JUSTICE 1 COMMITTEE

AGENDA

42nd Meeting, 2002 (Session 1)

Tuesday 10 December 2002

The Committee will meet at 1.30pm in the Chamber, Assembly Hall, The Mound, Edinburgh.

1. **Item in private:** The Committee will consider whether to discuss agenda item 4 in private, and whether to consider its draft Stage 1 report on the Council of Law Society of Scotland Bill in private at future meetings.

2. **Convener's report:** The Committee will consider the Convener's report.

3. **Title Conditions (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).

4. **Council of Law Society of Scotland Bill:** The Committee will consider a draft Stage 1 report.

Alison Taylor
Clerk to the Committee, Tel 85195
The following papers are attached for this meeting:

**Agenda item 3**
Response from Minister for Justice to Justice 1 Committee’s report on Stage 1 of the Title Conditions (Scotland) Bill  J1/02/42/1

**Agenda item 4**
Note by the Clerk (private paper)  J1/02/42/2

**Papers not circulated:**

**Agenda item 3**
The Title Conditions (Scotland) Bill (and Explanatory Notes and Policy Memorandum for the Bill) are available from Document Supply or on the Scottish Parliament website at: [http://www.scottish.parliament.uk/parl_bus/legis.html](http://www.scottish.parliament.uk/parl_bus/legis.html)

Copies of the marshalled list will be available from Document Supply, and groupings will be available from the Committee Clerks in Room 3.11, Committee Chambers (both available on Monday 9 December).

**Agenda item 4**

‘Complaints and Disciplinary Procedures’ report regarding the independent regulation of the accountancy profession by the Accountancy Foundation Review Board (November 2002) is available from the Committee Clerks in Room 3.11, Committee Chambers

**Paper for information circulated for the 42nd meeting, 2002**

Submission for Stage 1 of Prostitution Tolerance Zones (Scotland) Bill from Deputy Chief Constable Tom Wood, Lothians and Borders Police  J1/02/42/3

Paper on Statistics on Women in Custody in Scotland from Dr Nancy Loucks, independent criminologist  J1/02/42/4

Submission regarding sentencing options for women from Dr Nancy Loucks, independent criminologist  J1/02/42/5

Supplementary submission for inquiry into alternatives to custody from Association of Directors of Social Work  J1/02/42/6

Correspondence regarding barony lands and titles (private paper)  J1/02/42/7
I attach the following papers:

**Agenda item 4**

Supplementary evidence from The Law Society of Scotland  J1/02/42/08

Supplementary evidence from The Law Society of Scotland  J1/02/42/09

(Private Paper)

6 December 2002  Tony Reilly
I attach the following papers:

**Agenda item 4**

Proposed amendment regarding delegation to individuals from The Council of the Law Society of Scotland

10 December 2002

Tony Reilly
TITLE CONDITIONS (SCOTLAND) BILL
JUSTICE 1 COMMITTEE’S STAGE 1 REPORT

I am writing to you to respond to matters raised by the Justice 1 Committee in its Stage 1 Report on the Title Conditions Bill where the Committee asked the Executive to clarify or consider further various issues in the Bill. It is helpful to have an indication of where the Committee members think there may be potential problems and I hope I can satisfy the concerns expressed. Before doing so, however, may I take this opportunity to congratulate you and your Committee on producing such a thorough and well thought out report on such a long, complex and technical piece of draft legislation.

TIMESHARES AND THE RIGHTS OF CO-OWNERS

The Committee has asked the Executive to give consideration to extending the Bill to provide for burdens over individual shares of a property such as in a timeshare development (paragraph 4 of the Report). This would allow co-owners to be able to enforce the burdens against each other. The Scottish Law Commission recommended in its Report on Real Burdens that it should not be possible for a pro indiviso share to serve as either a burdened or benefited property. The only arguments that have been made in favour of allowing pro-indiviso owners to burden their own property in favour of another pro-indiviso owner have been in the potential for use in timeshare developments. Section 3(6) of the Bill provides that a real burden may not be “repugnant with ownership”. The right of an owner to use property is fundamental to ownership. While the law may recognise certain restrictions on use a total restriction on use for substantial periods would appear to fall foul of this provision. Even if burdens could be created between two pro-indiviso shares, it would not be possible without making radical changes to the existing law to use such burdens to regulate timeshare developments.
I remain to be convinced that giving pro indiviso owners a right to enforce burdens would have any real benefit.

**REQUIREMENTS OF SECTION 28**

The Law Society of Scotland and the Royal Institute of Chartered Surveyors commented in evidence that the requirements of section 28 were too detailed and bureaucratic in relation to the organisation of maintenance work. The Committee supported the basic principle of the provision and believed that it was desirable to have a time limit to require work to commence, but recommended that the Executive reconsider the practical concerns expressed.

The Executive does not believe that the proposals are too detailed or bureaucratic. The section does not seek any information which those organising the maintenance work will not have. Furthermore it is information which the owners from whom money is demanded may reasonably expect to be given. The rationale for the financial provisions in section 28 is to protect the money which owners will be obliged to deposit as their share of the cost of the work. The 14 day period before repayment can be demanded provides an incentive for the work beginning on time. In any case it is open to the majority to set the timescale within which the work will commence and to build in some element for delay.

The possibility of introducing a lower financial threshold limit which would have to be exceeded before the full requirements of the section would apply has been considered by the Executive, but we feel that it would be difficult to establish a suitable threshold (would this be the cost of work per person or the cost of the whole work? At what limit would an owner be content to hand over money without safeguards - £100? Or £1000?). All common maintenance work will benefit from the requirements of the provision and should proceed more efficiently.

**RIGHT TO BUY AND MIXED TENURE ESTATES**

The Committee referred (in paragraph 60) to a possible amendment proposed by Professor Paisley of Aberdeen University. Professor Paisley pointed out that a Deed of Conditions can only be granted if it complies with section 32 of the Conveyancing (Scotland) Act 1874: this envisages a sale or other dealing. Professor Paisley suggested that, since the motivation for registering Deeds of Conditions against the unsold parts of mixed tenure estates was to ensure that the right to enforce burdens was retained by the social landlord, the Bill should be amended to make it clear that this was technically permissible.

The Executive has consulted the Scottish Law Commission about this issue and we are confident that this is not a problem. The houses which are to be burdened are subject to a statutory right to buy. There is therefore always a realistic prospect that any of the properties could be sold. The local authority must sell if the tenant wishes to buy. The operation of section 17 of the Land Registration (Scotland) Act 1979 also reduces the chances of there being a problem. This provides that a burden in a Deed of Conditions will come into force when the deed is registered in the property registers. The Executive notes that Professor Rennie in his written evidence to the Committee did not envisage a difficulty in a local authority registering a Deed of Conditions in the situation envisaged.

**COMMON SCHEMES**

The Committee have noted (in Paragraphs 62-63 of the Report) that local authorities were concerned that in order for a regime to fall within the definition of community burdens then there must be evidence of a common scheme in the title of the burdened properties. The Committee recommended that the Bill should be clarified to cover the position where properties have been sold off without any intent of forming a common scheme. We take this to mean that the Bill should in the Committee’s
recommendation be amended to clarify the position where there is no evidence or notice of a common scheme in the feu dispositions creating the burdens.

As I said in my speech on 21 November, we shall be introducing amendments to clarify the position on the effect of section 48 by restricting the extent of the operation of the provision as it relates to common schemes rather than by defining common scheme. This will meet the concerns raised by local authorities.

**CREATION OF NEW ENFORCEMENT RIGHTS FOR CO-PROPRIETORS**

The Committee has also suggested that we should look again – in the light of the evidence given by Bruce Merchant - at the practicalities of the creation of new implied rights in housing estates. The question is what should happen in relation to feudal amenity burdens in housing estates after abolition of the feudal system in circumstances where the superior’s enforcement rights would not pass to anyone else. On abolition, the burdens would simply be extinguished because there would be no-one to enforce them.

Mr Merchant drew the attention of the Committee to the wording of certain burdens which provide that the feudal superior may waive a restriction imposed by the burden. His additional written evidence included the example:

“No external alterations or additions shall be made to the dwellinghouse without the written consent of the superiors”

What the Bill provides is that with the abolition of the feudal system the superior’s rights would pass to the neighbours. Mr Merchant was particularly concerned about the situation where an owner is selling a house, and has built a garage or the like in breach of his title conditions. Under the feudal system all he needed was the consent of the superior, and it was easy for him and his solicitor. The solicitor would approach the superior, who would charge a sum of money for a waiver, and the sale could proceed quickly. The picture which Mr Merchant painted was that in future, an owner in this situation would have to approach many owners to obtain a retrospective discharge for the burden he had breached, and that this would be costly and time-consuming.

