



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

33rd Meeting, 2014 (Session 4)

Tuesday 16 December 2014

The Committee will meet at 9.45 am in the David Livingstone Room (CR6).

1. **Decision on taking business in private:** The Committee will decide whether to take item 9 in private.
2. **Commission on Women Offenders:** The Committee will take evidence from—

Michael Matheson, Cabinet Secretary for Justice, Scottish Government;

Colin McConnell, Chief Executive, Scottish Prison Service;

Andy Bruce, Deputy Director, Community Justice Division, and Jane Moffat, Community Justice Division, Scottish Government.
3. **Modern Slavery Bill (UK Parliament legislation):** The Committee will take evidence on legislative consent memorandum LCM(S4) 35.1 from—

Michael Matheson, Cabinet Secretary for Justice, Neil Rennick, Acting Director, Justice, Ann Oxley, Criminal Law and Licensing Division, Keith Main, Safer Communities Division, and Kevin Gibson, Directorate for Legal Services, Scottish Government.
4. **Subordinate legislation:** The Committee will take evidence on the Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014 [draft] from—

Michael Matheson, Cabinet Secretary for Justice, Andy Bruce, Deputy Director, Community Justice Division, Kerry Morgan, Community Justice Division, and Craig McGuffie, Directorate for Legal Services, Scottish Government.

5. **Subordinate legislation:** Michael Matheson (Cabinet Secretary for Justice) to move—

S4M-11850—That the Justice Committee recommends that the Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014 [draft] be approved.

6. **Subordinate legislation:** The Committee will take evidence on the European Protection Order (Scotland) Regulations 2014 [draft] from—

Michael Matheson, Cabinet Secretary for Justice, Graham Ackerman, Criminal Law and Licensing Division, Karen MacIvor, Criminal Law and Licensing Division, and Craig McGuffie, Directorate for Legal Services, Scottish Government.

7. **Subordinate legislation:** Michael Matheson (Cabinet Secretary for Justice) to move—

S4M-11848—That the Justice Committee recommends that the European Protection Order (Scotland) Regulations 2014 [draft] be approved.

8. **Subordinate legislation:** The Committee will consider the following negative instrument—

Civil Jurisdiction and Judgements (Protection Measures) (Scotland) Regulations 2014 (SSI 2014/333).

9. **Assisted Suicide (Scotland) Bill:** The Committee will consider a draft report to the Health and Sport Committee.

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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk J/S4/14/33/1

Private paper J/S4/14/33/2 (P)

Agenda item 3

Paper by the clerk J/S4/14/33/3

Private paper J/S4/14/33/4 (P)

Agenda items 4 and 5

Paper by the clerk J/S4/14/33/5

Private paper J/S4/14/33/6 (P)

[Public Services Reform \(Inspection and Monitoring of Prisons\) \(Scotland\) Order 2014](#)

[Written submissions received on the Public Services Reform \(Inspection and Monitoring of Prisons\) \(Scotland\) Order 2014](#)

Agenda items 6 and 7

Paper by the clerk J/S4/14/33/7

[European Protection Order \(Scotland\) Regulations 2014](#)

Agenda item 8

Paper by the clerk J/S4/14/33/8

[Civil Jurisdiction and Judgements \(Protection Measures\) \(Scotland\) Regulations 2014 \(SSI 2014/333\)](#)

Agenda item 9

Private paper J/S4/14/33/9 (P)

[Assisted Suicide \(Scotland\) Bill and accompanying documents](#)

Justice Committee

33rd Meeting, 2014 (Session 4), Tuesday, 16 December 2014

Commission on Women Offenders

Note by the clerk

Purpose

1. This paper provides background on the Committee's annual evidence session with the Cabinet Secretary for Justice on progress in implementing the Commission on Women Offenders' recommendations.

Commission on Women Offenders

2. In response to two consecutive inspection reports by HM Chief Inspector of Prisons which were critical of conditions at Cornton Vale, the Scottish Government established a Commission on Women Offenders in June 2011 to look at ways of improving the outcomes for women in the criminal justice system. The Commission, chaired by Dame Elish Angiolini, recommended in its report of 17 April 2012 that:

- Cornton Vale should be replaced with a smaller specialist prison for women serving a statutory defined long-term sentence and who present a significant risk;
- most women prisoners on remand or serving short-term sentences should be held in local prisons to improve liaison with local communities and re-integration;
- women at risk of reoffending or custody should have a named key worker as a single point of contact and intensive mentoring;
- community justice centres (based on the 218 Service, the Willow Project and Women's Centres in England) should be established for women offenders to enable them to access a consistent range of services; and
- a national Community Justice Service should be established to commission, provide and manage adult offender services in the community.

Monitoring progress

3. The Scottish Government accepted a further recommendation that the Cabinet Secretary for Justice should report to the Parliament annually on progress in implementing the recommendations. In practice, this takes the form of a written update and evidence session.

4. The Committee also took evidence from the Cabinet Secretary and Chief Executive of the Scottish Prison Service (SPS) on 5 August 2014 on a perceived shift away from the Commission's recommendations relating to the size of the new prison replacing Cornton Vale and the creation of community justice centres.

Next steps

5. The Cabinet Secretary published his annual update for 2014 on 11 December, which is attached at Annexe A. The Committee is invited to consider this update and take evidence from the Cabinet Secretary and SPS Chief Executive on 16 December.

ANNEXE A**The Scottish Government's third annual progress report on implementation of the recommendations of the Commission on Women Offenders (CWO)**

As you will be aware, the CWO recommended that the Scottish Government should provide annual updates to the Parliament on the progress made to implement its recommendations. This is the third such progress report.

The Commission's remit was *"to consider the evidence on how to improve outcomes for women in the criminal justice system; to make recommendations for practical measures in this Parliament to reduce their reoffending and reverse the recent increase in the female prisoner population"*.

The Scottish Government welcomes the ambition shown by the Commission, and recognises the aspiration in its recommendations. The CWO called for a radical reform of existing systems and working practices across the criminal justice system; and in the way universal services such as housing, welfare benefits and healthcare interact with women in order to help them make positive changes and build the skills they will need to live a life of non-offending.

While the focus of the CWO's report was on adults, it commented that the evidence was overwhelming that intervening in the early years of life would have significantly more impact on rates of offending than intervening later in life. It strongly supported evidence based parenting programmes and intensive family support. The Scottish Government is committed to investment in the early years and is determined to make Scotland the best place in the world for children and young people to grow up. We have invested in the support for parents and families the CWO endorsed.

The Scottish Government has responded to the Commission both directly and in partnership with organisations across the public and Third sectors to deliver the significant progress that has been made so far. However, there is still much to do particularly to divert women from offending at an earlier stage in their involvement with the criminal justice system; and to achieve the radical reform in the way women can access mainstream services in the community. These elements of the CWO's vision cannot be delivered by central government action alone. This will require increased engagement from the wider criminal justice system and, importantly at a local level, from Community Planning Partnerships (CPPs) and their constituent partners whom are responsible for delivery of services to communities regardless of whether they have offended or not.

The redesign of Community Justice places emphasis upon collective responsibility through a partnership approach at a local level, bringing together a range of justice and non-justice partners and organisations – including local authorities, NHS Boards, Police Scotland, the Third Sector and communities – to plan for and deliver improved outcomes. Subject to Parliamentary business, we plan to introduce the Community Justice Bill to the Scottish Parliament in spring 2015. This legislation will enable a new model for community justice services in Scotland. It will incorporate local planning and delivery of community justice services through CPPs, with duties being placed on bodies such as NHS Boards, Local Authorities and Police Scotland, to engage in local strategic planning and delivery of services. This will ensure that community justice is

given the profile and priority that is required to improve outcomes for all offenders across Scotland.

This closer alignment of planning for services for all of a community should support local partners to see clearly what their role is in sustaining the on-going delivery of the enhanced women specific services this government has supported over the last 2 years, and crucially, in more proactive and tailored provision of the core services they are responsible for delivering to their communities. The Commission's strong view that was that *"many of our recommendations could be achieved through reconfiguration of existing funding, rather than significant new investment."*

Where central leadership is needed, this government will continue to provide it. The Ministerial Group on Offender Reintegration (MGOR), which was established by my predecessor in October last year, has facilitated cross-government consideration of the issues which are hindering successful reintegration of our citizens back in to their communities. The group heard for example of the practical difficulties that can be associated with "Friday liberations". As a result, The Prisoners (Control of Release) (Scotland) Bill, which was introduced to Parliament on 14 August 2014, includes measures that will enable the Scottish Prison Service, on behalf of Scottish Ministers, to bring forward a prisoner's release up to two days earlier, when doing so will improve the opportunity for an offender to receive necessary support on their release, and so improve their chances of rehabilitating themselves.

