



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

36th Meeting, 2012 (Session 4)

Tuesday 11 December 2012

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

1. **Subordinate legislation:** The Committee will take evidence on the Judicial Pensions and Retirement Act 1993 (Scottish Land Court) Order 2013 [draft] from—

Kenny MacAskill, Cabinet Secretary for Justice, Robert Sandeman, Civil Law and Legal System Division, and Michael Gilmartin, Legal Directorate, Scottish Government.

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

S4M-05116—That the Justice Committee recommends that the Judicial Pensions and Retirement Act 1993 (Scottish Land Court) Order 2013 [draft] be approved.

3. **Connection between school exclusions and offending:** The Committee will take evidence, in a round-table discussion, from—

Alan Staff, Chief Executive, Apex Scotland;

John Butcher, Head of Inclusion, Glasgow City Council and representative, Association of Directors of Education in Scotland;

Vivienne Sutherland, Depute Principal Psychologist, Fife Council Psychological Service and representative, Association of Scottish Principal Educational Psychologists;

Susan Quinn, President, Educational Institute of Scotland;

Maggie Fallon, Team Leader, Rights, Support and Wellbeing Team, Education Scotland;

Nico Juetten, Parliamentary Officer, Office of the Scottish Commissioner for Children and Young People;

Colin Morrison, Project Co-ordinator, Pupil Inclusion Network Scotland;

Jim Thewliss, Head Teacher, Harris Academy, Dundee and past President, School Leaders Scotland;

Eileen Prior, Executive Director, Scottish Parent Teacher Council;

Professor Pamela Munn, Professor Emeritus, Moray House School of Education;

Professor Susan McVie, Co-Director, Edinburgh Study of Youth Transitions and Crime.

4. **Petition PE01370:** The Committee will consider 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 Megrahi' calling on the Scottish Parliament to urge the Scottish Government to open an independent inquiry into the 2001 Kamp van Zeist conviction of Abdelbaset Ali Mohamed al-Megrahi for the bombing of Pan Am flight 103 in December 1988.
5. **Subordinate legislation:** The Committee will consider the following negative instruments—

International Recovery of Maintenance (Hague Convention 2007) (Scotland) Regulations 2012 (SSI 2012/301);

Criminal Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2012 (SSI 2012/305);

Police Grant (Variation) (Scotland) Order 2012 (SSI 2012/316);

Court Fees (Miscellaneous Amendments) Scotland Order 2012 (SSI 2012/322).

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The papers for this meeting are as follows—

Agenda items 1 and 2

SSI cover note J/S4/12/36/1

[Judicial Pensions and Retirement Act 1993 \(Scottish Land Court\) Order 2013](#)

Agenda item 3

Paper by the Clerk (private paper) J/S4/12/36/2 (P)

[Written submissions](#)

Agenda item 4

Paper by the clerk J/S4/12/36/3

[Petition PE01730](#)

Agenda item 5

SSI cover note J/S4/12/36/4

[International Recovery of Maintenance \(Hague Convention 2007\) \(Scotland\) Regulations 2012 \(SSI 2012/301\)](#)

SSI cover note J/S4/12/36/5

[Criminal Legal Aid \(Scotland\) \(Fees\) Amendment \(No. 2\) Regulations 2012 \(SSI 2012/305\)](#)

SSI cover note J/S4/12/36/6

[Police Grant \(Variation\) \(Scotland\) Order 2012 \(SSI 2012/316\)](#)

SSI cover note J/S4/12/36/7

[Court Fees \(Miscellaneous Amendments\) \(Scotland\) Order 2012 \(SSI 2012/322\)](#)

Papers for information

Letter from the Scottish Fire and Rescue Service on fire and rescue reform J/S4/12/36/8

Justice Committee

36th Meeting, 2012 (Session 4), Tuesday, 11 December 2012

SSI cover note

SSI title and number: Judicial Pensions and Retirement Act 1993 (Scottish Land Court) Order 2013 [draft]

Type of Instrument: Affirmative

Justice Committee deadline to report on the SSI 8 January 2013

SSI drawn to Parliament's attention by Sub Leg Committee: No

Purpose of Instrument:

1. The purpose of the instrument is to remove the compulsory retirement age for members of the Scottish Land Court. More details on the purpose of the instrument can be found in the Policy Note (see Annexe).
2. An electronic copy of the instrument can be found at:

<http://www.legislation.gov.uk/sdsi/2013/9780111018422/contents>

Affirmative Instrument – Procedure

3. The draft Order was laid on 14 November 2012 and referred to the Justice Committee. The Order is subject to affirmative procedure (Rule 10.6). It is for the Justice Committee to recommend to the Parliament whether the Order should be approved. The Cabinet Secretary for Justice has, by motion S4M-05116 (set out in the agenda), proposed that the Committee recommends the approval of the Order. The Cabinet Secretary will attend this meeting to answer any questions on the Order and then speak to and move the motion. The subsequent debate may last for up to 90 minutes.
4. At the end of the debate, the Committee must decide whether or not to agree to the motion, and then report to the Parliament accordingly, by 8 January 2013. As the Committee will not meet again before that date, members are asked to delegate to the Convener authority to approve the report for publication.

Annexe**Policy Note****Judicial Pensions and Retirement Act 1993 (Scottish Land Court) Order 2013
[draft]**

The above instrument is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 26(9)(a) and 29(3) of the Judicial Pensions and Retirement Act 1993. The instrument is subject to the affirmative procedure.

Policy Objective

The purpose of this instrument is to modify the compulsory retirement age for members of the Scottish Land Court. Presently, members of the Scottish Land Court are required to vacate office on reaching 65 years of age under paragraph 2 of Schedule 1 to the Scottish Land Court Act 1993. This compares unfavourably with the compulsory retirement ages for a number of other judicial offices. For example, sheriffs and sheriffs principal are only required to retire at the age of 70 under section 5A of the Sheriff Courts (Scotland) Act 1971 which is itself subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 which can enable a sheriff or sheriff principal to remain in office until reaching the age of 75.

The Scottish Government considers that paragraph 2 of Schedule 1 to the Scottish Land Court Act 1993 no longer pursues a legitimate aim and has concluded that it should be repealed in order to ensure compliance with Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303 02.12.2000 p.16).

The Scottish Government also considers that section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 should apply in respect of the Chairman and members of the Scottish Land Court.

