

#### AGENDA

#### 17th Meeting, 2000 (Session 1)

#### Wednesday 10 May 2000

The Committee will meet at 9.30 am in Committee Room 1, Committee Chambers, George IV Bridge, Edinburgh.

1. **Draft Regulation of Investigatory Powers (Scotland) Bill:** The Committee will take evidence on the general principles of the draft Bill from—

Jim Wallace, Deputy First Minister and Minister for Justice.

**2. Budget 2001-02:** The Committee will take evidence on the Executive's expenditure proposals from—

Jim Wallace, Deputy First Minister and Minister for Justice;

Lyndsay Montgomery, Chief Executive, and Tom Murray, Director of Legal Services, Scottish Legal Aid Board.

**3. Draft Regulation of Investigatory Powers (Scotland) Bill:** The Committee will take evidence on the general principles of the draft Bill from—

Professor Alan Miller, Scottish Human Rights Centre.

4. **Petitions:** The Committee will consider the following petitions—

PE89 by Mrs Eileen McBride;

PE102 by James Ward.

Andrew Mylne Clerk to the Committee Tel 85206

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

Agenda item 1

Draft Regulation of Investigatory Powers (Scotland) Bill

Draft Explanatory Notes (and other accompanying

documents)

Draft Policy Memorandum

JH/00/17/9

Note: Copies of the above documents have been circulated to Committee Members only - Others should be able to obtain copies by accessing the Executive website http://www.scotland.gov.uk

Agenda item 2

Letter from the Scottish Executive Finance Department (plus JH/00/17/1 four annexes)

Letter from the Crown Agent JH/00/17/10

Agenda item 3

Article by Professor Alan Miller (from *Holyrood* magazine) JH/00/17/2

Agenda item 4

Note by the Clerk on PE102 (copy of petition attached)

JH/00/17/5

#### Other papers:

Members should have received in the internal mail from the Executive copies of the draft Bail, Judicial Appointments etc. (Scotland) Bill. Others should be able to obtain copies of the Bill by accessing the Executive website http://www.scotland.gov.uk (as of 9 May 2000).

A Note by the Clerk on petition PE89 (together with a letter from the Minister for Justice) was circulated for last week's meeting as JH/00/16/4.

#### Papers for information circulated for the 17th meeting

Letter from the Convener to the Society of Messengers-at- JH/00/17/4 Arms and Sheriff Officers.

Extracts from the *Press and Journal* on Carbeth report and from the *Scotsman* on the proposed Regulation of Investigatory Powers (Scotland) Bill

Note by the Clerk on petition PE29: e-mail correspondence JH/00/17/3

Note by the Clerk on forward programme May – July JH/00/17/6

Minutes of the 16th Meeting JH/00/16/M

**Note:** The Clerk has been sent two copies of Research Findings No. 80 by the Scottish Executive Central Research Unit, entitled "Council Tax Collection Arrangements in Scotland and England & Wales". This is one of the documents referred to in the Scottish Law Commission Report on Poinding and Warrant Sale (para 1.7), and is therefore relevant to the Abolition of Poindings and Warrant Sales Bill. Members who would like a copy should contact the clerks.



Finance

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Date: 2 May 2000

Dear Andrew

## ANNUAL BUDGET PROCESS: EVIDENCE TO THE JUSTICE AND HOME AFFAIRS COMMITTEE

1. At the meeting held on Wednesday 26 April where the Committee took evidence on the Justice Budget proposals for 2001-02, I undertook to provide certain additional figures for the recently ended financial year 1999-2000. These are attached. However, there were also a number of other issues raised at the meeting which I should like to cover in this letter.

#### Discrepancies between Proof/Published Copy of Annual Expenditure Report

2. Committee members had in front of them a final proof of the Annual Expenditure Report but not in all cases a copy of the final publication. They were concerned, however, to note certain changes in figures between the proof copy of the Annual Expenditure Report and the published version. The changes for the Justice Chapter are in two principal areas, Courts and the inclusion of local authority specific grants in the programme total. The first reflects late changes to the content of the staffing costs for Courts Group, and does not impinge in any way on the sums of money available for the Scottish Court Service, and the second was an editorial decision to avoid any possibility of double counting. I shall explain further below.

#### **Courts**

3. Up until the current financial year, Courts had their own Vote, separate from the rest of the Justice programme. It was comprised of two main areas, Scottish Court Service (SCS), a Next Steps Agency which has the responsibility for running the Courts system in Scotland (save the District Courts which are the responsibility of local authorities) and Scottish Courts Administration (SCA), which has the responsibility for the provision of Judges and Sheriffs for the Courts, and to provide the administration for a number of tribunals and small departments. During 1999-2000 the Executive took the decision to bring SCA into the Scottish Executive staffing structure (previously they had been regarded as an Associated Department). The financial result of this decision is that from 1 April 2000 the costs of SCA staff, now known as SEJD Courts Group, fell within the Scottish Executive Administration Budget, not the Justice Budget. As to how Courts expenditure should be









displayed in the Annual Expenditure Report, it was initially decided that for ease of reference **all** Courts expenditure should be shown on the Justice programme, and this was the state of play for the proof copy. However, a late editorial decision was taken that the staff costs etc. split should be shown under the correct programme and a footnote to table 5.17 was included explaining the amounts transferred from the Justice Budget to the Scottish Executive Administration Budget. This accounts for the all the figure changes in tables 5.1 and 5.17, and for the Courts line change in table 5.24.

#### **Local authority specific grants**

4. The other principal change for the Justice chapter relates to the inclusion of local authority specific grants in the programme total. In the Justice chapter introductory page of the proof copy, the total quoted for the overall size of the Justice programme included specific grants. However, specific grants also fall to be counted as part of the overall local authority settlement, and, in order to avoid any double counting, an editorial decision was taken to include all specific grants within the local authority total, and to deduct them from individual spending programmes. This accounts for the figure changes in the introduction.

#### Real Terms Table 5.24

5. Just before publication, Treasury issued a fresh set of GDP deflators. A late editorial decision was made to take these into account in the Annual Expenditure Report, hence the range of changes to table 5.24.

#### **Victim Support**

6. I understand that following evidence from representatives from Victim Support Scotland, the Committee was concerned that the figure shown for Victim Support in the Annual Expenditure Report disagreed with the 2000-2001 grant agreed for the organisation. I hope the following explanation is helpful. During the 1996 Public Expenditure Survey, Victim Support Scotland received an additional £200,000 in grant for one year only. There were insufficient funds in forward years' baselines to roll this increase forward. Succeeding budget exercises also failed to find additional baseline funding for Victim Support, therefore the initial budget of £1.3m has remained static. However, at the same time, it was acknowledged that Victim Support would face significant difficulties should they receive less than £1.5m. Accordingly, we have managed to keep Victim Support funding at £1.5m, (as is evidenced by the outturn and estimate figures shown in table 5.1), by transferring in, for each year, additional provision in-year from savings accrued elsewhere in the Budget.

#### Additional 1999-2000 information

7. The Committee asked for information that would allow them to strip out in-year changes (including End Year Flexibility resources) from the 1999-2000 figures which appear in table 5.24 and thereby enable them to compare directly the 1999-2000 estimated outturn and the provision being planned for 2000-01 and 2001-02. This is attached at Annex A. We have also included a revised cash plans table 5.1 for ease of reference. The cash plans table is, of course, the one which shows the actual amount of money allocated to each area. The real terms table shows what money is actually worth (at 1998-99 prices) after inflation is stripped out. This does not, of course, have a direct bearing on the <u>outputs</u> which can be achieved with these resources. It is, after all, the objective of the efficiency agenda operated by the Executive (and before devolution by the Scottish Office) to improve value for money, either by delivering the same level of output for a reduced level







of input (in effect buying the same for less) or by delivering a higher level of output for a fixed level of input (getting more for one's money).

