The Committee will meet at 1.45pm in Committee Room 3.

1. **Item in Private:** The Committee will consider whether to discuss item 3 in private.

2. **Subordinate Legislation:** The Committee will consider the following statutory instruments—

   - The Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2002 (SSI 2002/246),
   - The Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2002 (SSI 2002/247), and
   - The Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 2002 (SSI 2002/254).

3. **Witness expenses:** The Committee will consider whether to approve travelling expenses for a witness.
4. **Prison Estates Review (in private):** The Committee will consider its draft Prison Estates Review report.

Alison Taylor  
Acting Clerk to the Committee, Tel 85195

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

**Agenda item 2**
Note by the Clerk *(SSI attached)*  
J1/02/26/1

Note by the Clerk *(SSI attached)*  
J1/02/26/2

Note by the Clerk *(SSI attached)*  
J1/02/26/3

**Agenda item 3**
Note by the Clerk (private paper)  
J1/02/26/4

**Agenda item 4**
Note by the Clerk (private paper)  
J1/02/26/5

Response from Dr Andrew Coyle, King’s College, University of London to the Prison Estates Review  
J1/02/26/6

Response from Prison Officers’ Association Scotland to the Prison Estates Review  
J1/02/26/7

Correspondence from the Minister for Justice regarding HMP Peterhead  
J1/02/26/8

Supplementary evidence from HMP Kilmarnock Director  
J1/02/26/9

Remit and membership of review group regarding future of HMP Peterhead  
J1/02/26/10

Visit by Members to HMP Barlinnie  
J1/02/26/12

**Papers not circulated:**

**Agenda item 4:**
Committee members may wish to consult Annexe 1 of the response from Prison Officers’ Association Scotland to the Prison Estates Review (Committee paper J1/02/26/7) which is available from the Committee Clerks from Room 3.11, Committee Chambers.

**Papers for information circulated for the 26th meeting, 2002**

Correspondence from the Minister for Justice regarding the Justice 1 Committee’s legal aid inquiry  
J1/02/26/11
JUSTICE 1 COMMITTEE

The Criminal Legal Aid (Scotland) (Fees) (Amendment) Regulations 2002 (SSI 2002/246)

Note by the Clerk

Background

1. This instrument changes Regulation 8 of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 to improve the administrative process for obtaining the approval of the Scottish Legal Aid Board (SLAB) in advance of the employment of a witness who is not on the Crown list.

2. The principal 1989 regulations stipulate that SLAB may not reimburse a solicitor a greater fee for employing a witness than would be paid by the Crown to a similar witness. The Crown is able to commission expert witnesses on a cheaper basis due to the use of contracts. SLAB or solicitors do not have this device at their disposal. Therefore, obtaining an expert witness and having their fees paid has led to growing area of contention between SLAB and solicitors. These regulations allow SLAB to reimburse ‘such sums as are considered by the Board to be reasonable having regard to the sums payable from time to time by the Crown to witnesses of the same categories’.

3. The Justice 1 Committee considered this issue in its legal aid inquiry report (Justice 1 Committee, 8th report, 2001, paragraphs 82 to 84). The Committee recommended that the Executive consider the regulations relating to the sanction of experts and the fee rates and consults on proposals for change within the context of a complete regulatory review. The Committee further recommended that SLAB give urgent consideration to streamlining and speeding the process of sanction for experts.

4. The principal regulations have so far been amended 8 times (9, including this instrument). The Executive accepts that a consolidation of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 is necessary. However, the Executive and the Law Society of Scotland are developing a new fee structure for solicitors undertaking civil legal aid and this may involve considerable changes to legislation. As such, the Executive intends to return to the matter of consolidation as soon as possible thereafter.

5. The Subordinate Legislation Committee considered this instrument at its 18th meeting of 2002 and agreed that the attention of the Parliament need not be drawn to it (Subordinate Legislation Committee, 27th Report, 2002).

Procedure

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

7. The instrument was laid on 23 May 2002 and is subject to annulment under the Parliament’s standing orders until 31 August 2002.

8. In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee.
JUSTICE 1 COMMITTEE

The Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2002 (SSI 2002/247)

Note by the Clerk

Background

1. The Privy Council expressed concerns in 2001 that difficult legal aid cases, where solicitor costs were substantial, for example the need for a number of expert witnesses, might deprive the accused of a fair trial because of the limitations of the Fixed Payment Scheme. The Executive brought forward a proposal to address this concern in the Convention Rights (Compliance) (Scotland) Act 2001. Section 7 of this Act amends the Legal Aid (Scotland) Act 1986 to provide a regulation making power to provide a means of payment to solicitors, in exceptional cases, other than the Fixed Payment Scheme. The principal regulations, Criminal Legal Aid (Fixed Payments) Scotland Regulations 1999 derive from this.

2. The amendment regulations currently before the Committee alter the principal regulations to provide for:

   - the Scottish Legal Aid Board (SLAB) to determine, in certain circumstances, to exempt a solicitor from the Fixed Payments Scheme for summary criminal legal aid; and

   - a fixed payment of £50 to solicitors undertaking a bail appeal after conviction but before sentence.

3. Specifically the regulations set out the factors that SLAB may take into account in considering whether a solicitor should not receive fixed payments, but instead a payment based on the amount of time spent and work done in providing summary criminal legal aid. They also prescribe solicitors’ obligations for those granted an exemption from the Scheme. In addition, the instrument sets out the review procedure for a SLAB decision to refuse an application for exemption.

4. Committee members may wish to note that the Law Society of Scotland has written in support of the Regulations and was fully consulted by the Executive, as was SLAB. (see attached Law Society of Scotland correspondence, dated 7 June 2002).

5. The Committee examined the principal of a fixed payments in its legal aid inquiry report (Justice 1 Committee, 8th report, 2001, paragraphs 68 to 74). The Committee recommended that SLAB monitor the impact of fixed fees on the availability of solicitors willing to undertake criminal legal aid throughout Scotland and report to the Committee in due course. The Legal Aid Board is commissioning research on this issue and is in the process of clarifying the design and scope of the research. It is likely that the research will be commissioned in the Autumn.
6. The Subordinate Legislation Committee considered this instrument at its 18th meeting of 2002 and agreed that the attention of the Parliament need not be drawn to it (Subordinate Legislation Committee, 27th Report, 2002).

**Procedure**

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

8. The instrument was laid on 23 May 2002 and is subject to annulment under the Parliament’s standing orders until 31 August 2002.

9. In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee.
JUSTICE 1 COMMITTEE

The Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 2002 (SSI 2002/254)

Note by the Clerk

Background

1. The purpose of this instrument is to provide civil legal aid – based on the incapable adult’s resources – to a person having an interest in the personal welfare of the adult for certain proceedings under Part 5 of the Adults with Incapacity (Scotland) Act 2000.

2. Justice 1 Committee members may recall that the Adults with Incapacity (Scotland) Act 2000 provides for decisions to be made on behalf of incapable adults lacking the capacity to do so themselves because of mental disorder or inability to communicate. This instrument refers to Part 5 of the Act which relates to medical treatment for patients who are incapable of consenting to the treatment in question. Under this Part there is a dispute resolution mechanism where a proxy or other person with an interest in the personal welfare of an incapable adult object to medical treatment.

3. The regulations seek to provide civil legal aid to a person having an interest in the personal welfare of the adult where medical treatment is disputed. Like all decisions taken from a medical diagnosis under Part 5, actions derived from these regulations can be appealed before the courts.

4. This instrument is part of a collection of subordinate legislation which sets out the detail and implementation of the 2000 Act. As such the instrument’s coming into force date, 1 July 2002, coincides with the commencement of Part 5 of the Act.

5. The Subordinate Legislation Committee considered this instrument at its 20th meeting of 2002 and noted that the Scottish Executive stated that consolidation of the Civil Legal Aid (Scotland) Regulations 1996 was required and asked whether the Scottish Executive had a timetable for the consolidation. The Scottish Executive Justice Department replied that the consolidation is being worked on currently and it intends to lay the consolidating instrument after the Parliament’s summer recess.

Procedure

6. Under Rule 10.4, this instrument is subject to negative procedure which means that it comes into force and remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.
7. The instrument was laid on 28 May 2002 and is subject to annulment under the Parliament’s standing orders until 5 S2002.

8. In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee.
The Scottish Executive’s Consultation on
the Future of the Scottish Prison Estate

A Response by
Dr Andrew Coyle
Director
International Centre for Prison Studies
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June 2002
Introduction

1. The Scottish Prison Service’s Estates Review and the Scottish Executive’s Consultation on the Future of the Scottish Prison Estate are to be warmly welcomed. There has never been a comprehensive review of the SPS estate.

2. The national prison system in Scotland was set up in 1878 with the establishment of the Scottish Prison Commission. At that point the new commission simply took over the existing prisons, which had previously been administered on a local basis. Within a few years many of the smaller prisons were closed. A new General Prison had been opened in Perth in 1842 for long term convicted prisoners. Towards the end of the 19th century the Commissioners embarked on a large scale prison building programme. Barlinnie Prison was opened in 1882 and new town prisons were built in Greenock, Dumfries and elsewhere. Scotland’s first and only convict prison was opened in Peterhead in 1888. Given its subsequent history, it is interesting to note that the prison was located there so that the convicts could work on a much needed community project, the construction of what remains one of the largest harbours of refuge in Europe. With the introduction of Borstal Training in the early years of the 20th century the Prison Commissioners bought what had previously been “a school for the sons of gentlemen” in the village of Polmont as the main Borstal Institution for Scotland.

3. Throughout the 20th century new prisons were built or acquired according to need. In the 1920s a new prison for Edinburgh was built at Sighthill so that the old prison on Calton Hill could be replaced by new accommodation for a more prestigious group of inmates. In the early part of the second half of the century a new institution for young offenders was built at Glenochil alongside the detention centre which was housed in the former National Coal Board training centre. A new prison for women was built in Cornton Vale, which allowed Greenock Prison to be refurbished for male prisoners.

4. The newest public prison in Scotland is in Shotts. There is a lack of clarity in the review documents about the history of the building of Shotts Prison and why this took so long. In the early 1970s it was planned that the prison would have 1,000 places. This was at a time when it was envisaged that the number of prisoners was likely to expand considerably within a short period. The services were prepared for a prison of this size but only one accommodation block for 60 prisoners was included. There were a number of reasons for this. One was a doubt about the need for 1,000 additional places. Another was to do with concern about the ability of the ground to sustain such large buildings, given the extent of the coal seams which had been mined below its surface. This was compounded by the discovery
that it would not be possible to build a full security wall around the prison. The 60 place prison opened in 1978. This arrangement was criticised strongly in the Report of the Committee of Inquiry into the UK Prison Services (The May Report) in 1979, which described the prison as “a truncated monster”. As a result, the government approved funding in the early 1980s for development to provide an additional 468 places. At that time it was also proposed to build two additional 500 place prisons, one in Cumbernauld and the other in Dunfermline. In the event, it was decided not to proceed with either of these. Work began on the development of Shotts Prison in the mid 1980s and was completed in 1987. The work was carried out successfully under a project management arrangement in which the development was managed by a commercial company, working to specifications provided by the Scottish Prison Service.

5. This short description explains how the Scottish Prison Service comes to have the estate which it has. Some prisons are where they are for historical reasons, which were relevant at the time but are no longer; Peterhead is an obvious case in point. Others were built because of local politics. For example, Perth Prison was expanded in the early 20th century at the expense of the more obvious choice of Dundee Prison because of an offer to purchase the large prison in Dundee for other use. Glenochil and Shotts were built on their locations because of land which was made available by the National Coal Board at a time when mining was in decline. For all of these reasons, there was a strong argument for carrying out a comprehensive review of the Scottish Prison Service Estate. Unfortunately the current review does not meet this description.

6. One would expect a comprehensive Estates Review to have several elements.
   • In the first place, there would be a review of the state of all existing prisons: the condition of the buildings, their age, their facilities, their location, their current use. This factual description would be accompanied by an analysis of the extent to which each prison was fit for its purpose. The last attempt to carry out such an exercise was as part of the Use and Conditions Survey which was carried out in 1979. This survey is referred to in passing in the Review.
   • There would then be a description of the current prisoner population according to various categories: pre-trial and remand, women, young offenders, short term prisoners, the number who need to be held in high security conditions, the number who can be held in low security or open conditions. This would be accompanied by an analysis of the extent to which the present estate met those needs. This was last done in 1986/87 when there was a redistribution of accommodation between adult male prisoners and young offenders.
   • Finally, there would be a review of the extent to which the current estate met the needs of the courts in respect of location. In other words, are the prisons in the right places? It was a review such as this at the beginning of the 20th century which identified the need for a new prison in Greenock to meet the needs of the courts in Renfrewshire.

7. None of these elements are dealt with in any depth in the current Review, which is based mainly on total number of places required, without any of the above distinctions. The breakdown of the prisoner population is referred to briefly in paragraph 35. The Review explicitly excludes any consideration of women prisoners since "the numbers of women prisoners are too small to be susceptible
to the statistical techniques employed by the Scottish Executive statisticians” (para 36).

8. An important consequence of this “one size fits all” approach is that no account is taken of the relative costs of providing different types of accommodation. Much of the cost of the prison estate is taken up by the level of security required by different groups of prisoners, both in terms of buildings and of staffing levels. High security prisons are much more expensive to build and to maintain than lower security prisons. No account is taken of this in the Review. It is regrettable that the current Review was separated from the 1999 exercise “Living Within Our Means”, which dealt in isolation with provision for low security prisoners and resulted in the closure of much of that provision.

The use of imprisonment in Scotland

9. Based on statistical predictions, the Review concludes that there will be a need for 3,300 new prisoner places in Scotland over the next ten years, 900 of which will be to accommodate additional prisoners. In the Review the Scottish Prison Service takes a pragmatic and managerialist approach to this matter, seeing its task as to make space available without commenting on whether it is a good or bad use of tax payers’ money to have such levels of imprisonment. In its Consultation Paper the Scottish Executive does attempt to answer its own question, “So why are prisoner numbers on the increase if crime is falling?” (paragraphs 13 to 29). Paragraph 20 of the Consultation Paper key includes a key sentence: “The projections of the prison population assume that the trends in sentencing behaviour will continue.” This is an assumption which the Consultation Paper should not have accepted without comment.

10. The relationship between levels of crime and levels of imprisonment in any society is at best problematic. Research evidence suggests that initiatives to reduce levels of crime should concentrate on issues such as creating safer communities and strengthening the social inclusion of marginalised sectors of society as well as an increase in the likelihood that anyone who commits a crime will be detected. Initiatives to reduce the likelihood that people who have been in prison will re-offend should focus on the need to help these individuals to re-settle into their communities by providing them with the necessary skills to obtain employment, by ensuring that they have appropriate accommodation and by providing a positive support/ supervision mechanism. There is little evidence to suggest that increasing levels of imprisonment is an efficient method of reducing levels of crime.

11. Rates of imprisonment are usually quoted per 100,000 of the population. The average rate of imprisonment for Western European countries is about 90 per 100,000. With a rate of 123, Scotland is near the top of end of the European rate. England, with 133, is the European leader. If the increase in prisoners projected in the Estates Review takes place, the level of imprisonment in Scotland will be about 145 per 100,000. In a democracy such as Scotland decisions about the need to impose a sentence of imprisonment in individual cases are made by the judiciary. This is the important principle of judicial independence, which is
referred to by the Justice Minister in his Foreword to the Consultation Paper. However, this principle does not imply that "trends in sentencing behaviour" should be the exclusive concern of the judiciary. Trends in sentencing behaviour can be affected by a wide variety of considerations. These may include the considered opinion of both the government and parliament about appropriate levels of imprisonment, the method of operation of the prosecuting authorities, public opinion, the influence of the media in the way it reports crime in general and individual cases in particular. Judges do not live in ivory towers and "trends in sentencing behaviour" are likely to be influenced by some or all of these factors.

12. There are examples in a number of countries where decisions were made about a need to change trends in sentencing behaviour. One example, which is relevant as a comparator for Scotland is Finland. Thirty years ago levels of imprisonment in Finland mirrored those of that country's eastern neighbours and were far in excess of the Western European average. A conscious yet informal decision was made to change that and the level of imprisonment were reduced considerably and for a number of years has been maintained around 59, half that of Scotland. This has been achieved without any increased threat to the safety of society. A contrary example is what has happened over the last 25 years in the United States of America. Changes in legislation and more punitive public attitudes have led to a massive increase in the use of imprisonment. There are about two million American men, women and children in prison; a rate of 690 per 100,000, the highest in the world. In Washington DC and in the states of Louisiana and Texas the imprisonment rate is 1,000 per 100,000; that means that one per cent of all inhabitants of those jurisdictions are in prison.

13. The people of Scotland, led by their Parliament and Executive, need to decide whether they wish to follow in the footsteps of Finland or of the United States. Ten years ago there was great disquiet and public debate in Scotland when the prison population broke through the 5,000 barrier for the first time. A few years ago the population reached 6,000 and is now quietly nudging its way towards 7,000 without similar public debate. The Consultation Paper envisages a prison population of almost 8,000 within the next ten years. Twenty or more years ago no one in the United States could have considered that at the beginning of the 21st century there would be two million Americans in prison. If Scotland were to reach similar levels in the next twenty years, it would have a prison population of around 30,000. On the one hand, this is inconceivable. On the other hand, it will only be prevented if there is a conscious decision on the part of the responsible elements of Scottish society that this should not happen. A debate about these issues should be an essential context for any discussion about the Scottish Prison Service Estate.

The need for replacement prison places

14. The Consultation Paper refers to the need to hold prisoners in accommodation which meets the test of decency and in which they feel safe. It concludes that a "significant part of the present (prison) estate is not fit for this purpose (para 8). The Estates Review quantifies this as 38% of the current accommodation (para
44). One is entitled to ask why the Scottish Prison Service allowed its estate to fall into such disrepair. A major factor is the absence of access to proper sanitation. It is indefensible that in a modern Scotland human beings in the care of the state should not have continuous access to running water and should be required to defecate in buckets, often in the presence of another person. This matter has come to a head with the possibility of legal challenge in the domestic courts under Article 3 of the European Convention on Human Rights. It is understood that the SPS is currently facing the possibility of around 300 such challenges.

15. Access to proper sanitation is not the only factor which makes accommodation "unfit for purpose". While there is a need to concentrate on this element in the first instance, sight should not be lost of the other unacceptable factors which may exist in many prisons. It is impossible to quantify these in the absence of a full Use and Conditions Survey.

16. The Estates Review concludes that "the way to achieve effectively adequate numbers of prisoner places" is by building new prisons (para 57). It goes on to note that the view at senior operational level is that the optimum size for a new prison is 700 cells or places. (It should be noted that cells and places are not necessarily the same thing; cells can be built for two or more prisoners.) Given that only one prison in the SPS, Barlinnie, at present has places for this number, it is not clear how this figure has been reached. In his evidence to the Justice 1 Committee HM Chief Inspector of Prisons for Scotland suggested that this figure "has much to do with considerations of what would be financially better for a private company running a prison" (Official Report, Justice 1 Committee, 14 May 2002; c 3553). The arguments presented in paragraphs 57 to 61 of the Review require close scrutiny. The effective management of a prison depends on a number of factors in addition to overall size. An important consideration is the type of prisoners being held in the prison. Operational experience indicates that prisons for those serving longer sentences should rarely have more than 500 places; that experience led to the reduction of planned places at Shotts Prison from 1,000 to just over 500. In respect of the highest security prisoners, the numbers should be much smaller. Another deciding factor will be the internal layout of the prison and the ability to create smaller management units within one secure perimeter. In respect of prisons holding short term prisoners, especially those awaiting trial or sentence, the flow of prisoners (the number coming in and out on any one day) may be more important than the stock (the number held on one day).

17. The bulk of the replacement prison places will be to compensate for lost places at Barlinnie, Low Moss and Peterhead. As the largest prison in Scotland, Barlinnie obviously has a key place in any review of the SPS estate. The Review is correct in drawing attention to the logistical problems in developing the site to its optimum potential while it remains an operational prison. There is no reason to question the proposal to redesign Barlinnie as a prison with 532 places.

18. The future of Low Moss Prison has been under consideration within the SPS for at least thirty years. There is no dispute that the existing buildings are no longer fit for use and should be replaced. When this matter was considered in the past, an important factor was the lease which the SPS had of the site and the lack of willingness on the part of the local authority to extend this. This is not mentioned
in the Review, so presumably the issue has been resolved. The relative ease of access to a prison on this site is a strong argument for building a new prison in Low Moss.

Peterhead

19. The issue of what to do at Peterhead is much more problematic. The present prison was built there because of a demand by the Scottish public and politicians that Scotland had the right to benefit from the public work of its convicts, who had previously been sent to work in the convict prisons in England. A parliamentary committee which was set up to look into the matter concluded that the most appropriate public work for Scottish convicts would be the erection of a harbour of refuge on the east coast, either in Montrose or in Peterhead. The argument was settled in favour of Peterhead and the prison opened there in 1888. During the construction of the harbour, convicts were transported daily by private train to the nearby quarries to dig out the granite, which was then transported back to the prison yard for dressing and on to the harbour. This explains the present layout of the workshops in Peterhead and their distance from the living accommodation. When work on the harbour was completed Peterhead retained its role as Scotland’s only convict prison.

