JH/00/31/A

The Scottish Parliament

JUSTICE AND HOME AFFAIRS COMMITTEE

AGENDA

31st Meeting, 2000 (Session 1)

Tuesday 31 October 2000

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

1. **Items in Private:** The Committee will decide whether to consider draft reports on stage 2 of the budget process 2001/02 and on the Leasehold Casualties (Scotland) Bill in private at its next meeting.

2. **Legal Aid Inquiry:** The Committee will consider the remit of its inquiry.

3. **STUC Women's Conference:** The Committee will consider an invitation from the Scottish Trades Union Congress to nominate a female representative to attend the STUC Women's Conference.

4. **Social Partnership Funding:** The Committee will consider a draft application for social partnership funding.

5. **Petition:** The Committee will consider written evidence on petition PE89 by Eileen McBryde on enhanced criminal record certificates from—

   Barnardos;

   Scottish Police Federation; and

   the Law Society of Scotland.

6. **Protection of Wild Mammals (Scotland) Bill (in private):** The Committee will consider a draft report on the Bill.

Andrew Mylne
Clerk to the Committee, Tel 85206

****

The following papers are attached for this meeting:

Agenda item 2	
Note by the Clerk (draft remit attached)	JH/00/31/9
Agenda item 3	
Note by the Clerk (letter from STUC attached)	JH/00/31/7
Agenda item 4	
Note by the Senior Assistant Clerk	JH/00/31/11
Draft proposal	JH/00/31/14
Research note	JH/00/31/15
Agenda item 5	
Note by the Assistant Clerk (written evidence attached)	JH/00/31/10
Agenda item 6	
Draft report (private paper)	JH/00/31/12

Papers not circulated:

Agenda item 5

The original petition was circulated as JH/00/17/A (10 May). Members may also wish to refer to the *Official Report* of the 18th meeting, on 15 May, at which the petition was previously considered after being deferred from the 10 May.

Agenda item 6

Members are reminded to bring with them copies of the Bill and Accompanying Documents. Members may also wish to bring along a copy of the *Official Reports* of the Justice and Home Affairs Committee meetings on 19 and 27 September and written evidence circulated in relation to the Bill.

JUSTICE AND HOME AFFAIRS COMMITTEE

Papers for information circulated for the 31st meeting, 2000

Leasehold Casualties (Scotland) Bill	
Correspondence between the Convener and Brian Hamilton on the Leasehold Casualties (Scotland) Bill	JH/00/31/3
Supplementary submission from Dr Eric Clive on the Leasehold Casualties (Scotland) Bill	JH/00/31/4
Prepared speech by Brian Hamilton for 4 October meeting	JH/00/31/5
Letter from the Executive on the Leasehold Casualties (Scotland) Bill	JH/00/31/13
Correspondence with the Executive	
Letter to the Convener from the Lord Advocate on Crown Office pay and conditions	JH/00/31/1
Letter to the Convener from the Minister for Justice on the proposed ECHR Bill [Note: Contrary to the penultimate sentence of the letter, the Executive does not now intend to issue a draft Bill in advance of introduction.]	JH/00/31/2
Letter to the Convener from the Minister for Justice on legal aid pilot schemes	JH/00/31/8
Miscellaneous	
Note by the Senior Assistant Clerk on petition PE264 (copy of petition attached)	JH/00/31/6
Written Answer on Crown Office budget	
Extracts from the *Herald* on judicial appointments, the *Daily Mail* on confiscation of assets and the *Scotsman* on rape witnesses	

Documents not circulated

Copies of the following have been provided to the Clerk:

- Scottish Executive Central Research Unit Research Report: *The Use of Civil Legal Remedies for Neighbour Nuisance in Scotland*, plus Research Findings (a brief summary of the report)
- Social Work Services Inspectorate for Scotland report: *Managing the Risk: An Inspection of the Management of Sex Offender Cases in the Community*
- Scottish Executive: *Feasibility Study for a Victim and Witness Support Service in Scotland*
- Scottish Retail Consortium: *Response to Advisory Group Report on youth crime review and the Scottish Executive's response*

Copies of these documents can be consulted in Room 3.6 CC. Some may be obtainable on request from the Document Supply Centre. Executive documents are available on the Executive website (www.scotland.gov.uk).

The Clerk has received a copy of the latest version ("Convent 5") of the draft *EU Charter of Fundamental Rights* to be discussed at the Nice Summit. Copies may be obtained on request.

Report on Real Burdens

The Scottish Law Commission has published its *Report on Real Burdens*, which contains a draft Title Conditions (Scotland) Bill. Copies of the report may be obtained from the Document Supply Centre (Scot Law Com No 181).

Recent statutory instruments

Members should note that the following SSIs were laid on 29 September and are expected to be considered by the Committee at its meeting on 8 November:

- The Regulation of Investigatory Powers (Notification of Authorisations etc.) (Scotland) Order 2000 (SSI 2000/340)
- The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Order 2000 (SSI 2000/343)

The following SSI was laid on 29 September but is not subject to Parliamentary Procedure:

- The Investigatory Powers Tribunal Rules 2000.

Freedom of Information

SPICe Research Paper on Freedom of Information in Scotland (RP – 00/19) has recently been published.

JH/00/31/9

JUSTICE AND HOME AFFAIRS COMMITTEE

Legal Aid and Access to Justice – draft remit for inquiry

Note by the Clerk

The Committee has agreed to undertake a major inquiry on legal aid and access to justice. An adviser, Professor Frank Stephen (Professor of Economics at the University of Strathclyde) has now been appointed. The next step is for the Committee to agree a remit for the inquiry.

The attached draft is based on the discussion held this morning with the Adviser. The Convener and two other members (Maureen Macmillan and Phil Gallie) attended, together with the clerks.

The intention is that, once the remit has been formally agreed by the Committee it will be sent direct to key organisations with a request for written evidence. The remit will also be included in a press release as part of a wider call for evidence. Once written evidence has been submitted, the Committee will be able to decide whom to invite to give oral evidence and on what topics. It is also intended that, in the meantime, one or more informal briefing sessions will be arranged to allow members of the Committee to familiarise themselves with aspects of the legal aid system as it currently operates.

The following is proposed as an initial list of organisations from whom written evidence should be invited:

- Scottish Executive Justice Department
- Scottish Legal Aid Board (SLAB)
- the Law Society of Scotland
- Citizens' Advice Scotland
- Federation of Small Businesses
- Association of Chief Police Officers (Scotland)
- Scottish Consumer Council
- Association of Scottish Legal Advice Networks

The Adviser will be in attendance for the discussion on the draft remit.

25 OCTOBER 2000 ANDREW MYLNE

Draft Remit

The Justice and Home Affairs Committee is undertaking a major inquiry on legal aid and access to justice. The inquiry is expected to take place over a period of up to a year, although no deadlines are being established at this stage.

The principal theme of the inquiry is an assessment of the impact of recent changes in the legal aid system (both civil and criminal), and the likely impact of possible and prospective changes, on the contribution made by that system to securing access to justice.

Examples of recent changes that may be considered include the impact of fixed fees in criminal cases, and factors that may have contributed to the reduced proportion of successful applications for civil legal aid being taken up. An example of a prospective change is the Scottish Executive's proposals to establish a community legal service. (However, the Committee does not intend to consider the implications of the pilot Public Defence Solicitors' Office which is currently the subject of an extensive research project.)

The Committee will consider the extent to which the legal aid system secures access to justice in a number of different dimensions. For example, the Committee may consider whether there are particular difficulties in securing access to justice because of limitations on the availability of legal aid to people at certain levels of income; applicants of certain categories (such as organisations or small businesses); people in certain parts of Scotland; or applicants pursuing certain categories of cases (such as attendance at fatal accident inquiries).

Although the inquiry is intended to be fairly broad in scope, the Committee wishes to emphasise two limitations to the above remit. First, the Committee will not be considering the routine administration of the legal aid system by the Scottish Legal Aid Board or other parties. Secondly, the Committee will not be considering individual decisions made by the Board or other aspects of individual cases involving the legal aid system.

The remit may also be reviewed and adjusted during the course of the inquiry as the Committee sees fit.

Professor Frank Stephen, Professor of Economics at the University of Strathclyde, has been appointed adviser to the Committee for the inquiry.

Interested individuals and organisations are invited to submit written evidence to the Committee, in the first instance by Wednesday 6 December 2000. Evidence should be reasonably brief (normally no more than 10 pages of A4) and set out in numbered paragraphs. A short (no more than one page of A4) summary at the beginning would be helpful. Evidence should be submitted (preferably in hard copy and electronically) to the Clerk to the Committee (Andrew Mylne, Room 3.9 Committee Chambers, George IV Bridge, Edinburgh EH99 1SP; telephone 0131 348 5206; e-mail: andrew.mylne@scottish.parliament.uk).

JH/00/31/7

JUSTICE AND HOME AFFAIRS COMMITTEE

Invitation from STUC

Note by the Clerk

I attach a letter sent to the Convener by the Scottish Trades Union Congress (STUC), inviting a female member to represent the Committee at a Women's Conference on 21 November.

The Convener takes the view that any member of the Committee who attended in response to this invitation could only do so in a representative capacity if the nomination was made by the Committee as a whole, rather than by the Convener alone.

The Committee is therefore invited to consider, firstly, whether it wishes to nominate someone to attend in a representative capacity and, if so, who that representative should be. If the Committee prefers not to nominate someone in that capacity, it would of course still be open to any female member of the Committee to attend and participate, but in an individual capacity.

Female members of the Committee, in particular, may wish to consider their availability to attend at the time indicated in the letter.

