AGENDA

40th Meeting, 2004 (Session 2)

Wednesday 22 December 2004

The Committee will meet at 10.00 am in Committee Room 1.

1. **Subordinate legislation:** Hugh Henry MSP (Deputy Minister for Justice) to move the following motion—

   S2M-2170 Cathy Jamieson—That the Justice 1 Committee recommends that the draft Criminal Procedure (Amendment) (Scotland) Act 2004 (Incidental, Supplemental and Consequential Provisions) Order 2005 be approved.

2. **Subordinate legislation:** The Committee will consider the following negative instrument—


3. **Protection of Children and Prevention of Sexual Offences (Scotland) Bill:** The Committee will take evidence from—

   Tam Baillie, Assistant Director (Policy), Barnardo’s Scotland;

   James Chalmers, University of Aberdeen.

4. **Security of tenure and stability of rents:** The Committee will consider what action to take in relation to the security of tenure and stability of rents for those who occupy properties built on leased land.

5. **Civil Partnership Act 2004 (UK legislation):** The Committee will note the enacting of UK legislation to create a status of civil partnerships for same-sex couples.

6. **Protection of Children and Prevention of Sexual Offences (Scotland) Bill:** The Committee will consider whether to delegate authority in respect of witness expenses to the Convener.

Alison Walker
Clerk to the Committee
Tel: 0131 348 5195
Papers for the meeting—

Agenda item 1
Note by the clerk  J1/S2/04/40/1

Agenda item 2
Note by the clerk  J1/S2/04/40/2

Agenda item 3
Note by the clerk (PRIVATE PAPER)  J1/S2/04/40/3
Written submission from Barnado’s Scotland  J1/S2/04/40/4

Agenda item 4
Note by the clerk  J1/S2/04/40/5
Note by the adviser  J1/S2/04/40/6

Agenda item 5
Note by the clerk  J1/S2/04/40/7

Papers for information—

Part 1 Land Reform (Scotland) Act 2003: Draft Guidance for Local Authorities and National Park Authorities (SE 2004/276) (due to be considered at the meeting of the Committee on 12 January 2005)  J1/S2/04/40/8
Correspondence from the Scottish Rural Property and Business Association Ltd about SE 2004/276  J1/S2/04/40/9

Correspondence from the Minister for Justice—

• about the EU Justice and Home Affairs Council of 25 and 26 October 2004;  J1/S2/04/40/10
• about the Parliament House redevelopment project  J1/S2/04/40/11
• to the Convener of the Justice 2 Committee about further roll-out of the escorting contract with Reliance Custodial Services  J1/S2/04/40/12

Documents not circulated—

A copy of the following has been supplied to the clerk—


This document is available for consultation in room T3.60. Additional copies may also be obtainable on request from the Document Supply Centre.

Forthcoming meetings—

Wednesday, 12 January 2005;
Wednesday, 26 January 2005;
Wednesday, 2 February 2005;
Wednesday, 9 February 2005.
I attach the following papers:

**Agenda Item 3: Protection of Children and Prevention of Sexual Offences (Scotland) Bill**

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20 December 2004  
Tony Reilly
Justice 1 Committee

40th Meeting 2004 (Session 2)

The Criminal Procedure (Amendment) (Scotland) Act 2004 (Incidental, Supplemental and Consequential Provisions) Order 2005

Note by the Clerk

Purpose of the draft instrument

1. This draft order makes amendments to the Criminal Procedure (Amendment) (Scotland) Act 2004 and the Criminal Procedure (Scotland) Act 1995.

Background

Criminal Procedure (Amendment) (Scotland) Act 2004

2. This instrument is drafted in exercise of powers conferred by section 26(1) and (2) of the Criminal Procedure (Amendment) (Scotland) Act 2004.

Provisions

3. The purpose of the Order is to amend the Criminal Procedure (Amendment) (Scotland) Act 2004 and the Criminal Procedure (Scotland) Act 1995 in order to make provision ancillary to the 2004 Act. The order clarifies some of the provisions of the 2004 Act and the amendments made by that Act to the 1995 Act. These amendments relate to:

- Trial diets in relation to solemn cases in the sheriff court
- Appointment by the court of a solicitor to act for the accused
- Intimation of an application for a change of bail address
- Child witness notices and vulnerable witness applications

4. There are other technical and consequential amendments.

Financial consequences

5. The Scottish Executive’s note states that the instrument has no financial effect on the Scottish Executive, local government or on business other than the financial effects as stated in the financial memorandum which was lodged with the Criminal Procedure (Amendment) (Scotland) Bill.

Subordinate Legislation Committee

6. The Subordinate Legislation Committee considered this instrument at its meeting on 7 December 2004 and determined that the attention of the Parliament need not be drawn to it (Subordinate Legislation Committee, 43rd Report, 2004 (Session 2)).

Procedure

7. The Justice 1 Committee has been designated lead committee and is required to report to the Parliament by 17 January 2005.
8. The draft instrument was laid on 30 November 2004. Under Rule 10.6.1(b), the instrument being subject to affirmative resolution before it can be made, it is for the Justice 1 Committee to recommend to the Parliament whether the instrument should be approved. The Minister for Justice has, by motion S2M-2170 (set out in the agenda), proposed that the Committee recommends the approval of the instrument. The Deputy Minister for Justice will attend in order to speak to and move the motion. The debate may last for up to 90 minutes.

9. At the end of the debate, the Committee must decide whether or not to agree to the motion, and then report to the Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendation.

Consideration by the Parliament

10. The motion will be considered by the Parliament on 12 January 2005.
Justice 1 Committee  
40th Meeting 2004 (Session 2)  

Act of Sederunt (Fees of Sheriff Officers) 2004

Note by the Clerk

Purpose of the instrument

1. This Act of Sederunt increases the fees payable to sheriff officers by 3.7% with effect from 1 January 2005.

Background

Sheriff Courts (Scotland) Act 1907

2. This instrument is laid before Parliament under section 40 of the Sheriff Courts (Scotland) Act 1907, as amended, and section 6 of the Execution of Diligence (Scotland) Act 1926.

Provisions

3. This Act of Sederunt increases the fees payable to sheriff officers by 3.7% with effect from 1 January 2005. The last increase was effected by the Act of Sederunt (Fees of Sheriff Officers) 2003 (SSI 2003/538) which increased fees by 3.2%.

Financial consequences

4. The explanatory note makes no reference to the financial consequences on Executive expenditure.

Subordinate Legislation Committee

5. The Subordinate Legislation Committee considered this instrument at its meeting on 7 December 2004 and determined that the attention of the Parliament need not be drawn to it (Subordinate Legislation Committee, 43rd Report, 2004 (Session 2)).

Procedure

6. This instrument is subject to negative procedure. Under Rule 10.4 of the Standing Orders, this 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 30 November 2004 and is subject to annulment under the Parliament’s Standing Orders until 20 January 2005.

8. In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee. The instrument is due to come into force on 1 January 2005.
Introduction
Barnardo’s Scotland provides over 60 services for some of the most vulnerable, disadvantaged and excluded children, young people and their families in communities across Scotland. This includes 4 services that are dedicated to working with children and young people with sexually problematic behaviour. In addition, many of our other services also deal with young people who have experienced sexual exploitation.

General Points
Barnardo’s Scotland welcomes the proposed new legislation as a means of extending further protection to young people. The Sexual Offences Act 2003 is already in place in England and Wales and we recognise the importance of UK consistency on this subject through the creation of similar legislation in Scotland.

Barnardo’s Scotland understands that the policy intention of the Act is:

1. to enable arrest and prosecution to be made of an adult on their way to meet a child who has been ‘groomed’ by the adult
2. to enable police to operate covert operations whereby officers could pose as children and entice sufficient information from the suspected abuser in order to bring about a successful conviction

Barnardo’s Scotland considers this to be a balanced piece of legislation in relation to the protection of children versus the infringement of civil liberties. However, there are some general points which Barnardo’s Scotland would wish to bring to the fore:

- The definition of grooming does not cover those in the same household and we are aware that many instances of sexual exploitation of children occur within the family. Grooming within families, for example - by an uncle, for exploitation by either the relative or an external person will not necessarily be assisted under the proposed new offences. It would have been useful to have considered how this type of behaviour could have been tackled as this limits the potential impact of the legislation.

- There is a need to continue to raise general public and professional awareness and use high profile educative and preventative campaigns in order to protect children from the process of grooming.
• It is essential that statutory and voluntary organisations charged with safeguarding children work in cooperation with internet service and mobile phone providers to protect children from the detrimental effects of grooming and sexual exploitation.

• We welcome the extension of police powers to protect children from sexual harm but would have some concerns about the operation of the legislation where sufficient resources were not available.

• Barnardo’s Scotland welcomes the legislation in terms of the restriction of perpetrators behaviour. However, we would wish to see equal priority given to treatment interventions with perpetrators. If the intention is to affect change in perpetrators behaviour to ensure the long term safety of children, restriction and intervention are both required.

Specific Points

Q1. Does the new offence set out in Section 1 of the attached draft Bill achieve the objective of ensuring that potential sex offenders meeting or travelling to meet a child following grooming behaviour can be prosecuted?

Barnardo’s Scotland generally agrees that the new offence will help move towards the objective of ensuring that sexual offenders meeting or travelling to meet a child following grooming behaviour can be prosecuted.

Barnardo’s Scotland has concerns that if the police are not adequately resourced, implementing the legislation may be problematic. The legislation only comes into effect at the point where an adult travels to meet or meets with a child – this is a considerable way down the grooming process. In circumstances where the police were following up concerns raised by children or parents, the proposed legislation would require that the police wait until the adult meets or travels to meet with the young person before they will have sufficient reason for arresting them. It is in these cases that the proposed Risk of Sexual Harm Orders (RSHOs) may become a valuable tool.

From Section 1 of the Protection of Children and Prevention of Sexual Offences (Scotland) Bill, it seems that there may be evidential considerations to show that there was intent on behalf of the adult to commit a ‘relevant offence’. While we recognise the inevitable limitations in creating legislation for this new offence, we also take note of the fact that there may be challenges in the presentation of evidence.

Q2. Does the new offence strike the right balance in criminalising activity which involves grooming and then meeting or travelling to meet a child? Or should other activities comprise the criminal offence?

Barnardo’s Scotland does not have suggestions to include any further activities within this criminal offence.
Q3. Is the proposed penalty set at the right level?

Barnardo’s Scotland considers the penalty sufficient but would again highlight the need for intervention with perpetrators. There is a requirement to consider most effective form of intervention with adult perpetrators. It would be useful if the prohibitive aspects of the legislation were complemented with a requirement for offenders to participate in treatment programmes.

Q4. Is 18 the right minimum age for the offender or should it be, for example, 16?

Barnardo’s Scotland has given very careful consideration to this issue and recognises that it poses a dilemma. The age of sexual consent in Scotland is 16 years, yet the proposed legislation is effective from 18 years. This leaves an anomalous position for those aged 16 and 17 years who would not be covered by the legislation as it stands.

Barnardo’s Scotland are aware of young people who present sexually problematic behaviour – most of these young people are under the age of 18 years. In our experience, interventions which occur at the earliest stage possible are more effective in helping to prevent future offending in this type of behaviour. The legislation would create a gap in potentially identifying perpetrators aged 16 and 17 years. Care would need to be exercised in separating out threatening behaviour and normal adolescent romantic exchanges – particularly where the age differences are small. Guidance is required on this so that the legislation remains targeted on those who pose a threat through grooming activity.

Barnardo’s Scotland recommends that the age for the offender be set at 16 with the following conditions:

- guidance is created which helps draw distinctions between grooming behaviour and normal adolescent ‘romantic exchanges’
- consideration is given to the role of the children’s hearing system in cases for those aged 16 and 17 years
- treatment programmes for young offenders are appropriately resourced

Q5. Would Risk of Sexual Harm Orders be a useful measure in preventing sex offences against children?

Barnardo’s Scotland welcomes the potential role of the RSHOs in providing opportunities for the police to intervene and prosecute at an earlier stage in the process of grooming. In conjunction with the offence to meet a child following grooming, the proposed new orders could provide the police with powers to act during the process of grooming. RSHOs would help to increase the limited scope of the proposed new offence in relation to the overall process of grooming.
RSHO’s may be effective in a restrictive sense, but it is essential that any work to refrain the behaviour of perpetrators is reinforced with intervention and support to ensure the maximum success.

Q6. Does the proposed list of trigger behaviour cover all relevant activities that might prompt application for a RHSO?

Barnardo’s Scotland believes that the list of trigger behaviours is wide enough to cover all relevant activities that might prompt application for a RSHO.

Q7. Should the use of Sexual Offences Prevention Orders be extended to allow them to be imposed at time of sentencing?

Barnardo’s Scotland would welcome the extension of Sexual Offences Prevention Orders (SOPOs). It is clear that there will be occasions when it would be useful for a court to impose a SOPO when disposing of an offender, rather than requiring a Chief Constable to make an application for an order.

Q8. Are there any other issues in relation to grooming a child for sexual exploitation that we should take into consideration in the proposed bill?

Barnardo’s Scotland generally welcome the introduction of the Bill. The legislation has the potential to be a valuable tool, but it is not the only way of addressing concerns about internet grooming. The following suggestions are proposed:

- Barnardo’s Scotland is particularly concerned regarding the support to be given to victims of this type of offence and that these are appropriately funded.

- Barnardo’s Scotland suggests that attention must be given to the treatment of perpetrators. Punitive deterrents must be reinforced with rehabilitative interventions. It is essential that those who commit or become victim of grooming offences receive suitable treatment if we are to reduce the likelihood of further offences.

- Barnardo’s Scotland recognises the preventative and education work of Scottish Executive in highlighting the issue e.g. the publication of ClickThinking. Children and young people are rightly encouraged to utilise the internet. As a consequence they require to be alert to some of the threats. However, more could be done in this area – particularly linking education programmes aimed at young people and parents with child protection processes.

- Barnardo’s Scotland experience is that young people with learning difficulties have represented a high proportion of those referred to our services as both perpetrators and victims of sexual exploitation. Consideration should be given to the types of measures which will be required to support legislation in this area.
Barnardo’s Scotland believes there is a continuing need to raise public awareness of the dangers which can arise from children and young people’s unmonitored use of new technologies - press reports have recently kept the issue on the public agenda.

Tam Baillie
Assistant Director (Policy)
Barnardo’s Scotland
15 December 2004
HUTTERS IN SCOTLAND

Thank you for your letter of 08 December to Cathy Jamieson MSP, Minister for Justice, raising the issues discussed by the Justice 1 Committee at its meeting of 08 October in relation to hutting in Scotland. I have been asked to respond.

I share the satisfaction expressed by Committee members that the situation at Carbeth is being progressed through constructive discussions at local level. The Executive’s underlying position is that it would not be appropriate to seek to intervene in private negotiations between landlord and tenants, and that we would encourage local resolution of such difficulties. We would be extremely reluctant to undertake anything to jeopardise the negotiations at Carbeth, and therefore do not think that rent control or compulsory arbitration proposals would facilitate resolution at this stage of the process.

In relation to the concerns which have been raised at Lochgoilhead, the Executive is unable to comment on specific issues which may become the subject of legal action. In general terms, although I sympathise with the problems which individual hutters have experienced I remain unimpressed that a legislative solution is workable or desirable.

One major obstacle to legislation is that if it were to apply retrospectively it would carry the very strong risk of being incompatible with the ECHR. This is most pronounced in the area of giving tenants greater security of tenure, but it also applies to proposals to effectively insert new clauses into the lease agreements between landlord and tenant on rent review or mediation. It is a well accepted principle of legal policy that, except in special circumstances, legislation ought not to be retrospective on the grounds that it ought not to change the character of past transactions carried out in good faith and on the basis of existing laws. Unless any legislation is made retrospective, it would not benefit the existing hutters.
I note from the Official Report that there was some discussion of possible reform to the law of leases to ensure greater fairness along the lines of the Unfair Contract Terms Act 1977. I regret that I also doubt whether this would be a workable solution as a lease providing for a 25 year tenure with no renewal clause is not of itself inherently unfair. Leases which roll-on on an annual basis with little or no provision for renewal or rent review are not uncommon. They operate perfectly satisfactorily in many circumstances. Quite understandably, a huffer who has personally built, maintained or customised their hut may feel that their investment should give them security of tenure. But, leaving aside the question of whether greater protection should be provided, this does not make the terms of the original contract unfair. It is the expectations of the parties and the circumstances of each case which produce dissatisfaction and disquiet.

Where the original agreement or contract was freely negotiated and entered into, it is difficult to intervene through legislation to the advantage of one of the parties at the expense of the other. In other forms of holiday lettings there is no statutory system of rent control or arbitration for determining rents as it is accepted that this is something which is properly decided by the market, and this system appears to work well. Even in relation to huts, we are only aware of pronounced dissatisfaction in two hutting estates out of the 37 sites (27 rented) identified in the “Huts and Hutters in Scotland” research paper published in 2000. Further consultation did not reveal widespread difficulties between landlords and hutters, although I note your comment that you have received correspondence from other hut sites.

I think it is worth remembering that there is a risk that legislation in this area might precipitate changes to the ownership and management of comparable estates in Scotland which could be damaging to the interest of hutters. In particular, estate owners might decide to terminate leases because of concern about the implications of hutters acquiring security of tenure or rent control, or even to sell their estate if they felt it would become economically unviable as a result. Such repercussions, if realised, would clearly undermine any positive value that legislative measures might have. One other factor on rent control is that because the leases are (or will be) generally of an annual duration, the landlord could end the lease by giving notice before the annual renewal date if he did not like the reviewed rent.

I am sorry that this response is not as positive as you would have wished, but it might be helpful to the hutters too if a line were to be drawn under this matter. The Executive’s position is that we see no prospect of a legislative solution. Furthermore, since it would not be appropriate for us to intervene between tenants and landlords, we do not believe that there is anything that can be done by the Executive to alter the position of the hutters.

Yours sincerely,

Hugh Henry

HUGH HENRY
Dear Pauline

I refer to your letter of 29 April and Douglas Thornton’s letter of 4 May 2004.

In the view of Professor Robert Rennie a member of the Society’s Conveyancing Committee the legal situation relating to such matters is fairly clear and that is:-

(a) That a lease for over a year has to be in writing.

(b) Generally speaking anything that is built on land eventually belongs to the owner of the land no matter who erected the building.

(c) There is no such thing in Scots Law as "squatters' rights".

(d) That there is no specific legislation which would deal with this particular issue in a general sense. There are no automatic rights of renewal of tenancies of this type nor any rights to have the rent kept at the same level.

1. The current legal situation

There is legislation on the statute book at the moment which places finite limits on the length of leases which can be granted. A lease which is entered into on or after 9th June 2000 will have a maximum length of 175 years (Abolition of Feudal Tenure etc (Scotland) Act 2000 S67). Accordingly it would not be possible to pass legislation which gave some sort of perpetual rights of tenure. There is also a prohibition of the lease of property for residential purposes for a period in excess of twenty years (Land Tenure Reform (Scotland) Act 1974 S8). These provisions apply to every lease for more than twenty years which has been entered into after 1st September 1974. The prohibition does not apply to leases of caravan sites or leases where the residential use is ancillary to a nonresidential use such as a caretaker's flat but it may apply to other situations. There are of course special provisions for security of tenure under the Housing Acts. These provisions go back to the Rent Restriction Acts. There is provision for assured tenancies. That legislation has been held to apply to a room in a hotel occupied by a long term resident. However the property in question must be the only or principal home of the tenant (Housing (Scotland) Act 1988 S2(1)). There is also a statutory exclusion of holiday lets. In McHale v Denham (1979 249 EG 969) certain premises were held to be on a holiday let even although the tenants were foreign visitors working in London who had been in possession for over six months.
3. The Scope for Specific or General Legislation

The Society acknowledges the point which the Executive make about the difficulty surrounding legislation to tackle a specific issue. There are always almost bound to be difficulties in such a case. Inevitably if legislation is passed which is specific to one particular site there are bound to be arguments arising in the future that other sites or other situations should have been dealt with at the same time.

