



## JUSTICE AND HOME AFFAIRS COMMITTEE

### AGENDA

**19th Meeting, 2000 (Session 1)**

**Monday 22 May 2000**

The Committee will meet at 1.30 pm in Committee Room 1, Committee Chambers, George IV Bridge, Edinburgh.

**1. Census SSIs:** The Committee will debate (for up to 30 minutes)—

Motion S1M-834 Angus MacKay—That the Committee recommends that the draft Census (Scotland) Amendment Order 2000, to the extent that it relates to the particulars printed in italics in article 2(3), be approved; and

the Census (Scotland) Regulations 2000.

**2. Insolvency Bill:** The Committee will consider a letter and memorandum from the Minister for Justice on the Insolvency Bill currently being considered by the UK Parliament.

**3. Draft Bail, Judicial Appointments etc. (Scotland) Bill:** The Committee will take evidence on the general principles of the draft Bill from—

Angus MacKay, Deputy Minister for Justice;

Alison Patterson, Director, and David McKenna, Assistant Director, Operations, Victim Support Scotland;

Helen Murray JP, Chairman, and Phyllis Hands, Secretary, District Courts Association.

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

Divorce etc. (Pensions) (Scotland) Regulations 2000 (SSI 2000/112)

European Communities (Lawyer's Practice) (Scotland) Regulations 2000  
(SSI 2000/121)

**5. Budget process 2001-02 (in private):** The Committee will consider a draft report.

Andrew Mylne  
Clerk to the Committee, Tel 85206

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

Agenda item 1

Note by the Clerk on the Census SSIs JH/00/19/1

Agenda item 2

Note by the Clerk JH/00/19/3

Letter to the Convener from the Deputy Minister for Justice  
and Executive Memorandum JH/00/19/2

Agenda item 4

Note by the Assistant Clerk on SSI 2000/112 JH/00/19/4

SSI 2000/112 JH/00/19/8

Executive Note on SSI 2000/112 JH/00/19/12

Note by the Assistant Clerk on SSI 2000/121 (copy of  
memorandum by the Law Society of Scotland and Faculty of  
Advocates attached) JH/00/19/5

SSI 2000/121 JH/00/19/9

Executive Note on SSI 2000/121 JH/00/19/10

EC Directive 98/5/EC JH/00/19/11

Agenda item 5

Letter to the Convener from the Deputy Minister for Justice JH/00/19/6

Letter to the Clerk from Scottish Executive Finance Division JH/00/19/13

Draft report (private paper – members only) JH/00/19/7

### **Note: Papers not circulated**

#### Agenda item 1

Members are reminded to bring with them the draft Census (Scotland) Amendment Order 2000 and the Census (Scotland) Regulations 2000 (circulated last week as JH/00/18/5 and 6 respectively).

#### Agenda item 3

Members are also reminded to bring copies of the draft Bail, Judicial Appointments etc. (Scotland) Bill and the draft Accompanying Documents.

#### Agenda item 4

SSI 2000/112 is available on the Internet at:

<http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/ssi2000/20000112.htm>

Members can obtain copies of a Regulatory Impact Assessment on the Welfare Reform and Pensions Bill (a UK Bill) from the clerks or on the Internet at:  
<http://www.dss.gov.uk/hq/pubs/welfria/index.htm>

SSI 2000/121 and the Directive are available on the Internet at::

<http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/ssi2000/20000121.htm>

and at: <http://www.europa.eu.int/eur-lex> respectively.

### **Paper for information circulated for the 19th meeting**

Revised schedule of meetings May – summer

JH/00/19/14

Extracts from the *Times* on fixed payments for legal aid and from the *Daily Record* on legal challenge to district courts

Minutes of the 18th Meeting

JH/00/18/M

## JUSTICE AND HOME AFFAIRS COMMITTEE

### Debate on Census SSIs

Note by the Clerk

#### Background

A national census is held every 10 years, the next being scheduled for April 2001. Provision for each census is made by subordinate legislation under the Census Act 1920. The Schedule to that Act sets out a list of the matters about which questions may be asked in any census – and it is up to Ministers making subordinate legislation under the Act to decide which matters to ask questions about from that list.

A draft Order under the 1920 Act was laid before the Parliament on 10 January (“the first draft Order”). The Equal Opportunities Committee considered the draft Order and recommended the addition of a question on religion into the census. The inclusion of such a question was not, however, something that could be included under the Act as it then stood. During the debate in the Parliament on the first draft Order on 16 February, the Minister for Justice announced that the Executive would bring forward a Bill to amend the 1920 Act to allow the inclusion in the 2001 census of a question on religion. At the end of the debate, the Parliament approved the first draft Order, which then became the Census (Scotland) Order 2000 (SSI 2000/68). (The Parliament disagreed to amendments to the Executive motion to approve the first draft Order that sought also to allow for the inclusion of census questions on income and on the Scots language.)

The Census (Amendment) (Scotland) Bill was introduced by the Minister for Justice on 29 February and was passed by the Parliament on 15 March. (A similar Bill was passed by the UK Parliament at around the same time.)

#### The draft Order

The present draft Order amends the Census (Scotland) Order 2000 to include the new question on religion (as permitted under the 1920 Act as that Act is now in force – i.e. as amended by the Census (Amendment) (Scotland) Act). It also amends the question to be asked regarding ethnicity and the question to be asked about the nature of a communal establishment.

The latter provision (i.e. article 2(3)) is printed in italics to indicate that it is subject to affirmative resolution by the Parliament; the remainder of the draft Order is subject to negative procedure. It is extremely unusual for a single instrument to be partially subject to affirmative procedure and partially to negative procedure in this way – in the vast majority of cases, the whole instrument is subject to one form of procedure or the other. In practice, the instrument will not be made unless the Parliament both approves by resolution the part in italics and does not resolve that the remainder should not be submitted to the Queen to be made.

### The Regulations

The Regulations – which are also included in the debate – provide for the administration of the census itself (including the appointment of officers to conduct and oversee the operation of the census) and the responsibilities of members of the public in completing census returns. Schedule 3 to the Regulations includes the proposed census form itself. The Regulations are not in draft and are subject to negative procedure.

### The role of the Committee

Under Rule 10.6 – which applies to affirmative instruments and hence to the relevant part of the draft Order – it is for a “lead committee” to recommend to the Parliament whether the instrument should be approved. The Justice and Home Affairs Committee has been designated lead committee on this instrument. Under Rule 10.6.2, the relevant Minister may by motion propose that the lead committee recommends approval – and the motion in the name of the Deputy Minister for Justice (set out in the Agenda) is a motion of that sort.

### The Committee’s report

At the end of the debate, the Committee must decide whether or not to agree to the motion, and then report to the Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendation. Given the need to have that report available in print in advance of the debate in the Parliament on 1 June, it will not be possible for a draft to be considered at a meeting of the Committee, although it may be possible for the text of the report to be circulated in draft to committee members before it is sent to press.

16 May 2000

ANDREW MYLNE

JH/00/19/2



## SCOTTISH EXECUTIVE

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Date: 17 May 2000

### **INSOLVENCY BILL: CONSENT OF SCOTTISH PARLIAMENT TO UK PARLIAMENT LEGISLATION IN A DEVOLVED AREA**

I am writing to ask the Justice and Home Affairs Committee to consider the enclosed Memorandum. This concerns an amendment to Clause 13 of the Insolvency Bill, which is presently being considered by the UK Parliament. Clause 13 of the Bill would allow implementation by regulations of the UNCITRAL model law on cross-border insolvency. The effect of the proposed amendment would be to provide that the UK Government would be able to make such regulations only with the consent of the Scottish Ministers. The Memorandum sets out the position in more detail.

If it is convenient to the Committee, I would be happy to answer any questions on the Memorandum when I appear before the Committee on Monday 22 May.

In addition, I append for the Committee's information a Motion which the Executive intends to lodge for consideration by the Scottish Parliament, but which will not be considered by the Parliament until after the Committee has had an opportunity to consider the Memorandum. The draft Motion is as follows:-

"That the Parliament endorses the principle of including in the Insolvency Bill a power for the Secretary of State, with the consent of the Scottish Ministers, to make regulations to implement the United Nations Commission on International Trade Law model law on cross-border insolvency and agrees that the relevant provisions to achieve this end in the Bill should be considered by the UK Parliament."

In addition, should the Committee so wish, copies of the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency can be provided by the Executive.



Angus Mackay



## **INSOLVENCY BILL**

### **MEMORANDUM FOR JUSTICE AND HOME AFFAIRS COMMITTEE**

#### Background

1. The Insolvency Bill was introduced in the House of Lords on 3 February 2000 and had its second reading on 4 April. It is about to enter Lord Committee. The Bill has still to go through its Commons stages. The purpose of the Bill is described in Annex A. It has GB effect and largely deals with matters reserved to the United Kingdom Parliament under Section C2 of Schedule 5 to the Scotland Act 1998 (insolvency).

#### The model law

2. There is one area of the Bill which may have an impact on devolved matters. This is the intention in clause 13 (see Annex B) to provide a regulation making power to implement the model law on cross-border insolvency which was adopted by the United Nations Commission on International Trade Law (UNCITRAL) of which the UK is a member; and for the amendment of section 426 of the Insolvency Act 1986 (co-operation between courts exercising insolvency jurisdiction).

#### Implications for devolution

3. Any regulations to implement the model law are likely to contain a mixture of reserved and devolved provisions. In particular, they may affect private international law, which is a devolved matter. They may also affect personal bankruptcy, which is devolved, and the process of winding up insolvent bodies corporate, which is an exception to the reservation under Section C2.

4. At present, however, the intended scope of any regulations is not known, and the balance of devolved and reserved matters covered in such regulations is not clear. There is no particular timescale for making the regulations which are not essential to the proper operation of the Insolvency Bill. Essentially clause 13 is an enabling power which may be used or not used at the discretion of the Ministers to whom the power is given.