I have a number of comments on this. First, the Bill makes two significant changes which will improve the position for the garage owner. One is the reduction in the period of negative prescription from 20 years to 5 years by section 17. This means that if the garage was built more than 5 years ago there will only very rarely be a difficulty and the purchaser’s solicitor can be expected to accept the position.

The second is the clarification given by section 16 to the extinction of real burdens by acquiescence. The building of a garage is an overt act and clearly it is reasonable to suppose that any benefited proprietor living nearby would know or should know that a garage has been built. If the neighbours had not objected to the garage being built, the burden would have been extinguished, and the owner would have no difficulty over his garage. Neighbours are expected to act in a reasonable fashion when they can see that one of their number is doing something that involves him in considerable expense, such as the building of a garage. If they do not take action pretty soon after they can see the works, they lose their rights to prevent it. The Bill will provide that if they have not taken action within – at the very latest – 12 weeks, the burden will be extinguished. More distant neighbours ought to know about a garage that results in material detriment to their property, but if they do not, our view is that they would not in any case have interest to enforce the burden.

My third comment is about the processes and their costs. It was suggested that the cost of obtaining a discharge is greater than a letter of consent. This is not so much because of the formality of the
deed, (we assume that both deeds will in fact become, if they are not already, relatively standard documents to be found on the solicitor’s word processor), but because of other checks that are required to be made relating to the title of the benefited proprietor. Mr Merchant thought that it would be necessary to obtain the title deeds of all the benefited properties for examination. While the practice adopted must be for the individual solicitors to consider, all that is needed is to ensure that the persons signing the discharge are in fact owners of the benefited properties. This can be done by searching the property registers which it is possible to do online. These checks would be needed if the benefited proprietors were to sign a consent rather than a discharge. It is not the case that discharge requires sight of title deeds whereas a letter of consent does not.

The question of costs is obviously important. Under the feudal system the superior would typically charge a fee for discharging the burden. In Mr Merchant’s experience this sum is in the region of £200-£300. There is limited research available on the subject. The Paper “Feuing Conditions in Scotland” produced in 1995 by Professor Cuisine and Ms J Egan for the Scottish Office Central Research Unit did however report that in the 20% of the cases examined the sum demanded was greater than £1,000.

If a selling owner and his solicitor did not wish to obtain discharges from the neighbours, it would be open to them to go to the Lands Tribunal. The cost of an application is £130, of obtaining an extract decree, £88 and in registering the decree another £25. This does not compare unfavourably with the £200-300 for a superior’s consent. There would no doubt be legal fees in both cases. If there is no opposition the application would be fast-tracked, and, in terms of section 88, would be granted automatically.

To sum up on this issue, therefore, the position is that an owner wishes to sell his house. His title deeds say that he should have obtained permission to build a garage, but he has ignored these and built it anyway. He may have built the garage more than five years before: in that case the Bill will ratify his position. He may have built it more recently, but his neighbours took no action to prevent him: in that case the provisions on acquiescence will come into play, and he will be secure. Even if he has put up his garage in the last 12 weeks, he can still seek a discharge from his neighbours, or he can go to the Lands Tribunal. It is also the case that the purchaser may not be too anxious about the position. The power of irritancy (i.e. an owner could be evicted for breaching a burden) will have disappeared. The removal of this threat may allow purchasers to be more pragmatic about obtaining discharges.

This is one side of the picture: we are talking about relatively limited numbers of sellers (who have not kept to the conditions which bind them) in relatively limited circumstances. Against that we have to balance the interests of large numbers of householders who live in estates which are governed by useful amenity burdens.

It may be worth saying here that the value of a real burden is dependent upon the perspective from which it is viewed. From the point of view of the dog loving burdened proprietor a burden preventing him from keeping a Rotweiller is objectionable; from the point of view of the family with young children living next door it is highly desirable. The same is true for most burdens. The pet lover may wish to keep the Rotweiller and be prevented from doing so but he may at the same time be grateful for the burden which prevents the family next door erecting an ugly extension which overlooks his garden.

The Scottish Law Commission in drafting the original Bill and the Executive in the changes it has made have throughout been very conscious of the need to balance enforcement rights against the relaxation or discharge of burdens. The Bill will increase the numbers of those who can enforce real burdens. To some extent this is an inevitable consequence of feudal abolition. In response the Bill includes a number of measures designed to facilitate variation or discharge of obligations. In
addition to existing methods of variation or discharge the Bill introduces discharge by majority (section 32), the 4 metre discharge (section 34), the sunset termination notice procedure (sections 19 to 23) and automatic discharge for unopposed application to the Lands Tribunal (section 88). As mentioned above this the Bill also makes significant changes to the current law to clarify when a burden which has already been breached is extinguished.

Finally, I think it is useful to reflect on the way in which our proposals have been received by other parties. In both its Consultation Paper and its Policy Memorandum the Executive used the example of three apparently identical housing estates, all subject to essentially identical real burdens. In one, the superior and all owners have express rights to enforce the burdens; in the second the owners’ rights would arise not expressly but by implication; and in the third only the superior is entitled to enforce (this is the type of estate which is discussed above). The Executive’s policy is that otherwise identical housing estates should be treated in the same way under the new law. This approach was supported by a large majority of those who responded to the Consultation Paper.

When a house is sold the problem which will arise if burdens have been breached will arise in all three estates, not just in the third. In both the first and second estates described above the problem identified can already exist and yet does not seem to have caused any of the difficulties predicted by Mr Merchant.

CONSERVATION BURDENS

The Committee suggested that the Executive should reconsider its position in relation to conservation burdens in the compulsory purchase situation. The Bill makes it clear that all burdens will be extinguished if the property is compulsorily purchased or acquired by agreement where a power to compulsorily acquire could be used. This gives effect to the current practice of the Keeper of the Registers and the bodies using compulsory purchase. The Executive believes that to provide exceptions to this rule would cause difficulties. If conservation burdens were to survive automatically, they would continue to regulate and restrict the use of land and could potentially frustrate the public authority seeking to acquire the land. Although conservation burdens would be extinguished under the present proposal in the Bill, conservation bodies would be given notice and would have the opportunity, in the case of a compulsory purchase order, to make their case at a public local enquiry and, in the case of an acquisition by agreement, to renew the burdens by application to the Lands Tribunal. It is considered that this process enables the competing public interests of the conservation body and the acquiring authority to be taken into account.

SCHOOL SITES ACT 1841

A notice provision

The Committee also invited me to write to them on the matter of the School Sites Act of 1841. COSLA and SOLAR have suggested that the development value burden model could be used to deal with school sites reversions by requiring reversion holders to register a notice of their interest within a limited time period as is the case with development value burdens under the Abolition of Feudal Tenure etc (Scotland) Act 2000.

These two types of right are not the same. With development value burdens the person who imposed the burden is entitled to make a demand for payment on change of use or the grant of permission for change of use. These burdens are usually time limited so that there is a diminishing interest in enforcement as time wears on. The holder of a school sites right of reversion is always entitled to the return of the land. When the cessation of use takes place the education authority ceases to be the rightful owner at all. The reversion holder’s interest does not diminish over time. Unlike a development value burden, a school sites reversion is not subject to discharge by the Lands Tribunal.
It would therefore be an extreme measure to remove such a valuable property right as a result of failure to record a notice within a given time period. Such an approach was rejected in England as “draconian”. There is a considerable difference between reversions and development value burdens and we do not believe that these two situations can or should be treated in the same way.

Section 14

Section 14 of the 1841 Act allowed education authorities to exchange the original school site for a more convenient and eligible site. The effect of this was that the right to the reversion would just disappear. Section 14 was repealed in 1945. To re-introduce it as requested by COSLA and SOLAR would mean that education authorities could always substitute another site when one became redundant and thus continually defeat the reversion. This would effectively be to abolish the right of reversion without compensation, which would not be equitable.

Title

There has been uncertainty in the past as to which schools are affected and who can claim the reversion. It is by no means necessarily the feudal superior and depends on individual titles and local circumstances. The Scottish Law Commission’s Report described the difficulties in some detail. It will always be up to a claimant to prove his entitlement to compensation but the Bill provisions will at last give education authorities a good title to deal with the site irrespective of and separately from any claim.

