JH/00/13/A

The Scottish Parliament

JUSTICE AND HOME AFFAIRS COMMITTEE

AGENDA

13th Meeting, 2000 (Session 1)

Wednesday 29 March 2000

The Committee will meet at 9.30 am in the Festival Theatre, 13/29 Nicolson Street, Edinburgh

1. **Meeting in private:** The Committee will consider whether to consider a draft report on petition PE14 by the Carbeth Hutters' Association in private at its next meeting.

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

   The Police Grant (Scotland) Order 2000 (SSI 2000/73);

   The Charities (Exemption from Accounting Requirements) (Scotland) Amendment Regulations (SSI 2000/49).

3. **Legal Aid SSIs:** The Convener to move (S1M-682), that the Committee holds a single debate on motions S1M-668, S1M-667 and S1M-666 (motions to approve the Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2000; the Advice and Assistance (Financial Conditions) (Scotland) Regulations 2000 and the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2000); and that the debate shall last no more than 90 minutes.

4. **Abolition of Feudal Tenure etc. (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 3).

5. **Petition:** The Committee will consider PE89 by Mrs Eileen McBride on information to be included on Enhanced Criminal Record Certificates.

6. **Stalking and Harassment:** The Committee will be invited to consider appointing a Reporter to consider the issues raised in the Scottish Executive consultation paper.

Andrew Mylne
Clerk to the Committee

The following papers are attached for this meeting:

Agenda item 2

Note by the Senior Assistant Clerk on SSI 2000/73 (copy of instrument attached)	JH/00/13/1
Note by the Assistant Clerk on SSI 2000/49 (copy of instrument attached)	JH/00/13/2

Agenda item 5

Note by the Assistant Clerk on PE89 (copy of petition attached)	JH/00/13/3

Other papers

Agenda item 4

Members are reminded to bring with them copies of the Bill and Accompanying Documents, together with any papers from the Stage 1 process that are considered relevant (such as the Committee's Stage 1 Report). Copies of the Marshalled List will be available from Document Supply first thing in the morning and will also be available at the meeting venue. A list of groupings will be available at the meeting venue at the beginning of the meeting.

Agenda item 5

A SPICe research note (00/19), *Access to Criminal Record Information under Part V of the Police Act 1997*, is available from the Reference Centre in PHQ.

Agenda item 6

Copies of the Executive consultation document *Stalking and Harassment* are available from the Document Supply Centre.

The Presiding Officer
Scottish Parliament
Edinburgh
EH99 1SP

THE POLICE GRANT (SCOTLAND) ORDER 2000 (SSI 2000/73)

The above instrument was made under section 32(3) of the Police (Scotland) Act 1967 on 16 March 2000. It was laid before the Scottish Parliament on 16 March. It comes into force on 1 April 2000. The purpose of the order is to determine the aggregate amount of grants to be made to police authorities and joint police boards for police purposes and the amount of grant to be made to each such authority or board for the financial year commencing 1 April 2000.

Article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 has not been complied with. The reason for not complying with that article is because of the need to await information about agreed budgets for the financial year 2000-2001 from two police authorities. These two authorities did not agree their budgets until Thursday 8 March. Following receipt of the information about the budgets set by the police authorities, the Department was then able finally to calculate the amount of police grant payable for the financial year 2000-2001.

This is regrettable, however the Presiding Officer will wish to note that each of the joint boards and police authorities mentioned in the Police Grant (Scotland) Order 2000 is aware of the terms of the Order.

16 March 00

Mike Murray
for the Scottish Executive Justice Department

SL/REC.LEAD/FORM

SSI Title and No:	The Police Grant (Scotland) Order 2000 **(SSI 2000/73)**		
Laid Date:	16- Mar-00	**Responsible Minister:**	James Wallace
SE Contact:	Mike Murray 244-2198		
Standing Order:	10.6 Subject to affirmative resolution within 40 days of laid date.		

RECOMMENDATION

Lead Committee:	Justice and Home Affairs	**Other Committees:**	**1.** **2.**
Clerk Contact Room & No:	Andrew Mylne Room 3.09 Ext 85206	**Clerk Contact No:**	**1.** **2.**
Reason:	This Order is made under section 32(3) and(5) of the Police (Scotland) Act 1967, as substituted by section 45(1) of the Crime and Punishment (Scotland) Act 1997, which makes provision for the Scottish ministers to make grants out of money from the Scottish Consolidated Fund for police purposes to police authorities and joint police boards.		

Time Limit for Parliament to Deal with Instrument	4-May-00	**1st SLC Meeting**	2-Mar-00

Lead Committee To Report By:	1 -May-00	***Other Committees To Report to the Lead Committee:**	

SSI Attached	X	**Draft Motion Attached if Required**		**Date Motion and Designation Form E-Mailed to the Bureau**		**Laying Clerk Advised of Designated Lead Committee**	X

*** 10 days before the lead committee reporting date. "Other" committees may wish to negotiate timing of their report with the lead committee.**

2000 No. 73

POLICE

The Police Grant (Scotland) Order 2000

Made	*16th March 2000*
Laid before the Scottish Parliament	*16th March 2000*
Coming into force	*1st April 2000*

The Scottish Ministers, in exercise of the powers conferred on them by section 32(3) and (5) of the Police (Scotland) Act 1967(a) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Police Grant (Scotland) Order 2000 and shall come into force on 1st April 2000.

(2) In this Order–

"the Act" means the Police (Scotland) Act 1967;

"authority" means a police authority (not being a constituent authority) or a joint police board;

"financial year 2000-2001" means the period of 12 months commencing on 1st April 2000; and

"police grant" means the grant made under section 32(1) of the Act.