4. Impact on Existing Contracts - Human Rights

The Executive have pointed out that introducing legislation would, if it is to have any effect, alter the legal rights of the parties retrospectively. This brings into sharp focus the provisions of Article I of Protocol I of the European Convention on Human Rights which provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions. The Article goes on to state that no-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. However, the Article does not impair the right of the State to enforce such laws as are deemed necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. There is obviously a balance to be struck between the interest of individual parties and the general or public interest. This balance is known as the balance of proportionality. There certainly have been cases where a state has been held entitled to pass legislation which curtails the property rights of individuals in the general interest. The case which is closest is the case involving the Duke of Westminster (James v United Kingdom ECHR 21st February 1986 Series No. 98). That case related to the English Leasehold Reform Act. Leasehold tenure is widespread in England. The Duke of Westminster many years ago acquired large tracts of Belgravia and Mayfair and then granted ground leases of plots. The tenants built the houses but on the expiry of the leases the houses belonged to the landlords. The Leasehold Reform Act allowed the tenants to buy out the landlords' interest on payment of compensation which did not in every case take into account the value of the house. The rationale was that the house had been built at the tenant's or previous tenant's expense. The Duke of Westminster took the United Kingdom to court alleging that he was being deprived of a very important property right. However the International Court of Human Rights held that the United Kingdom could pass this legislation in the general interest. Similarly in Mellacher and Others v Austria (ECHR 19th December 1989 Series A No.169) Austria passed rent control measures which deprived landlords of part of their income by effectively holding or reducing down rents. The court refused an application by landlords holding that Austria was entitled to pass the legislation despite the fact that the original rents were agreed upon in the open market and corresponded to the then prevailing market rents.

The/
3.

The question would be is there a general public interest in Scotland in passing legislation specifically to address an individual situation such as that being considered. Leasehold tenure in Scotland is not as common as in England and it might be difficult for the State to show that legislation was in the general or public interest. Certainly it could hardly be argued that such legislation did not affect the landlords' property rights adversely.

I hope you find the foregoing helpful but, should you wish to discuss it further, please do not hesitate to contact me.

Yours sincerely

Michael P Clancy
Director
Dear Pauline

I refer to your letter of 29 April and Douglas Thornton’s letter of 4 May 2004.

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3. **The Scope for Specific or General Legislation**

The Society acknowledges the point which the Executive make about the difficulty surrounding legislation to tackle a specific issue. There are always almost bound to be difficulties in such a case. Inevitably if legislation is passed which is specific to one particular site there are bound to be arguments arising in the future that other sites or other situations should have been dealt with at the same time.

4. **Impact on Existing Contracts - Human Rights**

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I hope you find the foregoing helpful but, should you wish to discuss it further, please do not hesitate to contact me.

Yours sincerely

Michael P Clancy
Director
From: Milligan, Christine [c.milligan@lancaster.ac.uk]
Sent: 07 September 2004 09:34
To: Thornton DM (Douglas)
Subject: RE: Hutters

Dear Douglas

Many thanks for advising us of Prof Rennie's appointment. I have attached a letter laying out some of the issues pertinent to the situation of the hutters at Rascarrel which we feel raise additional issues to those he appeared to respond to in his last correspondance to the Justice 1 Committee. I would be grateful if you would forward to him.

I would also be grateful if you could advise of the date in October when the next committee meeting will look at this issue.

Further to our previous correspondence we have just been informed that one of the oldest hutters on the shore at Rascarrel (74 years of age) has decided to take his hut down this week as he cannot afford the rent rise and can no longer cope with the worry. His family have had a hut on the shore since the 1940s and it seems a great injustice that he should find himself forced off in this way.

Christine
on behalf of the Dumfries and Galloway Hutters Association

-----Original Message-----
From: Douglas.Thornton@scottish.parliament.uk ([mailto:Douglas.Thornton@scottish.parliament.uk])
Sent: 25 August 2004 18:04
To: Milligan, Christine
Subject: RE: Hutters

Dear Christine,

Further to your email below, I apologise for the delay in responding to you; I have just returned from leave.

In relation to your first question relating to the appointment of an adviser, I am able to advise that Professor Rennie has been appointed to this post. In your previous email, you asked how the adviser might be contacted – I would ask that you continue to use the clerks as the point of contact regarding the Justice 1 Committee’s consideration of security of tenure; we will liaise with the adviser as necessary.

In relation to your second question, regarding any meeting between hutters and the Executive, the Committee agreed that it would not become involved in any such meetings. The timing of any such meetings is therefore a matter entirely for hutters and for the Executive.

It is likely that the Committee will consider security of tenure again in October.

Kind regards
Dear Douglas

We e-mailed you some time ago regarding the appointment of a legal advisor agreed at the last meeting of the Justice 1 Committee at which hutters rights and security of tenure were discussed. I realise that Parliament has been in recess over the summer but wondered if you would be good enough to let us know what is happening re this appointment?

Hutters from our association who attended this meeting also noted that the committee discussed a meeting between hutters representatives and the Scottish Executive. We have hear nothing further so again would be grateful if you could advise when this is likely to occur?

The situation has not improved in our area and at least one hutter is likely to be facing eviction as he was unable to pay the increased rent (as an aside, another elderly hutter was forced to spend the money he had been saving up for his Golden Wedding Anniversary to pay this!)

We really feel that it is imperative that an advisor is appointed as soon as possible so this situation can hopefully be resolved.

Yours Sincerely

Christine

(on behalf of the Dumfries and Galloway Hutters Association)
From: Milligan, Christine [c.milligan@lancaster.ac.uk]
Sent: 17 June 2004 09:55
To: Douglas.Thornton@scottish.parliament.uk
Subject: RE: JUSTICE 1 COMMITTEE: Security of tenure and rights of access

Dear Sir

Many thanks for advising us of the forthcoming meeting of the Justice Committee, although I am unable to attend myself, my husband and one other person will be there from the Rascarrel hutters to listen to the proceedings. I would still be grateful however if you could advise me of the outcome of the meeting so I can pass this on to others who are unable to attend.

I thought it worth bringing to your attention one further development that has just this week occurred. As you will be aware from previous correspondent, we did in fact send a cheque to the Land Agents for a sum equivalent to last year's rent plus £25.00 as a gesture of good faith. This has been returned to us this week, with a letter informing us that if we do not pay the revised rent in full within 14 days, we will be served with a Notice to Quit the site as of 1st February 2005.

The letter also states that the land owner has sole control over what use is made of the access road from the public highway to the shoreline where the huts are located and that they are entitled to close-off this road to members of the public should they wish to do so, thereby preventing any vehicular traffic from entering this road (and hence our access to the huts). This access road has been open to the public at large (not just the hutters) since before the Second World War and is certainly a pedestrian right of way (the upkeep of which, in recent years has been undertaken by the local authority). It is well used by the all members of the public for walking, fishing and general enjoyment of the shoreline and would certainly create much ill-feeling across the county should the landowner attempt to close-off access.

We are, of course, consulting with our solicitors about the best way to proceed, but as you will be aware, hutters currently have no security of tenure under Scottish Law. We cannot stress enough how urgently we feel the Scottish Parliament needs to move on this matter to close what is clearly a loophole in the current legal system.

We would be grateful if this matter could be brought to the attention of the Justice Committee when considering security of tenure for hutters at their meeting on Wednesday next.

Yours Sincerely

Christine Milligan

-----Original Message-----
From: Douglas.Thornton@scottish.parliament.uk [mailto:Douglas.Thornton@scottish.parliament.uk]
Sent: 15 June 2004 15:21
To: Milligan, Christine
Subject: RE: JUSTICE 1 COMMITTEE: Security of tenure and rights of access

Dear Ms Milligan,

Further to your email of 3 June 2004 and your request for a meeting with the Justice 1 Committee, I’m afraid that we have not yet had an opportunity to put your request before the Convener. It is anticipated that there will be an opportunity to do so later this week.

You may wish to note that the subject of security of tenure and rights of access for hutters will be considered by the Justice 1 Committee at its meeting on 23 June 2004.
The meeting is scheduled to commence at 10.00 am and will take place in the Chamber, Assembly Hall, the Mound, Edinburgh. The meeting will be open to the public and you are, of course, welcome to attend. Public seats are available and may be obtained in advance by calling the Parliament’s public information desk on 0131 348 5411. Please note that public access to the Chamber is via Mylne’s Court, off the High Street (a map is available online: http://www.scottish.parliament.uk/graphics/map.gif).

I will contact you again after the meeting to inform you of any decision that the Committee takes and to provide you with a copy of the official report of the meeting. In the meantime, please do not hesitate to contact me if you have any queries.

Kind regards

Douglas Thornton
Assistant Clerk
Justice 1 Committee
CC 3.11
The Scottish Parliament
Edinburgh
EH99 1SP
Tel: (0131) 348 5227
RNID Typetalk 18001 0131 348 5227
Fax: (0131) 348 5252

-----Original Message-----
From: Milligan, Christine [mailto:c.milligan@lancaster.ac.uk]
Sent: Thursday, June 03, 2004 9:21 PM
To: Douglas.Thornton@scottish.parliament.uk
Subject: RE: JUSTICE 1 COMMITTEE: Security of tenure and rights of access

Dear Mr Thornton

Many thanks for apprising us of developments in relation to the the issue of security of tenure for hutters. Things have begun to develop further here in Dumfries with the landowner now claiming that should this result in a court case, rents will be increased proportionally to cover any costs he accrues in the process.

We have been in contact with Bill McQueen from the Carbeth Hutters Association who informs us that contrary to what the letter from the Scottish Executive seems to imply, the situation for them has still not been satisfactorily resolved. We also understand that other hutters from the Dunoon area have been in touch with Mr McQueen as they too are experiencing problems with the landowner.

While we appreciate that the Social Justice Committee is looking into this issue, but things are now quite urgent for us and our view on this is that we feel that a joint meeting between the Justice Minister, the Social Justice Committee and ourselves, Mr McQueen and a representative from the Dunoon hutters would be beneficial in helping to clarify the issues and how (and more importantly when) things might proceed further.

We would appreciate it if this request could be put to the Minister and the Convenor and a possible date for a meeting suggested.
Dear Ms & Mr Milligan,

At its meeting on 31 March 2004, the Justice 1 Committee considered recent correspondence, including your email of 2 February 2004, relating to security of tenure and rights of access for those who own property built on leased land.

The Committee noted a response from the Scottish Executive outlining difficulties with legislating in this area; agreed to seek to appoint an adviser, and also agreed to write to the Law Society of Scotland and the Faculty of Advocates seeking views on the difficulties outlined by the Executive.

The official report of the meeting, which shows the discussion relating to security of tenure, is available online [here](#); copies of the papers considered at the meeting are available in PDF format [here](#), and the minute of the meeting is online [here](#). I shall write to you again to notify you when the Committee returns to this matter. In the meantime, please do not hesitate to contact me if you have any queries.

Kind regards

Douglas Thornton
Assistant Clerk
Justice 1 Committee
CC 3.11
The Scottish Parliament
Edinburgh
EH99 1SP
Tel: (0131) 348 5227
RNID Typetalk 18001 0131 348 5227
Fax: (0131) 348 5252
We are writing to you in connection with our holiday hut on the Rascarrel Shore in Dumfries and Galloway. These huts have been on the shore from at least the 2nd World War and most have remained in the ownership of the original families or have passed on to close friends.

In the recent past we have enjoyed good relations with the farmers who own the land for which we pay ground rent. However approximately five years ago the management of the farm passed into the hand of the son-in-law who has now passed over the management of the huts to a land agent. As a result we have received a letter indicating that the ground rent will increase this year from £150 per annum to £500.00 for 2004 and thereafter will rise to £1,000 per annum - an increase of over 700% in two years! As the law currently stands we appear to have no legal redress should he seek to impose even more rent increases of this kind in the following years. There are no services to these huts (i.e. no mains water, power or sewerage). We also have no written lease. Past policy by the farmer has simply been to invoice us in February of each year for payment of the ground rent. The rent increase affects eight families on the shore, few, if any, can afford to pay this kind of rent and have been told that if they fail to pay, matters will be placed in the hands of the Sheriff Officer, i.e. they are likely to be evicted. Though we have no solid evidence, we strongly believe that the landlord's ultimate goal is to remove the original hut owners by seeking to make the ground rent unaffordable, leaving the path clear for his own development.

I have attached a copy of a letter sent to the land agents stating why we believe the independent valuation to be flawed.

I understand from the Carbeth Hutters Association that the Social Justice Committee is currently considering legislation that will give hutters legal protection from unreasonable action by landlords - something we currently do not enjoy. I also note from the House of Lords website, that owners of huts in Holtsfield, Wales won a similar case against the landowners in the House of Lords.

We would very much like to know how this proposed legislation is progressing in the Scottish Parliament and whether the House of Lords ruling sets a precedent that would help to protect hutters in Scotland. We are not alone in the difficulties we face with the landowner, hutters in at least two other areas across Scotland are currently facing the same problems. We are thus, appealing to the Social Justice Committee to move forward with this with the utmost urgency. At the very least would it be possible to consider implementing some interim ruling that would protect hutters until the new legislation is implemented (e.g. a freeze on rent increases above the rate of inflation or other reasonable figure)? We, and others like us, are in an extremely vulnerable position and face the possibility of losing our holiday homes with what appears to be no legal redress as things currently stand.

I cannot express how strongly we feel about the need for some legal protection under Scottish law.

Unfortunately, we will be away from home for the next three months, but would be extremely grateful if you could send any response to the following e-mail address:

c.milligan@lancaster.ac.uk

Yours Sincerely

Christine and Norman Milligan
From:  Cllr John Downes [cllr.j.downes@basingstoke.gov.uk]
Sent:  29 November 2004 14:01
To:    Thornton DM (Douglas)
Cc:    c.milligan@lancaster.ac.uk
Subject: Justice 1 Committee- Security of tenure Scottish Hutters

For the attention of Pauline McNeil MSP

C/O Justice 1 Committee- Security of Tenure Scottish Hutters

Re:  Security of Tenure

    Dumfries and Galloway Hutters association

The whole issue of human rights has been propelled to the forefront of debate both in the UK and Europe, and as a result of the Iraq War throughout the world. Is it not ironic, therefore, that there is still a group of individuals in Scotland who don't have basic rights accorded to the rest of the population?

I am referring to the situation of Hutters in Scotland. The relationship between tenants and landlord is still governed by a medieval concept of land ownership which is little different to that of the Highland landowners and their peasant tenants during the Highland clearances.

In commercial relationships the issue of reasonableness and equity dominates and both parties are able to negotiate an agreement to their mutual satisfaction.

The relationship between private individuals and their landlords is even more carefully regulated to ensure that the "Rachmann" style of landlords can no longer tyrannise, bully and persecute individuals. The concept of reasonability and justice is normally paramount.

Clearly the context of fairness and equity must be interpreted in different ways; depending if the prospective tenant is looking to move in to a hut for the first time or if the tenant has occupied the site for a number of years without let, hindrance or a formal agreement governing the relationship.

In the first case the prospective tenant can decide if the lease agreement is acceptable; if it is not then the individual can walk away without loss and the landlord cannot dominate the situation to his exclusive advantage.

In the second case the situation is totally skewed in favour of the landlord. Hutters have NO rights in this situation. The landlord can impose any terms he wishes and the tenant can only take it or leave it! The landlord totally dominates the relationship and can vary the agreement at will. The landlord is not obliged to be fair, reasonable or to compensate the tenants if they are unwilling or unable to accept the terms offered. The landlord can bully, terrorise and persecute the tenants with little danger of the tenant having any recourse to any remedy or protection.

The committee is, or should be by now, be familiar with the situation in Carbeth and the problems being encountered by the Dumfries and Galloway Hutters Association. The situation at Carbeth is in a state of limbo, probably because the landlord cannot afford to continue with an expensive series of eviction actions rather then a fundamental change of heart.

The situation in Dumfries has yet to crystallise. The sites and huts on the foreshore at Rascarrel have been occupied by Hutters for nearly seventy years without any agreement to govern the relationship. This is despite repeated request from the tenants for proof of ownership and details of the agreement under which the landlord was claiming rent.

A demand was issued this year for a rent increase of 400% with a demand for an increase of 800% to £1000 for the next three years with the tenancy subject to a single 3 year agreement. The rent demanded is over five times that for the area and the landlord has refused to explain how this figure has been derived. The landlords solicitors have refused to discuss the terms of the offered agreement and have simply have said "sign or you will be evicted".
It is clear that the landlord is intending to milk the tenants for significant sums for the next three years while he obtains consent to redevelop the foreshore and then the tenants will be booted out without further ceremony. There is no current protection and the lease even states that the huts belong to the tenants and that their removal would be at the tenant's expense.

I am no expert in Scottish residential law however I would doubt if such a thing would be permitted in any other non commercial context. The committee has been studying this case for a considerable period and has, I believe, recommended change to the Administration.

I understand that the Administration has rejected the committee's recommendation because only a small number of people are affected and it would not be worth spending time on the required legislation.

Hutting is a long established tradition in Scotland and is an important part of Scotland's heritage; there are huge numbers of Hutters throughout Scotland who are as entitled to the protection of the law as are the rest of the population. This is an important issue for the Hutters, for the rights of the individual to protection from rapacious landlords, and for the development of justice and equity in Scotland.

I request that the committee give positive consideration to an urgent and positive change to the law and recommend that the administration take immediate action to pass the appropriate legislation, retrospectively, required to correct what is an archaic, unfair and unreasonable situation.

John Downes
47 Ivar Gardens,
Basingstoke RG24 8YD
--------------------------------------------------------

From: Katie Downes [ltdownes@yahoo.co.uk]
Sent: 29 November 2004 12:22
To: Thornton DM (Douglas)
Cc: c.milligan@lancaster.ac.uk
Subject: Justice 1 Committee Security of Tenure - Scottish Hutters

For the attention of Pauline McNeil c/o Justice 1 Committee Clerk
Rascarrel Hutters
Further to my e-mail of 1123 today, I would like to stress that at all times, both individually and as a group, members of the Dumfries & Galloway Hutters Association have attempted to meet and negotiate with the farmer, but he has refused to discuss the matter. AND YET - during the tragedy of Foot and Mouth, both my family and other hutters, communicated regularly as to when it would be reasonable and safe to visit out huts. We respected both his livelihood and his animals and the farmer actually told me himself that he appreciated our concern and support during those difficult times. Surely this highlights that we are reasonable people asking no more than a fair and reasonable response.

sincerely, Kathleen Downes
From: Katie Downes [ktdownes@yahoo.co.uk]
Sent: 29 November 2004 11:23
To: Thornton DM (Douglas)
Cc: c.milligan@lancaster.ac.uk
Subject: Justice 1 Committee Security of Tenure - Scottish Hutters

For the attention of Pauline McNeil MSP c/o Justice 1 Committee Clerk

I have contacted you several times this year regarding the plight of hutters in Scotland. I am a member of the Dumfries and Galloway Hutters Association and appreciate that Christine Milligan of that association contacted you on 22.10.04. I wish to add my support and agreement to Christine Milligan's communication and ask that you include my name, and those included in this e-mail, when the matter of security of tenure is discussed on Wednesday 1st December 2004.