- 8. The Annex A spreadsheet provides a detailed illustration of how baselines can alter over a financial year by showing the original baseline provision, altered by subsequent supplementary estimates which have brought in additional funding to a number of areas by the utilisation of End Year Flexibility. To assist the Committee, I have also attached a copy of the narrative breakdown of how each supplementary estimate (Autumn Annex B and Spring Annex C) moved provision between the spending categories. I would ask the Committee to note that the additional supplementary estimate information relates to the former layout of the Justice budget, i.e. Vote 5, and is not completely comparable to the table provided, but it does give the broad outline of moves between spending areas.
- 9. The Committee also asked that we provide a breakdown of the pay element included in all the Justice programme categories. This has also been included in Annex A.
- 10. I also attach at Annex D a background note on End Year Flexibility, which sets out the way EYF application has changed over the years, and how the Justice programme has been directly affected. It also gives a complete breakdown of the EYF drawn down into the Justice programme in 1999, which was based not only on the underspends from 1998-99, but also on historically accrued EYF.

#### Glossary of financial terms

- 11. Finally, it was noted during the taking of evidence that a glossary of financial terms would be useful for Committee Members. This is attached at Annex E.
- 12. I hope the Committee Members find the additional information useful.

Yours sincerely

#### **RUTH RITCHIE**









#### Annex A

#### UPDATED TABLE 5.1

CASH	1998-99 Outturn	1999-00 Original Estimate	1999-00 Autumn Supp	1999-00 Spring Supp	1999-00 Revised Estimate	Public Sector Pay 1999-00	Public Sector Pay as a % of 1999-00 Revised Estimate	2000-01 Plans	2001-02 Plans
	£m	£m	£m	£m	£m	£m		£m	£m
Criminal Injuries Compensation Board	27.8	35.1	0	-5.1	30.0	1.0	3.3	31.0	31.5
Criminal Justice Social Work Services and Victims Issues	39.5	44.3	0.5	4.9	49.7	0.0	0.0	46.3	47.5
Fire Central Government	4.0	4.5	-0.4	0.1	4.2	0.7	16.7	3.8	3.8
Legal Aid	136.4	135.3	-2.1	0	133.2	5.5	4.1	132.8	134.8
Miscellaneous	9.1	13.4	28.8	11.8	54.0	0.3	0.6	13.0	23.3
Police Central Government	31.4	33.6	3.3	0	36.9	18.8	50.9	35.6	34.3
Scottish Prison Service	178.3	204.4	10.9	0	215.3	130.5	60.6	209.5	210.5
Scottish Courts	50.9	53.8	0	11.6	65.4	19.4	29.7	55.9	58.9
TOTAL	477.4	524.4	41	23.3	588.7	176.2	29.9	527.9	544.6
Support to Local Authorities	343.4	355.9	3.8	3.8	363.5	257.4	70.8	369.6	380.7
Police Loan Charges	13.5	13.6	0	0	13.6	0.0	0.0	13.6	13.6
TOTAL	834.3	893.9	44.8	27.1	965.8	433.6	44.9	911.1	938.9

#### **UPDATED TABLE 5.24**

REAL TERMS	1998-99 Outturn	1999-00 Original Estimate	1999-00 Autumn Supp	1999-00 Spring Supp	1999-00 Revised Estimate	Public Sector Pay 1999-00	Public Sector Pay as a % of 1999-00 Revised Estimate	2000-01 Plans	2001-02 Plans
	£m	£m	£m	£m	£m	£m		£m	£m
Criminal Injuries Compensation Board	27.8	34.2	0.0	-5.0	29.3	1.0	3.3	29.6	29.3
Criminal Justice Social Work Services and Victims Issues	39.5	43.2	0.5	4.8	48.5	0.0	0.0	44.2	44.2
Fire Central Government	4.0	4.4	-0.4	0.1	4.1	0.7	16.7	3.6	3.5
Legal Aid	136.4	132.0	-2.0	0.0	130.0	5.4	4.1	126.7	125.5
Miscellaneous	9.1	13.1	28.1	11.5	52.7	0.3	0.6	12.4	21.7
Police Central Government	31.4	32.8	3.2	0.0	36.0	18.3	50.9	34.0	31.9
Scottish Prison Service	178.3	199.4	10.6	0.0	210.0	127.3	60.6	199.9	195.9
Scottish Courts	50.9	52.5	0.0	11.3	63.8	18.9	29.7	53.3	54.8
TOTAL	477.4	511.6	40.0	22.7	574.3	171.9	29.9	503.7	507.0
Support to Local Authorities	343.4	347.2	3.7	3.7	354.6	251.1	70.8	352.7	354.4
Police Loan Charges	13.5	13.3	0.0	0.0	13.3	0.0	0.0	13.0	12.7
TOTAL	834.3	872.1	43.7	26.4	942.2	423.0	44.9	869.3	874.0

#### Annex B

Vote Title: Law, order and protective services, police grant and social work services

Autumn Supplementary Change	Amount Subhead Increased/Decreased (£000's)	Brief Description of change
A2 Scottish Legal Aid Fund (admin)	125	Funding for Part V Pilot Study
A3 Scottish Legal Aid Fund (admin)	500	Funding for new computer system
B2 Scottish Legal Aid Fund	-2,725	Savings on this subhead to pay for millennium policing costs together with new computer system and Part V pilot study from subhead A above.
E2 Other services related to crime	291	Expected compensation claim for miscarriage of justice, CCTV and Capital Modernisation Fund.
F1 Scottish Prison Service (DRC)	5,191	Take up of EYF
F2 Scottish Prison Service (other current)	3,534	Take up of EYF
F3 Scottish Prison Service (capital)	6,627	Take up of EYF
FZ Scottish Prison Service (A in A)	-4,480	Take up of EYF
G2 Police services (current)	2,932	Funding for Drugs Enforcement, PITO, Part V of Police Act, Troon/Belfast and Livescan
G3 Police services (capital)	-159	Savings identified to transfer funds to Boundary Commission and Parole Board.

Autumn Supplementary Change	Amount Subhead Increased/Decreased (£000's)	Brief Description of change
12 Scottish fire services (current)	272	Inescapable funding for SFSTS
I3 Scottish fire services (capital)	-680	Savings identified to fund Scottish
(		Criminal Cases Review Commission and for Boundary Commission to transfer to the Secretary of State's Vote.
L2 Miscellaneous services (current)	27,830	Funding for Scottish Criminal Cases Review Commission (SCCRC), Police Telecomms, Scottish Parliamentary Elections and parking of the balance of EYF to fund projects already identified in future years.
L2 Miscellaneous services (capital)	516	Balance of Capital Modernisation Fund
M2 Social work services (current)	915	Money for Victim Support, Section 10 Grants and Witness Support Scheme.
M3 Social work services (capital)	75	Funding for Rossie Kenmure
O2 Invest to save	448	Funding of Invest to Save pilot schemes.
P4 Police current grant	3,300	Millennium costs
S5 Police capital grant	520	CCTV

Autumn Supplementary Change	Amount Subhead Increased/Decreased (£000's)	Brief Description of change
U2 Millennium Volunteers	150	Giving Age
V2 Welfare to Work- Prison Service, Scotland	14	Take up of EYF

#### **Key Points/ Outputs**

Pilot scheme with Glasgow Benefits Agency to provide Legal Aid Board with information on whether civil applicants for legal aid are in receipt of benefits and therefore eligible for legal aid

Funded from savings identified in Scottish Legal Aid Fund (subhead B).