Aggregate amount of grants for financial year 2000-2001

2. The aggregate amount of police grant to be made for the financial year 2000-2001 shall be £377,160,000.

Amount of grant to an authority for financial year 2000-2001

3. The amount of police grant to be made for the financial year 2000-2001 to each authority specified in column 1 of the Table below shall be the amount determined in relation to that authority which is set out in column 2 of that Table opposite to the name of that authority–

TABLE

(1) *Authority*	*(2)* *Amount of Grant*
Central Scotland Joint Police Board	£16,895,000
Dumfries and Galloway Council	£10,865,000
Fife Council	£20,902,000
Grampian Joint Police Board	£32,073,000
Lothian and Borders Joint Police Board	£68,159,000

(a) 1967 c.77; section 32 was substituted by the Crime and Punishment (Scotland) Act 1997 (c.48), section 45(1) and amended by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 41(2). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(1) *Authority*	*(2)* *Amount of Grant*
Northern Joint Police Board	£19,476,000
Strathclyde Joint Police Board	£179,448,000
Tayside Joint Police Board	£29,342,000

Payment of grant

4. The police grant payable to an authority by virtue of this Order for the financial year 2000-2001 shall be paid to that authority in equal monthly instalments on the 15th day of each month during that year.

JAMES WALLACE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
16th March 2000

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 32(3) and (5) of the Police (Scotland) Act 1967, as substituted by section 45(1) of the Crime and Punishment (Scotland) Act 1997, which makes provision for the Scottish Ministers to make grants out of money from the Scottish Consolidated Fund for police purposes to police authorities and joint police boards.

This Order determines–

(a) the aggregate amount of grants to be made under section 32(1) to all police authorities and joint police boards for the financial year 2000-2001 (article 2); and

(b) the amount of such grants to be made to each police authority or joint police board (article 3).

The Order also sets out how and when the grant is payable (article 4).

SL/REC.LEAD/FORM

SSI Title and No:	The Charities (Exemption from Accounting Requirements) (Scotland) Regulations 2000 **(SSI 2000/49)**		
Laid Date:	10 Mar 00	**Responsible Minister:**	James Wallace
SE Contact:	Jean Wilson 244-4214		
Standing Order:	10.4 Subject to negative resolution within 40 days of laid date.		

RECOMMENDATION

Lead Committee:	Justice and Home Affairs	**Other Committees:**	**1.** Social Inclusion, Housing and Voluntary Sector **2.**
Clerk Contact Room & No:	Andrew Mylne Room 3.09 Ext 85206	**Clerk Contact No:**	**1.** Martin Verity Room G11,Ext 85211 **2.**
Reason:	These Regulations amend the Charities (Exemption from Accounting Requirements) (Scotland) Regulations 1993.		

Time Limit for Parliament to Deal with Instrument	27 April 00	**1st SLC Meeting**	21 March 00
Lead Committee To Report By:	24 April 00	***Other Committees To Report to the Lead Committee:**	31 March 00

SSI Attached	X	**Draft Motion Attached if Required**		**Date Motion and Designation Form E-Mailed to the Bureau**		**Laying Clerk Advised of Designated Lead Committee**	X

*** 10 days before the lead committee reporting date. "Other" committees may wish to negotiate timing of their report with the lead committee.**

SCOTTISH STATUTORY INSTRUMENTS

2000 No. 49

CHARITIES

REGULATION OF CHARITIES

The Charities (Exemption from Accounting Requirements) (Scotland) Amendment Regulations 2000

Made	*8th March 2000*
Laid before the Scottish Parliament	*10th March 2000*
Coming into force	*1st April 2000*

The Scottish Ministers, in exercise of the powers conferred upon them by section 4(4)(b) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(a), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Charities (Exemption from Accounting Requirements) (Scotland) Amendment Regulations 2000 and shall come into force on 1 April 2000.

(2) In these Regulations "the principal Regulations" means the Charities (Exemption from Accounting Requirements) (Scotland) Regulations 1993(b).

Amendment of the principal Regulations

2. In Regulation 2 of the principal Regulations in the definition of "Scottish charitable corporation"(c) after the words "Auditor General" there shall be inserted the words "or are accounts in relation to which sections 21 and 22 of the Public Finance and Accountability (Scotland) Act 2000 apply".

James Wallace
A member of the Scottish Executive

St Andrew's House,
Edinburgh
8th March 2000

(a) 1990 c.40. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46)
(b) S.I. 1993/1624, as amended by S.I. 1995/645.
(c) As substituted by S.I. 1995/645, regulation 3.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Charities (Exemption from Accounting Requirements) (Scotland) Regulations 1993 by extending the definition of a Scottish charitable corporation to include recognised bodies whose accounts are required to be audited by the Auditor General or sent to the Auditor General for auditing under the provisions of sections 21 and 22 of the Public Finance and Accountability (Scotland) Act 2000 (2000 asp 1).

Public Petition to the Scottish Parliament

To the Scottish Parliament:

Re: Enhanced Criminal Record Certificates and the Presumption of Innocence

I, the undersigned declare that the legislation contained in The Police Act 1997 which allows non - conviction information, (i.e. unproven allegations) to be included on an **Enhanced Criminal Record Certificate,** negates a person's right to be presumed innocent until and unless proven guilty in a court of law.

Despite several attempts at reassurance as to how this law will be implemented, which I have received from a number of MSPs, I believe this law is fundamentally flawed, and that therefore it is impossible to implement it fairly. It also contravenes the spirit, if not the letter of the Declaration on Human Rights, which should now inform all our laws.

Please refer to the attached sheet for further information.

The Petitioner therefore requests that the Scottish Parliament acts quickly to repeal this part of the said act. It is not enough simply to halt the implementation of the provisions of Part V of the Police Act 1997 - it must be repealed to avoid leaving the way open for civil rights abuses by some future administration.

From: Eileen A. McBride (Mrs)

Signed ..Eileen A McBride

Further Information in Support of the Attached Petition

1. It appears this legislation was introduced in response to the Dunblane tragedy. However, had Enhanced Criminal Record Certificates been in existence at that time, they would not have prevented the crime, since obviously Mr Hamilton did not seek police approval before entering the school. Even if Part V is fully implemented, people who are not members of bona fide organisations will still be able to arrange access to children without police approval. This legislation will not therefore fulfil its intended purpose of preventing such an incident occurring in the future.

2. Some MSPs have told me that in deciding whether to release "non-conviction information " on an ECRC, great care will be taken to ensure "reliability "or "accuracy". Despite several letters over the last four months I have been unable to ascertain what these words mean. Is it merely that care will be taken to ensure that only allegations against a particular individual will be recorded on his certificate? I would be shocked if that level of efficiency could not be taken for granted on such an important matter. Or does it mean that the allegations recorded will be those *which the police believe to be true*? I fear that this might be the case, which is one reason why I believe the introduction of ECRCs in the proposed form threatens the right to the presumption of innocence. My fears are exacerbated by the fact that MSPs seem content to implement this legislation, but are unable or unwilling to reply to what should be a simple question.

