



## JUSTICE AND HOME AFFAIRS COMMITTEE

### AGENDA

**14th Meeting, 2000 (Session 1)**

**Tuesday 4 April 2000**

The Committee will meet at 9.30am in the Chamber, Assembly Hall, the Mound, Edinburgh

1. **Legal Aid:** Joint debate (up to 90 minutes) on the following motions—
  - S1M-668:** The Deputy Minister for Justice (Angus MacKay) to move, that the Committee, in consideration of The Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2000, recommends that the Regulations be approved;
  - S1M-667:** The Deputy Minister for Justice (Angus MacKay) to move, that the Committee, in consideration of The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2000, recommends that the Regulations be approved;
  - S1M-666:** The Deputy Minister for Justice (Angus MacKay) to move, that the Committee, in consideration of The Advice and Assistance (Assistance by Way of representation) (Scotland) Amendment Regulations 2000, recommends that the Regulations be approved.
2. **Police Grant (Scotland) Order 2000:** The Committee will resume consideration of the instrument.
3. **Budget 2001-02:** The Committee will consider the Executive's expenditure proposals.
4. **Domestic violence:** The Reporter will report on her meeting with the Minister for Justice.
5. **Remand Prisoners:** The Committee will consider Her Majesty's Chief Inspector of Prisons for Scotland's report.
6. **Proposed Regulation of Investigatory Powers Bill:** The Committee will consider possible witnesses for Stage 1 consideration.

7. **Carbeth Hutters Report (in private):** The Committee will consider a draft report on petition PE14 by the Carbeth Hutters' Association.

Andrew Mylne  
Clerk to the Committee  
Tel 85206

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**The following papers are attached for this meeting:**

Agenda item 1

Executive note and copy of draft SSI (relating to motion S1M-668)	JH/00/14/1
Executive note and copy of draft SSI (relating to motion S1M-667)	JH/00/14/2
Executive note and copy of draft SSI (relating to motion S1M-666)	JH/00/14/3

Agenda item 3

Note by the Senior Assistant Clerk	JH/00/14/4
Scottish Executive Departmental Report Extracts	JH/00/14/11

Agenda item 5

HMCIP Report on conditions for remand prisoners, "Punishment First – Verdict Later?"	JH/00/14/5
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Agenda item 6

Note by the Senior Assistant Clerk	JH/00/14/6
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Agenda item 7

Draft report on Petition PE14 (private paper)	JH/00/14/7
Letter from the Trustees of the Carbeth Estate	JH/00/14/10

JUSTICE AND HOME AFFAIRS COMMITTEE

**Papers for information circulated for the 14th meeting**

Petition PE89 - Letter from Eileen MacBride	JH/00/14/9
Memorandum by Margaret and Alex Dekker in response to the Lord Advocate's letter on petition PE29	JH/00/14/8
[Note: It is understood that copies of this memorandum have been sent directly to all members of the Committee. Any member who does not have a copy should contact the clerks. Copies are included in this circulation for recipients other than Committee members.]	
Letter from Clerk to the Rural Affairs Committee on visits relating to forthcoming Land Reform Bill	JH/00/14/12
Extracts from <i>Press and Journal</i> and <i>Herald</i> on police complaints and stalking	
Minutes of the 13th Meeting, 2000	JH/00/13/M

## SL/REC.LEAD/FORM

<b>SSI Title and No:</b>	The Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2000 SSI 2000 draft						
<b>Laid Date:</b>	9-Mar-00	<b>Responsible Minister:</b>	Jim Wallace				
<b>SE Contact:</b>	Katie Beattie 244-2200						
<b>Standing Order:</b>	10.6 Subject to affirmative resolution within 40 days of laid date						
<b>RECOMMENDATION</b>							
<b>Lead Committee:</b>	Justice and Home Affairs	<b>Other Committees:</b>	1. 2.				
<b>Clerk Contact Room &amp; No:</b>	Andrew Mylne Room 3.09 Tel:- 85206	<b>Clerk Contact No:</b>	1. 2.				
<b>Reason:</b>	These Regulations increase certain of the financial limits of the eligibility for civil legal aid under the Legal Aid (Scotland) Act 1986						
<b>Time Limit for Parliament to Deal with Instrument</b>	27-Apr-00	<b>1st SLC Meeting</b>	14-Mar-00				
<b>Lead Committee To Report By:</b>	23-Apr-00	<b>*Other Committees To Report to the Lead Committee:</b>					
<b>SSI Attached</b>	X	<b>Draft Motion Attached if Required</b>		<b>Date Motion and Designation Form E-Mailed to the Bureau</b>		<b>Laying Clerk Advised of Designated Lead Committee</b>	X

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

## **EXECUTIVE NOTE**

### **The Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2000 (S.S.I. 2000/draft)**

The above instrument will be made in exercise of the powers conferred on Scottish Ministers by section 36(1) and (2)(b) of the Legal Aid (Scotland) Act 1986. The instrument is subject to the affirmative resolution procedure.

#### **Policy Objectives**

The purpose of this instrument is to increase certain of the financial limits of eligibility for civil legal aid under the Legal Aid (Scotland) Act 1986. The disposable income eligibility limit for civil legal aid, without a contribution being payable, is increased from £2,680 to £2,723 and the upper limit, beyond which civil legal aid is not available is increased from £8,751 to £8,891.

The annual upratings of the limits for civil legal aid are directly linked to increases in the level of income-related social security benefits. As announced by the Secretary of State for Social Security on 9 November 1999, income based social security benefits have been uprated by the RPI exclusive of housing - the Rossi Index. This year the Rossi Index stood at 1.6% (down from 2.1%). The upratings take effect from 10 April 2000

Civil legal aid applications are assessed by the Scottish Legal Aid Board and the means assessment in these cases does enable allowances to be made for rent, council tax etc. It is therefore appropriate that civil legal aid eligibility limits be uprated by the Index which excludes housing costs; that is the Rossi Index.

Capital limits for benefits have not risen. The lower and upper disposable capital eligibility limits therefore remain unchanged at £3,000 and £8,560 respectively.

#### **Consultation**

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#### **Financial Effects**

The upratings to the disposable income eligibility limits for civil legal aid will lead to an increase in legal aid expenditure but the Department's spending plans allow for this.

*Carol Sibbald*

Scottish Executive Justice Department  
9 March 2000

## SL/REC.LEAD/FORM

<b>SSI Title and No:</b>	The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2000 SSI 2000 draft					
<b>Laid Date:</b>	9-Mar-00	<b>Responsible Minister:</b>	Jim Wallace			
<b>SE Contact:</b>	Katie Beattie 244-2200					
<b>Standing Order:</b>	10.6 Subject to affirmative resolution within 40 days of laid date					
<b>RECOMMENDATION</b>						
<b>Lead Committee:</b>	Justice and Home Affairs	<b>Other Committees:</b>	1. 2.			
<b>Clerk Contact Room &amp; No:</b>	Andrew Mylne Room 3.09 Tel:- 85206	<b>Clerk Contact No:</b>	1. 2.			
<b>Reason:</b>	These Regulations will revoke the Advice and Assistance (Financial Conditions)(Scotland)Regulations 1999 except in relation to any case where an application for advice and assistance has been made before the regulations are introduced( regulation 6)					
<b>Time Limit for Parliament to Deal with Instrument</b>	27-Apr-00		<b>1st SLC Meeting</b>	14-Mar-00		
<b>Lead Committee To Report By:</b>	23-Apr-00		<b>*Other Committees To Report to the Lead Committee:</b>			
<b>SSI Attached</b>	X	<b>Draft Motion Attached if Required</b>		<b>Date Motion and Designation Form E-Mailed to the Bureau</b>		<b>Laying Clerk Advised of Designated Lead Committee</b>
						X

## **EXECUTIVE NOTE**

### **The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2000 (S.S.I. 2000/draft )**

The above instrument will be made in exercise of the powers conferred on Scottish Ministers by sections 11(2), 36(2)(b) and 37(1) of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative resolution procedure.

#### **Policy Objectives**

The purpose of this instrument is to increase the disposable income limit for eligibility for advice and assistance under the Legal Aid (Scotland) Act 1986 from £178 a week to £180. The instrument also increases the weekly disposable income above which a person is required to pay a contribution from £75 to £76 and it prescribes the scale of contributions to be paid where the weekly disposable income exceeds £76 but does not exceed £180.

Disposable income limits for advice and assistance are increased annually in line with contributory benefits. As announced by the Secretary of State for Social Security on 9 November 1999, contributory benefits will rise by the RPI. This year the RPI stood at 1.1% (down from 3.2%). The upratings take effect from 10 April 2000.

In the means assessment for advice and assistance, no deductions are made for rent, council tax etc. The limits for advice and assistance contain built-in allowances on an average basis for these in order to simplify the means assessment which is carried out by the applicant's solicitor. It is therefore appropriate that the advice and assistance limits should be uprated by the Index which includes housing costs; that is the RPI.

Capital limits for benefits have not risen. The disposable capital limit therefore remains unchanged at £1,000.

#### **Consultation**

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#### **Financial Effects**

The upratings to the advice and assistance disposable income limits will lead to an increase in legal aid expenditure but the Department's spending plans allow for this.

*Carol Sibbald*

Scottish Executive Justice Department

9 March 2000

SL/REC.LEAD/FORM

<b>SSI Title and No:</b>	The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2000 SSI 2000/Draft					
<b>Laid Date:</b>	9- Mar-00	<b>Responsible Minister:</b>	Jim Wallace			
<b>SE Contact:</b>	Carol Sibbald 244-2199					
<b>Standing Order:</b>	10.6 Subject to affirmative resolution within 40 days of laid date.					
<b>RECOMMENDATION</b>						
<b>Lead Committee:</b>	Justice and Home Affairs	<b>Other Committees:</b>	1. 2.			
<b>Clerk Contact Room &amp; No:</b>	Andrew Mylne Room 3.09 Ext 85206	<b>Clerk Contact No:</b>	1. 2.			
<b>Reason:</b>	These Regulations make assistance by way of representation available to proceedings before an adjudicator (including a special adjudicator) or the Immigration Appeal Tribunal. The Regulations also prescribe proceedings for the purposes of the Legal Aid (Scotland) Act 1986.					
<b>Time Limit for Parliament to Deal with Instrument</b>	27-Apr-00		<b>1st SLC Meeting</b>	21-Mar-00		
<b>Lead Committee To Report By:</b>	23-Apr-00		<b>*Other Committees To Report to the Lead Committee:</b>			
<b>SSI Attached</b>	X	<b>Draft Motion Attached if Required</b>		<b>Date Motion and Designation Form E-Mailed to the Bureau</b>		<b>Laying Clerk Advised of Designated Lead Committee</b>
						X

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



## EXECUTIVE NOTE

### **The Advice and Assistance (Assistance by Way of Representation) Amendment Regulations 2000 (S.S.I. 2000/draft)**

The above instrument will be made in exercise of the powers conferred on Scottish Ministers by sections 9(1), (2)(a), (dd) and (de) and 37(1) of the Legal Aid (Scotland) Act 1986. The instrument is subject to the affirmative resolution procedure.

#### **Policy Objectives**

##### **Mental Health Proceedings**

The purpose of this instrument is to provide assistance by way of representation (ABWOR) without reference to the financial eligibility test under section 8 or the client contribution test under section 11 of the Legal Aid (Scotland) Act 1986 for all proceedings under Part V of the Mental Health (Scotland) Act 1984. This will bring the position in Scotland into line with the position in England and Wales.

There is presently a requirement for the financial eligibility and contributions tests to apply to mentally disordered persons in mental health proceedings. A mentally disordered person may appeal in the sheriff court against compulsory detention or guardianship. Legal representation during an appeal is generally necessary to assist mentally disordered people to argue their case effectively.

In England and Wales applicants before a Mental Health Review Tribunal are exempt from the financial eligibility test and are not required to make a contribution. This was achieved by Regulations. It is believed that Scotland should follow suit. The Legal Aid (Scotland) Act 1986 did not have power to make such Regulations and primary legislation, through the vehicle of the Access to Justice Act 1999, was required. This provided Scottish Ministers with the power to prescribe proceedings where the financial eligibility and contributions tests will not apply.

##### **Immigration and Asylum**

This instrument also extends the provision of ABWOR to proceedings before the Immigration Appellate Authorities (which comprises adjudicators and the Immigration Appeal Tribunal). The financial and contributions tests will apply to these proceedings. This will bring the position in Scotland into line with the position in England and Wales.

