SPEECH TO GLS SCOTLAND

Thank you for the opportunity of talking to you today about the Supreme Court of the United Kingdom, which has now been in operation for close to six months.

What I want to do today is:

- explain the Emblem;
- remind you of how we got here;
- tell you about the building;
- explain the structure and the status;
- remind you of the jurisdiction and talk about some casework;
- talk a little about Rules and Practice Directions;
- describe some of the wider work we are doing and some of the issues which arise;
- explain the position of the Judicial Committee of the Privy Council;

I would then be very happy to try and answer any questions you may have.

Emblem

A decision was taken by the Law Lords, as they then were, quite early on in the process that the Supreme Court would need a specially designed Emblem. A number of people have remarked on the fact that we do not use the Royal Coat of Arms. There are two principal reasons for this. First, the Royal Arms are differently quartered in parts of the United Kingdom and it would have been difficult to choose one version over the other. Second, in Northern Ireland, the use of the Royal Coat of Arms in courtrooms is now prohibited by statute.

Instead, a Scot, Yvonne Holton, Herald Painter to the Court of Lord Lyon was commissioned to design an Emblem. You will see that within an omega this incorporates symbols of the jurisdictions which use the Supreme Court – the Tudor Rose and the leaves of the leek for England and Wales, the Thistle for Scotland, and the flax for Northern Ireland.

At its most formal the Emblem is surmounted by a Crown. But it is used in semi-formal and informal ways throughout the building.

How did we get here?

It is no secret that the initial announcement, made on the back of a Cabinet reshuffle, did not lead to universal acclaim. Initially the focus was on the proposed abolition of the post of Lord Chancellor. (But see Lord Irvine's submission to the Constitution Committee in the House of Lords at the end of last year and Tony Blair's letter of earlier this year.) And until recently there were still those who doubted the necessity or wisdom of the move - see, for example, the comments made by Lord Strathclyde during tributes to the Law Lords in the House of Lords on 21 July when he said: "I think it would be fair to say that the overwhelming need for the expulsion of the Law Lords had not struck many of us until that infamous press release from No.10…." Others, however, have described this as a long overdue reform – Lord Wallace on the same occasion mentioning that the Lib-Dems have supported the separation of courts from the legislature "for a mere 200 years".

The announcement was followed by a period of consultation and then by the introduction of the Constitutional Reform Bill in February 2004 – now the Constitutional Reform Act 2005. The Bill underwent significant amendment during debates, including the creation of the post I now occupy. Further delays were caused by the need to find a suitable building. Lord Bingham, then the Senior Law Lord, had made clear that the Law Lords would only consider a building within a one-mile radius of Charing Cross.

There were then legal challenges to the decision to use the Middlesex Guildhall before refurbishment and renovation could start.

The Building

But we now have a building in the perfect location on Parliament Square, with the other three sides of the square taken up by the legislature (Palace of Westminster), the executive (the Treasury) and the Church (Westminster Abbey). And the building has been very sympathetically restored with a balance of old and new. Anyone who visited the building when it was a Crown Court will recall a rather gloomy building. As a consequence of incorporating the original lightwells into the building, and cleaning the interior, we now have a light airy building. We have three courtrooms, two of which are based on historic courtrooms and one of which is modern. One can sit nine Justices, the others sit five. There are improved facilities for lawyers in a suite of rooms which run along the front of the building on the first floor, and which incorporates working space, male and female robing rooms and meeting rooms. This is where we keep the Scottish collection of law books, more of which later. And a handsome library has been created at the centre of the building for the Justices and their staff.

I should, perhaps, add that, notwithstanding our new home on Parliament Square, the Court would be willing to consider sitting in Edinburgh, Belfast, or Cardiff on occasions, if that was thought to be desirable. That decision would not necessarily be straightforward and a number of sensitivities would need to be taken into account – as well as a range of practical considerations.

IT

The refurbishment has also enabled us to offer improved facilities to legal professionals using the UK's highest court. It is worth me saying a few words about information technology. In planning the Supreme Court we have tried to make the best use of IT within available resources. We have a new computer-based case management system and all three of our courtrooms are IT-enabled. That means it will be possible to bring electronic bundles on memory sticks or CD and for advocates to use this material in court rather than refer to paper copies. There is some nervousness about this among our user community and we have not yet used the in-court equipment in a real case. But I am setting up an EPE working group so that we can identify and address people's concerns. Initially we did not require both paper and electronic copies of documents because we did not wish to add to the cost of litigation which started some

time ago. But we are now asking for electronic copies of material – in much the same way as happens with the Judicial Committee of the Privy Council. Some of the Justices find it easier to take material home on a memory stick, than carry large volumes of paper.

