



JUSTICE AND HOME AFFAIRS COMMITTEE

AGENDA

37th Meeting, 2000 (Session 1)

Tuesday 12 December 2000

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

1. **Scottish Criminal Cases Review Commission:** The Committee will take evidence on the work of the Commission from—

Professor Sheila MacLean, Chair, and Carol Kelly, Chief Executive.

2. **Diligence working group:** The Committee will consider whether to nominate a member to participate in the Executive's "Cross-party Parliamentary Working Group on a diligence against moveable property to replace poinding and warrant sale".

3. **Subordinate legislation:** The Committee will debate the following motions—

S1M-1398 Jim Wallace: Draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2001—That the Justice and Home Affairs Committee recommends that the draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2001 be approved.

S1M-1422 Phil Gallie: Advice and Assistance (Scotland) Amendment (No.2) Regulations 2000—That the Justice and Home Affairs Committee recommends that nothing further be done under the Advice and Assistance (Scotland) Amendment (No.2) Regulations 2000 (SSI 2000/399).

4. **Forward Programme:** The Committee will consider its forward programme.

Andrew Mylne
Clerk to the Committee, Tel 85206

The following papers are attached for this meeting:

Agenda item 2

Note by the Convener (letter from Angus MacKay attached) JH/00/37/1

Agenda item 3

Note by the Senior Assistant Clerk (SSI and Executive note attached) JH/00/37/3

Note by the Senior Assistant Clerk (SSI and Executive note attached) JH/00/37/5

Letters to the *Scotsman*

Agenda item 4

Note by the Convener (letter from the Convener of the Equal Opportunities Committee to the Minister for Justice attached) JH/00/37/6

Papers not circulated:

Agenda item 1:

Members may wish to consult and/or bring to the meeting the first annual report and accounts (1999-2000) of the Scottish Criminal Cases Review Commission, which is available at the following website: <http://www.sccrc.org.uk/ar/ccar-00.htm> or from the Document Supply Centre.

JUSTICE AND HOME AFFAIRS COMMITTEE

Papers for information circulated for the 37th meeting, 2000

Letter to the Convener from the Lord Advocate on Glasgow District Court JH/00/37/2

Written Answers on Glasgow Sheriff Court [Written Answers](#)

Note by the Clerk on clerks' availability and mailing of papers during the recess (members only) JH/00/37/8

Note by the Convener on Committee Meetings (private paper – members only) JH/00/37/7

Reflections on visiting the prisons of Scotland, by the Rev Andrew McLellan, Moderator of the Church of Scotland JH/00/37/4

[Minutes of the 36th Meeting, 2000](#) [JH/00/36/M](#)

The Clerk has received a response from the Royal Society of Edinburgh to the consultation paper *Foresight: Just around the corner – Report of a Foresight Seminar to discuss the future of Crime Prevention in Scotland*. Members may obtain a copy of the response and the consultation paper from room 3.6 Committee Chambers or alternatively from the following websites—

- RSE response: <http://www.ma.hw.ac.uk/RSE>
- Consultation paper: <http://www.foresight.gov.uk>

JUSTICE AND HOME AFFAIRS COMMITTEE

Working Group on an alternative diligence against moveable property

Note by the Convener

I attach a letter by the Minister for Finance and Local Government (formerly Deputy Minister for Justice), Angus MacKay, inviting me to appoint a member of the Committee as a representative of the Committee on the above Executive working group, which he chairs.

As members will no doubt be aware, the working group was set up by the Executive after the Stage 1 debate on Tommy Sheridan's Abolition of Poindings and Warrant Sales Bill. During that debate, the Minister for Justice indicated that he would be inviting members of the three committees that took part in the Stage 1 process to participate in the group (Official Report, 27 April, col 169). However, when invitations were sent to the Conveners of the three committees that had been involved at Stage 1, Roseanna did not wish to participate as Convener and instead asked Christine Grahame to participate in the working group on her behalf. That decision was taken by Roseanna alone, and Christine's membership of the group was not endorsed by the Committee. As members will be aware, both Tommy Sheridan and Christine Grahame have since resigned from the working group. Again, Christine's decision was not taken on behalf of the Committee and was not endorsed by the Committee.

The Minister wrote to me on 17 October, asking me to nominate a Committee member to replace Christine. I replied on 2 November saying that it had never been my understanding that there was a Committee representative on the group, and that I did not consider such a representative to be desirable. That remains my view – but since the Minister has now repeated his invitation, I think it right to seek the view of the Committee as a whole.

The formal title of the working group is the "Cross-party Parliamentary Working Group on a diligence against moveable property to replace poinding and warrant sale". (I should make clear, however, that this is not a Parliamentary Cross-Party Group – i.e. it is not a Group set up and operated according to the rules laid down by the Parliament, on the recommendations of the Standards Committee. Rather, it is an Executive working group, consisting of those invited by the Executive to join, and with a secretariat provided by Executive officials.) That title itself suggests that MSPs on the group are there on behalf of their party. I know, for example, that Euan Robson is a member, but on behalf of the Liberal Democrats – and not on behalf of the Committee, of which he is, of course, also a member.

I have a number of doubts about there being a "Committee representative" on such a body. For one thing, the various political parties represented on the Committee are likely to have conflicting views on any proposal developed by the working group, and it is therefore difficult to see how one Committee member could command the

confidence of all members to represent the "Committee's view". For another thing, if the member is to participate in a meaningful representative capacity, he or she would have to refer significant matters back to the Committee – something that is unlikely to be practical from the point of view either of the group or of the Committee.

Finally, and most importantly, there would be a danger in the Committee being seen to have endorsed in advance whatever proposal the working group recommends. Any such proposal can be expected to be reflected in an Executive Bill to be brought forward in due course, and then probably referred to the Committee. I hope all members agree that, in those circumstances, the Committee should be able to consider such a Bill on its merits. This would be made more difficult if there was any presumption that, because a member of the Committee had been involved in developing the policy behind the Bill on the Committee's behalf, the Committee's approval of the Bill itself could somehow be taken for granted.

I would of course be more than happy if an individual member of the Committee wished to volunteer to participate in the Working Group, but I would hope that, in so doing, that member would make clear that he or she participated on his or her own account and not on behalf of the Committee as a whole.

December 2000

ALASDAIR MORGAN

JUSTICE AND HOME AFFAIRS COMMITTEE

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2001

Note by the Senior Assistant Clerk

Background

Assistance by Way of Representation (ABWOR) is available under the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 1997 for specified hearings and courts. ABWOR is available to persons who meet a financial test, and other conditions which may apply in particular proceedings.

These Regulations make provision for ABWOR to be made available for Employment Tribunals and prescribe the criteria to be applied by the Scottish Legal Aid Board in determining whether to approve an application for ABWOR before such tribunals. The Regulations provide that ABWOR should be approved for such proceedings subject to the following criteria: a) the case is arguable; b) it is reasonable in the particular circumstances of the case that ABWOR be made available, and c) the case is too complex to allow the applicant to present it to a minimum standard of effectiveness in person.

Regulation 5 also sets factors to be taken into account by the Board in determining whether a case is too complex to allow the applicant to present it to a minimum standard of effectiveness in person. The factors to be taken into account are as follows: a) the determination of the issue may involve procedural difficulty or consideration of a substantial question of law, or of evidence of a complex or difficult nature, and b) the applicant may be unable to understand the proceedings or to state his own case because of his or her age, inadequate knowledge of English, mental illness, other mental or physical disability, or otherwise. This aspect falls within the remit of the Equal Opportunities Committee. These Regulations have been considered by that Committee, which has no comment to make.

In its note, the Executive explains that it does not envisage that ABWOR will be made available for many cases before Employment Tribunals, as such proceedings are intended to allow the ordinary individual the opportunity to set out his or her case in an informal manner, and in most cases it will not be necessary for applicants to have legal representation.

The Regulations were considered on 21 November by the Subordinate Legislation Committee, which has no comment to make.

ECHR

Several cases before Employment Tribunals in Scotland have recently argued that the failure to make legal assistance available for these proceedings amounts to a violation of the right to a fair hearing under Article 6(1) of the ECHR. According to the Executive note, the Scottish Ministers believe that, in order to ensure compatibility with the Convention, legal assistance needs to be extended to those applicants before Employment Tribunals who meet the criteria set out in these regulations (as

well as the financial criterion and other conditions already applicable to those seeking advice and assistance).

Procedure

The instrument was laid on 13 November and is due to come into force on 15 January. Under Rule 10.6, the draft Regulations being subject to affirmative resolution, it is for the lead committee to recommend to the Parliament whether the instrument should come into force. The Minister for Justice has, by motion S1M-1398 (set out in the Agenda), proposed that the Committee recommends the approval of the Regulations. The Minister will attend to speak to and move the motion. The debate may last for up to 90 minutes.

At the end of the debate, the Committee must decide whether or not to agree to the motion, and then report to the Parliament accordingly. Such a report need only be a short statement of the Committee's recommendation. Given that the Committee will not meet again until after the reporting deadline, the text of the Committee's report will be circulated for approval by e-mail.

7 DECEMBER 2000

ALISON E TAYLOR

JUSTICE AND HOME AFFAIRS COMMITTEE

The Advice and Assistance (Scotland) Amendment (No.2) Regulations 2000

Note by the Senior Assistant Clerk

Background

Under the Advice and Assistance (Scotland) Regulations 1996, solicitors have a right to prior payment of fees or outlays out of any property recovered or preserved. These Regulations amend the 1996 Regulations in order to prevent that right from applying to an order made by an Employment Tribunal. This change is consequential on Assistance by Way of Representation (ABWOR) being made available for Employment Tribunals (under the draft affirmative instrument also for consideration by the Committee).

These Regulations omit the reference in the 1996 Regulations to section 87 of the Employment Protection Act 1975, since that section is now repealed. An updated reference is inserted.

Procedure

Under Rule 10.4, these Regulations are subject to negative procedure which means that they 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. Phil Gallie has lodged a motion (motion number S1M-1422 reprinted in the agenda), calling on the Committee to recommend annulment of the instrument. The debate on the motion can last up to 90 minutes. If the motion is agreed to, there must be a further debate in the Parliament on whether to annul the instrument.

The instrument was laid on 13 November and is subject to annulment under the Parliament's standing orders until 9 January. If not annulled, the instrument will come into force on 15 January.

7 DECEMBER 2000

ALISON E TAYLOR



The Scottish Parliament

Mr Jim Wallace MP MSP
Deputy First Minister and
Minister for Justice
The Scottish Executive
Spur S1/7
Saughton House
Broomhouse Drive
Edinburgh
EH11 3XD

Room G7
Committee Chambers
George IV Bridge
Edinburgh
EH99 1SP

Tel: 0131-348-5213
Fax: 0131-348-5600
kate.maclean@scottish.parliament.uk

6 December 2000

Dear *Mr Wallace.*

Equal Opportunities Committee

At its meeting on 5 December the Committee discussed the future work programme and, in particular, the issues arising from the recent announcement by the Lord Advocate of an inquiry into the treatment of the Chhokar family.

The Committee felt that it would be useful for the Race Reporter, Michael McMahon, to perform some initial work on this and to bring back an options paper to the Committee for the next meeting.

I am writing to inform you of this initial work and to further confirm that the Committee has asked me to write to both yourself and the Lord Advocate to ask that such courtesies, rights and privileges as you accord to myself as Convener are accorded to Michael. This administrative step speeds work for all involved and eliminates the need for me to write separately on each occasion to facilitate meetings etc.

Copies of this go to the Lord Advocate, Michael MacMahon, Alasdair Morgan, the Justice and Home Affairs Convener and the Clerk to the Equal Opportunities Committee.

Yours sincerely

Kate MacLean
Convener

PRISON REVIEW PASSES GRIM SENTENCE ON NOTORIOUS JAIL

Barlinnie doors are to shut for last time

BY PAUL GILBRIDE

SCOTTISH POLITICAL CORRESPONDENT

BARLINNIE Prison, frequently described as "the grimmest building in Scotland", is soon to close.

The Victorian jail, which has housed some of the country's most violent men, is to become a remand centre for just 500 inmates as opposed to the 1,000 it currently holds.

Built in Glasgow's Riddrie 120 years ago, "the Bar-L" is expected to close along with Peterhead, Dumfries, Low Moss, Castle Huntly, in Dundee, and Noran-side, in Angus.

The proposals are among a series of options to be presented to Justice Minister Jim Wallace as part of an Estate Review being finalised by the Scottish Prisons Service.

They will be replaced by two large new private jails - in Cambuslang, near Glasgow, and on the site of HMP Low Moss, near Bishopbriggs.

The leaked plans have angered the prison officers' union, which fears up to 1,200 of its 3,500 members could lose their jobs.

Yesterday, the Prison Officers' Association in Scotland refused to rule out strike action, which would be backed by colleagues south of the Border.

