



The Howard League for Penal Reform in Scotland

From the Secretary and Hon Director: Robin MacEwen
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Ms Cathy Jamieson MSP
Minister for Justice
St Andrew's House
Regent Road
Edinburgh EH1 3DG

Dear Minister

The League considered the Executive's response to Lord Bonomy's report at a recent meeting of its Executive Committee and asked me to write to you to express its concerns over certain of the proposals. The League welcomes any measure likely to improve the quality of justice delivered by the courts in Scotland and many of the changes proposed by Lord Bonomy and adopted by the Executive appear helpful in that regard. The League is, however, disturbed at the proposal to increase Sheriff's sentencing powers and to depart from the 110 day rule.

As regards Sheriffs' sentencing powers the League does not believe that it is appropriate to implement now a measure introduced by a Conservative administration at Westminster over 6 years ago. Such an important change should, the League considers, be examined afresh by the Scottish Parliament and the implications fully considered.

The League's principal concern is that the increases would not simply allow a redistribution of work between the courts but would lead to longer sentences than have previously been imposed for offences coming before the High Court and the Sheriff court on indictment leading to a further increase in the prison population. The Executive appears to have no policy to either contain or reduce the prison population and the League finds it worrying that it is prepared to contemplate changes of this kind with scant regard to the effects on levels of imprisonment. If the Executive nonetheless proceeds with such a change the League asks that any increase be restricted to 4 rather than 5 years and that, prior to implementation, the Executive ensures that the courts are in possession of comprehensive guidance on the exercise of their powers of imprisonment. It would clearly be unsatisfactory to allow guidance on the use of extended powers to imprison to be left to the decisions of the High Court on appeal. The High court has failed to make use of the power to provide sentencing guidelines and is reluctant on appeal to interfere with sentencing decisions of the inferior courts unless they are quite clearly unreasonable. The High Court appears unable without the intervention of the Executive to deliver the guidance needed to ensure just and rational sentencing.

The League proposes that the planned sentencing Commission be asked to bring forward proposals to deal with the need for better guidance to sentencers and that any increase to in Sheriffs' powers of imprisonment should await the outcome of such consideration by the Commission.



The proposed departure from the 110 day rule is also a matter of concern to the League. It is not a change requested by the Crown who appeared to be prepared to continue to work within the 110 day limit. The League recognises the difficulties which have led to the rule being relaxed in individual cases and welcomes the various measures designed to reduce delays and minimise extensions. For this reason it considers that the other proposals should be allowed time to work rather than moving to a new longer limit. To depart from the present rule seems to be to admit defeat in advance and surrender a measure that has been the envy of other jurisdictions.

At the same time the League would ask you to consider remedying an anomaly in the present operation of the rule. Under existing case law the rule's operation is suspended if the accused is recalled to custody to continue serving a prior sentence. The practical effect is that the Crown give a very much lower priority to dealing with such a case. The rationale might be summed up as being that "he would have been in prison anyway so there is no rush to bring him to trial". Such reasoning is flawed and ignores the fact that recall under the prior sentence may well have been a consequence of being accused of a further offence. Consideration by the Parole Board for release from the recalled sentence is almost bound to be influenced by the outcome of any trial. It appears to us therefore that rather than being of lower priority it is doubly important that the fresh indictment be determined at a trial within the time limit.

The League looks forward to hearing your response in due course.

A handwritten signature in black ink, reading 'Robin MacEwen'. The signature is written in a cursive, flowing style with a prominent 'R' and 'M'.

Robin MacEwen