Our website went live last August and has attracted a number of hits – the average figure is 6000 distinct visitors each month. In January, this swelled to over 34,000, which we assume was due to a high-profile judgment about terrorist assets. We continue to develop the website and when everything is working fully key information from the case management system will be accessible via the website. This means that individuals involved in cases will be able to check on the progress of their case; and corporate information such as our business plan. It also means that interested members of the public will be able to find out more information about cases by looking at public documents. We aim to put as much information as we can on the website, including case lists and brief explanations of what is involved in a case. We are also posting judgments on our website along with press summaries of those judgments. The latter is a new development. For high-profile judgments we also offer some journalists an opportunity to read the full judgment an hour or so before delivery in a "lock down".

There are two other technologically related issues I should cover. First, the building is Wi Fi enabled, including in the court rooms and in the lawyers' suite. This is not free Wi Fi. We have followed the policy implemented by the Ministry of Justice in courts in England and Wales where there is a charge for Wi Fi and we have made available information for users on how they can access and pay for the available Wi Fi.

Second, and this is something which has been covered reasonably extensively in the media, we have the facility to film and broadcast proceedings. Section 47 of the Constitutional Reform Act excludes the Supreme Court from the prohibitions on taking photographs etc which apply in England and Wales and Northern Ireland. I am aware that no such statutory prohibition applies in Scotland. This does mean that it is technically and legally possible for proceedings in the Supreme Court to be filmed and broadcast – and they are. Each of the three courtrooms has been equipped with four fixed cameras. We are routinely filming proceedings for our own use – and indeed live feed from the courtrooms is shown on two television screens in the exhibition area in the lower ground floor.

Structure and Status

The Constitutional Reform Act created a Supreme Court of the United Kingdom. It comprises twelve Judges; there is a President and a Deputy President; and the other Judges are styled "Justices of the Supreme Court". The existing Supreme Courts of England and Wales and Northern Ireland have been renamed. The Supreme Court of England and Wales is now the "Senior Courts of England and Wales"; and the Supreme Court of Judicature of Northern Ireland is the "Court of Judicature of Northern Ireland". The Scottish terminology did not need to change.

We did, of course, start one Justice short because of Lord Neuberger's appointment as Master of the Rolls. Selection of his successor was the responsibility of an ad hoc selection commission established under the Constitutional Reform Act 2005. The members of that commission were Lord Phillips and Lord Hope as President and Deputy President, Baroness Prashar representing the Judicial Appointments Commission of England and Wales, Lady Smith representing the Judicial Appointments Board in Scotland and Mrs Ruth Laird representing the Judicial Appointments Commission in Northern Ireland. I acted as Secretary to the commission. The vacancy was advertised in early October last year – only the second time a post at this level had been advertised.

The Act does not set out a detailed process but prescribes a set of statutory consultees (senior Judges and politicians), and allowing time for the statutory consultation does not make for a short process.

On 1 October the persons who immediately before that were Lords of Appeal in Ordinary automatically became Justices of the Supreme Court; and the Senior Lord of Appeal and Second Senior Lord of Appeal become respectively the President and Deputy President. Lord Clarke was the first Justice appointed direct to the Supreme Court. In court they are addressed as "My Lord" or "My Lady", as appropriate. They do not wear robes for daily sittings, but do have a ceremonial robe which was unveiled on 1 October last year.

Status

It is worth saying a few words to explain the status of the institution as a number of people are not clear on this. We are The Supreme Court of the United Kingdom. As such the administration does not form part of Her Majesty's Court Service, of the Northern Ireland Court Service, or the Scottish Court Service. In essence we are a small court service in our own right. In government terms, the administration of the institution is a non-Ministerial department – but the Court is obviously a court. We are not part

of the Ministry of Justice and we have our own separate budget for which I am the Accounting Officer. This means that I have had to establish appropriate governance structures, eg, Management Board/Audit Committees, but also to keep them proportionate. But I have ensured that we have a representative from Scotland on the Audit Committee – Elaine Noad.

The funding for the UKSC is complex with contributions coming from our fees, from the MoJ, from fee income paid to HMCS in England and Wales and the Northern Ireland Court Service, and a contribution from the Scottish Government.

All our permanent staff currently come from England and Wales, but one of our objectives for 2010/11 is to try and find ways of introducing a wider UK dimension to the staffing. However, we do try and ensure that at least one of our Judicial Assistants, young qualified lawyers who come to us for 10 months, has a Scottish legal background. The JAs undertake research for the Justices, produce summaries of all the applications for permission to appeal, and work on the drafts of press summaries. They – emphatically – do not write any part of the judgments.

Last summer we also had the benefit of a very interesting briefing on the history and operation of the Scottish legal system, from Michael Clancy of the Law Society of Scotland.