25 OCTOBER 2000 ANDREW MYLNE

JH/00/31/11

Justice and Home Affairs Committee

Public attitudes to alternatives to custody and sentencing

Note by the Senior Assistant Clerk

At its meeting on 8 February 2000, the Committee considered whether to apply for funds available to facilitate civic participation in Committee activity, and agreed that an application to fund deliberative polling on issues relating to offending would be the most valuable. It also agreed that the most likely topics on which participants' views should be sought were alternatives to custody and attitudes to sentencing and that a draft proposal would be considered at a future meeting.

This proposal has now been prepared by SPICe and is attached to this note along with a research paper on alternatives to custody in Scotland.

The proposal outlines 2 options. The Committee is invited to consider both options and decide which it wishes to pursue. Denis Oag, Senior Research Specialist from SPICe, will be available at the meeting to answer any questions regarding the proposal.

27 OCTOBER 2000 ALISON E TAYLOR

JH/00/31/14

Public Attitudes to Alternatives to Custody and Sentencing

Proposal for Justice and Home Affairs Committee

Note by Connie Smith, Senior Research Assessor, SPICe

Background

It is proposed to that the Justice and Home Affairs Committee consult the public on their attitudes to custody, alternative disposals and sentencing. These are complex issues and people have very different levels of knowledge and understanding and stimulate strong opinions in some. The aim of this consultation is to find out individuals' views on these issues and the reasons they hold them and how and why they alter.

Consequently there are three central core issues to be addressed in this exercise:

1. What are the views of the Scottish public on custody and alternatives to it?
2. Why do they hold these views – i.e. what is their knowledge and understanding of the issues?
3. To what extent and how do these opinions change?

Proposal

Given this is a complex area, eliciting strong responses, it is proposed that two complementary forms for gauging public views be used by the Committee. These are:

1. A survey to find out the views of the population on alternatives to custody and sentencing.
2. A "civic participation" event to consult a range of individuals on why they hold their views, why the might change them etc.

Stage 1 Omnibus Survey

Through an Opinion Survey a representative sample of adults are asked a series of questions. The results of this can be generalised to the population as a whole giving insight into the proportion of people that hold particular views. Whilst the number of respondents is not be large (up to 1000 adults) the system used to select the sample is such that the results demonstrate the prevalence of certain characteristics, views and/or behaviours across a population.

There are a variety of types of questions that can be asked e.g. factual, opinion, and various structures used to elicit the information. For example individuals can be asked:

> "Do you think serving a prison sentence prevents most people from re-offending?"

The respondent could be asked for a simple yes/no answer. Alternatively they could be given the statement:

> "Being sent to prison stops most people re-offending."

The respondent is asked to rate on a scale of 1 – 5 how strongly they agree or disagree with the statement.

Research companies run regular omnibus surveys, with face to face interviews carried out by skilled and experienced interviewers. Questions for insertion into the survey can be purchased. The analyses of the responses to these are given according to main socio-economic variables.

It is proposed that a series of questions on attitudes to sentencing and, alternatives to, are purchased in an appropriate Omnibus Survey. This will give the baseline data *representative* of the population of Scotland, aged 16 and over. This can inform the work of the Committee but will also provide a backdrop to any other research and/or consultation carried out on this subject.

Stage 2 Civic Participation Event
Whilst omnibus surveys can reveal how common views are across a population, they do not give an insight into why people hold those views nor their level of knowledge and/or understanding of the specific issue. It is proposed that in the second stage the Committee host an event at which the issues are discussed, debated and reasons people hold particular views explored.

This would different from an ordinary conference. Invited participants would include a wide range of "stakeholders", including professionals in the field, members of the public and the Committee. They would be brought together to identify priority issues to discuss and debate.

The format of the event is likely to include some plenary discussion and sessions in smaller groups. It is likely that this would require commissioning experienced facilitators and a venue with suitable breakout rooms. Consideration may need to be given to holding this at the weekend to enable individuals to participate.

Recommendation
If the Committee agrees to the proposals outlined in this paper the next stage is accessing resources for the survey and the conference.

Resources from the external research budget are available to fund the survey. Request for this are made by submitting a proposal to the Senior Research Assessor (SRA) in SPICe. The SRA puts all proposals to the Conveners' Liaison Group who decide which are to proceed. The next two deadlines for submission of proposals are 24th November 2000 and 25th May 2001.

A civic participation budget is available for the "consultative conference" event. Requests for funding from this for appropriate events should be made to the CLG via Elizabeth Watson. These can be made at any time.

Costings
All costings are estimates and subject to change.

Omnibus Survey
After an initial charge for entry to the survey, a charge is made for each question, depending on its complexity. Prices range from approximately £400 to £1500 for complex, questions e.g. use of rating scales. The total cost is not known until questions are finalised with the survey company.

£4,000 for 6 -10 questions

Conference
100 participants @ £40 per head plus travel expenses £4000
Organisation and Facilitation of conference £6,500
Venue

Total Estimated Costs

Omnibus Survey		
(External Research)	6 – 10 questions	£4,000
Conference		
(Civic Participation)	100 participants @ £40 per head	£4,000
	Organisation and facilitation	£6,500
	Administration costs	£3,000
Total		***£17,500***

JH/00/31/15

Justice and Home Affairs Committee

Alternatives to custody in Scotland

Note by Denis Oag, Senior Research Specialist, SPICe

The Use of Imprisonment in Scotland

The use of imprisonment, the ultimate sanction available to Scottish courts, is still relatively rare in Scotland. In 1998, for example, only eleven per cent of those convicted of crimes and offences were given a custodial sentence[1]. However, in the half century from 1950 the average daily prison population has increased threefold from around 2,000 in 1950 to over 6,000[2] in 1999. In the last decade an increasing number of convicted offenders have been sent to prison both in absolute and proportionate terms. In 1988, 14,468 of 179,119 persons with a charge proved against them received a custodial sentence (8%). Ten years later the number of persons with a charge proved in court had fallen by 22 per cent to 139,826 but of these, 15,906 (11%) were sentenced to a period of imprisonment. This upward trend in the use of imprisonment has coincided with an increase in the average length of sentence handed down by courts in recent years. While, in 1989 the average custodial sentence imposed was 240 days, by 1998 this had increased to 302 days[3]. Both of these factors have had an impact on the steady growth of the prison population.

As the size of the prisons estate has not kept pace with the increase in the size of the prison population, one result has been overcrowding, particularly in local prisons. In 1998, for example, the average daily population of Scottish prisons reached a record high of 6,369 against a capacity of 5,491.[4] More recently the opening of the new 500 place prison at Kilmarnock in March 1999 and a new 125 place houseblock for remand prisoners at Edinburgh's Saughton Prison in December 1998 have reduced the level of overcrowding. Set against this has been the closure over the last 12 months of HM Prisons Longriggend, Peninghame and Dungavel. In May 2000 three local prisons were still experiencing overcrowding of more than 10 per cent.[5]

Comparative incarceration rates

In comparative terms Scotland has one of the highest incarceration rates in Europe, with 118 prisoners for every 100,000 members of the general population at September 1998. This compares to figures of 97 per 100,000 in Germany and 89 per 100,000 in France. However, England & Wales have recently overtaken Scotland in this respect with 126 prisoners per 100,000 of the general population at September 1998.[6]

---

[1] Criminal Proceedings in Scottish Courts, 1998. CrJ/1998/8, Table 7. Eight per cent were sentenced to prison and 3% to a Young Offenders Institution.

[2] In 1997, the average daily prison population reached 6,084. Prison Statistics in Scotland, 1998. CrJ/1999/9.

[3] Ibid, Table 25A.

[4] Her Majesty's Chief Inspector of Prisons Annual Report 1998/99, Annex 5.

[5] HMP Inverness (19%); HMP Barlinnie (18%) and HMP Greenock (22%)

[6] Op Cit (CrJ/1999/9) Chart 7.

Custodial sentencing

The great majority of custodial sentences handed down by Scottish Courts are for short periods. In 1998, for example, 82% of custodial sentences were for 6 months or less.[7] It should also be noted that, at any given time, a sizeable proportion of the prison population has not actually been sentenced to imprisonment. Between 20 and 25 per cent of the average daily prison population are being held on remand awaiting trial or sentence.[8] Further, large numbers of prison receptions each year are of fine defaulters.[9] Taken together, remand prisoners and fine defaulters represent around two thirds of the daily receptions into Scottish penal establishments. In other words, on any given day, two thirds of the people prisons receive into custody have not actually been sentenced, in the first instance, to imprisonment. Table 1 below shows the length of sentence being served by prisoners in Scottish prisons as at 31 March 2000.

Table 1

Sentence length	1998-1999	1999-2000
Less than 1 year	1,436	1,165
I year but less than 2 years	540	544
2 years but less than 4 years	742	786
4 years but less than 10 years	1,627	1,628
10 years+	295	314
Life	579	601

Source: HM Chief Inspector of Prisons for Scotland Annual Report 1999-2000

It may be argued, therefore, that any serious attempt to reduce the size of the prison population would have to address the issue of prisoners held on remand and consider alternative sentences for the large number of short term prisoners, including fine defaulters[10].

Crimes and offences which attract custodial sentences

Imprisonment is, proportionately, the most commonly used sentence for the following crimes and offences: homicide (88%) robbery (70%), sexual assault (52%), serious assault (47%), housebreaking (47%), Lewd and indecent behaviour (44%), theft by opening lockfast places (33%) and theft of a motor vehicle (29%)[11]. Custody is used least in relation to crimes such as: drugs (14%), fraud (10%), vandalism (7%) and 'other' crimes of indecency (4%). It is also little used in relation to offences such as: simple assault (12%), Breach of the peace (7%) and motor vehicle offences (2%).

