JH/00/29/A

The Scottish Parliament

**JUSTICE AND HOME AFFAIRS COMMITTEE**

**AGENDA**

**29th Meeting, 2000 (Session 1)**

**Wednesday 27 September 2000**

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

1. **Items in Private:** The Committee will decide whether to take item 7 in private, and whether to consider a draft report on the Protection of Wild Mammals (Scotland) Bill in private at its meeting on 4 October.

2. **Lord Advocate and Solicitor General:** The Committee will take evidence on the Crown Office's recent performance and future plans, and on Stage 2 of the budget process 2001-02, from—

   Colin Boyd QC, the Lord Advocate, and Neil Davidson QC, Solicitor General for Scotland.

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

   Allan Murray, Director, Simon Hart, Campaigns Director, Peter Watson, Solicitor, and Paul Cullen QC, Scottish Countryside Alliance.

4. **Subordinate Legislation:** The Committee will consider the following negative instrument—

   The Human Rights Act 1998 (Jurisdiction) (Scotland) Rules 2000 (SSI 2000/301).

5. **Domestic Violence:** Maureen Macmillan will report on her recent meetings with the Minister for Justice and Deputy Minister for Communities and with Executive officials.

6. **Petition:** The Committee will consider written evidence on petition PE 102 by James Ward received from—

the Accountant in Bankruptcy;

the Law Society of Scotland;

Money Advice Scotland.

7. **Protection of Wild Mammals (Scotland) Bill:** The Committee will consider its response to evidence taken on the Bill.

Andrew Mylne
Clerk to the Committee, Tel 85206

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

| | |
|---|---|
| Agenda item 2 | |
| Note by the Senior Assistant Clerk on Stage 2 of the budget process | JH/00/29/8 |
| Justice Department Spending Plans (extract from the Scottish Executive Paper *Making a Difference for Scotland*). [Note: Copies of the full paper can be obtained from Document Supply Centre or http://www.scotland.gov.uk under Publications.] | |
| Crown Office response to Committee's Stage 1 budget report | JH/00/29/6 |
| Agenda item 4 | |
| Extract from the 32nd report of the Subordinate Legislation Committee regarding SSI 2000/301 | JH/00/29/3 |
| Response by the Scottish Executive to the Subordinate Legislation Committee | JH/00/29/4 |
| Agenda item 6 | |
| Note by the Assistant Clerk on PE102 | JH/00/29/7 |
| Letter from the petitioner [Note: the enclosures referred to are available on request from the Clerks] | JH/00/29/5 |

**Papers not circulated:**

Agenda item 2

Members should bring with them the Crown Office and Procurator Fiscal Service *Annual Report 1999-2000* and *Strategic Plan 2000-03*. Together with a document *What does the Crown Office and Procurator Fiscal Service do?*, these are available from the Document Supply Centre, PHQ. Members should also refer to the

Committee's report on Stage 1 of the budget process 2001/02, reprinted as an annex to the Finance Committee's report (SP Paper 154). *Investing in You* can be obtained on the Scottish Executive website (http://www.scotland.gov.uk).

Agenda item 3
Members are reminded to bring with them the Protection of Wild Mammals (Scotland) Bill (SP Bill 10) and accompanying documents (SP Bill 10-EN).

Agenda item 4
Members are reminded to bring with them The Human Rights Act 1998 (Jurisdiction) (Scotland) Rules 2000 (SSI 2000/301), copies of which were circulated for the 27th meeting on 11 September together with a note by the Senior Assistant Clerk (JH/00/27/1).

Agenda item 6
Members are reminded to bring with them copies of the following responses received, all of which have been previously circulated—

JH/00/25/18 – Accountant in Bankruptcy
JH/00/25/19 – Law Society of Scotland
JH/00/26/9 – Money Advice Scotland

Further copies of any of the above may be obtained in advance on request from the clerks. [Note: Citizens Advice Scotland were also invited to comment but declined to do so.]

JUSTICE AND HOME AFFAIRS COMMITTEE

**Papers for information circulated for the 29th meeting, 2000**

| | |
|---|---|
| Correspondence between the Convener and the Society of Messengers-at-Arms and Sheriff Officers | JH/00/29/1 |
| PE83 – Correspondence between the petitioner and the clerks | JH/00/29/2 |
| Minutes of the 28th Meeting, 2000 | JH/00/28/M |

Adults with Incapacity (Scotland) Act 2000

The Executive has recently published for consultation draft codes of practice for:

- Attorneys appointed under Part 2
- Withdrawers authorised under Part 3
- Local Authorities

and draft regulations on:

- Certificates in relation to powers of attorney under sections 15(3)(c) and 16(3)(c)
- Countersignatories of applications for authority to intromit under section 26(1)(c)
- Local authority supervision under section 10(3).

Copies of all of the above are available from the Executive's website (www.scotland.gov.uk/justice/incapacity). The consultation period in every case is three months. Any member who considers that any of the documents merits consideration at a meeting of the Committee should notify the Clerk in the first instance.

**JH/00/29/**

# JUSTICE AND HOME AFFAIRS COMMITTEE

## Stage 2 of the budget process 2001-02

Note by the Senior Assistant Clerk

Background

The first stage of the annual budget process involved all committees scrutinising the expenditure proposals of the Executive contained in *Investing in You* and reporting to the Finance Committee. Thereafter, on 28 June the Finance Committee's report incorporating all subject Committees' reports was debated in the Parliament.

The second stage of the process commenced on 20 September with the Minister for Finance's announcement to the Parliament on spending plans and the publication of *Making a Difference: Spending Plans for Scotland 2001-02 to 2003-04*. It had originally been envisaged that the detailed spending proposals ("level 3 figures") for the next financial year would be unveiled at that point. However the Chancellor's spending review, announced in July, has resulted in an increase in the overall block grant, thus making possible additions to the level 2 figures presented in *Investing in You.* The Minister for Finance has made clear that the level 3 figures will only follow from the individual Departments in the weeks following the announcement on 20 September.

The role of subject committees and Finance Committee

In future years, it is expected that Stage 2 of the process will dovetail with Stage 1. Stage 1 will be the occasion for subject committees to take a strategic look at the policies and funding of a Department, including level 2 figures. It is expected that recommendations made at this stage will be taken into account by the Executive when the detailed plans, including level 3 figures, are being drafted. Stage 2 of the Parliamentary process presents committees with the opportunity to consider whether the detailed plans reflect the recommendations they made at Stage 1. If a subject committee is not content with the Stage 2 proposals then it should recommend to the Finance Committee how the Departmental budget should be amended.

The Finance Committee will report to the Parliament on the expenditure proposals of the Executive, having taken account of the reports of subject committees. The report will also cover the expenditure proposals of the SPCB and Audit Scotland. The Finance Committee has the power to put forward alternative proposals to those of the Executive, provided that these proposals keep to the overall expenditure limit used by the Executive.

Stage 2 this year

In its report to the Finance Committee, the Justice and Home Affairs Committee made specific recommendations on the Executive's expenditure proposals at Stage 1, as well as commenting on how expenditure figures and aims and objectives were presented in *Investing in You*.

The major element of the Stage 2 process will be the consideration of the Justice Department's response to the Committee's recommendations, which has already been circulated to the Committee (JH/00/28/9). The Crown Office response is included in the present circulation.

The Committee will take evidence from the Minister for Justice at its meeting on 4 October. Given that it is unlikely that the Justice Department's detailed expenditure plans will be available before mid-October, the Committee may wish to establish at that meeting whether it is the Department's intention to accept the Committee's recommendations in its level 3 spending allocations.

The Committee is required to report to the Finance Committee no later than the second week of November. It is not expected that this report will be detailed or lengthy.