Jurisdiction

You will no doubt have seen speculation in the media last September about the Court's powers and how they might be exercised. With one exception, the Supreme Court has no additional powers to those exercised by the Appellate Committee of the House of Lords. The one addition is that the devolution jurisdiction until 30 September 2009 exercised by the Judicial Committee of the Privy Council has been transferred to the Supreme Court. (One person I spoke to on a visit to Scotland in 2008 welcomed this as removing the "neo-Colonial" aspects of the JCPC.)

The jurisdiction of the Supreme Court comprises civil appeals from England and Wales, Northern Ireland and Scotland; and criminal appeals from England and Wales and Northern Ireland. But issues relating to criminal proceedings in Scotland may come before the Supreme Court as devolution issues under the Scotland Act 1998 – and indeed, as you will have seen, they have done on a number of occasions already. The Human Rights Act 1998

applies to the Supreme Court and issues under that statute often arise on appeals to the Court.

As with the House of Lords, European community law requires that the Supreme Court (as the domestic court of last resort) should refer to the Court of Justice of the European communities any doubtful questions of community law necessary to its decision.

Cases

The vast majority of the cases we hear are civil cases. Historically the House of Lords heard between 100 and 120 cases a year, usually sitting in panels of five.

By the end of the first term the Court had:

- heard 25 cases – including six Scottish cases, Gray's Timber Products v HMRC and Robertson v Muir & Anor were civil appeals and 4 were devolution appeals (Allison, McInnes, Martin and Miller)
- delivered 16 judgments
- considered 58 applications for permission to appeal

The figures for this term are:

- heard 14 appeals including one Scottish civil appeal (Inveresk plc v Tullis Russell Papermakers Ltd)
- delivered 16 judgments
- considered 55 applications for permission to appeal including five devolution PTAs

Lord Bingham once described the House of Lords as dining "al a carte" as it has the capacity largely to determine its own workload. The test remains whether a case raises an arguable point of law of general public importance which should be considered by the Supreme Court at this time. But we have introduced a change in the way the decision is made on permission applications. The final decision is still be made by a panel of three Justices, but all Justices receive copies of the key papers so that they can contribute to the decision making process if they wish.

Our first "real" case was *R (on the application of Hay) v Her Majesty's Treasury* and *Her Majesty's Treasury v A and others* when the Justices considered the lawfulness of freezing orders in place over the affected parties' assets by virtue of the *Al Qaida and Taliban (United Nations Measures) Order 2006* (2006 NO 2952) (The 'AQO').

Other cases have included the JFS case, which posed considerable practical challenges because of the number of people wanting to attend the hearing; and some important family cases.

The judgments in the cases of Martin and Miller have produced a degree of comment of which you are no doubt aware: Lord Hope and Lord Rodger fundamentally disagreed on some points, with Lord Rodger's judgment described by one commentator as "ferocious".

Despite their rising number, the number of criminal appeals heard by the House of Lords has still been very low – in the 131 year period from 1876-2007, a total of 400 and most of them were decided in the last 40 years.

What kind of cases are considered so important?

In recent years, the House has handed down judgment in a number of significant criminal cases, including R *v Kennedy* (considering whether it was manslaughter to supply a drug, then freely and voluntarily self-administered by a person, who subsequently died as a result – they held it was not), *R v Rahman* (joint criminal enterprise), *R v Davis* (concerning the anonymity of witnesses) and the first case of *Norris v Government of the United States* (extradition and mutual criminality).

Most recently, in *R (on the application of Purdy) v DPP* the Law Lords required the Director of Public Prosecutions to issue an offence-specific policy identifying the facts and circumstances which he would take into account in deciding whether or not to consent to a prosecution in an assisted suicide case. The DPP's interim policy was published on 23 September 2009 and his final policy last month.

Rules and Practice Directions

We have a new set of Rules, Practice Directions and Forms for the Supreme Court. These were published later than we would have wished but can now be accessed on our new website – www.supremecourt.gov.uk. We have recently made some amendments to the Practice Directions.

The Constitutional Reform Act 2005 requires that the Rules are, and I quote, "simple and simply expressed" and that the Court is "accessible, fair and efficient". Rule 2 provides that the overriding objective of the Rules is to secure that the Court is accessible, fair and efficient and that the Court must interpret and apply the Rules with a view to securing that the Court is "accessible, fair and efficient and that unnecessary disputes over procedural matters are discouraged". This provision is modelled on that in the Civil

Procedure Rules. Whilst these words might sound like "motherhood and apple pie" they are very important in underpinning the approach we will be taking. And Rule 9(6) provides that, if any procedural question is not dealt with by the Rules, the Court or the Registrar "may adopt any procedure that is consistent with the overriding objective, the Act and these Rules".

That said, those of you who were involved in cases in the House of Lords, will recognise much of the procedure set out in the Rules and the Practice Directions. There are no major changes in procedure, although the language has been updated to reflect the fact that we are now a Court, and not a Committee of Parliament. For example you now apply for permission to appeal rather than submit petitions for leave to appeal.