The Purpose of Imprisonment

The use of imprisonment as a sentence in its own right is a relatively recent development in Scotland, having its origins in the Nineteenth Century following the abolition of transportation as a punishment. Up to then, prisons were used

[7] Ibid, Table 11.

[8] McManus, J. 'Imprisonment and other Custodial Sentences' in Duff, P. and Hutton, N. (Eds), Criminal Justice in Scotland. Ashgate, 1999.

[9] Around 42% of prison receptions each year are fine defaulters and this group make up about 6 or 7 % of the daily prison population. Hutton, N. in Duff, P. and Hutton, N. (Eds), Criminal Justice in Scotland. Ashgate, 1999. In 1998, 8,400 people were imprisoned for defaulting on a fine (CrJ/1999/9 page 13).

[10] Supervised Attendence Orders (SAOs) were introduced in 1990 as an alternative to prison for fine default. SAOs are discussed later.

[11] All figures are for 1998 and are taken from the Scottish Executive Statistical Bulletin CrJ/1998/8 (Op Cit)

predominantly to hold debtors and prisoners awaiting trial or sentence. Since this time there has, arguably, never been a single clear rationale underlying the use of imprisonment. Instead, competing philosophies have held sway at different times. These have ranged from ideas of punishment (retribution) to treatment (rehabilitation) models, and from deterrence to incapacitation and often several of these simultaneously. More recently, we have seen the emergence of a 'justice model' of penology which eschews notions of rehabilitation and sees deprivation of liberty, proportionate to the gravity of the crime committed, as sufficient punishment and an end in itself. It has also been argued that a 'new penology' has developed based on 'actuarial' principles and the concept of risk management in which the aim of the prison system is neither to rehabilitate nor punish but rather to regulate and manage offenders.[12]

The current mission statement of the Scottish Prison Service (SPS) appears to place the SPS somewhere between a managerial and rehabilitation approach. The SPS mission is:

- to keep in custody those committed by the courts
- to maintain good order in each prison
- to care for prisoners with humanity
- to provide prisoners with a range of opportunities to exercise personal responsibility and to prepare for release.[13]

The Cost and Effectiveness of Imprisonment

In 1998/99, the Scottish Prison Service employed nearly 5,000 staff and operated 22 establishments on a net budget of £185m. With around 5,400 prisoner places available, the average cost per prisoner place in 1998 was just under £28,000 per year.[14] This can be compared with £1,570 which was the estimated average cost of a probation order in 1997/98 or £1,400 for a community service order[15]. A consideration of costs alone, of course, can say nothing about the relative effectiveness of custodial and non-custodial sentences in reducing re-offending. One way of assessing effectiveness, though not without its problems, is to examine reconviction rates. Several recent studies have suggested that community-based disposals such as probation or community service lead to lower reconviction rates than the use of custody.[16]

Reducing the Prison Population

A large prison population is not only expensive to maintain but, because it is made up largely of offenders serving short sentences for minor offences, it is difficult for the SPS to achieve their fourth aim, i.e. to "provide prisoners with a range of opportunities to exercise personal responsibility and prepare for release". Overcrowding also increases control and management difficulties in Scottish prisons.

---

[12] McAra, L.'The Politics of Penality' in Duff, P. and Hutton, N. (Eds) (Op Cit).

[13] Scottish Prison Service Factsheet, 1999.

[14] Ibid.

[15] Costs, Sentencing Profiles and the Scottish Criminal Justice System, 1997. Scottish Office 1999.

[16] Two studies are cited by McIvor and Williams in Duff and Hutton (Op Cit), p211, which suggest that the reconviction rates for those given a probation or community service order are between 22% and 27% lower than those given a prison sentence.

Alternatives to Imprisonment

Custody is, then, an expensive option for dealing with offenders. It is also unclear as to whether the prison system does or can fulfil the many and sometimes competing functions expected of it. As a result, the Government has, in recent years, encouraged the courts to make greater use of non-custodial sentences, particularly for young and first offenders. The option of more intensive use of existing sentence options was chosen over the alternative of expanding the range of disposals available to the courts. In 1991, in an attempt to increase the availability and use of community-based disposals, the Government introduced '100 per cent funding'. Under this scheme, local authorities are fully reimbursed for the management and delivery of all community-based services in relation to convicted offenders.

Sentencing discretion

The majority of criminal offences in Scotland are offences at common law and, as such, attract indeterminate sentences with the maximum sentence available being life imprisonment. Judges, therefore, have wide sentencing discretion. The principal constraints on the sentencing power of judges are the jurisdiction of the courts in which they sit[17] and statutory limits imposed on certain crimes and offences by legislation. While guidance to sentencers exists in the form of previous decisions of the courts and, in the case of the High Court, a Sentencing Information System, there is no official sentencing 'tariff' for judges to draw on[18].

The following are the main non-custodial sentencing options available to the courts:

Fines

The imposition of fines is by far the most common disposal in Scottish courts. There has, however, been a proportionate and steady decline in the use of fines in Scotland from 78% of all disposals in 1988 to 68% in 1998. A sum in excess of £24m was collected in fine receipts by the sheriff and district courts in 1998/99.[19]

In addition to court imposed fines, the procurator fiscal can offer alternatives to prosecution in the form of monetary penalties. Fixed financial penalties attach to many motoring offences and fiscal fines[20] may be offered for certain minor offences. In 1997/98, 33% of reports received by procurators fiscal ended in non-court disposals; of these, 9% were fiscal fines or conditional offers.[21]

---

[17] The High Court hears only cases on indictment and has exclusive jurisdiction in cases of murder, rape and treason. At common law, its sentencing power is unlimited. The sheriff court, sitting in summary cases can impose prison sentences up to 3 months (in certain cases 12 months) and fines up to £5,000 for common law offences. Sitting in solemn cases, the sheriff court can impose a prison sentence of up to 3 years and /or an unlimited fine in common law cases. The district court deals only with summary matters and can impose up to 60 days imprisonment and a maximum fine of £2,500.

[18] Hutton suggests that there may be an 'informal tariff' based on the circulation of information on sentencing practice within what is essentially a small judicial community in Scotland. Op Cit, p175.

[19] Figure taken from the Scottish Executive 'Scottish District Courts Statistical Bulletin 1998-99' and from tables provided by Scottish Courts.

[20] Conditional offers of fixed financial penalties for a wide range of motoring offences were introduced in 1983. The fiscal fine was extended to other minor offences by s56 of the Criminal Justice (Scotland) Act 1987. Prosecutor fines are not recorded as criminal convictions.

[21] Paterson, Bates & Poustie, The Legal System of Scotland, fourth edition, 1999, p113,

Probation

Probation was introduced as a non-custodial sentence in 1907. A probation order counts as a conviction. Its use in Scottish Courts has more than doubled in the last decade to just over 5% of cases (7,100) in which a charge was proved in 1998 compared to 2% of cases in 1988. Probation orders were most commonly used in 1998 for convictions for 'other violence'[22] (31%), lewd and indecent behaviour (29%), fire-raising (29%) and sexual assault (23%)[23].

Community Service Orders

Community Service Orders (CSO) have been available in Scotland since 1979[24]. A CSO can be imposed on a person of or over the age of 16 who is convicted of an offence punishable by imprisonment (unless the sentence for that offence is fixed by law).[25] A CSO places a requirement on the offender to carry out a period of unpaid work of benefit to the community. The minimum is set at 40 hours and the maximum at 300. Before making an order the court must satisfy itself that:

- the offender consents;
- community service is available in the offenders area of residence;
- the offender is a suitable person for community service;
- suitable work is available.

In 1998, the number of convictions resulting in a CSO was 5,300, a decrease of 8% on the previous year.[26]

Supervised Attendance Orders

A recent addition to the court's armoury of sentences is the supervised attendance order (SAO).[27] The purpose of this disposal is to enable the court to deal with fine defaulters other than by use of imprisonment and as a first instance disposal for 16 and 17 year olds in place of a fine[28]. The latter have been used relatively rarely with only 68 orders made by the courts in 1998.[29] An SAO requires the offender to attend a place of supervision and to undertake activities specified by the local social work department for between 10 and 100 hours. It has been estimated that around 3,000 SAOs were made by the courts in 1996-97[30]

Compensation Orders

Compensation orders were introduced by Part IV of the *Criminal Justice (Scotland) Act 1980* and came into use the following year. A compensation order is restitutory in nature and can be made by the court as a sentence in its own right or combined with another disposal. In making a compensation order the court will take account of the means of the offender and the degree of loss or injury to the victim. In 1998,

---

[22] 'Other violence' includes threats, extortion and unnatural treatment of children

[23] Op Cit, (CrJ/1998/8)

[24] This penalty is not available to every court.

[25] See s 238 (1) of the *Criminal Procedure (Scotland) Act 1995.*

[26] Op Cit, (CrJ/1998/8)

[27] Brought in by the *Law Reform (Miscellaneous Provisions) (Scotland) Act 1990* and amended by the *Criminal Justice (Scotland) Act 1995.*

[28] Young, P. Crime and Criminal Justice in Scotland, TSO, 1997, p93.

[29] Op Cit CrJ/1998/8, Table 7.