Criminal conviction of Alexander Hall overturned by the Appeal Court after spending 11 years in prison is forecast to result in a compensation claim. The estimated compensation is based on figures obtained from Home Office based on similar cases but the final amount will be decided by an independent assessor.

Transfer of funds from Crime Prevention to Police Capital Grants for successful applicants of the Scottish Office CCTV Challenge Competition.

Uptake of funds committed for Capital Modernisation Fund.

Drugs Enforcement money to increase the number of Confiscation orders made to seize drug dealer's assets. Additional policing costs to monitor passengers and vehicles for counterterrorism and public order purposes on new car/passenger service route between Troon and Belfast. Slippage from 98-99 in payments to SAGEM in respect of Livescan. Implementation of Part V of Police Act which contains provision for wider availability of criminal conviction information (directly attributable to post Dunblane concerns). All these projects are funded from EYF.

#### **Key Points/ Outputs**

Provision required to fund increase in instructor's costs due partly to their pay rise (outwith our control) and an increased number of students which has a knock-on effect of having to employ extra staff for catering purposes. There are also additional fees in respect of a public local inquiry which has temporarily halted any fire training. All of the above bids are to be met from EYF.

Funding for Scottish Criminal Cases Review Commission from savings in Scottish Fire services. Additional funds for police telecomms due to an increase in BT charges. Further provision also required for publicity costs and cost of candidate's free mailings for the Scottish Parliamentary elections all to be met from EYF.

Additional help for victims in the criminal justice system both through general funding for victim services in the form of Victim Support Scotland and by the limited expansion of the witness support scheme. These are to be met from EYF and by a transfer from Crime Prevention (subhead E) respectively.

Transfers from Health Vote to provide capital funding for National Disability Information Service and from Development Vote to contribute to the shortfall in funding available for Section 10 Grants for Voluntary Organisations.

Replacement of windows at Rossie Secure Unit to be met from EYF.

The different schemes to benefit from this funding are the Young Offenders: Early Intervention, Community Care: Integrated Approach and Probation/Employment Services for Offenders. This funding covers 25% of the total cost of the schemes. The remaining 75% is to met from Treasury. The other scheme is the Scottish Legal Database which the Treasury is funding 46.6% of the total costs.

Funding for additional policing costs at the Millennium found from EYF.

Funding for successful applicants in the Scottish Office CCTV Challenge Competition. Provision for this to be transferred from Crime Prevention (subhead E).

#### **Key Points/ Outputs**

Scottish share from Treasury of UK wide initiative to raise the quality and increase the quantity of voluntary and community action.

Annex C

Vote Title: Law, order and protective services, police grant and social work services.

Spring Supplementary Change	Amount Subhead Increased/Decreased (£000's)	Brief Description of change	Key Points/ Outputs
B2 Scottish Legal Aid Fund	-35,000	Savings on this subhead used to pay for research in respect of the Public Defence Solicitor Office.	
C2 Criminal injuries compensation (administration)	-497	Transfer of provision to the Home Office as a result of a reduction in the Scottish percentage contribution from 13% to 11%	Full requirement for Scottish share of compensation and administration costs met The Schemes are administered on a cross border public authority basis
D4 Criminal injuries compensation	-4,570	Transfer of provision to the Home Office as a result of a reduction in the Scottish percentage contribution from 13% to 11%	Full requirement for Scottish share of compensation and administration costs met The Schemes are administered on a cross border public authority basis
F1 Scottish Prison Service (DRC)	-2,686	Transfer from savings on Running Costs into Capital and further reduction due to reduced VAT on contracted-out services.	Estimated figures were used for projecting VAT on contracted-out services. The timing of payments and recoveries has become clearer during the year and a reduction in A-inA has been made to reflect this, with a corresponding decrease in DRCs.
F2 Scottish Prison Service (other current)	-189	Transfer from Other Current expenditure into Capital.	Savings have been identified to meet expenditure in the capital investment programme in the current year.
F3 Scottish Prison Service (capital)	570	Transfer into Capital from Running Costs and Other Current expenditure.	Asset disposals have been lower than anticipated in the current year. SPS still wish to meet their plans on Capital expenditure for this year and have, therefore, made a reduction in running costs and other current expenditure to facilitate this.
FZ Scottish Prison Service (A in A)	-2,300	Reduction as a result of reduced VAT on contracted-out services and lower than expected disposals.	See F1 and F3 above.
G2 Police services (current)	-50	Transfer to Capital	To enable a back-up generator to be installed at the Scottish Police College.
G3 Police services (capital)	50	Transfer from Current	See G2 above.
I3 Scottish fire services (capital)	50	Funding for the Scottish Fire Service Training School.	To modernise and expand changing room facilities at the SFSTS to take account of the likely success of the effort by brigades to recruit more women into the fire service. To be funded from EYF.
L2 Miscellaneous services (current)	-7,299	EYF used for funding in respect of Elections and the Lockerbie Trial.	Funding in respect of the non-voted provision for European Elections and Scottish Parliamentary Elections, together with the Scottish Executives 20% share of the current costs of the Lockerbie Trial for Police, Prisons, Courts and the Crown Office have been met from EYF.

Spring Supplementary Change	Amount Subhead Increased/Decreased (£000's)	Brief Description of change	Key Points/ Outputs
LZ Miscellaneous services (A-inA)	53	Increased VAT refunds on research projects	
M2 Social work services (current)	100	Increased funding for expansion of the Council for Voluntary Service Network	The additional amount will be aimed at promoting expansion of the urban CVSs and has been found from the Listening to Communities budget in Vote 2.
N2 Lockerbie (current)	17,807	Police and Prisons costs incurred on the Lockerbie trial in the Netherlands. Given the unique nature of the trial, which involves providing high security facilities including a prison and a court in the Netherlands, which have to be staffed round the clock by Scottish police and prison officers, the costs will be substantial. Even 20% of the current costs is a significant sum It is impossible to predict the overall cost of the trial, as this will be determined by the length of the proceedings	Treasury has agreed that 80% of all current costs will be met from the Reserve. The other 20% in the current year have been met from EYF.
N3 Lockerbie (capital)	295	Police capital costs incurred on the Lockerbie trial in the Netherlands.	Treasury has agreed that all capital costs will be met from the Reserve.
O2 Invest to save (current)	-167	Funding of Invest to Save pilot schemes	The different schemes to benefit are the Young Offenders: Early Intervention, Community Care: Integrated Approach and Probation/Employment Services for Offenders. Treasury is meeting 75% of the costs. The other scheme is the Scottish Legal Database which the Treasury is funding 46.6% of the total costs.
O3 Invest to save (capital)	167	Capital element of funding of Invest to Save pilot schemes	Transfer from Current to meet the capital costs of the schemes at O2 above.
R4 Social work services grant	8,832	Provision for special grant schemes in respect of asylum seekers and Kosovo refugees.	The two special grant schemes will enable local authorities to be reimbursed for payments in respect of asylum seekers and Kosovo refugees.
			Asylum seekers The Home Office holds funding for the overall UK provision in respect of the support system for asylum seekers. A transfer of the estimated Scottish costs (£3.98m) has been agreed.
			Kosovo refugees

Spring Supplementary Change	Amount Subhead Increased/Decreased (£000's)	Brief Description of change	Key Points/ Outputs
			Payment to local authorities will be made under a Special Grant Scheme to provide authorities in Scotland with funding support towards relevant expenditure, incurred during 1999-00, in connection with the acceptance of displaced persons from Kosovo wherever they decide to live in Scotland. Payments will cover addition costs incurred on accommodation, social care, education and similar types of expenditure and Treasury approval has been given for the estimated costs in Scotland (£4.9m) to be met from the Reserve.
V2 Welfare to Work- Prison Service, Scotland	-14	Underspend from previous year transferred to Vote 2	The SPS Welfare to Work scheme ended in 1998-99. The unused provision has been transferred to Vote 3 for New Deal for Schools.