By repealing paragraph 2 of Schedule 1 to the Scottish Land Court Act 1993 and adding an entry to Schedule 5 of the Judicial Pensions and Retirement Act 1993, the retirement age for the Chair and members of the Scottish Land Court will be 70 by virtue of section 26(1) of the Judicial Pensions and Retirement Act 1993. Section 26(4) to (6) of that Act will also enable the Chair and members of the Scottish Land Court to remain in office beyond reaching the age of 70 in accordance with the terms of those provisions.

Consultation

Given that there is a narrow interest in the changes, no formal public consultation was undertaken. The Scottish Government did, however, hold discussions with those involved in the administration of the Scottish Land Court, who were generally supportive of the proposals.

Financial effects

The changes made by this instrument are unlikely to have any financial effects. The Scottish Government presently meets the employer pension contributions for both the Chair and members of the Scottish Land Court. The requirement to pay these contributions will remain.

Choice of Procedure

The Scottish Government is relying on a combination of domestic powers and powers under the European Communities Act 1972 to make the necessary changes. While section 29(2) of the Judicial Pensions and Retirement Act 1993 provides for an order under section 26(9)(a) of that Act to be subject to the negative procedure, section 2(2) of the European Communities Act 1972 enables the Scottish Ministers to elect for an instrument to be subject to the affirmative or negative procedure. The Scottish Government has elected to adopt the affirmative procedure since section 2(2) of the European Communities Act 1972 is being relied upon to make a substantive amendment to the Scottish Land Court Act 1993.

As this means that the changes involve using two powers that are subject to different procedures, the Scottish Government has decided that the powers in the European Communities Act 1972 should be used to enable the changes to be dealt with in one instrument that is subject to the affirmative procedure.

Scottish Government
November 2012

Justice Committee

36th Meeting, 2012 (Session 4), Tuesday, 11 December 2012

Petition PE01370

Introduction

1. This paper updates the Committee on progress in relation to Petition PE01370 and seeks members' agreement on its next steps.
2. Justice for Megrahi (JFM) has provided a submission to inform the Committee's discussion and this is included at Annexe A.

Background

3. Petition PE01370 was lodged on 1 November 2010 and referred by the Public Petitions Committee to the Justice Committee, which first considered it on 8 November 2011.
4. At its first consideration, the Committee agreed to keep the petition open pending the publication of Lord Carloway's report on criminal law and practice and the introduction of legislation relating to the Scottish Criminal Cases Review Commission. (The Criminal Cases (Punishment and Review) (Scotland) Act 2012 was subsequently passed on 20 June 2012.)
5. The Committee considered the petition again at its meeting on 25 September 2012, when it considered further information provided by the petitioners. In that submission, JFM stated that it had written to the Cabinet Secretary for Justice on 13 September 2012 "lodging serious formal allegations relating to the conduct of the Lockerbie investigation and the Kamp van Zeist trial of Fhimah and al-Megrahi". JFM stated that it did not intend to go public with the text of the letter for 30 days in order to allow the Cabinet Secretary sufficient time to respond. The Committee agreed to keep the petition open until it had had an opportunity to consider the Scottish Government's response. JFM has made its letter to the Cabinet Secretary public as Appendix A to its submission.
6. The Scottish Government replied to JFM on 8 October. This is Appendix B to JFM's submission. JFM subsequently wrote again to the Cabinet Secretary and this letter is Appendix C.

Action

7. Members will note that JFM states in its submission—

"In light of the integral relationship between PE1370 and the allegations we have lodged with Dumfries and Galloway Constabulary, we would request that the Justice Committee maintain the status of PE1370 as 'open' whilst decisions are made in respect of these allegations. It is obvious that we have raised many important questions that the ongoing Crown Office/police enquiry has failed to answer."

8. The Committee is invited to consider JFM's request to keep the petition open while it continues to pursue these issues with the Scottish Government, Crown Office and Dumfries and Galloway Constabulary.

Justice Committee

Petition PE1370

Written submission from Justice for Megrahi

At PE1370's last consideration before the Justice Committee, on 25th September 2012, committee members resolved to maintain its 'open' status pending further information regarding allegations of criminality submitted to Justice Secretary Mr MacAskill against police officers, forensic investigators and legal officials involved the Lockerbie inquiry and the 2000-01 trial at the Scottish Court in the Netherlands.

This submission and its attachments provide an update for members on these matters.

Allegations of criminality

On 13th September 2012, in a letter (see appendix A) marked 'private and confidential', Justice for Megrahi (JFM) wrote to the Cabinet Secretary for Justice, Mr Kenny MacAskill, specifying a series of six allegations (now eight) of serious criminal wrongdoing, ranging from perjury to perverting the course of justice. The allegations were against a number of named individuals in relation to their involvement in the investigation into the destruction of Pan Am 103 over Lockerbie on 21st December 1988, and the subsequent trial of Messrs Fhimah and al-Megrahi.

The letter requested that Mr MacAskill appoint an individual or body independent of the original investigation and trial to examine our allegations fully. We made it clear that, given the history of the case, the seriousness of the allegations and because certain of them involved the Crown Office and Scottish Police service, we believed their involvement in any independent investigation of our allegations would be inappropriate.

We also informed the Justice Secretary that we shared the current concern being expressed about the *'perceived lack of independence in Scotland between the Lord Advocate and the Scottish Government'* and requested, *'that your response to this letter will be free from Crown Office influence of any kind.'*

Finally, we placed a self-imposed media embargo on the letter's contents of 30 days in order to permit the Justice Secretary sufficient time to deal with the request without intrusion from the growing media interest.

A reply dated 8th October (see appendix B) was received from Mr Neil Rennick, the Deputy Director of Criminal Law and Licensing at the Justice Directorate, on behalf of Mr MacAskill in which he stated among other things:

'It is not the function of the Scottish Government to investigate allegations that criminal offences have been committed. This is the responsibility of the Lord Advocate who operates independently of the Scottish Government in such matters and your letter acknowledges the importance of this separation of duties within Scotland's justice system.'

Moreover, we were informed that if we wished to take the allegations further we should refer them to two of the organisations cited in the allegations, namely, Dumfries and Galloway Constabulary and the Crown Office.

In our response dated 17th October (see appendix C) we expressed our disappointment at Mr MacAskill's response which we maintained, *'distorts and utterly misrepresents our request to you'*.

We pointed out that we had not requested that the Justice Secretary, or any other member of the executive, investigate our allegations but that, because the Scottish Police and Crown Office were among those complained of, the allegations should be independently investigated.