Compensation

With regard to compensation, the current law is that the holder of the reversion is entitled to the return of the land with any building on it. The Bill provides that if the reversion is triggered after the coming into force of the Bill, the local authority has a choice. It can either transfer the land to the reversion holder if he pays the value attributable to any building on the land, or it can pay him compensation based on the market value (not the value to the Council) of the land after deduction of any value attributable to any building on the land. In either case this represents a considerable saving to the education authority where there is a valuable building on the land. By removing the value of the building, the site is likely to be made less attractive to title raiders.

Market value for the site itself is, however, a fair and equitable provision as, in current law, the holder of the reversion has an indisputable right to the return of the site. Compensation must be reasonably related to the value of the right. Any dispute over value can be referred to the Lands Tribunal in terms of section 77(5). This does mean that on sale or redevelopment of these sites local authorities will have to consider making a contingency for any claim to the reversion. All claims must be made within 5 years from the cessation of use.

In the meantime, the transformation of all rights to the land into claims for compensation means that education authorities will be able to get on with the sale of the site to a third party or to commence redevelopment of the site with a good title and without delay. This represents an enormous improvement on the current situation.

COMMERCIAL LAND TRANSACTIONS

I note that the Committee were interested in the suggestion of Professor Paisley that the Bill might be amended to permit the purchaser in a commercial land transaction to initiate an application to the Lands Tribunal to vary or discharge a burden prior to acquiring the property. It was argued that this would have the effect of speeding up land transactions.
I tend to agree with the view of the Law Society of Scotland that this change would have no material effect on current time scales. An unopposed application to the Lands Tribunal currently takes around 8 weeks. This could be longer than the period of the conveyancing process. An application to the Tribunal which is opposed can take considerably longer than 8 weeks, particularly if a hearing is required. Even if this process were to begin a little earlier in the case of opposed transactions involving commercial property, it is doubtful if this would actually speed up the conveyancing since the Tribunal is likely to take some months to reach a final conclusion.

There is always the added complication that the application would be made by a party who, may be a willing potential purchaser, but who has no right to the property. Until missives are finally concluded, it is of course possible for the deal to fall through and an application may therefore have been lodged (at some expense for legal services) which subsequently has to be withdrawn. In any event, if speed is of the essence, it is always up to the purchaser and seller to agree that the seller initiates the application in his own name but at the purchaser’s expense. I have to say that the potential benefits of this proposal do not seem to outweigh the potential drawbacks.

**COAL AUTHORITY**

The Committee has suggested that the Executive should consider the position of the Coal Authority. The Authority has asked to be exempted from the terms of the Bill as it owns many surface land and non-coal interests but it does not have a comprehensive record of all that it owns. I think it is worth pointing out that there are many bodies in both the public and private sectors which have large holdings of land and of rights to enforce burdens. Many have proper records of all of their land rights, while some do not. I find it difficult to agree that special treatment should be accorded to any individual or body.

**STANDARD SECURITIES**

Although I am aware that a number of witnesses before the Committee suggested that the law on standard securities was in need of urgent reform, they did not specify particular problems and this has not been raised with the Executive as a matter of urgency. I am, however, happy to confirm that the Executive will monitor the level of support for the reform of standard security legislation with a view to possible inclusion in the Scottish Law Commission’s next programme of law reform.

**INTERACTION OF PARTS 2 AND 4**

The Committee has urged the Executive to publicise the legislative changes to the public and interested property professionals to emphasise the connection between related parts of the Bill, in particular Parts 2 and 4. I can confirm that the Executive intends to publicise and explain the changes to the law and specifically how these will affect householders and practitioners.

In relation to Parts 2 and 4, the Executive will review both the Explanatory Notes and the Policy Memorandum with a view to clarifying the interaction between both parts. The interaction can be explained relatively simply. Part 4 of the Bill is intended to clarify who can enforce different kinds of burden. Facility and service burdens will be enforceable by those owners whose properties benefit from the facility or service. Neighbour burdens (which are usually imposed when someone sells off land adjoining their own) will be enforceable by the original sellers and their successors provided that they register a notice which identifies the burdened and the benefited properties. Where there is a common scheme of burdens, the burdens will be enforceable by those owners whose properties are also subject to the same or equivalent burdens – the burdens do not have to be identical. Where there is such a common scheme, the burdens will be treated as community burdens and they will therefore be subject to the rules on community burdens in Part 2.
EQUAL OPPORTUNITIES

The Committee asked that the Executive examine the accessibility of the processes provided for in the Bill. This followed a similar recommendation by the Equal Opportunities Committee that further exploration be carried out on accessible formats such as Braille or large print. This was in relation to the notice procedures contained in the Bill. The question of alternative formats is not of course confined to this Bill. There is no statutory requirement to make the document available in alternative formats in relation to notices used in relation to planning applications or for road management purposes.

It is important to remember that the notice procedures in the Bill will be used overwhelmingly by private individuals rather than local authorities or other corporate bodies (though they will also be able to take advantage of the procedures). There would be considerable extra costs to these people if they were obliged to send alternative format notices. Furthermore, the timescales for the notice procedures would inevitably have to be lengthened if alternative formats had to be provided on request.

There is of course a difference between knowing what a document says and what it means. The notices which will be issued under the various provisions of the Bill contain explanatory notes which can be read to a blind person in addition to the notice itself. But since the notices affect property rights such as the right to enforce a condition on adjoining property which may fundamentally affect the use and enjoyment of a property, many recipients are likely to wish to seek legal advice as to the actual effect of a notice and whether they should consent or object to what is proposed. In these circumstances, blind and visually impaired people are in exactly the same position as non-disabled people. It may be therefore that a personal explanation is more what is required than the provision of the documentation in alternative format. The establishment of best practice which can be pursued and encouraged through the various equality organisations would also be a better option than seeking to add further and probably impractical provisions to the Bill.

I hope that this explanation is helpful. I am copying this letter to the Clerk of the Justice Committee and to the Departmental Committee Liaison Officer.

JIM WALLACE
THE LEITH PROSTITUTION (NON-HARASSMENT) ZONE c.1985-2001
"A BRIEF DESCRIPTION"

In responding to the invitation to give evidence on the Prostitution Tolerance Zones (Scotland) Bill I thought it might assist members of the Justice Committee to have an accurate account of the development and operation of the Discretionary/Tolerance Zone for prostitutes which operated in Leith, Edinburgh between the 1980s and the year 2001.

The Leith model has been copied by many and held up as best practice. Accordingly it is important to understand its origins, strengths and weaknesses.

The views expressed in this document are my own and are based on personal experience over the life of the zone. They do not reflect ACPOS policy necessarily.

Let me say by introduction that the Leith policy for policing the sex industry was neither perfect nor trouble free. It was not introduced as a single strategy but evolved over nearly twenty years of pragmatism and the active co-operation of a number of groups – Police, Health Board, Council and not least sex industry workers and their representatives. This co-operation and the policy itself was often problematic and difficult to sustain, attracting as it did pressures and criticism from some Press, some politicians, some religious factions and eventually from residents. The demise of the Leith Non-Harassment Zone eventually came about as a result of pressure from residents in the regenerated area and the lack of legal basis for support by the local authority.

From a police perspective the Leith policy demanded a step beyond law enforcement to a wider consideration of the general public health and safety. I believe that this wider view is essential to the effective management of such a complex issue but it is a difficult line to cross for many police officers and for their staff associations. The Police Federation and others have, however, the luxury of being able to view the world only in the context of the law, they have no responsibility for the wider policing plan or for public safety.

The Leith policy was based on three basic propositions:

1. Prostitution has always and will always exist – no law enforcement agency, system of punishment, or moral or civil code has ever in recorded history eradicated the sex industry.
2. Rigorous law enforcement does not eradicate the sex industry but at best displaces it or drives it underground where the worst excesses of criminal activity, drugs, extortion, blackmail, pimping and violence have free reign to prey on it.

3. To ignore the sex industry or pretend it does not exist hinders good intelligence or intervention and also allows criminal elements to prey on it.

Accordingly it was concluded that the best if not ideal solution was to recognise the sex industry and develop multi-agency relationships, to contain, regulate and ensure it operated in the safest and healthiest environment possible. Importantly this was to be done while always working to encourage prostitutes away from the sex industry and preventing the incursion of serious criminal activity.

Despite the difficulties, tensions and ambiguities of our policy, many other police forces have sought to replicate the Leith model and some have done so. It is important to recognise, however, that the simple imposition of our system on other areas is unlikely to succeed since each area having its unique problem demands its own solution. For this reason comparisons between areas such as Edinburgh and Glasgow, are in my view, largely invalid.

