



**JUSTICE AND HOME AFFAIRS COMMITTEE**

**REVISED AGENDA**

**33rd Meeting, 2000 (Session 1)**

**Tuesday 14 November 2000**

The Committee will meet at 10.00 am in the Chamber, Assembly Hall, the Mound, Edinburgh.

1. **Item in private:** The Committee will decide whether to take item 4 in private.
2. **Subordinate Legislation:** The Committee will consider the following negative instrument—

The Gaming Clubs (Hours) (Scotland) Regulations 2000 (SSI 2000/371)

3. **Social Partnership Funding:** The Committee will consider applications for funding a civic participation event and external research relating to attitudes to sentencing and alternatives to custody.
4. **Proposed Protection from Abuse Bill:** The Committee will consider a draft report.

Andrew Mylne  
Clerk to the Committee, Tel 85206

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

Agenda item 2

Note by the Assistant Clerk (SSI attached)

JH/00/33/1

Agenda item 3

Note by the Senior Assistant Clerk

JH/00/33/2

Draft application for external research  
Draft application for civic participation conference

JH/00/33/3  
JH/00/33/4

Agenda item 4  
Draft report (private paper)

JH/00/33/5

**Papers not circulated:**

Agenda item 3  
Members may wish to consult a research paper by Denis Oag on Public attitudes to alternatives to custody and sentencing (JH/00/31/15).

## JUSTICE AND HOME AFFAIRS COMMITTEE

### Papers for information circulated for the 33rd meeting, 2000

[Minutes of the 32nd meeting](#)

JH/00/32/M

**Note:** The Committee's report to the Rural Affairs Committee has now been sent to that Committee as a public paper. It has also been posted on the Committee's website page. It will not, however, be published until the Rural Affairs Committee publishes its Stage 1 report on the Bill, to which the Justice and Home Affairs Committee report will be an Annexe.

## JUSTICE AND HOME AFFAIRS COMMITTEE

### Additional papers for the 33rd Meeting, 2000 (Session 1)

Tuesday 14 November 2000

I now attach a **revised Agenda** for the above meeting. It has been necessary to cancel the item relating to the Convention Rights (Compliance) Bill, as the Executive no longer intends to introduce the Bill on Monday 13 November, as had been planned. The Minister for Justice has explained the reasons for this change to the Convener, and I am expecting to be able to circulate a letter to the Committee setting out these reasons shortly.

I also attach the following papers:

#### Agenda item 4

Letter from the Minister for Justice on the Bill (circulated for the 28th meeting, 2000)

JH/00/28/8

#### Agenda item 5

Draft report (private paper)

JH/00/33/5

#### Papers for information

Extracts from—

- *The Scotsman* on court funding
- *The Scotsman* on HMP Peterhead
- *The Courier* on police complaints
- *Business a.m.* on legal aid for tribunals

10 November 2000

ANDREW MYLNE

**JUSTICE AND HOME AFFAIRS COMMITTEE****The Gaming Clubs (Hours) (Scotland) Regulations 2000 (SSI 2000/371)**

Note by the Assistant Clerk

**Background**

Under sections 22(4) and 51 of the Gaming Act 1968, the Scottish Ministers may make regulations in respect of the hours during which gaming will be permitted to take place on premises licensed under the Act. Although betting and gaming are reserved matters under Schedule 5 to the Scotland Act 1998, related licensing provisions are devolved.

The Regulations extend the permitted hours for gaming on premises other than bingo clubs from 2 pm until 6 am instead of until 4 am, except on Sundays. The purpose is to extend opening hours of casinos. Although the Regulations set out the opening hours of bingo clubs, these remain unchanged.

The Executive note (attached) explains the consultation process undertaken in respect of these Regulations. Overall, it appeared from the consultees that, although there would be an impact on casino staff, the police had no objection and the competitiveness of the casino industry would increase. See also the Regulatory Impact Assessment attached.

