

**JUSTICE AND HOME AFFAIRS COMMITTEE**  
**SUPPLEMENTARY PAPERS FOR MEETING ON 6 SEPTEMBER 2000**

Item 1 – Minister and Deputy Minister for Justice

Letter from the Minister for Justice to the Convener on the Draft Land Reform Bill JH/00/26/11

Item 3 – Legal Aid Inquiry

Article from The Journal of the Law Society of Scotland (July 2000) entitled 'Resuscitating Civil Legal Aid. JH/00/26/12

Sarah Aitcheson  
1 September 2000

JH/00/26/11



# SCOTTISH EXECUTIVE

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31 August 2000

*Dear Roseanna,*

## PUBLICATION OF THE DRAFT LAND REFORM BILL

This is to advise you that I am announcing today in Parliament a revised timetable for the publication of the draft Land Reform Bill. This announcement (by written Scottish Parliamentary Question) coincides with the issue of the fourth progress report of the Land Reform Action Plan, setting out progress achieved over this wide-ranging agenda since last May. I thought it would be helpful for you and members of the Justice and Home Affairs Committee if I made you aware of the present position.

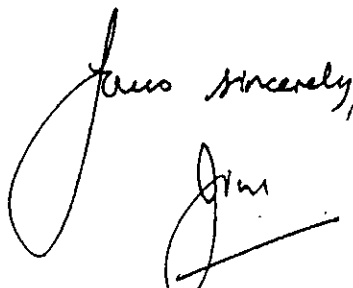
As you will know, the Executive has already consulted widely on our proposals for the draft Bill. I indicated to Parliament last November that we would include in the Bill provision for a new crofting community right to buy, which was greeted enthusiastically by many members but, inevitably, meant some delay.

I should stress that the Land Reform Bill is by its nature extremely novel, and its preparation entails careful consideration of a wide range of, sometimes complex, matters. There are also issues, following the Executive's White Paper consultation and meetings with various professional bodies, individuals and other interested parties, to which we wish to give attention. We are determined to make this legislation as effective as possible, and I am convinced that it is better to spend the time required now in order to get it right. I can assure you that I and my Ministerial colleagues are committed to giving this legislation high priority to deliver our proposals to legislate for a community right to buy, a crofting community right to buy and a right of responsible access.

I shall announce today that we plan to publish the draft Bill in February 2001. This will be followed by a 12-week consultation period, running to the end of May, and we shall aim for introduction to Parliament later in the year. The timetable thereafter will clearly be a matter for the Scottish Parliament and its Committees, principally the Justice and Home Affairs Committee, which is why I felt it important to notify you of our plans.

I hope this is helpful in setting out the position and look forward to meeting with you and your Committee members on 6 September.

I am copying this letter for information to Alex Johnstone, MSP, Convener of the Rural Affairs Committee and to the Clerks of both Committees. Copies also go to my Ministerial colleagues Angus MacKay and Tom McCabe.

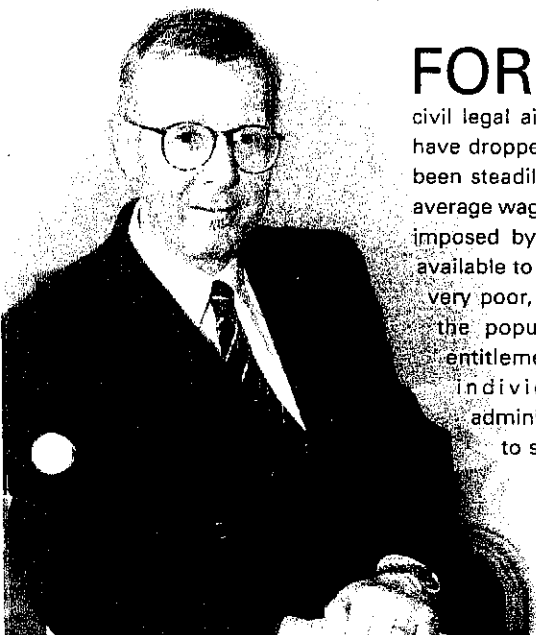
*Yours sincerely,*  
  
JIM WALLACE

civil  
legal aid

## RESUSCITATING

## civil legal aid

The Scottish Legal Aid Board's announcement that the payment period for contributions has been extended may go some way to improving access to civil legal aid, but Michael Scanlan warns the Scottish Executive that in the interests of justice they must create an environment which allows for its efficient delivery



**FOR** some years now there have been murmurings in the profession that civil legal aid is in crisis. A steady trickle of firms have dropped out of the scheme and eligibility has been steadily eroded both by a failure to link it to average wage rather than benefit levels and the cuts imposed by the last Government. It is no longer available to those of modest means but only to the very poor, leaving an unacceptable proportion of the population unable to pursue their legal entitlement. The result of this is not just individual hardship, but successive administrations have been unable or unwilling to see the bigger picture. Just about every penny spent on civil legal aid has an effect on the social costs of a breach of someone's civil rights.