As a result of concerns in England and Wales about unscrupulous advisers giving potential asylum seekers incorrect and inadequate advice, the Lord Chancellor asked the Legal Aid Board of England and Wales (LAB) to consider the provision of such advice under exclusive contracting with effect from 1 January 2000. LAB recommended, and the Lord Chancellor agreed, legal aid should be made available for appearances before adjudicators and the Immigration Appeal Tribunal. This legal aid will be restricted to advice and assistance, and ABWOR. The former is already available in Scotland but the latter is not.

At present, in certain circumstances, if an asylum seeker or foreign national is refused entry to the UK, or refused an extension to the time he/she is allowed to stay in the UK or refused a

change in status, then he/she has a right of appeal to the Immigration Appellate Authority. Appeals may be made to an adjudicator who has powers to overturn the decision where it is not in accordance with the law or immigration rules. If this appeal is not successful then leave to appeal to the Immigration Appeal Tribunal (IAT) may be sought. It is also possible for the Home Office to appeal to the IAT against a decision of an adjudicator.

Whilst we are not aware of similar problems with unscrupulous advisors in Scotland, an IAT sits in Glasgow, and there could be claims of unfairness if Scottish Ministers did not provide broadly equivalent legal aid cover for adjudicators and the IAT. We are now bringing forward Regulations to bring Scotland into line with England and Wales. The Scottish legal Aid Board has no powers to consider the provision of advice and assistance/ABWOR under contract. Thus advice and assistance/ABWOR will continue to be provided, as at present, by individual solicitors.

#### **Consultation**

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#### **Financial Effects**

The costs are likely to be small in Scotland and can be absorbed within existing provision.

*Carol Sibbald*  
Scottish Executive Justice Department  
9 March 2000

JH | 00 | 14 | 10

## **CARBETH ESTATE**

Ms Roseanna Cunningham  
Convener, Justice and Home Affairs Committee  
The Scottish Parliament  
Committee Chambers  
George IV Bridge  
Edinburgh  
EH99 1SP

28th March 2000

Dear Ms Cunningham

### Public Petition PE14 - Carbeth Estate

As one of the Trustees of the Carbeth Estate, I was interested to learn that the Justice and Home Affairs Committee will consider at tomorrow morning's meeting, "whether to consider" a draft report on Petition PE14 by the Carbeth Hutters' Association".

In advance of that meeting, I want to raise a number of points with you regarding both the previous meeting of the Committee and the impact the on-going dispute is having on my ability to manage the Estate.

### **Justice and Home Affairs Committee meeting, 16th February 2000**

On reading the minutes of the most recent meeting of the Justice and Home Affairs Committee at which Carbeth was discussed, I was concerned that a number of factual inaccuracies regarding the estate were articulated and placed "on record". Whether these inaccuracies were perpetrated deliberately or otherwise, I would not care to speculate; however, I am very keen to have the record put straight.

I am also concerned that members of the Committee should arrive at a decision regarding the estate on the basis of information that is not correct.

The attached two Appendices make specific reference to the issues concerned. The appendices are referenced to an attached copy of the minutes of the above meeting.

### **The Carbeth Estate**

The dispute at Carbeth has been a long and protracted one which, inevitably, has resulted in the expenditure of a great deal of time, energy and money. Sadly, there has been a human cost as well. As a direct result of the rent strike, a full time employee of the estate staff is being laid off.

Furthermore, I fear that the protracted nature of the dispute has encouraged many of the rent strikers to continue their strike, "waiting to see" what the outcome of the dispute might be, and suspending all payments until an announcement is made. This is posing an enormous financial burden on the estate to the extent that it is now seriously threatening the very future of the huts.

Whilst not wanting to predict the results of the Committee's deliberations, I would urge you to consider calling upon all strikers to pay what is their due forthwith.

As done on previous occasions I extend an offer to all members of the Committee to visit Carbeth where I would be delighted to explain to them first-hand the nature of the dispute.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Allan M. Barns-Graham'.

Allan M Barns-Graham

Petition - PE 14, Carbeth Hutters' Association  
Meeting of the Justice and Home Affairs Committee on 16/02/00  
Comments thereon from the Trustees of Carbeth Estate

APPENDIX I

OFFICIAL REPORT.  
16 FEBRUARY 2000.

Item 1 - Comment by the Convener

"However, we can invite ministers to consider ways in which the hutters might be given greater security and/or some protection from arbitrary rent increases." COLUMN 784

Item 1 - Trustees' reply

The statement suggests two underlying assumptions, firstly that the hutters require greater security and secondly, that they are likely to suffer from unnecessary and arbitrary future rent increases. The Trustees believe that both assumptions are wrong.

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Item 2 - Comment by the Convener

"I think that we were all agreed that we had heard such totally contradictory evidence that is was difficult for us to come to the kind of conclusion that might otherwise have been possible." COLUMN 784

Item 2 - Trustees' reply

As a result of the misinformation deliberately put about the total evidence obtained by the Justice and Home Affairs Committee will be, by definition, of a contradictory nature. The evidence provided by the Trustees can be substantiated and if there are areas where the Justice and Home Affairs Committee require further clarification then the Trustees would be happy to provide such clarification.

Item 3 - Comment by Scott Barrie

**" ... is it not the case that the issue boils down to the fact that the huts were not portable ... huts were a semi-permanent arrangement and that one could not move them except by destroying them."**

COLUMN 784.

Item 3 - Trustees' reply

Some huts are portable and have indeed in the past been removed or re-sited. A number of huts rest on railway sleepers which means that the huts are capable of being removed from the ground on which they rest. Some huts, admittedly, cannot be removed without their being destroyed.

It has not been the policy of the estate to remove huts. Where a hutter ceases to have a tenancy of a site for whatever reason someone else will take over the site. Previous tenants are recompensed in respect of the sale proceeds where the sales price exceeds any amounts previously due.

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Item 4 - Comment by Maureen Macmillan

**"They are not people's principal place of residence".** COLUMN 785.

Item 4 - Trustees' reply

What is of course very important and crucial is that these huts or chalets were never intended to be, never were and are not the principal place of residence of any of the "hutters". In addition the huts are NOT second homes. It is also important to set out that these huts are not, by any stretch of the imagination, to be considered as analogous to a hutter's home or indeed second home. The absence of, for example, running water in each hut (tenants of huts have to use communal taps), the specific reference in the Rules and Conditions that "the latrine must be maintained in good order and kept in sanitary condition with sufficient use of approved disinfectant", and that "the excreta if not removed must be buried in the subjects and kept covered with earth sprinkled with lime" together with a prohibition against flush toilets are all eloquent witness of the standard of accommodation, none of which, in terms of the individual leases, is the responsibility of the landlords.

Item 5 - Comment by Maureen Macmillan

**"Something unique and specific is needed to deal with this situation, in the same way as something unique and specific was needed for crofts".**

COLUMN 786.

Item 5 - Trustees' reply

The comparison between the huts at Carbeth and crofts is invalid. Prior to the rent strike and since the early 1960s there had been only 5 evictions under the terms of the Missives of Let where no reason is required to be given. For information a lease can be terminated by either party to the contract as at Whitsunday upon a period of notice being given (now 40 days, previously 90 days). This is a useful management tool for dealing with troublesome tenants. It poses no threat to the hutters and in any case its indiscriminate use by the estate proprietors would discredit the hut business and bring it to a speedy close.

If a hutter removed from a site there are four options open to him with regard to the hut on the site which are as follows:-

- (a) To remove the hut from the site at the hutter's own expense. This rarely happens.
- (b) To offer to sell the hut to the estate at a price to be mutually agreed. This has happened on a few occasions.
- (c) To sell the hut to a third party who would then take over responsibility for the site, but subject to the estate approving the third party as an acceptable person on the estate. This happens frequently.
- (d) To formally request that the estate sell the hut on behalf of the outgoing tenant, with the net free proceeds thereof being paid to the outgoing tenant. This happens frequently.

The estate will take all steps to accommodate the wishes of outgoing tenants in regard to the disposal of the hut or chalet and would not act in an obstructive way or manner. Of course the estate will take steps in the event of inaction by a departing tenant once the lease has been terminated but the estate prefers to rule by consent and not by edict. Where a tenant is evicted under the "40 day rule" and the subsequent proceeds of sale exceed the arrears of rent then the surplus is paid over to the previous tenant. The Trustees are not aware of any claim whether by any member or representative of the Carbeth Hutters' Association to the contrary.

Item 6 - Comment by Pauline McNeill

**"The point is that the land was trusted to working people ... The intention was to make provision for holiday homes, but the land was set aside for people who could not otherwise afford to go on holiday".**

COLUMN 785

Item 6 - Trustees' reply

The land was NOT trusted to anyone.

There was no intention to make provision for holiday homes. The huts are not holiday homes.

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Item 7 - Comment by Pauline McNeill

**"If the huts did not exist, people who live in the city would not be able to enjoy that land."**

COLUMN 786.

Item 7 - Trustees' reply

Carbeth estate affords significant public access by way of the West Highland Way, other public rights of way and the Craigmore Craggs.

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Item 8 - Comment by Pauline McNeill

**"It is a pity that the trust that was intended to protect the Carbeth hutters has not done so."**

COLUMN 786

Item 8 - Trustees' reply

The trust referred to was NOT set up to protect the hutters.

Even if a Trust had been set up to "protect" the hutters, which it had not, then it would be inaccurate to state that the hutters had not been protected. The very converse is the case. Much investment has been expended to protect and expand the huts at Carbeth. Protection should not in the Trustees view be provided to those who refuse to pay their rent or abuse the estate.



Item 9 - Comment by Pauline McNeill

**"I sympathise with the hutters and would like to find a way of protecting them".**

Column 786

Item 9 - Trustees' reply

Which hutters does Pauline McNeill sympathise with? Are they those who have paid nothing for the last three years and who intend to continue to pay nothing and if so should they be protected from the law.

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Item 10 - Comment by Pauline McNeill

**"The evidence indicates ... there is now a commercial development on the estate".**

Column 786

Item 10 - Trustees' reply

In the early years (the 1930s, the 1940s and the 1950s) the current owner's grandfather depended for his livelihood on the income arising from the huts. There was therefore a significant commercial dimension to the huts at that time.

If the huts were not run on commercial lines at the present time where would the the finance necessary to subsidise them come from?

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Item 11 - Comment by Pauline McNeill

**"There are new huts on the estate that seem to be developing along more commercial lines, which is a matter for the landowner".**

Column 786

Item 11 - Trustees' reply

The estate has to pay its way and the huts were becoming uneconomic especially as the number of huts at Carbeth were falling dramatically. New huts were built to replace burnt out or dilapidated ones. The estate has built 6 new huts in the past few years. Most of these were sold at little profit. It would be commercial suicide to deliberately sell them at a loss.

Item 12 - Comment by Pauline McNeill

**"The case boils down to two issues. The first is that the rent can be set arbitrarily, so that ... the landlords can do what they like. Secondly, the 40 day period for eviction seems unbalanced. Those are the things that we must try to legislate for, if we can". The answer probably lies in some kind of arbitration and rent controls."**

COLUMN 786.

Item 12 - Trustees' reply

The landlords cannot set the rent arbitrarily for simple commercial reasons. At law they can indeed charge whatever they like in the same way that a manufacturer can increase the price of its products to a point at which they cease to sell. In the past the rents had been set at too low a level and there was a significant chance of the huts running down to the point where their continuance would be severely threatened. Increases in the rent (£2.75 per week in 1997/98, £1.30 per week in 1998/99 and £0.85 per week in 1999/2000) were intimated well in advance (October 1996) and the reasons therefor explained have led to a current rent which, if paid in advance, amounts effectively to the sum of £59 per month. The reaction from most people is that they find it difficult firstly to see what all the fuss is about and secondly who could object to a rent of £59 per month for a place in the country.

The clause whereby leases can be terminated upon 40 days period of notice is a useful management tool that would cease to be of benefit if it was abused. It works both ways and it has rarely been used except in very recent times when large numbers of hutters were not paying their rent. What else is the estate to do if people do not pay their dues.

It is difficult to understand why legislation is considered so essential.

If an arbitration mechanism were introduced and rents were set at too high a level then the huts would dwindle in number terms. If the rents were set at too low a level then that would be a gross interference on the ability of the estate owners to run their estate properly. The huts would soon die and the hutting tradition would cease to exist.

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Item 13 - Comment by Maureen Macmillan

**"but if the landlord is replaced by a Marumba or a Schellenberg everything falls apart. The same sort of thing has been happening in the case of the hutters."**

COLUMN 786

Item 13 - Trustees' reply

This remark is rather akin to an accusation of improper and dishonourable behaviour on the part of the proprietors and is based on misinformation. We repeat that the current rent is effectively £59 per month if the rent is paid in full in advance.