The Subordinate Legislation Committee considered the instrument on 31 October, and had no comments to make. The Justice and Home Affairs Committee has been designated lead Committee.

**Procedure**

Under Rule 10.4, the instrument is subject to negative procedure - which means that the Regulations come into force and remain in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

The instrument was laid on 23 October and is subject to annulment under the Parliament's standing orders until 1 December. The instrument comes into force on 13 November, exactly 21 days after it was laid. Thus, an explanation from the Executive to the Presiding Officer is not required.

In terms of procedure, unless a motion for annulment is lodged, no further action by the Committee is required.

9 November 2000

FIONA GROVES

**Justice and Home Affairs Committee**

**Public Consultation Exercise – Attitudes to Sentencing and Alternative to Custody**

**Note by the Senior Assistant Clerk**

**Background**

The Committee agreed at its meeting on 31 October 2000 that funding should be sought for a three-stage public consultation exercise to ascertain the views of the general public on issues surrounding sentencing and alternatives to custody. The three stages will be:

- a public opinion survey
- a series of focus group interviews
- a conference event

**Proposals**

Funding for the first two stages (opinion survey and focus groups) will be sought from the external research budget and a draft outline proposal has been prepared for consideration by the Conveners' Group (JH/00/33/3 – attached). The deadline for submission of this proposal is 24 November 2000 and a decision on funding will be made by the Conveners' Group in early December.

The proposal for external research budget funding makes it clear that the main objective of the first two stages is to inform the debate at a subsequent conference but that the results of these complementary pieces of research would be valuable to the Committee as 'stand-alone' research.

The final stage of the public consultation exercise will be the conference event and funding for this will be sought from the Civic Participation Budget held by the Committee Office. A draft application has been prepared for submission to the Conveners' Group (JH/00/33/4 - attached).

**Next step**

The Committee is invited to consider the draft proposals. If the proposals are agreed to, they can then be submitted to the Conveners' Group for approval.

9 OCTOBER 2000

ALISON E TAYLOR

## Justice and Home Affairs Committee

### Draft Proposal for externally commissioned research

#### Background to the proposed research and its importance in the Committee's workplan

Many people appear to believe that judges and legislators are out of touch with public feeling on the issue of punishment and should listen more to the views of ordinary people. Judges, on the other hand, are required to take account not only of the severity of the offence but also to balance the needs of the offender and the interests of the public. Those who apply the law, therefore, may consider that the public has no real appreciation of the purposes of sentencing and does not understand the role of judicial discretion in sentencing decisions.

The Justice and Home Affairs Committee recognises that much current information regarding public opinion on these issues is anecdotal, and that public opinion may be easily influenced by the tenor of media reporting. The Committee is also aware that the use of imprisonment is an expensive resource that needs to be used wisely and appropriately. To support its remit to consider and report on matters relating to the administration of civil and criminal justice, the Committee wishes to commission research to explore the public's views and opinions on sentencing and alternatives to custody, and also the reasons these views are held and the processes by which the public's views and opinions are formed and changed.

#### Proposed Research

The Committee proposes a three-stage study with each stage providing valuable information in its own right but also contributing to the overall aim of the study. The first two stages, for which external research funding is requested, are described in this proposal. The third and final stage will be a civic participation conference for which Social Partnership funding will be sought.

#### Research Objectives

The two stages for which external research funding is requested are:

1. a **public opinion survey** seeking the views of a representative sample of the Scottish public on the issues surrounding the sentencing of offenders and on alternatives to imprisonment as a sentencing disposal;
2. **focus group interviews** with a broad cross-section of the population to obtain more qualitative information on these issues through open discussion and debate.

The public opinion survey will provide largely 'quantitative' data i.e. how many people hold a particular view. The focus group interviews will give the Committee insight into why people hold these views, what informs their views and the extent of the public's knowledge and understanding of the issues in question.