20. Until the opening of the main prison in Shotts and the conversion of Glenochil from a young offenders institution in 1986/87 there were three main prisons for holding long term prisoners in Scotland. Edinburgh held those who were first offenders, Perth held those who had been in prison before but who were assessed as being willing to conform to normal prison regime. Peterhead held those who were assessed as unwilling to conform: as well as those who had been in trouble in the other two prisons or who were thought to be particularly dangerous or a high escape risk. In addition there was a small unit with 20 places at Peterhead for those prisoners who required to be protected from other prisoners; the majority of these were sex offenders. There was the possibility of progressing through this system, so that a prisoner who began his sentence in Peterhead might in due course be transferred to Perth and ultimately end up in Edinburgh prior to release.

21. The late 1980s were characterised by significant disruption in the SPS. This coincided with the opening of Shotts Prison and the establishment of Glenochil as a long term prison and the transfer of large numbers of prisoners to different establishments. The culmination of the disruption was a series of major riots and hostage taking incidents, one of the worst of which occurred in Peterhead in October 1987. In the wake of these incidents a decision was taken to hold the 60 most troublesome and disruptive prisoners in the system, including all the leaders of the major incidents, in Peterhead in order to allow the rest of the prison system to return to a degree of normality. It was not viable to maintain Peterhead for any length of time with only 60 prisoners so it was subsequently decided to transfer the 20 or so protection prisoners from their existing accommodation into C Hall and to increase their numbers by transferring in most of the prisoners who had been held hostage in the major incidents or who otherwise felt unsafe in the volatile environment which existed at that time in many Scottish prisons; many of these prisoners were also sex offenders. In effect that meant that there were two
separate prisons operating within the Peterhead complex; one for the dangerous and difficult prisoners and another for the prisoners who required protection.

22. Between 1988 and 1990 the SPS made significant advances in its management of the long term prison system in operational and policy terms. The policy was laid out in the major document “Opportunity and Responsibility”. The operational developments culminated in a decision to transfer most of the disruptive prisoners from Peterhead to Shotts. Some of them went into the main prison and others into the new Shotts Unit. This happened in 1990 and as part of the package the Governor of Peterhead Prison also transferred to Shotts, which then became the main high security prison for Scotland.

23. Since the early 1990s the main role of Peterhead has been to hold those Scottish prisoners who require to be protected from other prisoners. The vast majority of those who have been convicted of some kind of sex offence. One of the main internal tasks of any prison administration is to provide a safe and secure environment for all prisoners. The traditional objective of management has been to create an environment in which all prisoners can circulate freely, without fear. Within the prison world there is a moralistic hierarchy of crime. At the top are likely to be those who have committed serious crimes such as armed robberies or violence. The respect given to them is not so much a moral one as one based on fear or an acknowledgement of the influence which they have over other prisoners. At the bottom of the hierarchy are those who have committed offences of a sexual nature. Other prisoners reflect the disapproval which all society has for such offenders; they sometimes consider themselves justified in expressing that disapproval in a violent manner. The prison authorities have an obligation to protect these prisoners in the same way that it protects all others.

24. In most prison systems the majority of prisoners who have committed sexual offences can circulate within the normal prison environment provided some basic safeguards are in place and the authorities make clear to other prisoners that abuse will not be tolerated. A small proportion may need to be physically segregated from other prisoners. They are likely to include those who have assaulted or abused small children or old people, sexually or otherwise. Within the SPS these were the group who were held in the small annex of Peterhead prior to 1987; there were never more than about 20 of them. The isolated location of that annex in Peterhead was used as a method of discouraging prisoners from seeking protection. Within the last 15 or so years there has been a considerable increase in the number of prisoners in Scotland who seek and are given such protection. The situation has been reached where it is assumed almost automatically that anyone who is admitted to prison having been convicted of an offence of any sexual nature should be held separately from other prisoners. The Consultation Paper estimates that 10% of all prisoners now fall into that category (para 121). In this respect, the SPS is following the model in HM Prison Service, which has seen a significant rise in recent years in the number of “Vulnerable Prisoner Units”. This model has not been followed in other countries.

25. Originally the segregation of sex offenders occurred simply as a means of protecting them from other prisoners. In Scotland there was an added consideration that it provided a useful way of utilising accommodation in
Peterhead at the end of the 1980s. One consequence of concentrating such prisoners in one location was that it drew attention to the nature of their offences and opened up the possibility of encouraging them to face up to their crimes and learning how to avoid repetition of them in the future. This coincided with the development of a number of behavioural programmes for prisoners and a specific set of programmes was developed for sex offenders. Throughout the course of the 1990s staff at Peterhead were at the forefront of the development of these programmes to such an extent that this has now become a major issue in discussion about the future of the prison.

26. The current state of knowledge suggests that properly focussed behavioural programmes can have some part to play in helping offenders to change their future behaviour. Such programmes have to operate as part of a much wider set of initiatives for helping prisoners to re-settle as law abiding citizens on release. The most complex and problematic of these programmes are those directed towards sex offenders. This is so for a variety of reasons. Sex offenders are not a homogenous group and care needs to be taken to distinguish between different categories. Care also needs to be taken not to expand this group unnecessarily. The delivery of these programmes is still at an early stage and it would not be wise to base any decision about the future of Peterhead or of the location of this group of prisoners solely on an opinion about the worth or otherwise of these programmes.

27. What is of greater concern is the assumption that 10% of all Scottish prisoners now need to be kept apart from other prisoners for reasons of their offences. This goes against the traditional objective of providing a safe and secure generic environment for all prisoners, with only a small number needing segregation. The SPS should be encouraged to break the cycle which saw this group of prisoners expand to fill the available accommodation, which then led to the provision of dedicated programmes for them, which then led to a justification for keeping them separate from the mainstream of prisoners.

28. The future of Peterhead Prison is of interest to the local community to an extent which is unique within the Scottish context. Its location as a convict prison, and later as the prison for the most difficult prisoners in the Scottish system, follows the tradition of similar prisons in other jurisdictions. This is a tradition that such prisons should be located in relatively remote locations. Typically, as in Attica Prison in New York State, staff will be locally recruited and come from a farming (or in the case of Peterhead a fishing) community while the prisoners will be from an urban environment; this leads to an expected clash of cultures. Successive generations of staff will be recruited to work in the prison and the establishment will become identified with the local community. This was the situation in Peterhead Prison until the end of the 1980s. Almost all prisoners came from "the central belt" and wished to return there from what they regarded as the isolation of the north-east. Staff had a fierce loyalty to the prison, which was reflected throughout the town. There was a symbiosis between Peterhead and the rest of the SPS. Staff in other establishments regarded Peterhead as being "different". Staff in Peterhead felt that their role in taking prisoners who could not be managed in other prisons was not sufficiently recognised.
29. When the maximum security prisoners were removed from Peterhead in 1990 staff needed to find a new role. It is to their credit that they have done so in the way they now manage their present prisoner population. However, that should not be a deciding factor in whether the prison should remain open or should be closed. Because of the shared experience of over a century the prison is closely identified with the town of Peterhead. This has social and political implications which go far beyond any considerations of the management of the prison system. Ultimately, the decision as to whether Peterhead should remain open is likely to be a political one, as it has been whenever this subject has been raised over the last 25 years.

The need for new accommodation and how it should be provided

30. A significant proportion of the Estates Review and of the Consultation paper is taken up with a consideration of how best to provide the required new accommodation and the debate between public and private provision. The issues have been well aired both in the already published written responses to both documents and in the evidence given by witnesses appearing before the Justice 1 Committee of the Scottish Parliament. There is no need to rehearse them here. It is for those concerned to make a judgement about the merits of the cases presented.

31. The International Centre for Prison Studies in the University of London has a unique overview of prison issues around the world. In addition, the present author has recently edited a book to be published later this year in the United States on prison privatisation. On these grounds it may be helpful to make a few general comments. Contracting the designing, construction, financing and management of prisons to commercial companies, commonly known as prison privatisation, has so far been restricted to a small number of countries. In many countries there is a strongly held view that it is morally and ethically wrong for the state to delegate the care of citizens who have been deprived of their liberty to a commercial company. That view was recently expressed by the Minister of Justice for the Russian Federation who announced that Russia would not contemplate the introduction of private prisons despite the terrible situation existing in the prison system because he took the view that it would be morally wrong to do so.

32. Considerable emphasis has been placed on the Financial Review of the Scottish Prison Service Estates Review which was published by Pricewaterhouse Coopers in conjunction with the Estates Review and the Consultative Paper. The difference in the figures presented by PWC for private sector involvement and for public sector involvement is of such a magnitude as to demand particularly close scrutiny. The Justice 1 Committee of the Scottish Parliament has dealt with this exhaustively in its public sessions. The PWC Review appears to have been conducted in something of a vacuum. It takes little account of experience in other countries. Within the United Kingdom, for example, the figures produced by Mouchel Consulting Limited in their report “Alternative Types of Prisons” presented to HM Prison Service in March 2000 are quite different from those in the PWC Review. One would at least have expected PWC to acknowledge this and to explain how they reached a different conclusion.
33. The PWC Review does not consider in any detail the option of Private Build/Public Operate on the grounds that “no directly comparable market data is available to SPS” (para 1.3). There are in fact a number of examples where variations of this option have been used. The best developed is to be found in France where prison service personnel carry out what are described as public service duties (supervision, rehabilitation, registration and management), and also oversee the functions delegated to private companies (maintenance, transportation, accommodation, food service, health services, work and vocational training). This model attracted the attention of Patrick Carter, a non-executive director of HM Prison Service, who was recently commissioned to prepare a report on prison privatisation. One of his recommendations was that “the Prison Service should move beyond the traditional choice of public or private prisons and explore the mixed management approach adopted successfully in France.” Speaking at the Prison Service annual conference in February 2001 Director General Martin Narey picked up this theme in giving his vision for the future of the service. He talked about the need to build new replacement prisons with proper facilities. He added, “And while the private sector will build those new prisons I want to give the public sector the opportunity to demonstrate that they can run them.” Following an assessment of the French model, the Chilean Ministry of Justice has now decided to contract out new prison building along the same model. All of this information is in the public domain and should have been known to PWC.

34. One of the arguments advanced for the introduction of contracting out, at least in England & Wales, was that the element of competition would sharpen up management in the public sector and would encourage an exchange of best practice. Having studied the Estates Review and the Consultation Paper one finds it hard to avoid the conclusion that the SPS, not least at Board level, still has many lessons to learn. From the evidence which the SPS provided to PWC it would appear that the SPS has no confidence that it can use the experience of the private sector in preparing tender documents to tight specifications, nor can it learn from the private sector experience in staffing levels and conditions of service. The main issue to be dealt with is not why the public sector figures are so low, but why the public sector figures are so high. One explanation may be that the management of the SPS at national level is not strong enough to introduce the changes which are necessary to achieve radical improvements. “The operational view of using the public sector option is that it provides little or no driver for change within the Prison Service.” (para 114) This suggests that the public sector option is something which exists in its own right, separate from the Prison Service. This is not the case. It can equally be argued that the failure of the public sector option, if that were to be the case, would in fact be a failure of the SPS Board. That would be a matter of grave public concern.

35. A few final words on the privatisation issue. There is increasing evidence that some jurisdictions which started down the road of prison privatisation a few years ago are now beginning to have second thoughts and some are actually returning prisons previously managed by the private sector to the public sector. Stephen Nathan referred to some examples of this in his recent evidence to the Justice 1 Committee. In the light of this experience there is also evidence that the private sector is beginning to focus its attention on developing countries, rather than on the developed world, where profit margins are narrow and public scrutiny is
intense. There is also evidence that the number of contractors in the field may well reduce rather than expand, thus limiting the element of genuine competition. This would become an important consideration if the SPS Board were to offer three new prisons for tender and were then to discover that there were only one or two potential bidders. It would be unfortunate if Scotland were to embrace the private prison option wholeheartedly just at the point when other jurisdictions were leaving it.

Conclusion

36. The fundamental question raised by the Estates Review and the Consultation Paper is about the nature of Scottish society. Do we wish to be a society like Texas in which we look up one per cent of our fellow citizens or do we wish to be a society like Finland which sees prison as a place of last resort? Do we regard prison as a place where we can solve the wider ills of society or as a place only to be used for those who have committed very serious crimes or from whom society needs to be protected? The issue of public provision against private provision, as presented in the Estates Review, is an important one which needs careful consideration. However, the more important question is about the increasing tendency in Scotland to deprive people of their liberty when alternative disposals are available and likely to be successful. The answer to this question is not easy to find in the Estates Review nor in the Consultation Paper.

Andrew Coyle
June 2002
About the author:
Since 1997 Andrew Coyle has been Director of the International Centre for Prison Studies in the School of Law, King’s College, University of London. In that capacity he acts frequently as an adviser on prison issues to bodies such as the United Nations and the Council of Europe, including its Committee for the Prevention of Torture. He has visited and advised on prison systems in over 40 countries in all regions of the world. He has a PhD in criminology from the Faculty of Law in the University of Edinburgh. His published books include “Inside: Rethinking Scotland’s Prisons” (1991) and “The Prisons We Deserve” (1994).

Between 1991 and 1997 Andrew Coyle was Governor of Brixton Prison in London.

Between 1973 and 1991 he was a Governor in the Scottish Prison Service. During that period he held the following appointments:
- 1973: Assistant Governor in Edinburgh Prison
- 1976: Assistant Governor in Polmont Borstal
- 1978: Deputy Governor of the newly opened Shotts Prison
- 1981: Governor in Scottish Prison Headquarters, where his responsibilities included providing the operational brief for the development of Shotts Prison Phase II
- 1986: Governor of Greenock Prison
- 1988: Governor of Peterhead Prison in the immediate aftermath of the riots in Scottish prisons. At the start of his period of office a decision was made to hold the most dangerous and disruptive prisoners in Scotland in Peterhead. Arrangements were also made for all prisoners in Scotland who required protection from other prisoners to be held in Peterhead. During that period he was also involved in the preparation of policy documents for the service, including "Opportunity and Responsibility". Following publication of this document in 1990 a policy decision was made to designate Shotts as the main high security prison for Scotland and to transfer the high risk prisoners from Peterhead to Shotts.
- 1990: Governor of Shotts Prison
PUBLIC CONSULTATION SUBMISSION ON BEHALF OF THE PRISON OFFICERS ASSOCIATION SCOTLAND IN RESPONSE TO THE SCOTTISH EXECUTIVES PUBLIC CONSULTATION DOCUMENT ON THE FUTURE OF THE SCOTTISH PRISON ESTATE

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Preface

1/ The following submission is in response to an invite by the Justice Minister Mr Jim Wallace on 21st March 2002, for all those with an interest in the subject of Prisons in Scotland to contribute their views during the 12-week public consultation period.

AIM

- To formally respond to the proposals by the Scottish Executives to further extend the Private Prison concept in Scotland.

- To formally respond to the following three evaluations detailed within the Scottish Executive’s Consultation on the Future of the Scottish Prison Estate for the provision of 3 new build prisons in Scotland:

  1/ PSC Public Sector Build - Public Sector Operate
  2/ PPP Private Build - Public Sector Operate
  3/ PPP Private Build - Private Operate

- To formally respond to the Pricewaterhouse Coopers Financial Review of the SPS Estates Review

- To formally respond to the recommendations made by the Scottish Executive to close:

  1/ HMP Low Moss.
  2/ HMP Peterhead.
  3/ To reduce HMP Barlinnie to a 530-space facility.

ORGANISATION OF SUBMISSION.

**Section 1:** Introduction, Previous Political Context, Background and Industrial Relations.

**Section 2:** Analysis of SPS Estates Review.

**Section 3:** Response to Option 1 - Public Sector Comparator.

**Section 4:** Response to Option 2 – Private Build - Public Operate

**Section 5:** Response to Option 3 – Private Build – Private Operate

**Section 6:** Analysis of Pricewaterhouse Coopers’ Financial Review of Scottish Prison Service Estates Review.
Section 7: POAS Response to SPS Recommendation to Close HMP Peterhead.

Section 8: POAS Response to SPS Recommendation to downsize HMP Barlinnie.

Section 9: POAS Response to SPS Recommendation to Close HMP Low Moss.

Section 10: Summary and Conclusions.

Anx 1: SPS – TUS Voluntary Industrial Relations Agreement

Anx 2:

Anx 3:

Anx 4:

Anx 5:

Anx 6:

Anx 7:

Anx 8:

Anx 9:

Section 1: Introduction

2/ The Prison Officers’ Association Scotland (POAS) is part of the UK Prison Officers’ Association (POA) and is recognised by the Scottish Prison Service as the Trades Union with representational rights for all grades of Uniformed and Nursing Staff in the SPS Agency. The POAS are affiliated to the STUC and are also members of the SPS – Trades Union Side along with PCS and Prospect.


4/ The following submission is in response to an invite by the Justice Minister Mr Jim Wallace on 21st March 2002, for all those with an interest in the subject of Prisons in Scotland to contribute their views during the 12-week public consultation period.

5/ This submission is based on research carried out by ourselves and refers to various reports and views expressed in recent years in relation to not only the moral arguments against the privatisation of Prisons generally, but also questions the financial figures detailed within the SPS Estates Review which suggest that to further
extend the Private Prison concept in Scotland would save the Scottish Tax Payer £700 million over the next 25 years. We believe the figures used by the Scottish Prison Service within their review are inherently flawed and do not constitute a like for like comparison between the Public and Private sector.

6/ In researching the subject of Private v Public we have in the main utilised the information available from a country with the largest Private Prison Sector in the world, the United States (3% of all Prison Facilities in America are operated by the Private Sector) where over the past 10 years there has been a vast amount of research conducted. Although in the main we refer to:

- General Accounting Office (GAO) Report – The GAO reviewed studies that compared privatised and public correctional facilities in terms of operational costs and quality of service 1996. ANX 1
- The Sentencing Project – Prison Privitisation and the Use of Incarceration – Amy Cheung – 2001 ANX 5

7/ In terms of the research available in the UK. In the main we refer to four primary pieces of research that have been published in recent years:

- The Carter Report – Commissioned by the Targeted Performance Initiative Group (Chaired by Lord Laming of Tewin) and published in January 2001. ANX 7
- Taylor – Cooper Report An Independent Report – Published in April 2002. ANX 8
- Privatising Justice – The Impact of the Private Finance Initiative in the Criminal Justice System – Researched and Written by the Centre for Public Services March 2002. ANX 9
- HMCIP Inspection Reports on PPS Kilmarnock – Full Inspection 2000 ANX 10

8/ The POAS accepts that a percentage of the Scottish Prison Service Estate needs upgraded in order to bring to an end the practice of slopping out and that Scotland should have a Prisons Estate fit for the 21st century. The POAS further agrees that flexibility and quality of any future new build accommodation will be central in providing an effective and successful Scottish Prison Service in years to come.
9/ It is a fact that the current SPS Estate is now suffering the effects of massive under funding over many years, especially throughout the 1980’s and 1990’s.

10/ The POAS are opposed to the use of private sector cash in the delivery of any public service. However as a reasonable Trade Union we are prepared to consider any option that modernises the SPS Estate but at the same time maintains the delivery of any services within the Public Sector.

11/ It is our view that the figures presented to the Scottish Executive by the Scottish Prison Service are flawed and, through an accountancy process that was in the main based on wide and varied assumptions, have been weighted in favour of Option 3 Private Build - Private Operate (PPP) and against Option 1 Public Build – Public Operate option (PSC) and also Option 2 Private Build – Public Operate.

**POLITICAL POSITION PRIOR TO 1997 GENERAL ELECTION**

12/ Prior to the General Election in 1997 the POAS (at that time the Scottish Prison Officers’ Association) had received a number of assurances from eminent Labour Politicians who when in opposition were totally opposed to Private Prisons in principle and in practice.

It is not our intention to go over old ground and repeat what has gone before, as we believe there would be little point. However we further believe that it is important to once again point out that there was huge opposition to the Conservative Government policy that opened the door to private sector prisons in 1999. So much so that senior labour politicians made statements that they have, up until recently, found very difficult to deliver.

13/ When the Conservative Government introduced the Criminal Justice Act in 1991 which opened the door to Private Prisons in the UK, there was wide spread condemnation of this Government policy by all opposition Parties for introducing legislation which gave the Private Sector the opportunity to bid to Design, Construct, Manage and Finance (DCFM) new build prisons in the UK. This condemnation resulted in the Labour Party giving the following commitment:

> “A Labour Government would bring the prisons back within the proper public prison system at the earliest opportunity”

We recognise that in recent years 3 Privately Operated Prisons in England have been taken back into public sector control under the present administration. Although this was achieved through Market Testing we believe it clearly demonstrates that the Public Sector Prison Service can successfully compete with the Private Sector if given a level playing field.

