The Committee will meet at 9.30 am in Committee Room 2, Committee Chambers, George IV Bridge, Edinburgh.

1. **Prisons**: The Committee will take evidence from—
   
The Right Reverend Andrew McLellan, Moderator of the General Assembly of the Church of Scotland.

2. **Legal Aid Inquiry**: The Committee will take evidence from—
   
   Professor Alan A Paterson, Professor of Law at Strathclyde University Law School.

3. **Petitions**: The Committee will consider the following petitions:
   
   Petition PE102 by James Ward;
   
   Petition PE205 by Fred and Maureen Collie; and
   
   Petition PE299 and PE331 by Ms Tricia Donegan.

4. **Convention Rights (Compliance) (Scotland) Bill (in private)**: The Committee will consider a draft report on the general principles of the Bill at Stage 1.

   Lynn Tullis
   Clerk to the Committee, Tel 85246
The following papers are attached for this meeting:

**Item 1**  
*Reflections on visiting the prisons of Scotland*, by the Rev Andrew McLellan, Moderator of the Church of Scotland (previously circulated to JHA Members as JH/00/37/4)  

**Item 2**  
Note by the Clerk (private paper)

**Item 3**  
Note by the Clerk (letter from the Minister for Justice and letter from the Convener attached)  
Note by the Clerk (petition PE205 and response from the Executive attached)  
Note by the Clerk (petitions PE299, PE 331 and response from the Lord Advocate attached)

**Item 4**  
Draft Stage 1 Report on the Convention Rights (Compliance) (Scotland) Bill (private paper)

**Papers not circulated:**

**Item 2**  
Members may wish to refer to the written submission on the Legal Aid Inquiry from Professor Paterson (LA 10).

**Item 4**  
Members may wish to refer to the Bill and accompanying documents. These are available from Document Supply or at the following location on the Scottish Parliament website: [http://www.scottish.parliament.uk/parl_bus/legis.html#25](http://www.scottish.parliament.uk/parl_bus/legis.html#25)

The Scottish Executive is undertaking a further consultation period of one month in relation to the draft codes of practice which are required to be in place for the implementation of Parts 2 and 3 of the Adults with Incapacity (Scotland) Act 2000 on 2 April 2001. Copies of the organisations to be contacted, a revised draft of the codes of practice and the letter from the Scottish Executive inviting the submission of evidence are available to consult from the Clerks in Room 3.7, Committee Chambers.

The Scottish Executive has sent its Report on the Permanent Identification of Dogs by the Dog Identification Group to the Clerks. Copies are available to consult from the Clerks in Room 3.7, Committee Chambers.

Petition PE313 by Mr Hugh Devine calling for the Scottish Parliament to resolve a dispute between householders and a developer in Deaconbank, Glasgow over land
Reflections on visiting the prison of Scotland
I HAVE FIVE W

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 terrible 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 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

This is jargon for constructive criticism. Which is not, I am afraid, 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 of 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; nor 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
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 how 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.
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 demean 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.
For further information contact:
The Church of Scotland Media Relations Unit
Telephone: 0131 240 2243 or 0131 225 5722
maintenance has been referred to the Justice 1 Committee for information only. The petition, along with correspondence with the Executive on the matter, is available to consult from the Clerks in Room 3.7, Committee Chambers.

**Papers for information circulated for the 5th meeting, 2001**

Letter from Clive Fairweather to the Guardian  
Minutes of the 4th Meeting, 2001  
Newspaper article on legal aid system of fixed fees
JUSTICE 1 COMMITTEE

Petition PE102 by James Ward

Note by the Clerk

Background

This petition calls for the Parliament to investigate the alleged illegal sequestration of the petitioner, and invites the Committee also to consider changes in the law, specifically the provision of a right of appeal against sequestration orders.

This petition was first considered by the Justice and Home Affairs Committee at its 18th meeting, 2000 (15 May 2000). The Committee agreed to write to the Minister for Justice to ask whether the issues raised in the petition were to be considered as part of the Executive’s general review of diligence (referred to during the Stage 1 debate on the Abolition of Poindings and Warrant Sales Bill). The answer to that question turned out to be no. The Committee also agreed to invite written evidence from relevant organisations. Evidence was received from the Law Society of Scotland, Money Advice Scotland and the Accountant in Bankruptcy.

That evidence was considered at the 29th meeting on 27 September. On behalf of the Committee, the Clerk wrote to the Minister for Justice on 5 October asking whether it would consider improving the information available to individuals facing sequestration, and whether it was satisfied that the current law was compatible with ECHR.