[30] McIvor,G and Williams, B.Community-based Disposals in Duff, P. and Hutton, N. (Eds) (Op Cit).

compensation orders were made as a main or secondary punishment for 4.6% of all charges proved. However, the use of this disposal has been criticised as inconsistent between courts and also of being used largely for the benefit of companies rather than individual victims.[31]

Restriction of Liberty Orders

Restriction of Liberty Orders (RLOs) were introduced by Section 5 of the *Crime and Punishment (Scotland) Act 1997* and have been available on a pilot basis to the sheriff courts in Aberdeen, Peterhead and Hamilton since August 1998. Restriction of Liberty Orders enable the court to electronically 'tag' offenders to ensure they remain in a specified place for up to 12 hours a day for a period of up to12 months or, conversely, away from a specified place or places for up to 12 months.[32] A total of 71 RLOs were made by the courts in 1998.

Drug Treatment and Testing Orders

Drug Treatment and Testing Orders (DTTOs) can be imposed as an alternative to sentencing where the offender is over 16, is a drug abuser and consents to be made the subject of an order. A DTTO can last between 6 months and 3 years. DTTOs represent a multi-agency approach designed to tackle the link between drug abuse and offending. They were introduced on a pilot basis to Glasgow sheriff courts in December 1998 and extended to the High Court, in respect of offenders from Glasgow, in December 1999. Their use was further extended to Fife in July 2000.

Conclusion

This note has considered a number of issues surrounding the viability of a penal policy that results in the current high levels of incarceration. These issues include the scepticism which has developed since the 1970s over the ability of prisons to rehabilitate offenders; the tendency of judges to send an increasing proportion of offenders to prison and for longer periods and the consequent problem of long term overcrowding in local prisons together with the humanitarian and control issues which arise as a result. Not least, there is also the issue of the escalating costs of maintaining large numbers of people in prison. Against this background, there is a clear need to review the use of custody in Scotland, particularly for those convicted of minor crimes and offences and for those such as fine defaulters not originally given custodial sentences. The use of remand for both pre and post-trial prisoners[33] would also benefit from review. On grounds of cost and effectiveness there are strong arguments for restricting the use of incarceration to a select few serious crimes such as homicide, rape, serious or sexual assault and, perhaps, for persistent offenders.

[31] Moody, S. 'Victims of Crime' in Duff, P. and Hutton, N. (Eds) (Op Cit).

[32] Criminal Justice Information Bulletin, July 1998

[33] Following conviction, offenders may be placed on remand to await sentence which, may not necessarily be a custodial one.

JH/00/31/10

JUSTICE AND HOME AFFAIRS COMMITTEE

Petition PE89 by Eileen McBride

Note by the Assistant Clerk

Background

This petition calls for the repeal of legislation which will allow non-conviction information to be included on enhanced criminal record certificates.

The relevant legislation, namely Part V of the Police 1997 Act, is not yet in force. The provisions of Part V create a new legislative framework for the disclosure of criminal records for employment purposes. There will be three kinds of certificates available. Under section 112, a criminal conviction certificate will record convictions held on central police records which are not 'spent' under the Rehabilitation of Offenders Act 1974. Under section 113, a criminal record certificate, for which an application would be made jointly by the individual concerned and a registered body or employer, will include both 'spent' and 'unspent' convictions.

The petitioner's principal concerns relate to enhanced criminal record certificates. Under section 115, an enhanced criminal record certificate will be available to prospective employees, trainees and volunteers who have regular contact with children and young people under the age of 18 or applicants for gaming, betting and lottery licences. This will include all of the details on the criminal record certificate together with information from a local police force record check and details of minor convictions and other 'non-conviction' information, which in the relevant chief constable's opinion might be relevant and ought to be included.

Mrs McBride is concerned that the provisions in sections 115 and 116 of Part V of the Police Act 1997, will negate a person's right under Scots law to be presumed innocent until and unless proven guilty, and also contravene article 6 (right to a fair trial) of the European Convention on Human Rights.

The Committee considered the petition on 29 March, and wrote to the Minister for Justice asking for clarification on when Part V of the Police Act 1997 would be brought into force in Scotland and inviting his comments on the suggestion that the relevant sections might breach article 6 of the European Convention on Human Rights. The Minister for Justice responded, saying that the Executive intends to commence Part V but it will take two years to equip the Scottish Criminal Record Office for the new expanded system. The Minister indicated that the legal advice received "suggested the risk of challenge under ECHR was not great, provided there was clear guidance on the type of information which Chief Constables should release and also that the procedures were regularly reviewed."

After the Committee considered the petition again on 15 May, Barnardo's Scotland, the Scottish Police Federation, the Law Society of Scotland and the Scottish Human Rights Centre were invited to submit written comments on the issues raised in the petition. The first three responded, and their responses were circulated.

It was confirmed by all three organisations that, on balance, for the protection of children, the declaration of certain non-conviction information was necessary. However, all three agreed that it was crucial that the appropriate safeguards be put in place in relation to what information will be disclosed on certificates and to whom access is given to this information. The Law Society went further to say that, in order to prevent a breach of ECHR, there should be an appeals mechanism available before the information is disclosed to employers and that the independence of the appeals system be scrutinised. An appeal at present would be made to Scottish Ministers.

For information, a Scottish Executive consultation paper "Protecting Children, Security their Safety" is subject to consultation until the end of October. This relates to the establishment of an index of adults unsuitable to work with children. The policy behind the index is much the same as that behind criminal record certificates and similar issues of concern are likely to arise.

Procedure

The Standing Orders make clear that, where the Public Petitions Committee 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

In view of the responses received, the Committee might wish to write again to the Minister for Justice, enclosing the responses:

- asking the Minister to keep the Committee informed about the Scottish Executive's progress on the preparation of a code of practice on disclosing non-conviction information and the likely timetable for implementation of Part V;
- highlighting the need for there to be strict regulation of what information will be disclosed and urging that any disclosure of non-conviction information should be based on the principle of proportionality; and/or
- asking the Minister to consider a review of the appeals mechanism in order that it could be invoked prior to the certificate being sent to the relevant organisation and would allow a more independent evaluation of the case.

25 OCTOBER 2000 FIONA GROVES

NB – The relevant papers, previously circulated are the following:

- SPICe Research Note 00/19
- JH/00/13/3 Note by the Assistant Clerk on PE89 (copy of petition attached)
- JH/00/14/9 Letter from Eileen MacBride on PE89
- JH/00/16/4 Note by the Clerk on petition PE89 (letter from the Minister for Justice was attached)
- JH/00/25/17 Response from Barnardo's Scotland
- JH/00/26/7 Response from the Scottish Police Federation
- JH/00/28/5 Response from the Law Society of Scotland

The latter three papers are attached to this note.

JH/00/31/3

The Scottish Parliament

Justice and Home Affairs Committee
From: the Convener, Alasdair Morgan MSP

Committee Chambers
George IV Bridge
EDINBURGH EH99 1SP
Tel (clerk): 0131 348 5206
Fax: 0131 348 5600
e-mail (clerk): andrew.mylne@scottish.parliament.uk

Brian Hamilton BLE
Rockhall
Collin
Dumfries DG1 4JW

17 October 2000

Dear Mr Hamilton,

Leasehold Casualties (Scotland) Bill

Thank you for your letter of 9 October, and for your kind remarks in the first and final paragraphs.

You suggest that, as the only witness arguing from the perspective of those who have benefited from the current law, you were subject to unfair restrictions on your ability to put your case to the Committee. I believe you were given a fair and reasonable opportunity to set out your position - indeed, if I may say so, I thought you put your case very clearly and forcefully.

The Committee's role is to "consider and report on" the general principles of the Bill. In fulfilling that role, it is up to the Committee to decide what evidence it needs to take. The established practice is for Committees to invite evidence from those individuals or bodies they consider to be representative of the principal relevant interests in relation to the Bill (or other matter under inquiry). Each such interest invited is given a roughly equal opportunity to comment, and all evidence received is taken into account.

There is not – nor, in my view, should there be – any presumption that, where a Committee encounters a difference of view on some key aspect of a Bill (or any other subject of inquiry) among its witnesses, equal time should be allowed for the arguments on either side to be expressed. That would only be reasonable if there was *prima facie* equal weight to the arguments on either side. However, in a case where the large majority of witnesses take one side against a lone voice expressing the contrary view, such a division of time would risk giving disproportionate consideration to marginal views at the expense of those more widely-supported.

In addition you should not assume that the length of time spent taking evidence from one side of an argument as against another will necessarily be reflected in the

final views of the committee, which in this particular case we have not yet even discussed.

Perhaps I can reassure you on some of the other matters you raise. Firstly, you say there was no press coverage. In fact – although what the media choose to report is clearly not a matter for me – I am aware of at least one substantial article about the meeting in which your views are prominently reported (and I attach a copy for your information). Secondly, I have asked the clerks to ensure that your letters to the Scottish Law Commission – the only written evidence you submitted in advance of the meeting -- are included among Committee papers available on the website. Thirdly, the clerks have arranged for your written statement (copies of which were handed to members of the Committee at the meeting) to be circulated in advance of the next meeting as a numbered Committee paper. This will ensure it is publicly available to all those who follow the Committee's business.

I can also reassure you in relation to your concern that other MSPs may remain unaware of the case you have made when they come to vote, in the Stage 1 debate, on the general principles of the Bill. The established practice is to print all evidence (which in this case will include your letters and statement, and the Official Report of the meeting you attended) in annexes to the Committee's Stage 1 report. That report will be published in advance of the Stage 1 debate, and I have no doubt that MSPs taking part in the debate will refer to your evidence in their remarks.

Finally, I note the point you make in your final paragraph. The clerks have now written to the Scottish Executive asking it to comment formally on your concerns about section 5 of the Bill. Any response it makes will of course be circulated to the Committee in advance of the Stage 1 report being finalised and will be published with that report.