3. Article 6 of the Human Rights Act 1998 states:

1. **In the determination of his civil rights and obligations or of any charge against him, everyone is entitled to a fair and public hearing....**

2. **Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.**

I recently heard from a representative of the Justice Department that:

"A committee of the Association of Chief Police Officers in Scotland and the Department are (sic) currently working on appropriate guidance on the release of this sensitive information and are (sic) taking into account the requirements of European Court of Human Rights legislation."

Although paragraph 2 of Article 6 refers specifically to those actually charged with a crime, the spirit if the Act would surely extend to circumstances where an official document, with the power to ruin a person's life and career can include unproven allegations on the word of the Chief Constable, without a "fair and public hearing" ever taking place.

4. I have also been told that interpretation of the law is ultimately for the Courts. This would seem to mean that someone will have to be adversely affected by an entry on an ECRC and suffer the trauma and delay of a Court Case to settle the matter. I urge you to repeal this patently unjust legislation now, before it can do damage to anyone.

Eileen A McBride

JH/00/13/ 4

SCOTTISH EXECUTIVE

Deputy First Minister & Minister for Justice
Jim Wallace QC MSP

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Edinburgh EH1 3DG

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scottish.ministers@scotland.gov.uk

Roseanna Cunningham MSP
Convener
Justice and Home Affairs Committee
The Scottish Parliament
George IV Bridge
EDINBURGH
EH99 1SP

Date: 22 March 2000

Dear Roseanna,

In my letter of 24 November about the petition by Maclay Murray and Spens to amend the Tenancy of Shops (Scotland) Act 1949, I undertook to consider the proposals and let you know the outcome.

A consultation exercise has since been carried out, but has not identified any consensus that the provisions of the 1949 Act are frequently being used to the detriment of the commercial property market. The majority of the interested parties who were consulted did not regard the 1949 Act to be a major obstacle to independent retailers and smaller chains seeking prominent trading positions in principal trading locations. In their experience the Act had only been used on a number of occasions in the last few years to protect the rights of small traders. Some concern was expressed that the call for change should be based on the decision of one Sheriff in what has been to date an isolated case; the decision of one Sheriff was not authoritative and cases were cited where Sheriffs had taken a different view. A summary of the consultative response is attached.

I conclude that insufficient support has been demonstrated for the proposals made by the petitioners and confirm that on present evidence no further action will be taken by the Scottish Executive in this regard.

I am sending a copy of this letter to John McAllion, Convener of the Public Petitions Committee, to Andrew Mylne and to Maclay Murray and Spens at 3 Glenfinlas Street, Edinburgh.

Yours sincerely,

Jim

JIM WALLACE

RESPONSES TO PROPOSALS BY MACLAY, MURRAY AND SPENS

Association of Scottish Chambers of Commerce

1. The Association did not submit a view; it had received comments from 2 member Chambers, expressing wholly opposite views, and therefore decided that it could not submit a representative view.

Confederation of British Industry

2. The CBI expressed support for the petition and perceived a need for legislation to protect both landlords and tenants, particularly where the tenants were small firms. They considered that the option to contract out of the Tenancy of Shops (Scotland) Act 1949 would:

2.1 provide protection to both landlords and tenants;

2.2 provide comfort to smaller businesses who might find it increasingly difficult to secure adequate premises as a result of the recent case; and

2.3 ensure the future of the wider commercial property market in Scotland as a whole was not jeopardised.

The Law Society of Scotland

3. The Law Society did not support the petition. The proposals were considered by the Society's Conveyancing Committee and specialist analysis and advice was also sought from Professor Douglas Cusine, formerly Professor of Conveyancing at Aberdeen University; and Mr Stewart Brymer, solicitor, Dundee who had recently lectured and written articles on the 1949 Act. Both were firmly of the opinion that the reform proposals were unjustified. The Society's comments were :

3.1 The petition highlighted a problem which was more important to landlords than tenants;

3.2 The Law Society did not agree that the 1949 Act had become a major obstacle to independent retailers and smaller chains who sought prominent trading positions in principal trading locations; observed that the Act had been used on a number of occasions in the last 5 years to protect rights of small traders; and therefore regarded it as an important piece of legislation in that area.

3.3 The Law Society agreed that the maximum extension courts could grant was one year, but noted that the extension could be renewed on a rolling basis if sufficient cause was identified;

3.4 The issue of alleged 'hardship' needed further examination. The petition cited a recent Glasgow case as the prompt for change, but the Law Society emphasised that the decision of one Sheriff was not authoritative and cited other cases where Sheriffs had taken a different view;

3.5 The Society noted that the issue of hardship was not the only factor taken into account by the courts, referring to McAllister's Scottish Law of Leases at pages 98-101 for a commentary on the workings of the Act and grounds of refusal of the tenant's application;

3.6 The petitioners' assessment of the inevitable consequence on the property market was exaggerated in the Society's view as any tenant could make use of the 1949 Act. In many cases the Act was a useful negotiating tool for tenants who received a Notice to Quit at the natural expiry of their lease and wished to renew its terms but not at a much increased level of rent. The Law Society understood the problem in England and Wales could be overcome by contracting out, but doubted whether there would be any benefit from the proposed reform, given the obvious strength of the bargaining power of the landlord as opposed to the tenant; and

3.7 The Society did not agree that the increase in investment in Scottish property over the course of the last 25 years had been principally the result of any lack of restriction on the landlord's ability to repossess property. In the Society's view, there had been a significantly greater investment in England where the principle of statutory renewal was much more common.

The Royal Institution of Chartered Surveyors in Scotland

4. The Institution suggested that the 1949 Act was little known in practice and infrequently used. They advised that although their members dealt with a large number of retail tenancies, they rarely encountered similar problems to those outlined by the petitioners, and did not have much experience of recourse being made to the Act. The Institution noted that landlords and tenants had different interests, the former seeking to maximise rental returns and the latter to make a reasonable living which suggested a case could be argued for both retention of the Act and for reform.