The CWO noted that around 75% of custodial sentences imposed on women are for periods of 6 months or less. The evidence is clear that short sentences do not work and we will continue to promote the use of community sentences as a more effective punishment for women.

This Government wants to create a socially just Scotland. As my predecessor said in the foreword of the Scottish Government's formal response to the CWO report, how women are dealt with in the criminal justice system is one of the most pressing social justice issues of recent times. That is why we will continue to bring strong leadership to this important agenda and work collaboratively with all partners who have a contribution to make.

Appendix A of this letter sets out the progress that has been made this year on delivery of the CWO's recommendations. It is set out under the themes identified by the Commission in its report. I look forward to discussing these issues with the Committee when we meet on 16 December 2014 to do so.

Michael Matheson
Cabinet Secretary for Justice
11 December 2014

SERVICE RE-DESIGN

Community justice services for women

1. £3m has been invested by the Scottish Government from 2013-15 to support 16 projects delivering new or enhanced services for women offenders in communities across Scotland. The projects have been developed by local justice organisations and their partners and, while a range of approaches are being tested, they are all designed to reflect the CWO's aspiration for person centred provision of services to reduce reoffending and bring about behavioural change. The projects can be split into 4 broad groups.
2. Firstly, in Glasgow, Edinburgh and Aberdeen justice centres for women have been established. These centres provide a multi-agency service and a holistic response to women offenders. The centres not only have a specific central location, but also a network of activities and services operating from that base. The staff work pro-actively to support the women involved with their services. The Tomorrow's Women Glasgow service in Glasgow is a new co-ordinated service for women which local justice and health partners have developed to work alongside existing services for women in the city, such as the 218 Centre. The Willow Service in Edinburgh and Aberdeen's Women's Justice Centre have been supported to secure new, fit-for-purpose facilities, and to expand their activities or increase their availability to more women in the area.
3. A second group of projects have created dedicated women offender teams within Criminal Justice Social Work provision in Dundee, North Lanarkshire, Renfrewshire, and Highlands region. These teams provide an enhanced service for women offenders, and connect with other public services such as the NHS, housing, family services or welfare, to deliver a holistic response to the women's needs.
4. A third group of projects in Fife, Angus, South Lanarkshire, and Falkirk & Forth Valley are testing an outreach model to engage and deliver services to women in the communities where they live, rather than being based in a single location. This model has been chosen because local partners considered that a centralised service would not support women living in rural areas, smaller towns and villages. The projects provide weekly one-stop-shop functions in a number of locations in their area.
5. The remaining projects each test new approaches to service delivery (for example, to examine whether enhanced reporting to the court would deliver better outcomes for women offenders, or if an early intervention service could reduce the numbers of women entering the criminal justice system); or support research into how services for women offenders could be improved in rural, highland and island areas where the available services, and the offender population, are widely spread.
6. An independent evaluation of all 16 projects has been funded by the Scottish Government, in partnership with the Institute for Research and Innovation in Social Services (IRISS), to evaluate the effectiveness of the different approaches. A report will be produced next spring which will inform local partners' decisions on the future provision of justice services for women in their areas.

Mentoring

7. The Commission identified mentoring as a key way in which women could be supported to make more positive choices and turn their lives around. Mentoring is a one-to-one relationship with an appropriately skilled and experienced individual. The mentor provides tailored support to each mentee to encourage them to address their circumstances and their offending behaviour, and make positive changes for the future.

8. The Shine mentoring service for women is delivered across Scotland through a Public Social Partnership (PSP). The service works with up to 720 women each year who are over 18 and are either on remand or completing short-term sentences; or at high risk of breaching their Community Payback Order. In Tayside, mentoring for women is provided by a PSP led by Tayside Council on Alcohol because they have a proven track record in the region of delivering mentoring for both male and female persistent offenders in the community who are on court orders, bail and pre-court disposals.

9. The Shine and TCA PSPs are among the six mentoring services being funded through the Reducing Reoffending Change Fund (RRCF). The RRCF is worth £18m over the five year period 2012-2017. Shine has received £2.7m from the Change Fund and TCA £311,270 for the period 2013-15. In June 2014, the First Minister announced that the Reducing Reoffending Change Fund would be continued for a further two years to support the six offender mentoring PSPs into 2015-17.

10. An independent evaluation of the RRCF funded projects is continuing to examine both the use of mentoring as a method of support, and the effectiveness of the Public Sector Partnership model. A report from that evaluation, conducted by Ipsos Mori, is scheduled to be produced in the autumn of 2015.

PARENTING AND FAMILY SUPPORT

11. The CWO strongly supported parenting programmes and intensive family support. Additionally, the 'What Works to Reduce Crime' report, published in October 2014, highlighted the importance of parenting as a crucial factor in the development of self-control. Lack of self-control is associated with a higher propensity towards offending behaviour and a range of other negative life outcomes (in terms of education, employment and relationships). The Scottish Government is committed to investing in early-years parenting programmes because they promote self-control and can help to break the cycle of inter-generational familial offending as well as in improving life chances more generally.

12. £6 million of Early Years Change Fund money (provided by Scottish Government, NHS and local authorities), (£3m in 2013/14 and £3m in 2014/15) is being used for Family Support Public Social Partnerships (PSPs) pilots, which specialise in the use of assertive outreach to support the most vulnerable families. These partnerships allow Scottish charities to work in partnerships with local authorities to give families intensive extra support at a time when they need it most.

13. The services being delivered focus on families who are "just coping", with the aim of avoiding crises which might subsequently require more intensive (and expensive) statutory interventions. Some examples include:

14. West Lothian – An intensive family support service providing hands-on support to improve parenting and stability in families. The service addresses poor parenting/lack of parenting capacity, substance misuse, domestic abuse, mental health issues, and involvement in offending and anti-social behaviour, truancy and exclusion.

15. Perth/Angus – Providing support to children of offenders and children at risk as well as engaging with parents who are experiencing parenting as a challenge but who are not engaging with community support. The delivery team provide direct intervention as well as supporting service provision.

16. Church of Scotland and SPS – The development and delivery of prison visitor services at HM YOI Polmont, designed to enhance and encourage family relationships for young people who offend.

ALTERNATIVES TO PROSECUTION

Fiscal Work Orders and Composite Diversion Orders

17. Previous progress reports have indicated a plan for the phased rollout of Fiscal Work Orders over 2014/15. Whilst a number of technical difficulties have arisen in relation to this proposed rollout, I am pleased to advise that we will adopt a single nationwide launch, currently scheduled for 1 April 2015.

18. As a consequence to the delayed roll out of Fiscal Work Orders, work to give detailed consideration to the Commission's recommendation that Procurators Fiscal be given new powers to impose a composite diversion order (combining unpaid work and rehabilitative elements) has also been delayed. There will be potential to examine the use of new composite orders once the Fiscal Work Orders have been established. This work will consider both whether and how the use of such an order would enhance the available range of options of existing diversion measures and the Fiscal Work Order, and the practicalities of introducing such an order.

Enhanced use of Diversion

19. Previous updates have highlighted the diversion project for women who offend in Glasgow. Led by local criminal justice partners, this project targets women who have committed an offence, and for whom diversion into an intervention service providing support and guidance could potentially be beneficial, but whose previous offending history or personal behaviour would usually make them ineligible for a standard diversion scheme. The Scottish Government has extended funding for a further year (2014/15) to allow the project team to evaluate the impact of the project and consider how local partners can mainstream the provision into the existing support services for women in the city.

ALTERNATIVES TO REMAND

Use of Electronic Monitoring

20. The Scottish Government took forward the CWO's recommendation to consider the potential of using electronic monitoring as a condition of bail as part of the public consultation we undertook on the future use of electronic monitoring in September 2013. Whilst some consultation respondents welcomed further consideration of this issue, the majority voiced concerns regarding net-widening, up-tariffing or degradation

of the risk management of offenders attached to extending the current bail eligibility criteria. Consequently we are not minded to pursue this option any further at this point.

21. However, we recognise that restriction of a person's liberty could play an important role in supporting alternatives to custody. A restriction of liberty order (an existing disposal which is available to sentencers) could support the individual to build and maintain connections with their family, their community and their employment, all of which are known to be factors which reduce the likelihood of re-offending.

