The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

27th Meeting, 2014 (Session 4)

Tuesday 4 November 2014

The Committee will meet at 9.30 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take item 10 in private.

2. **Subordinate legislation (drink driving limit):** The Committee will take evidence on the Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014 [draft] from—

   Kenny MacAskill, Cabinet Secretary for Justice, and Patrick Down, Policy Officer, Criminal Law and Licensing Division, Scottish Government.

3. **Subordinate legislation (drink driving limit):** Kenny MacAskill (Cabinet Secretary for Justice) to move—

   S4M-11277—That the Justice Committee recommends that the Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014 [draft] be approved.

4. **Subordinate legislation:** The Committee will take evidence on the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014 [draft] from—

   Kenny MacAskill, Cabinet Secretary for Justice, Neil Watt, Head of EU Implementation Team, Criminal Justice Division, and Neil Robertson, EU Policy Manager, EU Implementation Team, Criminal Justice Division, Scottish Government.

5. **Subordinate legislation:** Kenny MacAskill (Cabinet Secretary for Justice) to move—

   S4M-11278—That the Justice Committee recommends that the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014 [draft] be approved.

6. **Draft Budget Scrutiny 2015-16:** The Committee will take evidence on the Scottish Government's Draft Budget 2015-16 from—

    Derek Penman, HM Inspector of Constabulary in Scotland;

    Tina Yule, Lead Inspector, HM Inspectorate of Constabulary in Scotland;

    and then from—

    Chief Superintendent Niven Rennie, President, Association of Scottish Police Superintendents;

    Stevie Diamond, Police Staff Scotland Branch, Unison.

7. **Public petitions:** The Committee will consider the following petitions—

    PE1280 by Dr Kenneth Faulds and Julie Love on fatal accident inquiries;

    PE1370 by Dr Jim Swire, Professor Robert Black QC, Robert Forrester, Father Patrick Keegans and Iain McKie on Justice for Megrahi;

    PE1427 by Robert Kirkwood on behalf of Leith Links Residents' Association on multi-party actions;

    PE1449 by Dr John Wallace Hinton on behalf of Accountability Scotland on the Scottish Committee of the Administrative Justice and Tribunals Council;

    PE1479 by Andrew Muir on complaints about solicitors;

    PE1501 by Stuart Graham on public inquiries into self-inflicted and accidental deaths following suspicious death investigations;

    PE1504 by Kathie Mclean-Toremar on party litigants - civil appeals to the Supreme Court;

    PE1510 by Jody Curtis on the closure of police, fire and non-emergency service centres north of Dundee;

    PE1511 by Laura Ross on the decision made by the Scottish Fire and Rescue Service to close Inverness control room.

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

    Legal Aid and Assistance By Way of Representation (Fees for Time at Court and Travelling) (Scotland) Regulations 2014 (SSI 2014/257).

9. **Subordinate legislation:** The Committee will consider the following instrument which is not subject to any parliamentary procedure—

    Rules of the Scottish Land Court Order 2014 (SSI 2014/229).

10. **Serious Crime Bill (UK Parliament legislation):** The Committee will consider its approach to the legislative consent memorandum lodged by Kenny MacAskill (LCM(S4)33.1).

Irene Fleming
Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5195
Email: irene.fleming@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda items 2 and 3

Paper by the clerk	J/S4/14/27/1
Private paper	J/S4/14/27/2 (P)

Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014

Agenda items 4 and 5

Paper by the clerk	J/S4/14/27/3

Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014

Agenda item 6

Paper by the clerk	J/S4/14/27/4
Private paper	J/S4/14/27/5

SPICe Briefing: Draft Budget 2015-16: Justice

Scottish Government's Draft Budget 2015-16

Written submissions received on the Draft Budget 2015-16

Agenda item 7

Paper by the clerk	J/S4/14/27/6
Private paper	J/S4/14/27/7 (P)

Agenda item 8

Paper by the clerk	J/S4/14/27/8

Legal Aid and Assistance By Way of Representation (Fees for Time at Court and Travelling) (Scotland) Regulations 2014 (SSI 2014/257)

Agenda item 9

Paper by the clerk	J/S4/14/27/9

Rules of the Scottish Land Court Order 2014 (SSI 2014/229)

Agenda item 10

Private paper J/S4/14/27/10 (P)

Justice Committee

27th Meeting, 2014 (Session 4), Tuesday 4 November 2014

Subordinate legislation: Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014 [draft]

Reduction in drink driving limit

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following affirmative instrument:

- Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014 [draft];

Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014 [draft]

Introduction

2. The draft Regulations were made under sections 8(3) and 11(2) of the Road Traffic Act 1988 as amended by section 20 of the Scotland Act 2012.

3. The purpose of the instrument is to provide for the "drink drive" limit in Scotland to be lowered from 80 milligrams (mg) of alcohol in 100 millilitres (ml) of blood to 50mg of alcohol in 100ml of blood, and for equivalent changes to be made to the limits for the concentration of alcohol in breath and urine.

4. Further details on the purpose of the instrument can be found in the policy note in Annexe A to this paper and an electronic copy of the instrument is available at: http://www.legislation.gov.uk/sdsi/2014/9780111024478/contents

Consultation

5. The policy note states that there was a requirement for the Scottish Government to consult under section 195(2A) of the Road Traffic Act 1988 before a legislative change to change the drink drive limit can be introduced. The Scottish Government undertook a public consultation between September 2012 and 29 November 2012. The consultation analysis revealed that 74% of those who responded to the consultation agreed that the drink drive limit should be reduced, and of those, 87% agreed with the Scottish Government's proposal to lower the blood alcohol limit from 80mg/100ml to 50mg/100ml.

6. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website at: http://www.scotland.gov.uk/Publications/2013/03/6912

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 7 October 2014 and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit.

Justice Committee consideration

8. The Justice Committee is required to report to the Parliament on this instrument by 20 November 2014.

9. The instrument is subject to affirmative procedure (Rule 10.6. of Standing Orders). The Cabinet Secretary for Justice has lodged motion S4M-11277 proposing that the Committee recommends the approval of the instrument. The Cabinet Secretary will attend the Committee meeting on 4 November to answer any questions on the instrument, and then, under a separate agenda item, will be invited to speak to and move the motion for approval. It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 20 November 2014.

10. Members will recall that the Committee took evidence from Police Scotland, Scottish Health Action on Alcohol Problems and Scotland's Campaign against Irresponsible Drivers at its meeting on 28 October in order to inform its consideration of the instrument[1]. A transcript of that evidence session can be found in Annexe B to this paper.

11. The Parliament will then be invited to approve the instrument.

12. **The Committee will consider a draft report on the instrument at its next meeting.**

[1] Scottish Parliament Justice Committee. *Official Report, 28 October 2014.* Available at: http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9588

ANNEXE A

Policy Note: Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014 [draft]

Introduction

1. The above instrument was made in exercise of the powers conferred by sections 8(3) and 11(2) of the Road Traffic Act 1988 as amended by section 20 of the Scotland Act 2012. The instrument is subject to affirmative procedure.

Policy Objectives

2. These regulations provide for the "drink drive" limit to be lowered from 80 milligrams (mg) of alcohol in 100 millilitres (ml) of blood to 50mg of alcohol in 100ml of blood, and for equivalent changes to be made to the limits for the concentration of alcohol in breath and urine.

3. The regulations amend the "prescribed limit" set out in section 11(2) of the Road Traffic Act 1988 which sets out the limits on the proportion of alcohol present in the breath, blood and urine. The new limits are 50mg/100ml of blood, 22 micrograms/100ml of breath and 67 mg/100ml of urine. The regulations also make a consequential amendment to section 8(2) of the Road Traffic Act 1988 to reduce the limit below which a person can elect to have a specimen of breath replaced with a specimen of blood or urine (the so-called "statutory option") which is currently available to drivers whose breath/alcohol level is found to be over the prescribed limit, but less than 50mcg/100ml of breath. The order provides that the "statutory option" will be available to drivers whose breath/alcohol level is less than 31mcg/100ml.

4. The Scottish Government believes that this will help to make Scotland's roads safer. On average, just over one in eight deaths on Scotland's roads in recent years involve drivers over the legal limit. That is an average of 30 deaths each year.

5. Estimates of how many lives can be saved with a lower limit vary, but there is evidence that indicates between three and 17 lives each year could be saved on Scottish roads from a lower limit of 50mg/100ml.

Background

6. The Scotland Act 2012 provides the Scottish Ministers with a power to amend the "prescribed limit" for the concentration of alcohol in a driver's blood, breath or urine for the purpose of driving, attempting to drive or being in charge of a vehicle in Scotland. In short, this means that the Scottish Ministers have a power to change the "drink drive" limit.

7. In 2012, the Scottish Government undertook a public consultation[2] on a proposal to lower the drink-drive limit from 80mg/100ml of blood to 50mg/100ml of blood, which would bring Scotland into line with most of Europe. The responses to the consultation were analysed and showed that almost three quarters (74 per cent) of respondents to believe that drink drive limits should be reduced.

[2] http://www.scotland.gov.uk/Publications/2012/09/3556

8. In 2009, the then UK Government commissioned an independent review of drink and drug driving law. For this purpose, the North Review Committee, led by Sir Peter North CBE QC, was established and they published their recommendations in the summer of 2010[3]. The North Report of the Review of Drink and Drug Driving Law indicated that a lower drink limit of 50mg of alcohol in 100ml of blood would help save lives.

9. Paragraph 4.12 of the North Report noted that evidence showed drivers are six times more likely to die with a blood alcohol concentration level between 50 and 80mg/100ml than with zero blood alcohol. Evidence submitted in 2010 by the British Medical Association to the House of Commons Transport Committee's inquiry into drink and drug driving law indicated that the relative risk of being involved in a road traffic crash for drivers with a reading of 80mg of alcohol per 100ml of blood was 10 times higher than for drivers with a zero blood alcohol reading[4]. The relative crash risk for drivers with a reading of 50mg of alcohol per 100ml blood was twice the level than for drivers with a zero blood alcohol reading.

10. Paragraph 4.17 of the North Report went on to state:
"*The estimates of the potential for a lower limit of 50 mg/100 ml to save lives vary. On the one hand, Professor Richard Allsop estimates, with conservative assumptions, that 43 lives could be saved in Great Britain annually, NICE on the other hand makes more ambitious estimates, based on the experience of research conducted in Europe and in Australia. NICE applies their model to all road traffic casualties in England and Wales rather than just those reported as drink drive-related. Based on the Albalate study of European countries, although without a defined time horizon, 77 – 168 lives could be saved each year in England and Wales whereas, based on the Australian experience, 144 lives could be saved after the first year in England and Wales, progressively increasing by the 6th year to a total of up to 303 deaths avoided.*

These estimates for England and Wales take no account of the possible casualty savings for Scotland. It should be noted that Scotland represented 7% of all drink drive-related casualties in Great Britain in 2008".

11. As can be seen, a range of studies are mentioned in the North Report and an analysis applied to England and Wales figures. Apportioning these figures to Scotland would suggest a range of between 3 and 17 fewer deaths per year would result following the introduction of a lower drink drive limit.

Consultation

12. A Scottish Government consultation was undertaken to hear views on a proposal for a lower limit. In addition to wanting to receive feedback on the proposals, the need for the Scottish Government to consult is a requirement under section 195(2A) of the Road Traffic Act 1988 before a legislative change to change the drink drive limit can be introduced. The Scottish Government undertook the public consultation on proposals to lower the drink-drive limit between September 2012 and 29 November 2012. The consultation analysis revealed that 74% of those who responded to the consultation agreed that the drink drive limit should be reduced, and

---

3 http://webarchive.nationalarchives.gov.uk/20100921035225/http://northreview.independent.gov.uk/docs/NorthReview-Report.pdf

4 http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtran/460/460we12.htm

of those, 87% agreed with the Scottish Government's proposal to lower the blood alcohol limit from 80mg/100ml to 50mg/100ml.

13. The consultation responses suggested the likely benefits of a lower limit would be fewer road accidents and fewer casualties. A number of respondents also called for the Scottish Government to be given further powers by the UK Government to tackle drink driving including, for example, powers enabling the police to undertake random breath testing, and lower drink-drive limits for young and newly qualified drivers, or professional drivers such as HGV, bus or taxi drivers.

14. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website at http://www.scotland.gov.uk/Publications/2013/03/6912.

Impact Assessments

15. Equality Impact Assessment (EQIA) is a tool to assist in considering how policy (by policy we mean activities, functions, strategies, programmes and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways.

16. We have considered the impact of policy on particular groups of people (whatever their age, race, gender, sexual orientation, religion or belief or whether disabled or not). We are not aware of any evidence that any of the equality strands will be affected by the lowering of the drink-drive limit.

Financial Effects

17. A Financial Note has been completed, setting out the financial implications of lowering the drink-drive limit for the Scottish Administration and for other bodies, individuals and businesses.

Scottish Government
Justice Directorate
September 2014

ANNEXE B

Extract from the Official Report of the Justice Committee meeting on 28 October 2014

Drink-driving Limit

The Convener: The next item of business is an evidence session on the reduction in the drink-driving limit proposed in the draft Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014. The session will inform next week's evidence session on the draft regulations with the Cabinet Secretary for Justice. I welcome to the meeting our panel of witnesses: Chief Superintendent Iain Murray of Police Scotland; Dr Peter Rice, chair of Scottish Health Action on Alcohol Problems; and Margaret Dekker, research secretary of Scotland's Campaign against Irresponsible Drivers. We have had you here before, Mrs Dekker—I remember your campaigns.

We have submissions on the proposed limit and the Scottish Government's original consultation, so we will go straight to questions. I will take Christian Allard first this time, then Elaine Murray and then Sandra White.

Christian Allard: Thank you very much, convener.

We have heard a lot in the media about people's reaction to the proposed change to the limit. I agree with some of the comments that have been made regarding the penalties for the offence. It looks like a lot of people out there think that it might be very unfair that people who are caught on the lower side will get the same penalty as somebody who is caught on the higher side. In particular, I am somewhat worried that the hard-luck stories might, over time, reduce the level of public support. Do the witnesses think that that is a concern?

The Convener: Excuse me, but I am a wee bit lost. Are you suggesting a variation in the penalties? We do not have the power to do that.

Christian Allard: I know that we do not have those powers.

The Convener: I beg your pardon. He knows the law. How terrible of me!

Christian Allard: We might end up doing it in another way. Is that an important part of the legislation? If we had the powers to do that, would the witnesses want us to use them?