#### Proposed amendment of clause 13

5. Clause 13 is at present drafted in terms which give the Secretary of State power to make regulations with the agreement of the Lord Chancellor. The UK Government recognises that such regulations could contain devolved provisions and therefore proposes to amend the Bill to provide that such regulations shall also require the consent of the Scottish Ministers.

6. The Executive has considered whether this goes far enough. There are two factors which must be balanced. In the first place, there is the integrity of the devolution settlement, which allows matters of Scots private law to be developed coherently by the Scottish Parliament. In the second place, however, there is the need for GB law to be simple to understand and to operate especially where it may have to be used in a cross border context. If the Scottish Ministers were to be given a separate power to make regulations under clause 13 this could lead to a requirement for users of the regulations, including foreign users, to refer to two separate sets of regulations. One set would cover reserved matters at GB



level and other matters purely for England and Wales. The other set would cover only Scottish devolved matters. This does not seem desirable for ease of understanding and use by creditors and debtors both in the UK and abroad.

7. The approach suggested by the UK Government therefore seems on balance preferable. This would result in only one set of regulations, made by UK Ministers, but with the consent of the Scottish Ministers. The result would be that the Scottish Executive would be fully involved in the drafting of the regulations and would have a veto.

#### Consent of Scottish Parliament

8. Since the provisions of Clause 13 will result in the UK Parliament legislating on devolved matters, the consent of the Scottish Parliament is sought.

The Scottish Executive  
May 2000

## PROVISIONS OF INSOLVENCY BILL

(Taken from Explanatory Notes published on introduction)

### SUMMARY

#### 1. The Bill provides for:

- small companies<sup>1</sup> in financial difficulty to make voluntary arrangements with their creditors by providing the option of a moratorium<sup>2</sup> to give the firm's management time to put a rescue plan to creditors and for minor modifications to be made to the provisions relating to the existing company<sup>3</sup> and individual<sup>4</sup> voluntary arrangement schemes;
- changes to the procedure for disqualifying persons who are unfit to be company directors by allowing the Secretary of State to accept undertakings which would have the same legal effects as disqualification orders<sup>5</sup> made by a court and for various technical amendments to be made to existing legislation in relation to disqualification;
- the procedure for reporting delinquent officers and members of a company with a view to prosecution to be changed;
- amendment of section 219 of the Insolvency Act 1986 to ensure that it is compatible with the European Convention on Human Rights (ECHR);
- the property of a person who dies insolvent to be treated in the same way as that of a live insolvent (England and Wales only);
- a power to make rules or regulations concerning the investment of funds held in the Insolvency Services Account on behalf of bankruptcy estates, and the payment of interest on such funds; and
- a power to make regulations to give effect with or without modifications to the model law on cross-border insolvency which was adopted by the United Nations Commission on International Trade Law (UNCITRAL) of which the UK is a member state; and for the amendment of section 426 of the Insolvency Act 1986 (co-operation between courts exercising insolvency jurisdiction)

1. Section 247(3) *Companies Act 1985* defines a small company as one which satisfies two or more of the following criteria:

- Turnover - not more than £2.8 million.
- Balance sheet total - not more than £1.4 million.
- Number of employees - not more than 50.

2. *Moratorium* is a temporary stay, or in Scotland a sist, on certain legal acts and processes from being performed or continued.

3. *Company Voluntary Arrangements* were introduced by the Insolvency Act 1986 Part I and provide a means for financially troubled companies to reach a legally binding agreement with their creditors in satisfaction of their debts or a scheme of arrangement of their affairs. A proposal for a voluntary arrangement will determine who the nominee is to be. The nominee is the person chosen by the directors to put their voluntary arrangement to the creditors and the company and to act as supervisor of the voluntary arrangement if it is implemented. A liquidator or an administrator of the company may also propose a voluntary arrangement.

4. *Individual Voluntary Arrangements* were introduced by the Insolvency Act 1986 Part VIII and similarly provide a means for financially troubled individuals to reach a legally binding agreement with their creditors in satisfaction of their debts or a scheme of arrangement of their affairs (England and Wales only).

5. A person can be disqualified by the courts, by way of a *disqualification order*, from being an insolvency practitioner or director or from being involved in the promotion, formation and management of a company, for a maximum of fifteen years, if his conduct in an insolvent company (or partnership in England and Wales) makes him unfit and if other specified conditions are satisfied.

## **BACKGROUND**

### ***Moratorium in company voluntary arrangements***

2. Company rescues can be made more difficult or can be thwarted because of the absence of provision in the Insolvency Act 1986 for obtaining a short moratorium in the company voluntary arrangement procedure whilst a proposal for a voluntary arrangement is being drawn up and considered.
3. The absence of a moratorium means that, until the arrangement is formally approved, any creditor can take legal action against the assets of the company and so jeopardise the prospects of the voluntary arrangement succeeding. The addition of an optional moratorium to this procedure will offer the management of a small company a short time within which to put a rescue plan to creditors.
4. In the last three years an average of 500 company voluntary arrangements have been agreed annually.

### ***Disqualification Undertakings***

5. The present director disqualification regime was introduced by the Company Directors Disqualification Act 1986. In particular, this allows the court to make a disqualification order against a director of an insolvent company whose conduct as a director of that company either on its own or when taken with his conduct of other companies is such as to make him in the view of the court unfit to be involved in the management of a company. The application is made by the Secretary of State or the official receiver. Over the past two years, about 2800 disqualification orders have been made under Section 6.
6. At present disqualification can only be achieved by means of court proceedings and there are delays in getting cases through the courts. The power to accept undertakings which is to be conferred on the Secretary of State will mean that, where there is agreement, disqualification can be achieved administratively by the director giving an undertaking to the Secretary of State. This will result in earlier disqualification for those who give an undertaking. It will also save time.

### ***Reports by liquidators of criminal misconduct by company officers or members***

7. In certain circumstances, Section 218 Insolvency Act 1986 requires a liquidator<sup>1</sup> to report suspicions of criminal misconduct by company officers or members to the Director of Public Prosecutions, who may then refer such reports to the Secretary of State for investigation. The Bill requires liquidators to make such reports directly to the Secretary of State rather than to the Director of Public Prosecutions. In Scotland reports will continue to be made to the Lord Advocate who will no longer be able to require the Secretary of State to investigate the alleged offences.

*1 A liquidator is the insolvency practitioner appointed to realise the assets of a company and distribute the proceeds to creditors in a liquidation.*

### ***Restriction on use of answers obtained under compulsion***

8. Section 219 of the Insolvency Act 1986 allows answers obtained under powers of compulsion, derived from the Companies Act 1985, to be used as evidence against that person. This is not compatible with the judgment of the European Court of Human Rights in the case of Saunders v. UK. The Court decided that for the prosecution to use answers given pursuant to a power of compulsion in subsequent criminal proceedings infringed Mr Saunders' rights under Article 6 of the European Convention on Human Rights. The Bill therefore amends section 219 to make it compatible with the Convention.

### ***Property of deceased insolvents***

9. The order-making power contained in Section 421 of the Insolvency Act 1986 is not sufficient to ensure that all property, the ownership of which was vested in a deceased debtor immediately prior to his death (including his share in property held on a joint tenancy), is available to his creditors in insolvency proceedings where the insolvency order was made after the debtor's death<sup>1</sup>. That means that in some instances, what may appear to be the main, if not the only asset, namely the debtor's interest in the matrimonial home, will be beyond the reach of his creditors. The Bill therefore amends Section 421 by providing that the deceased's interest in property which he held on a joint tenancy on the day he died becomes part of his estate and may be dealt with accordingly.

<sup>1</sup> This was established by the decision of the Court of Appeal in the case of *In re Palmer Deceased (A Debtor)* [1994] Ch. 316.

### ***Bankruptcy: Interest on sums held in Insolvency Services Account***

10. For many years it has been possible for funds held in the Insolvency Services Account for a company in liquidation to be invested in Treasury Bills or other government securities for the benefit of the estate. There was also a facility for funds in excess of £2,000 to be placed on an interest bearing account and since 1994, interest of 3.5% per annum has been paid automatically on such funds. Similar provisions have never applied to bankruptcy estate funds. The Bill, therefore, gives the Secretary of State the power to make rules or regulations which will remove that anomaly.

### ***Model law on cross-border insolvency***

11. The UNCITRAL model law seeks to facilitate the process of obtaining recognition of foreign insolvency proceedings; to introduce a greater degree of certainty as to the assistance the courts can give a foreign officeholder and the stage of the proceedings at which the assistance is given; and to require courts with insolvency jurisdiction to co-operate with each other. The power taken in the Bill will enable the Secretary of State with the agreement of the Lord Chancellor to give effect in our law to the model law, with or without modifications.

FULL TEXT OF SECTION 13

Model law on cross-border insolvency.

13. - (1) The Secretary of State may by regulations made with the agreement of the Lord Chancellor make any provision which he considers necessary or expedient for the purpose of giving effect, with or without modifications, to the model law on cross-border insolvency.

(2) In particular, the regulations may-

- (a) apply any provision of insolvency law in relation to foreign proceedings (whether begun before or after the regulations come into force),
- (b) modify the application of insolvency law (whether in relation to foreign proceedings or otherwise),
- (c) amend any provision of section 426 of the Insolvency Act 1986 (co-operation between courts),

and may apply or, as the case may be, modify the application of insolvency law in relation to the Crown.

(3) The regulations may make different provision for different purposes and may make-

- (a) any supplementary, incidental or consequential provision, or
- (b) any transitory, transitional or saving provision,

which the Secretary of State considers necessary or expedient.

(4) In this section-

"foreign proceedings" has the same meaning as in the model law on cross-border insolvency,

"insolvency law" has the same meaning as in section 426(10)(a) and (b) of the Insolvency Act 1986,

"the model law on cross-border insolvency" means the model law contained in Annex I of the report of the 30th session of UNCITRAL.