14/ Due to the vigorous opposition all parties expressed against the Privatisation of Prisons in the UK in 1992, it is somewhat disappointing to the POAS that the strong principled argument put forward namely by both Labour and Liberal Democrat Party’s between 1991 and 1997 when in opposition, has not been reflected within the
proposals that have been put forward by the Scottish Executive in relation to the Scottish Prison Service Estates Review.

15/ Following our research the POAS firmly believes the arguments put forward by all parties throughout the early 1990’s – with the exception of the Conservatives - against the Privatisation of Prisons in the UK are as valid today, as they were then, if not more so given the various research that has been carried out over the past 10 years in both the United States and UK.

BACKGROUND
16/ In the Autumn 1999 the Scottish Prison Service carried out a review of the Prisons Estate “Living Within Our Means” with their stated aim being to improve the efficiency and effectiveness of the then prison estate.

17/ Although there was wide opposition to the recommendations contained within the review it resulted in the closures of HMP Penninghame, HMP Dungavel, HMP Longriggend, HMP Frairton was merged with HMP Perth and various small units were either mothballed or amalgamated. The main arguments put forward by the SPS Agency in support of the rationalisation of the estate at that time were:

- A projected fall in Prisoner numbers – As stated by SPS Chief Executive Tony Cameron when giving evidence to the Scottish Parliament Justice Committee in November 1999.

18/ The fact that prisoner numbers have in fact increased over the past two years and not fallen as projected by Mr Cameron and other SPS officials, is worrying to say the least. As it provides concrete evidence to suggest that the figures presented to the Justice Committee at that time were not based on a reasonable calculation on future prisoner numbers but were based on nothing more than flawed assumptions and a surprising desire by the SPS Board to close establishments that were at that time performing well, meeting Key Performance Indicators and providing a good quality service to the Scottish Tax Payer. HMP Dungavel in fact had only just been declared a drug free prison, a massive achievement that should not be lost sight of.

- The under utilisation of accommodation.

19/ It was a fact at that time HMP Penninghame and HMP Dungavel were being under utilised by the SPS. However it could be argued that the SPS Agency may have deliberately created this situation in order to place some weight to the recommendations of “Living Within Our Means”.

- The amalgamation of smaller units.

20/ The amalgamation of small units within the SPS led to the mothballing of the 10 Cell Unit at Peterhead. This was closely followed by the mothballing of the Shotts Unit.
21/ At the time the mothballing of the Peterhead Unit had a major impact on the flexibility of the service to provide places for those prisoners who either had difficulty adjusting to life within a prison setting or who were posing managerial problems. At the time of writing the SPS was in the process of reopening the Shotts Unit.

22/ When the recommendations of the “Living Within Our Means” Review were announced the Prison Officers’ Association were unsurprisingly opposed to the closures. However, we recognise that the process adopted in implementing the outcomes of “Living Within Our Means” by the SPS Agency through consultation with the SPS – Trades Union Side, resulted in no compulsory redundancies and those staff affected by the closures were in the main transferred to areas of their choice.

23/ Shortly following the “Living Within Our Means” review the SPS announced their intention to carry out a full comprehensive review of the Prisons Estate. This Review was announced on the 17th December 1999 and although the Prisons Board advised SPS Staff that the Review would take no longer than 6 months it has taken some 2 ½ years to complete.

24/ Following the successful implementation of the SPS Living Within Our Means review that was carried out with full Trade Union involvement, it is with regret that the Chief Executive thought it appropriate not to consult with the Trade Unions from regarding the progress of the SPS Estates Review.

25/ Although the Trades Union Side were consulted in the early stages of the Estates Review, this limited consultation ended when the Chair of the Review group Mr Rod McGowan was replaced by Mr Nick Cameron who incidentally is now employed by Premier Prison Services Ltd as the Director of PPS Kilmarnock. There was no joint working, no consultation process other than in the very early stages, no informal or formal discussions nationally on the content of the review and no view was sought from the POAS or the SPS – TUS by the Prisons Board prior to the review being submitted to the Scottish Executive. The Estates Review was conducted at Senior Managerial - Prisons Board level and in our view carried out in a vacuum.

RECENT HISTORY OF INDUSTRIAL RELATIONS WITHIN THE SPS

26/ Within the Estates Review Page 29 Para 114 states in relation to the PSC option:

> Even if this were achieved, there would remain a huge risk that, as evidenced by recent history, prison opening programmes would be frustrated by staffing issues and by union resistance to change.

It makes further comment:

> The fierce staff resistance to change across a range of issues is evidenced also by the difficulties in securing more effective staff attendance patterns. This process took over two years of intensive discussions and negotiations with the trade union side and even then, agreement was only achieved following industrial action and a two hour reduction in the working week.
27/ Given the above comments that are contained within the Review and also certain comments made by one or two MSP’s during the Parliamentary debate on Thursday 18th April 2002 where one MSP compared the relationship between Prison Service Management and the Trade Unions as that of the “Israelis and Palestinians”, we believe that it is necessary to set the record straight in relation to the past and more importantly the current state of Industrial Relations within the Scottish Prison Service.

28/ There is absolutely no doubt that prior to April 2001 Industrial Relations in the Prison Service were at breaking point. However this situation did not happen overnight and we believe the deterioration occurred over many years with the main contributory factor being the introduction of the Criminal Justice and Public Order Act 1994, a Conservative Government Policy that made it illegal for Prison Officers’ in the United Kingdom to take any form of industrial action.

29/ In our view the CJPO Act created an unfair Industrial Relations balance within the Scottish Prison Service. It gave SPS Management the opportunity to impose changes to the terms and conditions and pay of Prison Officers’ without giving due regard to the consultation and negotiation mechanisms that were in place and which in our view had been successful in bringing forward major changes to the Agency and its structures over many years prior to the introduction of the CJPO Act.

30/ We would argue that the CJPO Act created an unfair balance and as a consequence lead to Industrial Relations between Prison Service Management and the Prison Officers’ Association Scotland becoming strained, to the point of virtually being non existent.

31/ In April 2001 Prison Officers’ in Scotland had reached breaking point and were regrettably forced to take Industrial Action for the first time in its history. The catalyst to this was a further threat made by SPS Management to impose changes to working arrangements without giving due regard to reviewing safe systems of work and without the agreement of the Trades Unions.

32/ The SPS and Trades Unions had been involved in discussions in relation to reviewing working arrangements across every establishment for almost 2 ½ years. However mid way through that 2 ½ years there had been a 12-month hiatus due to SPS Management walking away from the negotiating forum. A further point we would like to make here is that it was actually the POAS who approached SPS Management and proposed a review of working conditions as we recognised at that time that it had been some 13 years since the last review.

33/ In November 2000 when negotiations were beginning to break down SPS Management imposed major changes to the working conditions of Scotland’s Prison Officers’ without agreement from the SPS – TUS. SPS Headquarters instructed Governors at Local Establishment level to carry out a review of Local Working Arrangements with the main aim being to reduce staff and make savings. As the revised working arrangements document had been imposed without the agreement of the POAS Nationally, POAS Local Branch Committee’s at Establishment Level were
unwilling to participate in the process locally. This lead to the majority of local Governors setting up working groups consisting of in the main managers with no Trades Union Involvement.

34/ The SPS-TUS were disappointed that the Scottish Prison Service had chosen to progress this issue in this manner and in order to try and resolve the situation the TUS suggested to the SPS that we employ the services of ACAS to facilitate a conciliation and arbitration process. Right up until 3 days prior to the day Prison Staff took Industrial Action the POAS were in contact with SPS Management requesting ACAS be brought in to try and resolve the areas of dispute. SPS Management remained silent.

35/ The POAS believe that although the Industrial action taken by Prison Officers’ on April 23rd 2001 was indeed regrettable it was the start of a new beginning in terms of Industrial Relations within the Scottish Prison Service.

36/ Both sides recognised that the manner in which various issues had been managed prior to the 23rd April 2001 was not the way forward and following an announcement in Parliament by Deputy First Minister Jim Wallace setting aside Section 127 of the Criminal Justice and Public Order Act 1994, both the SPS and the TUS committed themselves to a Voluntary Industrial Relations Agreements (VIRA) Anx 12 which binds both sides to the process of arbitration.

37/ Since then Industrial Relations within the SPS have made a steady improvement. So much so that the SPS and the Trades Unions have recently signed up to working in Partnership and are currently working on a more formal agreement which will reflect the need on both sides to fully adopt the partnership principle. These welcomed improvements in Industrial Relations in the SPS have also been formally recognised by the Justice Minister Mr Jim Wallace in a written reply to Mr Andy Hogg SPS-TUS Secretary dated 26th March 2002 (Anx 13), where he states:

“In the meantime, I note with pleasure the progress being made on a number of employee issues and the considerable changes that have taken place to improve the efficiency of the Service. Indeed, I understand that the Unions and management side have agreed a working definition of partnership and have confirmed their commitment to the SPS Vision statement. I think this is an important step forward for the Service for which both sides are to be congratulated and I look forward to seeing continued progress being made”

38/ Some would argue that in the past the POAS have been inhibitors to change and that we have resisted change at every turn. This is simply not the case, the Trades Union Side, which the POAS are members, have over the past twenty years been the drivers of change within the Agency. We can evidence this with the introduction of Fresh Start 1987, The Staffing Structure Review 1995, which introduced the two tier prison officer structure and reduced the number of uniform grades and finally a full Review of Working Arrangements in 2001. These were major changes within the
service which not only streamlined how the Agency delivered its business but also brought with them major efficiency savings.

39/ The POAS and the SPS are fully committed to working in Partnership in order that we can continue to deliver a first class public service to the people of Scotland and to ensure that Industrial Relations never again reach the depths they reached on the 23rd April 2001. It will continue to be our goal (hopefully a shared goal) to provide a safe working environment for all members of staff and prisoners, taking into account Health and Safety Regulations and safe working practices.

SECTION 2 – SPS ESTATES REVIEW
40/ Although we do not agree with the general recommendations of the SPS Estates Review and we will come on to the reasons why later, the POAS in the main actually agrees with what would constitute an ideal estate detailed by the SPS on Page 1 of the Estates Review Document:

THE IDEAL ESTATE
- Buildings should be safe, sound, secure, flexible in use, efficient to run and appropriate to projected future use.
- Design capacity should be adequate for overall numbers and categories of prisoners (including contingencies).
- Staff Facilities should reflect the high value we place in our staff and should support them in carrying out their duties.
- Accommodation should be primarily cellular with 100% night sanitation.
- Prisons should be located, as far as is practical, near to relevant population centres.
- Accommodation and facilities contribute to SPS aims, KPI’s and regime development.

41/ In our view the Terms of Reference was arguably a sound starting point to base any review of the current SPS Estate. The present SPS Estate is as highlighted in the Terms of Reference Para 4, a legacy of history. This may well be the case but the fact is that the current SPS Estate is now suffering the consequences of major under investment over many years and as such it should come as no surprise to any interested party that a percentage of the current SPS Estate does not meet the above principles of an ideal Estate. With this in mind the focus given to the review in terms of achieving that “Ideal Estate” was in our view indeed appropriate.

42/ On Page 2 Para 6 of the Terms of Reference the SPS have indicated that within the Review they compared the cost of public and private sector for the provision of new prison accommodation – including public/private partnership options.

43/ Although the SPS included a wide range of figures within the Review document making comparisons between the public and private sector, we do not believe the figures presented are accurate and the review document is clearly weighted heavily in favour of the Private sector.
PRISONER NUMBERS

On Pages 10 and 11 of the Estates Review Document it has been stated that Scottish Office statisticians have projected that average daily prisoner numbers will increase from the current population of 6200 in 2002 – to 7700 by the year 2010-11.

The SPS have however taken a prudent approach and based the Estates Review on a projected increase of prisoner numbers over the same period from 6300 in 2002 to 7200 in years 2010 - 11 based on the following factors:

- 7,200 was at the lower end but within the range of high and low variants.
- Alternatives to custody. Indicate that Government policies could reduce the prison population by approximately 600.
- From the work already done to provide for 7,200 requirement it was clear that only one option had any scope for additional provision (beyond 7,200) within 10 years. This one option had a timescale of 5-6 years. This would allow the planning and building of further new accommodation in the latter half of the ten years period if the numbers were rising in line with the 7,700 projection.

Following the Living within our Means Review in 1999 and the evidence given to the Justice Committee in 2000 by the Chief Executive Mr Tony Cameron where he indicated that the recommendations contained within that review were on the basis of a projected decrease in prisoner numbers, it should come as no surprise that the POAS are somewhat sceptical whether the figures given by the statisticians within the Scottish Office and the SPS can be viewed with confidence.

A further point we would make here is that the POAS are somewhat disappointed as we are sure the Scottish Parliament is that alternatives to custody have not had a bigger impact on the current prisoner population in Scotland as was first envisaged by the Scottish Executive in 1999. However, in our view alternatives to custody could, if the political will was there which we are sure it is, have a far bigger impact on future prisoner numbers than the 600 assumed by the SPS.

A final point we would like to make on this subject is that if the Scottish Executive decide to proceed with 3 further privately built and operated prisons in Scotland and prisoner numbers actually reduce over the 10 year period would this mean further closures of publicly operated establishments given that the private contracts would be for 25 years? Or would the contracts with the private sector be terminated and those prison/s brought back into public sector control? The POAS believes that this is an important question and one that remains unanswered.

SUPPLY OF PLACES

If we take on board the future assumed prison spaces required over the next ten years as being accurate and in order to live up to the principles of an “Ideal Estate” then the projected numbers would require new build accommodation of 2,200 spaces.

The SPS have decided that the optimum size for any new prison at the current time is around 700 cells or spaces. In support of this optimum size the SPS have stated in Para 57 of the SPS Estates Review:
Proportionality.
Management Complexity.
Operational Stability.
Cost Per Prisoner Place.

51/ The POAS do not disagree with the SPS’s view on the optimum size of a new build prison, in fact we accept that a 700 space new build prison would be about right in terms of operation and efficiency. However we would suggest that consideration be given to altering this optimum size for the provision of a 500 space new build prison on the Peterhead site given the offender profile and the specialised nature of the programme delivered there.

52/ On the basis of the projected increase in prisoner numbers and the need for an additional 2200 prisoner places the SPS have recommended the need for 3 x 700 new closed secure prisons.

OPTIONS FOR THE PROVISION OF 3 NEW PRISONS
53/ The 3 options for the provision of 3 x 700 place new build prisons that the SPS have provided the Scottish Executive alleged in-depth evaluations are:

- Option 1 – 3 Public Sector prisons referred to as PSC (Public Sector Comparator)
- Option 2 – 3 Public Private Partnership (PPP) Private Build, Public Operate.
- Option 3 – 3 Public Private Partnership (PPP) – Private Build, Private Operate. This has also been referred to as DCFM (Design Construct Manage and Finance)

SECTION 3 - PUBLIC SECTOR COMPARATOR
54/ In response to the points made by the SPS on Page 19 Para’s 73 – 77.

In Para 73 the SPS state:

“The SPS do not have a formally agreed operational design for a new prison or even for new house blocks. This is mainly because SPS has not planned the build of a whole new prison for 30 years”

55/ The POAS find this admission from the SPS simply astounding. Firstly one new build house block is already in operation at HMP Edinburgh and a further two new build house blocks are currently under construction at Edinburgh and HMYOI Polmont. Both are being built by Skanska UK who are the SPS’s preferred bidder.

56/ So the above statement is nothing more than misleading, when in fact a total of 3 new build house blocks designed by the SPS and built by Skanska UK are going to be operational within a matter of weeks.
The fact of the matter is if the SPS were to procure a new build prison in a similar manner in which the Private Sector does, then regardless of the limited differential in design specification the SPS could virtually purchase a prison designed for purpose directly off the shelf with a differential in price for such a venture being unlikely. An Independent Construction Engineer has indeed confirmed this point.

In our opinion there would be very little input required from SPS Officials in the design stage as we would envisage the type of expertise required for such a venture would in fact be contracted in over a fixed term or until such times as the new build is complete.

It seems to us within Para 73 that the SPS is firstly displaying a severe lack of ambition and secondly very little confidence in the abilities of the service to efficiently procure new build accommodation.

Also in Para 73 the SPS suggests:

“It would require an enormous additional input of resources to the Prison Service to complete an output based prison design that would fit the current SPS mode of operation”.

We would argue that this simply would not be the case. For example and as we have stated above if the SPS were to procure a new build prison in a similar manner in which the Private Sector design and construct, then regardless of the limited differential in design specification the SPS could virtually purchase a prison designed for purpose directly off the shelf without the need for “enormous additional input of resources”.

This argument also brings into question the alleged time span for the delivery of a Public Build - Public Operated Prison. The SPS have stated in the review that it would take some 11 years to procure, build and open a new prison on a green field site.

The POAS believe that this would simply not be the case. It is quite clear that the SPS are basing the figure of 11 years on a procurement process that was last used 30 years ago.

“The Public Sector comparator (PSC) in the criminal justice system, as with the rest of the public sector, is used as a narrow financial comparison which fails to take account of innovation and modernisation within the public sector. It fails to take account of social, economic, employment and environmental issues and community well being. All the financial assumptions are biased towards the private sector.

There is ample evidence that the transfer of risk to the private sector is largely illusory. The real risk is not financial but in service delivery, where poor performance and/or delays have a direct impact
Public sector options are usually costed on the worst case scenario of delays and cost overruns in historic publicly financed schemes, frequently involving the same construction companies bidding for PFI contracts. There is no attempt to include the reform of public sector procurement” – Page 6 Para 1 and 2 - Privatising Justice – The Impact of the Private Finance Initiative in the Criminal Justice System – Researched and Written by the Centre for Public Services March 2002.

64/ Since then there has been significant developments in the construction side of the procurement and building of new prisons in the UK. For example approximately 3 years ago the SPS recognised Skanska UK as being their preferred bidder in respect of any future new build accommodation being required within the Agency. That preferred bidder status remains valid today.

(Incidentally Skanska UK, who are in the process of building the new house block at HMP Edinburgh and will shortly be starting the new house block at HMYOI Polmont, bought over the SPS’s previous preferred bidder, Kvaerner Construction.)

65/ The POAS have been informed by a leading construction engineer that as the SPS have a preferred bidder in, Skanska UK, there would be no need for them to go through a long drawn out tendering process and it would be feasible to expect the delivery of a new Public Build – Public Operated Facility within virtually the same timescales as it would for the private sector.

66/ In Para 74 the SPS state:

“To take forward the costing for the PSC model, therefore, the work was based on areas of the HMP Kilmarnock model. The model was then adapted by the SPS Operations Directors to fulfil the requirements of the SPS operational approach for each of the relevant prison functions and in this, any recent building designs were taken into account since they were the latest indication of SPS operational requirements.”

67/ The POAS do not believe that you can make a proper sound financial assessment on the basis of a virtual prison. We would argue that if the specification agreed for Kilmarnock Prison with Premier Prison Services was acceptable to the Scottish Prison Service in 1999 then that same specification should be acceptable for a new build within the public sector with no meaningful design changes being required in 2002.

68/ It would appear that the SPS are suggesting in Para 74 that the specification of Kilmarnock Prison does not meet the specification of what would be expected of a new prison built by the public sector.

- If this is the case then does this suggest that Premier Prison Services are operating a prison where the risk in terms of the building is higher than if it had been built by the public sector?
In order to establish the additional cost to the public build option it would be necessary to establish what differences there is in design specification between the “virtual prison” adopted by the review and the Kilmarnock model?

If the building specification is indeed higher within the public sector, then what is the differential in cost between the public build option contained in Option 1 and the private build in Options 2 and 3?

“In using hypothetical prisons as a comparator the PwC report is fundamentally flawed. The US General Accounting Office rejected this approach in 1996, arguing that costs should be based on comparing existing comparable facilities”. Taylor – Cooper Report An Independent Report – Published in April 2002.

In relation to Para 75 of Option 1 (PSC) where the SPS state:

“To work out the operational costs of the PSC, 3 comparator prisons were used: Shotts, Perth and Edinburgh taking into account their prisoner mix, staffing regimes, prisoner escort requirements etc. Again Operations Directors were closely involved and they took full account of the fact that a new modern prison would normally be expected to lower operational costs. It was assumed that a new prison would have up to date technology and also that the use of staffing would be even more flexible than at present within our existing SPS operated establishments”.

The POAS believe that the SPS were fundamentally wrong to use Perth, Shotts and Edinburgh Prisons to try and establish what the operational costs would be of a new build prison operated by the public sector.

The Convener: Paragraph 2.2.2 of the PricewaterhouseCoopers report breaks down figures for the public sector under various headings. However, under the heading “PPP Private Build Private Operate Option”, we are not given such figures. That is the problem.

Derek Yule: The second chart appears to have taken an average cost from six or seven private prisons. That is a difficulty. I am not sure that you can say that there is a direct and fair comparison with the public sector model.