In his reply of 22 November, the Minister made it clear that he is satisfied on the ECHR-compliance point. He also agreed with the evidence of the Accountant in Bankruptcy that the current law is satisfactory. So far as the provision of information was concerned, the Minister referred to a recent leaflet produced by the Accountant in Bankruptcy and said he would consider whether other relevant documentation could be made more helpful.

In a letter of 26 November to the Minister, the petitioner challenged the Minister’s view about the fairness of the current law, pointing out that the right to petition for recall of sequestration was different from a right of appeal. In particular, he claimed that no legal aid was available in such cases and alleged that the position of the Accountant in Bankruptcy in such a procedure might give rise to conflicts of interest.

For information, in the Minister’s reply in January to Mr Ward’s letter of 26 November, he confirmed that legal aid is available for cases of petition for recall.

The Committee considered the petition again on 6 December, and the Convener wrote to the Minister on 14 December (attached). In his reply of 31 January (attached), the Minister indicated he was happy to consider whether procedures for recall are in practice sufficiently accessible and whether petitions for recall might be heard in the sheriff court as well as the Court of Session. He refuted the suggestion of there being a conflict of interest for the Accountant in Bankruptcy.
Option

In light of the Minister’s letter of 31 January, the Committee may now wish to suspend consideration of this petition, pending consideration by the Executive of possible changes of jurisdiction for petitions for recall. In the meantime, the Committee may wish to write to the Minister asking him to keep the Committee informed of progress in this regard.

21 February 2001

LYNN TULLIS

Link to letter from Convener to Minister for Justice
JUSTICE 1 COMMITTEE

Petition PE205 by Mr and Mrs Fred Collie

Note by the Clerk

Background

This petition (attached) calls for the Scottish Parliament to review and increase the minimum sentence for convictions of murder, that sentences for other crimes committed during a more serious offence be consecutive and that parole boards consider all information including previous offences and submissions from victims and relatives.

This was considered by the Public Petitions Committee on 6 June 2000 and again on 6 February 2001 which agreed to pass the petition and related correspondence to the relevant Justice Committee for information only.

The Public Petitions Committee wrote to the Minister for Justice regarding the issues raised in the petition and agreed to seek further information from the Executive on the rights of victims and victims families to attend or give views to Parole Boards. In its response (attached), the Executive stresses that it attaches great importance to judicial discretion in sentencing.

In response to the call to review and increase the minimum sentence for convictions of murder, the Executive explains that it is proposed, in the Convention Rights (Compliance) (Scotland) Bill, that it should be a matter for the judiciary to decide upon the length of time that an adult mandatory life prisoner should serve as punishment for the crime and on the expiry of that period it should be for the Parole Board to decide whether or not the prisoner requires to continue to be confined on public protection grounds.

In addressing the request that in cases involving serious crime sentences for other crimes committed during the commission of the more serious offence should be automatically consecutive, the Executive states that individual sentences are a matter for the court and it is for them to decide whether sentences should run consecutively or concurrently and that in the case of a person serving a life sentence for murder or a discretionary life sentence for another serious crime, a further sentence running consecutively would be redundant.

The petition requests that the Parole Board should be allowed to consider all information, including all police case notes and receive personal submissions from victims or, in cases of murder or culpable homicide, their relatives at hearings. The Executive explains that in reviewing a prisoner’s suitability for release on licence the Parole Board may take into account any matter that it considers to be relevant. It is not the policy of the Executive to initiate contact with a victim or the victim’s family because those concerned may not wish to be reminded of the crime or to know what is happening to the person convicted of it. The views of victim’s families, in relation to risk, are taken into account where these have been made known. In any case, it is not for the Parole Board to decide whether the convicted person has been
adequately punished, but to whether the risk that the prisoner would present to public safety, if released, is acceptable.

The petition requests that when a theft of money occurs during the commission of another serious crime, the offender should automatically be required to make restitution. The Executive explains that in cases where the victim is still alive, the court has discretion to make a compensation order under the terms of the Criminal Procedure (Scotland) Act 1995, where the offender is required to pay the victim such money as the court may direct. Where a victim has died as a result of a criminal injury, compensation may be payable to a qualifying dependent or relative, in the form of a Fatal Award granted under the provisions of the Criminal Injuries Compensation Scheme.

Options

Petition PE205 has been referred to the Justice 1 Committee for information only. The issues relating to sentencing and to a limited extent, the Parole Board, will be addressed by the Convention Rights (Compliance) (Scotland) Bill. The Committee may wish to take the points raised by the petition into account when formulating its Stage 1 report on the general principles of the Bill. Otherwise, the Committee may wish to note the petition and take no further action.