It is thought contingency plans to bring in the army to run the jails in the event of a strike are being drawn up.

Whatever happens, few will mourn the closure of Scotland's most notorious jail, with its

SWIFT END TO A SICKENING SERIAL KILLER



HANGED MAN: Peter Manuel

PETER Manuel, who murdered seven people in the Fifties, was the worst serial killer ever to be held in Barlinnie.

Like other men condemned to death at the jail, he was immediately put on a death watch. At least two prison officers shared his cell at all times, ensuring that the man who was about to be killed didn't try to kill himself.

On the morning of July 11 1968, Manuel met his end in the clinical confines of D Hall - better known by prisoners and staff as The Hanging Shed.

He went to meet his maker in businesslike

fashion. Prayers were said in the condemned cell, and he was offered a brandy for his nerves.

The procedure was both rapid and routine. Manuel's last request was: "Turn up the radio and I'll go quietly." So they did. He was grabbed, frogmarched quickly to the trap and his arms pinioned.

The noose went round his neck, the hangman pulled the lever and he plummeted two floors into the void beneath - all to the strains an electric organ playing Tea For Two.

Not long after that, the death sentence was abolished in Scotland.

cramped and damp conditions and where the practice of slopping out is still maintained.

It has been the scene of rooftop riots - one governor wryly commented that Barlinnie gave prisoners just what they wanted, three square meals a day and a roof beneath their feet - and has been described as a time bomb waiting to explode.

In recent times, 20,000 people a year have passed through its gates. Many have been some of society's saddest and most pathetic characters - petty criminals, fine dodgers and drug addicts.

Others have been hardened,

persistent and ruthless criminals such as killers and drug dealers.

In recent years, Barlinnie has tried to moderate its image by introducing a more humane regime. The Special Unit, which operated in the Seventies, sought to rehabilitate the most hardened criminals, such as murderer Jimmy Boyle, with a regime of tolerance and compassion.

Derek Turner, assistant secretary of the Prison Officers Association (Scotland), said he was angry at the proposals and said he was "disgusted" that the shake-up had been leaked.

Mr Turner said: "Privatisation

of prisons is a serious issue, so there should be a public debate. It wasn't in any of the parties' election manifestoes either.

"They are being introduced by stealth."

Mr Wallace said any proposals would be debated by MSPs before any decision was made.

He said: "Everyone is agreed that there is a need to modernise the prison estate. That's why I asked the SPS to carry out a review of the options for ministers to consider. Decisions on the future of the other prisons have not yet been made and so this is just speculation."

Chinook pilots vindicated after six-and-a-half years of blame

Jenny Percival
Political Correspondent

AN INQUIRY into a fatal helicopter crash on the Mull of Kintyre reveals today that the two pilots blamed by the Ministry of Defence were victims of "a major miscarriage of justice" and calls for them to be cleared of guilt.

The MOD had stuck by its own "very unsatisfactory" and "unsustainable" verdict that Flt Lt Jonathan Jagger and Flt Lt Richard Cook were to blame, despite doubts about the safety of the Chinook MkII helicopter.

The powerful Commons' public accounts committee found that at the time of the crash the Chinook

was experiencing "repeated and unexplained" technical difficulties caused by its computer software.

In a scathing attack on the MOD's "unwarrantable arrogance", it declared that the department should have heeded the sheriff court ruling that the cause of the crash could not be determined.

Captain John Cook, Flt Lt Cook's father, said: "We've been saying this for six-and-a-half years. We're absolutely delighted that this important body of people has come to this conclusion. I'm optimistic that the Government may take notice of it."

Tory MP David Davis, the committee's chairman, called on the MOD to set aside its finding that the crash of the Chinook ZD-576 was caused by

pilot error. His report provides the strongest evidence yet of the need for a rethink and will put pressure on the government to accept calls for a review.

It will also embarrass Tony Blair, the Prime Minister, who recently gave his backing to the MOD's version of events. Speaking in July, he said: "All possible causes were examined but no evidence of technical malfunctioning was found. The RAF board of inquiry established that the Chinook was flying too fast, too low in bad weather."

Both pilots and the 27 army and intelligence officers on board died on 2 June 1994, when the helicopter carrying them to a conference in Inverness, crashed into a hill on Mull.

The MOD has repeatedly said it can see no reason to overturn the ruling by Air Marshalls Sir William Wraatten and Sir John Day that the pilots were guilty of "gross negligence".

In March, the committee launched an inquiry into the Chinook MkII helicopter, which is the product of a £142 million contract undertaken by Boeing Helicopters to upgrade 32 MkI helicopters.

Victims of a miscarriage of natural justice Pages 8,9
Editorial comment Page 15

Its main conclusions are:
● The MOD did not realise there were problems with the helicopter's computerised fuel system, known as

Full Authority Digital Electronic Control (FADEC), until it was delivered for flight trials - despite six years of development and three in production. The late discovery of problems with the FADEC software was "unacceptable".

● The RAF's finding of pilot error does not satisfy the burden of proof required, that there be no doubt whatsoever. The committee found:

"The technical data recovered from the wreckage was incomplete and does not, we believe, conclusively rule out technical malfunction as a potential cause of the crash. Negligence should only be found where it can be positively identified to have been the cause."

"Given the absence of cockpit

THE SCOTSMAN

voice and accident data recorders and the contrary view of the Scottish fatal accident inquiry conducted by Sheriff Sir Stephen Young, it is impossible to prove gross negligence in the case of ZD-576.

The committee argues that the MOD should have appreciated the "superior standing" of the Scottish court and been guided by it.

It adds: "The department's [MOD] preference for the results of their own procedures constitutes unwarrantable arrogance."

"The committee simply cannot understand why the department continues to defend the unsustainable finding of gross negligence and recommends it should be set aside."

Mr Davis concluded: "In truth, we

shall never know what happened on that fateful day at the Mull of Kintyre in 1994 but the evidence provided to the committee points quite clearly to a major miscarriage of justice. Despite the absence of definitive evidence, the department has doggedly stuck by the view that the crash was caused by pilot error.

"The committee's report shows that this logic is flawed ... now is the time finally to put this matter right."

Geoff Hoop, the defence secretary, insisted that there was nothing in the committee's report to cast doubt on the integrity of the MOD's findings. "There is clearly a good deal of material in the report, but none of it constitutes new evidence," he said.

jpercival@scotsman.com

JUSTICE AND HOME AFFAIRS COMMITTEE

Future Business

Note by the Convener

Background

A number of issues within the remit of this Committee have arisen since the Committee last discussed and agreed its forward programme, at its meeting on 14 November. The purpose of this note is to set out these issues, and options available to the Committee to take these issues forward.

Chhokar Case

Members will be aware that Surjit Singh Chhokar was murdered on 4 November 1998 in Wishaw. Last week, two men accused of the murder were found not guilty. One was found guilty of a reduced charge of assault and was given 12 months' detention. Both men had denied the charges, and named the uncle of one of the accused in a special defence of incrimination. The uncle was acquitted of murder at a trial last year.

The Lord Advocate, Colin Boyd QC, has commissioned an independent judicial inquiry into the decision-making process in the prosecution of three men who had been accused of the murder of Mr Chhokar. He has also ordered a separate inquiry to review the arrangements for liaison with the members of the victim's family.

The Equal Opportunities Committee Race Reporter, Michael McMahon MSP, is currently performing some initial work on this issue, and will bring back an options paper to that Committee at its meeting on 19 December (see attached letter).

The conduct of these matters by the Crown Office is clearly a matter that falls within the remit of this Committee, and I would be interested in the Committee's view on what, if anything, it wishes to do in relation to this issue at this stage. One option would be to question the Lord Advocate on the arguments for and against a public inquiry on the handling of the case. Another, of course, would be to do nothing at least until the inquiries announced by the Crown Office have been concluded. The Committee might also wish to defer any decision until it becomes clear how the Equal Opportunities Committee intends to proceed.

Chinook helicopter crash

Members will also be aware of the issues arising from the 1994 crash of an RAF Chinook helicopter on the Mull of Kintyre, which killed 29 people. An RAF Board of Inquiry which initially examined the cause of the crash in 1997 blamed pilot error. However, a fatal accident inquiry in 1996 had found no proof that the pilots were to blame. On 30 November, the House of Commons Public Accounts Committee (PAC) criticised the findings of the RAF Board of Inquiry which blamed the two pilots for the crash. The PAC said there had been repeated problems with the aircraft's control software, and that that cast sufficient doubt on the conclusion of pilot error to justify overturning the Board of Inquiry findings. However, Defence Secretary Geoff Hoon has dismissed the PAC report on the grounds that it presents no new evidence that

would justify reopening the inquiry. That response has been widely criticised, including by former Defence Secretary Malcolm Rifkind and other MPs and peers.

Although the Ministry of Defence is subject to scrutiny by the House of Commons and not by the Scottish Parliament, the fatal accident inquiry was carried out in 1996 in a Scottish Court. It therefore seems to me that the Committee could legitimately look into at least some aspects of this case should it so wish.

Kilmarnock Prison

I understand that all members have received letters from the Prison Officers Association Scotland questioning figures recently presented by the Scottish Prisons Service concerning the relative cost per prisoner at HMP Kilmarnock and SPS-run prisons. The union invites the Committee to examine critically how such figures are arrived at. Christine Grahame has written to me suggesting that the Committee take evidence from the Chief Executive of the Scottish Prison Service and from the Chief Inspector of Prisons on this matter.

I had of course envisaged that the Committee would take evidence from the Minister and the SPS Chief Executive, and perhaps also the Chief Inspector, on the forthcoming Estates Review. However, I would be interested to know whether the Committee thinks it preferable to invite written evidence on the above point now. One advantage of doing so is that it would provide material on which questions could be based during oral evidence at a later date. It remains uncertain, of course, when the Executive's response to the Estates Review will be made known. I understand that the SPS Board's report is now with the Minister for Justice.

Child Protection

As members are aware, Gordon Jackson has suggested that the Committee may wish to look at local authority child protection committees and the problems which they are currently encountering. While I am sympathetic to the issue, it seems to me that the work of these committees cuts across the remits of several Committees of this Parliament (Local Government; Social Inclusion, Housing and Voluntary Sector; Health and Community Care; and Education, Culture and Sport). I am also a little reluctant for the Committee to commit itself at this stage to what could be another substantial inquiry while the inquiries on legal aid and self-regulation of the police are just beginning, particularly given the likely legislative burden next year.

One option would be to wait at least until the fate of this Committee has become clear. Another is perhaps to write to the Conveners of relevant committees to find out whether they have, or would have, an interest in undertaking such an inquiry.

7 DECEMBER 2000

ALASDAIR MORGAN

Alasdair Morgan Esq MP MSP
Convener
Justice and Home Affairs Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

1 December 2000

DISTRICT COURT – INDUSTRIAL ACTION

I understand that during the debate on Glasgow District Court there were requests for figures on the impact of the industrial action. I annex to this letter two tables. The first deals with cases which have been reported to the Procurator Fiscal and marked “no proceedings” without any prosecution action being taken, solely because the industrial action has meant that there was no court facility available. In that table, the references to “custody” and “non custody” relate to the status of the accused at the time that the case was reported to the Procurator Fiscal. The second table relates to cases which had already been commenced but which it has been necessary to mark “no further proceeding” because it has not been possible to call the case in court on the due date. In this table, the references to custody are references to persons who have been kept in custody pending trial and whom it has been necessary to release because the trial could not go ahead. You will see that there are four such cases.

These figures are accurate as at 27 November.

Mention was made of the totting up provisions during the debate. I am unable to determine how many of the road traffic cases would have involved potential totting up because the liability of an accused person to that procedure only becomes apparent when/

when he produces his driving licence and the endorsements are seen. The alternative approach is to requisition from the Driver and Vehicle Licensing Agency a printout in relation to every person accused of road traffic offences whose case falls within the statistics which I am providing and that would be an unreasonable burden to impose on DVLA.

