JH/00/28/A

The Scottish Parliament

JUSTICE AND HOME AFFAIRS COMMITTEE

AGENDA

28th Meeting, 2000 (Session 1)

Tuesday 19 September 2000

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

1. **Time limit on SSI debate:** The Convener to move (S1M-1184), that the Committee agrees to debate motion S1M-1157 (motion to recommend that nothing further be done under the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2000 (SSI 2000/187)) for no more than 30 minutes.

2. **Item in Private:** The Committee will decide whether to take item 7 in private.

3. **Protection of Wild Mammals (Scotland) Bill:** The Committee will take evidence at Stage 1 on enforcement aspects of the Bill from—

   Bill Swann, Mike Jones QC, Gordon Nardell, Scottish Campaign Against Hunting with Dogs, Mike Flynn, Chief Inspector, Scottish Society for the Prevention of Cruelty to Animals, Rachel Newman, Head of Society Prosecutions, Royal Society for the Prevention of Cruelty to Animals;

   Assistant Chief Constable Ian A Gordon, Association of Chief Police Officers in Scotland.

4. **Abolition of Poindings and Warrant Sales Bill:** The Committee will consider the Bill at Stage 2.

5. **Subordinate Legislation:** Phil Gallie to move (S1M-1157)—That the Committee recommends that nothing further be done under the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2000 (SSI 2000/187).

6. **Domestic Violence:** Maureen Macmillan will report on her recent meeting with the Minister for Justice and Minister for Communities.

7. **Legal Aid and Access to Justice:** The Committee will consider candidates for the post of adviser to its inquiry on legal aid and access to justice.

Andrew Mylne
Clerk to the Committee, Tel 85206

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The following papers are attached for this meeting:

Agenda item 3	
Note by Assistant Clerk on written evidence on the Protection of Wild Mammals (Scotland) Bill.	JH/00/28/1
Memorandum by Scottish Campaign Against Hunting with Dogs	JH/00/28/2
Memorandum by the Law Society of Scotland (to follow)	JH/00/28/6
Agenda item 5	
Note by the Senior Assistant Clerk on SSI 2000/187	JH/00/28/3
Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2000 (SSI 2000/187) (members only)	
[Note: The instrument is also available on the internet at www.scotland-legislation.hmso.gov.uk/legislation/scotland/ssi2000/20000187 .htm]	
Agenda item 7	
Note by Senior Assistant Clerk on candidates for post of adviser on legal aid and access to justice (private paper).	JH/00/28/4

Papers not circulated:

Agenda item 3

Members are reminded to bring with them copies of the Protection of Wild Mammals Scotland) Bill (SP Bill 10) and accompanying documents (SP Bill 10-EN). Members may also wish to refer to the two SPICe briefings which have been produced on the Bill (Research Note 99/17, *Fox Hunting in Scotland*, and Research Paper 00/04, *Protection of Wild Mammals (Scotland) Bill*).

Agenda item 4

Members are reminded to bring with them copies of the Abolition of Poindings and Warrant Sales Bill (SP3) and accompanying documents (SP Bill 3-FM), together with any papers from the Stage 1 process that are considered relevant (such as the Committee's Stage 1 report, SP Paper 82). Copies of the Marshalled List and

groupings will be available from Document Supply first thing in the morning and will also be available in the Chamber.

Agenda item 6

Members may wish to refer to the Official Report of the statement by the Minister for Justice on family law, 14 September.

JUSTICE AND HOME AFFAIRS COMMITTEE

Papers for information circulated for the 28th Meeting, 2000

Letter from the Law Society of Scotland on petition PE89	JH/00/28/5
Written evidence from Brian Hamilton on the Leasehold Casualties (Scotland) Bill.	JH/00/28/7
Letter to the Convener from the Minister for Justice on the proposed ECHR Bill	JH/00/28/8
Written Answer on Scottish prisons	
Minutes of the 27th Meeting, 2000	JH/00/27/M

Note: The Clerk has received a copy of a letter from the trustees of the Carbeth Charitable Trust and the Carbeth Hutters' Association to the Deputy Minister for Justice. Copies of this letter may be obtained on request from the clerks.

The Scottish Executive White Paper "Parents and Children" was published on 14 September. Copies should be available from Document Supply Centre or on the Internet – http://www.scotland.gov.uk/justice/familylaw/pac-00.asp

JH/00/28/1

JUSTICE AND HOME AFFAIRS COMMITTEE

Protection of Wild Mammals (Scotland) Bill

Note by the Assistant Clerk

When the Parliamentary Bureau referred the above Bill to the Justice and Home Affairs Committee (to report to the Rural Affairs Committee), the Presiding Officer wrote to the Convener making clear that this Committee was expected to do so "only in as much as the Bill will create a new criminal offence". In practice, this is likely to involve the Committee considering such issues as:

- the nature and scale of the new criminal offence;
- the overall impact of the Bill on the criminal justice system – personnel, resources, priorities;
- policing the Bill – detecting the crime, powers of arrest, search, seizure;
- investigation and prosecution of offences;
- the burden of proof and evidential issues – presumption of innocence/guilt;
- penalties and disqualification orders;
- licensing – workability and enforceability of the system to be established.

The Convener, however, does not wish the Committee to become involved in considering the wider and more general question of whether hunting with dogs should be outlawed.

<u>Written evidence invited to the Rural Affairs Committee</u>

The Rural Affairs Committee invited a number of organisations to submit written evidence on the Bill. Attached are extracts from those submissions which deal with the law enforcement aspects. A separate memorandum by the Scottish Campaign Against Hunting with Dogs, provided for this Committee, is also included in this circulation.

Members may also wish to refer to the part of SPICe Research Note RN/00/66 which deals with the enforcement aspects.

14 SEPTEMBER 2000 FIONA GROVES

JUSTICE AND HOME AFFAIRS COMMITTEE

The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2000 (SSI 2000/187)

Note by the Senior Assistant Clerk

Background

This instrument provides for changes to the Prisons and Young Offenders Institutions (Scotland) Rules 1994, and was made by the Scottish Ministers in exercise of the powers conferred by section 39(1) of the Prisons Scotland Act 1989. The rules set out the legal framework for the treatment of prisoners. The Executive aims to review the Rules every year, and these amendments are the product of its most recent review. The Executive note attached explains substantive amendments made to the Rules.

This instrument was laid on 16 June and is subject to annulment under the Parliament's standing orders until 19 September. However, the instrument **came into force on 28 July**. The Subordinate Legislation Committee considered the instrument on 27 June, and had no comments to make.

