JUSTICE COMMITTEE

AGENDA

35th Meeting, 2010 (Session 3)

Tuesday 7 December 2010

The Committee will meet at 10.00 am in Committee Room 2.

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private.

2. **Double Jeopardy (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

   Richard Keen QC, Dean of Faculty, and Ian Duguid QC, Chairman of the Criminal Bar Association, Faculty of Advocates;

   Alan McCreadie, Deputy Director Law Reform, and Bill McVicar, Convener of the Criminal Law Committee, Law Society of Scotland;

   and then from—

   Shelagh McCall, Commissioner, Scottish Human Rights Commission;

   John Scott, former Chair of the Scottish Human Rights Centre.

3. **Double Jeopardy (Scotland) Bill:** The Committee will consider the written evidence received so far and decide whether to invite additional witnesses to give oral evidence at its meeting on 14 December 2010.

4. **Double Jeopardy (Scotland) Bill (in private):** The Committee will consider the main themes arising from the oral evidence heard earlier in the meeting.

5. **Work programme (in private):** The Committee will consider its work programme.

6. **Damages (Scotland) Bill (in private):** The Committee will consider a revised draft Stage 1 report.
The papers for this meeting are as follows—

**Agenda item 2**

*All written submissions on the Double Jeopardy (Scotland) Bill*

*SPICe briefing: Double Jeopardy (Scotland) Bill*

*Copy of the Double Jeopardy (Scotland) Bill and all accompanying documents*

Paper by SPICe (private paper)  J/S3/10/35/1 (P)

**Agenda item 3**

Paper by the Clerk (private paper)  J/S3/10/35/2 (P)

**Agenda item 5**

Paper by the Clerk  J/S3/10/35/3

**Agenda item 6**

Letter from the Minister for Community Safety on the Damages Act 1996  J/S3/10/35/4
Justice Committee
35th Meeting, 2010 (Session 3), Tuesday 7 December 2010

Committee work programme

Background

1. The Committee’s last review of its work programme took place on 21 September. Since then, the Committee has received two new requests for inquiries, which require to be considered. This also provides an opportunity to review the rest of the work programme to the end of the session (which continues to consist largely of scrutiny of legislation).

2. A table indicating the expected distribution of work (covering Bills and budget scrutiny, in particular, but not including smaller items such as SSIs) is set out in table format in Annexe A.

Bills

3. There are at present six Bills in progress that have been referred to the Committee as lead committee, and the current position on these is set out below. These are dealt with according to the Committee’s agreed “priority order”, which determines the sequence in which it is undertaking Stage 1 evidence-taking.

(1) Damages (Scotland) Bill – Bill Butler

4. The Committee is expected to agree its Stage 1 report at this meeting in order to meet the deadline for publication of 5 sitting days before the Stage 1 debate (expected to be on 15 December).

5. If the Parliament agrees to the general principles of the Bill, time will have to be found for Stage 2 consideration at some point after the Christmas recess. (As with all Bills, the time required for Stage 2 is very difficult to forecast in advance, as it depends on the amendments lodged. There is no limit on the number of amendments that may be lodged, by any MSP, and all admissible amendments may be moved and debated.)

6. The Stage 1 evidence suggested that the Scottish Government had not reached a concluded position on the Bill, and might wish to discuss certain issues further with Mr Butler and relevant stakeholders to see whether matters of controversy can be resolved. There may therefore be a case for arranging a further oral evidence session in advance of the formal Stage 2 proceedings to obtain an update on progress.

(2) Domestic Abuse (Scotland) Bill – Rhoda Grant

7. Evidence-taking on this Bill has now been completed, and the Committee is expected to begin consideration of a draft Stage 1 report on 14 December. The deadline for completion of Stage 1 is 21 January. If the
Bill's general principles are agreed to, time will have to be found for Stage 2, perhaps in February.

(3) Double Jeopardy (Scotland) Bill – Scottish Government

8. The Committee has begun taking oral evidence, which is expected to be completed just before the Christmas recess. This should allow a Stage 1 report to be published by the beginning of February, to meet the Stage 1 deadline of 11 February. Assuming the Bill’s general principles are agreed, it is likely that Stage 2 will take place in early March.

