



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

5th Meeting, 2016 (Session 4)

Tuesday 2 February 2016

The Committee will meet at 10.00 am in the David Livingstone Room (CR6).

1. **Decisions on taking business in private:** The Committee will decide whether to take items 4 and 5 in private.
2. **Agricultural crime:** The Committee will take evidence from—

Lesley Thomson QC, Solicitor General for Scotland;

Catriona Dalrymple, Head of Policy Division, Crown Office and Procurator Fiscal Service.
3. **EU priorities:** The Committee will consider correspondence in relation to its EU priorities for 2015-16.
4. **Criminal Verdicts (Scotland) Bill:** The Committee will consider a draft Stage 1 report.
5. **Work programme:** The Committee will consider its work programme.

Peter McGrath
Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5195
Email: peter.mcgrath@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk

J/S4/16/5/1

Private paper

J/S4/16/5/2 (P)

Agenda item 3

Paper by the clerk

J/S4/16/5/3

Agenda item 4

Private paper

J/S4/16/5/4 (P)

[Criminal Verdicts \(Scotland\) Bill, accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

Agenda item 5

Private paper

J/S4/16/5/5 (P)

Private paper

J/S4/16/5/6 (P)

Private paper

J/S4/16/5/7 (P)

Justice Committee**5th Meeting, 2016 (Session 4), Tuesday 2 February 2016****Agricultural crime****Note by the clerk****Purpose**

1. This paper provides background information on the Committee's work in relation to agricultural crime in advance of its evidence session with the Solicitor General on 2 February.

Committee consideration

2. On 24 February 2015, the Committee held a round-table evidence session¹ on agricultural crime, which appeared, at the time, to be an escalating problem in Scotland. Key issues explored at the evidence session included that:

- agricultural crime was a growing problem ranging from low level crime, such as vandalism and scrap theft, to the theft of high-value livestock and farm machinery,
- quad bikes, tools and fuel were the most popular items stolen,
- high-value items were being stolen to order by organised crime groups and transported abroad, e.g. to Poland, Africa or Afghanistan, creating challenges for recovery,
- Police Scotland was in a better position than legacy forces to co-operate with forces in England on cross-border activity,
- when reporting crimes, some farmers found that police call handlers had little local knowledge of the location of farms,
- various "farm watch" and "rural watch" schemes, which alert farmers that there may be criminals operating in the local area, were operating across Scotland in partnership with Police Scotland, NFU Scotland, NFU Mutual and local authorities,
- farmers were unsure which phone number to use when reporting crime (the 101 or 999 number),
- theft of livestock was generally linked to food fraud, raising concerns over animal welfare and food safety, and
- in some cases, farmers were being intimidated not to report crimes.

3. The official report of this evidence session is available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9796&mode=pdf>

4. A joint response from the Cabinet Secretaries for Justice and for Rural Affairs, Climate Change and the Environment to the Committee's subsequent request for details of the steps being taken by the Scottish Government to address agricultural crime, is available at:

http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20150422_CSfJ_to_CG.pdf

5. Since the 24 February evidence session, Police Scotland has provided a number of written updates² to the Committee setting out the initiatives it is taking forward in relation to

¹ Police Scotland, COPFS, NFU Scotland; NFU Mutual; Scottish Borders Council; Scottish Land and Estates, and Dr Robert Smith from Robert Gordon University, attended the evidence session.

² Previous Police Scotland updates are available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/87523.aspx>

agricultural crime, the most recent of which was provided on 27 January 2016 and is attached at Annexe A. This latest submission indicates that the Scottish Partnership Against Rural Crime³ (SPARC) meets every six weeks “to drive prevention, intelligence gathering and enforcement across Scotland” and that, at its latest meeting on 26 January, “members were advised by NFU Mutual that the partnership working, “driven and supported by SPARC”, is already showing what it described as ‘impressive results’”. It goes on to explain that quad bike/all-terrain vehicle theft claims for Scotland have decreased in number and value each month since July 2015.

Solicitor General review

6. Following the Committee’s evidence session in February 2015, the Solicitor General announced on 3 March 2015 that she was to carry out a review of the way in which the Crown Office and Procurator Fiscal Service (COPFS) prosecutes agricultural crime, involving Police Scotland, National Farmers Union for Scotland, Scottish Land and Estates, and the Scottish Government. The outcome of the review was publication of an updated agricultural prosecution policy reinforcing COPFS approach to crimes such as the theft of farm vehicles, machinery, equipment, fuel and livestock; vandalism and fire-raising committed against farm property; and the worrying of livestock. The policy aims to:

- better recognise the financial and emotional impact on victims,
- deliver a specialist approach through training to all prosecutors and identify specialists to deal with cases at the initial decision-making stage, and
- use specialist prosecutors within COPFS serious and organised crime division whenever offences involve organised criminality, who will use proceeds of crime legislation to maximise the recovery of money and assets.

7. A copy of the updated COPFS agricultural crime policy is attached at Annexe B.

Next steps

8. The Committee will take evidence from the Solicitor General in relation to her review of agricultural crime prosecution and resulting policy on 2 February.

³ The Partnership includes membership from Police Scotland, NFU Scotland, Scottish Land and Estates, Scottish Business Resilience Centre, Scottish Government, NFU Mutual Insurance, Confor (forestry) Crimestoppers, Neighbourhood Watch Scotland, COPFs, and the Scottish Fire and Rescue Service.

ANNEXE A**Update from Police Scotland to the Justice Committee in relation to agricultural crime
(dated 27 January 2016)**

In furtherance of the Justice Committee's ongoing consideration of agricultural / rural crime in Scotland, I would like to provide a further update on the significant progress being made in this vital area.

The Scottish Partnership Against Rural Crime (SPARC) is now well established and, in addition to Police Scotland representatives, includes members from the National Farmers Union (Scotland, Scottish Land and Estates, Scottish Business Resilience Centre, Scottish Government, NFU Mutual Insurance, Confor (forestry), Crimestoppers, Neighbourhood Watch Scotland, COPFS, and the Scottish Fire and Rescue Service.

Chaired by Chief Superintendent Gavin Robertson, this group continues to meet every six weeks in order to drive and support prevention, intelligence gathering and enforcement activity across Scotland.

There are now 13 Rural / Wildlife Crime Governance Groups across Scotland, which were implemented according to a common 10-point plan and are chaired by a member of the respective Police Scotland Divisional Command Team. These arrangements provide clear local leadership, governance and delivery, ensuring that local rural / wildlife crime issues can be identified and addressed by those who understand them best.

Partnership activity takes the form of prevention, investigation, intelligence gathering and enforcement, specifically targeting resources at the key rural crime issues affecting each local area.

You will recall that NFU Mutual claims data previously identified that, in early 2014, the theft of quad bikes and All-Terrain Vehicles was increasing in Scotland despite a downward trend elsewhere in the UK.

I am pleased to report that, at the SPARC meeting on 26 January 2016, members were advised, by NFU Mutual, that its claims data showed that the partnership working driven and supported by SPARC is already showing what it described as "impressive results".

Quad bike / ATV theft claims for Scotland have decreased in number and value every month since July 2015 – a very welcome outcome in respect of one of the key aspects of rural crime affecting Scotland. However, we remain absolutely committed to continuing our collective drive to address rural crime issues and the attached briefing paper summarises some of the key activities being undertaken by SPARC and its members.

I trust that this provides an informative overview of the various initiatives being taken forward to further reduce the impact of rural crime on Scotland's communities.