COLIN D BOYD

Table One

Total Cases Marked

Statutory other than specified below	670	21.02%
Common Law	1371	43.01%
Road Traffic	463	14.52%
Speeders	233	7.31%
F.P.(Police) Defaulted	259	8.12%
Camera FP Defaults	84	2.63%
Vehicles Excise	50	1.57%
Wireless Telegraphy	43	1.35%
Parkers	1	0.03%
Breach of Probation	14	0.44%
Total	3188	

Custody

Statutory other than specified below	18	21.18%
Common Law	64	75.29%
Road Traffic	2	2.35%
Speeders	0	0.00%
Breach of Probation	1	
Total	85	

Non-Custody

Statutory other than specified below	652	21.01%
Common Law	1307	42.12%
Road Traffic	461	14.86%
Speeders	233	7.51%
F.P.(Police) Defaulted	259	8.35%
Camera FP Defaults	84	2.71%
Vehicles Excise	50	1.61%
Wireless Telegraphy	43	1.39%
Parkers	1	0.03%
Breach of Probation	13	0.42%
Total	3103	

Table Two

Total Cases Marked

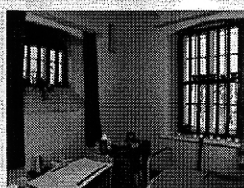
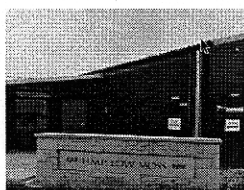
Statutory other than specified below	501	35.97%
Common Law	463	33.24%
Road Traffic	88	6.32%
Speeders	30	2.15%
F.P.(Police) Defaulted	147	10.55%
Camera FP Defaults	80	5.74%
Vehicles Excise	0	0.00%
Wireless Telegraphy	84	6.03%
Parkers	0	0.00%
Breach of Probation	0	0.00%
Total	1393	

Custody

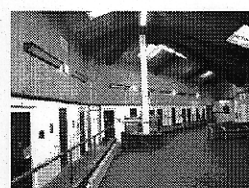
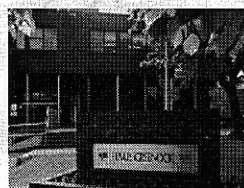
Statutory other than specified below	1	25.00%
Common Law	2	50.00%
Road Traffic	1	25.00%
Speeders	0	0.00%
Breach of Probation	0	
Total	4	

Non-Custody

Statutory other than specified below	500	36.00%
Common Law	461	33.19%
Road Traffic	57	6.26%
Speeders	30	2.16%
F.P.(Police) Defaulted	147	10.58%
Camera FP Defaults	80	5.76%
Vehicles Excise	0	0.00%
Wireless Telegraphy	84	6.05%
Parkers	0	0.00%
Breach of Probation	0	0.00%
Total	1359	



Reflections on visiting the prisons of Scotland



The Right Reverend Andrew McLellan
Moderator of the General Assembly of The Church of Scotland

*When I announced
that I was going
to visit all the
prisons of Scotland,
I was given some
little credit for a
sentence which was
quoted in the press.
I said:*

*"The degree
of civilisation in
a society can be
judged by entering
its prisons".*

*I was glad to
be applauded for
saying it,
but it isn't mine.*

*It is Dostoevsky:
but what is
more important,
it is true.*

I HAVE FIVE V

THE FIRST IS PUBLIC

The distance between Scotland's prisons and Scotland's people is immense. We don't know what our prisons are and what our prisons are like. My chief purpose in undertaking to visit all of Scotland's jails is to help to bridge that gap: to encourage a public interest in prisons and to help prisons feel that they are recognised by and supported by the public. There was a striking illustration of how difficult it is even for well-informed people to have much grasp of what is going on in Scotland's prisons. When a group of MSPs visited Barlinnie the headlines were all about how shocked they were at the physical conditions of the worst parts of that prison. The interesting thing, however, was that they were surprised: they, apparently, did not know what it was like. I do not blame them for that: but it is a dramatic sign of how far away from public understanding are the prisons of Scotland.

When I announced that I was going to visit all the prisons, Her Majesty's Chief Inspector of Prisons came to see me. I was quite nervous, for I was sure he was coming to warn me off: who did I think I was, snooping around where I had no business? On the contrary, his visit was a tremendously encouraging thing, for he made it clear to me that the more I could awaken the interest of the people of Scotland in the prisons of Scotland the better. And that reaction has been mirrored in the reactions of the Scottish Prison Service and the Scottish Executive and the Governors and prison staff and prisoners I have met. I have met some of the most dangerous people in Scotland; I have met some of the most radical governors in Scotland; I have met Jim Wallace: and from all I have heard the same: the more public interest in and understanding of prisons the better.

If I say that my first word for prisons is public then in the present spending climate you are expecting a rather more focussed comment. I am a Kilmarnock boy, in the sense that Kilmarnock is my home town. But I have had the greatest possible reservations about private prisons which is what Kilmarnock prison is. Some years ago I moved successfully the deliverance of the General Assembly which committed the Church of Scotland to opposition to privatising of prisons; and I went to Kilmarnock prison with a mind as near to closed as it is possible for a Presbyterian minister to have! I am sorry to say that I had real difficulties in Kilmarnock; because it was certainly a better experience than I expected. I think private

prisons are a bad thing: but the evidence I hoped to find to support that view was not overwhelmingly obvious. Old-fashioned as I am, I still think the moral argument is powerful: only the state has the right to deprive a person of liberty, and it is still to me doubtful if that state has the right to contract the execution of that punishment to a private individual or company. I think that underneath that there lie a host of related issues about responsibility and profit and vocational commitment which will not go away if the privatised model flourishes. I have no doubt that the churches will want to participate in that debate in the future as they have in the past.

MY SECOND WORD FOR PRISONS IS POSITIVE

I have been very moved by how much I have seen that is good in the prisons of Scotland. Sometimes, if you read what passes for comment on our jails you think they are unutterably awful. Unutterably sad they all are, but they are not unutterably awful. There are some terrific things to be seen and heard and felt; and a culture of continued negativity will produce negative results. An opportunity to mention some positive things ought not to be missed.

Like the new Remand Centre at Cornton Vale. It must be as good a facility of its type as you could find anywhere. Clive Fairweather told me at the very start that the three areas for which I might have a particular concern were Remand, Young Offenders and Women. The new provision at Cornton Vale addresses in some way some of the needs of all three. Or the Anger Management Class I heard about on my very first prison visit: four young men telling me how for the very first time they were taking the opportunity to look closely at what was going on inside themselves and they were finding it extraordinarily difficult and extraordinarily exciting.

Positive attitudes to prisons. What other attitude could there be to the noticeably gifted and skilled people who act as Governors in charge of our prisons? I have met nearly them all; and I have spent a good deal of time with several of them: and I have to say I am remarkably impressed. Scotland is fortunate in its prison governors. They are all very different from each other: and some have higher profiles than others. But in so far as it is possible to judge I felt that I met no misfits. There are not many occupations or professions of which you could say that.

The thing I feel most positive about myself, and which I want the people of Scotland to feel positive about, is the massive change which

there has been in relationships between prison staff and prisoners in the last ten or fifteen years. Fear and intimidation, bullying and violence do not characterise the relationships between prisoners and prison staff in Scotland. For that I am profoundly thankful; and I imagine that nearly everyone is. Of course there are incidents; of course there are difficult prisoners and authoritarian officers; but in every prison I visited there was clear evidence that the regime was attempting to be humane and hopeful, treating prisoners with dignity and respect. In this, as in so much else, what is good for prisoners turns out to be good for prison staff as well: just as what is bad for prisoners so often turns out to be bad for prison staff as well.

MY THIRD WORD IS PROPHETIC

That is jargon for constructive criticism. Which is jargon for saying what is wrong. It is wrong to keep People Awaiting Deportation in prison (indeed it is wrong to call them PADS - they are people detained under immigration procedures). It is scandalous that such people should be in prison; but that is hardly the fault of the Prison Service; and I have to say that in the two prisons where I met such people I felt they were being treated as well as was possible. It was poignant to find that these prisoners - refugees and asylum seekers among them - were the only ones in all my visits who asked me to help them.

It is wrong that prisoners should have to deal with their own waste products night and morning - "slopping out" is a disinfected term which hides the disgusting reality. It is equally wrong that we should demand the presence and supervision of prison staff at this wretched ritual: who would put up with such working conditions anywhere else? I hated what I saw and I hope it stops soon.

It is wrong that so many people should be in prison, that so many should be in prison for offences which do not constitute a real danger to anyone, and that so many of these should be women. What perplexes me is that everyone agrees about this; not least those who have to pronounce the sentences; and nobody seems to be able to provide alternatives. Everyone recognises that incarceration is always costly, frequently damaging, and, particularly in the case of women, so often damaging to others as well as the person imprisoned.

It is wrong that staff morale should be so low. In a famous phrase the Chief Inspector described morale as at "rock-bottom": famous because I heard it twice a day for last two weeks. The best way to have good prisons is to

have happy staff; and in general that is what we do not have. We have prison officers who are proud of what they do; and who are very loyal to the establishment within which they work. But there are significant management issues which must be dealt with if the Prison Service is to be equipped to run the prisons of tomorrow.

MY FOURTH WORD IS PASTORAL

Again that is a jargon word, which I am using in a specific sense as relating to the care and responsibility of the church. I am proud of our prison chaplains. If my visits have been a success it has been largely due to the efforts of Rev Stuart Fulton, Adviser in Chaplaincy to the Scottish Prison Service. I am very glad that I have discovered in nearly every prison fine chaplains working long hours engaged in the most serious spiritual work possible. I have been astonished to find how highly ministers and priests are regarded in prisons: far higher than in Scottish society generally. I am very grateful to the Scottish Prison Service for the clear declarations that they appreciate the value of prison chaplaincy; and I hope that my visits may have done something to encourage chaplains and to raise the profile of their work.

One of the reasons that I thought it would be good for the Moderator to visit our jails is that the congregation of which I am minister has had a long series of relationships with Edinburgh Prison. I hope that I will be able to encourage other congregations to look for opportunities for involvement with prisons near them. I enjoyed hearing one Governor giving a real ticking off to a local minister who was accompanying me because he had never been in the prison before! I do not underestimate, of course, especially as we have just marked Prisoners' Week, the importance of congregations regularly praying for those in prison and their families, for victims and for prison staff.

It is in the area of throughcare that the church might be able to show itself most helpful. It is the word which we heard most often in the prisons, the word which points to the importance of what happens to prisoners when they are released. It is good that negotiations are well advanced for appointing a throughcare chaplain, and I hope that this may prove a model for other appointments. The question of employment upon release is vital, and extremely difficult. I hope I may be able to help the church to think of ways in which it can make some contribution in that area.

And I hope the church will use what influence it has to form the public mind in a different

PRISONS

way from that of much of the popular press in the matter of the release of sex offenders. The culture which approves of victimisation and persecution of sex offenders demeans us all. Like most parish ministers I have some little experience of the results of sex offences and I am appalled and horrified by the damage which such crimes can cause. I resent very strongly the implication that it shows a disregard for their victims if one says a word on behalf of sex offenders. I reject utterly the ridiculous suggestion that it condones what they have done if one says a word on behalf of sex offenders. But the key question is not how can we exact further revenge upon those who have already served a prison sentence; nor is the key question how can we terrify sex offenders most. The key question is how can we stop other children and women being hurt, and very few people who know what they are talking about feel that victimising sex offenders is a good way to achieve that. No, the key question is to ask if we believe that sex offenders too are human beings - however flawed - made in the image of God. I hope that the Church of Scotland will have the courage to ask that very difficult question and to answer it.

MY FINAL WORD IS PERMANENT:

but my words about permanence will be brief.

Public, positive, prophetic pastoral words about prisons will only matter if they effect some permanent change. And the permanent change which matters is not permanent change in Scotland's prisons, but permanent change in Scotland. Over and over again I have seen that the problems of Scotland's prisons are the problems of Scotland; and only when Scotland is more decent and more gentle and more at ease with itself; only when Scotland is more just and more compassionate will Scotland's prisons be more empty and less sad. In particular I am speaking about poverty. You do not need a degree in social science to observe that we lock up a disproportionate amount of Scotland's poor people. The reasons for that are complex; but what you do about it is not lock up more poor people, but rather change for good the crippling, destructive effects of poverty on so much of our society.

When I announced that I was going to visit all the prisons of Scotland, I was given some little credit for a sentence which was quoted in the press. I said "The degree of civilisation in a society can be judged by entering its prisons". I was glad to be applauded for saying it, but it isn't mine. It is Dostoevsky: but what is more important, it is true.

JUSTICE AND HOME AFFAIRS COMMITTEE
LATE PAPERS FOR MEETING ON 12th DECEMBER 2000

Item 1 – Scottish Criminal Cases Review Commission

Briefing paper from Prof. Sheila McLean, Chairperson, SCCRC JH/00/37/10

Item 2 – Diligence Working Group

Letter from Angus MacKay

Item 3

Letter from the Law Society of Scotland on the two SSI's JH/00/37/09

Letters to *The Scotsman*

Andrew Mylne
November 2000
8th December

JUSTICE AND HOME AFFAIRS COMMITTEE

THE WORK OF THE SCOTTISH CRIMINAL CASES REVIEW COMMISSION

TUESDAY 12 DECEMBER

BRIEFING PAPER FROM PROFESSOR SHEILA McLEAN – CHAIRPERSON, SCCRC

Remit of the Commission

The Scottish Criminal Cases Review Commission was established on 1 April 1999 by section 194A of the Criminal Procedure (Scotland) Act as inserted by section 25 of the Crime and Punishment (Scotland) Act 1997, a copy of which is appended for ease of reference (appendix 1).

