

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

**THE 2004/05 AUDIT OF THE SCOTTISH PRISON SERVICE**

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1. I have received the audited accounts of the Scottish Prison Service for the year ended 31 March 2005. The auditor has given a clean audit certificate on the accounts but I have decided to issue this report to bring to Parliament's attention progress on the potential financial consequences of the Court of Session's ruling in a recent court case concerning prison conditions. This updates my report on the accounts of the Scottish Prison Service for the year ended 31 March 2004.
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.
3. As I previously reported, 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 on Human Rights. Lord Bonomy found in this case that the Scottish Ministers had acted in a manner incompatible with Article 3 of the Convention and that Mr Napier had suffered loss, injury and damage.
4. Lord Bonomy's judgement described prison conditions in terms of the "triple vices" of slopping-out, overcrowding and poor regime. The court awarded damages of £2,000 plus interest because, as a result of having spent long periods sharing a cell in which he had to slop-out, Mr Napier's eczema was exacerbated. The judgement was upheld on appeal.

**Movement in provisions and contingent liabilities**

5. In my report on the 2003/04 accounts, I drew attention to the Scottish Prison Service's inclusion of a provision for £26 million being its estimate, in the light of the court's judgement, of its possible liability arising from similar cases to that of Mr Napier. A contingent liability of £136 million was also created for other cases that may arise in connection with the European Convention of Human Rights. The 2004/05 accounts record an increase in the provision to £44 million and a reduction in the contingent liability to £24 million. The underlying circumstances have not changed significantly but, as indicated in the Chief Executive's Statement on Internal Control, there is now better information available on both the numbers of prisoners who may be involved and the likely value of any settlement.

**Further developments**

6. Note 20 of the accounts records that the Scottish Prison Service incurred costs of £970,000 primarily towards settling the costs of legal aid which Mr Napier received to bring his action against the Scottish Ministers. The Scottish Prison Service also incurred a further £500,000 in direct external legal and other associated costs in respect of the Scottish Ministers pursuing the case. This case illustrates the potential for significant expenditure of public money to arise from decisions taken about the same case in different parts of the justice system. In the light of these circumstances, the auditor has discussed with the Scottish Prison Service the means available to resolve similar actions which prisoners may bring against the Scottish Ministers. Since this raises issues for the wider justice system, the Scottish Prison Service has agreed to discuss the matter further with the Scottish Executive Justice Department.

7. The Scottish Ministers have now proposed a scheme for settling out of court personal injury cases which have been caused or exacerbated by slopping-out. The Scottish Prison Service has contacted agents for prisoners claiming compensation for injury caused by slopping-out and given them details of a proposed Alternative Dispute Resolution scheme. The Scottish Prison Service considers that resolving outstanding personal injury claims by Alternative Dispute Resolution could substantially lower its settlement costs compared to these cases being pursued through the courts.
8. Claims for compensation which have different characteristics from that of the Napier case are also being pursued and the Scottish Prison Service is developing a strategy which aims to deal with these in an effective manner.
9. The Scottish Prison Service has made significant progress in improving prison conditions. Slopping-out at HMP Barlinnie ended in July 2004 and there is now (subject to prisoner numbers) no shared use of slopping-out accommodation anywhere in the prison estate. Except for HMP Peterhead, where Ministers are considering options, it is expected that slopping-out will be completely eradicated one year after completion of both the two new prisons that the Scottish Prison Service plans to procure (subject to prisoner numbers).



**ROBERT W BLACK**  
**Auditor General for Scotland**  
**20 July 2005**