Chief Superintendent Iain Murray (Police Scotland): To be honest, I would not support any variation in the penalties. The research suggests that individuals who drink alcohol before they drive, even at the new lower limit that is being proposed, are three times more likely to die in a crash than they would be if they had not taken alcohol before they drove. There is sufficient evidence out there that suggests that drinking any alcohol impairs the ability to drive and to concentrate; it impairs reaction times. With the existing limit, people are six times more likely to die in a crash. I do not think that you would want to vary penalties depending on whether somebody was three times or six times more likely to kill themselves or somebody else. My view is that people who drink alcohol before driving are putting other people and themselves at risk and, therefore, the penalty needs to be such that it has a deterrent effect.

The studies that have been done across the countries that already have the limit that is being proposed have shown that all blood alcohol level counts tend to drop, and that there is a deterrent effect that means that the whole picture of drink driving changes. That deterrent effect is what is being considered. The purpose of the proposal is to improve safety, and I think that lowering the penalty would suggest that we were not taking that seriously.

Margaret Dekker (Scotland's Campaign against Irresponsible Drivers): The court already has powers to sentence. We keep being told that it is up to sheriffs to decide what the penalties are. I think that it would be a matter that is outwith our remit to comment on.

The Convener: I think that it is mandatory that you lose your licence for 12 months.

I am about to be corrected by our resident advocate.

Roderick Campbell: The exceptional circumstance—

The Convener: Yes, there is an issue around exceptional circumstances, but the basic rule is that you lose your licence.

Does anyone else wish to comment on variation in penalties elsewhere in Europe?

Dr Peter Rice (Scottish Health Action on Alcohol Problems): The question also touched on the level of public support for the measure. There are high levels of public support for drink-driving action—there are also majority levels of public support for a range of other alcohol measures, which sometimes surprises people.

In some countries, drink driving is considered to be more on the level of a parking ticket. It is one of the distinctive things about the United Kingdom that it is regarded here as a serious offence. I do not think that there is a substantial risk that lowering the limit will lead to the public regarding the offence as less serious. I agree with my colleague from Police Scotland that the degree of impairment at 50mg remains significant, and I think that the public realise that.

Chief Superintendent Murray: The most recent road safety information tracking study that was carried out on behalf of Road Safety Scotland shows that 95 per cent of those who were surveyed believe that drinking and driving over the limit is a very serious offence, and a further 4 per cent believe it to be serious. That means that 99 per cent of the people who were surveyed believe that drinking and driving over the limit is either very serious or serious. That demonstrates public support for the measures and the public’s perception of the issue.

Christian Allard: Could the issue of exceptional circumstances be extended to other cases?

Chief Superintendent Murray: I agree with Margaret Dekker that the courts already have the power to take into account the person’s circumstances when making a determination. I think that there is sufficient scope in the system at the moment.

The Convener: I do not think that that power is used very often. Exceptional circumstances might be pled quite often but I do not think that such pleading is successful very often.

Margaret Mitchell: What is the resource burden on Police Scotland in terms of the anticipated increase in convictions?

Chief Superintendent Murray: We are still considering that. We will do some survey work over the next few weeks. Some of the data is slightly hard to come by just now.

We estimate that we are likely to catch around a third more drink drivers than we do at the moment in the initial phase. As I said, research shows that drink driving and alcohol counts across the board tend to drop following the introduction of lower limits. My hope, therefore, would be that the public would learn. A quite significant campaign will be ratcheted up through November into December to make people aware of the implications. We have been doing that through the drink-drive initiatives of last winter and summer. When we breathalyse people who are over the proposed limit but under the current limit, we make them aware of the situation.

The worst-case scenario could be that as many as a third more drivers will be caught, but I would like to think that it will be less than that.

Margaret Mitchell: Is there not a significant chance that there would be more convictions of people who drive the morning after they have been drinking? After the chief constable has answered that, the rest of the panel could say what advice they could give people who want to ensure that they are not over the limit the morning after.

The Convener: You seem to have promoted the chief superintendent to chief constable.

Chief Superintendent Murray: I was quite grateful for that. [*Laughter*.]

Margaret Mitchell: We will see what we can do.

Chief Superintendent Murray: Of the 434 detections that we made during the four weeks of last winter's drink-drive campaign, 10 per cent were after 6 o'clock in the morning, so there is the risk of a slight increase. Before my colleagues respond, I should say that my simple message is that anyone who is going to be driving in the morning should not drink the night before.

The Convener: But how will they know? That is what the general public want to know. After all, the situation is different for different people and depends on what they eat for their evening meal, their size, their metabolism and so on. When they get into their car the next morning, at whatever time that might be, how will they know whether they have waited long enough? I am not trying to make excuses, but I think that this is a genuine problem for the public. Of course, it is easy-peasy if all you have done is sit in the pub drinking, but if you had a meal the night before or shared a bottle of wine with a pal, how will you know that you will not be over the limit the next morning?

Chief Superintendent Murray: You just have to plan ahead and make yourself aware that you cannot take the chance.

The Convener: But my question is: how do you know? Are you saying that no one should have anything the evening before? I am not trying to be difficult, but what about people who do these things innocently?

Chief Superintendent Murray: I understand the point, but it is all about prioritising certain aspects, such as when you drink or do not drink, when you need to drink, and the importance of drinking in your life so that you can decide what you do and when you do it. I am sure that Peter Rice will be able to throw more light on that, but the simple message that we have always put across is: do not risk it. We are talking not just about a legal limit but about the concept of impairment itself. The fact is that your ability to drive could be impaired, and you have to be aware of that. You might be feeling fine, but the fact is that—

The Convener: That is not the point. We admit that there would be impairment, but the question is how we know whether we are over the current limit, let alone a lower limit. I wonder whether Dr Rice can assist in giving the public some guidance.

Dr Rice: I can. It is an important question. Although any response can be couched in caveats about individual variability and so on, people need some relatively firm guidelines.

In your scenario of sharing a bottle of wine with a meal, if you start drinking that wine with your meal at 8 pm, your blood alcohol level will get back to zero at about 2 am the following day. I think that that provides some indication. If you drink more heavily than that—and this is the important point—your metabolising of alcohol will not speed up. Your alcohol metabolism system is like a shop with one checkout; it can go at only one speed. If you drink more heavily, there are no additional—

The Convener: I am just trying to think that through, but go on.

Dr Rice: If it takes you two minutes to put people through a checkout and someone comes into your shop every minute, you are going to end up with a long queue. Some shops will be able to call people through from the back to open another checkout, but your liver is not like that. It does not speed up. It chugs away at about 10ml or a standard unit an hour and nothing—not coffee, not sleep, not a shower, not exercise, not eating a full Scottish breakfast—will speed that up or make any difference.

The Convener: What happened to Irn Bru and a bacon roll?

Dr Rice: Those things have good marketers, but whatever magical properties people endow Irn Bru, bacon rolls or square sausage with, that is all they are. Basically, time is the only thing that clears alcohol from your system and, as I have said, an individual who started to drink a half bottle of wine at 8 pm would reach zero blood alcohol in the early morning. In fact, they might well wake up at pretty much the same time because that was happening to them.

I fully agree with the chief superintendent that the morning after thing is not an unintended consequence. It is intended, because people whose blood alcohol content is at such a level are significantly impaired and they are doing a risky thing. They would need to have been drinking fairly heavily or have had a very short sleep to run into that problem, but they still need to be aware of the rate of metabolism and calculate accordingly.

Margaret Mitchell: If that is the case, should there be an extensive education programme? I do not think that it is intended that a consequence will be that no one who is a driver should ever drink just in case they are over the limit the morning after. That is the extreme logical conclusion and that is clearly not the purpose of the legislation. Many people are absolutely law-abiding and would be appalled at the idea of driving when they are still feeling the effects of drink, but others have no regard whatever for such things and will be many times over the limit when they get into their cars. We want to ensure that we target the people who are a real danger, as well as educating the public and making sure that people do not fall into that category by accident.

Margaret Dekker: Road casualties have an emotional and financial cost for families as well as a ripple effect on the national health service, emergency services, insurance companies and so on. It is a privilege to hold a driving licence; lots of people forget that and feel that it is a right. To protect that licence, people have to abide by the law. We welcome the fact that the drink-driving limit is being reduced to bring it into line with those in other European countries.

Margaret Mitchell: My point is about how we advise the public. I do not think that you are suggesting that drivers should never drink.

Margaret Dekker: No. I am not suggesting that.

Margaret Mitchell: My point is about how people can be absolutely sure that, if they have been at a wedding or something and they get into the car the next day, they are not unintentionally going to be over the limit.

Margaret Dekker: I would go along with the British Medical Association and say that people should not overindulge—everything in moderation. I do not think that being at a wedding allows people to ignore the law if they have drunk until they are tipsy.

Margaret Mitchell: It could be about the time at which the person drives the next day, or it could be the person's metabolism. If we are going to do this, let us make sure that we are doing it for all the right reasons and that it is going to have the intended effect, which is to cut down on road-traffic accidents. We should not be putting valuable resources somewhere when they might be better deployed elsewhere. For example, what if the penalty of loss of licence for someone who is over the 50mg limit leads to a job loss? Are there other consequences that should be looked at and weighed up?

Margaret Dekker: As I said, a driving licence is a privilege, and to protect that licence people have to abide by the law. We are only too aware of the devastating consequences of loss of life and the financial impact that that can have on people's families. There is a balance to be struck. Lowering the drink-driving limit to 50mg per 100ml of blood is not unreasonable. It has already been proved in other European countries that it brings down the number of road casualties that are caused by drink driving. To my mind, it is only a start to eradicating the scourge of drink driving in Scotland.

Margaret Mitchell: I think it is about clarity.

The Convener: We are not disputing the level, and certainly it gets a person nowhere to tell the court that they might lose their job. The court hears that all the time. However, we are talking about people's knowledge.

The biggest issue is what happens the day or evening before. Dr Rice's information was very helpful; perhaps you should produce a wee booklet to give us an idea. I know that there are differences and people cannot rely on the information, but the public needs guidance about when they should say to themselves, "I will err on the side of caution tonight", and decide that two glasses are sufficient. That kind of thing is helpful to people who might not know whether they are liable to break the law. They certainly would not want to break the law; that is the point that we are trying to get at.

I think that most of the questions will be on this issue. Am I correct?

Elaine Murray: Yes.

The Convener: Who is next on my list? It is Elaine Murray.

Elaine Murray: My question is really on the same issue. I think—[*Interruption.*] Excuse me—[*Interruption.*]

The Convener: Water, please. It is just water, by the way.

Elaine Murray: Unfortunately.

Most of us can see the case for the reduction; it will bring us into line with the rest of Europe. In fact, the UK stands out as having an exceptionally high limit. However, many of us do not know what it means for somebody who has been responsible the night before. When can they drive? If somebody has gone for a work night out on the Friday, at what stage on the next day can they go and do their Christmas shopping, for example? Is there a case for people being able to breathalyse themselves before they get in the car to make sure that they are not over the limit?

Margaret Dekker: Breathalysers are on the market.

The Convener: Are they? We had better not advertise them. We will just leave it to people to Google them.

Elaine Murray: The Association of Chief Police Officers in Scotland said that there should be a significant media campaign prior to any reduction coming into effect. The reduction is due to come into effect on 5 December. Is there really enough time to ensure that the public are fully aware of the consequences? I refer not just to the point that people should not drink if they are driving a car, which most of us understand, but the consequences for the following day even if people have been responsible the day before.

Margaret Dekker: It is all about taking responsibility. If people have any doubt, they can get the bus or a taxi. There are other modes of transport besides cars to get people to where they are going.

Elaine Murray: There are not, in some parts of the world.

The Convener: You are speaking to a rural MSP.

Margaret Dekker: What about a bike, then?

The Convener: Do you have a horse, Elaine?

Elaine Murray: No.

The Convener: She does not have a horse any more. There we are.

Elaine Murray: The chief superintendent rightly says that it is about impairment. Somebody who has a heavy cold is impaired and should not drive. I believe that a heavy cold can have the same effect on somebody's ability to react as being over the current limit can have, but nobody thinks that they had better not drive because they have a cold. In fact, the party whips would take a dim view of us not coming to work because of a heavy cold.

There are other issues about impairment that people should be aware of but are not.

Chief Superintendent Murray: On the point that I made about targeting and the one that you just made about impairment, bear in mind the fact that we stop the vast majority of vehicles that we stop for a reason. It is because an offence has been committed, there has been some risk-taking behaviour or because something about the person's manner of driving is drawing attention to them.

If we stop people the morning after, the likelihood is that they will have brought themselves to our attention. We are not setting up road checks on the outskirts of housing estates at 6 o'clock in the morning to check people who are going to their work. We find people who are already speeding or who are doing something else wrong—for example, there might be something in the way that they are overtaking. It is about anything that draws attention to them; if there is an element of risky behaviour, that is where we start to pick up impairment through drink.

Those who behave responsibly, take a considered approach the night before, consider in the morning when they drive and drive according to the law will not have to worry about coming to the attention of the police. As Margaret Dekker said, it is about taking responsibility; it is about people being aware of what they are doing and how they are doing it.

Elaine Murray: Someone might be doing that and still be over the limit, might they not? Therefore, that is not the point. The point is whether or not they are impaired.

Chief Superintendent Murray: For me, it comes back to the point that they are putting themselves and others at risk because of that impairment. If a person is over the new proposed limit when they drive in the morning, there will be a degree of impairment whether they feel it or not.

Elaine Murray: My point concerns education and people being aware of when they are impaired, and not necessarily the police having noticed that they are impaired when driving. People need to be aware that certain things, such as having a bit of alcohol in their blood or having a heavy cold, mean that they should not drive. They need to be educated to know that they are impaired under those circumstances.

The Convener: Let us keep to the draft regulations, which are not about having a heavy cold.

Elaine Murray: No, but it is an analogy.

The Convener: I know what an analogy is.

Chief Superintendent Murray: A marketing campaign is about to kick in. Obviously, we need to tell the public when the reduction is going to happen, and it is vital that we get through the parliamentary process so that the marketing can kick in. There will be television advertising and all sorts of other marketing—all sorts of media stuff is waiting to kick in as soon as there is a green light. We are doing live education when we stop motorists; we are making them aware of the reduction.

There will be education. The question is whether the committee thinks that the time will be enough. That is for the committee to decide, but a significant amount of money is being spent through the safer Scotland initiative and Road Safety Scotland to make it happen.

The Convener: I have been teasing Elaine Murray a bit about heavy colds. If someone has taken medication that has alcohol in it—some medication for heavy colds and so on contains alcohol—as well as taking some alcohol, and they are tested and found to be over the limit, but only because of the additional alcohol in the medicine, will they have any kind of defence, if they can prove what happened? Would an examination of the blood sample permit a distinction to be made?

Dr Rice: The amount of alcohol in mouthwashes and cold remedies is not substantial—certainly, when compared with the alcohol that people consciously drink when they want to get the effects of alcohol. If you are asking whether someone could be over the limit because they had been overenthusiastic with the Night Nurse, my assumption would be that they had been overenthusiastic with something else.