(4) Long Leases (Scotland) Bill – Scottish Government

9. This Bill was introduced on 10 November, and the Committee has now agreed an approach to Stage 1 that involves a deadline for written submissions of 12 January 2011, oral evidence-taking during late January and early February, and publication of a Stage 1 report by early March. It remains to be seen whether there will be sufficient time thereafter for the Bill to complete its remaining stages.

(5) Commissioner for Victims and Witnesses (Scotland) Bill – David Stewart

10. The Committee issued a call for evidence on this Bill on 30 June, with a closing date for written submissions of 24 September. However, given its revised place in the order of priority, it will not now be possible to take oral evidence on the Bill until after the February recess. As a result, there is unlikely to be time prior to dissolution to conduct a full Stage 1 inquiry (involving taking evidence from a range of stakeholder interests, considering the issues raised, and agreeing a Stage 1 report).

11. Dave Stewart has now written to the Convener expressing concern about the possibility his Bill will not be fully scrutinised, and asking for an early opportunity to give evidence to the Committee. Mr Stewart’s letter is set out in Annexe B. The Committee is invited to decide how to respond to Mr Stewart’s letter.

12. One option is to invite Mr Stewart to attend a meeting in order at least to set out on the record his general rationale for introducing the Bill, and his response to some of the comments made in written evidence. While this would not be a substitute for the normal Stage 1 inquiry process, it would at least ensure that the issues raised by the Bill are given a public airing.

13. Such an evidence-session could be seen as a stand-alone bit of work, or could be seen as providing a basis for the Committee to publish a short Stage 1 report setting out its preliminary views on Mr Stewart’s Bill. Again, such a report would not be a substitute for the sort of Stage 1 report produced at the end of a full inquiry, but could provide a useful starting-point for more comprehensive scrutiny should there be any further Bill along similar lines introduced in Session 4.
14. Finally, the Committee might consider writing to the Bureau alerting it to the Committee’s difficulty in fulfilling its obligations under standing orders to “consider and report on” a Bill referred to it. The letter might refer to the correspondence the Committee had with the Bureau in May concerning the implications of a number of Members’ Bills being referred simultaneously to the Committee (reproduced in Annexe B). It might be suggested that in future greater use could be made of the option to refer Members’ Bills to ad hoc committees (as was recently done with the End of Life Assistance (Scotland) Bill, for example), although it is probably now too late to pursue this option for Mr Stewart’s Bill.

(6) Criminal Sentencing (Equity Fines) (Scotland) Bill – Bill Wilson

15. This Bill was withdrawn by Dr Wilson on 25 November. As a result the Convener’s motion, proposing the rejection of the Bill at Stage 1 under Rule 9.14.18(b), will not be taken.

New Member’s Bill proposal

16. Trish Godman lodged on 24 November a draft proposal for a Bill to criminalise the purchase and sale of sex. The issues raised are familiar to the Committee from the member’s amendments on the same subject to the Criminal Justice and Licensing (Scotland) Bill.

17. The draft proposal is accompanied by a consultation document, which runs until 18 February. The proposal has been referred to the Justice Committee under Rule 9.14.5, but because it is already subject to consultation, there is no action required by the Committee at this stage.

18. Given the timing, there is no prospect of any Bill to give effect to the proposal being introduced in the current session.

Budget scrutiny

19. The tight timescale for budget scrutiny this year, following publication of the UK Government’s Comprehensive Spending Review in October, has allowed time for only two oral evidence-taking sessions (held on 23 and 30 November). The Committee will shortly consider a draft report to the Finance Committee, which needs to be agreed by 21 December in order to meet that committee’s deadline of 24 December.