Procedure

The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2000 (SSI 2000/187) are subject to negative procedure – which means that they remain in force unless the Parliament passes a resolution, within the 40-day period, calling for its annulment.

Phil Gallie has lodged a motion (reprinted on the agenda) calling on the Committee to recommend annulment of the instrument. Under rule 10.4.2 of the standing orders, the Committee can debate that motion for up to 90 minutes. (Item 1 of the agenda, if agreed to, will impose a shorter limit of 30 minutes. Although not formally binding, that shorter limit should help to ensure that enough time remains for the other items on the agenda.) The Minister in charge of the instrument is entitled to participate in the proceedings for the purpose of debating the motion. If, following the debate, the Committee agrees to Phil Gallie's motion then, under Rule 10.4.4, the Parliamentary Bureau "shall, no later than 40 days after the instrument is laid, by motion propose that nothing further is to be done under the instrument." However, given that the 40 days expires on the day of the Committee's debate, the Parliament will not be able to debate the instrument within the time-limit. In practice, therefore, the instrument cannot be annulled in consequence of this motion.

11 SEPTEMBER 2000 ALISON TAYLOR

JH/00/28/

JUSTICE AND HOME AFFAIRS COMMITTEE

Protection of Wild Mammals (Scotland) Bill

Submission on behalf of the Scottish Campaign against Hunting with Dogs

Introduction

1. This paper outlines the position of the Bill's promoters on the general principles of the Bill so far as specifically relating to the use of the criminal law to implement a qualified prohibition of the hunting of wild mammals with dogs. It deals with the following issues:

- Police powers of detection, prevention, etc
- Procedures and penalties
- Other criminal law aspects of the Bill

2. As agreed in correspondence with the Committee Clerk, we have arranged for a small team of representatives to attend the Committee meeting on 19 September to deal with these and any other issues within its remit. Mr. Bill Swann will lead the team. He will be accompanied by Mike Jones QC, SCAHD's legal representative; Gordon Nardell, the Parliamentary draftsman of the Bill; Mike Flynn, Chief Inspector of the SSPCA; and Rachel Newman, Head of Society Prosecutions of the RSPCA.

3. This submission does not deal with wider policy questions such as the desirable scope of the prohibition or exceptions. Those issues are in the course of consideration by the Rural Affairs Committee.

Police powers of detection, prevention, etc.

4. Section 4 gives police officers a number of familiar powers of search, seizure, entry and arrest. It carefully defines both the scope of those powers and the trigger conditions for their exercise. Subject to one exception, the powers reflect those habitually appearing in legislation creating offences.

5. The exception is the inclusion of a power to act where a constable has reasonable cause to suspect that a person *is about to commit* an offence.

6. We consider that there is an overwhelming policy case for ensuring that where, for example, police officers come across persons fully equipped to begin hunting with dogs and the commencement of the unlawful activity is plainly imminent, they have power to intervene to prevent an offence from being committed. Once a dog has been

released to hunt, the fate of the quarry is in practice sealed.

7. There may, though, be technical legal considerations that enable those policy concerns to be met without the need expressly to confer an anticipatory power. First, an anticipatory power of arrest may be partly duplicative of other powers, in particular the power to detain under s. 14 of the Criminal Procedure (Scotland) Act 1995 and the common law power to arrest to prevent an imminent breach of the peace. Second, under Scots common law, an act preparatory to the commission of a substantive offence is itself the offence of attempt, for which the police have powers of arrest, search etc. corresponding to those attached to the substantive offence.

8. The terms of the anticipatory power set out in section 4(1) could therefore helpfully be reviewed at stage 2. We would also propose to take that opportunity to address a technical point on subsection (1)(d), *viz.* the Bill's interaction with the power of the police under Part II of the Proceeds of Crime (Scotland) Act 1995 to seek a warrant for seizure of items liable to forfeiture under that Part.

Procedures and penalties

Penalties

9. The provisions for trial and maximum penalties (section 5(1)) are in line with other contemporary animal welfare legislation: summary trial with power to impose up to 6 months' imprisonment and/or a fine of up to level 5, currently £5,000.

Burden of proof

10. It will be unambiguously for the prosecution to establish beyond reasonable doubt each ingredient of the section 1 offence charged, including the necessary mental element. All the offences created by section 1 require proof of intention (subsections (2) and (5)) or knowledge and agreement (subsections (3) and (4)). As far as the exceptions are concerned, if the Bill made no provision it would be for the courts to decide in each case where the burden of proof lay. Scots law generally recognises that the burden of claiming the benefit of an "exception or proviso" rests with the defender, particularly where — as in the case of section 2 (as amended) and section 3 — the facts on which the exception is based are primarily within the knowledge of the defender rather than the prosecutor. But to avoid uncertainty, we think it is preferable for the Bill itself to codify the position: see section 6(6). In addition section 6(7) provides a special defence for persons charged with "facilitating" offences. Under both subsections, the defence need only establish the relevant matters on the balance of probabilities, not beyond reasonable doubt.

11. That position is compatible with the presumption of innocence both in Scots law and under Article 6 of the European Convention on Human Rights.

12. Following our own consultations on the Bill, we recognise there may be a case

that effective enforcement of the prohibition would not be seriously compromised by making some or all of the exceptions subject to a lesser defence onus, an "evidential" rather than "persuasive" burden. The defence would not need to prove the applicability of an exception, but would merely have to bring in sufficient evidence to justify throwing the burden back to the prosecutor to prove that the case falls outside the exception.

13. That might be particularly appropriate in relation to section 5(6). Under section 5(7), the defence already bears the lighter burden of proving merely a reasonable belief that an exception applies. Any necessary drafting change could readily be made at stage 2.

Other criminal law aspects of the Bill

Police and prosecutorial discretion

14. The deployment of particular police resources is a matter of discretion for each Chief Constable. The police are not bound in law to investigate or seek to prevent every single offence brought to their attention. They may make rational priorities in allocating resources, and regularly do so in relation to all kinds of offences. Similarly the Procurator Fiscal enjoys wide discretion whether to institute proceedings in a case investigated by the police.

15. In case the contrary be suggested, we consider that the existence of these lawful discretions in no sense undermines the authority of the law, whether animal welfare legislation or any other part of the criminal law. Nor does it diminish the moral force of the case for implementing a prohibition on hunting with dogs by means of the criminal law.