The remit of the Commission is to review and investigate alleged miscarriages of justice in Scottish convictions and refer deserving cases to the High Court for determination. The High Court will hear the case as if it were a normal appeal. The grounds upon which the Commission may refer a case to the High Court are that a miscarriage of justice may have occurred and that it is in the interests of justice that a reference should be made.

Since April 1999 the Commission has referred 4 cases to the High Court for determination. To date, only 1 case has been determined by the High Court. In this case the applicant's conviction was quashed in relation to the convictions where the Commission considered that there may have been a miscarriage of justice. Of the three remaining cases referred to the High Court dates have yet to be set by the court for the hearing of the appeals.

The details of the four cases referred by the Commission are as follows:

Case 1 – George Fraser – referred by the Commission in September 1999, determined by the High Court in July 2000. Fresh evidence in the form of letters and affidavits, signed at the time of the trial by Mr Fraser's family in Poland, which cast doubt upon the complainer's credibility, this being a critical issue at trial; an insufficiency of evidence to convict on the indecency charges.

Case 2 – Referred by the Commission in November 1999, as yet no appeal date set. Fresh evidence in the form of previously undisclosed police statements from Crown witnesses.

Case 3 – Referred by the Commission in July 2000, as yet no appeal date set. Fresh evidence in the form of psychiatric reports concerning recovered memory of the applicant.

Case 4 – Referred by the Commission in August 2000, as yet no appeal date set. Defective representation by defence solicitor in that the solicitor did not implement his client's instructions.

To date, the Commission has taken final decisions not to refer 28 cases. The Commission has also issued interim decisions not to refer in a further 13 cases where the applicants have been given the opportunity to submit any further representations on the Board's interim decision before a final decision is made. Final decisions have been taken to close the files in relation to a further 9 cases, of which 6 had appeals were outstanding, 2 were closed for want of insistence and 1 case did not require any review by a Legal Officer as the Board's view was that the appropriate method of dealing with the issue raised was through a petition to the Nobile Officium. The Commission has also taken decisions not to review a further 24 cases as the applicants have not exhausted the normal appeals process and have not convinced the Board that there were special circumstances for this. These applicants have been invited to seek legal advice and consider applying directly to the Court for leave to appeal out of time. Further information regarding case statistics is presented in tabular and graphical form and appended to this note for information (appendix 2 and Table 1).

The Powers of the Commission

The powers of the Commission are very broad in that the Commission can:

- (i) take any steps which it considers appropriate to assist in the exercise of the Commission's function;
undertake enquiries and obtain statements, opinions or reports;
request the Lord Advocate or any other person to undertake enquiries or obtain statements, opinions and reports;
- (iv) apply to a Sheriff for a warrant to have a person cited to appear before the sheriff to be precognosed on oath, if that person refuses to make a statement to the Commission;
- (v) apply to the High Court for an order requiring any person or public body to produce or let the Commission have access to any documentation or material which the Commission believes will assist the Commission in its functions;
refer to the High Court, for the Court's opinion, on any point which the Commission desires the Court's assistance.

Use of powers

Since its establishment the Commission has considered it necessary to conduct enquiries and obtain statements using its own staff. Opinions and reports have been obtained from expert advisers under the instruction of the Commission's own staff. The Commission has not exercised its power to instruct the Lord Advocate or any other person to undertake enquiries on the Commission's behalf. The reason for this is that the Commission considers that the person reviewing a case, who has an in-depth knowledge of all the background facts and circumstances in the case and is fully aware of all the factual and legal issues raised in the application and/or which have come to light during the course of the investigation of the case should personally investigate all aspects of a case in order to ensure a comprehensive, thorough and independent review of a case.

The Commission has exercised its power in relation to expert advisers quite often, in particular, in the field of expert DNA analysis. It has also commissioned expert reports relating to photographic evidence, forensic examination, medical opinion and psychological analysis in relation to written and oral statements.

The Commission has on two occasions applied to a Sheriff for a warrant to cite a person to give a precognition on oath. The Commission has found that most witnesses are willing to give a statement to the Commission. The Commission has also on occasion had to advise potential witnesses of its power to apply to a Sheriff to take a precognition on oath and this generally results in co-operation from reluctant witnesses.

The Commission has also once exercised its powers to apply to the High Court for an order to produce documentation. On this occasion, the Commission wished full access to all papers held by the Crown in relation to a case being reviewed by the Commission. The Court granted the order in September 2000. The Commission and the Crown Office found the terms of the Court's judgement to be helpful in clarifying the position in relation to the release of documentation to the Commission. The Commission and Crown Office are currently drafting a Minute of Understanding regarding future working protocols.

The Commission has also, very recently, petitioned the High Court for the Court's opinion in relation to matters arising from the Commission's investigation of allegations of jury malpractice. The hearing before the Court has been scheduled for later this month.

Structure and Responsibilities of the Commission

The Board of the Commission consists of seven members, including the Chair, from varying backgrounds, 2 Academics, 1 senior Counsel, 1 retired Sheriff and part-time High Court Judge, 2 practising solicitors and 1 lay member.

The Commission currently employs a Chief Executive, a Director of Administration, seven Legal Officers (previously entitled Caseworkers) and two admin support staff.

The Chair and Board Members of the Commission are responsible for the strategic direction and performance of the Commission, for setting policies in relation to cases, for deciding whether cases should be referred to the High Court for determination and for ensuring that high standards of propriety and efficiency are achieved and maintained.

The Chief Executive is responsible for the efficient and effective progressing of the Commission's casework, the proper stewardship and expenditure of the public funds received by the Commission and the daily management of the Commission. The Chief Executive is the Accountable Officer for the Commission.

The Director of Administration is responsible for the day to day financial management of the Commission and is responsible for developing and implementing Commission policies in relation to pay and personnel issues, audit issues, members' fees and expenses and procurement.

The Legal Officers are responsible for conducting investigations and carrying out a full and thorough review of all cases alleging a miscarriage of justice, under the direction of the Chief Executive and the Board.

Processing Applications and Reviewing Cases

Full details of the Commission's initial procedures in relation to processing applications and reviewing cases can be found at Section 2, pages 14 and 15, of the Commission's annual report 1999-2000.

When the Commission was established the Board of the Commission agreed that it was necessary to allocate two Board Members to oversee the review of each case. Therefore, when cases were allocated to Legal Officers two Board Members were also allocated each case. This process proved to be very useful as the Commission was a new body within the Scottish criminal justice system and the day to day input from Board Members was extremely helpful to the Legal Officers and assisted them in developing methods for the efficient and effective review of the Commission's cases.

The Commission experienced some minor management problems within the first year of its establishment in that the first appointed Chief Executive remained in post for only a period of 9 months and resigned for personal reasons in December 1999. The Commission was without a Chief Executive from then until April 2000 when Ms Kelly joined the Commission. Since then Ms Kelly has taken an active role in the Commission's casework and has set in place further procedures to ensure the efficient and effective progressing of the Commission's casework. The Commission's Legal Officers have also built up expertise in the review of the cases. The Board of the Commission has recently considered proposals to enhance the overall efficiency of the Commission. In order to ensure the efficient use of public funds the Board has decided that it is now unnecessary to allocate two Board Members to take an active and supervisory role in the review process of every case under review. Discussions have been held with the Commission's Audit Committee and the Commission's internal auditors regarding changes to the current case handling procedures. New case handling procedures are currently being drafted, to come into effect on 1 January 2001. From that date new procedures will be in place whereby, according to existing workload and in accordance with priority ranking, a case is allocated to a legal officer and the case is then scheduled to be discussed at a committee meeting with 2 months. The discussion committees will consist of the allocated Legal Officer, the Chief Executive and two commissioners. Full details of the changes to the current case handling procedures will be detailed in the Commission's next annual report which will be published by end June 2001. These can, of course, be provided to the Committee as soon as the case handling procedures are finalised, if required.

Other Issues of Interest

Management Statement/Financial Memorandum and Corporate Plan

The Committee will wish to be aware that the Commission's Management Statement/Financial Memorandum and Corporate Plan have not yet been finalised, although it is expected that both documents will be available for publication by the end of December 2000.

While the Management Statement and Financial Memorandum has not yet been issued in final form, a draft version was agreed with the Scottish Executive Justice Department and the Commission has been working under the terms of the draft until a final version is issued by the Department.

The preparation of the Commission's first Corporate Plan was delayed due to the resignation in December 1999 of the Commission's first Chief Executive. However, when Ms Kelly took up appointment as Chief Executive in April 2000 she immediately commenced work on the preparation of the Corporate Plan. A draft Corporate Plan was submitted to the sponsor Department in August 2000. Ms Kelly has been in consultation with the Department in relation to finalising the Corporate Plan and a final version will be available by the end of the year. For information, a note detailing the targets which will be included in the Corporate Plan is appended to this note (appendix 3).

Legislative Change

Section 6 of the Commission's first annual report (1999-00), page 30, provides details of problems that the Commission has encountered in carrying out its functions in respect of existing legislation. The Committee may wish to be aware that the Commission has set up an internal working group, consisting of two Members of the Board of the Commission, the Chief Executive and a Legal Officer, to look at the problems, initially in relation to the Commission's own statutory provisions, and submit recommendations to the Board. The Board will report to the Scottish Executive in due course making recommendations for legislative change where necessary.



Crime and Punishment (Scotland) Act 1997

CHAPTER 48

PART II

The Scottish Criminal Cases Review Commission

Scottish Criminal Cases
Review Commission.

25.-(1) After Part X of the 1995 Act there shall be inserted the following new
Part

"PART XA

SCOTTISH CRIMINAL CASES REVIEW COMMISSION

The Scottish Criminal Cases Review Commission

Scottish
Criminal Cases
Review
Commission.

194A.-(1) There shall be established a body corporate
to be known as the Scottish Criminal Cases Review
Commission (in this Act referred to as "the
Commission")

(2) The Commission shall not be regarded as the
servant or agent of the Crown or as enjoying any status,

PART II

immunity or privilege of the Crown; and the Commission's property shall not be regarded as property of, or held on behalf of, the Crown.

(3) The Commission shall consist of not fewer than three members.

(4) The members of the Commission shall be appointed by Her Majesty on the recommendation of the Secretary of State.

(5) At least one third of the members of the Commission shall be persons who are legally qualified; and for this purpose a person is legally qualified if he is an advocate or solicitor of at least ten years' standing.

(6) At least two thirds of the members of the Commission shall be persons who appear to the Secretary of State to have knowledge or experience of any aspect of the criminal justice system; and for the purposes of this subsection the criminal justice system includes, in particular, the investigation of offences and the treatment of offenders.

(7) Schedule 9A to this Act, which makes further provision as to the Commission, shall have effect.

References to High Court

Cases dealt with on indictment. 194B.-(1) The Commission on the consideration of any conviction of a person or of the sentence (other than sentence of death) passed on a person who has been convicted on indictment may, if they think fit, at any time, and whether or not an appeal against such conviction or sentence has previously been heard and determined by the High Court, refer the whole case to the High Court and the case shall be heard and determined, subject to any directions the High Court may make, as if it were an appeal under Part VIII of this Act.

(2) The power of the Commission under this section to refer to the High Court the case of a person convicted shall be exercisable whether or not that person has petitioned for the exercise of Her Majesty's prerogative of mercy.

(3) This section shall apply in relation to a finding under section 55(2) and an order under section 57(2) of this Act as it applies, respectively, in relation to a conviction and a sentence.

(4) For the purposes of this section "person" includes a person who is deceased.

Grounds for reference.

194C. The grounds upon which the Commission may refer a case to the High Court are that they believe-

(a) that a miscarriage of justice may have occurred; and

(b) that it is in the interests of justice that a reference should be made.

194D.-(1) A reference of a conviction, sentence or finding may be made under section 194B of this Act whether or not an application has been made by or on behalf of the person to whom it relates.

(2) In considering whether to make a reference the Commission shall have regard to

(a) any application or representations made to the Commission by or on behalf of the person to whom it relates;

(b) any other representations made to the Commission in relation to it; and

(c) any other matters which appear to the Commission to be relevant.

(3) In considering whether to make a reference the Commission may at any time refer to the High Court for the Court's opinion any point on which they desire the Court's assistance; and on a reference under this subsection the High Court shall consider the point referred and furnish the Commission with their opinion on the point.

(4) Where the Commission make a reference to the High Court under section 194B of this Act they shall

(a) give to the Court a statement of their reasons for making the reference; and

(b) send a copy of the statement to every person who appears to them to be likely to be a party to any proceedings on the appeal arising from the reference.

(5) In every case in which

(a) an application has been made to the Commission by or on behalf of any person for the reference by them of any conviction, sentence or finding; but

(b) the Commission decide not to make a reference of the conviction, sentence or finding, they shall give a statement of the reasons for their decision to the person who made the application.

194E.--(1) The Secretary of State may by order provide for this Part of this Act to apply in relation to convictions, sentences and findings made in summary proceedings as they apply in relation to convictions, sentences and findings made in solemn proceedings, and may for that purpose make in such an order such amendments to the provisions of this Part as appear to him to be necessary or expedient.