**Justice and Home Affairs Committee**

**Civic Participation Conference**

**Draft Application to the Conveners' Group**

**Introduction**

In its report 'Shaping Scotland's Parliament', the Consultative Steering Group highlighted the importance of engaging the public in the work of the Parliament. To this end, a Civic Participation Fund has been established to assist Parliamentary Committees to consult the public on matters within their remits.

At its meeting on 31 October, the Justice and Home Affairs Committee agreed to apply for monies under this Fund to stage a civic participation conference the purpose of which will be to seek the views of the public on attitudes to sentencing and alternatives to imprisonment.

It is intended that the conference will be the final stage of a three-part public consultation which will also include a public opinion survey and a series of focus group interviews. Funding for the first two stages has been requested from the external research budget held by SPICe (proposal attached at appendix A).

The purpose of this consultation exercise will be to explore the range of views held by the public on these issues, to discern the reasons these views are held and to determine the extent to which these views alter when exposed to relevant information and informed debate.

**Conference**

The conference will involve between 90 and 100 randomly selected members of the public and will include representatives from the various criminal justice agencies and various "experts" in the field. The results of the public opinion survey and focus groups will be used as a basis for debate and discussion. Professional facilitators will be used to ensure the conference remains focused on the issues and to encourage open dialogue between participants and practitioners.

To encourage maximum participation some sessions will take place in smaller groups coming together at stages in plenary session. Using the Parliament campus would be cost effective, and probably act as a greater incentive to the participants. This would include using the Debating Chamber for the plenary sessions plus Committee Rooms for smaller groups. The organisation of the conference will be the responsibility of SPICe and the Justice Committee Clerking Team.



A full report detailing the priorities and decisions of participants will be one of the main outcomes of the event.

### **Costs**

It is anticipated that the cost of the event will be as follows:

|                                 |                |
|---------------------------------|----------------|
| 100 participants @ £40 per head | £4,000         |
| Organisation and facilitation   | £6,500         |
| Administration Costs            | £3,000         |
|                                 |                |
| <b>Total</b>                    | <b>£13,500</b> |

9 OCTOBER 2000

DENIS OAG AND ALISON TAYLOR

## **Research Aims**

As noted above, it is hoped that the results of these complementary studies will provide valuable information on:

- the public's views on the purposes of sentencing and the use of imprisonment;
- the public opinion on the appropriateness of existing sentencing policy by the courts;
- the reasons the public hold these views and opinions; and,
- the processes by which people's opinions are formed and changed.

In addition, the information provided by these two studies will be used to inform debate at the planned civic participation conference.

## **When does the Committee require the results of the research?**

It is intended to hold the civic participation conference in May 2001. The results of the proposed research would, therefore, be required as follows:

Public Opinion Survey – March 2001

Focus Group Interviews – April 2001

## **What specific expertise is required to research this area?**

While it would be possible to invite separate tenders for each part of the proposed research, the complementary nature of the two studies suggests that it would be advantageous to commission a single research organisation/consortium to conduct both parts. The successful tenderers, therefore, will have considerable experience in conducting public opinion polling and arranging and facilitating focus group interviews. A proven track record in public opinion polling is, therefore, vital, while knowledge of the subject area would be useful. It would be a considerable cost advantage to engage a research organisation which currently runs a regular omnibus opinion survey.

## **What are the expected outputs of this project and how will they be used?**

The results of the study will inform the Justice and Home Affairs Committee's work in keeping under review the administration of the criminal justice system. In particular, it will contribute to its on-going work on Scottish Prisons. Additionally, this research, together with the proposed conference, will increase democratic participation in the work of the Parliament by allowing the views of the public to be heard on these important issues.

