support for police expenditure is provided through Police Grant, Revenue Support Grant and Police Capital Grant. Local authorities also finance police expenditure through local taxation. The first two grants are for the core police service running costs, over which local authorities have some discretion, and make a financial contribution, and both are within Aggregate External Finance (AEF) in the local government settlement. Police capital grant finances all of police capital expenditure, and is referred to as being outwith AEF.

33. There are, however, differences in the control systems within the UK. Whilst police is a devolved function in Scotland, it is a reserved function in Wales and Northern Ireland. Moreover, spending on police (and other public protection functions) has been significantly higher in Northern Ireland for many years because of the security situation there. Much of the subsequent analysis excludes Northern Ireland as appropriate.
34. I noted earlier that British Governments have consistently allocated higher per capita public expenditure to Scotland than the UK average. This has been recorded in Treasury statistics through the Annual Financial Returns. Practice is to provide an expenditure index, using the UK figure for spending per capita as the average scoring 100. Indices above 100 therefore indicate above average expenditure, e.g. 114 is equivalent to 14% above average.

35. The approach used for the official statistics is to classify expenditure on the basis of who benefits from it. Spending on domestic public services such as health or education is treated as benefiting residents of Scotland, whilst spending on defence or foreign affairs is deemed to benefit all residents of the UK, and classified as “non-identifiable” on a regional basis. Clearly, such a division cannot be exact as, for example, university expenditure in Scotland can benefit students from elsewhere in the UK. Police spending is classified as identifiable.

36. Comparisons of the official estimates confirm Scotland’s spending advantage. These have been reported in the Treasury’s Public Expenditure Statistical Analyses (PESA) since 1973. Scotland’s per capita index relative to the UK averaged 121 from then until 1990, from an initial score of 118. This growth resulted from a period of severe economic recession and manufacturing decline in Scotland, with Scottish economic output and household incomes well below the UK average, and GDP per capita reaching a low point of 88 in 1988. Scotland’s high levels of public expenditure are therefore well established (6).

37. Since 1990, however, the index has averaged 118, and 117 in the most recent PESA for 2006-7. This reflects the narrowing of the differentials in economic performance relative to the UK over the past decade. PESA also provides an expenditure index for the main programmes of government. Police spending falls within the Public Order and Safety programme, which also includes justice and prisons expenditure. Scotland’s relative expenditure index varies between 89 for Public Order and Safety to 229 for Employment Spending. Public Order and Safety fares poorly relative to all other major public services in Scotland (see Table 1). The Public Order and Safety programme scores 89, some 11% below the UK average and 28% below the Scottish average.

38. Moreover, this relatively low index is long standing. In 1990-1, the Public Order and Safety Index was 106, compared with the Scottish average index of 119. In 2000, the Public Order and Safety Index was 104, compared with the Scottish average index of 118. This is not surprising given the incremental approach to public spending which protects baselines, and therefore changes occur very slowly. Indeed, in 1976-7, its predecessor, the Law, Order and Protective Services Programme, stood at 93 (HM Treasury 1979). Thereafter it fluctuated from 106 in 1990-1, down to 97 by 1997-8, then increasing again slightly. But within a range of 93 to 106, it is clearly well below the average expenditure index relative to the UK. This has therefore been a long-term funding position.

39. It also compares poorly with most programmes. In the most recent estimates, it scores 82, compared with 109 for education; 112 for health; 166 for housing; and 138 for roads. These results are set out in full in Table 1, which shows that Public Order and Safety spending is consistently lower than all four of these programmes.
40. These recent results, however, have been effected by the increasing sophistication in the definition and classification of programme expenditure, and improved data following the McLean Report on spending in the English regions (7). The result has been a “broadening of the coverage of identifiable expenditure in England and Wales in particular, so that almost all spending by Whitehall departments is treated as identifiable where there is equivalent spending by a devolved administration” (8).

41. This had a marked effect on relativities in the Public Order and Safety Programme, which has risen for England and Wales relative to spending for Scotland and Northern Ireland, suggesting the gap was greater than estimates showed in the past.

42. A further important change was the introduction in the post-devolution period of spending estimates for the nine English regions, and further disaggregation of the programme data on a functional basis. This provides police expenditure on a country basis from 2001-2 (see Table 2).

43. The data has been recalculated into a per capita and index basis (Table 3). This shows that police expenditure in Scotland is the lowest of all four nations of the UK, ranging between 75% and 83% of the UK average. Strict comparisons with England – because of the high additional costs of policing London – and Northern Ireland - are problematic, but the low level of spending relative to Wales is puzzling. Whilst no directly comparable regional statistics are available, CIPFA estimates show that London, with 15% of the population, is responsible for 20% of police expenditure in England (9). That is, spending per capita in London is around 33% above the English average. We can provide a reasonable comparison of spending between Scotland and England by excluding London from the calculation on this basis. This reduces police spending in England from £255 to £240 per capita, still higher than the Scottish figure of £213.

44. The CIPFA statistics referred to allow us to examine the consequences of the Scottish differential. These differ from the PESA statistics referred to above as they include spending funded by reserves, but the broad pattern is similar based on the net expenditure estimates only. The most recent complete data set is for 2006-7.