Link to Petition PE205
To The Scottish Parliament

Sentencing of serious offenders

We, the undersigned, declare that we would like the sentencing of serious offenders reviewed by the Scottish Parliament as a result of the murder of Elaine Collie, in her home in Edinburgh in April 1999 by her neighbour, John Ian Reid.

The Petitioners therefore request that the Scottish Parliament

- Review and increase the minimum sentence and parole period for those convicted of murder;

and

- In cases involving a serious crime – from the level of robbery or grievous bodily harm up to and including murder – that sentences for other crimes committed during the commission of the more serious offence be automatically consecutive;

and

- Allow parole boards to consider all information, including all police case notes, held on serious offenders of previous offences and receive personal submissions from victims or, in the case of murder/manslaughter, their relatives at hearings;

and

- In cases of theft make restitution automatic.

Petitioners: Fred and Maureen Collie,
88 Aeroway Drive,
Beach Haven,
Auckland,
New Zealand.

To enable the committee to consider this petition thoroughly, this submission includes:
- An introduction and the personal circumstances which have led us to make this request;
- Background to the murder of Elaine Collie, as an example of this type of offender;
- History of John Ian Reid, again as an example of this type of offender;
- A full description of the law changes we would like to see from the Scottish Parliament.
PUBLIC PETITION PE205

SENTENCING AND REVIEW OF SERIOUS OFFENDERS

MEMORANDUM FROM THE SCOTTISH EXECUTIVE JUSTICE DEPARTMENT

Purpose

1. As requested by the Public Petitions Committee, to comment on the petitioners' proposals that (a) the minimum sentence and parole period should be increased for those convicted of murder; (b) sentences for other crimes committed during commission of serious offences should automatically be consecutive; (c) the Parole Board should consider all information, including police case notes, held on serious offenders and should hear personal submissions from victims or their relatives and (d), in cases where theft occurs during the commission of another serious offence, restitution should be automatic.

Preliminary remarks

2. Mr and Mrs Fred and Maureen Collie have presented a petition to the Public Petitions Committee requesting four specific changes to the sentencing and management of serious offenders, particularly those convicted of murder. Their petition arises from the murder of Mr Collie's sister, Elaine Collie, and the sentencing of her killer, John Reid. Having been convicted in October 1999 at Edinburgh High Court, Mr Reid is currently serving a mandatory life sentence, with a statutory recommendation that he serve a minimum period of 15 years in custody.

3. The four proposals made in the petition are dealt with below. It would be inappropriate for the Scottish Executive to comment upon the specific facts of the case, indeed, Mr Collie does not request that it do so. However, the Scottish Ministers extend their deepest sympathies to Mr and Mrs Collie and the rest of Miss Collie's family.

4. The Scottish Executive is committed to taking whatever steps are necessary to tackle crime and its causes. It is working to protect the public, prevent the commission of crime and detect crimes once committed; ensure offenders are brought to justice promptly and dealt with effectively; ensure fairness for all those involved in the criminal justice system, including victims and witnesses, and tackle the roots of crime, by means of its social inclusion policies.

5. Several of the proposals made by the Collies relate to the decisions taken by the courts in sentencing. The role of the Scottish Executive in this respect is to ensure that the courts have a sufficient range of penalties available to deal with the wide variety of cases that come before them. However, Scottish Ministers attach great importance to judicial discretion in sentencing. It is for the courts to decide on the most appropriate sentence, within the limits provided by Parliament, in any particular case. Each case is unique and only the court hears all the facts and circumstances surrounding the offence and the offender. The independence of the judiciary is a fundamental principle of the Scottish legal system.
(A) – Increase in minimum sentence and parole period for those convicted of murder

6. The petition requests that the Scottish Parliament review and increase the minimum sentence and parole period for those convicted of murder. The petitioner wish there to be a recognition that cases of murder may vary in severity, and wish the minimum period before consideration of release on life licence in cases of murder to be 20 years for the least serious cases of murder, and longer for more serious cases.

Sentencing for murder

7. Murder attracts a mandatory life sentence. If a person is convicted of murder, the judge must impose a sentence of life imprisonment – i.e. detention without limit of time (in the case of offenders under the age of 18), detention for life (in the case of offenders aged 18-20), or life imprisonment (for offenders aged 21 or over).