9 OCTOBER 2000

CONNIE SMITH AND DENIS OAG



## SCOTTISH EXECUTIVE

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14 September 2000

JH/00/28/8

*Dear Roseanna,*

### LEGISLATIVE PROGRAMME ANNOUNCEMENT - ECHR BILL

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

- **Adult Mandatory Life Prisoners**

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

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

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



- **Legal Aid**

On legal aid, the main proposals are:

- The decision by the Appeal Court in the McLean cases - which is being appealed by the defence to the JCPC - confirmed that the Fixed Payments Scheme is ECHR compatible. However, the Court made a number of comments about the Scheme. Scottish Ministers propose to amend the legal aid fixed payments system for summary criminal cases to allow for the payment of time and line fees for a small number of exceptional and complex cases.
- An amendment of the powers of Ministers to make provision that would enable the Scottish Legal Aid Board to grant civil legal aid for certain proceedings before tribunals where the provision of legal aid would be required to ensure that the relevant party obtained a fair hearing.

- **Homosexual Offences**

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

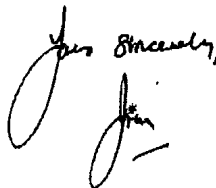
- **Appointment of Procurator Fiscal to the Lyon Court**

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

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

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

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

*Yours Sincerely,*  


JIM WALLACE

### Prison Service

**Colin Campbell (West of Scotland) (SNP):** To ask the Scottish Executive what means prison officers have of protecting themselves against assault and what means of restraint are available to them.

(S1W-7103)

**Mr Jim Wallace:** I have asked Tony Cameron, Chief Executive of the Scottish Prison Service, to respond. His response is as follows:

All prison officers are issued with staves which they are trained to use to defend themselves if they were physically attacked.

All prison officers are also trained in approved control and restraint techniques designed to restrain a violent prisoner in a way which minimises the risk of injury to prison officers and prisoners.

Prison rules also provide for the Governor to order that a prisoner be placed under a restraint by means of a body belt if the prisoner threatens to injure, or is in the course of injuring, himself or others. Use of such a restraint is rare.

**Linda Fabiani (Central Scotland) (SNP):** To ask the Scottish Executive what the average daily population of prisoners (a) was in each of the last three financial years and (b) is projected to be in each of the next three financial years in (i) penal establishments directly operated by the Scottish Prison Service, (ii) legalised police cells and (iii) privately operated penal establishments.

(S1W-7645)

**Mr Jim Wallace:** I have asked Tony Cameron, Chief Executive of the Scottish Prison Service, to respond. His response is as follows:

The available information on the numbers of prisoners in Scottish penal establishments is given in the table below. The prisoner population projections do not distinguish privately operated penal establishments from those directly operated by the Scottish Prison Service (SPS).

The average daily population of prisoners in legalised police cells is 1; numbers are not projected.

Average daily population in penal establishments in Scotland, excluding legalised police cells, 1997-98 to 2002-03

| Year                        | Numbers |         |                      | Projections |         |         |
|-----------------------------|---------|---------|----------------------|-------------|---------|---------|
|                             | 1997-98 | 1998-99 | 1999-2000<br>(prov.) | 2000-01     | 2001-02 | 2002-03 |
| Kilmarnock <sup>1</sup>     | 0       | 1       | 443                  | n.a.        | n.a.    | n.a.    |
| SPS operated establishments | 6,058   | 6,026   | 5,530                | n.a.        | n.a.    | n.a.    |
| All penal establishments    | 6,058   | 6,027   | 5,973                | 6,100       | 6,200   | 6,400   |

Note: Kilmarnock opened on 25 March 1999.

10/11/00  
(POLICE)  
Comp

## Police complaints may come before commissioner

By Steve Bargeton, political editor

SCOTTISH MINISTERS are considering proposals to set up a powerful Parliamentary commissioner for police complaints.

In the wake of the Stephen Lawrence inquiry, the Executive is under pressure to introduce some independent element into the police complaints procedure.

A commissioner responsible to ministers, and to the Scottish Parliament justice

and home affairs committee, is seen as a way of breaking the present system of the police investigating themselves without the massive expense of a full scale independent police complaints authority.