My family have owned a hut on Rascarrel Bay since between the two world wars, having originally been positioned there by the then farmer.
My children, who are in their twenties, are the fourth generation to enjoy and maintain the hut.
Mr. Thomas McDougall (who celebrated his Silver wedding anniversary last week) has also had a hut on Rascarrel since between the wars and his grand-daughter, Amanda Bradbury (of 65 Daisy Street, Glasgow) and her two children also visit his hut. Mr. McDougall is bewildered that, after all these decades, he can lose his hut and have to pay for the privilege.
My mother, Eileen O'Rourke nee Kerr (18 Raeburn Place, Edinburgh) also spent all her childhood there and recalls watching the bombers flying overhead to Glasgow. She too is bewildered that we have no rights of tenure and are being asked to pay £1,000 a year with the prospect of eviction ever present.
As you can see this is a form of blackmail or threat. If we pay we cannot risk the expense of maintaining our properties when we can be evicted at any time (and that is assuming we can all raise a £1,000 a year which I do not believe is possible - one elderly man having already given up). If we do not pay we will be evicted and have to carry the painful burden of the expenses for demolition and removal of our huts.
Please address this situation speedily and retrospectively - as Christine Milligan stated in her communication, The Scottish Parliament has been looking into this issue for nearly seven years and still no action as been taken. I would like to add that you consider especially the plight of elderly folk like Mr. McDougall of Dumfries (and there must be others) who have trustingly thought, as honest law abiding people, that their huts were theirs to cherish and preserve and have spent many decades doing just that without realising that all could be lost.
For myself and my family, we are prepared to travel hundreds of miles each year to return to the hut where generations of us have enjoyed the same countryside.

sincerely,
Kathleen Downes, 47 Ivar Gardens, Basingstoke, Hampshire
Dear Pauline,

Enclosed details of extortionate rent demands and eviction threat from landowner on the Solway Firth. Site rents 4 years ago were £500; next year they want £2000. Flats on the adjacent estate they do rent. The 8 flats involved intend to fight this.

It is disgraceful to apply market value on site rents. Site rents on flats have always been classed similar to allotment plots. Only in the last few years has greed taken over.
People who have been in their huts for 40 or 50 years, now struggling on a pension are to be evicted out on their hut due to market value of supply & demand.

Someone offering the landowners far more will rent the pensioner can afford, so, booted out of their huts.

A prime example of the ugly face of capitalism.

Hoping that the Justice Committee and its Officers get some good response on the legal matters.

Yours Sincerely

Bill McQueen
SCOTTISH HUTTERS

OWING TO A 1907 SHERIFF COURT ACT. PAR. 37, A LAND OWNER HAS THE LEGAL RIGHT TO EVICT LEASEHOLD OWNERS OF PROPERTY, WHENEVER HE Chooses. THIS INCLUDES HUTS, CHALETS AND HOUSING (REMEMBER DEESIDE 1996). SURELY IT SHOULD NOT BE TOO DIFFICULT TO ABOLISH THIS LAW, THE MOST UNDEMOCRATIC LAW IN EUROPE, AND REPLACE IT WITH A LAW SIMILAR TO THE SCOTTISH HOUSING ACT, THAT WOULD PROTECT OWNERS, TENANTS AND LANDOWNERS.

RENT DISPUTES COULD BE SETTLED BY A TRIBUNAL IMPOSING RENT CONTROL.

THE EXECUTIVE RESEARCH UNIT HAS THE INFORMATION ON ALL HUT RENTS, SO DETERMINATING A FAIR RENT, SHOULD NOT BE TOO DIFFICULT.

THE EXECUTIVES VIEW, THAT IT IS “AGAINST THE PRINCIPAL OF OLD SCOTTISH LAW” TO LEGISLATE FOR PROTECTION OF LEASEHOLD OWNERS IS PATHETIC. AFTER ALL, THE SCOTTISH PARLIAMENT WAS FORMED TO CHANGE THE OUTDATED FEUDAL LAWS.

THIS DISPUTE WITH HUTTERS AND LANDOWNERS, WONT GO AWAY. THE QUICKER THAT LEGISLATION IS BROUGHT IN, THE BETTER. AS PLANS ARE ALREADY IN HAND, TO PICKET COURTS, PARLIAMENT ETC.,
Our Ref: TLALSJ6/11

16th June 2004

Recorded Delivery
Mr N Milligan
19 Georgetown Drive
Dumfries
01387 268 182

Dear Sir

Beach Huts at Rascarrel
Our Clients J & E Hendry

We refer to our letter of 27th January enclosing a rental account. Our clients are disappointed to note that the rental remains outstanding, and, on their behalf, we require you to make payment of the sum involved within the course of the next 14 days. In the event, however, that you are not prepared to tender the required sum to us then our clients will have no option but to serve upon you a formal Notice to Quit the site as at 1st February, 2005. You should please be aware that, thereafter, our clients will be under no obligation whatsoever to consider any proposals you may wish to make, and will be entitled to insist upon your vacating the site as at 1.2.05.

In the event of your paying the rental requested for this year, of £500, our clients would be prepared to grant to you a formal lease in accordance with the Heads of Terms enclosed with this letter. Our clients are not prepared to amend the Heads of Terms.

It is also relevant to explain to you that our clients have sole control over what use is made, from time to time, of the farm road shown coloured green on the accompanying plan, which leads from the end of the public highway (the highway itself being coloured in red) at the location of Rascarrel Bridge. As you will appreciate, our clients are entitled to close-off their farm road to members of the public should our clients wish to do so, and thereby prevent vehicular traffic from entering upon the property in the ownership of our clients. As part of a more formal rental arrangement, based upon the Heads of Terms to which we have referred, vehicular access rights in your favour would, of course, be addressed.

In the context of the foregoing we emphasise to you that the rental increase which our clients are seeking namely, to £1,000.00 for three years from...
1.2.05, is based upon professional guidance from independent valuers, and
the amount involved serves to underline that the rental which has been paid
for many years is well and truly out of date.

In the particular circumstances we write on an entirely without prejudice basis
to our clients legal position.

Yours faithfully
For Wallets Rural Property Services

T L Atkinson FRICS FAAV
Director

P.S.

There is returned the cheque you issued earlier this year for £175
Terms and conditions to be included within leasing arrangements for huts at Rascarrel Bay, Auchencalmp, by Castle Douglas:

1. Description of the area of ground occupied by the hut and by any garden area - plan based.

2. Name and address of the tenant.

3. The initial rental for the period to 31st January, 2006. This to be based at the rate of £500.00 per annum. The rental with effect from 1st February, 2005 is to be £1,000.00 to be paid, in full, on or prior to that date.

4. Duration of Lease - as previously, namely on a year to year basis, but with each anniversary date being 31st January.

5. Rent review provisions - to be at regular intervals, of three years, and to be assessed on a full market value basis.

6. User - as the site of the existing beach hut, and associated garden or amenity ground. It will not be permissible for any hut owner to carry out structural works by way of adding to or substantially altering an existing hut without first having obtained the prior written consent of the Landlords. Furthermore, all occupiers of huts must use the hut concerned, having regard to the designation of the immediately surrounding foreshore areas as part of an SSSI.

7. Services - all necessary services will be as existing, the responsibility for which will lie with each hut occupier and not with the Landlords, nor with their successors in title as the proprietors of Rascarrel Farm.

8. Access arrangements - to be exercised as at present.

9. Assignment of lease - the prior consent of the Landlords shall be required as regards an assignment of a lease, which consent shall not be unreasonably withheld or delayed.

10. Termination - the lease to be able to be brought to an end by the Landlords, or by their successors, at the next succeeding anniversary date, following upon the service of a notice to that effect, provided not less than forty days are given for that purpose.
Justice 1 Committee

Security of tenure and rights of access

Note by the Clerk

Background

Petition PE14 by the Carbeth Hutters Association
1. Closed petition PE14 by the Carbeth Hutters’ Association called for a statutory system of rent control and arbitration and increased security of tenure. The former Justice and Home Affairs Committee investigated the petition and published a report in May 2000 which recommended that the Scottish Executive consider ways of providing legislative protection for hutters. The Executive issued a consultation paper, to which overwhelming support was received for legislating in this area. As yet, there has been no movement towards legislation as the Executive considers that there are substantial drawbacks with legislation to protect hutters.

Consideration by the Justice 1 Committee
2. The Justice 1 Committee has continued consideration of the issues relating to security of tenure and rights of access for those who own property built on leased land and last considered correspondence at its meeting on 23 June 2004.

Scottish Executive correspondence
3. The Committee last wrote to the Scottish Executive in December 2003 seeking views on whether rent control schemes or compulsory arbitration could be useful in resolving disputes between landowners and hutters. The Scottish Executive responded in February 2004. In its response (attached at annex A), the Executive noted progress in respect of the situation at Carbeth and the ongoing difficulties experienced by chalet owners on the Drimsynie Estate. However, the Executive did not believe that rent control or compulsory arbitration proposals would facilitate resolution at this stage.

4. The Executive also made a number of points against legislating in this area, namely—
   - that legislation would need to be applied retrospectively in order to benefit existing hutters but to do so would carry a very strong risk of being incompatible with requirements under the European convention on human rights;
   - that legislation to reform the law of leases in order to ensure greater fairness along the lines of the Unfair Contract Terms Act 1977 would be an unworkable solution as leases providing for a 25-year tenure with no renewal clause are not inherently unfair;
that, where an original agreement or contract was freely negotiated and entered into, it is difficult to legislate in favour of one party at the expense of the other;

that legislation in this area could indirectly have unfavourable consequences for the interests of hutters, by, for example encouraging estate owners to terminate leases owing to concerns about the implications of hutters acquiring security of tenure or rent control.

The Law Society of Scotland

5. In June 2004, the Law Society of Scotland responded to a request from the Committee for views on the difficulties outlined by the Executive. The response is attached at annex B. In summary, the response comments on the current legal situation as follows—

- A lease for more than a year must be in writing;
- In general, anything built on land eventually belongs to the landowner, no matter who built it;
- There is no equivalent of “squatters’ rights” in Scots law, and
- There is no specific legislation that would deal with this issue in a general sense, there being no automatic rights of renewal of tenancies of this type nor any rights to have the rent kept at the same level.

6. The response comments in more detail on current legislation in respect of the length of leases, in particular a prohibition under the Land Tenure Reform (Scotland) Act 1974 on leasing property for residential purposes for more than 20 years. The response also comments on statutory provision for assured tenancies, noting, however, that the property in question must be the only or principal home of the tenant and that holiday lets are excluded.

7. The society acknowledges the Scottish Executive’s position in respect of difficulties surrounding legislation to tackle a specific issue and goes on to comment that “inevitably if legislation is passed which is specific to one particular site there are bound to be arguments arising in the future that other sites or other situations should have been dealt with at the same time”.

8. The response also comments on the Executive’s position that introducing legislation would alter the legal rights of the parties retrospectively and highlights Article I of Protocol I of the European convention on human rights and the fact that it provides that “every natural or legal person is entitled to the peaceful enjoyment of his possessions” and may not “be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”.

9. The response explains that the balance to be struck between the interests of individuals and the public interest is known as the balance of proportionality and gives examples of cases in which the property rights of individuals have been curtailed by the public interest—

- **James v United Kingdom**: Leasehold tenants in Belgravia and Mayfair who had built houses that, under the terms of the lease, belonged to the landlord on expiry of the lease were able under the Leasehold Reform Act 1967 to buy out the landlord’s interest on payment of compensation which did not necessarily take into account the value of the house. The European Court of Human Rights held that the law was valid as it was in the public interest.

- **Mellacher and Others v Austria**: The European Court of Human Rights upheld that Austria was entitled to pass legislation to introduce rent control measures that effectively held down or reduced rents, even though the original rents were agreed upon in the open market and corresponded to the then prevailing market rents.

10. The Law Society of Scotland comments that the question would be whether there is a general public interest in passing legislation specific to this individual situation, that leasehold tenure is not as common in Scotland as it is in England and that it might be difficult for the state to show that legislation was in the general or public interest. The response also comments that “it could hardly be argued that such legislation did not affect the landlords’ property rights adversely”.

**Correspondence from hutters**
11. A selection of recent correspondence from hutters and their representatives is attached as annex C. The correspondence relates to the situation experienced by hutters at Rascarrel Bay, Dumfries and Galloway.

**Appointment of adviser**
12. At its meeting on Wednesday 23 June 2004, the Committee agreed to appoint an adviser in relation to this matter. Professor Robert Rennie, Professor of Conveyancing, University of Glasgow was subsequently appointed.

**Briefing from adviser**
13. Professor Rennie has prepared an introductory briefing note for members, enclosed as paper J1/S2/04/40/6 which covers the present legal position.

**Existing legislation relating to leases**
14. Professor Rennie’s briefing note sets out current legislation which regulates particular types of tenancy. He concludes that as the hutters do not in fact use their huts as their principal dwellings, they would not be covered by any of the existing security of tenure provisions.
**Tenancy-at-will**

15. At paragraph 7.0 of his briefing, Professor Rennie provides information on the practice of “tenancy-at-will” and highlights the provisions of part IV of the Land Registration (Scotland) Act 1979 in relation to tenancies-at-will. These provisions allow tenants who do not have a lease but who pay a ground rent and who have erected their own buildings to purchase the land from the land owner on the basis of an alternative formula set out in the Act. It may be helpful for the Committee to ascertain whether any of the hutters have ever thought of exercising this option. It might be, of course, that the legislation is too restrictive at the moment in that it only applies where there is no lease and the Committee is aware that some hutters do have year-to-year written leases. The Committee could consider whether there was any scope for slightly amending the legislation to cater for the situation.

**Options**

16. The Committee is invited to consider the following options:

(a) Seek information from hutters’ groups as to whether they have considered the provisions of part IV of the Land Registration (Scotland) Act 1979 which may allow them to purchase the land from the land owner;

(b) Consider whether there is any scope for amending the legislation to take account of the situation of hutters with written leases;

(c) Discount the request by hutters’ groups for a statutory system of rent control and arbitration and increased security of tenure due to the associated legal difficulties.
Dear Pauline,

HUTTERS IN SCOTLAND

Thank you for your letter of 08 December to Cathy Jamieson MSP, Minister for Justice, raising the issues discussed by the Justice 1 Committee at its meeting of 08 October in relation to hutting in Scotland. I have been asked to respond.

I share the satisfaction expressed by Committee members that the situation at Carbeth is being progressed through constructive discussions at local level. The Executive’s underlying position is that it would not be appropriate to seek to intervene in private negotiations between landlord and tenants, and that we would encourage local resolution of such difficulties. We would be extremely reluctant to undertake anything to jeopardise the negotiations at Carbeth, and therefore do not think that rent control or compulsory arbitration proposals would facilitate resolution at this stage of the process.

In relation to the concerns which have been raised at Lochgoilhead, the Executive is unable to comment on specific issues which may become the subject of legal action. In general terms, although I sympathise with the problems which individual hutters have experienced I remain unconvinced that a legislative solution is workable or desirable.

One major obstacle to legislation is that if it were to apply retrospectively it would carry the very strong risk of being incompatible with the ECHR. This is most pronounced in the area of giving tenants greater security of tenure, but it also applies to proposals to effectively insert new clauses into the lease agreements between landlord and tenant on rent review or mediation. It is a well accepted principle of legal policy that, except in special circumstances, legislation ought not to be retrospective on the grounds that it ought not to change the character of past transactions carried out in good faith and on the basis of existing laws. Unless any legislation is made retrospective, it would not benefit the existing hutters.
Briefing Note

By Professor Robert Rennie

Relative to Petition PE14 by the Carbeth Hutters’ Association

Justice 1 Committee
1.0 INTRODUCTION

The Carbeth Hutter's Association have lodged a petition with the Scottish Parliament calling for a statutory system of rent control and arbitration with increased security of tenure for Hutters. The Justice and Home Affairs Committee investigated the petition and published a report in May 2000 recommending that the Executive consider ways of providing legislation for the protection of Hutters. A consultation paper was issued and the responses indicated support for legislation. The Executive however considers that legislation would present serious difficulties not least from a human rights point of view. These are set out in a response from Jim Wallace MSP the then Minister for Justice. The basic problem is the fact that the Hutters or possibly their predecessors will have entered into contracts on a voluntary basis and that legislation which increased their rights would prejudice or affect the rights of the landowner.

2.0 THE EXTENT OF THE PROBLEM

The petition focuses on the plight of the Carbeth Hutters but there is evidence of problems of a similar nature in other areas including the Drimsynie Estate. However it could not I think be said that this was a problem which affected a great many people in Scotland as a whole.

3.0 THE DEFINITION OF A "HUTTER"

The term "Hutter" is not a legal term. My understanding is that it describes a situation where someone enters an unwritten agreement with a landowner whereby the Hutter is entitled to use a plot of ground belonging to the landowner for the erection of a holiday home. The "hut" is erected at the hutter's expense and a yearly sum is paid to the landowner for the use of the ground.

4.0 THE LAW OF ACCESSION AND RESTITUTION

The law of accession provides that things which are built on the ground accede to the ground. Accordingly if someone builds on ground then ownership of the building goes with ownership of the ground. This is essentially the problem which the hutters face. In commercial terms there is an unequal bargaining position when it comes down to rents or security of tenure. There is another area of law known as restitution. In some cases if a person is unjustly enriched by the actions of another person in good faith then the enriched
person may have to pay compensation to the other person. This is an extremely complicated area of law and each case is decided on its own merits. Put at its most simple however, if A owns land and B thinks however that he owns the same land and A does something which might lead B to assume that B in fact does own the land then if B expends money by building on the land A can only claim the land and the buildings back if prepared to pay compensation for the value of the building. The theory is that A has been unjustly enriched by B’s action in the mistaken belief that B owned the land. The difficulty for the hutters of course is that none of them have ever thought that they built on their own land.

5.0 THE THREAT OF EVICTION

There is no such thing as “squatters rights” so far as the law of Scotland is concerned. Subject to what I say later on in this note concerning the status of a tenancy-at-will I do not see that the hutters would have any particular defence to a notice to quit. In the next paragraph I look at the existing legislation which provides for security of tenure for various types of lease.

6.0 EXISTING LEGISLATION RELATING TO LEASES

Certain Acts do regulate particular types of tenancy.

(a) Agricultural leases are regulated under the Agricultural Holdings (Scotland) Act 1991.

(b) Leases of crofts are dealt with under the Crofters (Scotland) Act 1993 as amended by the Crofting Estates (Scotland) Act 1997.

(c) Urban Tenancies of domestic properties have been subject to rent control and security of tenure provisions for a great many years. There were regulated tenancies up until 1965 and controlled tenancies up until 1980. Since 1989 the regime has been one of assured tenancies.

(d) There is minimal security provided for shops under the Tenancy of Shops Acts 1949 and 1964.

It would I think be fair to say that in relation to domestic tenancies the trend of legislation has been away from greater control. Gone is the system of fair rents fixed by a rent committee. Instead the landlord and tenant are meant to agree a market rent. If they cannot agree then an appeal can be made to the rent assessment committee but its only task
is to fix a market rent. So far as security of tenure is concerned this will be available in certain circumstances but there is now provision for a short assured tenancy of not less than 6 months duration. Most private landlords opt for this type of tenancy which allows them to terminate at the end of the period. Local authority landlords of course are in a completely different position granting the new Scottish secure tenancy. For any private dwellinghouse to come under the rent legislation however it must be the only or principal home of the tenant. My understanding is that the hutters do not in fact use the huts as their principal dwellings and so are not covered by any of the security of tenure provisions.