Reparation cases, which are largely self-funded in any event, frequently result in a recoupment of benefits paid and reduce future dependency on benefits by properly compensating the injured party. Securing an exclusion order or transfer of the family home means less of a drain on scarce local authority housing provision and a fair financial settlement on divorce means, again, less dependency on benefits. These are just two examples of what is, in fact, a much greater and more complex interdependency between civil rights and public expenditure but despite the fact that we now have a Scottish Parliament there is no sign that this simple economic fact is in any sense informing its decisions.

Indeed there is no sign of any decisions at all. The consultation paper on civil legal aid issued by the previous administration has sunk without trace and while this may be no bad thing given that it was based

## More time to pay

THE Law Society of Scotland has welcomed the announcement by the Scottish Legal Aid Board of a new scheme to make it easier for people to pay some civil legal aid contributions.

Society President Alastair Thornton said: "The Society identified the contributions crisis in civil legal aid several years ago. It was clearly unworkable for people on low incomes to face a bill for legal aid contributions of sometimes over £1500 in ten months.

"It is welcome news that SLAB have found a way of extending the payment period for those

who have to pay a legal contribution of over £500. I hope this move will provide Scottish people with greater access to the Scottish courts to vindicate their rights."

As of the beginning of this month, contributions of £500 to £1,199 can be paid over 15 months and those over £1200 can be paid over 20 months.

The Board recently ran a pilot scheme to determine whether increasing the repayment period for contributions would result in more people accepting the offer of civil legal aid. The Board's analysis of the results indicates an

estimated 14 % increase in the number of people accepting an offer of civil legal aid as a result of the extended repayment period.

The extended contributions payment period will apply to offers of civil legal aid made from the beginning of July. However, existing contributions of more than £500 can also be paid over the longer period.

SLAB Chairman Jean Couper said: "We were concerned that some people decided not to accept the offer of legal aid because of the amount to be paid each month. We are delighted that Justice Minister Jim Wallace accepted our case for contributions to be paid over 15 or 20 months. We believe that this will increase access to civil legal aid for many people in Scotland, and we will monitor the situation to fully assess the impact."

on a number of false assumptions and treasury-driven, it is simply unacceptable that no alternative has been put forward.

The only idea which has drifted out of the Scottish Executive is the Community Legal Service. This is a vague concept, largely developed in England in response to burgeoning civil legal aid expenditure. It was developed, largely to save money but dressed up as socially useful. In Scotland civil legal aid expenditure is on a steady downward curve and is being delivered efficiently and economically. Surely it is not too much to expect that a Scottish Parliament will recognise the uniqueness of our system of law and legal aid and not cling to the coat tails of England.

In the hope that a Scottish solution to a Scottish problem is being pursued by the Justice and Home Affairs Committee, I put forward the following suggestions.

Understand that civil legal aid provides not just individual remedies but makes a contribution to the well being and proper functioning of society as a whole. It has cost benefits across a wide range of other social expenditure and most importantly should ensure that all of us who are accorded rights are in a position to assert them. This is an essential element of a civilised society.

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proper functioning of society as a whole

Take a long hard look at the multiplicity of regulations which impede the efficient delivery of civil legal aid. Is it really necessary to have so many controls? Is there a proper balance between prudent budget control and effective delivery of a necessary service. Think about visiting your GP and being told that you might have a serious infection but before any proper investigation, let alone treatment, can be carried out you will need to fill in this form then come back in a fortnight if you survive, oh, and by the way pay £500 meantime.

The Scottish Legal Aid Board was set up to administer legal aid. Why don't you give them a bit more freedom to do that instead of fettering them through Act, Regulations and Financial Memoranda.

Increase eligibility so that the scheme again provides for those of modest means, not just the very poor. This might cost money in the short term but it may well save it in the long term and after all we seem to have been able to afford a much wider scheme only a few years ago.

Finally, take urgent steps to review the present level of fees. Legal Aid was never intended to be a charitable endeavour on the part of solicitors. In fact it was introduced like the NHS so that those of limited means would not be dependent on the charity of individual solicitors. Access to legal remedies is a right, not a privilege for the few in a civilised society. Payment to solicitors which was once not far short of private rates is currently running at about half or less than half of private rates. This cannot continue. There is no more room in these market driven days for cross subsidisation. Every element of a solicitor's business must generate sufficient of a return to pay overheads and leave a surplus and that includes civil legal aid. No one expects to make much money out of civil legal aid but we cannot continue to provide it at a loss. Solicitors have nothing to lose if civil legal aid disappears overnight. The public has.

**Michael Scanlan**

is immediate Past President of the Society  
and Convener of the Civil Legal Aid Working Party

The views in this article are written in a personal capacity  
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