Item 14 - Comment by the Convener

**"We are agreed ... to provide protection for hutters and avoid their being put in the position in which the Carbeth hutters appear at the moment to find themselves".  
and "We agree that the hutters need some kind of protection ..."**

COLUMN 786

Item 14 - Trustees' reply

Most of the hutters are rent payers. They have not found themselves to have been put in a position with the estate to their detriment. Those who have refused to pay their rent have put themselves into a position with the estate. Are non-payers to be protected?

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Item 15 - Comment by Pauline McNeill

**"I agree that we want the Executive to proceed with this, despite all the difficulties. We should ask it to consider three issues. The first is the annual lease and the principle of tacit relocation. The second is rent controls ... but there must be other mechanisms for deciding whether a rent is reasonable. The third issue is the 40-day notice of eviction. Those are the three areas in which we will have to legislate ... Without that, there is no security of tenure".**

COLUMN 787

Item 15 - Trustees' reply

The annual lease has worked well since in its current form it was introduced in the early 1960s. It has not operated to the detriment of hutters provided they complied with the terms of the lease.

Reference should be made above to the level of rent which the Trustees believe should be left for them to decide. The current rent is £785 which if paid in advance is subject to an Early Payment Rebate of £79 resulting in a net rent of £706 - effectively £59 per month. If rent levels are set too low or too high the huts will cease to work. A reduction in the current level of the rent would lead to the end of the huts. If Government wishes to subsidise the huts then that is a different matter.

The 40-day notice of eviction is a management tool that is rarely used. It has never been abused. Its removal from the Rules and Conditions would be to the detriment of the hutters since it could make it very difficult in practical terms to remove a difficult or unsocial tenant.

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**SUMMARY**

It is disappointing that there continues much misinformation as is plainly evident by the content of the transcript of the latest meeting of the Justice and Home Affairs Committee on 16th February. The fact that PE14 has been before The Scottish Parliament and continues to be undecided is encouraging many of those on the rent strike and withholding payment of their rent to continue to do so on the basis of "Let's see what happens". The huts are being effectively destroyed at the present time by this uncertainty. It will be difficult to recover the damage caused. Any further continuance of this uncertainty is likely to ensure the death of the huts at Carbeth which would be a great shame.

Item D - Comment by Pauline McNeill

**"The case boils down to two issues. The first is that the rent can be set arbitrarily, so that ... the landlords can do what they like. Secondly, the 40 day period for eviction seems unbalanced. Those are the things that we must try to legislate for, if we can". The answer probably lies in some kind of arbitration and rent controls."**

COLUMN 786  
OR - 16 FEBRUARY.

Item D - Trustees' reply

The landlords cannot set the rent arbitrarily for simple commercial reasons. At law they can indeed charge whatever they like in the same way that a manufacturer can increase the price of its products to a point at which they cease to sell. In the past the rents had been set at too low a level and there was a significant chance of the huts running down to the point where their continuance would be severely threatened. Increases in the rent (£2.75 per week in 1997/98, £1.30 per week in 1998/99 and £0.85 per week in 1999/2000) were intimated well in advance (October 1996) and the reasons therefor explained. The current rent is £785 which if paid in advance is subject to an Early Payment Rebate of £79 resulting in a net rent of £706 - effectively £59 per month. If rent levels are set too low or too high the huts will cease to work. A reduction in the current level of the rent would lead to the end of the huts. If Government wishes to subsidise the huts then that is a different matter. The reaction from most people is that they find it difficult firstly to see what all the fuss is about and secondly who could object to a rent of £59 per month for a place in the country.

The 40-day notice of eviction is a management tool that is rarely used. It has never been abused. Its removal from the Rules and Conditions would be to the detriment of the hutters since it could make it very difficult in practical terms to remove a difficult or unsocial tenant.

## **JUSTICE AND HOME AFFAIRS COMMITTEE**

### **The Annual Budget Process**

Note by the Senior Assistant Clerk

#### Background

The Annual Budget Process which informs the production of the Budget Bill is based on the recommendations of the Financial Issues Advisory Group (FIAG), a subcommittee of the Consultative Steering Group (CSG). The processes involved are also the subject of written agreements between the Scottish Executive and the Parliament's Finance Committee.

The three Stage process is designed to enable subject committees to have a say in the development of the Executive's forward budget in their area. It is also intended to provide a mechanism for the public and interested groups to contribute to the Budget development process

#### The Annual Budget Process: Stage 1

The flow chart attached sets out the three stages of the annual budget process and highlights the role of subject committees. Stage 1 involves subject committees scrutinising and, time permitting, taking evidence on the Executive's strategic financial priorities for 2001-2002 before reporting to the Finance Committee.

The starting point for this process is the publication by the Executive of its Departmental Report. This will be available to committee members on 31 March. At this stage, only the main programme expenditure figures ("level 1" figures) will be available. However, committees will be able to look at the breakdown of the current year (2000-2001) as a guide to how the Departmental Budget is compiled.

Essentially subject committees are expected to:

- identify the level of resources the Executive is planning to commit to their area;
- identify the intended policy outcomes; and
- comment on whether they think the allocation is appropriate and adequate.

Guidance from the Finance Committee to help subject committees focus on these issues is attached. Subject committees must then report to the Finance Committee by Friday 2 June.

## Options

It is for the Committee to decide the level and nature of its consideration of Budget information as part of this process. Among the options open to the Committee are:

- writing to the Executive asking for any immediate points of clarification and/or inviting Executive officials to give evidence to clarify factual issues or explain financial procedures;
- inviting the Minister to give evidence on the Executive's spending priorities;
- inviting other interested parties to give evidence;
- appointing a Reporter to identify key areas of interest for agreement by the Committee following the Easter recess.

Any or all of these approaches could be adopted.

## Timetabling

The Bill on intrusive surveillance to be introduced following the Easter Recess is expected to be referred to the Justice and Home Affairs Committee. In addition, the Committee is to consider those provisions of the Protection of Wild Mammals (Scotland) Bill which create new offences. As a result, the time available to take evidence in relation to the Budget process is limited.

It is likely that, as a minimum, most subject Committees will take evidence from Executive officials and the relevant Minister. The time constraints for this Committee are such that it will not be possible to hear oral evidence from interested parties in relation to every area within the Committee's remit. However, the Committee could invite written evidence and identify one or two priority areas in relation to which they wish to take oral evidence. (These could be identified on the basis of previous inquiries or in relation to the figures published in the Departmental Report.)

If such priority areas are identified prior to the Easter Recess, the Clerks and Convener (or Reporter if the Committee chooses to appoint one) could identify suitable witnesses who may be available to give evidence at the first Committee meeting after the recess on Wednesday 26 April and perhaps at a meeting during May, time permitting.

30 March 2000

SHELAGH MCKINLAY

## BUDGET 2000/2001: STAGE 1

*This report should be completed and returned to the Clerk to the Finance Committee no later than 2 June*

### Committee: Justice and Home Affairs

Questions in each section should be read in conjunction with the relevant chapters of the Scottish Executive Departmental Report

#### SECTION ONE: DEPARTMENTAL AIMS AND OBJECTIVES

*The Committee is asked to consider the primary and secondary aims of the Department as set out in the Departmental report and to respond to the following questions:*

- 1. Are the Department's aims and objectives sufficiently clear and unambiguous?*
- 2. Are the targets identified by Ministers appropriate and realistic? Can they be supported by evidence?*
- 3. How reliably can outcomes be measured in this policy area?*
- 4. Are the objectives and specific targets designed in a way which makes it easy to audit whether or not they have been achieved? How will this audit be undertaken within the Executive and by whom?*
- 5. To what extent is the achievement of targets in this policy area dependent upon resources or upon other factors?*
- 6. Where, if at all would the Committee recommend adjustment of the aims and objectives? Why?*

#### SECTION TWO: PLANNED CURRENT AND CAPITAL EXPENDITURE

*The Committee is asked to consider the breakdown of expenditure as set out in the relevant section of the Departmental report and to respond to the following questions.*

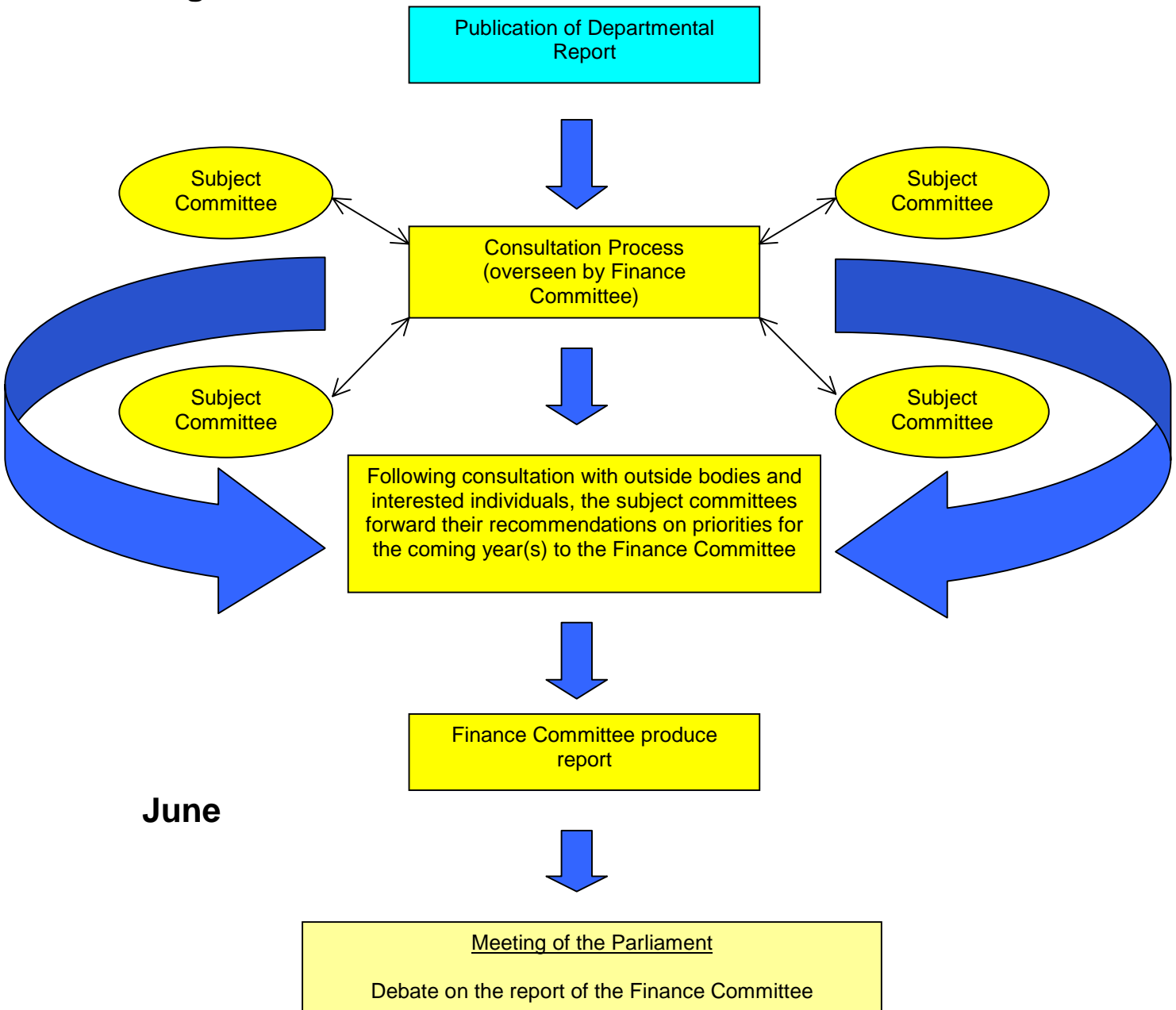
(In doing so, the Committee should bear in mind that it has before it **projected outturns** for years 1999-2000 and 2000-2001. The sub-programme levels of expenditure for 2001-2002 have not yet been set and previous years should be taken as a guide only.)