5. The Institution thought that amending the Act as proposed would allow the landlord to maximise his returns, having little or no regard for the existing tenant who might wish to trade from the location and causing hardship to the tenant. The Institution advised that it was important to retain smaller retailers within retail locations because it was necessary to promote local business opportunities; and to ensure tenant variety and choice to consumers which were fundamental to a well- performing development; and because there were always a certain number of units considered too small by most national retailers.

6. Considering the case for reform, the Institution conceded that the effect of the Act on the development of retail property could be potentially damaging in certain circumstances and its amendment advantageous to the landlord in the prime location who might wish to secure part of a site for comprehensive development. The Institution could foresee problems arising if tenants as a result of the 1949 Act had the ability to control the length of their lease within a large scale retail complex, quoting shopping centres as a good case in point where all leases should end simultaneously to allow refurbishment and ultimately regeneration. If such redevelopment were held up by small retailers seeking extensions to their leases, there was a risk in their view that small retailers might ultimately be refused leases if landlords feared they might have trouble reclaiming the property at the end of the lease.

7. The Institution advised in conclusion that they would only support the proposal if the case cited by the petitioners were to become a precedent to the extent that landlords were unable to redevelop retail sites and small retailers were subsequently denied leases. However, they cautioned about rushing towards legislation if the case was a one-off incident. They suggested legislation be delayed until sufficient time had passed to establish whether the provisions of the Act were being used on a more frequent basis to the detriment of the commercial property market.

FROM LORD WHITTY
PARLIAMENTARY UNDER-SECRETARY OF STATE

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
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Our Ref: W/04600/00

Roseanna Cunningham MSP
Convenor, Justice and Home Affairs Committee
The Scottish Parliament
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15 MAR 2000

Dear Roseanna Cunningham

PETITIONS ON ROAD FATALITIES

Thank you for your letter of 10 February enclosing these two petitions that the Public Petitions Committee has received from Alex and Margaret Dekker and from Tricia Donegan.

I note the concern of the petitioners about prosecutions against drivers who have been responsible for causing a death. It was in the light of such concern that the current study by the Transport Research Laboratory (TRL) was set up.

This study is attempting to examine whether there is sufficiently clear guidance on the law and its purpose and how this affects the choice of penalty. This includes a comparison of sentencing trends before and since the Road Traffic Act 1991 to assess how the changes in the definition of bad driving offences have been implemented by police and courts. By examining the whole process, from charging to sentencing, the research team is hoping to identify whether there is a need to improve current guidelines on sentencing in road traffic cases.

The research is seeking to ascertain what is leading prosecutors to select one offence rather than another, and why courts choose one penalty rather than another. Selected cases in both Scotland and England are being studied from charging to sentencing. As part of this process, the research is also examining whether the different legal systems are having an impact on conviction rates and sentencing in the two countries. A number of issues have emerged during the course of the research and are being examined further. The research is expected to be completed in October.

As you are no doubt aware, on 1 March the Government published its strategy for reducing all road casualties up to the year 2010. Improvements to the enforcement of road traffic law are a key element in the strategy and you may find it helpful therefore to have the enclosed copy of the enforcement chapter. Paragraphs 10.17 to 10.19 deal in particular with the issue of dangerous and careless driving offences. We are hopeful that the TRL study will highlight some ways in which the workings of the law might be improved in this area.

LORD WHITTY

CHAPTER 10
Better enforcement

Introduction

10.1 Road traffic law sets the framework for using the roads safely. It provides clear standards based on experience and analysis. Enforcing the law is an essential part of reducing road casualties and the police have a central role in improving road safety.

10.2 Traffic offences range from minor, careless errors to extremely serious, deliberate offences with devastating consequences for other road users and the drivers themselves. There has to be a correspondingly wide range of penalties.

10.3 But road policing is not only about traffic offences. It will be easier to persuade people out of their cars to walk, cycle and use public transport if roads are largely free from crime as well as danger from motor traffic. Road policing is an important element in reducing crime, the opportunities for crime and the fear of crime and it must be recognised as such.

Summary of the strategy

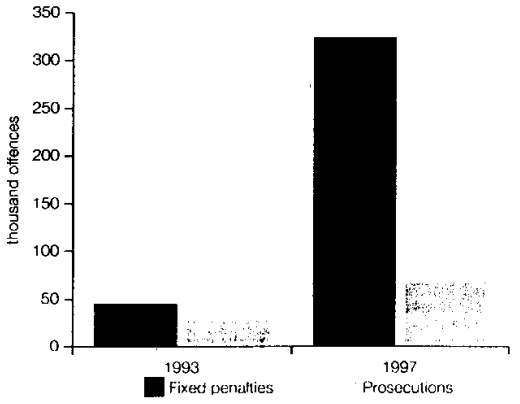
10.4 Together with the police, other enforcement agencies, and our partners in other government departments, we want to maximise the contribution that road traffic law can make to reducing road casualties. As far as possible, we want this to be achieved through persuasion and deterrence. But we need to have more effective penalties which are properly enforced and, especially for the more serious cases, that may mean increasing them. We want to see:

- more effective road traffic law enforcement;
- better public understanding of and respect for road traffic law;
- penalties more appropriate and proportionate to the seriousness of offences;
- more emphasis on education and retraining; and
- maximum use of new technology.

Background

10.5 The sheer number of road traffic offences is staggering. In England and Wales alone in 1997, 2.2 million motoring offences went to court, and a further 1.6 million offences were dealt with by official police action or fixed penalty notices, excluding parking and obstructions offences. More go undetected, some of them serious. A great many, though not all, affect road safety directly.

Motoring offences detected by automatic cameras: England and Wales



10.6 The general trend over recent years is that the number of court proceedings for motoring offences has been gradually falling, whereas the number of fixed penalty notices for offences other than parking has steadily risen. Cameras have increased the number of fixed penalties and prosecutions for speed and traffic light offences. The Home Office has recently consulted on increasing the penalty from £40 to £60.

Action plan

EFFECTIVE ROAD TRAFFIC LAW ENFORCEMENT

10.7 Road policing is one of the established aims and objectives of police forces. There have been calls for it to become a 'key priority' and we are developing the performance measures which would be necessary.