22. We have established an expert working group to explore opportunities around the use of electronic monitoring of offenders in Scotland. The group, which includes the Judicial Institute for Scotland, Social Work Scotland, Police Scotland, G4S, Scottish Prison Service, the Violence Reduction Unit and Academia met for the first time in November.

23. The EM working group met for the first time on 10 November and its programme of activity will be taken forward over the next 18 months. The group will produce its final report in February 2016. This report will give Scottish Ministers options and recommendations on improving the current electronic monitoring service, opportunities for greater integration and on the effectiveness of electronic monitoring.

SENTENCING

Problem Solving approaches in court

24. The Justice Committee took evidence on August 5th 2014 with my predecessor as Cabinet Secretary, SPS Chief Executive Colin McConnell and SG Community Justice Deputy Director Andrew Bruce. As part of that discussion, the work that had been ongoing for some time to develop the use of "problem solving" approaches within the summary court was discussed in general terms. I can now advise that Aberdeen Sheriff Court will be the location for the trial of problem solving approaches in a Summary Court. This follows extensive work to secure the support of the Sheriff Principal, an enthusiastic local sheriff, and local partners.

25. Clearly, it is important that any such project has the full agreement and participation of the various bodies involved. Work is, therefore, now underway to develop a project plan, involving all relevant partners and the Centre for Justice Innovation, who are experts in problem solving approaches. The exact remit of the Court will take some time to agree. However, it is anticipated that it will consider cases for both men and women.

PRISONS

New Prison Estate for Women Offenders

26. The SPS is continuing to develop a women's estate which is at the cutting edge of the management of women in custody. It will create a "hub and spoke" approach, where HMP & YOI Inverclyde will be the "hub" – the new national facility as well as the community facing prison for the west of Scotland. The spokes will be a new Unit in the grounds of HMP Edinburgh which will be the community facing prison for the east; and a women's unit at HMP Grampian which will serve the North of Scotland.

27. The national facility at HMP Inverclyde will provide interventions and services for young women and adult women serving long-term sentences, a mother and baby unit, and specialist interventions for women with enduring mental health illness and challenging behaviours. It will also provide interventions and care for short-term prisoners from across Scotland based on particularly high levels of risk and needs which cannot be met in the regional facilities.

28. Unless there are special circumstances, women and young offenders on remand or serving short-term sentences will be based in the regional units closest to their homes. Women and young offenders serving long-term sentences will be individually case managed using a multi-disciplinary approach and located in the prison that best meets their risk and needs.

29. The design for HMP & YOI Inverclyde was signed off in August by the SPS' Project and Programme Boards. The Invitation to Tender is being prepared and will be issued in early 2015. The design for the new regional unit at HMP Edinburgh is complete and the Invitation to Tender for the project has been issued with bids returned on 19 November 2014. The SPS is aiming to award a contract for the work in January 2015, with a start on site of April 2015.

30. These developments reflect not just the Commission's aim that short term prisoners should be kept in custody closer to their families, but they will also ensure that this is done in facilities that are fit for purpose, and have the resources and facilities to respond to the women's needs. These combined facilities have been designed to have sufficient capacity to provide effectively for the current women's prison population (i.e. 450). This is lower than Scottish Government projections on the future female prison population which, at their most conservative, project a population of 530. There is no intention to increase the capacity beyond 450, and indeed the longer term aim is for the female prison population to decrease. The design of the Inverclyde facility will incorporate a degree of flexibility and will enable the SPS to manage a reduced female prison population accordingly.

Throughcare Support Officers

31. This approach is also reflected in the SPS' proposal to expand their use of Throughcare Support Officers, who will undertake responsibilities to help prisoners prepare for release and reintegration to the community, and to continue to provide support and assistance in the community in the weeks following their release.

Video Conferencing

32. Video conferencing facilities to link women with the courts and their legal agents are now fully operational at HMP&YOI Cornton Vale. In HMP Grampian, a pilot project has been set up to enable male and female prisoners to use video conferencing to contact their families, as well as to link with courts and legal agents. The project will provide SPS with an opportunity to examine the use of video conferencing as part of prisoner visit arrangements.

SPS Strategy for the Management of Women in Custody

33. A strategy for the Management of Women in Custody is being developed and will set out how SPS proposes to work with women to address their complex needs and prepare them for a productive life in the community. The strategy will provide a

framework of guiding principles on what is required to work effectively with women who offend, with particular emphasis on the impact that trauma may have had on their lives.

Gender-specific training for all professional working with women

34. Last year's update advised that the SPS had developed an induction package for staff working with women offenders, which was being piloted at that time. This two day training has now been evaluated and is routinely provided to all new recruits.

35. An additional new one day programme for existing staff who work with women will be piloted at Cornton Vale before the end of this year, and will continue to be delivered until the comprehensive new curriculum for staff working with women is introduced. The new curriculum is spread over 21 weeks consisting of 14 modules and incorporating specified periods for reflective practice. The programme covers a broad spectrum of issues relating to the care and management of women in custody including trauma informed approaches, beliefs, values and ethics and desistance. Initially the curriculum will be introduced to staff in targeted establishments with a rolling programme of multiple cohorts. To ensure staff are appropriately supported, First Line Managers will provide professional supervision for staff working with women who offend.

COMMUNITY RE-INTEGRATION

Ministerial Group on Offender Reintegration

36. Evidence tells us that as well as Throughcare support in custody, effective and timely access to wider public services such as housing, welfare, healthcare and addictions advice can be significant factors in successful community reintegration post release. In October 2013, a Ministerial Group for Offender Reintegration (MGOR) was established in order to address the demand for better integration between the criminal justice system and wider public services. Over the past year, the group has considered improvement needed to a variety of complex issues including access to housing, welfare, employability and the provision of healthcare to offenders. Ministers have approved a series of recommendations for both immediate and longer term improvement that will address some of the Commission's concerns regarding the community reintegration of women offenders.

Flexible Release

37. The MGOR heard about the very real challenges that liberation on the days preceding weekends and public holidays can have on community reintegration and access to wider services in the community post release. As a result, in August of this year, the Scottish Government put forward provisions in the Prisoners Control of Release (Scotland) Bill which will give Scottish Prison Service the discretion to release an offender up to two days in advance of their release date for specific reintegration purposes. The Scottish Government considers this additional flexibility will allow the closer integration between prison and the community in order to secure the services and support needed to stabilise the lives of people leaving prison and, therefore, reduce the likelihood of reoffending.

Housing

38. The MGOR acknowledged that getting people leaving prison into appropriate accommodation is the foundation for successful reintegration. It can provide an anchor

for a previously chaotic life and enable other crucial steps such as getting and keeping employment, registering with a GP and accessing healthcare or treatment for addiction. Ministers noted that an early assessment of prisoners' housing status upon admission to prison and liaison with relevant housing support should be embedded into an assessment of their immediate needs.

39. A housing improvement project in HMP Perth was established in May 2014 with local authority partners that will test pre and post liberation practice to secure the best possible housing outcomes for offenders. We will consider along with the SPS and our housing partners how the learning from this can be replicated for the female prison estate.

40. It was also recognised, through the work of the MGOR, that the current framework of housing and homeless protocols and interventions between prisons, local authorities and other housing partners is highly complex and not working consistently in practice. The MGOR has, therefore, commissioned research which will map current housing provision and examine the extent and nature of issues and barriers that prisoners and ex-prisoners have surrounding finding and keeping a home before, during and after imprisonment. This research will report in the summer of 2015.

41. The housing improvement project and supplementary research will help us to develop more consistent practice for preventing homelessness and addressing housing issues amongst ex-offenders, including the specific housing needs of women, on their release from custody.

Employability and welfare

42. The MGOR acknowledged that access to employment and timely access to welfare are strongly correlated predictors of successful reintegration. The group concluded that we need to do more to engage with employers in order to champion the benefits of employing offenders. Following the recommendation of the MGOR, the Scottish Government and SPS will be holding an employability summit which will take place on 20 May 2015. This will provide an opportunity for the SPS to highlight examples of how prisons and national and local employers can work better together to encourage and support increased levels of employer engagement with ex-offenders, including building upon the existing good practice with employers and women at HMP Cornton Vale.