(In evidence to the Justice 1 Committee on 22nd May 2002)

If for example a new build prison were to be operated by the public sector then a number of factors would have to be taken into account in order to determine what the operational costs would be. Such as classification of prisoner group, differing types of regimes, staffing levels to support those regimes and support services etc. It would be a reasonable expectation that all those factors would be agreed during the actual procurement and building phase of any new build projects.
We would also like to point out here that the SPS and Trades Unions have a National Agreement whereby prior to any new builds going ahead staffing levels etc have to be agreed in order that overall costs can be established.

An example of this agreement in practice would be the Edinburgh and Polmont House Blocks where staffing levels etc were agreed long before the actual building work commenced.

(It is a point worth noting that the Trades Unions fully participated on these issues long before the SPS and TUS entered into a partnership agreement. The POAS did so on the basis that we recognised and accepted the need to deliver on time and within budgetary parameters. In our view this clearly contradicts certain claims that we are in someway an intransient Trade Union that is resentful of change.)

In evidence to the Justice 1 Committee on 22nd May 2002 Mr Martin Mathers and Mr Derek Yule CIPFA Scotland

The Convener: Will you expand on the point about quality? You said that the quality issues are not developed. Will you give examples of that?

Martin Mathers: In the Prison Service, as in any other service, we would expect certain standards. For a start, we would not expect prisoners to be running around the countryside. We would expect standards of rehabilitation and prisoner care. Are we comparing like with like for the three options? We do not know.

The Convener: I take it that, if you do not know, we cannot know.

Martin Mathers: Not unless you have access to information that we have not seen.

Derek Yule: The PricewaterhouseCoopers costings have raised questions. We would explore the significant difference between the private-private option and the public-public option and look for the assumptions behind some of the figures. That is particularly true of the figures for construction and running costs. The question of quality comes on board when we are considering the running costs.

The implication seems to be that there is a substantial reduction in staffing costs. That relates to the quality issue. We would ask about the staffing ratios in existing prisons. What are the assumptions justifying a substantial reduction in staffing costs in the private sector model? We would have to draw conclusions from that information and we cannot draw conclusions at the moment.

Martin Mathers: One thing that strikes me about the report is that the figures for operational costs in the public-public option are based on historical data from a sample of prisons. However, there must be a relationship between the design of the prison and how efficiently it can be operated. We must assume that those efficiencies can be designed into a public-build prison in the same way as they can be built into a private-build
Para 75 once again leaves a number of questions unanswered such as:

- What calculations were used by the SPS in order to establish the assumed operating costs over the term of 25 years of a publicly operated new build prison?
- Were the costs of the employer contributions to the Principle Civil Service Pension Scheme included for the full 25 years in the actual assumed operating costs of a new build public prison?
- Was a percentage of the running costs of the SPS College and SPS Headquarters assumed in the actual projected running costs of a new build public prison?
- What was the breakdown of staff required to operate a new build publicly operated prison? (i.e. Supervisor’s, Residential Officer’s, Operations Officer’s, Industries Officer’s, Medical Staff and Support Staff etc)
- Furthermore what levels of salary were attached to each grade in the assumed calculations?
- In summary we have to ask ourselves what were the actual assumed costings used by the SPS in Options 1 and 2 which were not assumed for Option 3?

*It is not possible to compare one privatised prison of 500 places at Kilmarnock with the complex and diverse range of services provided by the SPS.*

*Savings on labour costs will be delivered not just by a reduction in the absolute numbers of staff, but also by a radical change in the skills/experience mix of staff.* Taylor – Cooper Report An Independent Report – Published in April 2002.

With regards to Para 76 – Given the fact that the SPS appear to have deliberately based their negative views for the PSC Option on a process that was used some 30 years ago to procure the building of HMP Shotts and by doing so not taken account of the developments in the construction industry in that period of time the assumptions made by the Agency in our view have been deliberately flawed in order to widen the financial gap between the PSC Option and the Private Build – Private Operate Option.

In Para 76 the SPS state:

“In public sector projects, delays are often not considered in terms of the cost to the organisation. Like most other public sector bodies, SPS’s track record on delivery of new building projects to time and original cost is not good”

In our view this admission is a sad indictment on the senior Management of the SPS. We say this simply on the basis that if the SPS have awarded construction contracts in the past to contractors with no safe guards or penalty clauses written in,
then this is simply a fault that lies with who ever drew up the contract in the first instance and not the contractor.

78/ If the SPS are acknowledging here that their performance in relation to the management of drawing up building contracts in the past has been less than satisfactory, then in order to protect the Agency in the future we would suggest that type of expertise be contracted in so as to ensure that the necessary provisions are built in to protect the organisation. This is no different to what a private company would do prior to awarding a contract.

79/ Once again we believe Para 76 leaves a number of questions unanswered, for example:

What assumed additional cost was attached to the PSC Option to take account of the broad assumptions made by the SPS in relation to the risk of the following:

- The prison not opening in time?
- Operational performance levels not being met?
- Damage to the prison as a result of prison disturbances?
- How far could that risk be reduced by the appropriate safe guards and penalties being built into the contract in the first instance?

80/ The SPS state in Para 77 that the PSC Option for a 700 place prison would cost the following:

- CVR = £823.3M       NPV = 429.1M
- Cost per prisoner place – CVR = £47.0K       NPV = £24.5K

81/ It is quite apparent that throughout the SPS Estates Review document, especially in relation to the PSC Option, that in order to reach the above figures the SPS have made wide and varied assumptions for the building and operating of a new build Public Prison and one can only suggest that they have done so in order to widen the cost gap as much as they possibly could between Option 1 Public Build – Public Operate and Option 2 Private Build – Public Operate so the review ultimately drives readers towards Option 3 Private Build – Private Operate.

In summary the POAS believes that:

- The Review document has in our view been deliberately heavily weighted against the PSC Option.
- Other than bureaucracy, there is no valid reason that would prevent the SPS adopting a very similar procurement process to that used in the Private Sector to procure a new build prison from public sector funds.
This alone would in our view dramatically reduce the costs to the public purse and retain ownership of the asset within the Public Sector.

- The additional costs in terms of operating a new build prison within the Public Sector that have been assumed by the SPS and incorporated within Option 1 PSC and Option 2 Private Build – Public Operate, which have not been incorporated within Option 3 Private Build – Privately Operated Prison (as they would not be applicable) leaves the SPS Estates Review fundamentally flawed as it does not compare like with like.

- All the assumed calculations have been made on the basis of a new prison being built on a “green field site”. The POAS would suggest that currently there is ample space on a number of present SPS sites for the building of additional accommodation. The POAS believes that this option should have been given proper consideration within the review on the basis of a public build – public operate or a private build – public operate. We say this, as this option if pursued would obviously eliminate the need for the purchasing of “new build – green field sites” at taxpayers expense.

**SECTION 4 - OPTION 2 PRIVATE BUILD – PUBLIC OPERATE**

82/ Although there are no examples in the United Kingdom of a Private Build – Public Operate Prison, we believe the SPS and for that matter Pricewaterhouse Coopers are wrong in suggesting on Page 21 Para 79 that:

“Neither SPS nor PwC was able to find any example of the private build, public operated prison model elsewhere in the world”

83/ In a report commissioned by the Targeted Performance Initiative Group (Chaired by Lord Laming of Tewin) Review of PFI and “Market Testing in the Prison Service” and published in January 2001, Patrick Carter the author states on Page 18:

Para 8.3:

The private sector has demonstrated that it can design and build prisons which are economic to operate and provide safe, secure accommodation within which high quality regimes can be delivered. We see advantages in all new prisons being designed, financed, built by the private sector (although the choice between public or private finance rests ultimately with the Treasury).

Para 8.4:

“There are three alternative operating models: public sector, private sector and mixed management (where the responsibility is shared between the public and private sector). Recent market tests have demonstrated that the public sector can, with competition, match or even better the private sector on price and quality. The Trade Unions are to be congratulated for their goodwill and their imaginative input to the market tests without which this could not have been achieved.”
“Mixed management has been adopted successfully in France over the last 10 years. Twenty-one new prisons have been built by the private sector with public funding. The core custodial function is performed by Public Sector employees with the private sector contracted to provide maintenance, logistics ‘hotel services’, healthcare, prison shops, workshops and some inter-prison transport. We believe that this model should be considered by the Prison Service, particularly for new for old where existing public sector prisons would be closed and replaced by a new prison. The services provided by the private sector might vary by type of prison but within each prison there should only be a single provider to minimise the problem of contract management. Although we see mixed management offering considerable advantage in ‘new for old’ schemes it would be equally applicable if there was a need to provide new prisons to increase capacity”. Patrick Carter – Review of PFI and Market Testing in the Prison Service January 2001

84/ It is quite clear from Para 8.5 of this report commissioned by the Targeted Performance Initiative Group (Chaired by Lord Laming of Tewin) “Review of PFI and Market Testing in the Prison Service” that there are alternative models throughout the world and this raises serious concerns as to whether the SPS or PwC made any genuine attempt to properly explore other viable options or simply set out to support their agenda for further private prisons.

85/ Even although the SPS and PwC could not find an alternative model based on a private build – public operate option they have, not for the first time within the document, made some wide and broad assumptions in order to present a financial comparator in respect of a private build public operate model.

86/ In Para 80 the SPS and PwC looked at the risk transfer in a private build public operate model and suggested that as the operational and security requirements of a prison are quantitatively and qualitatively different from other sectors such as schools and hospitals it would be difficult to determine the level of risk transfer from the SPS to a private company in relation to facilities management.

87/ It has been clearly demonstrated in France the mixed management of prisons is an option and one that the Carter Report fully recommends. It would be fair to say that the French model would not be our preferred option, as it transfers responsibility for the facilities management side of an operational prison to the private sector, however the POA firmly believes that an in depth analysis of this private build – public operate option has to be carried out to determine the feasibility and the effectiveness of such a model.

SECTION 5 - OPTION 3 PRIVATE BUILD – PRIVATE OPERATE
88/ We believe, as we have already stated, that the SPS Estates Review Document has been heavily weighted in favour of the Option 3, Private Build – Private Operate.
This type of recommendation did not actually come as a surprise to the POAS, as when we met with SPS Chief Executive Mr Tony Cameron early last year, he stated that he felt it would be about right if the private sector were to operate about 30% of SPS business.

89/ We do not believe that the SPS has given sufficient time to researching the possible consequences of their recommendations. Given the worldwide evidence that is available today in relation to the private sectors involvement in the operation of prisons, we find it absolutely astounding that the SPS are recommending to ministers to place in excess of 40% of all Scotland’s adult male prisoners in the hands of private contractors.

90/ It is interesting to note that the SPS are proposing to contract out adult male prisoners but not male Sex Offenders, Female Prisoners or Young Offenders. This may suggest one or two things.

91/ Firstly it may be down to the fact that the private sector would be less likely to bid for such a contract which involved managing either Sex Offenders, Female Prisoners or Young Offenders, as this 3 groups of prisoners are extremely cost intensive and this would ultimately eat into the profit margin.

92/ Or secondly the SPS are more willing to take risks with adult male offenders, in terms of placing them in the hands of the private sector, than they are with Sex Offenders, Female Prisoners or Young Offenders. It is an important point and one, which we believe, needs clarified.

93/ As we have mentioned in Para 80 given the worldwide evidence in relation to privately operated prisons we cannot believe the SPS Chief Executive Mr Tony Cameron is proposing to place a further 30% of Scotland’s adult male prisoners in the hands of the private sector, evidence such as:

**Propriety**

- Privatisation of imprisonment involves an improper delegation to private companies of power and authority.
- Privatisation puts profit motives ahead of the public interest, inmate interests, or the purposes of imprisonment primarily the rehabilitation of offenders.
- Privatisation creates conflicts of interest that can interfere with due process for inmates.
- Privatisation threatens the jobs and benefits of public employees.
- Privatisation may threaten Prison Officers’ sense of authority and status, both inside and outside the prison.

95/ Imprisoning criminals is one of government's most fundamental responsibilities. It is crucial that this responsibility stays in the hands of the public sector and elected officials. By their very nature, private prison companies are more
interested in doing well than in doing good. They serve only the interests of their directors and shareholders. The bottom line for a Private Company is profit. The bottom line for the Public Sector Prison Service is to protect our communities from those who are behind prison bars.

“In the last few years in the U.S., there has been a heightened level of awareness and concern about issues related to privatised corrections. The performance record of private prisons in the U.S. since the mid 1980s can be described as "patchy at best." Recently a number of troubling developments in facilities operated by the two largest and most experienced corporations have damaged the credibility of privatised correctional services as a concept. These developments add further weight to ongoing concerns about the legitimacy of the private prison industry”. Judith Green Senior Justice Fellow, Center on Crime, Communities & Culture Prison Privatization: Recent Developments in the United States May 2000

**Accountability**

- Privatisation reduces accountability because private companies are insulated from the public and not subject to the same political controls, as are government agencies.
- Privatisation diffuses responsibility; government and private companies can each blame the other.
- Privatisation may encourage the government to neglect or avoid its ultimate responsibility for prisons.
- Privatisation reduces accountability because contracts are difficult to write and enforce.

The POAS argues that contracting reduces accountability because private companies are insulated from the public and not subject to the same political controls, as are government agencies.

“The lack of transparency and information disclosure is widespread. Basic information is withheld from trade unions and “commercial confidentiality” is used as a smokescreen to hide matters of public interest”. Privatising Justice – The Impact of the Private Finance Initiative in the Criminal Justice System Page 7 Lack of Disclosure and Trade Union Involvement – Researched and Written by the Centre for Public Services March 2002.

Since the opening of PPS Kilmarnock there have been various questions asked in relation to the issue of accountability. A recent example of this being the evidence given by the SPS Chief Executive Mr Tony Cameron to the Justice 1 Committee of the Scottish Parliament on Thursday 23rd May 2002. Mr Cameron was being questioned in relation to the differential in staffing levels between a public sector and a private sector prison, and he stated:

**Michael Matheson:** Okay. Have you been to Kilmarnock prison?
Tony Cameron: Yes.

Michael Matheson: If four to six staff members worked in each of the wings, would they have a problem in carrying out their duties?

Tony Cameron: I have absolutely no idea. That is a matter for the operator, not for me. I am not authorised—

Michael Matheson: No. I am not asking you that. I am asking you about the physical size of the building at Kilmarnock. Each of the wings holds 64 prisoners and there are two members of staff—one in each gallery. You are saying that the SPS would have four to six members of staff in each wing.

Tony Cameron: I do not know how many there are at Kilmarnock.

Michael Matheson: I am telling you that that is how many there are. I would have thought that you would be aware of that, as the chief executive of the SPS, which is responsible for the contract with Kilmarnock prison. That is how many staff there are in each wing. Other than for an office for the staff, why would much more space be required?

Tony Cameron: I do not know about Kilmarnock prison. I have no comment on that.

Michael Matheson: But you have been to Kilmarnock prison.

Tony Cameron: Yes.

98/ We believe this is a clear example of how contracting out the management of a prison diffuses accountability and responsibility. It is incredible that the Chief Executive of the SPS has no idea what the actual staffing levels are in Scotland’s only private prison when at the end of the day he is ultimately responsible for the operational contract.

99/ It is also the case that government and private companies can each blame the other when something goes wrong. A further factor being how difficult it has been for members of the Scottish Parliament to access information financial or otherwise in relation to Scotland’s only private prison at Kilmarnock.

On the other hand, the movement against privatizing prisons is gaining momentum by attacking such issues as the transfer of services from a public to private provider, the potential decline in the quality of inmate services, the propriety of private-sector operation of correctional facilities, and the legal liability surrounding privatization. James Austin and Garry Coventry – “Emerging Issues on Privatised Prisons” Washington D.C: Bureau of Justice Assistance, February 2002

Dependence

- Privatisation lowers the government's own capacity to provide services, which makes it dependent on contractors.

- Privatisation carries the risk of bankruptcy by the company providing the service.
Privatisation may involve exclusive franchises that simply replace public monopolies with private monopolies

Cost

The world wide research that is available suggests that the cost saving to the public purse of contracting out the operation of a new build prison is no more than between 10% – 15% and is even less in some studies.

For example in a study written by James Austin and Garry Coventry – “Emerging Issues on Privatised Prisons” Washington D.C: Bureau of Justice Assistance, February 2002, they state:

“Only a few studies can be relied upon in a debate over cost efficiency of prisons. It is generally accepted that the best research conducted to date was the Tennessee study that showed no or very minimal differences with respect to costs. The remaining studies had serious methodological flaws that limit their ability to reach firm conclusions. In general, these flaws pertain to an inability to control for factors known to be associated with inmate conduct and costs in making comparisons between public and privately operated facilities. For example, facilities chosen for comparisons often had inmates that differed on key attributes such as inmate age and classification level—factors known to be associated with inmate conduct. In some studies impact or outcome data used for analysis either were flawed or may have been contaminated by staff because they knew the results would be used to reach unflattering conclusions by the researchers studying the facility. Information on measures such as inmate assaults and even escapes can be easily manipulated by staff unless rigorous controls are applied to ensure inmate behavior is being measured in a standard and reliable manner. Studies of public and private facilities must include comparable facility types, institutional capacity, and inmate demographics. In addition, the dimension of time must be considered. The studies thus far are essentially one-time studies that measure the attributes of private and public facilities at a given time. To date, no long-term studies have been conducted to determine whether privately operated facilities can sustain their cost savings or quality of confinement over an extended period of time, especially if staff salaries and fringe benefits increase as their service tenure lengthens.”


They go on to say:

There is no consensus among academics and professionals in the field concerning the potential cost savings that privately managed operators can provide. Some researchers looking at privatization initiatives proclaim “a realistic expectation of cost savings as a result of contracting is probably in the range of 5 to 15 percent,” whereas others declare that the evidence accumulated thus far is not yet persuasive (Thomas and Logan, 1993). James Austin and Garry Coventry – “Emerging Issues on Privatised Prisons” Washington D.C: Bureau of Justice Assistance, February 2002
This point is also made within the The Mouchell Report – Commissioned by the Prison Service in England and Wales and published in March 2000, where it indicates within the financial comparators of the NPV Modelling on Page 8 Summary and Conclusions notional savings of between 10% - 15% can be realised between a private build – public operate and a private build private operate model. This kind of evidence strongly questions the 40% differential highlighted within the SPS Estates Review.

- Contracting creates the special costs of contracting: initiating, negotiating, and managing contracts, and monitoring contractor performance.

- Privatisation introduces lower terms and conditions of employment for Prison Staff and as a consequence would create a two-tier workforce within the Prison Sector in Scotland.

“Private prisons offer only modest cost savings, which are basically a result of moderate reductions in staffing patterns, fringe benefits, and other labor-related costs. No evidence was found to show that the existence of private prisons will have a dramatic effect on how non private prisons operate”.


During researching the issue of Private v Public and following the major incident at Yarlswood Detention Center we tried to establish exactly what level of insurance had been acquired by PPS Kilmarnock. To date we have been unable to establish if PPS Kilmarnock are insured at all.

It is also worrying that some private prison operators in England and Wales have been reported in the press as having “great difficulty” in attaining insurance cover following the Yarlswood Detention Center incident and have approached Government to indemnify them or subsidise the cost of insurance cover, the cost of which would need to be picked up by the taxpayer.

“Privatization may produce savings by cutting costs for health services, staff salaries and benefit costs (though executive compensation costs are likely to be much higher), and by lowering personnel staffing ratios (Nelson 1998). Privatization may also offset some overall costs with corporate tax payments from contractors. But private prison employee compensation costs and staffing ratios may increase over time if private security personnel unionize; if the mix of prisoner security level changes; or if lawsuits or prisoners’ grievances force changes in programs and policies that affect operational costs. To the extent that a state’s public prison system already embodies important principles of cost-effective prison management (e.g., central purchasing efficiencies; system-wide MIS; 6 control of medical costs; prudent security staffing ratios; lean administrative structures) cost savings from privatization are less likely to occur – unless they are wrung

- Private companies do not offer the equivalent pay rates of the public sector Prison Service.

There is absolutely no doubt that a two-tier workforce currently exists within the Prison Sector in Scotland. Prison staff employed within the public sector enjoy far better terms and conditions of employment and pension rights than their colleagues employed within the private sector. This does not mean however that staff in the Public Sector are over paid for the job they do on behalf of Society, it means that staff in the private sector are underpaid.

Recently at the STUC Conference the First Minister Jack McConnell said when addressing congress: (Extracts from Mr McConnell’s speech to congress)

“As Scotland’s First Minister, I am very proud of the shared ideals of the labour and trade union movements. We believe our society can be better than this – we believe in the community, that we are stronger together than we are apart. We want to change a Scotland where your background too often determines your future. We believe those with the most should help those with the least get a better start in life”

“After the long Tory years of failure we aim to build a better Scotland, with public services at its core”.

We want the best public services to secure social justice for all. Quality public services attract the effort and the work of our most talented. Public services that can respond directly to the people they serve and deliver quality provision in every community”.

“I want Scotland’s public services to be excellent, improving or both. I want this, not for some sense of achievement for its own sake, but because public services are a tool which at best liberates people from poverty, exclusion and prejudice. But public services at worst can contribute to the maintenance of injustice, discrimination and inequality”.