The Convener: You are teasing me, now. If someone would not have been over the limit without the Night Nurse, would that be a defence, if they could prove it?

Dr Rice: No. My understanding is that it would not be a defence.

The Convener: In your booklet, you should say, “Don’t rely on Night Nurse.”

Dr Rice: May I return to a point that I made earlier? The problem about driving the following day will crop up only when someone has drunk a pretty substantial amount the night before. In my professional life, I spend a lot of time speaking to people who drink very substantially. For someone who has had eight hours sleep, we are talking about consumption of in excess of a bottle of wine, half a bottle of spirits, six pints of average-strength beer—

The Convener: All together, or separately? [*Laughter*.] I got a bit lost there.

Dr Rice: No. It is “or”, not “and”. I make the point that if people are drinking at that level they are running risks other than in relation to driving. In this country there are a considerable number of deaths and injuries of intoxicated pedestrians. In some

estimates, the number of intoxicated people who are killed or seriously injured by sober drivers exceeds the number of people who are killed or seriously injured by drink drivers.

If someone turns up at their local accident and emergency department with a significant injury or trauma sustained because they were intoxicated, the staff do not say, “Fine, at least you weren’t driving”; there is a significant injury that has to be dealt with. I make the point that the risk of being over the limit the morning after will apply to people who take considerable risks that are not related to driving, because of the amount that they drink. Many people take such risks and get away with it, but many people do not get away with it. We need to see the issue in that context.

John Finnie: Margaret Mitchell used the term “burden” in a question. Dr Rice eloquently explained the limits, but I think that people will more readily understand your comment about not drinking the night before. Do you get frustrated by all the “What if?” questions that are put to police officers?

Chief Superintendent Murray: To be honest, I am very much with Margaret Mitchell, in that I think that it is about personal responsibility. Someone dies on the roads of Scotland every two days, and that is unacceptable. People engage in all sorts of risk-taking behaviour, including drink and drug driving. There is an attitude that leads people to say, “It was an accident and I didn’t mean it”, but people voluntarily put themselves at risk by getting behind the wheel or using the road in some other way, and our duty to each other and to ourselves is paramount.

I have little sympathy with the “I didn’t know” argument; people have to know and they have to take responsibility. If we are at the stage at which people cannot not have a drink the night before, that is a sad indictment of our society. A person must make a decision, if they are driving in the morning. People must decide who is driving and who is not driving and they must balance their lives accordingly. That is my personal view.

Road safety and casualty reduction is a huge responsibility for us all. It is all about risk taking and how we interact with each other. We have a duty to ourselves and to others in the context of how we approach all aspects of use of the road.

John Finnie: As other witnesses have said, it is not simply a matter for the police; other agencies are involved, such as the health service and—more important—so is society.

It has been suggested that the proposed change could result in up to 17 lives being saved. What is the burden for Police Scotland of 17 fatal collisions involving drunk drivers?

Chief Superintendent Murray: The burden is huge. Margaret Dekker mentioned the cost to society of £1.9 million per fatal collision. With regard to operational time, a minimum of four officers will spend a minimum of five days working solidly on that fatal collision. Slightly less time will be spent on serious collisions, but they still require a significant amount of time. We lose a working month, if you like, with each fatality. That adds up to a significant amount over a year. That amount of time refers just to those who are directly involved in investigation of the incident, but others are involved. There is an impact on the Crown Office and the courts—it rolls on and on.

As Margaret Dekker said, there is also an impact on the health service, from the ambulance teams who attend in the first place to the hospital staff—especially if the person does not die at the scene and requires a protracted period of care thereafter. There is a significant burden on Police Scotland in responding to fatal collisions. If I have teams of officers dealing with fatalities, that impacts on our ability to target other areas of risk taking on the roads.

John Finnie: There is also trauma for the individuals who are involved in dealing with fatalities.

Chief Superintendent Murray: Yes—there is no doubt about that. There is cumulative trauma. Traffic officers deal daily with horrendous scenes. We have a duty of care for our officers. Over the past six to eight years, there have been an average of 200 deaths and 1,900 serious collisions a year. That is a lot of death, a lot of destruction and a lot of people injured unnecessarily on our roads.

John Finnie: I want finally to hear it confirmed that Police Scotland is more than up for this change.

Chief Superintendent Murray: We are. We support the change fully and we will be ready to implement it on the proposed date.

John Finnie: Thank you very much.

The Convener: I do not think it is an issue of whether we are up for it; we are looking at the difficulties for the public. I do not dissent from what John Finnie has said. Obviously, the effect on the people involved is appalling. We are just testing the impact on the public, because you must take them with you in enforcement. I call Sandra White, to be followed by Roderick Campbell.

Sandra White: Thank you, convener. It is just past 12, so I say good afternoon.

We know that one in nine deaths on the road and many more injuries from collisions are caused by drivers who are over the limit. I want to put what some people have been saying into perspective. I recollect that many years ago when there was not what you might call a limit, there was carnage caused by people drink driving. Drivers have to take responsibility.

I agree with what Margaret Dekker said about educating drivers. I always think that in the hands of someone who has had a drink a car is a lethal weapon. Perhaps people should learn about their responsibilities in that regard.

I assume that education campaigns will be run on the television and so on. When the legislation comes into force, we will have a different drink-driving limit to the rest of the UK. How is that going to be addressed? Will there be advertising down south or as people come over the border?

Chief Superintendent Murray: As I understand it, there will be national elements to the campaign in the media, including the broadcast media. It is being considered whether to extend the campaign to other modes of transport to make people think about whether they are having a drink on the train or a drink in the airport. That is being included in our consideration of how we engage with the operating companies

and those who provide services. We are considering whether to place adverts strategically at motorway services, so that drivers will be aware of the change as they head north or south. That is all being considered as part of the campaign. A number of agencies are involved. There will be a heavy reliance on social media to make sure that the message is out there. All the traditional media, which I am more acquainted with, as well as the new-fangled stuff, will be used to make sure that we catch as many people as possible. An extensive campaign is planned; there will be significant investment.

Dr Rice: In other parts of Europe, it is not unusual to have people driving across borders to countries where there are different limits. Systems have developed in other places, so there might be some benefit from international learning. It is not a great problem that we hear about from my colleagues in other countries. There are examples where similar policies have worked without any great difficulty.

Margaret Dekker: Scotland has led the way in lowering the drink-driving limit, and it is only a matter of time before the rest of the UK falls into line. At Westminster, a hand-held saliva device for detecting drugs has already been developed. Drug driving is as important as drink driving. Currently, the field impairment test is pretty basic, and it has been argued that there are more drug drivers than drink drivers on the roads. I hope that the Parliament will see that the next step is to implement a roadside drug-testing kit to enable the police to tackle casualties on the roads.

Sandra White: I agree with everything that has been said, especially by Peter Rice, about the differences in legislation in European countries. I was trying to make that point. Those countries have moved on, and it is time that we moved on, as well. We can learn from one another.

Roderick Campbell: Good afternoon, panel. Does anyone think that we are missing a trick by not going for restrictions on younger drivers and random breath tests?

Chief Superintendent Murray: That is a consideration. I think that those things were perceived previously as a step too far, from the point of view of public support and also perhaps in respect of mixed messages. There is certainly evidence to suggest that there is a greater risk with younger drivers in respect of their capacity, tolerance and maturity, never mind their driving skills. Some countries have therefore looked at lower limits.

I would personally have a difficulty if we were to say, “Well done. You’ve held your licence for two years. Now you can drink more.” I think that Margaret Dekker hinted at the idea of continuing to drive down the limit. Scandinavian countries are shocked that we are only now coming down to 50mg and that it has taken us so long to get there. I think that they are already sitting at a limit of 20mg or 30mg.

Everybody is affected by the reality and the argument around impact and impairment, but young people are disproportionately affected. That is my understanding, although I am sure that Peter Rice can again add more to that.

Dr Rice: Yes. I think that the British Medical Association and the medical royal colleges would fully support both things that have been mentioned. I think that they would support a graduated structure with lower limits for younger drivers simply on the basis of the demographics of the accidents that we see, including the fatalities, which

are weighted very much towards younger people. Although there is often talk about the younger generation being better with drink driving than older people are, the numbers in respect of the profile of serious accidents and fatalities really do not bear that out.

Similarly, the level of public support and understanding of the importance of the issue of drink driving is such that I think that the general public would accept random breath testing. It has already been said that the UK has made a great deal of progress in reducing harm from drink driving but, compared with other countries, we still have a relatively low level of testing. I think that 15 per cent of French drivers are tested every year, but the numbers who are tested in the UK are in single figures.

Although other countries have much to learn from us about the various ways that drink driving has been approached, the testing-rate league is one league that we are not at the top of. Therefore, I think that you would find that the health bodies would support a process of random breath testing.

Margaret Dekker: To make any law effective, it has to be seen to be enforced. The penalties and enforcement must be seen to outweigh the risk of offending. In that context, we would support random breath testing and a lower limit for professional drivers such as taxi drivers, school bus drivers and anyone who drives in a care capacity. We would support an even lower limit of 20mg for those drivers.

The Convener: I do not know whether the police can answer this question, but is it ever reflected in the sentencing of people who have been found to have driven over the limit that they are a professional or commercial driver? I am not sure whether the courts take a harder view of that.

Chief Superintendent Murray: I am sorry, but I cannot comment on that. I am not aware of whether that happens.

The Convener: I wonder whether that is currently reflected in sentencing. I do not know.

Alison McInnes: John Finnie has covered most of my points. I support the reduction, because it will make things much clearer for people. The message is very simple: “Don’t drink and drive”. I am concerned that some of the questioning today might kind of encourage people to start trading off and tying themselves in knots. Can I have some assurance that the public education campaign that obviously needs to be run over the next month will be very clear?

Chief Superintendent Murray: Yes. I have seen the main television advert, and it is clear. The message is: “Don’t do it—don’t risk it.” Peter Rice has given some clear advice, but the issue is how that is interpreted. If people start thinking about when they stopped drinking, how much they drank and how much they ate, that will potentially lead to their taking a risk. The simple message has to be that people have to balance it. People who are intelligent enough and can work it out for themselves will be able to find the information online—it is there. However, if we put out any messages saying that a certain amount is all right or telling people to leave so many hours after drinking, that could leave us open to all sorts of counter-challenges later.

Alison McInnes: Is there a sense that one wider health benefit to society might come from a knock-on effect of people reducing their alcohol consumption generally?

Dr Rice: I think that there is. Anything that encourages people to reflect on their alcohol consumption is a good thing. Driving injuries and fatalities represent a pretty small proportion of alcohol-related fatalities in Scotland—it is certainly much less than 10 per cent and probably nearer 5 per cent. A lot of harm from alcohol has nothing to do with driving. Of course, a lot of interesting and productive things have happened to try to reduce that harm, particularly in Scotland. If the measure is part of a broader education campaign that encourages people to reflect, that will be a good thing.

One important point is that education on its own is a less powerful tool than we would often like to think it is. A combination of education and enforcement is a powerful shaper of behaviour. We see that with issues such as drink driving and wearing of seat belts. Although we would love to think that the answer is to explain things clearly to people and then they will change their attitudes, any marketer will say that the product also has to be easily accessible and easily bought. The combination of education and legislation, as we are talking about here, is the optimum mix.

The Convener: I want to make it absolutely plain that I, and I think my colleagues who teased out the issues of drinking the day before, in no way support drink driving and absolutely support the limit. Obviously, if somebody is daft enough to be drinking late at night, they should not drive the next day, but there is a point at which someone does not know. It was fair to ask for guidance—not a get-out clause, because people still have to take responsibility for what they do—on the point at which people should err on the side of caution.

I just want to clarify that. It is fair to reflect that that was the point of the line of questioning that Margaret Mitchell, Elaine Murray and I followed. People will ask, “When do ah ken?” or, “Am I okay for tomorrow?” Obviously, at the extremes people will know that they are or are not okay, but there will be bits in the middle where people are not sure about the next day. That was an important issue to test. Dr Rice’s information was helpful, and more of it would be very helpful. The public can then use that information to decide and to make judgments and take responsibility for what they are doing. They need information about what is liable to take them into the danger zone the next morning. However, it is not a get-out clause.

Elaine Murray: The impact can even be later on the next day. We perhaps should say to people that, if they have had a big night out, they should not drive at all the next day.

The Convener: Yes—exactly.

I just wanted to make that plain. I hope that Alison McInnes did not get the impression that we were in any way being frivolous or trying to give people excuses.

Alison McInnes: I did not mean to imply that, and I apologise if you took it in that way.
The Convener: I think that you did, actually.

Alison McInnes: Well, I apologise. One of the points about the 80mg limit is that people have tied themselves in knots thinking that it is okay to drive because they have done certain things, but they have—unintentionally, in their minds—been drink

driving and have been caught out. The lower limit will make it much clearer that, actually, there is no point in trying to decide about that.

The Convener: It is not a defence for someone to say that it was yesterday that they were drinking. We appreciate that, but it is helpful to tease out the issue.

One issue that nobody has asked about is random breath tests—

Roderick Campbell: I asked about that.

The Convener: You asked about it, but Dr Rice said that the public support random breath tests, which I found interesting. What is your data for that, Dr Rice?

Dr Rice: I do not have data on that. I think that there was a YouGov poll, which I could look at. I was just basing my comment on my observations of the public, having been involved in debates on various aspects of alcohol. There is particularly solid public support for action on drink driving. I have heard the argument against random breath testing that it risks losing public support, but what I was saying was that my view, in summing all that up, is that the public support for action on drink driving is solid and I do not think that random breath testing would put it at risk. It would be a move in the right direction, and it has had long-term support from health bodies.

The Convener: I simply wanted to test the evidence base for that. I can see why intelligence-led breath tests might be acceptable to someone, but I do not know about random breath tests. I do not know the answer, which is why I am asking you. We have had the issue of policing using stop and search powers and alienating the public. I do not know; I just pose the question whether random breath tests might have a counterproductive effect.

Elaine Murray: I seek clarification on that. I thought that, with intelligence-led breath tests, if somebody reports to the police that a certain person was in the pub drinking and got into their car, the police can act on that.

Chief Superintendent Murray: Yes, we can act if there is a reasonable cause to believe. There are three circumstances: the committing of a traffic offence, a collision or reasonable cause to believe that someone has alcohol in their system. As part of the festive season safety campaign, we do a large number of roadside checks. We have the power to stop vehicles to examine them and ensure that they are roadworthy. Particularly in the dark, there are always issues with things such as lighting. When we speak to drivers, we can form an opinion—from the smell of alcohol, their demeanour or whatever else—that allows us to meet that reasonable cause requirement.