7.0 TENANCIES-AT-WILL

It may be that hutters could claim to be tenants-at-will. The terms “tenancy-at-will” is not a technical legal terms in Scots law. It has been used to describe a practice which subsists in certain parts of Scotland particularly it appears in fishing and rural villages and also in a mining village in Lanarkshire. Effectively what happens is that the tenant rents land from the landowner in order to build his own house but is given no formal title or lease and can be removed for non-payment of rent. In some cases in the past the landowner has issued some sort of informal acknowledgement of the tenant’s right to stay on the ground. The house itself could change hands by means of a simple receipt for the price without any conveyance or transfer. In earlier times the purchaser and the seller would attend on the estate factor and intimate the sale and the new tenants name would then be entered in the rental book of the landowner. This type of tenancy was similar to the old rental rights or “kyndnes”. Some earlier authors treated this type of arrangement as something close to feudal tenure but it is quite clear that the holding was, to use the words of one author, “infinitely more precarious than a feu”. There is however some statutory protection available to tenants-at-will. This protection does not give them security of tenure nor any right to appeal against rent increases. Rather it gives the tenant-at-will a right to buy out the land and become absolute owner of the land and the hut. If the Hutters can claim to be tenants-at-will then they would be entitled to use the mechanism to buy out the land contained in Part IV of the Land Registration (Scotland) Act 1979. I do not know if this matter has been considered by the Executive. A tenant-at-will is defined in section 20 (8) as a person who, not being a tenant under a lease, a kindly tenant or a tenant or occupier by virtue of any enactment is by custom and usage the occupier of land on which there is a building or buildings erected or acquired for value by him or one of his predecessors and who is under an obligation to pay a rent for the ground only. Such a tenant can buy the
tenancy land subject to paying the owner compensation of such amount as may be agreed between them. Failing agreement the amount must be equal to the value of the tenancy land not including buildings but assuming a planning permission for residential purposes, or 1/25th of the value of the tenancy land including the value of the buildings whichever is the lesser. Added to that figure is any amount required to repay any mortgage over the tenancy land and such further amount as may be required to redeem any feuuduty. I mention this piece of legislation in passing. It may well be that the hutters do not see this as a solution. It would of course involve them in raising sums of money to make the purchases. I cannot say that in each individual case the right to buy would apply. I would have to know the details of the arrangement which each hutter has with the landowner. The statutory definition states that the tenant-at-will must not be a tenant under a lease. It should be borne in mind that an unwritten lease is quite competent if it is for a period of less than a year. The late Professor Halliday who was Professor of Conveyancing at Glasgow University when I myself was a student there was asked for his opinion on a very similar situation in 1981. I am attaching a copy of the short memorial and opinion in Appendix I to this briefing note. His view was that the owners of the holiday huts would be regarded by a court as tenants-at-will and would be in a position to purchase the land in terms of the 1979 provisions. However he was equally of the view that apart from this they had no security of tenure as tenants.

8.0 THE TREND OF THE LAW

Since the establishment of the Scottish Parliament there have been dramatic changes in Scottish property law. On 28th November 2004 the Abolition of Feudal Tenure etc. (Scotland) Act 2000, the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Bill 2004 will all become law. The Land Reform (Scotland) Act 2003 is already in force. It would I think be fair to say that the thrust of these Acts is to simplify the system of land tenure in Scotland rather than to complicate it. The Scottish Law Commission will also be publishing proposals to allow for the conversion of long leases (generally 999 years or thereabouts) into ordinary ownership title. The report is likely to be published at the end of 2004. The status of the King's Kindly Tenants of the four towns of Lochmaben will be converted into ordinary ownership when the abolition of the feudal system takes effect. The King's Kindly Tenants are a local type of tenancy found in Dumfriesshire near the border. Originally grants were made by King Robert I (the Bruce) to his vassals on the lands of his castle. Kings used the feudal system both in England and
in Scotland to retain the loyalty or fealty of nobles. This type of tenancy has been described as a mixture of tenancy and ownership in that the so called tenants had apparently a perpetual right along with a right to sell. The tenancy was only ever evidenced in the rental book of the Crown Steward the Earl of Mansfield. On 25th November 2004 this unusual form of tenure will be abolished but it will be converted into absolute ownership without any compensation. One might ask whether a tenant-at-will who is in a very similar situation should not have his or her rights converted into absolute ownership without any compensation being paid to the landlord. The difference frankly is that it is the Crown who is the landlord so far as the King’s Kindly Tenants of Lochmaben are concerned. It is one thing I suppose to deprive the Crown of ownership but quite another thing to deprive a private landowner of ownership without compensation. In any event, as I have indicated, there already exists a statutory provision which could allow the hutters to buy out the land. Accordingly one might say that to pass a piece of legislation which affected a very small number of people in a particular situation so as to create some form of anomalous but protected tenancy would go against the trend of all the other reforms which have so far been passed by the Parliament.

9.0 HUMAN RIGHTS

Article 1 of the first protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms is now part of Scots law. In general terms it provides that every natural or legal person is entitled to the peaceful enjoyment of his or her possessions subject to the right of the state to interfere in certain circumstances. A court or tribunal in determining a question which has arisen must apply the relevant law relating to human rights. There is also an obligation to interpret primary or subordinate legislation in such a way as to be compatible with the Convention. In terms of the Scotland Act 1998 it is provided in section 29 that an Act of the Scottish Parliament is not law in so far as any provision is outside the legislative competence of the Scottish Parliament and this would include Acts which are incompatible with the Convention. The right under Article 1 is subject to the right of the estate to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. I am satisfied that the provisions of the Abolition of Feudal Tenure etc. (Scotland) Act 2000, the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Bill 2004 are compatible with Article 1 of Protocol 1 despite the fact that no compensation is payable to the superior for the loss of the feudal superiority. There are rights to compensation in respect of feuduty and development value
burdens. Similarly I do not think that legislation which provides that a tenant under say a 999 year lease can convert to ownership on payment of minimal compensation to the landlord will contravene Article 1 of Protocol 1 because the value of a landlord’s interest under a 999 year lease providing for say a nominal ground rent of below £20.00 cannot be high. However the same could not be said for a tenant-at-will or a hutter where there is no fixed term and effectively no existing security of tenure. To deprive a landowner of ownership or to provide a tenant with perpetual security of tenure would in my opinion bring a serious risk of contravention of Article 1 of Protocol 1 especially in a situation where there appears to be existing legislation which would allow a tenant-at-will to acquire the land on payment of reasonable compensation to the landowner.

10.0 MOBILE HOMES - VOLUNTARY CODES

There is some statutory protection for the occupiers of mobile homes which are situated on protected caravan sites. This protection however only applies if the occupier is occupying the mobile home as his or her only or main residence. This is under the Mobile Homes Act 1975 and the Mobile Homes Act 1983. The basic protection is that the occupier may require a written statement of the terms on which he or she occupies the stance for his or her mobile home. There are implied terms in part 1 of schedule 1 to 1983 Act. These implied terms allow the occupier to remain in occupation unless the agreement is terminated on specified grounds such as breach of the agreement. I am also aware of certain chalet developments where a party “purchases” a chalet and then enters into a ground rental agreement. This does not give the owner of the chalet ownership of the ground and the law of accession can mean that ownership of the chalet technically vests in the owner of the site. Generally speaking however, these agreements contain complicated pre-emption provisions whereby the owner of the chalet who wishes to sell must first offer the chalet to the site owner at market value. In most cases the site owner must approve the new purchaser. I am aware of one site where the chalets are technically on wheels which are screened from view so they remain in the ownership of the purchaser and do not accede to the land. Generally speaking there is an obligation on the site owner to grant a new ground lease to whoever buys the chalet. There are also certain voluntary codes in existence promulgated by such bodies as the British Holiday and Home Parks Association and the National Caravan Council. Appendix 2 to this briefing note contains copies of a code of practice and a typical licence agreement for a holiday caravan pitch which is drawn
up in terms of a code of practice. It may be that a voluntary code agreed with a body such as the Scottish Landowners’ Federation might be worthy of consideration here.

Professor Robert Rennie
School of Law
University of Glasgow

20th August 2004
Tenancy-at-will—whether constituted.

MEMORIAL FOR AN OPINION

Our clients Miss A and Miss B are related but are the owners of separate holiday huts on land situated to the north of Glasgow. The holiday huts are well-furnished and were bought by our respective clients and assembled and erected on the land which for a long time and until recently belonged to a local farmer. The farmer collected from our clients and also from the other owners of the huts on the ground a sum of approximately £20 per annum by way of rent for their use of the land. Our clients and other neighbours on this piece of ground developed the property as best they could by improving amenities, etc. They were also subject to payment of rates each year amounting to approximately £25 over the last year or so. The farmer sold the property a few years ago to a local property developer who was happy to allow our clients and the other hut owners to remain on the land, but this property developer in turn sold to another gentleman whose agents have now served upon our clients a notice to quit the land as the property is to be used for a holiday home development.

Our clients appreciate that they have no title to the property and at no time did any disposition or any deed change hands, and it had occurred to us that our clients would have little or no grounds to fight the notice to quit, in view of the fact that they would appear to have been allowed to stay on the land merely on the goodwill of the owner and that vacant possession was given to the new purchaser when he acquired the subjects. We wondered, however, if under section 20, subsection (8) (Tenants-at-will) of the Land Registration (Scotland) Act 1979 our clients would be protected from eviction from the property in question.

We would be pleased to have the Professor’s opinion on whether or not our clients are protected as tenants-at-will in that they paid a ground rent to the owner of the land and that by custom and usage they are the occupiers of land on which a building has been erected. It may be that they do not qualify under the section aforementioned. Under the circumstances, however, we would also be obliged to have the Professor’s opinion on whether or not there is any other safeguard for our clients’ rights.

OPINION

The memorial raises an interesting and novel question. As I understand the matter, a tenancy-at-will was an unusual type of holding which was found occasionally in certain rural and mining areas.
However, a tenant-at-will is now statutorily defined in section 20(8) of the Land Registration (Scotland) Act 1979, so that the test is whether the tenants referred to in the memorial fall within that definition. *Prima facie* the tenants under the type of holding described in the memorial satisfy the definition in the subsection. It may be questioned whether they are not tenants under a lease. It is competent to have a verbal lease for a period of not more than a year and the landlord may argue that there was a lease for one year reconstituted orally each year. On the facts stated in the memorial, however, I doubt whether that argument would succeed, since it is unlikely that a hut of sufficient size and construction to be used as a holiday residence would have been erected for a single year’s occupancy. In any event I tend to the view that “lease” as used in the subsection means a written lease. In other respects the definition in the subsection seems to accord accurately with the position of the tenants as described in the memorial. The buildings were erected by Miss A and Miss B. Whether they are occupiers by custom and usage is a matter largely of fact, but since there are a number of other hut owners in the area and, if they have been in occupation for many years, the essential facts to establish custom and usage would appear to be present. The successive landlords having collected rents for many years and the tenants having paid them, it would be difficult to contend that there was no obligation to pay rents. Nor does there seem to have been any bargain as to a date ofish.

In relation to an unusual kind of legal relationship which has only recently been defined in legislation, it is difficult to state confidently how the courts would decide the matter. My own opinion, however, is that the tenants have a reasonable prospect of maintaining successfully that they are tenants-at-will.

I am asked whether there is any other safeguard of the tenants’ rights. So far as I am aware there is no real defence to an action of removing in the absence of any written title.

(March 23, 1981)

Introduction & Summary of the Agreement

1. This agreement permits you to station a caravan on a park and to occupy it for holiday and recreational purposes. It complies with the Code of Practice for Selling and Siting Holiday Caravans issued by the British Holiday & Home Parks Association and the National Caravan Council and is the Licence Agreement referred to in that Code.

2. You will already have been supplied with a copy of the Code. A copy of the Code is available for inspection at the office of the Park Owner or may be obtained from the British Holiday & Home Parks Association at Chichester House, 6 Pullman Court, Great Western Road, Gloucester, GL1 3ND or The National Caravan Council at Catherine House, Victoria Road, Aldershot, GU11 5SS.

3. Part I contains the particulars of the caravan, the length of time you may station it, the season during which you can use it and other information such as the amount of the pitch fee payable to the Park Owner.

4. Stationing a caravan is a long-term commitment and you will have to comply with the terms and conditions contained in Part II.

5. Part II clause 1 sets out in detail the meaning of expressions used in the Agreement. Clause 2 gives you permission to station the Caravan. Clause 3 contains the obligations you are taking on, Clause 4 sets out standards of behaviour which are expected of you and members of your party using the Caravan.

6. Clause 5 sets out the obligations undertaken by the owner of the Park.

7. Clause 6 contains the procedure should you decide you want to sell the Caravan. Under clause 6 all sales on the Park have to be dealt with through the office of the Park Owner who is entitled to meet and approve the buyer of the Caravan. The clause also provides for the buyer of the Caravan to pay the owner of the Park a commission.

8. Clause 7 sets out the basis on which the pitch fee may be reviewed.

9. The Caravan may be moved from its pitch to allow redevelopment and/or maintenance and this is dealt with in clause 8.

10. The situations in which the Agreement can be brought to an end are described in clause 9. Clause 10 sets out the circumstances in which the Park Owner is able to bring the Agreement to an end and clause 11 allows you to bring the agreement to an end by notice in writing.

11. Clause 12 sets out what has to happen when the agreement is terminated.

12. If the Park Owner is in breach of his obligations under the Agreement he may be liable to pay compensation to you and/or to permit you to move the Caravan away on less notice than is usually required.

13. In addition to the obligations set out in the Agreement there will be Park Rules, which will be individual to each park, and these may have to be changed from time to time as permitted by clause 13.

14. If a dispute arises clause 14 allows for this to be resolved by arbitration as an alternative to going to Court. Certain disputes have to be referred to an independent surveyor for determination by him.
Permission to station the Caravan

a. As long as you comply with this Agreement, we permit you throughout the Licence Period to station the Caravan on a pitch at the Park and to occupy it each Season during the Licence Period. The Licence Period shall be reduced by one year in respect of each year of the Licence Period in which hiring takes place.

b. This permission is personal to you and may not be assigned or transferred to any other person. The permission comes to an end when you sell or transfer the Caravan to anyone else including a Family Member.

c. Furthermore this Agreement does not permit the stationing of any alternative or replacement caravan.

Your Obligations

You agree with us as follows:

a. To comply with the terms of this Licence Agreement and the Park Rules.

b. To pay the Pitch Fee and other charges due to us promptly on the days set out in Part I.

c. To pay interest at 4% over base rate from time to time of a London clearing bank nominated by us on any sums overdue to us (in Northern Ireland, a Northern Irish Bank nominated by us).

d. To insure the Caravan to its full value against all usual risks including fire and storm damage and against third party liability in such reasonable sum as we may notify to you from time to time (not being less than £2ml) and to provide us with up to date details of the insurance on request. To insure through our agency if this is a requirement of Part I.

To keep the Caravan in a good state of repair and condition, in a habitable state and to comply with all servicing and usage recommendations of the manufacturer of the Caravan.

To use the Caravan only as holiday accommodation and not as your only or main residence.

a. Not to do or omit to do anything which might put us in breach of any condition of the Site Licence and to comply with all statutory requirements in relation to the Caravan and its installations and furnishings. The conditions of the Site Licence are displayed on the Park and should familiarise yourself with the obligations placed on you by the Site Licence and bear in mind that the conditions can be changed and are subject to review from time to time.

b. Not to carry out any building works at the Park or to erect any extension to the Caravan or without permission in writing of the Park owner to erect any hut, fence, structure, TV aerial or clothes line or to connect any services or utilities to the Caravan.

c. We will comply with our obligations if you terminate this Agreement under clause 11.

d. We will insure the Park against usual third party risks to a minimum of £2ml per claim.

e. We will sell electricity at a rate of charge prescribed by the Office of the Electricity Regulator (OFUK) and will sell bottled gas at a price recommended as the retail price from time to time by the gas supplier (plus a reasonable delivery charge).

f. If an age limit applies in Part I of this Agreement, we shall be bound by such an age limit in relation to caravans of that category which we sell on the Park.

Selling the Caravan

Provided that the age of the Caravan does not exceed any Age Limit which appears in Part I you may sell the Caravan in accordance with the provisions of this clause. If the age of the Caravan exceeds any Age Limit you may only sell it for removal from the Park.

a. You agree to write and tell us if you are putting the Caravan on the market for sale while it remains on the Park and to confirm to us in writing every two months thereafter that it remains for sale. You agree to tell us in writing whether the Caravan is subject to finance and if it is give us the name of the company and the reference number of the Agreement.

b. You agree to follow the procedure set out below:

(i) To conduct the sale transaction through our office and we appoint our agent for that purpose. We will receive all purchase monies from your buyer and will promptly account to you for the same, subject to discharging any finance outstanding on the Caravan of which you have notified us in writing.

(ii) To allow us to approve your prospective buyer by seeking suitable references and carrying out the enquiries we consider to be appropriate. If we wish to we may require a meeting with your buyer in person.

(iii) We can advise you on the price you may obtain for the Caravan and we will tell you the percentage rate of commission we would charge your buyer when we enter into a new agreement with him. It is essential you pass this information on to your buyer.

(iv) You agree to write to us telling us the agreed price if you intend to sell the Caravan to a third party but not in the case of a Family.
Member) and we are entitled within two working days of receiving your letter to buy the Caravan from you, for the same price, without charging you any commission. If we buy the Caravan from you in this way we may only deduct from the purchase price we pay you sums which are lawfully due to us under the Agreement and any sums required to settle outstanding finance.

c. To assist you in the process of selling the Caravan:
   (i) We will only withhold approval of a prospective buyer on reasonable grounds.
   (ii) Where we have approved your buyer, we will give him a new Licence Agreement for the amount of the Licence Period which then remains unexpired. In other respects the new Licence Agreement will contain terms at least as beneficial to your buyer as this Agreement.

d. Before we issue the new Licence Agreement to your buyer, we will charge him a commission of not exceeding 15% of the Fair Market Value of the Caravan (plus Value Added Tax or any similar tax if appropriate) unless your buyer is a Family Member. In the case of a Family Member, your buyer shall pay us commission not exceeding 15% of the price actually paid on resale (plus VAT if appropriate).

e. Apart from commission we will not make any other charges to you or to the buyer of the Caravan without the express agreement of the paying party or unless additional rights or services are agreed between the parties.

f. Without affecting your statutory and legal rights, in the event of any dispute as to what the Fair Market Value may be the question may be referred to the Independent Surveyor for determination under clause 14 of this Agreement.

g. You have the unrestricted right to remove the Caravan from the Park on reasonable notice to us and as long as you comply with clause 3 above.

7 Review of Pitch Fees

a. On the Review Date we are entitled to renew the Pitch Fee. We must give you at least three months’ notice in writing before the Review Date of an increase in the Pitch Fee.

b. We will give you a written explanation of the reasons for any increase which is proposed.

c. If not less than 51% of the owners of caravans affected by a proposed increase object to us in writing the parties will together take steps to have the reviewed fee determined by a special arbitration scheme relating only to the review of the annual Pitch Fee. Otherwise the proposed reviewed Pitch Fee will become payable with effect from the Review Date.

d. The Pitch Fee will be reviewed (by us or the arbitrator/arbitration) having regard to the following criteria:
   - We are entitled to pass on to you as appropriate any charges which are not within our control such as rates, water charges and other charges paid to third parties;
   - Any changes in the cost of living as shown by the General Index of Retail Prices or another index having a similar purpose;
   - Sums spent by us on the Park and/or its facilities;
   - Changes in the cost of salaries and wages which we have to pay our staff;
   - Changes in the length of the Season;
   - Any other relevant factor.

8 Moving the Caravan

Within the Licence Period we may wish to move the Caravan to another part of the Park and this clause sets out the basis on which we may do that, for example because we are redeveloping an area of the Park, or installing some facility.

a. We are allowed to remove the Caravan for the purposes of redevelopment and/or maintenance of the Park and when this happens we will give you at least three months’ notice in writing. If the caravan has to be moved because of some emergency or because of works to be carried out by a third party over whom we have no control such as a water supply company or other utility company we will give you such notice as we can.

b. We will be responsible for all reasonable costs incurred in moving the Caravan.

c. Following redevelopment we are entitled to return the Caravan to its original pitch or to site it permanently on another pitch. If the consequence of the redevelopment is that the original pitch is less pleasant or if the move is permanent we must offer an alternative satisfactory pitch. Among the features to be taken into account in deciding whether the original pitch is less pleasant as the result of redevelopment will be the loss of a view and proximity to vehicular traffic.

d. Any dispute arising under sub clause c above as to the pleasantness of the alternative pitch or the question whether the original pitch is less pleasant by reason of the development may be referred to the Independent Surveyor under clause 14 of this Agreement.

e. We are entitled to move the Caravan at any time in the event of an emergency but will wherever possible give at least seven days’ notice for any move occurring during the Season.