21 September 2000 ALISON E TAYLOR

JH|00|29|6

**CROWN OFFICE**
25 CHAMBERS STREET
EDINBURGH
*Tel:* **0131-226 2626 Ext. 2516**
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**ANDREW C NORMAND**
**THE CROWN AGENT**

ACN/MRM

21 September 2000

Mr Andrew Mylne
Clerk to the Justice and Home Affairs Committee
Committee Chambers
George IV Bridge
EDINBURGH
EH99 1SP

Dear Mr Mylne

**MEETING OF THE JUSTICE AND HOME AFFAIRS COMMITTEE ON 27 SEPTEMBER 2000**

I refer to your letter of 15 September to the Lord Advocate, in which you mentioned the Committee's recommendations at Stage 1. You referred to an understanding, of which we were not aware until your letter, that the Committee expected a response prior to the meeting planned for 27 September. I have been asked by the Lord Advocate to reply in order that the Committee should have such a response prior to that meeting.

In our earlier evidence to the Committee I explained the funding position of the Crown Office and Procurator Fiscal Service, and my view that a substantial increase in funding was necessary to continue to provide an excellent prosecution service. I also explained our plans for a modernisation project, and our intention to become more responsive to the needs and interests of victims and witnesses.

We therefore welcomed the Committee's general support for improved funding of the Fiscal Service, and in particular its interest in support for victims and witnesses. The Committee also gave specific mention of our modernisation plans and hoped for full funding.

Over the Summer these issues have been to the fore in discussions within the Executive. The Committee will have noted the substantial increase in the provision for this Department which was announced yesterday by the Finance Minister, Mr McConnell. The Lord Advocate will of course be able to explain our new funding position, and what it means for our services, more fully at the meeting next week.

In the meantime I have enclosed, as requested, a breakdown of the announced forward provision down to Level 3 (i.e. internal departmental business objectives). We will be spending time over coming weeks in more detailed business planning, and in the New Year funding and performance plans will be published. I should add the caveat that such detailed allocations must remain flexible to

an extent to deal with any changing priorities which may emerge over the planning period, and any change to financial policies, for example, regarding the use of the End Year Flexibility facility.

Yours sincerely

Andrew C Normand
Crown Agent

**Crown Office and Procurator Fiscal Service**

**Level 3 breakdown of baseline provision - September 2000**

| | *2000-01* | *2001-02* | *2002-03* | *2003-04* |
|---|---|---|---|---|
| **Prosecutions** | 47.0 | 50.9 | 55.3 | 56.7 |
| **Deaths investigation** | 2.9 | 3.0 | 3.1 | 3.2 |
| **Complaints against Police** | 0.8 | 0.8 | 0.9 | 0.9 |
| **Scottish Charities Office** | 0.3 | 0.3 | 0.3 | 0.3 |
| Total | 51.0 | 55.0 | 59.6 | 61.1 |
| Q & LTR * | 0.1 | 0.1 | 0.1 | 0.1 |

* = net funding within recoveries to the Exchequer; ie not funded from Block provision

**JH/00/29/03**

## JUSTICE AND HOME AFFAIRS COMMITTEE

### The Human Rights Act 1998 (Jurisdiction) (Scotland) Rules 2000, (SSI 2000/301)

### Extract from the 32nd Report of the Subordinate Legislation Committee

The Committee noted that section 9 of the Human Rights Act is quoted in the instrument's preamble as an enabling power. However, the Committee notes that section 20 of the Act containing the procedural provisions applicable to subordinate legislation under the Act does not mention section 9.

The Committee therefore asked why the rules, insofar as made under section 9, are contained in a statutory instrument and subject to annulment.

The Scottish Executive Justice Department, in its response (see attached) indicates that Rule 4 of the instrument contains provision empowered by section 9(1)(c) of the Human Rights Act 1998. In terms of section 9(5), "rules" in section 9 "has the same meaning as in section 7(9)". Section 7(9)(c) provides that, as regards Scotland, "rules" means "rules made by the Secretary of State" and the view is taken that the power to make such rules transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

Section 20 of the Act makes provision about powers under the Act which are to be exercisable by way of statutory instrument and as to the Parliamentary procedures on any such statutory instrument. There is no specific mention of section 9 in section 20, but section 20(2) provides for the power to make rules under section 7(9) to be exercisable by statutory instrument and section 20(5) makes such a statutory instrument subject to annulment.

Notwithstanding the terms of section 9(5), the Executive takes the view that any exercise of the power conferred by section 9(1)(c) is subject to the provisions of section 20(2) and (5), namely the power is exercisable by statutory instrument and the statutory instrument is subject to annulment.

Section 9(5), however, is merely a definition provision and does not, for example, apply section 7(5) to rules made under section 9 nor that rules under section 7(9) may include provision under section 9(1). On one interpretation the reference to section 7(5) merely attracts the definition that is "rules made by the Secretary of State". There are various other provisions in the Act that confer powers on the Secretary of State to make rules not all of which are subject to the same procedure. The absence of a reference to section 9 in section 20 therefore gives rise to doubts as to whether rules under section 9 should in fact be made by Statutory Instrument and be subject to any procedure.

However, the position is not beyond doubt and on this occasion the Committee is prepared to accept the Executive's interpretation.

**The Committee therefore refers the instrument to the lead Committee and the Parliament on the grounds that further explanation of the procedures used was requested of and supplied by the Executive.**

JH/00/29/4

The Clerk to the Subordinate Legislation Committee
Scottish Parliament
EDINBURGH
EH99 1SP

**THE HUMAN RIGHTS ACT 1998 (JURISDICTION) (SCOTLAND) RULES 2000 (SSI 2000/301)**

**On 5th September 2000, the Clerk to the Committee wrote in the following terms –**

"1. The Committee notes that in the instrument section 9 of the Human Rights Act is quoted in the preamble as an enabling power. However, the Committee notes that section 20 of the Act containing the procedural provisions applicable to subordinate legislation under the Act makes no mention of section 9.

2. The Committee wishes to be advised why the rules insofar as made under section 9 are contained in a statutory instrument and subject to annulment.".

**The Scottish Executive Justice Department responds as follows :–**

Rule 4 of this instrument contains provision empowered by section 9(1)(c) of the Human Rights Act 1998 ("the Act"). In terms of section 9(5), "rules" in section 9 "has the same meaning as in section 7(9)". Section 7(9)(c) provides that, as regards Scotland, "rules" means "rules made by the Secretary of State" and the view is taken that the power to make such rules transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

Section 20 of the Act makes provision about powers under the Act which are to be exercisable by way of statutory instrument and as to the Parliamentary procedures on any such statutory instrument. There is no specific mention of section 9 in section 20, but section 20(2) provides for the power to make rules under section 7(9) to be exercisable by statutory instrument and section 20(5) makes such a statutory instrument subject to annulment. Standing the terms of section 9(5), the view is taken that any exercise of the power conferred by section 9(1)(c) is subject to the provisions of section 20(2) and (5) (in other words, the power is exercisable by statutory instrument and the statutory instrument is subject to annulment).

September 2000

For:
Scottish Executive Justice Department

# JUSTICE AND HOME AFFAIRS COMMITTEE

## Petition PE102 by James Ward

Note by the Assistant Clerk

Background

This petition calls for the Parliament to investigate the alleged illegal sequestration of the petitioner and invites the committee to consider changes in the law, specifically to consider the provision of a right of appeal against sequestration orders. On 15 May, the Committee agreed to find out 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.

I understand from the Executive that sequestration is not included in its current review of the law on diligence, nor is it under review by the Executive in any other context, although research is being conducted into the impact on small business of bankruptcy law.