POLICE SCOTLAND BRIEFING PAPER

Detective Inspector Jane Donaldson is Police Scotland's national Rural Crime Co-ordinator, as well as the SPARC secretariat and action manager. This role is vital for the continued

progression of innovative work at national level as well as the co-ordination, support and encouragement of local partnership activity.

I am delighted to report that, through sponsorship by the NFU Mutual insurance company, this vital post will be funded for 1 year from 1 April 2016. This will facilitate delivery of the SPARC workplan and consolidation of the rural crime workstream through an entire planning cycle.

The remainder of this briefing paper outlines the key activities being undertaken in support of SPARC objectives.

1. By working in partnership, develop prevention opportunities to mitigate threat from rural crime.

- **Guide To Security in the Rural Environment**

Since its launch at the Royal Highland Show in June, 2015, this booklet has been updated to include a section on Cyber Crime and remains available via the websites of Police Scotland and its partners. Using the booklet as a reference point, several leaflet-style templates on specific issues are now being developed for use by areas experiencing particular issues.

- **Forensic Marking**

Funded by Borders Council, 200 forensic marking kits have been offered free or at a discounted rate to farms / businesses / homes in the Borders area. About 40% of the kits have been issued to date with repeat victims being prioritised. Variations on this approach are now being developed for adoption in other areas of Scotland.

For example, in Spring 2016, a scheme developed by Police Scotland and the local Community Council will see the village of Langbank, Renfrewshire being developed as a "Crime Prevention Village". This will involve forensic property marking and signage being deployed across the whole village with a view to deterring would-be criminals.

- **Expansion of CESAR Scheme in Scotland**

The CESAR (Construction and Agricultural Equipment Security and Registration) Scheme was designed by the Police and Home Office working in partnership with the Construction, Agricultural & Associated Industries.

Through its use of identification plates, radio frequency identification chips, datadots and forensic marking solution, CESAR provides law enforcement agencies, including those at borders and ports, with an effective way to identify potentially stolen equipment and machinery 24 hours a day, 365 days a year.

Data supplied by the UK Plant and Agricultural Intelligence Unit (PANIU) provides that a machine protected by CESAR is 4 times less likely to be stolen than a non-registered machine and, if stolen, 6 times more likely to be recovered. Insurance discounts of up to 20% are available for vehicles fitted with CESAR.

Discussions are at an advanced stage in respect of further expansion of the CESAR scheme in Scotland during early 2016.

- **Agricultural Vehicle Examination and Awareness Training**

Positive discussions are ongoing with NFU Mutual Insurance company who are keen to support the delivery of specialist vehicle examination training to Police Scotland Roads

Policing officers as well as more general awareness raising for community officers, particularly those working in a rural environment.

- **Anti Livestock Worrying Campaign**
Crime data shows that reports of sheep worrying increase between late February and April (lambing). Through collaboration between SPARC partners, Scottish Natural Heritage and local rural / wildlife crime governance groups, an education, awareness raising and enforcement campaign will take place in Spring 2016 and will be repeated annually.
 - **Scottish Rural Colleges**
Police Scotland, the Scottish Business Resilience Centre and the Scottish Rural Colleges are exploring the potential introduction of course-relevant crime prevention inputs to students. This is considered to be an excellent opportunity to access the next generation of farmers and rural business people.
 - **Scottish Government Review of National Policing Priorities**
All SPARC partners have been asked to encourage their members to take part in the first stage of the Scottish Government review of national policing priorities.
 - **NFU Scotland / Police Engagement**
NFU(S) reports that the relationship between its regional managers and local policing divisions has improved through strong partnership working and joint activities. Most NFU(S) regional managers co-hosted a crime prevention event with police in 2015. Further activity is being planned for 2016 with a view to such events being annual features in the rural calendar.
 - **Scottish Land and Estates / Police Engagement**
Scottish Land and Estates reports that a successful rural crime awareness event was held on 1st October 2015 hosted by Stair Estates, near Stranraer. Speakers from Police Scotland informed land managers and stakeholders about rural crime with a focus on informing and educating, sharing knowledge and building relationships to enhance community intelligence. More joint work will be developed during 2016.
- 2. Improve contact from / incident reporting by rural communities**
- **Engagement Events**
Throughout 2016, numerous rural crime community engagement events will be held at a variety of venues including rural shows, Young farmers Groups, local riding schools, Forestry Commission offices, golf clubs and rural colleges.
 - **Location Reporting**
999 calls automatically identify the location of the caller to the control rooms of the emergency services but calls on the 101 system do not carry such information. To provide more accurate location reporting from rural locations when calling 101, the use of freely available Geolocator Apps for mobile and android telephones is being encouraged.
- 3. Develop a communications strategy maximising use of available technology**

SPARC now has in place an agreed Media Protocol and a designated communications officer who is linked into the communications teams of all SPARC partners to ensure consistent messaging.

SPARC members and the 13 local governance groups are now regularly producing rural crime articles to inform partner publications and wider media.

4. Work in support of the Crown Office and Procurator Fiscal Service (COPFS) review of agricultural crime prosecution strategy

Following consideration by a multi-agency working group, this new policy was launched by COPFS on 17 December 2015. It reinforces COPFS approach to crimes such as the theft of farm vehicles, machinery, equipment, fuel and livestock; vandalism and fire-raising committed against farm property; and the worrying of livestock.

COPFS staff dealing with these cases will be provided training in the significant financial and emotional impact that agricultural offences can have on rural businesses, communities and individuals.

Information regarding the impact of the crimes will be recorded by police from the earliest stages of an investigation and presented to the Sheriff or Judge in order that they can decide on the appropriate sentence.

Whenever offences involve organised criminality, they will be dealt with by specialist prosecutors within COPFS Serious and Organised Crime Division, who will use Proceeds of Crime legislation to maximise the recovery of money and assets.

Police Scotland will contribute to the training of COPFS prosecutors which is being arranged for March 2016.

5. Improve understanding and awareness of rural crime and provide reassurance to rural communities

- **Crimestoppers Call to Action**

To encourage gathering of intelligence in respect of local and national rural crime activity, an Intelligence Requirement outlining key rural crime issues, has been distributed to each of Police Scotland's Divisions for dissemination to all officers.

SPARC members are also approaching the final stage of discussions in relation to securing the support of Crimestoppers to generate actionable intelligence from community members who may be reluctant to provide information to the authorities.

- **Rural Crime Toolkit**

A Rural Crime toolkit is now available to all police officers and staff, which addresses the key issues of quad / ATV theft, livestock theft and livestock worrying. The rural crime toolkit links into existing Police Scotland initiatives such as Operations RAC (acquisitive crime) and Quarterlight (vehicle crime).

The toolkit's content and approach have been informed by SPARC members and will standardise and improve operational service delivery.

- **Watch Schemes**

The review of 'Watch Schemes' has been completed by Police Scotland's Safer Communities Division. This has identified that a variety of watch schemes exist across

the rural, residential and business communities with a range of differing communication platforms and that some areas have no Watch Scheme available.

A single platform adopted by Rural Watch schemes and Neighbourhood Watch Scotland is a preferred option and work is progressing towards this single solution. Such a platform will improve communication, co-ordination and information sharing between the police and residential and rural communities. As well as providing preventative, informative and reassuring messages it allows community concerns to be quickly escalated and responded to.

This work is now subject of discussion at senior level between Police Scotland, Neighbourhood Watch Scotland and the Scottish Business Resilience Centre with a view to progressing the introduction of a national platform and model for Scotland.

- **National Farmers Union (Scotland) Annual Conference**

On Friday 12 February 2016, Chief Superintendent Gavin Robertson has been invited to speak at the NFU(S) Annual Conference to update delegates on the work of SPARC.