45. This shows Scotland incurring an above average share on police salaries at 10%, but lower shares of running costs (6.5%) and capital expenditure (6.5%) (see Table 8). In addition, although this will vary from year to year, Scotland records 14.9% of pensions expenditure, and negligible spending on police community support officers expenditure (0.7%).

46. These results are consistent with those highlighted earlier for the Public Order and Safety Programme. PESA also disaggregates English spending data onto a regional basis, which shows that higher Public Order and Safety spending as a whole is inflated by the higher spending in London (158), but that spending in Scotland is also lower than North East England (113), North West England (109) and Yorkshire and Humberside (91), as well as Wales (105). By contrast, Scotland spends more than these English regions on transport, housing, health and education.

47. This raises the question as to whether Scotland’s lower spending reflects lower need for policing. The only UK-wide comparative assessment of expenditure need was carried out by the Treasury in 1979, as part of the preparations for devolution. At that time, police expenditure was excluded from that study, as it was not to be a devolved function.
48. Logically, however, there ought to be an overlap between the pressures which drive spending on other aspects of the Public Order and Safety programme – namely justice (courts, legal aid, criminal injuries and compensation), and treatment of offenders (prisons and probation service). This study identified population, crime and poverty as the key factors influencing spending, and assessed Scotland’s expenditure need at 5% above average.

49. A more recent exercise in police needs assessment is the report on police Grant Aided Expenditure (GAE) assessments published in 2004. This study reached findings which are broadly consistent with the Treasury study. It identified a range of objective drivers of police expenditure across four components of police workload - crime, community safety, traffic and public order - and it tested these factors via regression analysis for statistical relationships with crime rates, accident rates, etc.

50. This report concluded that the principal factor determining financial allocations should be population, with additional weightings for secondary factors which add to policing costs. The report further established a correlation between deprivation – as measured by benefit recipients – and crime rates, and high urbanisation. Deprivation factors were weighted at 0.75, and urbanisation at 0.50.

51. The model therefore is based on empirical observations and plausible assumptions, that:-

- population, deprivation, and urbanisation are fair indicators of the numbers of crimes likely to be committed in any area;
- levels of crime are a fair proxy for police workload; and
- police workload is a fair proxy for costs.

52. Similar assumptions and arguments were made for the traffic comparisons, which demonstrated a weak correlation between accident rates and population sparsity. The other two components were determined judgementally.

53. This model captures most of the key drivers of police expenditure in terms of expenditure need. My own view would be that it understates the impact of sparsity on police costs, as policing crime levels in a concentrated urban context will be less costly than policing similar crime levels in a rural context, because of the impact of distance in attending to, and dealing with, incidents in remote rural communities. Such cases are reflected in higher costs of provision through small schools in education, small GP practices, and longer hospital stays in health; or elongated roads networks per head of population in transport. Logically, I would expect more policemen per head of population to be needed to police a remote rural population than a city housing estate of similar size, and such rural costs are important drivers across Scotland as a whole.

54. Sparsity of population is a well established factor driving costs of delivery, and provision is made for such costs in local government, health service and further education resource allocation formulae in Scotland. It requires higher manpower levels and higher transport costs in policing. As the most recent Executive report on Government Expenditure and Revenue in Scotland (GERS) observed, Scotland is “the most sparsely populated area in the UK, and lower population density raises costs”.

Whilst Scotland’s economic performance has improved relative to the UK average in the past decade, it still records relatively high levels of poverty and deprivation compared with the rest of Great Britain. The most recent Regional Trends data records Scotland as having unemployment rates some 25% above the UK average; and benefit recipient rates some 25-27% above average; road mileage networks some 54% greater than average; and sparsity levels four times the UK average. Unfortunately, differences in legal systems, recording practices and classifications means that recorded crime figures for Scotland are not comparable to those for England and Wales, but Regional Trends does publish comparable data for offences committed against households, and Scotland reports a higher rate of offences per 10,000 households at 3,309, compared with 3,001 for England, and 2,608 for Wales.

Whilst such factors would probably be weighted at less than 1.0 in terms of needs assessment, they still suggest that Scotland has higher expenditure needs than England or Wales, yet spending on policing is lower in per capita terms than in both, even after allowing for a London effect.

[4] Police Funding in Scotland

The Scottish Executive provides funding for policing through Police Grant and Police Capital Grant, within the AEF allocations for local authorities. Police grant is paid at a rate of 51% of eligible expenditure within the GAE provision for police. It also funds common police services directly through its Police Central Government Programme.

GAE is the amount the Executive believes a police authority requires to spend to provide a standard service efficiently. The statistical data shows that police GAE has grown significantly in real terms, from £910m to £1071m, an increase of 17.7% at 2006-7 prices, but less than the 28.2% increase for the Scottish Budget overall. Police grant has grown broadly in line, at 17.8% (Draft Budget 2007-8).

Table 6 shows that the police share of GAE has remained broadly stable at around 11.8%, fluctuating slightly from year to year. GAE is funded by Police Grant, Revenue Support Grant and Council Tax, with any spending above GAE wholly financed by local taxation (see Table 4). Table 5, however, shows that police GAE as a percentage of the Scottish Departmental Expenditure Limit (the block allocation) has fallen consistently each year, from 4.61% in 2002-3 to 4.11% in 2007-8, equivalent to around £134m of funding.