Minimum period before consideration of release on life licence

8. The current position is as follows. The decision about the timing of the first review by the Parole Board about the suitability of a life prisoner’s release depends upon the class of life prisoner to which the person belongs. If the person is a discretionary life prisoner, that is one who has been given a life sentence for a crime other than murder where the Court has used its discretion to impose an indeterminate sentence, or is a person convicted of murder committed when under the age of 18 years, the sentencing judge has the discretion to set a “designated part” (the period required to be served to satisfy the criminal justice requirements of retribution and deterrence). It is only in the exceptional case where the judge considers that the appropriate punitive period for the crime is the rest of the prisoner’s life that a designated part should not be set (see O’Neill v HMA). These two classes of prisoner are collectively referred to as designated life prisoners.

9. In determining the length of the designated part of a prisoner’s sentence, the Court considers the seriousness of the offence (and any others associated with it), previous convictions and where appropriate the stage at which the offender indicated his or her intention to plead guilty and the circumstances in which that indication was given. Guidance on the way in which these factors should be applied is set out in case law. After the designated part has expired (and at two-yearly intervals thereafter – but see also paragraph 19), the prisoner is entitled to require the Scottish Ministers to refer his case to the Parole Board. If the Parole Board is satisfied that it is no longer necessary that the prisoner should continue to be confined for the protection of the public it will direct his release. The Scottish Ministers have no discretion to decline to accept the direction: the prisoner must be released on life licence.

10. So far as adult mandatory life prisoners (that is those who commit murder when aged 18 or more) are concerned, it is currently a matter for the Scottish Ministers to decide on the timing of the first review of the prisoner’s suitability for release by the Parole Board. They do so with the benefit of advice from a non-statutory committee – the Preliminary Review Committee – which among others includes a High Court judge and the chairman of the Parole Board. In reaching their decision Ministers take into account any minimum recommendation that the sentencing judge may have made under section 205 of the Criminal Procedure (Scotland) Act 1995.
11. The Scottish Ministers may only release an adult mandatory life prisoner if this is recommended by the Parole Board and they have obtained and taken into account the views of the trial judge (if available) and the Lord Justice General. They are not obliged to accept the Board’s recommendation or the judiciary’s views but must exercise their discretion reasonably.

12. However it is proposed that the law relating to the sentencing and release of adult mandatory life prisoners should be amended and brought into line with the existing arrangements for designated life prisoners. In accordance with the announcement made by the First Minister on 13 September 2000, the Scottish Executive introduced a Bill – the Convention Rights (Compliance) (Scotland) Bill – on 10 January 2001 that provides, inter alia, that the law governing the sentencing and release of adult mandatory life prisoners should be brought into line with the existing arrangements for discretionary life prisoners and under 18 murderers.

13. In other words, it is proposed that it should be a matter for the judiciary to decide upon the length of time that an adult mandatory life prisoner should serve as punishment for the crime and on the expiry of that period it should be for the Parole Board to decide whether or not the prisoner requires to continue to be confined on public protection grounds.

14. In line with the arrangements that apply at present to designated life prisoners, Scottish Ministers would have no role in deciding when the prisoner’s case should be reviewed by the Parole Board and would exercise no discretion over whether or not the prisoner should be released if the Board does not consider that the prisoner requires to continue to be confined after the punishment part of the sentence has expired.

(B) - Automatic consecutive sentences for serious crimes

15. The petition requests that in cases involving a serious crime sentences for other crimes committed during the commission of the more serious offence should be automatically consecutive.

16. A sentencing judge may order a sentence of imprisonment to commence after the expiry of any prison sentence which the accused is currently serving in Scotland or England. Where there are several charges on the same indictment or complaint, the court may impose a separate and consecutive sentence on each charge provided that the total sentence does not exceed the jurisdictional powers of sentence of the court. Alternatively, the court may impose sentences to run concurrently.

17. As stated previously, individual sentences are solely matters for the court, and Scottish Ministers attach great importance to the tradition of judicial discretion in sentencing. Only the sentencing court is in a position to decide the appropriate sentence(s) for the offence(s) and offender before it, including whether to make the sentences run consecutively or concurrently.

18. In the case of a person serving a life sentence for murder or a discretionary life sentence for another serious offence, who will be subject to imprisonment or licence for life, a further sentence running consecutively would be redundant. However, it may be desirable for the court to impose shorter, concurrent sentences on the lesser charges: should an appeal against the life sentence be successful in those circumstances, the offender will nonetheless
be required to serve the shorter sentences for the other crimes, instead of being given immediate release.