- **Scottish Government Cross Party Group (CPG) on Rural Policy**

The next meeting of the CPG will take place on 24 February 2016 and will have the theme, "Rural Crime and Responsibility". Chief Superintendent Gavin Robertson will attend the meeting to deliver a presentation on the work of SPARC and take part in subsequent discussions.

- **Scottish Rural Crime Seminar**

A sub-group of SPARC has been set up to consider the delivery of a rural crime seminar during the latter half of 2016. SPARC members have been asked to identify suitable topics for discussion and attendees.

Conclusion

The arrangements described in this briefing paper are intended to develop a more consistent and stronger partnership approach to tackling Rural Crime across all of Scotland on a national and local level.

Kate Thomson
Assistant Chief Constable
Police Scotland
27 February 2016

ANNEXE B**Crown Office and Procurator Fiscal Service****AGRICULTURAL CRIME POLICY****Introduction:**

1. This document explains the way in which the Crown Office and Procurator Fiscal Service (COPFS) will deal with agricultural crimes reported to us for consideration of prosecution by Police Scotland.

What is agricultural crime?

2. Agricultural crime has no specific definition but is considered to include any statutory or common law offence which may be committed against people in agricultural communities, their lands, businesses and property.

Why are we publishing a policy document specifically for agricultural crimes?

3. The Solicitor General announced a review of the way in which COPFS prosecute agricultural crimes on 3 March 2015. The review was announced following discussion of agricultural crime, and its impact on rural communities, by the Justice Committee of the Scottish Parliament:

4. A review was subsequently carried out in partnership with Police Scotland, National Farmers Union for Scotland, Scottish Land & Estates and Scottish Government, with a focus on ensuring that the full impact of agricultural crimes is considered by prosecutors when deciding on action in cases, and that full information on the impact of the crime on the victim and their business is presented by prosecutors to the Court.

5. On conclusion of the review it was agreed that COPFS would, in respect of all agricultural crime, update existing policy and guidance to ensure that:

- All staff dealing with agricultural crime are aware of the significant financial and emotional impact that agricultural offences can have on rural businesses, communities and individuals;

- Full details of the impact of the crime; e.g. level of financial loss to individuals, impact on business, distress caused to victims are conveyed by the Police in any reports submitted to the Crown;

- Prosecutors are aware of all updated offence specific guidance as it relates to agricultural crime;

- Prosecutors dealing with agricultural crime are provided with training in order that a specialist approach is taken in relation to the consideration of reported agricultural crimes and their prosecution;

- Appropriate prosecutorial action, where there is a sufficiency of evidence, is taken in respect of agricultural crimes and taking account of the impact on victims/communities;

- The courts are made aware by prosecutors of the full impact of the crime following a plea or finding of guilt.
- Consideration of offences involving organised criminality by specialist prosecutors within COPFS Serious and Organised Crime Division will include use of the Proceeds of Crime legislation to maximise the recovery of money and assets obtained through this criminality.

Prevention– Working together to tackle agricultural crime:

6. This document advises of changes to prosecution policy and how crimes should be reported to and dealt with by COPFS. However, prosecutors should also be aware of the work being undertaken by Police Scotland and the wider agricultural community to help prevent these crimes occurring in the first instance.

7. Police Scotland in partnership with NFU Scotland recently produced a booklet for rural communities to assist them in this regard entitled 'A guide to security in the rural environment' and which is available [here](#).

8. The booklet provides practical advice and guidance to rural communities on measures that can be taken to help prevent crime occurring in the first place and encourages the reporting of any suspected offences to Police Scotland.

9. COPFS policy in relation to the prosecution of agricultural crime will support the efforts being made by Police Scotland and the wider agricultural community to tackle these offences.

Key offences

10. The crimes identified to COPFS as priorities for agricultural communities in the course of the review group's discussions were as follows:

- Theft (including aggravated theft committed by housebreaking or opening lockfast places) of farm vehicles, machinery, equipment, fuel and livestock;
- Vandalism and Malicious Mischief (The wilful or reckless destruction of the property belonging to another) and Wilful Fire-raising committed against businesses/farm property;
- Housebreaking in respect of residential properties;
- Worrying of Livestock, the most common of which is sheep worrying –
- Dogs (Protection of Livestock) Act 1953 – s.1(1) and (6)

Agricultural Crime –the Background and impact

11. The majority of agricultural offences are clearly likely to occur within rural areas which account for 98% of the land mass of Scotland and nearly a fifth of the population are resident there. Over recent years, the population of rural Scotland has continued to grow at a faster rate than the rest of Scotland.

12. Rural communities are disparate, and rural properties can be a number of miles from their nearest neighbour. As a result of this, these properties and the individuals who reside there can be particularly vulnerable to criminal activities.

The emotional impact on victims and communities

13. Whilst our rural communities are considered to be safe places in which to stay, work and visit, we recognise that the impact of crimes, including agricultural offences, on victims and rural communities are significant.

14. Many crimes may be relatively low value but the cumulative effect of these on a local community can have a serious impact on how safe residents feel. This is particularly true in the instance of farms, where individuals will often have resided in that location for their whole life, and where lone working is a common occurrence. The negative consequences of criminal activities can compound feelings of isolation, and ultimately have a negative impact on how individuals go about their business activities.

15. Most farms (particularly those with pedigree herds) will have built up their stock bloodlines over many years. Any significant loss of breeding stock has the potential to cause harm to many years of hard work and significant loss for the future. Farmers work with their animals on a daily basis, they know the individuals within their herd, and often have substantial levels of emotional attachment with them. Any harm caused to the animals is hugely distressing for them from an emotional perspective.

16. Many instances of livestock worrying are not reported, this is for a number of reasons. It can be due to the victim knowing the owners of the dog responsible, and fearing reprisals, or it can be because of the belief that reporting the crime will not lead to any satisfactory compensation. As a result of this, the official figures obtained on instances of livestock worrying are probably lower than the reality.

17. The following testimony of a farmer who lost livestock as a result of sheep being worried highlights that the impact of these offences goes far beyond financial loss:

“The most shocking and alarming days of our lives.

“...while out checking our sheep we found a few ewes covered in blood, having been gripped at the neck and face. As we searched the hill we came across many more, and then we came across 3 dogs, a bullmastiff and 2 Border collies running wild on the 650 acre hill ground.

“It took two days to gather the ewes and their lambs in from the hill, a job that normally takes 3-4 hours. Many were traumatised which meant many had to be picked up and brought in with the quad bike and trailer. Ewes and lambs were hiding in ditches, and behind rushes, bleeding from the neck and face, some had been attacked the previous day or two and were crawling with maggots.

“The impact on other farmers whose livestock are killed and injured by dogs is immeasurable...The pain and trauma those defenceless ewes were put through leaves me distraught. The magnitude and catastrophe of the event are immeasurable.

“The affection we have for our livestock is immense, it would be impossible to do this job without it, to see the pain, shock and trauma these ewes went through will never leave me or my husband.”

The financial cost of agricultural crime

18. The financial cost of agricultural crime such as the theft of vehicles, machinery, equipment and fuel is significant, and for the victims of these crimes it can go beyond the cost of simply replacing the property stolen.

19. Costs to agricultural businesses can include a loss of earnings due to thefts which prevent, or restrict, the carrying out of day to day work and trade.

20. There may be associated costs connected to the hiring of replacement vehicles, equipment and machinery. Further costs can be incurred due to repairs having to be carried out in respect of any property or security measures damaged as a result of thefts and vandalism.