~(2) An order under this section shall be made by statutory instrument, and shall not have effect unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

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Further powers. 194E The Commission may take any steps which they consider appropriate for assisting them in the exercise of any of their functions and may, in particular-

- (a) themselves undertake inquiries and obtain statements, opinions or reports; or
- (b) request the Lord Advocate or any other person to undertake such inquiries or obtain such statements, opinions and reports.

Supplementary provision. 1946.--(1) The Secretary of State may by order make such incidental, consequential, transitional or supplementary provisions as may appear to him to be necessary or expedient for the purpose of bringing this Part of this Act into operation, and, without prejudice to the generality of the foregoing, of dealing with any cases being considered by him under section 124 of this Act at the time when this Part comes into force, and an order under this section may make different provision in relation to different cases or classes of case.

(2) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Powers of investigation of Commission

Power to request 194H.--(1) Where it appears to the Commission that a precognition on person may have information which they require for the purposes of carrying out their functions, and the person oath. refuses to make any statement to them, they may apply to the sheriff under this section.

(2) On an application made by the Commission under this section, the sheriff may, if he is satisfied that it is reasonable in the circumstances, grant warrant to cite the person concerned to appear before the sheriff in chambers at such time or place as shall be specified in the citation, for precognition on oath by a member of the Commission or a person appointed by them to act in that regard.

(3) Any person who, having been duly cited to attend for precognition under subsection (2) above and having been given at least 48 hours notice, fails without reasonable excuse to attend shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 21 days; and the court may issue a warrant for the apprehension of the person concerned ordering him to be brought before a sheriff for precognition on oath.

(4) Any person who, having been duly cited to attend for precognition under subsection (2) above, attends hut

- (a) refuses to give information within his knowledge or to produce evidence in his possession; or

PART II

(b) prevaricates in his evidence,
shall be guilty of an offence and shall be liable to be
summarily subjected to a fine not exceeding level 3 on the
standard scale or to imprisonment for a period not
exceeding 21 days.

Power to obtain
documents etc.

1941.-(1) Where the Commission believe that a person
or a public body has possession or control of a document
or other material which may assist them in the exercise of
any of their functions, they may apply to the High Court
for an order requiring that person or body
(a) to produce the document or other material to the
Commission or to give the Commission access

to it; and

(b) to allow the Commission to take away the
document or other material or to make and take
away a copy of it in such form as they think
appropriate,

and such an order may direct that the document or other
material must not be destroyed, damaged or altered
before the direction is withdrawn by the Court.

(2) The duty to comply with an order under this section
is not affected by any obligation of secrecy or other
limitation on disclosure (including any such obligation or
limitation imposed by or by virtue of any enactment)
which would otherwise prevent the production of the
document or other material to the Commission or the
giving of access to it to the Commission.

(3) The documents and other material covered by this
section include, in particular, any document or other
material obtained or created during any investigation or
proceedings relating to

(a) the case in relation to which the Commission's .
function is being or may be exercised; or

(b) any other case which may be in any way
connected with that case (whether or not any
function of the Commission could be exercised
in relation to that other case).

(4) In this section

"Minister" means a Minister of the Crown as defined
by section 8 of the Ministers of the Crown Act

1975;

"police force" means any police force maintained for
a local government area **under section 1(1) of
the Police (Scotland) Act 1967 and references to**
a chief constable are references to the chief
constable of such a force within the meaning of

that Act; and

1975 c.26.

1967 c.77.

'public body" means

(a) any police force;

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(b) any government department, local authority or other body constituted for the purposes of the public service, local government or the administration of justice; or

(c) any other body whose members are appointed by Her Majesty, any Minister or any government department or whose revenues consist wholly or mainly of money provided by Parliament.

Disclosure of information

Offence
of

194J. -(1) A person who is or has been a member or employee of the Commission shall not disclose any information obtained by the Commission in the exercise of any of their functions unless the disclosure of the information is excepted from this section by section 194K of this Act.

(2) A member of the Commission shall not authorise the disclosure by an employee of the Commission of any information obtained by the Commission in the exercise of any of their functions unless the authorisation of the disclosure of the information is excepted from this section by section 194K of this Act.

(3) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level S on the standard scale.

Exceptions from
obligations of
non-disclosure.

194K. -(1) The disclosure of information, or the authorisation of the disclosure of information, is excepted from section 194J of this Act by this section if the information is disclosed, or is authorised to be disclosed-

- (a) for the purposes of any criminal, disciplinary or civil proceedings;
- (b) in order to assist in dealing with an application made to the Secretary of State for compensation for a miscarriage of justice;
- (c) by a person who is a member or an employee of the Commission to another person who is a member or an employee of the Commission;
- (d) in any statement or report required by this Act;
- (e) in or in connection with the exercise of any function under this Act; or
- (f) in any circumstances in which the disclosure of information is permitted by an order made by the Secretary of State.

(2) The disclosure of information is also excepted from section 194J of this Act by this section if the information is disclosed by an employee of the Commission who is authorised to disclose the information by a member of the Commission.

PART II

(3) The disclosure of information, or the authorisation of the disclosure of information, is also excepted from section 1941 of this Act by this section if the information is disclosed, or is authorised to be disclosed, for the purposes of-

- (a) the investigation of an offence; or
- (b) deciding whether to prosecute a person for an offence,

unless the disclosure is or would be prevented by an obligation or other limitation on disclosure (including any such obligation or limitation imposed by, under or by virtue of any enactment) arising otherwise than under that section.

(4) Where the disclosure of information is excepted from section 1941 of this Act by subsection (1) or (2) above, the disclosure of the information is not prevented by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by, under or by virtue of any enactment) arising otherwise than under that section.

(5) The power to make an order under subsection (1)(f) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Consent to disclosure.

194L. -(1) Where a person or body is required by an order under section 1941 of this Act to produce or allow access to a document or other material to the Commission and notifies them that any information contained in the document or other material to which the order relates is not to be disclosed by the Commission without his or its prior consent, the Commission shall not disclose the information without such consent.

(2) Such consent may not be withheld unless-

- (a) (apart from section 1941 of this Act) the person would have been prevented by any obligation of secrecy or other limitation on disclosure from disclosing the information without such

consent; and

- (b) it is reasonable for the person to withhold his consent to disclosure of the information by the

Commission.

(3) An obligation of secrecy or other limitation on disclosure which applies to a person only where disclosure is not authorised by another person shall not be taken for the purposes of subsection (2)(a) **above to prevent the disclosure** by the person of information to the Commission unless

- (a) reasonable steps have been taken to obtain the authorisation of the other person; or
- (b) such **authorisation could not** reasonably be expected to be obtained."

PART II

(2) After Schedule 9 to the 1995 Act there shall be inserted the following Schedule-

"SCHEDULE 9A

THE COMMISSION: FURTHER PROVISIONS

Membership

1. Her Majesty shall, on the recommendation of the Secretary of State, appoint one of the members of the Commission to be the chairman of the Commission. .

2.-(1) Subject to the following provisions of this paragraph, a person shall hold and vacate *office as* a member of the Commission, or as chairman of the Commission, in accordance with the terms of his appointment.

(2) An appointment as a member of the Commission may be full-time or part-time.

(3) The appointment of a person as a member of the Commission, or as chairman of the Commission, shall be for a fixed period of not longer than five years.

(4) Subject to sub-paragraph (5) below, a person whose term of appointment as a member of the Commission, or as chairman of the Commission, expires shall be eligible for re-appointment.

(5) No person may hold office as a member of the Commission for a continuous period which is longer than ten years.

(6) A person may at any time resign his office as a member of the Commission, or as chairman of the Commission, by notice in writing addressed to Her Majesty.

(7) Her Majesty may at any time remove a person from office as a member of the Commission if satisfied-

- (a) that he has without reasonable excuse failed to discharge his functions as a member for a continuous period of three months beginning not earlier than six months before that time;
- (b) that he has been convicted of a criminal offence;
- (c) that a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors; or
- (d) that he is unable or unfit to discharge his functions as a member.

(8) If the chairman of the Commission ceases to be a member of the Commission he shall also cease to be chairman.

Members and employees

3.-(1) The Commission shall-

- (a) pay to members of the Commission such remuneration;
- (b) pay to or in respect of members of the Commission any such allowances, fees, expenses and gratuities; and

PART II

1972 c. 11.

(c) pay towards the provisions of pensions to or in respect of members of the Commission any such sums, as the Commission are required to pay by or in accordance with directions given by the Secretary of State.

(2) Where a member of the Commission was, immediately before becoming a member, a participant in a scheme under section 1 of the Superannuation Act 1972, the Minister for the Civil Service may determine that his term of office as a member shall be treated for the purposes of the scheme as if it were service in the employment or office by reference to which he was a participant in the scheme; and his rights under the scheme shall not be affected by sub-paragraph (1)(c) above.

(3) Where-

- (a) a person ceases to hold office as a member of the Commission otherwise than on the expiry of his term of appointment; and
- (b) it appears to the Secretary of State that there are special circumstances which make it right for him, to receive compensation,

the Secretary of State may direct the Commission to make to him a payment of such amount as the Secretary of State may determine.

4.-(1) The Commission may appoint a chief executive and such other employees as the Commission think fit, subject to the consent of the Secretary of State as to their number and terms and conditions of service.

(2) The Commission shall-

- (a) pay to employees of the Commission such remuneration; and
- (b) pay to or in respect of employees of the Commission any such allowances, fees, expenses and gratuities, as the Commission may, with the consent of the Secretary of State, determine.

(3) Employment by the Commission shall be included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 may apply.

5. The Commission shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to paragraph 3(2) or 4(3) above in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

Procedure

6.-(1) The arrangements for the procedure of the Commission (including the quorum for meetings) shall be such as the Commission may determine.

(2) The arrangements may provide **for the discharge**, under the general direction of the Commission, of any function of the Commission- - -

PART II

- (a) in the case of the function specified in sub-paragraph (3) below, by a committee consisting of not fewer than three members of the Commission; and
 - (b) in any other case, by any committee of, or by one or more of the members or employees of, the Commission.
- (3) The function referred to in sub-paragraph (2)(a) above is making a reference to the High Court under section 194B of this Act.
- (4) The validity of any proceedings of the Commission (or of any committee of the Commission) shall not be affected by-
- (a) any vacancy among the members of the Commission or in the office of chairman of the Commission; or
 - (b) any defect in the appointment of any person as a member of the Commission or as chairman of the Commission.
- (5) Where-
- (a) a document or other material has been produced to the Commission under section 194I of this Act, or they have been given access to a document or other material under that section, and the Commission have taken away the document or other material (or a copy of it); and
 - (b) the person who produced the document or other material to the Commission, or gave them access to it, has notified the Commission that he considers that its disclosure to others may be contrary to the interests of national security,
- the Commission shall, after consulting that person, deal with the document or material (or copy) in a manner appropriate for safeguarding the interests of national security.

Evidence

7. A document purporting to be
- (a) duly executed under the seal of the Commission; or
 - (b) signed on behalf of the Commission, shall be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

Annual reports and accounts

- 8.--(1) As soon as possible after the end of each financial year of the Commission, the Commission shall send to the Secretary of State a report on the discharge of their functions during that year.
- (2) Such a report may include an account of the working of the provisions of Part XA of this Act and recommendations relating to any of those provisions.
- (3) The Secretary of State shall lay before each House of Parliament, and cause to be published, a copy of every report sent to him under sub-paragraph (1).
- 9.--(1) The Commission shall-
- (a) keep proper accounts and proper records in relation to the accounts; and

PART II

- (b) prepare a statement of accounts in respect of each financial year of the Commission.

(2) The statement of accounts shall contain such information and shall be in such form as the Secretary of State may, with the consent of the Treasury, direct.

(3) The Commission shall send a copy of the statement of accounts to the Secretary of State and to the Comptroller and Auditor General within such period after the end of the financial year to which the statement relates as the Secretary of State may direct.

(4) The Comptroller and Auditor General shall-

- (a) examine, certify and report on the statement of accounts; and
- (b) lay a copy of the statement of accounts and of his report before each House of Parliament.

10. For the purposes of this Schedule the Commission's financial year shall be the period of twelve months ending with 31 st March; but the first financial year of the Commission shall be the period beginning with the date of establishment of the Commission and ending with the first 31st March which falls at least six months after that date.