Two recent police initiatives lay the foundations for improving road traffic law enforcement.

The ACPO national road policing strategy

10.8 In 1997, the Association of Chief Police Officers (ACPO) adopted a national road policing strategy, 'to secure an environment where the individual can use the roads with confidence, free from death and injury, damage or fear'. In Scotland, a national road policing strategy is being prepared by the Association of Chief Police Officers in Scotland. ACPO's traffic committee also produced a more detailed good practice guide, *Effective Road Policing*. The significance of these documents is that they recognise the link between road traffic offences and other criminal acts, particularly vehicle theft. **They have adopted the principle that policing the roads means policing crime.**

HMIC report: Road Policing and Traffic

10.9 In 1998, Her Majesty's Inspectorate of Constabulary (HMIC) published a report ***Road Policing and Traffic*** **which emphasised the need for greater attention to road safety and road policing and contained detailed recommendations for the police.** Broadly, these proposed that: Chief Constables, when determining the level and structure of resources for local road policing, should take account of the need to achieve a reduction of road casualties and crime; they should also involve service deliverers in the development of their strategies, and negotiate formal partnership strategies with other agencies; the police should also aim to ensure that prosecution policies are applied consistently; and ACPO should monitor and evaluate the implementation of its road policing strategy and traffic policies.

UNDERSTANDING AND RESPECT FOR ROAD TRAFFIC LAW

10.10 It is a serious problem facing the Government and the police in this field that road traffic offences are not regarded by society with the same degree of condemnation as other crimes. This is partly a question of social attitudes but is also affected by a lack of understanding. Road traffic law is complex and the reasons for regulation are not always obvious. Greater clarity in road traffic law will improve deterrence and lead to a better acceptance of the rules of the road.

Speed limits

10.11 **We want to improve public understanding of the reasons for speed limits.** As explained in Chapter 6, *Safer speeds*, we will continue to publicise the dangers of excessive and inappropriate speed, and we will investigate other ways of promoting the message through partnerships with others.

10.12 We will also consider how to encourage car and motorcycle advertisers to promote safe speed choice and road safety.

10.13 **To ensure drivers adopt more appropriate speeds we need to introduce clearer speed limit signing** to remove any confusion, with additional signing for speed cameras, speed activated signs at hazards and more effectively targeted education and publicity campaigns.

The Crime and Disorder Act

10.14 The Crime and Disorder Act 1998 requires police and local authorities to produce joint strategies which are firmly rooted in the issues of concern to local people.

10.15 Consultation is revealing a demand for greater emphasis on making roads safer. Some police forces and local authorities are responding by producing a joint road safety strategy. **We will continue to monitor the way in which road safety is represented in these strategies.**

APPROPRIATE PENALTIES

10.16 Penalties should fit the offence. Serious road traffic offences merit strong penalties.

The Home Office Review of Road Traffic Penalties

This review will consider a range of offences including the following major issues:

- penalties for all speeding offences;
- dealing with worst cases of speeding;
- the maximum penalty for careless driving;
- penalties for driving while unfit through drink/drugs;
- minimum disqualification period for high risk drink-drive offenders;
- unlicensed and uninsured driving;
- abuse of bus lanes.

Road traffic offences represent a distinct area of criminal law in which penalties for the various offences are closely related. It is important to look at this regime as a whole to avoid the risk of anomalies or inconsistencies arising in sentencing law and practice. To this end the Government is now undertaking an urgent review, led by the Home Office, of penalties for road traffic offences. We believe that a comprehensive and co-ordinated approach will produce the best policy options for reform.

Dangerous and careless driving

10.17 Ideally, a driver whose behaviour is grossly irresponsible should be found guilty of *dangerous* driving, and one who is simply negligent or incompetent, of *careless* driving. But in practice, the two can be hard to distinguish. There is currently public concern that the definitions of dangerous and careless driving are not quite right. Under the Joint Charging Standards agreed by the police and the Crown Prosecution Service in 1996, 'careless driving' is that which 'falls below the standard of a reasonable, prudent and competent driver'. 'Dangerous driving' occurs when the driving 'falls far below what would be expected of a competent and careful driver and it would be obvious to a competent and careful driver that driving in that way would be dangerous'.

10.18 We are currently reviewing the present system by means of research which involves interviews with parties in the judicial process (including victims and their families) and tracking the progress of cases through the courts. **This review is due to be completed in October 2000.** Meanwhile in the case of *R* v. *Simmonds* (22nd January 1999) the Court of Appeal has said that the consequences of an offence can be taken into account when sentencing the offender.

10.19 In the shorter term, however, **the Government believes that the maximum penalty for careless driving should be increased from a fine of up to £2,500 to a fine of up to £5,000.** That is the highest fine that can normally be imposed by a magistrates' court in England and Wales[1]. The Home Office review of penalties, referred to above, will consider the implications of this change.

Retesting of offenders

10.20 Since 1992, motorists disqualified for dangerous driving offences have had to pass an extended driving test before getting their licences back. The courts can also require a retest for other endorsable offences.

10.21 It is a sound principle that a driver who has been banned for a considerable time should have to take a further test. **There are already powers in the Road Traffic Offenders Act 1988 to extend obligatory retesting. The Government intends to use this power and will shortly consult on how to do so.**

Cutting speed

10.22 One of the greatest challenges to the Government and the police alike is to change the cultural attitude that regards speeding as a trivial offence. Our efforts to publicise the dangers are being matched by an increase in enforcement, mainly through speed cameras and moves to increase penalties.

10.23 The Magistrates' Association issued their current guideline penalties in 1997 and are now working on new guidelines which are due to be issued in April 2000.

10.24 The Home Office has recently consulted on increasing the fixed penalty for all endorsable offences (including speeding) from £40 to £60. **The Home Office review of penalties for road traffic offences will determine the best way to make penalties for speeding offences more effective.** And, in particular, it will consider how to punish those who drive far in excess of the speed limit, including the possibility of creating a new offence.