SCAHD
Edinburgh, 14 September 2000

JH/00/28/5

The Scottish Parliament
Room 3.10, Committee Chambers
Edinburgh
EH99 1SP

11 September, 2000

From the Law Society of Scotland:

Petition PE89 from Eileen McBride

Thank you for your letter of 12 June, asking for the Society's views in relation to Petition PE89 from Eileen McBride. I can confirm that the Society's Criminal Law Committee has now had the opportunity of considering this petition and the important issues which it raises.

The Committee notes that the petition calls for the Scottish Parliament to repeal Part V of the Police Act 1997 and accordingly the Committee has looked in detail at the provisions of that part of the Act as currently drafted and examined the implications of implementation of these provisions in Scotland.

Part V of the Police Act 1997 makes provision for three types of certificates in relation to criminal records:-

1. Criminal Conviction Certificates, provided for by Section 112. These detail convictions held on central police records which are not "spent" in terms of the Rehabilitation of Offenders Act 1974 (the 1974 Act);

2. Criminal Record Certificates, provided for by Section 113. These provide details of "spent" and "unspent" convictions under the 1974 Act and in England, details of police cautions (there is no equivalent of police cautions in Scotland). It is important to note that these certificates can only be obtained on the joint application of the individual involved and a registered body or employer;

3. Enhanced Criminal Record Certificates, provided for by Section 115. These allow disclosure of the details of all "spent" and "unspent" convictions under the 1974 Act as well as any other information which, in the discretion of the Chief Officer "might be relevant" to the applicants suitability for a position which involves , inter alia, "regularly caring for, training, supervising or being in sole charge of persons aged under 18".

The Criminal Law Committee has little difficulty with the implementation of the provisions which create the Criminal Conviction Certificates and the Criminal Record Certificates, as these essentially permit disclosure of convictions. The individual applicant has, therefore, had the opportunity to test the allegations made against him or her in a court of law, with the protection of the rules of evidence governing admissibility and relevance.

It is acknowledged that information will be contained in the Criminal Record Certificate of "spent" convictions in terms of the Rehabilitation of Offenders Act 1974 and that such disclosure may offend against the principles of that Act.

However, conflicting interests must be balanced in this legislation. There is the need for reliable information about criminal records to be disclosed to employers where the individual concerned will as part of their ordinary duties in employment have contact with children. This must be balanced against the right to allow those convicted of criminal offences to be able to put their past behind them through principles of confidentiality, except in the clearest cases where the public interest requires disclosure. For, it must be recognised that whilst the rate of reoffending amongst many offenders is high, attempts to rehabilitate are sometimes successful and central to any success in that area is the ability of such offenders through employment to reintegrate themselves within the community.

It is welcome therefore that Criminal Record Certificates cannot be accessed unless there is a joint application by the individual concerned and the registered person or employer. In this way, the process offers protection both to employers, and therefore to children as well as to the individual applicants themselves. The employer can satisfy him or herself that the person appointed is an appropriate person to work with children and at the same time, the individual applicant has the option of refraining to apply for such a certificate and therefore withdrawing the application for the position, prior to any disclosure being made.

The provisions of Section 113 therefore allow the primary purpose of the legislation to be fulfilled by ensuring adequate protection for children but at the same time protecting the confidentiality and privacy of the individual applicant.

The Committee's principle concerns in relation to Part V of the 1997 Act relate to the provisions for an Enhanced Criminal Record Certificate. These provisions allow not only the disclosure of "spent" and "unspent" convictions but also for disclosure of information which might, in the Chief Officer's opinion, be relevant to the applicant's suitability for the position concerned.

It is noteworthy that there is no guidance offered in the legislation as to what will be considered as "relevant" for the purposes of this section and this decision would appear to be one which is subjectively made by the Chief Officer involved.

The White Paper, "On the Record in Scotland: Proposals for Improved Access to Criminal Records" may offer some guidance as to the interpretation of this phrase. The White Paper indicated that "relevant" information could include information about acquittals, about decisions to prosecute, about continuing police operations and about the known associates of the applicant where the association gives rise to concern. The paper went on to state that "it should not include details which cannot be substantiated".

However, despite these assurances, the legislation as currently framed appears to offer no protection to prevent this. Furthermore, the Committee would question how decisions concerning disclosure could be made consistently if the subjective test, as currently specified in the Act, is implemented.

In the Committee's view, the regulation of the circumstances in which information is made available ought to be strict and on the principle of proportionality. The extent of disclosure of non-conviction material could be restricted to details of pending cases and then only if the information could be tested evidentially and deemed to be admissible in a court of law.

Section 115(8) and (9) may represent a further inroad to an individual's right to privacy and tilt the balance in favour of disclosure. These subsections essentially allow the Scottish Ministers to permit the disclosure to a registered body or employer of sensitive or contentious information without advising the individual concerned about the nature of the information or that the disclosure itself is being made.

This may have implications in terms of human rights legislation, as the individual applicant will be unaware of the extent of the disclosure made and, therefore, unable to challenge the information concerned.

Compliance with ECHR

Article 6 of the European Convention on Human Rights states that "in the determination of his civil rights and obligations … everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". Central to the application of Article 6, therefore, is the interpretation of the term "civil rights and obligations". From the case law, it is apparent that the Commission and the Court have interpreted the notion of civil rights and obligations quite broadly.

For the purposes of this exercise, consideration must be given to determining whether the collation of "relevant" information is in itself a civil right.

It is interesting to note that the Court has held that the notion of a civil right encompasses the right to enjoy honour and a good reputation (Helmers-v-Sweden (1991) and Tolstoy Miloslavsky-v-United Kingdom (1995)).

It may be inferred from this, therefore, that if there is a threat to continued enjoyment of honour and good reputation that an interested party would be entitled to defend this as a civil right.

The Police Act 1997 would not appear to provide for any facility through which an individual applicant could challenge the inclusion of information in the Enhanced Criminal Record Certificate before it is disclosed to the registered person or employer.

Furthermore, if the Scottish Ministers exercise discretion in terms of Section 115(8) and (9) the individual applicant may never be aware of the extent and nature of the information actually disclosed, and therefore, may not be in a position to preserve his or her good reputation or honour.

It is acknowledged that Part V of the 1997 Act has been extended by Section 8 of the Protection of Children Act 1999, which makes provision for the Secretary of State to maintain a list of

individuals("the index") who are considered unsuitable for work with children. Section 8 if the 1999 Act states that the Enhanced Criminal Record Certificate will also include details of whether the applicant is included in this list.