9 Termination of the Licence

The Licence may come to an end in any of the following ways:
   - By you giving us notice in writing of your wish to end it.
   - Because the Licence Period has passed.
   - By the sale of the Caravan or by you losing title to it.
   - By us taking steps to terminate it because you have broken your obligations under this Agreement.

10 When we may terminate the Licence Agreement

a. If you are in serious breach of your obligations under this Agreement and the breach is not capable of being remedied we may serve upon you reasonable notice in writing to terminate this Licence Agreement. In deciding what period of notice is reasonable we shall have due regard to the nature of the breach.

b. If you are in breach of any of your obligations which is capable of being remedied for example such as a failure to repair the Caravan or to pay pitch fees promptly we may write giving you notice specifying the breach and asking you to remedy the breach within a reasonable time. If you do not comply with that notice we are entitled to write to you to end the Licence Agreement and to require you to remove the Caravan from the Park within one month.

11 When you may terminate the Licence Agreement

You are entitled to bring this Agreement to an end by writing to us giving us not less than two months’ notice. However if we have broken our obligations to you under this Agreement you may give us a lesser period of notice but should still give us as much notice as possible.
The consequences of termination of the Agreement

a. You will remove the Caravan and all other property of yours from the Park within one month after termination of this Agreement however that comes about. In accordance with clause 3 above we are to arrange for all de-siting work to carry this out ourselves. If you fail to remove the Caravan under this clause 12 a we are entitled to remove it ourselves.

b. We are entitled to make a reasonable charge for disconnecting the Caravan from services and preparing it for transport away from the Park. This charge will be based upon the time spent and costs incurred by us in this process.

c. Where we end the Licence Agreement under the provisions in the clause we will repay to you in full any pitch fees and other charges which you have paid us for any period after the removal of the Caravan.

d. Where you have terminated the Licence Agreement so that it comes to an end before the end of June we will repay to you the balance of the pitch fees and other charges which you have paid us for a period after the Licence Agreement has ended, less any sums properly due to us.

Where the Licence Agreement ends before the end of March repay 80%

Where the Licence Agreement ends before the end of June repay 40%

Where the Licence Agreement ends after the end of June no repayment

e. We retain the right to hold the Caravan and the power of sale over the Caravan for any sums due to us on termination which exceed £200 and we will be entitled to deduct from sums due to you any sums due to us or any finance company and the costs of sale and storage (This sub-clause shall not apply to Licence Agreements made in Scotland)

13 Park Rules

a. It may be necessary or desirable to change the Park Rules from time to time. We may change the Park Rules at any time by giving written notice to you.

b. Any changes made after the signing of this Agreement will not affect anything to which you are entitled under this Agreement.

14 Disputes

The Agreement provides for disputes to be resolved by the following means:

a. We may refer any dispute to an arbitrator as an alternative to going to Court.

b. Any dispute relating to the amount of the pitch fee has to be referred to an arbitrator because the Court does not have power to fix the pitch fee.

c. We may refer questions arising under clause 61 and clause 62 to an independent surveyor.

15 General

a. We agree that any letters or other communications between us shall be sent to the address appearing in Part I unless we have told you or you have told us of another address within the United Kingdom to be used instead.

b. This Agreement commences on the date the Agreement is signed on behalf of the Park Owner.

c. We shall be entitled to make changes to the Park and/or the way it is managed. Where such changes require this Agreement to be amended you agree not to withhold your approval to amendments except on reasonable grounds.
CODE OF PRACTICE for Siting and Selling Holiday Caravans
DEFINITIONS

"CARAVAN"
The Holiday Caravan designed for recreational use and specified in a Licence Agreement. It should not be confused with a park (mobile) home or touring caravan.

"CARAVAN OWNER"
The individual or company in possession of the Caravan and party to a Licence Agreement.

"THE CODE"
This Code of Practice for Selling and Siting Holiday Caravans.

"FAIR MARKET VALUE"
The price (taking into account current market conditions) which a purchaser of a caravan would reasonably expect to pay and which the seller of a caravan would reasonably expect to accept for the Caravan located for sale on the Park complete with a Licence Agreement in accordance with the Code. This price shall be calculated without regard to any commission which the Park Owner would be entitled to charge under paragraph 24 below to the buyer of the Caravan.

"FAMILY MEMBER"
In relation to the Caravan Owner his spouse, parent, grandparent, child (including stepchild), grandchild, brother, or sister including the spouse of any of those persons.

"FIRST PURCHASE"
The date on which an unused Caravan is sold to its first user whether by the Park Owner, the manufacturer or by a dealer.

"HIRE": "HIRING"
The act of obtaining for payment whether in cash or in kind the use of the Caravan by persons (except Family Members) other than the Caravan Owner.

"LICENCE AGREEMENT"
The written agreement between the Park Owner and the Caravan Owner for the siting of a Caravan on the Park.

"LICENCE PERIOD"
Means the cumulative period of the Licence Agreement as described in paragraph 8 below.

"PARK"
Land licensed for recreational use under The Caravan Sites & Control of Development Act 1960 (or in Northern Ireland under the Caravans (Northern Ireland) Act 1963) on which Caravan Owners may stabin their Caravans with the benefit of a Licence Agreement.

"PARK OWNER"
The individual or company named in the Licence Agreement as being the owner of the Park or authorised by the owner to be responsible for its operation.

"PARK RULES"
The rules of conduct and practice issued by the Park Owner from time to time which are applicable to the occupation and use of caravans and other facilities at the Park.

"SITE LICENCE"
The caravan site licence applicable to the Park issued to the Park Owner by the local authority under section 3 of the Caravan Sites Control of Development Act 1960 (or in Northern Ireland under Section 3 of the Caravans Act (Northern Ireland) 1963).

"THE TRADE ASSOCIATIONS"
Means the British Holiday & Home Parks Association and the National Caravan Council.

Page One.
Throughout the Code reference to one gender shall include the other gender and reference to the singular shall include the plural.
INTRODUCTION

The Trade Associations have drawn up the Code in order to assure Caravan Owners and prospective owners who take their leisure and holidays in Caravans that their interests are being looked after. The Code has been drawn up in consultation with the Office of Fair Trading.

The Code sets out principles of good practice in the operation of parks where there are Caravans under private ownership. There is a complementary Code for Letting Caravans. The Trade Associations have adopted the principles laid down in the Code as being applicable to their membership, as a minimum standard.

There is a complaints procedure for any Caravan Owner who feels dissatisfied with the treatment he has received from a member of either Trade Association. Paragraph 28 of the Code explains how to use this procedure. The Trade Associations will review all complaints and use their disciplinary procedures against any members who are found to have breached the Code. In serious cases this may result in expulsion of the member from the Trade Association to which it belongs.

Caravan Owners must recognise that they are entering into a long term transaction which brings with it certain responsibilities. Caravan Owners should make sure they understand the full implications of each stage of their purchase transaction. They are entering into a legally binding contract and should read every document carefully before signing it. Once the purchase is complete, Caravan Owners should ensure they look after their Caravan well and understand what maintenance and upkeep is necessary, including the precautions needed before laying up for winter. The Park Owner will be able to pass on to Caravan Owners any recommendations from caravan manufacturers about over-wintering and laying up the caravan and may be able to offer advice. They must also recognise that they are joining a new circle of neighbours and should respect the privacy and rights of those neighbours.

The Park Owner has to ensure that the operation of the Park follows the conditions laid down by the local authority in the Site Licence. Some of the provisions of the Licence Agreement are included because of conditions in the site licence. Caravan Owners need to be familiar with any obligations placed on them by the Site Licence and bear in mind that these can be changed by the local authority. Where that happens it may be necessary for the Park Owner to change the terms and conditions or facilities at the Park.

The Code is for the benefit and protection of consumers. It is not intended to benefit caravan dealers or those who own caravans as part of their business activities. Similarly it is not applicable to owners of caravans who occupy caravans as permanent residences. Neither this Code nor any Licence Agreement shall confer on the Caravan Owner any interest in land or any rights after the end of the Licence Period to site a caravan on the Park.
THE CODE OF PRACTICE

GENERAL
1. Unless otherwise stated all new caravans offered for sale by the Park Owner will comply with the relevant national or European habitation standard.

2. All documentation issued by the Park Owner shall comply with the Unfair Contract Terms Act 1977, Sale of Goods Act 1979, Supply of Goods and Services Act 1982, The Sale and Supply of Goods Act 1994, The Unfair Terms in Consumer Contracts Regulations 1994 and other relevant statutes. The Park Owner will explain in clear and plain language to a prospective purchaser the financial terms for the purchase and siting of the Caravan and all obligatory charges for the use of facilities and amenities, including the terms applying to charges and rebates if leaving the Park. The Park Owner shall also give details of insurance requirements and utility supplies.

3. If the terms of the Licence Agreement require the Caravan Owner to make the Caravan available for hiring, this must be made clear to the purchaser before the Licence Agreement is signed. It shall also be specifically included within the Licence Agreement.

4. To demonstrate to the public their observance of the Code all members of the Trade Associations will prominently display their membership symbol and have copies of the Code available in their park office.

5. The Park Owner must be capable of (or can arrange for) the service and repair of Caravans and equipment.

RIGHT TO AN AGREEMENT
6. Under the Code all Caravan Owners are entitled to a Licence Agreement for the period of tenure provided by para.8 below. Before the prospective purchaser enters into a legally binding agreement, the Park Owner will provide a copy of the Licence Agreement, the Park Rules and a copy of the Code. The Licence Agreement shall be personal to the Caravan Owner and not capable of assignment or transmission by him.

SELLING TECHNIQUES
7. The Park Owner and his staff must not use, and must guard against and actively discourage his agents from using, sales techniques which place undue or improper pressure on the consumer.

TENURE
8. Anyone who has purchased a new Caravan shall be given a Licence Agreement which runs for a Licence Period of not less than ten years from the date of First Purchase. However for each year in which any Hiring takes place the Licence Period shall reduce by one year.

In the case of a used Caravan being sold by the Park Owner he shall give the Caravan Owner a Licence Agreement for a Licence Period being not less than the balance of the period of ten years referred to in the previous paragraph.

Where a park owner who is a member of one of the Trade Associations buys a park or, being a park owner already, joins one of the Trade Associations he shall where the caravan is less than ten years old, is in a suitable condition and the other provisions of the Code apply, offer the caravan owners a Licence Agreement. The Licence Period shall be not less than the unexpired period of ten years from First Purchase less a year for each year in which Hiring has taken place or will subsequently take place.

In all other cases the period of the Licence Agreement is entirely at the discretion of the Park Owner.

During the period of any Licence Agreement the Caravan Owner will not be required to remove a caravan for the purposes of creating a sale or solely on account of its age. This does not preclude a Park Owner from maintaining an age limit for caravans on the Park but this limit must also apply to caravans sold by the Park Owner and must not be less than the minimum Licence Period set out above. In such cases this must be made clear to caravan purchasers before the Licence Agreement is signed. It must also be specifically included within the Licence Agreement.

REMOVAL OF THE CARAVAN FROM THE PARK OR PITCH
9. In the case of a serious breach by the Caravan Owner of one or more of the provisions of the Licence Agreement or Park Rules which is not capable of remedy, the Park Owner shall be entitled to end the Licence Agreement after serving reasonable notice on the Caravan Owner having regard to the nature of the breach.

In the case of a breach which is capable of remedy (such as a failure to repair or to pay the pitch fees or other charges promptly as they fall due), the Park Owner shall take no action to end the Licence Agreement until he has first served a written notice on the Caravan Owner. The written notice shall specify the breach requiring it to be put right in a reasonable time. If the Caravan Owner does not comply with the written notice the Park Owner shall be entitled to give not less than one month's notice in writing to end the Licence Agreement and to require the removal of the Caravan from the Park.

If it is the Park Owner who ends the Licence Agreement he shall fully reimburse the Caravan Owner for any pitch fees and other charges he has paid in advance for a period after the date the Licence Agreement ends.

Page Three
10. A Caravan Owner who intends to give up his pitch shall give the Park Owner at least two months’ notice in writing to end his Licence Agreement unless there is some breach of obligation on the part of the Park Owner in which case he may leave earlier but shall give the Park Owner as much written notice as possible.

Where it is the Caravan Owner who ends the Licence Agreement the Park Owner must as a minimum repay any pitch fees and other charges paid by the Caravan Owner in advance for a period after the date the Licence Agreement ends on the following scale:

- Where the Licence Agreement ends before the end of March: 80% repayment
- Where the Licence Agreement ends before the end of June: 40% repayment
- Where the Licence Agreement ends after the end of June: no repayment

Park Owners should note that where the caravan owner is leaving because of a breach by the Park Owner they may be required to give a greater refund.

11. However the Licence Agreement is brought to an end the Caravan Owner must permit the Park Owner the exclusive right to move the Caravan from the pitch and will give at least 7 days’ notice in writing of his wish to remove the Caravan from the Park. The Park Owner may refuse to permit the Caravan to be removed from the Park at weekends and on Bank Holidays (Scotland Local Holidays). Any charge made by the Park Owner for removing the caravan will be limited to the reasonable reimbursement of costs incurred and for time spent in doing this.

12. A Park Owner who wishes to move a Caravan from a particular pitch to allow redevelopment shall give the Caravan Owner at least three months' notice in writing and shall be responsible for all reasonable costs of the move. If the Caravan is moved for this purpose the Park Owner will mainstate the Caravan after the work is completed. If the move is permanent the Park Owner shall provide an alternative satisfactory similar pitch. Among the features to be taken into account in deciding whether the original pitch is less pleasant as a result of redevelopment will be the loss of a view and proximity to traffic.

13. In an emergency, the Park Owner will endeavour to give at least seven days notice before temporarily removing the Caravan from a pitch for the purposes of maintenance.

PITCH FEES AND OTHER CHARGES

14. The Park Owner shall give the Caravan Owner at least three months notification of an increase in pitch fees. Normally pitch fees will increase in line with changes in the cost of living or to cover the cost of improvements on the Park.

15. Where increases in pitch fees is proposed the Park Owner shall give the Caravan Owner an explanation in writing of the reasons for the proposed increase.

16. If not less than 51% of all Caravan Owners on the Park affected by the increase object in writing then the matter shall be referred to the special arbitration scheme for pitch fee disputes.

17. The Park Owner may pass on to Caravan Owners any appropriate any charges which are not within the control of the Park Owner such as rates, water charges and other charges paid to third parties. Statutory charges will be in accordance with relevant legislation.

18. The Park Owner shall not re-sell electricity at a price higher than that set by the Office of the Electricity Regulator (OFTERS). Similarly the Park Owner shall not sell bottled gas at a price higher than the recommended retail price as set from time to time by the gas supplier.

19. Caravans shall be properly insured against fire and storm damage and third party liability.

RE-SALE OF CARAVANS

20. The purpose of this section of the Code is to provide guidance so that a balance is maintained between the reasonable expectations of both the Park Operator and the Caravan Owner. A Caravan Owner may reasonably expect to receive a fair price for his Caravan if he chooses to sell his Caravan. Equally, the Park Owner may reasonably expect to control the occupancy of the Park.

21. The Caravan Owner shall have the unrestricted right to sell his Caravan off the Park or to remove it at any time, as long as he has settled all outstanding accounts due to the Park Owner in excess of £200. Where funds pass through the hands of the Park Owner he should settle any outstanding finance charges before promptly passing the funds to the Caravan Owner.

22. The Caravan Owner must notify the Park Owner in writing of his intention to place the Caravan on the market for sale and notify the Park Owner in writing at least every month after then that the Caravan remains for sale. After receiving that notice the Park Owner may himself make an offer to buy the Caravan and the parties are free to negotiate the price between them. If they are not able to reach agreement the Park Owner may be able to assist the Caravan Owner by offering the Caravan for sale through his agency.

23. A Caravan Owner who has not agreed to sell the Caravan to the Park Owner and who wishes to sell the Caravan to a buyer who intends to continue to station the Caravan on the Park must comply with the procedure set out
The procedure for the Caravan Owner to follow is:

(a) He must conduct the sale transaction through the office of the Park Owner who shall receive all purchase moneys from the buyer and promptly account to the seller for the same, subject to discharging any finance outstanding on the Caravan.

(b) He must permit the Park Owner to approve the prospective buyer by seeking suitable references and carrying out such enquiries as may be appropriate. This may involve the Park Owner requesting a meeting with the prospective buyer in person and carrying out checks with credit reference agencies and taking any other references as the Park Owner considers appropriate.

(c) The Park Owner can advise on the price to be sought and will indicate the level of commission payment he will seek from a prospective purchaser. The Caravan Owner must pass this information on to any prospective purchasers.

In return the Park Owner:

(i) Must not refuse to approve a prospective buyer or refuse to permit the sale to proceed except on reasonable grounds.

(ii) Where he has approved the buyer the Park Owner shall give him a new Licence Agreement the terms of which shall be at least as beneficial to the buyer as the Licence Agreement held by the previous Caravan Owner but which shall be for a fixed period equal to the amount of the Licence Period in the previous Licence Agreement which remains unexpired. A Park Owner may at his absolute discretion offer an agreement for a longer period, but in that case he will be entitled to charge the buyer a sum for this in addition to the commission set out in paragraph 24. The buyer does not have to accept this offer. The payment may be subject to value added tax.

(iii) Where the Caravan Owner has told the Park Owner he intends to sell the Caravan to a third party (but not where the third party is a Family Member) the Park Owner shall be entitled within two working days of being notified in writing, to buy the Caravan from the Caravan Owner for the same price, without the deduction of commission. The Park Owner may deduct from his purchase price only sums which may be lawfully due to him under the Licence Agreement and any sum required to settle outstanding finance.

24. The buyer of the Caravan shall on being given the new Licence Agreement pay the Park Owner a commission. The commission shall be at the discretion of the Park Owner who shall however not be entitled to charge more than 15% of the Fair Market Value of the Caravan unless the buyer is a Family Member of the Caravan Owner. In the case of a Family Member the buyer shall pay the Park Owner commission on the basis of up to 15% of the price actually paid on resale. The commission may be subject to Value Added Tax. No other charges to the buyer or seller will be made unless additional rights or services are agreed between the parties.

SUBSTANTIAL CHANGES IN ARRANGEMENTS ON A PARK

25. The Park Owner is entitled to make substantial changes to the Park or the way it is managed or run because he wishes to develop or improve the Park or its facilities in the normal course of developing his business. This may, by way of example, include development of new facilities and amenities, provision of new services and environmental improvements and often occurs where a park has recently changed ownership. In general improvements of this sort are in the interests of both the Park Owner and the Caravan Owner. Where such changes require the amendment of the Licence Agreement, the Caravan Owner shall not withhold his approval to amendments suggested by the Park Owner except on reasonable grounds.

26. A Licence Agreement shall not subsequently be amended unilaterally and shall be binding on successors in title to the Park Owner. New terms and conditions shall not be introduced which represent a fundamental change to previous arrangements. Examples of actions which would amount to breach of this paragraph are:-

Requiring a Caravan Owner to enter into a lease in place of the Licence Agreement

Introducing a new requirement that the Caravan Owner should hire his Caravan where this had not been a requirement before.

Changing the basis on which hiring is carried out by, for example, requiring it to be done through the exclusive agency of the Park Owner.

Introducing provisions which discriminate unreasonably between one Caravan Owner on the Park and another.

TERMS OF LICENCE AGREEMENTS

27. A Licence Agreement issued in accordance with the Code shall include, as a minimum, the following:

(a) The names of the Parties.

(b) The Caravan Owner's permanent residing address and an address to which communications from the Park Owner to the Caravan Owner are to be delivered.

(c) Details of the Caravan to which the Licence Agreement applies including the date of First Purchase.