Justice minister Jim Wallace is said to be "generally sympathetic" to the proposal, which works successfully in New Zealand.

In essence the police complaints commissioner would act in much the same way as the gas and electricity ombudsman.

Complaints from the pub-

lic would be investigated initially by the force involved, thus keeping the police "on side."

But if the complainant felt the complaint was not being dealt with promptly or effectively, he could go to the commissioner.

It is also envisaged that the commissioner would have the power to inspect at random any ongoing complaint in any Scottish police force at any time.

Before Christmas the Executive is expected to publish a consultation paper seeking views on how the

controversial issue of modernising the police complaints procedure can be achieved.

Yesterday the Scottish Liberal Democrats published a new policy document putting the case for an independent Parliamentary police complaints commissioner.

Party justice spokesman Euan Robson said that although the Scottish system was better than the system south of the Border, there was room for improvement.

"It is important that the public believe that com-

plaints against the police are treated fairly and impartially," he said.

The author of the report, Marilynne MacLaren, said that the commissioner would be the final "court of appeal."

"In the main the commissioner would review cases already dealt with by bodies such as the Chief Inspector of Constabulary," she said.

"However, in exceptional circumstances the commissioner would have the power to direct some primary investigations.

"These proposals are not about going back to the drawing board and starting again, they are about giving the public a stake in the system of dealing with police complaints.

There is a general acceptance that the current system of complaints against the police needs to be made more transparent and impartial.

However, ministers do not want to antagonise the police by bringing in a totally independent police complaints board, and the subsequent cost of it.

# Lawyers threaten legal aid boycott

Scottish executive asked to include tribunals  
Cost is stumbling block to fee-increase call

Kate Mills

5

A WORKING party set up to campaign for an increase in legal aid fees has warned that lawyers will stop doing such work if the amount they are paid is not increased.

The Law Society of Scotland group, fronted by Michael Scanlan, a former society president, is also demanding an extension of the system to industrial tribunals, which are excluded from aid awards.

Mr Scanlan said yesterday: "There has been little movement in the level of legal aid fees for nine years. If something doesn't happen then there will be a whole raft of solicitors that will say we can't afford to do this work.

"We are greatly disadvantaged here in Scotland: the cost per capita of civil legal aid is one third of what it is in England and Wales."

Originally, employment and criminal injuries tribunals were intended to be informal, low key affairs, where the parties would be able to represent themselves.

However, in the case of employment tribunals, the growth of European regulation has turned them into a litigation minefield.

Employers, faced with the potential of paying out up to £50,000 to a wronged

employee, are fighting tribunals armed with solicitors and advocates. Lawyers say that this state of affairs is in breach of the Human Rights Act (HRA), which requires parties to a trial to have a so-called equality of arms.

Jane Garvie, a human rights and employment lawyer at the Glasgow firm Golds, said: "The HRA says that there has to be a fair trial, but if the parties are not on an equal footing, then can the trial be fair?"

An employment tribunal test case on this issue is currently at the employment appeals tribunal.

Any increase in fees - currently £56.40 an hour for advocacy services and £43.60 for other services - would benefit the hundreds of legal aid practices in Scotland.

Ross Harper & Murphy, the leading Glasgow legal aid firm, received more than £2.5m from the legal aid board last year. The leading advocate, Donald Findlay, was paid £136,000.

But, however sophisticated the legal arguments, it is likely to be the cost which is a stumbling block to the working party's submission. Last year, the cost of legal aid fell to £138m from £145m in 1997-98. It is unlikely that the government will want to see the figure on the rise again.



Michael Scanlan says lawyers in Scotland are disadvantaged. Picture: Gail Prentice

The working party intends to submit its demands to the Scottish executive this month. The executive refused to comment until it received them.

The Scottish Legal Aid Board tried to cut back on legal aid spending by introducing a controversial Public Defenders Solicitors Office in Edinburgh two years ago. Individuals facing criminal charges had to use the office for legal advice.