The Scottish Executive are currently consulting on the establishment of such an index in Scotland. The Committee notes from the terms of that consultation paper (Scottish Executive consultation paper "Protecting Children: Securing Their Safety") that it is proposed that an individual will have the right to respond to an allegation which suggests he or she should be included in the list. There would, in these circumstances, therefore appear to be some facility for an individual to challenge the information prior to it being recorded and therefore prior to it being released.

Appeals Procedure

As currently drafted, the Police Act 1997 only allows the applicant to challenge the accuracy of the information contained in the Enhanced Criminal Record Certificate by making a written application to the Scottish Ministers. If the Scottish Ministers are satisfied that the information contained in the certificate is inaccurate, then a new certificate shall be issued.

There may be concern that this procedure could not be truly regarded as an independent appeals mechanism, as the certificate is granted originally under the authority of the Scottish Ministers.

This may therefore have implications in terms of the European Convention on Human Rights because, in the Committee's view, to be compliant with ECHR provision should be made to enable interested parties to appeal against the inclusion of material in the Enhanced Criminal Record Certificate and this appeal should be to an independent body. In the Committee's view, such an appeal could be made either to an independent tribunal comprising perhaps of a legally qualified chairperson, together with two other members or alternatively, to the sheriff. Similar suggestions have been made by the Executive in their consultation paper on the establishment of the index referred to previously.

Conclusion

The Committee has sympathy with the policy intention behind this legislation and also acknowledges that there is a need to consider carefully the protection of children and the rights and liberties of individuals. It is accepted that this is a difficult balance to strike but, if the provisions are carefully framed, this objective could be achieved. The Committee hopes that these comments are of some assistance to the Committee, but should you wish to discuss any aspect of this further, then please do not hesitate to contact me.

Yours sincerely

Anne G Keenan
Deputy Director

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JH|00|28|7

The Secretary
Scottish Law Commission
140 Causewayside,
Edinburgh
EH9 1PR

5th May 1997

Your Ref: L18/160

Dear Sirs

LEASEHOLD CASUALTIES

Thank you for your letter of 29th April 1997. I would be obliged if you would place this letter in front of the committee considering the above subject.

I am the sole director of M.R.S. HAMILTON LTD. proprietors of the Blackwood Estate, Lanarkshire. After the company purchased the estate I found that we had the landlords interest in thirtysix 999 year leases. About twenty per cent of the leases had a very onerous casualty clause. Sixteen houses were subject to a lease with the onerous casualty clause. The leases provide that on an assignation to a singular successor the incoming tenant shall pay to the landlord one full years rent or value of the subjects and they provide for the appointment of valuers and an oversman if necessary. I enclose a typical lease.

We searched against all of the properties, with the casualty clause, to discover the incidence of assignations, and to check if there were outstanding liabilities. Five of the properties were registered in the Land Register but the Keeper had failed to note the casualty clause in the Burdens Section on the Land Certificates. We are taking action against the Keeper of the Land Register, I value our loss in excess of £210,000 (this includes the value of future casualties).

I am also aware that the Keeper paid a landlord, with an estate in Lanark, over £ 90,000 a few years ago in compensation for similar omissions in relation to leasehold casualties. This may explain the enthusiasm the Keeper has for Leasehold Reform.

Fourteen out of the sixteen properties had an outstanding liability. Where our demands were small (under £ 1,000) they were paid without a lot of opposition. At the time of writing we have one house with a casualty clause still exigible and no arrears, one with the arrears being valued by an oversman and one where the obligation for interest on a casualty is being disputed. We also have our claim against the Keeper.

The second advisor I object to is the Deputy Keeper of the Registers of Scotland. The Keeper has a financial interest in the outcome of these deliberations. My company, and the Keeper is on his warning, is taking action to recover a sum in excess of £200,000. It is ironic that Counsel advising my company has recently written to us stating that because he has been appointed a part time member of the Law Commission he feels he must resign from our action. He explains that although he is not directly involved with these present deliberations there might at some time in the future arise some conflict of interest. While disappointed with Counsel's decision it was of course right and proper that he should resign. No such scruples seem to guide the Keeper's course of conduct. The Keeper has as much interest in influencing the outcome as the landlords. If I were cynical I might ask why the insurers underwriting the Law Society's Master Policy were not also on the advisory group. I am not suggesting for one minute that the advisory committee should be made up of vested interests. However, if one side is to have an important role in the direction of the course of the discussion the other side should also have had the same opportunity. What should have happened is that those with an apparent vested interest should have declined to sit on the advisory group committee. The damage has been done and from now on we must attempt to correct the errors, bias and lack of real knowledge with our various contributions.

2. The Paper goes on at length about 19 year duplicands, casualties incurred by death (more on this later) and duplicands on entry of an assignee. The truth of the matter is that none of these obligations are insisted upon, partly because the cost of collection is greater than the financial obligation. Even if the Law is changed, giving the landlord the right to a redemption in line with the suggestion in the Paper, the landlord is unlikely to bother to collect payment. The cost of collection will, in most cases, exceed the sum collected. As regards a casualty becoming due on the death of a tenant I have never seen such a clause. What I have seen is a casualty becoming due on the entry of an heir or successor (universal successor). Casualties due on the entry of an heir or successor are always a duplicand of the contracted rent and therefore are so insignificant, due to inflation, that they are never collected.

The only obligation that is of real concern to all parties is that casualty which is due on the entry of a singular successor and is the value of a present yearly rent of the property subject to the assignation. Although leases are common in a number of counties in Scotland I am only aware that this particular casualty clause appears in Lanarkshire leases. At 3.7 an attempt is made to estimate the size of the so called problem. Given that (a) we are only really concerned with those clauses requiring a payment of the actual value of one year's rent on assignation and (b) that these clauses only appear in Lanarkshire leases and (c) the clause does not appear in leases under 999 years duration and (d) (c) excludes about 30% of the leases and (e) there were 4,000 long leases registered in Lanarkshire and (f) only about 20% of long leases contain the onerous casualty clause (believe me I have checked) and (g) because of the decision in Kaye v Archibald, it is unlikely that casualties are collectable except in only a small number of cases. You may be aware that grants and leases of land in the last century were on average much larger than today's plot size. Almost every lease is now subject to partial assignations thus rendering the casualty clause ineffective in cases where the casualty attaches to " the said piece of ground hereby let". From the

I am going to make the assumption that there can be no abolition of leasehold casualties without compensation. In constructing a formula to calculate the redemption price the same philosophy is used as in redemption of feuduties: that a fund be provided that produces an equal return. In valuing the landlord's interest cognisence has to be taken of the incidence of assignations (7, 14, 21 etc.), the probable and average annual growth of rental income (g) and a discount rate (d) to be applied for early payments of future casualties. One also has to consider the likely date of the next assignation (n). The building societies tell us that houses change ownership every seven years, in Blackwood our figures suggest 5.9 years. My own research, for what it is worth, shows an increase in capital value of property of 4.47.% over the last 160 years. I would suggest that the discount rate used in relation to the redemption of feu duties should be the same as used for casualty redemption. This produces a formula which is shown at the end of this paper.