(d) The date the Licence Agreement shall start, the length of time it shall run and how it can be renewed.

(e) The times of the year the Park is open.

(f) The amount of the annual pitch fee, when it is to be paid, how it is to be reviewed and whether or not it includes winter storage.

(g) What charges are included (eg rates, water) in the annual fee.

(h) What other charges are made eg hiring agency, supervisory services, club membership, entry to swimming pool, gas supplies etc specifying those that are obligatory.

(i) Any requirement for insuring the Caravan including, where applicable, insuring through the Park Owner.

(j) The terms for either party ending the Licence Agreement, including rebate arrangements for any repayment.

(k) The terms for selling and issuing a new Licence Agreement to the buyer.

Page Five
Whether Hiring the Caravan is forbidden, permitted or obligatory, whether or not Hiring has to be done
through the Park Owner and what charges are to be made for this service when provided.

What services are available to the pitch.

The responsibility of the Park Owner to provide and maintain services (stating which services).

The responsibility of the Caravan Owner to observe site licence conditions and Park Rules and to maintain
the Caravan and its equipment in good condition.

A statement that any restriction the Park Owner places upon the age at which the Caravan may be resold on
the Park shall bind the Park Owner as well as the Caravan Owner and details of what the age restriction is.

The basis of any disconnection fees the Park Owner may charge to allow removal of the Caravan from the
Park.

Details for the notification of amendment to the Park Rules.

Independent non-exclusive arrangements for disputes to be subject to arbitration (subject to limits on the
pecuniary value of the matter in dispute).

A signature box incorporating the following statement: 'This is a legally binding agreement which you should
sign only if you are satisfied with its terms and conditions. You should understand that the purchase price of
the caravan and any resale value are subject to a variety of factors and resale value may improve or reduce
over time.'

COMPLAINTS PROCEDURE

When a Park Owner receives a complaint he must take immediate notice of it and take action to achieve a
mutually acceptable settlement. Caravanners manufacturers and dealers who are members of the National Caravan Council
will similarly use every endeavour to assist in the settlement of complaints about their products or services. In the event of
a complaint the status quo should be maintained unless there is undue delay ocassioned by either party. Park Owners
must advise a complaint of the conciliation processes offered by the trade associations and the independent arbitration
services available. A Caravan Owner may at any time seek guidance in setting complaints from their local Trading
Standards Department, Citizens Advice Bureaux and Consumer Advice Centres.

STEP ONE
A person with a complaint should, in the first instance, take the matter up direct with the Park Owner.

STEP TWO
A Caravan Owner who is still dissatisfied may refer the matter for conciliation to the Park Owner’s Trade Association.

Applications for conciliation should be referred to:

The Director General
British Holiday & Home Parks Association
6 Pullman Court
Great Western Road
Gloucester
GL1 3ND

The National Caravan Council
Catherine House
Victoria Road
Aldershot
Hampshire
GU11 1SS

And the Trade Association will take steps to conciliate within one month of the matter being referred to them.

STEP THREE
If the complaint is still not resolved either party may approach the Director General of the relevant Trade Association who
shall advise him on how he may apply for independent arbitration within the two special schemes operated by the
Chartered Institute of Arbitrators. Caravan Owners can choose whether or not to use these schemes. If they decide to use
them the Park Owner is obliged to agree to use them. Once the matter has been decided by the arbitrator it is not normally
possible to start again with proceedings in Court. Similarly, once Court proceedings have started it will not be possible to
use arbitration unless both parties agree to do so.

Application to seek resolution of the problem through the Arbitration schemes must be made within two months of receiving
the advice from the Director General. The arrangements are:

a) In the event of a complaint arising from the level of increase in pitch fees the parties may seek resolution of the
complaint under a special Holiday Caravan Pitch Fees Arbitration Scheme.

b) Any other complaint will be referred to a special simplified Holiday Caravan Arbitration Scheme. Under this
Scheme arbitration will normally be on the basis of documents only. This is a relatively low cost scheme.

In either case the Institute will appoint an independent arbitrator/arbiter. Under the provisions of the Arbitration Acts 1950
and 1996 and other relevant statutes unless otherwise agreed any award of the arbitrator/arbiter is binding on all parties and
enforceable through the courts.

The Institute charges fees on the application for arbitration but these may be refundable to the successful party in some
circumstances.

A copy of the arbitration arrangements can be obtained from the Trade Associations or direct from the Chartered Institute of
Arbitrators, 24 Angel Gate, City Road, London EC1V 2RS

MONITORING

Both the Trade Associations will analyse all complaints against members arising from the Code or associated
matters referred to the Trade Associations for conciliation or arbitration in a form laid down by the OFT. The results of
such analyses will be provided annually to the OFT together with observations on the operation of the Code. The OFT will
be invited to send observers to any meetings of the Associations at which disciplinary action against Park owners for
potential breaches of this Code is considered.
LICENCE AGREEMENT

FOR A

HOLIDAY CARAVAN PITCH

INTRODUCTION & SUMMARY OF THE AGREEMENT
1. This Agreement permits you to station a caravan on a park and to occupy it for holiday and recreational purposes. It complies with the Code of Practice for Selling and Siting Holiday Caravans issued by the British Holiday & Home Parks Association and the National Caravan Council and is the Licence Agreement referred to in that Code.

2. You will already have been supplied with a copy of the Code. A copy of the Code is available for inspection at the office of the Park Owner or may be obtained from the British Holiday & Home Parks Association at Chichester House, 6 Pullman Court, Great Western Road, Gloucester, GL1 3ND or the National Caravan Council at Catherin House, Victoria Road, Aldershot, GU11 1SS.

3. Part I contains the particulars of the caravan, the length of time you may station it, the season during which you can use it and other information such as the amount of the pitch fee payable to the Park Owner.

4. Stationing a caravan is a long-term commitment and you will have to comply with the terms and conditions contained in Part II.

5. Part II clause 1 sets out in detail the meaning of expressions used in the Agreement. Clause 2 gives you permission to station the Caravan. Clause 3 contains the obligations you are taking on. Clause 4 sets out standards of behaviour which are expected of you and members of your party using the Caravan.

6. Clause 5 sets out the obligations undertaken by the owner of the Park.

7. Clause 6 contains the procedure should you decide you want to sell the Caravan. Under clause 6b all sales on the Park have to be dealt with through the office of the Park Owner who is entitled to meet and approve the buyer of the Caravan. The clause also provides for the buyer of the Caravan to pay the owner of the Park a commission.

8. Clause 7 sets out the basis on which the pitch fees may be reviewed.

9. The Caravan may be moved from its pitch to allow redevelopment and/or maintenance and this is dealt with in clause 8.

10. The situations in which the Agreement can be brought to an end are described in clause 9. Clause 10 sets out the circumstances in which the Park Owner is able to bring the Agreement to an end and clause 11 allows you to bring the agreement to an end by notice in writing.

11. Clause 12 sets out what has to happen when the agreement is terminated.

12. If the Park Owner is in breach of his obligations under the Agreement he may be liable to pay compensation to you and/or to permit you to move the Caravan away on less notice than is usually required.

13. In addition to the obligations set out in the Agreement there will be Park Rules, which will be individual to each park, and these may have to be changed from time to time as permitted by clause 13.

14. If a dispute arises clause 14 allows for this to be resolved by arbitration as an alternative to going to Court. Certain disputes have to be referred to an independent surveyor for determination by him.

Page One
PART 1  PARTICULARS

Date of Agreement

Names & Addresses of parties:
Park
Owner:

Caravan
Owner:

D.B. & J. LEETHAM

BURNSIDE CARAVAN PARK

SANDBRAES

WHITING BAY

ISLE OF ARRAN

KA27 8RE

Name of Park: BURNSIDE CARAVAN PARK

Description of Caravan: Chassis/Ser No.

Date of First Purchase:

Category of Caravan: HOLIDAY No. of Berths

Licence Period:

Amount of annual pitch fee and when payable
(inc. or excl. of V.A.T.) £ (No V.A.T.) 1st APRIL

Review Date: the 1st day of MARCH in each year of the Licence Period

List other charges
(clearly marking any which are compulsory)
e.g. club rates, water etc:

LOCAL AUTHORITY RATES

WATER CHARGES

ELECTRICITY

Season: (The Period when the Caravan may be occupied) MARCH TO OCTOBER incl.

Hiring: permitted: ☐ not permitted: ☑ compulsory: ☐

Services provided without separate additional charge:
PARK MAINTENANCE - GRASS CUTTING etc.

PLEASE NOTE:
This is a legally binding agreement which you should sign only if you are satisfied with its terms and conditions.

You should understand that the purchase price of the Caravan and any resale value are subject to a variety of factors and resale value may improve or reduce over time.

Page Two
Services provided for a charge:

**WINTER DRAINAGE (IF REQUIRED)**

<table>
<thead>
<tr>
<th>Requirement to insure through Park Owner:</th>
<th>Yes [ ]</th>
<th>No [✓]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whether winter storage charged for separately:</td>
<td>Yes [ ]</td>
<td>No [✓]</td>
</tr>
</tbody>
</table>

Age Limit 16 years after First Purchase (and thereafter at Park Owners discretion).

This is a legally binding agreement which you should sign only if you are satisfied with its terms and conditions.

You should understand that the purchase price of the Caravan and any resale value are subject to a variety of factors and resale value may improve or reduce over time.

**SIGNATURES:**

Caravan
Owner:

For Park
Owner:

**PART II**

**TERMS & CONDITIONS OF THE LICENCE AGREEMENT**

1. **Meaning of Expressions used in this Agreement and Interpretation**

   - 'Caravan' means the Caravan Holiday Home described in Part I.
   - 'Our/Us' means the Park Owner described in Part I.
   - 'You/Your' means the Caravan Owner described in Part I.
   - 'Caravan Owner' means the person(s) whose name and address appears in Part I.
   - 'Fair Market Value' means the price (taking into account current market conditions) which a buyer of the Caravan would reasonably expect to pay and which the seller of the Caravan would reasonably expect to accept for the Caravan located for sale on the Park complete with this Licence Agreement. This price shall be calculated without regard to any commission which we would be entitled to charge under clause 6 of Part II to the buyer of the Caravan.
   - 'Family Member' means your spouse, parent, grandparent, child, grandchild, brother or sister, and the spouse of any of those persons and treating the stepchild of any person as his child.
   - 'Hire/Hiring' means the act of obtaining for payment, whether in cash or kind the use of the Caravan by persons (except Family Members) other than you. If Hiring is compulsory this will be clear from Part I of this Licence Agreement. When Hiring is stated to be compulsory it means we can Hire the Caravan for you. Whether Hiring is compulsory or permitted it will take place on the basis of a separate agreement between us.
   - 'Independent Surveyor' means the surveyor appointed under clause 14 for the purpose of determining any dispute under clauses 6 & 8 of this Agreement.
   - 'Licence Period' means the period shown as the Licence Period in Part I.
2. Permission to station a Caravan

3. Your Obligations

You agree with us as follows:

a. To comply with the terms of this Licence Agreement and the Park Rules.

b. To pay the Pitch Fee and other charges due to us promptly on the dates set out in Part I.

c. To pay interest at 4% over base rate from time to time of a London clearing bank nominated by us on any sums overdue to us (in Northern Ireland, a Northern Irish Bank nominated by us).

d. To insure the Caravan to its full value against all usual risks including fire and storm damage and against third party liability in such reasonable sum as we may notify to you from time to time (not being less than £2m) and to provide us with up to date details of the insurances on request. To insure through our agency if this is a requirement of Part I.

e. To keep the Caravan in a good state of repair and condition, in a habitable state and to comply with all servicing and usage recommendations of the manufacturer of the Caravan.

f. To use the Caravan only as holiday accommodation and not as your only or main residence.

g. Not to do or omit to do anything which might put us in breach of any condition of the Site Licence and to comply with all statutory requirements in relation to the Caravan and its installations and furnishings. The conditions of the Site Licence are displayed on the Park and you should familiarise yourself with the obligations placed on you by the Site Licence and bear in mind that the conditions can be changed and are subject to review from time to time.

h. Not to carry out any building works at the Park or to erect any extension to the Caravan or without permission in writing of the Park Owner to erect any hut, fence, structure TV aerial or clothes line or to connect any services or utilities to the Caravan.

i. To permit us to remove the Caravan from its pitch in accordance with the rights we have under the Agreement.

j. To permit us to conduct any saint or removal work (even after termination of the Agreement) in respect of the Caravan ourselves or through our contractors in order that we can maintain standards on the Park.

k. To comply with any requirement contained in Part I as to Hiring the Caravan.

l. To comply with the provisions of clause 6 below when selling the Caravan.

4. Behaviour Standards

By entering into this Agreement you undertake for yourself and people who occupy the Caravan as your guests (including children) to adopt the following standards of behaviour:

a. To act in a courteous and considerate manner towards us and other customers of ours.
b. To supervise children properly so that they are not a nuisance or danger to themselves or others.

c. You further agree that you will not:
   * commit any criminal offence at the Park or use the Caravan for the furtherance of any criminal activity.
   * commit any acts of vandalism or nuisance.
   * keep or carry any firearm or any other weapon at the Park.
   * use any unlawful drugs.
   * create any noise or disturbance.
   * carry on any trade or business at the Park.

And you accept that any breach of these behaviour standards may bring about the termination of your Licence. Termination by us is dealt with by Clause 10.

5. Our Obligations

a. We will provide the Services to the Caravan except where these have to be interrupted for the purpose of repair or for other reasons beyond our control such as interruptions in the supply of services to us.

b. We will move the Caravan from the Park or the Pitch only in accordance with the provisions of clauses 8 & 10.

c. We will comply with our obligations if you terminate this Agreement under Clause 11.

d. We will insure the Park against usual third party risks to a minimum of £2m per claim.

e. We will sell you electricity at a rate of charge prescribed by the Office of the Electricity Regulator (OF 0FER) and will sell bottled gas at a price recommended as the retail price from time to time by the gas supplier (plus a reasonable delivery charge).

f. If an age limit appears in Part I of this Agreement we shall be bound by such an age limit in relation to caravans of that category which we sell on the Park.

6. Selling the Caravan

Provided that the age of the Caravan does not exceed any Age Limit which appears in Part I you may sell the Caravan in accordance with the provisions of this clause. If the age of the Caravan exceeds any Age Limit you may only sell it for removal from the Park.

a. You agree to write and tell us if you are putting the Caravan on the market for sale while it remains on the Park and to confirm to us in writing every two months thereafter that it remains for sale. You agree to tell us in writing whether the Caravan is subject to finance and if it is give us the name of the company and the reference number of the Agreement.

b. You agree to follow the procedure set out below:

(i) To conduct the sale transaction through our office and appoint us your agent for that purpose. We will receive all purchase money from your buyer and will promptly account to you for the same, subject to discharging any finance outstanding on the Caravan of which you have notified us in writing.
(ii) To allow us to approve your prospective buyer by seeking suitable references and carrying out the enquiries we consider to be appropriate. If we wish to we may require a meeting with your buyer in person.
(iii) We can advise you on the price you may obtain for the Caravan and we will tell you the percentage rate of commission we would charge your buyer when we enter into a new agreement with him. It is essential you pass this information on to your buyer.
(iv) You agree to write to us telling us the agreed price if you intend to sell the Caravan to a third party (but not in the case of a Family Member) and we are entitled within two working days of receiving your letter to buy the Caravan from you, for the same price, without charging you any commission. If we buy the Caravan from you in this way we may only deduct from the purchase price we pay you sums which are lawfully due to us under this Agreement and any sum needed to settle outstanding finance.

c. To assist you in the process of selling the Caravan:

(i) We will only withhold approval of a prospective buyer on reasonable grounds.
(ii) Where we have approved your buyer we will give him a new Licence Agreement for the amount of the Licence Period which then remains unexpired. In other respects the new Licence Agreement will contain terms at least as beneficial to your buyer as this Agreement.

d. Before we issue the new Licence Agreement to your buyer we will charge him a commission of not exceeding 15% of the Fair Market Value of the Caravan (plus Value Added Tax or any similar tax if appropriate) unless your buyer is a Family Member. In the case of a Family Member your buyer shall pay us commission not exceeding 15% of the price actually paid on resale (plus V.A.T. if appropriate).

e. Apart from commission we will not make any other charges to you or to the buyer of the Caravan without the express agreement of the paying party or unless additional rights or services are agreed between the parties.

f. Without afflicting your statutory and legal rights, in the event of any dispute as to what a Fair Market Value may be the question may be referred to the independent Surveyor for determination under clause 14 of this Agreement.
7. Review of Pitch Fees

a. On the Review Date we are entitled to review the Pitch Fee. We must give you at least three months’ notice in writing before the Review Date of an increase in the Pitch Fee.

b. We will give you a written explanation of the reasons for any increase which is proposed.

c. If not less than 51% of the owners of caravans affected by the proposed increase object to us in writing the parties will together take steps to have the reviewed fee determined by a special arbitration scheme relating only to the review of the annual Pitch Fee. Otherwise the proposed reviewed Pitch Fee will become payable with effect from the Review Date.

d. The Pitch Fee will be reviewed (by us or the arbitrator/arbitral) having regard to the following criteria:
   ▶ We are entitled to pass on to you as appropriate any changes which are not within our control such as rates, water charges and other charges paid to third parties.
   ▶ Any changes in the cost of living as shown by the General index of Retail Prices or another index having a similar purpose.
   ▶ Sums spent by us on the Park and/or its facilities.
   ▶ Changes in the cost of salaries and wages which we have to pay our staff.
   ▶ Changes in the length of the Season.
   ▶ Any other relevant factor.

Moving the Caravan

Within the Licence Period we may wish to move the Caravan to another part of the Park and this clause sets out the basis on which we may do that, for example because we are redeveloping an area of the Park, or installing some facility.

a. We are allowed to remove the Caravan for the purposes of redevelopment and/or maintenance of the Park and when this happens we will give you at least three month’s notice in writing. If the Caravan has to be moved because of some emergency or because of works to be carried out by a third party over whom we have no control such as a water supply company or other utility company we will give you as much notice as we can.

b. We will be responsible for all reasonable costs incurred in moving the Caravan.

c. Following redevelopment we are entitled to return the Caravan to its original pitch or to site it permanently on another pitch. If the consequence of the redevelopment is that the original pitch is less pleasant or if the move is permanent we must offer an alternative satisfactory pitch. Among the features to be taken into account in deciding whether the original pitch is less pleasant as the result of redevelopment will be the loss of a view and proximity to vehicular traffic.

d. Any dispute arising under sub clause e above as to the pleasantness of the alternative pitch or the question whether the original pitch is less pleasant by reason of the development may be referred to the Independent Surveyor under clause 14 of this Agreement.

e. We are entitled to move the Caravan at any time in the event of an emergency but will whenever possible give at least seven days’ notice for any move occurring during the Season.

Termination of licence

The Licence may come to an end in any of the following ways:
   ▶ By giving you notice in writing of your wish to end it.
   ▶ Because the Licence Period has passed.
   ▶ By the sale of the Caravan or by you losing title to it.
   ▶ By us taking steps to terminate it because you have broken your obligations under this Agreement.

a. If you are in serious breach of your obligations under this Agreement and the breach is not capable of being remedied we may serve upon you reasonable notice in writing to terminate this Licence Agreement. In deciding what period of notice is reasonable we shall have due regard to the nature of the breach.

b. If you are in breach of any of your obligations which is capable of being remedied (for example such as a failure to repair the Caravan or to pay pitch fees promptly) we may write giving you notice specifying the breach and asking you to remedy the breach within a reasonable time. If you do not comply with that notice we are entitled to write to you and the Licence Agreement and to require you to remove the Caravan from the Park within one month.

You are entitled to bring this Agreement to an end by writing to us giving us not less than two months notice. However if we have broken our obligations to you under this Agreement you may give us a lesser period of notice but should still give us as much notice as possible.