21. The theft of livestock and of livestock worrying offences, the most common of which is sheep worrying, can also have a significant financial impact on victims due to the cost of replacing any animals killed or stolen, veterinary costs associated with the treatment of injured animals, and directly associated costs on the running of the business. E.g. Any abortions in the herd caused by stress.

22. It is crucial therefore that prosecutors are fully apprised of the impact of offences prior to deciding on the appropriate action to be taken and, in the event of court proceedings and conviction, that the court are similarly advised prior to sentencing.

Prosecution Policy:

23. COPFS policy and guidance is being updated to assist prosecutors take the appropriate action in the public interest in respect of agricultural crimes. A robust prosecution policy approach is to be maintained and updated offence specific guidance will be made available to prosecutors.

Information to be provided to COPFS by Police Scotland:

24. It has been agreed with Police Scotland that reporting officers will, in respect of all relevant cases submitted to COPFS for consideration of prosecution, provide the following information within the body of the Standard Prosecution Report (SPR):

Theft (including aggravated theft and fraud) of farm vehicles, machinery,

- equipment, fuel and livestock
- Distress/impact on victims
- Cost of property stolen;
- Cost of replacement/hiring replacement equipment;
- Immediate impact on business as a result of theft and ongoing costs;
- Directly associated costs to business as a result of theft;- including business interruption and insurance

Vandalism/Malicious Mischief/Wilful Fire-raising:

- Distress/impact on victims
- Cost of property/equipment damaged;
- Cost of repairs to property/equipment, hiring or replacement of equipment;
- Immediate impact on business as a result of crime and ongoing costs;
- Directly associated costs to business as a result of crime;
- Photographs of damage caused to assist convey impact;

Sheep or other Livestock Worrying Offences:

- Distress/impact on victims
- Number of livestock killed/injured
- Nature and extent of any injuries sustained
- Cost of replacing sheep/other livestock and any directly associated losses as a result of those killed/injured such as:
 - Lambing put back a year
 - Bloodlines lost
 - Any loss of premium from quality assurance
 - Extra feed required to counter loss of condition from stress
 - Extra bedding/housing costs from having to house animals
 - Any abortions in other animals in the herd from stress
 - Future losses of breeding stock
 - Cost of treating sheep or other livestock/veterinary costs
 - Cost of removal/destruction of sheep or other livestock
- Photographs of injured/dead sheep or other livestock– Capture more than just financial impact.

25. If information regarding the full impact of the offence is not provided then prosecutors should defer marking the case and request that the reporting officer make further enquiry.

Detection and reporting of offences:

26. As agricultural crimes are likely to occur in remote or rural areas it may require Police to conduct more detailed investigations in order to detect and report cases to the Crown for prosecution. If the case discloses a sufficiency, and the victim cannot be appropriately compensated for their loss through a fiscal compensation offer, then there is a presumption that prosecutors will raise proceedings against any accused in court.

Serious and Organised Crime:

27. In some cases of agricultural crime we recognise that the accused may be associated with organised crime or may have obtained significant financial gain from their criminal endeavours. Therefore at the early decision making stage prosecutors must consider whether the case should be referred to the Proceeds of Crime Unit to consider whether a financial investigation should be carried out with a view to obtaining a confiscation order.

28. To make that assessment the prosecutor must assess if the offences pass the criminal lifestyle test on 1 of the following 3 grounds:-

(1) The offence is one which is specified in Schedule 4 of Proceeds of Crime (Scotland) Act 2002. This schedule covers offences of money laundering, drug trafficking, directing terrorism, people trafficking, arms trafficking, counterfeiting, intellectual property, pimping, brothel keeping and blackmail; or

(2) The offence constitutes conduct forming part of a course of criminal activity. Section 142 of the Proceeds of Crime (Scotland) Act 2002 states that conduct forms part of a course of criminal activity if the accused is convicted of at least 4 charges on one indictment/complaint from which he or she has benefited or in the period of 6 years prior to proceedings being instituted, the accused has been convicted on at least 2 separate occasions of an offence constituting conduct from which he or she has benefited. In both these cases the relevant total benefit must be not less than £1,000; or

(3) The offence is committed over a period of at least 6 months and, again, the relevant benefit is not less than £1,000.

29. As can be seen from the above, criminal lifestyle cases are intended to target those accused who are engaged in an activity which is profit making.

30. There will also be cases where the accused may not pass the criminal lifestyle test but there is benefit from his particular criminal conduct, for example in cases of vehicle or livestock theft.

31. Cases where there has been financial gain must be carefully considered for referral to Proceeds of Crime Unit at Crown Office. Careful consideration should also be applied to how the charges are set out in the complaint or indictment.

Victims and Prosecution Witnesses:

32. COPFS [commitments to victims and witnesses](#) provides that we will:

- (i) Give you respect and a professional service at all times.
- (ii) Communicate with you clearly and effectively.
- (iii) Give you the information you need when you need it.
- (iv) Deal with your case as quickly as possible.
- (v) Require you to give evidence in court only when we have to.
- (vi) Ensure you can communicate with us if your first language is not English.
- (vii) Take account of any extra support you may need.
- (viii) Give the judge information about the effect of the crime on you.
- (ix) Tell you how to claim expenses and deal with your claim as quickly as possible.
- (x) Work with other organisations to help you get the services you need.

33. Clearly there will be times where, of necessity, victims of agricultural crime and witnesses will be required to attend court in person and give evidence in order that the crime can be proven. If a witness is required to attend court then they will receive a letter (called a citation) telling them where and when to go to court. Prosecutors must take all reasonable steps to ensure that victims and witnesses are not unnecessarily called to court to give evidence.

34. Further information for witnesses if they receive a citation to attend court and give evidence is available on our [website](#).

35. Prosecutors must take all reasonable steps to ensure that victims and witnesses are not unnecessarily called to court to give evidence. Witnesses whose evidence is seemingly uncontroversial should be identified within the body of the report. E.g. Owner of the property who cannot identify the person responsible for the housebreaking but speaks to securing the property, discovery of the break-in and the property stolen.

36. Prosecutors should therefore seek to agree such evidence either through the use of Statements of Uncontroversial Evidence (SOUEs) or through joint minute of agreement with the defence.

16 December 2015

Justice Committee

5th Meeting, 2016 (Session 4), Tuesday 2 February 2016

EU issues

Background

1. The Committee receives regular written updates from the Minister for Community Safety and Legal Affairs in relation to the following EU issues previously identified by the Committee as particular areas of interest:

- (a) EU work on EU-Justice in the context of the Scottish Government's own digital strategy in Scotland,
- (b) the impact, if any, of Directives on the Presumption of Innocence, Procedural Safeguards for Children in Criminal Proceedings, and Legal Aid in Criminal Proceedings, on Scots law,
- (c) developments with negotiations on creating a European Public Prosecutor's Office to establish the likely impact on Scottish prosecutors, if any,
- (d) the Commission's European Agenda on Migration and other related work in this area, given the current migrant crisis, and
- (e) any relevant issues for Scotland arising from the Justice and Home Affairs agenda 2015-20.

2. The Minister's latest update, of 21 January, is attached at Annexe A (pages 4-9). The Minister has also provided a report of the most recent EU Justice and Home Affairs Council meeting held on 3 and 4 December 2015 in Brussels, which is attached at Annexe B (pages 10-12) for information.