To place our policy in context it is important to chart its development. From the time criminal records began Edinburgh, like all other cities, has had an established sex industry. In the 1960’s street prostitutes were confined to the traditional dock area and were serviced by mature and fairly streetwise women. Crimes committed by, and upon these women were generally unreported and a few very serious offences apart, the policing of street prostitution was a local matter enforced by small groups of plain clothes officers who often formed professional relationships with the established prostitutes, offering some protection to them and their clients. The clients of these street prostitutes were mainly working men, sailors and dock workers comprising the majority. Middle class clients were catered for by an infamous brothel which operated in the Stockbridge area from the 1940’s till the late 1970’s when the proprietor died. This establishment was well run and any attempted incursions by criminals was firmly resisted through informal but well-established contacts with local police.
In the late 1970's these traditional patterns and informal controls disappeared when the main brothel in Stockbridge ceased to exist, and the first wave of Heroin abuse hit the housing schemes in Edinburgh. Throughout the late seventies and early eighties this resulted in a huge growth of young street prostitutes, the vast majority being drugs and alcohol dependent or supporting others who were. At the same time the clientele changed with a greater number of middle class men, displaced from Stockbridge, coming to Leith to use the services of the growing number of street prostitutes. The results of these changes were explosive. Younger drug/alcohol dependent women displaced the more experienced women, supply outstripped demand and street prices fell while crime increased with more affluent clients being robbed, blackmailed and assaulted while the younger women, often working under the influence of drink or drugs, fell prey to violence and sexual assault.

In 1981 two street prostitutes were murdered and a number of others seriously assaulted, numerous clients were assaulted, robbed and blackmailed and it was clear that behind these known statistics a substantial "dark figure" existed. It became clear that the old systems of informal control no longer worked and that if we were to regain control it would require a careful analysis and a strategic re-direction.

An analysis of that time showed that the sex industry in Edinburgh fell, as it does today, into three broad categories; The street scene in Leith, the saunas and massage parlours, then beginning to emerge, and the small and unquantified private flat/escort agency operations. There also exists a small but volatile homosexual rent boy scene but since our interest is mainly in female prostitution, I will restrict my comments to the sex industry as it relates to women only.

At that time the Leith street scene comprised a constantly changing population of about 200 women, engaged in chaotic and highly dangerous patterns of offending.

It was immediately clear that most of the women were not engaged in prostitution by choice but were working to sustain themselves or their dependants. A substantial number came from a background of local authority care and had developed drug and alcohol dependence in their teenage years. Because of the high level of activity many were falling regularly into the hands of the police as victims or offenders, but it was to the pattern of offending that we first addressed ourselves. Then as now we operated the three caution system before charge. That is to say a woman found soliciting would be cautioned on three occasions before a charge would be preferred. On conviction the offenders would then be designated a
convicted or known, prostitute, effectively stigmatised and trapped to some extent within the sex industry. Whereas in the previous era the older wiser prostitutes went to considerable lengths to avoid conviction, often moving area or ceasing to offend when cautions began to mount, the lifestyles of the new generation did not allow for this and the number of convicted prostitutes was growing steadily.

On examining court disposals it became clear that traditional punishments did little to discourage offending, indeed the opposite was often true. When fined, the most common disposal, the offender was compelled to offend again to pay the fine, when chaotic lifestyle and the inability to pay resulted in fine default - imprisonment eventually followed. Our study showed imprisonment apparently did little to deter either with additional pressure being placed on a frequently dysfunctional domestic life.

A picture emerged of a large and volatile group of women chaotically engaged in dangerous behaviour in which they had been trapped, many apparently with the unwitting assistance of the criminal justice system. In a time when HIV/AIDS was emerging as a major hazard this was recognised as a significant threat to the wider public safety.

The developing sauna/massage parlour represented a safer solution offering as it did some control and a healthier environment for workers and clients alike. The licensing of saunas and massage parlours was made possible by the Civic Government Scotland Act which gives local authorities the option to licence for public entertainment certain premises, dance halls, snooker clubs, etc. Some authorities decided to licence saunas/massage parlours, others did not. The City of Edinburgh Council decided after consultation with the police to licence such premises within Edinburgh, not as a back door method of legalising the sex industry but in recognition that most, if not all, saunas/massage parlours are part of the sex industry and it was better to have some control than none. The provisions of the Civic Government Scotland Act gives opportunity to vet applicants for licences to establish suitability of premises and most importantly right of access. During the 1970's some 20 saunas/massage parlours opened in Edinburgh and contrary to predictions of enormous growth that number has remained fairly constant, supply apparently having matched demand.

Following our review of the 1980s we developed a strategy based on the wider public safety, the main elements of which are as follows.
Multi-agency Working and Group Responsibility

Recognising that the police are one component of any strategy we established good communications with the Health Board, departments of the local authority and most significantly the prostitute health groups – SHIVA (now defunct) and “Scot-Pep”. The importance of these groups cannot be overstated since they provide the main contact with the street and sauna workers.

In our experience group responsibility and understanding was vitally important particularly when dealing with the press and all involved worked hard to establish and maintain contact and trust at a number of levels.

Non-Harassment Zone – Prosecution Policy – Patrol Profile

From the start it was evident that while agreements in principle and strategic direction were essential, understandings on practical issues had to be put in place. Accordingly a Non-Harassment Zone for street prostitutes in the Coburg Street area of Leith was agreed. It is important at this stage to define our Non-Harassment Zone policy. Within the defined area of the zone we undertook to take no action against an agreed number (usually 20) of street prostitutes who worked in a manner which did not attract complaints from members of the public or otherwise cause offence. That is to say they had to be sober, not obviously under the influence of drugs and be reasonably well-behaved. If aspects of this understanding were breached we first took action to rectify matters before preferring charges.

Prosecution policy was of utmost importance since it was vital that prostitutes and their representatives knew where the line was drawn. As previously described while working within the Non-Harassment Zone we undertook to take no action as long as prostitutes behaved reasonably. We did not tolerate the presence of pimps, the presence of drugs or other criminal activity within or without the Non-Harassment Zone. Likewise if prostitutes operated outwith the zone they were moved on and reminded of the agreement prior to any action being taken. Inevitably, however, we did not succeed in conciliating all complaints and in an average six month period usually cautioned seventeen to twenty prostitutes and subsequently charged three. When a street prostitute is charged we do not as a matter of policy seize as evidence condoms or other contraceptive devices. This was once standard procedure since it indicated sexual activity but since the practice deterred the use of condoms among some prostitutes we discontinued seizure after consultation with the Procurator Fiscal – we now make no reference to
possession of such articles so as not to discourage their use. Given the level of activity in Leith we considered the small number charged a credit to the practitioners from all groups involved.

In order to maintain this uneasy balance a structured police patrol profile was essential and we tried to maintain a regular but not heavy uniform patrol presence in and around the Non-Harassment Zone. This helped to control the behaviour of the street prostitutes and their clients but just as importantly provided a safer environment for both.

Prostitute Liaison Officer

Since 1993 we have deployed a Prostitute Liaison Officer tasked with keeping regular contact with the street prostitutes and their various help groups. The PLO will routinely visit the prostitute “drop in centre” and act as a mediator in any local difficulty as well as a line of communication for criminal intelligence and problem solving.

These arrangements worked reasonably well for nearly 20 years but they were always informal and depended ultimately on goodwill, pragmatism and a degree of flexibility.

The Leith policy came under pressure and failed when the traditional zone was re-developed for high amenity houses and the new residents began a campaign of complaints. An attempt to move the zone to a nearby, commercial area also failed because of public pressure and the attention of the local press. Since the zone had always been informal, the City of Edinburgh Council and its locally elected members could not support its continuance.

At the present time there is no designated area for street prostitution in Edinburgh but the trade continues in a number of locations in Leith. Understandably local residents are concerned and resistant to prostitutes and their clients in their neighbourhoods and this has led to a number of complaints, petitions and public demonstrations amidst continuing media interest. From a police perspective there has been a loss of control and intelligence, pimps have started to re-appear and although we still have good contact with the prostitute help groups it is fair to say that we have lost much of the advantage gained over the last twenty years.
In conclusion you will have noted from my description that the Leith policy was far from perfect, but it did provide a pragmatic response in which risk to health, the public safety, and victimisation was reduced. I have no doubts as to the overall benefit of a Tolerance or Non-Harassment Zone such as operated in Leith. The challenge will be in the practical application of such a scheme within a legal framework should the Bill be passed into law.

(T J Wood)
Deputy Chief Constable

26 November 2002
Statistics: Women in Custody In Scotland

Prison Statistics (Scotland), 2001:

- Of 668 women in Scotland directly sentenced to prison last year, less than 9% (58 women) were sentenced to two years or more.
  - 44.2% of women directly sentenced to prison were sentenced for 'other theft', usually shoplifting.