The Law Society of Scotland, Money Advice Scotland, the Accountant in Bankruptcy, and Citizens' Advice Scotland were invited to submit written comments on the issues raised in the petition. The first three responded, while the latter declined to comment.

It was confirmed by all three organisations that there is no right of appeal against an order of sequestration. The responses all pointed out that the principal option for someone who believes they have been wrongly sequestrated is to petition the court for recall of sequestration. It appears that the petitioner did not pursue this avenue successfully on the basis of legal advice. If so, that would be a matter for him to pursue through the Law Society of Scotland's complaints procedure.

The Law Society of Scotland and the Accountant in Bankruptcy explained why an appeal mechanism might be inappropriate. Both on balance believe the law to be satisfactory. Money Advice Scotland suggested that there needs to be clearer guidance, information and advice available for individuals. The petitioner continues to question whether the current law is fair, and suggests it is incompatible with the European Convention on Human Rights.

Procedure

The Standing Orders make clear that, where the Public Petitions Committee (PPC) refers a petition to another committee it is for that committee then to take "such action as they consider appropriate" (Rule 15.6.2(a)).

Options

One option would be for the Committee to note the responses received and take no futher action, on the basis that a sufficient case for proposing a change in the law has not been made.

Another option would be for the Committee to refer the petition and the responses received to the Executive, asking for its view on whether there is a case for changing the law. It could also be asked whether it has any plans to improve the information available to individuals facing sequestration to reduce the risk of them failing to exercise the rights provided by the current law; and whether it has satisfied itself that that law is compatible with the European Convention.

21 September 2000 FIONA GROVES

JH|00|29|5

8 September 2000

The Scottish Parliament
Justice and Home Affairs Committee
Committee Chambers
George IV Bridge
Edinburgh
EH99 1SP

For the attention of Miss Fiona Groves

Dear Miss Groves

Petition Number PE102

With regards to our telephone conversation you wish me to comment on letters from the Law Society of Scotland - Mrs Anne Keenan, Money Advice Scotland - Yvonne Gallacher, Accountant in Bankruptcy - Stephen Woodhouse, in all the comments that the current law is satisfactory and also the debtor has paid his debts in full or has given sufficient security for their payment and if the debtor was unable to pay the full debt depending on the amount he can apply to the Court for Time to Pay both pre and post decree.

As in my case, I turned up with the full amount to pay the creditor but what has been clearly omitted from the three letters is that when you are sequestrated under the law as it stands the creditor means all creditors, the trustee simply takes in all your debts, eg

if a person in Scotland decides to go after someone for a debt of £1,700 and applies to the court even if that sum is erroneous and subsequently that person is made bankrupt the Accountant in Bankruptcy and his/her trustee will inform his building society, the banks, or others, so what it means is if a person owes £1,700 and his debts accrue up to £200,000 then according to the law as it stands in Scotland the Accountant in Bankruptcy via viz the trustee expects the sequestrated (Bankrupt) to pay the £200,000 outstanding. I believe that the people of Scotland will be as shocked as I have been to these known facts. I simply ask why Mrs Keenan of the Law Society and Mr Woodhouse of the Accountant in Bankruptcy say that the current law is satisfactory.

I also ask how many recalls have been brought to the Courts and being

granted by reason of error on the part of the Accountant in Bankruptcy or said trustee.

I think you will find as I have the results may be surprising to you.

Production Document [1] THE HERALD Mr James Ward
Production Document [2]THE HERALD Mr Ian Cross
Production Document [3] THE SUNDAY MAIL Mr Frank Warren
Production Document [4] THE SUNDAY MAIL Ms Victoria Young
Production Document [5] THE SUNDAY MAIL Proudfoot & McKenzie
which I enclose.

I have other issues which I will raise latter with documentation to back up, the reason for the justice committee to change this law. Which I believe contravenes article 6 and others in the Humane rights convention.

Yours sincerely

James Ward
69 Station Road
Blantyre
G72 9AE

Fax & Post

JH/00/29/2

26 Burnbrae,
Maybury Drive,
Edinburgh,
EH12 8UB

Andrew Mylne,
Clerk to the Justice & Home affairs Cttee.,
The Scottish Parliament,
Room 3.9
Committee Chambers,
George IV Bridge,
Edinburgh EH99 1SP.

21st September 2000

Dear Mr. Mylne,

Concern for Justice.
PE83.

I have to thank you for your letter of 18th September and I note what you say.

I have to disagree, however, with the convener as to what the general issue arising from the Petition actually is. It is not about Judicial Privilege. It is about the rights of the people of Scotland to be presumed innocent until proven guilty according to Law and to be allowed to answer accusations of criminal behaviour made against them before being declared guilty of such behaviour and publicy condemned for it.

In the case which highlighted an apparent anomaly in our Law and led to the Petition being presented to the Scottish Parliament a number of men were accused of criminal conspiracy by the person on trial. These men were then named not only in the Court but throughout the Media, having been condemned as conspirators by the Sheriff without their having had any opportunity to reply. That is a publicly known fact.

When such accusations are made in a criminal court by the person on trial in order to achieve acquittal and the Sheriff on the Bench states he believes these accusations without ever hearing what those accused have to say in reply: when that Sheriff goes on to acquit the person on trial, on the basis of these accusations, and in so doing publicly condemns those named members of the public about whom he knows nothing, members of the public who have not been allowed into his court to answer these accusations: when the Sheriff allows their names to be published throughout the Media, then we all have the right to question whether that Sheriff was acting in accordance with the Law. That is what the Petition was about.

Nobody is above the Law, and so all Sheriffs and Judges must act in accordance with, and within the Law. If they do not do so they must be held to account, and cannot hide behind the Privilege afforded to them while on the Bench. The protection of Privilege should not allow members of the Bench to override the rights of the people under the Law. If it does, as the Convener seems to think, then that protection is itself a matter of public concern and requires investigation. Those men

accused and condemned of conspiracy without a hearing, in the case which gave rise to this, were not just aggrieved, they were not allowed to answer their accuser and thereby were denied not only their rights under the Law of Scotland as people have understood the Law to be, certainly up until now, but it was also a denial of their Human Rights. The people of Scotland are entitled to know where they stand on this. What does the Law of Scotland have to say on this matter?

I will be away until late October, but in the meantime I will advise the committee of your reply. There will probably be a meeting within the next few months when the matter will be discussed and I will write you then with regard to the decisions made.

Yours Sincerely,

A. MacKenzie .

Agnes MacKenzie ( Concern for Justice ).

JR/00/29/2

The
Scottish
Parliament

**Justice and Home Affairs Committee**

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Mrs Agnes Mackenzie
26 Burnbrae
Maybury Drive
Edinburgh
EH12 8UE

18 September 2000

Dear Mrs Mackenzie,

**Petition PE83**

Thank you for your letter of 21 August, which I have now discussed with the Convener.

The Convener has noted your comments about my note to the Committee, and about certain remarks made by members of the Committee during the discussion of it on 2 May. Nevertheless, it is not the Convener's nor the Committee's intention to reopen discussion of the petition.

The Convener recognises that there is a very general issue arising from the petition that is, in principle, distinct from the circumstances surrounding the trial of Donald Macleod. That issue is whether there should be limits on the absolute privilege currently attaching to statements made by a sheriff or judge in court. However, the Convener's view is that such privilege is an essential safeguard of judicial independence and the fact that some individuals will from time to time be aggrieved by the exercise of it in particular cases is an inevitable consequence of the absolute form such privilege must take. She therefore does not consider that it would be a profitable use of the Committee's time to consider that general issue. She also continues to believe that it would be extremely difficult in practice to discuss that general issue on the basis of your petition without the Committee becoming involved in discussing the circumstances of the trial and the various allegations made during it.