European scrutiny

20. The Committee has now agreed its priorities arising from the EU Commission work programme, primarily through a list of issues to be tracked by the Parliament’s European Officer. It is not envisaged that these will give rise to significant demands on committee time in the remainder of the session.
Legislative consent memorandums

21. It was previously indicated that the only UK Parliament Bill in the 2010 Queen's Speech liable to result in a legislative consent memorandum being referred to the Justice Committee was the Police Reform and Social Responsibility Bill.¹ This was on the basis that it was expected to include provisions creating a UK-wide Border Police Force, which would have impacted on devolved responsibilities. However, it is now understood that the Bill (which has not yet been introduced) will not include such provisions.

22. The only other current or forthcoming UK Government Bill with provisions relevant to the Justice Committee’s remit and expected to engage the Sewel Convention is the Scotland Bill (considered further under “Calman Commission recommendations” below).

Proposed new scrutiny topics

23. In view of the continuing demands of legislative and budget scrutiny in the remaining months of the session, there is clearly very limited scope for undertaking new inquiry work at this stage of the session. Nevertheless, the Committee has received two recent requests which require to be considered.

Post legislative scrutiny of the Scottish Government’s recent Emergency Bill

24. Following the decision of the UK Supreme Court in Cadder v. HMA, the Scottish Government introduced the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill on 26 October. The following day, the Parliament agreed to treat it as an Emergency Bill and debated it at Stage 1, Stage 2 and Stage 3 before passing it. The Bill received Royal Assent on 29 October and came into force the following day.

25. As part of its response to the Supreme Court judgement, the Scottish Government invited Lord Carloway to “lead a review of Scottish criminal law and practice in the aftermath of the Cadder decision”. The remit for the review (published on 18 November) confirms that it will include “the extent to which issues raised during the passage of the Criminal Procedures (Legal Assistance, Detention and Appeals) (Scotland Act) 2010 may need further consideration, and the extent to which the provisions of the Act may need amendment or replacement”. The review is expected “to be completed in the course of next year, in time for legislation to be considered during the 2011-12 Parliamentary session”.²

¹ Further information is available from the No. 10 website: http://www.number10.gov.uk/queens-speech/2010/05/queens-speech-police-reform-and-social-responsibility-bill-50670
26. On 1 November, Robert Brown e-mailed the Convener, suggesting that the Committee should undertake urgent, detailed scrutiny of the Act. A copy of his e-mail is included in Annexe C.

27. As Mr Brown’s e-mail indicates, a number of significant concerns were raised by the Law Society of Scotland, the Scottish Human Rights Commission and others about the contents of the Bill (including whether they might also be subject to challenge under ECHR), and about the Scottish Government’s rationale for invoking the Emergency Bill procedure. Given the use of that procedure, there was at the time no opportunity for the Committee to take evidence on these issues, or take a considered view on the merits of the Bill.

28. It could be argued that once a Bill has become law, the main rationale for Parliamentary scrutiny has been removed (since there is no longer an opportunity to adjust the legislation to reflect concerns raised). On this view, it may be preferable to wait until the practical impact of the Act can better be gauged before conducting any sort of “post-legislative scrutiny”. Against this, however, there is the argument that committee scrutiny at the earliest opportunity after enactment is the best alternative to undertaking such scrutiny during the passage of the Bill, particularly if (as alleged by some) the Act could still be vulnerable to challenge on ECHR grounds.

29. In weighing up these arguments, the Committee may also wish to take account of the Carloway review process. One view might be that further parliamentary scrutiny should now await the outcome of the Carloway review, with the focus then being on gauging whether his recommendations meet the concerns raised at the time of the Emergency Bill. The alternative view would be that a longer-term judicial-led process is not a substitute for parliamentary scrutiny, and that one of the advantages of the Committee conducting scrutiny before dissolution would be that its conclusions could then be taken into account by Lord Carloway in conducting his own review.

30. Given the extent of the Committee’s existing work programme, the above factors point to either:

- finding time to hold at least a one-off evidence session before dissolution – perhaps involving some of those known to be critical of the Act’s provisions, together with the Cabinet Secretary – followed perhaps by preparation of a short report; and/or

- proposing (in a legacy paper) that the next Justice Committee consider undertaking scrutiny of the issues raised by the Act once the outcome of the Carloway review process is known.