'As Secretary for Justice you have a clear duty to make sure that our justice system is administered in a way that instils public confidence in that system. We will leave it to you to decide if, by failing to facilitate a full and independent enquiry into our allegations, you have abrogated that responsibility to the people of Scotland.'

We also expressed our considerable surprise that our confidential letter of 13th September, which contained allegations against the Crown Office, had not only been passed on to them but that the Crown Office had clearly been authorised to act as respondent via the medium of the press. They did so in a confrontational manner by accusing JFM of:

1. *'making deliberately false and misleading allegations'*, when the Crown Office had obviously not had sight of the supporting evidence;
2. suggesting that *'police officers'* and *'officials fabricated evidence'*, when JFM had done no such thing;
3. making *'defamatory and entirely unfounded allegations'*, when, again, the Crown Office had not had sight of the supporting evidence, and it is clearly a self evident truism that when making an allegation against an individual, one will inevitably impugn that person's reputation.

(See: <http://www.scotsman.com/the-scotsman/lockerbie-cover-up-like-hillsborough-claim-campaigners-1-2543953>)

We considered it to be highly improper for the Crown Office to respond, and, furthermore, to respond inaccurately, to a private and confidential letter to the Justice Secretary, which had contained criminal allegations against that very organisation, via the media and without any recourse to us.

In the event and under protest, because we were left with no alternative, we have since reported our allegations to Chief Constable Patrick Shearer of Dumfries and Galloway Police and on 9th November supplied him with a 41 page paper detailing evidence in support of our allegations. We await a response on how he intends to proceed.

Documentation

In order to avoid unnecessary repetition, the redacted correspondence between JFM and the Justice Directorate may be viewed by committee members by referring to the appendices to this submission:

- A. JFM's 13th September 2012 letter
- B. Justice Directorate's 8th October 2012 letter
- C. JFM's 17th October 2012 letter

Discussion

It is clear from the above that we are extremely concerned at the way the Secretary for Justice and Crown Office are handling the serious allegations we have made. Our initial pleas for a confidential and independent examination of our allegations have been summarily dismissed and we have been forced to report matters to a police force intimately involved in the Lockerbie tragedy since day one. It seems almost inevitable given the seriousness of these allegations that the matter will require to be passed back to the Crown Office for advice, and, yet again, an accused organisation will be acting as judge and jury in its own cause.

JFM firmly believes it has sound and compelling evidence to back up its allegations, and that this evidence submitted to support them (contained in its 41 page paper) is not susceptible to the customary type of blanket dismissal by the Crown Office, namely, that the matter has already been attended to by the courts, or by that normally employed by the Scottish Government, namely, that it has no doubt as to the safety of Mr al-Megrahi's conviction.

We also believe that the Crown's suggestion that the only course of action is for the al-Megrahi family to lodge an appeal is not a viable one given the rampant political factionalism in today's Libya that must be placing the family under extreme pressure not to do so. Additionally, for the bereaved to step into the breach would no doubt result in their efforts falling foul of the double standards and conflict of interest embodied in section 7 of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010. Ultimately, should it not be the responsibility of the Crown to serve the interests of justice in Scotland rather than that of an embattled and isolated Libyan family or the Lockerbie bereaved?

We believe that the official response to our allegations clearly demonstrates:

1. An abrogation of his responsibilities by the Secretary for Justice.
2. A cynical placing of the Chief Constable of Dumfries and Galloway Constabulary in the invidious and unenviable position of either having to investigate his own force or refer the matter to the Crown Office against whom some of the allegations are made (this aspect of the matter is of course compounded by the fact that Dumfries and Galloway Constabulary is working

together with the Crown on the 'live' investigation which is attempting to seek out Libyans whom they believe may have been co-conspirators in Lockerbie).

3. A blatant disregard for the public interest which clearly demands that after nearly 25 years the biggest terrorist outrage ever perpetrated within the UK is fully investigated and those responsible held to account.
4. A failure to exercise the power to appoint an independent body invested in the Justice Secretary by the electorate.
5. Evidence of an unhealthy and unconstitutional relationship between the Secretary for Justice and the Crown Office.

The allegations and PE1370

As referred to above we firmly believe our allegations to be both compelling and immune to the usual blanket rebuffs so commonly presented by the Crown. JFM took the decision to lodge its allegations in order to break the logjam which is currently blocking its request for an inquiry into Lockerbie/Zeist.

Dumfries and Galloway Constabulary and the Crown Office insist that their enquiry is still 'live'. In 11 years they have interviewed Mr Moussa Koussa in London, visited Tripoli to persuade the new Libyan Government to produce concrete evidence, and conducted in camera hearings on Malta in an effort to locate others responsible for the downing of PA103, and yet, all this has produced is a succession of 'no comments' and a feeling of extreme frustration among the Lockerbie relatives and others committed to the truth being revealed.

Meanwhile, in the space of two months, JFM has assembled a total of now eight allegations of criminality against employees, former or otherwise, of Dumfries and Galloway Constabulary, other police forces, the Crown Office and forensic investigators backed up with copious evidence, all of which points in an entirely different direction to the Zeist conviction and the Crown's current quest.

It is extremely important that this matter remains a 'live' issue within the Scottish Parliament so that it cannot be arbitrarily closed down by the very people we believe might have culpability in the matter. It is vital that clear and unambiguous answers are forthcoming from the appropriate authorities.

In light of the integral relationship between PE1370 and the allegations we have lodged with Dumfries and Galloway Constabulary, we would request that the Justice Committee maintain the status of PE1370 as 'open' whilst decisions are made in respect of these allegations. It is obvious that we have raised many important questions that the ongoing Crown Office/police enquiry has failed to answer.

The case for an independent public enquiry into the whole Lockerbie/Zeist affair, as petitioned for, is growing and we hope that the Justice Committee will do all that it can to ensure that all the relevant questions are answered and that the actions of the government and their officials are carefully scrutinised. Justice must be done and as

importantly be seen to be done by those directly involved in the Lockerbie tragedy and the Scottish people in whose name the government is acting.

The detailed evidence recently presented to Dumfries and Galloway Constabulary is not being released at this time to maintain the integrity of the whole enquiry.

Please do not hesitate to contact Justice for Megrahi should further information be required.

The Committee of Justice for Megrahi

The Committee of Justice for Megrahi to Justice Secretary Mr MacAskill on 13th September 2012.