Studies have been done on random breath testing, particularly in Australia. Some of the data gathering has questionable elements, but most of the studies have shown a move towards support for random breath testing. Last year, we engaged with the University of Glasgow on a procedural justice programme on the explanation of what we are doing. That work is still not concluded, as follow-up work is on-going. It was about how we approach people and speak to them.

We have found a lot of support. There is an awareness that it is time for the Christmas drink-driving campaign, because we have been doing it for so long now. We find, from having done it at the coalface at 2 in the morning, that most people are supportive

when we ask whether they mind providing a specimen. Some of the campaigns focused on breathalysing as many people as were willing, so that we could get that dramatic statistical perspective. I have never found anybody to refuse or decline to take a breathalyser test when offered the opportunity. When there is a need to do it, we can do it, and we can offer people the opportunity.

The Convener: That clarifies the position. We have gone into that.

John Finnie: I have one final point for Chief Superintendent Murray. Some people might think that the measure is an extra tool in the armoury, but there is nothing in your existing powers that inhibits your ability to rigorously enforce the legislation, is there?

Chief Superintendent Murray: No. We can stop vehicles travelling on the road at any time. At that point, we can speak to drivers, which allows us to form opinions. There are powers that allow us to do things from that point onwards.

The Convener: So you do not have to have cause to stop someone—there does not have to be a brake light out or something.

Chief Superintendent Murray: We have separate legislation for that, but anybody driving on the road can be stopped by the police at any time.

The Convener: I will bear that in mind.

That completes the evidence. I thank our witnesses very much indeed.

Justice Committee

27th Meeting, 2014 (Session 4), Tuesday 4 November 2014

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following affirmative instrument:

- Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014 [draft].

Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014 [draft]

Introduction

2. The draft Order was made under section 56(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 and all other enabling powers.

3. This instrument amends the Criminal Procedure (Scotland) Act 1995 to make further provision for transposing the EU Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties (2005/214/JHA of 24 February 2005, more explicitly. According to the policy note, this instrument is intended to provide a solid foundation for transposing the provisions of the 2005 Framework Decision through a separate order which will be brought forward shortly.

4. Further details on the purpose of the instrument can be found in the policy note in the Annexe to this paper and an electronic copy of the instrument is available at: http://www.legislation.gov.uk/sdsi/2014/9780111024508/contents

Consultation

5. The policy note confirms that Order has been considered by the Scottish Court Service which is the central authority for the administration of the mutual recognition of financial penalties provisions and which acts as designated officials for the competent authority.

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 28 October 2014 and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit.

Justice Committee consideration

7. The Justice Committee is required to report to the Parliament on this instrument by 26 November 2014.

8. The instrument is subject to affirmative procedure (Rule 10.6. of Standing Orders). The Cabinet Secretary for Justice has lodged motion S4M-11278 proposing that the Committee recommends the approval of the instrument. The Cabinet Secretary will attend the Committee meeting on 4 November to answer any questions on the instrument, and then, under a separate agenda item, will be invited to speak to and move the motion for approval. It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 26 November 2014.

9. The Parliament will then be invited to approve the instrument.

10. The Committee is asked to delegate to the Convener authority to approve the report on the instrument for publication.

ANNEXE

Policy Note: Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014

1. The Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014 was made in exercise of the powers conferred by sections 56 and 82 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. It is subject to affirmative procedure.

Policy Objectives

2. The purpose of this Order is to amend the Criminal Procedure (Scotland) Act 1995 ('the 1995 Act') to make further provision for the transposition of the European Union Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties (2005/214/JHA of 24 February 2005) ('the 2005 Framework Decision'), in order to reflect more explicitly the terms of the Framework Decision.

3. By way of background, the 2005 Framework Decision was transposed by the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (SSI 2009/342)('the 2009 Order'). The 2009 Order introduced a scheme which enables Scottish fines and fixed penalties such as for Road Traffic Act offences or assault, of a value greater than €70, to be enforced elsewhere in the EU and vice versa. It did so by adding provisions to the 1995 Act. The 2005 Framework Decision applies to a wide range of offences such as theft, criminal damage or road traffic, fully listed in article 5 of the Decision, in relation to which financial penalties can be imposed. The 2009 Order came into force on 12 October 2009.

4. The 2005 Framework Decision has since been amended by the European Union Framework Decision on the Application of the Principle of Mutual Recognition to Decisions Rendered in the Absence of the Person Concerned at Trial (2009/299/JHA of 26 February 2009)('the 2009 Framework Decision'). An Order will be laid in early course to transpose its provisions and the amendments made by this Order will provide a solid foundation for that.

5. The Order makes it clear that when a requesting authority seeks enforcement of a financial penalty in Scotland, but has not provided the certificate that requires to accompany a request, the central authority in Scotland (the sheriff clerk at Edinburgh) must notify the requesting authority that the decision will not be enforced unless the required certificate is provided (article 7).

6. It also makes it clear that the competent authority for Scotland must, when considering a request for recognition, consult the competent authority in the issuing State before refusing recognition of the transfer of a financial penalty on certain grounds (article 7 (3)). Separately, the grounds for non-recognition now explicitly include transmission of an incomplete certificate (e.g. if not certified as accurate) or a certificate that manifestly does not correspond to the decision (article 7(1)).

Consultation

7. The Order has been considered by the Scottish Court Service who are the central authority for the administration of the mutual recognition of financial penalties provisions and act as designated officials for the competent authority. The amendment

to the 2005 Framework Decision will only affect the courts and the changes are minor and procedural in nature. As their practical impact is limited and there are no financial implications for individuals, business or the third sector, we do not believe there is a requirement for formal public consultation.

Impact Assessment

8. There are no equality impact issues and a Equality Impact Assessment (EQIA) has not been completed. The Order makes further provision for the administrative processes to be followed in accepting another Member States' financial penalty for enforcement. The changes to the process are minor and do not require the central or competent authority to make any decision that may involve, or impact on, protected characteristics.

Financial Effects

9. A final Business and Regulatory Impact Assessment (BRIA) has not been completed. The Order makes further provision for the administrative processes to be followed in accepting another Member States' financial penalty for enforcement. The changes to the administrative processes are minor. The Scottish Court Service (as the central authority) are content that there will be no significant operational impact arising from this Order.

Scottish Government
Justice Directorate
30 September 2014

Justice Committee

27th Meeting, 2014 (Session 4), Tuesday 4 November 2014

Draft Budget 2015-16

Note by the clerk

Background

1. The Scottish Government published its Draft Budget 2015-16[1] on 9 October 2014.

2. The Justice Committee has agreed to focus this year's budget scrutiny on the police and courts[2] budgets. At this meeting, the Committee will hear evidence on the police budget from HM Inspector of Constabulary in Scotland (HMICS), followed by the Association of Scottish Police Superintendents (ASPS) and Unison. This evidence will inform sessions with the Scottish Police Federation (SPF), Scottish Police Authority (SPA) and Police Scotland on 11 November, and with the Cabinet Secretary for Justice on 25 November.

3. SPICe has produced a briefing on the Draft Budget 2015-16: Justice which contains detailed information on the justice budget with a particular focus on the police and courts budgets. This is circulated with members' papers.

Police budget 2015-16

Previous scrutiny

4. Last year, the Committee examined the police budget 2014-15 and, during that scrutiny, explored the following key areas:

- the Scottish Government's continuing commitment to deliver 1,000 additional police officers[3];
- the level of backfilling of police staff posts with police officers;
- an appropriate workforce balance;
- local authority funding for additional police officers;
- the need to devolve budgets; and
- how additional police duties set out in recent legislation would be funded.

5. The Committee's report on the Draft Budget 2014-15 and the Scottish Government's response to that report are available at the following web page:
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/68005.aspx

Additional budgetary information

6. To assist this year's scrutiny of the police budget, the Committee has requested the following additional budgetary information from the SPA and Police Scotland:

- a breakdown of how the police budget for 2014-15 has been allocated and how specific savings for that year were made;

[1] The Scottish Government's Draft Budget 2015-16 is available at:
http://www.scotland.gov.uk/Resource/0046/00460440.pdf

[2] The Committee is due to take evidence on the courts budget on 18 November.

[3] The baseline figure for this commitment is 16,234, which was the number of police officers as at 31 March 2007.

- how the SPA and Police Scotland plan to allocate their budget and make their specified savings for 2015-16;
- any significant factors which limit the SPA's flexibility in managing relevant budgets; and
- any potential ways of achieving savings which have been considered but rejected.

7. It is understood that this information will be available on Friday 31 October. Written submissions from witnesses are also expected to be available by this date.

Recommendation

8. The Committee is invited to consider this information alongside the SPICe briefing on the Draft Budget 2015-16 (Justice) in advance of taking evidence from HMICS, ASPS and Unison at the meeting.

Justice Committee

27th Meeting, 2014 (Session 4), Tuesday 4 November 2014

Petitions

Note by the clerk

Introduction

1. The purpose of this note is to assist the Committee in considering a new petition and to update the Committee in relation to a number of on-going petitions.

2. Annexed to the note are submissions from petitioners to assist the Committee when considering their petition.

3. These petitions are—

New petition

- PE 1501: Public inquiries into self-inflicted and accidental deaths following suspicious death investigations.

On-going petitions

- PE 1280: Fatal Accident inquiries on deaths abroad;
- PE 1370: Independent inquiry into the Megrahi conviction;
- PE 1427: Multi Party Actions;
- PE 1449: Preserving an independent Scottish Administrative Justice Council;
- PE 1479: Legal profession and legal aid time bar;
- PE 1504: Civil Appeals; and
- PE 1510 and PE 1511 – Police and Fire Control Rooms.

Summary

4. Of the above petitions, PE 1501, PE 1280 and PE 1427 relate, either directly or indirectly, to issues where the Scottish Government has committed to legislating in the area (although not necessarily to address the points raised by the petitioner).

5. PE 1504 relates to legislation, the Courts Reform (Scotland) Bill, which was recently passed by the Parliament.

6. The paper provides an update on the latest position with PE 1370. Notes from a recent meeting between Police Scotland and Justice for Megrahi (JFM) are annexed to the paper, along with a recent submission from JFM.

7. In relation to PE 1449, the Committee has received a letter from the Chair of the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC), and correspondence from the petitioners. These letters are annexed to this paper.

8. PE 1479 relates to the time bar for complaints against solicitors. The Scottish Legal Complaints Commission (SLCC) is currently consulting on rule changes to

increase this time bar from one-year to three. The petitioner is aware of the consultation. He believes that there should be no time bar.

9. In relation to petitions PE 1510 and PE 1511, the Committee took evidence from the inspectors of constabulary and fire and rescue on 19 August.

New Petition

PE 1501: Public inquiries into self-inflicted and accidental deaths following suspicious death investigations

Terms of the petition
10. PE 1501 is a petition by Stuart Graham calling on the Scottish Parliament to urge the Scottish Government to introduce the right to a mandatory public inquiry with full evidence release in deaths determined to be self-inflicted or accidental, following suspicious death investigations.

Referral to the Justice Committee
11. In referring the petition to the Justice Committee, the Public Petitions Committee (PPC) has drawn the Committee's attention to the extensive body of evidence that it has received on this issue from the petitioner, Victim Support Scotland, the Scottish Government, the Crown Office and Procurator Fiscal Service (COPFS), the Law Society of Scotland and Police Scotland. Full details of the PPC's consideration of the petition, and the submissions it has received, are available here: (http://external.scottish.parliament.uk/GettingInvolved/Petitions/thevictimslastright).

12. As members will be aware, the Scottish Government has committed to bringing forward legislation during this session of the Parliament to implement the recommendations of Lord Cullen's Review of Fatal Accident Inquiry Legislation.

Existing petitions

PE 1280: Fatal Accident inquiries on deaths abroad

Terms of the petition
13. PE 1280 is a petition by Julie Love and Dr Kenneth Faulds calling on the Scottish Parliament to urge the Scottish Government to give the same level of protection to the families of people from Scotland who die abroad as is currently in place for people from England by amending the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to require the holding of an FAI when a person from Scotland dies abroad.

Latest position
14. As indicated above, the Scottish Government has committed to legislating on FAIs before the end of this Parliamentary session.

15. On 1 July, the Scottish Government published its consultation on legislation to reform FAIs[1]. The consultation, which closed on 9 September, sought views on permitting discretionary FAIs into deaths of Scots abroad where the body is repatriated to Scotland. The petitioner's response to the consultation is available here: http://www.scotland.gov.uk/Resource/0046/00460890.pdf.

PE 1370: Independent inquiry into the Megrahi conviction

Terms of the petition
16. PE 1370 is a petition by Dr Jim Swire, Professor Robert Black QC, Mr Robert Forrester, Father Patrick Keegans and Mr Iain McKie on behalf of Justice for

[1] Available here: http://www.scotland.gov.uk/Publications/2014/07/6772

Megrahi on opening an independent inquiry into the 2001 Kamp van Zeist conviction of Abdelbaset Ali Mohmed al-Megrahi for the bombing of Pan Am flight 103 in December 1988.

Latest position

17. The Committee considered the petition on 3 June and agreed to keep the petition open and to keep matters under review. Shortly after that meeting the Scottish Criminal Cases Review Commission received an application to review the conviction[2]. The petitioners have stressed, however, that this process is distinct from the petition.

18. In respect of the call for an independent inquiry, prior to the meeting on 3 June Police Scotland advised the Committee that a full investigation of JFM's allegations was resuming and that Police Scotland and JFM would hold future liaison meetings. JFM advised that "constructive progress" was now being made between itself and Police Scotland.

19. Police Scotland and JFM have provided the Committee with a note of the meeting, which took place on 7 July. A copy of that note is annexed. A further meeting took place in September. Both sides have agreed to meet every 2 to 3 months and will share notes with the Committee when they become available.[3]

20. On 30 October, JFM provided the Committee with a further submission. That submission is also annexed.

PE 1427: Multi Party Actions

Terms of the petition

21. PE 1427 is a petition by Robert Kirkwood on behalf of Leith Links Residents Association calling on the Scottish Parliament to urge the Scottish Government to implement the Scottish Civil Courts Review recommendations on multi-party actions by making changes to existing protocols that will (1) encourage the Rules Council to use rule of court 2.2 for multi-party actions; (2) modify court fees to a single payment; (3) encourage the Rules Council to introduce a protocol on recovery of documents; (4) clarify the common law right of nuisance, and (5) introduce compulsory insurance.

Latest position

22. The Scottish Government wrote to the Committee on 6 March 2014 advising that it would address the Scottish Civil Courts Review (SCCR) recommendations in this area in its response to Sheriff Principal Taylor's report on the Review of Expenses and Funding of Civil Litigation in Scotland.