#### **Background Note**

#### **EYF - Current Scheme**

1. To give Departments more flexibility in managing expenditure pressures, Treasury changed the rules under which EYF could be claimed during the Comprehensive Spending Review (CSR) in 1998, and the new rules became applicable for the financial year 1998-99. This enables all programme expenditure underspend which falls within the Treasury-agreed DEL (Departmental Expenditure Limit) to be claimed as EYF, and carried forward into the next financial year. Annex A sets out the EYF claimed for 1998-99 for the Justice Programme. Prisons and Courts are also looked at separately in Annex B, because they have a historical series of EYF claims which the other parts of the programme do not.

#### EYF – Previous scheme

2. Prior to the change of rules in the CSR, EYF could only be claimed under very specific circumstances. The only areas where Departments could earn EYF on underspends in the previous year were in capital and running cost provision. Originally, running cost underspend EYF was limited to 0.5% of the total Departmental Running Cost limit, but following a Treasury review in 1993, the scheme was revised to allow unlimited claims. Capital EYF was limited to 2% of the Vote or £2m, whichever was the lesser. Within the Justice programme, only Prisons and Courts had expenditure classified as running costs, and only they could claim running cost EYF. On capital, because this scheme was limited, and as Prisons had by far the largest capital allocation, they scooped the Vote 5 capital pool, leaving very little, if any, for the remainder of that Vote. For Courts, because they have a separate Vote, they were able to claim the maximum allowed under the capital scheme. Annex B illustrates a five year spread of the amounts accrued and claimed by Prisons and Courts since 1994-95 to the last financial year. Courts only took up EYF in 1997-98: Prisons always took up their maximum allowed until 1996-97.

#### **RUTH RITCHIE**

28 April 2000

Scottish Executive Finance: Justice Area 3C31 Victoria Quay Ext. 47508

#### SCOTTISH EXECUTIVE JUSTICE DEPARTMENT

#### 1998-99 UNDERSPENDS: END YEAR FLEXIBILITY

Category	EYF claimed (£m)	Percentage of baseline
Legal Aid *	2.695	1.94
Criminal Injuries Compensation *	2.274	7.56
Prisons	11.884	6.24
Police Central Government	2.008	5.35
Police Grant	0.417	0.12
Fire Central Government	0.309	7.18
Miscellaneous	1.348	11.91
Courts	4.335	9.65
Social Work **	0.436	0.50
TOTAL	25.706	2.87

#### Notes:

In addition to the above, Courts have accrued EYF from previous years amounting to £5.656m and SPS for £12.009m. Together with the EYF from 98-99 this totals £43.371m in EYF for the Justice programme.

<sup>\*</sup> Demand-led category.

<sup>\*\*</sup> This figure relates to the entire Social Work programme which from 1 July 1999 has been re-distributed to correspond with Ministerial portfolios. Only Criminal Justice Social Work Services and Victims issues now remain with the Justice Programme.

# Scottish Executive Justice Department

End Year Flexibility: Prisons and

Courts

		£'000s 1994-95	1995-96	1996-97	1997-98	1998-99	EYF Total
<b>Prisons</b>							
EYF Earned:	Running Costs	£1,028	£5,435	£4,613	£10,396	£9,378	
	Capital	£662	£1,765	£863	£2,000	£2,506	
EYF Claimed		-£1,690	-£7,200	-£863	-£5,000		
Balance		£0	£0	£4,613	£7,396	£11,884	£23,893
<b>Courts</b>							
EYF Earned:	Running Costs	£3,200	£610	£90	£1,722	£4,138	
	Capital	£585	£245	£225	£34	£197	
EYF Claimed	-	£0	£0	£0	-£1,055	£0	
Balance		£3,785	£855	£315	£701	£4,335	£9,991

Footnotes: Figure for Courts for 1994-95 is a cumulative unclaimed EYF

figure.

Figures for 1998-99 running costs include all non-capital programme

expenditure.

## Glossary (see also appendix attached for 'new' terms)

**appropriations in aid:** money received by a department which it is authorised to retain (rather than surrender to the Consolidated Fund) to offset related expenditure in the current financial year. Such receipts are voted by Parliament in Estimates and accounted for in the annual Appropriation Account.

**clawback:** the concept that where an asset financed by public money is sold, all or part of the proceeds of the sale should be returned to the Exchequer.

Comptroller and Auditor General (C&AG): the head of the National Audit Office, appointed by the Crown, and an Officer of the House of Commons. As Comptroller, the C&AG's duties are to authorise the issue by the Treasury of public funds from the Consolidated Fund and National Loans Fund to government departments and others; as Auditor General, the C&AG certifies the accounts of all government departments and some other public bodies, and carries out value-for-money examinations.

**Consolidated Fund (CF):** the government's 'current account", kept by the Treasury at the Bank of England, through which pass most government payments and receipts.

Consolidated Fund Extra Receipts (CFERs): receipts realised or recovered by departments in the process of conducting services charged on public funds which are not authorised to be appropriated in aid of expenditure. Examples include excess appropriations in aid.

**Consolidated Fund standing services:** payments for services which Parliament has decided by statute should be met directly from the Consolidated Fund, rather than financed by voted money.

Contingencies Fund: a government fund, controlled by the Treasury, which, subject to certain criteria, can be used to finance urgent expenditure (through issue of a repayable advance) in anticipation of parliamentary approval of Estimates, or used to finance expenditure in advance of receipts.

**Control Total:** the measure used by the government to plan public expenditure for the medium term, and monitor and control it within each financial year.

**Estimate:** a statement of how much money the government needs in the coming financial year, and for what purpose(s), by which parliamentary authority is sought for the planned level of expenditure and receipts.

**Exchange Equalisation Account:** the account at the Bank of England in which the government's reserves of foreign currency are held.

**Government Actuary:** the head of the Government Actuary's Department (GAD), which provides a consultancy service to government departments on a range of actuarial issues including social security, pensions, population projection and the financial supervision of insurance companies and friendly societies.

**government loan guarantees:** guarantees provided by the Treasury or other government departments in respect of limited, generally short-term, borrowing from the private sector by the bodies for which they are responsible, so that the borrower can obtain the best possible terms.

*Green Book:* the informal title for *Appraisal and Evaluation in Central Government* which is published by the Treasury for the guidance of government departments.

**hereditary revenue:** a legal concept which comprises virtually all non statutory receipts of government departments, and normally also any statutory receipts of departments where the statutory scheme is silent about what the department should do with the receipts. Hereditary revenue is required to be surrendered to the Consolidated Fund by section 1 of the Civil List Act 1953 (but may be appropriated in aid where applicable).

**market value:** the best price reasonably obtainable when an asset is offered for sale on the open market.

**National Debt:** the gross liabilities of the National Loans Fund.

**National Insurance Fund (NIF): a** government fund used to meet the cost of contribution-based benefits, financed mainly by contributions paid by employers and individuals.

**National Loans Fund (NLF):** the UK fund through which pass most of the government's borrowing transactions and some domestic lending transactions.

**negative public expenditure: a** classification of receipts which may be offset against expenditure in the Control Total. Typical examples are receipts from the sale of goods and services.

**non-departmental public body (NDPB): a** body which has a role in the processes of government, but is not a government department or part of one. NDPBs accordingly operate at arm's length from government Ministers.

Office of the Paymaster General (OPG): the government department responsible for discharging the Paymaster General's statutory responsibilities to hold accounts and make payments for government departments and other public bodies.