1. *Do the details of expenditure on the Departmental programme in total and for each of the main sub-programmes (as at 2000-01) adequately support the Department's stated objectives? If not, why not?*
2. *If the Committee has suggested revised objectives under Section 1, how would it allocate resources to these?*
3. *Looking at last year's level 3 figures, is the Committee satisfied that it understands the factors which underpin them, including:*
  - *the breakdown of types of spending which constitute the sub-programme expenditure figures;*
  - *any inflationary pressures which apply to the different elements of expenditure within sub-programmes;*
  - *any levels of assumed efficiency, or re-engineering, savings that have been built into the expenditure figures, including the targets these are based upon and whether these are realistic and achievable;*
  - *invest-to-save programmes, especially where the savings do not register until beyond the current horizon.*
4. *What elements of expenditure are allocated centrally and what are the elements whose disbursement is determined at a local level? In the case of the latter expenditure, to what extent can central government direct how this expenditure is applied or determine what are the priorities? What is the effect of the Executive ring-fencing money (where applicable)?*
5. *Other issues the Committee may wish to consider include:*
  - *Is the Department pursuing a Research and Development approach? If so, how is investment in this allocated and prioritised?*
  - *Is the Department funding pilot schemes under any of these headings? If so, what provision is there for rolling these out in the event that they are a success?*
  - *Is the Department able to identify where there may be unused resources at the end of the current financial year? Where such surplus exists, how are decisions taken about redeploying it?*
  - *Does the Department participate in any cross-cutting policy areas with other Departments of the Executive? If so, how is funding disbursed across the various partners? Have you any comments to make on this?*
  - *What if any income streams feed into this Department's expenditure totals? Is there any scope to alter these?*

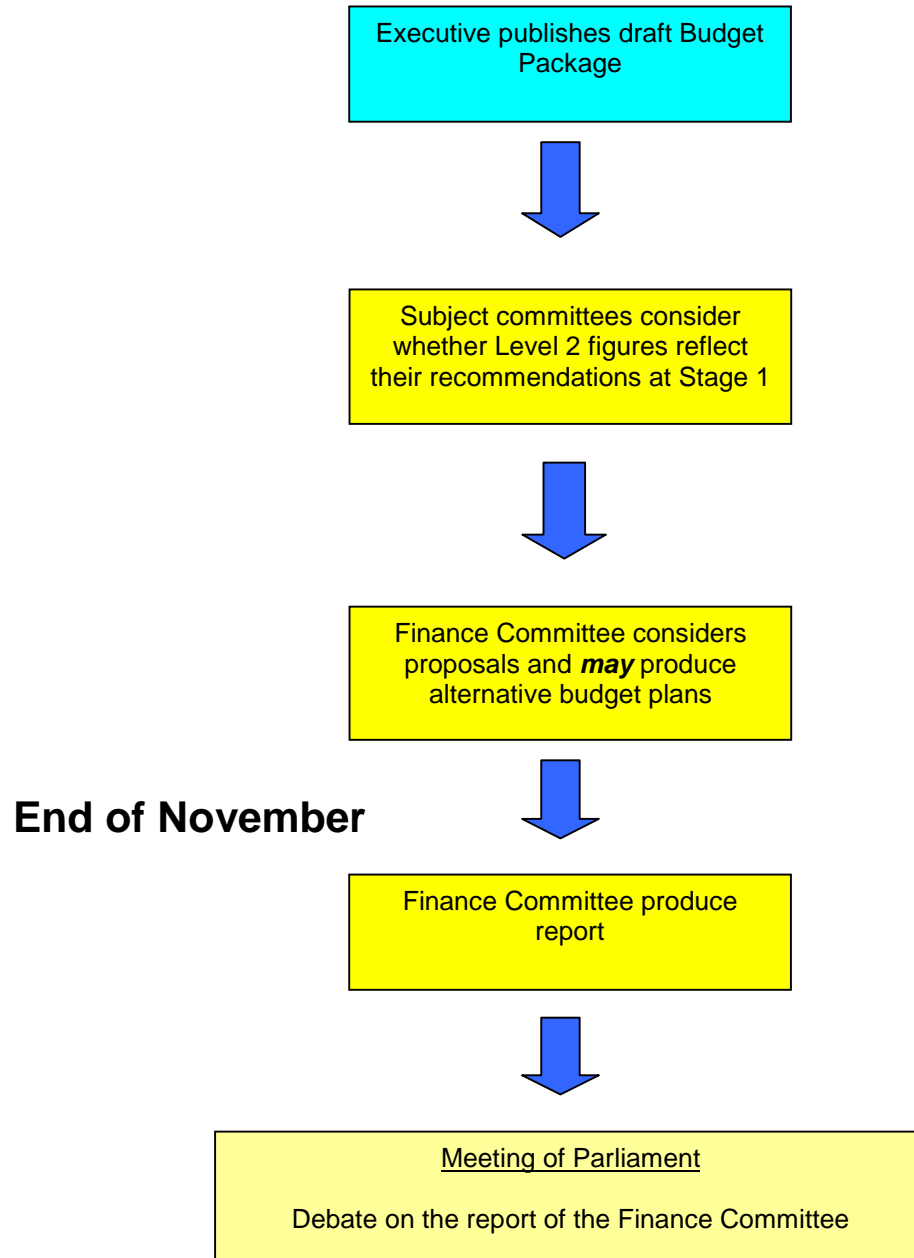


# Annual Budget Process

## Stage 1 Begins 31 March

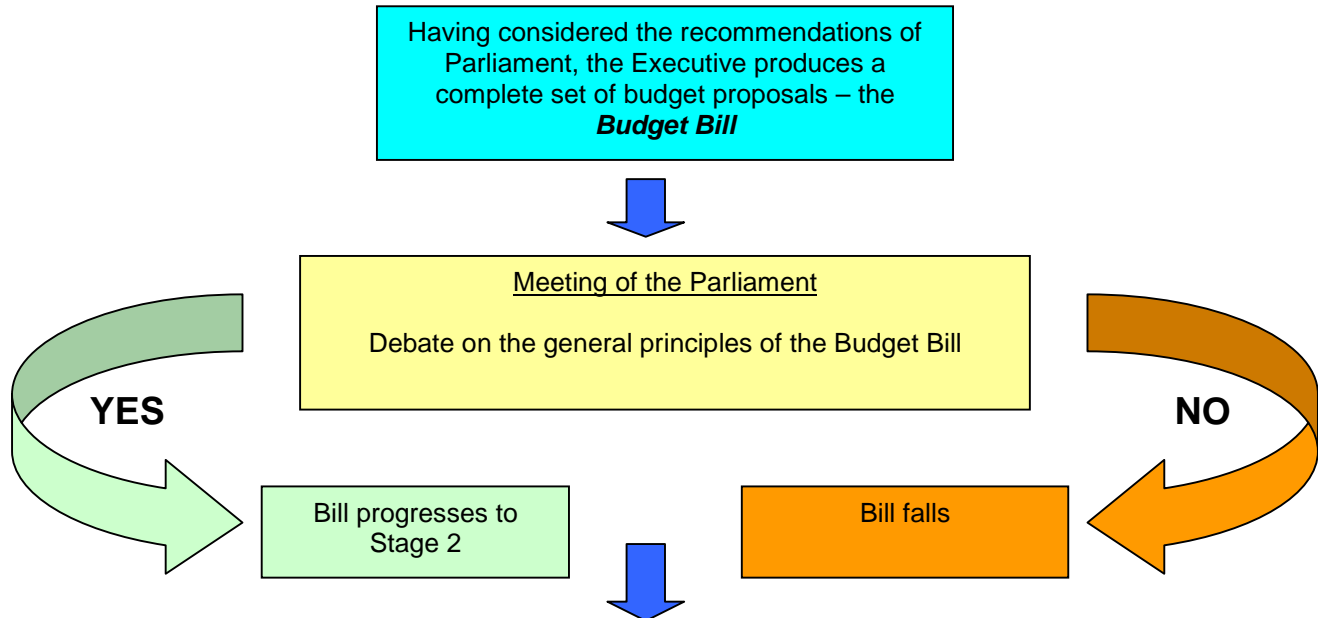


## Stage 2 Begins 20 September



## Stage 3 Begins January 20

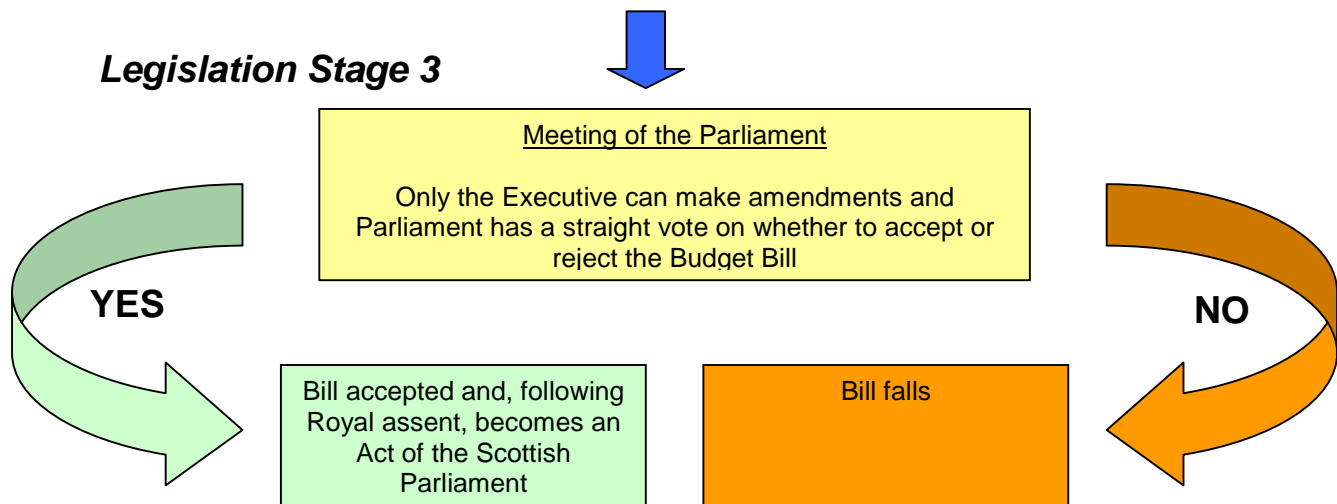
### Legislation Stage 1



### Legislation Stage 2

Finance Committee consider Budget Bill. Executive amendments only; however clarification on proposals can be sought

### Legislation Stage 3



***Under Standing Orders, Rule 9.16.5, Legislation Stage 3 of the Budget Bill shall begin no earlier than 20 days after the introduction of the Bill (ie Legislation Stage 1) and if it is not complete following the expiry of 30 days following its introduction, it shall fall.***



## JUSTICE AND HOME AFFAIRS COMMITTEE

### MINUTES

**13th Meeting, 2000 (Session 1)**

**Wednesday 29 March 2000**

Present:

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

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

Apologies were received from Maureen Macmillan

The meeting opened at 9.30 am.

- 1. Meeting in private:** The Committee agreed to consider a draft report on petition PE14 by the Carbeth Hutters' Association in private at its next meeting.
- 2. Subordinate legislation:** The Committee agreed to defer consideration of the Police Grant (Scotland) Order 2000 (SSI 2000/73) until its next meeting. The Committee considered the Charities (Exemption from Accounting Requirements) (Scotland) Amendment Regulations (SSI 2000/49).
- 3. Legal Aid SSIs:** The Convener moved S1M-862—That the Committee agree to hold 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. The motion was agreed to.
- 4. Abolition of Feudal Tenure etc. (Scotland) Bill:** The Committee considered the Bill at Stage 2 (Day 3).

The following amendments were agreed to (without division): 88, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110,

111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125 and 126.

Amendment 89 was agreed to by division: For 7, Against 1, Abstentions 2.

Amendment 157 was disagreed to by division: For 4, Against 5, Abstentions 1.

Amendments 154, 156 and 135 were moved and, with the agreement of the Committee, withdrawn.

Other amendments were not moved.

Sections 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 70 and 73 were agreed to without amendment.

Sections 65, 69, 71, 72, 74 and 75 and schedules 10 and 11 were agreed to as amended.

The Long Title was agreed to as amended.

5. **Petition:** The Committee considered petition PE89 by Mrs Eileen McBride calling for the repeal of legislation which allows non-conviction information to be included on Enhanced Criminal Record Certificates. The Committee agreed to write to the Minister for Justice asking for clarification on when Part V of the Police Act 1997 would be brought into force in Scotland and inviting his comments on the suggestion that the relevant sections might breach article 6 of the European Convention on Human Rights. The Committee also agreed to ask for information about guidance being prepared for police forces by a Part V Project Board, membership of which includes Executive staff, the Association of Chief Police Officers in Scotland and the Scottish Criminal Records Office.
6. **Stalking and Harassment:** The Committee agreed to appoint Pauline McNeill as Reporter to consider the issues raised in the Scottish Executive consultation paper.

The meeting closed at 11.02 am.