I am copying this letter, together with yours, to members of my Committee.

Yours sincerely

pp

ALASDAIR MORGAN MSP
Convener

Letter approved by the Convener and signed in his absence.

Press and Journal

5 OCT 2000

Titles raider hits out at Law Commission

2

by **Tim Pauling** 6

A FORMER North-east man who used an archaic legal loophole in property documents to net thousands of pounds yesterday accused the legal profession of trying to cover its own mistakes when he appeared before a parliamentary committee.

Brian Hamilton – known as the Raider of the Lost Titles – told the justice and home affairs committee that evidence it had from the Law Commission and Registers of Scotland was worthless.

The former North Sea welder was giving evidence on a private members bill designed to stamp out the practice of claiming leasehold casualty payments from unsuspecting landowners. The payments are charged over and above rent occasionally paid to the landlord as stipulated in the lease.

The Leasehold Casualties (Scotland) Bill was introduced by Adam Ingram, SNP MSP for South of Scotland, and Pauline McNeill, Labour MSP for Glasgow Kelvin, with the support of the Scottish Executive.

The two backbench members claim the pain and hardship caused by the payments have no place in a modern Scotland.

Mr Hamilton, formerly of Cammachmore, near Stonehaven, netted nearly £500,000 in 1993 after buying remnants of estates once owned by the Dukes of Richmond and Gordon in the Huntly area.

Action

In 1997, he won a court action against a Lanarkshire woman, Anne Judge, when she contested his demand for £6,350 under the terms of the leasehold rights on her home. He obtained the rights when he became the owner of the Blackwood Estate, in Lanarkshire.

Lanark Sheriff Court ruled that Mrs Judge had to pay almost £20,000, a sum covering the casualty, interest of £1,505 and Mr Hamilton's legal fees.

Mr Hamilton told MSPs yesterday that the narrow range of advice to the Law Commission's advisory group was biased – particularly regarding the issue of compensation – and flawed in the face of overwhelming evidence.

He said the group was loaded in favour of the professionals, and did not include any landlords or tenants.

"In my view the Law Commission's report on the redemption value – the compensation value – is absolutely worthless; it doesn't bear any resemblance to what is happening out there," said Mr Hamilton, of Dumfries. "It is worthless because they didn't have any alternative views available."

He said it was wrong to abolish a landlord's rights, which may be worth £6,000 every seven years or so, with a one-off payment not thought to exceed £60, as laid out in the bill.

Compensation

In an earlier written submission Mr Hamilton said that householders would not have been caught out if lawyers had done their job.

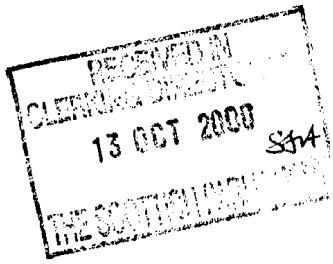
Earlier in the day, the committee heard evidence from Alistair Rennie, deputy keeper of the Registers of Scotland, which keep records of all land deeds.

One of Mr Hamilton's criticisms is that the register had failed to list the casualty clauses which had partly lead to the current situation. It currently costs the Register about £40,000 a year in compensation.

Committee convener Alisdair Morgan said to Mr Rennie: "Mr Hamilton's contention is that you are interested in seeing this piece of legislation passed to get your organisation off the hook." Mr Rennie replied that argument was removed by one of the sections of the bill.

Earlier Mr Rennie said: "We support this piece of legislation which will remove a confusion that has existed in the law for 150 years. It is quite critical that it is sorted out as soon as possible."

B.G. HAMILTON. BLE
Rockhall,
Collin, Dumfries
DG1 4JW
Tel: 01387 750580
Fax: 01387 750522
Int. Code: 011441387



Alasdair Morgan MSP
The Scottish Parliament
Edinburgh
EH99 1SP

9th October 2000

Dear Mr. Morgan,

Leasehold Casualties Bill

I refer to our conversation at the telephone. Please extend my thanks to your committee for the courtesy shown to me on Wednesday.

You will perhaps agree that the situation with regard to the formulation of the Committee's opinion on this Bill is somewhat unusual. Normally opinion is more evenly divided; on this occasion it appears that there is complete consensus on the Bill amongst those who will vote on it. May I suggest that in these circumstances it places an even greater responsibility on you as chair of the examining/vetting committee to ensure that the alternative point of opinion has an airing.

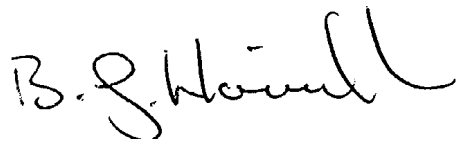
On Wednesday I was placed in an impossible position. Your committee invited me, presumably as a spokesman for the interests of those who held landlords' interests in leasehold casualties, to speak to the Bill. You could have invited many others including solicitors acting for major estate owners. Convenor, the odds were unfair. As I said during the time that I was questioned: my own financial interest in the matter is almost exhausted. Perhaps, in retrospect I was the correct person to question, I might have given a more detached view than a landlord who stood to lose considerably by the proposed Bill. What was unfair was that I had to answer the case made by the Law Commission, the Law Society, and the Registers of Scotland. The time allocated to me was the same as all the other parties had been given. However, the Law Society and the Keeper of the Registers had already had a major influence on the Law Commissions Report: they being on the Law Commissions Advisory Group. Convenor, under those circumstances you should have exercised your discretion. The only opportunity to answer their case was at your committee hearing and I was not given a reasonable chance to do so. You may have noticed that the press did not cover the meeting. It is unlikely that MSP's other than those on your committee will ever hear any of the alternative case. My submissions are not on your web-site and there is no political mileage for my views to be repeated. You will recall that I had to abandon my prepared statement for lack of time. May I suggest that to partially

rectify the situation you instruct that the statement be transcribed into a Committee Paper and put with all other papers in the public domain on the web-site with an explanation that it could not be delivered for lack of time. This will not only allow the public at large to consider an alternative point of view it will also allow MSP's the same opportunity.

The other point that I spoke about to you on the telephone was my request that your committee look again at the proposed Section 5 to the draft Bill (I refer you to the last page of my proposed opening statement to your committee). This section was added without notice to the Law Commission's Report and without any public consultation. The Law Commission explained that they had the power to make recommendations outside of their terms of reference. When I saw the proposal I wrote to them and explained my concerns. The reply that I received was that their task was finished once they had submitted their report, however, they said that other options were open to the landlord to irritate leases but did not explain what these were. In discussion with Dr. Eric Clive on the morning of the 4th October, before we both gave our evidence, he as good as conceded that I was right. If I am right it should be of great concern. Firstly the quality of work submitted by the Law Commission should make it impossible that someone like myself should be able to point out mistakes in their work. Secondly, the rules of engagement should make it possible for the Law Commission to be able to notify the Executive of any last minute changes they consider appropriate. The 'jobsworth' approach by the Law Commission is not good enough.

Thank you for your time and please accept my best wishes in your Convenorship.

Yours sincerely,



JH/00/31/4

JUSTICE AND HOME AFFAIRS COMMITTEE

Leasehold Casualties (Scotland) Bill

Supplementary submission by Dr Clive

Introduction

My oral evidence to the Committee was not as full or helpful as it might have been on the question of compensation. I wonder if I might be permitted to supplement it with this short written summary of the options.

This submission is made as an individual. It goes slightly beyond what is in the Scottish Law Commission's report. It deals only with compensation for the loss of the right to collect rental value casualties on the assignation of ultra long leases.

I am assuming that the policy is to extinguish such leasehold casualties not later than the date when the Bill receives Royal Assent and to make some provision for compensation.

It should be noted that the benefit the tenant would be getting from the extinction of such casualties is not relief from a casualty which has fallen due. Accrued rights would not be affected by the Bill. The tenants who will be asked for compensation will have already paid, or become liable for, a casualty on taking over the property. The benefit the tenant would be getting is the clearing of the title, so that future tenants will not become liable for rental value casualties on acquiring the property. Many tenants might not have wanted to clear their title. An elderly tenant, for example, might well say "Why should I pay money for that? I'll leave that to my heirs to sort out."

Option 1 - Case by case system (tenant to pay)

Scheme. Each casualty would be assessed individually. The landlord could apply to a tribunal for compensation for the loss of each casualty, presenting evidence of its actual value at the date of extinction. The tenant would have the right to reply. The tribunal would order the tenant to pay the landlord a sum which it considered fair compensation for the landlord's loss of future income. The sums would be tailor-made for each situation and would vary enormously, but not necessarily according to the value of the property.

Example 1. The landlord can prove that the tenant intends to assign in a month's time and that the new tenant intends to assign after a year. The landlord submits, and the tribunal accepts, that the nature of the property is such that frequent assignations are likely thereafter. The terms of the lease, and the nature of the property, are such that it would be very difficult for the tenants to take legitimate avoidance measures. The property is sublet at a high rent so that the actual rental value is high and ascertainable. Large compensation.

Example 2. The property is a dwelling house in an area where there is little reliable evidence of actual rental values. It is not in particularly good condition. The tenant is a single mother who acquired the tenancy, and paid a casualty, two years ago with the help of a loan. She has no immediate intention of moving but has a new man in her life and says, quite honestly, that she does not know how long she might stay in the house. If she moved in with her new man she might sublet her house and keep it as a source of income (and as a place to go to if the relationship broke down) but she has not made up her mind on this yet. Everything is a bit uncertain. She has no savings and no further borrowing capacity. The landlord produces evidence that on average houses in the area change hands every 8 years and that similar houses in a neighbouring area where there is more privately rented accommodation fetch a certain rent. Medium compensation, based on guesswork.