**Paymaster General:** the government Minister who has statutory responsibility for the government accounts held in his name at the Bank of England.

**Public Accounts Committee (PAC): a** committee of the House of Commons which examines the accounting for and the regularity and propriety of government expenditure. It also examines the economy, efficiency and effectiveness of expenditure.

**public dividend capital (PDC):** finance provided by government to public sector bodies as an equiry stake; an alternative to loan finance.

**public expenditure survey (the Survey):** the means by which the government reviews and plans public expenditure, typically for three years ahead, allowing spending priorities and resources to be re-evaluated. The Survey provides the basis for departments to prepare their annual Estimates. (There was no 1997 Survey. It was suspended in favour of the Comprehensive Spending Review, a wide-ranging zero-based review of all government spending initiated by the government.)

**Public Works Loan Board (PWLB):** the Crown-appointed Commissioners who make loans to local authorities from the National Loans Fund and administer such loans until redemption.

**requisition for credit:** the means by which the Treasury seeks the approval of the Comptroller and Auditor General (C&AG) for the Bank of England, on the Treasury's behalf, to issue money from the Consolidated Fund or the National Loans Fund.

**short surrender:** a means by which money paid into the Consolidated Fund in error can be "refunded" to a department by netting off the sum from other amounts due to the Fund.

**supplementary statements:** annual statements showing, for each year, details of transactions on the Consolidated Fund and the National Loans Fund; certain assets and liabilities, including contingent liabilities, of the Consolidated Fund; and the assets and liabilities of the National Loans Fund.

**Supply:** money voted by Parliament in response to Estimates, for expenditure by government departments.

**Supply Estimates:** see Estimates; see also Vote.

**Supply services:** services provided by government departments which are financed by money voted by Parliament in response to Supply Estimates.

**trading fund:** a means of financing certain activities of government by which the trading fund has standing authority to use its receipts to meet its expenditure. Trading funds do not, therefore, account for their receipts through a Vote.

**Treasury Accountant:** the Head of the Treasury's Exchequer Funds and Accounts Team, whose responsibilities include the operation of the Consolidated Fund and the National Loans Fund.

**Treasury Minute: a** formal administrative document drawn up by the Treasury, which may serve a wide variety of purposes including seeking parliamentary approval for the use of receipts as appropriations in aid, a remission of some or all of the principal of voted loans, and responding on behalf of the government to reports by the Public Accounts Committee (PAC). (The term "Treasury Minute" is sometimes wrongly used for depart-mental Minutes which are drawn up and laid before Parliament by the spending department responsible for the particular item - such as gifts, contingent liabilities, etc. - being drawn to Parliament's attention.)

*ultra vires:* a legal term for activity which is outside the scope of the relevant legal powers and therefore illegal.

**Vote:** money voted by Parliament in response to Supply Estimates. The term is also often used to describe an Estimate - the terms in that sense are synonymous.

windfall: monies received by a department which were not anticipated in the public expenditure survey (the Survey).

## Appendix to D10

### ${\bf GLOSSARY-(NEW)~SCOTTISH~TERMS}$

Traditional	New	Definition
Accounting Officer	Accountable Officer	
Ambit	Scope	
Appropriated in Aid	Brought to account	but this is not the full meaning – ie useable
Appropriation Account	Departmental Account	
Appropriation Act	Budget Act	
Appropriation in Aid	Budget Receipts	
C&AG	C&AG / AGS	Auditor General for Scotland
CFER	Surrendered Receipts	
Department	Department (as in AEFD) Alternatively, Manager or Finance team	(depending on usage)
Early Day Motion		
End Year Flexibility	Carry Forward	
Excess Vote	Budget Overspend	
Exchequer	Exchequer	
Government	Executive	
Main Estimate	Budget Proposal	
NAO	Audit Scotland	
Next Steps Agency	Executive Agency	
PAC	PAC / AC	Audit Committee
Parliament	Parliament	Scottish Parliament (otherwise <u>UK</u> Parliament)
Scottish Office	Core Departments of the SA	
Secretary of State	Scottish Ministers / Scottish Executive	In context
Supplementary Estimate	Budget Amendment	
Supply	Funding or budget	In context
Supply Estimates	Budget	
Treasury	*TOA*	Holding term only NEED NEW TITLE
Virement		
Vote	Departmental Budget	
Vote on Account	Interim Budget Approval	

#### **Petition PE102 by James Ward**

Note by the Clerk

#### Background

This petition calls for the Parliament to investigate the alleged illegal sequestration of the petitioner, and invites the Committee also to consider changes in the law, specifically the provision of a right of appeal against sequestration orders.

The petition is accompanied by a considerable volume of papers relating to the particular circumstances of the sequestration of Mr Ward (not circulated). He claims that he turned up at the court with sufficient money to avoid sequestration, but was told by the sheriff that the case had proceeded too far for sequestration to be avoided.

My understanding is that there is no right of appeal against an award of sequestration, although the person subject to such an order may petition the Court of Session for recall of the award. The court, in considering such a petition, has power to take account of all the circumstances. Legal aid may be available to someone seeking to petition the court in this way. It is not clear from the material available what steps were taken in Mr Ward's case to seek recall of the award, although I understand that he has also alleged that his solicitors failed to advise him appropriately.

The petitioner has asked for an opportunity to give oral evidence to the Committee.

#### Procedure

The Standing Orders make clear that, where the Public Petitions Committee (PPC) refers a petition to another committee it is for that committee then to take "such action as they consider appropriate" (Rule 15.6.2(a)). The Committee need not undertake any substantive investigation of the petition, or it may conduct an inquiry if it chooses. As with any other item of Committee business, it is up to the Committee to decide whether or not to take evidence from any party (including the petitioner).

#### **Options**

The Convener has already clearly indicated her concern that the Committee should avoid becoming involved in individual cases, particularly where an issue has been raised in the hope that the Committee might somehow seek to have a judicial decision overturned or reconsidered. The Committee may feel that it would be difficult, given the way the petition is presented, for this problem to be avoided in the present case, particularly if oral evidence were taken from the petitioner.

On the other hand, the petition does raise a general issue about rights of appeal in sequestration cases. Before the Committee could undertake an inquiry on that issue, however, further information about the current state of the law would first be required. Since the petition seeks a change in the law, the Committee ought to be aware that some insolvency matters (including some aspects of sequestration proceedings) are reserved under Schedule 5 (section C2) to the Scotland Act. It cannot therefore be taken for granted at this stage that a Scottish Parliament Bill to change the law along

the lines proposed in the petition would pass the test of legislative competence. It is also difficult to envisage how Committee time could be found for any such inquiry at least until after the summer recess and – even then – without this being at the expense of other subjects of inquiry recently agreed on by the Committee as its priorities for consideration.

An alternative option would be for the Committee to write to the Executive asking whether the review of the law of diligence announced by the Minister for Justice during the Stage 1 debate on the Abolition of Poindings and Warrant Sales Bill will address issues of sequestration; and, if so, whether the case for remedying the alleged deficiency in the law raised in this petition could be evaluated as part of that exercise.

3 May 2000 ANDREW MYLNE

From: the Convener

Reply to: Clerk to the Committee Committee Chambers George IV Bridge EDINBURGH EH99 1SP Tel (direct) 0131 348 5206 Fax 0131 348 5600

e-mail (clerk): andrew.mylne@scottish.parliament.uk

Roderick Macpherson Society of Messengers-at-Arms and Sheriff Officers 11 Alva Street Edinburgh EH2 4PH

4 May 2000

Dear Mr Macpherson

#### **Abolition of Poindings and Warrant Sales Bill**

I am writing to you in connection with allegations made by Tommy Sheridan MSP during the recent Stage 1 debate in the Parliament on the above Bill. As you will be aware, Mr Sheridan referred directly, in his speech opening the debate (Official Report, Volume 6, No 2 (27 April 2000), col 164), to the minutes of your society's AGM last year, which apparently made clear that the Society's attitude towards the Bill were at odds with certain remarks you had made in evidence to the Justice and Home Affairs Committee.