The Convener has asked me to copy this letter to the other members of the Committee, together with yours. A copy also goes to the Clerk to the Public Petitions Committee for information.

Yours sincerely,

ANDREW MYLNE
*Clerk to the Committee*

26 Burnbrae,
Maybury Drive,
Edinburgh,
EH12 8UB.

21st August 2000

Fiona Groves,
Asst. Clerk,
Room 3.10,
Committee Chambers,
George IV Bridge,
Edinburgh,
EH99 1SP.

Dear M/S Groves,

PE83 - Concern for Justice.

Thank you for your letter of 20th July 2000,with enclosures which I have just received on my return from holiday.

Having read the note which was prepared in advance of the meeting on Tuesday 2nd May 2000, I have to say that the clerk appears to have misread the situation which we wished to have presented to the committee, and thereby may have inadvertently misled the committee as to what it was really about.

There are several points which I wish to make with regard to his note. He says that the PPC suggested the committee should consider only the general issues raised and not the particular facts and circumstances of the court case that gave rise to the petition. That was good advice as it is a general issue which could affect any of us individually including any MSP. But the committee did not deal with it as a general issue, referring immediatley to the case which gave rise to it, and one of the committee members actually implied that we thought we could " use the Parliament's committees as a way of having a trial reheard". That was an insulting statement and very far from the truth. Nobody wants a re-trial, the man in the dock was acquitted, and he will not be re-tried. Nevertheless that does not mean that those condemned without a hearing have no right to ask if they were treated in accordance with the Law, and to seek justice for themselves, regardless of the Sheriff's Privilege.

The case which gave rise to the petition did involve a minister of the Free Church of Scotland,as the clerk rightly pointed out in his note.The Sheriff did not, however, only make " various statements to the effect that the women concerned had made false allegations against him". The Sheriff said he believed the accused's claim that he had been the victim of a conspiracy, that the women had gone to the police and even into the witness box to make false allegations about him all to please the men he named and claimed were jealous of him and wished to bring about his downfall. What women in her senses would do that? What man in his right mind would ask or expect anyone to do that?

The clerk goes on in his note to say that ' The group Concern for Justice was set up in direct response to the above case and has as its stated aim clearing the names of the women concerned". The group was set up as stated,but it was set up by the men accused of conspiracy by the minister concerned, ( Donald Macleod ). They were accused by him of procuring the girls to lie on their behalf. The main aim is to get some justice for these men, who were condemned without a hearing, without even being seen by the Sheriff,and about whom he knew nothing, condemned as conspirators and publicly vilified throughout the media, with written and spoken contributions from Donald Macleod himself. There could only be a conspiracy, of course, if these men had in fact persuaded the girls to make false allegations to please them and they were all in it together. The girls were therefore also condemned by the Sheriff as co-conspirators. There was no real evidence presented to that court of any conspiracy, as there was no conspiracy. Donald Macleod dragged the Free Church into the situation and accused his colleagues and fellow ministers of conspiracy in his desperation for acquittal. Nobody expected the Sheriff to believe him.

Although Sheriffs are protected by Privilege while on the Bench, they must respect that privilege as it does not give them carte blanche to say what they like about any member of the public who has not appeared in their court just because the accused claims he has been set up and names the people who are supposed to have set him up. It would make a mockery of our criminal justice system if all Sheriffs and Judges behaved in the way the Sheriff presiding at Donald Macleod's case behaved. We would all be at constant risk of being publicly condemned and vilified without any means of redress, which seems to be how the Law stands at the moment. If that is the Law, it is indeed an Ass.

The convener of the Justice Committee was apparently of the opinion that the petition arose " out of a long-running theological dispute in the Free Church of Scotland". That, of course, was Donald Macleod's claim. But the Police are not concerned with theological disputes they are concerned with criminal matters, and they investigated these allegations very thoroughly before sending their report to the Procurator Fiscal. Could they have been hoodwinked by five young women who didn't all know one another, and none of whom knew all of the men supposedly persuading them to make these allegations?

I was a witness for the prosecution at the trial, in respect of Donald Macleod's supposed alibi, and I know I told the truth. Also I and others knew about one girl's unpleasant experience 10 years before the trial. We knew long before the man whom Donald Macleod claimed had persuaded her to make false allegations about him to the police and in court. That man who was vilified by Donald Macleod in the press, eventually left the Free Church about two years ago and has no more to with it. He is a brother-in-law of Donald Macleod, married to his wife's sister.The girl is the daughter of Mrs. Macleod's brother and also of my sister. They were not involved in any conspiracy. The girls who went into the witness-box were those who were courageous enough to do so, at the request of the fiscal.

In January this year the church did finally split, not because of any theological dispute but because those who left were not prepared to take part in a cover-up. I was asked to chair the Concern for Justice Fund Committee as I had been a witness in the court. I am not in the Free Church, Continuing or Otherwise, nor am I ever likely to be. I cannot, however, in all consience look the other way because of what I know to be true.

Concern for Justice would like to establish what the Law is. Is it a fact that under the Law of Scotland any of us can be publicly condemned and our reputations destroyed by a Sheriff just becaues he is protected by Privilege and decides to accept what the person on trial accuses us of in order to get acquitted? And that without the Sheriff seeing us and hearing what we have to say in reply!

Concern for Justice will probably have a meeting sometime before the end of the year to decide where we go from here. Presumably we could present another petition in our own words now that we understand the format required.

I think I will send copies of this to the various members of the Justice Committee who were present at the meeting on 2nd May although they may not get around to reading it. Please pass my comments on to the clerk. I am not surprised he was confused, most people are, that's what it's all about.

Yours Sincerely,

A. Mackenzie

Agnes Mackenzie.

Copies to Committee members.

JH/00/29/1

**From: the Convener**

**Reply to: Clerk to the Committee**
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Roderick Macpherson
Society of Messengers-at-Arms and Sheriff Officers
11 Alva Street
Edinburgh EH2 4PH

19 September 2000

Dear Mr Macpherson

**Abolition of Poindings and Warrant Sales Bill**

Thank you for your letter of 11 August.

I am pleased that we have now succeeded in resolving most of the issues that have arisen in what has become a protracted correspondence.

I am sorry that we continue to differ on whether I should have challenged Mr Sheridan about the statements made in the Financial Memorandum to his Bill about its estimated costs. While I note what you say in your latest letter, I remain unconvinced. You give reasons why you find his statements implausible, and suggest that the Committee, or other MSPs, might have challenged them during Stage 1. However, for reasons I have already explained at length and don't propose to repeat here, any such challenge would have been quite different in kind from the challenge made in my original letter to you, to which you took such exception.

I only wrote to you on 4 May because of the allegation made by Mr Sheridan during the Stage 1 debate, which was based on evidence which suggested a discrepancy between the views of your Society and the evidence given to my Committee. If you can provide comparable evidence to suggest that, in making the statements about estimated costs in his Financial Memorandum, Mr Sheridan was being untruthful or disingenuous, I would of course be prepared to take the matter up with him. In the absence of such evidence, however, I must leave it to individual members of the Committee, or other MSPs, to take up your challenge to the accuracy of Mr Sheridan's cost estimates during the remaining proceedings on his Bill. The Parliament Chamber is, I am sure you will agree, a better forum for such issues to be debated than in correspondence of this sort.

At the end of your letter, you point out that a letter of 2 June from the President of your Society has not been acknowledged. I can only imagine that this was a misunderstanding and that the letter was not, at the time, considered to require a reply. If that was not the expectation, I can only apologise and ask you to assure the President that the offer of assistance by the Union Internationale des Huissiers de Justice et Officiers Judiciaires has been noted and will be taken up should a suitable opportunity arise in the future.