Expenses

11. The Secretary of State shall defray the expenses of the Commission up to such amount as may be approved by him."

SCOTTISH CRIMINAL CASES REVIEW COMMISSION

CASE STATISTICS AS AT END NOVEMBER 2000

Summary

TOTAL CASES RECEIVED	193
<i>of which:</i>	
Referrals	4
Final decisions not to refer issued	28
Cases closed for other reasons (appeal outstanding, want of insistence etc)	9
Cases currently allocated to Legal Officers	99
<i>of which</i>	
<i>Interim decisions not to refer have been issued</i>	<i>13</i>
Cases held in Suspense	24
Cases in backlog	29

TRENDS IN CASE STATISTICS SINCE APRIL 1999 (see Table 1 and graphs attached)

When the Commission was established it was virtually impossible to predict the likely volume of cases that would be received and throughout the first year the Commission attempted to control the backlog with existing resources. As at 1st April, 2000 there were 44 cases in backlog.

While the backlog decreased from 44 to 37 cases between the beginning of April 2000 and 31st July, 2000, it became clear that, without additional resources, the backlog would begin to increase rapidly again as, by the latter date, each Legal Officer had been allocated the maximum number of cases which s/he could reasonably be expected to review.

The number of cases received by the Commission has varied between 3 and 13 per month and has averaged 8.7 cases over the period from 1 April 1999 to 30 November 2000. If the Commission continues to receive cases at around 9 cases per month it will have received a total of over 230 cases by end March 2001.

The average rate of progress on the conclusion of cases has shown a significant increase during the second year of the Commission's life due, firstly, to there now being in the system, with the passage of time, many cases where the review process has reached an advanced stage, secondly, to the recruitment of a fourth legal officer in December 1999 and, thirdly, to the fact that progress of cases through the system is now being clearly targeted by Legal Officers. The recruitment of a further 3 legal officers from 1 October 2000 is not expected to start affecting the rate of completion until around April 2001 though it will, of course, allow the backlog to be reduced as they gradually take on a full caseload.

It is not possible to predict with any degree of accuracy the likely future rate of conclusion of cases but, after careful scrutiny of the state of play in relation to each of

the cases allocated as at 31st July, 2000, it seemed reasonable to anticipate that it may be possible to conclude cases from that date at the approximate rate of 1 case per legal officer per month. This figure will be kept under careful review and any significant deviation reported to the Scottish Executive without delay in order that timeous consideration can be given to any steps which may be appropriate to match the level of resources to casework demands such as increasing or reducing the number of Legal Officers, as necessary.

Through the employment of three further Legal Officers from October 2000 with Legal Officers concluding cases at a rate of 1 case each per month, by the end of March 2001, the number of cases in backlog should be virtually eliminated, with 116 incomplete cases in the system. However, thereafter the backlog may begin to increase once more. If, however, the Legal Officers conclude cases at the rate of 1.5 cases each per month by May 2001 the backlog would be clear and the number of incomplete cases in the system would be 111. By March 2002 the number of incomplete cases in the system would be 86. If this were to be the true sequence of events the Commission would be looking to reduce its staff numbers before the end of March 2002.

The Commission will ensure that the rate of intake and of conclusion of cases will be carefully monitored to ensure that the backlog is under control and at acceptable levels at all times.

PERFORMANCE TARGETS SET TO MEET THE OBJECTIVES AS SET BY SCOTTISH MINISTERS*Performance targets to monitor efficiency and expedition in dealing with cases*

An initial assessment of the likely complexity of each case will be completed by the Chief Executive after the Board has accepted the case for review and before the case is allocated to a Legal Officer;

The Director of Administration will notify the Crown Office and the Police of receipt of cases for the purpose of retention of paperwork and productions on a monthly basis;

Cases will be allocated to a legal officer within a maximum period of 9 months from the date of receipt;

Within 3 days of a case being allocated to a legal officer the applicant will be notified of the allocation;

Within 4 weeks of allocation, the legal officer will prepare an initial case plan document;

Review of cases relating to sentence only will be concluded within 6 months of being allocated to a legal officer;

Cases relating to conviction or conviction and sentence will be concluded within 10 months of being allocated to a legal officer, excluding any time delay due to factors outwith the Commission's control.

After careful consideration, the Commission has concluded that, given the diversity of its cases and the uniqueness of each individual case reviewed it is not possible to subdivide and stipulate targets for individual stages of the review process. The target of 10 months given for the conclusion of every case after allocation is itself essentially conjectural given the nature of the Commission's work.

Performance targets to monitor standards of service to stakeholders

In order to monitor whether the Commission is delivering its services in ways appropriate to stakeholders' needs the Commission will scrutinise and report on:

The number of applicants who ask the Commission to reconsider their cases after receiving the Commission's interim statement of reasons for the decision not to refer cases and the number of applicants who re-apply after receiving the final letter containing the reasons for the decision not to refer

The number of appeals dismissed after referral by the Commission

The number of complaints received

The length of time taken to bring to a conclusion complaints against the Commission or individual Members or staff of the Commission .

Policy and general case discussion meetings, involving all Members and staff will be held at least twice yearly and the Chief Executive will hold regular fortnightly meetings with all staff.

Each staff member will undertake at least 3 days of training and development.

The staff pay, promotion and performance appraisal systems will be reviewed by 31 March 2001.

The Commission will carry out audits and will formulate and implement policies, incorporating any changes deemed to be necessary in the Commission's practices and procedures, in respect of both Data Protection and Human Rights legislation and will put in place procedures to monitor the effectiveness of these policies.

The Commission will critically analyse the provisions of section 194 of the Criminal Procedure (Scotland) Act 1995 and report to the Scottish Executive thereon by 31 December 2001, with recommendations in respect of amendments and additional provisions which may assist the Commission in carrying out its function more efficiently, effectively and expeditiously.

The Commission will, in the light of its experience in cases reviewed, carry out a review of the provisions of the Contempt of Court Act 1981 and report to the Scottish Executive on the extent to which the provisions contained in that Act obstruct the Commission in the exercise of its functions.

To promote public understanding of the Commission's role

To achieve this objective the Commission will develop and implement a programme of activities to promote understanding of the Commission's role to the public and to the Commission's other stakeholders and the external organisations with which the Commission interacts.

The Commission will widely distribute its information leaflets and video and encourage feedback from organisations and individuals on the content of the information provided and take account of constructive comments.

The Commission will produce leaflets for witnesses explaining the role of the Commission, the arrangements which can be made for interview and dealing with possible matters of concern for potential witnesses.

The Commission will develop its website to provide information on all aspects of the work of the Commission. The website will include a feedback system which will be monitored. All constructive comments will be taken into consideration by the Commission.

The Commission will prepare a programme of talks to be held on the role of the Commission throughout Scotland to bar associations, legal groups, prisoners, prison staff, law students, and any other interested parties.

The Commission will also invite external organisations and individuals with an interest in or having a working relationship with the Commission's work to visit the Commission and learn more about the Commission's work in operation.

The Commission will take an open approach in its dealings with applicants, the public, the media and other agencies within and outwith the criminal justice system and will monitor and develop its methods of communication as necessary.

The Commission will monitor whether or not this objective is being met by reporting on the level and type of feedback it receives from the public and external organisations in its Annual Report and Accounts.

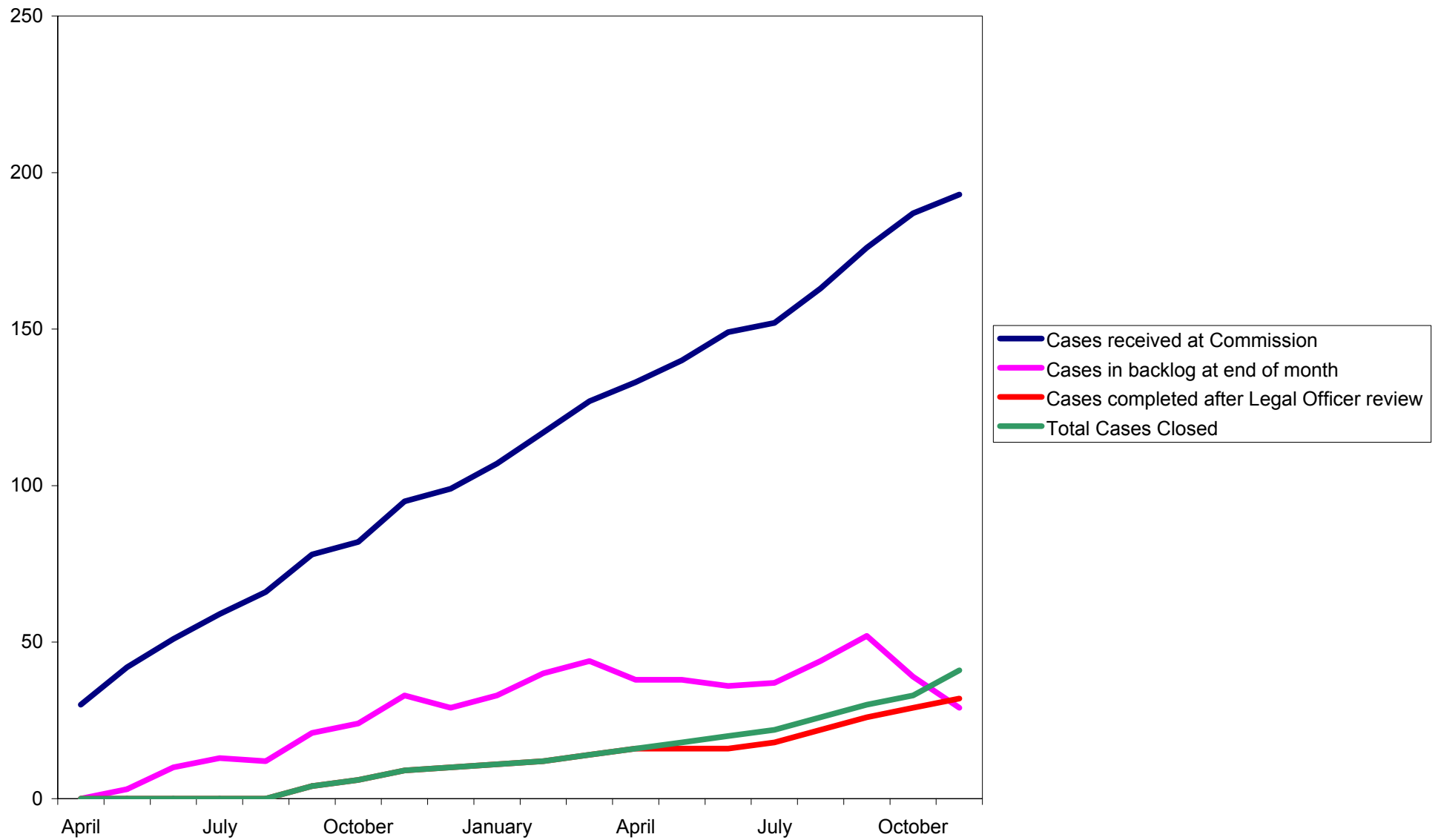
To enhance public confidence in the ability of the Scottish criminal justice system to cure miscarriages of justice

This objective is inextricably linked with the Commission's other objectives. The Commission believes that it is not possible to set specific goals, over and above those set out in relation to its other objectives, to achieve this objective. The Commission will work conscientiously to ensure that public confidence is enhanced by effectively and expeditiously reviewing and investigating all of its cases and by ensuring the integrity, impartiality, objectivity and independence of its work.

The Commission believes that if it is meeting its other objectives then public confidence in the Scottish criminal justice system to cure miscarriages of justice will be enhanced. The Commission is firmly of the view that its independence from Government and the prosecution service is of paramount importance in enhancing public confidence in the ability of the criminal justice system to remedy miscarriages of justice and the Commission will maintain total independence in its investigation and review of cases and in its decision making process.

The Commission will report in its Annual Report on the volume and nature of feedback received from the public on how the Commission is perceived to be fulfilling its function by way of monitoring whether this objective is being met.