As I am sure you will appreciate, that is a serious allegation, and I would therefore be grateful for your explanation of the apparent discrepancy between the views attributed to your Society by Mr Sheridan and the evidence you gave to my Committee.

I regard it as essential to the proper functioning of the Parliament's committee system that witnesses giving evidence are open and truthful about the views of those they represent. Where it becomes apparent that a particular witness cannot be relied upon to meet this standard, committees may need to have recourse to the powers they have under the Parliament's standing orders to put witnesses on oath.

Yours sincerely

ROSEANNA CUNNINGHAM MSP Convener

#### **Petition PE29 by Alex and Margaret Dekker**

Note by the Clerk

The following are the two e-mails referred to by the Convener during the Committee's consideration of the above petition at the 16th Meeting (2 May).

#### E-mail from Stephen Stradling

I have an interest in PE29 (road deaths) which is being considered at your meeting of 2 May 2000 and wish to submit evidence based on my research at Manchester and Napier universities to aid the Committee's understanding of driver attitude and behaviour.

As background I attach a Word file of a paper I was invited to present at the DETR Speed Review seminar last September [copies available from the clerks]

I would seek to (briefly) make three points to the Committee:

- 1. Accidents may not be accidental, at least in the sense of not being foreseeable and preventable. Some kinds of drivers those with inappropriate attitudes are more likely to be "crash magnets".
- 2. While dangerous driving requires that a driver "falls far below what would be expected of a competent driver", the current consensus in road safety research is that quite small deviations from normal driving practice may result in crash involvement.
- 3. The justice system performs an important signalling function, as well as its retributive and rehabilitatory functions. The perceived downgrading of Road Traffic Act Section 1 offences sends a signal which does not promote safer driving.

Thanking you for your attention in this matter.

Stephen G. Stradling, PhD
Reader in Behavioural Aspects of Transport
Transport Research Institute
Napier University
1 May 2000

#### E-mail from Margaret and Alex Dekker

Thank you for your letter regarding the consideration of the above petition at the forthcoming JHAC meeting on 2nd May.

Could we ask that, given the seriousness of the issue together with the points raised in our findings, the Committee will see fit to launch an inquiry into road deaths and the Criminal justice system by appointing a reporter and taking evidence?

Margaret & Alex Dekker 1 May 2000

Forward Programme May – July 2000

Note by the Clerk

#### Note: some of the details below are provisional at this stage

#### Wednesday 10 May

Draft Regulation of Investigatory Powers (Scotland) Bill – pre-Stage 1 evidence from Minister for Justice, Scottish Human Rights Centre Budget process – evidence from Minister for Justice, SLAB

#### Monday 15 May (pm)

Draft Regulation of Investigatory Powers (Scotland) Bill – pre-Stage 1 evidence Proposed Bail, Judicial Appointments etc. (Scotland) Bill – pre-Stage 1 evidence

#### Monday 22 May (pm)

Proposed Bail, Judicial Appointments etc. (Scotland) Bill – pre-Stage 1 evidence Debate on Census (Scotland) Order and Regulations Draft report on Budget process (in private)

Draft report on Scottish prisons (in private)

#### Tuesday 30 May

Bail, Judicial Appointments etc. (Scotland) Bill – pre-Stage 1 evidence (if necessary) Draft Stage 1 Report on Regulation of Investigatory Powers (Scotland) Bill (in private)

#### Wednesday 7 June (Festival Theatre)

Report by Pauline McNeill on stalking and harrassment
Draft Stage 1 Report on Bail, Judicial Appointments etc. (Scotland) Bill (in private)

#### Tuesday 13 June

Regulation of Investigatory Powers (Scotland) Bill – Stage 2

#### [Tuesday 20 June (am) – extra meeting if required]

#### Wednesday 21 June

Bail, Judicial Appointments etc. (Scotland) Bill – Stage 2

#### Tuesday 27 June (am, plus pm if required)

Bail, Judicial Appointments etc. (Scotland) Bill - Stage 2

#### Wednesday 5 July

Regulation of Investigatory Powers (Scotland) Bill – Stage 2 Report by Michael Matheson on judicial appointments

#### Week Beginning 10 July:

#### **Summer Recess begins**

20 March 2000 ANDREW MYLNE



#### **MINUTES**

16th Meeting, 2000 (Session 1)

#### Tuesday 2 May 2000

Present:

Scott Barrie
Phil Gallie
Gordon Jackson (Deputy Convener)
Maureen Macmillan
Mrs Lyndsay McIntosh

Roseanna Cunningham (Convener) Christine Grahame Kate MacLean Michael Matheson Pauline McNeill

Also present: Cathie Craigie

Apologies were received from Euan Robson

The meeting opened at 10.03 am.

Budget 2001-02: The Committee took evidence on the Executive's expenditure proposals from—

Gerard Brown, Member of Council and Convener of the Legal Aid Committee, Martin McAllister, Vice-President Elect and Vice-Convener of the Legal Aid Committee and Michael Clancy, Director, Law Society of Scotland

Professor Frank Stephen, Department of Economics, University of Strathclyde

Maureen Macmillan declared an interest as the spouse of a member of the Law Society of Scotland; Christine Grahame declared an interest as a member of the Law Society of Scotland.

2. **Petitions:** The Committee considered the following petitions—

Petition PE29 by Alex and Margaret Dekker and Petition PE55 by Tricia Donegan: The Committee decided to suspend consideration of these petitions pending the publication in the autumn of research sponsored by the Department of Environment, Transport and the Regions (DETR) into the

application of road traffic legislation by the police, prosecutors and courts. The Committee also agreed to write to the Lord Advocate in relation to PE55 asking for further details of the guidance to be issued to procurators fiscal concerning preservation of evidence and of the Crown Office's powers to make a reference on a point of law in circumstances such as those that applied in the case of Daniel Tasker.

PE71 by James and Anne Bollan: The Committee decided to not to undertake further consideration of this petition for the time being, but agreed that the issues raised could be addressed in the context of any inquiry it may undertake on legal aid and access to justice.

PE83 by Concern for Justice: Gordon Jackson declared an interest, having provided a legal Opinion on an aspect of the case from which the petition arose. The Committee decided to take no action in relation to the petition.

PE89 by Eileen McBride: The Committee agreed to defer consideration of this petition to a future meeting.

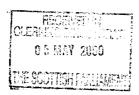
3. Scottish prisons (in private): The Committee considered a draft report. Various changes were suggested, and it was agreed that a revised draft would be considered at a future meeting.

The meeting closed at 12.33 pm.

Andrew Mylne Clerk to the Committee.







#### **CROWN OFFICE**

25 CHAMBERS STREET EDINBURGH

Tel: 0131-226 2626 Ext. 2516

Fax: 0131-225 7473

ACN/JA

3 May 2000

Andrew Mylne Clerk to Justice and Home Affairs Committee Room 3.09 Scottish Parliament Committee Chambers George IV Bridge Edinburgh EH99 1SP

Dear Mr Mylne

#### **BUDGET PROCESS**

During the meeting of the Committee on 26 April I undertook to write with further information about 3 matters and I am now pleased to do so.

Mr Matheson asked for information about the "invest to save" project in information technology.

