THE SCOTTISH OFFICE

IMPROVING THE DELIVERY OF JUSTICE IN SCOTLAND

FIRM AND FAIR

THE SCOTTISH OFFICE HOME AND HEALTH DEPARTMENT

Firm and Fair

Improving the Delivery of Justice in Scotland

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FOREWORD

Crime is a matter of concern to us all. This Government's aim has always been to prevent crime and to reduce offending. Recent falls in the levels of recorded crime in Scotland are encouraging, but we cannot be complacent. This White Paper is a further step in our fight against crime. We are proposing significant reforms to increase the capacity of the criminal justice system to deal with those who break the law.

Scotland is well served by its distinctive system of criminal justice. An independent prosecution service acting in the public interest and a judiciary of absolute integrity are among its particular strengths. But even systems which serve us well need to adjust to meet new challenges and new demands. The Justice Charter for Scotland, issued under the Citizen's Charter, tackled important issues facing the criminal justice system. It recognised the needs of victims and made commitments to reduce delays and inconvenience to witnesses and other court users. The Lord Advocate and I want to keep up the momentum created by the Justice Charter. We have decided that the time is right for a substantial overhaul of existing practice and procedures.

We have therefore undertaken a thorough review of how our criminal justice system performs. In our four consultation papers, issued over the last year, we suggested how the system could work better, with less inconvenience, less delay and less waste. We must have a criminal justice system which works, and is seen to work, well. It must be understood by those who pay for it and who look to it to protect them, their families and the communities in which they live. We are grateful for the replies to our consultation papers. We have taken careful account of them and they have helped to shape the proposals in this White Paper. Our aim is to produce a system which is fair to all - to victims, to witnesses and to society at large, as well as to the accused.

Three key themes of the Government's law and order strategy are reflected in the proposals in the White Paper.

- **First,** our highest priority is to protect the public from crime and criminals. People who break the law must be quickly identified, brought to account and punished. Our proposals will improve the capacity of the police, the prosecution and the courts to deal with crime quickly and efficiently.

– **Second,** in line with Citizen's Charter principles and in common with other areas of the public service, the criminal justice system must be responsive to the needs and concerns of people who come into contact with it. We believe it is extremely important to encourage sensitive treatment of victims, witnesses and jurors.

– **Third,** members of the public should recognise that participation in the criminal justice process is an important civic duty and that their contributions are essential to the effective administration of justice. The public expects a lot of the criminal justice system and we believe that the system should be able to expect a contribution from the public in return. We intend to make it easier for people to give that contribution without undue inconvenience.

It is essential that the Scottish criminal justice system commands respect and public confidence. I believe that, by providing the system itself with the tools it needs to take effective action against those who break the criminal law, the measures proposed in this White Paper strike the right balance between securing public support and participation and ensuring that everyone who comes into contact with the system gets a better and fairer deal. Where legislation is required, we shall bring it forward at the next opportunity.

IAN LANG

Secretary of State for Scotland

Chapter 1
INTRODUCTION

This White Paper sets out the Government's proposals for changes to the criminal justice system in Scotland. Over the last year, through the series of consultation papers[1] under the general theme of improving the delivery of justice in Scotland, the Government has sought views from a wide range of interested bodies and individuals on the operation of the criminal justice system and of criminal legal aid. The emphasis has been on identifying improvements to the procedures and processes involved in reaching decisions in criminal cases. These consultations examined the handling of cases by the criminal justice and legal aid systems in Scotland and made proposals for changes to some important aspects of them.

1.2 1993 marked the publication of the Report of the Royal Commission on Criminal Justice[2]. Although the Royal Commission's remit did not extend to Scotland, the Secretary of State for Scotland undertook to consider the implications of the Royal Commission's recommendations in the Scottish context. The consultations in Scotland therefore also covered those areas of the Royal Commission's report which were of relevance to Scotland and where the Secretary of State wished to seek views on the possible implementation of changes.

1.3 Chapters 2 to 9 of this White Paper set out in detail the Government's proposals for reform, referring to the outcome of the consultation process as appropriate. In addition they describe a number of other areas where the Government proposes legislation for reform of criminal procedure, but which did not fall within the scope of the recent consultation exercise. Some aspects have been the subject of separate consultation, as for example the proposals relating to unfitness to plead and acquittal by reason of insanity, and some arise from work of the Scottish Law Commission, as for example the proposals on forfeiture and confiscation. Proposals have also come from other sources, such as the recommendations of the Standing Committee on Criminal Procedure chaired by Lord MacLean and consultation on national standards for social work services in the criminal justice system. A number of further, minor amendments to criminal justice procedures are proposed.

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[1] The Review of Criminal Evidence and Criminal Procedure, June 1993
Criminal Legal Aid Review, November 1993
Juries and Verdicts, January 1994
Sentencing and Appeals, February 1994

[2] Report of the Royal Commission on Criminal Justice Cm 2263, July 1993

SUMMARY OF MAIN PROPOSALS

1.4 Victims and other members of the public sometimes complain about the way that **bail** operates. New powers are proposed to deal with people who commit offences while on bail and to allow the prosecutor to have the grant of bail reviewed if significant new information comes to light.

1.5 At present far too many cases do not go to trial on schedule. This means that victims and other witnesses are called to court unnecessarily and often have to wait for long periods. Among the witnesses affected are many police officers. The proposals in this White Paper aim to make sure that more cases go ahead on time by **enhancing the system of intermediate diets** and so reducing the number of cases which are cancelled at a late stage. This should free many police officers for more productive work. Even when they eventually give their evidence, witnesses sometimes find that it was never really in dispute. They feel their time has been wasted. New methods of putting such evidence before the court without unnecessary inconvenience to witnesses are proposed.

1.6 **Juries** are a vital part of the system of justice. **It has been decided to maintain the traditional Scottish jury of fifteen and the three verdicts,** but to make sure that juries are truly representative. At present some people find it difficult to serve because of particular family, business or holiday commitments. In future they will be offered alternative dates at a more convenient time. At present also peremptory challenges mean that for no good reason some people are denied their chance to contribute to the administration of justice. It is proposed to abolish peremptory challenges.

1.7 In recent years there has been an enormous growth in **appeals**, especially against sentence. Ways of improving the information available to judges about levels of sentence are currently being explored and the Government proposes to introduce a specific statutory power to allow the Appeal Court to issue judgements establishing sentencing guidelines. The large number of appeals can lead to delays. At present all appeals are heard by three judges. The Government believes that all appeals should continue to be heard by the Appeal Court, but it is proposed to introduce a sift by a single judge to weed out those with no prospects of success. Provision will be made to allow appeals on matters of sentence only to be heard by a bench of two judges. These changes should ensure that appellants with genuine appeals have them heard as quickly as possible.

1.8 In England and Wales the recent Royal Commission on Criminal Justice proposed the setting up of a Criminal Cases Review Authority to handle certain miscarriages of justice. The Home Secretary has accepted this proposal which has also been considered in relation to Scotland. The

Scottish system is different. Many of those who replied to the consultation paper dealing with these issues were opposed to any similar changes for Scotland. The issues are complex, however, and involve the powers of the Appeal Court and its relationship with any new body. They require further scrutiny. The Secretary of State has accordingly decided to set up an independent committee to examine them and to report as soon as possible.

1.9 The Royal Commission made a number of recommendations on the position of victims and on a variety of other topics. The White Paper charts the progress made on these matters in Scotland and sets out the Government's proposals for the future.

1.10 Much has been achieved by the existing system of diversion from prosecution and the Government intends to strengthen it. Similarly the Government proposes to build on the success of the distinctive system of fiscal fines by introducing four levels of fine which procurators fiscal will be able to offer for a range of minor offences.

1.11 Much has been done already by the courts, by lawyers and by other professionals to improve services. The proposals in this White Paper carry forward and develop that work.

1.12 The main changes proposed are:-

- reform of bail legislation, giving the courts new powers to deal with offending on bail (paragraphs 2.5 to 2.14);
- an enhanced system of intermediate diets before trial to reduce the numbers of trials adjourned and cancelled at a late stage, causing inconvenience to witnesses (paragraphs 2.15 to 2.20);
- developments in disclosure of information to the defence so as to encourage agreement of uncontentious evidence, as well as development of the system of dealing with routine evidence (paragraphs 2.21 to 2.34);
- improvements in the procedures for the selection of juries so that they are properly representative and that inconvenience to potential and actual jurors is kept to a minimum (paragraphs 3.2 to 3.14);
- promotion of improved information systems for the courts about sentencing and the development of sentencing guidelines (paragraphs 4.6 to 4.8);
- clarification of the courts' powers to take account of a guilty plea as a mitigating factor for sentence (paragraph 4.14);
- enhanced powers for the courts to order forfeiture and confiscation of offenders' assets, in appropriate circumstances (paragraphs 4.15 to 4.19);

– a system of sifting of appeals by a single judge before the case goes to a hearing, and reduction in the quorum of three judges to hear appeals against sentence (paragraphs 5.5 to 5.11);

– limiting the current power of the prosecution to reindict on a higher charge (paragraph 6.9);

– the appointment of an independent committee to examine further and report on appeals criteria and machinery for dealing with alleged miscarriages of justice (paragraphs 6.12 to 6.17);

– adjustments to the system of criminal legal aid to reinforce the proposed system of reformed intermediate diets and agreement of evidence (paragraph 7.6);

– improved facilities for diversion from prosecution (paragraphs 8.5 to 8.6);

– extension of the distinctively Scottish system of fiscal fines to enable the Crown to deal with a wider range of minor offences out of court, while at the same time preserving the right to a trial where the offer of a fine is not accepted (paragraphs 8.7 to 8.12);

– amendments to criminal procedure as recommended by the Standing Committee on Criminal Procedure (paragraphs 8.13 to 8.17);

– new powers, with appropriate safeguards, to enable DNA recognition to be fully used in the fight against crime (paragraphs 8.22 to 8.31);

– improvements to the system of non-custodial offender services (paragraphs 8.32 to 8.38);

– reform of the arrangements for dealing with those unfit to plead or acquitted by reason of insanity (paragraphs 8.39 to 8.41);

– a proposal to consolidate criminal procedure legislation (paragraphs 8.42 to 8.43);

– the continuing development of services and support for victims and witnesses (paragraphs 9.2 to 9.11 and Annex B);

– improvements in the police service, involving improved discipline and complaints procedures, training and appraisal, and safeguards for suspects (paragraphs 9.12 to 9.24); and

– a continuing review of forensic science services in Scotland by the Standing Committee on Forensic Science Services in Scotland (paragraphs 9.25 to 9.31).

1.13 Annex A summarises the Government's proposals for legislation.

Chapter 2
PRE - TRIAL PROCEDURE

INTRODUCTION

In June 1993 the Government published a consultation paper seeking views on proposals for improving the procedures for bringing cases to trial. These proposals were set out in a report, the *Review of Criminal Evidence and Criminal Procedure*, which revealed that as many as four out of five trials did not take place when programmed and that the main causes were late guilty pleas and unforeseen adjournments. It was estimated that of the 350,000 or so witnesses who attended court each year, as many as 280,000 did not give evidence. Half of these witnesses were likely to be police officers. The report made proposals for reducing the waste of time and inconvenience involved in cancelled and adjourned trials by introducing mandatory intermediate diets. There were also further proposals for reducing the length of the minority of trials which do go ahead, through the agreement of uncontroversial evidence and the presentation of some evidence in written form. The ultimate success of any new system is crucially dependent on effective management of pre-trial procedures by the judiciary.

2.2 Responses to the consultation paper demonstrated considerable concern about the consequences of the cancellation and adjournment of trials and broad support for most of the measures set out in the consultation paper.

2.3 Concern has also been expressed recently about the rising numbers of offences which are committed by persons on bail. Although this issue did not form part of the *Review of Criminal Evidence and Criminal Procedure,* the Government believes that abuse of bail by accused persons is an extremely important issue which is of concern to a wide spectrum of the general public. The Government therefore intends to take action to curb the increase in offending while on bail.

2.4 **The Government proposes to introduce legislation to implement the proposals set out in the following paragraphs.**

BAIL

2.5 Legislation on bail was last passed in 1980 when the Bail etc. (Scotland)

Act 1980 removed the normal requirement that a sum of money be pledged or deposited before release on bail could be granted. It established a system of conditions attached to the grant of bail to ensure that the due process of law was observed.

2.6 Of the 200,000 or so criminal cases subject to court proceedings each year in Scotland, only a minority involve persons either remanded in custody or released on bail prior to their appearance in court for trial. The majority of accused are simply ordained to appear for trial.

2.7 Under section 26 of the Criminal Procedure (Scotland) Act 1975 all crimes and offences in Scotland are bailable by sheriffs, except treason and murder. Courts will grant bail unless the application is opposed by the procurator fiscal, and the court considers it should be refused on the grounds of the need to protect the public and secure the course of justice. Bail conditions seek to ensure that the accused appears at court at the appropriate time, assists as necessary with inquiries or reports required by the court in dealing with his case and does not obstruct the course of justice, either by interfering with witnesses or otherwise. The 1980 Act also enables the court to impose conditions to secure that the accused does not commit an offence while on bail.

2.8 In 1989 the Government commissioned major research into the workings of the 1980 Act. While it was in progress, over 1991 and 1992, public concern developed about the growth in bail abuse apparent from police statistics of recorded crime. The research report, which was published in May 1994, indicated that there was a need for greater consistency in the practice of all those involved in bail and related decisions. It suggested that in those areas in Scotland where bail is more readily granted there was a tendency for those who repeatedly committed minor offences to end up in custody because of a record of offending on bail, whereas elsewhere such offences were less likely to be recorded as bail abuse. The report indicated that rates for offending on bail in Scotland appear to be similar to those in England and Wales.

2.9 **The Government attaches considerable importance to securing the process of justice and reducing levels of bail abuse.** In the light of the report's concerns about different approaches throughout Scotland, **the Crown Office is to establish a working party comprising members of the Procurator Fiscal Service and representatives of the Association of Chief Police Officers in Scotland to review the guidelines to the police on their approach to liberation of accused persons before appearance in court.** The working party's objective will be to find means of ensuring consistency in the police approach while taking account as necessary of local and specific circumstances. This review will

be reinforced by a fresh look by the Crown Office at the prosecution attitude to bail.

2.10 The Government welcomes these initiatives. However, despite evidence that the apparent growth in bail abuse recorded by the police in recent years is mainly due to increased efforts by local police forces to identify and record bail abuse accurately, the fact remains that in 1993 the police recorded 26,000 offences of offending on bail. This figure is unacceptable. The Government shares the widespread public concern at this level of offending on bail. The Government has therefore decided to take action to deal with these abuses.

2.11 Failure to observe a condition of bail disrupts the due process of law and is a breach of the trust of the court which released that individual on bail. The commission of another offence while on bail is a further breach of the court's trust. **The Government believes that present legislation does not enable the courts to treat in a sufficiently serious and visible manner those on bail who offend repeatedly, and therefore proposes the following measures:**

– where a person on bail commits an offence the courts will be given a new power to increase the sentence for that offence (an aggravated sentence);

– the penalties which the court may impose will be a fine of up to £1,000 and/or a period of imprisonment of up to 6 months (60 days if convicted in the district court). The proposed maximum period of imprisonment is twice as severe as the maximum that the sheriff court may at present impose in respect of an offence committed while on bail;

– where a court imposes an aggravated sentence the increase in the sentence will be spelled out separately by the court. The court may take into account the circumstances under which bail was originally granted and the nature of the original offence in determining the seriousness of the aggravating factor. The increase in the sentence would form part of the sentence for purposes of appeal; and

– if the accused is found not guilty of the original offence for which bail was granted but is convicted of a subsequent offence while on bail the court may still, in these circumstances, impose an aggravated sentence.