(5) Regulations under this section are to be made by statutory instrument and may only be made if a draft has been laid before and approved by resolution of each House of Parliament.

**JUSTICE AND HOME AFFAIRS COMMITTEE**

**Divorce etc. (Pensions) (Scotland) Regulations 2000 (SSI 2000/112)**

Note by the Assistant Clerk

Background

These Regulations provide for calculation and verification of benefits under a pension arrangement to establish the value of matrimonial property on divorce or nullity of marriage. The value of matrimonial property forms part of Scottish family law and is a devolved matter. These Regulations will apply to actions of divorce and nullity of marriage starting on or after 1 December 2000.

The Executive is bringing into force the devolved aspects of the treatment of pensions on divorce contained in the Welfare Reform and Pensions Act 1999, which will allow couples to share, at the time of divorce, the benefits in a pension held by one or either of them.

The Executive Note (attached) sets out its policy objectives and the consultative process undertaken in relation to these Regulations. It states that concerns have been taken into account in deciding the “relevant date” on which benefits are valued for the purpose of assessing their value as part of the matrimonial property, and providing the opportunity to charge for an “historic value”.

The Executive has also provided a Regulatory Impact Assessment prepared at the time the then Welfare Reform and Pensions Bill was before the UK Parliament (copies available from the clerks). It appears that the Regulations will ensure that most of the cost will be borne by the divorcing couple and not the taxpayer or pension schemes.

Procedure

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

Any MSP may lodge a motion seeking to annul such an instrument and, if that happens, there must be a debate on the instrument at a meeting of the committee. However, as there appears to be nothing particularly controversial in these Regulations, it seems unlikely that any MSP will lodge such a motion. In that event, no further action by the Committee is required.

17 May 2000

FIONA GROVES

## EXECUTIVE NOTE

**THE DIVORCE ETC. (PENSIONS) (SCOTLAND) REGULATIONS 2000 (S.S.I. 2000/112)**

1. These Regulations were made in exercise of the powers conferred by sections 10(8) and (8A) of the Family Law (Scotland) Act 1985, as substituted and inserted respectively by the Welfare Reform and Pensions Act 1999<sup>1</sup>. The instrument is subject to negative resolution procedure.

**Policy Objectives**

2. The instrument provides for the calculation and verification of benefits under a pension arrangement, for the purposes of establishing the value of matrimonial property on divorce or nullity of marriage. The valuation of matrimonial property forms part of Scottish family law and is a devolved matter. The Regulations replace those provisions of the Divorce etc. (Pensions) (Scotland) Regulations 1996 (S.I. 1996/1901) and the Divorce etc. (Pensions) (Scotland) (Amendment) Regulations 1997 (S.I. 1997/745) for which the Scottish Ministers now have responsibility. The instrument will come into effect from 1 December 2000. The existing regulations will apply to any actions for divorce or declarator of nullity of marriage commenced before then.

3. It is necessary because new reserved Department of Social Security Regulations<sup>2</sup> are being made to implement the pension sharing parts of the Welfare Reform and Pensions Act 1999 throughout the UK and the instrument has been drafted to be consistent with the terminology used in the other new Regulations. In order to make consistent provision for the UK, the DSS are simultaneously making regulations<sup>3</sup> for Scotland on reserved matters, including earmarking orders and the valuation of pensions for pension sharing purposes. These will replace the reserved parts of the 1996 and 1997 regulations referred to above. .

4. Other UK orders are being made by the Inland Revenue<sup>4</sup>. The Lord Chancellor's Department<sup>5</sup> is making equivalent Regulations in relation to England and Wales.

<sup>1</sup> The powers were brought into force on 15 April 2000 by The Welfare Reform and Pensions Act 1999 (Commencement No 6) Order 2000 (SSI 2000/111)

<sup>2</sup> The Pensions on Divorce (Provision of Information) Regulations 2000 (SI 2000/1048)

The Pensions on Divorce (Charging) Regulations 2000 (SI 2000/1049)

The Pension Sharing (Valuation) Regulations 2000 (SI 2000/1052)

The Pensions Sharing (Implementation and Discharge of Liability) Regulations 2000 (SI 2000/1053)

The Pension Sharing (Pension Credit Benefit) Regulations 2000 (SI 2000/1054)

The Pension Sharing (Safeguarded Rights) Regulations 2000 (SI 2000/1055)

<sup>3</sup> The Divorce etc (Notification and Treatment of Pensions)(Scotland) Regulations 2000 (SI 2000/1050 (S.4))

The Pensions on Divorce (Pension Sharing) (Scotland) Regulations 2000 (SI 2000/1051 (S.5))

<sup>4</sup> The Retirement Benefit Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) (Amendment) Regulations 2000

The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) (Amendment No. 2) Regulations 2000

The Retirement Benefit Schemes (Restriction on Discretion to Approve) (Excepted Provisions) (Amendment) Regulations 2000

The Sharing of Pensions on Divorce or Annulment (Amendment) Regulations 2000

## Consultation

5. The following bodies were consulted in the preparation of the instrument.

- Occupational Pensions Regulatory Authority
- Members of the DSS Pensions on Divorce Consultation Panel, including:
  - Association of British Insurers
  - Association of Consulting Actuaries
  - Institute of Actuaries and Faculty of Actuaries
  - Law Society of Scotland
  - National Association of Pension Funds
  - Society of Pension Consultants

6. Some, but not all, were able to respond in the time available to meet the project timetable. We have explained to those who were unable to do so that any further points which are raised can be dealt with in the further Regulations which will be made later in the summer to deal with SERPS valuations and other matters.

7. Many consultees were concerned about the "relevant date" on which benefits are valued for the purpose of assessing their value as part of matrimonial property. We have provided that this is the date of separation, or the date of service of the divorce summons if this is earlier where the date of application for valuation is more than twelve months after that date. This meets concerns raised by consultees. They also felt that a person responsible for a pension arrangement should be able to charge for a historic value. The Charging Regulations<sup>6</sup> being made by DSS allows pension arrangements to charge for a valuation of rights more than 12 months before the date of receipt of the request. Regulation 3(11) was inserted to meet these concerns.

8. None of the consultees favoured making it obligatory to show survivors' benefits separately in the cash equivalent valuation. This has therefore not been included.

## Financial effects

9. An assessment of the cost to business of the provisions of the Welfare Reform and Pensions Act 1999, including these regulations, is detailed in the Regulatory Impact Assessment for that Act. A copy of this Assessment is being placed in the Information Centre.

Scottish Executive Justice Department  
April 2000

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<sup>5</sup> The Divorce etc. (Pensions) Regulations 2000

<sup>6</sup> The Pensions on Divorce (Charging) Regulations 2000 (SI 2000/1049)



**JUSTICE AND HOME AFFAIRS COMMITTEE**

**European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (SSI 2000/121)**

Note by the Assistant Clerk

Background

The Regulations implement the *EC Lawyer's Establishment Directive 98/5/EC* (copy attached). The purpose of the Directive is to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the legal qualification was obtained. Lawyers will be able to integrate into the host state profession after 3 years of regular and effective practice. Consequential amendments are made to the Solicitors (Scotland) Act 1980.

While the Subordinate Legislation Committee considered this instrument, they received a letter from the Law Society of Scotland and the Faculty of Advocates concerning the wording of the Regulations, particularly Regulations 16 and 21. Their concern was that the Regulations, as drafted, might be subject to legal challenge. The SLC invited the Executive to respond to the points raised by the Society and the Faculty, and the Executive provided a Note to the SLC.

The SLC is today publishing its report on the instrument – and the Law Society/Faculty of Advocates letter and the Executive response are printed with that report (19th Report, 2000, SP Paper 129, available from the Document Supply Centre and on the website).

The Law Society and the Faculty of Advocates have now submitted a further letter, this time to the Justice and Home Affairs Committee, which includes "observations" on the Executive note prepared for the SLC. This new letter is attached. In it the Society and the Faculty express concern about what they regard as "serious problems" with Regulations 16 and 21 which, they believe, may open the Regulations to legal challenge.

Procedure

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

Any MSP may lodge a motion seeking to annul such an instrument and, if that happens, there must be a debate on the instrument at a meeting of the Committee. If no such motion is lodged, no further action by the Committee is required.

17 May 2000

FIONA GROVES



## The Law Society of Scotland

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### European Communities (Lawyer's Practice)(Scotland) Regulations 2000

The Faculty of Advocates and the Law Society of Scotland welcome these Regulations which implement the EC Lawyers' Establishment Directive. This Directive enables an EC lawyer to practise his or her profession on a permanent basis in a Member State other than that in which he or she is qualified.

Both the Faculty and the Society have for some time been in discussion with the Scottish Executive in connection with these Regulations. Many of the points which were raised have been answered by the Executive. The most recent meeting took place between representatives of the Executive and the Faculty on 25<sup>th</sup> April 2000. Since then, the Executive have made further amendments to the Regulations upon which we were not consulted because of the Executive timetable. Unfortunately, some of these amendments have, in our view, introduced serious difficulties into the Regulations.

In particular, the wording of Regulation 16 (Applications to be entered on a register) and 21 (Offence of pretending to be a registered European Lawyer) causes problems of *vires* and extent.

#### Regulation 16

Regulation 16 (1) – The Regulation as it is presently worded requires a European lawyer who wishes to practise in Scotland "or any other part of the UK" to apply to be entered on the register maintained by a professional body (that is, the Faculty or the Society) under the Regulations. This extends the scope of the Regulations to apply outwith Scotland. Discussions with the Executive have from the outset been based on the understanding that the Scottish professional bodies would regulate European lawyers practising on a permanent basis in Scotland, and that they would have no role in relation to those European lawyers registered in and practising on a permanent basis in other parts of the UK.

We do not consider that Regulation 16(6) solves this problem. Regulation 16(1) applies to all European lawyers at the stage of application for registration (indeed at the earlier stage of intention to practise) and, therefore, the intended exemption under 16(6) can never arise. In any event, even if Regulation 16(6) were to be re-drafted the problem of *vires* which we have identified in relation to Regulation 16(1) would remain.