When all the components of police funding are added together, Table 4 shows that spending grew by 16.8% compared with the 28.2% growth in TME. That is, by 3.4% per annum for policing, compared with 5.6% for all services. The clear conclusion is, therefore, that whilst police funding has grown in real terms since devolution, it has done so at a much slower rate than other Executive programmes, and its share of the Departmental Expenditure Limit has fallen as a result. In short, despite the rhetoric of tackling crime in Executive policy, policing has been a low priority in terms of the public finances.

Police Authorities and Joint Police Boards are requisitioning bodies, with the precepts levied on the constituent authorities. Police GAEs are disaggregated and allocated to the constituent authorities for expenditure control purposes. In 2002-3 and 2003-4 police
authorities set budgets equivalent to the police GAE total for Scotland. Since then, they have set budgets slightly above GAE, e.g. by £1 million over a total of £1045m in 2006-7.

62. In the previous section, the evidence showed that policing had been a low priority in budget-making for the Scottish Executive, even though reducing crime was one of its key priorities in Spending Review 2002 (9). Local authorities operate classic incremental budgetary systems operating through marginal adjustments to the current baseline.

63. Table 7 shows clearly that, as for GAE, police funding has remained broadly stable over the five year period, with slight annual fluctuations. The police share fell slightly in 2003-4, then increased marginally for each of the next three years. In short, police funding was treated similarly to other local services, in contrast with its low priority in the Executive Budget.

64. As with Executive funding, police budgets have been growing in real terms, in line with increases in local government expenditure, but at a slower rate than funding for the Executive’s own departmental programmes.

[5] Conclusions

65. The first part of my remit is to examine the impact of the Barnett Formula on police expenditure in Scotland. The research undertaken shows clearly that the Scottish block allocation is based on full comparability with police expenditure in England, and this is reflected through the operation of the Barnett Formula.

66. My judgement is that the Formula itself has had no adverse effect on police funding in Scotland as the Barnett related increases for all comparable spending in England is used to build up an aggregate total which is available to the Scottish Executive as a block grant which it can allocate according to its own priorities. There is therefore no direct link between the Formula and police funding in Scotland.

67. However, it could have been adversely affected if Scottish public spending as a whole had been reduced as a result of the Formula. This did not occur, as public spending grew in real terms by 5.6% per annum over the period, whilst Scotland’s share of the UK Budget remained broadly stable.

68. The second part of my remit is to undertake comparative analysis of police spending in Scotland relative to police spending in the rest of the UK; and to other major public services in Scotland. The research reveals that police expenditure per capita is significantly lower than in England, which is almost 20% higher than in Scotland, or 13% if London is excluded; and also than Wales, which is 12% above Scotland. Northern Ireland spends 122% more than Scotland because of the security problems there. But overall, police expenditure in the UK is 21% higher than in Scotland.

69. This is a significant difference from the conventional pattern, as for all other major public services, Scottish spending levels are well above the UK average.

70. This higher spending is a reflection of Scotland’s higher levels of social need, reflected in measures of poverty, deprivation and poor health, and through higher unit costs associated with service provision in rural Scotland. The report shows that these need factors also
drive police expenditure, which makes Scotland’s low level of funding a puzzling anomaly.

71. Analysis of the Scottish Budget shows that one reason for the funding gap is the consistently low priority given to police funding since devolution. Whilst the Scottish Budget has been growing by 5.6% per annum in real terms, the police budget has only been growing by 3.4% over the same period.

72. This is the direct result of Executive decisions, rather than Whitehall or local government. Police funding in local budgets has grown in line with all local services, but below the growth in public spending in the devolved budget.

73. In conclusion, therefore, expenditure on police in Scotland is the lowest of the four nations of the UK. This has not arisen because of the financial framework for devolved government, but directly from the political priorities of the Scottish Executive exercised in the three Spending Reviews since the establishment of the Scottish Parliament, and the low baseline inherited from the pre-devolution system.

Table 1: Index of Public Spending in Scotland on Key Public Services (UK = 100)

<table>
<thead>
<tr>
<th>Programme</th>
<th>1990</th>
<th>2000</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>130</td>
<td>124</td>
<td>109</td>
</tr>
<tr>
<td>Health</td>
<td>124</td>
<td>116</td>
<td>112</td>
</tr>
<tr>
<td>Housing</td>
<td>144</td>
<td>164</td>
<td>166</td>
</tr>
<tr>
<td>Roads</td>
<td>128</td>
<td>123</td>
<td>138</td>
</tr>
<tr>
<td>Public Order</td>
<td>106</td>
<td>104</td>
<td>82</td>
</tr>
<tr>
<td>Scottish Average</td>
<td>119</td>
<td>118</td>
<td>117</td>
</tr>
</tbody>
</table>

Source: GERS and PESA

Table 2: Police Spending Across the UK (£ per capita)