Example 3. The tenants (a young married couple) paid a substantial casualty recently on taking over the house. It is an attractive large house with a high rental value. They give evidence, which is accepted by the tribunal, that they have no intention of moving house in their lifetimes. They are firmly settled in the community and the house is ideal for their future purposes. The tribunal concludes that, on a balance of probabilities, the landlord would not receive another casualty for forty or fifty years. Small compensation.

Example 4. The tenant of a block of tenement buildings is a company formed by a housing association to hold the titles to its properties. It took over the lease a few years ago when the buildings were decrepit and paid a small casualty (because the actual rental value was minimal at that time). It has spent a lot of money on doing up the buildings. If it did assign the lease the casualties would be enormous but it has no intention of assigning the lease in the foreseeable future. Even if it did wish to transfer the properties it would prefer to transfer the shares in the holding company than to assign the lease. The tribunal concludes that, on a balance of probabilities, the landlord would never get a casualty payment. No compensation.

Advantages. This scheme would be fair, or more than fair, to landlords. The circumstances of each case could be taken into consideration. It would be immune to human rights challenges.

Disadvantages. Tenants who might never have wanted or needed to clear their titles of liability for future casualties would be forced to defend claims by landlords, to get involved in expensive and troublesome disputes and in some cases to pay sums which they would not otherwise have chosen to pay. Solicitors acting for landlords who had not claimed casualties for 90 years might feel obliged to rake through the titles and advise on the new statutory rights to compensation. Sleeping problems could be awakened.

The scheme would be expensive to operate.

Assessment. This option would, at great expense, make matters worse rather than better. It seems completely unacceptable.

Option 2 Formula system (tenant to pay)
Scheme. The landlord could claim compensation from the tenant on the basis of a formula. The scheme would operate as provided for in the Bill, subject to possible variations in the formula.

Advantages. This scheme could be efficient to operate, depending on the formula. It provides some compensation for landlords but is not necessarily unfair to tenants. It provides some extra protection against human rights challenges.

Disadvantages. The formula must be rough and ready if it is to apply across the board. It cannot please everybody. If the formula relates to actual rental value there would be valuation problems and expenses.

Assessment. Everything depends on the formula used.

A formula of, say, 2.5 times the amount of the current annual rental value[1] would seriously penalise many tenants who, if there had been no legislation on the subject might never have wanted to clear their titles of liability for future casualties, or who might not have done so for many years (by which time anything might have happened). It would certainly over-

[1] There is evidence that this figure has been used for voluntary buy-outs. See the Scottish Law Commission's Report on Leasehold Casualties, para 2.27 and Mr Brian Hamilton's evidence to the Committee.

compensate some landlords. It could awaken sleeping landlords. It would make the problem worse rather than better.

A formula based on the ground rent (as in the Bill) will give some landlords less in some cases than they would have got if there had been no legislation. In some cases (see e.g. example 4 in Option 1) it will give the landlords more than they would otherwise have received but the amount would be minimal and could be ignored for practical purposes. There is some historical and moral justification for using the ground rent. Historically, landlords in Lanarkshire replaced rental value casualties by ground rent duplicands in new ultra-long leases granted after 1874.[2] Morally, the ground rent avoids basing the casualty on value added by tenants' expenditures.[3]

Given the peculiar and very special nature of the problem it must be better to err on the side of being harsh to some landlords in some cases than on the side of forcing some tenants to pay substantial sums they would never otherwise have had to pay.

On the basis of the actual terms of the First Protocol to the European Convention on Human Rights, and on the basis of cases such as the Duke of Westminster's case[4] and the Mellacher case[5] (mentioned in the SLC report), this solution seems to be compatible with the Convention. It must surely be within the discretion of a democratic legislature to conclude that exactions which are akin to a private property transfer tax combined with a private development value tax are contrary to public policy. When it is suddenly discovered, to most people's surprise, that such exactions can still be made on the basis of some landlords' quasi-feudal property rights dating from the 18th or 19th centuries it must surely be within the discretion of a democratic legislature to conclude that the use of the landlords' property rights to make such exactions should be controlled at once in the general interest. If the only feasible way of doing that, other than paying compensation out of public funds,[6] is to provide for no compensation or compensation at a level which will not make the problem worse, then that cannot be regarded as a disproportionate response, particularly if accrued rights are respected and there is no element of retrospectivity in the legislation.

This seems to be the best system if, but only if, the formula is very low. It would be unacceptable if the formula is high.

Option 3 Compensation out of public funds
Scheme. Landlords could apply to the Scottish Executive or a special official or tribunal for compensation out of public funds. Compensation would be assessed either on a case by case system or on the basis of a formula. As a case by case system would be unduly expensive to operate and would involve intrusive inquiries of tenants it will be assumed that a formula system would be preferred.

Advantages. The formula could be fixed at a level which was more acceptable to landlords than the one in the Bill. There would be complete immunity from human rights challenges.

Disadvantages. Public money would be spent in a questionable way. Quite apart from the cost of the compensation, the system would be expensive to operate because the legal validity and enforceability of each casualty would have to be checked. Landlords who had

[2] See the Scottish Law Commission's Report on Leasehold Casualties para 2.17 and Appendix B, Table 1.
[3] The unfairness of basing the casualty on current rental value is most obvious where, as in example 4 in Option 1, the tenant has acquired derelict property and has erected on it, at great expense, buildings with a very high rental value.
[4] *James v United Kingdom*, ECHR, 21 February 1987, Series A No 117.
[5] *Mellacher and Others*, ECHR, 19 December 1989, Series A No 182.
[6] See Option 3 below.

not claimed casualties for decades would be tempted to claim compensation because there would be no hardship to their tenants and no public opprobrium.

Assessment. It is a political decision whether to use public funds to buy off all possible risk of a human rights challenge. Subject to that, the following points can be made.

There seems to be no obvious reason why public money should be offered to those landlords who have not exercised their rights to claim rental value casualties for many years.

The fundamental objection to this option is that it would be dangerous to establish a precedent or expectation that every time the State puts a stop to an undesirable practice it must compensate those who have been making money out of the practice and who, in the absence of legislation, would have continued to do so for an indefinite period. Many examples could be mentioned. At one time selling opium was lawful and people made money from it. Perhaps some people bought opium-dealing businesses in the expectation of future lawful profits or bought chemists' businesses and found to their delight that they included a lucrative line in supplying opium. When legislation put a stop to this practice, opium dealers might have argued "I don't mind you stopping opium dealing, but not at my expense". Surely, however, no legislature would have concluded that opium dealers had a claim against the State for compensation for all the profits they would have made into the indefinite future if there had been no legislation. To offer such compensation out of public funds would have been a disproportionately generous response to the social problem. To recognise accrued rights, perhaps by providing compensation for the loss in value of existing stocks, would have been a proportionate response.

General conclusion

The scheme proposed in the Bill, or something very like it, seems to be the only feasible compensation scheme, apart from the provision of compensation out of public funds, if rental value casualties are to be extinguished immediately without making the existing problem worse. Whether compensation out of public funds should be offered in order to buy off all possible human rights challenges is a political decision but it would seem to be a disproportionate response likely to set a dangerous precedent.

8 October 2000

JH/00/31/5

JUSTICE AND HOME AFFAIRS COMMITTEE

Leasehold Casualties (Scotland) Bill

Prepared Speech by Brain Hamilton for 4th of October Meeting

Convener, you may have heard from Professor Rennie representing the Law Society, an organisation whose members have singularly failed to come up to the standards expected of competent solicitors, both in their conveyancing and their treatment of clients following the discovery of their mistakes.

You have heard from Mr. Rennie the Deputy Keeper of the Registers of Scotland, an organisation that, if this Bill were not passed, would be at risk of significant financial liability. You will note form your own Research Paper that the Keepers Office has already paid out, in indemnity payments, in excess of £230,000. For the Keeper this is not an academic matter of developing the Law of Property; for him it is about avoiding liability for his own incompetence.

Finally you have heard from the Law Commission. It is worth pointing out at this stage that the two Rennies, one from the Law Society the other from the Keepers Office were also on the Law Commissions Advisory Group.

Convenor, you have invited me to give evidence. You could have invited one of the big estate owners or their solicitors; instead you have invited the least of the landlords who have an interest in Leasehold Casualties. You have restricted me to the same time for my opening statement as all others giving evidence before this committee. It falls on me to answer the case put by all witnesses and to challenge the Law Commissions Report. This is a Bill that appears to have no opposition from elected members. Convenor, you will not be surprised to hear that I suspect that the cards are stacked against me this morning.

I would like to start my evidence to this committee with a response to the **Law Commissions Report**. I would like to follow that with a response to some of the evidence given to you at your meeting on 11th September. I would then, with your permission, like to make one specific comment on the draft Bill.

You have before you, I think, my submissions to the **Law Commission**. You may have noted that my comments that the narrow range of views available to them on the **Advisory Group**. That group was loaded in favour of those professionals whose job it was to protect citizens seeking to purchase accommodation. This narrow range of views has resulted in a **Report** that is less than objective.

Certainly as far as it **purports** to draw conclusion on the redemption or compensation value of rental value the Report is flawed and flies in the face of easily available evidence. **Convenor**, the report finds that a fair multiplier for a casualty due on assignation is 0.75. Landlords and tenants have been **freely and routinely** negotiating buy-outs of casualties at a multiplier of at least **2.5** for the last **eleven**

years. There has never been any compulsitor on either tenant or landlord to agree a buy-out. These buy-outs have been mutually agreed to the benefit of all parties. There are scores of examples readily available. If this committee wants proof of this statement I can arrange to have that proof delivered to you. Certainly the Keeper of the Registers of Scotland knows this to be true; the discharges are all recorded in his register. In the Feudal Casualties Act of 1914 at section 5 (b) **2.5** was also the multiplier for this type of casualty.