31. The Committee is invited to decide how to respond to Mr Brown’s request.
Laser pens

32. On 6 October, Wendy Alexander wrote to the Convener inviting the Committee to consider the potential for misuse of laser pens, particularly when directed at the pilots of aircraft, and makes the case for classifying them as offensive weapons. A copy of Ms Alexander’s letter is set out in Annexe D.

33. There have already been various incidents demonstrating the potential dangers of these devices, particularly green laser pointers whose power output exceeds the existing legal limit of 1mW. In relation to any committee inquiry, it should be borne in mind that, while the criminal law is generally devolved (including the power to limit the sale and possession of articles that could be used as weapons), product safety and liability (Section C8) and certain aspects of air transport (Section E4 of Schedule 5) are reserved matters under the Scotland Act.

34. The Committee is invited to decide how to respond to Ms Alexander’s letter. Although time constraints in the remainder of this session preclude any extensive inquiry, if the Committee considers this to be a priority issue, there are various options (not necessarily exclusive) for how it could be addressed:

- referring Ms Alexander’s concern by letter to the Scottish Government, inviting it to comment on what, if any, action (within devolved competence) is being considered;
- seeking written evidence directly from the police, airlines, pilots and airport operators on the extent of the problem as they understand it;
- flagging up the issue in the legacy paper as a potential inquiry topic for the Session 4 committee.

Update on existing scrutiny topics

35. The following paragraphs consist of a brief reminder of the various items of scrutiny work the Committee agreed at previous work programme discussions to undertake as and when time allows.

Access to justice

36. Robert Brown has advocated on various occasions consideration of the availability of civil legal aid and the access to a solicitor (or other source of advice, such as a Citizens’ Advice Bureau or law centre) within a reasonable travelling distance of where people live. Some elements of this were raised during scrutiny of the Legal Services (Scotland) Bill. The recently established Access to Justice Committee of the Law Society of Scotland has also raised the profile of these issues, and has advocated a Bill on the subject in the next session. The Committee may wish to flag this up in the legacy paper as a continuing area of concern.

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3 See for example: http://news.bbc.co.uk/1/hi/england/suffolk/7710530.stm.
Training for the judiciary
37. Committee members visited the Judicial Studies Committee in Edinburgh on 16 November, and a note of the visit is attached (Annexe E). This topic can now be considered closed.

Administrative Justice Steering Group
38. The Committee agreed in September 2009 to hold a one-off evidence session on issues arising from the final report of the Administrative Justice Steering Group, chaired by Lord Philip, recommending the creation of a Scottish Tribunals Service covering both devolved and reserved tribunals. (This final report followed an earlier 2008 report setting out a range of options.)

39. At the Committee’s meeting on 1 June 2010, it was noted that the Scottish Committee of the Administrative Justice and Tribunals Council (SCAJTC) was holding a conference on 22 June to consider the issues arising from Lord Philip’s report. A note by SPICe about this event was circulated on 21 October 2010. At its meeting on 21 September 2010, the Committee agreed to seek an update from the SCAJTC on the result of its own consultation (which closed on 22 September). The clerks will aim to arrange this at an appropriate opportunity (the SCAJTC expects to provide advice to Ministers, based on the outcome of the consultation, in December).

40. On 30 September, there was a debate in the Parliament on tribunal reform. In that debate, the Cabinet Secretary announced that a Scottish Tribunal Service was to be established from 1 December, initially as a delivery unit of the Scottish Government covering five tribunals. He also said that he had discussed with the Lord Chancellor how this might fit with the UK Government’s policy of creating a unified judicial structure for England and Wales. The Cabinet Secretary said that he hoped these discussions would lead to judicial leadership of tribunals in Scotland being transferred to the Lord President, and administrative responsibility being devolved to Scottish Ministers.

41. It may also be worth noting that, in light of the UK Government’s announcement (as part of its review of public bodies) that the AJTC is to be abolished, the longer term future of the Scottish Committee may now be in doubt.

Calman Commission recommendations
42. This was a proposal by Angela Constance to scrutinise the recommendations of the Commission on Scottish Devolution (the Calman Commission)
Commission) relating to devolution of responsibility for the regulation of airguns, controlled substances, drink-driving limits and the national speed-limit. It was initially agreed to defer this issue until the then UK Government’s position was clear, and then until after the UK general election.