Copies of this letter go to members of my Committee, Tommy Sheridan and Alex Neil.

Yours sincerely

ROSEANNA CUNNINGHAM MSP
*Convener*

SP

*From R.A. Macpherson, Past President*

# SOCIETY OF MESSENGERS-AT-ARMS AND SHERIFF OFFICERS

*Affiliated to Union Internationale des Huissiers de Justice et Officiers Judiciaires*

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Ms. Roseanna Cunningham, M.S.P.,
Convener of the Justice and Home Affairs Committee,
Committee Chambers,
George IV Bridge,
EDINBURGH, EH99 1SP.

11th August, 2000.

Dear Convener,

**Abolition of Poindings and Warrant Sales Bill**

Thank you for your letter of 13th July which arrived just after I went on holiday. I am much obliged to you for the care that you have taken in answering the questions I put to you in my last letter. Indeed, if I may please say so, I am grateful that you have so well established a conciliatory tone in our correspondence. Our Society hopes only to be on the best possible terms with the Justice Committee and wishes to do all that it can to be of real assistance to your Committee in its important work. Please be assured of our goodwill to the Committee and to you personally.

I quite agree with the approach you have taken in your letter of 13th July: there is no point in pursuing aspects of our disagreement. Your assurance about your intentions - that you never meant to suggest any pre-judging of the merits of any "serious accusation" against me - is sufficient to settle the matter. After all, "it is incumbent upon us, and it contributes also to our own tranquillity, that we put the best construction upon a thing that it will bear," as Tom Paine's words happily express my point.

What you have written about the remarks made by Mr. Alex Neil is also perfectly fair, and I gladly acknowledge my appreciation of your efforts to be, and be seen to be, strictly neutral. In fact, I shall not be writing to him at the moment. He has referred to sheriff officers as "a mob of lackeys" or "bully-boys", and I fear that my calling him to account for such rudeness might just force him into ill-judged self-justification. I shall save him from that embarrassment during this leadership election period in your party. However,/

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However, if he ever happens to have sight of this letter, he will see this assurance: he and all of his colleagues on the Social Inclusion Committee can count on our Society to give all and any assistance, without trace of rancour or resentment at the hostile way in which we have been misrepresented thus far.

But I *must* take up that part of your letter where you write that you had no evidence to suggest that Mr. Sheridan's statements in his bill's Financial Memorandum were open to challenge in the way I said they were. The Scottish Executive told your Committee (I quote from Section 27 of the Memorandum by the Scottish Executive to the Justice and Home Affairs Committee, dated 4th November, 1999) that it was evident that the claim of no cost implications, although not quantified, was "far from accurate". In my last letter, I referred to what the Scottish Law Commission (in its Memorandum to your Committee, Section 13) told you about the "no costs" claims: "We feel bound to say that we do not find them credible." And the transcript of my evidence before you records that I drew your attention to the joint CoSLA and Scottish Executive report, *It Pays to Pay*. "In *It Pays to Pay* [page 3] we are told that one of the key points to note is that the abolition of poinding and warrant sales *would* have a major effect on council tax collection levels". As a local government councillor - with the fiduciary responsibilities of that public trust - Mr. Sheridan can be presumed to be well-informed about all this. Yet, in my presence, the Committee members seemed to let some of these and other telling quotations be dismissed by Mr. Sheridan as "conjecture". And this was how he disputed the sense of my argument: "you do not have statistics or facts to prove that the number of people who would not pay their debts would increase greatly." Quite so: but it would be unfortunate for the Committee's reputation if it were seen both to have wanted sight of impossible proofs of the future, and at the same time to have believed in Mr. Sheridan's *clairvoyance*.

Even the best revolutionaries know of no way of judging the future but by the past. I told you that a part of the experience of the past, as recorded in the Scottish Executive Central Research Unit (I.R.R.V.) 1999 report on Council Tax collection (Section 4.33), is that "those local authorities with a higher level of poindings and warrant sales, do have a significantly higher level of collection overall." The acknowledgement that the Justice Committee made in its Stage 1 Report (Section 45) that "No-one can say for certain ... that abolition will have no adverse effects" just makes matters worse. The context of the remark suggests that while you did know that the Financial Memorandum's claims of "no costs expected" could not possibly be right, no one wanted to offer any criticism of Mr. Sheridan and the bill's co-sponsors - who had harshly criticised other witnesses/

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witnesses for so-called reliance on anecdotal evidence or speculation. I do not need to say that Mr. Sheridan "must know" his best estimates are wrong. I am simply calling attention to the very things that you yourself judge to need investigating: "apparent discrepancies".

If you accepted, as the literal truth, that it was Mr. Sheridan's "best estimate" that his bill to abolish poindings (and this bill suggested *no* replacement diligence) would have "no costs expected" on the Scottish administration, "no costs expected" on local authorities and "no costs expected" on other bodies, individuals and businesses, I wonder what your Committee could have thought was meant by Mr. Mike Dailly's concession, in his testimony with Mr. Sheridan before your Committee, that "if the Bill proceeds, some people will win and *some will lose*." By *losing*, surely I do not misrepresent Mr. Sheridan and his colleagues by saying that this loss is *financial*? Who was going to lose? The Committee did not ask. The last sentence of Paragraph 6 of the Financial Memorandum ("which contains a *non sequitur*", as pointed out by the Scottish Law Commission *Memorandum*, Section 13), made it entirely apparent that Mr. Sheridan's reasoning on costs was confused, at the least. Here he was even talking of "negligible" costs, not none. You were specifically invited to clarify this. The Committee did not do so.

I realise your Committee held that the case for abolition was based upon a "moral principle." We disagree on this point of principle; but I acknowledge that matters of conscience are often - and rightly - held without the slightest thought of mundane cost. However, the Committee's Stage 1 Report (Section 46) acknowledged Parliament's "responsibility to take a more pragmatic view." Unless I am greatly mistaken, examining the "costs expected" of proposed legislation is part of the Committee's and Parliament's pragmatic responsibility. The Committee did not fulfil it. Instead, it looked for praise for its "carefully thought out, responsible and, above all, reasonable" conclusion: abolish poinding in principle, and in practice put all faith in the Executive to find something new. To be candid, one really only has reason to doubt, from the evidence you took, that such a novelty can be found - this to-be-discovered diligence against moveable property, which "must bear no semblance to poindings" (S.N.P. News release, 8th June). As you said in Parliament in the poinding debate on 27th April, albeit in a different context: "We are in serious Lewis Carroll territory here." How perceptive was your warning of Wonderland: only by the works of fancy or *legerdemain* can the claim of "no costs expected" seem the truth.

Of course the claim of "no costs expected" was beyond the line of possibility! I

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Ms. Roseanna Cunningham, M.S.P.,
Convener of the Justice and Home Affairs Committee.

11th August, 2000.

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*am* "in a position to say that the cost estimates in Mr. Sheridan's memorandum are factually incorrect". To prove it, all I need do, at the least, is produce this one example: I remind you that it was shown - indeed, it was never doubted - that sequestration is "considerably more expensive" than poinding and sale, and, moreover, unlike poinding and sale, imposes costs on the public purse (Scottish Law Commission, *Discussion Paper No. 110*, pp. 62-64).