2.12 The Government believes these measures will enable the courts to deal more directly and more effectively with those who abuse the trust placed in them by the court through the grant of bail.

2.13 In some cases it may be wholly inappropriate for bail to be granted at all. In addition to the restrictions which exist at present, the Government believes that those who are accused of a serious offence where they have been convicted previously of that or a similar serious offence should not be admitted to bail. **The Government accordingly proposes to amend section 26 of the 1975 Act to provide that bail should not be available to those facing charges of culpable homicide, attempted murder, rape or attempted rape where they have a previous conviction for any of these, involving a custodial sentence in the case of culpable homicide, or a previous conviction for murder or treason. The Government also proposes to promote specific provisions enabling the prosecution, in the light of new information, to request the court to review bail conditions which might have been imposed, or to review a decision to grant bail.**

2.14 The existing powers of the court to impose conditions on the grant of bail do not include power to impose a condition that the accused should attend an identity parade or should present himself to have a sample taken under warrant. The absence of such a power can lead to accused persons being kept in custody where they might otherwise be granted bail. This is undesirable and **the Government therefore proposes:**

- **to introduce a power for courts to impose a new condition of bail to require a person to make himself available for the purposes of participating in an identification parade or to enable prints, impressions or samples to be taken under the authority of a warrant; and**
- **to increase the maximum fine for breaching a condition of bail from the current level of £200 to £1,000.**

INTERMEDIATE DIETS

Summary procedure

2.15 The proposal for a new mandatory intermediate diet in summary procedure was widely welcomed. Indeed, following the successful experiments commissioned by the Steering Group on Court Programming, chaired by Sheriff Principal Nicholson, some courts have on their own initiative introduced intermediate diets in the period since the consultation paper was published. Early results from these courts seem to reflect the encouraging outcome of the original experiments.

2.16 In response to the consultation it has been argued that there may be cases where an intermediate diet would be unduly costly or inconvenient, or in which an intermediate diet would be demonstrably pointless; and that

there may be some courts, for example those which sit infrequently and which do not face the difficulties of cancelled trials experienced in most courts, where a mandatory diet would not merely serve no real purpose, but would actually create exceptional programming difficulties.

2.17 The Government recognises these possibilities, but remains concerned to ensure that effective intermediate diets are adopted as widely as possible. **The Government therefore intends to proceed with the proposal to make intermediate diets mandatory in all summary cases prosecuted in the sheriff courts and district courts. However to allow sufficient flexibility to meet the practical points that have been raised, the Government proposes:**

- **first, that in exceptional cases and on the application of the prosecution and defence, the court may dispense with an intermediate diet if it considers that there would be no benefit in having one;**
- **second, that in exceptional cases (such as an accused who lived at some considerable distance), the court would have power to excuse the accused from attending the diet, provided he was represented at it; and**
- **third, that the Secretary of State should have powers to introduce intermediate trial diets progressively and to exclude individual courts from the mandatory requirement if they could demonstrate both that the diets would not yield any significant practical benefits and that imposition of the diets would be an unreasonable burden on court programming. The exercise of such a power might be appropriate in relation to some less busy district courts.**

2.18 **The purpose of the intermediate diet would be set out in legislation more fully than at present, in a provision based on the list of duties suggested in the report of the** *Review of Criminal Evidence and Criminal Procedure,* **namely that the court:**

- **shall ascertain whether the prosecution and defence cases are fully prepared;**
- **shall ascertain whether the Crown and defence are in a position to agree and have agreed any of the evidence and can discharge any of the witnesses;**
- **shall enquire whether a joint minute of agreement or a statement of facts can be agreed; and**
- **if not satisfied that the case is fully prepared, and/or that evidence which will not be contested has been agreed, shall either arrange a new trial diet or continue the intermediate diet to another date.**

2.19 **The prosecution and defence would have a statutory duty to take all reasonable steps open to them to secure agreement on matters which might be agreed or admitted.**

Solemn procedure

2.20 The Review report proposed the introduction of a similar mandatory diet in solemn procedure. While this proposal was widely supported in relation to sheriff and jury cases, it was pointed out that a number of practical problems would arise in programming such diets for the High Court, which sits continuously only in Edinburgh and Glasgow and depends on a relatively small number of judges sitting as required in cities and towns around Scotland. **The Government therefore proposes that the mandatory diet should be introduced for sheriff and jury cases only.** It would be subject to a similar statutory framework as is proposed above for intermediate diets. In the High Court, where the problems of cancelled and adjourned trials are in any case somewhat less acute than in the sheriff courts, the Crown will seek to make use of the existing statutory provisions for preliminary diets in section 76 of the Criminal Procedure (Scotland) Act 1975, as modified by section 39 of the Prisoners and Criminal Proceedings (Scotland) Act 1993, in cases where it would appear to be beneficial to do so.

AGREED ADJOURNMENTS

2.21 In the light of general support for the proposal in the consultation paper, **the Government will promote amendments to clarify the existing provisions in sections 77A, 314(3) and 314(4) of the Criminal Procedure (Scotland) Act 1975.** These will provide that an adjournment of a trial may be granted by a judge in chambers, where prosecution and defence agree on the need for adjournment. It will, however, remain possible for the application to be considered, and if appropriate refused, in open court should the court require it.

EVIDENCE

Civilian witness statements

2.22 The consultation paper also sought views on the report's recommendation that, subject to the resolution of a number of practical difficulties, the prosecution should routinely provide the defence with copies of witness statements in summary cases, so as to facilitate earlier guilty pleas and the agreement of evidence. This recommendation was supported by many, although not all, consultees. An experiment in the provision of civilian witness statements in certain cases has been carried out in Paisley. Further experiments in different areas and within different parameters will be necessary. The Lord Advocate intends that they will be overseen by a working

party including prosecution, police and defence interests. Work in this area will, therefore, continue.

2.23 In some complex cases it may be helpful for the prosecution to provide the defence with additional information about the prosecution case other than in the form of witness statements. This is already possible within the existing procedures, and prosecutors will continue to do this in appropriate cases.

Routine evidence

2.24 The certificate evidence provisions in section 26 of the Criminal Justice (Scotland) Act 1980 avoid the need for witnesses to attend court. When the prosecution lodges a certificate the defence is given an opportunity to insist on proof of the matter in the usual way. This is an important safeguard which ensures that in those cases where there may be justification for a challenge, the defence is given the fullest opportunity to test the evidence in court. Consultation elicited general support for the extension of the use of certificate evidence and a number of respondents suggested additional categories of evidence which might be suitable for certification. These suggestions are being examined and **the Government will introduce legislation to extend the list of categories of evidence which may be certificated.**

2.25 Certificate evidence is most suitable in the case of routine matters which require to be proved in connection with statutory offences. New categories of evidence which would be suitable for certification will arise as new statutory offences are created and amendments are made to existing ones, or prosecution of existing offences becomes more frequent or subject to new techniques. **The Government proposes that primary legislation should enable new categories of evidence to be added to the certificate evidence provisions by way of statutory instrument.**

2.26 The Government will bring forward legislation enacting other minor changes to the law of evidence to bring it up to date with changes in the criminal justice system and in society generally. For example, there is growing awareness of the potential danger to health from storage of infected biological samples. To minimise the risk of infection spreading they should be destroyed at the earliest possible opportunity. **The Government proposes that evidence of the results of the analysis of such samples shall be sufficient, without the need to produce the sample in court.**

2.27 Scientific testing of forensic evidence is now carried out in sizable laboratories which deal with a considerable volume of tests. Most of the tests are carried out by technicians under the direction and supervision of approved analysts. The results of such tests are already presented to the courts by certificate. **Legislation will be brought forward to clarify the**

certificate provisions to ensure that a certificate signed by two approved analysts may be sufficient proof of the results of a scientific analysis carried out under their direction or supervision, notwithstanding that all of the processes in the analysis may not have been carried out by the analysts themselves.

Agreement of evidence

2.28 The Government believes that there is significant further scope for releasing witnesses from attendance at court and, to a lesser extent, for reducing the length of trials, through the agreement in advance of evidence which is not likely to be contested. The sort of evidence which is rarely challenged and is therefore generally capable of agreement includes, for example, the evidence of householders whose property has been broken into or car owners whose car has been stolen or forced open. Often such evidence will merely establish that a crime has been committed, not that it was committed by the accused, and in many cases the accused will have no interest in challenging it (although of course the accused must always retain the right to challenge it if he wishes).

2.29 Those who commented on this issue generally agreed that there was scope for more agreement in such matters and that a concerted attempt to achieve agreement before trial would be in the public interest. The correct mechanisms for securing and recording agreement of uncontentious evidence are crucial, and much thought has been given to this issue by the Scottish Law Commission and others. The main options are **minutes of agreement**, the procedure for which already exists; **statements of facts not in dispute,** as recommended by the Scottish Law Commission; and **witness statements.** Each of these options has advantages and disadvantages. However all of them are likely to be more effective when combined with an intermediate diet, at which the question of whether and what evidence can be agreed is addressed.

2.30 **The Government proposes that the existing procedure for minutes of agreement and minutes of admission should remain in place.** It is likely to be useful in most cases where there is scope for agreement of evidence. With the introduction of the new mandatory intermediate and first diets there appears to be no reason why the parties cannot decide at that stage to make such evidence the subject of a minute of agreement.

2.31 A minute of agreement may not however be the most appropriate method in every case. Within the broad category of what may be called uncontroversial evidence, the facts themselves, the form in which they may be expressed in a witness statement, and the quality of the statement will vary widely from case to case. Systems for agreeing evidence should be

flexible enough to deal with all the likely eventualities, so long as they are intelligible and contain adequate safeguards for accused persons. This suggests that the Crown should have a number of options for taking forward the important business of securing agreement to uncontroversial evidence.

2.32 The facts which may be agreed are often drawn from **witness statements.** In many cases the statements will not be a suitable basis for agreement on their own, perhaps because they contain too much extraneous material or because the facts in them have to be related to certain productions which will be used in evidence. For these reasons such statements are normally used as a basis for proposing a minute of agreement. However there may be witness statements which are suitable as they stand and in such cases it would be more effective to serve the statements themselves on the accused.

2.33 The Government has given further consideration to the Scottish Law Commission's proposal for **a statement of facts** which would be served on an accused person and would be regarded as proved unless a counter-notice was served. The procedure is similar to that already used for certificate evidence and has the advantage that it puts the onus on the accused to address the facts early on in the case and particularly to decide whether he is prepared to agree those narrated in the statement. The Government has concluded that this proposal should be introduced for use in those circumstances where it would be appropriate. It would lend itself in particular to the proof of documentary evidence which is already admissible by virtue of Schedule 3 to the Prisoners and Criminal Proceedings (Scotland) Act 1993 and which could be the basis for some of the facts in the statement. If it were possible to agree evidence in this way, no further proof would be required. The disadvantage of the mechanism is that the drafting of the statement of facts could be very time consuming and the Crown's workload might often be disproportionate to the benefits achieved. Experience of the procedure in practice will enable the Crown to identify more effectively those cases where its use is likely to be beneficial.

2.34 **The Government accordingly proposes that the procedural model proposed by the Scottish Law Commission for statements of facts not in dispute should be adopted, but that such a statement could incorporate reference to witness statements and documents which could be appended to the statement of facts.** The list of facts, or the facts in the statements or other documents, would be held to be proved unless the accused or his agent served a counter-notice within a prescribed period. Procurators fiscal would serve such a statement, if one was appropriate in the case, before an intermediate diet, in sufficient time to allow the accused or his agent to inform the court at the diet whether he intended to

serve a counter-notice. This procedure might also be appropriate for the few cases in which no intermediate diet is held.

THE ROLE OF THE JUDICIARY

2.35 The *Review of Criminal Evidence and Criminal Procedure* recommended that judges should manage preliminary procedures more effectively. This recommendation was directed mainly at the conduct of intermediate diets and it received strong support from the majority of respondents, including the Sheriffs' Association and the sheriffs principal. A few respondents advised caution. One or two were concerned that judges might, in managing the procedures actively, infringe the rights of the accused. Several suggested that training would be necessary to enable the judiciary, especially justices of the peace, to make the most effective use of the new intermediate diets.

2.36 The changes to pre-trial procedures which the Government proposes would not diminish the existing rights of the accused. The changes are intended to make practices which already exist - intermediate diets, procedures for agreement of evidence, changes of plea, adjournment of trials - operate more effectively and with less cost and inconvenience to witnesses and other members of the public. The whole tradition of Scottish justice suggests that the judiciary are well able to distinguish management of these procedural issues from interference in the substance of the case before them. There is no reason why effective judicial oversight of these procedures should infringe the rights of the accused.

2.37 On the other hand, the Government readily accepts that training in case management may be beneficial for sheriffs and justices of the peace who will be conducting intermediate diets. Such training has already been recommended by the Steering Group on Court Programming, chaired by Sheriff Principal Nicholson, and the new committee to co-ordinate shrieval training, recently set up under the chairmanship of Lord Cameron of Lochbroom (see Chapter 9), will no doubt take account of the legislative changes proposed in this White Paper. Training of justices of the peace is the responsibility of local justices committees, but the Secretary of State for Scotland has powers to make and approve training schemes. **The Scottish Office Home and Health Department will consult the Central Advisory Committee for Justices of the Peace and the District Courts Association on the form of training of justices of the peace which might be required, taking account of any relevant developments in training for sheriffs.**

Chapter 3
JURIES AND VERDICTS

INTRODUCTION

In the consultation paper *Juries and Verdicts* the Government invited views on a number of proposals for improving the selection of juries, as well as on the future of the three verdict system, the size of Scottish juries and the majority verdict. This chapter sets out the Government's conclusions in the light of the responses received. In general, there was widespread support for the Government's proposals for reform of the procedures for selection of juries, but much less consensus in relation to issues related to the three verdict system.

THE SELECTION OF JURIES

3.2 The purpose of the Government's series of proposals for improving the selection of juries is to achieve juries which are more representative of the community and more willing to serve. This can be achieved by making it more difficult to avoid jury service but less inconvenient and time-consuming to undertake it, and by reducing the number of people who are cited for jury service but not in the end asked to serve. There was general support for these objectives and for most of the proposals set out in the consultation paper.

Revisal notices

3.3 The majority of respondents who commented agreed that a specific offence of failing to return a Revisal Notice (the initial inquiry to potential jurors) should be created. Those who dissented were mainly concerned with the practical and resource implications of prosecuting the proposed offence. **The Government proposes to introduce legislation creating such an offence.**

Persons on bail

3.4 Again, the majority of respondents supported the disqualification of persons on bail from jury service. Some, however, pointed out that those on bail are presumed innocent. The justification for disqualification is not, however, that those on bail might have committed an offence. Rather, it is that they have been accused of committing an offence and are still subject to criminal proceedings and that this might improperly affect their attitude

to the proceedings in which they would be contributing to the verdict. **The Government proposes to add persons on bail to the categories of persons who are disqualified from jury service, as currently set out in Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.**

Members of religious sects

3.5 The Government sought views on a recommendation made by the Royal Commission on Criminal Justice, that practising members of religious sects who find jury service incompatible with their tenets or beliefs should be entitled to be excused jury service. There was considerable support for this proposal and **the Government proposes to introduce a provision adding such persons to the categories of persons excusable as of right, as specified in Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.**

Single sex juries and exemption of women

3.6 The responses revealed that the existence of provisions (in section 100 of the Criminal Procedure (Scotland) Act 1975) allowing the empanelling of juries of a single sex and the exemption of women "by reason of the nature of the evidence to be given or of the issues to be tried" was not generally known. **There was almost unanimous support for abolition of these provisions, and the Government will introduce legislation to repeal them.**

Statutory prescription of the number of jurors cited

3.7 The provision in section 85 of the 1975 Act that the number of jurors summoned shall be 45, a number which dates from 1579, has no relevance to modern circumstances, when trials are normally grouped in sittings, and clerks of court have to take into account a range of different factors which may vary from court to court. **There was near unanimous support for the abolition of this provision and the Government intends to introduce legislation to abolish it.**

Excusal from jury service

3.8 Excusal from jury service has a potentially significant role in influencing the composition of the jury and inflating the numbers of citizens who have to be cited initially. There was considerable support for the aim of achieving a more consistent policy on excusal and the proposal to offer more flexibility about the dates of jury service was widely welcomed, although there were more mixed views about the need to tighten the clerks' statutory discretion to excuse. The Government considers it desirable that the importance of jury service as a public duty is understood by all, and that it should not be generally assumed that obtaining excusal from jury service is easy. **It**

therefore proposes that the statutory discretion to excuse should be narrowed so that excusal is not available for inconvenience but is confined to exceptional circumstances. The offer of an alternative date for service should meet most circumstances where inconvenience is the problem. This will be achieved administratively by citing for a subsequent sitting those who have indicated that serving at a particular sitting would be inconvenient.