## **Regulation 21**

A similar problem arises in relation to Regulation 21(1)(a) where an offence is created if a person pretends to be a registered European lawyer or describes him or herself as such whether in Scotland "or elsewhere". This wording would create an offence outwith Scotland, and it is clear from the Executive Note of 11 May that this is the intention.

These points were raised in a letter to the Subordinate Legislation Committee on 8 May which was considered at the meeting of the committee on 9 May 2000 and following which the committee requested a further Note from the Executive. The Executive Note, dated 11 May 2000, claimed, on the one hand, that the extension of the Regulations to other parts of the UK was necessary but, on the other, sought to play down the effect of this by stressing that such extension operated "only as a matter of Scots law".

It is not clear what the Executive intended to convey by the use of this phrase which is nowhere defined. Whereas legal tradition allows the Parliament at Westminster to legislate with effect reaching beyond the confines of the UK, section 29(2)(a) of the Scotland Act 1998 makes it clear that it is outwith the legislative competence of the Scottish Parliament to make provisions which "would form part of the law of a country or territory other than Scotland, or confer or remove functions exercisable otherwise than in or as regards Scotland". Under section 29(2)(b), it is also outwith the legislative competence of the Scottish Parliament to enact any provision incompatible with Community law.

It is clear from the Executive Note of 11 May that the Regulations purport not only to make provisions for European lawyers who may never enter Scotland and have no connection with it but also to create a criminal offence outwith Scotland. In these respects the Regulations go beyond the intended scope of the Directive which they bear to implement.

More detailed observations in response to the Executive Note of 11 May are set out in the separate Annex accompanying this letter.

Both the Faculty and the Society consider that the problems arising from the wording of Regulations 16 and 21 are serious and are liable to open the Regulations to challenge. We feel that the Regulations are not merely incompatible with the scheme of the Directive but, as is conceded in the Executive Note, purport to make provisions applying outwith Scotland.

If you would like to discuss this letter further, please do not hesitate to contact Sarah Fleming at the Law Society.

Yours sincerely

Michael P. Clancy  
Director

**OBSERVATIONS ON EXECUTIVE NOTE DATED 11 MAY 2000**

The professional bodies reject the contentions put forward in the above Note on the following grounds:-

1. **The central argument (repeated in paragraphs 3, 4, 7, 9 and 11) that the excessive extent of Regulations 16 and 21 is cured by the fact that the Regulations apply "as a matter of Scots law".**

The Executive's position here is difficult to understand. Any Scottish legislation, whether primary or delegated, is by definition enacted "as a matter of Scots law". There is no dispute that these Regulations embody Scots law. The live questions here, however, are how widely, and in respect of what persons and subject-matter, the Regulations purport to apply Scots law rights, obligations and liabilities.

The problem is that the Regulations are expressed as applying, not only to European lawyers generally, but to European lawyers practising, or wishing to practise, on a permanent basis anywhere in the U.K. Among those caught will be the European lawyer based in London or Belfast who has no intention of ever visiting or practising in Scotland.

As conceded in paragraph 3 of the Note of 11 May, Regulation 1(6) confirms that extra-territorial application beyond Scotland was in fact intended.

To suggest that there is no problem here because the Regulations apply "as a matter of Scots law" is, with respect, illogical.

2. **The implied assertion in paragraph 4 that it is necessary for the Scottish Regulations to implement the Directive throughout the U.K.**

This is a misconception. Implementation of the Directive in England & Wales and Northern Ireland is being achieved by the European Communities (Lawyers' Practice) Regulations 2000, which were laid in the U.K. Parliament on 19 April. Regulation 3(1) of the Scottish Regulations confirms that their purpose is to implement the Directive "in or as regards Scotland".

3. **The contention in paragraph 4 that a European lawyer not registering with one of the professional bodies in England & Wales or Northern Ireland "...must register with the Law Society or the Faculty of Advocates".**

The scheme of the Directive is that the benefits and burdens of registration should arise in the jurisdiction or jurisdictions where the European lawyer wishes to practise on a permanent basis. The Directive does not require a European lawyer to register in a jurisdiction where he or she does not intend to practise. A European lawyer intending to practise permanently in England & Wales or Northern Ireland should be obliged to register there. To give such a lawyer the option of registering in Scotland instead is inappropriate.

4. **The suggestion in paragraphs 7 and 9 that the exemption in Regulation 16(6) covers intended registration in England & Wales or Northern Ireland.**

Regulation 16(6) contains no such provision. In terms, the exemption arises only where registration elsewhere is completed. Mere application elsewhere, or a mere proposal to apply elsewhere, cannot possibly be sufficient.

In any event, the exemption in Regulation 16(6) is not clearly expressed, and does not appear to warrant the limited interpretation which the Scottish Executive have sought to place upon it.

5. **The concentration on mandatory registration.**

This ignores the important question of who will be entitled to register in Scotland and thereby obtain the significant practising rights and other benefits flowing from such registration. The current wording of Regulation 16(1) may be thought to entitle any European lawyer practising or intending to practise elsewhere in the U.K. to apply for registration here in Scotland. This would go far beyond the intended scope of the Directive. The benefits of registration in Scotland (and the corresponding burdens on the professional bodies here) should only apply in the case of a European lawyer intending to practise on a permanent basis in Scotland.

6. **The final sentence of paragraph 11.**

This highlights the misconceived approach of the Scottish Executive to implementation of the Directive. Provision for registration in Scotland "... regardless of where the European lawyer is practising in the United Kingdom" is entirely inappropriate. The misconception is made clear by comparing Regulation 16(1) of the Scottish Regulations with Regulation 16(1) of the equivalent Regulations for England & Wales and Northern Ireland.

Regulation 16(1) of the Scottish Regulations, so far as relevant, provides as follows:-

"... a European lawyer who wishes to pursue professional activities under his home professional title on a permanent basis *in Scotland or any other part of the United Kingdom* shall apply to be entered on [an appropriate register as there defined]".

By contrast, Regulation 16(1) of the equivalent Regulations for England & Wales and Northern Ireland is, so far as relevant, in the following terms:-

"... a European lawyer who wishes to pursue professional activities under his home professional title on a permanent basis *in England and Wales or Northern Ireland* shall apply to be entered on [an appropriate register as there defined]".

Until very shortly before the Scottish Regulations were made, Regulation 16(1) here was in matching terms, limiting the obligation to register to those European lawyers wishing to practise "on a permanent basis *in Scotland*". Interestingly, this approach was followed through in the Annex to the Executive Note accompanying the Regulations which, so far as relevant, states:-

"Regulation 16 requires European lawyers who wish to pursue professional activities *in Scotland* on a permanent basis under their home professional title to apply to be entered on [an appropriate register as defined in the Regulations]".

It is submitted that this was (and still is) the correct approach, and that the present wording is not only inappropriate but also raises serious problems of vires.

## EXECUTIVE NOTE

### The European Communities (Lawyer's Practice) (Scotland) Regulations 2000 S.S.I. 2000/121

1. The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure.

#### Policy objectives

2. The purpose of the instrument is to implement the EC Lawyers Establishment Directive of 16 February 1998. A copy of EC Directive 98/5/EC is attached. The Directive provides for European lawyers to practise on a permanent basis under their home State professional title in another European jurisdiction and to be able to integrate into the host state profession after 3 years of regular and effective practice. The European lawyer must register with a competent authority in the host State, which in Scotland is either the Law Society of Scotland or the Faculty of Advocates. Registration entitles the European lawyer to practise the law of the relevant part of the UK as well as the law of the home State, thus enabling the 3 years of regular and effective practice to start to be accumulated. The detailed provisions of the Regulations are explained in the Annex.

3. Under present EC law, a lawyer who wishes to undertake work in another Member State may do so on an occasional basis under the Services Directive (Council Directive of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services 77/249/EEC), which was implemented by the European Communities (Services of Lawyers) Order 1978 (SI 1978/1910). Alternatively, the lawyer would have to join the host State's legal profession under the Mutual Recognition of Qualifications Directive (Council Directive 89/48/EEC), which was implemented by the European Communities (Recognition of Professional Qualifications) Regulations 1991 (SI 1991/824), which often requires a lawyer to re-qualify in the process.

4. The European Communities (Lawyer's Practice) (Scotland) Regulations 2000 come into force fully on 22 November 2000, but are commenced in part on 22 May 2000 to permit the professional bodies to make any changes to their own rules and allow those European lawyers who are at present practising regularly in Scotland to apply to be registered by 22 November 2000. The Lord Chancellor's Department have prepared a similar set of Regulations to implement the Directive on the same timescale in England and Wales and Northern Ireland.

#### Regulatory impact assessment

5. The professional bodies will incur costs in registering European lawyers and in assessing the subsequent progress of those lawyers and their entitlement to be integrated into the profession. The professional bodies will be able to charge European lawyers fees for their registration and admission in order to cover such administrative costs.

## **Consultation**

6. The Law Society of Scotland, the Faculty of Advocates and the Lord Chancellor's Department have been consulted regularly during the preparation of the instrument. The Scottish Committee of the Council on Tribunals have also been consulted on the draft Regulations and were content (for their interest in the extension of the remit of the Scottish Solicitors' Discipline Tribunal to cover registered European lawyers).

## **Financial effects**

7. The instrument has no financial effects on the Scottish Executive, local government or the courts.

## **Scottish Executive Justice Department**

April 2000

## **The European Communities (Lawyer's Practice) (Scotland) Regulations 2000**

### **PART I      INTRODUCTORY**

#### **Citation, commencement and transitional provisions**

Regulation 1 provides that the Regulations may be cited as The European Communities (Lawyer's Practice) (Scotland) Regulations 2000 and that they will come into force on 22 May 2000. Regulations 21 and 22, which make it an offence to pretend to be a registered European lawyer and make related provision, will only come into force however on 22 November 2000 to allow time for European lawyers to register with the relevant professional body.