23. The Scottish Government's formal response to Sheriff Principal Taylor's recommendations stated of multi-party actions:

> "The Scottish Government remains committed to introducing such a procedure and intends to give it further consideration with partners, including the Scottish Legal Aid Board. That consideration will cover the question of how such actions are funded, taking account of Sheriff Principal Taylor's recommendations. Again, to the extent that multi-party actions are interconnected with matters that we have committed to take forward by primary legislation such as damages

[2] The news release is available here: http://www.sccrc.org.uk/viewfile.aspx?id=616
[3] The note of the September meeting is not yet available.

based agreements, we intend to develop, and to consult on our proposed approach as part of that consultation."[4]

24. Giving evidence to the Committee on 3 June on the Scottish Government's response, the Minister for Community Safety and Legal Affairs advised that:

"In the longer term, we are committed to multiparty or class actions…We will consider it in respect of the package of legislation that we have talked about, but there are issues that have to be bottomed out when public funding is involved—for example, with the Scottish Legal Aid Board. We are not quite there yet in our certainty about whether we will put that into the package of legislation, but it is being considered for it."[5]

25. The petitioner has subsequently advised the clerks that:

"An important issue (not mentioned in proposed legislation) is access to documentation - i.e. currently the Freedom of Information Act does not apply to documents held by private companies in Scotland. It is therefore difficult to pursue claims (outlined in Sheriff Principal Taylor's Review) when private companies can presently withhold documents that could support claims".[6]

PE 1449: Preserving an independent Scottish Administrative Justice Council

Terms of the petition

26. PE 1449 is a petition by Dr John Wallace Hinton on behalf of Accountability Scotland on preserving an independent Scottish Administrative Justice Council when the UK Administrative Justice and Tribunals Council system is abolished, ensuring the new body has a critical user-interface to enable base-roots input from the public and that it has complete independence from political or civil service influence.

Latest position

27. The Scottish Tribunals and Administrative Justice Advisory Committee was formed by the Scottish Government on an interim basis to ensure that there is scrutiny of devolved matters from outwith the Scottish Government; and that there is a route for any issues affecting the administrative justice and tribunals system to be identified to the Scottish Ministers[7]. The Advisory Committee held its first meeting on 17 December 2013.

28. The Committee considered the petition at its meeting on 18 February 2014. As the Tribunals (Scotland) Bill was still completing its parliamentary passage[8] and as information was still being accumulated on the issue[9], the Committee agreed to keep the petition open. Prior to the meeting, the current Convener of Accountability

[4] (Review of Expenses and Funding of Civil Litigation in Scotland: A Report by Sheriff Principal James A Taylor – Scottish Government Response, p 19. Available here: http://www.scotland.gov.uk/Resource/0045/00451822.pdf)

[5] Justice Committee, Official Report, 3 June 2014, Cols 4621-22

[6] Email from petitioner to clerks – 7 September 2014

[7] The following link provides details on its membership: http://news.scotland.gov.uk/News/Administrative-Justice-and-Tribunals-853.aspx

[8] The Bill received Royal Assent on 15 April

[9] The Convener of Accountability Scotland wrote to the Committee on 13 February. A copy of that letter is available here: http://www.scottish.parliament.uk/S4_JusticeCommittee/General%20Documents/20140213_Submission.pdf

Scotland, Peter Stewart-Blacker, advised the Committee that it required time to prepare a report to the Committee, and that he was due to meet the Chair of the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC).

29. Mr Stewart-Blacker subsequently met the Chair of the Advisory Committee and has advised the clerks that he has outstanding concerns about the composition of the Advisory Committee and its funding. Those concerns relate, in particular, to what he considers to be a lack of representation for the end user on the Committee.

30. On 3 June 2014, the Committee wrote to Mr Hinton, Mr Stewart-Blacker and the Chair of STAJAC about the composition of STAJAC and its funding. In particular, the Committee sought information from the Chair of the level of representation for the end user on STAJAC. The Committee has now received submissions from Marieke Dwarshuis, Chair of STAJAC, from Mr Hinton (who has now left Accountability Scotland)[10], and from Mr Stewart-Blacker on behalf of Accountability Scotland. These submissions are annexed.

PE 1479: Legal profession and legal aid time bar

Terms of the petition

31. PE 1479 is a petition by Andrew Muir calling on the Scottish Parliament to urge the Scottish Government to amend the Legal Profession and Legal Aid (Scotland) Act 2007 by removing any references to complaints being made timeously.

Latest position

32. The SLCC previously advised the Committee that the SLCC Board has reviewed the issue and is proposing an extension to the time bar policy from one year to three. It is currently consulting stakeholders on this proposal as required by the 2007 Act[11]. That consultation closes on 17 November. The SLCC expects the new time bar to take effect for legal services provided after 1 January 2015. The relevant section from the revised Rules of the Scottish Legal Complaints Commission 2015 is annexed. The SLCC has previously advised the Committee that it will include the petitioner in that consultation.

33. Separately, the petitioner has contacted the clerks to make clear that his position has not changed: namely that he believes that the Committee should recommend the removal of the time bar.

PE 1504: Civil Appeals

Terms of the petition

34. PE 1504 is a petition by Kathie McLean-Toremar asking the Scottish Parliament to urge the Scottish Government to consider changing the current legislation regarding Civil Appeals from the Court of Session to the Supreme Court. The petition states that, "In accordance with paragraph 1.8 appeals from the Court of Session to the Supreme Court, a party litigant does not have the same rights as a criminal, a murderer, a sex offender or another person making the same appeal".

[10] The petition was submitted by Mr Hinton on behalf of Accountability Scotland (as Convener). Mr Stewart-Blacker (the current Convener) made clear to the clerks that Mr Hinton is no longer associated with the organisation and Mr Hinton's views are his alone. Throughout the process the clerks have corresponded both with Mr Hinton as original petitioner and with Mr Stewart-Blacker as Convener of Accountability Scotland.

[11] Details of the consultation are available here: http://www.scottishlegalcomplaints.com/about-slcc/what-we-do/our-processes/slcc-rules/slcc-rules-change-consultation-october-2014.aspx

Latest Position

35. The Committee considered the petition on 3 June and agreed to write again to the petitioner seeking clarification regarding the general public interest of her case and the precise reasoning she was given by solicitors for not representing her.

36. The petitioner has responded to the Committee. In relation to the Committee's question about the point of general public importance in her case, she states that it is:

- inequality of Arms, under Article 6 of the Human Rights Act 1998;
- delay by the Scottish legal system; and
- miscarriage of Justice.

37. In relation to the reasons given by solicitors for not representing her, the petitioner cited the following:

- pressure of work;
- insufficient time for submission;
- the stage in the process they were being approached;
- lack of specialist knowledge to consider matter;
- money; and
- conflict of interest.

38. The Committee considered the petitioner's general concerns about the rights of a party litigant as part of its scrutiny of the Courts Reform (Scotland) Bill. In its Stage 1 report, the Committee noted the petitioner's concern to correct what she perceives to be a flaw in the system in relation to appeals to the Supreme Court and considered that the provisions of section 111 of the Bill would appear to put party litigants and those with legal representation on an equal footing.

39. The Bill passed its final parliamentary stage on 7 October.

PE 1510 and PE 1511 – Police and Fire Control Rooms

Terms of the petitions

40. PE 1510 is a petition by Jody Curtis calling on the Scottish Parliament to undertake a committee inquiry into the closure of Police, Fire, and Non-Emergency Service Centres north of Dundee. In particular, the major concerns raised have been the loss of public knowledge; public safety; officers being off the street and overwhelmed in managing the increased workload this would create.

41. PE 1511 is a petition by Laura Ross calling on the Scottish Parliament to urge the Scottish Government to review the decision made by the Scottish Fire and Rescue Service to close the Inverness Control Room.

42. The Committee previously agreed to consider the issues raised by both petitions during its forthcoming one-off evidence session with HM Inspector of Constabulary in Scotland and HM Chief Inspector of the Scottish Fire and Rescue Service. Although the petitions were not directly referred to during that session, issues around centralisation of services and the loss of local knowledge were explored.

43. The Committee also received written evidence from emergency planning authorities, Police Scotland, the Scottish Fire and Rescue Service, the Scottish Police Federation and the Fire Brigades Union on the issues raised in the petitions. Responses were mixed, with some emergency planning authorities, such as

Aberdeenshire Council and Comhairle nan Eilean Siar, echoed the concerns of the petitioners, whilst others, such as South Lanarkshire Council, indicated that they were content with the changes.

44. **The Committee is invited consider what action it wishes to take in relation to each petition.**

ANNEXE A

PE 1370 – Justice for Megrahi

Written submission from Justice for Megrahi

Thank you for letting me know that the Justice Committee will next consider petitions at its meeting on Tuesday 7 October and requesting an update on liaison between JFM and Police Scotland in respect of the investigation into JFM's 9 criminal allegations.

As an update I have attached a summary of the last meeting on 7 July 2014 between the police and our Liaison Group.

It shows that a major police enquiry is continuing with a dedicated investigation team in place which is being proactive in collecting and assessing documentation and in interviewing potential witnesses. It is not known when their enquiry will be complete but it is expected to take some time yet.

JFM remains fully supportive of the Police Scotland enquiry however and is cooperating fully. We nevertheless continue to have little faith in the Crown Office who will be the final arbiters in relation to the eventual police report on our allegations.

We believe that the ongoing oversight of these matters by the Justice Committee, as part of their consideration of our petition PE1370, is essential and we trust that this review will continue until the outcome of the police enquiry is known and the Crown Office has made its related decisions.

Two further meetings with Police Scotland are planned for September and November and I will ensure that you are provided with a summary of the meeting's business for the information of your members.

We are also aware that the Scottish Criminal Cases Review Commission (SCCRC) continues to consider a submission by the Lockerbie relatives but as a campaign committee we have no locus in these matters.

Please do not hesitate to contact me if any further information is required.

Robert Forrester
Secretary of Justice for Megrahi on behalf of the Committee of Justice for Megrahi.
3 September 2014

MEETING RECORD
Police Scotland and Justice for Megrahi (JFM)
Tulliallan: Monday 7th July 2014
Present:
Justice for Megrahi (JFM): Iain McKie; Len Murray.
Police Scotland: Deputy Chief Constable Iain Livingstone; Detective Superintendent Stuart Johnstone; Detective Inspector Scott Cunningham.
Apologies: James Robertson

This is the second meeting held to facilitate liaison between Police Scotland and JFM in respect of the ongoing investigation by Police Scotland into JFM's complaint of 9 criminal allegations made in September 2012.

DCC Livingstone introduced the meeting and reiterated the importance of this forum. It was appropriate and necessary for Police Scotland and JFM to have full and frank discussion on related matters and also to provide an update in relation to the 9 criminal allegations. He highlighted this was a unique arrangement which was uncharted and untested.

DCC Livingstone confirmed that steady progress was being made into investigating the 9 allegations, with independent legal advice and scrutiny in place to fully support Police Scotland in terms of the complexities of the matters under investigation, and to ensure absolute transparency.

He also confirmed that this and further updates to JFM would be as informative as possible, but highlighted it was not appropriate to provide partial updates, to avoid reporting back on an incomplete basis, particularly where emerging findings have not first been subject to legal scrutiny and consideration. Ultimately, once all the investigations are completed in relation to all of the allegations then the conclusion and findings will be provided to JFM.

DCC Livingstone confirmed Police Scotland had made a visible and active commitment to resource this as a major investigation, and one that was now well under way with a group of specially trained and experienced resources working to the MIRSAP principles with HOLMES capacity.

D/Supt Johnstone provided reassurance that the work completed by Mr Patrick Shearer would be a useful foundation to proceed and emphasised the investigative strategy and processes would withstand robust and intense scrutiny.

DCC Livingstone confirmed that appropriate security measures were in place by way of a confidentiality agreement with resources and alarmed and monitored premises.

JFM were extremely satisfied that they felt they were now being listened to and that progress was being made by Police Scotland, particularly as there was a clear structure, process and plan in place. JFM reiterated that they had trust in the Police to fully investigate the complaints.

D/Supt Johnstone provided a comprehensive update on each strand of the investigation so far, and focussed on the processes and procedures adopted. Significant progress has been made with the enquiry moving apace through detailed

research and analysis, with the 9 criminal allegations had been separated into 5 categories as part of the overarching investigative strategy.

D/Supt Johnstone explained that the process adopted ensured a full and forensic examination of all relevant material was being undertaken and considered in respect of relevant legislation and guidance, and also in the context of evidence presented by experts and in academic reports. This approach is essential to satisfy the necessary level of scrutiny required in terms of the specific elements of this allegation.

Some categories will take considerable time due to a number of documents being in paper format and not on any electronic database.

A senior analyst has been appointed to critically analyse and examine all relevant material in what can only be described as a particularly complex area of work. JFM acknowledged the scale of the complexities of the different aspects of the enquiry, and reinforced their commitment to cooperate fully and share, where appropriate, experience and knowledge. This offer is welcomed by Police Scotland.

Brief discussion followed between both parties in acknowledgement of the recent submission of a fresh appeal to the SCCRC.

JFM re-iterated their continuing lack of trust in the Crown Office. DCC Livingstone confirmed the Crown Office had primacy over the live investigation to provide the appropriate direction as deemed necessary. However, it was highlighted that although the findings of the JFM investigation would be initially reported to the DCC Crime, with further independent legal scrutiny, ultimately these could be reported to Crown Office.

It was stressed by Police Scotland that there was complete transparency and independence in respect of the investigative work being progressed, which was fully acknowledged and complimented by JFM.

JFM confirmed the three aforementioned meeting representatives present at the meeting on 2nd April 2014 will provide the role of ‘JFM Liaison Group’ charged with responsibility for maintaining close police links and liaison.

Agreed by Police Scotland and JFM that they would mutually brief each other where they identified any speculative information or circulations elsewhere in respect of the investigation or the ongoing liaison between JFM and the police.

DCC Livingstone commented on the latest update provided to the Justice Committee by both parties, and the decision which confirmed the petition remained live and that the Justice Committee would maintain a watching brief.

In conclusion, JFM Liaison Group stated they were totally satisfied with the updates on progress so far, and agreed with the process to hold further meetings every 2 – 3 months, or as appropriate, and that a record of discussions is maintained and circulated to the relevant parties.

Both parties agreed that the discussions had been open, frank and extremely useful, and gave a commitment to build on this positive relationship.

Additional written submission from Justice for Megrahi

Justice for Megrahi supplement for the Justice Committee of the Scottish Parliament consideration of PE 1370 on 4th November 2014

PE 1370 has had unanimous cross party support from the Justice Committee for some time now. At its last consideration of 1370 (3 June 2014), it was decided that the Committee would maintain the petition open and observe a 'watching brief' over developments.