May I suggest to your committee that if they accept the philosophy underpinning this method of valuation then this paper be sent to someone who is an expert in the field of discounted cash flow. The validity of my formula needs to be tested and I am sure someone with a better understanding of mathematics will be able to reduce my formula to a more easily managed form. My own suggestion is either Prof. McLeary who is a member of the Lands Tribunal or Prof. Bryan McGregor Professor of Land Economy at Aberdeen University.

When this is computed it will bring out a figure of about four times the present day casualty. Since valuations of casualties have produced figures between 6% and 10% of capital value you will see that a fair redemption price might mean that a tenant has to make a payment of up to fourty per cent of the capital value of his house. This is clearly impossible, many people do not own that much equity in their house. We cannot have a law that places people into negative equity. And indeed, why should we? If the tenant has been properly informed of the conditions of the lease before purchasing the assignation he will have paid a price that reflects this continuing obligation between the then tenant and the then landlord. If the leasehold casualty was then abolished without compensation for the landlord such a tenant would make a large capital gain at the expense of the landlord. If he has not been informed of the casualtiey clause then the Law Commission should make a recomendation, which if accepted, should make it easier for the tenant to obtain compensation from his solicitor.

If the state is to abolish the landlords' right to collect casualties the effect of that action will be to absolve solicitors, insurance companies and the Keeper of the Land Register of the obligation to make good their mistakes and to those who purchased, being aware of the terms of the lease, hand to them large capital gains..

In view of the large sums of money involved it is, in my view, unthinkable that any compensation that landlords receive comes from state funds. This would be a subsidy from the state to the legal profession and their insurers.

Whilst M.R.S. Hamilton Ltd has now almost disposed of its entire interest in collecting casualties the committee should be aware that we know of two estates comprising hundreds of leases with onerous casualty clauses. We know that a considerable price

was paid for these casualties. It would be, in our view, unjust to abolish the right to collect without fair compensation.

I could, of course, discourse at length on the nature of leases in Scots Law and the very real difference they have to feus. I could discourse on various cases where their lordships refused to alter a contract freely entered into. However, being aware of the quality of intellect on your committeee and my own intellectual failings I will refrain.

I am prepared to answer any further questions your committee may care to put to me.

Yours faithfully,

B. G. Hamilton

Redemption value = Pres' value of Casualty x $\frac{(1+g)^n}{(1+d)^n} + \frac{(1+g)^{n+7}}{(1+d)^{n+7}} + \frac{(1+g)^{n+14}}{(1+d)^{n+14}} +$

repeat term adding 7 years *ad infinitum* (999 years)

It should be noted that calculations after about 200 years produce little or no value.

Example
First Term
Redemtion Value = Cas' x $\frac{(1.045)^4}{(1.080)^4}$ = 0.8765 +

Second Term $\frac{(1.045)^{11}}{(1.080)^{11}}$ = 0.6960 +

Third Term $\frac{(1.045)^{18}}{(1.080)^{18}}$ = 0.5527 +

Fourth Term $\frac{(1.045)^{25}}{(1.080)^{25}}$ = 0.4388 +

Fifth Term 32 years = 0.3485

Six Term 37 years = 0.2955

Seventh Term 42 years = 0.2507 sub total 3.4587

ETC.

Suppose we want to know the discounted cash flow value of a casualty, with a present day value of £7,000 which is to become due in year 112. Applying the above formula todays redemption price would be £178.85. One will see that even if the multiple is small, when it is multiplied by the present day value of the casualty, say £7,000, it produces a sum worth collecting.

B.G. HAMILTON. BLE.

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The Secretary
Scottish Law Commission
140 Causewayside
Edinburgh
EH9 1PR

20th June 1997
Your Ref: L18/160

Dear Sirs,

Discussion Paper on Leasehold Casualties

I refer you to my letter of 5th May 1997 which I had hoped you would have been able to consider before finalising the Discussion Paper.

I profoundly regret that my contribution to your deliberations will be seen as negative. However, please believe me when I tell you that any axe I may appear to have to grind is a very small axe. My company has, apart from an action against the Keeper of the Land Register, only a very small financial interest in casualties, having settled with the solicitors, and their insurers, over terms buying out the casualty provisions in all but three of our Leases.

My objections to the proposals in the Discussion Paper (the Paper) are:
1. That the Paper takes a partisan approach to the so called problems of leasehold casualties.
2. That the Paper has been prepared without any real knowledge of how landlords, tenants, solicitors and insurers have been dealing with casualty obligations.
3. That the Paper displays a woeful lack of knowledge of Scots Law pertaining to heritable rights and prescription and in consequence proposes to replace the existing law with law that does violence to established principles of Scots Law.

1. The first footnote in the Paper identifies the Law Commission's advisors. I have the greatest respect for Professor Robert Rennie. However, there is no getting away from the fact that apart from being a Professor of Conveyancing he is also a partner in a legal practice in the heart of 'casualty land'. Justice must not only be done it must be seen to be done. In the whole of the Paper there is not a single criticism of the legal profession. If landlords are to be criticised for taking a commercial attitude towards their property one would have expected solicitors to come in for some criticism for not taking more care of their clients' interests. "Caution is the badge of the conveyancer" said Prof. Halliday. The whole Paper gives the sense that it is trying to abolish casualties at the least possible cost to the tenant irrespective of the landlord's interest. When one knows that in fact in almost every case where a casualty has been demanded from a tenant it has been the solicitor or his insurers who have eventually met the claim one can see that the legal profession would want the abolition on the least onerous terms possible.

Whenever our demand for payment of casualties due was substantial solicitors went to extreme and extremely novel lengths to deny their client's liability. What was apparent was that in no case did the tenant appear to be aware of the casualty clause within the lease. What also became apparent was that the opposition we were getting was not to protect the tenants but to protect the solicitors and/or the insurers behind the Master Policy. In your letter you say that the goverment are concerned at the problems that leasehold casualties are causing. With respect, it is not the casualties that are causing a problem but the failure of the tenants and their advisers to take cognisense of the casualty provision when negotiating an assignation of the lease.