“We will invest to build services for the 21st century by investing in buildings, equipment and people”.

“We aim to secure Best Value across the whole of the whole Public Sector, to release resources to invest in further service improvements. We will set the standards and demand quality from all service providers”.

“Improving public services is an enormous task. We will only secure excellence in our public services through a partnership between frontline staff and managers”.

“Staff who are valued and secure are best placed to deliver high-quality public services. Part of the drive to raise standards involves making sure
the staff who deliver public services are properly motivated and rewarded for their work”.

“I am committed to promoting a Scottish employment model that covers the public and private sector. A model that

- Secures a well trained, motivated workforce;
- Secures the best conditions of employment;
- Secures high productivity and flexibility;
- Secures a commitment to service improvements;
- Secures good recruitment standards;
- Secures good management; and low staff turnover

“This model needs to be developed in partnership with you, using the Trade Unionists as an additional lever for excellence in public services. This new employment model must include tackling the two-tier workforce and securing a stable framework for investment, for modernisation and for reform of public services”.

“I recognise that Trade Unionists and frontline staff have important views on employment practice, how contracts are prepared, the performance indicators that are used and how contracts are delivered. We will work with you to use your experience to help us secure quality public services across the whole of Scotland”.

“The best partnerships between the public and the private sectors have delivered outstanding new services to the public. If the only innovation that the private sector can offer is on the basis of reduced employment standards, that is not good enough for me, however, for those who can rise to the challenge and use their experience to the benefit of the public sector we should work with them”.

“PPP schemes should be on the basis of increased quality and contract innovation not cost cutting and poorer workforce involvement, motivation and commitment. The creation of a two tier workforce undermines our intention to create excellence and quality within Scotland’s public services, and we will take steps to tackle it”.

If we relate the above extracts to the performance of PPS Kilmarnock, Scotland’s only PFI Prison, then we have to question what if anything, other than possibly better technology, has the private sector prison service brought to the prison service by way of innovation other than:

- Low Staffing Levels.
- Low Wages for front line staff.
• Reduced Terms and Conditions of Employment for Prison Staff.
• Staff dependant on state benefits/income support etc.
• Increased wages and benefits for senior managers and executives.
• Less political accountability.
• Less transparency.
• No employer funded pension scheme.
• Higher level of serious assaults against staff.

107/ The fact that a number of staff at Kilmarnock Prison are claiming some form of income support provides clear evidence that the public purse is subsidising the reduced terms and conditions of employment offered by the private sector, specifically the low wage issue, which is a cost to the taxpayer that has not been calculated into the Private Build – Private Operate Option.

108/ We would argue that PPS Kilmarnock does not in any shape or form constitute a shining example of innovative private sector involvement within the Public Sector Prison Service in Scotland.

109/ In fact given the evidence of the full inspection on PPS Kilmarnock in 2000 and the interim inspection in 2001 conducted by Her Majesties Chief Inspector of Prisons, Mr Clive Fairweather, we simply cannot understand how the Scottish Prison Service can state firstly on Page 26 Para 101:

“The SPS has been aware for some years of the need to reduce running costs. However, in 1999, the opening of the new privately managed prison at Kilmarnock provided the SPS Board with hard evidence about the differences in costs between the private and the public sectors. The Board has been able to monitor first hand the ability of the private sector to deliver effective prison services. The reality is that the private sector is able to deliver as effective a service, with fewer staff, at far less cost. In fact, the nature of the detailed contract performance measures means that if anything the Board is able to demonstrate with more certainty the high quality of the service being provided by Kilmarnock than within any of its prisons”.

110/ This is an absolutely incredulous admission by the Prisons Board in that they allegedly have more of an idea what happens within Scotland’s only Private Prison than they do for the prisons they are employed to manage, those prisons within the Public Sector?

In the full inspection report of Kilmarnock in 2000 the HMCIP Mr Clive Fairweather stated:

• The main aspect of the operation of this new prison that requires to be addressed relates to challenging offending behaviour. (Page 100 Para 13.11)
• We suggest that the issue regarding the integration and delivery of services should be pursued as a matter of priority so that prisoners offending behaviour can be appropriately challenged through effective sentence and development plan. (Page 36 Para 6.22)
• There were waiting lists for particular courses for long term prisoners (Page 37 Para 6.25)
• There were no programmes specifically designed for the short term prisoner group.
• Kilmarnock was failing to fulfil its obligations in relation to programmes for remand prisoners. (Page 38 Para 6.28)
• The main unsettling factor was the restriction on the existing services caused by the level of Resourcing. (Page 40 Para 6.36)
• Social work group was not involved in the delivery of group work or programme delivery. (Page 40 Para 6.39)
• Low staffing levels were responsible for a major failing in social work provision: There were other areas where there would normally be a social work role but the demands placed on them meant that there was not the capacity to deliver – e.g. induction, work with families, pre-releases, sentence planning, and only limited involvement in suicide management. – HMCIP recommended a review of the entire work of the unit. (Page 42 Para 6.44)
• In terms of drug misuse, the HMCIP commented that Kilmarnock had failed to implement ‘a strategic approach in addressing this problem’ (Page 15 Para 4.13) The Prisons Drugs Strategy Group was too narrow and had failed to include individuals with a professional background specifically in drugs work (Page 16 Para 4.15)
• Some members of staff expressed anxieties about the staffing levels in the residential wings (Page 3 Para 1.7)
• The HMCIP Subsequently learned that there had been four serious assaults on staff during the whole of 1999-2000, which was higher than in any other prison in Scotland (Page 3).
• Staffing levels on the wings were regarded by staff of all grades as being too low, particularly as there could be occasions when staff were left on their own and this led to fears about personal safety. Staff were also unhappy about the shift pattern, though this was about to be changed – to the forth system since the prison became operational. Concern was also expressed about the length of the shifts without any breaks and only a few minutes to eat lunch that was provided by the prison’ (Page 86 Para 9.50)
• It was also noted in his report that ‘some prisoners expressed concerns about the staffing levels in the wings as it was felt that they were not always able to cope with what they were asked to do, especially on those occasions when there was only one PCO available’ (Page 89 Para 10.3).
• It was claimed also that staff were constantly being put under pressure to meet deadlines and targets in order to satisfy the terms and conditions of the contract (Page 86 Para 9.47).
• A further point the Inspectorate identified was in relation to serious deficiencies in the training of staff working in Kilmarnock ‘There was, however, no authentic definition of competence other than at an arbitrary level set by the STO. There were no systems in place that would measure to what extent the training delivered was transferred into the operational setting, nor was there any evidence that Supervisors were competent to carry out the necessary arrangements (Page 83 Para 9.39)
Some staff felt that their initial training was good but the majority were of the view that it was too short, that it did not cover issues in sufficient depth and that they had to find their feet by being “on the job”. (Page 86 Para 9.52) ‘Developing training in the prison will, therefore be a significant challenge over the coming year’ (Page 84 Para 9.4).

HMCIP also made reference to the fact that PPS do not recognise any trade union and conducts the relationship between staff and management through a works council. They further add that: It is difficult to see how the Works Council, a body dependant on PPS for its existence and funded by it, can fulfil the claim that it enables staff to possess ‘some bargaining power’ (Page 81 Para 9.31)

The HMCIP found that one issue remained to be addressed ‘was the disparity in pay between staff at different PPS operated prisons’ (Page 82 Para 9.31)

Concerns were expressed at the high proportion of those threatening suicide, which the inspectorate believed might be an indication of some prisoners manipulating a caring system for their own self-interest.

Further concerns were expressed at the high number of adjudications – i.e. over 3000 since the prison opened and 14 on one day and twice the level of a comparative establishment, Perth.

The POAS believes that the content of the HMCIP’s first full inspection of PPS Kilmarnock should have raised a number of concerns for the owner of the contract the SPS in relation to the operation and performance of Scotland’s only privately operated prison. Although we do accept that the HMCIP had a number of favourable comments to make in relation to PPS Kilmarnock he did have major concerns in a vast number of areas and although this was the case the HMCIP Mr Clive Faiweather gave Kilmarnock the ‘benefit of the doubt’ but ‘felt that the jury was still out on crime prevention’.

In the 2000 report the Inspectorate made a wide range of recommendations specifically aimed at improving the service delivery at Kilmarnock, however the follow-up inspection report of 2001 clearly showed that the majority of those recommendations had not been implemented. In fact some of the problems that had been identified had worsened. In its introduction the Interim Inspection, which carried out in 2001, states:

‘Last years formal inspection concluded with the observation that delivery of a range of regime options to address offending behaviour and tackle drug misuse were among the major issues to be addressed in order for the prison to contribute more effectively to crime reduction. We also stated that if sufficient resources were put in place, Scotland’s first privately managed prison could expect to present further challenges to other SPS establishments. Nevertheless, on this latest occasion, we found that with the exception of an additional social worker post, additional resources had not been provided’ (Page 2 Para 2.1).
• ‘It became clear during the course of this inspection that priority was being given to delivering the contract as specified. Additional work, which might be necessary and appropriate and would contribute to more effective delivery of the contract, could not be undertaken if this meant that some other elements specified in the contract would not be delivered. Similarly, if there was a shift in existing demand, or if new demands arose, these could not be addressed without either changes to the contract being negotiated or additional resources being provided’ (Page 2 Para 2.2).

• ‘In our view this highlights a dichotomy when operating to a detailed contract specification. At the time of the previous inspection, operating to an agreed specification had been thought to provide clarity of purpose. On this occasion however, it seemed that the contract was more of a mixed blessing with management also describing it as being “restrictive and flexible at times”. It was also pointed out several times that “running a contract was not necessarily the same as running a prison”’ (Page 2 Para 2.3).

‘We were surprised to find that although the prison had been operational for two years, the necessary regime performance measures have still not been agreed. This prevented full, objective assessments of performance in regime delivery. We noted however that while work sheds were full, a large number of prisoners were not fully engaged in purposeful activity, the regime timetable was not being followed and a number of prisoners were seen to be asleep in the sheds’ (Page 2 Para 2.4)

In terms of addressing offending behaviour the Intermediate report stated:

While a number of interventions had been developed to address offending behaviour they were not yet fully accredited or approved by the SPS, and prisoners complained about the access and waiting times.

113/ Although at the Intermediate inspection PPS Kilmarnock had introduced a co-ordinated drugs plan, the HMCIP made the following comment:

‘When compared to action plans developed by other SPS prisons there appeared to be a number of gaps, particularly in relation to timescales, measures and resources’ (Page 5 Para 2.17).

114/ One of the most worrying aspects of the Intermediate Inspection was in relation to “addressing offending behaviour (v) working for a prison wage”, the HMCIP stated:

‘We were told that prisoners were allowed to attend two unauthorised absences from work each week, which would not affect their wages. However, if a prisoner wanted to attend an offending behaviour programme, visit the gym or take a daytime visit or attend education, then any more than
two of these activities would be classed as unauthorised absence, which meant in effect they could either earn high wages or address offending behaviour or maintain family contact. They felt that they had to choose between assisting their families financially or trying to do something about why they had come to prison in the first place. Since most of them come from deprived areas, the chance to assist their families financially left them with no choice but to work’ (Page 12 Para 5.2)

Also highlighted within the Intermediate Inspection was the problems PPS Kilmarnock were experiencing in retaining staff. The Inspectorate found;

‘Staff turnover rate at Kilmarnock – 32% in the last year was significantly higher than any other Scottish prison (e.g. Barlinnie – 9%, Greenock – 11%, Edinburgh - 11%),’ (Page 3 Para 2.5)

‘The high staff turnover within residential wings meant that there were considerable numbers of staff who were not familiar with the content’ (Page 22 Para 15.2.18)

HMCIP went on to say on Page 3 Para 2.8:

‘Staffing levels in the house blocks continued to be a concern. It was often the case that single officers were supervising large numbers of prisoners, due to the competing pressures of demands for escorts and other out of wing activities. ‘A’ wing, in particular, which houses Long Term Prisoners, seemed to be particularly difficult place to work. With the current staffing levels, it did not, in our opinion, feel a particularly safe environment for either prisoners or staff’.

Staff who work in Kilmarnock made the following comment to the inspectorate:

On occasion, residential staff were left on their own, which led to concerns about personal safety’ (Page 10 Para 4.5)

And while some improvements had been made in relation to the staff attendance patterns, staff still felt:

‘Somewhat vulnerable in some areas where prisoners were particularly recalcitrant’.

‘At times of staff difficulty staffing levels were reduced to below agreed level in the segregation unit’ (Page 19 Para 15.2.2)

‘One member of staff whom we spoke to had accumulated 200 hours but foresaw little prospect of getting the time back in the medium term due to
the expected staff transfers to a new PPS Prison in Uttoxeter’ (Page 10-11 Para 4.7)

‘There was still a lack of training for Sentence Planning Officers’, who were now delivering many tasks which were previously the responsibility of the Personal Officer’ (Page 23 Para 15.2.20).

‘In addition the Inspectorate also concluded that it was questionable whether Line Managers were in a position to become more actively involved in addressing the training needs of staff because of their lack of training to date’ (Page 30 Para 15.2.45)

119/ It is also concerning that in the full inspection report on PPS Kilmarnock, the HMCIP reported a high number of instances of self-harm. PPS tried to suggest that this was a manipulative tactic used by some individuals to avoid being transferred to Low Moss Prison. However when the HMCIP carried out some research he revealed an extremely worrying fact. Only 9 out of 124 incidents of self-harm in PPS Kilmarnock were specifically attributed to manipulative tactics used by prisoners to avoid transfer. We can only suggest that PPS tried, through providing the HMCIP misleading information, to avoid contract penalties.

120/ A further concern for ourselves is the level of violence against staff as reported by the HMCIP in his intermediate report where he states in Page 3 Para 2.7:

‘The number of assaults on staff was high although none had been classified as serious. A review of a sample of incident reports highlighted a number of possible discrepancies, which we noted were being further investigated by the SPS HQ’ (page 3 Para 2.7)

121/ In our view the above discrepancies have now been proven with statements contained within the Taylor – Cooper Report An Independent Report – Published in April 2002 which on Page 29 contains statements given by Mr Malcolm Maclennan from the Inspectorate and the HMCIP Mr Clive Fairweather which verify the fact that PPS Kilmarnock have been misreporting serious assaults on staff. This once again evidences the lack of total transparency and accountability at PPS Kilmarnock. It is deeply concerning to the POAS that a private company tried to cover up serious staff assaults in attempt to avoid financial penalties.

122/ Two further points the HMCIP made in his intermediate report:

1/ Relationship between Staff and Prisoners

‘There was an indication that they had deteriorated over the last year with more staff being described as “aggressive” and “unhelpful”. The mixture of under – 21’s and adults was not seen as helpful. Adult prisoners were of the view that under 21 remands required a more assertive and firm approach, which unfortunately reflected in staff attitudes towards adults’ (Page 14 Para 5.20)
2/ Acts of Misconduct.

‘The number of misconduct reports also continued to be high – over 5000 in the past year, whereas HMP Perth, which has a similar size and prisoner mix, had only one third of that number over the same period’ (Page 4 Para 2.9)

123/ The fact that relations between staff and prisoners have deteriorated may be the primary reason for the high numbers of misconduct reports at PPS Kilmarnock. However a further reason may be simply down to the lack of experience of PPS Staff in managing such a mix of prisoners.

124/ It is quite clear to the HMCIP that PPS Kilmarnock is not operating to the level to which the SPS have tried to make out within the Estates Review. There are inherent deficiencies in the following areas:

- Low staffing levels.
- Inadequate staff training.
- Inadequate staff facilities.
- Severe lack of accredited offending behaviour programmes.
- Non-adherence to contract requirements.
- Attempts by PPS to cover up breaches of contract in order to avoid financial penalties.
- Inadequate staff meal breaks.
- Long working hours. (Average 45hr working week)
- High turnover in uniformed staff (32%)
- Lack of projected Sentence Planning for Prisoners.
- Lack of Personal Officers.
- Difficulty in renegotiating the contract without additional resources being required.
- Problems with transparency and accountability.

Public sector still cheaper in Belgium
A presentation by Sodexho/CCA - the most recent company to come through the doors of the Belgian Ministry of Justice - has failed to convince that privatised prison management is viable. The ministry’s calculations show that it would be no cheaper than existing costs. The current programme of constructing 1,000 new cells over the next few years will, however, be privately financed. - Prison Privatisation March 97.

125/ In terms of both the full and intermediate reports by the HMCIP in 2000 and 2001 respectfully, we found it absolutely unbelievable that within the Estates Review Document and Option 3 Private Build – Private Operate the SPS can conclude on Page 31 by stating:

“Operationally, this option has been demonstrated to work and benefits from synergies arising from design, build and operation being integrated”
126/ The HMCIP believes that PPS Kilmarnock is a failed experiment and the POAS could not agree more. If the above deficiencies had been identified within a public sector prison then we would firstly have been tagged as a failing prison and secondly have been given a specific period of time to introduce the improvements required to meet the recommendations made by the HMCIP. The fact is no matter what recommendations the HMCIP makes in respect of PPS Kilmarnock no improvements will be made unless the public purse is willing to pick up the bill to renegotiate the contract.

127/ Given the above we believe the following question has to be posed in relation to not only the performance of PPS Kilmarnock but also of a Prisons Board who openly praise the performance of the one and only private prison in Scotland.

Is the Scottish Taxpayer receiving value for money from both the PPS Kilmarnock and the SPS Board?

The answer is quite simply NO.

128/ In terms of pay structures within both the private and public sector prison services. We acknowledge that the starting pay for new recruits to both the public and private sector prison service in Scotland is comparable. However due to the fact that a public sector employee joining the prison service enjoys a pay progression system which is based on performance until they reach the maximum of the Pay Band and the private sector don’t then this alone quickly widens the pay gap between public and private sector employees.

129/ A possible reason for the substantial differences in the terms and conditions of prison staff within the public and private sectors may simply be down to the fact that currently PPS Kilmarnock are resistant in recognising the POAS as the appropriate Trades Union to represent staff in the workplace and negotiations between PPS Management and staff are conducted through a works council.

130/ Some have recently suggested that as non-unionised work forces become unionised then the gap in terms and conditions of employment will gradually close, as employees within the private sector will undoubtedly strive for comparability with their public sector colleagues.

“Private sector prison officer/custody officer and supervisor pay rates are, on average, between 24.6% and 32.4% lower than in the Prison Service, although senior managers and Directors in private prisons are better paid than their Prison Service counterparts. The value of a Prison Service pension is, on average, between 10.5% and 13.5% more valuable than those in privately managed prisons. Prison Staff get between 5% - 28% more holidays. Privatising Justice – The Impact of the Private Finance Initiative in the Criminal Justice System Page 7 Employment Para’s 2 and 4 – Researched and Written by the Centre for Public Services March 2002.
Proponents’ Arguments: Proponents contend that cost-savings and efficiency of operation place private prisons at an advantage over public prisons and support the argument for privatization. Research to date, however, casts doubt on the validity of these arguments.

Fiscal Savings-- Private prisons have proliferated mostly under the argument of cost containment. Advocates for privatization maintain that private sector management and operation of prisons can cut costs by as much as 20%. Central to the argument in favor of privatization is the perceived inefficiency of labor costs in the operation of prisons. In using mostly nonunion labor and by controlling wages and fringe benefits, private prison companies maintain that they can efficiently reduce the costs of labor and thereby net substantial savings for the government. The promise of meaningful savings, however, is specious at best. Research to date has concluded that there is little evidence that privatization of prisons results in significant public savings. In a 1996 General Accounting Office (GAO) review of several comparative studies on private versus public prisons, researchers acknowledged, “because the studies reported little difference and/or mixed results in comparing private and public facilities, we could not conclude whether privatization saved money.”

A study by the Bureau of Justice Assistance (BJA) released in 2001 had similar conclusions, stating that “rather than the projected 20-percent savings, the average saving from privatization was only 1 percent” and “the promises of 20-percent savings in operational costs have simply not materialized.” These modest savings, furthermore, “will not revolutionize modern correctional practices.”

Efficiency of Operation-- Proponents of privatization argue that besides cost-saving benefits, private prisons operate more efficiently and at a higher quality than publicly administered ones. Recent research, though, suggests that privatization advocates’ claims of vastly improved efficiency are dubious and that at best, private prisons are equal in performance to public prisons. A 1998 report conducted by Abt Associates concluded “only a few of the more than a hundred privately operated facilities in existence have been studied, and these studies do not offer compelling evidence of superiority.” Likewise, the BJA study acknowledged “no definitive research evidence would lead to the conclusion that inmate services and the quality of confinement are significantly improved in privately operated facilities.”

More problematic is the BJA study’s further assertion that “the rate of major incidents is higher at private facilities than at public facilities.” A survey of the prison industry conducted by analyst James Austin also found 49% more inmate on staff assaults and 65% more inmate on inmate assaults occurred in private minimum and medium security facilities than in comparable publicly run facilities.