<table>
<thead>
<tr>
<th>Year</th>
<th>Scotland</th>
<th>Wales</th>
<th>N. Ireland</th>
<th>England</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001-2</td>
<td>157</td>
<td>171</td>
<td>432</td>
<td>186</td>
<td>190</td>
</tr>
<tr>
<td>2002-3</td>
<td>164</td>
<td>186</td>
<td>444</td>
<td>201</td>
<td>204</td>
</tr>
<tr>
<td>2003-4</td>
<td>182</td>
<td>205</td>
<td>437</td>
<td>225</td>
<td>227</td>
</tr>
<tr>
<td>2004-5</td>
<td>192</td>
<td>211</td>
<td>462</td>
<td>245</td>
<td>245</td>
</tr>
<tr>
<td>2005-6</td>
<td>199</td>
<td>239</td>
<td>471</td>
<td>265</td>
<td>264</td>
</tr>
<tr>
<td>2006-7</td>
<td>213</td>
<td>239</td>
<td>474</td>
<td>255</td>
<td>257</td>
</tr>
</tbody>
</table>

Source: PESA 2007
Table 3: Index of Police Expenditure Across the UK
(UK = 100)

<table>
<thead>
<tr>
<th>Year</th>
<th>Scotland</th>
<th>Wales</th>
<th>England</th>
<th>N. Ireland</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001-2</td>
<td>83</td>
<td>90</td>
<td>98</td>
<td>227</td>
<td>100</td>
</tr>
<tr>
<td>2002-3</td>
<td>80</td>
<td>91</td>
<td>99</td>
<td>218</td>
<td>100</td>
</tr>
<tr>
<td>2003-4</td>
<td>79</td>
<td>90</td>
<td>99</td>
<td>193</td>
<td>100</td>
</tr>
<tr>
<td>2004-5</td>
<td>78</td>
<td>86</td>
<td>100</td>
<td>189</td>
<td>100</td>
</tr>
<tr>
<td>2005-6</td>
<td>75</td>
<td>90</td>
<td>100</td>
<td>178</td>
<td>100</td>
</tr>
<tr>
<td>2006-7</td>
<td>83</td>
<td>93</td>
<td>99</td>
<td>184</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: PESA 2007

Table 4: Police Spending in the Scottish Budget
(£m 2006-7 prices)

<table>
<thead>
<tr>
<th>Year</th>
<th>Police Central Government</th>
<th>Police Capital</th>
<th>Police GAE</th>
<th>Police Loan Charges</th>
<th>Total Police</th>
<th>TME</th>
<th>Growth in Police Spending</th>
<th>Growth in TME</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002-3</td>
<td>86.3</td>
<td>32.9</td>
<td>909.7</td>
<td>15.0</td>
<td>1043.9</td>
<td>23767.9</td>
<td>+16.8%</td>
<td>-28.2%</td>
</tr>
<tr>
<td>2003-4</td>
<td>81.6</td>
<td>28.4</td>
<td>955.1</td>
<td>14.6</td>
<td>1079.7</td>
<td>25408.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2004-5</td>
<td>104.2</td>
<td>32.9</td>
<td>982.3</td>
<td>14.2</td>
<td>1133.6</td>
<td>26697.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2005-6</td>
<td>109.9</td>
<td>32.2</td>
<td>1028.1</td>
<td>13.9</td>
<td>1184.1</td>
<td>28059.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2006-7</td>
<td>103.8</td>
<td>31.4</td>
<td>1045.2</td>
<td>14.7</td>
<td>1195.1</td>
<td>29748.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2007-8</td>
<td>104.6</td>
<td>30.6</td>
<td>1070.4</td>
<td>14.3</td>
<td>1219.9</td>
<td>30473.6</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Draft Budget 2007-8

Table 5: Police GAE as a percentage of Scottish DEL

<table>
<thead>
<tr>
<th>Year</th>
<th>Police GAE (£bn)</th>
<th>Scottish DEL (£bn)</th>
<th>% Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002-3</td>
<td>0.822</td>
<td>17.807</td>
<td>4.61</td>
</tr>
<tr>
<td>2003-4</td>
<td>0.888</td>
<td>19.755</td>
<td>4.50</td>
</tr>
<tr>
<td>2004-5</td>
<td>0.939</td>
<td>21.421</td>
<td>4.38</td>
</tr>
<tr>
<td>2005-6</td>
<td>1.003</td>
<td>23.237</td>
<td>4.31</td>
</tr>
<tr>
<td>2006-7</td>
<td>1.045</td>
<td>25.304</td>
<td>4.13</td>
</tr>
<tr>
<td>2007-8</td>
<td>1.099</td>
<td>26.773</td>
<td>4.11</td>
</tr>
</tbody>
</table>

Source: Draft Budget 2007-8
Table 6: Police Share of GAE

<table>
<thead>
<tr>
<th>Year</th>
<th>Police GAE (£m)</th>
<th>Total GAE (£m)</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002-3</td>
<td>822.1</td>
<td>6992.5</td>
<td>11.8</td>
</tr>
<tr>
<td>2003-4</td>
<td>888.8</td>
<td>7667.9</td>
<td>11.6</td>
</tr>
<tr>
<td>2004-5</td>
<td>939.0</td>
<td>8240.9</td>
<td>11.4</td>
</tr>
<tr>
<td>2005-6</td>
<td>1003.6</td>
<td>8707.3</td>
<td>11.4</td>
</tr>
<tr>
<td>2006-7</td>
<td>1045.2</td>
<td>8987.9</td>
<td>11.6</td>
</tr>
<tr>
<td>2007-8</td>
<td>1098.9</td>
<td>9269.5</td>
<td>11.9</td>
</tr>
</tbody>
</table>