Latest update

3. A summary of key points from the Minister's latest update of 21 January is set out below.

EU work on EU-Justice in the context of the Scottish Government's own digital strategy in Scotland

4. The Minister previously advised that Scotland had signed up to participate in the EU cross-border video-conferencing project. The Scottish Government has participated in a number of virtual meetings and is involved in the next phase of testing connections with European project partners. The Minister states that the Scottish Government will be working closely with the Scottish Prison Service, the Scottish Courts and Tribunals Service and the Crown Office and Procurator Fiscal Service "to identify connectivity and interoperability lessons which I hope will help us better understand the uses and benefits of increased VC use in European and Scottish contexts". He goes on to state that "we are currently laying the ground for potential applications to the Connecting Europe Facility later in 2016 to support a number of EU-Justice Portal interconnections projects".

Impact of Directives on Presumption of Innocence, Procedural Safeguards for Children in Criminal Proceedings, and Legal Aid in Criminal Proceedings, on Scots law

5. The Minister confirms that the UK did not opt in to any of the above measures when first published and that the UK Government is currently considering whether to opt in post-adoption in light of negotiations. Key issues raised in the Minister's response include:

- *Presumption of Innocence Directive*: Scots law and practice appears to be largely compliant with the Directive, although "the proposed provision with regard to non-

co-operation, and in particular the general prohibition of any inference being drawn from the acts of suspect/accused persons, may conflict with current domestic practice, where in certain circumstances inferences can be drawn from the refusal to co-operate”.

- *Procedural Safeguards for Children in Criminal Proceedings Directive*: Although Scotland and the UK already meet the standards proposed in the Directive; there are some areas of divergence in relation to the definition of a child in criminal proceedings and in domestic proposals on how 16 and 17 year olds are treated when detained by the police. The Criminal Justice (Scotland) Act 2016 reflects the Scottish Government’s preferred approach “to support suspects aged 16 and 17 years old to make their own decisions (in recognition of the age-based laws which operate here) with safeguards for all under 18 year olds and particular protections for those under 16, and 16 and 17 year olds under compulsory supervision”.
- *Legal Aid Directive*: the draft Directive in its current form appears unlikely to have a significant impact on Scots law in relation to legal aid.

Developments with the negotiations on creating a European Public Prosecutor’s Office to establish the likely impact on Scottish prosecutors, if any

6. In September 2013, the Committee reported to the Parliament that the EPPO proposal did not comply with the principle of subsidiarity.¹ The Parliament agreed with the Committee’s position, as did the House of Commons and House of Lords. The proposed regulation requires unanimity of the European Council. While some elements have been agreed, there is still no overall agreement on the scope and structure. The Minister states that “we continue to work constructively with the UK Government and EU counterparts to represent Scottish interests in the negotiations and in particular to ensure that there is no adverse impact on the Scottish prosecutorial system”.

The Commission’s European Agenda on Migration and other related work given the current migration situation

7. The appendix to the Minister’s letter (pages 7-9) provides a full update on progress with the EU Agenda on Migration, setting out a series of proposed measures, many of which are supported by the Scottish Government. In his letter, the Minister states that “the Scottish Government remains firmly committed to continuing to press the UK Government to sign up to measures which will protect vulnerable refugees from harm and ease the burden on countries which are most affected, in particular by participating fully in proposed EU action such as relocation and resettlement”.

Any relevant issues for Scotland arising from the Justice and Home Affairs agenda 2015-20

8. The Minister restates that the JHA Agenda 2015-16 is a high level strategic document with the overall priority to “consistently transpose, effectively implement and consolidate the legal instruments and policy measures in place”. However, he highlights a number of new measures, including:

- two new draft directives, in response to the Paris attacks and foiled terrorist attacks, on: (a) combating terrorism and providing additional support measures to victims of terrorism, and (b) control of the acquisition and possession of weapons. These measures are expected to be treated as a priority. The Minister advises that, while

¹ The principle of subsidiarity is that the EU shall only act where (a) it has exclusive competence; or (b) in areas of shared competence, only where the aims could not be achieved at a more appropriate level, whether that be at national, regional or local level. It is based on the presumption that, unless the EU has exclusive competence, action should be taken at the lowest level of government consistent with the subject matter and the objective.

both are reserved to the UK Government, officials are monitoring their progress for Scottish interests.

- a revised version of the 'Brussels IIa' Regulation, which deals with cross-border judgements in matrimonial matters and matters of parental responsibility, is expected. The Scottish Government intends to take a close interest in this proposal.
- a General Data Protection Regulation and a law enforcement Data Protection Directive were both agreed on 15 December 2015 and are likely to be adopted in 2016, coming into force within two years. The UK JHA opt in² does not apply to these measures. Although a fully reserved matter, Scottish Government officials are monitoring the measures in relation to Scottish interests.

Other issues

Human rights

9. The UK Government has indicated that it intends to bring forward proposals to repeal the Human Rights Act 1998 and replace it with a British Bill of Rights. Given its workload, the Committee previously indicated that it was content for the European and External Relations Committee (EERC) to undertake work on this issue. The EERC issued a call for written evidence on the potential implications for Scotland of the repeal of the Human Rights Act and its replacement with a British Bill of Rights. Written submissions received are available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/94228.aspx>

10. The EERC is expected to take evidence on this issue prior to the end of the Parliamentary session.

EU migration

11. The Committee previously wrote to the EERC asking whether it intended to undertake any work in relation to the EU migration crisis. The EERC advised that it would be taking evidence on the refugee crisis in the EU in due course. It held a round-table evidence session on the issue on 1 October 2015. Following that session, the EERC wrote to the Scottish Government, UK Government and European Commission in relation to the evidence it received. These letters and responses received are available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/92555.aspx>

Next steps

12. **The Committee is invited to consider next steps³ in relation to EU issues. Options include:**

- **agreeing to write to the Minister asking him to update the Committee if any significant or urgent issues arise, but otherwise to conclude consideration of EU issues for this parliamentary session,**
- **agreeing to invite the Minister to give evidence to expand on the issues set out in his written update,**

² The JHA opt in Protocol 21 enables the UK to choose within three months of a proposal being presented to the Council whether it wishes to participate in its adoption and application. If it does so, there is no possibility of opting out at a later date and the European Court of Justice would have jurisdiction over the measure. It would still be entitled to be involved in negotiations but would have no vote. The UK may at any stage after a measure has been adopted, indicate its wish to participate, though approval from the Commission would be required.

³ Unlike in previous years, the EERC does not require subject committees to report on their work on EU engagement during 2015-16.

- **writing to the EERC seeking an update on its work in relation to human rights and EU migration.**

ANNEXE A

Letter from Minister for Community Safety and Legal Affairs to the Justice Committee in relation to EU issues (dated 21 January 2016)

Thank you for your letter of 18 January with regard to the Committee's EU priorities for 2015-16. I am pleased to be able to update you as follows, further to our correspondence last year.

EU work on E-Justice in the context of the Scottish Government's own Digital Strategy in Scotland

In my letter of 4 May 2015 to the Committee, I advised that Scotland has signed up to participate in the EU cross border video conferencing project supported by the Justice Programme. Participation in such projects enables meaningful two-way exchanges of expertise between us and our EU partners.

Since the project began in November, we have provided information on current cross-border VC use to and from Scotland, shared information on public sector VC standards and participated in a number of virtual meetings with project participants through Eurojust and their impressive multi-point VC facility, which I had the opportunity to see for myself during my visit to The Hague last July.

The next phase involves testing connections with our European project partners. We will be working closely with the Scottish Prison Service, Scottish Courts and Tribunal Service and the Crown Office and Procurator Fiscal Service to identify connectivity and interoperability lessons which I hope will help us better understand the uses and benefits of increased VC use in European and Scottish contexts.