As previously indicated, there are two main initiatives being pursued which relate to our petition. A major Police Scotland investigation into our 9 allegations of criminality and the Scottish Criminal Cases Review Commission (SCCRC) consideration of an appeal application submitted by the Lockerbie relatives.

In relation to the police investigation, JFM has established a Liaison Group which is in regular contact with the police investigation team. Due to factors beyond my and Police Scotland's control I am presently not in a position to provide the Justice Committee with a summary of the last meeting on held on 29th September 2014 and can inform the committee that a further meeting is planned for 21st November. I can, however, state that the relationship between JFM and Police Scotland has improved immeasurably since the intervention of Sir Stephen House.

The dedicated Police Scotland investigation team is being proactive in collecting and assessing documentation and in interviewing potential witnesses. It is not known when their enquiry will be complete but it is expected to take some time yet.

In respect of the Lockerbie relatives' SCCRC submission, while we have no direct locus in these matters, we believe that the decisions made in relation to it by the SCCRC and Appeal Court will be important factors for the Justice Committee to consider in relation to our petition.

JFM remains fully supportive of the Police Scotland enquiry and has faith that the SCCRC will carry out their enquiries efficiently and effectively.

Nevertheless, given the Lord Advocate's unprecedented public condemnation of our allegations before any enquiry whatsoever had been made, we continue to have little faith in the Crown Office, who will be the final arbiters in relation to the eventual police report on our allegations. Furthermore, in light of the judiciary's new found powers via the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act [Section 7], we are also extremely concerned that the Appeal Court will use these powers to reject any legitimate referral from the SCCRC.

We remain most strongly of the opinion that the parliamentarians of the Justice Committee, as part of their ongoing assessment whether a public enquiry as requested in the JFM petition is required, have a particularly influential role to play in continuing its oversight of the ongoing Police and SCCRC enquiries and in keeping our petition open.

Robert Forrester (Secretary of Justice for Megrahi)
On behalf of the Committee of Justice for Megrahi
30 October 2014

ANNEXE B

PE1449 – Preserving an independent Scottish Administrative Justice Council

Written submission from the Scottish Tribunals and Administrative Justice Advisory Committee

I write in response to the Justice Committee's request of 3rd June 2014 to establish the extent to which the end user is represented in the deliberations of the interim Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC).

In establishing the membership of the Committee, it has been my aim to ensure skills, expertise and experience from a number of different backgrounds and perspectives, in order to ensure a balanced and well informed contribution from the Committee to policy and practice development in relation to the administrative justice and tribunals system in Scotland.

The aim therefore has been that the overall membership should allow for the perspective of users, advice providers, decision makers and experts/academics to be represented.

Membership of the Committee is as follows:

Professor Tom Mullen (Glasgow University School of Law)
Shaben Begum (Scottish Independent Advocacy Alliance)
Paul McFadden (Complaints Standards Authority, SPSO)
Lauren Wood (Citizens Advice Scotland)
Tom Drysdale (Tribunal Judge, retired)
John Sturrock (Core Solutions Ltd)
Douglas Proudfoot (East Lothian Council)
Sarah O'Neill (Consumer and legal policy consultant)

Members have been invited to join the Committee not to represent the organisation they work for at present, but to contribute on the basis of the expertise and experience they have gained in different roles, mostly over many years. Three members in particular have significant experience of either representing users directly in a variety of administrative justice or tribunal processes, and/or of representing the end user interest in related policy work:

Shaben Begum has an advocacy background stretching back over many years. She is currently Director of the Scottish Independent Advocacy Alliance (SIAA). Shaben previously worked for the Advocacy Service in Rampton Hospital before moving to Scotland in 2000 when appointed as Manager of the Patients Advocacy Service in the State Hospital, Carstairs.

Lauren Wood is Access to Justice Policy Officer at Citizens Advice Scotland. She is responsible for influencing decision makers and opinion formers to ensure access to justice policy and legislation is framed in the best interests of users and consumers.

Sarah O'Neill is a non-practising solicitor, with experience in the private, public and voluntary sectors. She is currently an independent consultant specialising in legal and consumer policy. She was formerly Director of Policy at Consumer

Focus Scotland, and prior to that Legal Officer at the Scottish Consumer Council, working extensively on civil and administrative justice issues from the perspective of the user/consumer. Sarah is also a member of the board of trustees of the Scottish Mediation Network and she established the first In-Court Advice project in Scotland, in Edinburgh Sherriff Court.

These Committee members have been invited to join the Committee specifically on the strength of their expertise and experience of representing users or the end user perspective in (administrative) justice issues, and so to ensure a strong and ongoing focus on promoting the interests of users of administrative justice and tribunals, as set out in the remit of the Committee.

In addition, the end user perspective is represented in the work of the committee through our recent stakeholder engagement event, attended by a wide range of over 70 stakeholders, including end users. The feedback gained at this event has helped shape the work priorities for the Committee for the next 18 months.

In particular I should highlight in this context the work planned to monitor the impact on end users of the merger of the Scottish Tribunals Service and the Scottish Court Service; our intention to review the possible impact, resulting from the integration of health and social care, on the availability and effectiveness of remedies for grievances; and the work planned to explore, with local authorities, the financial and other impacts (including on end users) of not getting administrative decisions 'right first time'.

I believe that through the membership of the Committee, as well as through our intended work priorities, the Scottish Tribunals and Administrative Justice Advisory Committee demonstrates a focus on the user perspective and a commitment addressing the issues that impact on end users of the system.

Should you or members of the Justice Committee wish to discuss these matters further, I would be delighted to do so.

Marieke Dwarshuis
Chair
Scottish Tribunals and Administrative Justice Advisory Committee
30 June 2014

Written submission from Dr John Wallace Hinton

Answer to the request in the Official Report of the Justice Committee 3rd June 2014

Tribunals and Administrative Justice Council Advisory Committee: Concerns and Recommendations

I submitted this petition having had first-hand experience of failures of administrative justice in several contexts and much knowledge of the experiences of others. I am therefore aware of the need for an Administrative Justice body which is able to investigate and act – hopefully effecting the necessary changes in official 'cover-up' cultures. Unlike the STAJAC it will need to be independent of government, allow direct input from the public and it requires more adequate financial support.

The media publicize a few striking cases of maladministration involving suicides or the skulduggery in Edinburgh City Council, but otherwise rarely shows interest. Most of the cases to have hit the headlines have been from more populous England, but is Scottish officialdom better? We have the SPSO, but however one judges the adequacy and effectiveness of his investigations, his job is to investigate *individual* acts of administration – not to analyse the administrative culture in which they flourish – and he is not qualified to make legal judgements.

Maladministration, service failures and poor administrative justice are bad enough, but insufficient attention is paid to the severe psychological effects on individuals produced by their frustrated efforts to achieve administrative justice for themselves or their communities. As a psychologist specializing in psychological stress, I am very aware of the serious effects of bureaucracy-induced stress responses – including mental and physical illnesses. Often these translate to substantial financial costs to be borne by the Scottish National Health Service and employers.

I was shocked when the Scottish Committee of AJTC Council was abolished in August 2013 and I have been informed of the great disappointment of all the former members of this Committee. I welcome the establishment of the interim Advisory Committee (STAJAC) earlier this year, and I understand that also to be the view of former SCAJTC members. However, I share their concerns at the **absence of any structure in Scotland which can exercise, monitor and review powers in respect of the reserved as well as devolved administrative justice matters in Scotland**. **The absence of clear guarantees of independence for STAJAC is a major concern** (ref. 1). It is to be hoped that, for the future of Scottish democracy, a powerful Administrative Justice body will be created which has the necessary independence and powers. Whilst the oversight of Tribunals is vitally important, I am concerned with Administrative Justice in the broadest sense, and maybe there is a need for two bodies, bearing in mind the range of Administrative Justice matters dealt with here.

I agree with the following statements made by Richard Henderson, former Scottish AJTC Committee Chairperson (ref.1). He says: “Whatever the outcome of the upcoming referendum it is in my view imperative that the situation for administrative justice in Scotland is considered with the aim of securing integrated responsibility for all tribunals with jurisdiction in Scotland, that responsibility to lie with a Scottish institution. It is also imperative whatever the outcome of the referendum that the principles for an administrative justice system for Scotland, as recommended by the AJTC, are recognized by both Scotland’s Government and Parliament and that steps are set in place to secure their incorporation in the future development of administrative justice in this jurisdiction.

I have no doubt that a proper respect for administrative justice sits at the heart of any democratic country whether that is within a devolved or independent context, and whether Administrative Justice is to be seen as an integrated aspect of civil justice or separately. Administrative Justice is as, if not more, significant on a daily basis to citizens of this country than any other aspect of civil justice. It permeates the way decisions are taken which affect us individually, the way we are governed and the whole relationship between citizen and state.

To my mind, bearing in mind the asymmetric relationship between citizens and the state, it is axiomatic that the operation of the administrative justice system must be properly monitored and reviewed on a permanent basis, and that any such monitoring and review must be committed to a body which is independent of government,

including any other structure which operates powers on behalf of government which directly affect the rights and interests of individual citizens."

Some examples of where a Scottish Administrative Justice body should have powers of censure and powers to recommend statutory improvements, in reports to the Scottish Parliament

Public Authorities and officials are largely unaccountable and they often operate without transparency. They cover up for each other –(ref Hillsborough disaster, mid-Staffordshire NHS Trust fiasco, North Ayrshire & Arran patient safety cover-up (Rab Wilson, ref 2 & 3). Two submissions by myself and Dr Richard Burton to the SPSO concerned maladministration and service failure of Glasgow City Council, where Council officials lied (with impunity) to avoid censure. The SQA is only required to account to Scottish Parliament for its 'systems' not its errors in administration and its employees have a gagging order. The extent of the lack of accountability and the degree of cover-up by the SQA is illustrated in the Petition and Accountability Scotland Conference paper of Ian Thow (ref 3): his Petition was thrown out on the advice of officials with an interest in avoiding trouble. The School inspectorate is a law unto itself, not accountable to the SPSO, so social injustices cannot be censured and we have cases of dedicated Scottish head-teachers committing suicide or becoming seriously ill. In our extensive experience, the SPSO can dismiss complaints by using the arbitrary12-month rule, when a proper consideration requires scrutiny of a long sequence of events. Also complainants can be denied access to critical correspondence on their cases from the body complained about. These strategies apply especially to complaints about council planning departments, public consultation inadequacies, errors in implementation of developments and extended lacks of enforcement of planning stipulations (ref.3).

A new Scottish Administrative Justice body should be empowered to ensure that there is complete openness in public bodies and that their complaint handlers are unconnected with the individuals or bodies complained about.

To ensure Administrative Justice in operation of our public services it should be obligatory for all employees to report faults in the system, just as it is in the aviation industry – faults in hospitals are just as important as faults in planes! For a start the elimination of employment confidentiality agreements and gagging orders should be enforced in all areas where issues of national security are not involved. The Scottish Health Secretary has introduced regulations for the Scottish NHS to stop gagging orders, but it needs an Administrative Justice Council to ensure that this is implemented.

A powerful AJTC would eliminate much of the load on the SPSO by ensuring that public bodies obeyed the law and got it 'right first time'. Whilst the SPSO should be obliged to attend meetings of the new body, it should not be part of it, as that would inhibit the necessary impartial oversight of its operations. So finally, the SPSO must be held to account for the operation of its **systems** as was stipulated in the remit of the Scottish Committee of AJTC. In fact, the **previous Scottish Committee of the AJTC was the only independent body that could report to Parliament on the fairness of the SPSO's systems and other matters of Administrative Justice. It is essential that this continues.**

Craigforth surveys show satisfaction rates of the SPSO to be exceptionally low by world standards. The Gibraltar ombudsman delivers almost 100% satisfaction, so the

new Administrative Justice body should investigate and report on how the SPSO could achieve this, after exploring why the SPSO does so badly.

Composition of the Scottish Administrative Justice Council

The new Scottish Administrative Justice Council should be composed exclusively of independent lawyers with experience in the field of Administrative Justice and no connection to secret societies or any public body interests. The way they are appointed is critical, and they should not be political appointees, but voted into office by their qualified peer group

Public input to the Scottish Administrative Justice Council

The Council should be able to receive and act upon **direct input from the public** – e.g. from individual citizens, Community Councils and voluntary bodies.

Scrutiny of Proposed Legislation to ensure Administrative Justice in new laws

Scotland has no governmental body for the scrutiny of new laws in regard to administrative justice. Whether or not Scotland becomes independent with a written constitution, Parliament requires a legislation-revising body to ensure that its citizens are safeguarded from the use of arbitrary powers in the public services due to 'loose' regulations and lack of accountability and lack of transparency in the functioning of public bodies. Whilst the Scottish Parliament's committee system is admirable, and public consultations desirable, it is not enough: ultimately legislation must pass independent legal scrutiny, and an expanded Scottish Administrative Justice Council could handle this.

The PASC report applied to the UK AJTC, but it is crucial to our Scottish case.

Please note especially its last paragraph: **"**The AJTC should be part of the machinery to help government get decisions **'**right first time**'**. Instead, over half a million decisions [in the UK] have to be reviewed each year, at great cost and considerable injustice and inconvenience to citizens."

As Professor Tom Mullen points out (ref 4), there is a serious need for an Administrative Justice oversight policy and a necessity to maintain an oversight of official administrative systems – to identify weaknesses, and a need to help Government Departments with policy. And Professor Michael Adler (ref 2) has stated that the new Administrative Justice body should be "able to consider issues on its own initiative; proactive rather than reactive".

Cost of a Scottish Administrative Justice Council

In Professor Mullen**'**s view (ref 4) it is not a problem to implement an Administrative Justice System, but the question is, will the Scottish Government pay for it? Professor Mullen suggested that half a million pounds would cover costs. However a million pounds pa may be required – a quarter of the cost of the bureaucracy of the SPSO (about which Alex Neil (ref 5) has quoted: 'it's not worth a farthing!' - after considering its functioning and the degree of dissatisfaction.)

Summary of Recommendations

1) **Adequate funding to provide a proper secretariat** (initially at least 25% of

what the SPSO receives).

2) **Guarantees of independence of government** (no party allegiances or secret society membership).

3) **Consist exclusively of highly qualified lawyers**, experienced in the field of Administrative Justice (say 9 as with the Supreme Court of the USA).

4) **No political influence in selection** of members for appointment. They should be voted as candidates by their lawyer peers and membership ratified by the Scottish Parliament.

5) **Security of tenure** (as with the USA Supreme court) to reduce risk of outside pressures regarding re-appointment. Members would hold office ad vitam aut culpam (i.e. they would lose office if they were guilty of corruption or other gross moral turpitude).