CUMULATIVE TOTALS APRIL 1999 TO NOVEMBER 2000



CASEWORK STATISTICS - (April 1999 - November 2000)																					
Monthly Totals																					
	April	May	June	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	August	September	October	November	TOTALS
Cases received at Commission	30	12	9	8	7	12	4	13	4	8	10	10	6	7	9	3	11	13	11	6	193
Cases in backlog at end month (minus any allocations)	0	3	10	13	12	21	24	33	29	33	40	44	38	38	36	37	44	52	39	29	
Cases put to Board for policy decisions	0	0	0	2	2	2	1	1	0	0	1	5	0	1	2	0	0	0	0	1	18
Cases put to Board for referral	0	0	0	0	0	1	0	1	0	0	0	1	0	0	0	1	1	0	0	1	6
Cases put to Board for refusal	0	0	0	5	2	1	0	1	1	0	2	2	2	4	3	3	6	11	8	10	61
Total put to Board	0	0	0	5	2	2	0	2	1	0	2	3	2	4	3	4	7	11	8	11	67
Referral issued	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	1	1	0	0	0	4
Interim refusal issued	0	0	0	4	2	2	0	1	1	0	2	2	0	4	3	2	2	7	3	6	41
Final refusal issued	0	0	0	0	0	3	2	2	1	1	1	2	2	0	0	1	3	4	3	3	28
Cases completed (excl non eligible)	0	0	0	0	0	4	2	3	1	1	1	2	2	0	0	2	4	4	3	3	32
Cases closed for want of insistence	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	2
Cases closed - appeal outstanding														1	1					4	6
Cases closed - no investigation by Caseworker required	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Total Cases Closed	0	0	0	0	0	4	2	3	1	1	1	2	2	2	2	2	4	4	3	8	41
Cumulative Totals																					
	April	May	June	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	August	September	October	November	
Cases received at Commission	30	42	51	59	66	78	82	95	99	107	117	127	133	140	149	152	163	176	187	193	
Cases in backlog at end month (minus any allocations)	0	3	10	13	12	21	24	33	29	33	40	44	38	38	36	37	44	52	39	29	
Cases put to Board for policy decisions	0	0	0	2	4	6	7	8	8	8	9	14	14	15	17	17	17	17	17	18	
Cases put to Board for referral	0	0	0	0	0	1	1	2	2	2	2	3	3	3	3	4	5	5	5	6	
Cases put to Board for refusal	0	0	0	5	7	8	8	9	10	10	12	14	16	20	23	26	32	43	51	61	
Total put to Board	0	0	0	5	7	9	9	11	12	12	14	17	19	23	26	30	37	48	56	67	
Referral issued	0	0	0	0	0	1	1	2	2	2	2	2	2	2	2	3	4	4	4	4	
Interim refusal issued	0	0	0	4	6	8	8	9	10	10	12	14	14	18	21	23	25	32	35	41	
Final refusal issued			0	0	0	3	5	7	8	9	10	12	14	14	14	15	18	22	25	28	
Cases completed (excl non eligible)			0	0	0	4	6	9	10	11	12	14	16	16	16	18	22	26	29	32	
Cases closed for want of insistence			0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	2	
Cases closed - appeal outstanding			0	0	0	0	0	0	0	0	0	0	0	1	2	2	2	2	2	6	
Cases closed - no investigation by Caseworker required			0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1	
Total Cases Closed			0	0	0	4	6	9	10	11	12	14	16	18	20	22	26	30	33	41	



SCOTTISH EXECUTIVE

Justice Department
Access to Justice and International Group

Alasdair Morgan MSP
Convenor
Justice and Home Affairs Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

Secretariat to the:
Cross Party Parliamentary Working Group on a Diligence against
Moveable Property to replace Poinding and Warrant Sale
Chair: Angus MacKay MSP

Telephone: 0131-221-6762
rosemary.pollard@scotland.gsi.gov.uk
<http://www.scotland.gov.uk>

30 December 2000

We corresponded recently about future representation of the JHA Committee on the Cross Party Parliamentary Working Group on a Diligence Against Moveable Property to replace Poinding and Warrant Sale, following the resignation of Christine Grahame.

You advised that you had thought that Christine Grahame attended the Group as an SNP representative rather than for the JHA Committee's interests. I can confirm, however, that the original invitation to Rosanna Cunningham, who nominated Christine in her stead, was as a representative of the Justice and Home Affairs Committee.

You may recall the Deputy First Minister's statement to Parliament on 8 June when he set out the Executives arrangements for setting up the Working Group and advised to whom invitations had been issued. In her response to him, Rosanna Cunningham welcomed this but queried whether the Convenors would be the best person from the Committees to serve on the Group and, in the event, nominated Christine Grahame to attend from the JHA Committee. The other Committee Convenors also accepted the invitation and, accordingly, Christine Grahame, Margaret Curran and Trish Godman joined the Group to representatives of the three Committees which had considered the bill for abolition of poidning and warrant sale.

I note what you say about Christine resigning because it was no longer SNP policy to participate on the Working Group. However, I should be grateful if the JHA Committee, which had been in the lead on this issue, would consider fielding a replacement representative for the Group. The Group is meeting fortnightly and it would be useful to have the replacement member involved in discussions as soon as possible.

ANGUS MACKAY

JUSTICE AND HOME AFFAIRS COMMITTEE

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2001 The Advice and Assistance (Scotland) Amendment (No. 2) Regulations 2000

Letter from Michael Clancy of the Law Society of Scotland

The Society welcomes the introduction of these two sets of Regulations which will provide as follows:-

In relation to the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2001, these Regulations provide that ABWOR shall be available in relation to proceedings before an Employment Tribunal subject to the approval of the Scottish Legal Aid Board. The Regulations also prescribe the criteria to be applied by the Board in determining whether to approve an application for ABWOR before an Employment Tribunal.

The Society welcomes the extension of Advice and Assistance by Way of Representation to Employment Tribunals. Employment Tribunals deal with complex areas of law and matters of great importance to those who appear before them. It is appropriate that those appearing are given access to legal advice and representation.

In relation to the Advice and Assistance (Scotland) Amendment (No. 2) Regulations 2000, these Regulations amend the Advice and Assistance (Scotland) Regulations 1996 to provide that a solicitor's right to prior payment of fees and outlays out of any property recovered or preserved for a client in respect of advice and assistance shall not apply to an Order made by an Employment Tribunal. The Society has no comments to make on these Regulations.

In relation to the Assistance by Way of Representation Regulations however, I wonder if it would be appropriate to raise with the Scottish Executive at the meeting on 12th December the following:-

(a) I understand that Employment Tribunals in Scotland sit on a permanent basis in Glasgow, Edinburgh, Aberdeen, Dundee and Inverness although hearings can also be arranged in Dumfries, Stranraer, Kirkcudbright, Oban, Fort William, the Western Isles, Wick, Kirkwall and Lerwick. In some situations, Tribunals sitting in England and Wales can also deal with Scottish cases. In that context, I wonder if the Executive would be prepared to confirm whether travelling time to these locations and related travelling costs will be paid under these Regulations.

(b) In view of the issue of the possible extra-territorial hearing of Scottish cases, it might also be appropriate to consider the extent to which SLAB will pay for Advice and Assistance and ABWOR before Tribunals in England and Wales.

I hope these points are of interest to the Committee.

ECMA
Bill

Finney was

27 NOV 2000

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The Daily Telegraph

Group sex for men 'to be legal in Scotland'

By TARA WOMERSLEY

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HOMOSEXUAL men will be permitted to participate in group sex under measures designed to bring Scotland into line with European law, although it remains illegal south of the border.

Plans to repeal the law forbidding more than two adult males from having sex, whether in the privacy of their own home or not, have been branded as a result of obsessive "political correctness" within the Executive.

The repeal will come into force as part of the European Convention on Human Rights (Compliance) Bill, which was due to be presented to the Scottish Parliament more than a week ago.

It will now be unveiled within in the next fortnight although it is understood that a change to the same law in England will not to be considered by the Home Office for at least four months.

Phil Gallie, the Scottish Conservatives' justice spokesman, claimed that the Executive's stance was making it a laughing stock.

He said: "It is all to do with political correctness as far as the Scottish Parliament is concerned with Labour, the Liberal Democrats and Nationalists all obsessed with these issues."

23 NOV 2000
LEON AND

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LETTERS TO THE EDITOR

Access to justice for all must be maintained

With regard to your report (21 November) of the "pre-emptive strike" tribunals under Article 6 of the European Convention on Human Rights, no doubt the CBI fears another "grave train", and doubtless this will occur, given the increased potential of legal aid. I believe this is as it should be, rather than have our legal system slide into disrepute over lack of access to justice for all.

It is interesting that a spokeswoman for the Law Society of Scotland has welcomed the plans to "open up justice for thousands of people who have had a raw deal". Did she mean in employment, or elsewhere in the justice system?

Other issues in defence of Article 6 also arise: What, for instance, of the reported £30 million legal aid handed out already in civil cases? Are your readers aware that their money, via public funds in civil legal aid, can be awarded to an individual in successful pursuit of an inheritance, whereas parties who are unfortunate enough to live

above the declared low income threshold required by legal aid, but unable to consider the astronomic court costs to defend an action, are effectively denied their right to a fair and public hearing?

Are your readers also aware that the legal aid system is open to abuse of its rules and regulations by the number of unlimited extensions it awards applicants? And that whereas applicants can be made aware of the defenders' objections before the case reaches a court, no such right is reciprocated to the defendants at the time the application is filed?

Legal solutions are not always the correct answer or route, particularly in unique situations of proving legal precedent situations where no tribunal or mediation is on offer, and a fair and just solution can only be pursued through the courts.

Such situations provide a "grave train" only for lawyers, and not a very moral "train" at that, considering the huge

expense and stress clients have to endure. Would that due process were as obvious a right in civil cases as your editorial suggests.

MOIRA A REEKIE
Comely Bank Place
Edinburgh

I am concerned at the tone and content in the coverage of the suggestion that legal aid may be extended to employment tribunals. Surely, the common aim of employer and employee organisations is a modern employee relations system that combines fairness and flexibility?

In a system that permits almost any form of dismissal within the first year of employment, there can be little doubt that employers have a significant degree of latitude. But what of fairness?

Recent statistics show that where neither party is represented in tribunal proceedings, the employee succeeds in 58.9 per cent of cases. But where the employer engages a solicitor

against an unrepresented applicant, the employee's success rate falls to 33 per cent.

Despite the allegations to the contrary in your editorial, it is well established that the determination of private civil obligations such as employment fall within the scope of the European Convention on Human Rights. The question we must ask is whether the lack of representation creates an inequality. Sadly, the statistics I have given answer that question.

As an agency that works with disadvantaged workers, we are delighted by the executive's reported plans. So-called chancers risk paying costs if they pursue a case that is frivolous, vexatious or otherwise unreasonable.

Therefore, we appear to be on the verge of creating a balanced system that protects the rights and interests of both employers and employees.

PETER HUNTER
Director, Scottish Low Pay Unit
Sandyford Place
Glasgow

28 NOV 2000

LEGAL
AID

2

THE SCOTSMAN

Employers have unfair advantage at tribunals

I read with surprise your report (21 November) on the decision of the Scottish executive to make legal aid available to people wishing representation at employment tribunals. You described this decision as a "chancers' charter".

It is true there has been a steep rise in tribunal applications over the past few years. But the reason for this has not been the emergence of an army of "chancers". It is more to do with the wide-ranging changes in employment legislation introduced by the government; the drop in trade union membership and traditional methods of dispute resolution; and the new methods of so-called flexible working

involving temporary, short-term and fixed-term contracts.

You quote the Confederation of British Industry Scotland as stating that the decision will increase the legal costs of employers, and make business uncompetitive. I find that very hard to believe. I am sure legal costs associated with tribunal applications are a small proportion of the legal costs of any employer. Any increase would be relatively insignificant.

In any case, if more employers adopted what is generally recognised as good practice, and sought free advice from ACAS, the Citizens Advice Bureaux and other agencies when they have a problem, they

would minimise their litigation costs.

Employers have an unfair advantage in a tribunal application. They can afford a solicitor, and most applicants cannot. As a result, most applications (65 per cent) are unsuccessful when an unrepresented applicant is confronted with an employer represented by a solicitor.

When an applicant is represented, the proportion of unsuccessful cases drops to about 50 per cent. Therefore, the decision of the executive will certainly make the system fairer.

DES LOUGHNEY

Secretary
Edinburgh Trade Union Council
Albany Street, Edinburgh

JUSTICE AND HOME AFFAIRS COMMITTEE
LATE PAPERS FOR MEETING ON 12th DECEMBER 2000

Papers for information for the 37th meeting, 2000

Letter from the Federation of Small Businesses

JH/00/37/11

Letter from Minister for Justice to Convenor on Divorce etc.
(Pensions)(Scotland) Amendment Regulations 2000

JH/00/37/12

Andrew Mylne
November 2000
11th December

JUSTICE AND HOME AFFAIRS COMMITTEE

Legal Aid For Employment Tribunals

Letter from the Federation of Small Businesses

The Federation is aware that the Scottish Executive has placed a draft Affirmative Statutory Instrument before the Committee making provision for advice and assistance under the Legal Aid (Scotland) Act for representation at Employment Tribunals.

This proposal raises a number of issues of concern, the first of which is the total lack of consultation from the Executive with the business community. The Scottish Executive Justice Department have not been in contact with the Federation regarding this issue, which we feel clearly has implications for the small business sector.

Whether we agree with the proposal or not, the lack of consultation from the Justice Department undermines the Executive's commitment to consult with business on all legislation and regulations that affect the business community, particularly the small business sector.

I must point out our own position has not been decided, as due to the short time-scale we have been unable to fully consider, in consultation with our members, the full implications of the proposal.

However, it is the view of the Federation that the current Employment Tribunal system is not equal or fair for small employers. There are serious issues for example, surrounding the number of spurious cases, the system of pre-declared evidence and withdrawal of cases at the last minute etc.

There is a need for a root and branch review of Employment Tribunal procedures. The Federation did welcomed the recent announcement by the Trade & Industry Secretary, proposals to strengthen the employment tribunal system to reduce the risk of employers facing spurious claims.