43. The MGOR also considered that access routes to the Scottish Welfare Fund were particularly challenging for prisoners. The fund was established in April 2013 in order to provide clothes and basic items of house furniture (Community Care Grants) and living expenses in an emergency (Crisis Grants). In response, the Scottish Government has worked in partnership with SPS to streamline the claim process for prisoners claiming from the Scottish Welfare Fund. Practitioner guidance was published in October 2014 for use within prisons and by support workers and local authority staff on the use of Scottish Welfare Fund. It also provides information for local authorities about the issues faced by prisoners and what to take into account in processing their applications.

Health

44. The MGOR was clear about the significant contribution that appropriate health care provision could make to the reducing reoffending agenda. It therefore agreed that every prisoner should have a single multi-agency community integration plan regardless

of their sentence length. The plan should include an individualised health pathway, including arrangements for GP registration and, where appropriate, necessary referrals to specialist services such as substance misuse or community mental health teams to ensure ongoing treatment in the community. This work will be taken forward through the Throughcare and Service project which forms part of phase 2 of the Scottish Government's Reducing Reoffending Programme.

Mental Health

45. The MGOR also agreed that the National Prisoner Healthcare Network (NPHN) should review current psychological interventions within prisons and through to the community so that an integrated approach which more effectively addresses both offending and health needs can be developed for targeted populations of offenders (including women). NPHN is expected to make recommendations by June 2015.

MAKING IT WORK (LEADERSHIP, STRUCTURES AND DELIVERY)

46. The Commission made two ambitious recommendations regarding the future structures and leadership for community justice services across Scotland, proposing the creation of a single national service that would commission and manage adult offender services in the community, and for that body to work in partnership with the SPS in a National Community Justice and Prison Delivery Board. As was indicated in this Government's formal response to the Commission, we accepted that it was no longer acceptable to retain the status quo in commissioning, delivering and managing community justice activity. Given the scale of this issue, a public consultation was established to create an open and detailed dialogue on what the future arrangements should be.

47. "*Redesigning the Community Justice System – A Consultation on Proposals*" was launched in December 2012, setting out three options for change, and including a model supporting the Commission's preference for a strong single national body to deliver all community justice activities. Analysis of the consultation dialogue and responses showed no clear preference for the options provided, so Scottish Government officials worked with stakeholders on the development of a fourth model which will combine the creation of a national body with the local responsibility for delivery and planning, as set out in "*Future model for Community Justice in Scotland*" on 9 April 2014. That consultation concluded on 2 July and received a total of 66 responses, which were published on 8 October 2014.

48. The Scottish Government has reviewed these responses and has produced a summary report which was published on 21 October 2014. In addition, 9 consultation events were held around Scotland with over 340 attendees. From this series of consultation workshops, a report was published that captured the feedback along with the emerging themes that were highlighted during these discussions. The Scottish Government response to the consultation will be published before the end of the year.

49. The new model takes into account the recognition amongst all parties that it should deliver services which are person-centred, evidence-based and make best use of public resources. Strong leadership, robust accountability and a strategic approach to working with all delivery partners is therefore at the forefront. The new model will incorporate local planning and delivery of Community Justice Services through Community Planning Partnerships (CPPs), with duties being placed on a defined set of partner bodies (including local authorities, NHS boards and Police Scotland) to engage

in this local strategic planning and delivery, and accountability for planning and performance residing at the CPP level.

50. In addition, the new model will also establish a national body to provide professional and strategic leadership for the sector and provide assurance on the achievement of improved outcomes. It will also place a clear focus on the need for collaboration between participating bodies, in order to deliver effective services to offenders, including the opportunity to commission, manage or deliver services nationally where appropriate. The new model will be implemented during 2016/17. The Community Justice Bill which was included in the Programme for Government will provide the necessary legislation for the new arrangements.

Justice Committee

33rd Meeting, 2014 (Session 4), Tuesday 16 December 2014

Legislative Consent Memorandum – UK Modern Slavery Bill

Note by the clerk

Introduction

1. The Justice Committee will take evidence from Michael Matheson, Cabinet Secretary for Justice, on a Legislative Consent Memorandum (LCM) on the Modern Slavery Bill, before considering a draft report at a future meeting.

Purpose of the Bill

2. The Modern Slavery Bill¹ was introduced in the House of Commons on 10 June 2014. Some provisions in the Bill (as amended) apply to Scotland and relate to devolved matters. The Scottish Government therefore lodged a Legislative Consent Memorandum (LCM) on the Bill on 14 November 2014. A copy of the LCM is at Annex A.

Provisions of the Bill relating to devolved matters

3. At introduction, the Bill did not contain any provisions that extended to Scotland. However, amendments tabled on 28 October 2014 extended provisions to Scotland in relation to:

- police powers to pursue, board and detain ships at sea for the purpose of investigating various slavery and human trafficking offences; and
- the establishment of a UK-wide independent Anti-Slavery Commissioner.

Enforcement powers in relation to ships

4. The Bill sets out enforcement powers for police officers working in Scotland (both Police Scotland and National Crime Agency officers). The proposed powers would allow officers to stop, board, divert and detain a vessel for the purpose of preventing, detecting or investigating a relevant offence under the Bill. They would have the power to search a ship and to obtain information, seize items and to arrest persons who are suspected of committing an offence.

5. The Bill also provides for additional powers, with the intention of giving police officers the powers required to operate effectively against shipping moving across normal limits of jurisdiction in 'hot pursuit' situations. In practical terms, this would give enforcement powers to Scottish officers pursuing a ship in English waters, and to English officers pursuing a ship into Scottish waters.

Establishment of independent Anti-Slavery Commissioner

6. The Bill provides for the establishment of a UK-wide independent Anti-Slavery Commissioner. It seeks to confer functions on the Commissioner relating to devolved

¹ UK Modern Slavery Bill. Available at:
<http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0051/15051.pdf>

matters. It also alters the executive competence of Scottish Ministers, by giving them regulation-making powers in this area.

Written evidence

7. The Committee has received a written submission on the LCM from the Scottish Refugee Council. That submission is at Annexe B.

Delegated Powers and Law Reform Committee

8. The Delegated Powers and Law Reform (DPLR) Committee considered the LCM at its meeting on 2 December 2014. It examined the provisions that confer powers to make subordinate legislation on the Scottish Ministers and reported on 2 December² that it was content with those provisions.

Next steps

9. The Committee is to take evidence from the Cabinet Secretary for Justice in relation to this LCM on 16 December.

² Delegated Powers and Law Reform Committee, 69th Report, 2014 (Session 4) - Legislative Consent Memorandum on the Modern Slavery Bill. Available at:
http://www.scottish.parliament.uk/S4_SubordinateLegislationCommittee/Reports/suR-14-69w.pdf

LEGISLATIVE CONSENT MEMORANDUM

MODERN SLAVERY BILL

Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Cabinet Secretary for Justice, is:

“That the Parliament agrees that the relevant provisions of the Modern Slavery Bill, introduced in the House of Commons on 10 June 2014, relating to enforcement powers in relation to ships and the Anti-Slavery Commissioner, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the functions of Scottish Ministers, should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by Kenny MacAskill, Cabinet Secretary for Justice, under Rule 9B.3.1(c)(i) of the Parliament’s Standing Orders. The Modern Slavery Bill was introduced in the House of Commons on 10 June 2014 and the relevant amendments made 28 October 2014. The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/2014-15/modernslavery.html>

Content of the Bill

3. The Bill makes provision about slavery, servitude and forced or compulsory labour and human trafficking including:
 - Consolidation of the current offences of slavery and human trafficking whilst increasing the maximum penalty for such offences;
 - Creation of enforcement powers in relation to ships;
 - Provision for two new civil preventative orders, the Slavery and Trafficking Prevention Order and the Slavery and Trafficking Risk Order;
 - Creation of the office of Independent Anti-slavery Commissioner and sets out the functions of the Commissioner;
 - Measures focused on supporting and protecting victims, including a statutory defence for slavery or trafficking victims and special measures for witnesses in criminal proceedings.

Provisions which relate to Scotland

4. The Bill did not extend to Scotland on introduction. However, amendments lodged on 28 October 2014 aim to extend two provisions to Scotland, namely those provisions relating to enforcement powers for ships and the Independent Anti-Slavery Commissioner. These areas are discussed in detail below.

Enforcement powers in relation to ships

5. Clause 13 of and Schedule 1 to the Bill as introduced set out powers enabling an enforcement officer in England and Wales to exercise powers to pursue, stop, board and investigate vessels for the purposes of preventing, detecting,

investigating and prosecuting offences under the main slavery and human trafficking provisions of the Bill.