It is clear to me that tenants, for a long time, have been overpaying for the assignations of the lease. Solicitors have not been advising clients properly of the onerous conditions in the lease and consequently these conditions have not been taken account of when considering the purchase price for the assignation.

Your committeee will be aware of the considerable press coverage our efforts to collect the casualties have generated. Scare stories of eviction and others have all been used by those whose interest lies in the abolition of the landlords' right to enforce the terms of the lease. On one occassion when we offered a buy-out to an old gentleman, who had no arrears, at one and a half times a casualty we were accused by the Press of threatening the old man with eviction if he did not pay us £7,000.

As a matter of record, at the time of writing the company has collected a total of £27,058 in casualties. It has also collected in legal costs, judical and extra-judical, from solicitors and the insurance company opposing us, £19,665. We will not entertain a request for a buy-out until all of our expenses have been paid. Of the money collected in casualties, £255 and £1,150 came directly from two tenants. In our view these last sums should also have been paid by someone other than the tenants.

It seems to me that your committee has been asked to look at this supposed problem, and will be expected to come up with a recommendation to abolish the leasehold casualty, in order to get negligent professionals off the hook. If you will excuse my saying so I note the timetable you have been set and wonder if the rest of the legal problems that we face are to receive the same urgent treatment.

From the lease enclosed you will see that an intelligent layman would notice something in relation to the casualty clause. Your committee will be aware of the complexities of the modern lease. If you do decide to recommend the abolition of leasehold casualties why stop there? Surely it would be just as logical to abolish the three and five year rent review, the obligation to maintain the landlords property, to abolish restrictions on use of leased property etc. etc. Would you intend to differentiate between commercial leases with casualty clauses and residential leases with casualty clauses. A point worth noticing is that all of these leases were commercial leases originally. The land was leased to developers to erect dwellings, those developers then rented the properties setting their own rents. The point I am trying to make in this section is that if the casualty clause had been correctly addressed in an examination of the lease prior to an offer being made for an assignation there would be no problem.

foregoing and having had the opportunity to examine the Wishaw and Coltness chartularies I doubt whether there are more than **twenty leases** with an active onerous casualty clause.

When demands have been made, these demands have, in almost every case, been eventually settled by the solicitors or their insurers making the payment to the landlord. There has, to my knowledge, been **no case** where an individual ***qua*** tenant has made a substantial payment to his landlord. I except from this statement the case where the tenant has purchased an assignation of the lease in full knowledge of the casualty clause. At 3.5 the Paper refers, as a result of correspondence received, to hardship caused to individuals. I strongly dispute the so called facts in this section. The fact that a demand was made on a tenant does not mean that the tenant was the person who paid the casualty. May I suggest that you revert to your informants and ascertain who in fact funded the payment of the casualty. The examples given are recognised and I have it on the authority of the landlord concerned that settlement was made with funding coming not from the tenant but from a third party. Tenants have certainly been caused mental hardship. This is because their incompetent solicitors refuse to accept responsibilty for their shoddy work. The last two sentences in 3.5 lay bare the problem. I can see that we are going to have a complete review, and a change in the law faster than it is possible to get an incompetent lawyer to face up to his responsibilities.

You refer to the Adjournment Debate on the 13th November. I would like to place on record that I regard remarks made about me in the House of Commons as being (in ordinary circumstances) defamatory. I have challenged Hood MP to repeat those remarks outside of the House. You also refer to reports in the Press. I am advised by Counsel that certain reports about my companies activities are defamatory

A purchaser of a lease with an onerous casualty clause may not only be liable for past casualties but will also have the value of his interest diminished by the future obligations. Accordingly when solicitors and insurers finally come to do the decent thing by the tenant (usually as a result of the tenant taking alternative advise) the future obligations are bought out. I have produced a formula, see my letter 5th May, that shows on a compulsory redemption scheme the buyout should be a multiple of four times the present annual rental value. In fact our company has been routinely settling with the Sun Alliance Insurance Company at a rate of two and a half times the annual rental value. I am sure Sun Alliance will confirm this.

3. This section is difficult for me. I am hopeful that someone with better academic qualifications than I am ever likely to have makes a contribution on the points below.

Despite the language of various Acts a duplicand at every 19 years is **not** a casualty. A casualty is an obligation to a landlord falling due on the happening of a casual event. If the writer of the Paper can understand this then he will begin to understand why the prescriptive period of a casualty is and should be twenty years and that for a duplicand at a regular interval five years. In order that an obligation can be demanded the landlord must know that it is due. It does not take much organisation to demand 19 year duplicands. Both parties must be deemed to know when they are due: look at the lease and divide the subsequent years by 19 and you will immediately know when the

last and the next duplicand was and is due. However, by the very nature of a casualty no one is on notice that it is to become due. If the landlord is not informed of an assignation he may have no way of knowing that a casualty has been incurred. Registration of leases in the Sasine and Land Register is not an essential to possessing a 'real right'. "Possession is the sasine of the Lease". And even if the Lease and subsequent assignation are recorded why should the landlord be expected to continually search the Register. It is quite clear that 999 year leases are assignable without reference to the landlord. Although intimation is required for the completion of an assignation in practice the intimation of an assignation is rarely made. We have only been able to identify one intimation out of a total of thirtyfour assignations in the twenty years prior to my company acquiring the Blackwood Estate. The only point of contact the landlord may have with his tenant is the collection of rent. However, with inflation the value of the rent has fallen so much that in most cases it is not economic to collect the rent. I would accept a proposal that the right to collect a casualty should prescribe in five years if, and only if, there is a corresponding duty on the tenant to intimate the assignation inducing the casualty (but see answer 2.(3)(a). The obligation is on the tenant to pay the casualty not the landlord to demand the casualty.

The suggestion that a casualty is a periodic payment not only flies in the face of reason it does violence to the English language. Let us take the hypothetical situation where I am the landlord of St. Giles Church, Edinburgh, and my tenants the Church of Scotland have a 999 year Lease with a casualty clause entitling me to one year's rental value on assignation to a singular successor. When is my next casualty due? How can a payment that may never become due be a periodic payment? Does the author of the Paper (the Author) think that Counsel in the *M.R.S. Hamilton v Arlott* case was the only one to consider the prescriptive period of a casualty. They all tried, initially, to argue for five years but only in the *Arlott* case did the solicitor for the tenants have the temerity to try the argument in front of the sheriff. At least three other Counsel for tenants (instructed by the insurers) had considered the point and thought it not worth arguing.