43. The new UK Government has now introduced the Scotland Bill, aimed at implementing the final report of the Calman Commission. The Bill engages the Sewel Convention, and the Scottish Government has lodged a legislative consent memorandum. The Parliament has also established an ad hoc committee (of which Robert Brown is a member) to scrutinise the LCM.

44. On the basis of these developments, the Committee may now be content to delete this item from its work programme.

Scottish Law Commission reports – implementation
45. The Committee agreed to consider the issue of progress in implementing Scottish Law Commission reports, following concerns expressed in the Commission’s 2008 annual report by the chairman, Lord Drummond Young. However, it agreed to defer its consideration until a working group of Scottish Parliament and Scottish Government officials had reported.

46. The Committee then engaged in protracted correspondence with the Presiding Officer (as chair of the Parliamentary Bureau), raising concerns about the proposal by the working group (and accepted by the Bureau) that it should be made possible to refer Law Commission Bills proposing only minor and technical changes to the law to the Subordinate Legislation Committee. The Bureau’s position did not change, and the matter is now closed. So far, no Bill has yet been referred to the Subordinate Legislation Committee.

Conclusion
47. The Committee is invited to note the contents of this paper, and to:

- decide how to respond to David Stewart’s letter on scrutiny of his Member’s Bill (paragraphs 10 – 14 above)
- decide how to respond to the request by Robert Brown for an inquiry on issues raised by the recent Emergency Bill (paragraphs 24 – 31 above)
- decide how to respond to the request by Wendy Alexander for an inquiry into misuse of laser pointers (paragraphs 32 – 34 above)
- note the position regarding existing scrutiny topics (paragraphs 35 – 46 above), and to delete from its work programme the issues of training for the judiciary, Calman Commission recommendations and implementation of Scottish Law Commission reports.
**Current work programme**

**Note:** This includes expected dates for remaining Stage 1 scrutiny of Bills and Budget scrutiny but does not include Stage 2 proceedings, SSIs or other items. All timings are subject to change.

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| 14 Dec | Double Jeopardy – evidence session 3  
Budget – draft report |
| 21 Dec | Double Jeopardy – evidence session 4  
Budget – draft report and sign off |

**Recess: 23 December to 9 January**

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| 11 Jan | Domestic Abuse – draft report and sign off    
Long Leases – consideration of written evidence  
Double Jeopardy – issues paper |
| 18 Jan | Long Leases – evidence session 1              |
| 25 Jan | Long Leases – evidence session 2              
Double Jeopardy – first draft report |
| 1 Feb  | Long Leases – evidence session 3              
Double Jeopardy – second draft report and sign off |
| 8 Feb  | Long Leases – evidence session 4              |

**Recess: 12 February to 20 February**

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<tr>
<td>22 Feb</td>
<td>Long Leases – issues paper/first draft report</td>
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<td>1 Mar</td>
<td>Long Leases – draft report and sign-off</td>
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**Key:**

- Domestic Abuse
- Double Jeopardy
- Budget
- Long Leases
Letter to the Convener from David Stewart

Thank you for your letter dated 19 October 2010 in response to my letter relating to the Justice Committee's consideration of the Commissioner for Victims and Witnesses (Scotland) Bill. You will appreciate that it has taken considerable time and effort to introduce the Bill within the revised time-limits that the Parliament agreed earlier this session.

While I appreciate that my Bill remains on the Justice Committee's work programme, I am concerned that due to other pressures it is possible that the Bill will not be considered this session. I would therefore ask the Committee, without prejudice to its full consideration of the Bill, to consider allowing me to appear to set out the important issues and principles underpinning the Bill and highlight the policy areas it addresses.