10.25 Cameras have proved their effectiveness in enforcing speed limits and reducing speed-related accidents and casualties at accident hot spots. They are costly to install, operate and maintain, but these enforcement costs cannot be directly recovered by the police and local authorities where a fixed penalty notice is used. Only where cases are heard in court may the police and others claim their costs. To address this funding problem the Government now accepts that those responsible for installing and operating cameras should be able to retain some of the fine revenue from offences detected by camera, to cover their costs. This would enable better use to be made of existing cameras and for additional cameras to be introduced for road safety purposes. The next generation of cameras will be digital, offering greater capacity and flexibility at lower cost.

We are developing a funding system with effect from April 2000 to enable local authorities, the police, magistrates' courts committees and other agencies involved in the enforcement process to have some of their camera enforcement costs refunded from a proportion of the fine revenue. A scheme to pilot a new funding system is being planned and, if successful, will become available country-wide.

10.26 **Following the success of rehabilitation courses for drink-drivers, we want to develop similar schemes for habitual speeders.**

Bus lanes

10.27 The introduction of bus lanes on key roads in recent years has made a valuable contribution to improving public transport services, particularly in London and other urban areas. However, the benefits

1 In Scotland the maximum fine that can be imposed by a District Court is £2,500. The higher fine of £5,000 could be imposed only by the Sheriff Court

for bus users of shorter journey times and more punctual services may be lost altogether due to the irresponsible or thoughtless behaviour of drivers who drive or park in bus lanes. Such behaviour can also have serious road safety implications. For example, vehicles parked in or close to bus stop bays may prevent a bus driver from stopping close to the kerb, thus exposing boarding or alighting passengers to risks from other road users, particularly motorcycle riders and cyclists but also in some situations larger vehicles.

10.28 Bus lane abuse may also create unnecessary hazards for both passengers and pedestrians where bus drivers are forced to manoeuvre to avoid parked vehicles or those entering or leaving a bus lane.

10.29 Both the police and many local authorities have powers to enforce offences in bus lanes. The police, for example, retain responsibility for enforcing the law on dangerous parking, which is an endorsable offence. In London, the Government has made additional investment in bus demonstration projects. These have improved safety features through good design and traffic management. Enforcement has a higher profile with the increased use of on-bus and roadside cameras, and of tow trucks to remove vehicles.

10.30 In the Home Office review, we will look at the possibility of increasing penalties further for bus lane offences, together with alternative sanctions and measures to improve enforceability of bus lanes, particularly in respect of persistent offenders.

Unlicensed and uninsured driving

10.31 We are concerned about the extent of unlicensed and uninsured driving and we are carrying out research to find out more about the size of the problem and how it can best be tackled. We also want to make sure that penalties for both offences are adequate and act as a powerful enough deterrent. The Home Office review of penalties **will also look at options for raising the penalties for unlicensed and uninsured driving.**

EMPHASIS ON EDUCATION AND RETRAINING

10.32 For minor road traffic offences or as part of the penalty for speeding and other more serious offences, retraining may well be appropriate.

Driver improvement schemes

10.33 In recent years, the police have developed schemes which offer retraining rather than prosecution to drivers who have committed careless errors. The drivers themselves pay the costs. One of the earliest was introduced by Devon and Cornwall Police in 1991, in association with Devon County Council. The ***National Driver Improvement Scheme*** has been adopted by over 30 forces. (Similar schemes are being considered for Scotland.) Research has shown that attending the courses can improve drivers' attitudes but further research is needed to evaluate the effects on accident involvement and re-offending.

10.34 The police and course providers are working together to ensure that there is consistency between the schemes on such matters as criteria for deciding whether a driver should be offered a course or prosecuted, and explaining the reasons to anyone injured by a careless driver. We welcome this and hope that the scheme will become available nationwide.

More retraining of offenders

10.35 **We are considering how the courts might be able to send convicted offenders on retraining courses (such as Driver Improvement Schemes) as part of their sentence.** This would require primary legislation.

10.36 **We will also examine ways of extending retraining to other penalties involving retesting,** now that a fairly standard training package is available. To include training would emphasise that retesting is a safety measure, not simply another punishment.

NEW TECHNOLOGY

10.37 Technological developments can make enforcement more efficient and effective. The areas we are investigating include:

- **better sharing of information**

The police already have access to vehicle records held by the Driver and Vehicle Licensing Agency (DVLA). **Legislation to allow the police to have bulk access to DVLA's driver records will be brought forward when a suitable opportunity arises.**

We will also explore further the scope for jointly analysing data of road casualties and data of driving offences, to give us a better understanding of the connection between road traffic offences and casualties.

- **smart driving licences**

'Smart-card' driving licences could offer significant advantages for enforcement and road safety, as information about the driver and vehicle could be stored and downloaded electronically. DVLA is represented on a European Commission working party which is examining the issues.

- **evidential roadside breath testers**

Readings from evidential roadside breath-testing devices could be used as evidence in court, so offenders need not be taken to a police station for a second test (see Chapter 4, *Safer drivers – drink, drugs and drowsiness*). The Home Office and the police are currently examining the procedural and legal implications of evidential roadside breath testing. When these are resolved, the Government will seek an early legislative opportunity to implement it.

- **digital speed cameras**

The Home Office has recently approved a new generation of speed camera which can record offences digitally, removing the need to process film. They can also be linked together to monitor vehicle speeds over set distances, using software that can read number plates.

- **roadside drug screening devices**

The Home Office is working on a roadside drug screening device and a detailed technical specification is being developed.

PACTS report on road traffic law and enforcement

10.38 In July 1999, the Parliamentary Advisory Council for Transport Safety (PACTS) published a report *Road traffic law and enforcement: a driving force for casualty reduction*, which made recommendations for improving enforcement. The Government's response is being published separately.