The Paper suggests that the right to a monetary payment which falls due on a particular date is not one of those rights classified as *res merae facultatis*. If the Author is right then the right to collect a rent or a casualty is not a right but an obligation. The Author is getting into dangerous ground here. If the landlord is obliged to collect rents then he might be inclined to fulfill his obligation completely and irritate for non payment of rent. At this point I would remind the Author that the provisions at S.4-7 of the Miscellaneous Provisions Act 1985 do not apply to leases of land used wholly or mainly for residential purposes. As far as I am aware no landlord, being the proprietor under a 999 year lease where the rents are so low as to be not worth collecting has ever taken advantage of this 'legal loophole'.

The Paper suggests that the negative prescription should apply to the right of the landlord to collect future casualties. Is the author of the Paper seriously suggesting that the negative prescription be applied to heritable rights? I refer the Author to to J.M. Millar, *A Handbook of Prescription*, 1893, at pages 79-83. In *Macdonald v Duke of Gordon*, 1828, 6 S. 600. where the defender pleaded that the pursuer had lost his title to a right of patronage by negative prescription, Lord Corehouse said: "If there be a principle well settled in the law of Scotland, it is this - that the right of ownership

in a feudal subject, being complete, cannot suffer the negative prescription..." . I see no reason in principle why the same dictum should not apply to leasehold subjects. May I also refer you again to Millar at page 86 where he usefully instructs us on the principle of the *res merae facultatis* and see in particular the case *Governors of Cauvin's Hospital v Falconer*, 1863,1 M 1164 quoted.

PROVISIONAL PROPOSALS

1. (a) I have already made my comments regarding the linguistic and legal acrobatics employed to come to this proposal.

(b) This, as I understand it, is the law at present and it is therefore not necessary to make any proposal.

(c) What do you propose in the event that the assignation of the lease is not registered?

2. (1) Please see my comments regarding the negative prescription applying to heritable rights. How do you propose that the landlord be put on his notice that a casualty is due? Someone purchasing without a mortgage would have no need to record his assignation and could wait until after the new five year prescriptive period had passed before recording his assignation.

(2) I have no problem with this providing there is an obligation to notify the landlord of the assignation inducing the obligation to pay the casualty.

(3) (a) See my earlier comments. However, just because it would suit both tenant and landlord this is not good reason to corrupt our law of heritable rights.

(b) Your proposals generally are going to have an undesired, and perhaps unwanted, effect. Landlords are going to complete audits of their estates and will shortly be issuing any outstanding notices for casualties due in the last twenty years.

(c) & (d) See (b) above.

3. Why not! He paid a solicitor to check his titles. It is convenient that the prescriptive period on the obligation to pay a casualty, 20 years, is the same as the prescriptive period for suing your solicitor. The five year prescriptive period for suing your solicitor runs from the date when you could reasonably have expected to know that your interests had been damaged. What's the philosophy here? Is the Author concerned about the respective rights of the tenant and landlord or the financial wellbeing of the legal and insurance professions.

4. I believe the proposal to be in line with the present law.

5. The sanction of irritancy is only available where it is specifically provided in the lease. I have not seen a lease where it is so provided for.

6. Surely this is already the law? In any event landlords will regard this as a non-issue.

7. Abolition without compensation is confiscation. While the discounted cash flow value of (b) & (c) is low it is bad law to appropriate a person's property without some form of compensation even if the owner does not want to avail himself of the compensation provisions.

(a) & (d) would have the effect of handing the landlord's capital to the tenant, in practice in almost every case absolving the solicitor's and their insurers of the obligation to make good the solicitors conveyancing errors.

8. Why do I detect bias in these proposals? Is it because in every case the onus to do something is placed on the landlord. Why not expect the tenant to serve notice on his landlord that there is a casualty clause in the lease and that if the landlord does not intimate his agreement to change then the status quo will remain. See my remaks at 7 regarding abolition without compensation.

9. See my remarks at 8 above.

10. Before addressing the questions posed I would like the Author to answer this question. What is the philosophy guiding the author on a suitable redemption scheme? Is it to be that an honest attempt is made at valuing the landlord's interest and a capital sum provided to replace his casualty income or is a politically acceptable solution going to be imposed on the landlord? If it is the former then I will attempt to provide the mathematics. If it is the latter then we are wasting our time and should let the politicians at the Scottish Office decide the question. Assuming the former is required:

(1) In calculating the discounted cash flow value of an income stream the factor that will have most influence on value is the assumed date of the next payment due. If one were to assume that the first payment due was in the next year then the value of the income stream would be, and I will use the yield on 2.5% British Consols as the Discount Rate, that bought out in the calculation below

The discounted cash flow value of one pound every nineteen years discounted at 8%, assuming that the next casualty is due in one years time is

$1 \times [(1.08)^{-1} = 0.9259$

$(1.08)^{-20} = 0.2145$

$(1.08)^{-39} = 0.0497$

$(1.08)^{-58} = 0.0115$ Sub Total 1.2016

I will not carry this any further. You should be able to see that no matter how far into the future we discount the cash flow value of a duplicand occurring every nineteen years the redemption value is never going to exceed a multiple of 1.21.

When we make the assumption that the next duplicand is due in eighteen years time the redemption rate drops to a multiple of 0.33.

(2) Assuming a duplicand is payable on an assignation and we accept Building Societies' figures that houses change hands every seven years and the next casualty is due in one years time the maths are:

$1 \times [(1.08)^{-1} + (1.08)^{-8} + (1.08)^{-15}$ etc.]

In this case the discounted cash flow value is never going to exceed a multiple of 2.3.

Where the assumtion is made that the next assignation is due in six years time the multiple is 1.6

For a casualty due on the assignation of the lease and equal to one year's current market value I refer you to my letter of 5th May in which I make the mathematical case for a redemption rate of approximately a multiple of four times the current rental value. However, in terms of the question asked the highest value of a casualty in the

next twenty years must take in expected annual growth, estimated at 4.5% on a long term basis, and the maths are:
Redemption value = Current annual rent x $(1.045)^{20}$ = 2.4117
Curiously this is not far off the level at which deals have been done between the insurers and my company where a multiple of 2.5 has been agreed in every case.

My own proposals.

Given the pressure on the Law Commission to solve the 'problem of leasehold casualties' my proposals my seem very radical. I recommend that the Law Commission propose no change to the law. My reasons can be deduced from the previous pages. However, to summarise;

1. In almost every case of a demand for a casualty payment liability has fallen on the solicitor responsible for the conveyance of the assignation of the lease. Solicitors are to some extent supervised by the Law Society and it would be very unusual for adequate insurance cover not to be in place to cover negligent conveyancing. A change in the law should not be used to bail out solicitors and their insurers. Premiums have been paid and a fund exists to solve most of the problems. The Law Commission should notify the Law Society that it expects lawyers to deal with claims promptly. Where the prescriptive period has run its course in relation to taking action against a negligent solicitor it would have also run its course on the right of the landlord to collect past casualties.