David Stewart MSP
23 November 2010

Letter from the Convener to the Presiding Officer (as chair of the Bureau) on referral of Members’ Bills

Justice Committee scrutiny of Members’ Bills

It has been brought to my attention that, of the eight Members’ Bills currently expected to be introduced by the 1 June deadline for introducing such Bills this session, five are on matters that fall within the remit of the Justice Committee. These are Bill Butler’s Bill on damages, Rhoda Grant’s Bill on civil protection orders, Hugh Henry’s Bill on workers protection, Dave Stewart’s Bill on a victims’ commissioner, and Bill Wilson’s Bill on equity fines.

As you know, the Justice Committee is well-used to considering legislation, and members take their scrutiny responsibilities seriously. As such, I am sure the Committee will wish to subject each Bill referred to it to thorough scrutiny at Stage 1, taking oral evidence from a range of interested parties. In my view, it is not practical to undertake this sort of scrutiny of two or more Bills simultaneously, and it is also clear that for the Justice Committee to embark on a sequence of five Stage 1 inquiries, beginning in September, would inevitably result in at least one Bill not being able to complete Stage 1 until so late in the session that it would no longer have any prospect of completing the remaining stages before dissolution. That would frustrate the purpose of the Member’s Bill process, which is to allow any legislative proposal that passes the pre-introduction hurdles to pass or fall on its merits.

To avoid this outcome, I would urge the Bureau to consider what scope there may be for referring at least one or two of these Members’ Bills to other committees. If, in view of the subject-matter of the Bills, this does not prove
possible, I would ask that serious consideration be given to establishing ad hoc committees as an alternative.

I look forward to hearing from you.

Bill Aitken MSP
Convener, Justice Committee
27 May 2010

Reply by the Presiding Officer

Thank you for your letter of 27 May in connection with Justice Committee scrutiny of Members’ Bills.

The Bureau considered this matter at its meeting on 8 June and agreed to refer the Damages (Scotland) Bill to the Justice Committee for consideration at Stage 1. This Bill was not considered to fall within any other committee remit.

Whilst the Bureau considered alternative options for Stage 1 referral of the remaining four Bills, it agreed to recommend to the Parliament that the Justice Committee be designated as lead committee in consideration of the following three Bills:

The Commissioner for Victims and Witnesses (Scotland) Bill;
The Criminal Sentencing (Equity Fines) (Scotland) Bill; and
The Domestic Abuse (Scotland) Bill.

The Bureau further agreed to recommend to the Parliament that the Protection of Workers (Scotland) Bill be referred to the Economy, Energy and Tourism Committee at Stage 1.

Bureau motions on referral of the above Bills were agreed by the Parliament on 9 June.

Alex Fergusson MSP
Presiding Officer
9 June 2010
Annexe C

E-mail from Robert Brown to the Convener

Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland Act 2010)

I write to request that the Justice Committee considers carrying out detailed scrutiny of the Bill passed last Wednesday under emergency legislation.

As you know, I had grave concerns about the necessity for, and implications of, putting this through on an emergency basis. Last Wednesday I moved 28 amendments, covering issues I could identify with Sections 1 and 3. Other issues were raised about Section 7.

The more I have been told about the implications, the less I am happy with the process. Since the Bill was passed, we had the highly critical comments - and persuasive analysis - by the Chair of the Scottish Human Rights Commission, not least on Newsnight on Thursday. I also attended an emergency meeting of the Glasgow Bar Association which had an academic speaker from England to describe the procedures there and from which it was clear that there are all sorts of issues about police and solicitor training. Their view appeared to echo mine that the new legislation itself may still not be ECHR compliant.

I am conscious of the Committee's work pressures but I think it is vital that there is a detailed scrutiny of the Act, as it now is, with an opportunity for input by people with an interest and knowledge which of course the Bill's emergency timescales did not allow.

I wonder if this could be tabled before the Committee as soon as convenient.

Robert Brown MSP
1 November 2010
Letter from Wendy Alexander to the Convener (and Deputy Convener)

I am writing to express my concern regarding the misuse of laser pens. It has come to my attention the dangerous operation of these devices has increased and I would like to urge an investigation by the Justice Committee into the classification of laser pens as an offensive weapon.