On this theme of "apparent discrepancies", (but what a minor one it is, by comparison) I must also refer you to Paragraph 3 of the Financial Memorandum. "In the year 1998, there were 23,067 reports of poindings carried out in Scotland," it tells Parliament; Paragraph 7 then says "A Scottish Office study of debtors published in April 1999 (Scottish Office Central Research Unit, Legal Studies Research Findings No. 10, *Evaluation of the Debtors (Scotland) Act 1987: Study of Debtors*) found that 39% of debtors subject to a poinding or warrant sale had suffered personal distress." I wonder how many debtors this implies were shown - objectively, and by no less an authority than the Scottish Office Central Research Unit - to have "suffered personal distress"? How many did you think? In its Stage 1 Report, the Committee's very first reason given for supporting the abolition of poinding was this: "The evidence that poindings and warrant sales cause undue distress to debtors in many cases is compelling" (Section 44). An important - and unchallenged, by you - statistic in the Financial Memorandum on this point will certainly be seen as part of the "evidence" upon which the Committee relied.

When I tell you that the *Study of Debtors* records that the total achieved sample of respondents or interviewees with experience of poinding and warrant sales in fact amounted to only 39 people - (so 39% = 15.2 people!) - have I not indeed indicated an apparent discrepancy? You have been fed a concoction!

I want to be scrupulously fair to Mr. Sheridan about this. The *Study of Debtors* does indeed contribute many findings which properly strengthen his side of the argument. Had he quoted this extract from the Study's summary, he would - by fair means - have made his point: "Thirty-nine of those interviewed had experienced either a poinding or a poinding and warrant sale. For many, [i.e. many of the 39] the diligence was a frightening and intimidating ordeal. Several people reported health problems which they attributed to the levels of mental stress they experienced. Interviewees generally thought the diligence was outmoded and should be abolished." But see what has been done instead. Look at the *method* in it. The Study's statement that the total evaluation programme of all aspects of the Debtors Act was based on interviews with a sample of 100/

Ms. Roseanna Cunningham, M.S.P.,
Convener of the Justice and Home Affairs Committee.



100 people identified from court records - of whom only 39 had experience of poinding - becomes the excuse to turn the thirty nine into a percentage.

Who was likely to bother to go back to the impressive sources of data recorded in Paragraph 7 of the Financial Memorandum to check that this percentage of 39 was real or imagined? This answer, it seems, is this: only one of the "Rottweilers in suits"! You see now why unsubstantiated accusations against us - such as those made in the Press and Parliament which gave rise to this present correspondence, and were clearly calculated to suggest to you that I was not a credible witness - are so hurtful to a rational debate on poinding. These discrepancies in Mr. Sheridan's evidence are perhaps only trifles. But your message to me is that the Justice and Home Affairs Committee will not be trifled with. Even as trifles, there is obviously a case that *another* witness to the Committee had indeed "been or might have been perceived to be, disingenuous or untruthful", as you put it. You will see, moreover, that the case against Mr. Sheridan is stronger than his against this Society.

So why should it be held a "serious allegation" if Mr. Sheridan suggests an apparent discrepancy, but not one if I do? You say that "in respect of no other witness has there been a serious suggestion that evidence given did not reflect that witness's true position". But my concerns about the misleading nature of his statistics were published in the *Scots Law Times* of 11th February. I do not need to ask if this misleading was deliberate. That is a proper question for Parliament, not for me. However I think it would become harder for a Convener, "acting in the general and non-partisan interests of the Committee, and of the Parliament more generally" to refute an accusation of partiality if the suggestions from only one side of the argument are treated as "serious". I hope that, on reflection, you will see that I *have* drawn a reasonable analogy - or, more accurately, contradistinction - between your treatment of me, and your treatment of Mr. Sheridan.

I referred to these discrepancies in Mr. Sheridan's memorandum in my effort to show how very unfair I thought was your first letter to the Society. I hoped thereby to make the crooked straight and the rough places plain; and you have indeed smoothed all, as I have acknowledged. It is not now my place to prosecute a charge against Mr. Sheridan's evidence. But as a well-wisher of the new Parliament, I do record my very real fear that the Justice Committee will be seen not to have done its work properly in its consideration of the general principles of this bill at Stage 1.

Unwelcome/

Ms. Roseanna Cunningham, M.S.P.,
Convener of the Justice and Home Affairs Committee.



Unwelcome as this suggestion must be to you, I believe I am not misguided in making it. Sir David Steel has written, in a letter to this Society's President, that in terms of Rule 9.3.2 of the Parliament's Standing Orders, it is not for him, nor for the clerks who advise members on bills, even to question the accuracy of the Financial Memorandum. "These are matters for the member in charge of the Bill to defend in debate during the passage of the Bill." Mr. Sheridan never had to. "The accuracy or otherwise of the Financial Memorandum may, of course," as the Presiding Officer continues, "be debated by the relevant Committee or by the Parliament in considering the Bill." Your Committee never did. Parliament never did. Instead, the "best estimates" were presumed to be accurate. You have made a free confession to me of this: "I have no reason to believe that the statements in Mr. Sheridan's memorandum are anything other than his best estimates." Whether the authorities I have quoted are right or wrong about the accuracy of the estimates is not the point. Neither is it my purpose to prove that the memorandum's author might have been "disingenuous or untruthful". My complaint is that the Committee never tested the Financial Memorandum.

I am sorry that I have had to write at such length on these points. Turning now to the next paragraph in your letter, I much welcome your comments that, in your role as Convener, you cannot make statements which would inevitably be seen as lending support to one side in an explicitly political dispute. I highly value your clear expression of this principle and see now that your method of replying to my very pointed requests for expressions of support is entirely correct. So I thank you for the strictly factual and unobjectionable acknowledgement that you make: "The members of your Society are indeed officers of court who are obliged under statute to act in accordance with orders of the court."

But let me show you what nonsense Mr. Sheridan has been giving out about the status of sheriff officers. "They are not independent officers of court", he wrote boldly in the *Daily Record*, 23rd February, 2000. It is a point of fact, as you acknowledge, that messengers-at-arms (and advocates too, for that matter) are officers of the court. So what can it mean that we are *not* independent officers of court? Either it misrepresents the facts, or the answer turns upon the meaning of the word "independent". The context of Mr. Sheridan's accusation suggests that only civil servants can be trusted to be independent. But would you not think it a slur upon officers of court, as a category, to suggest that they are not independent, because they are paid by fees? (Surely neither you nor the Deputy Convener is entirely neutral on the possibility of nationalising the Scottish Bar?/

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Ms. Roseanna Cunningham, M.S.P.,
Convener of the Justice and Home Affairs Committee.

11th August, 2000.

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Bar? - for that is the logical consequence of Mr. Sheridan's call in the *Daily Record*, "Nationalise the sheriff officers.")

Please ask your Committee's Clerk not to trouble to reply to my letter to him of 23rd June - that is, so long as I am correctly understanding your letter to me to answer the questions I had put to him. The answers I am taking are as follows: (1) No, none; (2) No, none; (3) No, none; and (4) Yes - during a part of a recent meeting held in private, you explicitly drew attention to this correspondence; there was no discussion of substance; the principle of members' silence indicating consent was accepted. You will appreciate that I ask for any necessary correction because I should not like my final written account of how the Parliament has handled the Abolition of Poindings and Warrant Sales Bill to fall short of the clearest exposition of the truth. (For the same reason, you would now no doubt wish to refute such criticisms of the Committee in this letter as you find refutable.)