Andrew Mylne  
Clerk to the Committee

**Road Deaths in Scotland**

**and the**

**Criminal Justice System**

**The Dekker Family's Evidence  
to the  
Justice and Home Affairs Committee**

**30<sup>th</sup> March 2000**

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## Introduction

*"People in Scotland have high hopes for their Parliament, and in developing our proposals we have been keen to ensure that these hopes will be met. In particular our recommendations envisage an open, accessible Parliament where power is shared with the people; where people are encouraged to participate in the policy making process which affects our lives; an accountable, visible Parliament; and a Parliament which promotes equal opportunities for all."*

Introduction to the Report of the Consultative Steering Group - Pub. 1999

In this document we will show that contrary to what Parliament intended, contravention of Section 1 of the Road Traffic Act, 'Causing death by dangerous driving', is not deemed a serious offence by the Crown Office. In fact there exists a policy of downgrading, to save court time and money.

The Lord Advocate in his response to the Justice and Home Affairs Committee states there is no policy of downgrading Section 1 of the Road Traffic Act, that "prosecution policy in this area continues to involve the rigorous and resource intensive procedures which are tailored for serious and/or complex crime reports." From the applicable law and as law abiding citizens, indeed that was our expectation of the Criminal Justice system. In practice, quite the reverse is true.

The Westminster Parliament has passed a Law. It is simple and clear and should be a powerful weapon in deterring very bad driving. The reality is that 'Causing death by dangerous driving' is not used to either punish or deter very bad drivers. The absence of sufficient legal censure means that people will continue to die or be seriously injured, needlessly, on Scotland's roads because not only are they innocent victims of very bad drivers but our Criminal Justice System responds to such drivers by "letting them off".

The Public Petitions Committee passed petition PE29 to the Justice and Home Affairs Committee on 16<sup>th</sup> November 1999. This petition was significant particularly because it was signed by 3,500 people in different parts of Scotland although primarily by people in Cumbernauld who know the road on which Steven Dekker was killed.

The signatories asked the Committee to:

1. Register their disquiet about the reduction in prosecutions for 'Causing death by dangerous driving'.
2. Affirm the sentiments in the petition and condemn the actions of the Crown Office in this case.
3. Investigate and report the Crown Office's decisions and considerations in prosecuting road traffic deaths, including how they interpret the law.
4. Monitor the Scottish situation in dealing with road deaths.
5. Devise and enforce a system which shall ensure the accountability and the independence of the Crown Office in a manner that incompetence and cover



ups are not able to be hidden by the mantle of independence.

The Dekker Family subsequently asked to respond to the Lord Advocate's letter on the Petition. This submission to the Justice Committee is twofold:

1. A direct response to the points made in the Lord Advocate's letter to the Justice Committee dated 5<sup>th</sup> January 2000.
2. The results of our research over an eighteen month period. Some of the figures enclosed in the submission have never been printed in a public document before.

We recognise that our new democracy can expose and reform matters which are unjust and contrary to the public interest. We understand that the Committee has the power to:

- appoint Reporter(s) to investigate an issue thoroughly
- launch an inquiry and to take evidence
- initiate legislation

This submission urges the Committee to recognise the seriousness of the issue, the consistent failure to implement laws passed by the Westminster Parliament and the resulting danger to public safety.

Although the research we have undertaken has been inspired by the road death of our son Steven, ensuring that Sections 1 & 3 of the Road Traffic Act are enforced is a matter of public interest. The Committee has extensive powers to reform and we urge you to use them.

## **Chapter 1 - Applicable Law**

### **Relevant Extracts from Road Traffic Act 1991.**

#### **Section 1 - Causing Death by Dangerous Driving**

"A person who causes the death of another person by driving a mechanically propelled vehicle dangerously<sup>1</sup> on a road or other public place is guilty of an offence"

**Maximum sentences - 10 year's prison sentence and/or unlimited fine, obligatory 2 year's disqualification and re-test, obligatory 3-11 points.**

#### **Section 2 - Dangerous Driving**

"A person who drives a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence"

**Maximum sentences - 6 month's prison sentence and/or statutory maximum fine, obligatory 12 months disqualification and re-test, obligatory 3 - 11 points.**

#### **Section 3 - Careless or Inconsiderate Driving<sup>2</sup> (without due care and attention)**

"A person who drives a mechanically propelled vehicle on a road or other public place without due care and attention or without reasonable consideration for other persons using the road is guilty of an offence"

**Maximum sentences - Level 4 fine (£2500), discretionary disqualification, obligatory 3-9 points.**

#### **Section 3a - Causing Death by Careless Driving<sup>2</sup> Under the influence of Drink/Drugs**

**Maximum sentences - 10 year's prison sentence and/or unlimited fine, obligatory 2 year's disqualification and re-test, obligatory 3-11 points.**

<sup>1</sup> Road Traffic Act 1991 definition of "Dangerously",  
A person drives dangerously if:

- the way he drives falls far below what would be expected of a competent driver, and
- it would be obvious to a competent and careful driver that driving in that way would be dangerous.
- it is obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.

<sup>2</sup> Road Traffic Act's definition of "Careless" was adopted from the North 's Report as:  
A moment's inattention

## **Chapter 2 - Summary of Recommendations**

1. We urge the committee to investigate the Catrina Deans case and compare it with that of the driver Andrew Wilson whose actions killed Steven Dekker.
2. We ask the Committee to take steps to ensure that any driver who has killed an innocent victim:
  - a) cannot drive away from court.
  - b) that any disqualified driver must inform the authorities of any change of address or intended emigration so that police records are updated and police in other jurisdictions are alerted eg through Europol.
  - c) that the police issue guidelines on enforcing a driving disqualification.
3. We seek assurances from the Justice and Home Affairs Committee that downgrading of the charge of 'Careless driving' where an innocent victim's life has been taken, to district court level will not occur.
4. Given that the Criminal Justice System has evolved separately North and South of the border the Justice and Home Affairs Committee should seek assurances that the Transport Research Laboratory's research is equally applicable and relevant to Scotland.
5. We ask the Justice Committee to take evidence from the Crown Office on the review procedure for charges arising from a road death eg:
  - a) In a review procedure, is a visit to the locus considered mandatory?
  - b) In a review procedure, is further and or clarification of evidence requested from the police or other witnesses?
  - c) What are the benchmarks of very bad driving required to merit contravention of Section 1 of the Road Traffic Act, 'Causing death by dangerous driving'?
  - d) Do the same advocate/s (deputes) who levelled the charge carry out the review?
6. We ask the Justice and Home Affairs Committee to ensure the publication of Crown Office policy which explains that;
  - a) following a road death and possible prosecution, a Procurator Fiscal will offer a meeting to a family to explain procedures.
  - b) following every road death, a Procurator Fiscal will request a meeting with a family to seek their views on a Fatal Accident Inquiry.
  - c) in the interests of public safety, any recommendations from a Fatal Accident Inquiry will be actioned by the appropriate authorities.
7. Where a death occurs on the road the accused should appear in the High Court with all evidence presented and all necessary witnesses called. By downgrading Section 1 of the Road Traffic Act, 'Causing death by dangerous driving' to the Sheriff court, the Justice System is failing to play its part in a collective effort towards public safety on our roads.

### Chapter 3 - Did You Know?

- Article 2 in the European Convention of Human Rights states that everyone's right to life should be respected.
- In Scotland there will be at least 950 road deaths during the period of research being carried out by the Transport Research Laboratory.
- 'Careless driving' cannot take into account when sentence is passed that an innocent victim has been killed. No other criminal act ignores the consequences of the offenders actions.
- The vast majority of cases involving a road death are heard in the Sheriff Court. Some future offenders may even have their cases heard in the District Court.
- Only 3.5% of all road deaths are the subject of a Fatal Accident Inquiry.
- Fiscals do not routinely meet with families of those who have had a loved one killed on the road.
- Fiscals receive a £12,000 bonus if they prosecute within their financial targets.
- At least 3,500 drivers are detected each year for driving while disqualified in Scotland
- In spite of legislation, the Courts and the Crown Office ignore the express wishes of Parliament - "the effect if the changes has not been as marked as was hoped," quote from Henry McLeish.
- The system's failings are deliberately ignored by key people who do not wish to see reform. They may also be drivers. They take the view that 'there but for the grace of God go I' when in fact they should be acting in the public interest.
- That higher fines for motorists caught driving carelessly, will be introduced in England and Wales. The fines will be increased to £5,000. Currently in Scotland the maximum fine is £2,500.
- The negative figure in Table 1 (1994 difference -1.1%) - illustrates why a sensible debate for reform has, so far been prevented both due to a lack of information and some of its dubious quality.

## Chapter 4 - Policy of Downgrading

### I. Statistics and their Significance

The Lord Advocate in his reply, states that there is no policy to reduce the number of prosecutions under section 1 of the Road Traffic Act 1988. Also, that the statistics we have produced do not support such a proposition. He alleges that his graph “% Deaths resulting in s1 Proceedings v Year” shows a marginal upward trend. This is not the case.

We would ask the Committee to consider the following evidence.

#### Road deaths in Scotland

- a) The Registrar General's Office for Scotland has provided the Lord Advocate with the number of road traffic deaths in Scotland for the years 1988 -1997. However the Scottish Executive Bulletin, Road Accidents Scotland 1998, provides a differing number of deaths over the same period. See Table 1.

Table 1 - Number of Road Deaths in Scotland

Year	<u>Road Accident</u> <u>Scotland 1998</u>	<u>GRO for</u> <u>Scotland</u>	<u>% Difference</u>
1988	554	564	+1.8
1989	553	564	+2.0
1990	546	555	+1.6
1991	491	521	+6.1
1992	463	472	+1.9
1993	399	410	+2.8
1994	363	359	-1.1
1995	409	427	+4.4
1996	357	367	+2.8
1997	377	389	+3.2
1998	385	390	+1.3

It may be helpful to clarify the criteria in data collection, as we know it:

Road Accidents Scotland 1998 Bulletin states that data is collected on “stats 19” return forms. These forms are completed by the police following every road accident which results in death or injury. The Bulletin states, that a death is “counted” if it occurs within 30 days of a traffic accident.

The Registrar General Office for Scotland's records "counts" deaths which have occurred on the roads (not the number of road accidents). This data is collected from death certificates and will therefore include those deaths which have occurred after 30 days as a result of a road traffic accident.

Accordingly there is no data recorded on the precise number of accidents which have resulted in death.

- b) Data taken from Scottish Executive Bulletin, Road Accidents Scotland 1998 as in Table 2 shows that in any one collision there can be more than one road death.

**Table 2.**

<u>Year</u>	<u>Number of Accidents involving death/s<sup>1</sup></u>	<u>Road Deaths*</u>	<u>Drivers Proceeded Against-Section 1<sup>2</sup></u>	<u>Drivers as % Accidents</u>
1991	443	491	30	6.8
1992	426	463	23	5.4
1993	359	399	25	7.0
1994	319	363	21	6.6
1995	361	409	29	8.0
1996	316	357	23	7.3
1997	340	377	17	5.0
1998	339	385	17	5.0

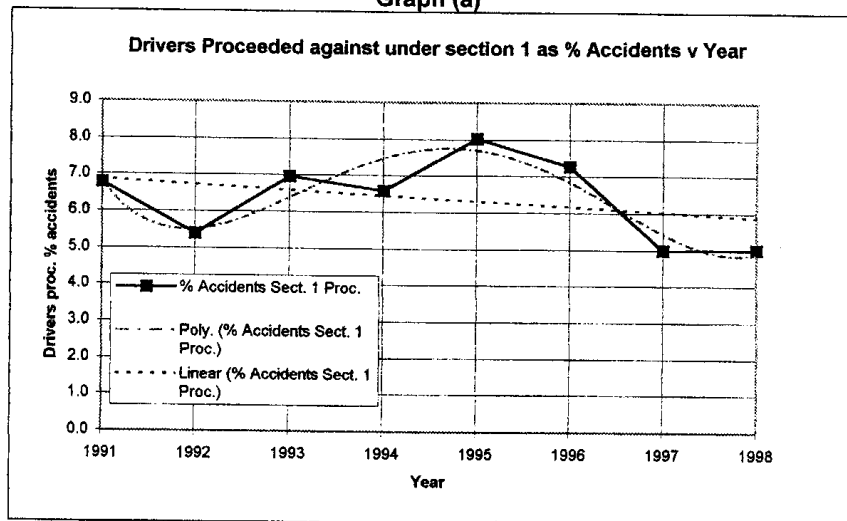
<sup>1</sup> Road Accidents Scotland 1998

<sup>2</sup> On request from Scottish Executive

It follows, therefore, that a more accurate projection of drivers proceeded against since the Road Traffic Act was amended, is obtained from a plot of:

**% Accidents (Drivers) Resulting in Section 1 Proceedings V Year (Graph a)**

Graph (a)



Interpretation of the "best fit" trendline shows an **upward trend from 1992 -1995** and from 1995 a **steep downward trend**. A linear fit shows an overall **downward trend**. The intention of the amended Road Traffic Act 1991 was to enable **more prosecutions to be pursued for the more serious "dangerous driving" offences**.