Education and outreach

The senior judiciary and the work they do are more visible than ever before since we have opened our doors to the public.

One of the main reasons underpinning the creation of the Supreme Court was to increase the transparency of the workings of the highest court in the UK and to make the Court much more accessible than the House of Lords could ever be to those who wish to watch proceedings. And between 1

October and end January approximately 15,000 members of the public had taken advantage of the opportunity to look around the building and sit in on cases.

This presents a wonderful opportunity for us to build on the work started in the House of Lords and to engage with students and others in order to increase people's knowledge of the UK justice systems and of the difficult issues on which the Court is asked to adjudicate. On the lower ground floor of the building we have an exhibition area. The panels tell the history of the Appellate Committee and of the Judicial Committee of the Privy Council; some of the key aspects of the creation of the Supreme Court; and describe what happens in the Court on a daily basis, as well as set out some of the history of the building and the surrounding area. There are two interactive elements to the exhibition – a timeline of key historical, political, constitutional and legal events; and a series of very simplified case studies where, through a touch screen, individuals will be taken through the issue and the law and invited to say what their decision would have been. You can then see which, if any, of the Justices you agreed with. We have undertaken some engagement with a couple of schools on a pilot basis to see if case studies can provide helpful material to support schools in the various parts of the UK. We are now keen to recruit someone with

specialist skills who can develop our education and outreach work – but that will depend on resources.

User Group

I have established a User Group including representatives from the professions in all parts of the United Kingdom, along with specialist legal associations. This User Group comprises users of both the Supreme Court and the Judicial Committee of the Privy Council.

We had our first meeting on 22 January, chaired by Lady Hale. A set of the minutes of that meeting can now be found on our website. We plan to have formal meetings two or three times a year but to keep in touch in between those meetings as necessary. I am pleased to say that there was good Scottish representation at the first meeting, which I hope will continue.

JCPC

It may be helpful if I say a little about the Judicial Committee of the Privy Council or JCPC, which has moved from its purpose built courtroom in 9 Downing Street to be accommodated within the new Supreme Court. The JCPC remains a Committee of the Privy Council and a separate court; and also remains the responsibility of the Ministry of Justice. But within those constraints I am trying to unify the administration of the two courts so far as possible. And certainly co-location makes listing much easier, given that the same Judges sit in both courts.

The JCPC remains the final Court of Appeal for a number of independent Commonwealth countries, Crown Dependencies and overseas territories. It quite often acts as a constitutional court for those countries and is generally much valued.

You may have seen Lord Phillips' comments in an interview last year when he raised question marks over the amount of judicial time devoted to JCPC cases, some of which are frankly of a much lower quality than would reach the Supreme Court. This has begun to generate a debate, most noticeably in some Caribbean countries and, in particular, Jamaica. I think the debate generated will continue for some time – and indeed has given rise to some Parliamentary Questions.

Scottish Issues

Throughout the time I have been involved in the Supreme Court ie since May 2008, I have been very conscious of the political context in which we operate, and of the need to build relationships with all parts of the United Kingdom bearing that political context in mind.

The creation of the Supreme Court itself was an overtly political act, and not one which was the product of consensus between the main parties. This is a source of regret to me as I do not think the highest court in the land should be a political football between different parties.

But I am equally aware that the politics do not start and stop at Westminster. As in England and Wales and Northern Ireland, not everyone in Scotland will have welcomed the move from the Appellate Committee at the House of Lords to a Supreme Court; and I have noted with interest the conclusions of the Calman Commission, and more recently Professor Walker's report. Decisions on these matters are for others to take and I and my colleagues will be watching political developments with considerable interest – not least because our Emblem, incorporating the Thistle, can be found throughout our building, including on all the carpets!

I mentioned earlier that the Scottish collection of law books was housed in the Lawyers' Suite. For some years the Faculty of Advocates provided a collection of books in the House of Lords for Scottish advocates and solicitors to use when they were presenting cases. The Dean of the Faculty of Advocates kindly agreed that this collection should be moved to the Supreme Court. As I mentioned earlier, the collection is housed in the Lawyers' Suite, where it is much more accessible than it was in the House of Lords; and where it has been consulted by the Justices as well as by lawyers from Scotland.

After some discussions between the Faculty Librarian and our Librarian the bulk of the collection of books has been generously donated to the Supreme Court and we will be responsible for keeping that part of the collection up to date. The Faculty will continue to pay for the updating of:

a. Session cases.
b. Scots Law Times.
c. Laws of Scotland – Stair Encyclopaedia.

We will pay for the updating of:

a. The Parliament House book.

b. Court of Session practice.

c. Scottish Civil Law reports.

We will also take the advice of the Faculty in purchasing further Scottish textbooks for the collection.