We have reviewed our internal processes and services to external interests and have identified considerable scope for further use of new technology. Our review of internal processes has led to a business plan which will modernise the Service and underpin major change in its use of resources. An investment of some £5.5m is required over a 2 year period to put in place the communications and systems infrastructure which will support new case processing software. With this platform in place, over a 5 year period the Service will reduce its current heavy reliance on separate administrative processes. This will speed up processing, improve quality control, and release resources to provide extra legal staff and improved support for external interests, including victims and witnesses. The initiative is consistent with the White Paper 'Modernising Government' and the need for us to respond positively to the Civil Service reform policy.

A significant part of this planned development can be funded from existing resources if 100% of EYF is retained, not only that available at end of 1999-00 but also from future years.

In addition to existing resources, CO/PFS would require additional funds over the next 3 years. The business case shows that the department's net funding requirement can be reduced once these developments are in place, but the initial investment requires support. The net requirement - taking account of costs and savings, and at 2000 prices - is shown on the note circulated to the Committee prior to the 26 April session.



Mrs McIntosh asked about fully funded diversion schemes and also about awareness training in relation in particular to domestic abuse.

So far as fully funded diversion is concerned, in 1997 the Scottish Office provided 100% funding for 18 pilot schemes. In January this year, the Scottish Executive Central Research Unit published a paper entitled Diversion from Prosecution to Social Work and Other Service Agencies: Evaluation of the 100% funding pilot programmes. The paper noted widespread endorsement for diversion amongst procurators fiscal, social work staff and accused persons but also gave some figures for the exercise and warned that diversion should not be regarded as a cheap alternative to prosecution. Following that paper, we have been corresponding with the Justice Department, which has funding responsibility for these schemes. They and we are in the process of identifying priorities in the application of the schemes but in general terms it is contemplated that the schemes will be extended, with certain revisions, so as to apply throughout Scotland. Meantime, funding of the existing pilot schemes has been continued until the end of September. The final decision as to the ambit of the schemes is one for Ministers.

Awareness training in relation to victim issues generally is already a component of the training course for new legal staff in the Service and of other courses including the joint customer awareness training which we undertake with the Scottish Courts Service. Victim Support Scotland deliver that component for us. The awareness training in relation to domestic abuse in particular will follow the issue of new guidance to the Procurator Fiscal Service by the end of June. That guidance will draw on discussions with and involvement in the work of a wide range of groups, including amongst others Victim Support Scotland and the Scottish Partnership on Domestic Abuse. We shall be delivering training in each of our 6 Regions. The handling of that training will be for Regional Training Committees, with support from Crown Office and we intend those Regional Committees to request the assistance of local Victim Support, Womens' Aid and other such groups. We have used this model successfully in relation to racial awareness training, with the assistance and approval of the Commission for Racial Equality and organisations representing ethnic minority groups.

I hope the Committee finds this information helpful.

Yours sincerely

Andrew & Normand Crown Agent

andew Monus



# Spotlight on rights

# Professor Alan Miller looks ahead to developments in Scottish human rights

THE MONTH of May will see the introduction by the executive of the Intrusive Surveillance bill. It provides for regulation of directed surveillance (i.e. covert but non-intrusive surveillance), intrusive surveillance and the conduct and use of covert human intelligence sources. Its progress through Stages 1, 2 and 3 of the legislative process is to be accelerated to facilitate a tight timetable in order that it may be passed before the summer recess. The executive's intention is that it should be in force to attempt to ensure compatibility with the ECHR prior to the coming into force on October 2 2000 of the Human Rights

This bill is in effect the Scottish part of the UK Regulation of Investigatory Powers bill currently proceeding through the House of Common and attracting significant criticism regarding ECHR compatibility from within the legal profession and from human rights non-governmental organisations. Such concerns include the lack of sufficient definition of who and what is a legitimate target as well as the lack of judicial control of authorisation of surveillance.

Another bill entitled Bail & Judicial Appointments etc. (Scotland) which relates to bail, administration of district courts and part-time judicial appointments is also being accelerated through the Scottish parliament. This is also a measure intended to attempt to ensure ECHR compatibility. It is largely a response to the "temporary Sheriff" ruling of last year and further and anticipated challenges to the bail system and the role of justices of the peace and the administration of the district courts.

All of this legislative haste is evidence of the executive's increasing awareness of the power of the courts

under the Scotland Act to effectively overrule a member of the executive and indeed the Scottish parliament itself in the event of a failure to comply with the ECHR.

But what of the level of awareness of parliament itself? How is it to satisfy itself on the question of ECHR compatibility?

In this respect all of the committees, and not only the justice and home affairs committee, shoulder a heavy responsibility. In a single chamber it is effectively the committees which must address the question of ECHR compatibility through scrutiny, receiving evidence and indeed through initiating legislation if given the time and resources to go along with their power to do so!

How. then, is ECHR compatibility to be assessed? Up until now the executive has simply provided a single sentence declaring ECHR compatibility of a bill. This does not take us far forward as the Scotland Act already prohibits the introduction of a bill which is not compatible with the ECHR. Indeed a judgement is still awaited from the Court of Session as to whether the retrospective effect of the parliament's first piece of legislation (the Mental Health (Public Safety and Appeals) (Scotland) Act) to plug the "Noel Ruddle" gap is in fact compatible with the ECHR.

Assessing compatibility can, however, be significantly more than a legal eagle trawling through previous judgements of the European Court of Human Rights in Strasbourg in order to "Strasbourg proof" any proposed domestic legislation. Very often scrutiny of a proposed bill will involve more complex social considerations and judgements of the balance to be struck between individual rights and an identifiable public interest.

For example, the Intrusive Surveillance bill clearly impacts upon Article 8's right to respect for private and family life, home and correspondence. Any state interference with such a right must not only be "in accordance with law" (which is what the bill is attempting to provide) but must be "necessary in a democratic society." This has come to be defined by Strasbourg as fulfilling a "pressing social need", pursuing an accepted legitimate aim such as the prevention of crime but in so doing achieving a reasonable relationship of "proportionality" between the means employed and the aim pursued. Strasbourg case law has demonstrated that it is this concept of proportionality which should be of most concern to legislators and decision-makers as it is this which gives the ECHR its dynamic character as a "living instrument" constantly being redefined and interpreted to reflect changes in the values of society. Consequently, it is necessary to consider the approaches taken throughout Europe and beyond such as Canada and Australia as well as to take into account a wider range of international human rights conventions and obligations.

Canada, Australia and, close to home, Northern Ireland and soon the Republic of Ireland have human rights commissions to assist legislators and the public in this respect and a decision is still awaited as to whether there is to be a Scottish Human Rights Commission.

However, the question of ECHR compatibility is clearly not a question for parliament alone but also for the public and the many and varied bodies impacted by legislation.

To increase awareness of ECHR compatibility with reference to current legislative proposals, the Human Rights Consultancy is organising a conference on June 13 to be addressed by speakers include leading academics as well as Scottish legislators.

Further information is available on 0141 314 3819 or by e-mail at: HumanRight:Consutlang-lambin@htintercet.com

### Dress and Journal

# Carbeth hutters welcome call by MSPs for legal protection

by Craig McGill

A SCOTTISH Parliament committee yesterday called for legal protection for occupants of hol-iday huts like those on Carbeth estate in Stirlingshire.

Published by the justice and home affairs committee, the report was issued in response to a petition lodged by the Carbeth Hutters' Association which Hutters' Association which called on the Parliament to legislate to introduce rent controls and improve security of tenure

It represents certain hutters who are in dispute with the Carbeth Estate over rent increases.

The battle between hutters and the estate has been going on for three years and looks to have no end in sight.

The committee's report does not take a view on this dispute. but concentrates on the general issues raised in evidence which may have a wider relevance for hutting in Scotland.