6. Following detailed discussions the UK Government, on 28 October, introduced a series of amendments to the Bill which are designed to confer equivalent powers to enforcement officers in Scotland and Northern Ireland, and a further provision enabling officers from the various administrations to pursue these powers into adjacent waters.
7. Clause 36 of the Bill sets out “Enforcement powers in relation to ships: Scotland”. This, combined with the detailed powers set out in Part 2 to Schedule 1 of the Bill, will allow a Scottish constable as defined by section 99 of the Police and Fire Reform (Scotland) Act 2012 or a National Crime Agency Officer having the powers and privileges of a Scottish constable, to stop, board, divert and detain a vessel for the purpose of preventing, detecting or investigating a relevant offence under the Bill. The detailed powers in the Schedule include the power to search a ship and to obtain information, to seize items found and to arrest persons suspected of committing an offence. Offences for the purposes of this part of the Act are listed at clause 36(8) and include offences under the Criminal Justice (Scotland) Act 2003, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and the Criminal Justice and Licensing (Scotland) Act 2010.
8. Detailed provisions within the new clause also set out the requirement that a Scottish constable or enforcement officer will require the consent of the Secretary of State before exercising these powers in relation to a UK ship in foreign waters, or a foreign ship within UK territorial waters. Equivalent provisions are set out elsewhere in relation to Northern Ireland.
9. In addition, Clause 38 sets out provisions to allow for, and to govern “Hot pursuit in United Kingdom Waters”. This provision allows, at subsections (1) to (3), an English and Welsh constable or enforcement officer to pursue a vessel into Scottish (or Northern Ireland) waters and to exercise all other relevant powers there. Subsections (4) to (6) provide equivalent powers to Scottish constables or enforcement officers, allowing pursuit into England and Wales waters or Northern Ireland waters, from Scottish or international waters. Powers are given to Northern Ireland officers in subsections (7) to (10).
10. For the purposes of the Legislative Consent Motion, these provisions allow a constable of a police force in England and Wales, or of the Police Service of Northern Ireland or PSNI Reserve, an immigration officer or designated customs official, or an officer in the armed forces to continue pursuit of a vessel into Scottish territorial waters and to exercise appropriate police powers in those waters, regardless of where the criminal conduct or pursuit started.

The Independent Anti - Slavery Commissioner

11. Clause 40 provides for the establishment of a UK wide independent Anti-Slavery Commissioner in consultation with Scottish Ministers and the terms of the appointment.
12. Clause 41 sets out the general functions of the Commissioner. The Commissioner must encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences and the identification of

victims of the offences. The aim is to encourage effective investigations in order to enhance the prospect of the successful prosecution of perpetrators and the prevention of future offences. The Commissioner may consult any person he/she considers appropriate in discharging these functions and cooperate and working jointly with others in the UK or abroad. He/she may make recommendations to public authorities about the exercise of their functions; undertake research and support others to do so; provide reports on any matter which he/she has been asked to report on by the Scottish Ministers, Department of Justice Northern Ireland or the Secretary of State. Accordingly provision is included to permit Scottish Ministers to commission Scotland specific reports and requiring them to lay before Parliament any such reports published by the Commissioner. Powers are included for the redaction of any reports which might jeopardise the safety of any person in Scotland, or might prejudice the investigation or prosecution of an offence under the law of Scotland.

13. Clause 42 provides for the Commissioner to prepare, for a specified period of not less than one year and not more than three years, a strategic plan and, if necessary, revised strategic plans setting out how the Commissioner proposes to exercise the Commissioner's functions. The plan must contain the objectives and principles for the period to which the plan relates, state any matters on which the Commissioner proposes to report and any other activities the Commissioner proposes to undertake during that period. The Secretary of State must consult the Scottish Ministers before approving a strategic plan. Clause 42 also requires the Commissioner to publish and submit to Scottish Ministers an annual report in respect of each calendar year. Scottish Ministers are required to lay before Parliament any strategic plan approved by the Secretary of State and any annual report they receive.
14. Clause 43 places a duty on specified public authorities to co-operate with the Commissioner. Provision is included for Scottish ministers to specify in regulations the authorities having only functions exercisable in or as regards Scotland who are to be subject to this duty. Authorities having a UK wide remit relating to reserved issues will be specified in regulations made by the Secretary of State.
15. Clause 44 sets out restrictions on the functions of the Commissioner in relation to individual cases but allows the commissioner if necessary to draw conclusions in the context of considering a general issue.
16. Clause 53 provides for the parliamentary procedure to be adopted for the regulation making powers under the Bill and contains provisions that Regulations made by the Scottish Ministers under this Bill are subject to the negative procedure.

Reasons for seeking a legislative consent motion

17. The Bill as amended, contains provisions which are within the legislative competence of the Scottish Parliament, making it a "relevant Bill" under Chapter 9B of the Standing Orders and consequently requiring the consent of the Scottish Parliament.

Enforcement powers in relation to ships

18. Human trafficking is a crime that does not respect borders or national boundaries and it is crucial that we work with the UK and Northern Irish Governments to make sure our laws take this into account. Provisions on the exercise of police powers as regards offences in Scotland or in Scottish territorial waters are – so far as they amend Scots law – within the Parliament's legislative competence and therefore have a devolved purpose. Policing, and the exercise of police powers in Scottish territorial waters fall within the legislative competence of the Scottish Parliament. The consent of the parliament is therefore required to the inclusion of the relevant enforcement provisions of the Bill as regards Scotland.

Independent Anti-Slavery Commissioner

19. As noted above, human trafficking does not respect national boundaries. Having one UK-wide Commissioner will provide consistency across the board and hold each jurisdiction to account on the same basis.
20. Provisions in the Bill which create the office of Independent Anti-slavery Commissioner and confer functions on that office-holder in relation to Scotland and Scottish public authorities have a devolved purpose. Those provisions also alter the executive competence of the Scottish Ministers (for example by the conferral of regulation-making powers). Given the nature of the provisions in question and the importance of having a Commissioner who can operate with a UK-wide remit, it is appropriate to agree that the UK Parliament can legislate in respect of this matter.

Consultation

21. The UK Government consulted widely on the provisions of its Bill in England and Wales and also published a draft Bill for pre-legislative scrutiny. Scottish delivery partners were encouraged to offer views to that consultation. The issue of human trafficking has been the subject of a number of reports, inquiries and consultations over recent years. Each of these inquiries and reports has sought views from relevant interests and made specific recommendations to reform and strengthen the response to human trafficking in Scotland including the appointment of an independent rapporteur.
22. Given the extensive engagement activity already undertaken and available reports and consultation, the Scottish Government does not propose to undertake formal consultation on the Independent Anti-Slavery Commissioner. Informal consultation has taken place with delivery partners such as police, Crown, CoSLA and victim support providers, who are members of the Progress Group established following the Human Trafficking Summit held in October 2012. In general, the main delivery partners have been supportive of the Scottish Government's position but it is expected that there will be calls for a specific Scottish Commissioner.

Financial implications

23. It is expected that there will be no costs to the Scottish Government or public authorities as a result of the Independent Anti-Slavery Commissioner provisions. The only exception would be if a Scottish specific report was to be commissioned.

24. Similarly, no significant new or additional costs are anticipated to the Scottish Government, the Police Service of Scotland or other agencies as a result of the new enforcement powers.

Conclusion

25. It is the view of the Scottish Government that it is in the interests of the Scottish people and good governance that the relevant amendments made to the UK Modern Slavery Bill as outlined above, which fall within the legislative competence of the Scottish Parliament or which alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.