6) **The powers** should include the investigation and **reporting to parliament on:**
a) Administrative Justice matters relating to public authorities and officials.
b) Administrative Justice in proposed legislation.
Should be able to consider issues on its own initiative: proactive rather than reactive.

7) **Input from individual citizens, Community Councils and voluntary bodies should be allowed.**

Finally, **without Administrative Justice there can be no guarantee of the Social Justice** for which Scotland can be rightly proud as an important feature of its culture, so to oversee **it is imperative to have a powerful independent council.**

Dr John Wallace Hinton
Petitioner: Petition PE1449
(A S Convener retired)
31 August 2014

References:

(1) Letter from Richard Henderson (ex Chair of Scottish Council of the AJTC) 26.08.14. Quotes made from this with his permission.

(2) http://www.dailyrecord.co.uk/news/health/whistleblower-nurse-vindicated-as-nhs-board-1129105

(3) Making Scottish Public Services Accountable, Accountability Scotland Conference The Scottish Parliament Committee Room 3 Monday 16th Sept 2013, (Supported by Glasgow Human Rights Network). Proceedings published on Accountability Scotland website: http://accountabilityscotland.org.uk

(4) Petition PE1449

(5) Alex Neil MSP speaking in support of eight petitions lodged by constituents at Petitions Committee hearing, Scottish Parliament, calling for the Scottish Government

to commission an independent review of the SPSO. The petitions, PE1342, PE1343, PE1344, PE1345, PE1346, PE1347, PE1348, and PE1349. 9 September 2010.

Written submission from Accountability Scotland

Scotland's administrative justice system needs to be properly monitored and reviewed on a permanent basis in respect of both reserved and devolved matters. The Advisory Committee (STAJAC) is a useful interim measure, but it is poorly funded, is not clearly independent of government and has no provision for direct input from members of the public that have actually suffered administrative injustice. Sound administrative justice is important to us all individually for its influence on decision making, governance and the whole relationship between citizens and state.

Much was made of the delivery of social justice in the referendum campaigns. Social justice can only be delivered through effective administrative justice. We have not so far seen much evidence of effective administrative justice in Scotland. This needs exhaustive research and subsequent reform.

All this is surely accepted as axiomatic, but it may be useful for us to indicate some specific problems that a new committee should address.

There needs to be much more transparency in the functioning of public bodies. Complaint handlers should be unconnected with the individuals or bodies complained about. Indeed, there can be no confidence in investigations of an authority by its own staff; i.e. there must be structural independence. (Recall the Kevin Ruddy case in this connection in which police complaints handling breached the European Convention on Human Rights through lack of structural independence – because the investigating officer was of the same force.)

There should be no gagging orders, no confidentiality agreements and no victimization of whistle blowers. Instead, it should be obligatory for employees to report faults, as in the aircraft industry – a duty of candour for all public employees.

Vital to administrative justice is the SPSO. However, the ombudsman can only investigate individual acts of maladministration and, although he has instituted a procedure for complaints handling by bodies under his jurisdiction, it is not in his remit to oversee the whole of the administrative justice landscape nor can he consider the complaints of whistle blowers. It should be an urgent task of a new justice committee to consider the adequacy and effectiveness of SPSO investigations and subsequent outcomes to establish why the SPSO has achieved satisfaction rates no better than 50% (as shown by the Craigforth surveys). These compare poorly with satisfaction rates of other ombudsmen worldwide, e.g. in Australia, New Zealand and, most strikingly Gibraltar where satisfaction is very close to 100%. Part of the problem seems to be inherent in the Scottish Public Services Ombudsman Act 2002, or at least in the way it is interpreted; the proposed committee should look into this. (We especially have in mind that complainants cannot see and check the correctness correspondence between SPSO and the body complained about.) A committee with statutory powers of investigation and reporting is needed to establish through statistics the present and future performance of the SPSO.

Most of the notable cases of administrative injustice to have been given media attention have been English (such as Mid-Staffordshire and the CQC), but we cannot assume that Scotland is better. Newspapers are mostly interested in big and simple

stories, but one has read of Scottish problems relating to HM Inspectorate of Education and the NHS and to the scandal of Edinburgh City Council. So Scotland cannot be complacent; we do need a body independent of government and adequately funded to oversee administrative justice.

The views we express here accord with STAJAC's document "Workplan May 2014 – December 2015", but here we also call attention here to some specific issues for the proposed committee to address. We regard our "Submission provided by the petitioners on 23 May 2013" to be still valid.

Accountability Scotland
25 September 2014

ANNEXE C

Proposed Rules of the Scottish Legal Complaints Commission 2015 – relevant extract

Time limits

For complaints where work was first instructed or the date of the alleged occurrence of the specific act, omission or conviction complained of was prior to 1 January 2015 the following rules will apply:

(1) Subject to the provisions contained in Rule 7(4):

(a) A complaint solely alleging professional misconduct, unsatisfactory professional conduct or a conviction, will not be accepted if, in the opinion of the Commission, it is made to the Commission more than 1 year after the alleged occurrence of the professional misconduct, unsatisfactory professional conduct or conviction complained of.

(b) A complaint made by or on behalf of a client, i.e. where professional services have been provided by a practitioner in connection with any matter in which the practitioner has been instructed by the complainer, alleging inadequate professional services or both inadequate professional services and professional misconduct/unsatisfactory professional conduct/a conviction will not be accepted if, in the opinion of the Commission, the complaint is made more than 1 year after the date on which any services in respect of that matter were last provided by that practitioner to that client.

(c) A complaint made by a third party, i.e. where the professional services have been provided by a practitioner in connection with any matter in which the practitioner has not been instructed by the complainer or by any party on whose behalf the complaint is made, alleging inadequate professional services or both inadequate professional services and professional misconduct/unsatisfactory professional conduct/a conviction, will not be accepted if, in the opinion of the Commission, the complaint is made more than 1 year after the alleged occurrence of the specific act or omission complained of.

For complaints where work was first instructed or the date of the alleged occurrence of the specific act, omission or conviction complained of was on or after 1 January 2015 the following rules will apply:

(2) Subject to the provisions contained in Rule 7(4):

(a) A complaint solely alleging professional misconduct, unsatisfactory professional conduct or a conviction, will not be accepted if, in the opinion of the Commission, it is made more than 3 years after the alleged occurrence of the professional misconduct, unsatisfactory professional conduct or conviction complained of.

(b) A complaint made by or on behalf of a client, i.e. where professional services have been provided by a practitioner in connection with any matter in which the practitioner has been instructed by the complainer,

alleging inadequate professional services or both inadequate professional services and professional misconduct/unsatisfactory professional conduct/a conviction, will not be accepted if, in the opinion of the Commission, the complaint is made more than 3 years after the date on which any services in respect of that matter were last provided by that practitioner to that client.

(c) A complaint made by a third party, i.e. where the professional services have been provided by a practitioner in connection with any matter in which the practitioner has not been instructed by the complainer or by any party on whose behalf the complaint is made, alleging inadequate professional services or both inadequate professional services and professional misconduct/unsatisfactory professional conduct/a conviction, will not be accepted if, in the opinion of the Commission, the complaint is made more than 3 years after the alleged occurrence of the specific act or omission complained of.

(d) Where the practitioner has written to the complainer –

(i) to the effect that the practitioner will take no further steps to resolve the complaint, and that the complainer has the right to make a complaint to the Commission, and

(ii) in the same written communication has provided to the complainer the full address and contact details of the Commission,

the complaint will not be accepted if, in the opinion of the Commission, the complaint is made more than 6 months after the date of that written communication.

(e) For the avoidance of doubt, the period of 6 months set out at (d) above does not run consecutively with the time limits set out elsewhere in Rule 7(2) and it does not serve to extend the time-limits set out in 7(2)(a), (b) and (c).

(3) In determining whether the period of 1 year mentioned in paragraph (1) or the period of 3 years mentioned in paragraph (2) above has elapsed, there is to be disregarded any time during which the complainer was, in the opinion of the Commission, excusably unaware of the alleged:

(a) professional misconduct, unsatisfactory professional conduct or conviction;

(b) inadequate professional services.

(4) Notwithstanding paragraphs (1) and (2) above, the Commission may proceed to take preliminary steps and further action as regards a complaint that has not been made within the Commission's time limits if there are, in the opinion of the Commission:

(a) exceptional reasons why the complaint was not made sooner;

(b) exceptional circumstances relating to the nature of the complaint; or

(c) the circumstances are such that the Commission considers it to be in the public interest so to proceed.

ANNEXE D

PE 1504: Submission from Kathie McLean-Toremar in response to questions from the Committee

What the point of general public importance was in your case ?

(Please note as I stated in my opening statement, this is not about my case but every person domiciled in Scotland representing themselves will find themselves in this position being denied Access to Justice due to paragraph 1.8.)

However,

1. Inequality of Arms ,Article 6 Human Rights Act

2. Inordinate and Inexcusable delay by the Scottish Legal system.
Ie a case taking six years to come to court, then because of a solicitors mistake another 2 years to come to Proof. Making a total of 8 years to wait for a case to be heard, an inconceivable delay to access to justice.

3. Miscarriage of Justice.

What the reasons were for 38 solicitors not representing you were.

1. Pressure of work

2. Insufficient time for submission, please note you only have 42 working days, for a case that has spanned over 10 years.

3. Late stage of process.

4. Lack of specialist knowledge to consider matter.

5. Money.

6. Conflict of interest.

(I had reported the solicitor who had originally represented me in my case to the Law Society and he was found to be guilty of inadequate professional service and fined, this was known throughout the legal services and it was stated to me over and over that for a solicitor to represent me would be a ‘conflict of interest’ as the eminent solicitor who had made this mistake was still practising and as he was a Glasgow solicitor ,he was in fact instructing Edinburgh solicitors to instruct Counsel via his cases in the Court of Session. This would in turn basically means a loss of income if any solicitor helped me.) Please note where Mr.Chic Brodie asked me to clarify what I had stated, ‘a Glasgow solicitor has to instruct an Edinburgh solicitor so as to approach Counsel at the Court of Session.’ he does not approach directly to Counsel.

Only Counsel in Scotland can sign an application to the Supreme Court submitted by a Scottish subject. Therefore a Scottish subject are, unlike the overwhelming majority of UK subjects, denied the opportunity to approach the vast majority of UK practising Counsel to seek their signature. This is a limitation which significantly inhibits choice, and has been recognised by authorities throughout the rest of the UK as such.

So a Scottish person is blatantly denied Access to Justice.

Please also note that a member of the Justice Committee Roderick Campbell an advocate with Ampersand ie a member of the Faculty of Advocates, who has particular interest in Human Rights and Professional Negligence ,and knows what I have stated about paragraph 1.8 and Glasgow solicitors instructing Edinburgh solicitors re Counsel to be fact.

Kathie McLean-Toremar
30 July 2014

Justice Committee

27th Meeting, 2014 (Session 4), Tuesday 4 November 2014

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instrument:

- Legal Aid and Assistance By Way of Representation (Fees for Time at Court and Travelling) (Scotland) Regulations 2014 (SSI 2014/257);

2. Further details on the procedure for negative instruments are set out in Annexe A.

Legal Aid and Assistance By Way of Representation (Fees for Time at Court and Travelling) (Scotland) Regulations 2014 (SSI 2014/257)

Introduction

3. The instrument was made under section 33(2)(a) and (b) and (3) of the Legal Aid (Scotland) Act 1986. The purpose of the instrument is to bring in a consistent approach as to how solicitors must charge their time engaged at court across civil legal aid, criminal legal aid, legal aid in contempt of court proceedings and advice and assistance for matters relating to assistance by way of representation.

4. The instrument comes into force on 10 November 2014.

5. Further details on the purpose of the instrument can be found in the policy note (see below). The Business and Regulatory Impact Assessment also provides some background information and is available at:
http://www.legislation.gov.uk/ssi/2014/257/pdfs/ssifia_20140257_en.pdf

6. An electronic copy of the instrument is available at:
http://www.legislation.gov.uk/ssi/2014/257/contents/made

Consultation

7. The policy note on the instrument states that the Scottish Government shared a discussion paper at an early stage and later a draft of the instrument with the Legal Aid Board, the Faculty of Advocates and the civil and criminal negotiating teams of the Law Society of Scotland and that these bodies are content with the proposal.

Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 7 October 2014 and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit.

Justice Committee consideration

9. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 17 November 2014.

Policy Note: Legal Aid and Assistance By Way of Representation (Fees for Time at Court and Travelling) (Scotland) Regulations 2014 (SSI 2014/257)

The above instrument was made in exercise of the powers conferred by section 33(2)(a) and (b) and (3) of the Legal Aid (Scotland) Act 1986. The instrument is subject to negative procedure.

Policy Objectives

The Scottish Government remains committed to maintaining a fair, high quality and equitable system which maintains public confidence at an affordable and sustainable level of expenditure. It is imperative, therefore, that savings are made wherever possible. In 2011 the Scottish Government set out its proposals in *A Sustainable Future for Legal Aid* to take forward a series of legal aid reforms.

The instrument will bring in a consistent approach as to how solicitors must charge their time engaged at court across civil legal aid, criminal legal aid, legal aid in contempt of court proceedings and advice and assistance (A&A) for matters relating to assistance by way of representation (ABWOR). This will bring about savings to the Scottish Legal Aid Fund and will assist with the development of the Scottish Legal Aid Board's ("the Board") online accounts system.

The instrument will ensure that the actual time engaged at court by solicitors – specifically for advocacy (conduct of the hearing), non-advocacy (work other than the hearing) and travel – is added up and then the total time is rounded up to the nearest quarter of an hour.

There can often be gaps in between the times the solicitor is engaged at court. For example:

Activity	**Time**	**Actual time engaged (mins)**
Travel to court	9:30-9:50	20
Meeting with client	9:50-9:55	5
Meeting with Procurator Fiscal/Advocate Depute	10:10-10:30	20
Waiting for hearing	10:30-11:00	30
Conduct of hearing	11:00-12:00	60
Meeting with client	12:10-12:15	5
Travel to office	12:30-12:45	15

Under the present provisions, there is an ambiguity regarding whether the rounding up to the nearest quarter hour should take place on basis of the total time engaged per day in a given type of work, or whether each block of time engaged in activities falling under a particular fee heading should be rounded up individually. The effect of the amendments is that the actual time the solicitor is engaged at court or travelling is aggregated and then rounded up. In the above example, this would produce the following results:

Activity	**Time**	**Actual time engaged (mins)**	**Time charged (rounded up to nearest ¼ hour)**
Travel to court Travel to office Total:	9:30-9:50 12:30-12.45 	20 15 35	 45
Meeting with client Meeting with Procurator Fiscal/Advocate Depute Waiting for hearing Meeting with client Total:	9:50-9:55 10:10-10:30 10:30-11:00 12:10-12:15 	5 20 30 5 60	 60
Conduct of hearing	11:00-12:00	60	60
	Grand total	155	165

Consultation

The Scottish Government shared a discussion paper at an early stage and later a draft of the instrument with the Board, the Faculty of Advocates and the civil and criminal negotiating teams of the Law Society of Scotland. They are content with the proposal.