1. When you may terminate the Licence Agreement

2. The consequences of termination of the Licence Agreement

a. You will remove the Caravan and all other property of yours from the Park within one month after termination of this Agreement however that comes about. In accordance with clause 3 above we are to arrange for all de-structuring to carry this out ourselves. If you fail to remove the caravan under this clause 12 a we are entitled to remove it ourselves.

b. We are entitled to make a reasonable charge for disconnecting the Caravan from services and preparing it for transport away from the Park. This charge will be based upon the time spent and costs incurred by us in this process.
c. Where we and the Licence Agreement under the provisions in this clause we will repay to you in full any pitch fees and other charges which you have paid us for any period after the removal of the Caravan.

d. Where you have terminated the Licence Agreement so that it comes to an end before the end of June we will repay to you on the scale set out below any pitch fees and other charges which you have paid us for a period after the Licence Agreement has ended, less any sums properly due to us.

Where the Licence Agreement ends before the end of March repay 60%
Where the Licence Agreement ends before the end of June repay 40%
Where the Licence Agreement ends after the end of June no repayment

e. We retain the right to hold the Caravan and the power of sale over the Caravan for any sums due to us on termination which exceed £200 and we will be entitled to deduct from sums due to you any sums due to us or any finance company and the costs of sale and storage (This sub-clause shall not apply to Licence Agreements made in Scotland)

13. Park Rules

a. It may be necessary or desirable to change the Park Rules from time to time. We may change the Park Rules at any time by giving written notice to you.

b. Any changes made after the signing of this Agreement will not affect anything to which you are entitled under this Agreement.

14. Disputes

The Agreement provides for disputes to be resolved by the following means:

a. We may refer any dispute to an arbitrator as an alternative to going to Court.

b. Any dispute relating to the amount of the pitch fee has to be referred to an arbitrator because the Court does not have power to fix the pitch fee.

c. We may refer questions arising under clause 61 and clause 8 to an independent surveyor.

16. General

a. We agree that any letters or other communications between us shall be sent to the address appearing in Part I unless we have told you or you have told us of another address within the United Kingdom to be used instead.

b. This Agreement commences on the date the Agreement is signed on behalf of the Park Owner.

c. We shall be entitled to make changes to the Park and/or the way it is managed. Where such changes require this Agreement to be amended you agree not to withhold your approval to amendments except on reasonable grounds.
I note from the Official Report that there was some discussion of possible reform to the law of leases to ensure greater fairness along the lines of the Unfair Contract Terms Act 1977. I regret that I also doubt whether this would be a workable solution as a lease providing for a 25 year tenure with no renewal clause is not of itself inherently unfair. Leases which roll-on on an annual basis with little or no provision for renewal or rent review are not uncommon. They operate perfectly satisfactory in many circumstances. Quite understandably, a hutter who has personally built, maintained or customised their hut may feel that their investment should give them security of tenure. But, leaving aside the question of whether greater protection should be provided, this does not make the terms of the original contract unfair. It is the expectations of the parties and the circumstances of each case which produce dissatisfaction and disquiet.

Where the original agreement or contract was freely negotiated and entered into, it is difficult to intervene through legislation to the advantage of one of the parties at the expense of the other. In other forms of holiday lettings there is no statutory system of rent control or arbitration for determining rents as it is accepted that this is something which is properly decided by the market, and this system appears to work well. Even in relation to huts, we are only aware of pronounced dissatisfaction in two hutting estates out of the 37 sites (27 rented) identified in the “Huts and Hutters in Scotland” research paper published in 2000. Further consultation did not reveal widespread difficulties between landlords and hutters, although I note your comment that you have received correspondence from other hut sites.

I think it is worth remembering that there is a risk that legislation in this area might precipitate changes to the ownership and management of comparable estates in Scotland which could be damaging to the interest of hutters. In particular, estate owners might decide to terminate leases because of concern about the implications of hutters acquiring security of tenure or rent control, or even to sell their estate if they felt it would become economically unviable as a result. Such repercussions, if realised, would clearly undermine any positive value that legislative measures might have. One other factor on rent control is that because the leases are (or will be) generally of an annual duration, the landlord could end the lease by giving notice before the annual renewal date if he did not like the reviewed rent.

I am sorry that this response is not as positive as you would have wished, but it might be helpful to the hutters too if a line were to be drawn under this matter. The Executive’s position is that we see no prospect of a legislative solution. Furthermore, since it would not be appropriate for us to intervene between tenants and landlords, we do not believe that there is anything that can be done by the Executive to alter the position of the hutters.

Yours sincerely,

Hugh Henry

Hugh Henry
Justice 1 Committee
40th Meeting 2004 (Session 2)

Civil Partnership Act 2004 (UK legislation)

Note by the Clerk

Background

1. On 3 June 2004, the Parliament agreed motion S2M–1202 in the name of Cathy Jamieson—that the Parliament endorses the principle of giving same sex couples in Scotland the opportunity to form a civil partnership and agrees that the provisions in the Civil Partnership Bill that relate to devolved matters should be based on Scots law and considered by the UK Parliament.

Consideration by the Justice 1 Committee

2. Prior to the Parliament’s decision, the Justice 1 Committee had taken evidence from the Law Society of Scotland, Professor Kenneth Norrie of the University of Strathclyde and the Deputy Minister for Justice on the technical aspects of the Civil Partnership Bill (“the Bill”) and reported to the Parliament on its findings.

3. The Deputy Minister for Justice has, over the course of the period since his appearance before the Committee in relation to this matter, corresponded with the Committee in order to keep it informed of the Bill’s progress through Parliament. The minister’s most recent letters, of 9 and 29 November 2004, are attached at annexes A and B respectively.

Amendments

4. The minister’s letter of 9 November covers amendments to the Scottish sections of the Bill at Second Reading, Standing Committee and Report Stage, including a number of amendments that the Executive had agreed in correspondence with the Committee should be tabled, namely—

- capacity to consent (clause 86 and 92)
- adoptive and half blood relationships (clause 86)
- the addition of judicial separation (which had been removed in the Lords) (clause 120)
- the addition of legal rights of succession (clause 131)
- minor amendments to the Bankruptcy (Scotland) Act 1985 (schedule 28)
- consequential amendment to the Debtors (Scotland) Act 1987 (schedule 28)

5. The letter also explains that, in response to the Committee’s report, the Executive had reconsidered the amendments that it was planning to make in relation to religious premises and discloses the wording of the amendment it had arrived at in

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1 Justice 1 Committee, 20th Meeting 2004 (Session 2)
2 Justice 1 Committee, 7th Report 2004: Civil Partnership Bill - UK Legislation
http://www.scottish.parliament.uk/business/committees/justice1/reports-04/j1r04-07-01.htm
order to address the Committee's concerns. The letter goes on to give details of further technical amendments.

Enactment


"I would like to take this opportunity to express my gratitude to the Committee for their work in scrutinising the Scottish provisions in the Bill. The final shape of the Scottish provisions takes account of the comments and consideration given by the Committee and I believe that this has made for a better Bill. I have also appreciated the constructive dialogue that we and our officials have had as the Bill has progressed."

7. The Committee is invited to note the enactment of the legislation and to note the Deputy Minister for Justice's comments in relation to the Justice 1 Committee's substantive contribution to the process.
CIVIL PARTNERSHIP BILL

I am writing to update the Justice 1 Committee on the Bill's progress through the Commons Stages. Anne McGuire MP, Parliamentary Under Secretary of State for Scotland, is writing to you separately to update you on the UK Government's position with regard to Survivor Pensions for Civil Partners.

Second reading

The Bill successfully passed second reading on 12 October. The opposition were largely in support of the Bill and opposed the amendments laid by conservative Peers in the Lords - some of whom explained why the opposition amendments would not work and should be removed from the Bill. There were some positive comments by a number of Scottish MPs about support for the Bill in the Scotland and the scrutiny and support by the Scottish Parliament. One Scottish MPs asked whether the Government were going to bring forward an amendment on legal rights of succession, which had not been possible in the Lords and Anne McGuire responded positively.

Standing Committee

The Bill was considered at Standing Committee on 19, 21 and 26 October with scrutiny of the Scottish provisions taking up the majority of the morning session on 26 October. During consideration of the Scottish provisions, some Scottish members were keen to put on record their admiration for the level and quality of scrutiny the Scottish provisions received from the Justice 1 Committee and the fact that the Scottish provisions adhered to Scots law. During the debate, Alan Duncan MP (opposition spokesperson) questioned how succession law in Scotland would apply to civil partners. Anne McGuire subsequently wrote to Alan Duncan, a copy of which was sent to you. There was also detailed consideration of the procedure and grounds for dissolving a civil partnership. During Committee the opposition amendments made in the Lords at Report Stage were successfully overturned. This brings the Bill back inside the scope of the Sewel motion that was agreed by the Scottish Parliament on 3 June. Furthermore, Government amendments to the Scottish provisions that were previously agreed with the Committee were successfully made as follows:

- capacity to consent (clause 86 and 92)
- adoptive and half blood relationships (clause 86)
- the addition of judicial separation (which had been removed in the Lords) (clause 120)
- the addition of legal rights of succession (clause 13 1)
- minor amendments to the Bankruptcy (Scotland) Act 1985 (schedule 28)
- consequential amendment to the Debtors (Scotland) Act 1987 (schedule 28)

Two additional technical Government amendments were also made and these are explained below:

*Succession (Scotland) Act 1964*

Schedule 28 amends the Succession (Scotland) Act 1964 to provide civil partners with prior rights of succession in the same way that they apply to spouses. Amendment to section 36(1) of that Act, which would ensure that the term 'civil partner' is also recognised in the interpretation of the Act, was previously missed. A Government amendment as follows was made to include this in the Bill:

Schedule 28, Part 1:

(9) In section 36(1) (interpretation), in the definition of "prior rights", after "spouses" insert "or civil partner".

*Family Law Act 1986*

Schedule 28 included an amendment to the Family Law Act 1986 to ensure that civil partnership proceedings were recognised by the Scottish court. However, the Family Law Act 1986 is a UK wide piece of legislation and the required amendments for England, Wales and Northern Ireland are to be achieved by regulation. It is therefore inappropriate that the Act be amended solely for Scotland at this stage. Doing so runs a risk of the various components of the legislation not working effectively. In order to ensure consistency throughout the UK this amendment had to be removed so that the necessary Scottish amendments can be achieved through regulation in coordination with the rest of the UK.

*Report Stage*

Report stage and Third Reading on the Bill will take place on 9 November at which we will lay Government amendment to the Scottish clause on approval of places for Civil Partnership registration (clause 93). This redefines the definition of "religious premises".

*Religious premises*

The Justice 1 Committee questioned the text of what is now subsection (2) of clause 93, which would preclude from consideration by a local registration authority for civil partnership registration a place where "one or more persons are known to meet for public worship or one known to be regarded by persons of a religious faith as a place of reverence". The Committee's concern was that, under the terms of this provision, it could be possible to preclude a village hall that is used for many purposes (including religious worship). As was made clear in response to the Committee, the policy intention is that the local registration authority would concentrate on the primary purpose of the place. However, we undertook to look again at the provision in light of the Committee's views.

In my letter of 19 May 2004, I indicated that as a consequence, we intended to bring forward a Government amendment at Report Stage in the House of Lords that would amend clause 93(2) to make it more closely follow the policy intention that it is the primary purpose of the place which would inform the decision of the local registration authority. As I indicated, if the amendment was made successfully, clause 93(2) would read:
(2) But the place must not be in religious premises. In this section "religious premises" means premises-
(a) designed for use solely or mainly for religious purposes, or
(b) in use solely or mainly for religious purposes.

This would allow a village hall that is only occasionally used for religious functions to be considered by the local registration authority as a place where the formal steps of a civil partnership registration could take place. This also followed the drafting used in the Bill by the UK Government for the England and Wales provision.

In the Committee's report on the Sewel motion, it acknowledged the proposed amendment but concluded that it believes:

"that the clause as amended would exclude former church buildings - designed for use solely or mainly for religious purposes - that have now been deconsecrated and converted for other uses, for example as a venue for social events."

My officials have looked again at the drafting of this clause, as have the UK Government for the equivalent clause for England and Wales, and have identified a better form of words that should address the Committee's concerns. I propose to amend clause 93 in Report Stage as follows:

Page 44, line 8, clause 93, leave out from 'be' to end of line 10 and insert 'in religious premises, that is to say in premises which-
(a) are used solely or mainly for religious purposes, or
(b) have been so used and have not subsequently been used solely or mainly for other purposes.'.

Page 44, line 12, clause 93, leave out '; and "known" means known to the local registration authority'

With this revised form of words, I believe the Justice 1 Committee's concerns are much better addressed. The clause sets out that "religious premises" is to be defined as "premises which are used solely or mainly for religious purposes", or premises which "have been so used and have not subsequently been used solely or mainly for other purposes". In other words, premises will come within the definition where their sole or main use is for religious purposes, and they will continue to fall within the definition until such time as they are solely or mainly used for non-religious purposes. This will ensure that the character of particular premises is decided by reference to their sole or main use (or if they are disused their last sole or main use). It means also that the design of a building which is not used for religious purposes should not have any bearing on whether or not that building should be defined as "religious premises".

This makes it very clear that in, for example, the case where a same-sex couple may have bought a disused and deconsecrated church that is now their private home, a civil partnership registration could take place. However, a disused church that has not been deconsecrated would be regarded as "religious premises" within the new definition.
Technical registration amendment

My officials have also identified one further technical amendment that is required. The purpose of this is to fill a small gap in provision that currently exists for civil marriage but which has not been provided for civil partnership registration. Section 18(2) of the Marriage (Scotland) Act 1977 enables an authorised registrar, with the approval of the Registrar General, to solemnise a civil marriage:

(a) in the registration office of another authorised registrar; or
(b) at an approved place in the district of another authorised registrar.

There is no equivalent provision in the Bill for the registration of civil partnerships. I therefore propose to amend Clause 93 at Report Stage as follows, so that the place of registration may, with the approval of the Registrar General, be outwith the district of the registrar authorised under Clause 87.

Page 44, line 7, clause 93, at end insert-

'( ) The place of registration may, if the approval of the Registrar General is obtained, be outwith the district of the authorised registrar carrying out the registration.'

If these amendments are successfully taken, the revised clause 93 will read as follows:

93 Place of registration

(1) Two people may be registered as civil partners of each other at a registration office or any other place which they are the local registration authority agree is to be the place of registration.

(2) The place of registration may, if the approval of the Registrar General is obtained, be outwith the district of the authorised registrar carrying out the registration.

(3) But the place must not be in religious premises, that is to say in premises which—

(a) are used solely or mainly for religious purposes, or
(b) have been so used and have not subsequently been used solely or mainly for other purposes.

(4) "Local registration authority" has the meaning given by section 5(3) of the 1965 Act.

Further technical amendment to schedule 28: succession

My officials have also identified a technical amendment that is required to schedule 28 with regard to the Succession (Scotland) Act 1964. Schedule 28 already makes amendment to the 1964 Act to provide prior rights for civil partners. However, amendment of section 10(2) of the 1964 Act has not presently been made to bring civil partners within the scope of its meaning.

Section 10(2) of the 1964 Act sets out that claims for *jus velictae, jus velicti* or legitim are to be calculated by reference to so much of the net moveable estate as remains after prior rights have been met. The Law Society are concerned that without an amendment to section 10(2) to include reference
to civil partners this would only apply to spouses. That would mean that the surviving civil partner would be entitled to the appropriate fraction of the whole estate, even after receiving prior rights, while a spouse in the same position would be entitled only to the same fraction of the lesser amount left after the satisfaction of prior rights. This would, of course, produce a potentially significant difference between the treatment of spouses and the treatment of civil partners.

We consider that it is necessary to amend section 10(2) to replace the term "jus relict, jus relictae or legitim" with the term "legal rights". We have sought to make this amendment in schedule 28 as this is the area of the Bill where we have the provision relating to prior rights.

The text of the amendment is as follows:

( ) 'In section 10(2) (calculation of legal rights), for "jus relict, jus relictae or legitim" substitute "legal rights"

Next steps

Once the Bill has had its Third Reading in the Commons, it will be passed back to the Lords for agreement to the amendments made in the Commons. The UK Government expects that this will happen in the week commencing 15 November. There will likely be some heated debate on the Bill but it is anticipated that the Commons amendments will be accepted.

I hope this update is helpful and I am happy, of course, to discuss any aspects of this letter with you. I will write to you again once the Bill has had its Third Reading in the Commons.

HUGH HENRY
CIVIL PARTNERSHIP ACT 2004

I am writing further to my letter of 9 November to update you on the Bill’s final progress through the UK Parliament. I also attach a letter from Anne McGuire, Parliamentary under Secretary of State to update you on a change in the UK Government’s position with regard to Survivor Pensions for Civil Partners.

The Civil Partnership Bill had its Report Stage and Third Reading in the Commons on 9 November and passed its Third Reading with a 389 to 47 majority. At Report a small number of opposition backbenchers had laid a group of amendments to add family members back into the Bill. The amendments that they sought differed in a small way to those that the opposition had achieved in the Lords (and which were overturned in Commons Committee) by also seeking to make provision for a simplified dissolution procedure for such couples. This group of amendments and the principle that the Bill be restricted to same-sex couples were debated for some 3.5 hours with the opposition eventually pressing the matter to a vote which they lost by a significant margin. Subsequently, the Government amendments were successfully moved without opposition and this included the Scottish amendments to clause 93 (religious premises and technical registration amendment) and the technical succession amendment in schedule 28.

The Commons amendments to the Bill were considered and agreed by the Lords on 17 November. There was protracted debate on the opposition amendments which had been overturned by the Commons and an amendment to reinstate part of them. The House divided and the Government won with a large majority. The Lords agreed all of the amendments made to the Bill by the Commons.

The Bill was subsequently granted Royal Assent on 18 November 2004. Officials in Scottish Executive Departments and agencies will now work to implement the Scottish provisions in the Act. I would like to take this opportunity to express my gratitude to the Committee for their work in scrutinising the Scottish provisions in the Bill. The final shape of the Scottish provisions takes account of the comments and consideration given by the Committee and I believe that this has made for a better Bill. I have also appreciated the constructive dialogue that we and our officials have had as the Bill has progressed.

I hope this is helpful. I am happy, of course, to discuss any aspects of this letter with you.

HUGH HENRY
PART 1 LAND REFORM (SCOTLAND) ACT 2003
DRAFT GUIDANCE FOR LOCAL AUTHORITIES/NATIONAL PARK AUTHORITIES
LOCAL AUTHORITY/NATIONAL PARK AUTHORITY ASSISTANCE FOR LANDOWNERS & LAND MANAGERS

In accordance with the advice of Ms Ruth Cooper, the SRPBA would like to take this opportunity to make further comment on the draft Guidance to Local Authorities and National Park Authorities (the Guidance).

The SRPBA previously submitted comments on the draft Guidance in August 2004 as part of the consultation process. However, having now perused the revised draft Guidance, the SRPBA would like to once again emphasise our key concerns.

Primarily, the SRPBA remains extremely concerned about the lack of direct reference in the Guidance to local authority support for land owners and land managers (hereafter land managers). While local authorities will have a clear duty to uphold access rights, it will be important for this function to be approached in a fair and just manner. By acting as an “honest broker”, local authorities should actively assist land managers to manage access responsibly and to find reasonable solutions in circumstances where irresponsible access has occurred. The Guidance will therefore be a critical and appropriate vehicle for encouraging local authorities to embrace a more balanced and inclusive approach to the fulfilment of their duties.

Local authority access officers can play a key role in providing practical, grass roots support to land managers who have been subject to the effects of irresponsible access. For example, where dog fouling in a crop field is of the extent and degree that the future viability of that field to produce a profitable crop is threatened, the local authority could provide dog waste bins and run a dog fouling awareness campaign as measures to mitigate the problem. If local authorities do not take on this function, there is nowhere else for land managers to turn in such circumstances for practical assistance and support.