2. The position of the tenant who purchased within the last twenty years in full knowledge of an onerous casualty clause remains the same. We can presume he took the casualty clause into consideration when making his offer. He is therefore deemed to be in a position that if he wants to invest in a buy-out with the landlord he is not paying for that interest twice. It must be assumed that landlords will act in their own best financial interest and if an offer is made to purchase a buy-out of an onerous casualty they will deal with it realistically.

3. My proposals do not deal with the tenant, with an onerous casualty clause, who purchased his lease more than twenty years ago without being informed of the casualty clause. On the Blackwood Estate we have one tenant, out of sixteen, of more than twenty years standing with an onerous casualty clause. That tenant was a universal successor and as such did not pay for his assignation. Given the frequency of sales of domestic property I doubt whether anyone will be affected by the gap in my proposals.

3. Before making any proposals the Law Commission should make further investigation into the size of the 'problem of leasehold casualties'. It may be that there is no problen at all!

Should the Commission like any further imput from me I will be pleased to assist.

Your faithfully,

SCOTTISH EXECUTIVE

Deputy First Minister & Minister for Justice
Jim Wallace QC MSP

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Roseanna Cunningham MSP
Convenor
Justice & Home Affairs Committee
Scottish Parliament
George IV Bridge
EDINBURGH

14 September 2000

JH/00/28/8

Dear Roseanna,

LEGISLATIVE PROGRAMME ANNOUNCMENT – ECHR BILL

The First Minister will today make a statement to the Scottish Parliament about the Executive's planned programme of legislation for the coming year. In that statement he will announce the Executive's intention to introduce a further Bill to amend certain aspects of Scots law which may be incompatible with the European Convention on Human Rights. The details of the Bill have yet to be finalised but in the light of what I said at the Justice Committee on 6th September I am keen to keep you informed about the key proposals we expect the Bill to contain.

- **Adult Mandatory Life Prisoners**

  We propose to introduce an ECHR compliant tribunal system for determining the release of adult mandatory life prisoners which would bring the arrangements for those prisoners into line with the existing arrangements for other life prisoners. This would involve a tariff or 'punishment period' set in open court and a review at the expiry of the punishment period to determine whether detention should continue on the grounds of risk to the public. The review would be carried out by the Parole Board sitting as a tribunal.

- **Security of Tenure for Members of the Parole Board**

  We propose to introduce statutory tenure for Parole Board members to ensure that the Board when sitting as a tribunal complies with Article 6 of the ECHR as an 'independent and impartial tribunal'. The arrangements would be similar to those introduced for part-time sheriffs. Appointments would be made by Scottish Ministers in accordance with procedures to be specified in regulations and a tribunal would be established to consider the removal of a Board member.

- **Legal Aid**

  On legal aid, the main proposals are:

  - The decision by the Appeal Court in the McLean cases - which is being appealed by the defence to the JCPC - confirmed that the Fixed Payments Scheme is ECHR compatible. However, the Court made a number of comments about the Scheme. Scottish Ministers propose to amend the legal aid fixed payments system for summary criminal cases to allow for the payment of time and line fees for a small number of exceptional and complex cases.

  - An amendment of the powers of Ministers to make provision that would enable the Scottish Legal Aid Board to grant civil legal aid for certain proceedings before tribunals where the provision of legal aid would be required to ensure that the relevant party obtained a fair hearing.

- **Homosexual Offences**

  We propose to repeal the provisions in section 13(2)(a) of the Criminal Law (Consolidation) (Scotland) Act 1995 which make it an offence for more than two consenting adult males to engage in a homosexual act in the privacy of their own homes. (This is the direct result of a recent decision in the European Court of Human Rights on the equivalent English provision).

- **Appointment of Procurator Fiscal to the Lyon Court**

We propose an amendment to transfer from the Lord Lyon the power to appoint the Procurator Fiscal to the Lyon Court.

It is our intention to issue a draft Bill to a wide range of organisations with an interest as soon as the detail of our proposals is finalised. I will write to you again at that time with a full explanation of our proposals and the ECHR background to each. Any additions to the Bill beyond those outlined in this letter will also be clarified at that time.

At present, I anticipate that introduction of the Bill will take place in the autumn.

I am copying this letter to the Clerk to the Justice & Home Affairs Committee.

Yours sincerely,

JIM WALLACE

JH/00/27/M

The Scottish Parliament

JUSTICE AND HOME AFFAIRS COMMITTEE

MINUTES

27th Meeting, 2000 (Session 1)

Monday 11 September 2000

Present:

Roseanna Cunningham (Convener)
Christine Grahame
Kate MacLean
Michael Matheson
Pauline McNeill
Phil Gallie
Gordon Jackson (Deputy Convener)
Maureen Macmillan
Mrs Lyndsay McIntosh

Also present: Dorothy-Grace Elder

Apologies were received from Scott Barrie and Euan Robson

The meeting opened at 2.04 pm

1. **Abolition of Poindings and Warrant Sales Bill – Order of consideration:** The Convener moved (S1M-1151)—That the Committee consider the Abolition of Poindings and Warrant Sales Bill at Stage 2 in the following order: section 1, the schedule, sections 2 and 3, long title. The motion was agreed to.

2. **Scottish Prisons:** The Committee took evidence on Her Majesty's Chief Inspector of Prisons for Scotland's Report for 1999-2000 from—

   Clive Fairweather, Chief Inspector of Prisons for Scotland; Eric Fairbairn, Deputy Chief Inspector, and Brian Henaghen, Staff Officer.

The meeting was adjourned from 3.29 pm to 3.39 pm.

3. **Leasehold Casualties (Scotland) Bill:** The Committee took evidence at Stage 1 on the general principles of the Bill from—

   Adam Ingram MSP;

   Professor Robert Rennie, Conveyancing Committee, and Linsey Lewin, Deputy Director, Law Society of Scotland.

4. **Subordinate Legislation:** The Committee agreed to defer consideration of the Human Rights Act 1998 (Jurisdiction) (Scotland) Rules 2000 (SSI 2000/301) pending further consideration by the Subordinate Legislation Committee.

The meeting closed at 4.26 pm.

Andrew Mylne, Clerk to the Committee