The Committee of Justice for Megrahi hereby formally lodge with you complaints alleging criminal wrongdoing in the investigation and prosecution of Abdelbaset al-Megrahi and Lamin Fhimah for the murder of 270 people in the downing of Pan Am 103 on 21st December 1988. These complaints are directed against the persons and bodies named below whom, for the reasons given, we believe may be guilty of the criminal offences specified.

1. On 22 August 2000 the Lord Advocate, Colin Boyd QC, communicated to the judges of the Scottish Court in the Netherlands information about the contents of CIA cables relating to the Crown witness Abdul Majid Giaka that was known to members of the prosecution team [A. B. and C. D.] who had scrutinised the cables, to be false. The Lord Advocate did so after consulting these members of the prosecution team. It is submitted that this constituted an attempt to pervert the course of justice.

2. Members of the Lockerbie prosecution team, including but not limited to [C. D.], devised and presented or allowed to be presented to the trial court a scenario regarding the placement of items in luggage container AVE4041 which was known to be false, in order to obfuscate and conceal compelling evidence that the bomb suitcase was introduced by a terrorist infiltration at Heathrow airport. It is submitted that this constituted an attempt to pervert the course of justice.

3. Dumfries and Galloway Police, and those individuals employed by that force responsible for the recording, prioritising and submission to the Crown Office of evidence gathered in the investigation into the downing of Pan Am Flight 103, and the Crown Office, and those individuals in that organisation responsible for the analysis of said evidence and identifying what material required to be passed on to those acting for Megrahi and Fhimah, concealed the witness statement relating to the break-in to Heathrow airside giving access to the luggage loading shed used by Pan Am 103 in the early hours of 21st December 1988 which was provided by Heathrow Security Officer Raymond Manly to the Metropolitan Police shortly after Mr Manly's discovery of the break-in. It is submitted that the concealment of this witness statement, which was or ought to have been known to Dumfries and Galloway Police and the Crown Office to be of the highest possible significance to the defence, constituted an attempt to pervert the course of justice.

4. [In the course of his testimony at Camp Zeist, witness E. F.] told the Court that the materials and tracking analysis of fragment PT/35b, the sliver of printed circuit board said to have originated from a circuit board contained in one of the 20 MST-13 digital timer instruments supplied by MEBO AG to Libya (the boards for all these timers having been custom-made for MEBO by Thuring AG), were "similar in all respects" to the control samples of MST-13 circuit boards. [E. F.] consistently used this form of words to describe analyses of items which were identical or of common origin. This statement was false. While the tracking pattern was indeed identical, [E. F.] was aware that the coating on the circuitry of the control boards was the standard alloy of 70% tin and 30% lead, while the coating on the circuitry of fragment PT/35b (most unusually) lacked the 30% lead content. It is submitted that his statement to the

Court was a deliberate falsehood designed to conceal a significant and material difference between the evidential fragment and the control items, and thus constituted both perjury and an attempt to pervert the course of justice.

5. The Lockerbie investigation, and in particular [police officer G. H.], knew by 1990 that the coating on the circuitry of fragment PT/35b was composed of pure tin, and that this composition was highly unusual, being described as “by far the most interesting feature” of the fragment by all the experts who were consulted, “without exception”. By early 1992 [G. H.] and those in the Crown Office to whom he reported also knew that the metallurgy testing on the control MST-13 circuit boards showed the circuitry on these boards to be coated with the standard 70% tin / 30% lead alloy. [G. H.] and those in the Crown Office to whom he reported either failed to inquire with the manufacturer Thuring AG whether they had supplied any MST-13 timer boards with the unusual lead-free coating, or did make such inquiries and failed to disclose the results of these inquiries to the defence. It was discovered by the defence team in 2008 that Thuring AG did not manufacture printed circuit boards with a lead-free coating, and indeed lacked the manufacturing capacity to do so. If [G. H.] and/or those in the Crown Office to whom he reported failed to make the relevant inquiries with Thuring AG, it is submitted that this omission was grossly negligent. If [G. H.] and/or those in the Crown Office to whom he reported made such inquiries and failed to disclose the results to the defence, it is submitted that this failure constitutes an attempt to pervert the course of justice.

6. From our assessment of the ‘SCCRC Statement of Reasons’, relating to its referral of Mr Megrabi’s case to the Court of Criminal Appeal in 2007, and the ‘Grounds of Appeal 1 and 2’ documents prepared by his legal team in furtherance of that appeal, it is clear that a number of questions have been raised in relation to the process which led to the identification of Mr Megrabi by witness Mr Anthony Gauci. These include doubts about the legitimacy of the process by which Mr Gauci’s identification evidence was obtained, assessed and delivered, and what prompted significant failures by the Crown to disclose related material information. From these documents it appears that [police officer I. J.] and other police officers who were involved in this identification process might well have been aware that a number of the aspects of the process they were following were flawed and did not accord with guidelines extant at the time or with any general principles of fairness to the accused. It is submitted that the omissions and failings referred to in the relevant reports indicate that [I. J.] and others have important questions to answer in connection with the identification process, and we believe, taken as a whole, that their conduct constitutes an attempt to pervert the course of justice and a breach of section 44 (2) of the Police (Scotland) Act 1967 (violation of duty by a constable).

The above numbered complaints simply constitute the basic allegations. Documents containing detailed supporting material have been prepared and will be made available to the investigating authorities as and when requested by them.

You above all will realise the seriousness of these allegations which strike at the very heart of the Lockerbie investigation past and present. Effectively, we are complaining about the actions of Crown Office officials, the prosecution and investigating authorities including the police, and certain other agencies and individuals. Given the

controversy surrounding this whole affair we request that you give serious thought to the independence of any investigating authority you appoint. As a group we believe that you should appoint someone outwith Scotland who has no previous direct or indirect association with Lockerbie or its ramifications.

You will be aware of the disquiet we feel about the delay and obfuscation which have surrounded this whole affair since 1988. Nevertheless we understand you will require reasonable time to inquire into these allegations and decide how you wish to proceed. We therefore propose to keep these matters private and confidential for a period of thirty days from the date of this letter to allow you to carry out the necessary enquiries, decide how you wish the matter to be investigated, and respond to us. We thereafter reserve the right to make the above matters public as and when we feel appropriate and reasonable. Furthermore, on the grounds that JFM's petition PE1370 is due for consideration on 25th September, we also reserve the right to inform the Justice Committee of the fact that we have lodged this document with yourself, making reference (in general terms only) to the fact that it contains serious allegations relating to the Lockerbie/Zeist case.