There are many other instances where the local authority could offer practical assistance in the management of irresponsible access; and these include littering, inappropriate wild camping, surface degradation caused by inappropriate access (e.g. horse riding on soft and boggy ground), inappropriate car parking etc.

It is essential, therefore, for the Guidance to advocate that local authorities should provide practical support to land managers wherever possible. In particular, section 13 of the draft Guidance (Duty of local authority to uphold access rights) could be extended to encourage consideration of the land management perspective and the possible provision of assistance.
Second paragraph –

“The emphasis of the legislation on the local management of access means that dialogue and consensus building is vital. Local authorities will rely heavily on advice from their access officers on the ground and from their local access forum(s), which should provide advice based on discussions between all those affected by the new rights. **Assistance should also be offered to landowners and land managers, where reasonable and appropriate, to facilitate the responsible exercise of access rights.** If this dialogue and consultation ....”

Fourth paragraph (Assert, protect, keep open and free from encroachment) –

“**Land managers have a clear duty to manage land over which access rights can be exercised responsibly. It is essential that in order for the public to exercise their access rights that they should be open and free from obstructions. It is important that local authorities understand the relationship between the duties imposed by section 13 and the powers to assist them fulfil this duty provided in sections 14 and 15 of the Act. Local authorities should use these powers with consideration for land management interests. Where appropriate, reasonable assistance should be offered to land managers to allow them to manage access responsibly.**”

This principle of offering assistance to land managers as a first line measure in the implementation of local authority duties to uphold access rights, and to help land managers deal effectively with irresponsible access, could also be inculcated into chapters 7 to 23 of the Guidance.

The SRPBA, and previously as the Scottish Landowners’ Federation, has consistently played an active part in the work of the Access Forum since its inception. Throughout the development process of the Act and the Code, consensus and co-operative working between all interested parties has continually been viewed by the Access Forum as the preferred approach to the successful delivery of the right of access. It is hoped that this spirit of fairness, mutual consideration and partnership working will be reflected in the Guidance, and ultimately will be realised in the way that local authorities fulfil their duties under the access legislation.

We are grateful for Justice 1 Committee's consideration of these suggestions at such a late stage of the revision process.

Yours sincerely,

Janice Gray
Access Officer
I am writing to inform you of the outcome of the Justice and Home Affairs Council which took place in Luxembourg on 25 and 26 October. I apologise for the delay in sending this information. I attended for the first day of the Council along with David Blunkett, the Home Secretary and Caroline Flint, the Home Office Parliamentary Under Secretary of State. The main focus of the Council was the new “Hague” Programme.

Council Agenda

JHA Multi Annual Programme (The Hague Programme)

General

UK Ministers welcomed the general thrust of the Programme. There was much that we could be positive about; the focus on implementation and evaluation, the recognition of the need to look at operational action that made a difference to the ordinary citizen and the continuing endorsement of mutual recognition in criminal and civil judicial co-operation. However, the UK still had concerns with the Common European Asylum System where we think the deadline of 2010 is ambitious and unlikely to be realised and on the European Public Prosecutor (EPP) where we felt it premature to anticipate the adoption of the draft Constitutional Treaty.

Asylum and Immigration

On the Common European Asylum System (CEAS) the UK was supported by a number of Member States in its view that evaluation of the first phase of the programme was necessary before a move to the second phase in 2010. There was also discussion on the European Border Guard where again there was a difference of views among Member States. Discussion on the move to Qualified Majority Voting and co-decision also failed to reach a consensus although the Presidency concluded that it would go to the European Council on the basis of moving to QMV/co-decision in as many areas as possible, and consistent with Treaty provisions.
Strengthening Security and Justice

European Public Prosecutor and Eurojust

The UK’s view was that the Hague Programme could not pre-empt the ratification of the Constitutional Treaty, particularly as it would be subject to referenda in many of the Member States. The UK argued that it would be wrong to pre-suppose the creation of a European Public Prosecutor given the unanimity requirement in the Treaty. Others shared these concerns and also voiced concern over Eurojust’s competence. The Presidency accepted that this was a highly contentious issue and agreed to reflect further as to its inclusion in the Hague Programme.

Mutual Recognition and Confidence Building

There was general agreement that judicial co-operation should be based on developments of mutual recognition arrangements. The UK and others expressed concern that the text implied that the creation of minimum standards was a pre-requisite for mutual recognition. We also sought clarification on the reference within the text to a European judicial culture and suggested that this should be amended to refer to the need for understanding of Member States’ diverse legal traditions. The Presidency confirmed that there was no intention within the text to make mutual recognition dependent upon approximation, but it acknowledged that it might be useful to undertake an assessment of the procedural safeguards in existence in Member States in order to establish if and where action at EU level could provide added value. The Presidency also addressed the point on the phrase “European judicial culture” and said that it was not the intention to imply the creation of a uniform legal order rather it was intended to signal a desire for unity through co-operation between diverse legal systems.

Exchange of Information

There was general agreement on the need to improve the mechanisms for the exchange of information but it was important to safeguard data protection. The UK along with others argued that there was a need to protect the methods of collecting data.

Terrorism

On this section of the text the UK had concerns about the continued reference to national security in the introduction to the programme. The UK view is that much can be achieved in tackling terrorist threats through co-operation but national security is ultimately a matter for individual Member States.

Judicial Co-operation in Civil Law

There was broad support for the text on family law with only a few drafting changes suggested. The Presidency emphasised that there was no suggestion of harmonisation of family law and concluded that, having heard Member States’ views, the current text of the Programme struck broadly the right balance.
DAY 2 AGENDA ITEMS

Draft Regulation on Security Features and Biometrics in Passports

The Presidency introduced a compromise solution to two outstanding issues on the draft Regulation. There was broad support for the Presidency’s compromise which dealt with timescales for implementation of a first identifier (digital facial image) which would fit in more closely with the requirement to meet US deadlines for digital facial images in EU passports. The text of the draft Regulation was agreed in principle, subject to scrutiny reserves from two Member States.

Terrorism

The Counter Terrorism Co-ordinator (Gijs De Vries) outlined progress made on peer evaluations of the 15 Member States with an interim report being completed in time for discussions at the December JHA Council. Evaluations of the new Member States will be prepared during 2005.

Framework Decision on Ship Source Pollution

There are still fundamental differences between Member States on this Framework Decision which has been under discussion for more than a year. There are no specific Scottish issues to consider on this.

European Judicial Record

The Commission presented its initiative for a Council Decision on the exchange of information from criminal records. The Commission confirmed that this would be followed in December by a proposal for a Framework Decision on the mutual recognition of convictions for sentencing purposes and then, in Spring 2005, with a Council Decision to establish a network for exchanging information between national databases. The Executive is engaged in discussions on the Commission proposal on the exchange of information from criminal records and is aware of the Commission’s intention to present further initiatives in December this year and Spring 2005.

I am copying this letter to Annabel Goldie and John Swinney for their information.

CATHY JAMIESON
Parliament House Redevelopment Project

You will be aware that the Scottish Court Service has had work underway on a project to redevelop Parliament House in Edinburgh, home of the Supreme Courts. The project was agreed in 1997, and work commenced in 1999. The projected cost at first quarter 1999 prices was £105 million, which would rise in line with construction industry inflation. The project was planned in 5 phases, and it was anticipated that it would take 14 to 15 years to complete.

Currently, work is complete on Phases 1A and 1B, at a total cost of £21.1 million, in line with original budgets after allowing for construction industry inflation over the period. Phases 1A and 1B have covered some backlog maintenance issues, provision of a new Judges’ Library and Judges’ chambers, preparations to allow further redevelopment work on the building and archaeological works on the site. The Scottish Court Service has been in discussions with the contractors to restructure the contract for Phase 1C, which would complete Phase 1 of the project.

Partly due to planning issues at an earlier stage and partly due to archaeological works on site, which have been more extensive than originally envisaged, it is currently projected that the project would take another 13 to 14 years to complete. The most recent projection of cost to completion is £133.6 million at second quarter 2004 prices, in line with the original total budget after allowing for construction industry inflation over the period. Clearly, as costs would continue to rise over the period, this could lead to the final bill for the project being substantially higher.

The Scottish Court Service has been alert to the risks surrounding the project, and the need to review the plans beyond Phase 1 in light of a changing business environment. There are some important operational concerns which need to be addressed urgently, the most pressing of which are to ensure that:

- the facilities enable maximum benefit to be gained from the High Court reform programme;
- access to custody facilities follows the latest guidelines on security to ensure the safety of all court users;
- custody facilities are designed to modern standards in line with ECHR requirements; and
- additional facilities are provided for criminal appeals as quickly as possible.
These concerns would be addressed within the originally planned redevelopment, but the timescale of 13 to 14 years for overall completion would mean it would be some 10 years before custody and criminal appeal court facilities would be completed.

The whole project was designed in phases to allow for review points. The Scottish Court Service would have expected to review the project at the end of Phase 1, which means that on the original timescale a review would have been due now. Given the delay and the issues highlighted above, the Court Service intends to conduct a full options appraisal now rather than wait to the end of Phase 1C. The objective of the review will be to ensure that the project overall meets the key needs of users of Parliament House as quickly as possible and delivers best value for money. I agree that this is the best course of action.

I remain committed to Parliament House as the home of the Supreme Courts. This is a very important historic building, and I expect any new plan to involve making a substantial investment in refurbishing the building. Nevertheless, in line with our approach to Efficient Government, it is important at this stage to check that we are getting the best possible value from our investment.

Once decisions are taken on the future of the project, we would hope to see current contractors amongst those competing to undertake the work. The quality of design and workmanship to date has been of a high standard.

An extensive consultation exercise was carried out when the project was originally planned to ensure that the needs of Judges and users of Parliament House were taken into account. This will inform the current review, and the Scottish Court Service will seek to involve those people again to ensure that views continue to be taken fully into account.

Once the review is complete, I will report back to you on the further plans for the redevelopment of Parliament House. In the mean time, the Chief Executive of the Scottish Court Service would be happy to answer any questions you or members of the Committee may have on the review.

I have written in similar terms to Annabel Goldie, Convener of the Justice 2 Committee and have lodged 5 copies in SPICE.

I hope you have found this update on the Parliament House redevelopment helpful.

CATHY JAMIESON
FURTHER ROLL-OUT OF RELIANCE ESCORTING CONTRACT

You will recall that when I appeared before your Committee on 8 June, I gave a commitment to tell you of any further roll-out of the Escorting Contract with Reliance Custodial Services. I have advised you on previous occasions when the Reliance contract has gone live in the various areas of Scotland. As you will be aware, Reliance are now operating all court escorts across Scotland.

There are two phases, which still have to be rolled out. These two phases cover all non-core escorts, which are mainly concerned with inter-prison transfers and prisoners’ hospital appointments/confinements. Reliance have been shadowing non-core escorts functions since 30 November 2004 in the Strathclyde, Central Scotland and Dumfries & Galloway areas.

The SPS have conducted a comprehensive assessment of Reliance’s readiness to proceed based on the criteria set out to the Committee on 8 June. The Chief Executive of the SPS has provided formal assurance that Reliance is now ready to roll-out this phase of the contract, and has therefore authorised Reliance to roll out Phase 5a of the Contract from today, 16 December 2004.

A copy of this letter has also been sent to the Convener and Clerk of Justice 1 Committee and 5 copies lodged in SPICE.
Justice 1 Committee
Protection of Children and Prevention of Sexual Offences
(Scotland) Bill

Proposed Executive Amendments

Briefing note by the adviser

Background

The Executive have confirmed that they propose to bring forward amendments to the Protection of Children and Prevention of Sexual Offences (Scotland) Bill. The purpose of these amendments is to amend the law of Scotland to the extent necessary (a) to permit United Kingdom ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child pornography; and (b) to conform to the obligations imposed on the United Kingdom under the Council Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography.

1. THE OPTIONAL PROTOCOL TO THE UN CONVENTION ON THE RIGHTS OF THE CHILD

1.1 Purpose of the protocol
This Optional Protocol was adopted by the General Assembly of the United Nations on 25 May 2000 and entered into force on 18 January 2002. The United Kingdom is a party to the Convention on the Rights of the Child,¹ but has not yet ratified this Protocol. As its title suggests, the purpose of the Protocol is to extend the protective scope of the Convention to guarantee the protection of children from the sale of children, child prostitution and child pornography.

1.2 Offences
Article 3 of the Protocol requires states to ensure that a range of activities is punished as criminal offences, whether committed domestically or transnationally, and whether committed on an individual or organised basis. The activities struck at by the Protocol are: (a) sale of children; (b) child prostitution; (c) child pornography.

1.2.1 Sale of children: Sale of children means any act or transaction whereby a person or group of persons transfers a child to another for remuneration or any other consideration.² Article 3(1)(a) provides that offering, delivering or accepting a child, by whatever means, for the purpose of sexual exploitation, transfer of the organs of the child for profit, or engagement of the child in forced labour should be an offence. It also

¹ The United Kingdom ratified the Convention on 16 December 1991.
² Article 2(a).
provides that it should be an offence improperly to induce consent to the adoption of a child in violation of applicable international legal instruments on adoption.

1.2.2 **Child prostitution:** Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration. Article 3(b) provides that it should be an offence to offer, obtain, procure or provide a child for child prostitution.

1.2.3 **Child pornography:** Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. Article 3(c) provides that it should be an offence to produce, distribute, disseminate, import, export, offer, sell or possess for any of these purposes, child pornography.

1.3 **“A child”:** The Protocol does not define this term. However, for the purpose of the main Convention “a child” means “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

2. **THE COUNCIL FRAMEWORK DECISION ON COMBATING THE SEXUAL EXPLOITATION OF CHILDREN AND CHILD PORNOGRAPHY**

2.1 **Purpose of the framework decision**
The Council of the EU adopted the Framework Decision on 22 December 2003. Under Article 12 member states are required to implement the measures necessary to comply with it by 20 January 2006 at the latest.

2.2 **The Offences**
Members states are required to take such steps as are necessary to ensure that sexual exploitation of children and child pornography are appropriately punished under the criminal law.

2.2.1 **Sexual exploitation offences:** Article 2 requires states to punish as crimes a range of conduct, including: coercing a child into prostitution or participation in pornographic performances; recruiting a child into prostitution or into participating in pornographic performances; engaging in sexual activities with a child where use is made of coercion force or threats, money or other forms of remuneration is given as payment for the child’s participation in these sexual activities or where abuse is made of a recognised position of trust, authority or influence over the child.

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3 Article 2(b).
4 Article 3(c).
5 Council Framework Decision 2004/68/JHA.
2.2.2 **Child pornography offences**: Article 3 requires states to punish as crimes: production of child pornography, distribution; dissemination or transmission of child pornography; supplying or making available child pornography; acquisition or possession of child pornography.

2.3 **Child pornography**: Article 1 defines child pornography as pornographic material that visually depicts or represents a real child, a real person appearing to be a child or a realistic image of a non-existent child involved in, or engaged in sexually explicit conduct, including lascivious exhibition of the genitals or the pubic area of a child.

2.4 **Child**: For all purposes of the framework decision, a child is defined as "any person below the age of 18 years".

3. **IMPLICATIONS**
Detailed considerations of the effect of these measures on Scots law will have to wait until the Executive publishes in detail its amendments. However, a number of general observations can be made at this stage.

The first of these is that the law of England and Wales has already been amended in these areas. So, for example, the offence of possessing an indecent photograph of a child now extends to possession of such photographs of persons under 18, whereas the previous law applied only where the person in question was under 16.

The most important changes will arise because of the definition of "child" (in both documents) as a person under the age of 18. Generally speaking Scots law identifies the age of 16 as the age at which a person may engage in consensual sexual behaviour without threat of criminal sanction. The introduction of the age of 18 will mean that a range of conduct not presently reached by the criminal law will become criminal:

3.1 **Prostitution offences**: At the moment no form of prostitution – in the sense of offering or receiving sexual services for payment or reward – is criminal as such in Scotland. There are several offences related to prostitution, such as soliciting for the purposes of prostitution, procuring women for prostitution and brothel keeping. But these are generally not age-related, although there are exceptions to this. Section 10 of the Criminal Law (Consolidation) (Scotland) Act 1995 makes it an offence for a person having parental responsibilities in relation to a girl under 16 to cause or encourage her prostitution. Section 7 of the same Act makes it an offence for any person to procure or attempt to procure any woman under 21 to have unlawful sexual intercourse in any part of the world (although that provision is not necessarily linked to prostitution as such).

But as a general rule, it is not a crime to offer another person payment or reward for sexual services – even if the provider of those services is under 16. The measures which the Executive is seeking to implement would make it an offence, for example, for a man to pay a 17 year old woman for sex, albeit that the sexual act itself would not be unlawful in the absence of such payment.
3.2 Child pornography offences: There is already a substantial body of rules criminalising child pornography, including offences of creating, possessing and supplying photographs or pseudo-photographs of a child. For the purpose of these offences a child is defined as a person who is, or appears to be, under the age of 16. The extension of the definition of a child for these purposes to a person under 18 may give rise to some problems. Suppose, for example, that a 19 year old man and his 17 year old wife create indecent images of themselves engaged in sexual acts. That, without further qualification, would have to be an offence in terms of the Framework Decision. That can be fairly easily dealt with by restricting the scope of the offence to “extra-marital” sexual relations, but that in turn may raise issues of discrimination against those who chose not to marry, or, indeed, those whose sexual orientation prevents their marriage. Considerations of this kind have led to Parliament, when amending the equivalent English law in this regard, to insert an exception where the parties are married or live together as partners “in an enduring family relationship”.6

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As you may be aware, the UK signed the 2\textsuperscript{nd} Optional Protocol to the UN Convention on the Rights of the Child (UNCRC) in 2000. The protocol requires state parties to criminalise child prostitution, child pornography and child trafficking. There is also an EU Framework Decision\textsuperscript{1} which requires the same approach to child prostitution and child pornography.

Both define a child as someone who is under 18 years old.

As you know, there is no specific offence in Scots law that criminalises prostitution. The law in relation to children criminalises sexual relations with children under 16. This would of course criminalise prostitution in relation to those under 16. However, there is no law in Scotland preventing 16 and 17 year olds from engaging in prostitution.

The law in relation to indecent pictures of children also defines children as those under 16 years old.

At present, Scots law is therefore not compliant with the requirements of either instrument in respect of child prostitution or child pornography. Scots law is, however, compliant with the requirements in relation to trafficking.

A number of different age limits are currently used in Scots law to define a child. 16 is of course the age of consent, but several different age limits are used for criminal responsibility, civil protection, purchase of cigarettes and alcohol, driving, voting, obtaining credit, getting married, being entitled to protection, etc. It would not be appropriate to define a child by a single age for all purposes, as the context is often very different. It is my view that, in relation to child prostitution and child pornography, defining a child as someone under 18 is most appropriate.

It is therefore necessary to change Scots law so that 16 and 17 year olds can no longer be involved in prostitution or pornography.

The EU Framework Decision has an implementation deadline of January 2006, so it is important that Scots law is changed before then. In order to meet this deadline, the most appropriate legislative vehicle for these provisions would appear to be the Protection of Children and Prevention of Sexual Offences Bill which was introduced on 29 October and is currently at Stage 1.

\textsuperscript{1} Council Framework Decision 204/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography
I regret that these provisions were not included in the Bill prior to introduction. However, detailed briefing (in the form of the Policy Memorandum and Explanatory Notes) will be sent to the Committee as soon as possible, and I hope that this will allow you to consider these provisions in Stage 1. The amendments themselves will take rather longer to prepare as detailed consideration will have to be given to their construction. Particular consideration will have to be given, for example, to any exceptions which should be included – for example, on the possession of indecent pictures of a 16 or 17 year old spouse. The amendments will be drafted as soon as possible, and will be submitted for Stage 2 consideration.

HUGH HENRY