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Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP

3rd February 2011

Dorothy Rhona

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

Thank you for your letter of 25 January 2010. The letter requests “a written response to the specific issues during the discussion on the petition, in particular by Christine Grahame MSP and Bill Butler MSP (around the Criminal Procedure (Legal Assistance Detention and Appeals) (Scotland) Act 2010).” I have taken the questions to be those set out by Bill Butler MSP.

Mr Butler said, “First, we could, as Christine Grahame suggests, write to the cabinet secretary to ask whether he will review the application of the emergency legislation as he has promised. If that is his intention—which I do not doubt, because he told Christine Grahame, a member of the Parliament, that that was his intention—when will his review take place, and when and how will his decision in that respect be made known?”

I am happy to provide reassurance to the Committee about the commitment given to review the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010.

On 26 October I announced that Lord Carloway would lead an independent review of the impact of the Supreme Court decision in the case of *Cadder v HMA*. On the same day the Scottish Government introduced the Bill which led to that said Act. Item (d) on the terms of reference for Lord Carloway’s review states “To consider the extent to which issues raised during the passage of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland Act) 2010 may need further consideration, and the extent to which the provisions of the Act may need amendment or replacement;”

Lord Carloway has appointed a reference group who met on 20 December 2010 and 3 February 2011 and will continue to meet regularly. A list of the members of that the reference group is attached. I note, in respect of the issues raised before the Committee, that the Chief Executive of the Scottish Criminal Cases Review Commission is a member of the reference group.

I have asked Lord Carloway to report as soon as is practicable and by late summer 2011.

Further details regarding the Review are available from the Review's web pages.

<http://www.scotland.gov.uk/About/CarlowayReview>

Mr Butler went on to state “Secondly, on another point that Christine Grahame raised, can the SCCRC open an abandoned appeal?”

This question appears to be directed to the SCCRC and therefore I will leave it to them to answer. I note there was some discussion regarding section 7 of the Act. The Scottish Government has indicated its view of the effect of that section. I repeat that view here as it may be helpful to the Committee.

“The SCCRC retains the discretion to refer cases to the High Court if it is in the interests of justice to do so. In making this judgement, the Commission must now consider the need for finality and certainty in criminal cases alongside other public interest issues. The UK Supreme Court was clear that the interests of justice were served by the courts offering certainty in convictions to avoid large numbers of cases constantly being cast in doubt. In the wake of the Cadder decision, there was a concern that the SCCRC route could become a “back channel” for criminal appeals on Cadder grounds, and as such the Scottish Government moved quickly to head off this possibility.

The High Court does have the power to reject a case referred to it, but this can only be done if the reference is not in the interests of justice. Scottish courts have a long and proud history of acting independently and impartially and this power has been entrusted to them in the certain knowledge this integrity will be maintained.”

In due course Lord Carloway will have the opportunity to comment on any part of the Act as he sees fit.

*Kind regards
Kenny*

KENNY MACASKILL

Lord Carloway's Reference Group	
Ian Bryce	Board member, Law Society of Scotland
Bridget Campbell	Director, Justice, Scottish Government
Professor Peter Duff	Professor of Criminal Justice, University of Aberdeen
John Dunn	Deputy Crown Agent, Crown Office & Procurator Fiscal Service
Shelagh McCall	Commissioner, Scottish Human Rights Commission
Lindsay Montgomery (alternatively, Tom Murray)	Chief Executive, Scottish Legal Aid Board (Director of Legal Aid & Applications)
Gerry Moynihan, QC	Faculty of Advocates
Sheriff Elizabeth Munro	Dundee Sheriff Court
John Scott	Solicitor Advocate
Gerard Sinclair	Chief Executive, Scottish Criminal Cases Review Commission
Chief Constable David Strang	Chair of ACPOS Criminal Justice Business Area