Although Scotland cannot access funds from the Justice Programme as the UK has opted out, we are currently laying the ground for potential applications to the Connecting Europe Facility later in 2016 to support a number of EU e-Justice Portal interconnections projects. I will of course update the Committee if there are any developments in this regard.

The impact, if any, of Directives on the Presumption of Innocence, Procedural Safeguards for Children in Criminal Proceedings, and Legal Aid in Criminal Proceedings, on Scots law

On Presumption of Innocence, in my letter of 20 March 2015 to the Committee, I noted that Scots law and practice appears to be largely compliant with the Directive. However, it remains the case that the proposed provision with regard to non-co-operation, and in particular the general prohibition of any inference being drawn from the acts of suspect/accused persons, may conflict with current domestic practice, where in certain circumstances inferences can be drawn from the refusal to co-operate. The negotiations on this measure are now complete and adoption is expected in the coming months.

The position on the Legal Aid Directive also remains unchanged since my letter to you of 20 March 2015. The draft in its current form seems unlikely to have a significant impact on Scots law in relation to legal aid. However, the measure is intended to complement the Access to Lawyer Directive, which the UK Government has confirmed it will not be opting into post-adoption. Negotiations will continue under the current EU Presidency.

With regard to the Procedural Safeguards for Children in Criminal Proceedings Directive, you will be aware from previous updates that whilst Scotland, and indeed the UK as a whole,

already meets or perhaps even exceeds the standards proposed in the Directive, there are some areas of divergence.

In Scotland, generally in criminal proceedings a child is defined as someone who is under 16, unless they are subject to a Compulsory Supervision Order, whereas the Directive defines a child as someone under the age of 18. There is also some divergence from domestic proposals on how 16 and 17 year olds are to be treated when they are detained by the police.

The Criminal Justice (Scotland) Act 2016 will give greater discretion to 16 and 17 year olds than to those under 16. A 16 or 17 year old not on a Compulsory Supervision Order may waive their right to have a solicitor present during a Police interview as long as a 'relevant person' agrees. They are also to be given the choice whether or not anyone is contacted following their arrest, and, if they wish someone contacted, who that person should be. By contrast, the Directive treats all those under 18 in the same manner and does not allow for any degree of discretion.

While we support in principle EU moves to raise standards, we already provide significant and balanced protections for detained persons which will be enhanced further by provisions contained in the 2016 Act. The Act reflects our preferred approach, which is to support suspects aged 16 and 17 years old to make their own decisions (in recognition of the agebased laws which operate here) with safeguards for all under 18 year olds and particular protections for those under 16 and 16 and 17 year olds under compulsory supervision. The negotiations on this measure are now complete and adoption is expected in the coming months.

The UK Government did not opt in to any of the above measures when they were first published, and is currently considering whether to opt in post-adoption in light of the negotiations. The Scottish Government is in touch with the UK Government to ensure Scottish interests are represented in these post-adoption opt in decisions.

Developments with the negotiations on creating a European Public Prosecutor's Office to establish the likely impact on Scottish prosecutors, if any

Despite further negotiations, and notwithstanding that some elements of a potential future EPPO have been provisionally agreed, there is still no overall agreement as to scope and structure. Negotiations will continue under the current Netherlands EU Presidency. The Scottish Government maintains the view that opting in to the EPPO has the potential to undermine the position of the Lord Advocate at the head of the system of prosecution and investigation of crime. We continue to work constructively with UK Government and EU counterparts to represent Scottish interests in the negotiations and in particular to ensure that there is no adverse impact on the Scottish prosecutorial system.

The Commission's European Agenda on Migration and other related work given the current migrant situation

Since I last wrote to the Committee in May 2015 on this matter, following the publication of the Agenda on Migration, a series of measures has been proposed. In case it is of interest, include an update as an Appendix to this letter. There is much in the EU Agenda that the Scottish Government can support, such as the focus on taking action to save lives in the Mediterranean; the recognition that migration to Europe is a complex global issue with its roots in third countries; and the understanding that European cooperation - not isolation – is key. We strongly support a controlled and managed migration system and it is essential that we work with our European neighbours on a shared approach to the challenges and opportunities that migration presents. However what we now face is a humanitarian crisis and

one of responding to the very large numbers who have reluctantly been forced to flee their homelands.

Although asylum is a matter reserved to the UK Government, the Scottish Government believes asylum and refugee resettlement into the EU from third countries is an area which requires multi-lateral and collective action by the EU. The EU must take collective responsibility. The Scottish Government remains firmly committed to continuing to press the UK Government to sign-up to measures which will protect vulnerable refugees from harm, and ease the burden on countries which are most affected, in particular by participating fully in proposed EU action such as on relocation and resettlement. It is hugely disappointing that the UK Government has chosen not to take part fully in the EU's collective efforts, although we do recognise the significant financial contribution that the UK Government has made to the humanitarian effort.

Any relevant issues for Scotland arising from the Justice and Home Affairs agenda 2015-20

As the Committee will recall from correspondence last year, the Justice and Home Affairs Agenda 2015-2016 is a high level strategic document, within which the overall priority 'is to consistently transpose, effectively implement and consolidate the legal instruments and policy measures in place'. This aligns with the Better Regulation agenda, one of the overarching objectives of the Juncker Commission, which seeks to ensure that a" EU legislation is fit for purpose.

During negotiations, these discussions are led by the Member States, but as regards implementation, it is the jurisdictions, such as Scotland, that are key. So, with regard to implementation, the Scottish Government will seek to ensure that a" EU JHA legislative obligations are met, and the Committee will recall, as a good example of delivery by Scotland, the Regulations passed in December 2015 in relation to the EU Victims' Directive. This ensured Scotland is among the first jurisdictions in the EU to transpose the Directive.

Despite the general trend towards less JHA legislation foreseen in the Agenda, there have been a number of new measures in relation to priority and urgent matters, almost entirely in asylum and migration. Issues in relation to this are covered in the previous section.

Over and above these measures, security matters have also moved centre stage as a result of increased threat from Daesh, which resulted in the Paris atrocities last year, a number of other foiled terrorist attack plots and also the 'foreign fighter' phenomenon - those travelling to and from Syria and Iraq in particular. In response to this the Commission have recently tabled two new draft Directives, both seeking to amend and update antecedent EU legislation.

The first is a draft Directive to replace Council Framework Decision 2002/475/JHA on combating terrorism. The proposed new Directive seeks to update the provisions in the Framework Decision to criminalise attempts at recruitment and training for terrorism, travel to any country, including those within the EU, for the purposes of participating in terrorism, and the financing of the various terrorist offences contained within the proposed Directive. It also seeks to improve existing provisions on aiding and abetting, incitement and attempt, and the rules on jurisdiction.

The Directive also proposes additional provisions governing specific support measures to victims of terrorism. The Commission's proposal is intended to complement wider international efforts, in particular the provisions of UN Security Council Resolution 2178 (2014) on 'Threats to international peace and security caused by terrorist acts'.

The second draft Directive is one proposed to amend the Council Directive 91/477/EEC on control of the acquisition and possession of weapons. These proposals aim to strengthen controls and include stricter rules to ban certain semi-automatic firearms and to bring deactivated weapons under tighter control; tighter rules on the online acquisition of firearms, key parts or ammunition; improvements to the traceability of weapons; common criteria concerning alarm weapons (e.g. distress flares) in order to prevent their transformation into fully functioning firearms; better exchange of information between Member States; stricter conditions for collectors to limit the risk of sale to criminals; a time limit of five years for the duration of a firearms licence; and standard medical tests on application to grant or renew a firearm certificate.