In passing we would also note the recent publicity given to the perceived lack of independence in Scotland between the Lord Advocate and the Scottish Government by Mr Andrew Tickell. (<http://lallandspeatworrier.blogspot.co.uk/2012/08/the-unpolitical-snps-pied-lord-advocate.html>) We also share this concern and would hope, for reasons that must be obvious from the foregoing, that your response to this letter will be free from Crown Office influence of any kind.

We thank you for your time and attention in this matter and look forward to an acknowledgment of receipt by return.

Robert Forrester

On behalf of the Committee of Justice for Megrahi
Professor Robert Black QC
Mr Robert Forrester
Father Patrick Keegans
Dr Morag Kerr
Mr Iain McKie
Mr Leonard Murray
Dr Jim Swire

Mr Neil Rennick, Deputy Director of Criminal Law and Licensing Division of the Justice Directorate, to the Committee of Justice for Megrahi on 8th October 2012.

I refer to your letter of 13 September to the Cabinet Secretary for Justice making a complaint alleging criminal offences were committed in the investigation and prosecution of Abdelbaset Al-Megrahi. I have been asked to reply.

Your letter makes very serious allegations of criminal activity against named individuals. Your letter indicates that you have documents containing detailed supporting material about these allegations, although you have not included this information with your letter. Your letter links these allegations with your wider call for an inquiry into the conviction of Mr Al-Megrahi.

On the wider issue of Mr Al-Megrahi's prosecution and conviction, he was convicted in a court of law and the Scottish Ministers have stated their view that a court remains the only appropriate forum for considering all the evidence in the case and determining his guilt or innocence. Following consideration of all relevant matters, only a court has the power to either uphold or overturn Mr Al-Megrahi's conviction. It remains open for relatives of Mr Al-Megrahi or, potentially, relatives of the Lockerbie bombing victims, to ask the Scottish Criminal Cases Review Commission to refer the case to the court for a further appeal and Ministers have made clear they would be comfortable if this were to happen.

It is also the case that Lockerbie remains a live, ongoing criminal investigation and the Lord Advocate has confirmed that enquiries are underway as a result of recent developments in Libya to bring others to justice.

Separate from the above wider issues, you ask Scottish Ministers to appoint an investigating authority to examine your allegations. Scottish Ministers take exceptionally seriously any suggestion of inappropriate or criminal activity by individuals with key responsibilities within Scotland's justice system. Such allegations should be reported and investigated through the appropriate procedures.

It is not the function of the Scottish Government to investigate allegations that criminal offences have been committed. This is the responsibility of the Lord Advocate who operates independently of the Scottish Government in relation to such matters and your letter acknowledges the importance of this separation of duties within Scotland's justice system.

Where allegations relate to the conduct of police officers or members of the prosecution service, there are established arrangements for investigating these, independent of those involved in the original case. Where there is evidence of potential criminal actions, final decisions on whether to proceed with a prosecution would be taken based on advice from Crown Counsel.

If you believe criminal offences have been committed you should provide any evidence which supports your allegations to the police, in this case Dumfries and Galloway Constabulary, for them to consider. I suggest that you may wish to contact

Chief Constable Patrick Shearer at Police Headquarters, Cornwall Mount, Dumfries,
DG1 1PZ.

I trust that this reply explains the position of the Scottish Government. Given the consideration by the Justice Committee of your petition, I am copying this response to the clerk of the Justice Committee for information. As your letter included allegations against named individuals I have not copied it to the Committee.

Neil Rennick
Deputy Director

The Committee of Justice for Megrahi to Justice Secretary Mr MacAskill on 17th October 2012.

The Committee of Justice for Megrahi wishes to convey its thanks to Mr Neil Rennick, the Deputy Director of Criminal Law and Licensing at the Justice Directorate, for responding on your behalf to our letter to you of 13th September 2012. For the purposes of this current letter, we must assume that what Mr Rennick wrote represents in its entirety your own views on the issues under discussion. Herein we wish to deal with some of the unusual developments pursuant to your receipt of our letter outlining the six allegations of criminal wrongdoing in relation to the investigation of the Lockerbie case and the subsequent legal process at Zeist, and in addition, your views as expressed in Mr Rennick's reply.

Our letter was addressed to you as 'private and confidential', and we adopted a self-imposed media embargo on its contents for a period of thirty days, ten days longer we understand than is the norm for ministerial responses. The Lockerbie case is an extremely sensitive and highly charged issue, which even now, almost twenty-four years after the tragedy itself and twelve years after the trial of Mr Fhimah and Mr al-Megrahi, generates considerable media interest. To compound matters, the allegations we are making are of a particularly serious nature. We took these measures because we wished to minimise any pressure you might feel, and hoped by freeing you from the distraction of media intrusion to provide time and opportunity for constructive reflection. Indeed, had you requested it, we would have been happy to have extended the thirty-day period. For our part, at the time of writing this, the media embargo still obtains in respect of the detail of our allegations. Furthermore, our letter contained a paragraph expressing our concerns regarding Crown Office involvement in our discussion with yourself thus:

In passing we would also note the recent publicity given to the perceived lack of independence in Scotland between the Lord Advocate and the Scottish Government by Mr Andrew Tickell. (<http://lallandspeatworrier.blogspot.co.uk/2012/08/the-unpolitical-snps-pied-lord-advocate.html>) We also share this concern and would hope, for reasons that must be obvious from the foregoing, that your response to this letter will be free from Crown Office influence of any kind.

We therefore find it profoundly regrettable that the Crown Office has clearly not only become privy to the contents of our communication to you, but that that very institution, headed by a government minister, the Lord Advocate, appears to have been permitted free rein to take on the role of respondent via the medium of the press. Our complaints have been branded 'defamatory and entirely unfounded' in a most belligerent tone, and we have been accused of submitting 'deliberately false and misleading allegations'. To add injury to insult, the response also contained an insinuation that we had accused police officers and/or officials of fabricating evidence, which as you know we most certainly did not. Curiously, the Crown's comments mirror those it made with reference to Mr John Ashton's book Megrahi: You are my Jury; comments which the Crown has signally failed to substantiate or follow up.