However, earlier this year the board had to do a U-turn and allow individuals the freedom to choose their solicitor. This month figures published by the executive showed that the average cost of a case run by the public defenders was £70 more than the cost of using a high street solicitor.

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## TOP TEN FIRMS

### Legal aid income

|    |                      |        |
|----|----------------------|--------|
| 1  | Ross Harper & Murphy | £2,540 |
| 2  | Bruce Short & Co     | £1,088 |
| 3  | Livingstone Brown    | £1,038 |
| 4  | George Mathers & Co  | £887   |
| 5  | GWedder & McInnes    | £817   |
| 6  | Drummond Miller      | £810   |
| 7  | Turnbull McCarron    | £884   |
| 8  | Gallen & Co          | £874   |
| 9  | Ian McCarry          | £864   |
| 10 | Blair & Bryden       | £861   |

Total legal aid income (excluding VAT) paid to high street solicitors during 1998-99

## TOP TEN LAWYERS

### Legal aid earnings

|    |                    |          |
|----|--------------------|----------|
| 1  | Donald Findlay     | £136,000 |
| 2  | Ian Duguid         | £129,000 |
| 3  | W Gordon Jackson   | £121,000 |
| 4  | William McVie      | £114,000 |
| 5  | Michael P Richards | £108,000 |
| 6  | Chris M Shedd      | £103,000 |
| 7  | Gerald Carroll     | £100,000 |
| 8  | Harbert A Kerrigan | £93,000  |
| 9  | Brian McConnachie  | £93,000  |
| 10 | Edgar Pringle      | £91,000  |

Amounts paid (including VAT) from legal aid fund to advocates in 1998-99

THE SCOTSMAN

2

# A disaster in the making

## Sex criminal expert criticises the planned closure of model prison

Tanya Thompson  
Home Affairs Correspondent

ONE of the world's leading experts on sex offenders has criticised plans to close Peterhead prison, claiming it could be a disaster for the treatment of Scotland's most dangerous inmates.

A leaked report, seen by *The Scotsman*, questions the logic of closing the establishment and highlights its rehabilitation programmes as among the best in the world.

The document, written by Professor Bill Marshall, of Queens University, Kingston, Ontario, will come as a huge embarrassment to ministers considering the prison's future.

Prof Marshall writes: "In considering all the prison-based sexual offender programmes I have visited or evaluated around the world, the programme of Peterhead prison is clearly world-class."

"I understand there are suggestions ... to close Peterhead and shift the programme to an institution near the central belt. This would be a retrograde step and would have to be supported by some very sound reasoning that is presently not at all apparent to me."

Last night, senior prison sources expressed concerns about public safety should pris-

oners be transferred to another jail. "The quality of the work that goes on will not be easily replicated elsewhere," said one insider. "Specialist staff may choose to leave the service if Peterhead closes and their replacements will not be trained in these rehabilitation programmes."

"Without these programmes, inmates could re-offend, I say that with no hesitation."

Peterhead prison has established itself over the past decade as one of the top three centres in the world for the treatment and

### The programme of Peterhead prison is world-class

rehabilitation of rapists and child molesters. Introduced in 1993, the STOP programme aims to make sex offenders identify mood cycles and triggers which result in offences.

Peterhead staff are awaiting the outcome of the Scottish Prison Service's estates review, which will decide the fate of a number of jails. Senior prison managers are considering closing Peterhead and building a new sex offenders unit attached to Shotts prison in Lanarkshire.

Peterhead holds 300 sex offenders, all of whom are serving terms of at least four years. Last year, 97 inmates completed programmes designed to address their offending, at a cost of about £3,000 each.

Prof Marshall's report states: "It is only in such prisons that the appropriate climate can be created to fully support and facilitate effective sexual offender treatment."

"The administration and staff at Peterhead have achieved an excellent prison environment to conduct sexual offender treatment and they should be given full support to continue their outstanding work."