Although both of these measures are reserved to the UK Government, officials are monitoring their progress for Scottish interests. It is understood that the current EU Presidency will treat them as a priority.

On the civil law side, although still awaited, the Commission has signalled that they intend to publish a revised version of the so-called 'Brussels IIa' Regulation, which deals with cross-border judgements in matrimonial matters and matters of parental responsibility. The Scottish Government expects to take a close interest in this proposal. The Regulation determines in cross-EU border cases which court has jurisdiction in divorce cases. It also determines in cross-EU border cases which court has jurisdiction in parental responsibility disputes, including residence and contact. In cases of cross-EU border parental child abduction, it provides a procedure to return the child to the place of his or her habitual residence.

Whilst not a new measure, the Committee may wish to note that the draft Europol Regulation, based on a Commission proposal to update the legal basis of the EU Police Cooperation Agency, has now been agreed in principle following negotiations and is expected to be adopted in the first half of this year. The UK JHA opt in applies and the Scottish Government will seek to ensure that Scottish interests are fully represented in any UK decision.

Lastly, the European Parliament and the Council have agreed the final texts of a new General Data Protection Regulation (GDPR) and law enforcement Data Protection Directive (DPD), on 15 December 2015, which as above are likely to be adopted in the first part of this year. Both will come into force two years thereafter. The UK JHA opt in does not apply. As a fully reserved matter, any implementation will be for the UK Government, but Scottish Government officials will keep in touch with their UK Government counterparts in respect of Scottish interests.

I hope the foregoing is of assistance to the Committee and I am happy to seek to provide any further clarifications you may require.

Paul Wheelhouse
Minister for Community Safety and Legal Affairs
21 January 2016

APPENDIX - EU AGENDA ON MIGRATION - UPDATE ON PROGRESS

1. The European Agenda on Migration was published on 13 May 2015, having been brought forward in response to the refugee crisis and challenge of ever-growing migrant flows to the EU. It updated and prioritised strands of activity which in many cases already existed, calling for “a core set of measures and a consistent and clear common policy”. For more detail see: <http://europa.eu/rapid/press-releaseIP-15-4956en.htm>

2. The Agenda was subsequently adopted by Member States, subject to development of more detail around specific proposals. However, commitments from Member States are not yet sufficient to match needs, whether in terms of available places for relocation schemes or as regards personnel and equipment to support processing of arrivals at “hotspots”.

http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/pressmaterial/docs/state_of_play_-_relocation_en.pdf

3. The immediate actions in the EU Agenda included;

- saving lives at sea by providing additional search and rescue resources in the Mediterranean and targeting criminal smuggling networks;
- setting up a new "hotspot" approach to ease the burden on frontline Member States, helping them process refugees as they arrive;
- providing emergency funding to support reception and the provision of healthcare to refugees;
- easing the burden on frontline Member States through a "relocation" programme;
- “resettling” displaced persons in particular need of protection direct from camps outside the EU.

4. The Agenda also set out "four pillars" to better manage migration in the longer term, seeking to reduce the pressure of rising refugee numbers:

- reducing the incentives for undocumented or illegal migration;
- border management, saving lives and securing external borders;
- “Europe's duty to protect”, through a strong common asylum policy;
- a new policy on legal migration.

PROGRESS TO DATE ON THE AGENDA'S OBJECTIVES

5. Progress to date may be summarised as follows. For a more detailed but earlier summary from the European Commission itself, see: [http://europa.eu/rapid/pressrelease IP-15-5839_en.htm](http://europa.eu/rapid/pressrelease/IP-15-5839_en.htm) - this also has good links to specific actions.

• **Objective:** saving lives at sea by providing additional search and rescue resources in the Mediterranean and targeting criminal smuggling networks. Actions: two joint naval operations are in place between North Africa and Italy and between Turkey and the Near East and Greece. UK has contributed Royal Navy vessels to the former. Increasingly, both operations are more focused on interdiction - seizing migrant smugglers' vessels and other assets. Scottish Ministers wrote during 2015 to UK Ministers to emphasise the need not lose sight of the humanitarian aspect of this mission. Although the estimate of over 3000 deaths is tragic, it is estimated that the joint naval operations directly saved over 50,000 lives in 2015.

• **Objective:** setting up a new "hotspot" approach to ease the burden on frontline Member States, providing expert support and facilities to assist receiving countries to document arrivals at point of entry. Actions: of 5 planned hotspots in Greece, the first (Lesvos) is operative, and of 6 planned in Italy the first (Lampedusa) is operative.

• **Objective:** providing emergency funding to support reception and the provision of healthcare to refugees. Actions: substantial EU funding is being provided as well as help in kind (staff, materials and supplies). UK Government has contributed additional funding to support costs of refugees overwintering in camps in Greece. Scottish Government and several Scotland based charities have also given generous support to humanitarian efforts.

• **Objective:** easing the burden on frontline Member States through a “relocation” programme. Actions: agreement was reached to relocate a total of 160,000 refugees from camps in Italy and Greece during 2015 and 2016. To end 2015, only 322 actual relocations

had taken place. (UK does not take part in relocation of those who have reached the EU by irregular routes.)

- **Objective:** “resettling” displaced persons in need of protection. Actions: Member States adopted conclusions on resettling 22504 displaced persons from outside the EU who are in clear need of international protection, but no data is available on progress, if any. (UK Government increased its offer of places for vulnerable Syrian refugees to 20000 over 5 years. This is an entirely separate scheme from the EU's resettlement programme, negotiated directly with UNHCR.) Scotland has moved quickly to ensure we take a full share of these refugees, many of whom will have suffered great trauma, and the first arrivals reached Scotland towards the end of 2015, with all Scottish local authorities offering support, though not all will house refugees.)

6. Note that, due to exclusions within the EU treaties the UK Government (along with Ireland and Denmark) is not required to participate in shared measures in the field of asylum and migration, although it can opt-in to specific measures, and continues to advocate EUwide collaboration on the migration crisis.

7. Against the EU Agenda's longer-term objectives, though little visible progress may appear to have been made, intensive discussions are ongoing on what are complex and intractable issues.

- **Objective:** reducing the incentives for undocumented, or illegal, migration. Proposed actions here are focussed around strengthening policy on returns, clarifying and if possible expanding safe legal migration routes and offering aid to improve conditions in “sending” countries.

- **Objective:** border management. saving lives and securing external borders. Actions include recent agreement in principle to create a joint border guard (for the Schengen frontier only) to support national efforts. <http://ec.europa.eu/news/2015/12/20151215en.htm>. Support has also been given to several non-Member States in the Balkans to help them manage flows of arrival from Greece towards the north and west of the EU.

- **Objective:** strong common asylum policy. Work continues to encourage EU Member States to align their asylum policies. There are significant divergences which can encourage arrivals not to claim asylum in the first EU country they reach, which creates a conflict with EU policy that claims should be registered at the same time as arrivals are documented, all in their first country of arrival into the EU.

- **Objective:** a new policy on legal migration. This is expected to be introduced in draft by the Commission in mid-March 2016 and we understand that it will focus on the longer-term issue of how to facilitate and encourage immigration into the EU of individuals holding skills in key categories.

8. The EU's intention with all longer-term objectives is that existing processes should be used where possible. A summit was held at Valetta to energise existing frameworks for dialogue on migration and mobility with African nations, with the UK subsequently hosting a meeting of the Khartoum process (which covers East Africa).

http://ec.europa.eu/news/2015/11/20151109_en.htm and separate discussions have recently taken place with Turkey (which currently holds 2 million refugees from Syria and elsewhere) http://ec.europa.eu/news/2015/11/20151129_en.htm.