As you may remember. The Law Commission's final Report and Draft Bill was prepared in haste in order to achieve the **political imperative**. The committee may be interested to know that **neither** the Law Commission **nor** its researchers ever interviewed one landlord or his agent. However they still felt able to describe and comment on how a landlord would behave and his reach his decisions. Convenor, the **Law Commission's Report**, in so far as it relates to the redemption value of a rental value casualty, **is absolutely worthless.**

In the Official Report of the 11th September meeting, of this committee. As the column 1689 Mr. Adam Ingram is reported as saying **"In the case of rental value casualties, compensation will be based on the ground rent only, to avoid landlords reaping the benefit of the work done by successive tenants on the building".** And later on he says**: "The idea is to award the landlord a sum of money that, if invested, would yield the same amount at the same due date."**

It can hardly be said that this proposal is **compensation** for the landlord's loss of income. To abolish one right which may be worth £6,000 every seven years or so and replacing it with a one-off payment, that is not thought likely to exceed £60, and call that compensation **does violence to the English language**.

If the sponsors of the Bill object to landlord receiving payments based on the tenant's improvements it is logical that their next Bill ought to outlaw rent review clauses.

They might also outlaw the modern ground lease whereby land is let for a term of years, with the tenant erecting a building, or even a whole retail park, and that whole development reverting to the landlord at the end of the lease.

Convenor, the terms of any lease determine the rent due to the landlord. What should be remembered is that the tenant, under these long leases, has had the use of the land for a **very long time**, at a rent **so small** that in recent times **the rent has not been worth collecting**.

I think that the sponsors of the Bill are in trouble here. They have listened to what Legal Opinion they wanted to hear. The distinguishing point about the Westminster case and the case at hand is that the Duke's property was not confiscated, which is what this Bill in effect does, the Duke got a reasonable sum but not as much as he wanted. Mr. Jackson got to the point when discussing proportionality with Prof. Rennie at column 1697 in the record. If one were to accept the short summary of the case that Prof. Rennie gave then the correct compensation might be the value of the land alone.

Mr. Ingram at column 1693 says that the current had to shell out for payment not made. With respect to Mr. Ingram and other politicians who have commentated, he and they know that it has been the case that negligent lawyers have had to shell out.

Where it was the case that the tenant knew about the casualty clause before he took on the lease that tenant can hardly complain. He would have factored this in when arriving at his offer price.

At column 1694 Mrs. Maureen Macmillan raised the question of schools and schoolhouses on long leases. I can, with confidence, inform this committee that there are no schools or schoolhouses subject to casualty clauses. It does not require much thought realise that a casualty clause in a lease to an incorporated body is pretty useless. Perhaps after I have finished giving my evidence Ms. Pauline McNeill, who made a long speech to this Parliament on December 15th naming me regarding this very subject might like to make a Personal Statement and at the same time correct Mrs. Macmillan's information.

At column 1695 Professor Rennie informed the committee that the Law Society and the Registers of Scotland made and approach to the President of the Court of Session. They did this with the hope that the Lord President would get them off the hook of their own incompetence. Committee members will not be surprised to hear that when I was made aware, by one of their own members, of this move, I also made an approach to the Lord President and made him aware of the full extent of the problem.

At the top of column 1696 you will note Professor Rennie saying that in most cases there would be a negligence claim against the solicitors. I refer you to my submission to the Law Commission. In every case that I came across it was apparent that the tenants were never told of the casualty conditions of the lease. And in almost every case the solicitors left their clients with the problem.

There were **two honourable exceptions**, one was a firm that Donald Dewar, our First Minister, was a consultant with, and the other firm was Professor Rennie's firm.

One firm of solicitors, Carruthers Gemmill of Glasgow, acting for Mrs. Anne Judge who lives in Boghead, refused even to notify their insurers of a possibility of a claim. That lady had eventually to instruct another firm of solicitors to sue the first firm and has now been compensated for all her losses.

Convenor, Mr. Ingram at Column 1690, when being questioned by Mr. Gallie, described the leasehold casualty as a loophole. Ms. McNeill also used that term. My understanding of that term is it is something that could not reasonable have been foreseen. Convenor, the casualty clauses in long leases are as clear as day. They were not missed because of lack of clarity; they were missed by shoddy conveyancing. In order to absolve the solicitors and their insurers of their responsibilities to tenants under these leases it is proposed, by other lawyers, to abolish the obligation to conform to the lease. Convenor, it is significant that in the whole of this debate over the last four or five years there has been no criticism at all of the legal profession. One might have expected at least that the Law Commission, in its Report, would admonish those solicitors who were at fault. Members of this

committee will know that solicitors, like other professions, have Professional Indemnity Insurance. The legal profession's campaign to abolish Leasehold Casualties has been about protecting the premium level. Their record in this matter shows that they put their own interests way in front of their client's.

If I may, Convenor, I would like to make one specific comment on the draft Bill.

Section 5 abolishes the landlord's right to irritate the lease. I myself drew to the attention of the Law Commission the fact that Sections 4-7 of the 1985 Miscellaneous Provisions (Scotland) Act did not cover residential leases. I think it absolutely correct that tenants should not be at risk for non-payment of a rent that the landlord himself does not think worth collecting. There is one situation however, where I think members will see an advantage to the community to allow a landlord to irritate a lease.

I remember when the Abolition of Feudal Tenure Bill was being discussed on 15th December last year everyone declared their ignorance of the law before they went on to make new law. Some detail is required. Please stop me if I do not make myself clear.

The registration of a lease, in either the Sasine Register or the Land Register, is deemed to be, in law, equivalent to possession. And so, if a landlord were to go to the court and ask for irritancy on the grounds that the tenant had abandoned the lease he would be refused if that lease had been recorded. Almost all-long leases were recorded after 1857.

At present the landlord's the landlord's vehicle for irritating a lease, where the lease has been abandoned, is to irritate on the ground on non-payment of rent. I have done this on one occasion. This site has now got a factory built on it. The courts are more than capable of making sure that anyone with an interest in the lease has an opportunity to some forward.

If the Bill goes through in its present form the only way that these sites can be developed is fir someone to record a defective title. They must wait ten years for it to mature into an unchallenged title. Those of you, on this committee, who are lawyers, or who are studying the law, will be aware of the Law Society's and the Keeper of the Register's attempts to stamp out the practice of recording defective titles. I believe there is a strong case for some amendment to Section 5 of the Bill.

Convenor, that concludes what I have to say. If there are any questions I will be pleased to attempt an answer.

JH/00/31/13

SCOTTISH EXECUTIVE

Justice Department
Civil Law Division

Saughton House
Broomhouse Drive
Edinburgh EH11 3XD
DX: ED20 557 007

Telephone: 0131-244 2258
Fax: 0131-244 2195
micheline.brannan@scotland.gsi.gov.uk
http://www.scotland.gov.uk

Ms Alison E Taylor
Senior Assistant Clerk
Justice and Home Affairs Committee
The Scottish Parliament
Room 3.9
Committee Chambers
George IV Bridge
Edinburgh
EH99 1SP

26 October 2000

Dear Alison

LEASEHOLD CASUALTIES (SCOTLAND) BILL

Thank you for your letter of 13 October concerning claims made by Mr Brian Hamilton in his evidence to the Committee about the Leasehold Casualties (Scotland) Bill. Mr Hamilton claimed that if irritancy provisions in leases referred to in section 5 of the Bill were abolished, a landlord would have no grounds on which to seek irritancy if a tenant abandoned a lease. Mr Hamilton was of the view that the only option for a landlord in such circumstances would be to record a new title for the abandoned site and sit out the prescriptive period of 10 years until the title became unchallengeable. It was suggested that the land would not be capable of development during that 10 year period.

We do not believe that the landlord would be left so completely without appropriate remedies as is suggested by Mr Hamilton. In the case of abandoned property, a landlord will indeed no longer be able to irritate the lease. We understand that a landlord could, however, seek a declarator from the court that the tenant has abandoned the lease and that the landlord is accordingly entitled to resume possession of the subjects of lease and to dispose of them as he pleases. He would have to satisfy the court that the tenant had indeed abandoned the lease by producing evidence to that effect. If the landlord obtains a declarator he will be able to resume possession and to present the decree of declarator to the Keeper of the Registers in order to clear the registers of the tenant's interest. This would enable him to sell the particular piece of ground to a developer. We understand that the question of whether a landlord can obtain a declarator of abandonment has not been fully explored in case law, principally because the landlord would previously have been able to irritate the lease. There would, however, seem to be no reason in principle why a landlord should not be able to obtain such a declarator.

Another remedy which might be open to the landlord would be to rescind the lease (ie bring it to an end for the future) on the ground that the tenant was in material breach of its terms by not occupying the land. What would amount to a material breach would depend to a large extent on the terms of the

lease. Rescission would not need any court action but in order to give a good title the landlord would want a court decree. In practice he would probably bring an action for declarator that the tenant had, by his material breach followed by the landlord's rescission, lost his rights under the lease and that the landlord was entitled to resume possession of the land and dispose of it at pleasure. Reliance on actual material breaches (as opposed to deemed material breaches) is not precluded by section 5 of the Bill. Abandoned property would presumably not be "used for residential purposes". The landlord would therefore be subject to section 5 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985. He would not be able to rely on the breach to terminate the lease "if in all the circumstances of the case a fair and reasonable landlord would not seek so to rely". The court would consider whether a reasonable opportunity had been given to the tenant to remedy the breach. Presumably a court would want to be satisfied that all reasonable steps had been taken to trace the person currently entitled to the tenant's interest under the lease, who might of course be an heir of the last known tenant. These procedures clearly afford more protection for the tenant than simple resort to irritancy and seem preferable for this reason.