19. In the case of designated life prisoners, as recorded in paragraph 9, “the designated part has expired (and at two-yearly intervals thereafter), the prisoner is entitled to require the Scottish Ministers to refer his case to the Parole Board”. However, where they are also serving a sentence of imprisonment for a determinate term, they are required to serve one-half of that term before the case can be referred to the Board. For adult mandatory life prisoners, where the Scottish Ministers have decided to set a date for the first formal review by the Parole Board on the advice of the Preliminary Review Committee (see paragraph 10), if the prisoner subsequently receives a determinate sentence in custody before the first review, the case would be re-referred to the Committee for further consideration. This is likely to lead to a later date being set for the first review by the Board. Similarly, where the prisoner has received a determinate sentence in custody after the first review, this is likely to affect the timing of a subsequent review by the Parole Board.

(C) - Increased information for Parole Board in making decisions on release

20. The petition requests that Parole Board should be allowed to consider all information, including all police case notes, held on serious offenders of previous offenders and receive personal submissions from victims or, in cases of murder or culpable homicide, their relatives at hearings.

21. In reviewing a prisoner’s suitability for release on licence the Parole Board, by statute, may take into account any matter that it considers to be relevant, including the following:

- the nature and circumstances of the prisoner’s offence;
- his or her conduct in prison;
- the likelihood of him or her committing any offence or causing harm to any other person if released on licence;
- what he or she intends to do if released on licence; and
- any written information, documents or written representations which Scottish Ministers or the prisoner send to the Parole Board or which the Board has otherwise obtained.

22. To allow the Parole Board to carry out its work, it receives dossiers on each case containing detailed written reports covering a description of the crime, including a report from the trial judge, details of any previous convictions, the views of prison staff on the prisoner’s conduct and response in custody, information on the prisoner’s home background situation and, where appropriate, psychiatric and psychological reports.

23. As regards the views of victims or in a murder case those of the victim’s family, arrangements exist to enable the views of victims or their families on the release of a prisoner to be made known to the Parole Board where the victim or their family have previously expressed a wish to be involved. It is not the policy to initiate contact with a victim or the victim’s family because those concerned may not wish to be reminded of the crime or to know what is happening to the person convicted of it.

24. The petition proposes that in the cases of those convicted of murder or culpable homicide the family of a victim should be permitted to attend the Parole Board meeting at which the prisoner’s case is being considered.
25. However, the Parole Board's function is not to consider whether any prisoner has served long enough as punishment for the crime. That is the role of the judge in sentencing. When reviewing whether or not to recommend the release of an adult mandatory life prisoner or to direct the release of a designated life prisoner, the Board is required to consider the question of whether the risk that the prisoner would present to public safety, if released, is acceptable. It is required to balance the prisoner's continued detention against the benefit, both to the public and the offender, of release back into the community under supervision which might help rehabilitation and so lessen the risk of re-offending in the future.

26. The Board's proceedings at which the cases of adult mandatory life prisoners are reviewed are, by statute, at present, conducted in private but, as previously indicated, the views of victim's families, in relation to risk, are taken into account where these have been made known. Similarly, such views would be taken into account by Scottish Ministers when they take their decision on release, following a favourable recommendation from the Parole Board.

27. With regard to proceedings before the Board when it is considering the case of a designated life prisoner, the law already enables the Board to authorise any person to attend a hearing for such purpose and on such terms and conditions as it considers appropriate. If the provisions contained in the Convention Rights (Compliance) (Scotland) Bill are brought into force, these arrangements will be extended to the cases of adult mandatory life prisoners.

(D) – Automatic restitution for theft

28. The petition requests that when a theft of money occurs during the commission of another serious crime, the offender should automatically be required to make restitution.

29. In cases where the victim of a crime is still alive, the court has discretion to make a compensation order under the terms of the Criminal Procedure (Scotland) Act 1995, sections 249-253, where the offender is required to pay the victim such money as the court may direct. Such an order is made in respect of any personal injury, loss or damage caused, whether directly or indirectly, by the acts which constituted the offence. The means of the offender are taken into account by the court in making the decision as to whether to impose such an order.

30. However, compensation orders are payable to the individual victim and could not, therefore, be made in cases of murder or culpable homicide.

31. Where a victim has died as a result of a criminal injury, compensation may be payable to a qualifying dependant or relative (defined as spouse or former spouse, partner, parent or child: siblings do not fall within the definition), in the form of a Fatal Award granted under the provisions of the Criminal Injuries Compensation Scheme. Supplementary compensation may also be payable if the victim has died following, but not as a result of, a criminal injury. The reasonable cost of funeral expenses may also be reimbursed to anyone who has paid them, even if he or she would otherwise be ineligible under the Scheme.