Source: Draft Budget 2007-8

Table 7: Police Expenditure in Local Authority Budgets

<table>
<thead>
<tr>
<th>Year</th>
<th>Police (£m)</th>
<th>All Services (£m)</th>
<th>% Share (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002-3</td>
<td>822.3</td>
<td>8348.6</td>
<td>9.85</td>
</tr>
<tr>
<td>2003-4</td>
<td>888.8</td>
<td>9204.1</td>
<td>9.67</td>
</tr>
<tr>
<td>2004-5</td>
<td>937.6</td>
<td>9688.2</td>
<td>9.68</td>
</tr>
<tr>
<td>2005-6</td>
<td>1006.0</td>
<td>10247.2</td>
<td>9.82</td>
</tr>
<tr>
<td>2006-7</td>
<td>1046.3</td>
<td>10586.1</td>
<td>9.88</td>
</tr>
</tbody>
</table>

Source: CIPFA Rating Review, Scotland

Table 8: Selected Elements of Police Expenditure 2006-7

<table>
<thead>
<tr>
<th>Cost Element</th>
<th>Scotland (£m)</th>
<th>UK (£m)</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police Officers Salaries</td>
<td>619.3</td>
<td>6512.0</td>
<td>9.5</td>
</tr>
<tr>
<td>PCSO Salaries</td>
<td>1.4</td>
<td>204.8</td>
<td>0.7</td>
</tr>
<tr>
<td>Other Staff Salaries</td>
<td>160.5</td>
<td>2156.2</td>
<td>7.4</td>
</tr>
<tr>
<td>Pensions</td>
<td>329.5</td>
<td>2204.3</td>
<td>14.9</td>
</tr>
<tr>
<td>Running Costs</td>
<td>141.7</td>
<td>219.8</td>
<td>6.5</td>
</tr>
<tr>
<td>Capital</td>
<td>52.4</td>
<td>799.7</td>
<td>6.5</td>
</tr>
</tbody>
</table>

Source: CIPFA Police Services Estimates 2006-7
References


6. The official statements of this position can be found in Scottish Office (1997) Scotland’s Parliament CM 3658 (Edinburgh, HMSO Ch.7) which states that the Barnett Formula has delivered “fair settlements” for Scotland. For a review of the position over time, see G. McCrone (1999) “Scotland’s Public Finances from Goschen to Barnett”. Quarterly Economic Commentary, Vol.24, No.2, pp.30-45.


The Author

Professor Midwinter retired as Dean of the Faculty of Arts and Social Sciences at the University of Strathclyde in 1999. Since then, he has concentrated on research and consultancy in public finance. Midwinter was the Budget Adviser to the Finance Committee of the Scottish Parliament from 2002 to 2007. He is currently Visiting Professor at The Institute of Public Sector Accounting Research at the University of Edinburgh.
DRAFT BUDGET SCRUTINY 2008-09

SUBMISSION FROM THE SCOTTISH POLICE FEDERATION

Submission to the Justice Committee on Police Funding

We would have wished to submit a more comprehensive paper for the Committee but the Draft Budget lacks the necessary detail on Police GAE and Police Capital Grant within the Local Government settlement to make a robust assessment. We have asked for more information from the Government which has been partially fulfilled (correspondence enclosed).

Police GAE

The spending plans section simply reports a “commitment to making an additional 1000 police officers available in our communities through increased recruitment, improved retention and redeployment” – and investing “£13.5m/£18m/£22.5m in recruiting an additional 500 police officers by 2011.”

This raises a number of practical questions about delivery. Firstly, is the additional funding intended wholly for recruitment of additional officers?

If not, what provision has been made for increased pension costs in the light of increased numbers of retirements over the next two years? £15m was provided in 2007-8, and this will need to be increased.

Thirdly, what assumptions are being made about retention? It is unlikely that older officers will want to continue in post to undertake rigorous beat duties in communities. Moreover, retaining existing officers does not add to police numbers, it simply reduces recruitment.

In the absence of GAE information, our consultant has provided estimates of the GAE totals required to increase the baseline to meet inflation and to add in the £54m mentioned in the budget. This would require GAE provision of

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007-8</td>
<td>£1099m</td>
</tr>
<tr>
<td>2008-9</td>
<td>£1164.5m</td>
</tr>
<tr>
<td>2009-10</td>
<td>£1215m</td>
</tr>
<tr>
<td>2010-11</td>
<td>£1235.5m</td>
</tr>
</tbody>
</table>

These figures provided a broad benchmark basis for comparison to the Government’s figures when these are published. They include estimates of an extra £22m for pensions in 2008-9, and £16m for 2009-10.

Efficiency Savings

In this years exercise, the Government is assuming all savings will be cash-releasing. That means there will be cash savings arising from providing the same service at lower cost.
The Minister previously quoted savings of £25m and £42m to the Justice Committee. However, these were largely time releasing, which cannot be used to fund police officers, as they do not save cash.

As police staff costs are around 50% of the budget, and pension costs nearly 20%, the cash savings would have to be found in the remaining 30% - support staff costs, supplies and services, transport. Our view is this is unattainable at 2% over 3 years. £22m pa is five times the original cash savings target of £4m pa. Police staff costs cannot be sensibly reduced when additional numbers of officers are being sought, and pension costs are obligatory and must be met.