With respect to the relationship between the Lord Advocate and the Scottish Government, it is worthy of note that Jock Thomson QC in a letter to the Herald on 6th October complains about this very issue and speaks of:

.... the unholy, unhealthy alliance of law officers and law makers: Kenny MacAskill and Frank Mulholland, in the same bed. There is no separation of powers. Constitutionally the system now is morally and mortally flawed.
www.heraldscotland.com/comment/letters/career-prosecutors-as-lawofficers-have-destroyed-criminal-justice-system.19073061

Your actions in allowing the Crown Office sight of our 'Private and Confidential' letter, and we must assume sanctioning the response, make Mr Thomson's comments particularly apposite. It appears to us that an extremely important constitutional point has been raised which carries with it serious political implications for yourself and the Scottish Government.

In his letter, Mr Rennick states:

It is not the function of the Scottish Government to investigate allegations that criminal offences have been committed. This is the responsibility of the Lord Advocate who operates independently of the Scottish Government in such matters and your letter acknowledges the importance of this separation of duties within Scotland's justice system.

His response distorts and utterly misrepresents our request to you. We did not request that you as Justice Secretary, or any other member of the executive, investigate our allegations. We stated the following:

Given the controversy surrounding this whole affair we request that you give serious thought to the independence of any investigating authority you appoint. As a group we believe that you should appoint someone outwith Scotland who has no previous direct or indirect association with Lockerbie or its ramifications.

In view of the high profile of the Lockerbie case, we consider it essential that absolutely no criticism of bias can be levelled at any investigation of allegations of this nature. If the choice is seen to be entirely independent of the original investigation and the trial, the opportunities for criticism are significantly reduced. We specifically did not approach Dumfries and Galloway Constabulary, since we considered that to ask Chief Constable Patrick Shearer to investigate not only the conduct of his own force but also that of the Crown Office would be to place him in a particularly invidious position. Moreover, whilst we are cognisant of the involvement of both Strathclyde Police and Lothian and Borders Constabulary in the Lockerbie investigation, we are unaware of how many other Scottish police forces took part in it. We therefore believed it was entirely appropriate that we request our complaints be investigated by a body outwith Scotland appointed by yourself; something which falls well within your powers.

As Secretary for Justice you have a clear duty to make sure that our justice system is

administered in a way that instils public confidence in that system. We will leave it to you to decide if, by failing to facilitate a full and independent enquiry into our allegations, you have abrogated that responsibility to the people of Scotland.

Nevertheless, whatever our thinking on independent scrutiny, Chief Constable Patrick Shearer is now in possession of our request that he investigate our allegations. We are confident that he will approach the matter without fear or favour and with consummate professionalism.

We have not addressed the question of an appeal. Following the addition of the Criminal Procedures (Legal Assistance, Detentions and Appeals) (Scotland) 2010 Act to the statute book, a third appeal is clearly highly problematic. The difficulties faced by Mr al-Megrahi's family due to the current political factionalism in Libya create a further obstacle. It is our belief that the resolution of the serious problems in the Lockerbie investigation and the Kamp van Zeist trial process identified by us and others should not depend on the decision, and the resources, of a single embattled family in a foreign land.

Robert Forrester

On behalf of the Committee of Justice for Megrahi
Professor Robert Black QC
Mr Robert Forrester
Father Patrick Keegans
Dr Morag Kerr
Mr Iain McKie
Mr Leonard Murray
Dr Jim Swire

Justice Committee

36th Meeting, 2012 (Session 4), Tuesday 11 December 2012

SSI cover note

SSI title and number: International Recovery of Maintenance (Hague Convention 2007) (Scotland) Regulations 2012 (SSI 2012/301)

Type of Instrument: Negative

Coming into force: In accordance with regulation 1(b)

Justice Committee deadline to consider SSI: 10 December 2012

Motion for annulment lodged: No

SSI drawn to Parliament's attention by Sub Leg Committee: No

Purpose of Instrument:

1. The purpose of the instrument is to make provision to enable the recognition and enforcement, in Scotland, of maintenance decisions made by courts, and maintenance arrangements concluded, in States bound by the Convention (other than EU Member States). More details on the purpose of the instrument can be found in the policy note (see Annexe).

2. An electronic copy of the instrument can be found at:

<http://www.legislation.gov.uk/ssi/2012/301/contents/made>

Justice Committee consideration:

3. The instrument was laid on 8 November 2012 and the Justice Committee has been designated as lead committee.

4. 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 Subordinate Legislation 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, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.

5. Each negative instrument appears on a committee agenda at the first opportunity after the Subordinate Legislation 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 correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Annexe

Policy Note

International Recovery of Maintenance (Hague Convention 2007) (Scotland) Regulations 2012 (SSI 2012/301)

The above instrument is being made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure.

Background

The Regulations make provision to facilitate the application of the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at the Hague on 23 November 2007 (“the Convention”) in Scotland. The Convention will be concluded by the European Union on a date yet to be determined pursuant to Council Decision 2011/432/EU (“the Council Decision”). The Regulations will come into force on the date that the Convention enters into force in respect of the European Union, the date of which will be notified in the Edinburgh Gazette.

The Convention contains rules on recognition and enforcement of maintenance decisions between States bound by the Convention and administrative co-operation to facilitate the recovery of such maintenance. Member States of the European Union (apart from Denmark) are bound to apply the Convention by virtue of conclusion by the European Union.

The Convention is intended to provide a simpler, quicker and more efficient global system for the reciprocal enforcement of family maintenance and will replace earlier Hague and UN Conventions. EU Member States will use the Convention with non-EU Contracting States only; Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations continues to apply in respect of arrangements among EU Member States.

Policy

The Regulations make provision so as to enable the recognition and enforcement, in Scotland, of maintenance decisions made by courts, and maintenance arrangements concluded, in States bound by the Convention (other than EU Member States). This is achieved by providing for the registration of maintenance decisions and arrangements in the sheriff court where a maintenance obligation falls to be enforced against a person who is resident in Scotland or assets belonging to that person which are susceptible to enforcement are situated or held in Scotland.

The Regulations designate the Scottish Ministers as the Central Authority in relation to Scotland for the purposes of Article 4 of the Convention. Applications under

Chapter III of the Convention will, therefore, fall to be made to the Scottish Ministers. The Scottish Ministers will, therefore be responsible for the obligations under the Convention to provide administrative co-operation to facilitate the recovery of maintenance in Scotland.