#### **Interpretation**

Regulation 2 defines terms used in the Regulations and confirms the EU States and professional titles covered by the definition of "European lawyer".

#### **Purpose of Regulations**

Regulation 3 explains that the purpose of the Regulations is to implement EC Directive 98/5/EC in Scotland and facilitate the practice in Scotland of the profession of lawyer on a permanent basis by a European lawyer. It also provides, as required by Article 1.4 of the Directive, that practice of the profession of lawyer within the meaning of these Regulations does not include the provision of services in Scotland by lawyers on an occasional basis as covered by the European Communities (Services of Lawyers) Order 1978.

#### **Competent authorities**

Regulation 4 designates the Law Society of Scotland and the Faculty of Advocates as the competent authorities in terms of the Directive for the following purposes : to receive applications by European lawyers for registration under Part III of the Regulations or for entry into the profession of solicitor or advocate under Part V; to regulate registered European lawyers registered with them; and to provide certificates attesting to the registration of solicitors or advocates with it.

#### **Exchange of information**

Regulation 5 provides for the exchange of information on European lawyers or persons with whom they jointly practise between the competent authorities of EU Member States, subject to the requirement to preserve the confidentiality of such exchanges (Articles 10.5 and 13 of the Directive). A competent authority in Scotland is required to provide a certificate attesting to registration when requested to do so by the registered solicitor or advocate or by a competent authority in another EU Member State.



## **PART II PRACTICE OF PROFESSIONAL ACTIVITIES BY A REGISTERED EUROPEAN LAWYER**

### **Practice of professional activities**

Regulation 6 entitles a registered European lawyer to carry out under his home professional title any professional activity that may lawfully be carried out by a member of the host State professional body with which he is registered, subject to any relevant enactments or rules (Articles 2 and 5). It also entitles a registered European lawyer to practise as a salaried lawyer under his home professional title to the same extent as an employed member of the host State professional body with which he is registered (Article 8).

### **Title and description to be used by a registered European lawyer**

Regulation 7 requires a registered European lawyer practising in Scotland under his home professional title to use that title, expressed in an official language of his home State, in a manner which avoids confusion with the title of solicitor or advocate; to indicate the name of the professional organisation by which he is authorised to practise or the court of law before which he is entitled to practise in his home State; and to indicate the name of the professional body with which he is registered in Scotland (or, if applicable, in England and Wales or Northern Ireland) and that he is a registered European lawyer with that body. (Article 4)

### **Joint practice**

Regulation 8 provides that a registered European lawyer may carry out professional activities under his home professional title as part of a joint practice on the same basis as a member of the professional body with which he is registered. That joint practice may be with a member of the professional body with which he is registered or a registered European lawyer registered with that body; or any other person permitted by the professional body with which he is registered, or another European lawyer practising on a permanent basis under his home professional title in that registered European lawyer's home State. (Article 11)

### **Name of joint practice**

Regulation 9 provides that a registered European lawyer who is a member of a joint practice in his home State may employ the name of that practice with his home professional title when practising in Scotland. It also provides that rules of conduct of the professional body he is registered with may prohibit the use by him of the name of a joint practice to the extent that (a) that name is also used by persons who are not European lawyers or UK solicitors; and (b) those rules prohibit members of that professional body, whether or not practising as such, from using that name. (Article 12)

### **Notification of joint practice**

Regulation 10 requires a European lawyer who is a member of a joint practice in his home State to inform the professional body with which he intends to register of that fact and provide that body with information on the name of the joint practice, his place of business, the name and place of business of all members of his joint practice and any other information about that practice which the professional body requests, together with any changes to that information which might occur either before or after registration. (Article 11.4)

## **Representation in legal proceedings**

Regulation 11 provides that a registered European lawyer shall not be prevented by any enactment or rule of law or practice from representing a client in proceedings before any court, tribunal or public authority only because he is not a solicitor or advocate. In any such proceedings where the professional activities may only be provided lawfully by a solicitor or advocate, the Regulation requires that a registered European lawyer should act in conjunction with a solicitor or advocate entitled to practise before the court, tribunal or public authority in question; that the solicitor or advocate will be answerable to the court, tribunal or public authority in question in relation to the proceedings; and that a registered European lawyer shall not have a right of audience in a supreme court unless he has completed a course of training in evidence, pleading and practice before that court which is required of any member of the professional body who seeks a right of audience in that court. (Article 5.3)

## **Property transactions**

Regulation 12 provides that a registered European lawyer is not entitled to prepare for remuneration any deed creating or transferring an interest in land, unless he has a home title obtained in Denmark, the Republic of Ireland, Finland or Sweden. (Article 5.2)

## **Executries**

Regulation 13 provides that a registered European lawyer is not entitled to prepare for remuneration any deed for obtaining title to administer the estate of a deceased person, unless he has a home professional title obtained in Denmark, Germany, the Republic of Ireland, Austria, Finland or Sweden. (Article 5.2)

## **Legal Aid**

Regulation 14 confirms that a registered European lawyer may provide professional activities by way of legal advice and assistance or legal aid under the Legal Aid (Scotland) Act 1986.

## **PART III REGISTRATION**

### **Establishment and maintenance of registers of European lawyers**

Regulation 15 requires the Law Society of Scotland and the Faculty of Advocates to establish and maintain a register of registered European lawyers. (Article 3)

### **Application to be entered on a register**

Regulation 16 requires European lawyers who wish to pursue professional activities in Scotland on a permanent basis under their home professional title to apply to be entered on the register maintained by a professional body; and to provide the professional body with certificates confirming his registration with the competent authority in the home State (or each of the home States) under whose home professional title he intends to practise (Article 3.2). The Regulation also provides that the professional body may require that the certificate(s) be not more than 3 months old (Article 3.2); and requires that applications for

registration should comply with any regulations made by the professional body and should be accompanied by the appropriate fee. Paragraph (5) provides that applications under this regulation shall not be affected by applications to or registrations with professional bodies in England and Wales or Northern Ireland, subject to regulation 18. An England and Wales or Northern Ireland registered European lawyer who wishes to pursue professional activities under his home professional title on a permanent basis in Scotland is not required to register with a professional body in Scotland (paragraph 6).

### **Registration by professional body**

Regulation 17 requires a professional body to enter on its register the name of a European lawyer who applies for registration; and requires a professional body to inform the competent authority in the home State of the registration. (Article 3)

### **Restrictions on registration**

Regulation 18 requires that a European lawyer shall not be registered at the same time with both the Law Society of Scotland and the Faculty of Advocates; that an Irish solicitor shall not be entered on a register maintained by the Faculty of Advocates and an Irish barrister shall not be entered on a register maintained by the Law Society of Scotland; that a European lawyer registered with any of the barristers' professional bodies shall not be entered on a register maintained by the Law Society of Scotland; and that a European lawyer registered with any of the England and Wales and Northern Ireland solicitors' professional bodies shall not be entered on a register maintained by the Faculty of Advocates. (Article 3(3))

### **Time limit for decision and notification by professional body**

Regulation 19 requires professional bodies to consider applications for registration as soon as practicable and to notify the European lawyer of their decision within four months of receipt of the application. Where an application is rejected or granted subject to conditions or where a registration is withdrawn or suspended, the professional body is required to notify the applicant of the reasons for rejection, or for the imposition of conditions, or for withdrawal or suspension. (Article 9)

### **Appeal by European lawyer**

Regulation 20 provides that the European lawyer may appeal to the Court of Session within 3 months of being notified of the decision of the professional body; that the Court of Session may determine the appeal either by ordering the professional body to register the European lawyer, or by refusing the appeal, or by remitting the matter to the professional body with such directions as it sees fit; and that the Court of Session should give reasons for its decision. (Article 9)

## **Offences**

Regulation 21 makes it an offence for a person not registered as a registered European lawyer to pretend to be a registered European lawyer; or to carry on professional activities under one of the professional titles listed in regulation 2(4), implying that he is entitled to do so, or to take or use any name, title, designation or description to that end. The offences are disapplied in certain circumstances eg where the person is providing services within the meaning of the European Communities (Services of Lawyers) Order 1978). The maximum penalty on summary conviction is prescribed as a fine not exceeding level 4 on the standard scale (currently £2,500).

## **Fees, rewards, outlays and expenses of an unregistered European lawyer**

Regulation 22 provides that any costs or fees in relation to professional activities carried on by an unregistered European lawyer under his home professional title in Scotland are not recoverable. The Regulation effectively applies to unregistered European lawyers the same constraint in relation to recovery of fees and costs which applies under section 33 of the Solicitors (Scotland) Act 1980 to unqualified persons pretending to be solicitors.

## **Evidence of registration**

Regulation 23 provides that a certificate purporting to be signed by an officer of a professional body stating that a person is (or is not), or was (or was not), registered with that professional body during a period specified in the certificate, shall be evidence of that fact and the signature, unless the contrary be proved.

## **Publication of names of registered European lawyers**

Regulation 24 requires a professional body to publish the names of any European lawyers registered with it when it publishes the names of solicitors or advocates so registered. (Article 3.4)

# **PART IV REGULATION AND DISCIPLINE**

## **Rules of professional conduct applicable**

Regulation 25 provides for a registered European lawyer practising under his home professional title in Scotland to be subject to the same rules of professional conduct as a member of the professional body with which he is registered (Article 6.1).

## **Disciplinary proceedings applicable**

Regulation 26 provides that a registered European lawyer who has allegedly failed to comply with the relevant rules of professional conduct is subject to the same rules of procedure, penalties and remedies as a member of the professional body with which he is registered (Article 7.1); and that disciplinary proceedings may be brought by the appropriate authority. Sanctions which may be imposed in such disciplinary proceedings include withdrawal or suspension of registration and the appropriate authority is required to give reasons for its decision. The appropriate authority is defined to be the Faculty of Advocates, in relation to registered European lawyers registered with it; and the Scottish Solicitors' Discipline

Tribunal in relation to registered European lawyers registered with the Law Society of Scotland.