**Police Capital Grant**

Finally, the Federation would express concern over the proposal to end ring-fencing of Police Capital Grant. Firstly, it is impractical in the context of Joint Police Boards. Secondly, policing has always been recognised as a national service, delivered locally, but meeting national standards. Thirdly, such a change reduces transparency and accountability for public funds.

If we receive further information from the Government we shall report this to the Committee. We welcome the commitments made by all political parties to increase police numbers, to deal with the growing pressures on officer time. This will improve our capacity and the quality of police work.
Mr Alastair Merrill  
Police Powers Performance – Resources  
St Andrews House  
EDINBURGH  
EH1 3DG

Ref: JG/FF  
19 November 2007

Dear Alistair

**Police Funding in the Spending Review**

You will know that I am to give oral evidence to the Justice Committee on 27th November on the proposed police budget and the efficient government targets and achievements. Assessing the consequences for the police is difficult because of the changes to the budget documents format. It no longer presents spending trends within portfolio chapters in real terms, which is what is needed to assess the adequacy of the new spending plans. Neither does it contain GAE allocations for local government service functions which makes it impossible to properly assess the adequacy of the spending plans for policing.

To assist me to make a reasonable contribution to the Committee next week, can you provide me with the following:

- The GAE totals for the next three years;
- The provision within these totals for inflation;
- The provision within these totals for increased pension costs;
- Clarification as to whether the extra £22.5m is for new recruits only;
- Clarification over whether police staff costs and pension costs are exempt from efficiency targets.

Yours sincerely

Joe Grant  
General Secretary
Police and Community Safety Directorate
Police Powers, Performance and Resources Division

T: 0131-244 2154 F: 0131-244 2660
E: alastair.merrill@scotland.gov.uk

Joe Grant
General Secretary
Scottish Police Federation
5 Woodside Place
Glasgow
G3 7QF

Your ref: JG/FF

22 November 2007

Dear Joe

POLICE FUNDING IN THE SPENDING REVIEW

Thank you for your letter of 19 November 2007 regarding police budgets.

I am not yet in a position to answer all the questions you raise. Discussions are continuing with COSLA over the distribution of resources in the local government finance settlement, including the allocations for police. Final decisions will be confirmed when the Cabinet Secretary for Finance and Sustainable Growth announces the details of the Local Government Finance Settlement in his statement to Parliament in mid-December.

What I can tell you is that the Spending Review figures assume inflation at 2.7% per year and that the extra £54m across the period for building policing capacity will be additional to increases in police GAE. This will fund as a first step the recruitment of 500 new police officers, and will support the development of opportunities for increased retention as well as pump-priming projects to improve the effectiveness and efficiency of Scottish Forces.

As for efficiency targets, my understanding is that these will apply to all police expenditure, including police staff and pension costs. This is no different from the way the rest of the public sector is being treated. The Police Service has a good record of generating efficiency savings and we shall work with Forces to ensure that efficiencies are reinvested in operational policing. I might add that we are looking at the feasibility of transferring responsibility for pension costs away from Forces, as we appreciate that the volatility of those costs can cause problems. You will appreciate that this is a complex area so any transfer could not be achieved quickly.

Yours sincerely,

Alastair Merrill
Deputy Director
Police Powers, Performance & Resources
St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.scotland.gov.uk
SCOTTISH PRISON SERVICE: KEY ISSUES

1) 2008-09 Draft Budget

The Draft Budget for 2008-09 was published in the Scottish Government’s Scottish Budget Spending Review 2007 on 14 November 2007. Details of the Scottish Prison Service Draft Budget are summarised in the following table:

   **Expenditure Category (£m)**          2007-08 | 2008-09 | 2009-10 | 2010-11

   **Net Current Expenditure**            329.7   | 332.9   | 346.1   | 354.0   
   **Net Capital Expenditure**            97.6    | 110.4   | 118.6   | 126.8   
   **Total Net Expenditure**              427.3   | 443.3   | 464.7   | 480.8   

The delay in UK Spending Review process and the subsequent knock-on to the Scottish Spending Review, means that SPS has only some 4 months rather than the normal 16 months in which to develop detailed plans for the first financial year of the spending review period - and limited opportunity to fully evaluate the draft budget in advance of the Committee meeting. However, from the analysis that we have carried out to date, we are content that the draft budget for 2008-09 provides a satisfactory level of funding to allow the SPS to accommodate the projected prisoner population for 2008-09 and to make substantial progress with the on-going modernisation of the prison estate.

   **Average Prisoner Population**

   **Average Prisoner Population Projection** | 2007-08 | 2008-09 | 2009-10 | 2010-11

   **Prisoner Population Projection (excl HDC)** | 7,300   | 7,500   | 7,600   | 7,800   
   **Estimated Home Detention Curfew (HDC)**     | 300     | 300     | 300     | 300     
   **Prisoner Population Projection (incl HDC)** | 7,600   | 7,800   | 7,900   | 8,100   


As at Friday 16 November 2007, SPS held 7,273 people in custody in 14 establishments with an additional 316 on HDC (a combined total of 7,589). On Monday 17 September 2007, SPS held a record high of 7,528 people in custody (with 294 on HDC, a combined total of 7,822).
iii) Prisoner Places

Following the opening of replacement accommodation at HMP Perth in October 2007, the design capacity of the estate is approximately 6,400. HMP Addiewell is due to open in December 2008, providing 700 places, and new houseblocks will open at HMP Edinburgh (early 2009) and HMYOI Polmont (late 2009) providing a further 250 places. When this additional accommodation comes on stream, subject to prisoner numbers at the time, it will be used to reduce the levels of cell-sharing across the estate and to allow unfit accommodation to be decommissioned or replaced.