Peremptory challenge

3.9 Views about the abolition of the right to object to three jurors without giving reasons - "peremptory challenge" - were mixed, with a small majority favouring abolition. Some respondents were clear that the right is abused and should not be available. Others believed that the abolition of peremptory challenge might lead to time-consuming challenges on cause shown. A few respondents argued that the right of peremptory challenge is a useful safeguard for accused persons. **The Government's view is that the provisions are unnecessary and, being open to abuse, should be abolished.** Experience since peremptory challenge was abolished in England and Wales suggests that abolition would not be followed by a significant rise in challenges on cause shown.

3.10 In general, it is Government policy that disabled people should be able to perform fully their duty to serve as a juror. In this context the improvements in courtroom facilities for the disabled, listed in Annex B, are relevant. It has been pointed out, however, that there may be occasions when it is apparent to the court that a person who has been balloted is unsuitable for jury service, perhaps because of a disability which would prevent proper consideration of the evidence. In such cases an objection on cause shown may be embarrassing to the potential juror. Such cases are likely to be infrequent: most people in such circumstances would have been excused service on medical grounds. **However to meet the occasional case which might arise the Government proposes to adopt a solution proposed by the senior judiciary, namely that the court should have power to excuse a juror on joint application by prosecution and defence, without requiring the cause to be stated in open court.**

Occupation of prospective jurors

3.11 At present, the occupations of prospective jurors are on the List of Assize made available to the prosecution and defence. This is alleged to form the basis of many peremptory challenges. It might form the basis of challenges on cause shown if peremptory challenge were abolished, although it seems unlikely that occupation alone could justify a successful objection. There seems no substantive reason why occupation should be revealed in this way. **A clear majority of respondents supported the Government's**

initial view that the List of Assize should not contain the occupations of potential jurors and the Government intends to introduce legislation which would remove this requirement.

Jury comprehension

3.12 In line with the Citizen's Charter principles of information, consultation and helpfulness, the Government sought views on whether additional steps might be taken to assist the comprehension of juries before or at the beginning of the trial. The Scottish Courts Administration has issued revised and improved information booklets to jurors. These explain why they have been called for jury service, what will be expected of them if they are chosen to serve and what will happen in court. A new telephone helpline has been set up to provide information and to answer any questions about jury service. Before the jury is balloted, the clerk of court gives a comprehensive introductory talk to those assembled in court. There was general opposition to opening speeches by the prosecution and defence. However, a number of respondents suggested that the practice followed by some judges of giving an introductory explanation to the jury should be expanded and made universal. The Government has drawn the views of respondents to the attention of the judiciary and has indicated that it would welcome any steps the judiciary can take to aid jury comprehension, particularly where complex matters are before the court.

3.13 This is an area which must always be kept under review. It is one which might benefit from research into the experiences of jurors. The Government will consider the case for suitable research which would not contravene the provisions of the Contempt of Court Act 1981. **Meanwhile, the Government does not propose any legislative action.**

3.14 The Royal Commission on Criminal Justice made recommendations that the Contempt of Court Act 1981 be amended to permit research into the decision-making process of juries. The 1981 Act applies to Scotland and the recommendations therefore have implications for research into the Scottish jury system. Any research in this area would be an issue of great sensitivity. The Government is sympathetic to the recommendations but is anxious to ensure that any changes to the 1981 Act would respect the concerns of jurors and the judiciary. Careful consideration is accordingly being given to what changes might be appropriate. An announcement will be made when the Government has reached a conclusion.

THE THREE VERDICT SYSTEM

3.15 A particularly important issue on which the Government has sought views is the future of the three verdict system. The Government had no preconceived view on abolition or retention and in the consultation paper

set out impartially the arguments for and against change. The three verdicts have been part of the Scottish criminal justice system for more than two and a half centuries and clearly they should not be altered or abolished lightly. On the other hand the system of verdicts must command the confidence of the public at large as well as practitioners in our courts and should not be maintained simply because of tradition.

3.16 The responses to consultation on this issue do not reveal a consensus for change. Nor does the debate appear to have ranged the views of legal interests for no change against the views of the public at large for abolition, as some commentators have suggested. While most of the responses from within the criminal justice system supported the retention of the three verdicts, a few favoured abolition. On the other hand, public support for abolition appears not to be widespread in Scotland.

3.17 Respondents were divided about the logical case for three verdicts. While some asserted that logic dictated that there should be only two verdicts, others asserted that the three verdicts were entirely logical and, indeed, more consistent with reality than a two verdict system.

3.18 Some opposition to the not proven verdict has been based on the view that there are widely held misconceptions about its effects - for example that it could be followed by a fresh prosecution, that it prevented prosecution of anyone else, or that it offered a soft option for juries. To some extent, these misconceptions should have been corrected by the publication of the consultation paper. Moreover, judges have already taken action on their own initiative to ensure that juries understand that where the case against an accused person is found not proven, that person may not be prosecuted again for the same crime.

3.19 The debate about the future of the three verdict system is itself likely to have had a beneficial effect on the operation of the system and on public perception of it. In the Government's view, a considerable weight of informed opinion against the three verdict system would be necessary to justify its abolition. Such weight of opinion does not appear to exist at present. **The Government therefore proposes that the three verdict system should remain.**

JURY SIZE AND MAJORITY VERDICTS

3.20 A wide variety of views about the appropriate size of juries, and the required majority for conviction, was submitted. Most respondents were not in favour of change from the present size of 15, although some respondents preferred a qualified majority verdict of two thirds or more to the present simple majority requirement, whatever the available verdicts. Others took the view that the simple majority verdict had to be viewed in

relation to the other elements of the system, including the three verdicts, the requirement for corroboration and the independence and discretion of the public prosecutor. While some respondents were content to see smaller juries, there were no strong views in support of the proposition that practical issues of economy and reduced inconvenience justify change, and some importance was attached to the advantages of larger juries in achieving a broader spread of views and limiting the influence of individual jurors.

3.21 **In the light of these views and the proposal to retain the three verdict system the Government proposes that there should be no change at present either to the size of juries or to the simple majority verdict.**

CHAPTER 4
THE POWERS OF THE COURTS

INTRODUCTION

In any effective criminal justice system the courts must have adequate and appropriate powers to deal effectively with those convicted of crimes. In the consultation paper *Sentencing and Appeals* the Government sought views on a range of issues concerned with the sentencing powers and practices of the courts. The Scottish Law Commission is preparing a report to the Government on forfeiture and confiscation. This chapter records the Government's conclusions on three important issues: whether the sentencing powers available to each court remain appropriate; whether there is a case for guidelines on sentencing; and whether the courts need greater powers to confiscate the proceeds of crime.

SENTENCING

Sentencing powers

4.2 The Government invited views on a number of options for increasing the maximum sentencing powers available to the sheriff courts. The rationale for these proposals was to facilitate a more efficient distribution of cases between the courts and, in particular, to relieve the High Court of the burden of dealing with cases which might appropriately be dealt with in the sheriff courts. The options on which views were sought were:

> an increase in the maximum powers of the sheriff courts in **solemn** cases from three years to four or five years;
>
> an increase in the **summary** sentencing powers of the sheriff courts from three months, and from six months for a second or subsequent offence involving personal injury or dishonest appropriation of property, to six months and twelve months respectively; and
>
> a matching increase in the sentencing powers of **stipendiary magistrates.**

Solemn procedure

4.3 There was considerable support for the proposal to increase the sheriff court's powers in **solemn** cases from practitioners in the sheriff courts and others. However, some expressed concern that an increase in sentencing powers to enable the sheriff courts to deal with more cases would in fact

lead to longer sentences being imposed overall. Even among those who supported an increase in powers many considered that measures such as training or sentencing guidelines, or the restriction of the powers to sheriffs in certain categories, would be desirable to prevent this happening. Some respondents, including the senior judiciary, suggested that, since a high proportion of High Court cases were resulting in sentences which were within the sheriff courts' existing powers, a better approach would be for the Crown to allocate more cases to the sheriff courts, and that the sheriff courts' power to remit a case to the High Court for sentence would provide an adequate safeguard in the occasional case where the circumstances appeared to merit a heavier sentence than the sheriff court could impose.

Summary procedure

4.4 There was less support for an increase in sheriffs' **summary** sentencing powers. Similar objections to the proposed increase for solemn cases were raised but in addition many expressed concern that accused persons should not in general be subject to imprisonment for more than six months unless they had been convicted by a jury. In fact for some statutory offences, including some drugs offences, the sheriff courts may already impose sentences of up to twelve months after summary conviction.

4.5 The Government acknowledges the unease expressed by some respondents about these proposals, the absence of a strong demand for change and the power of the sheriff to remit solemn cases to the High Court for sentence in appropriate cases. **For the time being, the Government does not propose to bring forward proposals for any changes to the sentencing powers of the courts.**

Sentencing guidelines

4.6 The Government invited views on whether sentencing guidelines should be introduced in Scotland. Many respondents pointed out that a substantial amount of guidance on sentencing matters was available in the reported decisions of the Appeal Court, although these do not deal with the question of the appropriate range of sentences in particular categories of case. Considerable support was expressed for the development of such sentencing guidelines. Apart from their potential to improve consistency and provide a benchmark for decisions to appeal, respondents considered that guidelines could contribute a more logical and transparent approach to sentencing. Some district courts in particular would welcome them. The Government will discuss with the senior judiciary and the district courts the best means of meeting district courts' apparent desire for more guidance on sentencing.

4.7 The Appeal Court would obviously have a pivotal role in any system of sentencing guidelines. Since it determines all appeals against sentence,

there would be little point in guidelines which did not have the support or endorsement of the Appeal Court. One possible source of guidance on the appropriate range of sentences is the decisions of the Appeal Court in individual cases. The Appeal Court's decisions about whether a particular sentence is inappropriate or excessive are not, however, generally perceived as having direct relevance to other cases. In view of the substantial support for the introduction of sentencing guidelines, **the Government proposes to promote a specific statutory power to allow the Appeal Court to issue judgments establishing such general guidelines.**

4.8 Respondents also expressed a desire for better information about sentencing. The Government welcomes the initiative taken by the High Court to set up a Sentencing Information System (SIS) for cases tried in that Court and is funding a feasibility study of such a system. The Scottish Office Home and Health Department sends statistical information about sentences imposed in the previous year to all summary courts. It is also, in association with the Lord Justice Clerk, providing advice and support for the researchers undertaking the SIS project. If the proposed SIS proves workable and successful, the Government would see considerable attractions in assessing the feasibility of a similar system for the sheriff and district courts. The Government will continue to support the development of an SIS for the High Court and will keep in view the case for similar developments in other courts.

A sentencing commission

4.9 There was some support for a sentencing commission to review the objectives of sentencing and to set out the basic principles to be followed in sentencing, although there were mixed views about how prescriptive such a commission could usefully be. **The Government does not propose to set up a formal sentencing commission at present, but it will keep the case for such a development under review. In the meantime, the new group set up by the Secretary of State to coordinate the provision of training for the judiciary (which is referred to in Chapter 9) will no doubt wish to consider future training needs in the key area of sentencing.**

Sentence discounting

4.10 In the report of the *Review of Criminal Evidence and Criminal Procedure* the advantages and disadvantages of reducing sentences to encourage early guilty pleas - sentence discounting - were discussed at some length. The Government concluded that since formal discounting would be a significant departure from traditional sentencing practice in Scotland, and raised so many issues of both principle and practice, views should be sought before any detailed scheme was formulated.

4.11 Sentence discounting is practised in England and Wales and in many other jurisdictions. All share essential features of the Scottish system, such as the presumption of innocence and the absolute right of the accused to have the charges proved in court, and many provide considerable judicial discretion in sentencing. Moreover, many respondents asserted that in practice Scottish judges often do impose lesser sentences on those who have pled guilty than on those who go to trial. However these respondents and most others were opposed to any formal system of sentence discounting or any requirement to reduce sentences in such circumstances. This was generally on the grounds that such a system would penalise accused persons who exercised their right to go to trial. It was also argued that the weight that should be attached to a plea of guilty for sentencing purposes varies widely from case to case and that the courts should not be constrained from deciding the appropriate weight to attach to such a plea in the circumstances of each case.

4.12 For most, although not all, respondents, these considerations outweighed any benefit which might be obtained if a system of sentence discounting were to reduce the number of late pleas of guilty, and therefore reduce the waste of time and inconvenience suffered by witnesses, jurors and others involved in criminal proceedings, who turn up expecting a trial which is then cancelled.

4.13 **Having considered the various arguments, the Government has decided at present against the introduction of a formal or mandatory approach to sentence discounting in Scotland.** Nevertheless there appears to be considerable acceptance of the principle that it may be right in many cases to reduce sentence for those who plead guilty early. At present, it is possible that some courts are inhibited from reducing sentences where they see justification for doing so by their perception of the effect of the judgment in Strawhorn v McLeod (1987) which proscribed "a declared practice of discounting". Similarly, accused persons may not realise that it is in fact open to the court to take account of an early guilty plea by imposing a reduced sentence. **The Government therefore intends to introduce a statutory provision to make it clear that the courts *may* take into account a guilty plea, and the circumstances in which it was made, as a mitigating factor in considering the appropriate sentence.**

4.14 One further provision has been suggested by the High Court judges. This is that courts should have the power to backdate a custodial sentence to the date when an accused person tendered a plea of guilty, whether or not the accused was in custody at the time. This would facilitate a small reduction in sentence equivalent to the period of any deferral of sentence for reports etc. **The Government considers this to be a useful suggestion and proposes to introduce such a provision.**

FORFEITURE AND CONFISCATION

4.15 In 1987 the Government asked the Scottish Law Commission to carry out a review of the law of forfeiture, including confiscation of the proceeds of crime. The Commission was invited

> "to consider
>
> 1. the adequacy of the present law and the procedure relating to the forfeiture, in criminal proceedings in Scotland, of property used for the purpose of committing, or facilitating the commission of, offences and of proceeds of criminal activity in general; and
>
> 2. whether further provision should be made to enable courts in Scotland to order forfeiture of the proceeds of criminal activity generally and property derived from such proceeds
>
> taking account of existing or proposed measures and the effectiveness of those already in operation, and to advise."

4.16 In June 1989 the Scottish Law Commission published its Discussion Paper No 82, *Forfeiture and Confiscation*, which sought views on ways to widen the powers of the courts to order forfeiture of goods and articles used for the purpose of committing a crime, and to order the confiscation of property representing the profits or proceeds of crime. In Scotland, while the courts may require the forfeiture of anything used in the commission of an offence, confiscation powers are limited to drug trafficking and terrorism-related offences.