SCOTTISH GOVERNMENT

November 2014

ANNEXE B**WRITTEN SUBMISSION FROM THE SCOTTISH REFUGEE COUNCIL**

1. Further to our email of 24 November 2014 (appended) and, in advance of the Cabinet Secretary for Justice's forthcoming oral evidence on Draft Legislative Consent Memorandum³ (LCM) on 16 December 2014, please see below for the Committee's consideration, short written evidence from Scottish Refugee Council.
2. As you will know, Scottish Refugee Council has decades of experience working with men, women, and children across the world who are in Scotland and are seeking international protection in the UK, including refugee status arising from a positive asylum decision, as well as other forms of humanitarian protection.
3. It is often people in vulnerable predicaments that suffer trafficked exploitation and slavery en route to or in the UK and Scotland. Furthermore, our experience is there is overlap between people seeking asylum in the UK and those that have survived trafficked exploitation.
4. We won't rehearse the points shared in our appended email of 24 November. Rather, we suggest that the Committee when taking evidence on the Independent Anti-Slavery Commissioner (the IASC) component of this draft LCM, should focus on how this should be tailored to best reflect the Scottish context. Of particular interest is how the functions of the IASC may best reflect survivors' issues as well as the desirability of Scottish Ministers having the power to appoint or to consent to a Scotland commissioner to lead the IASC work in Scotland externally and internally.
5. The draft LCM set out the Scotland elements of the IASC (paras., 41-43). In general terms these concern the IASC's relationship with Scottish Ministers and the Scottish Parliament in terms of its (a) establishment; (b) public reporting including grounds for redaction⁴; (c) its strategic plan; (d) annual reporting; and (e) the proposed power of Scottish Ministers to specify in regulations those public authorities with functions exercisable in or as regards Scotland that they consider must fulfil the duty to cooperate with the IASC. These are welcome as slavery and trafficking do not respect or require international borders, with survivors from across the world and the UK.
6. The wider question is how the IASC may best fit the Scottish context. Most relevant legislation, policy and services to anti-slavery and human trafficking are devolved to the Scottish Parliament. These include survivor assistance, child protection, health, legal advice, and criminal justice and the courts. Furthermore, others such as the reception zones for and dispersal of asylum seekers are areas of Joint Working⁵ between the Scottish and UK Governments. The forthcoming Human Trafficking and Exploitation Bill⁶ should reflect the substantial control Scotland has in this area.

³ [LCM\(S4\)35.1](#)

⁴ As recently amended in the House of Lords Committee Stage of the Modern Slavery Bill through UK Government Amendments 70 and 71 that changed Clause 41 of the Bill to reflect the responsibility of the Lord Advocate for criminal prosecutions for offences under the law of Scotland, at [House of Lords Committee Stage on Modern Slavery Bill on 8th December 2014](#).

⁵ [Areas of Joint Working between UK and Scottish Governments](#)

⁶ [Para., 210, p.68, Scottish Government's Legislative Programme 2014-15](#)

7. Furthermore, the report of the Smith Commission recommended under its "additional issues for consideration"⁷ that the UK and Scottish Governments should work together to explore the possibility of extending the temporary right to remain in Scotland for trafficking survivors for protection needs or to participate in relevant legal proceedings.

8. The Smith Commission also suggested that both governments work together on the possibility of putting different powers in place in Scotland for asylum seekers to access accommodation and financial support and advice. In being subjects of high relevance to anti-slavery, they would not only expand Scottish responsibilities in this area, but we think they also speak to an unprecedented need for IASC functions and powers to adequately reflect Scotland.

9. The extensive devolution of areas of most relevance to anti-slavery is reflected in the increasing specialisation of anti-slavery resources in different sectors in Scotland. Police Scotland has a National Human Trafficking Unit and the Crown Office and Procurator Fiscal Service has specialist guidance on slavery and trafficking offences. There are specialist arrangements in health, child protection, and legal advice and representation in place in Scotland. And, the Trafficking Awareness Raising Alliance and the Scottish Guardianship Service are expert services working with, respectively, adult women survivors of sex trafficking and separated children and young people, a substantial number of whom have indicators of human trafficking, such as young Vietnamese men exploited in cannabis farming.

10. The thread throughout this ever-increasing specialisation is the need to prioritise survivor assistance and protection. The current remit and functions of the proposed IASC relate in the main to the encouragement of good practices in the law enforcement sphere, specifically in terms of the prevention, detection, investigation and prosecution of trafficking and slavery offences, as well as the identification of survivors of those offences. These are necessary but, in our opinion, not sufficient conditions to enable the IASC to promote holistic good practice in anti-slavery in Scotland, as well as ideally, across England, Northern Ireland, and Wales too.

11. We think promotion of good practices in anti-slavery and human trafficking needs to be across the piece. And, that entails a function, at the very least in Scotland in the devolved areas of victim care, to develop and disseminate good practice in survivor assistance and protection. This will enable the development, implementation, and scrutiny around Scotland's anti-slavery performance by the Scottish Parliament and others, to benefit from comprehensive and contemporary good practices as opposed to only those that consider slavery and human trafficking through the prism of law enforcement and criminal offences, important as that perspective is.

12. Such a Scottish function in the IASC's remit to promote good practice in terms of survivor assistance and protection should also bring out the inequality inherent in slavery and trafficking. It is well recognised from international law through to front-line services here that trafficking is a gendered crime, afflicting especially children and young people too, as well as those who are vulnerable from inside and outside these Isles. *We suggest the Committee considers the desirability that the IASC, in respect of its Scotland work, has a function to encourage good practice in survivor assistance and protection, and that the Committee enquires as to whether the CSJ may seek an enabling power in the Modern Slavery Bill, to effect this.*

⁷ Paragraphs 96(3)&(4) of Additional Issues for Consideration

13. Furthermore, we suggest the Committee consider how the proposed IASC will ensure, within its governance arrangements, that the Scottish context is appropriately reflected in the IASC priority setting processes, strategic planning, and public and stakeholder engagement. Whereas there are some requirements in to the current Modern Slavery Bill to safeguard Scottish interests e.g. the Secretary of State must consult Scottish Ministers before approving the IASC's strategic plan. However, there is no provision yet that ensures Scottish interests are reflected in the governance of the IASC so - to expand on the strategic plan example-, there is no mechanism to ensure Scotland is properly reflected in the formulation of this plan.

14. Therefore, we suggest the Committee considers whether the current provisions in the Modern Slavery Bill provide adequate safeguards to ensure Scottish interests are reflected both in the internal and external work of the IASC in respect of Scotland. *And, in particular, the desirability of whether the CSJ should seek an enabling power in the Modern Slavery Bill for Scottish Ministers to appoint or have the power to consent to an Commissioner for Scotland within the IASC, analogous for instance, to the Scotland Commissioner within the Equality and Human Rights Commission*⁸. Such should help to protect Scottish priorities in the UK-wide IASC.

Graham O'Neill
Policy Officer
Scottish Refugee Council
10 December 2014

Appendix

The LCM relates to two provisions in the Modern Slavery Bill (the MSB) on, respectively, the proposed independent anti-slavery commissioner and enforcement powers in relation to ships. The suggestions below relate to the proposed anti-slavery commissioner.

Scottish Refugee Council broadly welcomes the intent behind Part 4 of the MSB, dealing as it is with the remit etc., of the proposed "independent" anti-slavery commissioner. We welcome the rationale in the Memorandum to seek a LCM from the Scottish Parliament that the UK Parliament legislate in this area through its MSB. Human trafficking and related forms of servitude-based exploitation are indeed crimes that often traverse borders so it is desirable that responses to it are, as far as possible within current and future constitutional arrangements, *consistent* across the UK.

Scottish Refugee Council has decades of experience working with men, women, and children across the world who are in Scotland and are seeking international protection in the UK, including refugee status arising from a positive asylum decision. This experience has taught us it is often people in or fleeing vulnerable predicaments that are most at risk of and who then suffer trafficked exploitation and slavery en route to and / or within the UK and Scotland. We recognise too there is overlap between people seeking asylum in the UK and those that have survived trafficked exploitation.

Trafficking and slavery are crime. An individual may have been trafficked *and* be seeking asylum, but trafficking is properly the responsibility of Scottish criminal justice institutions and those with expertise to assist and meet the protection and recovery

⁸ [Schedule 1, Part 1, Clause 2\(3\)\(b\) Equality Act 2010.](#)

needs of survivors. In particular, and amongst others, this means Police Scotland, the Crown Office and Procurator Fiscal Service, and the Scottish law courts at the criminal justice end as well as us, TARA, Freedom from Torture, Scottish Guardianship Service, the NHS, social work, and solicitors and advocates at the survivors' end.

To date, the Home Office has had responsibility for decisions on international protection (which is appropriate) *but also*, unfortunately, on trafficking / slavery status through the Home Office being the Competent Authority within the National Referral Mechanism. Thankfully, the recently published review of the NRM has recommended ceasing this Competent Authority role for the Home Office and replacing it with regional multi-disciplinary panels to make conclusive decisions on whether one is deemed to be a survivor of trafficking or servitude-based exploitation. It remains to be seen how this recommendation is taken forward in the UK as well as in Scotland, notably through the forthcoming Scottish Bill.