Last night, Derek Turner, the assistant secretary of the Prison Officers' Association Scotland, accused the SPS of putting the public at risk to save money. He said: "The STOP programme would not work elsewhere."

"It is a major problem for the public if these offenders do not get the proper treatment before their release. This is a report from a world expert on sex offenders. Government ministers ignore it at their peril."

The Scottish executive refused to comment on the report. A spokesman said it would receive proposals from the SPS on the future of Peterhead by the end of the year.  
tthompson@scotsman.com

Prisons  
or McLean  
Centre



# Lack of court funding lets accused walk free

John Robertson and David Scott

2

THREE senior judges, including the leader of the bench, warned the Scottish executive yesterday of the need for an adequately-funded criminal justice system to stop alleged offenders walking free.

The call was made as two men facing a string of dishonesty charges escaped trial because "pressure of business" had prevented their case being heard within a 12-month time limit.

Lord Rodger, the Lord Justice-General, and two colleagues in the Court of Criminal Appeal in Edinburgh said there had to be good reason to erode an accused's fundamental right under the statutory timescale. A log-jam of cases was not enough, they ruled.

Giving the court's judgment, Lord Philip said: "That important right can be given effect only if all the constituent parts of the criminal justice system...have adequate resources."

He added: "There is an obligation on the Scottish executive to organise our legal system so as to...bring cases to trial within the time-limit set down by parliament."

Thomas Warnes, 35, of Buchanan Street, Leith, Edinburgh, had faced an indictment of 14 charges of theft and passing forged cheques, involving a total of around £10,000.

A co-accused, Alexander Simpson, 29, also of Buchanan Street, appeared on two of the charges. Having been released on bail after an initial court appearance, their trial before a jury at Edinburgh Sheriff Court had to start within the year ending 1 May, 2000, otherwise the case fell. The time-limit for those remanded in custody is 110 days.

However, a backlog of cases had built up and on 28 April, the Crown asked for an adjournment and for a two-month extension of the time-limit. The request was granted by Sheriff Isobel Foote.

Warnes and Simpson then appealed to Lord Rodger, sitting with Lords Philip and Reed. In yesterday's ruling, Lord Philip said the only reason given by the Crown for seeking the extension had been pressure of business.

Lord Philip said earlier appeal court judgments had emphasised

**'The executive are obliged to organise our legal system'**

the importance of the right, under section 65(1) of the Criminal Procedure (Scotland) Act, to have a trial start within 12 months.

Those judgments had also established that pressure of business of itself was not sufficient reason to justify the granting of an extension.

"That important right can be given effect, however, only if all the constituent parts of the criminal justice system—including the courts, the Crown and, so far as publicly funded, the defence—have adequate resources to ensure that, as a rule, trials can be begun within 12 months," Lord Philip added.

"To allow that increased pressure itself to form the basis for extending the time-limit would be to erode the very right enshrined in section 65(1)."

Looking to the European Convention on Human Rights, Lord Philip said it placed a duty on contracting states, unless there was an exceptional and temporary backlog of business, to organise their legal systems so the courts could comply with a requirement for trials "within a reasonable time".

He continued: "There is an obligation on the Scottish executive to organise our legal system so as to allow the courts and all the other components in the system to bring cases to trial

within the time-limit set down by parliament."

Roseanna Cunningham, the Scottish National Party's justice spokesperson, said Lord Philip was right to draw the executive's attention to what might be a lack of resources within the criminal justice system.

"It is not good enough that cases are lost for reasons such as this," she said.

Ms Cunningham recalled that there had been concerns raised over a number of years about resources in the fiscal service.

She went on: "The executive must look very closely at whether the resources are in place to achieve the right results in the criminal justice system."

A spokesman for the Scottish executive recognised its responsibilities: "We have made significant additional resources available in the last year."

"It is for the Crown to determine in which order cases are called in court and to allocate cases," he said.

SUBSTANTIAL  
LAW Comp  
Scots