- Of 1,212 total sentenced receptions, 544 of these were for fine default (44.9%).
  - The average fine outstanding for adult females received into custody was £214, with an average sentence imposed of 9 days. For female young offenders, the average fine outstanding was £183, with an average sentence of 9 days.
  - 79% of people sentenced to custody for fine default were serving no other custodial sentence (specific figures for males/females not published).

- Of all receptions of females into custody, half (51.1%) were remands.
  - In 1998, 525 convicted females were held in custody prior to sentencing. Of these, less than half (222 women, or 42.3%) eventually received a custodial sentence (Scottish Court Services 2000).

- 30% of women sentenced to custody were sentenced to prison by District & Stipendiary Magistrate courts, compared to 20% of men.

- On 30 June 2001, the highest proportion of sentenced women in prison were there for drug offences (26%), followed by 'other theft' (usually shoplifting: 15%) and serious assault (14%). Convicted men in prison were there primarily for serious assault (15%), drugs (14%), homicide (13%), and robbery (12%).

- On 8 November 2002, 72 of the 245 women in custody (29.4%) were on remand (48 untried plus 24 convicted unsentenced).
Justice 1 Committee

Prisons

Submission regarding sentencing options for women from Dr Nancy Loucks, independent criminologist

Following our evidence to the Justice 1 Committee yesterday, I will be posting a range of information to you for the Committee. I am waiting for up to date statistics from Cornton Vale about the use of SERs; once I have received it, I will pass everything on to you.

One issue which came up during our evidence was about the lack of Intensive Probation as a sentencing option for young women in Glasgow. I contacted the Glasgow Partnership Project about this again today and learned that the situation has changed. While Sheriffs are the only sentencers who can refer young people, social workers may also make referrals. The Project is able to take young women as well as young men now, and indeed have two young female clients at present. The Project said their previous lack of provision for young women was not because they were unable to, but because no young women had been referred to the Project.

The Glasgow Partnership Project, run by NCH Action for Children, is an Intensive Probation Programme (a fairly high tariff non-custodial penalty, designed to be used for high rate offenders as a direct alternative to custody). A similar programme, Inverclyde Intensive Probation, is available for women in the Inverclyde region. I am not aware of similar projects for women elsewhere in Scotland, though they may exist.

I would be grateful if you would pass this on to the Committee, as the information I gave them yesterday was slightly out of date.

Dr. Nancy Loucks
Independent Criminologist
Dear Clerk to the Committee

Alternatives to Custody Inquiry

I am pleased to forward the additional information requested by the Justice Committee at its meeting on 26 November 2002.

Appendix 1 - Cost of providing community disposal by Local Authority Criminal Justice Social Work Services.
   The growth in the number of community based disposals in previous year.

Appendix 2 - Increase in Criminal Justice Social Work workload in the Scottish Borders Council.

Appendix 3 - Example of Community Service Order – Peterhead Sheriff Court.

Appendix 4 - Example of Community Service Order – Edinburgh High Court.

Please let me know if you require any further information.

Yours sincerely

COLIN D MACKENZIE
Convener, ADSW Standing Committee Criminal Justice

cc Mr Brian Fearon, Secretary, ADSW
Ms Shona Main, ADSW Policy & Parliamentary Officer
Mr Chris Hawkes, Scottish Borders Council

ADSWSW
ASSOCIATION OF DIRECTORS OF SOCIAL WORK

President: Jim Dickie
Director of Social Work
North Lanarkshire Council
Scott House
76-77 Merry Street
Motherwell ML1 1JE
Tel 01698 351111
Fax 01698 722115
E-mail dickie@northlan.gov.uk

South Lanarkshire Council
Council Offices
Room 8
Almada Street
Hamilton ML3 0AA
Tel 01698 410679
Fax 01698 410586
E-mail adsw@southlanarkshire.gov.uk

Telephone No: 01224 665490
Fax No: 01224 664888
E-Mail: colin.mackenzie@aberdeenshire.gov.uk
Our Ref: CDM/LN
Date: 3 December 2002
ADSW

Further written evidence to Justice 1 Committee

At its sitting on November 26th 2002 the Justice 1 Committee asked for additional written evidence to that given verbally by Mr C Mackenzie and Mr C Hawkes of ADSW.

Two sets of additional information are required:

1) **The cost of providing community based disposals by local authority Criminal Justice Social Work**

2) **The growth in the number of community based disposals in previous years.**

1) The cost of providing Community based disposals is dictated by the amount of grant available to provide these services. The grant is allocated against the average number of specific report or Order types, delivered by each local authority over the previous three years. In addition the Scottish Executive adds weighting to each type of allocation in an attempt to address differing 'need' factors.

The following table records the average mainland Scottish allocation received in 2002/03 for an individual:
- Probation Order
- Community Service Order
- Supervised Attendance Order

*These allocations are made only once, at the outset of each order irrespective of whether the order exceeds one year.*

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation Order</td>
<td>£1,368 per order</td>
</tr>
<tr>
<td>Community Service</td>
<td>£1,708 per order</td>
</tr>
<tr>
<td>Supervised Attendance</td>
<td>£519 per order</td>
</tr>
</tbody>
</table>

2) The growth in the number of community based disposals in previous years.

In oral evidence Mr Hawkes advised the Justice 1 Committee of the increase in community based court disposals since 1991. Subsequently, Mr Hawkes has learned that data collected by the Scottish Executive prior to 1999 is not comparable with data post 1999 and therefore should not be relied upon. (Criminal Justice Social Work Statistics 2001/02, Annex, paragraph 15.12, published December 2002). Since 1999, a different method of collection has been used and is now regarded as reliable. Taking this into account the following table records growth in community based disposals since 1999.

<table>
<thead>
<tr>
<th>Type</th>
<th>1999-00</th>
<th>2000-01</th>
<th>2001-02</th>
<th>Percent change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Enquiry Report</td>
<td>36,383</td>
<td>36,663</td>
<td>40,366</td>
<td>10.1% +</td>
</tr>
<tr>
<td>Community Service Order</td>
<td>6,281</td>
<td>6,131</td>
<td>6,500</td>
<td>6.0% +</td>
</tr>
<tr>
<td>Probation Order</td>
<td>5,897</td>
<td>5,928</td>
<td>7,057</td>
<td>19.0% +</td>
</tr>
<tr>
<td>Supervised Attendance Order</td>
<td>N/A</td>
<td>2,626</td>
<td>2,610</td>
<td>0.6% -</td>
</tr>
</tbody>
</table>
Report to Scottish Executive regarding Scottish Borders Council’s increase in Criminal Justice Social Work workload.

Scottish Borders Council Criminal Justice Social Work has experienced a marked increase in the Court’s requirement for core services over the last two years 2000-2002 and on current projection this looks to increase for the remainder of this financial year. The growth in service demand is, we believe, due to a new Sheriff taking office in the four Sheriff Courts of Scottish Borders. In addition, the Criminal Justice Social Work Statistics 2000-01 (Stationery Office December 2002) reflects a general growth in requests for core services nationally. This general growth records:

- Social Enquiry Reports prepared increased by 10%
- Community Services Orders increased by 6%
- Probation Orders increased by 19%
- Supervised Attendance decreased by 1%

Scottish Borders has seen growth in each of these core areas exceeding those recorded nationally (fig.1)

![Fig. 1. All service outcomes 99-03](image_url)
Social Enquiry Reports

Reports to Courts are measured in two ways, reports requested and reports prepared. Scottish Borders has seen a marked increase in both areas.

<table>
<thead>
<tr>
<th>Year</th>
<th>Reports-Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-8</td>
<td>350</td>
</tr>
<tr>
<td>1998-9</td>
<td>402</td>
</tr>
<tr>
<td>1999-00</td>
<td>443</td>
</tr>
<tr>
<td>2000-01</td>
<td>362</td>
</tr>
<tr>
<td>2001-02</td>
<td>493</td>
</tr>
<tr>
<td>2002-03 (pr)</td>
<td>518</td>
</tr>
</tbody>
</table>

Reports requested have grown by 28% between April 1999 - April 2002 (fig 2.) and are projecting to increase by 48% by year-end.

Reports 'prepared' have increased by 11.2% since 1999 and are projected to increase by 17% compared with 1999 by the end of this financial year (fig 3). However when viewed over the last two years the growth for the current year is 38% higher than the previous year.
Community Service Orders

The number of CSO’s has increased at a faster rate than the growth in prepared social enquiry reports.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>118</td>
<td>106</td>
<td>105</td>
<td>105</td>
<td>158</td>
<td>172</td>
</tr>
</tbody>
</table>

In 1999, 105 CSO’s were supervised compared with 158 in 2001-02. This represents growth of 50.4%. 34% of the growth in Community Service has occurred since Oct 2000 (fig 4). When projected the outturn for 2002-03 increases to 63%. Across the same period 1999 - 2002 the financial allocation has reduced by 4% (fig 5).