Scottish Refugee Council's work with asylum seekers and refugees has identified human trafficking and servitude-based exploitation. This is especially amongst women, children (especially girls) and young people and such reflects wider global patterns of how such exploitation is often highly gendered and trades on the distinctive vulnerabilities of children and younger people. This experience has led us to develop close relationships with key trafficking survivors agencies, such as TARA, as well as to advocate that the Home Office as a Competent Authority on trafficking always completely separates out the trafficking / slavery issue from any asylum claim, acting ideally in the best interests of the survivor. It is our view that this separation hasn't always happened, so undermining the ability of the Home Office to ensure that best interests are upheld.

All of the above informed our interpretation of this Memorandum. As we say, we support the need to promote as much consistency in anti-trafficking efforts across the UK as is feasible. That said, we invite the Committee to critically consider the overarching question as to whether the proposed commissioner *should be confined to hold each jurisdiction in the UK accountable for such efforts on the "same basis"*. Such may limit the proposed commissioner's promotion of good practices across the full gambit of *key* anti-trafficking / slavery issues in Scotland. A notable function gap is good practice on the *assistance and recovery of survivors* which is not so far part of the proposed commissioner's functions in the MSB, but which should be there both in the commissioners role and, we hope too, in the anti-human trafficking strategy in the forthcoming Human Trafficking (Scotland) Bill.

Furthermore, we suggest the Committee gives consideration to whether the Memorandum sufficiently develops the Scottish dimension of the functions and role of the proposed anti-slavery commissioner. In particular, it may wish to have regard to the following, specific considerations:

(a) the need for the MSB to include a provision for the appointment or selection of a Scotland anti-slavery commissioner analogous, perhaps, to the Scotland Commissioner at the Equality and Human Rights Commission;

(b) as noted above, scope in the MSB, that the proposed anti-slavery commission in its operations in Scotland, can develop complementary functions on promoting good practices (or more) relating to key issues such as, as mentioned earlier, the assistance and recovery of survivors, which is perhaps especially important given the absence of a victims' commissioner or statutory champion in Scotland; and

(c) that the current MSB Bill and the Memorandum do not specify any mechanism for a direct relationship between the proposed commissioner and parliaments across the UK, including therefore the Scottish Parliament.

Furthermore, the Memorandum does not reflect that the trafficking and related servitude-based exploitation are always borne out of inequalities and abuses of power, as well as being severe human rights violations. As mentioned above, international law and policy pinpoint gender and age-based inequalities are especially significant. The Committee may wish to consider how equality and human rights considerations can be better and more explicitly integrated, perhaps through inviting the Cabinet Secretary to ensure that an equalities and human rights assessment is not only conducted in relation to the forthcoming Scottish Bill but also to the provisions in this Memorandum.

Finally, we suggest that the Committee considers inviting the Cabinet Secretary to give oral evidence on this Memorandum and, potentially, that also the full Chamber of the Parliament is requested to debate the proposed anti-slavery commissioner provisions, especially.

Graham O'Neill
Policy Officer
24 November 2014

Justice Committee

33rd Meeting, 2014 (Session 4), Tuesday 16 December 2014

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following affirmative instrument:
 - **Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014 [draft].**

Introduction

2. This instrument amends the Prisons (Scotland) Act 1989 and the Prisons and Young Offenders Institutions (Scotland) Rules 2011, to:
 - clarify the functions of Her Majesty's Chief Inspector of Prisons and confer further functions on that office;
 - create the roles of prison monitoring co-ordinator and independent prison monitor;
 - transfer the functions of prison visiting committees to those roles and confer further functions on them;
 - abolish prison visiting committees, the functions of prison visiting committees having been transferred to prison monitoring co-ordinators and independent prison monitors; and
 - abolish visiting committees for legalised police cells, as their functions are now exercised by independent custody visitors under section 94 of the Police and Fire Reform (Scotland) Act 2012.
3. An electronic copy of the instrument, together with an explanatory document, can be found at: <http://www.legislation.gov.uk/sdsi/2014/9780111024928/contents>.

Revisions to the Order

4. The Committee reported on a previous draft of the instrument under the super affirmative procedure in January 2014.¹ The Scottish Government amended that Order following responses to its consultation and the Committee's report.
5. The Scottish Government consulted on the revised draft Order between 19 September and 13 October 2014. 30 responses were received over the course of this further consultation and two were received after the consultation closed. Further changes were made to the revised draft Order in light of the responses received.

¹ Justice Committee, 1st Report, 2014 (Session 4), Proposed draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014. Available at: http://www.scottish.parliament.uk/S4_JusticeCommittee/Reports/juR-14-01w.pdf.

Evidence session on 2 December

6. To inform the Committee's consideration of the revised draft Order, it took evidence on 2 December from—

- the Scottish Human Rights Commission;
- the Association of Visiting Committees and Scottish Penal Establishments;
- Howard League Scotland;
- Positive Prison? Positive Futures.
- Professor Andrew Coyle, Emeritus Professor of Prison Studies, Kings College London;
- Dr James McManus, Member of the European Committee for the Prevention of Torture; and
- HM Chief Inspector of Prisons for Scotland.²

7. The Committee also received written submissions in advance of that session.³

Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 2 December 2014 and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit.

Consideration of the instrument

9. The Justice Committee is required to report to the Parliament on the instrument by 12 January 2015.

10. The instrument is subject to affirmative procedure (Rule 10.6 of Standing Orders). The Cabinet Secretary for Justice has lodged motion S4M-11850 proposing that the Committee recommends approval of the instrument. The Cabinet Secretary is due to attend the meeting on 16 December to answer any questions on the instrument, and then, under a separate agenda item, to speak to and move the motion for approval. It is for the Committee to decide whether or not to agree to this motion, and then to report to the Parliament by 12 January 2015. Thereafter, the Parliament will be invited to consider whether it wishes to recommend approval of the instrument.

Next steps

11. The Committee will consider a draft report at its meeting on 6 January. After the Committee has reported, the instrument will be considered by the Parliament.

² The Official Report of that meeting is available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9665>.

³ Written evidence on the Order. Available at:

http://www.scottish.parliament.uk/S4_JusticeCommittee/Paper_by_the_clerk_-_prison_visiting_committees.pdf and

http://www.scottish.parliament.uk/S4_JusticeCommittee/Replacement_submission_from_AVC.pdf.

Justice Committee

33rd Meeting, 2014 (Session 4), Tuesday 16 December 2014

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following affirmative instrument:

- **European Protection Order (Scotland) Regulations 2014 [draft].**

Introduction

2. This instrument transposes into domestic law the requirements of Directive 2011/99/EU, allowing individuals to apply for a European Protection Order (EPO)¹ where they would benefit from a protection measure and intend to move elsewhere in the EU. It would also extend protection to those in a similar situation who are moving to Scotland. In order to achieve this in part, the Regulations insert five new sections into the Criminal Procedure (Scotland) Act 1995:

- conferring upon the court (the competent authority) powers to recognise and implement incoming EPOs, and to issue outgoing EPOs;
- setting out the circumstances in which an EPO can be issued by the competent authority;
- setting out the grounds for non-recognition of an EPO;
- providing a power to modify or revoke a non-harassment order imposed in implementation of an EPO; and
- including the definitions referred to in Article 2² of the Directive.

3. The policy note states that criminal court rules, setting out the administrative and procedural aspects for issuing and implementing EPOs, will also be required.

4. Directive 2011/99/EU relates solely to criminal protection orders. The Scottish Government is transposing a parallel Regulation on civil matters (EU Regulation 606/2013) through SSI 2014/333, which is also to be considered by the Committee at this meeting.

5. Further details on the purpose of the instrument can be found in the policy note (see below) to this paper and an electronic copy of the instrument is available at:

<http://www.legislation.gov.uk/sdsi/2014/9780111025260/contents>

¹ The Regulations define an EPO as a decision in relation to a protection measure taken by a competent authority in an EU member state and on the basis of which the competent authority of another EU member state may take any appropriate measure or measures under its own national law with a view to continuing the protection of protected persons. In Scotland, the competent authority will be the courts.

² The definitions in Article 2 can be found in the Directive at:

http://ec.europa.eu/justice/criminal/files/directive_2011_99_on_epo_en.pdf

Consultation

4. According to the policy note, the Scottish Government has consulted with the UK Government throughout development of the Regulations and with the Scottish Court Service, which will be responsible for the administration of EPOs. It states that the Scottish Government has also consulted the Lord President's office, the Criminal Courts Rules Council, the Crown Office and Procurator Fiscal Service and Police Scotland, and that it will continue to engage with stakeholders to monitor introduction of EPOs into domestic law.