Clearly contravention of Section 1 of the Road Traffic Law, 'Causing death by dangerous driving', is not being implemented as Parliament intended it to be.

## II. Prosecutions

The North Committee's recommendation, which was accepted by the Government of the day was that a 'Causing death by dangerous driving' offence be introduced to show **"the law's concern for the sanctity of life"**. The new offence is based more on the observed standard of driving at the time of the offence and no longer on the driver's state of mind. The purpose of this change was to make the offence **easier** to prove in court. The intention of the amended Act was to enable **more prosecutions to be pursued for the more serious "dangerous driving" offences**.

Mr McLeish in his role as Minister of State and Home Affairs stated in a letter to our MP, dated 3<sup>rd</sup> November 1998 **"the effect of the changes has not been as marked as was hoped and we are aware of considerable public concern that sentences for causing death on the roads do not, in many cases, reflect the devastating effect that these drivers have on their victim's families"**.

The Lord Advocate states that prosecution procedures following contravention of Section 1 of the Road Traffic Act, causing death by dangerous driving is equal to that of any serious and/or complex crime report. To judge the validity of this view please consider:

- a) The level of court in which the crime of 'Causing death by dangerous driving' is heard. In England, this crime is heard in the Crown Court. Yet in Scotland in spite of the maximum custodial sentence of 10 years available to the court, it is commonly heard in the Sheriff court, under Solemn Proceedings, where the maximum custodial sentence at the court's disposal is 3 years. The Sheriff can, of course, refer the case to the High court for further sentencing. This is a very rare occurrence.
- b) By contrast, in 1998 there were 3 prosecutions for contravention of Section 3a of the Road Traffic Act, (Causing death by careless driving under the influence of drink/drugs), all of which resulted in a custodial sentence. When there is a political priority eg drink/drugs, then this charge, is sure to be heard in the High Court.
- c) The same sentencing power is available for Section 1 as for Section 3a of the Road Traffic Act. However as there is a political priority to punish and deter drivers who are behind the wheel but under the influence of drink and drugs then they are dealt with and punished more severely by the criminal justice system.

Surely, a driver must be considered equally as culpable, who when stone cold sober and in full knowledge of his actions, drives dangerously and kills an innocent victim. All we are asking for is equality of arms at court.

#### ***Recommendation***

Where a death occurs on the road the accused should appear in the High Court with all evidence presented and all necessary witnesses called. By downgrading Section 1 of the Road Traffic Act, 'Causing death by dangerous driving' to the Sheriff court, the Justice System is failing to play its part in a collective effort towards public safety on our roads.

### **III. Sentencing**

- a) **Section 1 of Road Traffic Act, 'Causing death by dangerous driving'.**  
In 1995, the custodial sentence available to the courts for Section 1 of the Road Traffic Act, Causing death by dangerous driving was increased from 5 to 10 years, to reflect the gravity of the crime. However, as stated earlier, in Scotland, this charge is commonly heard in the Sheriff court, and thus, there is already an assumption by the Criminal Justice System that if a custodial sentence handed is down, it will be less than 3 years.



We would draw attention to the current information on custodial sentences handed down for contravention of Section 1 of the Road Traffic Act for the year 1998.

Offences recorded by the police	Drivers proceeded against in court	Offenders with charge proven	Custodial sentence	Other
39	17	14	9	5

The length of the custodial sentence received by 9 offenders were:

<= 6 months	> 6 months < 2 years	> 2 years < 4 years	over 4 years
0	8	1	0

Of the 5 "other" sentences, the Scottish Executive explain that these include community service or probation and/or a fine. We have examples of drivers convicted of section 1 'Causing death by dangerous driving' offences where a fine and a driving disqualification was the "other" sentence handed down.

#### b) Section 3 of the Road Traffic Act, Careless driving

##### Definition

'Careless driving', or driving without due care and attention, was defined by the North Committee and accepted by the government as *"a moment's inattention."*

In practice the 'Careless driving' charge covers all incidents from those of a very minor nature, to serious injury or where an innocent victim's life has been taken. "A description of the kind of situations in which careless or inconsiderate driving may arise would be virtually unlimited"<sup>1</sup>. The statistics of offenders charged with the wide ranging careless driving offences are shown in Table 4.

<sup>1</sup> *Road Traffic Law in Scotland* John Wheatley (Sheriff of Tayside and Fife)

**Table 4 - Careless Driving Offences**

Year	Crimes recorded by police <sup>2</sup>	Drivers proceeded against in court <sup>1</sup>	Drivers charge proven <sup>2</sup>
1992	20478	9575	8533
1993	17825	7901	6944
1994	18571	6876	6062
1995	16774	7152	6299
1996	15199	6925	6089
1997	14190	6642	5794
1998	13733	5528	4860

The Bulletin *Motor Vehicle Offences in Scotland, 1998* states that there was an increase of 34% on the 1997 figures, in the use of Fixed penalty or "Fiscal fine" made by Procurator Fiscals. We would assume that where as the result of a driver's careless actions an innocent victim's life has been taken, then such a 'Careless driving' charge would be heard under summary proceedings. However, there is no information available to substantiate this assumption.

There are also **no statistics** available on;

- the number of drivers who have killed innocent victims as a result of their careless driving!
- the sentences handed down to drivers who have killed innocent victims as a result of their careless driving.

#### Cost Cutting

From those cases which went to summary proceedings as reported in Central Scotland's newspapers in 1998 we have formed the view that a lesser charge of 'Careless driving', the cheaper option, is brought where a charge of 'Causing death by dangerous driving' is more appropriate. Put succinctly a death has occurred. A 5 to 15 minute hearing under summary proceedings costs approximately £200.

The average fine for a careless driving offence in 1998 was £154.

#### Interpretation

In the case *McCallum v Hamilton* 1985 SCCR 369 as quoted by the Lord Advocate, Lord Robertson states *"The injuries and death resulting to the pedestrian might have a bearing on the quality and degree of the careless driving complained of."*

This view was also expressed in the North Report *"consequences are often a factor in sentencing decisions just as they are a factor in deciding whether or not a particular case should be prosecuted. However, it is appropriate in a Scottish*

<sup>1</sup> Motor Vehicle Offence Bulletin 1998

<sup>2</sup> On request from Scottish Executive

*careless driving case to allege other consequences, such as damage to vehicles or that a person was struck by the vehicle, (but not fatally injured!) in order to indicate the seriousness of the carelessness". They concluded, "We recommend therefore that the courts should be able to take consequences into account in sentencing for all the general bad driving offences. This should be made clear by legislation both in England and Wales and in Scotland".*

This is all very encouraging until we look at the available sentencing powers of the court for the offence of careless driving:

A level 4 fine (£2,500) a discretionary disqualification and/or penalty points.

#### **Recommendation**

We ask the Committee to take steps to ensure that no driver who has killed an innocent victim as a result of his/her driving should be able to drive away from court! The punishment of a driving disqualification *if* it is implemented and enforced, is fairly minimal in the circumstances of an incident where an innocent victim's life has been taken.

#### **IV. Application of the Road Traffic Law**

Road Traffic Law is indeed bizarre. Over the past year we have monitored cases of road traffic offences called to court. Among these offences are drivers who have been charged and called to court under section 2 of the Road Traffic Act, 'Dangerous driving'. Amongst these offences none of them equate to driving down a one-way main road the wrong way and causing a death. Yet section 2 is a more serious charge than section 3. They have included a woman brought to court on a charge of 'Dangerous driving' as she had been driving along a road brushing her hair. Crucially such drivers are charged even though there has been no injury but because (rightly so) they could have potentially caused death or injury.

There appears to be no dispute with the definition of "dangerous" in Section 2. We find it incredulous that in the case of the driver who drove down a one-way main road the wrong way and killed our son Steven, that has been deemed merely careless by the Crown and verified by *"every professional prosecutor who has looked at the case"*. (Crown Office letter to MP dated 8<sup>th</sup> April 1999)

#### **V. Failure of the Crown Office**

The Lord Advocate states that the Crown adopts a *"constant process of review of prosecution policy and practice which is informed by development in case and statute law, and by public policy conditions"*. We can now prove that the Crown failed to live up to its own declared criteria when it decided to prosecute Andrew Wilson with 'Careless driving':

**a) Case Law**

The Catrina Deans case is almost identical as she drove the wrong way on a main road into Cumbernauld, on 23<sup>rd</sup> November 1992, but this time from Airdrie and killed a driver<sup>1</sup>. She was successfully prosecuted with 'Causing death by dangerous driving'. She avoided a custodial sentence only because she was pregnant when the case eventually came to court.<sup>2</sup>

The cases can only be differentiated by two facts:

- Ms Deans was a female driver;
- Ms Deans argued that she drove up the main road the wrong way because it was a dark night whereas Andrew Wilson drove up the one-way main road the wrong way on a clear bright evening at 6 pm on 19<sup>th</sup> September.

**Recommendation**

We therefore urge the committee to investigate this specific case and compare it with that of Andrew Wilson.

**b) Statute Law**

The Lord Advocate states that *"It is the duty of the prosecutor to select the most appropriate charge having regard to all the available evidence and applicable law"*.

That is exactly why the crime of 'Causing death by dangerous driving' was passed by our parliamentarians. The Crown Office is deliberately failing to implement the law by adopting and then establishing its own interpretation of 'dangerous'. If this interpretation is based on foreseeing the future i.e. how juries will misunderstand the precise meaning of Section 1, then there is a **duty of the State to issue guidelines to Sheriffs so that they instruct the Jury in the clearest terms.**

**c) Public Policy**

Being drunk in charge of a car or speeding is now regarded as socially unacceptable which results in severe penalties. That is a change from ten years ago. There is a great deal of public money spent on and public feelings expressed that, bad driving is unacceptable. The signatories to the petition (PE29) expressed their disquiet about public safety on our roads following the charge of careless driving brought after Steven's death.

We would expect that bad driving should be made socially unacceptable now.

**VI. Future Policy of Downgrading - District Courts**

Over 40% of all those called to court in connection with a criminal matter are dealt with at district court level (funded by local government) and by voluntary lay justices. Prior to the devolved Scottish Parliament, the Criminal Justice Forum

<sup>1</sup> Cumbernauld News November 1992

<sup>2</sup> Lanark Sheriff court, November 1993 Guilty of Causing death by dangerous driving

was chaired by the Secretary of State for Scotland and included the Home Affairs Minister and the Lord Advocate. The Government had accepted the recommendation of the Criminal Justice Forum and were consulting on extending the sentencing powers of the district courts, in particular to allow them to disqualify for driving offences. As seen from Table 4, in 1998 5,528 of 'Careless driving' offences were proceeded against in the Sheriff court. The wide ranging 'Careless driving' offences are not deemed to be very serious offences and the presently available sentences for this offence will fall into the proposed remit of the district court.

It therefore gives serious cause for concern that a charge of 'Careless driving', where an innocent victim has been killed, will be downgraded to district court level.

***Recommendation***

We seek assurances from the Justice and Home Affairs Committee that downgrading of the charge of 'Careless driving' where an innocent victim's life has been taken, to district court level will not occur.

## Chapter 5 - Driving Disqualification

### I. Enforcement

When someone fails to pay a fine, or does not carry out a community service order it is immediately obvious to the Authorities. In the case of driving disqualification, it is the only disposal which is self regulating. Therefore it is not obvious how many drivers continue to drive during the period when they are disqualified. In the Bulletin *Motor Vehicle Offences in Scotland 1998* we learn that each year, on average over 17% of those disqualified are convicted of driving while disqualified. In human terms in Scotland that means, every year there are over 3,500 drivers on our roads although they are disqualified.

In fact the statistic is far more worrying. 'Driving while disqualified' has a 100% clear up rate as the offenders are only detected *in flagrante* (in the act).

Given that those offenders detected are subject to police activity and deployment, the true number of drivers who ignore their punishment is much, much higher. These drivers compromise public safety and show contempt for the Law.

### II. Duty to Protect the Public Interest

It is incredible that a driver who as a result of his careless driving has killed an innocent victim and received a disqualification as "punishment" can change address or leave the country without informing the police or the courts.

The State has a duty to protect all its people and must therefore keep track of those offenders who are disqualified from driving.

#### **Recommendation**

We ask the Committee to take steps to ensure that any driver who has killed an innocent victim:

- a) cannot drive away from court.
- b) that any disqualified driver must inform the authorities of any change of address or intended emigration so that police records are updated and police in other jurisdictions are alerted eg through Europol.
- c) that the police issue guidelines on enforcing a driving disqualification.