Work is also underway to deliver a new 700 place prison at Bishopbriggs as instructed by the Cabinet Secretary for Justice on 22 August 2007 (copy attached for ease of reference). Following the termination of the competition to design, build, operate and finance a new prison on 24 August 2007, SPS is now preparing for a new competition to design and build a prison for public sector operation and management. We expect to commence this procurement process around the turn of this year and to award a construction contract around the end of 2008, with a view to HMP Bishopbriggs opening during 2011. Funding to support the construction of HMP Bishopbriggs has been provided in the Draft Budget.

The Cabinet Secretary for Justice also announced in August 2007 that HMP Aberdeen and HMP Peterhead (both considered to be unfit for purpose) would be replaced with a new prison in the Peterhead area (HMP Grampian). SPS is now taking forward this development, using the private sector to construct the prison and the public sector to operate and manage the facility. No firm date has yet been set for the opening of HMP Grampian - further work is required, including securing planning permission etc. - however, it is likely to open after HMP Bishopbriggs. Funding to support the construction of HMP Grampian has been provided in the Draft Budget.

iv) Ending of Slopping-out

As a result of the on-going modernisation of the prison estate, the practice of slopping-out was ended in Scotland when a new houseblock at HMYOI Polmont opened earlier this year. In 2001 some 1,900 cells had no access to night sanitation. Following the elimination of slopping-out at HMP Barlinnie, HMP Edinburgh, HMP Glenochil and HMP Perth, only HMP Peterhead (some 300 cells) does not have access to integral night sanitation - prison cells at HMP Peterhead have ‘porta-potties’. As stated above, the Cabinet Secretary has announced that HMP Peterhead will be replaced by HMP Grampian in due course.

v) Prisoner Compensation Claims

SPS is responsible for managing any claim made by prisoners against Scottish Ministers. SPS has reported the implications of the Napier judgement to Parliament, and included details in the SPS Annual Reports and Accounts - most recently in the 2006-07 report.

In September 2006, Scottish Ministers conceded that doubled up slopping out represented a breach of human rights and that damages should be awarded to prisoners who had been detained in the relevant conditions. This concession was limited to prisoners who had raised actions in either the Court of Session or Sheriff Court, had been detained in the relevant conditions for a material period and was further limited to those claims which fell within our understanding at the time of time
bar legislation. As a result, we made offers of £2,100 plus legal costs to 267 prisoners and their agents. 221 of these have been accepted so far at a cost of approximately £1m. Large numbers of claims fell outside the 1 year time bar and were stayed pending the outcome of the Somerville case.

In the light of the recent House of Lords time bar ruling on Somerville, Scottish Ministers have now concluded that there is no option but to settle all outstanding court cases where the claimants had been detained in the relevant conditions. Of the 192 slopping out cases in the Court of Session, 151 may be settled this way. Approximately 1,400 prisoners or ex-prisoners have lodged Sheriff Court actions. Some 1,200 of these have slopped-out in a doubled-up cell for a material period. Ministers gave details of their approach to handling the consequences of the Somerville judgment in a written answer to Parliamentary Question SW3-6286 last week (copy attached for ease of reference).

The SPS Annual Report and Accounts contain provision for the settlement of slopping-out claims. Based on our current understanding of the legal position, we anticipate that the cost of settling existing and future claims can be met from within this provision. The Draft Budget for 2008-09 will therefore not need to fund such prisoner compensation and related legal costs.

vi) Efficiency Savings Target

We understand that SPS, like all other parts of the public sector will be expected to contribute to the delivery of a cash-releasing efficiency target of £1.6b (or 2%) per annum for the Scottish Government over the next 3 years. In effect, the SPS Draft Budget has been reduced by some £8.6m per annum in anticipation of such cash-releasing savings being achieved.

As recorded below, SPS has an excellent track record of delivering against the Government’s efficiency agenda, including working effectively with our trade union partners to identify and implement such changes. However, as mentioned above, the shortage of time between being notified of the Draft Budget and the level of cash-releasing efficiency savings to be achieved, significantly increases the scale of the challenge involved in actually delivering this target, particularly in 2008-09. Even more so against the background of record prisoner numbers.

As stated in the Scottish Government’s Scottish Budget Spending Review 2007, the Scottish Government will publish its detailed plans by the end of March 2008 it expects to achieve the target level of savings. We will seek to work with our trade union partners to play our full part and, in particular, to meet the challenge set by the Cabinet Secretary in his instruction of 22 August, when he announced his policy of future new prisons being operated by the public sector, that he required SPS to ‘ensure that public operation is as efficient as possible and that the apparent cost gap between public and private sector operation is addressed and reduced’.

vii) International Financial Reporting Standards

The Scottish Government’s Scottish Budget Spending Review 2007 refers to the plan to move to International Financial Reporting Standards (IFRS) from 2008-09 and points out that, because some accounting and budgeting guidance has not been available prior to developing the SG’s spending plans, some subsequent revision to the Draft Budgets may be necessary. We understand that the Scottish Government is seeking to manage the impact of this change in conjunction with HM Treasury.
The impact of IFRS on the SPS Draft Budget could be significant unless any accounting changes are fully funded and reflected in a revised Budget for SPS. The main risk appears to be in relation to changes to the accounting treatment of PPP contracts. It is therefore necessary to qualify our opinion that the Draft Budget is satisfactory until such time as the funding implications of IFRS have been identified and fully reflected in the SPS Budget for 2008-09 and future periods.