Fig 4. CSO's by month 06-02

Fig 5. Community Service Allocation 1999-2002
Probation Orders

Probation has seen a steady increase in use since 1997.

<table>
<thead>
<tr>
<th>Year</th>
<th>1997-8</th>
<th>1998-9</th>
<th>1999-00</th>
<th>2000-01</th>
<th>2001-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td>47</td>
<td>73</td>
<td>72</td>
<td>76</td>
<td>98</td>
</tr>
</tbody>
</table>

The introduction of modular programmes in Nov 2000 delivered using the Effective Practice criteria, resulted in a level of growth which has been sustained (fig.5). In percentage comparison the use of probation per year has increased by 108% since 1997, and 38% since 1999.
Supervised Attendance Orders

Supervised Attendance Orders are a relatively new disposal. In the first year of introduction the Courts made moderate use of this order and set an expectation of workload numbers for future years. In fact, the new Sheriff made fewer orders in year two but has now adopted Supervised Attendance as an integral part of his sentencing policy and in consequence the number of orders has recovered now to exceed year one (Fig 6).

2000-01  2001-02  2002-03 (projected)
64        49        104

Fig 6. Supervised Attendance Orders 2000-02
Allocation analysis

The 2002-3 financial allocation for SER’s, Community Service, Probation and Supervised Attendance Orders is detailed in fig 7.

**Fig 7**

<table>
<thead>
<tr>
<th>Service</th>
<th>Amount (£)</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Enquiry Reports</td>
<td>98,330</td>
<td>493</td>
</tr>
<tr>
<td>Community Service Orders</td>
<td>174,607</td>
<td>158</td>
</tr>
<tr>
<td>Probation Orders</td>
<td>108,995</td>
<td>98</td>
</tr>
<tr>
<td>Supervised Attendance Orders</td>
<td>23,011</td>
<td>52</td>
</tr>
</tbody>
</table>

The anticipated number of units for each service area is no longer provided by the Scottish Executive. However if the actual outturn for 2001-02 is used as an indication of expected workload a unit price would attach to each service area as described in fig 8.

**Fig 8**

<table>
<thead>
<tr>
<th>Service</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Enquiry Reports</td>
<td>199.00</td>
</tr>
<tr>
<td>Community Service Orders</td>
<td>1105.00</td>
</tr>
<tr>
<td>Probation Orders</td>
<td>1122.00</td>
</tr>
<tr>
<td>Supervised Attendance Orders</td>
<td>442.50</td>
</tr>
</tbody>
</table>

For comparison, fig 9 details the average (mainland) allocation to each Scottish authority for these service areas.

**Fig 9**

<table>
<thead>
<tr>
<th>Service</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Enquiry Reports</td>
<td>266.00</td>
</tr>
<tr>
<td>Community Service Orders</td>
<td>1708.00</td>
</tr>
<tr>
<td>Probation Orders</td>
<td>1368.00</td>
</tr>
<tr>
<td>Supervised Attendance Orders</td>
<td>519.00</td>
</tr>
</tbody>
</table>

If Scottish Borders had been paid at the national (mainland) average per unit the allocation described in fig 10 would have been appropriate.

**Fig 10**

<table>
<thead>
<tr>
<th>Service</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Enquiry Reports</td>
<td>131,138</td>
</tr>
<tr>
<td>Community Service Orders</td>
<td>269,864</td>
</tr>
<tr>
<td>Probation Orders</td>
<td>134,064</td>
</tr>
<tr>
<td>Supervised Attendance Orders</td>
<td>26,988</td>
</tr>
</tbody>
</table>

The difference between fig 7, the amount we were paid and fig10 the national average is minus £157,111. This does not take account of the actual workload being experienced in 2002-03.
APPENDIX 3

COMMUNITY SERVICE ORDER

CASE NO.

under section 238 of the Criminal Procedure (Scotland) Act 1995

PERTHSHIRE SHERIFF COURT

DATE OF ORDER

SHERIFF

1. DOUGLAS, Q.C.

OFFENDER

ADDRESS

DATE OF BIRTH:

OFFENCE(S)

1 THEFT BY HOUSEBREAKING ( RAIL AGRAVATION )

Order of Court

(1) THE COURT, being satisfied that the offender has committed the offence with which he or she is charged (or in view of the conviction of the offender), and being of the opinion that, having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to make a community service order containing the undenoted requirements;

And having explained to the offender the effect of the community service order (including the requirements set out below), and that if he or she fails to comply with the community service order, he or she may be brought before the court by his or her supervising officer for a breach of the community service order and may be fined or sentenced or dealt with for the original offence, and that, if he or she commits another offence during the period of the community service order, he or she may be dealt with for that offence;

IN RESPECT that the offender who resides (or is to reside) in the District of PERTHSHIRE in the area of ABERDEENSHIRE has been convicted of the said offence(s) REQUIRES the said Council to appoint or assign an officer to discharge the functions assigned by sections 239 to 248 of the Criminal Procedure (Scotland) Act 1995 in respect of the offender and to notify the offender forthwith of the particulars of the officer;

ORDERS that the offender shall, during the period of twelve months from this date or until the performance of the hours of unpaid work specified at (2) below, whichever is shorter -

(a) report to the local authority officer appointed or assigned to his or her and notify the said officer without delay of any change of address or of any change in the times, if any, at which the offender usually works; and

(b) perform for 80 hours such unpaid work at times as the local authority officer may instruct.

(2) If for any reason the offender fails to perform the unpaid work specified in paragraph (1) (a) above during the period of twelve months from the date of the order -

(a) the order shall remain in force beyond the twelve month period;
(b) the offender's obligation under paragraph (1) above will continue, and;
(c) the local authority officer appointed under the order shall take whatever action is appropriate to bring the circumstances to the attention of the Court.

Copy to: Offender, Chief Social Worker

* delete as appropriate
a. I have been given, read and understood the foregoing Order.

b. I understand that the court, if satisfied that I have failed to comply with any of the conditions of this order, may take the following action under the Criminal Procedure (Scotland) Act 1995, Section 239(3):

i. Continue the Order and impose a fine (not exceeding level 3 in the scale of fines); or

ii. Revoke the order and impose any penalty the Court could have imposed at the first instance; or

iii. Vary the number of hours in the Order (but not in total less than 40 hours nor more than 240 hours) for offences committed before 19 July 1994; thereafter not in total less than 80 hours nor more than 240 hours (300 hours in solemn procedure).

At __________________________

Town or City

Signed __________________________ Date __________________________

Offender

Signed __________________________ Date __________________________

CS Officer

Signed __________________________ Date __________________________

CS Officer

Received 30/10/02
CRIMINAL PROCEDURE (SCOTLAND) ACT 1995 SECTION 238

COMMUNITY SERVICE ORDER

IN THE HIGH COURT OF JUSTICIARY, held at Edinburgh

on 1 February 2002

Before The Hon Lord Reed

OFFENDER

Date of Birth

Address

Offences

Con. Misuse of Drugs Act 1971, Section 4(3)(b) – 2 charges
Con. Misuse of Drugs Act 1971, Section 23(4) – 1 charge
- In respect of which the offender was on 4 October 2000 Ordered to perform 150
  hours of unpaid;
that on 11 January 2002, following proceedings under Section 240(1)(d) of the Criminal
Procedure (Scotland) Act 1995, the Order of 4 October 2000 was revoked

1.

The Court, in view of the conviction of the offender and nature of the breach of the order of the Court of
4 October 2000, and being of the opinion that, having regard to the circumstances, including the nature of the
offences and the character of the offender, it is expedient to make a community service order containing the
undertaken requirements;

and having explained to the offender the effect of the community service order (including the requirements set
out below), and that if he fails to comply with the order, he may be brought before the court by his supervising
officer for a breach of the community service order and may be fined or sentenced or dealt with for the original
offence, and that, if he commits another offence during the period of the community service order, he may be
dealt with for that offence;

in respect that the offender who resides in the area of Aberdeenshire Council has been convicted of the said
offences and breached a Community Service Order imposed following thereon, Required the said Council to
appoint or assign an officer to discharge the functions assigned by sections 239 to 245 of the above Act in
respect of the offender and to notify the offender forthwith of the particulars of the officer; Ordered that the
offender shall, during the period of twelve months from this date or until the performance of the hours of unpaid
work specified at (b) below, whichever is shorter -

(a) report to the local authority officer appointed or assigned to him and notify the said officer
  without delay of any change of address or of any change in the times, if any, at which he
  usually works and

(b) perform for 138 hours such unpaid work at times as the local authority officer may instruct.