## Chapter 6 - Formal Charging by the Police

The police we have been told are sometimes not in possession of all the facts when they formally charge a driver. The Lord Advocate states, *"The police are unlikely to have the results of a detailed investigation and reconstruction by police accident investigation experts"* etc. The Lord Advocate states that whether to prosecute an individual for contravention of Section 1 or 3 of the Road Traffic Act is a matter entirely for the Crown and that any suggestion of downgrading in prosecutions is wrong. We ask that the Justice Committee reflects on the following evidence:

- a) Compare the data available on formal charging by the police following homicide; since 1991, approximately 67% of offenders are proceeded against in court in contrast to the 48% of offenders for section 1 of the Road Traffic Act.
- b) The statistical fact as shown in Table 3, that since 1991, when the Road Traffic Act was amended that on average only 48% of drivers formally charged by the by police for contravention of Section 1 of the Road Traffic Act have been proceeded against in court.

**Table 3 - Section 1 of RTA, Causing death by dangerous driving**

Year	Number of offenders Recorded by police	Number of Offenders Proceeded against in Court	% Number of Offenders proceeded against
1991	69	30	43.5
1992	66	23	34.8
1993	56	25	44.6
1994	47	21	44.7
1995	45	29	64.4
1996	41	23	56.1
1997	35	17	48.6
1998	39	17	43.6
			Average: 47.6

**By default for the remaining 52% of offenders, a reduced charge of careless driving will be brought or possibly "no proceedings".**

- c) This figure of 52% is particularly alarming since the traffic police are working to the same definition of Road Traffic Law and spend local government resources of money, time and deployment of staff in substantiating the appropriate charge. The Police have replied that a formal charge of 'Causing death by dangerous driving' will only be brought when they have evidence to

support that charge. The lesser charge is simply brought to prevent a repeat of past experiences whereby a driver could walk free from court.

***Recommendation***

As the police are accountable to Parliament, evidence on this matter from the Association of Chief Police Officers of Scotland may be considered appropriate by this Committee.



## **Chapter 7 - Transport Research Laboratory**

The current research being carried out by the Transport Research Laboratory (TRL) on behalf of the DETR at Westminster was started in May 1998 and will be completed in October 2000. During this period approximately 950 people will lose their lives on Scotland's roads.

The research will look at the effect of the 1991 Road Traffic Act. We have asked the Justice Minister and MSP's have asked the Lord Advocate and the Justice Minister for data on 'Careless driving' where a death occurred. Both have replied to the effect, that statistical information regarding 'Careless driving' where a death has occurred is not published as the data is not collected on a death by death basis.

In order that Scotland may benefit from this research, what steps will be taken by the Lord Advocate and the Justice Minister to ensure that the following pertinent information, both pre and post 1991, is included in the current research being undertaken by the TRL:

- a) circumstances of the deaths,
- b) formal charges recorded by police,
- c) charge proceeded against in court,
- d) outcome in court and
- e) sentences handed down to an offender.

### ***Recommendation***

Given that the Criminal Justice System has evolved separately North and South of the border, the Justice and Home Affairs Committee should seek assurances that the Transport Research Laboratory's research is equally applicable and relevant to Scotland.

## **Chapter 8 - Communications from Fiscal/Crown Office to families.**

### **I. Information and case progress.**

The Lord Advocate devoted some pages to his Department's contact with our family. At no point can we say that contact was initiated by his Department. We honestly believe that any letter and meetings were the direct result of our constant pressure and desire for an explanation of this tragic and disgraceful process. For example, at no point were we advised that we could expect a meeting with the Fiscal. It is therefore interesting to read that such a meeting "is always offered".

We understand that if a family are not witnesses to the collision, a courtesy meeting is at the discretion of the Fiscal.

### **II. Review Procedures**

Our family received notification that Andrew Wilson would be charged with 'Careless driving'. As we had reasonably expected a charge of 'Causing death by dangerous driving' we immediately wrote to the Crown Office to instigate the review procedure. Crown Office have stated that *"the required degree of very bad driving was absent"* and therefore we have grave doubts about the mechanics of the review procedure. It also has to be said that at the moment hardly anyone even knows that a review procedure exists!

#### ***Recommendation***

We ask the Justice Committee to take evidence from the Crown Office on the review procedure for charges arising from a road death eg:

- a) In a review procedure, is a visit to the locus considered mandatory?
- b) In a review procedure, is further and/or clarification of evidence requested from the police or other witnesses?
- c) What are the benchmarks of very bad driving required to merit contravention of Section 1 of the Road Traffic Act, causing death by dangerous driving?
- d) Do the same advocate/s who levelled the charge, carry out the review?

### **III. Fatal Accident Inquiries**

We are in receipt of a letter from a family who, following their relative's road death have been seeking a Fatal Accident Inquiry (FAI). Having been refused by the Procurator Fiscal, the family has written to the Justice Department seeking clarification on guidelines for a FAI following a road death. Mr Andrew Brookfield of the Justice Department replied *"It is my understanding that it is already standard practice for the Procurator Fiscal to meet the victim's family and seek their view's as to whether they wish an inquiry to be held"*.

We can categorically state, Procurator Fiscals do not meet routinely with victim's families to seek their views on a FAI. This may be the theory but this is not the

experience of families whose grief has been aggravated by a Criminal Justice system which keeps families in ignorance of circumstances surrounding their loved one's death. We have evidence of families who have begged for a FAI, which instead of being offered - was dismissed by the Fiscal.

At present a FAI is mandatory if a driver is killed during the course of his/her employment. The purpose of an Fatal Accident Inquiry is to ventilate the facts in public, and if appropriate to make recommendations whereby in the future, a similar occurrence could be avoided. It follows that every road death in the interest of public safety should be the subject of an inquiry if relatives so wish. However, a FAI following any death on the road is discretionary, subject to Crown Counsel's approval.

The Central Research Unit in 1995, published *Public Interest and Private Grief: A Study of Fatal Accident Inquiries in Scotland*. This report presents findings from the operation of FAI's in Scotland for the year 1992. These findings show that, in general, there has been a decline in the number of FAI's held. That Crown Office does not routinely record whether inquiries are mandatory or discretionary and that this information cannot be verified from existing statistics. i.e. again no transparency.

In 1992 there were 463 road deaths. From the research unit's findings, 9 of these road deaths were work related and therefore were subject to a mandatory inquiry. The number of road deaths which could have been the subject of a discretionary inquiry, should a family wish it, was therefore, 454. Only 16 of these road deaths were the subject of a discretionary inquiry i.e. only 3.5%

As a Fatal Accident Inquiry will take up 3 - 4 days of court time, with evidence presented and witnesses called, Procurator Fiscals may be influenced by their budgetary constraints, which, if met are rewarded with a monetary bonus.

In this CRU report, the view of one advocate depute was that any sensitive issue would be referred to the Lord Advocate: *"as a rule of thumb I would always send him something that I thought would give rise to media interest because he will be the target of any media inquiry"*. We believe that a Fatal Accident Inquiry into Steven's death was only granted following media interest, inquiries and pressure from our MP and MSP's.

#### **Recommendation**

We ask the Justice and Home Affairs Committee to ensure the publication of Crown Office policy which states:

- a) following a road death and possible prosecution, a Procurator Fiscal will offer a meeting to a family to explain procedures.
- b) following every road death, a Procurator Fiscal will request a meeting with the family to seek their views on a Fatal Accident Inquiry.
- c) in the interests of public safety, any recommendations from a Fatal Accident Inquiry will be actioned by the appropriate authorities.

## **Chapter 9 - The Fatal Accident Inquiry into the death of our son, Steven Dekker.**

The Fatal Accident Inquiry finally established what we already knew to be true. The Sheriff stated, that Steven was in no way to blame or at fault. It was established that the road signs and markings were to national road traffic regulations. There was no fault with the cars, the road conditions, or the weather (it was a dry daylight evening with clear visibility),.

The Sheriff stated: Accordingly, in terms of Section 6(1) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976:-

**"A reasonable precaution whereby the death might have been avoided would have been if the Mercedes van had not been proceeding in the wrong direction on a one-way section of the northbound carriageway of the slip road, which joins the A80 Glasgow to Stirling trunk road with the A8011 to Cumbernauld".**

### **Issue 1- Evidence Vs Verdict**

The Fatal Accident Inquiry judgement bore no relation to the discoveries that were made during the course of the evidence heard. We attach a page of evidence to highlight this point.

*By the court: to Andrew Wilson*

*Are you in a position to tell me how wide the road was at the point of the accident? Was it one lane or two lanes?*

*- It was one lane your honour.*

*One lane? - Yes*

*Do you mean there was one lane one was meant to be on, or the road in fact by this time was only one lane wide?*

*- I recall the road as just being one lane wide.*

*Taking photograph R, it appears the road is two lanes wide, but one lane is hatched off. What puzzles me.. and I am anxious for any help you can give me in relation to this .. is why when you saw this vehicle coming towards you swerved to your right?*

*- Because I was in the wrong lane, and there was just the grass, the hard shoulder; there was nothing to my left.*

*Did you ultimately mount the grass verge?*

*- No, because I went to the right, and the grass verge was on the left. I was driving thinking I was going the right way, but I was in the wrong lane. There was me thinking it was two way, and I veered to the right, and the oncoming car done the same.*

*When you left the roundabout you were travelling on a road that was one way; is that correct?*

*- That is correct*

*You stopped, and then you turned in effect a sharp right hand turn to go up another road?*

*- That is correct.*

*When you started up that road did you think you were on a two way road or did you think you were now on a one way road going the other way?*

*- I thought I was on a slip road back to the roundabout.*

*Did you think it was a one way road or a two way road?*

*- I still thought it was two way.*

*You thought it was a two way road? - Yes.*

*If it was a two way road how would it be a single lane road?*

*- I don't know, your honour. I don't know.*

*How could it be a two way road if half the road was hatched off, as it appears to be? - I don't know your honour.*

*To Mr Woods (defence agent)*

*I appreciate that what I have raised is not necessarily something which has come directly from the evidence you have had, but it does appear to me to raise matters, particularly your client's last answer.*

A transcript of the all evidence and the Sheriff's determination is available and we would welcome your scrutiny of it.

## **Issue 2 - Misinterpretation of the Law**

Key players within the criminal justice system appear to ignore the intention and the detail of the law. It is a fact that 80% of the U.K. population over the age of 17 drive, so perhaps this is the reason there appears to be a high degree of sympathy for the driver. Thus the benchmark is not what the Law states but in fact to their own standard of driving.

In the Sheriff's determination he continually excuses the offender's actions, as "a moment's inattention". For example, in upholding the careless driving charge, *"based on the evidence I have heard"* the Sheriff states that Andrew Wilson's *"fault lay in his failure to observe one road sign (i.e. road merge sign) (and possibly an arrow further down the road)"* He thanked the police *"the video was very helpful... clearly shows how a driver, lost as Mr Wilson was, could make such a mistake"*. The video taken by the police, the day after Steven was killed, showed a driver in a similar Mercedes van who without stopping undertook the 150° manoeuvre only slowly.

3500 people bothered to sign the petition because they know the road, the vast majority travel along it regularly, and know that "such a mistake" is unreasonable, bizarre and dangerous. Evidence was led by the local authority that no similar recorded "accident" has occurred in the last 10 years.

Clearly "such a mistake" is the criterion on which the Crown Office decided on a careless driving charge. This is not factually correct. As stated previously, 'Careless driving' is a moment's inattention.

In order for Andrew Wilson to drive up the one way main road the wrong way he pulled in off the road, stopped, reversed away from a raised manhole and then

undertook a 150° turn! The evidence given by Andrew Wilson and his passenger, also friend, Colin Mennie verifies that they pulled in and off the road onto a grass verge and stopped. His passenger stated, "he just kind of braked suddenly and pulled in onto the verge .....nearly hitting a raised manhole cover."

Yet the manner in which he left the road and negotiated the manoeuvre has been ignored by the Sheriff.

### **Issue 3 - Consistency/validity of Evidence**

With regard to the Sheriff's statement that Andrew Wilson was lost, if he was lost should he not have been looking for route signs? The fact was he was not lost, on page 11 of his evidence corroborated by his passenger's evidence which states Andrew Wilson was following Glasgow signs, but decided "*they didn't want to go that way*" as they were retracing in reverse the route they had taken earlier in the day i.e ignoring route signs. Nonetheless the Sheriff chose to accept he was lost and upheld the Crown's decision to bring a careless driving charge.

On page 3 the Sheriff states (the merge sign) "*does not indicate that the merging road is also a one-way system*"! (This is an approved road traffic merge sign used up and down the country). Following this statement from the Sheriff he failed to make any recommendation that the national sign regulations should be changed accordingly. One would have thought that recommendation for action would be essential since he is supposed to be acting in the public interest!