With regard to the proposal for Legal Aid for Employment Tribunals the Federation's view is that the Committee should ask the Executive to carry out a full and proper consultation. This could perhaps be in line with the new approach to consultation announced by the Cabinet Office on the 27th of November.

If you need any further information please do not hesitate to contact me.

John Downie
Scottish Parliamentary Officer
11 December 2000

cc Minister for Justice

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

Jim Wallace MSP
Minister for Justice
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

8 December 2000

Dear Jim,

Divorce etc. (Pensions) (Scotland) Amendment Regulations 2000

The Justice and Home Affairs Committee considered the Divorce etc. (Pensions) (Scotland) Amendment Regulations 2000 (SSI 2000/392) at its meeting on Wednesday.

The Committee had before it a report on the Regulations by the Subordinate Legislation Committee. That Committee had established from your department that the new Regulation 3A(3), to be inserted by these Regulations, was based on a misunderstanding about DSS policy. Your officials then wrote to my Committee explaining that, because of that misunderstanding, the Executive now regards the new regulation 3A(3) to be unnecessary and as requiring to be revoked. We were also informed that the Executive accordingly proposed to bring forward further amending Regulations to remove the offending provision. I understand these new amending Regulations (SSI 2000/438) have now been laid and referred to my Committee, though the Committee has not yet considered them.

The Committee has asked me to express concern about the handling of these Regulations. The "principal" Regulations (SSI 2000/112) were only made in April this year, and already we are seeing two subsequent amendments to them. It seems extraordinary that your Department proceeded to the stage of laying before the Parliament a statutory instrument that was based on a misunderstanding of the policy of a UK Government Department.

The Subordinate Legislation Committee also takes the view that the new Regulation 3A(3), by allowing an alternative date for the valuation of SERPS benefits to be

calculated in certain circumstances, is *ultra vires* the parent Act. Your department, in its letter to this Committee, merely “notes that the Subordinate Legislation Committee has raised doubts about the *vires* of this provision”. In fact, that Committee did more than merely “raise doubts” – it was quite clear in its view that the instrument was *ultra vires* (see paragraph 36 of the Committee’s 42nd Report, 2000 (SP Paper 223)).

I would be grateful to know what steps you are taking to ensure that instruments are not laid before the Parliament in future until it has been properly established that they are both necessary and competent.

Yours sincerely

ALASDAIR MORGAN MSP
Convener

JUSTICE AND HOME AFFAIRS COMMITTEE

SUPPLEMENTARY PAPERS RELATING TO THE 37TH MEETING, 2000

Letter from the Convener to the Minister for Justice on petition PE102 (as agreed to by the Committee at the 36th Meeting). JH/00/37/13

Letter from the Convener to Angus MacKay on the Executive's working group on a diligence against moveable property to replace poinding and warrant sale JH/00/37/14

Letter to Tony Cameron, Chief Executive of the Scottish Prison Service on HMP Kilmarnock JH/00/37/15

Written Answer on enhanced criminal records certificates [Written Answers](#)

Extract from the *Scotsman* on delays in the courts

Minutes of the 37th Meeting, 2000 JH/00/37/M

Papers not circulated:

The Clerk has received a copy of the Executive's latest Land Reform Action Plan (progress report at end November 2000). Copies may be obtained on request from the clerks.

The Clerk has also received a copy of a Crown Office press release concerning an address by the Lord Advocate to a Victim Support Scotland Conference on 7 December called "In the Aftermath". Copies of the press release may be obtained on request from the clerks.

The Convener has been sent a "manifesto and information document" entitled *Cannabis: Legalise and Utilise*, published by the Legalise Cannabis Alliance, together with leaflets addressed individually to members of the committee. Members may obtain a copy of the document, and the leaflet in their name, by application to the clerks.

Members may wish to note that the Executive has issued a consultation paper on legislation to provide greater protection to hutters in Scotland. Copies can be obtained from document supply, or can be found at the following web address: <http://www.scotland.gov.uk/consultations/housing/cphs-01.asp>

The Clerk has received a copy of HM Prisons Inspectorate Report of its intermediate inspection of HM Young Offenders Institution, Polmont. This is available for members to consult from the Clerks.

Members may wish to note that SPICe has produced a research note (RN 00/107) on the Scottish Charity Law Review. Copies are available from the Document Supply Centre.

Members may wish to note that the following European Documents have been referred to the Committee for information:

- 1630: Proposal for a Council Regulation extending the programme of incentives and exchanges for legal practitioners in the area of civil law (Grotius – civil);
- 1606: Proposal for a Council Regulation on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters;
- 1624: Programme of Measures to implement the principle of mutual recognition of decisions in criminal matters;
- 1434: Draft framework Decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime;
- 1451: Proposal for a decision establishing a European judicial network in civil and commercial matters.

Andrew Mylne
15 December 2000

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 5252

e-mail (clerk): andrew.mylne@scottish.parliament.uk

Jim Wallace MSP
Minister for Justice
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

14 December 2000

Dear Jim,

Petition PE102

The Committee considered the above petition from James Ward again at its meeting on 6 December. Please find enclosed the relevant extract from the Official Report of the above meeting for your information.

As you point out in your letter of 22 November, it is possible to petition the Court of Session for recall of sequestration. However, the Committee was concerned that this could disadvantage individuals in more remote parts of Scotland, for whom the expense of attending a court in Edinburgh could be significant, given the likely financial circumstances of a person considering such a course. We would therefore be interested to know whether any consideration has been given to extending jurisdiction in such cases to the sheriff court.

A second point arose from the leaflet *Recall of sequestration* published by the Accountant in Bankruptcy, to which you referred in your letter of 22 November. You acknowledge in that letter that sequestration can be a "bewildering experience", and members of the Committee were also struck by comments in that leaflet that "the process is not straightforward" (paragraph 1.2) and is "an expensive process right away" (paragraph 4). The Committee expressed concern about the apparent complexity and cost of applications for recall of sequestration. Again, it would be helpful to know what consideration your Department has given to addressing that issue.

Finally, the Committee noted the petitioner's concern, in his letter of 26 November to you, about a possible conflict of interest for the Accountant in Bankruptcy. While the Committee did not feel able to take a view on whether that concern is justified, it would be interested to know what your response is to the petitioner on this point. Perhaps you could therefore arrange to copy your reply to him to the clerk to the Committee.

Copies of this letter go to the petitioner and to the Clerk to the Public Petitions Committee.

Yours sincerely

ALASDAIR MORGAN MSP
Convener

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 5252

e-mail (clerk): andrew.mylne@scottish.parliament.uk

Angus MacKay MSP
Chair, Working Group on a Diligence against
moveable property to replace poinding and warrant sale
Scottish Executive
Access to Justice, Diligence and European coordination division,
Hayweights House
23 Lauriston Street
Edinburgh EH3 9DQ

13 December 2000

Dear Angus,

Working Group on Diligence

In my letter of 7 December, I promised to let you know the outcome of the Committee's consideration of your request for a Committee representative to serve on the above Working Group.

At its meeting yesterday morning, the Committee decided not to appoint a member in that capacity, for reasons similar to those I have indicated to you in previous correspondence. Nor did any member of the Committee indicate an interest in serving on the Group in an individual capacity.

Nevertheless, the Committee was conscious of the need to remain aware of the work being undertaken by the Working Group, and asked me to raise with you the possibility of the Committee receiving regular updates on progress in the Group's work. Although Euan Robson is a member of the Group, we do not feel it is appropriate to expect him both to represent his party and to act as a source of information for the Committee. Instead, we wondered whether you could send us details of significant decisions taken by the Group – either by copying to the clerk the Minutes of the Group, or by some other means that you consider appropriate. We would of course expect to circulate as "public papers" any material provided in this connection.

Yours sincerely,

ALASDAIR MORGAN MSP
Convener

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 5252

e-mail (clerk): andrew.mylne@scottish.parliament.uk

Mr Tony Cameron
Chief Executive
The Scottish Prison Service
Calton House
5 Redheughs Rigg
EDINBURGH
EH12 9HW

14 December 2000

Dear Mr Cameron,

HM Prison Kilmaronock

At its meeting on 12 December, the Justice and Home Affairs Committee considered a number of issues of potential future business. One of those concerned HMP Kilmaronock and the future role of privately-run prisons in Scotland. As you are aware, the Committee has a long-standing interest in prisons, and the contribution of HMP Kilmaronock has been raised in previous Committee consideration of the prison service. Members are also conscious of reports suggesting that one of the recommendations of the forthcoming Prison Estates Review may be an increase in the contribution made by privately-run prisons.

A question that has arisen in that connection is the relative cost of prisoner places at HMP Kilmaronock compared with the average for SPS-run prisons. We are aware that a figure of £11,000 per prisoner place per year at HMP Kilmaronock has been quoted, and that this has been compared with an SPS average cost per prisoner place in the region of £28,000 per year. (These figures were mentioned, for example, by HM Chief Inspector of Prisons in his *Report on HM Prison Kilmaronock 2000* (page 2).) However, we are also conscious that these figures are controversial, and have been criticised on the grounds that they do not involve comparing like with like. The Committee has received correspondence from the Prison Officers' Association Scotland, for example, urging us to look critically at these figures.

For these reasons, the Committee has agreed that I should write to you seeking clarification of how those figures were calculated. Alternatively, if the figures I have referred to are not ones you would regard as correct, perhaps you could set out your

best estimates of the relative costs per prisoner place at HMP Kilmarnock and at other Scottish prisons, together with an explanation of how they were arrived at. It would be very helpful if you were able to provide this information within the next few weeks, so that it will be available to the Committee in advance of its consideration of the outcome of the Prison Estates Review.

I look forward to your reply with interest.

Yours sincerely

ALASDAIR MORGAN MSP
Convener



JUSTICE AND HOME AFFAIRS COMMITTEE

MINUTES

37th Meeting, 2000 (Session 1)

Tuesday 12 December 2000

Present:

Scott Barrie
Christine Grahame
Kate MacLean
Mrs Lyndsay McIntosh
Alasdair Morgan (Convener)

Phil Gallie
Gordon Jackson (Deputy Convener)
Maureen Macmillan
Pauline McNeill

Also present: Jim Wallace, Minister for Justice.

The meeting opened at 10.00 am.

- 1. Scottish Criminal Cases Review Commission:** The Committee took evidence on the work of the Commission from—

Professor Sheila McLean, Chairperson, and Carol Kelly, Chief Executive.

- 2. Diligence working group:** The Committee considered whether to nominate a member to participate in the Executive's "Cross-party Parliamentary Working Group on a diligence against moveable property to replace poinding and warrant sale". The Committee decided not to nominate a member in that capacity, but agreed to write to Angus MacKay, Chair of the Working Group, asking that the Committee be kept informed on a regular basis about the work of the Group.

The meeting was adjourned from 10.54 am to 11.04 am.

- 3. Subordinate Legislation:** Jim Wallace, Minister for Justice, moved (S1M-1398)— That the Justice and Home Affairs Committee recommends that the draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2001 be approved.

After debate, the motion was agreed to (by division: For 5, Against 2, Abstentions 1).

Phil Gallie then moved (S1M-1422)—That the Justice and Home Affairs Committee recommends that nothing further be done under the Advice and Assistance (Scotland) Amendment (No.2) Regulations 2000 (SSI 2000/399).

The motion was disagreed to (by division: For 2, Against 6, Abstentions 0).

It was agreed that the Committee's report on the draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2001 would mention the concerns of some members about the lack of consultation undertaken and about the complexity of the new eligibility tests proposed. A draft of the report would be circulated by e-mail for approval.

- 4. Forward Programme:** The Committee considered its forward programme. It agreed not to consider the Chhokar case at least until the Crown Office inquiries had been completed, and to take account of any consideration that may be undertaken by the Equal Opportunities Committee. It also agreed to write to the Lord Advocate to establish the extent to which information about those inquiries would be made public. In relation to the 1994 Chinook helicopter crash in the Mull of Kintyre, the Committee agreed not to inquire into that incident directly, but to consider at a future meeting a possible remit for an inquiry into the relationship between the role of governmental boards of inquiry and judicial Inquiries in such cases, particularly in relation to differing standards of proof. It agreed to write to the Chief Executive of the Scottish Prison Service (SPS) seeking clarification of how figures provided by SPS on the cost per prisoner at HMP Kilmarnock compared with other Scottish prisons were calculated. In relation to the Deputy Convener's suggestion of an inquiry into variations between local authorities in the methods of operation of child protection committees, the Committee agreed to write to the Association of Directors of Social Work, the Scottish Children's Reporter Administration and the Minister for Justice to establish whether there was a case for undertaking such an inquiry. Other committees within whose remits this issue falls would be kept informed.

The meeting closed at 12.34 am.

Andrew Mylne, Clerk to the Committee