The Regulations also make minor and consequential amendments to the Debtors (Scotland) Act 1987, the Debt Arrangement and Attachment (Scotland) Act 2002 and the Bankruptcy and Diligence etc. (Scotland) Act 2007 so as to ensure that the various enforcement measures for which they provide can be executed in relation to maintenance arrangements which are registered in the sheriff court. Further amendments to these provisions are made so as to make it clear that these measures are also available in respect of court settlements and authentic instruments which are registered in the sheriff court under the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011.

The Regulations also make amendments to the Civil Legal Aid (Scotland) Regulations 2002 so that legal aid is available in respect of applications to the Scottish Ministers under Chapter III of the Convention.

Consultation

Consultees in Scotland and Northern Ireland were included as part of a technical consultation carried out by the Ministry of Justice in respect of equivalent Regulations proposed to be made in relation to England and Wales. Key stakeholders were subsequently consulted about the wording of the Regulations but no further consultation was considered necessary.

Impact Assessment and Financial Effects

It is anticipated that the number of cases under these Regulations will not be significant. These cases will be eligible for legal aid assistance and will not be subject to means testing. The Scottish Legal Aid Board have been consulted on the amendments to the Civil Legal Aid (Scotland) Regulations 2002

Given that these Regulations relate to improving the reciprocal enforcement of family maintenance they do not impact on business or the environment.

Choice of procedure

Section 2(2) of the European Communities Act 1972 enables the Scottish Ministers to elect for an instrument to be subject to the affirmative or negative procedure. The Scottish Government has elected to make the regulations subject to the negative procedure since they do not contain any criminal provisions or unusual powers of entry nor do they impose any onerous duties on members of the public or involve substantial expenditure. Although the regulations make amendments to primary legislation those amendments are consequential to the requirements of the Convention (which will apply in any case by virtue of the direct applicability of the Convention as a matter EU law).

Since it is not anticipated that the European Union will conclude the Convention before April 2013, the Scottish Parliament will, in any event, has the full 40 day period to consider the instrument before it enters into force.

Timing

Article 7 of the Council Decision requires the Member States to notify the Commission, no later than 10 December 2012, amongst other things of, the contact details of the Central Authority designated in accordance with Article 4(3) of the Conventions.

It is anticipated that the Convention will be concluded by the European Union in or after April 2013.

Scottish Government
November 2012

Justice Committee

36th Meeting, 2012 (Session 4), Tuesday 11 December 2012

SSI cover note

SSI title and number: Criminal Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2012 (SSI 2012/305)

Type of Instrument: Negative

Coming into force: 18 December 2012

Justice Committee deadline to consider SSI: 7 January 2013

Motion for annulment lodged: No

SSI drawn to Parliament's attention by Sub Leg Committee: No

Purpose of Instrument:

1. The purpose of the instrument is to correct an erroneous reference in the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2012 (SSI 2012/276). SSI 2012/276 made a reference to the Road Traffic Act 1998 which should have been to the Road Traffic Act 1988. More details on the purpose of the instrument can be found in the policy note (see Annexe).

2. The Committee considered SSI 2012/276 on 20 November 2012. The Scottish Government had already announced its intention of laying an amending instrument to correct this error so the Committee has been expecting this instrument.

3. An electronic copy of the instrument can be found at:

<http://www.legislation.gov.uk/ssi/2012/305/contents/made>

Justice Committee consideration:

4. The instrument was laid on 15 November 2012 and the Justice Committee has been designated as lead committee.

5. 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 Subordinate Legislation 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, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.

6. Each negative instrument appears on a committee agenda at the first opportunity after the Subordinate Legislation 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 correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Annexe

Policy Note

Criminal Legal Aid (Scotland) (Fees) Amendment (No 2) Regulations 2012 (SSI 2012/305)

1. The above instrument was made by Scottish Ministers in exercise of the powers conferred by sections 33(2)(a) and (3)(a) and 36(1) of the Legal Aid (Scotland) Act 1986. The instrument is subject to negative procedure.

Policy Objective

2. This instrument corrects an erroneous reference in the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2012 (SSI 2012/276). Those regulations amended the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 (“the principal Regulations”, SI 1989/1491) to insert a regulation 3A. Regulation 3A refers, amongst other things, to an offence under section 1 of the “1998 Act”. It should refer to section 1 of the “1988 Act”, being the Road Traffic Act 1988 (which “the 1988 Act” is defined as in the principal regulations).

Regulation 3A concerns fees payable to counsel for cases not subsequently indicted at the High Court. Periodically the Crown will drop proceedings which would have been marked and indicted as High Court proceedings at the petition stage. When these cases are concluded they will have been dealt with exclusively in the sheriff court and where the cases concern the offences specified in regulation 3A of the principal Regulations, fees for counsel may be payable as if the relevant table of fees for High Court cases applied.

Scottish Government
Justice Directorate
13 November 2012

Justice Committee

36th Meeting, 2012 (Session 4), Tuesday 11 December 2012

SSI cover note

SSI title and number: Police Grant (Variation) (Scotland) Order 2012 (SSI 2012/316)

Type of Instrument: Negative

Coming into force: 1 January 2013

Justice Committee deadline to consider SSI: 7 January 2013

Motion for annulment lodged: No

SSI drawn to Parliament's attention by Sub Leg Committee: No

Purpose of Instrument:

1. The purpose of the instrument is to re-determine the amount of police grant paid to police authorities and joint police boards in 2012-13. More details on the purpose of the instrument can be found in the policy note (see Annexe).

2. An electronic copy of the instrument can be found at:

<http://www.legislation.gov.uk/ssi/2012/316/contents/made>

Justice Committee consideration:

3. The instrument was laid on 22 November 2012 and the Justice Committee has been designated as lead committee.

4. 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 Subordinate Legislation 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, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.

5. Each negative instrument appears on a committee agenda at the first opportunity after the Subordinate Legislation 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 correspondence to be entered into or a

Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Annexe

Policy Note

**Police Grant (Variation) (Scotland) Order 2012
(SSI 2012/316)**

The above instrument was made in exercise of the powers conferred by section 32 of the Police (Scotland) Act 1967. The instrument is subject to negative resolution procedure.

Policy Objectives

The purpose of the instrument is to re-determine the amount of police grant paid to police authorities and joint police boards in 2012-13.

Financial Effects

None. The balance of payments due for 2012-13 will be paid as soon as the Order comes into force.