2.

If for any reason the offender fails to perform the unpaid work specified in paragraph 1(b) above during
the period of twelve months from the date of the order -

(a) the order shall remain in force beyond the twelve month period;

(b) the offender’s obligation under paragraph 1 above will continue, and;

(c) the local authority officer appointed under the order shall take whatever action is appropriate to
  bring the circumstances to the attention of the court.

Copy to: Offender
Chief Social Worker

Matthew Weir
Depute Clerk of Justiciary
RECEIPT FOR ORDER

(a) I have been given, have read and understood the foregoing order,

(b) I understand that the court, if satisfied that I have failed to comply with any of the conditions of this order, may take the following action under the Criminal Procedure (Scotland) Act 1995 Section 239

(i) Continue the order and impose upon me a fine (not exceeding level 3 on the standard scale),

or

(ii) Revoke the order and deal with me in any manner in which I could have been dealt with for the original offence by the court which made the order,

or

(iii) Vary the number of hours in the order (but not in total less than 40 nor more than 240 hours, or in cases where the offence was committed on or after 18 July 1996, not in total less than 80 nor more than 240 hours or 300 hours where the conviction is on indictment).

At (Place)

Signed (Offender) Date

Signed (Community Service Officer) Date

Signed (Community Service Officer) Date
Dear Jenny,

COUNCIL OF THE LAW SOCIETY OF SCOTLAND BILL

I am writing to bring you up to date with the scheme of delegation which is being worked on by the Society. This might be of assistance to Justice 1 Committee when it comes to consider the draft report on the Bill.

As indicated at the evidence session on 19th November 2002, the Society has been working on proposals for a scheme of delegation for a number of months. A final decision has not yet been reached on the scheme of delegation, although it may be helpful to sketch for you where this work now stands:

1. I enclose a copy of the existing schedule of delegated powers to committees, conveners and secretariat which was approved by the Society’s Council on 30th January 1998 and operated until its suspension in 1999. This was a reflection of existing practice by the Council prior to 1998.

2. A revision of that schedule of delegation covering the regulatory, functional and advisory committees of the Council. I enclose a draft document which deals with the division of labour and powers in relation to these committees. This paper should remain confidential as it is still under discussion and has not been finalised.

3. The publication of the Justice 1 Committee’s report on the Regulation of the Legal Profession on 27th November, gives rise to substantial issues of principle for the Council and the Society’s Constitution Committee to consider, especially in relation to the recommendations at paragraphs 20, 21 and 23.

/.../

Direct E-mail: moiragoll@lawscot.org.uk
I am sure the Justice 1 Committee will recognise that the current proportion of non-solicitor/solicitor members on Client Relations Committees at 40% non-solicitor to 60% solicitor membership is close to meeting the Justice 1 Committee's recommendation. Similarly in relation to the reservation to Council of consideration of some conduct issues, these would only amount to - on average - between 15 and 20 cases per annum. Qualitatively and quantitatively, there is much common ground between the Society and Justice 1 Committee.

Nevertheless, these issues are, as Justice 1 will appreciate, ones which the Council will want to take very seriously and consider closely. Therefore, the finalised scheme of delegation is unlikely to be available before the Justice 1 Committee makes its report on 23rd December.

If, however, the Committee wishes further detail from me to enable them to complete the report, I will do my best to provide that.

Yours sincerely,

Michael P. Clancy
Director

Dictated by Mr. Clancy and signed in his absence

Enc.
Law Society's Schedule of Delegated Powers to Committees, Conveners and Secretariat

[APPROVED BY COUNCIL ON JANUARY 30, 1998]

1. All Committees

All Committees have the following Delegated Powers:

1. Power to incur expenditure in accordance with the Committee's budget previously approved by the Finance Committee or the Council.

2. Power to sub-delegate to the Convener, to the Secretary, or to the Committee Secretary such of the Powers delegated to the Committee as the Committee considers necessary and appropriate for the carrying out of its agreed Remit and Objectives.

3. Power to respond in the Council's name to all Memoranda and Consultation Documents or any other proposals in whatever form for change in the law or procedure in relation to matters within the Committee's Remit unless the Committee considers that such proposal or response thereto proposes radical and fundamental change in law or practice or conflicts with existing Council policy, in which case such Response will be submitted to the Council for consideration and approval.

2. Powers Delegated to Specific Committees

The President's Committee
All Powers vested in the Council.

Admissions Committee
Powers to make all decisions under the Admission as Solicitor (Scotland) Regulations 1991 with the exception of Waivers under Regulation 40.

Power to the Convener and Deputy Secretary (Education and Training) to approve:
Release 4th May 1998
1. Simple assignments of training contracts where appropriate letters have been received from all three parties;
2. Secondment of trainees where the proposals fall within the provision for prosecution under the Admission Regulations;
3. First Waivers of Regulation 10 of the Admission Regulations on production of satisfactory evidence of appropriate work experience and attempts to keep knowledge of the law up-to-date.

Client Relations Committees (including Supervisory Committee)
1. The Council delegates to the Complaints Supervisory Committee, subject to the exceptions contained in paragraphs 3(a) and 3(b) hereof, the whole Powers of the Council in regard to the investigation, determination and disposal of complaints against solicitors and all matters ancillary or incidental thereto.
2. Complaints Supervisory Committee shall have Power to sub-delegate:
   (a) to the existing Complaints Committees (including the Legal Aid Complaints Committee)—and such other Complaints Committees or Panels as may, with approval of Council, be formed from time to time or
   (b) to the Convenor of the Complaints Supervisory Committee or
   (c) to the Senior Deputy Secretary in the Client Relations Office or
   (d) to the Deputy Secretary in the Client Relations Office
   such of the Powers delegated to Complaints Supervisory Committee in terms of paragraph 1 hereof as Complaints Supervisory Committee considers necessary and appropriate for the carrying out of the Council’s statutory duties and obligations in regard to the handling and determination of complaints against solicitors.
3. The exceptions mentioned in paragraph 1 hereof are:
   (a) The referral of a solicitor for prosecution before the Scottish Solicitors’ Discipline Tribunal in respect of which a recommendation for prosecution shall be made to Council for its decision and
   (b) The Powers of the Council under Section 31 of the Legal Aid (Scotland) Act 1980.
4. In respect of such Powers as may be sub-delegated, in terms of paragraph 2 hereof, Complaints Supervisory Committee shall lodge with the Secretary a Schedule of such Delegated Powers and any amendment thereof from time to time.

Compliance committee
- Power to grant an extension of time for compliance with the Solicitors (Scotland) (Continuing Professional Development) Regulations 1993 (the C.P.D. Regulations).
- Power to grant or refuse Waivers from the C.P.D. Regulations.
- Power to determine what is “relevant education and study” in terms of the C.P.D. Regulations.
- Power to assess the continuing education of a solicitor in respect of C.P.D. but not Power to impose disciplinary sanctions.
- Power to require solicitors to undertake additional C.P.D. to make up a shortfall.

The following Powers are delegated to the Committee Secretary
- Power to grant extension of time for compliance with the C.P.D. Regulations on cause shown.
- Power to grant Waivers in accordance with established Committee policy decisions.
- Power to determine whether a course or seminar is “relevant education and study” and/or whether it is “management and professional development” in accordance with established Committee policy decisions.

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Finance Committee
1. Power to purchase or acquire all necessary equipment for the proper execution of the business and responsibilities of Council and its Committees and to incur all reasonable expenditure in regard to the maintenance of the Council's Offices.
2. Power to approve Committee budgets subject to the overall budget for the following financial year being approved by Council.
3. Power to approve additional expenditure or re-allocation of previously budgeted expenditure sought by individual Committees provided that any additional expenditure would not result in a greater deficit at the end of the financial year than had previously been approved by Council.
4. Power to authorise recruitment of staff in excess of budgeted levels as required to achieve objectives agreed by Council.