Representatives of private-sector firms assert that they can save taxpayers money by providing correctional services traditionally supplied by government at less cost. This can be achieved by reducing the costs of
labor associated with operational costs. Labor costs are controlled by reducing one or more of the following personnel cost factors: (1) number of staff, (2) wages, or (3) fringe benefits.

The private sector alleges that these costs can be contained or that, for the same dollar, it can provide more or at least better services (Travis et al., 1985: 13). This point of containing labor costs is the crux of the privatization movement. Prisons are extremely labor intensive, with approximately 65 to 70 percent of the costs of operating a prison going to staff salaries, fringe benefits, and overtime. Controlling these costs is more difficult to achieve with unionized government workers. Private firms typically use nonunion labor, allowing for the lowest benefit packages. Overall, private firms claim that they can save 10 to 20 percent in prison operations due largely to efficient handling of labor costs.


- Private companies do not offer employer funded pension schemes.

131/ Much has been said about the fact that employees in the Public Sector prison service enjoy an employer funded pension scheme (Principle Civil Service Pension Scheme) The Scottish Prison Service, being a civil service agency, has no option and has to make contributions of around 13%-16% to the scheme. This is no different to any other civil service agency that also have to make these contributions on behalf of civil servants employed by that agency, for example Members of the Scottish Parliament are members of the exact same scheme.

132/ Once again this is a cost that has been calculated against Option 1 and 2 within the SPS Estates Review in terms of the public operation of a new build prison, which amounts to a substantial percentage of overall operating costs. However in terms of the Private sector operating a new build prison we only have to look at the Kilmarnock example where staff employed by PPS are offered a pension scheme which is a stake holder scheme where staff make self contributions of up to a maximum of 3% of pay which is equalled by the employer. (In evidence to the Justice 1 Committee Mr Ron Tasker PPS Kilmarnock stated that up to 20% of staff currently employed by PPS Kilmarnock have bought into the stakeholder pension scheme). Although staff are able to contribute up to a maximum of 3% of pay, Mr Tasker did not inform the Committee of what level of contributions are presently being made. It is therefore not possible to quantify PPS’s contributions to the scheme.

133/ It would be interesting to establish exactly how many staff at PPS Kilmarnock have actually bought into the stakeholder pension scheme in order to determine whether or not the terms and conditions offered by PPS allow sufficient financial flexibility for staff to provide for their retirement years. On the level of pay offered by PPS we would find it difficult to believe that the majority of staff employed at Kilmarnock can actually afford to live day to day never mind invest for their retirement and if this is indeed the case then once again the public purse will bare the brunt in years to come through income support and benefit payments. This is a further
cost to the taxpayer that has not been calculated in the Private Build – Private Operate Option.

*Some PFI contractors have been unable to provide ‘broadly comparable’ pension schemes, and some have refused to reveal to trade unions their Government Actuary Department advice on the comparability of their pension scheme. New PFI Prisons do not involve a staff transfer and private contractors use money purchase pension schemes, which are inferior to public sector final salary schemes. They enable private contractors to make a significant saving compared with the contribution costs of comparable public sector pensions at the expense of the staff*.

Privatising Justice – The Impact of the Private Finance Initiative in the Criminal Justice System Page 7 Employment Para’s 2 and 4 – Researched and Written by the Centre for Public Services March 2002.

134/ As we have stated many times in the past the POAS will make no excuses for the pension scheme that is provided for through contributions made by the Agency. It is an excellent scheme that provides civil servants a decent living income when they retire and ensures that they do not become a burden on the state.

- Privatisation may cost more in the long run as a result of initial low bids followed by unjustifiable price raises in subsequent contracts.
- Privatisation may cost more in the long run if high capital costs inhibit market entry and restrict competition.
- Privatisation lacks effective competition in "follow-on" contracts, which are commonplace.
- Privatisation costs the government extra for the termination, unemployment, and retraining of displaced government workers.
- Contracts with cost-plus-fixed-fee provisions provide no incentive for efficiency.
- Privatisation may have a higher initial marginal cost than would expanding government services.

*The spate of widely publicized problems at private correctional facilities in the United States has led to increased public scrutiny of the private prison business, contributing to the slowing growth of CCA and Wackenhut, as well as other smaller firms.*

*Since 2000, no states have negotiated new private prison contracts, and several states have curtailed their relationship with the private prison industry. North Carolina, citing insufficient staff and mismanagement, canceled its two contracts with CCA and also passed legislation prohibiting the import of out-of-state inmates, as did Montana and California.*
In February 2001, Arkansas announced it was taking back operations of two of its prisons from Wackenhut. In response to these developments, neither CCA nor Wackenhut have emerged financially unscathed. CCA, especially, has taken a financial nose-dive, with its stock trading as low as 18 cents per share in December 2000 compared to a high of $44 in 1998. Most recently, though, CCA shares have recovered to about $18 in early 2002.

Claims of significant cost-savings and improved efficiency from private prisons have not proven true. Furthermore, private profit interests in sentencing policy and limited public oversight of private facilities complicate the debate over expansion of private prisons. The public and policymakers would be well served by a broad discussion of the complex set of issues raised by prison privatization. The Sentencing Project – Prison Privatization and the Use of Incarceration – Author Miss Amy Cheung - 2001

136/ The POAS remain of the firm view that Prisons should not be operated for profit. There is an undoubted moral obligation on the state to take care of those people the courts sentence to a custodial sentence. We would argue that there is no place in this new Scotland for what can only be described as modern day slavery.

137/ In terms of the financial arguments presented in the Estates Review, which we have already stated, been weighted in favour of the Option 3 Private Build – Private Operate. We believe we have presented sufficient evidence to suggest that the notional 40% savings detailed within the review are based on nothing more than very broad assumptions rather than anything factual and as such are fundamentally flawed. Throughout the world, including England and Wales, there is a vast amount of research that indicates savings of between 1% and 15% so why is Scotland any different?

If a PFI is to be successful, one must expect the private partner to bring more than money to the table. It must bring its expertise and experience and provide efficiency and cost-effectiveness in other ways. If the issue was purely about money, the PFI might not be a valid approach to take. Mr Martin Mathers CIPFA (In evidence to the Justice 1 Committee 22nd March 2001)

138/ It is interesting to note that in the United States of America, the biggest market for private prisons in the world, the tide appears to have turned. In recent years various states have at the first opportunity returned private prisons back to the public sector control. This comes at a time when the SPS wishes to give away control of over 30% of Scotland’s prisons to the Private Sector.

SECTION 6 - ANALYSIS OF THE PRICEWATERHOUSE COOPERS FINANCIAL REVIEW OF THE SCOTTISH PRISON SERVICE ESTATES REVIEW

139/ The Scottish Prison Service Estates Review outcome is supported by Pricewaterhouse Coopers who were commissioned by the Scottish Executive to review the financial figures supplied to Ministers by the Scottish Prison Service.
The fact that Pricewaterhouse Coopers support the conclusions reached in the Estates Review is hardly surprising given that they were commissioned to do exactly that.

In their summary Pricewaterhouse Coopers state in Para 1.1:

> We have been engaged by the Scottish Prison Service on behalf of the Scottish Executive Justice Department to undertake a financial review to support investment decisions that form part of the SPS Estates Review.

Also of no surprise to ourselves is that PwC would find no difficulty with their involvement in supporting such a conclusion on the basis that they will clearly have a vested interest in such an outcome given their previous and current involvement in various other PFI projects throughout the business world.

What is surprising however is that PwC have put their name to a document that has come to conclusions without conducting a proper audit of the information presented to them by the SPS. PwC may contest the fact that they were not engaged to conduct any such audit, but without doing so it is difficult to understand the level of certainty they attach to the outcomes of the Estates Review. This view is reinforced with evidence given to the Justice 1 Committee on the 22nd May 2002 by Mr Paul Mathers CIPFA when he was asked the question:

**Lord James Douglas-Hamilton:** You say in your report that schemes with a wider scope offer the private sector more potential for efficiency and quality improvements. You also say that people considering PFI/PPP schemes should consider the link between the service being delivered and the design and operation of the building. On that basis, which of the options that are considered in the estates review do you think provides the greatest potential for efficiency and quality improvements?

**Martin Mathers:** The first thing to say is that we do not have enough information from the evidence from the estates review and the PricewaterhouseCoopers report to answer that. There are points about quality that the report does not address. Until we know what the underlying assumptions are, it will be difficult to come to a final view.

**Lord James Douglas-Hamilton:** Would you be asking for more costings?

**Martin Mathers:** We would be asking for more details about the assumptions underlying the costings.

One thing that strikes me about the report is that the figures for operational costs in the public-public option are based on historical data from a sample of prisons. However, there must be a relationship between the design of the prison and how efficiently it can be operated. We must assume that those efficiencies can be designed into a public-build prison in the same way as they can be built into a private-build prison. Perhaps the method that is used to cost the public-public option is not valid.
Mr Paul Mathers, CIPFA (In evidence to the Justice 1 on 22nd May 2002)

143/ All the more difficult when you consider that the assertions the SPS make in the Estates Review are based on “Hypothetical prisons” as opposed to existing comparable facilities.

SECTION 7 - POAS RESPONSE TO THE SPS PROPOSAL TO CLOSE HMP PETERHEAD

144/ The POAS believes that the SPS Boards proposal to close Peterhead is one of the more worrying aspects of the SPS Estates Review. The POAS further believes given the size of the Peterhead site a new build 500-place prison should be located there for the purposes of the management of long term adult male sex offenders. In the following submission we will explain the reasons that support our belief.

145/ In our view the Estates Review has not given any serious and in-depth consideration of what the impact of closing Peterhead Prison would have to not only the delivery of a world class prisoner programme, but also the affect on the prisoners themselves, staff and their families and also the local economy of Peterhead. The POAS are of the firm view that all these issues should have been properly assessed within the review, sadly however they have not.

146/ Over the past ten years Peterhead Prison has developed into a world-renowned facility for the treatment of male adult sex offender who are serving a sentence of 4 years or over. It has been recognised by a number of academics and professional bodies as being a centre of excellence for the work it does on behalf of the people of Scotland. This recognition however has not been achieved overnight; it has taken a considerable number of years to develop a fully encompassing regime that meets the needs of the prisoner group located there.

147/ In the early 1990’s it was decided by Scottish Office Ministers that the role of Peterhead Prison within the Scottish Prison system was to change. It was to move from a prison that for a number of years held very violent and disruptive prisoners to a facility that would house in the main adult male sex offenders, with a small percentage being protection prisoners from throughout the prison system. This change in function brought with it major challenges for not only the staff who worked there who were still coming to terms with the aftermath of prisoner riots, hostage takings and other major incidents that had occurred in the late 1980’s but also the local community in terms of accepting a predominantly sex offender prison being on their doorstep.

147/ The POAS believe that at that time the decision made by Scottish Ministers in consultation with the local MP Mr Alex Salmond to change Peterhead’s role within the SPS was extremely brave, we say this simply on the basis that the development of a whole prison to deal predominantly with long-term sex offenders who was indeed experimental as it had never been tried before. However the decisions that were made at that time were undoubtedly the catalyst to what Scotland has in Peterhead today, a
world-renowned centre of excellence for the treatment of long-term adult male sex offenders.

148/ When Peterhead initially developed the Sex Offender programme (STOP Programme) it became clear at an early stage that the programme could not run effectively in isolation from the rest of the prison and as such it was decided that the staff responsible for the delivery of STOP would be formed out of a multi disciplinary approach. (i.e. Social Workers and Prison Officers’ working together) This approach was indeed supported by Professor Bill Marshall, who was and still is an eminent world specialist in the treatment of adult male sex offenders, had been asked by the then Governor Mr Alex Spencer to assist in the development and implementation of the STOP Programme.

149/ A further issue that came to light in the early days and again was linked to the programme running in isolation from the rest of the prison was that if the programme was going to be successful and achieve what it was set up to achieve, less victims of crimes of a sexual nature in Scotland, then all staff who were employed in Peterhead Prison at that time had to “buy in” to the whole concept of the STOP Programme. This was fundamentally important; as had this not happened then the POAS do not believe that Peterhead would have achieved half of what it has to date, in fact we would go as far to suggest that the experiment could well have failed.

150/ The process of getting staff “buy in” was lengthy, simply because the level of training all staff had to undertake was quite substantial. It was through this training that staff were encouraged to challenge pro-offending behaviour and language in a non-abusive manner. It was also the case that it was extremely difficult for a percentage of staff at that time to adapt from the confrontational environment they had experienced whilst working with difficult and disruptive prisoners, to a supportive challenging environment where they had to engage with long-term adult male sex offenders. Throughout the conceptual years of the STOP Programme it was a fact that the majority of staff had to challenge their own personal attitudes and beliefs in terms of not only their use of language but also their own personal interaction with prisoners.

151/ Peterhead has come a long way since those early days. Ten years on and Peterhead has been acknowledged throughout the world as being in the top three for the sex offender programmes that it delivers. The work the prison does on behalf of the people of Scotland has been bestowed with various awards acknowledging not only the quality of the programmes they deliver but also the dedication and commitment of all staff employed there.

“Public safety would be gravely compromised if Peterhead Prison were closed.”
Clive Fairweather, HM Chief Inspector of Prisons

152/ Even throughout the past three years when there has been huge uncertainty around the future of the prison itself, staff have continued to deliver a first class public service, which the POAS are very proud. HMCIP Mr Clive Fairweather has in fact
acknowledged this point in his recent Inspection Report March 2002 where in Para 4.2 he comments:

On this latest occasion we were encouraged to find that despite the recent announcement, staff were in remarkably good heart and were, commendably, determined too continue with the as professional an approach as possible: indeed it would be hard, currently, to find as resolute a group of prison officers anywhere in Scotland. Though the closure of the prison could affect many of these individuals financially, in the various exchanges we had, staff raised instead the issue of what would be lost to public safety if prisoners were to be transferred. This underscores the holistic approach to offending behaviour, which has, in more recent years, gradually become a hallmark of this prison. We were not surprised to find that the prison had recently been awarded BEACON site status, as part of the 'Modernising Government Initiative.

Peterhead Prison is unique within the SPS and makes a contribution to the Agency’s targets disproportionate to its prisoner population yet it has consistently achieved this with a cost per prisoner place less than the Agency target. The staff who are employed at Peterhead have demonstrated their commitment and willingness to adapt and change. This point is highlighted with the following report compiled by Professor Bill Marshall:

The Marshall Report

**Report on Peterhead Prison's Sexual Offender Program**

*20 July, 2000*

I visited Peterhead Prison on July 10th and 11th 2000, at the request of the Governor, Mr. W. Rattray, to do an appraisal of the current status of the STOP program. I have visited the prison on several occasions dating from 1992 to assist in the development of the STOP program and to contribute to staff training. Previously I have submitted reports on the status of the program with the present report being the latest update.

**Current Status**

Since I last visited Peterhead Prison (July, 1996) there have been important and valuable developments to the program. At the time of my last visit I thought the STOP program was one of the best sexual offender programs in Britain and, indeed, among the best prison based programs I have seen anywhere. With the recent developments, the STOP program is even better than it was in 1996. Mr. Rattray and his excellent staff have instituted developments that more effectively round out the process making it a thoroughly comprehensive intervention. Indeed, in considering all the prison based sexual offender programs I have visited or evaluated around the world (14 different countries), the program of Peterhead Prison is clearly world class. This is particularly relevant given that the program is delivered by uniformed prison officers which is not only very uncommon outside Britain but was viewed with scepticism by treatment providers in
North America. The outstanding success of Peterhead's program contradicts the scepticism voiced by North American therapists regarding the value of providing treatment to these difficult clients by prison officers. The staff at Peterhead Prison are to be congratulated on this initiative and their success should inspire programs elsewhere to consider the value of including uniformed staff in the treatment of sexual offenders.

The developments since my last report include: (1) renovation and opening of "A" Hall as the induction centre; (2) removal of the non-sex offender protection inmates so that Peterhead Prison now exclusively houses sexual offenders only; (3) an increase in the population to 300 long-term sexual offenders; (4) conversion of "E" Hall to house a limited number (17) of the most successful graduates of the primary program and (5) the development of a three-stage overall program involving induction, the Core 2000 program, and a maintenance/pre-release program. In each of these three stages the offender spends approximately one third of his sentence time. In addition, the appointment of Dr. Bruce Kidd as the institutional Psychologist has had significant benefits.

The induction process in "A" Hall is thorough and comprehensive. Inmates are given details concerning the rules of the prison and their rights and privileges as well as guidelines about treatment opportunities. They are also carefully assessed to determine treatment needs and to generate motivation to change. Once this is complete, various issues (e.g., education, cognitive skills, drugs/alcohol, anger, relationship skills) are targeted in group work to prepare the offenders for their participation in Core 2000 when they are transferred to "C" or "D" Halls.

Core 2000 involves 85 sessions with 2 sessions each week. This schedule of 2 sessions per week is, in my experience, ideal. I have spent time in numerous prison programs in various countries (Canada, USA, Australia, New Zealand, England, Scotland, Ireland, The Netherlands, Spain, Belgium, Germany, Czech Republic, Bermuda and South Africa) and where sessions are more than 3 times per week, both the staff and the inmates display burn out. The inmates show this by lower levels of participation during the fourth and fifth session each week and by repeated failures to complete homework assignments. Also there is clear evidence in the general psychological literature, that while massed practice (in the present case this would be 4 or 5 sessions per week) may induce rapid change, these changes do not last. Evidence on spaced practice (in this case 2 sessions per week) indicates that it leads to lasting change. The staff effects of 4 or 5 sessions per week are displayed in similar late session lethargy and high turnover. Any move to increase the number of sessions per week would, therefore, be clearly counterproductive.

In the maintenance stage of treatment at Peterhead Prison, the offenders spend the last third of their sentence. The program at this stage involves the development of release plans and refinement of relapse prevention plans, as well as continued work on any issues from the Core 2000 program that need
further attention. One aspect of this component that was thoroughly developed, but has not yet been implemented was community work outside the walls. It was proposed that a small group (6) of carefully selected inmates, under the supervision of an officer, be engaged in limited community work as part of their pre-release preparation. The community was canvassed with a 98% response rate all of whom indicated approval of the project. However a Head Office directive shut down the project before it was implemented. That, I consider was unfortunate because it means these offenders will be less prepared for release than they would have been had the project been implemented. Direct release into the community after a long prison term is not wise; gradual release programs have been very successfully implemented elsewhere.

Making Peterhead Prison an exclusively sexual offender institution shows that the Scottish Prison Service is one the more innovative prison services in the world. I have visited only two exclusively sexual offender prisons: Peterhead and New Zealand's Kia Mantilla Prison. It is only in such prisons that the appropriate prison climate can be created to fully support and facilitate effective sexual offender treatment. My main base of operation is in Bath Institution in Canada, which is a programs prison providing treatment for diverse problems in a mixed population. While Bath Institution delivers an effective sexual offender program the presence of nonsex offenders limits the active involvement in treatment processes outside the group sessions. It is critical for administrators to understand that treatment processes are initiated in the group sessions but are implemented primarily between sessions. Creating the appropriate climate within a prison is the most effective contribution to effective treatment. The administration and online staff at Peterhead Prison have achieved an excellent prison environment to conduct sexual offender treatment and they should be given full support to continue their outstanding work. I understand there are suggestions being considered to close Peterhead Prison and shift the program to an institution near the central belt. If this is done it will take a high quality governor and a devoted and fully supportive staff several years to achieve the standards operating at present in Peterhead Prison. This would be a retrograde step and would have to be supported by some very sound reasoning that is presently not at all apparent to me.

**Future Directions**

The very first thing I would recommend is that Peterhead Prison remain the centre for the treatment of Scotland's long term sexual offenders. The exemplary staff, the excellent treatment, supportive environment, the forward thinking administration, and the evident community support for Peterhead Prison's program, make any proposal to relocate these offenders remarkably like fixing something that is not broken. Sexual offender treatment programs in prisons are very difficult to implement at all, let alone effectively. Peterhead Prison has achieved this and more. Their program should be seen as one of the examples of excellence implemented
by the Scottish Prison Service and SPS should be duly proud of the achievements of Peterhead Prison.

Second, I want to complement the staff at Peterhead Prison for the excellent changes they have made to the program over the past four years. The flow through the three stages (induction, Core 2000, and maintenance) is an ideal utilization of their resources and their suggestions for a limited community work program represents the most effective way to begin the process of re-assimilating these offenders back into society. A reflection of the efforts made by staff at Peterhead Prison, is the fact that in 1996 the cost per offender to operate the prison and its programs was $36,000, and is now only $24,000 despite the improvements to the program, and an increase in productivity in industrial training.

In conclusion, I consider the operation of Peterhead Prison, in so far as it affects the implementation of an effective sexual offender treatment program, to be exemplary and forward thinking. I strongly recommend that it be retained as Scotland's model sexual offender institution and that the innovations at Peterhead Prison be given full support.

W.L. Marshall, Ph.D. C. Psych. FRSC.
Professor of Psychology and Psychiatry
and Director, Bath Institution Sexual Offenders' Program

154/ This report is overwhelming evidence from a world expert in Sex Offender treatment programmes, but the SPS have through the Estates Review chose to totally ignore it.