In its report, the committee supports the introduction of an independent system of rent con-trol and arbitration which mem-bers believe will benefit both responsible landlords and the hutters. The report also states that new legal measures are needed to give butters improved security of tenure, making it more difficult for landlords to

The committee has forwarded a request to the Scottish Ex-ecutive to consider ways of providing legislative protection for butters, possibly in the forth-coming Land Reform Bill.

The trustee of Carbeth estate the committee's actions could see all hutting end in Scotland, but his opponents called the report a victory for their side.

A spokesman for the hutters said last night: "This is great news for us and we are delighted at what we have seen.
"This shows the Parliament is listening to people and is look-

ing to safeguard hutting for Scotland in the future

"It is too late to protect any of those who have been involved in this dispute for the last three years, but for those who have contracts or will enter contracts in the future, any laws that come from this report will give them some form of protection." However, estate trustee Allan

Barns-Graham said the decision could see an end to hutting across Scotland.

He said: "This is an own-goal as it could lead to the end of the very thing these people think it is safeguarding. "I am extremely disappointed

with the recommendations.

"At first glance they might seem reasonable and fair but an examination of them reveals them to be nothing more than a debtor's charter

"For three years I have been attempting to remove striking tenants from my land.

"This report exonerates them from any responsibility regarding this while ignoring my rights and responsibilities as landlord.

"The committee received evidence that the vast majority of tenants regard the rents and services at Carbeth to be fair and reasonable. But this has been ignored and instead the committee has accepted lies and myths perpetrated by a politically motivated minority of hutters who have cost the estate a great deal of money over the

past three years.
"The report fails to make any specific recommendations on how a landlord should deal with tenants who do not pay rent.

"This is tantamount to a green light to tenants elsewhere in Scotland that if you don't want to pay your rent, you don't have to and you have the full support of the justice and home affairs committee.

"I will be meeting with my fellow trustees and advisers to discuss our options and what course of action to take."

## When RIP will not mean rest in peace 2

Legislation could soon be in force that would give police and security forces new powers to bug e-mails and mobile phones. Victoria Masterson reports 24

RIP - the acronym is frighteningly appropriate. For critics of the Reg-ulation of Investigatory Powers bill claim it will kill e-commerce in

Britain.

The legislation, which is currently going through parliament and could be on the statute book by July, is designed to stem the growing tide of cyber crime by giving police and security forces new powers to bug and tap e-mails and mobile phones.

Under the RIP bill, government agents including tax and customs officers will have the legal right to intercept and carry out surveillance on

tercept and carry out surveillance on

private communications.
Without a warrant, they will be able to enter any business or home and demand an individual's internet account number, address, password, en count number, address, password, en-cryption codes and credit card details. But if that individual can't hand over their password - perhaps because it is lost or genuinely forgotten - they could be put in jail for up to two years. Lobbyists and lawyers are also con-cerned about Section 50 of the bill, which forbids the subject of such a raid from displacing to gryone ever

raid from disclosing to anyone, even their employer, what is going on.

One of the worst-case scenarios in

this instance is that a business could find its affairs being discussed in open

ourt with no prior warning.

Frank Binnie, the chief executive of the Internet Society of Scotland, describes the RIP bill as "draconian" and believes the accompanying state disruption and ingrusion could force

businesses out of the country.
"I don't think any of the government ministers or the civil servants

can possibly realise the damaging effect this is going to have on e-commerce," he says.

"What it means is that anybody

with a computer, but particularly anyone with a computer who is involved in e-commerce, is going to have to move their business out of the UK and out of Scotland.

The reach is that the police can

The reason is that the police can walk in and demand passwords and encryption codes without a warrant. What's the point of trying to run a business in the UK when you might just as well have your main computer or file as we may eyon man country - apart from Uganda where they're thinking of introducing a similar law? For internet service providers (ISPs), there are significant cost as

well as privacy issues.

The RIP bill states that ISPs must have an interception capability, and instelling a system which can do that will cost money. Quite a lot of money.

A new report commissioned by the

A new report commissioned by the Home Office calculates that interception running costs alone for a medium to large ISP range from £23,200 to £236,000 a year.

Small ISPs will have to fork out between £9,400 to £11,800 a year.

For a growing e-business, that kind of overhead could mean the difference between life and death. So much for Chancellor Gordon Brown's drive for a knowledge economy.

for a knowledge economy.

If the cost of running the interception system doesn't put the ISP out business, the installation fee

might.
The Smith Group, the e-business consultancy which compiled the re-

port, estimates initial capital expenditure of £210,000 to £500,000 to put the infrastructure in place.

At the moment the debate is about

At the moment the debate is above
who should foot this bill - the government, the ISP, or a bit of both.
The Smith Group suggests the cost
of setting up the system should be met

of setting up the system should be life by the government.

But the government stresses it has still to come to a decision.

A Home Office spokesman says:

The road we ultimately want to go down is to establish principles with the big ISP players, then go into individual negotiations with each ISP to determine what level of interception capanability would be required and capapability would be required and how the cost of the burden should be shared. "It could be that the government carries the burden, we still need to determine that, but what is certain is that it will be proportionate and fair to each ISP." The Home Office points out that its current surveillance powers come under the interception

powers come under the Interception of Communications Act 1985 so are hopelessly out of date.

"Clearly in the last 15 years there's been a step change in the way we could communicate." the spokesman says. "First we want to make sure that those powers are still relevant for the 1st century. Secondly, we want to ensure that interceptions where they are necessary can be performed on private networks as well as those supplied by the ISPs."

Concerns about the new legislation are even more acute in Scotland be-

are even more acute in Scotland be-cause the devolved version of the bill— the Intrusive Surveillance Bill—has

will be devolved to Scotland and

which will stay at Westminster.
Alastair Orn, an intellectual property partner at the Glasgow law firm, Maclay Murray Spens, points out that while police and criminal matters fall to the Scottish parliament under the auspices of justice minister Jim Walauspices of justice minister Jim Waliace, matters relating to the defence of the reaim and national security rest with Westminster

All this makes for an "uneasy com-

All this makes for an "uneasy compromise" which is making businesses north of the Border very nervous.

"The big difficulty is that nobody knows what's sitting where, while the Scottish bill is not available at all." Mr Orr says. "The key concern! have at the moment is that there's complete uncertainty as to how it's moving forward because we don't know what's expected.

what's expected.

"Obviously from a business point of view that is not something that any-



body is very happy about. If people are thinking about where they want to be and how they want to set things up, then they want to have as much certainty as possible.

Mr Orr suggests there are also concerns that the governments going too far in terms of the powers in plans to give various authorities.

"It hasn't built in sufficient checks and balances to make sure that rights of privacy are protected and to make sure that other things like data protection issues are properly taken account of." Mr Orr says.

Mr Orr is currently working with the Internet Society of Scotland on representations about the bill's possible impact on business, which will be prought before the Scotnsh parliament next month.

Meanwhile. internet service providers are worried about the practical feasibility of what the government is trying to achieve.

Andrew Vench, the managing director of the Edinburgh-based ISP. NSL Internet, points out that there is a widely available and free technology called "FGP" which protects correspondence with an unbreakable encryption code.

"If anyone downloads that and installs it, then we can't intercept their e-mail -full stop." he says.

"It's common-sense, really, if you're sending condiontal documents, you should use this system. Equally, I'm absolutely certain that anyone using the internet for criminal purposes will be using this, too.

"I don't think the legislation is yory helpful. Clearly there has to be regulation and clearly regulation is good for us as ISPs, because net fraud doesn't help our business.

"But this sort of thing is just ill thought out, because anyone can evade it if they download a bit of fee software.

"It's just puring extra overheads on us to no particular benefit."

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