32. Mr Collie may have the right to pursue compensation by the civil route. This would be a matter for him and his legal advisers to consider.
Lead Minister

33. The Deputy First Minister and Minister for Justice is the lead Minister for matters of sentencing and parole.

Scottish Executive Justice Department
January 2001
JUSTICE 1 COMMITTEE

Petitions PE299 and PE331 by Ms Tricia Donegan

Note by the Clerk

Background

These petitions both relate to road accidents causing fatalities. Petition PE299 (attached) calls for the Scottish Parliament to investigate whether the additional driving offences of failure to possess the correct licence, MOT or insurance documentation should be taken into consideration at court hearings concerning a fatality caused by dangerous driving. Petition PE331 (attached) calls for the Scottish Parliament to investigate why drivers who have made deliberate decisions when driving which cause risk to the lives of others are classed as careless drivers when prosecuted, even in the event of a fatality.

The Public Petitions Committee (PPC) considered petition PE299 on 4 December 2000 and agreed to write to the Lord Advocate requesting his comments on the issues raised. In his response (attached), the Lord Advocate indicates that specific separate offences already exist for driving without a licence, driving without insurance and driving without an MOT certificate. If the accused is found guilty of such offences, then they will necessarily be taken into account by the court. He points out that his responsibility is for the prosecution of offences, and not the formulation of the substantive law in this area (road traffic law is reserved). He is, however, of the view that a new offence of causing death by dangerous driving without a licence might be regarded as an unnecessary re-organisation of existing statutory offences.

The PPC considered these petitions again on 6 February, and agreed to pass the petitions and the Lord Advocate’s response to the relevant Justice Committee for information only.

Options

The Committee has already considered Petition PE55 by Tricia Donegan relating to prosecutions following a death caused by a road traffic accident. At its meeting on 2 May 2000, the Committee agreed to suspend consideration of this petition pending the publication of research sponsored by the Department of Environment, Transport and the Regions (DETR) into the application of road traffic legislation by the police, prosecutors and courts. This research is due to be published in the next couple of months. Members may wish to defer consideration of these petitions until this research is available at which point it can consider them along with the original petition. The Committee will also consider PE 29 by Mr and Mrs Dekker regarding death by dangerous driving in the light of this report.
If I was to get into a car and drive down a One way Street and decided I didn't want to go down that road after all, so started to reverse back up it and in the process knocked someone down....

WOULD THIS BE CLASSED AS CARELESS DRIVING?, EVEN ALTHOUGH IT WAS A DELIBERATE ACT THAT CAUSED SOMEONE TO GET KNOCKED DOWN?

-------

If I'm going down a Slip Road onto a Motorway and realised I had taken the wrong road, so proceeded to do a Three Point turn and Drive Up the Slip Road the Wrong Way and in the process caused a Crash....

WOULD THAT BE CLASSED AS CARELESS DRIVING?, EVEN ALTHOUGH I HAD TAKEN THE DELIBERATE DECISION OF DOING A THREE POINT TURN AND DRIVING UP THE SLIP ROAD THE WRONG WAY THAT CAUSED THE CRASH.

-------

The Petitioner Requests That The Scottish Parliament Investigates why drivers that make deliberate decisions when driving that risk other peoples lifes, are ONLY classed as CARELESS Drivers even in the event of a DEATH.

Petitioner: Tricia Donegan, 32 Roshieburn, Erskine. PA8 6DT

DATE: 5.01.01
To The Scottish Parliament

IF YOU CAUSE A DEATH WHILE BREAKING THE LAW?

David was killed on the 26th of November 1998, in Leven. The charge against Daniel Tasker was Death by Dangerous Driving, No MOT, No Insurance, And Driving the car with only a provisional licence and not accompanied by a qualified driver.

David was not the only innocent victim that day, his family became victims too.

To get behind the wheel of a car and drive after you have had a drink is recognised as a Deliberate act of breaking the Law and is a charge of Drunk Driving. Sitting behind a wheel of a car with drink in you, without driving is a charge of Drunk in Charge. The Government have spent thousands of pounds on T.V and leaflet campaigns on implementing the Law,- Dont Drink and Drive.

Tasker drove a car with No licence, No MOT or Insurance Yet none of this was taken into consideration when charged with Causing Death by Dangerous Driving.(HE KNEW HE WAS BREAKING THE LAW)Like Drunk Driving he took the deliberate decision to get behind the wheel of a car and drive.

The Petitioner Requests That The Scottish Parliament:

Investigates why Drivers that Deliberately get behind the wheel of a car and Drive having No licence,MOT or Insurance that end up causing a Death, don't have these offenses taken into consideration when it goes to court.