155/ There has been an overriding assumption made by the SPS in the Estates Review that the Core 2000 Programme (Stop Programme) could be moved to a different establishment and would not suffer if Peterhead were to close. They assume that the majority of staff currently located at Peterhead would transfer to a new location with the programme. In order to challenge this assumption the POAS conducted a straw poll of 20 uniformed staff (various ages and lengths of service) at Peterhead and asked them the following question.

**If Peterhead were to close in 3 years time would you transfer to HMP Glenochil?**
The replies we received were as follows:

Yes = 8 (40%)
No = 6 (30%)
Undecided = 6 (30%)

If you were to transfer the results of this straw poll across the entire uniformed group of staff currently at Peterhead you would reach the following result:

Current Complement of Staff = 240
Uniformed Staff Complement (Mobility Written into Contract) = 200
Yes = 80  
No = 60  
Undecided = 60

On the basis of this straw poll 30% of staff have indicated that they would not transfer if the prison were to close with a further 30% being undecided. The POAS believes that these figures are significant on the basis that you could not loose this amount of staff and expect to transfer the programme without it having a detrimental affect.

156/ Over the past 2 1/2 years arguments have been presented by the SPS Board in order to try and support their proposal to close this Centre of Excellence, arguments such as:

- The buildings at Peterhead are in a dilapidated state of repair.
- Location - Distance from the Central Belt.
- Issues around Prisoner Visits.
- Issues around through care.
- No access to night sanitation – “prisoners are still slopping out”
- No access to EPIC (Electrical Power in Cell)

157/ We will respond to each of the points individually.

**THE BUILDINGS AT PETERHEAD ARE SUBSTANDARD AND IN A DILAPIDATED STATE.**

158/ Within Para 154 of the SPS Estates Review it states:

*The buildings at Peterhead are substandard. Built in 1888 from shuttered concrete, many of the buildings are showing their age and are reaching the end of their useful life. There are problems with water ingress in a number of residential and support buildings. Maintenance is expensive and operationally the layout of the prison is wasteful of manpower. No prisoners have access to power in cells or to proper night sanitation and so slopping out or portable toilets remain the only current options. This is highly undesirable.*

159/ It has to be pointed out that to our knowledge the SPS in forming this opinion did not carry out any form of structural survey, this alone questions the content of the above statement.

160/ In response to this Paragraph the POAS would point readers to the recent HMCI Inspection Report published in March 2002. In Para 4.8 of the report the Inspectorate state:

*The prison was very clean and tidy, whilst its buildings were assessed as being in good condition (see specialist report Annex A).*
Within the specialist report compiled by Mr Sandy Ratcliffe Guest Inspector (HMIP England and Wales), who accompanied the HMCIP on his inspection, he stated in his conclusions:

_The residential buildings at HMP Peterhead have been well maintained and are in good physical condition._

He also stated that:

_It would be worthwhile to produce a detailed cost/benefit analysis before writing Peterhead off._

In our view the points made above clearly suggest that a full cost analysis should have been carried out in respect of a programme of refurbishment to the existing residential buildings currently located on the Peterhead site. The results of such an exercise would obviously have to be weighed against whether or not it would dramatically improve not only the prisoner accommodation but also the facilities within the establishment, against the option to invest in a new 500-place prison built on the current site.

Moving on to the second argument the SPS have put forward to support their recommendation to close Peterhead.

**THE DISTANCE PETERHEAD PRISON IS FROM THE CENTRAL BELT.**

The SPS state in Para 161 of the Estates Review:

_There are some operational disadvantages to remaining at Peterhead. It is more difficult to support operationally in the event of problems than a central belt location._

The POAS do not agree that there are disadvantages in having a prison located in the North East of Scotland. In fact if you take the above statement in the strictest sense does this mean that Aberdeen and Inverness Prisons are next to close?

Other than those outlined above, we believe that the primary reason the SPS Board are recommending the closure of Peterhead is ultimately they need to close a number of publicly operated establishments in order that they make sufficient prisoner numbers available for transfer to their ‘desired’ option the Private Sector.

Sometime ago the SPS Chief Executive Mr Tony Cameron made the following ludicrous statement:

_“The SPS cannot afford to have a social conscience when managing the financial budget for the Agency”_
of the local area, but this cannot be the said of the Scottish Government. In our view, and we are sure the Scottish Executive would agree, that there is a responsibility on Government to ensure that there is fair distribution of public services throughout Scotland and not just the central belt.

168/    The closure of Peterhead Prison would be an absolute disaster for local economy. In recent years Peterhead has lost a number of major employers such as Cleavland, Cross and Blackwell, Simmers, and the running down of RAF Buchan. There has also been a major downturn in the fishing industry brought about by decommissioning.

169/    The local infrastructure would also suffer as Prison Officers’ are fully integrated in the local community, their partners work, their children attend local schools, so the affect of closing Peterhead Prison would be felt right across the board and not just in economic terms.

**PRISONERS ACCESS TO VISITS.**

170/    The SPS have continuously stated that prisoners have problems attaining visits at Peterhead. On giving this issue serious consideration and after discussions with a number of people we simply do not believe this to be the case. The Local Visiting Committee stated the following:

*Prison Visiting Committees act as independent observers on behalf of the Scottish Executive Justice Department with regard to complaints or queries by prisoners as to their conditions, treatment and management. Although having statutory responsibilities, members are independently appointed by local authorities and are normally a mix of Councillors and non-Council members.*

*Due to their access to the prison as part of their duties the Peterhead Prison Visiting Committee has a unique insight into the operation of the prison, the views of prisoners, the arrangements for delivery of the STOP programme, the structure, facilities and upkeep of the buildings, and the morale of prisoners and officers. In view of this knowledge it has been able to take an objective approach to consideration of the Estates Review by the Scottish Prison Service and is clear that the balance of argument falls very much in favour of retention. The PPVC accordingly will be making representations to the Scottish Executive and the Scottish Parliament's Justice Committees against the current proposals. They will also be liaising with Aberdeenshire Council which is making separate representations.*

171/    The evidence shows that there is not a significant problem at Peterhead with regards to prisoners receiving visits. Yes there are a sizable number of prisoners who do not receive any visits at all but this is primarily down to the nature of their offence rather then the distance they are from their local area. In his last inspection the HMCIP commented in Annex 8:

*We were told that around 25% of prisoners currently held at Peterhead had addresses north of Perth, and that because of the offences committed nearly 50% did not receive visits from friends or family.*
Then after meeting with two groups of prisoners within the establishment the HMCIP goes on to say in Annex 10:

Both groups expressed the strong view that they did not want Peterhead to be closed. They said that for prisoners convicted of sex offences it was the only safe establishment in Scotland. Also because everyone held there was convicted on the same type of offence, there was little bullying or violence. Illegal drug taking was minimal and staff/prisoner relationships were extremely positive. The group who had taken part in the STOP 2000 programme said it was a difficult experience, but one which had helped them come to terms with their offence.

Most prisoners in the groups had discussed the issue of distance from their homes with their families, but recognised that long journeys were an acceptable price for their safety. They also said that they had longer visits to compensate for this and some relatives stayed for several days to take consecutive visits. (Both groups recalled in detail how they and their visitors had previously been abused and assaulted in other prisons)

He further stated:

They felt that the work being carried out in Peterhead and the culture and environment created were unique and unlikely to be replicated elsewhere. They were most concerned that if the prison were to close, they would be dispersed to other establishments in the Central belt. Safety and that of family and friends would again be placed in jeopardy.

Earlier this year over 200 prisoners at Peterhead signed a petition opposing the proposal to close the prison, one or two of them also put forward statements such as the following:

Peterhead Prison has provided for the first time, the kind of surroundings where I as an offender can work through my rehabilitation programme in a safe environment. In other prisons I have felt in constant fear for my safety and too scared to leave my cell. As our petition to the Justice Committee said, we want to be able to address our offending behaviour in a prison setting that is free from violence and bullying, this is something that certainly cannot be assured in any other prison in Scotland.

- HMCIP Inspection Report – HMP Peterhead March 2001 ANX 12
- HMP Peterhead - Professor Bill Marshall Report – ANX 14

DELIVERY OF THROUGHCARE

The final point the SPS have used in order to justify their recommendation to close Peterhead is around the alleged problems with the provision of through care for prisoners due for release. In our response to this point we consulted with members of staff at Peterhead with experience of dealing with outside Agencies in relation to the process of through care and they stated the following:
On admission to HMP Peterhead prisoners are interviewed by social work, routinely the relevant community based social work service is informed by the unit of admission and a request for relevant reports is made. In the case of Extended Sentences, links are established with the named officer as soon as possible and maintained during sentence. During the sentence Throughcare is provided by the prison based social work team, prisoners are allocated a social worker at the point of admission, contact is undertaken as per National Standards and Objectives for Criminal Justice Social Work. In practice reviews are undertaken to link in with the Sentence Management Process, thus obtaining updated information and maintaining prisoner contact and thus allowing relevant information to be shared with the community social worker. In addition, the social work unit provides an updated list of prisoners currently resident in HMP Peterhead to the relevant Criminal Justice Manager to facilitate planning for release on a regular basis.

The practice of community based social work varies, however contact on a face to face basis occurs in the main for the preparation of Home Background Reports, Routine ‘courtesy calls’ to prisoners when visiting the prison for other purposes to maintain links and make the most of the visit, Pre-Release Meetings and STOP 2000 Post Programme Case Conference Reviews, which are multi-disciplinary meeting often involving agencies other than Social Work, i.e. housing, police, specialist project workers, facilitators, psychology, convened by the Throughcare Manager (Senior Social Worker).

Copies of complete Parole Dossiers including group work reports are routinely sent to the Supervising Officer as part of Risk Management process prior to liberation. Community bases social workers have indicated they value the information sharing of the case conference/ pre-release meeting as providing an overview of the prisoner’s behaviour whilst in custody.

Ordinary community based social workers attend for the pre-release meetings, where this does not occur (there are very few) is due to the fact that the prisoner is locating the Probation service in England, through inter jurisdiction Transfer, however extensive telephone liaison is undertaken the Senior Social Worker attends the meeting and acts on behalf of the supervising officer for comment/amendment. Other incidents where such a measure is used is when a prisoner has been moved for the operational purposes to another prison.

Child Protection/Community Protection, through the preparation of Circular 11 reports and notification to relevant area Directors of Social Work and Attendance at Multi-Agency Risk Management meetings/Circular 11.
OPTION APPRAISAL 2000 – NEW BUILD

175/ In 2000 Peterhead Management were asked to put forward an option appraisal detailing the full costs, including operational costs, of a new build 350 place prison located on the current site.

176/ This piece of work was completed jointly between Local Management and Local POAS Representatives and forwarded to the Estates Review Group at SPS HQ Calton House.

177/ The POAS Nationally were somewhat surprised when there was absolutely no mention of the option appraisal within the actual SPS Estates Review or the Pricewaterhouse Coopers Financial Review and it was with great difficulty, we acquired a copy of the appraisal. It is clear from the figures contained within the option appraisal that dramatic savings can be achieved within the public sector from moving away from an old facility into a facility built for purpose.

178/ At the time of the option appraisal being submitted, a design had been agreed and it was from this design and from the knowledge of those involved had in relation to the classification of prisoner and the type of regime that would be operated within that design that both management and Local POAS were able to agree in principle an actual staffing level for the operation of the new build.

179/ The Option Appraisal detailed what the operational savings would be if a new build prison was built at Peterhead and to say they surprised even ourselves would be an understatement. The total cost of the new build had been established by utilising SPS Estates Department at HQ and were as follows:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>COST</th>
<th>ITEM</th>
<th>COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>350 Place Accommodation</td>
<td>£14,194,000</td>
<td>Services</td>
<td>£1,530,000</td>
</tr>
<tr>
<td>Gate Complex</td>
<td>£3,500,000</td>
<td>Equipment</td>
<td>£494,000</td>
</tr>
<tr>
<td>Industrial Complex</td>
<td>£2,000,000</td>
<td>Associated Costs</td>
<td>£1,310,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>£23,028,000</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

180/ If this rebuild had went ahead then it would have had the following affect on firstly a significant reduction in the staffing complement which in turn resulted in a reduction in cost per prisoner place:

<table>
<thead>
<tr>
<th>Cost Per Prisoner Place 1996/97</th>
<th>Cost Per Prisoner Place 2000/2001</th>
<th>Proposed Future Cost Per Prisoner Place</th>
<th>2000/1 Staffing Complement</th>
<th>Staffing Complement with a new build</th>
</tr>
</thead>
<tbody>
<tr>
<td>£39,982</td>
<td>£26,581</td>
<td>£19,695</td>
<td>255</td>
<td>218</td>
</tr>
</tbody>
</table>
181/ The operational cost savings approximately £1,000,000 primarily came from the reduction of came from operational uniform staff (37 staff). There is no doubt that this is a significant financial saving on the operational side of the business and as this was the case the new build prison would have virtually been paid for over a 25 year period out of those saving.

182/ Although this exercise was carried out some 2 years ago and was based on a new build of 350 places we cannot understand why there was no mention of this information within the Estates Review. We believe it should have been as when the Justice Minister announced the Estates Review in the Parliament a number of MSP’s asked questions around why no costing had been carried out in relation to the option of a new build on the Peterhead site.

"It would be unfortunate if this environment and expertise which has been developed over the past 10 years were to be lost."

Lady Cosgrove, Cosgrove Committee

183/ The POAS would strongly suggest that the Scottish Executive resist the SPS’s recommendation to close Peterhead Prison and furthermore give serious consideration to investing in a new build 500-place facility on the current site that is fit for purpose and which would reflect the needs of a Centre of Excellence. It would be an absolute travesty if the work currently being carried out at Peterhead, which has taken over 10 years to develop, were disrupted in any shape or form for the sake of extending the Private Prison concept in Scotland, which appears to be the SPS Chief Executive Mr Tony Cameron’s ultimate desire.

SECTION 8 - POAS RESPONSE TO PROPOSED REDUCTION IN SIZE OF HMP BARLINNIE

184/ Given the location of Barlinnie and benefits derived from it, we find it hard to understand the logic in 'downsizing' instead of utilising what is described as 'an excellent location' SPS Est. Rev. para. 129. As already stated we accept and support the need to improve the facilities and conditions at Barlinnie and in fact as a trade union we have long called for such investment to improve the standards in this establishment, both for staff and prisoners.

185/ The advantages provided to the SPS from this location appear to have easily been dismissed, given one of the principle reasons given for shutting Peterhead was its remoteness, the logic applied to Barlinnie does not make sense to us. Given the scope of the land available within the grounds of Barlinnie we believe it is perfectly feasible to operate on a reduced capacity when time allows (as is the plan for a private build) and rebuild a purpose built establishment on site, maintaining the easy access for families, courts and legal representatives. It would relinquish the need to procure a new site and go through the lengthy process of securing planning permission. There
is already an acceptance of the surrounding community for the presence of the establishment, which is not something that can be easily taken for granted.

186/ It is our view that the Barlinnie site offers the opportunity to develop 2 purpose built areas of accommodation in 2 phases, one to house the untried population and one to house convicted prisoners. With some forethought and planning this could be achieved by applying the same strategy proposed for facilitating a private build in relation to decanting.

187/ A point to note is the impact of the closure of Low Moss. Taking into consideration the location of this establishment and the numbers involved, it is hard to imagine where potentially 350 prisoners would decant to other than significant numbers of those ending up in Barlinnie. There is not mention in terms of timescale the impact this would have on developing Barlinnie under either option and should be considered further before reasonable timescales can be arrived at.

SECTION 9 - POAS RESPONSE TO THE SPS PROPOSAL TO CLOSE HMP LOW MOSS

188/ The POAS support the recommendation within the SPS Estates Review to close HMP Low Moss when available accommodation becomes available and consider the site for a new prison facility. The SPS are quite right when they say in Para 146 of the Review:

> Overall, the standard of accommodation is extremely poor at Low Moss and it is becoming increasingly difficult to maintain with problems of wet rot being found following water ingress.

Also in Para 147;

> There is no debate about the unsuitability of the accommodation at Low Moss. As a result, refurbishment was not an option that required to be considered in any depth.

Although we have already stated that we accept the proposal to close Low Moss, we would hope that any new build facility that is located on the Low Moss site will be on the basis of Option 1 Public Build - Public Operate or Option 2 Private Build - Public Operate.

SECTION 11: SUMMARY AND CONCLUSIONS.
Thank you for your letter of 15 May about the Prison Estates Review.

I note the Committee’s recommendation that a full structural survey of HMP Peterhead should be carried out. However, such a survey would be expensive and in the Executive’s view, not serve any useful purpose. I accept that the buildings at Peterhead are not in danger of falling down. However, the key issue is not the durability of the buildings but their fitness for purpose.

It is generally recognised that the buildings fall well short of modern requirements. The electricity, gas, water, and sewerage services on the site are all under significant strain and in need of upgrading or replacement. Whilst the buildings are not unsafe or unstable, the shuttered concrete is beginning to degrade. Most significantly, the structure of the buildings, the thickness of the walls, and the size of cells do not readily permit either the installation of integral sanitation or division into groups to allow electronic night sanitation. The term ‘state of exhaustion’ used in the Estates Review is a summary of these factors.

All of the problems mentioned above are readily apparent from inspection of the premises. A structural survey would add nothing worthwhile enough to our information on any of these points to justify the expenditure, and so would not be a productive use of time or money. I therefore do not propose to ask the Scottish Prison Service to instruct such a survey.

As regards the final point in your letter, there is no record of a full structural survey having been carried out at Peterhead. Structural surveys are not commissioned unless indications from visual inspections, settlement or other problems indicate that they are necessary. A visual survey was carried out in August 1994 to ascertain the extent of the problem of “rain penetration through the numerous cracks in the mass concrete walls.” That survey also included investigation of external wall foundations at four locations. The 1979 survey referred to by Mr Fairweather was a detailed
“Use and Condition Survey”. It was not a structural survey: it was carried out in order to provide a comprehensive and analytical record of all building units comprising the prison complex. A search of the relevant records has been unable to trace a copy of the report of that analysis. In any event, the contents of that report could not have any significant bearing on the current discussion for the reasons given above.

A copy of this letter goes to the Chief Executive of the Scottish Prison Service.

JIM WALLACE
31 May 2002

Jenny Goldsmith
Clerk
Scottish Parliament
Committee Chambers
George IV Bridge
Edinburgh
EH99 1SP

Dear Jenny,

When we appeared 22 May 02, I promised to let the committee have the figures for nurses attendance over the last 6 months. Below is a list covering November 2001 to May 2002.

- Standard working week for Full Time Nurses and Senior Nurses is 42 hours per week.
- Average for each nurse per week is 55.3 hours per week.
- Highest working week was 66 hours.
- Lowest working week was 42 hours
- All extra hours are paid at a premium rate.

Yours sincerely,

C. Murcet

Ron Tasker
OPERATIONS DIRECTOR
PREMIER CUSTODIAL GROUP LIMITED
JUSTICE 1 COMMITTEE

Remit and membership of review group regarding future of HMP Peterhead

Correspondence from Alec Spencer, Director, Directorate of Rehabilitation and Care, Scottish Prison Service

The membership of the group and terms of reference have been agreed with Ministers as follows:

Alec Spencer, Director of Rehabilitation and Care, SPS (Chairman)
Professor Roisin Hall, Head of Psychological Services, SPS
Hilary Eldridge, Director Lucy Faithfull Foundation
Stewart Campbell, STOP Programme Manager, HMP Peterhead, SPS
Jane Martin, Criminal Justice Social Work Manager, Fife
Rona Sweeney, Deputy Governor, HMP Barlinnie, SPS
Professor Kevin Power (Psychologist)
Dr David Coghill (Adolescent Psychiatrist)
David McKay, SPS College (Secretary), SPS

The Terms of Reference are:

To provide Ministers with advice on the practical issues and implications which will have to be taken into account to enable a fully informed decision on the future of Peterhead to be reached. In particular the group should pay regard to:

the best advice on the ‘monoculture’ or mixed population argument;

whether there is any scope for a range of accommodation:

to provide dedicated accommodation for only those currently undertaking programmes or for the population at large, and/or

to provide some other configuration of accommodation to meet the different categories or sentence lengths of sex offenders;

make an assessment of the likely disruption caused by the moving of prisoners from Peterhead, and whether and how it could be managed without reducing the effectiveness of the programme, taking into account staffing and training issues and transitional arrangements;

to consider the impact that such a proposed transfer would have on the throughcare process and any other public protection matter.
The Group is to report to the Deputy First Minister & Minister for Justice, and the Deputy Minister for Justice by the end of June 2002.
LEGAL AID

Thank you for your letter of 20 March following up the debate on the Committee’s report on legal aid. I see that this letter (which appears to have taken some time to reach me) has crossed with one that Richard Simpson sent you on 31 March about the announcements I made during the debate.

I am pleased that the Committee feels able to set out its key priorities. This will be helpful for us in taking forward the numerous issues mentioned in the report. It may be helpful if I respond to your letter by reporting on how matters currently stand in those priority areas.