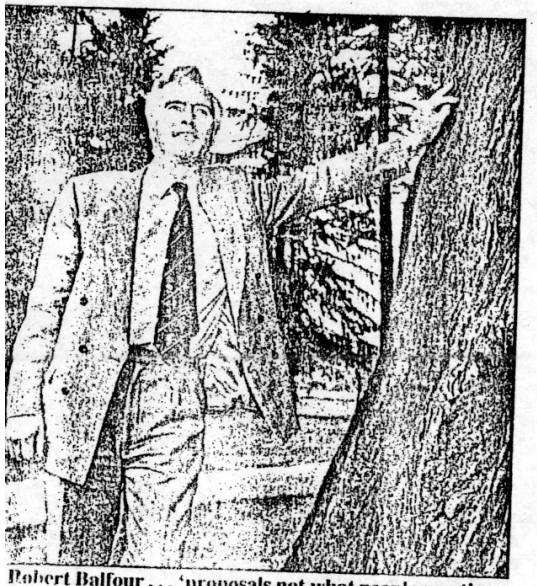
Implementation timetable – Better enforcement

	Implement now	Implement in the next 2–3 years	Longer term intentions	Primary legislation required
Implement the findings of the HMIC inspection report (for the police)	✔	✔		
Improve public understanding of the risks and penalties of road traffic offences		✔		
Monitor the extent to which road safety issues are included in Crime and Disorder strategies	✔			
Home Office and DETR to review penalties for road traffic offences	✔			
Consult on obligatory retesting on conviction for wider range of offences		✔		
Complete research into dangerous and careless driving	✔			
Raise maximum penalty for careless driving		✔		
Specific consideration of penalties for speeding offences	✔			
Develop a new funding mechanism for speed cameras (see paragraph 27)		✔		
DETR, Home Office and the police to refine the details of driver improvement schemes with a view to extending them nationwide		✔		✔
Develop new technology which could help enforce the law more effectively eg digital breath-testing devices and drug-testing devices		✔	✔	✔

Press and Journal

Reforms raise many concerns, say lairds

19



Robert Balfour ... 'proposals not what people want'

by **Joe Watson**

THE convener of the Scottish Landowners' Federation yesterday claimed the Scottish Executive was using a "turbo-charged industrial hammer" to crack open the land reform nut.

Robert Balfour, in Aberdeen for the SLF's North-east region meeting, said the Executive's land reform proposals had raised many concerns.

He, however, said it was "really quite rich" that the Executive had looked to the nation's landowners to provide many of the answers to the thorny question of land reform.

Mr Balfour said: "Land reform raises many concerns because community has not been defined, and has been put in the context of the whole of rural Scotland instead of mainly the Highlands.

"We have also raised concerns about how a community could register an interest in land."

Mr Balfour said in extreme cases a farmer wanting to pass on his farm to his family may have to consult the local community about the sale before going ahead with it.

But Mr Balfour said: "I do not believe this is what people want. By and large, people do not want the responsibility of owning land, they want to have more influence over what happens on that land when it affects them.

"That is what people want. What they are getting is a turbo-charged industrial hammer to crack a very small nut.

"To vary the analogy, the Government is in a hole and when you are in that position, the sensible thing is to stop digging. I'm not going to give them a ladder to get out either.

"Donald Dewar continues to insist that good landowners have nothing to fear, omitting to point out that the current proposals go farther than the original consultation document."

Mr Balfour said the organisation would not stand in the way of greater opportunity for people either to acquire land or to be involved with it as a community. But this assumed agreement could be reached on what constituted a community.

He added: "What we will not do is stand idly by and watch an urban centric administration play silly games with the birthright of a generation."

He claimed it was long past time critics recognised the massive contribution made by owners and managers of land in Scotland.

And he said he knew of no other industry in the world held up to so much abuse as landowning. It also seemed to offend sensitivities on The Mound.

Mr Balfour also updated North-east members on ongoing talks between the Scottish NFU and the SLF on agricultural tenancy reforms.

Proposals to deal with short-term lets for potatoes and carrots have been tabled as had a plan to deal with the old section 2.

He added: "All I would like to say is that there are stumbling blocks over length of term since we have agreed to continue negotiations away from the glare of publicity."

Press and Journal

Jail-death woman's family want action

THE family of a woman who hanged herself in jail yesterday called for a change in legal-aid rules so they can pursue a claim against prison bosses through the courts.

Angela Bollan was 19 when she died in Cornton Vale Prison near Stirling on May 26, 1996, and her parents, James and Anne, claim the Scottish Prison Service was negligent in failing to prevent her death.

In a petition to the Scottish Parliament's Justice and Home Affairs Committee, they called for legal-aid rules to allow them to seek damages on behalf of Angela's daughter, Stephanie, who is five.

In their letter to the committee Mr and Mrs Bollan, from Alexandria, said: "We are both on low fixed incomes and are too poor to pay court costs. The findings of the fatal accident inquiry held into Angela's death form the basis of our case.

"We are being socially excluded from the justice system by SLAB (Scottish Legal Aid Board), an unelected quango, who are acting as judge and jury and denying our granddaughter the right to have a court decide if the Scottish Prison Service was negligent and caused Angela's death."

They are asking MSPs to change the rules so anyone who has lost a close relative whose death has required a fatal accident inquiry has a right to legal aid.

In their submission Mr and Mrs Bollan added: "The pain we continue to suffer after the loss of our daughter is deep, dark and unimaginable. We need to know why Angela died. We need to know who was responsible.

"Someone in the SPS needs to be held to account in a court of law for Angela's unavoidable death. We seek justice and truth not just for ourselves but for Stephanie, who has an undeniable right to know why her mum was allowed to die, whilst in the care of the state."

Kate MacLean, Labour MSP for Dundee East, told the committee: "SLAB say that the procurator fiscal always defends a family's interest at an FAI but these do not always coincide.

"I'm involved in a case that the sheriff said in fact victims should be represented at an FAI."

Committee convener Roseanna Cunningham said a decision on what action to take on the petition would be deferred until after Easter and in the meantime it would be sent to SLAB for its comments.

JH/00/13/1

JUSTICE AND HOME AFFAIRS COMMITTEE

THE POLICE GRANT (SCOTLAND) ORDER 2000 (SSI 2000/73)

Note by the Senior Assistant Clerk

Please find attached a copy of the above Regulations, which have been referred to the Committee by the Subordinate Legislation Committee for consideration. A covering letter from the Scottish Executive Justice Department to the Presiding Officer is attached.

Laying of the Order

Article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 states that a "negative instrument" should be laid 21 days before the instrument comes into force. However, Article 10(3) does allow an instrument to come into force less than 21 days after it is laid provided the Executive, or other responsible authority, explains to the Presiding Officer why this has been necessary.