9. Negotiations with major source countries are being taken forward on what has been characterised by senior European sources as the "more for more" principle – EU development and technical aid in return for in-country measures to reduce EU-bound departures and to facilitate returns. A separate strand of EU work is attempting to establish

and expand a common "safe list" of countries to which nationals may return, without risk of persecution, once they have exhausted due process but failed to establish a right to remain in the EU. EU policy prefers returns to be voluntary rather than enforced.

ANNEXE B

Letter from Minister for Community Safety and Legal Affairs providing update on EU Justice and Home Affairs Council meeting on 3 & 4 December 2015 in Brussels (dated 15 December 2015)

Please find enclosed a report of the recent EU Justice and Home Affairs Council meeting held on 3 and 4 December in Brussels. I attended on 3 December (Justice Day), during which the Council addressed a number of issues in the civil and criminal justice areas, touching on security and migration. The attached report covers discussions on both days.

I had the opportunity, in the margins of Council, to meet with Frances Fitzgerald TD, Irish Minister for Justice and Equality for a bilateral on a number of issues of common interest, including Scotland's approach to the transposition of the Victims' Directive.

I also met with James Brokenshire MP, Home Office Minister to discuss the Justice and Home Affairs Council agenda and how to optimise communication between the two administrations as regards matters being taken forward through the Council.

I am also sending a copy of this report to Christina McKelvie, Convener of the European and External Relations Committee.

Paul Wheelhouse
Minister for Community Safety and Legal Affairs
15 December 2015

REPORT ON EU JUSTICE AND HOME AFFAIRS COUNCIL MEETING BRUSSELS – 3 & 4 DECEMBER 2015

Main outcomes of the Council

Justice Ministers:

- Reached political agreement on the draft Regulation promoting the free movement of citizens and businesses **by simplifying the requirements for accepting certain public documents** in the European Union.
- The Council provisionally agreed on certain articles on the proposal regarding the setting up of a **European Public Prosecutor's Office (EPPO)**. Those articles relate to the competence and investigative powers of the EPPO.
- Failed to reach political agreement on two draft Regulations seeking to harmonise the law on **matrimonial property regimes and the property consequences of registered partnerships**. The UK did not opt in to this measure. Member states may consider enhanced cooperation as an alternative.
- Discussed **the retention of electronic data, effective criminal justice in the digital age** and **judicial cooperation and the fight against xenophobia**, the latter in the context of the migration and refugee crisis.

Interior Ministers:

- Approved a compromised text agreed with the European Parliament on the proposal for a Directive on the collection and use of **Passenger Name Records** data for external flights, with the option to collect data on intra-EU flights.
- Confirmed agreement on the proposal for a Regulation on the European Agency for Law Enforcement Cooperation and Training – **Europol**.
- Were briefed on the implementation of measures regarding **counter terrorism** following the statement by EU leaders on 12 February 2015 and JHA Council Conclusions on 20 November.

The Mixed Committee (EU plus Norway, Iceland, Liechtenstein and Switzerland):

- Discussed the **migration and refugee crisis**, including progress on recent EU measures and the actions needed to strengthen the Schengen area.

Ministerial Attendance

The United Kingdom was represented on the Justice Day by James Brokenshire, Home Office Minister and Lord Edward Faulks QC, Minister of State for Civil Justice. On Interior Day the UK was represented by Theresa May, the Home Secretary. Paul Wheelhouse, Minister for Community Safety and Legal Affairs, attended on Justice Day.

More information on the main discussion items is provided below.

Simplification of Acceptance of Public Documents

This proposal was published by the Commission in April 2013 and aims to simplify the procedures for cross border use and acceptance of certain public documents. The current text applies only to documents relating to civil status matters, such as birth, marriage and death. The Council reached a general approach covering all provisions in the draft Regulation earlier this year. Following trilogues negotiations the Council and European Parliament agreed on a final text.

European Public Prosecutor's Office (EPPO)

In July 2013 the Commission published its proposal to establish the EPPO. It would create a decentralised prosecution office of the European Union with exclusive competence for investigating, prosecuting and bringing to judgement the perpetrators of, and accomplices in, offences against the EU's financial interests. The proposed Regulation requires unanimity of the Council. The Council secured broad support on the competence of the EPPO but was not able to secure a partial general approach.

Retention of electronic data

The Council held a general discussion on the consequences of the invalidation of the Data Retention Directive. The Directive obliges member states to lay down an obligation for providers of publicly available electronic communications services and public communications networks to retain traffic and location data for a period between six months and two years, the choice of the length of the period being left to each member state in its national law. All member states considered that retaining bulk electronic communication data in a generalised manner was still allowed. A majority of delegations also felt that an EU-wide approach had to be considered in order to put an end to the fragmentation of the legal

framework on data retention across the EU. A number of delegations also called for a new legislative proposal by the Commission.

EU Passenger Name Records Directive (PNR)

The Council approved the compromise text agreed with the European Parliament on the proposal for a directive on the use of PNR data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. Under this directive, air carriers will be obliged to provide member states' authorities with the PNR data for flights entering or departing from the EU. It will also allow, but not oblige, member states to collect PNR data concerning selected intra-EU flights. Data will be stored for six months, after which it will be masked out and stored for another four and a half years, with a strict procedure for accessing the full data.

Europol

The Council approved the compromise text agreed with the European Parliament on a draft regulation on the European Agency for Law Enforcement Cooperation and Training (Europol), which paves the way for the formal adoption of the regulation by the co-legislators in the coming months. The new draft regulation is mainly aimed at aligning the current Council Decision on Europol (Decision 2009/371/JHA) with the requirements of the Treaty of Lisbon by setting up the legislative framework of Europol in the regulation and by introducing a mechanism for control of Europol's activities by the European Parliament, together with national Parliaments. In addition it will adapt Europol's external relations to the new Treaty rules. The new regulation will also ensure a robust data protection regime for Europol, in particular to guarantee that the data protection supervisor of Europol has full independence, can act effectively and has sufficient powers of intervention. Finally, it will provide Europol with a flexible and modern data management regime and align Europol's governance with the general guidelines applicable to agencies.

Counter Terrorism

Ministers (including, exceptionally, the Associated States) were briefed about the implementation of measures regarding counter terrorism, following the statement by EU leaders on 12 February 2015. Ministers underlined the importance of accelerating the implementation of all areas covered by the statement and highlighted the importance of JHA Council Conclusions of 20 November in this regard, in particular on the following measures: EU PNR Directive, firearms, external border controls, information sharing, terrorist financing, criminal justice response to terrorism, prevention of radicalisation and safeguarding EU values as well as cooperating with our international partners.

Migration and the Schengen Area

Ministers held a wide-ranging discussion on the basis of this information and on the progress made in implementing the most recent EU measures. Several member states pointed out that the setting up and operation of 'hotspots' and the temporary relocation scheme were still not working properly, and progress on that was urgently needed. Ministers also spoke of the need to make progress in the dialogues with third countries. There was broad support for the suggestions made by the presidency regarding the integrity of the Schengen area, which addressed the need for more consultations between member states before the temporary reintroduction of internal border controls, better protection of external borders, increased checks on illegal immigration inside the Schengen area, and ways of addressing serious deficiencies in external border controls.

Ministers reconfirmed their commitment to fully applying the procedures for information sharing on temporary reintroduction of border controls at the internal borders.

Scottish Government EU Office
December 2015