- Eligibility

As I announced, we are making a number of changes to the capital limits in advice and assistance and civil legal aid. Work on the necessary Regulations is advanced, and I hope to have them laid and introduced before the summer recess. I hope that it may also be possible to introduce the changes to the exemption in matrimonial cases, which will probably require amendments to changes to two sets of Regulations, by then.

I am presently taking legal advice on whether an “automatic” mechanism for uprating the limits on a regular basis in future could be established under existing powers; and I will advise the Committee of the conclusions.

- Fees

I fear that I have still to receive any proposals from the Law Society on fees for civil legal aid work. However, I understand that the Society does intend to put forward proposals for a quality system at the same time. I am in principle attracted to the idea of introducing such a system alongside any increase in fees: but you will understand that until I see the Society’s proposals, and take a considered view of their content, I cannot
judge whether that would be feasible. I will, however, keep the Committee’s concerns in mind.

As far as fixed payments are concerned, I hope to lay draft Regulations in the next few days to address once and for all any concerns about the ability of the system to provide adequate remuneration for solicitors in exceptional cases. These Regulations have been the subject of detailed discussions with the Law Society. My officials have also sought expressions of interest from the research community in the proposed project looking at the overall impact of the fixed payment regime; and they hope to get the project under way soon.

- Quality

As indicated above, the issue of quality in civil legal aid work will be taken forward in the context of civil fees. This may provide a template for future expansion of quality schemes in other areas of work. I understand that the Scottish Legal Aid Board and the Society are currently considering the Committee’s broad recommendation to look at ways of evaluating quality: my officials will seek to participate fully in work in this area. The Board’s work on mapping the availability of legal services is expected to be ready in June, and I will of course make sure that you receive a copy.

- Scope

My officials are currently working on the complex interactions between the benefits system and the legal aid system, and I hope to be in a position to make an announcement soon: but, as I have told the Committee, this is a difficult and complicated area, and I want to be very sure that any new arrangements are comprehensive, consistent and robust before coming to the Committee with proposals.

You also ask about the timing of the proposed changes to sanction for expert witnesses and to the arrangements for cases involving special urgency. I hope to lay Regulations on both of these issues before the summer recess.

Finally, you ask about the Executive’s response to the review of legal advice and information provision in Scotland. I hope to make an announcement shortly about the way the Executive intends to take forward development work in this area; and will of course keep the Committee informed of developments.

I hope that this is helpful; and I hope you will agree that considerable progress is being made in a number of areas identified in the Committee’s report.

\[Signature\]

JIM WALLACE
Introduction

1. Members of the Justice 1 Committee went on a fact-finding visit to HMP Barlinnie on Monday 29 April 2002 to assist with their consideration of the Scottish Prisons Estates Review. The members representing the Justice 1 Committee were Donald Gorrie, Paul Martin and Michael Matheson. This note provides a factual account of the visit.

2. The Visit Programme is attached at Annex A and includes background information provided by the Governor, Mr McKinlay, in advance of members visiting the prison.

Informal Discussion with the Governor

3. Mr McKinlay welcomed members to HMP Barlinnie. Members and the Governor talked informally about the prison and the range of factors that impact on managing a prison.

Prisoner numbers and overcrowding

4. On the day of the visit, Barlinnie’s prison population was 1187, which meant that the prison was functioning at approximately 40% over capacity. The average prison population at HMP Barlinnie is around 1090 prisoners. The Governor told members that trends for England show that their prison population is also increasing. However the Governor was unsure whether the current sharp increase in numbers was due to a seasonal trend (historically April has shown an increase) or the overall trend.

5. The Governor indicated that he had difficulty moving prisoners on to HMP Low Moss because of their dislike of the dormitory accommodation and as such, many inmates preferred to stay in Barlinnie prison, even with slopping out and overcrowding. This of course had an impact on the number of prisoners held at Barlinnie.

6. The Governor highlighted that HM Prison Barlinnie had a duty to accept all those referred to it by the courts. On Easter Saturday, Glasgow courts processed approximately 160 cases (including custody cases). Today would see 150 new arrivals, plus 25 prisoners from HMP Low Moss because of the recent riot. This increasing demand for places was exerting pressure on the management to consider using the hall set aside for renovation to house prisoners. If prison numbers
continued to rise in the short-term, the Governor advised that the old Special Unit could be used to provide another 20 places. Additionally, some storerooms that were formerly used as cells could be converted.

Addressing Offending Behaviour

7. Michael Matheson was interested to know whether there had been any prisoner success stories. The Governor remarked that it was difficult to be specific, but usually success was down to the individual who had taken the decision to change his life. This was a very difficult decision because when a prisoner is released and returns to his home community the same pressures exist from his peer group and family. Ordinarily though the profile of a prisoner who wants to reform, is one who asks questions and seeks out programmes to address his offending behaviour. Michael Matheson expressed his concern that not enough was being done to address offending behaviour universally.

8. When asked about programmes aimed at reducing reoffending behaviour, the Governor said that it was difficult to pinpoint whether specific initiatives were having an effect on prisoner numbers. Michael Matheson stated that in the late 1990’s to 2000 members were advised that prisoner numbers were expected to decrease; now the Prison Estates Review asserts that numbers are increasing. It was fundamental that the reasons for the increase were identified. The Governor suggested that the increase may be down to more police initiatives, the length and type of sentences handed down in courts and fines which could not be paid leading to arrest and finally a custodial sentence.

Education and Support Programmes

9. Donald Gorrie speculated whether focussing on education to raise literacy levels would go some way to addressing offending behaviour. The Governor explained that Barlinnie prison had to deliver 43,000 hours of educational programmes in 2001-2002; unfortunately the accommodation for the education centre is limited. It was noted that the young remand group was particularly difficult to encourage into education. They tended to have the same life patterns inside the prison, as they had in their community, for example they would not attend school, similarly in prison they do not attend education programmes.

Presentation on Education Programmes

10. Members received a short presentation from the Regimes Manager and staff about the types of courses delivered in Barlinnie prison. These were Cognitive Skills, Anger Management, Problem Solving Skills, New Deal, STOP 2000, Drug Rehabilitation, Employability Pre-Release and Offence Awareness. In response to the HMCIP’s
intermediate report of the prison in November 2000\textsuperscript{1} a number of programmes, such as, adult literacy, drug and alcohol awareness and emergency first aid, had been developed and were being delivered to remand prisoners.

11. Annex B shows in detail the courses provided. It was important to note that education was not compulsory. A prisoner could only be reported for not attending work. Attendance on educational programmes had improved. Prisoners were being persuaded to attend programmes now that they receive payment, much as if they were at work. The prison was in partnership with a number of external organisations: Cranstoun Drugs Initiative, Greater Glasgow Health Board, Career Scotland and the Employment Service, to aid employment, assist with housing and understanding the benefits system. HMP Barlinnie was obligated to provide 43,000 learning hours for 2002-2003, with a further 10,000 hours dedicated to the New Deal.

12. The prison staff had developed a course “Offence Awareness Programme” which ran alongside the STOP 2000 Programme for those prisoners that did not meet the criteria for the STOP 2000 Programme. Members were given an outline of the course, which is attached at Annex C. The course was due to be considered for approval by the Scottish Prison Service. Members were advised that the Offence Awareness Programme was flexible, in that it could last the whole length of a prisoner’s sentence. Prison staff had received professional advice which substantiated the benefit of this programme, principally because any work undertaken with sex offenders, specifically victim recognition, would be valuable.

13. Paul Martin questioned whether the STOP 2000 programme should only be delivered in HMP Peterhead, within a monoculture. Prison staff refuted this; the programme is condensed from 2 years to 6 months by having more frequent sessions, this did not reduce the quality of the programme. Letham Hall, which houses vulnerable prisoners and sex offenders, is self-contained and has its own work parties that do not interact with the rest of the prison population. Prisoners serving sentences for sexual offences take their visits along with other protected prisoners. Staff confirmed that there had been no complaints regarding assaults and visiting problems.

14. The Governor drew members’ attention to the paper produced by Professor Bill Marshall\textsuperscript{2} which suggested that 2 units, one in Peterhead and one in the Central Belt could deliver the programme just as effectively. In essence, handling a distinct group of prisoners is about effective management systems and regimes. Michael Matheson asked the Governor what the optimum environment for dealing with sex

\footnotetext{\textsuperscript{1} HM Prisons Inspectorate’s Intermediate Inspection of HMP Barlinnie 6-7 November, page15, para 15.2.5 \textsuperscript{2} Proposal for the Provision of Treatment Services to Sexual Offenders in the Scottish Prison Service (J1/02/11/17)
offenders was, monoculture or a unit within a mainstream prison? The Governor said that there was a case for segmenting the population to deal with the needs of prisoners, and if there were circumstances where sex offenders, with personality disorders, or prisoners who were extremely violent, then there was a case for containing them separately.

Tour of establishment

15. The Barlinnie estate is 32 acres in size. Members were shown the front gate, staff facilities, visitors entrance, Drug Support Unit, Cranstoun Group, D Hall, B Hall, A Hall and Letham Hall.

16. **Front gate** – was very modern. A hand scanner entry system was in operation for staff. Vehicle registrations were checked and baggage scanned. Random searches were carried out from time to time.

17. **Staff facilities** – this formed part of the new build providing up-to-date gym facilities and a rest area. Barlinnie prison currently had 595 staff, although 616.5 staff was the full compliment figure. Of this number, 133 were operational staff and 251 residential staff. Each hall had approximately 42 allocated staff.

18. **Visitors entrance and agents rooms** – agents could use a biometric system to enter the agents visiting area. This recognised the agents fingerprint. A new initiative was shortly to be introduced where a video conference could be set up between the prison and the sheriff court. This would have the effect of reducing the amount of appearances at court a prisoner had to make, thereby reducing escort time and costs.

19. When visitors entered the prison they were scanned using a hand scanner which detects whether people had come into contact with drugs recently. Visiting hours started at 11.15 am and continued to 8.05 pm with a break between 4.00 pm and 5.00 pm. Untried prisoners could have a visit every day if required. Convicted prisoners were allowed 2 hours visiting time per calendar month. It was noted that if all the prisoners took up their full quota of visits, additional facilities would have to be found, but that this was seldom the case. Prisoners with family located in distant locales were allowed to accumulate 2 visits, as such their family could visit for 1 hour and 20 minutes as opposed to 40 minutes. Before visitors were allowed to leave the room, all prisoners had to be accounted for. There was a large visiting area and a smaller visiting room. In addition there was a special visiting room. An area of the large visit room was set aside for a children’s play area. There was disabled prisoner access to the room.

20. **Drug Support Unit** – there were currently 134 prisoners on methadone. The facility offered three one-to-one interview rooms and three classrooms where the Lifeline Programme was delivered. Dispensing of methadone was time intensive. The management team was looking
at having a multi-centre dispensing system to cut down on unnecessary prisoner movements. Individual sessions were available with the nurse, and the doctor held a clinic every 2 days. The prisoner induction programme covered addiction health issues such as Hepatitis C. Prior to release prisoners were warned that their tolerance to street heroine would have reduced while serving their sentence, therefore if they took drugs of the same quantity and quality they increased their risk of suffering a drugs overdose, possibly leading to death.

21. Cranstoun Group – assesses prisoners, then passes these results on to other agencies, then checks that any referrals have been dealt with.

22. D Hall – was the first hall to be renovated. It was separated into 4 units housing 64 prisoners in each unit, which in turn were staffed by 4 prison officers. The cells had electric power and in-cell sanitation. The benefit of the refurbished accommodation was evident to members. During the weekend the food was delivered in dixies (large portable heated food containers). The most common complaint about this method was that because the food had to be laid out for prisoners, it was frequently cold by the time they got to eat it. Food was eaten in their cells.

23. B Hall – opened on 22 March and has had a basic renovation carried out. Even with the renovation the prison officers said that there was no office space for interviews etc., however there was no doubt that the residential accommodation was greatly improved. Generally B Hall housed 320 prisoners, but could take up to 370 prisoners by doubling up more of the cells normally retained as single cells for observation purposes. In the 2nd flat, 60 prisoners were on the detox programme and in the 3rd flat, 45 prisoners were on methadone. Prisoners had committed various crimes, but the vast majority were drugs related.

24. Prison staff talked about the constant round of opening cells up for prisoners to attend court, use the shower or the phone, for social work visits, family visits and visits from agents, which was very staff intensive. This left little time for meaningful interaction with prisoners. Overcrowding generally restricted the ability of prison staff to do anything beyond movements. There were 48,000 movements last year alone. If a prisoner wished to opt out of prison life, it was understood that he could be locked up for a long period during the day. With the introduction of in cell television, prison staff were concerned that it was much more difficult to identify prisoners with any particular problems.

25. A Hall – housed short term offenders and untried prisoners. The induction flat was on the 2nd floor. This was where the 3-day induction programme that familiarised inmates with the prison routine was delivered. On the day of the visit the hall contained 279 inmates; full capacity was 286. This hall had not been renovated, although small screens had been provided to afford some privacy when using the
toilet. Prison officers told members about the listener scheme, where prisoners were trained by the Samaritans to help vulnerable prisoners.

26. *Education Unit* – some classes were held in the halls, such as, drug dependency. Sentence management was available to prisoners serving sentences over 4 years. A basic skills assessment of each inmate was carried out. This provided an indication of their literacy level. Approximately 30% of those screened had a very low literacy level. The tutor highlighted that although the classes were voluntary she encouraged them through her own enthusiasm for teaching, offering prisoners an opportunity to learn in a non-threatening environment. Numeracy could be taught through other activities, for instance, learning about healthy eating where recipes for 2 people had to be altered for more people. The tutor was not in favour of compulsory education as inmates had to be ready to learn for education to be effective. She estimated that approximately a quarter of the prison population was attending classes, this equated to 280 prisoners a month, however the tutor commented that those serving shorter sentences were less likely to receive education. Courses were varied and relevant: life skills, job seeking and modern studies.

27. *Letham Hall* – designed to hold up to 150 prisoners and currently had 139 prisoners. A fence surrounded the building, as the fabric of the building meant that it was not secure. Letham Hall held prisoners serving sentences for sex offences and vulnerable prisoners. Those whose personality made them vulnerable or perhaps those under threat because they owed money to other prisoners etc. At that time there were 45 sex offenders held there, 6 of whom were imprisoned for carrying out offences under Schedule 1 of the Criminal Procedure (Scotland) Act 1995. Staff were permanently based in Letham Hall.

28. Staff took a therapeutic approach to their work, modelling behaviour (focusing on issues like equality) and promoting self-esteem. The staff tried to keep sex offenders in single cells, as they were possibly sexual predators. Prison officers commented that the prisoners felt safer in a separate unit. There was a sense of the ‘revolving door system’ with a lot of this type of prisoner coming back to prison because they have breached their license. The rolling programme developed by the prison staff helped those serving short sentences to address their offending behaviour.

**Lunch with members of the prison staff**

29. Members had the opportunity to lunch with staff and chat informally. One staff member thought that the SPS had sufficient expertise in building prisons because the Service had built HMP Shotts. When asked about the length of time it had taken to complete the project, the prison officer advised that the delay had not been due to the construction of the building, but rather the condition of the land (ex-mining site). A major concern for staff was that if a private prison was
built and prisoner numbers fell, prisoners would be taken from Barlinnie prison to fill the private prison, which could ultimately result in a reduction of staff at the prison. Staff were not content with the proposal to reduce the number of prisoners held at Barlinnie and did not want the prison to become principally a young remand facility because that meant the job could become more ‘turn key’ in approach, unless the programme and regime was specifically developed to address young remand issues.

Meeting with prisoners from A, E and D Halls

30. The prisoners felt strongly that the Drug Support Unit did not have enough places for those who wanted assistance, especially when only 10% of the prison population were drug free. It was noted that there were only 50 places available in the Drug Support Unit. Some had applied to the Unit and been interviewed but had been told that they were not suitable. This led to confusion about how you could become suitable for admittance to the unit. Prisoners also felt that there should be more assistance on release. Michael Matheson asked whether the Drugs Court had had any impact. One prisoner said that he had been ‘knocked back’ for a Drug Treatment and Testing Order because he had a history of using drugs for 12 years, although he was only 26 years old.

31. Some prisoners had attended the anger management and problem solving courses and confirmed that the courses had helped them to address their behaviour. Inmates criticised the fact that those serving shorter sentences of 6 months or less did not get the chance to attend the classes. Michael Matheson asked about the level of community support available. The prisoners said that the Cranstoun project offered 8 weeks aftercare, access to a counsellor, help with housing issues and college if required, but that it was really down to the individual to pursue these options.

32. Donald Gorrie wanted to find out whether any of the prisoners had undertaken some form of community service. The inmates said that this was the last leg before a custodial sentence. Most agreed that if they had a previous similar conviction they would be given a custodial sentence. There was a general view that courts were not using alternatives to custody.

33. Paul Martin asked about availability of employment opportunities on release. The prisoners said there were jobs where employers did not ask whether you had a criminal record, but the likelihood was that someone would recognise you and tell your employer about your background which meant that you would lose your job.

34. Other concerns were that the education centre was too small for the size of the prison. Inmates said that at times they were locked up for
half a day. They complained that the wages paid for work were too low compared to HMP Kilmarnock. Wages were between £5.40 and £8.00 and should be increased because they had to pay for toiletries and phonecards. If you did not work you were put on report. Adding even though at times those allocated to doing joinery had no work to do, as there were no joinery contracts. When this happened the inmates played cards instead.

35. On the topic of slopping out, prisoners said that D Hall had the best toilet facilities. Roughly 50-100 prisoners had to be escorted to the ablution facilities in 20 minutes. There were set times for slopping out, but commented that they had a toothbrush in one hand and a slop bowl in the other.

36. Donald Gorrie asked about the delivery of the food, which had been highlighted as unsatisfactory during the tour of the prison. Inmates confirmed the food was cold and congealed because it could take up to an hour from delivery through to sitting down to eat the food in the cell. Inmates were given an apple or orange once a week and remarked that the canteen did not stock fruit. Prisoners had a continental breakfast on weekdays and on the weekends a roll and sausage. They complained that the breakfast provided was inadequate.

37. On visiting times, the inmates were content about the length and amount of visits allowed but said that if families turned up just 1 minute later than the appointed time then they were not allowed in.

38. One prisoner who was dependent on drugs said, 'getting the jail saved my life'. Another had been convicted on an attempted murder charge twice and reported that if he was released back into the same community he would be back in prison for the same reason, as the people concerned still lived there. An inmate said that he was in the last week of a 3 year sentence he was serving for serious assault with injury and was concerned that no one had spoken to him about his release or about housing or 'DSS' matters.

Meeting with the prison management team

39. Members were introduced to the Deputy Governor, Administration Manager, Industrial Manager, Remand and Young Remand Manager, Security Operations Manager, Health Centre Manager, Estates Manager, Catering Manager, Planning Manager, Head of Operations and the Head of Residential.

40. Managers thought that there should be equal focus on the courts and the police service. Especially as in the last 15 years the prison service had responded well to change and taken on a business culture. The Integration of the Scottish Criminal Justice Information System (ISCJIS) was needed to provide cohesive information across the
services, as at the moment it was felt that the prison service was out of the loop.

41. Following the prisoner session, members asked the management team about the difficulty prisoners were finding in accessing sentence management and the Drug Support Unit. The Operations Manager explained these services were limited by capacity, 81% of prisoners have a drug problem. Although the Unit can accommodate 50 prisoners, it should be noted that it could provide support to others not located in the Unit.

42. The Health Centre Manager advised members that the clinic at Barlinnie was the largest dispenser of methadone.

43. Generally the management thought that more should be done to advance an integrated social policy where the prison system addresses offending behaviour as a priority. The management team suggested that both Justice Committees should work together for a joined-up criminal justice system.

Meeting with representatives of the Prison Officers Association Scotland (POAS)

44. Members met with the local branch Chairman, Secretary and a Committee Member briefly at the end of their visit. The Union thought that rather than the 3 options presented for HMP Barlinnie in the Estates Review, there was another option, spending some money on refurbishment of the prison. Union staff said that between £2.5 million and £5 million would be sufficient to renovate all the halls to the same standard as D Hall, which could have a lifespan of 60-70 years.

45. On the issue of private prisons, the Chairman said that he had been to HMP Kilmarnock and was shocked by the staffing levels and the way it was being run. The ratio of inmates to prison officers was 15:1. They felt that staff in Kilmarnock prison were trained merely to a minimum standard. Prisoners were only locked up for 1 hour during the day, which provided too much free time, which in turn led to an increased potential for intimidation and bullying incidents. There was a concern that if prisoner numbers didn’t increase as expected then those prisoners held in public sector prisons would be moved to the private sector. This could result in the closure of Barlinnie prison.

46. In summing up union staff believed that prisoners at the prison were being penalised because of lack of investment. Long-term prisoners were particularly affected as they could spend up to 2 years of their sentence at HMP Barlinnie.

47. Committee members thanked Bill McKinlay for organising a very open and frank visit to the prison.