I renew my thanks for your courteous and helpful letter. The Society's President, in joining me in these compliments, asks me to remind you that his letter to you of 2nd June still goes without your acknowledgement. You will remember that in this, the President informed you that the good offices of the Union Internationale des Huissiers de Justice et Officiers Judiciaires were at your disposal. On 28th July, at an international meeting in Paris, the President of the International Union, Maître Isnard, asked the Scottish representative present what had been the Justice and Home Affairs Committee's response to that letter of 2nd June. Our embarrassment at not being able to answer him was compounded by his asking what response we had had to our letter, with similar terms, dated 9th June, addressed to the Deputy Minister for Justice, and copied also to the Minister for Justice himself. No reply was, again, all that could be answered. I quite appreciate that you may not have felt the need to comment on the content of the letter because the subsequent announcement of the "Working Party" meant that developments would presently be entirely the responsibility of Mr. Wallace and his Deputy. Notwithstanding, you would favour us with your reply. I know you will be keen that Scotland is seen to be co-operative and business-like in all its dealings with such a highly regarded international legal organization, and you would therefore regret any possible risk of discourtesy to it by the Scottish authorities becoming apparent. You will be glad, therefore, that the arrival of a reply from Mr. Wallace yesterday helps us to lessen that risk - although its being addressed to the "Society of Messengers-At-Arms and Sheri" (*sic*), and then referring to us in the body as the "Society of Members-at-Arms" does not make it a suitable document to copy to the officials in Paris.

Yours sincerely,

R Murray Macrae

# The Scottish Gamekeepers Association

## Submission to the Justice & Home Affairs Committee

## On

## The Protection of Wild Mammals (Scotland) Bill

The Scottish Gamekeepers Association appreciates that the Justice & Home Affairs Committee is concerned only with the judicial aspects of the Protection of Wild Mammals (Scotland) Bill (known hereafter as the Bill).

We submit that without an understanding of the contribution made by the professional gamekeeper to Scotland's natural heritage and to Scotland's rural economy, it is impossible to accurately determine the legislative effects of the Bill.

We attach a copy of our submission to the Rural Affairs Committee, as Appendix 1, illustrating the wider implications of the Bill. The first section, entitled "Terriers", and the section at the end of page 2, "The National Parks Bill", are of particular relevance.

The SGA condemns the Bill and submits that it will have a divisive effect on rural communities. Accordingly, we dispute the validity of **all** the evidence given to this committee by the Scottish Campaign Against Hunting With Dogs (SCAHD) and their advisors.

Scotland's wildlife managers (gamekeepers) are the largest working group affected by the Bill. Having read the 28th Official Report of the Justice and Home Affairs Committee meeting, the SGA seeks permission to submit the following for the Committee's consideration:

**1.** It is unclear precisely what the "Licensing" intentions are. The SGA submits that licences are an unnecessary and bureaucratic expense. The SGA is concerned that the conflicting evidence given, reflects the confusion surrounding the principles of the Protection of Wild Mammals (Scotland) Bill. A further example of the muddled thinking employed in the drafting of this Bill, can be found in Section 1 (5) which states: A person who owns or keeps one or more dogs intending any of them to be used to hunt… commits an offence". Does this mean that any dog owner with a terrier or hound is a suspected criminal?

**2.** The recent Burns Inquiry, in England & Wales, recognises that in some areas, Terrier Work is necessary as a means of fox control (9.20). The foreword to the Consultation on the National Parks (Scotland) Bill, written by Sarah Boyack (MSP and Minister for Transport and Environment), begins: 'Scotland's natural and cultural heritage is a most precious and valuable asset. It is an essential part of what defines Scotland, what makes it special. It is worth protecting in its own right…' The SGA maintains that the putting of terriers down holes to flush out foxes so that they may be humanely shot, is integral to Scotland's unique bio-diversity.

The Scottish Gamekeepers Association,
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**3.** When considering the evidence given by Mike Flynn, SSPCA, the committee's Convener noted that in 1999, only four cases of wildlife crime were reported to the Procurator Fiscal - of which only two cases resulted in convictions. Given the rising rate of serious crime and the negligible figures involved in Terrier Work, the SGA questions the justification and the requirement for this legislation.

**4.** Assistant Chief Constable Gordon states in his evidence that he does not expect chief constables to see this bill as a major priority for police resources. Indeed, he goes on to say it might well "sit low on the list of policing activity, when compared with other more pressing demands".

**a.** Current police funding focuses on issues of **real** importance to government and to the welfare of society such as: drug dealing, theft, murder, rape and arson.

**b.** There is no financial or moral justification for adding law-abiding gamekeepers to that list.

**c.** We object to the Burden of Proof being placed on the accused. There is no parallel between those who misuse or sell drugs and the work of the professional gamekeeper. The SCAHD has failed to show why a "crime" that the police concede does not fulfill the criteria of a "Serious crime", should be classified as one that requires such harsh measures.

**5.** The SGA supports the evidence given by Assistant Chief Constable Gordon and by the wildlife liaison officer for Tayside Police, Alan Stewart. Relationships between police and gamekeepers/rural communities are generally constructive and crime in rural areas is generally low. If this Bill is enacted and surveillance teams descend on rural areas, these contacts will deteriorate and the police will inevitably be viewed with suspicion. Equally, Countryside Rangers would find life in rural communities untenable were this responsibility to pass to them.

**6.** We are concerned about the confusion surrounding dogs seized by police, in particular where the accused enters a plea of Not Guilty. Furthermore, who is going to pay for a dog's upkeep if the accused is subsequently found not guilty? Who will be responsible for the dog's welfare during its incarceration? Working dogs are often household pets and the distress caused, to all family members, by the removal of a dog who is following its instinct and its training, is draconian in the extreme.

**7.** In our submission to the Rural Affairs Committee, we covered the question of compensation for those whose dogs would be destroyed because of this Bill. The MLURI report to the Scottish Executive suggests that 10% of gamekeepers would lose their jobs (and their homes) if this Bill is enacted. We submit that this is a short-term view and that, long-term, numbers will be much higher; there has been no consideration by the drafters of this Bill as to what level of compensation should be payable. Nor has there been any consideration as to levels of compensation payable to land owners for loss of income due to depleted shooting stocks, nor for the inevitable drop in land value. There is of course no way that Scotland can be compensated for the loss of wildlife.

The SGA urges the Justice and Home Affairs Committee to recommend to the Parliament's lead committee on this Bill that this proposed legislation is unworkable and **unnecessarily** compromises law abiding citizens.

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**Appendix 1.**

## Submission to Rural Affairs Committee.

The original intention of Lord Watson's Member's Bill was to ban hunting with hounds. The Bill, as laid before Parliament, attempts to restrict many countryside activities including vermin control and rough shooting.

### Terriers

- Terriers play a vital role in pest control. It is widely recognised that foxes and mustelids destroy the young of mammals and the eggs and young of ground nesting birds (including Dotterel, Hen Harriers, Golden Plovers, Capercaillie, Lapwings, Merlins and Black Grouse), not just game birds. The RSPB have recently re-imposed fox control at their Abernethy Reserve in Speyside following a dramatic decline in Capercaillie numbers. In the interest of bio-diversity, predator numbers must be controlled.
- Gamekeepers use terriers to bolt foxes, which are then shot. Radio collars are used to track dogs and to ensure that if necessary, the gamekeeper can dig down to the fox and humanly shoot it.
- Gamekeepers do not want to pay huge amounts in Vets' bills. They are fond of their dogs and the vast majority would never endanger their dogs' welfare, or its ability to work, by deliberately encouraging a fight between their dog and a fox.
- A ban on terrier work will not, we submit, stop the die-hard who misuse their dogs. As civilised and law abiding members of society, we abhor the violent and loutish behaviour of some football fans, but we do not seek to ban football.

### Hounds

- Many estates and farmers employ footpacks to control foxes.
- In forested and highland areas, the use of hounds in vermin control is invaluable to gamekeepers and the SGA backs the work of the Scottish Hill Packs Association.
- The protection offered to livestock during lambing could not be replaced if the use of hounds was made illegal.
- In lowland areas, mounted packs perform a similar service.