2) Efficient Government Initiative - 2007-08 savings

SPS has a successful track record in introducing efficiency measures across the full range of activities performed by the Service. As a matter of good management practice, SPS seeks to deploy taxpayers’ money as efficiently and effectively as possible to support the operation and development of the prison system in Scotland.

We regard the Efficient Government Initiative as an extension of the practice already operated by SPS and welcome the challenge posed by this initiative which required SPS to deliver cash-releasing savings of £7m in 2006-07, followed by £10m in 2007-08. We are working in partnership with our trade unions to achieve this. We are also required to deliver time-releasing savings of £0.9m per annum. Our aim is to use these time-releasing savings to improve correctional work with prisoners. The implementation of the Prisoner Escort and Court Custody contract has delivered time releasing savings of nearly £1 million a year which have been directed to improving the quality of our work with prisoners.

The delivery of the required efficiency savings is being greatly assisted by the ongoing modernisation of the prison estate. The replacement of buildings which are unfit for purpose with modern custom built facilities has enabled efficiencies and service improvements to be achieved on the opening of these new developments.

We currently expect to achieve some £9.4m cash-releasing efficiency savings in 2007-08 compared with the target of £10m. Taken together with 2006-07, SPS expects to deliver a combined cash-releasing efficiency saving of £17.2m against a target of £17m and to match our time-releasing target saving of £0.9m per annum.

Scottish Prison Service
20 November 2007
Parliamentary Question and Answer: re Consequences of Somerville Judgement

Nigel Don (North East Scotland) (SNP): To ask the Scottish Executive what the consequences of the Somerville judgment will be for the actions currently before the court raised by prisoners and ex-prisoners and how the Scottish Government will respond.

(S3W-6286)

Kenny MacAskill: As a government we are determined to deal with both the causes and effects of the court actions we have inherited relating to slopping out. I have today confirmed that the Scottish Prison Service (SPS) will invest on average £120 million a year to build long-needed replacement prisons in the north-east and Bishopbriggs and end the conditions that leave the system open to these claims.

Slopping out was first held by the Scottish courts to be in breach of the European Convention on Human Rights in Napier, a case relating to prison conditions going back to 1999 and decided in 2004.

Further actions in the Court of Session and the sheriff court were sisted pending the outcome of the House of Lords decision in the related case of Somerville.

In September 2006 the then Scottish Executive made a concession in the light of European Court of Human Rights jurisprudence to settle claims where prisoners had been detained in a shared cell with no access to in-cell sanitation. Offers of settlement were limited to those cases which then fell within the Scottish Executive’s interpretation of the time bar in human rights cases. The Scottish Prison Service at that time made provision in its accounts against the possibility of further successful claims.

On 24 October 2007 the House of Lords ruled that the Scotland Act 1998 does not provide an explicit time bar for human rights claims brought against Scottish ministers.

In the light of this ruling we have concluded that we have no option but to settle outstanding court cases where an individual has been detained in the relevant conditions for a material period of time, subject to any general provisions on prescription and limitation of claims and delay. To continue to defend these cases would incur further costs for no public benefit. The cases will be settled using the provision previously made in SPS’s accounts.

The effect of the House of Lords ruling is to leave the Scottish Government as the only public authority exposed to claims of this kind without a one year time bar. I have made it clear to the UK Government that I regard that position as untenable and unacceptable and that action is required to restore the position to what we believe was intended in 1998 and was understood to be case before now. If that requires amendment of the Scotland Act, I believe the UK Government should be prepared to consider bringing forward legislation to that effect. I continue to discuss these points with the UK Government and will give further details to Parliament in due course.
Mike Ewart, Chief Executive, SPS

Copy to: First Minister
         Permanent Secretary
         Director General Justice and Communities
         Director of Finance

ACCOUNTABLE OFFICER DIRECTION: HMP BISHOPBRIGGS

1. I refer to your minute of 20 August, requesting written authority to terminate the current competition to design, build and operate a new prison at Bishopbriggs and constitute a new competition to design and build a prison for public sector operation and management through the Scottish Prison Service (SPS).

2. In terms of section 15(8) of the Public Finance and Accountability (Scotland) Act 2000, I hereby authorise you, as the appropriate Accountable Officer, to terminate the current competition and constitute a new competition to design and build a prison to be operated in the public sector by SPS.

3. It is a matter of principle for this Administration that HMP Bishopbriggs and any future new prisons be operated within the public sector. To that end, I look to you and to the members of the SPS to ensure that public operation is as efficient and cost-effective as possible and that the apparent cost gap between public and private sector operation is addressed and reduced.

KENNY MACASKILL
Cabinet Secretary for Justice
22 August 2007