

A REPORT BY THE AUDITOR GENERAL FOR SCOTLAND UNDER SECTION 22(3) OF
THE PUBLIC FINANCE AND ACCOUNTABILITY (SCOTLAND) ACT 2000

THE 2003/04 AUDIT OF THE SCOTTISH PRISON SERVICE

1. I have received the audited accounts of the Scottish Prison Service for the year ended 31 March 2004. The auditor's report on the accounts is not qualified but I have decided to issue this report to bring to Parliament's attention progress on my examination of the contract between the Scottish Prison Service and Reliance Secure Task Management Ltd for the delivery of prisoner escort and court custody services in Scotland. I am also issuing this report to bring to Parliament's attention the potential financial consequences of the Court of Session's ruling in a recent court case concerning prison conditions.
2. I submit these accounts and the auditor's report in terms of sub-section 22(4) of the Public Finance and Accountability (Scotland) Act 2000, together with this report which I have prepared under sub-section 22(3) of the Act.

Prisoner escort and court custody services

3. During April and May 2004, a number of reports appeared in the media concerning the release in error of prisoners held in custody by Reliance Secure Task Management Ltd. Reliance had commenced providing prisoner escort and court custody services in the west of Scotland under contract with the Scottish Prison Service from 1 April 2004. The contract stipulates that Reliance will extend provision of these services in stages so that, by October 2004, it will be responsible for all prisoner escort and court custody services across Scotland.
4. In May 2004, the Minister for Justice requested that I bring forward my examination of the contract. I agreed to do so and requested Audit Scotland to carry out the audit and to report to me under sub-section 23(10) of the Act.
5. The auditor has now reported the result of her audit to me. I have considered the auditor's findings and prepared my own report. My report '*Scottish Prison Service: Contract for the provision of prisoner escort and court custody services*' was published on 30 September 2004.

Prison conditions

6. In April 2004, Lord Bonomy issued his judgement in the case of *Robert Napier v the Scottish Ministers* heard at the Court of Session. The case involved a challenge by a serving prisoner over the conditions in which he was held in HMP Barlinnie in 2001 and whether these breached his rights under the European Convention of Human Rights. Lord Bonomy found in this case that the Scottish Prison Service had acted in a manner incompatible with Article 3 of the Convention and that Mr Napier had suffered loss, injury and damage. Lord Bonomy awarded damages of £2,000 plus interest.
7. The Scottish Ministers have appealed Lord Bonomy's judgement. The appeal has not yet been heard. Other similar cases are before the courts, and the Scottish Prison Service has been notified that further cases may be brought. Depending on the outcome of the appeal in *Napier* and other cases relating to the European Convention of Human Rights, the Scottish Prison Service may incur further costs.
8. Under UK accounting standards, private and public bodies are required to make provisions in their financial statements to recognise situations where it is probable that they may incur costs to settle an obligation created as a result of a past event and where a reliable estimate can be made of the financial amount. The provision, and any subsequent additions, is recognised in the year that it is created as an expense on the

Operating Statement. The total provision, less any settlements made, is recognised as a liability in the Balance Sheet.

9. Where an obligation may exist but a financial payment may not be required to settle it, or where the financial amount cannot be measured with sufficient accuracy then a contingent liability exists. The contingent liability is disclosed as a note to the accounts and does not have any impact on the body's financial performance for the year.
10. The Scottish Prison Service has included in its 2003/04 accounts a provision for £26 million representing its estimate, in the light of the court's judgement, of its possible liability arising since 1999 when the European Convention on Human Rights came into force in Scotland. The Scottish Prison Service has also disclosed a contingent liability of £136 million for other cases that may arise in connection with the European Convention of Human Rights.
11. The appointed auditor is satisfied that the basis on which the provision and contingent liability have been estimated is reasonable and takes into account legal advice. In such circumstances, however, only the courts can determine the Scottish Prison Service's ultimate liability. The Scottish Ministers have appealed the Court of Session's ruling. The auditor will monitor the situation as an ongoing part of the audit.



ROBERT W BLACK
Auditor General for Scotland
30 September 2004