4.17 The Scottish Law Commission has been considering the responses and its report is expected to be published shortly. **The Government considers that arrangements in Scotland to confiscate the proceeds of general crime are long overdue and, following consideration of the Scottish Law Commission recommendations, will bring forward legislative proposals on forfeiture and confiscation at the earliest opportunity.**

4.18 These proposals will complement and continue the progress made in recent years where there has been considerable effort, often at the initiative of the Government, to reinforce international arrangements to confiscate the proceeds of crime. Particular attention has been paid to drug trafficking but many measures have also been taken in relation to the financing of terrorism and serious crime. Various provisions were enacted in the Criminal Justice Act 1993 to counter the money laundering of such proceeds.

Chapter 5
APPEALS PROCEDURES

INTRODUCTION

In any criminal justice system, regardless of how fair and just that system may be, it is vital that there is the safeguard of access to a system of appeal. In its consultation paper *Sentencing and Appeals* the Government sought views on a number of issues relating to the criminal appeals procedure and the handling of alleged miscarriages of justice. This chapter and the next record the Government's conclusions under three heads: Appeals Procedure, in which is proposed the introduction of a single judge sift and a reduction in the quorum of the Appeal Court; Consideration of Appeals, in which is considered the criteria adopted by the Appeal Court for determining appeals; and Miscarriages of Justice, which is concerned with the machinery for dealing with allegations that a miscarriage of justice has occurred.

5.2 Under sections 228 and 442 of the Criminal Procedure (Scotland) Act 1975, any person may appeal against conviction or sentence, other than a sentence fixed by law. Procedures for handling appeals have been the subject of review on a number of occasions over the years. The last major changes to the procedures were enacted in the Criminal Justice (Scotland) Act 1980, which followed the third report of the Thomson Committee[1]. Since then the increase in the number of appeals lodged, particularly appeals against sentence in summary cases, has been dramatic. Between 1981 and 1992 the increase was nearly threefold, with 3,510 appeals being lodged in 1992.

5.3 Although up to 40% of appeals are abandoned before a hearing, the increase in volume still represents a significant additional burden for the Appeal Court. The Government consulted on a number of proposals for changes to the procedures for handling appeals.

DEVOLUTION OF APPEALS TO SHERIFFS PRINCIPAL

5.4 The consultation paper raised the possibility of devolving responsibility for appeals arising from district court cases to sheriffs principal. This proposal did not meet with widespread support and has obvious implica-

[1] Criminal Appeals in Scotland (Third Report) Cmnd 7005, December 1977

tions for the workload and organisation of the sheriff courts. A number of respondents objected on the grounds that an appeal against even a minor offence can have significant implications for the individual. **The Government has therefore decided not to pursue this option.** In the light of the responses, however, the Government intends to take action on two other fronts.

SINGLE JUDGE SIFT

5.5 At present the Appeal Court must consider all appeals which are lodged with the Justiciary Office. In a significant proportion of cases the grounds of appeal are not properly stated or the appeal itself has no merit. The Government believes that it would assist the working of the Appeal Court to introduce a system of filtering cases at an early stage before the full Court is required to consider them.

5.6 One concern is that many appeals are lodged where the grounds of appeal are poorly stated. The proposal in the consultation paper that there should be some (possibly non-judicial) filter of such cases was, in general, not favoured by consultees on the basis that there should be no dilution of the absolute right of appeal in Scotland. The drafting of grounds of appeal is, however, a matter of professional legal practice. Counsel are under a professional obligation to ensure that grounds of appeal are properly framed, and should not usually act as counsel where they believe the appeal to have no merit. The Law Society of Scotland and the Bar Associations have indicated that improvements in legal practice, and programmes of Continuing Professional Development already undertaken by the professional bodies, should ensure that higher standards of drafting will be achieved in future. **The Government welcomes these initiatives.**

5.7 Nevertheless, there will still be many appeals which, following the preparation of the stated case, or the report of the trial judge, clearly have no issue of substance which merits consideration by the full Appeal Court. The proposals for a single judge sift outlined in the consultation paper *Sentencing and Appeals* were generally supported by those who responded. **Accordingly, the Government proposes statutory changes which would require an appellant to obtain leave to appeal, both for appeals arising from solemn procedure and for those arising from summary procedure.** The application for leave to appeal would be considered once full grounds of appeal had been lodged, and only if leave were granted would the appeal be heard by the full Court. Provision would be made for the application to be considered by a single judge on the basis of written submissions, including the trial judge's report or the stated case as appropriate. Parties would not be represented and the consideration of the application by the single judge would not take place in Court.

5.8 In addition to these proposals, to ensure that all appellants have the opportunity to have their case considered by the full Court if they so wish, **the Government intends to provide that if an appellant is refused leave to appeal by the single judge, the application for leave could be renewed to the full Court,** which would then decide, again on the papers and without legal argument, whether leave should be granted. This is similar to the provisions which apply in England and Wales in relation to solemn appeals.

5.9 The consultation paper questioned whether legal aid should be refused to appellants who choose to continue their appeal to the full Court following rejection by the sifting judge. The drafting of grounds of appeal and legal preparation up to the application for leave to appeal to the single judge would, as at present, be covered by the grant of criminal legal aid for the original trial. Most respondents considered that legal aid should not be available following rejection in the single judge sift. The Government accepts this view. In any event, any additional legal advice required at this stage should be minimal. If the full Court refused leave to appeal, there could be no further application for legal aid. If leave were granted, the appellant would then be able to obtain legal aid to instruct Counsel before the appeal.

REDUCTION IN THE QUORUM OF THE APPEAL COURT

5.10 Section 245 of the Criminal Procedure (Scotland) Act 1975 provides that the quorum of the High Court for the consideration of appeals shall be three of the Lords Commissioners of Justiciary. This applies in all criminal appeals. The consultation paper raised the issue of whether, in certain types of criminal appeals, the size of the bench might be reduced. In particular the paper proposed that summary appeals against conviction could be heard by two judges and that summary appeals against sentence only could be heard by a single judge. Almost all respondents agreed that there was a case for reducing the number of judges hearing summary sentence appeals, with some considering a single judge to be appropriate. Some respondents indeed agreed with the proposals that summary conviction appeals might be heard by two judge benches, and most also considered a two judge bench appropriate for sentence only appeals from solemn procedure. Most respondents, however, suggested that all appeals against conviction could raise important points of law which might merit consideration by a full bench of three judges.

5.11 **The Government has concluded that it is not always necessary for three judges to hear an appeal and proposes that the current requirement for a quorum of three judges should be amended.** However, in the light of the proposed introduction of a single judge sift for all appeals, **the Government proposes that conviction appeals should continue to be heard by a bench of at least three judges and that only appeals against sentence alone should be heard by a bench of**

two judges. It would be provided that, in the event of disagreement in cases heard by two judges, the appeal could be referred to a bench of three judges. Benches of two judges would also have the power to remit cases to a three judge bench if they thought it appropriate. Provision would also have to be made to allow a larger bench to consider appeals in certain circumstances, such as where a conviction and sentence appeal was scheduled but the appeal against conviction was withdrawn at the last moment. The remaining appeal against sentence could then be heard by the larger bench already constituted rather than having to reconvene the court.

Chapter 6
CONSIDERATION OF APPEALS AND ALLEGED MISCARRIAGES OF JUSTICE

INTRODUCTION

The consultation paper *Sentencing and Appeals* set out a number of possible alternatives to the current procedures for the handling of alleged miscarriages of justice. It also dealt with possible statutory changes to enable the Appeal Court to take a wider view on a number of issues in its consideration of appeals. These two issues are closely linked since the Appeal Court applies the same criteria to the consideration of cases referred to them by the Secretary of State as to appeals from the court of first instance.

6.2 The results of the consultation process were inconclusive, indicating a degree of support for some changes to the consideration of appeals by the Appeal Court, but showing no widespread support for change to the current procedures for handling alleged miscarriages of justice. The complexity of both issues prevented many consultees from commenting on the proposals in detail and the Government has decided that these difficult questions merit further detailed consideration by an independent committee. The Government proposes to set up this committee as soon as is practicable.

CONSIDERATION OF APPEALS BY THE APPEAL COURT IN SCOTLAND

6.3 The consultation paper invited views on whether the Appeal Court should be empowered to admit certain evidence, in exceptional circumstances, where it is currently unable to do so. The questions were:

- whether the Appeal Court should be enabled to receive a change of statement by a witness, where there is some reasonable explanation why the witness gave the previous evidence from which he now wishes to depart;
- whether the terms of section 228(2) of the Criminal Procedure (Scotland) Act 1975 should be amended to allow the Appeal Court to hear additional evidence which was available at the time of the trial where there is a reasonable explanation for the failure to adduce the evidence;
- whether the Appeal Court should be expressly empowered to reconsider the jury's verdict, even in the absence of fresh evidence; and

- whether the Appeal Court's present approach of quashing a conviction where it considers that authority for a fresh prosecution should be given but a retrial is not practicable, should be maintained.

6.4 Opinions were divided on the need for any change, and in particular on whether it would be possible to change the criteria for the consideration of appeals without opening up the floodgates to potentially unmeritorious appeals which could swamp the Appeal Court. Some consultees expressed the view that any relaxation of the criteria, which currently exclude consideration of the changed statement of a witness and other evidence available at the time of the trial, would encourage intimidation of witnesses and the fabrication of evidence. There was, however, a significant degree of support for change in relation to both these issues, many considering that the Appeal Court would be able to distinguish those cases which had no merit and that the public interest would be safeguarded if the Appeal Court were to receive such additional evidence.

6.5 There was less widespread support for the third proposal for change, with only a small minority of consultees in favour of the Appeal Court being able expressly to reconsider a jury's verdict. This view reflects the traditional role of the jury in Scots law as the master of the facts. On the fourth issue there was no support for change to the current approach of the Appeal Court when considering authorisation for a fresh prosecution in circumstances where a retrial would be impractical.

6.6 The Government recognises that change to the criteria for consideration of appeals raises difficult issues of law and procedure, and that the precise nature of any changes would require careful consideration if the changes were not to undermine the general principle of finality of criminal proceedings and overload the Appeal Court with unmeritorious appeals. For the time being the Government does not propose to bring forward proposals for legislative change, but the issues will be considered further by the Committee along with possible changes to procedures for handling alleged miscarriages of justice.

CROWN APPEAL AGAINST ACQUITTAL

6.7 The Government consulted on the proposal raised by the Royal Commission that there should be a Crown right of appeal against acquittal in circumstances where there was a clear indication that the jury in a particular case had been suborned.

6.8 There was no support for this proposal and a clear view that the principle of having tholed one's assize should be maintained. The Government is not aware that, in Scotland, there is any significant problem of interference with juries. The size of the jury and the simple majority system make

it difficult to influence the verdict of a jury in Scotland. Since it is intended to retain these safeguards, **the Government has no plans to introduce a Crown right of appeal against acquittal in Scotland.**

REINDICTMENT ON A HIGHER CHARGE THAN ORIGINAL CONVICTION

6.9 The consultation paper sought views on whether it is appropriate that an accused who is subject to a retrial can be reindicted on a higher charge than that on which he was originally convicted. Most consultees argued that it was potentially oppressive that the prosecution should be able to reindict on a higher charge. A minority of consultees argued that for evidential reasons it should be open to the prosecution to bring whatever it considers the most appropriate charges against an accused. In the light of the opinions expressed **the Government intends to introduce legislation to limit the current powers of the prosecution to reindict following a successful appeal against conviction.** The legislation will make provision to ensure that all the relevant evidence can be led.

LORD ADVOCATE'S REFERENCE

6.10 Following the recommendation in the third report[1] of the Thomson Committee, the Criminal Justice (Scotland) Act 1980 introduced a provision that "where a person tried on indictment is acquitted of a charge, the Lord Advocate may refer a point of law which has arisen in relation to that charge to the High Court for their opinion"[2]. The ruling of the High Court cannot affect the acquittal and the identity of the acquitted person may not be revealed.

6.11 It is not impossible that the Crown may wish to seek clarification of an important point of law notwithstanding that the accused was not acquitted. It is anomalous that statute should restrict exercise of the Lord Advocate's reference to those cases where a person is acquitted of the charge. **The Government therefore proposes to amend the provision to allow the Lord Advocate to refer a point of law to the High Court for their opinion regardless of the final outcome of the trial.** This change will have no effect on the accused or the outcome of the original trial.

ALLEGED MISCARRIAGES OF JUSTICE

6.12 The Royal Commission on Criminal Justice was established in 1991 in the wake of a number of miscarriages of justice which occurred in England and Wales. Its remit did not extend to Scotland, but the Secretary of State undertook to consider the implications of the Commission's report in the

[1] Criminal Procedure in Scotland (Third Report) Cmnd 7005, December 1977

[2] Section 263A of the Criminal Procedure (Scotland) Act 1975

Scottish context. Chapter 11 of its report[3] dealt with the handling of alleged miscarriages of justice. One of the Commission's main recommendations was that, in England and Wales, an independent review authority should be established to take over from the Home Secretary the role of deciding whether cases should be referred back to the Court of Appeal once the normal appeal process has been exhausted.

6.13 In Scotland the extra-judicial consideration of allegations of miscarriage of justice is currently undertaken by the Secretary of State, who has power under section 263 of the Criminal Procedure (Scotland) Act 1975 to refer such cases as he thinks fit to the High Court. Any person may petition the Secretary of State in relation to an alleged miscarriage of justice. The Secretary of State may refer a case back to the Appeal Court at any stage, although he will in practice never consider doing so if the case is *sub judice*, ie if an appeal is pending or the time within which an appeal may be lodged has not yet expired. Once a case has been referred back to the Appeal Court it is dealt with by the Court in the same way as an appeal under section 228 of the 1975 Act.

6.14 The consultation paper *Sentencing and Appeals* raised the question whether any change was needed to the current arrangements in Scotland and suggested a number of ways in which an independent element could be introduced into the consideration of alleged miscarriages of justice. These were:

- the creation of the role of ombudsman to consider complaints about the handling of cases by the Secretary of State and his Department;
- the establishment of an Inspector to oversee the handling of cases generally by the Secretary of State and his Department;
- the continuation of the current powers of the Secretary of State, but with the insertion into the process of independent assessors to advise on individual cases;
- the creation of a new arm of the Appeal Court with investigatory powers; and
- adoption of the Royal Commission's approach of a new review authority with investigatory powers, independent of the executive and the judiciary.

6.15 The consultation exercise did not reveal widespread support for any change to the present arrangements in Scotland, notwithstanding the Government's intention to establish a criminal cases review authority in England and Wales. Some respondents argued that no evidence had been produced of any problems with the current arrangements in Scotland for

[3] Report of the Royal Commission on Criminal Justice, Cm 2263 July 1993

ensuring that appropriate cases are referred back to the Appeal Court. It was also argued that two particular features of the Scottish criminal justice system which do not exist in England and Wales are significant. The first is the existence of the Procurator Fiscal as public prosecutor acting in the public interest and overseeing the police investigation of cases. The second is the requirement in Scotland that all material facts be confirmed by evidence from at least two independent sources.

6.16 It is clear from the responses that there is no general support for any one of the options for change to the Scottish procedures for handling alleged miscarriages of justice canvassed in the paper. For the time being the Secretary of State will continue to exercise his powers under section 263 of the Criminal Procedure (Scotland) Act 1975 in considering petitions alleging miscarriage of justice. The Government has not, however, ruled out the possibility of change in this area. The issues raised here are particularly complex and are closely related to the consideration of appeals by the Appeal Court. Changes to the appeals criteria discussed above may reduce the need for change to the procedures for handling alleged miscarriages of justice.