IF THE PERSON THAT CAUSED THE DEATH HAD NOT BEEN BREAKING THE LAW IN THE FIRST PLACE, DAVID WOULD BE WITH US NOW.

PETITIONER: TRICIA DONEGAN,
32 RASHIEBURN,
ERSKINE.
PA8 6DT

[Signature]
Our Ref: 1112/00/M

John McAllion Esq MSP
Convener
Public Petitions Committee
George IV Bridge
EDINBURGH

12 January 2001

Dear Sirs,

PUBLIC PETITION PE299
PETITIONER TRICIA DONEGAN, 32 RASHIEBURN, ERSKINE

Thank you for your letter of 12 December 2000, requesting my comments on the issues raised in this Petition.

In the particular case with which the petitioner, Ms Donegan, is concerned, Daniel Tasker was prosecuted for driving without a licence, driving without insurance and driving without an MOT certificate, in contravention of Sections 87, 143 and 47 of the Road Traffic Act 1988 respectively. He pled guilty to these charges at the outset of his trial and, in due course, he was fined a total of £240 and disqualified for one year. It is not therefore correct to say that "none of this was taken into consideration".

In general terms, I do not think it can be said that there is any gap in the law in connection with these offences. Driving without a valid licence, driving without insurance and driving without an MOT certificate are all specific criminal offences in their own right. Where there is sufficient evidence that these offences have been committed then appropriate proceedings will be taken. Where such offences come to light during the investigation of a fatal road traffic accident, they will be libelled along with any charges arising from the driving which caused the death. If the accused is found guilty of such offences, then they will necessarily be taken into account by the court.

My/
The series of articles on prisons which were published in your newspaper throughout the week made for very compelling reading. I congratulate you and your correspondents for the various stories that they so succinctly told.

However, a further purpose of me writing, is to state that the picture in Scotland is very different. Whilst Scotland has yet to deliver on the ending of slopping out, over the course of the last 6 years I have been noting a steady improvement in conditions for prisoners. In particular, prisoners on remand, who have either not been found guilty of an offence, or who have not yet been sentenced are beginning to enjoy the status they deserve, namely that they should be accommodated in the best accommodation available, not as previously occurred, in the worst. Prison numbers have also been steadying, and this coupled with the constructions of some new halls and one privately run prison has meant that we really can see the possibility of an end to overcrowding in Scottish prisons. Certainly, overcrowding is currently no longer the overwhelming problem it is for the Prison Service in England and Wales.

Conditions for women prisoners have also been improved and it seems to be generally accepted up here that fewer women should be imprisoned, although numbers remain high. More still needs to be done for our young offenders, however, and issues still need to be addressed concerning violence amongst prisoners. There are clear signs that the SPS is beginning to get a much stronger handle on this problem, as it is with drug abuse, and as it has done with its revised suicide strategy. Efforts to try and change prisoners, in an attempt to reduce the number of future victims of crime also appear to be becoming much more focused.

It would seem that Scotland is well on the way to creating a prison system which is appropriate to its particular needs.

Yours sincerely,

Clive Fairweather OBE
HM Chief Inspector of Prisons

CB FAIRWEATHER OBE
HM Chief Inspector of Prisons for Scotland
Charges fall through legal aid loophole

by Ken Bell

SHERIFF ruled yesterday that two Roxburn men, who had their human rights breached because no solicitor will take on their court case on legal aid because of the cost.

As a result the two men — allegedly involved in charges including contravention of the Trade Description Act, the Video Recordings Act, the Trade Marks Act and the Copyright Design and Patents Act — had the complaints against them dismissed at Perth Sheriff Court because no solicitor is willing to undertake his or her defence on legal aid.

A Glasgow solicitor was advised he could be committing “financial suicide” if he appeared in the case and the president of the Glasgow Law Society wrote to Mr Seph Shields to say, “It would be an extremely imprudent solicitor who looked upon himself in the position of embarking on such a defence.”

Sheriff Kevin Tierney, during legal arguments, said the two men had been told that by statute a maximum preparatory fee for a legal case was £500 but that this case could cost at least 10 times that amount.

George Glendinning (31) and Trevor Endres (30) individually and trading as Glende Trading, both of 18 Johnstone Avenue, Uphall, Broxburn, had denied 16 args alleged to have occurred between August 20 and October 17, 1998, at Kinross Hotel and the address in Broxburn.

The case documents list 523 productions allegedly mislabelled, wrongly demarked or pirated goods, involving 86 stations, PlayStation games and CDs.

The two had pleaded not guilty and the defence intended to call 10 witnesses for trial: seven to the charges and three expert witnesses.