### Other Dog Uses

- Gamekeepers working near built up areas, where gun use is unsafe, are increasingly finding that lurchers play an important role in fox control (15,000 foxes per annum). A lamp is used to locate the fox; the dog is slipped from the lead and swiftly dispatches the fox. Lurchers are large dogs, easily outweighing foxes. The role of a lurcher can be likened to a terrier killing a rat.
- Retrievers, spaniels and Labradors are used to flush and locate rabbits and hares in agriculture and forestry.
- The high, dense growth of vegetation cover, which evolves during the early stages of afforestation, provides various pests with ideal cover and significant damage can be inflicted on young trees if effective forest protection is not carried out. The use of trained dogs is a vital part of this management if successful tree establishment is to be achieved.
- Humane deer management is essential if woodland growth/regeneration is to be achieved. A deer, shot through the heart, can run for over 200 yards despite being clinically dead. For moral, ethical, sporting and financial reasons it is essential that the carcass is recovered. Dense cover or thicket stage plantation

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requires the use of trained tracker dogs. Different deer species require different breeds of dogs to accomplish this task and therefore a wildlife manager/stalker usually has a number of dogs to cover the wide variety of tasks they may need to perform.

## Employment

- We are concerned that the nature of the questions asked by the Macaulay Land Use Research Institute resulted in the conclusion that **in the short-term** an estimated 114 of our members will face redundancy if The Protection of Wild Mammals (Scotland) Bill becomes law, may not reflect the true picture and many more may face job losses. Without an in-depth inquiry, **the long-term** implications of this Bill are impossible to determine.
- The decline in Scotland's wild salmon stocks has seen a dramatic decrease in fishermen coming to Scotland in recent years (with hotel owners and rural shops suffering accordingly). There are plenty of good rivers elsewhere in the world; so why bother coming here? The answer is, that they do so less and less and the same would apply to those who come to shoot.
- Shooting provides employment from August through to February. Hotels and shops in rural communities depend on the sporting gun for income the winter season after the holidaymaker has returned home.
- Ultimately, like the fisherman and the sporting gun, how many tourists will suffer the high fuel costs of getting to the Highlands if there is nothing to see? Without the tourist how long will small isolated communities survive?

## Financial Implications

- *"Subsections (1) to (6), read with subsection (8), of the Bill permit the licensed use of dogs under close control to stalk a wild mammal, or flush it from surface cover, to swift dispatch by gun"*. Who is going to pay for the issuing of these licenses?
- A working dog is worth between £200 and £5,000. The Scottish Gamekeepers Association would expect their members to be compensated if dogs are destroyed or rendered useless as a result of this Bill.

## Scottish Campaign Against Hunting Video

- The video does not depict Scottish gamekeepers and is clearly showing the work of amateurs. We note that no shotguns were used, only a pistol, which is not usual practice by gamekeepers.

## The National Parks Bill

- The Scottish Executive's National Parks Bill aims "To promote sustainable use of the natural resources of the area" and "To conserve and enhance the natural and cultural heritage of the area".
- Grouse shooting underpins the rich and varied biodiversity of the Cairngorms and yet Watson's Bill would remove an important tool in maintaining our endangered heather habitat: the use of terriers to flush foxes from underground. Gamekeepers are employed to provide shooting. Shooting is a huge countryside industry. It relies on a healthy abundance of game birds and animals and they in turn rely on gamekeepers to manage their habitats, provide their food and to control their predators.
- Thousands of tourists admire the abundance of our flora and fauna - Scotland has one of the richest examples of biodiversity in Europe. If grouse numbers fall because of inadequate predator control, the grouse shooter cannot find his sport elsewhere It follows therefore, that without the grouse shooter there will be little incentive for estates to manage the heather mosaic and consequently either the taxpayer will have to foot the bill or it will fall into decline, thus losing our uniquely Scottish biodiversity.

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- Capercaillie & Brown Hares are Threatened Species. Action Plans have been produced for their survival. In both cases, one of the factors in their decline is increased fox predation ("Biodiversity of the Cairngorms - An Assessment of Priority Habitats and Species" p62 - Brown Hare and p76 - Capercaillie refers.)
- The Scottish Gamekeepers Association submits that the Protection of Wild Mammals (Scotland) Bill is contrary to the National Parks Bill, as it will clearly undermine the aims of a Park.

**Macaulay Land Use Research Institute**

- The recently concluded Macaulay Land Use Research Institute investigation into some of the effects of this proposed Bill leaves many questions – regarding the wider implications to the rural business community (i.e.: hotels, garages, shops, restaurants etc.) - unanswered.
- The long-term effects of the Bill (sociologically, environmentally and economically) have not been investigated.

**Policing The Bill**

- The Rural Affairs Committee will be considering the financial and practical implications of policing this Bill. We would ask that the Committee also consider the probability of this Bill creating a new tier of criminals who are currently law-abiding citizens.

An enquiry should be instigated to determine the long-term economic, environmental and sociological effects of reduced fox control. Just as a Jury must dismiss the case against the Accused if there is any reasonable doubt arising from the evidence, so too should the Rural Affairs Committee dismiss this Bill if there is **any** possibility that it may be detrimental to rural areas.

We submit that the PROTECTION OF WILD MAMMALS (SCOTLAND) BILL **will** have devastating economic, environmental and social consequences for our Country. We urge the Rural Affairs Committee to throw out this Bill in its entirety as to implement the Bill will serve no other purpose than to allow the proliferation of major pests: the fox, the mink and other mustelids.

*The Scottish Gamekeepers Association will welcome the opportunity to give Oral Evidence before the Rural Affairs Committee and to answer any questions the Members might have.*

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**Subject:** Protection of Wild Mammals (Scotland) Bill

I have just read the Official Report of the Committee meeting on Tuesday this week, specifically of the evidence given by Bill Swann of SCAHD on the subject of hare coursing. Since this man is representing himself as an expert, I was astonished and outraged at how little he appears to know about coursing. His evidence is riddled with inaccuracies, so much so that I would seriously doubt that any credence at all can be given to it. I have attended hare coursing meetings for nearly twenty years and am a member of the Deerhound Club Coursing Sub Committee - I hope you have read the written evidence we submitted. NEVER in all that time have I heard of hares being transported in cages to a meeting run under National Coursing Club Rules. It cannot be stressed strongly enough that the object of coursing is NOT to kill hares, but to test the relative merits of two sighthounds. Releasing captive hares completely negates the object of the exercise. Under NCC rules, only wild free hares who have lived on the coursing ground for a minimum of six months may be coursed; the progress of the hare may not be impeded in any way; the hare is given at least 80 yards start before the hounds are slipped and the vast majority of hares escape completely unharmed, if a little out of breath. There are officials on the field at all times to ensure that these rules are strictly enforced to ensure the welfare of the hare. The slipper is required to make sure that hares are fit to be coursed; leverets are left alone, as is any hare that does not appear to be in prime condition. Most coursing meetings in Scotland, with the exception of the Scottish National, are walked-up. This means that there is no formal running ground and that spectators, officials, hounds and handlers walk in line behind the slipper, while the judge stations himself at a suitable vantage point. On the rare occasions when a hare is caught, it is swiftly killed by the leading dog, and on the even rarer occasions when it is not instantly killed, there are officials whose sole job is to ensure that it is removed from the dog and killed to avoid suffering. Hares are not ripped apart.

I hope you will take oral evidence from people who know what they are talking about - Bill Swann clearly either does not or is so hellbent on getting this deeply flawed and draconian Bill passed that he is prepared deliberately to lie to your Committee. Whether he has lied about coursing, or simply not bothered to acquaint himself with the facts because they don't suit his agenda, his evidence simply cannot be relied upon. Please treat it as it deserves.

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