6.17 **The Government has therefore decided that further consideration of both these issues is required and intends to appoint a committee to look at the issues in detail. The committee will be asked to report within a specific timescale on the need for and nature of any changes to the current legislative criteria governing the consideration of appeals by the Appeal Court, and to the procedures for considering alleged miscarriages of justice. The Government will announce the membership and remit of the committee shortly, but intends that the committee should include a member of the senior judiciary and others with knowledge and experience of the Scottish criminal justice system and the Scottish criminal law.**

Chapter 7
CRIMINAL LEGAL AID

INTRODUCTION

The Government's consultation paper on the future arrangements for criminal legal aid in Scotland was issued in November 1993. The paper reviewed the background to the criminal legal aid system and discussed a number of areas in which change might be desirable. The changes discussed included a number directed at supporting the general thrust of changes canvassed in the earlier consultation paper on the *Review of Criminal Evidence and Criminal Procedure*. The criminal legal aid consultation paper also went wider, however, in setting out a number of other possible changes to improve the effectiveness and efficiency of the Scottish criminal legal aid system.

7.2 The responses to the consultation paper covered a wide range of issues in varying depth. In some cases, there was general consensus either in favour of a particular proposed change or in favour of the *status quo*. In other cases, however, no clear consensus emerged. After careful consideration, **the Government now proposes to make a number of changes to the procedural arrangements relating to the provision of criminal legal aid and Assistance by Way of Representation (ABWOR) in criminal cases.** In other areas, further work is necessary before decisions can be taken on the detail of possibly wider-ranging changes to the criminal legal aid system.

7.3 The Scottish Office is undertaking a Policy and Financial Management Review (PFMR) of the Scottish Legal Aid Board in 1994-95. In accordance with standard practice, the views of interested parties will be sought on this Review. The initial stage of the PFMR will assess the provision and delivery of legal aid in Scotland. Issues arising from the Criminal Legal Aid Review and the consultations on it, including the possibility of general simplification of the criminal legal aid system and also the other areas described later in this chapter, will be taken into account in the context of the PFMR.

ELIGIBILITY

7.4 In a number of cases the Government has decided to make no change to the current arrangements for criminal legal aid as a result of the views expressed during the consultation exercise. **No change is proposed to either of the basic eligibility criteria for criminal legal aid: the financial means test whereby applicants are eligible for legal aid if the**

expenses of the case cannot be met without undue hardship to them or their dependants; and the basic merits test in summary cases, ie that it is in the interests of justice that legal aid should be made available.

7.5 A number of respondents argued strongly that the present arrangements on financial eligibility had the advantage of flexibility over a scheme involving fixed financial limits. If these arrangements are retained, it follows that it would not be practicable to introduce a system of contributions by legally-aided accused persons of moderate means. In any case, a number of respondents to the paper argued against this on the grounds that there are no arrangements in Scotland for expenses to be awarded against the prosecution when an accused person is found not guilty, and the operation of a system of contributions and subsequent reimbursements for those acquitted would be very complex. In addition, there was no call from respondents to change or clarify the current interests of justice tests. **The Government does not therefore propose to pursue these options.**

PROCEDURAL CHANGES

7.6 **The Government proposes to bring forward 3 procedural changes to support the general thrust of the changes proposed as a result of the *Review of Criminal Evidence and Criminal Procedure*.**

"14-day rule"

7.6.1 There was widespread support for the proposal for the abolition of the "14-day rule" in relation to accused persons who change their plea from not guilty to guilty. An application for Assistance by Way of Representation (ABWOR) would normally be made only by an accused who has tendered a plea of guilty. However, an accused who submits an original plea of not guilty is eligible for ABWOR if he intends to change his plea to guilty, so long as he intimates his intention in writing to the prosecutor within 4 days of the diet at which the plea of not guilty was tendered. The intention of the 14-day limit was to concentrate the minds of accused persons and encourage earlier changes of plea: however, it does not appear to have had this effect. It seems indeed more likely to encourage the maintenance of a not guilty plea (generally carrying entitlement to full legal aid) once the 14-day limit has passed. **It is therefore proposed that the time limit should be extended to the date of the intermediate diet, or a set period in advance of a trial diet if no intermediate diet is to be held.** This can be achieved by Regulations under the Legal Aid (Scotland) Act 1986.

Advance Payments

7.6.2 The consultation paper discussed the question of whether advance payments in respect of preparatory work in legally-aided cases should be introduced. The reaction of consultees to this proposal was mixed. In the Government's view, however, the availability of earlier payments as an option where solicitors have undertaken significant amounts of preparatory work early in the case could act as an incentive for solicitors to undertake this work timeously. It would therefore underpin the general emphasis on early case preparation underlying the proposed changes in criminal procedure discussed in Chapter 2. Such an option could be brought in by administrative action by the Scottish Legal Aid Board. **The Government proposes to discuss further with the Board the early introduction of such a scheme.**

ABWOR for pleas in mitigation

7.6.3 The consultation paper sought views on the proposition that pleas in mitigation for convicted persons should be covered by ABWOR rather than by full criminal legal aid. Comments on this were again mixed, but certain respondents took the view that ABWOR might be seen as an alternative rather than as a replacement for full criminal legal aid in straightforward cases, with solicitors being encouraged to move to ABWOR if there were no complicating factors in the case. **The Government therefore proposes to make this option available through Regulations, without however excluding work on pleas in mitigation from the scope of full criminal legal aid where this is justified.**

STATUTORY TEST FOR LEGAL AID IN CRIMINAL APPEALS

7.7 The proposal in the consultation paper that the current criteria on merit for the award of criminal legal aid in appeals should be changed from a "substantial grounds" to an "interests of justice" test was generally welcomed. **The Government intends to promote this change.** This would have the effect, among other things, of regularising the position in the light of a number of judgments by the European Court of Human Rights. In framing the legislation, consideration will be given to how the interests of justice should be assessed in relation to the award of legal aid for criminal appeals, and as to whether there is scope for aligning the provisions more closely with the current interests of justice test in relation to applications for summary criminal legal aid.

SOLEMN PROCEDURE

7.8 The proposal that responsibility for the award of solemn criminal legal

aid should be transferred from the courts to the Scottish Legal Aid Board offers opportunities for simplified administration, but some doubts were expressed about how effectively awards of solemn legal aid could take into account the urgent work required to be done at an early stage in these cases. **The Government propose to consider this issue further.**

STANDARD FEES

7.9 The consultation paper discussed the proposition that a system of standard fees for legally-aided work on criminal cases should be brought forward. Comments on this generally recognised the simplicity and straightforwardness of a standard fee system. Concern was however voiced about whether it might in some cases discourage solicitors from doing necessary work, or reward those that did not, and about what arrangements should be made more generally for particularly complex cases. **The Government considers that, from the point of view of simplicity, clarity and proper cost control, it would be highly desirable to devise a system of standard fees for legally-aided cases in both the criminal and civil areas, and is currently undertaking further work on this issue.**

QUALITY OF LEGAL AID SERVICE

7.10 The consultation paper explored the possibility of establishing a more formal system whereby the Scottish Legal Aid Board could ensure the quality of legal aid service delivered by solicitors. This attracted a number of both positive and negative comments, with fears being expressed about the effect of possible restrictions on choice of solicitors and about the mechanisms whereby such a system of quality assured suppliers could be audited and checked. **The Government remains of the view that quality assurance in the delivery of the legal aid system is a crucial issue. Again, it proposes to consider these matters further.**

Chapter 8
OTHER CRIMINAL JUSTICE ISSUES

INTRODUCTION

In addition to the proposals which have been addressed in the consultation process over the last year the Government has identified a number of other issues affecting the criminal justice system on which it intends to bring forward proposals for legislative change at the next opportunity. These proposals, which are described in this chapter along with proposals for extending alternatives to prosecution, are intended to assist in simplifying and streamlining procedures wherever possible and to reflect needs in today's criminal justice system.

ALTERNATIVES TO PROSECUTION

8.2 Since the early 1980s it has been Government policy to extend the range of options open to procurators fiscal so that they have positive alternatives to prosecution, which may not always be the appropriate response to a report of criminal behaviour. The Committee on Alternatives to Prosecution (the Stewart Committee), which was set up to consider alternatives to prosecution for minor offences in order to relieve pressure on the prosecution service and courts, produced two reports[1] which recommended a number of measures to provide alternatives to prosecution.

8.3 Since the Stewart Committee reported, the Government has introduced, and prosecutors have made significant use of, a number of alternatives to prosecution. These include diversion from prosecution, fixed penalties for road traffic offences and fiscal fines. There has been widespread acceptance that these alternatives are beneficial and have worked well in practice.

8.4 The Government now proposes further development of two of the proposals originally made by the Stewart Committee: **diversion from prosecution and fiscal fines.** Those developments would enhance the flexibility available to prosecutors, facilitate a more appropriate response to minor criminality in some cases, and relieve the pressure placed on busy courts by cases which could be dealt with appropriately by other means.

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[1] The Motorist and Fixed Penalties, Cmnd 8027, December 1980

Keeping Offenders Out of Court: Further Alternatives to Prosecution, Cmnd 8958, July 1983

Diversion from prosecution

8.5 Diversion from prosecution provides an opportunity for a number of people who commit relatively minor offences to be dealt with outwith the court system. In appropriate cases, depending on the circumstances of the offender, this may be both more effective and more humane and can reduce unnecessary court procedures. A number of existing projects have shown the potential. The need and demand for, and the costs and effectiveness of, diversion programmes need to be established more fully. The Government therefore intends to fund directly, to monitor and to evaluate a number of existing diversion schemes as pilots. Such schemes will enable procurators fiscal, in cases where it is thought appropriate, either to waive prosecution or to defer a prosecution decision while the alleged offender completes a specified programme. Such programmes may include reparation to the victim and participation in an alcohol or drug misuse programme.

8.6 **The Government proposes to amend section 27A of the Social Work (Scotland) Act 1968 to enable the Secretary of State to include, by subsequent statutory instrument, diversion from prosecution among the social work criminal justice services which may be 100% funded by central government.**

Fiscal fines

8.7 In the consultation paper *Sentencing and Appeals*, published in February 1994, the Government invited views on the scope for extending the use of fiscal fines, which were introduced in 1988 following the recommendations of the Stewart Committee. Currently, procurators fiscal have discretion to make an offer of a fiscal fine of £25 for any offence triable in the district court[2]. Acceptance of a fiscal fine does not amount to a conviction and is not recorded as such. Two possible means of extending their use were suggested:

- increasing the range of offences for which a fiscal fine may be offered; and
- introducing a sliding scale of penalties which may be offered.

Responses indicated general agreement that fiscal fines have proved a pragmatic and useful disposal for the least serious offences and the majority of consultees who commented were in favour of extending the scope of fiscal fines. The following paragraphs describe the Government's proposals in the light of the responses.

Offences for which a fiscal fine may be offered

8.8 The Government invited views on whether there was scope to extend

[2] Section 56 of the Criminal Justice (Scotland) Act 1987 and SI 1987 No 2025 (S.139)

the range of offences where a fiscal fine can be offered, either by making it possible to try all statutory offences in the district court, or by removing the restriction of fiscal fines to offences triable in the district court. There was considerable support for extending the scope of fiscal fines to include all statutory offences. One option would be to remove the restriction on fiscal fines to offences triable in the district courts. This would mean that if an offer in such a case were turned down, however, the case would then be tried in the sheriff court. In effect an offence which the procurator fiscal initially considered not to merit prosecution would then have to be prosecuted in the sheriff court, without the option of prosecution in the district court. **The Government therefore proposes the more straightforward option of extending the scope of fiscal fines by making all statutory offences triable in the district court.**

8.9 This change will not mean that all those accused of a statutory offence would be offered a fiscal fine. Nor does it mean that whole categories of offence will no longer be the subject of prosecution, or that any offence will be decriminalised. As at present, the decision on the suitable disposal of a case would be taken by the procurator fiscal, based on the known facts of the case and bearing in mind any guidance issued by the Lord Advocate. Individual examples of all offences vary widely in their seriousness; and the circumstances of offenders, including their criminal record, vary widely too. On one set of facts it may be appropriate to take no proceedings at all; on another it may be appropriate to prosecute so that the offender may face the full rigour of the law. The fiscal fine merely provides another option to deal with offences at the less serious end of the scale.

Level of fine

8.10 Those responding to the consultation paper generally supported the proposal that there should be a scale of penalties available rather than a single fixed amount, as at present. The preferred option was for fixed points on a scale within an upper limit.

8.11 At present section 56 of the Criminal Justice (Scotland) Act 1987 limits the penalty which may be offered to a single figure no greater than the maximum level 1 fine, which is currently £200. However the current fiscal fine is fixed by statutory instrument at £25, which is half of the level 1 maximum which was in force when fiscal fines were introduced. **The Government proposes to bring forward an amendment to section 56 to provide for the setting of a number of fixed points by statutory instrument. Thereafter, using that power, it would propose to introduce four levels of penalty for procurators fiscal to choose according to the circumstances of the case. These would be £25, £50, £75 and £100.** £100 is half the level 1 maximum on the standard scale. These penal-

ties would be reviewed whenever the level of fines on the standard scale available to the courts under section 289G of the Criminal Procedure (Scotland) Act 1975 was reviewed.

Payment by instalment

8.12 There was general agreement that alleged offenders should continue to have the option of paying a fiscal fine by instalments. Several consultees voiced concern that, for alleged offenders on a low income, a requirement on those paying the largest fines to do so at the rate of £10 per fortnight would cause unnecessary hardship. Such persons who consider they might face financial hardship might therefore prefer to turn down the offer of a fiscal fine, and to have their circumstances considered by a court. **The Government proposes to introduce a flexible repayment system to suit the varying size of fines, with the expectation that the required minimum repayment would be between £5 and £10 a fortnight.**

THE STANDING COMMITTEE ON CRIMINAL PROCEDURE: THE MACLEAN COMMITTEE

8.13 A number of important reforms of both substantive and procedural law are proposed in this and other chapters of this White Paper. It is no less important to ensure that the basic mechanisms of criminal procedure continue to work well, that they remain up to date and relevant to all the circumstances which come before the courts, and that they are adjusted to take account of new problems or those which were not foreseen when the procedures were devised. It was for these purposes that the Standing Committee on Criminal Procedure was set up in 1982. The Committee's remit is to meet regularly to keep under continuous review emerging problems and suggested improvements in our system of criminal procedure generally. It is currently chaired by Lord MacLean.

8.14 Much of Scotland's criminal procedure is set out in the Criminal Procedure (Scotland) Act 1975. In 1991, the Secretary of State and the Lord Justice General asked the Standing Committee on Criminal Procedure to review the operation of the Act, identify any problems that had arisen in practice, and suggest appropriate solutions. In 1993, the Committee made a number of recommendations to improve the Act either by clarification of some provisions which had caused confusion or by seeking to facilitate practice which experience has shown to be desirable.

8.15 The Government wishes to record its gratitude to the Standing Committee for undertaking this task and for producing a number of practical suggestions for improving existing provisions governing criminal procedure. The Committee's work will continue. **The Government now proposes to introduce legislation to amend the Criminal Procedure**

(Scotland) Act 1975 in the light of the recommendations the Committee has made and the advice of the Lord Justice General and the Lord Justice Clerk. These proposed legislative changes are listed in Annex A to this White Paper.