This instrument was laid on 16 March and will come into force on 1 April - less than 21 days after it was laid. The attached letter from the Executive to the Presiding Officer states that the 21 day rule has not been complied with because of the need to await information about agreed budgets for the financial year 2000/01 from two police authorities which did not agree their budgets until 8 March.

Members should note that instruments may still be annulled after they have come into force. The fact that this instrument will come into force on 1 April does not prevent any member from subsequently lodging a motion to annul, provided that the usual requirements of Standing Orders in relation to negative instruments are met (Rule 10.4).

Procedure

Any member may lodge a motion asking the lead Committee to recommend that nothing further is to be done under the instrument (i.e. that it should be annulled). If such a motion is lodged, there will be a debate on the instrument at a meeting of the Committee, lasting up to 90 minutes, which a Minister and the member who lodged the motion (if not a member of the Committee) are entitled to attend.

The Committee, after having taken into account the Subordinate Legislation Committee's views on the instrument, must then report to the Parliament. If the Committee's recommendation is that the instrument should be annulled, the Parliamentary Bureau will lodge a motion to that effect which is then debated in Parliament. Any such motion by the Bureau must be lodged no later than 40 days after the instrument is laid. The Subordinate Legislation Committee discussed the instrument at its meeting on 22 March and is expected to publish its report prior to 29 March.

Police Grant

The Police Grant (Scotland) Order 1999 (SI 1999/953), which applies to the financial year 1999/2000, is also attached for information. Members may wish to note that the financial information which will shortly be published by the Executive to inform the first stage of the Budget process will include projections for the amount of police grant to be made in 20001/02.

SHELAGH MCKINLAY 24 March 2000

JUSTICE AND HOME AFFAIRS COMMITTEE

The Charities (Exemption from Accounting Requirements) (Scotland) Amendment Regulations (SSI 2000/49)

Note by the Assistant Clerk

Background

The above instrument has been referred to the Committee by the Subordinate Legislation Committee.

These Regulations amend 1993 regulations by extending the definition of a Scottish charitable corporation to include bodies whose accounts require to be audited by or sent to the Auditor General by virtue of sections 21 and 22 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1).

Procedure

These Regulations are made as a negative instrument – that is, an instrument that comes into force and remains in force unless the Parliament passes a resolution calling for its annulment.

Any MSP may lodge a motion with the committee to which the instrument has been referred (under Rule 10.4.1). If such a motion is lodged, there must be a debate on the instrument at a meeting of the committee, lasting up to 90 minutes, which a Minister is entitled to attend (Rule 10.4.2). The committee must then report on the instrument to the Parliament. If the conclusion of the debate is a recommendation to annul, there must be a short debate in the Chamber (Rule 10.4.3 and 10.4.4). The entire process must take place within 40 days (excluding recesses) of the instrument being laid, i.e by 18 April.

There appears to be nothing at all controversial in these Regulations. It is therefore unlikely that any MSP will lodge a motion calling on the Committee to annul the instrument. Unless such a motion is lodged, no action by the Committee is required.

FIONA GROVES 22 March 2000

JH/00/13/3

JUSTICE AND HOME AFFAIRS COMMITTEE

Petition PE 89 by Mrs Eileen McBride

Note by the Assistant Clerk

Background

This petition calls for the Parliament to repeal the legislation which allows non-conviction information to be included on an Enhanced Criminal Record Certificate and has been referred to this Committee by the Public Petitions Committee. The petitioner is concerned that the inclusion of such information negates an individual's right to be presumed innocent until proven guilty in a court of law.

SPICe has prepared a Research Note (RN 00/19) which describes the current position and outlines the background to Part V of the Police Act 1997 in relation to the provision of criminal record checks for those working with children.

Options

The Committee may wish to write to the Minister for Justice for clarification on when the relevant sections of the Police Act 1997 will be brought into force in Scotland. The Committee might also ask the Minister for his comments on the suggestion that those sections might breach article 6 of the European Convention on Human Rights.

23 March 2000

JH/00/12/M

The Scottish Parliament

JUSTICE AND HOME AFFAIRS COMMITTEE

MINUTES

12th Meeting, 2000 (Session 1)

Tuesday 21 March 2000

Present:

Scott Barrie	Roseanna Cunningham (Convener)
Christine Grahame	Gordon Jackson (Deputy Convener)
Kate MacLean	Maureen Macmillan
Michael Matheson	Mrs Lyndsay McIntosh
Pauline McNeill	Euan Robson

Also present: Angus MacKay (Deputy Minister for Justice), Brian Monteith.

Apologies were received from Phil Gallie.

The meeting opened at 9.33 am.

1. Abolition of Feudal Tenure etc. (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 2).

The following amendments were agreed to (without division): 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57.

Amendment 150 was disagreed to by division: For 2, Against 7, Abstentions 1.

Amendments 130, 131 and 133 were moved and, with the agreement of the Committee, withdrawn.

Another amendment was not moved.

Sections 21, 23, 24, 28, 29, 30 and 31 and schedule 6 were agreed to without amendment.

Sections 19, 20, 22, 25, 26 and 27 and schedule 7 were agreed to as amended.

The meeting was adjourned from 10.20 am to 10.25 am.

2. Abolition of Feudal Tenure etc. (Scotland) Bill: The Committee resumed consideration of the Bill at Stage 2 (Day 2).

The Convener decided that an amendment proposed by Brian Monteith could be taken as a manuscript amendment (amendment 161).

The following amendments were agreed to (without division): 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70 and 71.

Amendments 161, 134 and 152 were moved and, with the agreement of the Committee, withdrawn.

Other amendments were not moved.

Sections 33, 36, 38, 39 and 40 were agreed to without amendment.

Sections 32, 34, 35 and 37 and schedule 8 were agreed to as amended.

The meeting was adjourned from 11.02 am to 11.24 am.

3. Abolition of Feudal Tenure etc. (Scotland) Bill: The Committee resumed consideration of the Bill at Stage 2 (Day 2).

The following amendments were agreed to (without division): 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86 and 87.

Sections 42, 45, 46, 47, 48, 49, 50, 51, 53, 54 and 55 were agreed to without amendment.

Sections 41, 43, 44 and 52 were agreed to as amended.

The meeting closed at 11.38 am.

Andrew Mylne
Clerk to the Committee