The Executive continues to believe that the remedy of irritancy should be removed in the cases specified under section 5 of the Bill. Irritancy is not an appropriate way of depriving a tenant of valuable rights, even in cases where the landlord claims that the lease has been abandoned. There are other remedies available to a landlord where a tenant has abandoned a lease and we believe that these remedies are preferable to irritancy.

Yours ever

Micheline H Brannan

MRS M H BRANNAN

THE WOMEN'S AGENDA - MAKING IT HAPPEN WORKSHOPS PROGRAMME AND OUTLINE

2.00 pm - 2.45 pm	Speaker on Workshop Topic - to outline the issues and define our demands by argument and evidence for what we want.
2.45 pm - 3.30 pm	MSP on women's experience of Parliament so far and how women can influence the Parliament and the Executive in the specific areas discussed.
3.30 pm - 3.45 pm	Coffee Break
3.45 pm - 4.30 pm	Discussion Session on: How do women make it happen - finally the Group should discuss a range of strategies to help achieve the aims of the Women's Agenda. This should include the question of who has responsibility over key areas; how to build meaningful links with others sharing our Agenda; and how to effectively influence those in power.

The Right Honourable Colin Boyd QC

LORD ADVOCATE'S CHAMBERS
25 CHAMBERS STREET
EDINBURGH EH1 1LA

Telephone: 0131-226 2626
Fax (GP3): 0131-226 6910

JH/00/31/1

Alasdair Morgan Esq MSP
Convener
Justice and Home Affairs Committee
Committee Chambers
George IV Bridge
EDINBURGH

10 October 2000

Dear Alasdair,

When I appeared on 27 September before the Justice and Home Affairs Committee the then Convener made reference to a letter recently sent out by the Crown Agent to staff and asked me about matters covered in that letter concerning pay structures and reward arrangements in the Fiscal Service. The Convener's interest appeared to be based on what she had been told by an unidentified source within the Service, rather than either the Department or the recognised trades union representatives, who have been involved in discussions directly concerning pay and conditions. The Convener recognised, and I confirmed, that these matters would be for the Crown Agent to deal with, since I am not directly involved in the setting of pay and conditions. However, I offered to consult further with the Crown Agent and to write to clarify matters.

I am advised that the Department undertook a Pay and Grading review in 1996, leading to revised grading and pay scales and agreement that subsequent annual pay increases should be negotiated on the basis of a performance and competency staff appraisal and reporting system. The new arrangements were introduced in 1997 following acceptance in an all-staff ballot.

It is standard practice amongst all Civil Service employers that such systems should be examined after 3 years to see what improvements or other adjustments might be made in the light of experience. I understand the TUS representatives within the Department were made aware of this in the pay talks in 1999. In subsequent correspondence earlier this year the TUS were assured that all suggestions for change emanating from both TUS and the Department would be considered and discussed in conjunction with the negotiations when the normal pay claim was made. Comments about/

about the current system, from the TUS and individuals, have been gathered and carefully considered over the past year or so, and the system reviewed by the Department.

The pay negotiations for 2000 commenced shortly after the TUS submitted their pay claim on 25 July. The last pay agreement ran out on 31 July, and although the negotiations are more complicated than usual because of the structural aspects, the Department hopes to conclude the talks shortly to allow staff to vote on the proposals. Pay increases will be back-dated to 1 August.

As I indicated during the Committee session, I understand the concern of staff at a time when we are undergoing profound change in the way the Service operates. I recognised in my evidence that there are pay issues to address, with a view to improving recruitment performance and offering improved reward to existing staff. That is fully covered in the agenda of the pay talks.

I hope this explains the position for the Committee.

Yours sincerely,

COLIN D BOYD

SCOTTISH EXECUTIVE

JH/00/31/2

Deputy First Minister & Minister for Justice
Jim Wallace QC MSP

St Andrew's House
Regent Road
Edinburgh EH1 3DG

Telephone: 0131-556 8400
scottish.ministers@scotland.gov.uk

Alasdair Morgan MSP
Convenor
Justice & Home Affairs Committee
Scottish Parliament
George IV Bridge
EDINBURGH

10 October 2000

Dear Alasdair,

ECHR BILL

I am writing to you about the Executive's proposals for a further Bill which will amend certain aspects of Scots law which may be incompatible with the European Convention of Human Rights.

As you will be aware, an announcement about the Bill was made on 14 September as part of the First Minister's statement on the legislative programme. At that time I wrote to Roseanna Cunningham with an outline of our key proposals. The key areas of the Bill are still very much those already disclosed in relation to adult mandatory life prisoners, the Parole Board and legal aid. However, it is now clear that there will be one or two further additions and I am writing to make you aware of those.

Legal Aid

We want to be in a position to commence Part V of the Legal Aid (Scotland) Act 1986 in order to allow the Board to employ solicitors to represent unrepresented accused. The concern that we have is that [even with the amendments being made to the 1986 Act to allow for exceptions to the Fixed Payment Scheme] some accused may still find themselves unrepresented. In particular, we have identified a potential problem in relation to distant rural areas and cases where an accused is unable to find a solicitor who is willing to represent him under the Fixed Payment Scheme. We think that commencement of Part V may be necessary to ensure that summary criminal legal aid is provided in appropriate circumstances as required under Article 6 of ECHR. To achieve this some technical amendment is needed to the 1986 Act.

General Remedial Power

Scottish Ministers already have some powers under the Human Rights Act to amend ECHR incompatibilities by subordinate legislation. Those powers fall short of those currently available to UK Ministers and we propose to extend them to cover a wider range of circumstances where actual or potential incompatibilities may arise. This will allow Scottish Ministers to make amendments by

subordinate legislation with the approval of the Scottish Parliament where the circumstances are pressing. At present, if a provision in an Act of the Scottish Parliament was declared incompatible, only UK Ministers would be in a position to make a remedial order (under s107 of the Scotland Act) to remedy this. Under the Human Rights Act, Scottish Courts can strike down incompatible provisions in ASPs with immediate effect. We may therefore require to take preventative action where this is anticipated. The wider availability of a power to take action by subordinate legislation will help us to avoid any unnecessary disturbance to the parliamentary timetable.

I still anticipate introduction of the Bill in the autumn. I expect this to be before the end of November. We will be issuing a draft Bill to the Committee and interested organisations prior to introduction and I will contact you again at that time.

I am copying this letter to the Convenor of the Subordinate Legislation Committee for his information and to the Clerks to both Committees.

Yours ever,
Jim

JIM WALLACE

JH/DD/31/8

SCOTTISH EXECUTIVE

Deputy First Minister & Minister for Justice
Jim Wallace QC MSP

St Andrew's House
Regent Road
Edinburgh EH1 3DG

Alasdair Morgan Esq MSP
The Scottish Parliament
EDINBURGH
EH99 1SP

Telephone: 0131-556 8400
scottish.ministers@scotland.gsi.gov.uk
http://www.scotland.gov.uk

17 October 2000

Dear Alasdair,

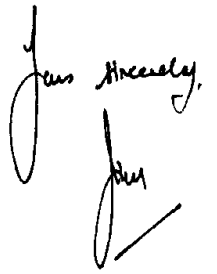
LEGAL AID: PROPOSED PILOT SCHEMES

During the discussion at the Justice and Home Affairs Committee on 6 September, Maureen Macmillan asked about the pilots which the Scottish Legal Aid Board has been asked to set up under Part V of the Legal Aid (Scotland) Act 1986. I undertook to write to the Committee.

Funding has been made available to the Scottish Legal Aid Board for a series of pilot schemes in the field of civil legal aid. These will run alongside the work of the Group I am setting up to develop proposals for a Community Legal Service. I announced the establishment of this Group at a Conference on Legal Aid on the 10 October. The experience of the pilot schemes will feed into the discussions of the Community Legal Service Working Group and generate useful experience. Within the next month or two the Scottish Legal Aid Board will be inviting applications from organisations across Scotland to apply to take part in pilot schemes. The Board will set up a panel which will include representatives from other organisations to select the best of these proposals to be implemented in the early part of 2001. The details of the pilot schemes will become available following this process.

Mab0961.010

I am sending a copy of this letter direct to Maureen Macmillan since she asked about pilot schemes..



JIM WALLACE

JH/00/31/6

JUSTICE AND HOME AFFAIRS COMMITTEE

Petition PE264 by Mr J S Morrison

Note by the Senior Assistant Clerk

Background

This petition has been submitted on behalf of the Scottish Private Investigators Forum and calls for the Scottish Parliament to urge the Scottish Executive to pass a Private Investigators (Registration) Bill, thus recognising the specific concerns of private investigation within the private security industry.

The petitioner attended the Public Petitions Committee (PPC) meeting on 26 September 2000 to speak in support of the petition. The PPC agreed to pass the petition to the Minister for Enterprise and Lifelong Learning seeking his comments on the issues raised in the petition and drawing his attention to the official report of the meeting.

Procedure

This petition has been copied to the Committee by the Public Petitions Committee **for information only**. No action is therefore required, and it is not currently proposed to consider it at a meeting of the Committee as an Agenda item.

9 OCTOBER 2000 ALISON E TAYLOR