8.16 The proposed changes are minor in nature. The only one which is likely to affect a significant number of accused persons is the proposal that notices of penalty should no longer be served on the accused in summary procedure. Notices of penalty are not served in solemn procedure, nor are they served when the accused is charged with a common law offence. Since they refer to the maximum penalties which may be imposed, they are of very limited guidance, in the vast majority of cases, as to the penalty which is likely to be imposed, and indeed may be positively misleading in that respect. Accused persons in England and Wales do not receive a notice of penalty. **The Government sees no need for them in summary procedure and proposes to abolish the existing requirement.**

8.17 In addition to the changes arising from the recommendations of the Standing Committee, the Government proposes two other minor amendments relating to service of documents:

- that it should be competent to cite witnesses by post as well as in person; and
- that the various provisions relating to the service of transcripts, notices and other documents on the accused should be clarified.

RIGHT OF SILENCE AND JUDICIAL EXAMINATION

8.18 The accused person's right to remain silent, to decline to incriminate himself, has for long been a feature of Scots law. However, it is not an inviolate principle. It has been accepted that the court may in certain circumstances comment on or draw adverse inferences from an accused's silence and in reviving the issue of judicial examination in their second report[1], the Thomson Committee on Criminal Procedure in Scotland was influenced by concerns that the accused could exercise his right to stay silent and then come forward at trial with a line of defence which might have been shown to be false if he had been examined at an early stage in the proceedings. The Thomson Committee considered there to be three objectives to judicial examination:

- to afford an accused an opportunity, at the earliest possible stage, of stating his position as regards the charge against him;
- to enable the procurator fiscal to ask an accused questions designed to prevent the subsequent fabrication of a false line of defence, for example, alibi; and

[1] Criminal Procedure in Scotland (Second Report) Cmnd 6218, October 1975

- to protect the interests of an accused who has been interrogated by police officers by ensuring that any answers or statements were fairly obtained and not distorted or presented out of context.

8.19 Appropriate amendments were introduced by the Government in the Criminal Justice (Scotland) Act 1980. Under these provisions the prosecutor, the judge or any co-accused may comment on an accused's silence at judicial examination where, in evidence at the trial, the accused or any witness called on his behalf gives evidence which could have been stated appropriately in answer to a question at the judicial examination stage.

8.20 The Government recently commissioned research into the operation of the judicial examination procedure in Scotland. The preliminary findings of this research indicate that the use of judicial examination has declined in recent years and that it is used in around only 15 per cent of all cases placed on petition.

8.21 The provisions in the judicial examination procedure provide a useful mechanism in some cases to avoid the fabrication of false defences and to give early notice of lines of defence which the prosecutor can then investigate. **The Government is anxious to ensure the most effective use possible of judicial examination and will consider carefully the results of the research. Once the research into judicial examination is completed the Government will consult on whether any changes to this and related matters, including the right of silence pre-trial and at trial, should be made.**

DNA

8.22 Under Scots law once a fingerprint or sample has been lawfully obtained it may be used for the purposes of identification or investigation of an offence. The advanced techniques of the Automatic Fingerprint Recognition system operated by the police in Scotland have proved to be a considerable weapon in the fight against crime where fingerprints are found at the scene of the crime. The development of DNA recognition, which has already been accepted by the Scottish courts, provides further assistance to the police in identifying suspects.

8.23 In view of the improved potential which DNA now offers for the investigation of crime the Government believes that the police should be able to obtain samples for DNA analysis on a more routine basis than at present.

8.24 Any suitable sample taken under existing procedures may be used for DNA analysis. The best material for such analysis is obtained from samples

of blood, but hair roots and mouth swabs may also be used. At present such samples may be obtained with the consent of the detainee or the accused. Where consent is refused a warrant may be sought to secure the necessary sample.

8.25 **The Government considers that these arrangements should remain unaltered in respect of blood samples.** However, the Government believes that the police should be given the power to take samples of hair roots and mouth swabs on a more routine basis.

8.26 Section 28 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 regularised the powers of the police to take fingerprints and other impressions and restated the circumstances in which records of such prints or impressions should be destroyed. Section 28 also provides the police, on the authority of an officer of a rank no lower than inspector, with the power to take samples from the external parts of the body of a detainee or an accused, such as nail clippings and cut hair. While these samples may provide a DNA analysis, the quality of the results will be poor. Plucked hair roots and mouth swabs are excluded from the definition of such samples.

8.27 **The Government therefore proposes to bring forward an amendment to section 28 to permit a constable, with appropriate authority, to take samples of plucked hair and mouth swabs. The power would be an enabling one.** It would be for the police to make use of the provisions in the light of available resources and the developing technology.

8.28 **The Government also proposes to regularise the arrangements for the destruction of samples to ensure that where a person is not convicted or proceedings are not taken against him any sample should be destroyed. Subject to the circumstances described below, this will place the destruction of samples on the same basis as the destruction of fingerprints.**

8.29 In certain circumstances the method of obtaining a DNA analysis means that the destruction of samples and information which otherwise ought to be destroyed cannot be achieved without destroying records which should lawfully be retained. This may occur where samples from a convicted person have been processed and stored alongside those from persons not convicted. **The Government accordingly proposes to introduce provisions to require that any sample or information from a person not convicted may not be used as evidence against the person concerned or in connection with the investigation of any other offence.**

8.30 **The Government also proposes to make it clear that, once a**

sample and associated information are lawfully obtained and retained, they may be used for the investigation of any offence.

8.31 The Government believes that these measures will assist the police considerably in investigating and clearing up crime. The Government's proposals are an extension of existing powers to take fingerprints and samples and will replicate as far as possible all the safeguards which currently apply.

SOCIAL WORK SERVICES IN THE CRIMINAL JUSTICE SYSTEM

8.32 Social work services in the criminal justice system (offender services) provide community based disposals as an alternative to custody where the courts consider this appropriate. Since 1991, most offender services have been underpinned by 100% central government funding and by national standards for their delivery. The Government proposes to build on the achievements of recent years by promoting the following statutory changes, which are designed to prevent abuse of the trust involved in these disposals and to make them more effective.

Community service

8.33 **The Government proposes that committing an offence against any person for whom, or premises at which, an offender undertook work whilst on a community service order, will be an aggravation of that offence.** This is intended to discourage offenders placed on community service from committing such offences and so to help secure increased safety and confidence in the community. To safeguard against subsequent abuse of the trust placed in them by the court, **the same provisions will apply to any such offence committed within 3 months of completing the community service order.**

8.34 **The Government also proposes that the maximum number of hours for which a community service order can be made will be increased by Statutory Instrument, in relation to cases taken under solemn procedure, from 240 hours to 300 hours.** This will enable the courts to reflect the more serious nature of offences tried under solemn procedure.

Probation

8.35 At present probation is not formally a "conviction". It is the Government's policy to ensure that community based disposals adequately reflect the need to make offenders aware of the seriousness of their offence and to recognise that such behaviour will not be tolerated by society. **It is intended, therefore, that the imposition of a probation order will become both a conviction and a sentence of the court.** This will facilitate transfer arrangements between Scotland and England and Wales.

Supervised attendance orders and fine enforcement

8.36 Safeguards against abuse of trust similar to those proposed for community service orders will be introduced for supervised attendance orders.

8.37 Consideration is also being given to dealing with certain anomalies arising from the effect of the early release provisions in the Prisoners and Criminal Proceedings (Scotland) Act 1993 on prison sentences of seven days or less which particularly affect fine defaulters.

Community disposals generally

8.38 **The Government proposes additionally to introduce a number of minor procedural changes to improve the efficiency and effectiveness of all community based disposals, including provisions designed to speed up and improve the procedures for dealing with breaches of such orders.**

UNFITNESS TO PLEAD AND ACQUITTAL BY REASON OF INSANITY

8.39 The Government circulated a consultation paper[2] in February 1993, containing proposals for changing the criminal law and procedures relating to persons found unfit to plead or acquitted on grounds of insanity. The present arrangements, under the Criminal Procedure (Scotland) Act 1975, offer little flexibility and have attracted criticism.

8.40 The main changes proposed were supported by most of those who responded to the consultation paper. The first of these is the **introduction of a procedure for examination of the facts in both solemn and summary cases** to establish whether an accused who is unfit to plead committed the act with which they are charged. The second is the **introduction for the courts of a wider and more flexible range of disposals, including a community-based disposal,** for those who, on the basis of an examination of the facts, are found to have carried out the act with which they are charged, and for those who are tried and acquitted by reason of insanity. At present, in solemn cases, a hospital order is mandatory.

8.41 On many of the points of detail raised in the consultation paper a clear consensus emerged, for example that the examination of the facts should be held before a judge alone, that witnesses should appear in person, that the accused should be entitled to be present unless it would not be in his interests on medical grounds, and that the court should appoint someone to represent the accused. **The Government therefore intends bringing forward comprehensive legislative proposals, based on those put**

[2] Criminal Procedure - Unfitness to Plead and Acquittal by Reason of Insanity

forward for consultation and taking account of the responses received, to reform the criminal law and procedures for those found unfit to plead or acquitted on grounds of insanity.

CONSOLIDATION OF CRIMINAL PROCEDURE LEGISLATION

8.42 The last consolidation of Scottish criminal procedure legislation was provided by the Criminal Procedure (Scotland) Act 1975. Since that time wide-ranging legislative changes have been made to criminal procedure, both as amendments to the 1975 Act and as free-standing provisions. Implementation of the proposals in this White Paper will lead to many further legislative changes to criminal procedure in Scotland.

8.43 **The Government therefore considers that a new consolidation of criminal procedure legislation is desirable and intends to provide for this to take place as soon as possible after Parliament has completed its consideration of the proposals for legislative change contained in this White Paper.**

Chapter 9
THE ROYAL COMMISSION ON CRIMINAL JUSTICE

INTRODUCTION

The report of the Royal Commission on Criminal Justice[1] covered a range of issues which are also of relevance to the Scottish criminal justice system. Although the remit of the Royal Commission did not extend to Scotland, the Secretary of State undertook to consider the implications of the Commission's recommendations in the Scottish context and to consult on any which he thought to be of particular relevance. Most of the key issues covered by the Royal Commission have been examined in the Scottish context in the four consultation papers issued over the last year. These include pre-trial procedures, appeals procedures, appeals criteria and the handling of alleged miscarriages of justice. This chapter describes the action the Government is taking in Scotland on a number of other issues where there is a parallel, but separate, Scottish interest in the Royal Commission's report. On some issues, action was under way before the Royal Commission reported, but the Commission's recommendations have been taken into account where appropriate.

THE VICTIM'S EXPERIENCE OF THE CRIMINAL JUSTICE SYSTEM

9.2 The Royal Commission gave considerable attention to the position of victims in its recommendations. The Government endorses the Commission's view that the needs of victims should be taken into account. Indeed, the Citizen's Charter aims to raise the standard of all public services and make them more responsive to the needs and wishes of their users. Its principles are central to the proposals for working to improve the treatment of victims of crime.

Early contacts

9.3 The Government regards it as of great importance that victims have the best possible opportunity to give their evidence without fear or stress. Annex B describes the action which has been taken since the *Justice Charter for Scotland* was published in 1991. Substantial progress has been made in Scotland recently in connection with the giving of evidence by victims of

[1] Cm 2263, July 1993

crime and the Government is committed to introducing further improvements wherever possible.

9.4 After the commission of an offence, one of the victim's early contacts with the criminal justice system is with the procurator fiscal's office. The policy of the Procurator Fiscal Service has traditionally been to seek to answer all enquiries from victims in a prompt and helpful way. In cases of serious crime, the precognition process (the taking of statements) provides an opportunity for face to face contact between the prosecutor and the victim prior to the trial. At this meeting the victim can air any concerns and ask for information. If a particular official is given as a point of contact, further enquiries can then be directed to that official, who will maintain a continuing interest and involvement in the case until its conclusion. Staff are trained to make a point of volunteering information rather than expecting the victim to take the initiative to seek it. This is important when the victim appears particularly vulnerable, for example because of age or mental disability.

The court process

9.5 Attending court and giving evidence can be stressful for victims. The Government has tackled this on a number of fronts and the resulting improvements have benefited all witnesses including victims. The **first** relates to the physical environment. The *Justice Charter for Scotland* reflects the Government's commitment to improving the accommodation and facilities in courthouses for victims and witnesses.

9.6 **Secondly** the Government has implemented a number of Scottish Law Commission recommendations which are intended to reduce as much as possible the stress sometimes experienced by victims and witnesses when they give evidence. Thus the Government's actions, as described in Annex B, have led to increased protection and support for children and for other vulnerable witnesses, particularly those who have suffered a sexual assault or rape.

9.7 A **third** element of the strategy is to familiarise witnesses with the environment in which they will be giving their evidence. Pre-trial visits and information about court procedures are now provided both for the witness and for their family and contacts, by members of the procurator fiscal's staff as appropriate.

9.8 **Fourthly,** the Government is concerned to ensure that as far as is practicable victims are kept informed during the prosecution process. At present the procurator fiscal gives information, on request, to relatives of those who die as a result of accidents or criminal conduct. A system has been developed in Edinburgh for giving next of kin information as a matter of course. The installation of advanced information technology in all procu-

rator fiscal offices, now well under way, will make it easier for staff to deal with enquiries. The system will enable staff to identify the case rapidly and to inform the enquirer of the latest position in relation to it. The system is not currently in place for the victims of crime in general, but an increased awareness of the needs of victims and an appreciation of their place in the criminal justice system, are being fostered throughout the Procurator Fiscal Service by training and guidance. The Crown Office is exploring the feasibility of further developing its information technology systems to provide information automatically to those victims who want to receive it.

Research

9.9 Although there is limited systematic information available at present about the type and quantity of information wanted by victims of crime, the Crown Office has commissioned research to investigate the needs and demands of victims. The objective is to measure the demand for information from victims and to establish how this differs in differing circumstances, with a view to introducing a coordinated approach to meeting the information needs of victims in due course.

Victim Support

9.10 **The Government is committed to working closely with the organisations acting on behalf of victims.** Scottish Office funding for victim support has risen from £600 in 1984-85 to £858,000 in 1994-95, in line with the Government's policy of improving services to victims and developing an approach more focused on assisting the victims of crime. Trained volunteer visitors are now dealing with a wide range of victims, including the victims of more serious crimes. In 1993-94, 70 local victim support schemes in Scotland offered assistance to some 40,000 victims of crime, reflecting the effective partnership of Government funding and volunteer effort in the community. The Scottish Office has recently commissioned a study of the services provided by Victim Support Scotland. It will be completed towards the end of 1994 and will help with the planning of further service developments.

9.11 Procurators fiscal have developed links with victim support services and other voluntary organisations to ensure that, where victims are receiving advice and assistance from such bodies, all relevant information is exchanged and any special needs of the victim are met. The Crown Office is represented on the National Council of Victim Support Scotland, and regular meetings take place to discuss victim issues as they arise.

DEVELOPMENTS IN THE POLICE SERVICE

9.12 The Royal Commission devoted a considerable proportion of its report to proposals for improvements to police procedures, training and discipli-

nary measures in England and Wales. Many of these are reflected in developments which the Government is pursuing with Scottish police forces.

Police discipline and complaints

9.13 Following consideration of a report by HM Inspector of Constabulary, *The Handling of Complaints Against the Police in Scotland,* which was published in February 1993, the Secretary of State issued a consultation paper on his proposals for change in this area. **In the light of responses, the Government introduced, in the Police and Magistrates Courts Bill, measures to empower HM Inspectorate of Constabulary to review how a complaint has been handled where a member of the public has expressed dissatisfaction.** In appropriate circumstances, HM Inspectorate will also be empowered to direct the Chief Constable of the force concerned to re-examine the complaint.

9.14 This will provide a new element of independent scrutiny. As a matter of practice these reviews will usually be handled by an HM Inspector who has not been a career police officer. This is in line with the Citizen's Charter promise that Inspectorates of major public services would be independent of the service inspected; involve lay people in inspections; and be open about their work and findings.