The accused had lodged a minute with the court that they did not have sufficient means to pay for legal assistance and they were entitled to free legal assistance under the Human Rights Convention.

They claim that case has been assessed at costing in the region of £5000 but the statutory fee fixed under the Legal Aid Scotland Act 1996 was £500.

They claimed that in continuing with the prosecution in these circumstances the procurator fiscal was acting in a way incompatible with accused’s rights under the conventions.

The solicitors who had acted in the case, Mr John Carroll and Mr Joseph Shields, represented by Miss J. McPherson, said it was a complex case involving a number of statutes, labelled productions and expert evidence.

They also said it would involve significantly more work in preparation than the average summary trial.

Mr Carroll, for the first accused, estimated investigation of the Crown case would take 24-30 hours of his time and on top of that time would be required in preparing his own defence case.

His overall assessment was that the necessary preparation of the case would exceed £5000, and this would not include fees for experts authorised by the Legal Aid Board.

Mr Shields had made similar inquiries and the president of the Glasgow Bar Association had written to him, “There is no doubt that we would view the taking of such a case as you refer to as financial suicide.”

The Crown had argued that the minute before the court was premature, and it was also premature to say £500 was inadequate.

They suggested the solicitors should act under the £500 fixed fee and if it was inadequate they could withdraw.

The depute fiscal arguing the case had told Sheriff Tierney that it was “just speculation” to say no solicitor would act in the case on Legal Aid.

In his decision upholding the plea Sheriff Tierney noted, “In my opinion the rigid system of a fixed fee of £500 for the preparatory work for summary trials, regardless of the amount of work or the complexity of that work, is an effective denial of free legal assistance in those cases, such as this, where the fee is so disproportionately low that no solicitor could reasonably be expected to bear the cost of the work so far as it exceeds the fixed fee.”

Sheriff Tierney, in agreeing to dismiss the complaint, found that while the two accused were entitled to free legal aid the existence of the fixed fee in this case constitutes a denial of that entitlement.

There was, he held, “a current disadvantage to the accused, and a real risk of a future risk or detriment at the trial.”

He held that the procurator fiscal, on the authority of the Lord Advocate, was acting in a way which was incompatible with the rights of the accused under the Human Rights Convention and therefore acting outwith their authority.

“There is no mechanism whereby the accused can be provided with a level of legal aid which will result in a solicitor being prepared to undertake the necessary work of preparation, the breach of the accused’s convention rights cannot be cured.

“In these circumstances the appropriate disposal is to sustain the minutes and dismiss the complaints.”
The Scottish Parliament

JUSTICE 1 COMMITTEE

MINUTES

4th Meeting, 2001 (Session 1)

Wednesday 14 February 2001

Present:

Phil Gallie
Paul Martin
Alasdair Morgan (Convener)

Gordon Jackson (Deputy Convener)
Michael Matheson

Apologies were received from Maureen Macmillan and Euan Robson.

Also present: Iain Gray and Adam Ingram.

The meeting opened at 9.09 am.

1. **Items in Private:** The Committee agreed to discuss its report on the general principles of the Convention Rights (Compliance) (Scotland) Bill at Stage 1 in private at its next meeting, and agreed to take items 2 and 7 in private.

2. **Legal Aid Inquiry (in private):** The Committee considered how to proceed with its legal aid inquiry.

3. **Convention Rights (Compliance) (Scotland) Bill (in private):** The Committee considered possible lines of questioning on the general principles of the Bill at Stage 1.

4. **Leasehold Casualties (Scotland) Bill:** The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7.

Sections 1, 5, 7 and 9 and the long title were agreed to as amended.

Sections 2 and 3, schedules 1 and 2, and sections 4, 6, 8 and 10 were agreed to without amendment.
5. **Convention Rights (Compliance) (Scotland) Bill**: The Committee took evidence on the general principles of the Bill at Stage 1 from—

   Lord Ross, Member, Hugh Boyle, Secretary, and Dr Jim McManus, Chairman of the Parole Board for Scotland; and

   Professor Gane of the University of Aberdeen.

The meeting was adjourned from 11.08 am to 11.15 am.

6. **Convention Rights (Compliance) (Scotland) Bill**: The Committee took evidence on the general principles of the Bill at Stage 1 from—

   Jim Wallace, Minister for Justice.

7. **Work Programme (in private)**: The Committee considered its forward work programme.

8. **Convention Rights (Compliance) (Scotland) Bill (in private)**: The Committee considered the format and content of its report on the general principles of the Bill at Stage 1.

   The meeting closed at 1.27 pm.

   Lynn Tullis, Clerk to the Committee