Last year a Boeing 747 at Glasgow Airport was subject to a laser pen attack, which dazed and nearly blinded the pilot and co-pilot. This incident, in addition to others, has been detailed at length by the Herald (06 October 2010) and the Paisley Daily Express (21 August 2010). Any device which can cause that level of damage should be a candidate for classification as an offensive weapon. While I am aware of the legitimate utility of laser pens, the steep rise in the use of lasers against aircraft has been well-documented and expert advice affords that they will only become more dangerous as technology advances.

I would be grateful if the Scottish Parliament’s Justice Committee could either pursue this matter further with Government, initiate an inquiry itself or include the matter in future work programmes. This matter requires urgent attention due to the marked increase in the dangerous use of these devices.

Thank you for your consideration with this matter.

Wendy Alexander MSP
6 October 2010
Annexe E

Summary of the Committee’s visit to the Judicial Studies Committee

On 16 November 2010 Members of the Justice Committee met members and staff of the Judicial Studies Committee (JSC) at their offices on Hanover Street in Edinburgh.

Lord Brodie, Chairman of the JSC, welcomed the Committee and provided a background to legal education in Scotland. Lord Brodie highlighted the importance of judicial training but also the need to maintain judicial independence. For this reason, he said, training is devised by judges for judges. Lord Brodie also indicated, however, that the JSC had an open door policy and was receptive to the views of external organisations (a point later repeated by Sheriff Welsh).

Sheriff Thornton, Deputy Director of Judicial Studies, then gave an outline of the range of publications and training materials available to the judiciary as well as the wide variety of training courses provided by the JSC. These include:

- **induction training** offered to all new judicial appointments at every level;
- **refresher courses** which every member of the judiciary are invited to attend every three years and includes matters of topical and general interest and recent developments in law and practice;
- **judicial skills courses** which focus on ‘judgecraft’ and are intended to be very practical. Each member of the judiciary is invited to attend such a course every five years;
- subject specific **one-day courses** and **IT training modules** which are held throughout the year;
- a three day **Justices of the Peace Annual Conference** which a Justice is expected to attend once during each five year term of appointment.

Sheriff Welsh QC, Director of Judicial Studies, then outlined the various training methodologies used by the JSC and how these had developed over a number of years. These included mentoring with more experienced judges, building networks with those involved with judicial training in other countries and experiential learning, using web and DVD based resources. Sheriff Welsh also emphasised the unique nature of judicial training and that in his experience judges were always looking to develop their skills and knowledge.

The meeting then moved to questioning where Justice Committee Members raised a number of points ranging from the forthcoming introduction of Community Payback Orders to consistency in sentencing and judicial conduct on the bench.

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7 Members present: Bill Aitken MSP (Convener), Robert Brown MSP, James Kelly MSP, Stewart Maxwell MSP and Dave Thompson MSP.
Finally, Members were given the opportunity to sample a sentencing exercise taken from a JSC course. This required participants to watch proceedings on DVD and study court papers relating to a mock trial before giving their suggested sentence on the case. This proved to be a useful and practical insight into the JSC’s work.

The Convener of the Justice Committee, Bill Aitken MSP, gave his thanks on behalf of the Committee for what he said had been an exceptionally informative and worthwhile meeting.
Justice Committee

35th Meeting, 2010 (Session 3), Tuesday 7 December 2010

Letter from the Minister for Community Safety to the Convener

Damages Act 1996

Section 1 of the Damages Act 1996, as amended, provides that in determining the return to be expected from the investment of a sum awarded as damages for future pecuniary loss in an action for personal injury a court shall, subject to and in accordance with relevant rules of court, take into account such rate of return (if any) as may from time to time be prescribed by an order made by the Scottish Ministers. This is commonly known as the discount rate.

The discount rate is currently 2.5%, as prescribed by the Damages (Personal Injury) (Scotland) Order 2002, SSI 2002/46. This is the same as the rate that has been prescribed by separate subordinate legislation south of the border. I am now undertaking a review of the discount rate for Scotland (and the Lord Chancellor is doing likewise for England and Wales). I will provide information about the outcome of the review as regards Scotland as soon as practicable.

Fergus Ewing MSP
Minister for Community Safety
1 December 2010