9.15 The Secretary of State also issued a document, which was the subject of consultation, detailing his proposals not only for dealing with cases of police misconduct but also for performance appraisal procedures in the police service. It addressed the dual issues of how officers below chief officer rank who are either not performing satisfactorily or whose behaviour is unacceptable should be dealt with. **New procedures for dealing with inefficiency and misconduct are provided in the Police and Magistrates Courts Bill.**

Training and appraisal

9.16 Six of the recommendations of the Royal Commission have implications for police training. These proposed training in the sympathetic handling of distressed victims and witnesses; the extension to all ranks of training in basic interviewing skills; the overhaul of detective and investigation training to concentrate on the most common mistakes in investigations and how they can be avoided; dedicated training for custody officers; training for station commanders in the management of custody officers and investigating officers, including the need to keep their roles separate; and training in the role which solicitors are expected to play in the criminal justice system.

9.17 All these areas are, where applicable, being fully addressed in Scotland either by courses provided by the Scottish Police College or by local train-

ing. Training for probationer constables at the College covers the handling of distressed victims and witnesses at both basic and advanced levels. In addition specialist units dealing particularly with distressed witnesses receive in-force training, often as part of inter-agency training involving police, social work and education staff. The Scottish police forces are considering extending the present training in interviewing techniques for probationer constables. A one week module on interview training is at present included in the detective training course at the Scottish Police College which also addresses any known problem areas in investigative techniques. The Association of Chief Police Officers in Scotland (ACPOS) continually monitors such training courses and can therefore take steps to change the content whenever this appears necessary.

9.18 The statutory role of custody officer does not exist in Scotland, but newly-promoted sergeants who perform a similar role receive training in custody duties. As there are no areas of joint responsibility between custody officers and investigating officers, station commanders do not receive training on how to ensure that these roles are kept separate; there do not appear to be any difficulties in this area. Training at the Scottish Police College of both probationers and detectives covers the role of solicitors in the criminal justice system.

9.19 In June 1993, the Police Advisory Board for Scotland agreed to set up a Working Party to review the current system of staff appraisal. The Working Party is in close touch with a UK Steering Group which is overseeing the development of proposals for appraisal linked to the introduction of appraisal-related pay for all ranks.

Safeguards for suspects

9.20 A number of potential safeguards for suspects were identified by the Royal Commission. Action in the relevant areas in Scotland is described below.

9.21 The Royal Commission recommended the issue of a simplified version of the notice to detained persons. At present in Scotland people are informed orally of their status and associated rights; a notice giving similar information is affixed to cell walls. The status of a person held at a police station may be that of a voluntary attender, or detainee, or arrested person. Those attending voluntarily are asked to complete a declaration to that effect and there are statutory safeguards for those who have been detained or arrested. However, the Government considers it would be appropriate and in keeping with the thrust of the Justice Charter if each individual were given a written statement of the terms under which they are held. The Scottish Office is therefore currently discussing this proposal with ACPOS.

9.22 The Royal Commission suggested that further research should be carried out to consider whether video recording of interviews should be introduced on a more widespread basis. A pilot scheme on videoing interviews is being conducted within Lothian and Borders Police, while Tayside Police and Central Scotland Police are piloting the video monitoring of custody suites. The Government is pleased to note the very positive developments in these areas and **the Scottish Office is consulting ACPOS on the need for further research on video recording.**

9.23 Safeguards for vulnerable suspects are also very important. The Royal Commission recommended that there should be a review of the role of the "appropriate adult" and of whether police have adequate guidelines. **The current Scottish guidance will be reviewed in the light of the report of a Working Group which is reviewing services for mentally disordered offenders.** This is likely to be in the autumn of 1994. In the meantime steps have been taken to disseminate good practice.

Conduct of major inquiries

9.24 The Royal Commission made recommendations in relation to major police inquiries. It suggested that policy files should be opened for all major inquiries and that, following major investigations, there should be a full debriefing involving all the parties concerned. In Scotland policy files already form part of recording procedures followed under the HOLMES major enquiry system, and they provide a diary of important policy decisions taken during the course of an investigation. Furthermore, debriefing takes place at the end of all major inquiries. These recommendations therefore already form part of current procedures in Scotland.

FORENSIC SCIENCE

9.25 The Royal Commission made a number of recommendations about the organisation of forensic science facilities and about standards of investigation. It also considered and made recommendations about the way in which the prosecution and defence deal with scientific evidence in the pre-trial period and at trial.

9.26 Forensic science facilities are organised quite differently in Scotland with reliance being placed almost wholly on police laboratories. The Standing Committee on Forensic Science in Scotland comprises representatives of Crown Office and the Procurator Fiscal Service, the Scottish Office Home and Health Department, the Association of Chief Police Officers in Scotland, the Scottish Forensic Science Liaison Group, the Law Society of Scotland and an independent academic. The Committee reports to the Secretary of State and the Lord Advocate. Its terms of reference are "to keep under review the provision of forensic science services in Scotland".

The Government believes that these arrangements provide a satisfactory means of keeping under review matters relating to the organisation of facilities and does not consider that there is any need in Scotland for an additional body like the Forensic Science Advisory Council proposed by the Royal Commission.

9.27 The Standing Committee is considering and will report in due course to the Secretary of State and the Lord Advocate on some of the detailed recommendations of the Royal Commission.

9.28 Through the Committee, efforts are being made to improve standards and quality in the provision of forensic science services in Scotland through the Scottish Forensic Science Liaison Group (SFSLG) and its extensive quality assurance programme. Both the value and cost of National Measurement Accreditation Service (NAMAS) accreditation are acknowledged. Provision of services to the defence has been traditionally difficult to assess, but is being kept under review. Guidance on access to police laboratories by the defence is being formulated.

9.29 The authorisation of forensic scientists, and others such as fingerprint specialists, to make certain reports, currently involves the Secretary of State in consideration of each case. This is unnecessarily bureaucratic. **The Government intends that, where the Secretary of State has prescribed the standard of competence or achievement required of an expert witness, it should be possible for the Chief Constable to certify that any particular individual has achieved that standard.** Full consideration of the specification of standards will be necessary. The intention is that competence should be demonstrated by the attainment of a recognised, external academic or professional award, and that this objective evidence of ability should permit authorisation by the Chief Constable. The Secretary of State would continue to deal with any case where authorisation was thought appropriate but the prescribed standard had not been attained.

9.30 A similar element of bureaucracy attaches to the certification of those, other than police officers, who may serve witness citations. When this provision was introduced in 1980 it was novel, and the Secretary of State was required to authorise each individual. The operation of this power has led to no complaints about individuals to the Secretary of State and in practice nothing of value seems to be added to the selection of such staff by the need for the Secretary of State's authorisation. **The Government therefore intends that the Chief Constable should be competent to issue the authorisation himself.**

9.31 The Secretary of State is consulting relevant interests on these two proposals.

SERIOUS FRAUD

9.32 The Royal Commission made several recommendations concerning the law on serious fraud. Where they are relevant to Scotland several have been taken forward already. The recommendation that more regulatory penalties than criminal penalties be used where appropriate is under active consideration by the Government.

JUDICIAL TRAINING

9.33 The Royal Commission emphasised the need for adequate judicial training to accompany the changes in procedures it recommended in its report, given the importance the Commission attached to judges actively controlling the conduct of criminal cases. It stated that the interests of justice require competent judges who are fully abreast of the latest developments in law and practice.

9.34 **The Government agrees that a critical factor in securing the delivery of high quality justice in our courts is the quality of those who preside over these courts.** The Scottish judiciary has a key role to play if the new provisions and procedures proposed in this Paper are to be implemented effectively. The proposals for intermediate diets in Chapter 2 of this White Paper are just one example of this, where the ability of judges to operate the new procedures effectively will be crucial to their success.

9.35 **The Government considers that judicial training makes an important contribution to the delivery of justice.** The Government very much welcomes the growth in recent years of the training undertaken by the judiciary. Earlier this year, following consultation with the Lord Justice General, the Secretary of State set up a group under the chairmanship of Lord Cameron of Lochbroom to co-ordinate the provision of training for the judiciary in the sheriff courts. That group, and others involved in judicial training, will no doubt wish to have regard to the proposals in this White Paper, and in subsequent legislation, when considering the future training needs of the Scottish judiciary. At present, all new permanent and temporary sheriffs receive substantial training, including training in the key area of sentencing. **The Government hopes and expects that this foundation will continue to be built on.**

Chapter 10
RESOURCE IMPLICATIONS

INTRODUCTION

The measures outlined in this White Paper are designed to take forward the Government's strategy to increase the capacity of the criminal justice system in Scotland to fight crime and to uphold and maintain public confidence in the criminal law.

10.2 The Government's review of the criminal justice system has aimed to identify improvements to the system which will assist the various agencies within the criminal justice system in continuing to deliver a high quality of justice, while at the same time making the best use of the available resources. The package of proposals in this White Paper will enable the system to move towards achieving these qualitative improvements. The following paragraphs describe the resource implications of the key changes proposed.

10.3 The proposals in Chapter 2 for the introduction of mandatory intermediate diets in summary procedure in the sheriff and district courts and in Chapter 8 for the extension of the potential use of fiscal fines will have the greatest effect on the handling of cases within the system. Through these changes it should be possible to achieve significant improvements in the efficient programming of business for the courts and a considerable reduction in the burden on the district courts. The proposals for procedural changes arising from the recommendations of the Standing Committee on Criminal Procedure should also increase efficiency in the courts. All these changes can be achieved within existing levels of resources.

10.4 The Government believes that the opportunity for redeployment of the time of the senior judges arising from the introduction of the single judge sift and a smaller quorum for the bench in sentence appeals should assist in improving the capacity of the High Court to cope with the increasing volume of cases it has to deal with.

10.5 The improvements proposed to the arrangements for the citation of jurors and the reduction in wasted witness time arising from the introduction of intermediate diets should mean that fewer members of the public are inconvenienced by turning up to find they are not needed. Reimbursement of costs for those attending court as witnesses and jurors

should thereby be significantly reduced. The costs to the police service will also be less if police officers are relieved of having to attend court as witnesses only to find the case has been cancelled. Fewer police officers tied up in court means more officers available to be on the beat.

EFFECT ON INDIVIDUAL AGENCIES WITHIN THE CRIMINAL JUSTICE SYSTEM

10.6 The resource implications of the proposed changes for particular agencies within the criminal justice system cannot be precisely estimated, especially as in many cases likely savings will not necessarily accrue to the same agencies as incur the costs of implementation.

10.7 Many of the proposals will require the transfer of resources within the criminal justice system or shifting expenditure to an earlier stage in the criminal justice process. Taken as a whole such proposals should provide net savings to the criminal justice system. The following paragraphs provide a general assessment of the likely effects on each of the major parts of the criminal justice system.

The courts

10.8 The courts will both incur costs and receive benefits from the proposed changes. Although the courts will require to allocate time to hold intermediate diets, this may not involve the courts in sitting for any longer overall in the week. Arrangements such as diversion from prosecution and the proposed extension to fiscal fines, which will facilitate the disposal of cases without going to court, should reduce the burden on the district and sheriff courts.

10.9 Other proposals, such as improvements in courtroom accommodation and facilities for victims and witnesses described in Chapter 9, will incur costs for the court service, already identified in the Justice Charter.

10.10 As regards the judiciary, extension of shrieval training will have resource implications in judge time. For the High Court, reduced Appeal Court benches will release some senior judge time, which can be reallocated to deal with the continuing increase in the workload of the High Court. The introduction of a single judge sift should also release senior judge time, but this will at least in part be offset by the resources required to operate the sift.

10.11 Support for a sentencing information system will also have cost implications for the court service.

10.12 There will be additional costs to the courts through implementing the forfeiture and confiscation provisions, but these should be offset by the value of cash and items realised in return.

The Procurator Fiscal Service

10.13 The procurator fiscal service will be involved in the implementation of most of the changes proposed in this White Paper. It will have a crucial role in ensuring the successful application of a number of the improvements.

10.14 The introduction of mandatory intermediate diets will have resource implications for the procurator fiscal service in preparation for and participation in such diets, and in the associated administrative tasks such as ensuring that witnesses are countermanded in good time. The extension of fiscal fines will save resources by reducing the number of cases which have to be prosecuted.

10.15 Additional fiscal time will also be required for the implementation of the proposals on forfeiture and confiscation.

10.16 Developments are underway in the procurator fiscal service to provide information automatically to victims. Any comprehensive information technology system to provide this service is likely to require substantial investment, and preliminary research is being carried out.

10.17 The proposals for tightening up on the operation of bail could also have implications for the speed with which the procurator fiscal has to process cases.

10.18 Finally, the new proposals for dealing with insanity in bar of trial will result in both the prosecutor and the court having to conduct proceedings which are not presently required in relation to establishing the facts of the case.

The police

10.19 The police service will be involved in a considerable range of these proposals. Reductions in police witness duties should result in the release of significant resources for the police, as will the citation of witnesses by post.

10.20 Extensive provision of equipment for tape-recording all police interviews, and for video taping custody suites and charge bars, would have significant resource implications for police capital expenditure. The extra running costs associated with such equipment would probably be offset by a reduction in the time devoted to investigating complaints (where the evidence of the video tape would be, in many cases, the definitive answer to the complainer). Similarly the video-recording of interviews might, on occasion, save time in court by eliminating the need to pursue allegations about behaviour which can be directly answered by reference to the video tape. Forces are already making incremental improvements in this area, where they see the greatest benefits.

10.21 Wider powers to take and analyse DNA samples will have significant resource implications and will have to be used as resources permit. The use of the powers should improve the efficiency with which the police are able to investigate and clear up crime.

The prison service and State Hospital

10.22 Most of the proposals in this paper deal with issues affecting the agencies involved in the initial stages of the criminal justice process, rather than after disposal of a case by the courts. Tightening of the law on bail may result in a slight increase in the use of remand, and a corresponding increase in costs for the prison service. A wider range of disposals for persons found unfit to plead, or acquitted by way of insanity, may slightly reduce numbers in detention at the State Hospital or elsewhere but this would be offset by the extra resources required for alternative disposals.

Civilian witnesses and jurors

10.23 The major potential benefit of intermediate diets lies in reducing unnecessary witness attendance at court. Prosecution witnesses' expenses may be reimbursed by the Crown Office and so there will be substantial savings in those costs if fewer witnesses are required to attend court. This saving, in resource terms, should offset other costs throughout the system. In solemn cases, it should also be possible to reduce the numbers of jurors cited, and this will also produce further savings.

The defence

10.24 Defence agents will have an important role to play in ensuring the successful implementation of the proposals for change which touch on improvements in the efficiency of processing cases through the courts. There may be some increase in defence preparation time to consider the agreement of evidence, although this should be mainly a bringing forward of preparation which has to be undertaken in any event. There will be increased costs for defence agents' participation in intermediate diets, offset by savings at the trial diet, including waiting time at the trial diet.

The Scottish Legal Aid Board

10.25 Legal aid is a substantial item of expenditure within the criminal justice budget. None of the proposals in this paper should materially affect overall levels of expenditure on the fund. Abolition of the 14 day rule in relation to accused persons who change their plea from not guilty to guilty will result in a small increase in costs to the legal aid fund; but if abolition results in more guilty pleas, there should be net savings to the fund.

10.26 Advance legal aid payments for preparatory work may involve some rephasing of legal aid expenditure, and would be offset by savings stemming from greater efficiency in court administration.

CONCLUSION

10.27 The proposals which the Government is putting forward in this White Paper focus on increasing the quality of services to victims, witnesses, and all others who have contact with the criminal justice system. Taken together they will work towards the provision of better standards of service within the criminal justice system. The Government believes it is right to reassess the priorities for expenditure within the criminal justice system and to adjust them as necessary to meet the changing needs within the system. That is what will happen when these proposals are introduced.