Impact Assessments

An equality impact assessment for this policy was undertaken and is attached. There are no equality impact issues.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that there will be a single method of calculation of the aggregated time for solicitors to manage, regardless of the type of proceedings or legal assistance available in the case. Having a single calculation is also beneficial to the development of the Board's online accounts system and will achieve an estimated full year saving to the Legal Aid Fund in the region of £100,000-£150,000.

Scottish Government
Justice Directorate
22 September 2014

ANNEXE A

Negative instruments: procedure

Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

Each negative instrument appears on the Justice Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/64215.aspx

Justice Committee

27th Meeting, 2014 (Session 4), Tuesday 4 November 2014

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following instrument which is not subject to any parliamentary procedure:

- Rules of the Scottish Land Court Order 2014 (SSI 2014/229).

Rules of the Scottish Land Court Order 2014 (SSI 2014/229)

Introduction

2. The instrument was made under paragraph 12 of the Schedule to the Scottish Land Court Act 1993(a). The purpose of the instrument is to set out the practice and procedure to be followed in the Scottish Land Court, with effect from 22 September 2014. The Rules replace the previous Rules, which are revoked.

3. The instrument came into force on 22 September 2014.

4. An electronic copy of the instrument is available at:
http://www.legislation.gov.uk/ssi/2014/229/contents/made

Delegated Powers and Law Reform Committee consideration

5. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 30 September 2014 and agreed to draw the instrument to the attention of the Parliament for the following reasons:

6. There are the following minor drafting errors:

(a) The reference in rule 20(1) to the rights conferred by paragraphs (2) and (5) of this rule should be to the rights conferred by paragraphs (2) and (6);

(b) Rule 50(1) refers to "the process in the case" under rule 49. The reference should be to "the process in the application", as that is the term defined by rule 49; and

(c) The reference in rule 97(3) to a written submission under paragraph (1) of that rule should be to a written submission under paragraph (2).

7. There is also a failure to follow normal drafting practice, as various provisions in the order are not drafted in gender-neutral terms. This applies in rules 7(1), 58(4), 96(8) and 106(4) in the Schedule to the Order.

8. Separately, the DPLR Committee noted that it would have been useful had the planned timing of the instrument allowed a period longer than two sitting days between the date when it was laid before the Parliament and the date when the provisions were

brought into force, to afford the DPLR Committee the opportunity to scrutinise the instrument before the commencement date. The DPLR Committee also noted the explanation of the timetable given by the Scottish Land Court, and that the court regrets the inadvertent failure to allow time for scrutiny.

9. The relevant extract from the DPLR Committee's report on the instrument is reproduced on page 2 of this paper.

Justice Committee consideration

10. The instrument was laid on 21 August 2014 and the Justice Committee has been designated as lead committee.

Procedure
11. This instrument is not subject to any parliamentary procedure. It has been referred to the Committee under Rule 10.1.3 of Standing Orders. However, there is no formal requirement for the Committee to consider it.

12. The Committee has agreed that these types of instruments will not normally be placed on a Committee agenda unless—

- the DPLR Committee has drawn the instrument to the lead committee's attention on technical grounds; or
- a member of the Justice Committee has proposed to the Convener that the instrument goes on the agenda, and the Convener agrees.

13. In addition, where the clerks are aware of particular issues with an instrument not subject to parliamentary procedure, they will draw this to the Convener's attention, for consideration of whether to put it on the agenda.

Recommendation

14. The Committee is invited to note the instrument and make any comment on it. In particular, in light of the concerns raised by the DPLR Committee, the Committee is invited to endorse the conclusions reached in the DPLR Committee's report.

Extract from the Delegated Powers and Law Reform Committee 52nd Report 2014

Rules of the Scottish Land Court Order 2014 (SSI 2014/229)
(Justice Committee)

1. The purpose of the Order is to set out rules governing the practice and procedure to be followed in the Scottish Land Court with effect from 22 September 2014. The Order also revokes the previous rules, contained in the Scottish Land Court Rules 1992 (SI 1992/2656).

2. The Order came into force on 22 September 2014.

3. In considering the instrument, the Committee asked the Scottish Land Court for an explanation of certain matters. The correspondence is reproduced in the Annexe.

4. There are some drafting errors in the instrument, as set out below. There is also a failure to follow normal drafting practice, as various provisions in the order are not drafted in gender-neutral terms. This is also explained below.

5. The Committee also sought an explanation why the instrument, which is subject to the default laying requirement, was laid just prior to a Scottish Parliament recess period and came into force immediately after that recess on 22 September 2014, with the result that the Committee had no opportunity to scrutinise it prior to it coming into force. The Committee asked why the instrument could not have been laid before or after the recess, to enable such scrutiny to take place.

6. The Scottish Land Court's response states that it regrets the inadvertent failure to give the Committee time to scrutinise the rules before they came into force, and acknowledges that the court should have been more alive to the effect which the two separate periods of recess have had on the Parliamentary timetable this year. The response explains that the court wished to ensure that the new rules were enacted before its Chairman Lord McGhie retires in October and that the coming into force date was chosen accordingly. It further explains that there were unexpected delays in having the instrument signed by members of the court and approved by the Scottish Ministers.

7. **The Committee draws the instrument to the attention of the Parliament on the general reporting ground for these reasons:**

8. **Firstly there are some minor drafting errors, as follows:**

(a) The reference in rule 20(1) to the rights conferred by paragraphs (2) and (5) of this rule should be to the rights conferred by paragraphs (2) and (6);

(b) Rule 50(1) refers to "the process in the case" under rule 49. The reference should be to "the process in the application", as that is the term defined by rule 49; and

(c) The reference in rule 97(3) to a written submission under paragraph (1) of that rule should be to a written submission under paragraph (2).

9. **Secondly there is a failure to follow normal drafting practice, as various provisions in the order are not drafted in gender-neutral terms. This applies in rules 7(1), 58(4), 96(8) and 106(4) in the Schedule to the Order.**

10. **Separately, the Committee notes that it would have been useful had the planned timing of the instrument allowed a period longer than 2 sitting days between the date when it was laid before the Parliament and the date when the provisions were brought into force, to afford the Committee the opportunity to scrutinise the instrument before the commencement date. The Committee also notes the explanation of the timetable given by the Scottish Land Court, and that the court regrets the inadvertent failure to allow time for scrutiny.**

ANNEXE

Rules of the Scottish Land Court Order 2014 (SSI 2014/229)

On 11 September 2014, the Scottish Government was asked:

1. The instrument is subject to the default laying requirement in section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. It was laid on 21 August 2014 and comes into force on 22 September 2014. The Scottish Parliament is in recess from 23 August 2014 until 21 September 2014 (inclusive). Accordingly the Committee will not have an opportunity to scrutinise the legal and technical validity of the instrument prior to it coming into force.

Can the Scottish Government /Scottish Land Court explain why the instrument could not have been laid either before or after the recess, to afford the Committee the opportunity of scrutinising it?

2. In the Schedule to the instrument, rule 7(1) uses a gender-specific pronoun in referring to the Principal Clerk of the court. Normal drafting practice is to avoid the use of gender-specific pronouns. Can you explain why there has been a failure to follow normal practice in this case, and would you propose to take any corrective action?

The question applies equally in respect of rules 58(4), 96(8) and 106(4).

3. Rule 14 concerns the lodging of answers and other responses. Paragraphs (5) and (7) of rule 14 provide for what may happen "where a party asks for an order by virtue of paragraph (4)". Paragraph (6) provides for what may happen "where a respondent asks for an order in terms of paragraph (4)".

Standing the use of the word "party" on the one hand and "respondent" on the other, are the provisions in paragraphs (5) and (7) intended to apply in different circumstances to the provision in paragraph (6)? Further, where an order is sought "by virtue of paragraph 4", is this intended to mean something different to where an order is sought "in terms of paragraph 4"?

Depending on the intention, is the meaning of the provisions in paragraphs (5), (6) and (7) considered to be sufficiently clear, and if so why?

4. In rule 20(1) should the reference to "paragraphs (2) and (5)" be to "paragraphs (2) and (6)"? If so, is any corrective action proposed?

5. Rule 21(2) provides for the appointment of a person as a commissioner for the purpose of taking possession or copies etc. of material relevant to a hearing. Does the Scottish Government / Scottish Land Court consider both the form and meaning of the paragraph to be sufficiently clear, and if so why? Alternatively, could the form or meaning be made clearer by the use of further divisions within the paragraph? If so, is any corrective action proposed?

6. Rule 40 provides for the remit of matters by the court to a person specially qualified by skill and experience. Rule 42 provides for the appointment by the court of a person with special qualifications to give evidence to the court. The remit under rule 40 must occur before the issue of the final order "in the application", while the

appointment under rule 42 must be made before the issue of the final order "in a case".

What does the Scottish Government/Scottish Land Court consider to be the effect of referring to the final order "in the application" on the one hand, and the final order "in the case" on the other? Specifically, are the two terms intended to have a different meaning and is that meaning considered to be sufficiently clear? If so, please explain why.

7. In rule 50(1), what is the intended meaning of "the process in the case under rule 49", and does this require further definition? We note that "the process in the application" is defined under rule 49(3), but not "the process in the case".

8. Rules 61 and 62 provide respectively for dispensing with the hearing of an appeal to the court, and where an appeal hearing is set down, the lodging of an outline of argument with the court. There appears to be no provision enabling the court to fix an appeal hearing. This is in contrast to rule 19(1), which expressly confers power on the court to fix a hearing in relation to an application to the court. It is also in contrast to rule 73 of the Scottish Land Court Rules 1992, which expressly requires the court to appoint a time and place for an appeal hearing.

In the absence of express provision, does the Scottish Government / Scottish Land Court consider that the rules enable the court to fix an appeal hearing?

The same question applies in relation to rules 68 and 69, with regard to the fixing of a hearing for an internal appeal.

9. In rule 97(3) should the reference to a written submission under paragraph (1) be to a written submission under paragraph (2)? If so, is any corrective action proposed?

10. Rule 97(4) provides that, at taxation, the party found liable in expenses is not entitled to be heard in relation to any item unless intimation has been given under paragraph (3) to the party found entitled to expenses, unless the auditor finds that the failure to intimate arose due to mistake, oversight or other excusable cause.

What is the intended position where the party found liable in expenses fails to identify the item in his or her written submission to the auditor under paragraph (2)? Is the policy intention that the auditor should be enabled to allow the party to be heard if satisfied that the failure to identify the item in submissions to the auditor arose due to mistake, oversight or other excusable cause? We note that that appears to be the position under rule 42.2(6) of the Rules of the Court of Session (SI 1994/1443) in relation to taxation of expenses in that court, although we appreciate the intention may of course be different in relation to the Scottish Land Court.

Depending on the intention, is any corrective action necessary?

11. The term "initial application" is used in rule 104(2)(b)(i). What is its intended meaning, and does it require further definition?

12. The Explanatory Note states that the Rules govern the practice and procedure to be followed in the Scottish Land Court with effect from 1st September 2014. Does

the Scottish Government / Scottish Land Court agree that the reference to the 1st September 2014 is erroneous, and does it propose to take any corrective action?

The Scottish Land Court responded as follows:

1. We regret having inadvertently failed to give the Committee time to scrutinise the Rules before they come into force and acknowledge that we should have been more alive to the effect which the two separate periods of recess have had on the Parliamentary timetable this year. The exercise of drafting and revising of the Rules has been a time-consuming and complex process, mainly driven by Lord McGhie and requiring to be fitted in among his other judicial responsibilities as time permitted. The Court wished to ensure that the new Rules were enacted before Lord McGhie retires in October and the coming into force date was chosen accordingly. The text of the Rules and the SSI were finalised in July, but the process of having the Instrument signed by the members of Court and approved by Scottish Ministers took slightly longer than had been hoped. Regrettably this led to the Rules being laid later than intended.

2. The general approach taken in drafting the Rules was to use gender-neutral terminology, but as you will be aware this can sometimes become cumbersome. Given that the Principal Clerk at the date of making the Rules is a woman, it was felt that it was appropriate to use the feminine pronoun on the few occasions where the repeated use of the term “the Principal Clerk” would have sounded awkward and unnatural.

3. We think that the meaning of paragraphs (5), (6) and (7) in Rule 14 is sufficiently clear. As regards the use of the words “in terms of” in paragraph (6) as opposed to “by virtue of” in paragraphs (5) and (7), no difference in meaning is intended. As noted above, we have tried to avoid any consistencies in terminology but one or two have remained. We do not see this one as posing any problem in the present context.

As regards the use of “respondent” rather than “party” in paragraph (6), this is intentional. Paragraph (6) makes clear that the court can still consider a request by a respondent for an order in his or her favour even if the original application does not proceed. For example, paragraph (4) would allow a respondent to make what in other courts would be known as a counterclaim against the applicant; paragraph (6) ensures that the respondent’s counterclaim can proceed even if the applicant decides not to proceed with the application.

4. The reference in Rule 20(1) should be to paragraphs (2) to (6), as you say. We will ask for this to be corrected by way of correction slip.

5. We consider that the form and meaning of the provision in Rule 21(2) is sufficiently clear. The formal procedure for what is referred to in other courts as “commission and diligence” is seldom necessary. In most circumstances an order under Rule 21(1) will be sufficient.

6. No difference in meaning is intended by the use of “application” in Rule 40 as opposed to “case” in Rule 42. As noted above, we have tried to avoid any consistencies in terminology but a few have slipped through. We see no risk of real confusion.

7. Again, no difference is intended by the use of “application” in one instance and “case” in the other and we see no risk of real confusion.

8. We consider that there is no doubt that the Court has power to order an appeal hearing. If not covered by Rule 19(1) it would be covered by Rule 1 and is any event implicit in the power of a Court to regulate its procedure.

9. We have already asked for this error on Rule 97(3) to be corrected by way of correction slip.

10. The intention of Rule 97(4) is as you describe. A party is entitled to be heard where notice has been given and may not otherwise be heard without permission.

11. We think the meaning of the term “initial application” in Rule 104(2)(b)(i) is clear enough in context. It is intended to refer to the lodging of the initiating writ (normally a completed application form) in a new application. Where issues of statutory time bar arise it may be important to know when an application has been validly made.

12. The reference in the Explanatory Note should be to 22 September 2014. We will ask for this to be corrected by way of correction slip.