Safer Communities Directorate
Police Division
November 2012

Justice Committee

36th Meeting, 2012 (Session 4), Tuesday 11 December 2012

SSI cover note

SSI title and number: Court Fees (Miscellaneous Amendments) Scotland Order 2012 (SSI 2012/322)

Type of Instrument: Negative

Coming into force: 9 December 2012

Justice Committee deadline to consider SSI: 14 January 2013

Motion for annulment lodged: No

SSI drawn to Parliament's attention by Sub Leg Committee: Yes (see Annexe)

Purpose of Instrument:

1. The purpose of the instrument is to amend the Court of Session etc. Fees Amendment Order 2012 (SSI 2012/290), the High Court of Justiciary Fees Amendment Order 2012 (SSI 2012/291) and the Sheriff Court Fees Amendments Order 2012 (SSI 2012/293), correcting a number of drafting errors. The Committee considered these instruments at its meeting on 27 November 2012.

2. An electronic copy of the instrument can be found at:

<http://www.legislation.gov.uk/ssi/2012/322/contents/made>

Justice Committee consideration:

3. The instrument was laid on 26 November 2012 and the Justice Committee has been designated as lead committee.

4. 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 Subordinate Legislation 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, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.

5. Each negative instrument appears on a committee agenda at the first opportunity after the Subordinate Legislation 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 correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Annexe

Court Fees (Miscellaneous Amendments) Scotland Order 2012 (SSI 2012/322) *(Justice Committee)*

1. The Order amends the Court of Session etc. Fees Amendment Order 2012, the High Court of Justiciary Fees Amendment Order 2012, and the Sheriff Court Fees Amendment Order 2012. The amendments are to correct the defects in the commencement provisions which the Committee has recently reported on in connection with those instruments.

2. The Court of Session etc. Fees Amendment Order 2012 is also amended to correct some minor drafting errors which the Committee identified.

3. The Order is subject to the negative procedure, and comes into force on 9 December 2012. Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with, as the Order has not been laid at least 28 days before it comes into force. The failure to comply with section 28(2) automatically engages the Committee's reporting ground (j) in Rule 10.3.1 of the Standing Orders.

1. As part of its scrutiny of the instrument, the Committee considered the explanation that the Scottish Government provided in its letter to the Presiding Officer for this failure. The correspondence is reproduced in the Appendix. The Committee accepted the explanation for the reason explained below.

2. The Committee draws the instrument to the attention of the Parliament on reporting ground (j).

3. There has been a failure to lay the instrument at least 28 days before it comes into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

4. Since the purpose of this instrument is to correct errors in various Scottish statutory instruments before they come into force, the Committee agreed to find the explanation provided by the Scottish Government for this failure to be acceptable.

Appendix

Court Fees (Miscellaneous Amendments) Scotland Order 2012 (SSI 2012/322)

Breach of laying requirements: letter to Presiding Officer

The above instrument was made by the Scottish Ministers under section 2 of the Courts of Law Fees (Scotland) Act 1895 on 22 November 2012. It is being laid before the Scottish Parliament today and is to come into force on 9 December 2012.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with section 31(3) of that Act, this letter explains why.

The above instrument makes amendments to the Court of Session etc. Fees Amendment Order 2012, the High Court of Justiciary Fees Amendment Order 2012 and the Sheriff Court Fees Amendment Order 2012. The Scottish Government's attention was drawn to errors in these orders by the Subordinate Legislation Committee at its meeting on 20 November.

These errors require to be corrected, and the Scottish Government has undertaken to do so prior to the orders coming into force on 10 December. It is, therefore, intended that the corrective instrument will come into force before then. As a result, the corrective instrument does not comply with section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

Justice Committee

36th Meeting, 2012 (Session 4), Tuesday, 11 December 2012

Fire and Rescue Reform

Letter from the Chair and Chief Officer of the Scottish Fire and Rescue Service

Thank you for your letters congratulating both Alasdair and myself on our respective appointments as Chief Officer and Chair of the new Scottish Fire and Rescue Service.

In respect of your request for an update on the progress we are making, we both felt that it would be useful to provide you with a single response as we are very much working in a collaborative way to ensure the success of the reform process.

The Scottish Fire and Rescue Service Board has now been appointed. Board members are currently undergoing a series of development seminars to assist them to effectively fulfil their responsibilities, these include:

- Governance and Accountability Arrangements
- Employer Responsibilities, eg Equality and Health and Safety
- Fire and Rescue Service Familiarisation
- The Financial Operating Environment

We have also scheduled a 2 day strategic planning workshop for the 19 and 20 December 2012, where the Board will work with the Strategic Leadership Team on the Strategic Plan, the structure of the new Service and the budget.

There is also a lot of work being undertaken to develop the Board's Standing Orders, business procedures and the Scheme of Delegation. It is anticipated that the first formal Board meeting will take place on Monday 14 January 2013, to agree this work and to appoint a Vice-Chair and establish Standing Committees.

The specific responsibilities of the SFRS and the SFRS Board in relation to human resources and finances will be dealt with through the Scheme of Delegation. However, we are clear that the SFRS Board is the employer and responsible for setting the strategic direction and through effective scrutiny holding the executive of the Service to account for the delivery of the strategy.

For this to work effectively and efficiently, working within the Scheme of Delegation, the overall day to day financial and human resource management responsibilities will be for the Chief Officer to manage.

Finally, the key early deliverables for the Chief Officer, as noted below, are progressing well, with importantly, the new Service's Management Team having been appointed and taking up post on 1 January 2013.

Key early deliverables

- Review the work done to date to prepare for the start of the SFRS and make any necessary operational decisions required to ensure that the SFRS functions effectively on 1st April and can carry out its statutory responsibilities and continue to provide an effective response to incidents.
- Ensure the Service can operate within its approved budgets from 1st April.
- Prepare options for the Board on structures.
- Appoint senior management team.
- Designate number, roles and leadership of Local Senior Officers.
- Support the Board in producing the first SFRS strategic plan, setting out how the SFRS will deliver its functions and meet the Scottish Government priorities as set out in the Fire and Rescue Framework.
- Ensure that robust arrangements are in place to create a new formal relationship with each of the 32 local authorities by, for example, ensuring local plans are produced with reflect national and local priorities.

We hope that this update is useful and would, of course, be happy to provide any further detail you require.

P Watters, Chair, Scottish Fire and Rescue Service
AG Hay, Chief Officer
6 December 2012