### **Disciplinary proceedings against a registered European lawyer**

Regulation 27 requires a professional body intending to begin disciplinary proceedings against a registered European lawyer to inform the competent authority in his home State of that intention; to furnish it with all the relevant details, to co-operate with that authority throughout those proceedings, and to inform it of the decision reached as soon as practicable. (Article 7.2) Where the competent authority in the home State withdraws the authorisation to practise of the registered European lawyer under his home professional title, either temporarily or permanently, his registration with the professional body in Scotland is automatically withdrawn to the same extent. (Article 7.5) In the case of an appeal against a decision in disciplinary proceedings, the appeal body has to give the competent authority in the registered European lawyer's home State an opportunity to make representations in relation to that appeal. (Article 7.3)

### **Disciplinary proceedings against a solicitor or advocate**

Regulation 28 requires a professional body in Scotland which intends to begin disciplinary proceedings against a solicitor or advocate practising in another Member State, to inform the competent authority in that State of its intention to begin those proceedings and the decision reached (including the decision in any appeal) as soon as practicable after the decision is given. (Article 7.2).

## **PART V ENTRY INTO THE PROFESSION OF SOLICITOR OR ADVOCATE**

Part V of the Regulations implements Article 10 which provides that a lawyer practising under his home country professional title, who has effectively and regularly pursued a professional activity in the host Member State in the law of that State (including Community law) for a period of at least 3 years may apply to gain admission to the profession of lawyer in the host Member State and to be exempted from the requirement to take an aptitude test. (The requirement for an aptitude test was set out in the Qualifications Directive 89/48/EEC, and implemented by Regulation 6(1)(b)(ii) of the European Communities (Recognition of Professional Qualifications) Regulations 1991.)

### **Application by registered European lawyer**

Regulation 29 provides that a registered European lawyer who applies for admission as a solicitor or advocate may apply to the relevant professional body to be exempted from any requirement to pass an aptitude test under Regulation 6(1)(b)(ii) of the Qualification Regulations (SI 1991/824). He may apply for exemption if he has been a European lawyer registered with that professional body for at least 3 years; and has for that period effectively and regularly pursued in Scotland professional activities under his home professional title in the law of Scotland including Community law. Alternatively, he may apply for exemption if he has been a European lawyer registered with that professional body for at least 3 years; has for that period effectively and regularly pursued in Scotland professional activities under his home professional title; and has for a period of less than 3 years effectively and regularly pursued in Scotland professional activities under his home professional title in the law of Scotland. (Article 10.3)

## **Decision by professional body**

Regulation 30 provides that the professional body shall grant an exemption from the aptitude test if it considers that the relevant requirements have been met; and that the registration of a registered European lawyer shall cease from the date he is granted entry into the profession of solicitor or advocate. The professional body may refuse to grant an exemption if it considers that the registered European lawyer would be unfit to practise as a solicitor or advocate. (Article 10.4)

## **Evidence in support of application for exemption under regulation 29(2)**

Regulation 31 sets out what evidence is required in support of an application for exemption from an aptitude test for a registered European lawyer who has been registered for at least 3 years; and who has for that period effectively and regularly pursued in Scotland professional activities under his home professional title in the law of Scotland including Community law. A registered European lawyer who applies for such an exemption is required to provide the professional body with any relevant information and documentation which it may reasonably require in relation to such an application. The professional body is entitled to verify the effective and regular nature of the professional activity pursued; and to request further details or clarification from the registered European lawyer, orally or in writing, on the information and documentation. (Article 10.1).

## **Evidence in support of application for exemption under regulation 29(3)**

Regulation 32 sets out what is required of a registered European lawyer who has practised in the law of the host Member State for a period of less than 3 years and who applies for exemption from an aptitude test in terms of regulation 29(3). In such circumstances the registered European lawyer is required to provide the professional body with any relevant information and documentation it may reasonably require. In determining the application the professional body has to take into account the effective and regular nature of the professional activities pursued by the registered European lawyer during his registration period; and any knowledge and professional experience he has gained of, and any training he has received in, the law of Scotland and of the applicable rules of professional conduct. The professional body is required to assess and verify at an interview the effective and regular nature of the registered European lawyer's professional activity and his capacity to continue that activity; though an interview may be dispensed with if the professional body believes it to be unnecessary. (Article 10.3)

## **Meaning of "effectively and regularly pursued"**

Regulation 33 defines "effectively and regularly pursued" activities as activities exercised "without any interruption other than that resulting from the events of everyday life". (Article 10.1)

## **Time limit for decision and notification by professional body**

Regulation 34 requires a professional body to consider applications under regulation 29 as soon as reasonably practicable and to notify the applicant of its decision (and if the application is rejected, the reasons for rejection) within 4 months of receiving all the relevant

information and documentation required. Where the professional body fails to take a decision and notify a registered European lawyer of that decision within 4 months, the body is deemed to have taken a decision to reject the application and to have notified that decision to him on the last day of that period.

#### **Appeal by registered European lawyer**

Regulation 35 entitles a registered European lawyer to appeal to the Court of Session against the decision of the professional body within 3 months of the date of notification of the professional body's decision, or later with the permission of the Court of Session. The Court of Session may either grant the exemption applied for, refuse the appeal, or remit the matter to the professional body with such directions as it sees fit. The Court of Session is required to give reasons for its decision.

#### **Practice under the title of solicitor or advocate**

Regulation 36 provides that where a registered European lawyer is granted entry into the profession of solicitor or advocate, that lawyer is entitled to continue to practise in Scotland under his home professional title and to use that title (expressed in an official language of his home State) alongside the title of solicitor or advocate. (Article 10.6). The lawyer's continuing practice in Scotland under either title is subject to the rules of professional conduct (including those relating to disciplinary and complaints procedures) which apply to solicitors or advocates, as the case may be. His registration under regulation 17 with the professional body whose title he has acquired ceases from the date he is entitled to use that title.

### **PART VI SUPPLEMENTARY PROVISIONS**

#### **Modification and extension of enactments**

Regulation 37 provides for the Schedules to the Regulations to have effect, explaining that Schedule 1 amends the Solicitors (Scotland) Act 1980; and Schedule 2 applies certain enactments with modifications and extensions in relation to registered European lawyers.

### **SCHEDULE 1 : AMENDMENTS TO THE SOLICITORS (SCOTLAND) ACT 1980**

#### **Paragraph 1 inserts :**

after section 12 of the 1980 Act new sections dealing with :

#### **Register of European lawyers**

Section 12A Keeping the register

Section 12B Information to be provided by registered European lawyers

Section 12C Removal of name from register on request

Section 12D Restoration of name to register on request

after section 24 of the 1980 Act new sections dealing with :

## **Registration certificates for registered European lawyers**

- Section 24A Applications for registration certificates
- Section 24B Issue of registration certificates
- Section 24C Discretion of Council in special cases
- Section 24D Appeals from decisions of Council
- Section 24E Date and expiry of registration certificates
- Section 24F Suspension of registration certificates
- Section 24G Further provisions relating to suspension of registration certificates

after section 23 a new section dealing with :

Section 23A Professional misconduct for registered European lawyer to practise without a registration

Subparagraphs (5) - (12) make technical amendments to sections 25A, 26, 28, 31(1), 32(1), 33, 43 and 65 of the 1980 Act.

Subparagraph (13) inserts after paragraph 1 of Part 1 of Schedule 3 to the 1980 Act :

Paragraph 1A Contributions by registered European lawyers (to the Scottish Solicitors' Guarantee Fund, as relevant to Article 6.3 of the Directive)

## **SCHEDULE 2 : APPLICATION, EXTENSION AND MODIFICATION OF ENACTMENTS TO REGISTERED EUROPEAN LAWYERS**

### **PART 1**

Part 1 applies certain provisions of the Solicitors (Scotland) Act 1980 in relation to registered European lawyers, with modifications and extensions as specified.

### **PART II**

Part II amends other enactments and provisions in relation to registered European lawyers ;

- (1) The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975
- (2) The Estates Agents Act 1979
- (3) The Financial Services Act 1986
- (4) The Insolvency Act 1986
- (5) The Banking Act 1987 (Exempt Transactions) Regulations 1988
- (6) The Law Reform (Miscellaneous Provisions)(Scotland) Act 1990



JH/00/19/6



## SCOTTISH EXECUTIVE

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Date: 17 May 2000

### ANNUAL BUDGET PROCESS 2001-02

I refer to the Justice and Home Affairs Committee Clerk's letter of 10 May, in which he set out the questions we did not have time to consider when I appeared before the Committee last Wednesday to give evidence on the publication *Investing in You*.

Before I go over the questions in detail, I should like to note that the new Budgetary consultation process has meant that all of us, the Scottish Executive and Committees, have been on a steep learning curve, and we shall take away from this exercise lessons on how the new Annual Expenditure Report (*Investing in You*) might be improved for the future. I can assure you therefore that comments on the usefulness of the publication from the various subject Committees will be noted and taken into account for next year's exercise.

In relation to targets, I am aware that the Committee wished to see how the Justice Department fared in performance against targets set for 1999-2000. My officials are gathering this information together, and this will be coming forward to the Committee under separate cover this week.

#### **Criminal Justice Social Work**

I note your comments on the allocation of funding to Victim Support Scotland. The position is, however, that other spending pressures both within the Justice programme and the wider Scottish Executive budget have had a higher priority and additional funds have therefore been allocated to those baselines. However, as Mrs Ritchie noted in JH/00/17/1, additional funds have always been found from in-year savings for Victim Support Scotland, and they have not faced any cut in their annual provision. We hope to regularise the Victim Support Scotland baseline in the Spending Review 2000 currently underway.