On page 4 he comments that "*He (Andrew Wilson) took avoiding action.*" That comment misrepresents the evidence. According to Andrew Wilson's road position and the evidence he gave, he should have veered left, to avoid the oncoming vehicle. Both his evidence and that of the passenger Colin Mennie confirmed that they knew they were driving up the road the wrong way. Even though the driver knew he was in the wrong, he chose to veer right and therefore drove straight into Steven's path.

We would draw the Committee's attention to the evidence given of what happened immediately after the incident. Neither the driver nor the passenger made any attempt to offer assistance to our dying son or his seriously injured girlfriend, Gail. Evidence given by the drivers who arrived shortly afterward 'the incident' revealed that they were the ones who tendered what comfort and assistance they could at the road side.

On page 17 the Sheriff concludes. "*He stopped his vehicle and waited till the road was clear before undertaking a manoeuvre by crossing a hatched area (chevron) which he was entitled to do*".

Mr McDuff<sup>1</sup>, BSC(Hons) CMJ MICE MIHT, a highly qualified Transport Team

<sup>1</sup> Transcript reads "McDuff" should read "McDove"

Manager with North Lanarkshire Council gave evidence, to the contrary, that these chevron markings indicate traffic lanes in the same direction and are for emergency use only. "The more white lines the greater the danger or potential danger so essentially you should not be on them." (photographs enclosed)

The Sheriff on page 18 formed the opinion that *"He (Andrew Wilson) was keeping a good lookout"*. Andrew Wilson stated there was no traffic on the road. His passenger stated the road was very busy and Andrew Wilson had his foot on accelerator and clutch waiting for a space in the traffic to turn. Had he been keeping a good lookout, as he should, he would have observed the many route and road signs prior to his manoeuvre and not stopped and turned at the point he did.

Sheriff stated on page 3 *"Mr Wilson reversed his van for a short distance to enable him to have a better view of the traffic."* This is a complete fabrication. There was no evidence given to that effect. Furthermore **had the sheriff, the fiscal or the review person/body visited the scene** as we asked, it would have been obvious, that in this relatively small space such actions were impossible! **He must have reversed away from the raised manhole cover he nearly hit, and the surrounding raised grass area, so that he could manoeuvre the U-turn at the widest point in the road.** The Crown production photographs or any photographs are inadequate to reproduce these dimensions. **Only by visiting the locus would the magnitude of Andrew Wilson's crime be realised.**

#### **Issue 4 - Public Interest**

Further on page 3, (of his determination) the "hard shoulder" mentioned by the Sheriff, is a narrow grass verge. The Sheriff when the case was called to court in March 1999 remarked that Andrew Wilson had crossed solid white lines to stop on this grass verge and that doing so "was even worse"! Yet there was no acknowledgement by the Sheriff who conducted the Fatal Accident Inquiry that Andrew Wilson had made dangerous decisions and had undertaken a succession of dangerous manoeuvres. His opinion was that Andrew Wilson made only one mistake. It is indeed difficult to comprehend why two senior sheriffs should come to such different conclusions.

#### **Issue 6- Ignoring/Crime Evidence**

The Lord Advocate at the second Justice Committee meeting on 31<sup>st</sup> August 1999, stated that each charge (in relation to road traffic offences) would be examined separately. In practice, that is not true!

The police formally charged Andrew Wilson with contravention of 40A - the manner in which he was transporting his passengers. We learned at the FAI that not only were the children of 6 and 9 years unrestrained and unseated in the rear

of the van but in addition and contrary to Andrew Wilson's evidence both he and his 6 year old son in front were also unrestrained. This was borne out by the fiscal who pointed out that the passenger who was the only one wearing a seatbelt was uninjured. The children were all taken to hospital to receive medical attention. What happened to this charge 40A brought by the police? Is this no longer a punishable offence?

On a planned trip Andrew Wilson disregarded the safety of his own children what chance did our son have?

### **Issue 7 - Integrity of Offender**

Initially the FAI was arranged for 29<sup>th</sup> September 1999. The FAI had to be rearranged and was conducted over two separate periods as Andrew Wilson alleged he was emigrating to Canada at the end of August 1999. The Fiscal ensured that his evidence was heard early "on commission". In the witness box he was asked to confirm when he was leaving the country. His lawyer however advised him not to answer the question. Subsequent efforts established that he had dual citizenship and therefore did not need to "emigrate" to Canada. He was free to go whenever it suited him. In fact he left Scotland in October the month following the full FAI.

### **Issue 8 - Limitations of the Court**

At the original trial on 23<sup>rd</sup> March 1999, the Sheriff checked if he could take Steven's death into consideration when deciding sentence. He was assured he could not! He stated that 'his hands were tied' and issued a £750 fine and a one year disqualification from driving. Andrew Wilson left for Canada with 6 months of his driving disqualification outstanding.

From enquiries we have made to the provinces in Canada, only internal checks are made on a driver's licence, therefore he is free to drive. We are speechless!



## Conclusion

The reason that there is not a vigorous prosecution policy is because there is collusion by those who work within the legal system.

No driver accuses him/herself of bad driving. Indeed, we even have television programmes which are set out to entertain rather than shock drivers into better driving practices. Some in Authority even feel "there but for the grace of God etc" and thus there is a predisposed attitude and a reluctance to prosecute and sentence bad driving offences. It would appear their own "standard" of driving is the criteria they use and not that as intended by Parliament. It also has been said by those in Authority that the offender has to "live with it" while nothing is said about the innocent victim whose life has been taken or the life sentences families are left with. Any truly remorseful driver would find their life easier if the fuller use of the Applicable Law was used in charging and sentencing, at least they could say they had paid their debt to society. It has to be said however, that the only thing many among them will remember is that they "have come off well".

Terminology is an important indicator of people's actual views. The Lord Advocate also talks about Steven's death being an "*accident*". That is factually not the case - Steven was killed by the deliberate and fatal actions of another driver.

The Lord Advocate talks about the importance of Scotland's law being compatible with the European Convention on Human Rights. We are rather concerned that we need to remind the Lord Advocate of Article 2 of that Convention, "the right to life" means that there is an explicit duty on the State to respect that right. Consequently the state has a duty to act when that right is taken away - in our case, Steven's right to life was denied and so the Convention was breached.

The State's reaction, in prosecuting Andrew Wilson with 'Careless driving', was the equivalent to prosecuting a driver who drove needlessly (without due care and attention) in the outside lane of a dual carriageway, causing no collision. The State did not respect Steven's right to life.

Parliament has passed the law, 'Causing death by dangerous driving', with sentences available to reflect the gravity of the crime. The amended Road Traffic Law is not being implemented as Parliament intended it to be. There is factual evidence of a policy of downgrading in prosecuting and sentencing drivers who have killed innocent victims on our roads. We have shown this by;

- a) the statistics we have presented,
- b) the level of court in which 'Causing death by dangerous driving' offences is commonly heard.
- c) the sentences handed down, with reference to 'Causing death by dangerous driving' and 'Careless driving offences'.
- d) reference to Steven's case.

In 1984, Lord Lane stated:

"Figures seem to show that the offence (Section 1 of the Road Traffic Act) is regarded by the courts as less serious than in fact it is; less serious than Parliament intended it to be and less serious than the public in general regard it". 16 years on, in the year 2000, the same can be said.

In summarising we ask the Justice and Home Affairs Committee to monitor road deaths in Scotland and take action on the following;

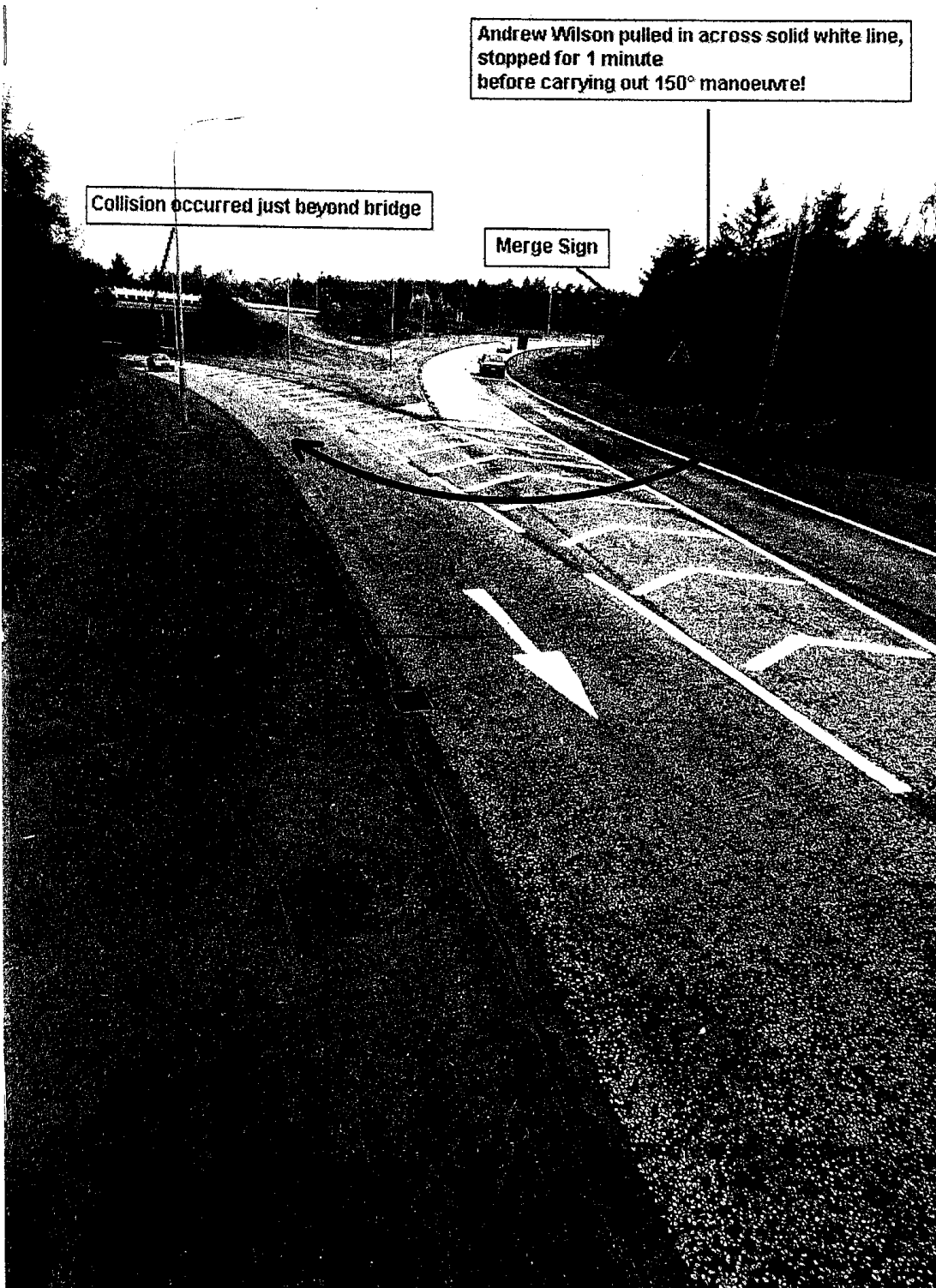
- a) Liaison Officer be appointed to ensure that there is a consistently delivered service by the police, the Crown and the courts.
- b) Seek the views ACPOS
- c) Every road death be thoroughly investigated as any other serious or complex crime cases i.e. as homicide with all evidence preserved.
- d) Where a prosecution follows a road death that the culpability of the offender be determined in the High Court.
- e) There is no plea bargaining or downgrading of contravention of section 1 of the Road Traffic Act, 'Causing death by dangerous driving'.
- f) Strict guidelines are issued and training given to procurators fiscal and sheriffs on interpretation and sentencing road death offences.
- g) Section 3, 'Careless driving' offences will not be downgraded to district court level.
- h) No driver who has killed an innocent victim as a result of his/her careless driving will be able to drive away from court.
- i) Any driver receiving a driving disqualification must inform the authorities of a change of address or intended emigration.
- j) There is vigilance by the police in enforcing a driving disqualification.
- k) In the event of any road death, procurators fiscal meet with families to seek their views on a Fatal Accident Inquiry.

Furthermore we ask that the Justice and Home Affairs Committee work with the Scottish Executive to ensure that road deaths are treated as a political priority.

Andrew Wilson pulled in across solid white line,  
stopped for 1 minute  
before carrying out 150° manoeuvre!

Collision occurred just beyond bridge

Merge Sign



Forward View of Junction  
(as travelled by Andrew Wilson)