Annex A
SUMMARY OF LEGISLATIVE PROPOSALS

The Government intends to promote the following amendments to legislation to give effect to the proposals contained in this White Paper.

The following abbreviations are used to refer to the relevant Acts of Parliament:

1825 Act: Jurors (Scotland) Act 1825 (c. 50)
1889 Act: Public Bodies Corrupt Practices Act 1889 (c. 69)
1906 Act: Prevention of Corruption Act 1906 (c. 34)
1966 Act: Local Government (Scotland) Act 1966 (c. 51)
1968 Act: Social Work (Scotland) Act 1968
1975 Act: Criminal Procedure (Scotland) Act 1975 (c. 21)
1978 Act: Community Services By Offenders (Scotland) Act 1978
1980 Bail Act: Bail etc. (Scotland) Act 1980 (c. 4)
1980 CJ Act: Criminal Justice (Scotland) Act 1980 (c. 62)
1980 LR Act: Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55)
1982 Act: Civic Government (Scotland) Act 1982 (c. 45)
1985 Act: Bankruptcy (Scotland) Act 1985 (c. 66)
1986 Act: Legal Aid (Scotland) Act 1986
1987 Act: Criminal Justice (Scotland) Act 1987 (c. 41)
1990 Act: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)
1993 Act: Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)

PRE-TRIAL PROCEDURE

Bail

Section 1(2) of the 1980 Bail Act: amend to alter the range of bail conditions which may be imposed by the court.

Section 3 of the 1980 Bail Act: amend to include increase of penalties for breach of bail conditions to £1,000.

Insert a new section into the 1980 Bail Act introducing offending on bail as an aggravating factor for sentencing.

Insert a new section into the 1980 Bail Act to enable the prosecution to ask the court to review the grant of bail.

Section 26 of the 1975 Act: amend to make the grant of bail incompetent in certain circumstances.

Intermediate diets

Section 337A of the 1975 Act: amend to make provision for an intermediate diet to be mandatory in summary procedure, subject to the exceptions listed at paragraph 3.5 of this White Paper, and further amend to include detailed provisions regarding the purpose of an intermediate diet, as set out at paragraph 3.6.

Section 76 of the 1975 Act: amend to make provision for similar mandatory diets for sheriff solemn procedure.

Agreed adjournments

Sections 77A and 314(3) and (4) of the 1975 Act: amend to provide that an adjournment of a trial requested under these sections may be granted by a judge in chambers.

Routine evidence

Schedule 1 to the 1980 CJ Act: extend the provisions of Schedule 1 to further categories of evidence which may be admissible by certificate and allow Schedule 1 to be further amended in the future by subordinate legislation.

Further amend to enable early destruction of biological samples in the interests of public health and to remove the need for technicians to speak to the processes forming part of a forensic or chemical analysis of samples.

Section 26 of the 1980 CJ Act: amend to provide for implementation of recommendations 23 to 35 of the Scottish Law Commission Report No 137 (and their draft Bill clause 7, section 26A) to provide an optional as opposed to a compulsory provision for serving a statement of facts containing evidence thought to be uncontroversial.

JURIES AND VERDICTS

Revisal notices

An offence of failing to return a Revisal Notice would be created.

Persons on bail

Part II of Schedule 1 to the 1980 LR Act: extend to include persons on bail.

Members of religious sects

Part III of Schedule 1 to the 1980 LR Act: extend to include practising members of religious sects.

Single sex juries and exemption of women

Section 100 of the 1975 Act: would be repealed.

Statutory prescription of the number of jurors cited

Section 85 of the 1975 Act: would be repealed.

Excusal from jury service

Section 1 of the 1980 LR Act: amend to confine excusal to exceptional circumstances.

Peremptory challenge

Section 130 of the 1975 Act: would be repealed.

A further provision would be made to give the court power to excuse a juror on joint application by prosecution and defence, without requiring the cause to be stated in open court.

Occupation of jurors

Section 3 of the 1825 Act and section 93 of the 1975 Act: amend to exclude potential jurors' occupations from the list of assize.

SENTENCING

Sentencing guidelines

The Appeal Court would be expressly enabled to issue sentencing guidelines.

Sentence discounting

Legislation would be introduced to make it clear that the courts *may* take into account a guilty plea, when deciding sentence.

Provision would also be made to empower the courts to backdate a custodial sentence to the date when the accused tendered a plea of guilty.

Forfeiture and confiscation

Provision would be made to extend the powers of the courts to order confiscation of the profits and proceeds of general crime.

APPEALS PROCEDURES

Single judge sift

Sections 228(1) and 442(1) of the 1975 Act: amend to introduce a requirement for leave from the High Court to appeal.

Section 247 of the 1975 Act: extension of the powers of a single judge to include decisions on applications for leave to appeal.

Reduction in the quorum of the appeal court

Section 245 of the 1975 Act: amend to provide that the quorum of the Lords Commissioners of Justiciary to hear appeals against sentence only shall be two.

CONSIDERATION OF APPEALS

Reindictment on a higher charge

Section 255 of the 1975 Act: amend to restrict the charges in an indictment served on the accused who is being retried.

Lord Advocate's reference

Section 263A of the 1975 Act: amend to allow the Lord Advocate to refer a point of law to the High Court for a ruling, regardless of whether the accused was acquitted.

CRIMINAL LEGAL AID

Assistance by way of representation

Regulations under the 1986 Act - SI 1988 No. 2290(s.225): abolition of the 14 day time-limit on eligibility for Assistance by Way of Representation for an accused changing his plea from not guilty to guilty.

Regulations under the 1986 Act - SI 1988 No. 2290(s.225): extension of ABWOR to cover pleas in mitigation for convicted persons in suitable cases.

Interests of justice test in criminal appeals

Section 25(2) of the 1986 Act: amend to change the criteria on merit for the award of criminal legal aid in appeals from a "substantial grounds" to an "interests of justice" test.

OTHER CRIMINAL JUSTICE ISSUES

Diversion from prosecution

Section 27A of the 1968 Act: amend to enable the Secretary of State to include diversion from prosecution within the categories identified in section 27(1) of the 1968 Act.

Fiscal fines

Section 7(1) of the 1980 CJ Act: amend to allow all statutory offences to be tried in the district court.

Section 56 of the 1987 Act: amend to provide for a sliding scale of fiscal fines. Fixed points on this scale would be set by statutory instrument and reviewed

whenever the levels of fines on the standard scale were reviewed.

Payment by instalment

Regulations under the 1987 Act - SI 1987 No 2025 (s.139): replace with a further Statutory Instrument giving a more flexible repayment system to reflect the proposed varying size of fines.

Standing Committee on Criminal Procedure

The Government intends to promote the following amendments to the 1975 Act arising from the recommendations of the Standing Committee on Criminal Procedure discussed in Chapter 8.

Section 58(2): amend to allow the procurator fiscal, as well as the person serving it, to amend an indictment.

Section 77: amend to allow a sheriff court case to be adjourned to a sitting within two months of the trial diet, as is the case in the High Court.

Sections 96 and 129: section 129 would be made consistent with the terms of section 96, by removing the reference to the list of jurors being served on the accused.

Section 128: amend to make provision under summary procedure, similar to that which exists in solemn procedure, that a new trial will be permitted in the case of illness or death of the presiding judge.

Section 142: amend to make provision that, except on cause shown, the accused shall be the first witness called for the defence.

Section 145: amend to make provision under summary procedure, similar to that which exists in solemn procedure, that where the conduct of the accused causes difficulty, he may be removed from the court.

Section 157(1): amend to remove the reference to murder trials, so that any trial may be interrupted for plea or sentence on a separate charge.

Sections 179 and 380: amend to clarify that the court has the power to defer sentencing after conviction pending the outcome of proceedings against co-accused.

Sections 180 and 381: amend to include option of remand to hospital following conviction.

Section 238: amend to provide that an application for interim liberation pending the determination of an appeal may be considered before the grounds of appeal have been lodged only in exceptional circumstances.

Sections 264 and 443A: amend to provide for the suspension of collection

of fines, collection of compensation award payments and community service orders pending an appeal.

Section 270(2): amend to allow the return of productions where an appeal is against sentence only.

Section 311: amend to remove the requirement to serve a notice of penalty on a person accused of a statutory offence in summary procedure.

Section 321(5): amend to allow the witness to be brought before the court to allow the determination of an appropriate level of caution.

Section 359: amend to make it competent for a certified copy of a complaint to be accepted as if it were an original.

Section 430: amend to put into statute the common law provision that it is competent for sentences to run consecutively except where otherwise stated in statute.

Section 442(1)(a)(iii) and Form 71 of Schedule 1 to the Act of Adjournal (Consolidation) 1988: amend so that Form 71 would require the grounds of appeal against sentence to be stated also.

Section 444(1): amend to prevent delay in lodging an appeal against both conviction and sentence when sentence is deferred.

Section 446: amend to ensure that an offender who was already serving one sentence and was on interim liberation pending appeal against a different offence could apply to have sentence on the second offence backdated if his appeal were abandoned, so that he would not serve a longer sentence simply because of a delay in serving the warrant.

Section 453: amend to allow the Crown to draw an incompetent sentence to the attention of the High Court as well as an incompetent conviction.

Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 to be repealed and re-enacted within the 1975 Act.

A provision would be promoted that a special defence must be read to the jury unless the judge gives a direction on cause shown that the special defence should not be read.

Section 69: amend to allow citation of witnesses by post as well as in person.

Section 20B(9) and section 71 of the 1975 Act; section 26(4) of the 1980 CJ Act; section 60 of the 1987 Act; and rule 167 of the Act of Adjournal (Consolidation) 1988: the various provisions relating to the service of transcripts, notices and other documents on the accused would be clarified. This

would be done by making all the relevant sections subject to the conditions of rule 167 of the Act of Adjournal (Consolidation) 1988, which currently applies only to documents served under section 71 of the 1975 Act.

DNA

Section 28 of the 1993 Act: amend to add hair roots and mouth swabs to the samples a constable may take, with the authority of an officer of no lower rank than inspector; amend to clarify that samples and information should be destroyed where a person is not convicted or no proceedings are instituted, but that where this is not possible without destroying information that may be lawfully retained, provide that the information otherwise retained should not then be used for evidence against the individual or investigation of another offence; amend to clarify that lawfully obtained and retained samples and information may be used for the investigation of any offence.

SOCIAL WORK SERVICES IN THE CRIMINAL JUSTICE SYSTEM

Community service

Section 4 of the 1968 Act: amend to provide that if a person undertaking a community service order, or within 3 months of the completion or termination of that order, commits an offence at the premises or against a person where all or part of the requirements of the order were carried out, it shall be regarded as an aggravation of this offence and will be so libelled in the charge.

Section 1(1) of the 1978 Act: amend to provide for an increase in the maximum number of hours for community service orders from 240 to 300.

Probation

Sections 183(1) and 384(1) of the 1975 Act: amend to provide that a court, after convicting the offender, may make a probation order and that this will be the sentence of the court. This will allow some duplicating sections to be removed.

Community disposals generally

Section 7 of the 1978 Act: amend so that the provision inserted into section 1(1) by section 61(3) of the 1990 Act also applies to this section, ie that the court may only make an order where otherwise it intended a custodial sentence.

Section 2(3)(a) of the 1978 Act: amend to provide that a copy of the order may alternatively be forwarded to the offender's last known address by recorded delivery.

Sections 183(7) and 384(7) of the 1975 Act, and Schedule 6(2)(3) of the 1990

Act: amend so that the clerk of court may alternatively forward a copy of the order to the offender's last known address.

Sections 186(1) and 387(1) of the 1975 Act, section 4(1) of the 1978 Act, section 18(1) of the 1993 Act and Schedule 6(4)(1) to the 1990 Act: amend to remove the requirement that the supervising officer must give evidence on oath when initiating breach action.

Unfitness to plead and acquittal by reason of insanity

Provision would be made to implement comprehensive proposals for reform of the criminal law and procedures relating to those found unfit to plead or acquitted on grounds of insanity.

ROYAL COMMISSION ON CRIMINAL JUSTICE

Forensic science

Section 26 of the 1980 CJ Act: amend to make it competent for a Chief Constable to authorise forensic witnesses.

In addition to these specific proposals the opportunity will be taken to make additional and consequential amendments where necessary.

Annex B
MEETING VICTIMS' NEEDS

Under the Citizen's Charter all public services should take more account of the needs and wishes of individual users. This annex sets out the main areas in which steps have been taken in order to improve the victim's experience of the court system.

Court facilities

B.2 The main improvements which have been made are:

- separate rooms for victims and vulnerable witnesses;
- public address systems to keep witnesses informed of progress of business where appropriate;
- sound reinforcement systems where these are necessary;
- loop systems to assist the hard of hearing;
- air cleaners in witness rooms;
- improved access to toilets for disabled people;
- refreshment facilities with special arrangements to cater for witnesses;
- improved seating and decoration within witness rooms; and
- provision of creche facilities.

B.3 The overall aim is to provide these facilities wherever it is practical and possible to do so: improvements will continue to be made systematically within the on-going court building and refurbishment programme.

Initiatives to support victims

B.4 In certain offences of a sexual nature including rape, assault with intent to rape, indecent assault and indecent behaviour more generally, the law has, for some time, prohibited the admissibility of evidence with regard to previous sexual history which is not relevant to the charges before the court. **Following a recent research project on the use of these provisions, the Government is considering bringing forward proposals for extending them to incest and clandestine injury crimes.**

B.5 The Government attaches particular importance to help for the victims of sexual assault and domestic violence. Close liaison between the fiscal and the Women and Child Units of police forces has evolved, adding another

channel of communication between the victim and the criminal justice system. **The Government takes the view that the current guidance on the treatment by the police of victims in cases of rape and domestic violence should be extended to a wider range of witnesses and cases than at present. It has therefore invited the Association of Chief Police Officers in Scotland to give their views on the scope for such an extension.**

B.6 To provide specific support for women who have been the victims of sexual assault, Victim Support Scotland, with the assistance of The Scottish Office, has set up a Working Group to produce an information leaflet setting out what assistance is available and where it may be obtained. This leaflet is likely also to contain general advice and information relating to the court process.

Provisions relating to children

B.7 Children who are victims of crime are a particularly vulnerable group. The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 introduced provisions to allow for the evidence of a child to be taken by a live television link. The child is outside the court room and is not able to see the accused. The provisions, which followed from a Scottish Law Commission Report, were implemented in 1991 with the installation of equipment in the sheriff court and High Court in Glasgow and Edinburgh. Again, research has been undertaken into the effectiveness of these procedures and the Government is considering extending the facilities to other parts of Scotland. Child witnesses also receive a leaflet, *Going to Court,* which explains what the child will be expected to do, and what he or she may expect from the visit to court.

B.8 **Further provisions in the Prisoners and Criminal Proceedings (Scotland) Act 1993 mean that, as from 1 January 1994, the court may authorise the use of screens to conceal an accused from a child giving evidence. Since that date certain child witnesses have also been able to give evidence on commission. This means that their evidence is video recorded and played to the court at the trial. This saves them from having to attend court.**

Research into information needs of victims

B.9 The aims of current Crown Office research into the information needs of victims are as follows:

- to measure the extent to which victims are currently kept informed about the progress of their cases;
- to establish whether there is, in fact, a demand for greater information and, if so, to identify what victims want to know, how they want to receive such information and when they want to receive it; and

– to explore whether there are differences between the needs and demands of victims of different types of offences; between victims who are called as witnesses and those who are not; and between victims whose cases are proceeded with and those whose cases are not.

B.10 **The results of this research, expected later this year, will inform a review of the Procurator Fiscal Service's practices in keeping victims informed of progress with their cases, and allow the issue to be addressed in a comprehensive and methodical manner.**

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