### **Legal Aid**

The Board in its Corporate Plan sets a full and fairly detailed set of objectives and targets. These, of course, are derived from the objectives and targets of the Justice Department. However, given the Justice Department's targets are at a more strategic level, it would not be appropriate, in our view, to reproduce in this document the more detailed material which the Legal Aid Board properly includes in its Corporate Plan.

### **Miscellaneous**

#### **Invest to Save**

The Invest to Save budget was part of the Comprehensive Spending Review (CSR) outcome. An important theme of the budget is 'joined up' Government and this scheme funds collaborative projects involving more than one Department or public sector organisation. The Scottish Executive successfully bid for 4 projects with a combined value of £2m over the three CSR years, that is 1999-2000 through to 2001-02. The first, which ran for 1999-2000 only is the Scottish Legal Database (£210k – 46.6% of the total cost), to create a database enabling electronic access to various public sector legal documentation, considerably reducing the time taken to retrieve and analyse legal information. The other three schemes will operate for the three year period. These are early intervention with young offenders (£440k), integrated approach to community care services (£980k) and integration of probation and employment services for offenders (£450k). These sums relate to 75% of the total project costs. The Executive picks up the cost balances from the Justice programme EYF. The Minister for Finance is looking at bids for future years' Invest to Save schemes under the Modernising Government banner.

#### **Other Miscellaneous**

Unfortunately a printing error means that the footnote number was placed against the wrong year in regard to the Other Miscellaneous category: it should be against 1999-2000. For 2000-2001, the remaining EYF from 1998-99 which is earmarked for initiatives in 2000-01 and 2001-02 which have been already announced will be carried forward in-year and added to the Other Miscellaneous category in the Autumn Supplementary, together with some 75% of any EYF accumulated on the Justice programme from 1999-2000. The pressures that all the EYF will help fund are extending the Witness Support pilot schemes, funding the Scottish Partnership on Domestic Violence, setting up the Office of the Public Guardian which will assist people with incapacities, and also go towards supporting a range of investments to provide Police with the infrastructure they require to tackle crime effectively. The Other Miscellaneous category will also be enhanced in year by Treasury Reserve funds for the Lockerbie trial, which will be drawn down into the Justice Budget in a supplementary estimate.

#### **Residential Accommodation for Children**

We would hope to meet the two targets published for this category using the following measures:

- Adequate provision will be measured by the extent to which places are not provided and children end up in prison or in some less satisfactory accommodation.
- The range of educational opportunities and addressing offending behaviour is measured by regular inspections by the Schools Inspectorate and the Social Work Inspectorate.
- The reduction in number of offences after release is monitored by continuing Social Work supervision.

#### **Scottish Prison Service**

All the targets for last year are not set out in Investing in You because they have already been published in full in the SPS Corporate plan for 1999-2002 in August 1999. Investing in You therefore gives a brief summary of trends. In order to fulfil the requirements of the current SPS planning process, some targets cannot be set for this year until last year's outcomes are known. The

current planning cycle does not lend itself to announcement of SPS targets until late May this year as indicated in Investing in You.

A comprehensive three-year prisoner population projection is included within chapter five of the SPS Corporate Plan. Although the population is fairly level at present, projections of the future prisoner population, which are generally based on trends observed over the past 15-25 years, indicate an increase as shown in the table below. These latest projections will be published in the 2000-2003 SPS Corporate Plan.

#### PROJECTED PRISON POPULATION 1998-99 to 2003-2004

Year	September 1999 Board Paper	April 2000 Board Paper	Difference
1998-1999	6,029 (provisional)	6,029	-
1999-2000	6,100	6,000	-100
2000-2001	6,200	6,100	-100
2001-2002	6,400	6,200	-200
2002-2003	6,500	6,400	-100
2003-2004	6,700	6,600	-100

#### Scottish Court Service

The same situation applies to SCS's Lockerbie costs as to those noted for police and prisons under the Other Miscellaneous category. The Treasury Reserve provision for the Lockerbie trial costs for 1999-2000 was drawn down into the programme in year via the Spring Supplementary estimate. The situation will be the same for 2000-2001, whereby Courts provision will be enhanced by an in year increase for Lockerbie trial costs.

Insofar as the SCS targets are concerned, the first 2 objectives refer to a basket of standards covering various elements of administrative work undertaken by the Court Service in support of the judiciary. The detailed specification of these targets and performance against them are listed in the Scottish Court Service Annual Report and Accounts which will be presented to Parliament later in the year. Tables 2 and 4 of the Annual Report and Accounts for 1998-99 spell out these targets in detail.

#### Courts Group

The Civil Justice and International Division of Courts Group maintain an on-going involvement in the legal systems of Europe, incorporating work across the whole range of ECHR issues as they affect Scotland.

#### Justice Support to Local Authorities (police)

In this publication, the difference between 'crimes' and 'offences' is a matter of statistical classification, and does not reflect the distinction made in our criminal law. Its purpose here is to attempt to establish broad categories of offences which distinguish between more serious and less serious incidents i.e. 'crimes' are more serious than 'offences'. However, this categorisation is a general one so that, for example, while over two thirds of 'offences' are motor vehicle offences

which normally attract comparatively minor penalties, they include dangerous and drunk driving and driving while disqualified which may in certain circumstances be punished severely by the courts.

Resources are not directed to police authorities according to clear up rates. There is a formula for distributing Scottish Expenditure grant (known as GAE or Grant Aided Expenditure). This is delivered partly (51%) by police grant paid directly by the Scottish Executive and partly (49%) by police authorities from revenue support grant (also provided by the Scottish Executive). Only police grant falls within the Justice programme. The current formula is based to a large extent on the number of officers and the staff in each force. However work is underway to derive a formula based on objectively identified measures of need within each force's area. The consultants undertaking the research are expected to report next year.

I hope the Committee find this information useful.



ANGUS MACKAY



## SCOTTISH EXECUTIVE

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Date: 17 May 2000

Dear Andrew,

### **ANNUAL BUDGET PROCESS 2001-02: PERFORMANCE AGAINST TARGETS**

Following the meeting on 26 April when the Committee took evidence from Scottish Executive officials on the 2001-02 Justice programme provision, the Committee noted that it would be helpful to have performance against target information for the previous year.

I attach a paper which sets performance against objective for the years 1998-99 and 1999-2000, where applicable, for the targets set out for 2000-2001 in the Annual Expenditure Report (Investing in You). The Committee should note that some of the 2000-01 targets published relate to action applicable to that year only and therefore there can be no directly comparable previous years' information.

Yours sincerely

**RUTH RITCHIE**



## PERFORMANCE AGAINST TARGETS

### CRIMINAL INJURIES COMPENSATION BOARD

<i>OBJECTIVE</i>	<i>PERFORMANCE</i>
To reduce backlog of outstanding cases (Scottish figure).	<p>2000-01 Target – To deal with 220* cases per week.</p> <p>1999-00 Forecast Outturn – 184</p> <p>1998-99 Outturn- 181</p> <p>*Please note this is a revised figure based purely on Scottish cases. Published 2000-01 target related to GB figure.</p>
To ensure that 1996 applications get a first decision within 12 months of receipt (GB figure).	<p>2000-01 Target – To issue a first decision for 90% of applications by the end of 2000-01.</p> <p>1999-00 Outturn – 80%.</p> <p>1998-99 Outturn – 84.5%.</p>
Make a decision on 1996 Scheme applications if no additional information is required (GB figure).	<p>2000-01 Target – Within 4 weeks.</p> <p>1999-00 Outturn – 11%.</p> <p>1998-99 Outturn – 12%.</p>
Arrange Oral Hearing for appeals on 1996 Scheme Applications (GB figure).	<p>2000-01 Target – Within 6 months.</p> <p>1999-00 Outturn – 15%.</p> <p>1998-99 Outturn – 42%.</p>
To continue to monitor the tariff-scheme and meet all settled claims for compensation within budget.	<p>2000-01 Target – Maintain expenditure within Ministerially agreed provision.</p> <p>1999-00 Outturn – Expenditure within budget.</p> <p>1998-99 Outturn – Expenditure within budget.</p>

### CRIMINAL JUSTICE SOCIAL WORK SERVICES AND OFFENDER SERVICES

<i>OBJECTIVE</i>	<i>PERFORMANCE</i>
To work with local authority criminal justice social work services to develop and maintain effective community based disposals for use by the courts as alternatives to custody.	<p>2000-01 Target – To provide for 6,500 probation orders and 7,500 community service orders in each calendar year.</p> <p>1999-00 Outturn – Figures not yet available.</p> <p>1998-99 Outturn – 6,897 probation orders and 7,236 community service orders issued.</p>
To promote and develop services which provide support for victims of crime and	2000-01 Target – 48,000 referrals.

witnesses through funding of Victim Support Scotland.	1999-00 Projected Outturn – 42,400 referrals. 1998-99 Outturn – 41,000 referrals.
To pilot and evaluate Drug Treatment & Testing Orders.	2000-01 Target – 80 Orders issued. 1999-00 Outturn – 30 Orders issued. 1998-99 Outturn – No Orders issued.

## FIRE

<i>OBJECTIVE</i>	<i>PERFORMANCE</i>
To meet the training needs of fire brigades and other public services.	2000-01 Target – To deliver 3,500 student training weeks at the Scottish Fire Service Training School (SFSTS) and 1,670 at the Fire Service College (FSC).  1999-00 Outturn – 3,755 student training weeks at the SFSTS and 1,938 at the FSC.  1998-99 Outturn – 3,119 student training weeks at the SFSTS and 2,042 at the FSC.
Promote effectiveness and efficiency of the fire service	2000-01 Target – Implement agreed recommendations of the Review Group on the structure of the fire service.
Ensure necessary statutory powers are available and associated guidance.	2000-01 Target – Review legislation on fire safety in non-domestic premises more broadly, in conjunction with the Home Office. Develop any other legislative proposals as outcome of Structure Review.