Guarantee Fund Committee
1. The whole Powers of the Council is regard to the monitoring of the Accounts Rules and the Accounts Certificate Rules including investigation, determination and disposal of breaches of those Rules with the exception of those matters contained in paragraph 9 hereof which will remain vested in the Council.
2. Power to approve firms for routine or special inspection.
3. Power to call solicitors for interview.
4. Power to grant an extension of time for overdue Accountant's Certificates or Accounts Certificates.
5. Power to invest the Guarantee Fund from time to time.
6. Power to charge for re-inspection in terms of Rule 17(6) of the 1997 Accounts Rules or its equivalent in future Rules.
7. The Committee Convener and Chief Accountant in tandem shall have Power to require a re-inspection.
8. The Chief Accountant on his own shall have Power:
   (a) to dispose of Inspection Reports by letter and to record clear Reports.
   (b) to issue ten day reminder letters for overdue Accountant’s Certificates or Accounts Certificates.
   (c) to approve and pay claims on the Guarantee Fund of less than £5,000.
9. The exceptions referred to in paragraph 1 hereof are:
   (1) Appointment of a Judicial Factor.
   (2) Interventions under Sections 38, 45 and 46 of the Act.
   (3) Prosecution before the Scottish Solicitors’ Discipline Tribunal.
   (5) Suspension or withdrawal of Practising Certificates under Section 40 for:
      (a) Breaches of the Accounts Rules, or
      (b) Breaches of the Accounts Certificate Rules.
   (6) Approval of Guarantee Fund Claims (excluding Delegated Powers for claims of less than £5,000).
   (7) Decisions on policy matters referred by the Committee.

Insolvency Solicitors Adjudication Panel
The Power to approve but not to refuse all applications for recognition as an Insolvency Practitioner in terms of the Insolvency Act 1986.

Insurance Committee—Practice Advisory Service
Power to authorise a Practice Advisory Service inspection under Rule 9 of the Solicitors (Scotland) (Professional Indemnity Insurance) Rules 1995 is delegated to the Secretary whom failing the Deputy Secretary servicing the Insurance Committee.

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Investor Protection Committee
1. Power to authorize firms to give advice on pension transfers and opt-outs and to act as discretionary investment managers.
2. Power to recognise other investment qualifications which are deemed equivalent to the Society’s principal investment business examination.

Judicial Procedure Committee
Power to refuse applications for Membership of the Society’s Personal Injury Panel (see Speculative Actions Working Party).

Law Reform Committee
Power to lobby for change in the law in the name of the Council and through responding effectively to law reform proposals.

Legal Aid Strategy Committee
Power to liaise with the Scottish Legal Aid Board and other relevant bodies.

Marketing Committee
Power to the Convener to take decisions on a project when the principle has been agreed by the Committee without having to refer back to the Committee on points of detail.

Power to the Committee Secretary to take day-to-day decisions in implementation of previously agreed projects.

Mediation Committee and Accreditation Panels
Power to the Family Mediator and Solicitor Mediator Accreditation Panels to grant applications for accreditation as a Family Mediator or Solicitor Mediator.

Power to the Mediation Committee to refuse applications for accreditation as either a Family Mediator or a Solicitor Mediator.

Professional Practice Committee
1. Power to consider and determine all matters of Professional Practice and advise or instruct Members accordingly, provided any such determinations are made by a majority of not less than two-thirds of the Committee present. If one-third of the Members present make a Motion that the matter be remitted for consideration by the Council, it shall be so remitted.
2. Power to grant and refuse Waivers in terms of the Solicitors (Scotland) Practice Rules 1986 (the Conflict of Interest Rules).
3. Power to grant but not refuse Waivers in terms of Rule 10(4) of the 1997 Accounts Rules, or its equivalent in future Rules.
4. Power to issue Notices in terms of Rule 10 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1995 or its equivalent in future Rules.

Additional Waiver Powers
5. Power to grant and refuse Waivers in terms of the Advertising Rules; the Solicitors (Scotland) Practice Rules 1991 (known as the Fee Sharing Rules); the Solicitors (Scotland) (Associates, Consultants and Employees) Practice Rules 1996; and the Solicitors (Scotland) (Incorporated Practices) Practice Rules 1997.
6. Power to the Committee Convener to grant Waivers from the Conflict of Interest Rules which fall outside established Committee policy.

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7. Power to the two Departmental Deputy Secretaries to grant Waivers from the Conflict of Interest Rules in accordance with established Committee policy.

Publications Strategy Committee
1. Power to implement the new Journal without further recourse to the Council subject to operating within the agreed budget for the financial year 1997/98.
2. Power in relation to the Journal to determine:
   (a) The number and category of subscription rates and the actual subscription rates.
   (b) The advertising rate, content and type of advertisement.
   (c) Payment to contributors.
   (d) Payment and copy dates.
   (e) Type and content of inserts.
   (f) Employment of printers, advertising agents and consultants.
3. Power to enter into such printing contracts as are necessary to implement the agreed Objectives.
4. Power to set the subscription rates of Scottish Criminal Case Reports and Scottish Civil Law Reports.

Remuneration Committee
1. Power to approve the Cost of Time Survey Report.
2. Power to fix the value of the Unit in the light of the Survey Report.
3. Power to the Committee’s LPAC/Working Party to make representations to the Lord President’s Advisory Committee on Solicitors’ Fees in the Courts.

Speculative Actions Working Party
Power to set the criteria for Membership of the Personal Injury Panel and to grant, but not refuse applications for Membership of the Panel.

Speculation Accreditation Panel
Power to set the criteria for Accreditation as a Specialist by the particular Panel and Power to grant such accreditation to individual Members of the Profession.

Specialisation Committee
Power to refuse accreditation as a Specialist taking into account the recommendation of the relevant Accreditation Panel.

Update Committee,
1. Power to determine the nature, type, length, venue and cost of all Courses and the subjects, choice of contributors, group leaders and their remuneration.
2. Power to grant and refuse Waivers under Rule 6 of the Solicitors (Scotland) (Practice Management Course) Practice Rules 1997 or its equivalent in future Rules.

The Roll of Solicitors and Issue of Practising Certificates
Power to the Secretary to:
1. Restore the Roll except for those struck off by the Scottish Solicitors’ Discipline Tribunal.
2. Remove from the Roll on request, in terms of Section 9 of the Act.
3. Waive requirement for six week notice under Section 15(1) of the Act.
4. Issue a Practising Certificate to solicitors affected by Section 15(2) of the Act.

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Note—The following Committees are not Committees of the Council but are Independent and Autonomous.

Their decisions do not require the approval of and cannot be overturned by the Council:
1. Investment Compliance Committee.
2. Public Service & Commerce Group Committee.
3. SFC (Scotland) Committee.
LS222(S)/mpc/mmg

Ms. Jenny Goldsmith,
Assistant Clerk, Justice 1 Committee,
The Scottish Parliament,
Room 3.11 Committee Chambers,
EDINBURGH EH99 1SP

By e-mail

Dear Jenny,

COUNCIL OF THE LAW SOCIETY OF SCOTLAND BILL - PROPOSED AMENDMENT REGARDING DELEGATION TO INDIVIDUALS

I enclose a copy of a proposed amendment the Society would intend bringing forward at Stage 2.

The purpose of this amendment is to ensure that new section 3A(5) allows case managers to determine whether or not the Society has jurisdiction over complaints. It can be argued that new section 3A(5) will not in fact prohibit case managers from so identifying complaints, because the function of determining whether a complaint is a conduct complaint is not expressly conferred upon the Council by section 42A(1) or (2) or section 33(1). The only functions expressly conferred upon the Council are:-

a) section 42A(1) is to take any of the steps in section 42A(2) where (a) the Council received a complaint from any person having an interest that a solicitor has provided inadequate professional services and (b) after inquiry the Council upholds the complaint;

b) section 42A(2) which provides for making of certain determinations of direction; and

c) section 33(1) where the duty is to investigate the conduct complaint and to make a written report to the complainer and the solicitor of the facts found by the Council and of what action the Council would propose to take.

Accordingly, it is arguable that no amendment is in fact necessary. However, taking account of the doctrine of implied jurisdiction where it is generally implied that a person can make ancillary determinations which are necessary in order to carry out some function, then it would be prudent to make clear in the Bill that arrangements can be made for individuals to be able to ascertain whether or not the Society has jurisdiction.
The amendment is drawn specifically to ensure that the Council will not be able to delegate to an individual the function of determining whether a conduct complaint is without foundation. This will keep within the spirit of the prohibition of “individual determination which is the policyintention of the existing provision.

If you have any questions, please let me know.

Yours sincerely,

Michael P. Clancy
Director

Enc.
In section 1, page 2, line 6 at end insert –

“(5) Subsection (5) does not prevent an arrangement being made under this section for the discharge by an individual of the implied function of the Council under section 42A (1) or section 33(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 to ascertain whether a complaint is a conduct complaint and, for this purpose, conduct complaint shall have the same meaning as in the said section 33(1).”
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