## LEGAL AID

<i>OBJECTIVE</i>	<i>PERFORMANCE</i>
Develop proposals on civil legal aid.	2000-01 Target - Scottish Legal Aid Board to introduce pilot schemes on different forms of access to legal services by 31 March 2001.
To settle all criminal legal aid accounts promptly.	2000-01 Target – From 25 October 1999, SLAB will pay all criminal legal aid accounts within 30 calendar days of receipt, if supported by appropriate documentation. Where abatements are being made payment will be made on offer.

## MISCELLANEOUS

(Please note that in this section, the targets for 2000-01 remain the same as those set for previous years.)

<i><b>OBJECTIVE</b></i>	<i><b>PERFORMANCE</b></i>
To be able to react to any emergency, and to assist local authorities and others also to do so.	2000-01 Target – To continue to participate in exercises and mount training courses as required.
To enable children detained under sections 205/208 of the Criminal Procedure (Scotland) Act 1995 to continue their education while held in secure custody and to provide them with opportunities to address their offending behaviour.	2000-01 Target – To continue to provide all those sentenced to detention with a range of opportunities for education and to address their offending behaviour.
By providing education and enabling all those detained under sections 205/208 to address their offending behaviour through counselling and appropriate programmes to assist in their rehabilitation and so encourage them to lead law abiding lives.	2000-01 Target – To contribute to a reduction in the number of offences that are committed by children after release.

## POLICE CENTRAL GOVERNMENT

<i><b>OBJECTIVE</b></i>	<i><b>PERFORMANCE</b></i>
To increase percentage of Force Core Needs met (Scottish Police College).	2000-01 Target – 97% by March 2001.  1999-00 Forecast Outturn – 91% at March 2000.  1998-99 Outturn – 94% at March 1999.
To improve level of Participant Satisfaction at the Scottish Police College (scale 1 (low) to 5 (high)).	2000-01 Target – 4.07 by March 2001.  1999-00 Forecast Outturn – 4.05 at March 2000.  1998-99 Outturn – 4.06 at March 1999.
To increase number of participants attending Continuous Professional Development Throughput.	2000-01 Target – 1,725 participants.  1999-00 Forecast Outturn – 1,649 participants.  1998-99 Outturn – 1,525 participants.
To provide timeously accurate disclosure information under Police (CC) 4/1989.	2000-01 Target – Provide information in 8 days in 97% of cases.  1999-00 Forecast Outturn – Provided information in 8 days in 95% of cases.  1998-99 Outturn – Provided information in 10 days in 94% of cases.



Provide efficient and effective Livescan Fingerprint service confirming identity or otherwise within 2 hours of receiving images.	2000-01 Target – 95%. 1999-00 Forecast Outturn – 94%. 1998-99 Outturn – 90%.
Increase the number of CCTV cameras in operation.	2000-01 Target – 1,440. 1999-00 Outturn – 1,158. 1998-99 Outturn – 932.
Produce a report for the new Scottish Parliament reviewing the structure of police forces in Scotland.	2000-01 Target – Ensure that the police service is adequately resourced, appropriately advised, has the necessary powers and is properly trained to meet its responsibility to deal with crime, and to prevent crime.
Introduce improved procedures for dealing with intimidated and vulnerable witnesses.	2000-01 Target – Implement agreed recommendations of “Towards a Just Conclusion”.

## SCOTTISH COURTS

<i><b>OBJECTIVE</b></i>	<i><b>PERFORMANCE</b></i>
To achieve the administrative standards set by the Lord President and the Lord Justice General for the Court of Session and High Court.	2000-01 Target – 96%. 1999-00 Outturn – 91%. 1998-99 Outturn – 97%.
To achieve the administrative standards agreed with Sheriff Principal for Sheriff Courts.	2000-01 Target – 85%. 1999-00 Outturn – 97%. 1998-99 Outturn – 97.3%.
Meet the demand for court sitting days.	2000-01 Target – 29,000. 1999-00 Outturn – 30,679. 1998-99 Outturn – 30,744.
Control staff, accommodation and administrative costs per Court sitting day.	2000-01 Target - £950. 1999-00 Provisional Outturn - £912. 1998-99 Outturn - £878.
To produce public consultation paper which will address concerns about lack of transparency in current arrangements.	2000-01 Target – Publish document by Easter 2000.
To provide computer facilities and training to all Judiciary who require it.	2000-01 Target – To complete task by May 2000.
To process vacancies for Sheriffs and provide timeous advice to Ministers.	2000-01 Target – To fill vacancies with minimum delay.

To produce an Action Plan setting out proposed reforms following the consultation "Towards a Just Conclusion".	2000-01 Target – Publish Action Plan by May 2000.
To conclude negotiations on a Regulation under Title VI of the Treaty of Rome.	2000-01 Target – Conclude negotiations no later than June 2000.
To implement draft Regulation under Title VI of the Treaty of Rome.	2000-01 Target – Implementation by January 2001.

## JUSTICE SUPPORT TO LOCAL AUTHORITIES

<i>OBJECTIVE</i>	<i>PERFORMANCE</i>
To respond to 999 calls within prescribed target time.	2000-01 Target – 83% by March 2001.  1999-00 Forecast Outturn – 83%.  1998-99 Outturn – 81.96%.
To ensure that victims of crime are satisfied with the police performance.	2000-01 Target – 88% by March 2001.  1999-00 Forecast Outturn – 88%.  1998-99 Outturn 85.87%.



**JUSTICE AND HOME AFFAIRS COMMITTEE****Revised schedule of meetings May – Summer recess**

Note by the Clerk

<b>DATE</b>	<b>TIME</b>	<b>VENUE</b>	
Monday 22 May	1.30 – 4.30	CR1	
Tuesday 30 May	9.30 – 12.30	The Hub	
Wednesday 7 June	9.30 – 12.30	Festival Theatre	
Tuesday 13 June	9.30 – 12.30	CR1	
Tuesday 20 June	9.30 – 12.30	Chamber	N.B. additional slot if required
Wednesday 21 June	9.30 – 12.30	CR1	
Tuesday 27 June	9.30 – 12.30	CR1	
Tuesday 27 June	1.30 – 4.30	CR1	N.B. additional slot if required
Tuesday 4 July	2.00 – 5.00	Chamber	

Note that the meeting on 30 May is now expected to take place in the Hub.

It has also now been announced that the Parliament is to meet all day on the last two Wednesdays before the summer recess. As a result, slots allocated to committees in the mornings of those Wednesdays have had to be rescheduled. This does not affect Justice and Home Affairs on the first of those two weeks (when the allocated slot on 27 June remains unchanged), but does affect the meeting previously scheduled for Wednesday 5 July.

Please also note that the above is a list of slots reserved for the Committee, not a list of agreed meetings. The final decision about whether the Committee utilises a particular slot and, if it does, when the meeting begins, is for the Convener, and will be announced on the Agenda for a particular meeting. Note also that room allocations and times may change at short notice.

**Official Report**

I have been asked to advise members that, as a result of the large number of committee meetings taking place each week at present, combined with the effect of the forthcoming bank holiday, there may be additional delays in the production of the Official Reports of committee meetings. The staff of the Official Report are doing everything they can under difficult circumstances. The only general priority they can give is to committees considering a Bill at Stage 2. Members may wish to consult the Official Report production schedule, which is available on “SPEIR” (the Parliament intranet).

17 May 2000

ANDREW MYLNE

## JUSTICE AND HOME AFFAIRS COMMITTEE

### MINUTES

**18th Meeting, 2000 (Session 1)**

**Monday 15 May 2000**

Present:

Scott Barrie  
Christine Grahame  
Kate MacLean  
Michael Matheson  
Pauline McNeill

Roseanna Cunningham (Convener)  
Gordon Jackson (Deputy Convener)  
Maureen Macmillan  
Mrs Lyndsay McIntosh  
Euan Robson

Apologies were received from Phil Gallie.

The meeting opened at 1.35 pm.

- 1. Meeting in private:** The Committee agreed to consider in private a draft report on the Budget Process 2001-02 at its next meeting.
- 2. Committee business in the Chamber:** The Committee agreed that its 3rd Report, 2000, on petition PE14 from the Carbeth Hutters' Association (SP Paper 110) should be proposed by the Convener as an item of Committee business for debate in the Parliament.
- 3. Petitions:** The Committee considered the following petitions—

PE89 by Eileen McBride: The Committee agreed to write to the Minister for Justice asking him to keep the Committee informed about the Scottish Executive's progress on the preparation of a code of practice on disclosing non-conviction information. The Committee also agreed to invite written evidence on the issues raised in the petition from the Scottish Human Rights Centre, the Law Society of Scotland, the police and appropriate academic lawyers and children's organisations.

PE102 by James Ward: The Committee agreed to write to the Minister for Justice to ask whether the issues raised in the petition could be taken into account in the review of the law of diligence referred to during the Stage 1 debate on the Abolition of Poindings and Warrant Sales Bill. The Committee also agreed to invite written evidence on the issues raised in the petition from other relevant organisations.

- 4. Draft Regulation of Investigatory Powers (Scotland) Bill:** The Committee took evidence on the general principles of the draft Bill from—

Assistant Chief Constable Graeme Pearson and Detective Chief Superintendent Gordon Irving, Association of Chief Police Officers in Scotland;

Jim McLean, Convener of the Intellectual Property Committee, Murray Macara, Criminal Law Committee, Michael Clancy, Director, and Anne Keenan, Deputy Director, Law Society of Scotland.

- 5. Draft Bail, Judicial Appointments etc. (Scotland) Bill:** The Committee took evidence on the general principles of the draft Bill from—

Professor Christopher Gane, University of Aberdeen.

- 6. Census SSIs:** The Convener moved S1M-841—That the Committee agrees to consider the draft Census (Scotland) Amendment Order 2000 and the Census (Scotland) Regulations 2000 at its meeting on 22 May, and that debate on the two instruments be limited to 30 minutes. The motion was agreed to.

The meeting closed at 3.54 pm.

Andrew Mylne  
Clerk to the Committee