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 9 December 2014 and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit.

Justice Committee consideration

7. The Justice Committee is required to report to the Parliament on the instrument by 19 January 2015.

8. The instrument is subject to affirmative procedure (Rule 10.6 of Standing Orders). The Cabinet Secretary for Justice has lodged motion S4M-11848 proposing that the Committee recommends approval of the instrument. The Cabinet Secretary is due to attend the meeting on 16 December to answer any questions on the instrument, and then, under a separate agenda item, to speak to and move the motion for approval. It is for the Committee to decide whether or not to agree to this motion, and then to report to the Parliament by 19 January 2015. Thereafter, the Parliament will be invited to approve the instrument.

9. The Committee will be asked to delegate to the Convener authority to approve the report on the instrument for publication.

Policy Note: European Protection Order (Scotland) Regulations 2014 [draft]

The above order is made by the Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and all other powers enabling them to do so.

The instrument, which will make amendments to primary legislation, is subject to the affirmative procedure.

Background

The European Protection Order (Scotland) Regulations 2014 ("the Regulations"), in part, implement Directive 2011/99/EU ("the Directive") of the European Parliament and of the Council of the 13 December 2011 on the European Protection Order.

On 18 May 2011, the European Commission proposed a package of measures to ensure a minimum level of rights, support and protection for victims across the EU, no matter where they come from or live. This Directive forms part of those measures.

The Directive relates solely to criminal protection orders. There is a parallel Regulation on civil matters (EU Regulation 606/2013) (“the EU Regulation”) and the Scottish Government will be transposing the terms of this Regulation by virtue of the Civil Jurisdiction and Judgments (Protection Measures) (Scotland) Regulations 2014, which come into force on 11 January 2015.

The general objective of the Directive is to provide mutual recognition across the EU of criminal protection orders. Recital 5 of the Directive states that “a mechanism should be created to ensure mutual recognition among Member States of decisions concerning protection measures for victims of crime.”

The Directive seeks to allow measures which have been imposed in order to protect an individual – for example, a restriction on the movement of someone who has sought to harm that person – to be extended to another Member State in which the individual decides to stay. Practically this means that protection orders issued in one EU country can be recognised across the entire EU. In this way, the protection will travel with the individual.

This will be achieved through a system of European Protection Orders (“EPOs”), which will be issued, on request, by the Member State in which the protection measure is originally adopted. Upon receipt of the EPO by the receiving member state, and subject to various conditions, an equivalent measure available under domestic law is to be imposed.

Policy Objective

The policy objective is to transpose into domestic law the requirements of the Directive, allowing individuals to apply for an EPO where they benefit from a protection measure and intend to move elsewhere in the EU, and to extend protection to those in a similar situation who are moving to Scotland. In order to achieve this in part, the Regulations insert five new sections into the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”).

The Regulations define an EPO as a “decision in relation to a protection measure taken by a competent authority in a Member State of the European Union (“the issuing state”) and on the basis of which the competent authority of another Member State of the European Union (“the executing state”) may take any appropriate measure or measures under its own national law with a view to continuing the protection of protected persons.”

In Scotland the competent authority will be the Scottish courts. New section 254B to be inserted into the 1995 Act therefore confers upon the court the power to issue EPOs in relation to individuals who have had an order made for their protection and who wish to reside or stay in the executing state, taking account of the matters set out at section 254B(3). Once the court is satisfied that an EPO can be issued it must transmit the EPO to the competent authority of the executing state.

The power of the court to recognise an incoming EPO is provided for at new section 254C. The court must recognise the EPO unless one or more of the grounds set out at section 254C(3) applies; if one or more of those grounds does apply the court has the power under new section 254C(2) to refuse to recognise the EPO. Where an EPO is recognised, the court must make a non-harassment order (under s234A of the 1995

Act, as modified by new section 254D) which contains only such requirements as to the offender's conduct as may constitute protection measures and which correspond to the protection imposed in the issuing state. Such orders are considered sufficiently flexible to cover any prohibitions or restrictions required.

New section 254E provides for the modification and revocation of non-harassment orders made under section 245D. Modification or revocation of non-harassment orders made under section 254D may only take place in certain circumstances, such as the modification or revocation of the prohibitions and restrictions imposed by the issuing state and contained in the EPO. In addition to being able to act when notified of such changes by the competent authority of the issuing state, the court can also do so on application by the offender. While the grounds on which the non-harassment order can be modified or revoked are limited, it was considered useful to provide a mechanism by which the court can be asked to re-consider an order imposed (for example, if circumstances have changed but the court has not yet been notified by the competent authority).

New 254A contains a list of definitions for the terms used in 254A-254E.

In summary, the Regulations amend the 1995 Act by:

- conferring upon the court (the competent authority) the power to recognise and implement incoming EPOs;
- conferring upon the court (the competent authority) the power to issue outgoing EPOs;
- setting out the circumstances in which an EPO can be issued by the competent authority;
- setting out the grounds for non-recognition of an EPO;
- providing a power to modify or revoke a non-harassment order imposed in implementation of an EPO; and
- including the definitions referred to in Article 2 of the Directive.

While the Regulations implement the Directive in part, criminal court rules will also be required. These will set out the administrative and procedural aspects for issuing and implementing EPOs. In summary, court rules will:

- set out which forms are to be used for the application process, for issuing EPOs and for the NHOs used to implement EPOs
- set out what the transmission procedure may be for sending EPOs to other Member States
- set out the procedure for some of the notifications required in the Directive.
- set out the procedure for dealing with incomplete applications.
- set out the procedure in relation to modifications of NHOs.
- ensure compliance with the Directive in terms of translation.
- ensure compliance with the Directive in terms of costs.

Consultation

The Scottish Government has consulted with the UK Government throughout the development of the Regulations.

The Regulations have been considered by the Scottish Court Service which will be responsible for the administration of European Protection Orders. The Scottish

Government has also consulted other key stakeholders, including the Lord President's office, the Criminal Courts Rules Council, the Crown Office and Procurator Fiscal Service and Police Scotland.

The Scottish Government will continue to engage with stakeholders to monitor the introduction of EPOs into domestic law and will seek feedback, particularly in relation to how the system of EPOs operates in practice.

Business and Regulatory Impact Assessment

The Regulations are in consequence of provisions contained within the EU Directive and do not affect businesses therefore no Business Regulatory Impact Assessment has been carried out.

Equality Impact Assessment

An Equality Impact Assessment is being prepared to cover both this Directive and the EU Regulation and will be published shortly. The main impact of both is expected to be around domestic abuse. The Scottish Government publishes statistics on domestic abuse recorded by the police³. These statistics show that incidents with a female victim and a male perpetrator represented 80% of all incidents of domestic abuse in 2012-13. Therefore, in relation to the Equality Act 2010 protected characteristic of sex, the Directive and the Regulations will have particular benefits for women, given that most victims of domestic abuse are women.

Financial Implications

The Scottish Court Service will be responsible for the administration and procedural aspects of dealing with European Protection Orders. As this is a new type of protection for victims, it is extremely difficult to ascertain likely volumes. Initial views are that volumes will be low. As such, there should be no significant financial implications for the Scottish Court Service. The Scottish Government has liaised closely with the Scottish Court Service throughout the development of the Regulations, and will continue to monitor how the EPO regime operates in practice following transposition.

Directorate for Justice
November 2014

³ The 2012-13 statistics on Domestic Abuse Recorded by the Police in Scotland are at:
<http://www.scotland.gov.uk/Publications/2013/10/2411>

Justice Committee

33rd Meeting, 2014 (Session 4), Tuesday 16 December 2014

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instrument:
 - **Civil Jurisdiction and Judgements (Protection Measures) (Scotland) Regulations 2014 (SSI 2014/333).**
2. Further details on the procedure for negative instruments are set out in Annexe A.

Introduction

4. The instrument makes provision to facilitate the application in Scotland of Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters. The EU Regulation is part of an EU legislative package which aims to strengthen the rights of victims by recognising civil protection measures across the EU. It is designed to complement Directive 2011/99/EU on the European Protection Order (EPO), which covers protection in criminal measures. (The EPO Regulations are also to be considered by the Committee on 16 December.)
5. The policy note on the instrument states that the Scottish Government considers that interdicts and civil non-harassment orders granted by Scottish courts could be covered by the definition of 'protection measures' contained in Article 3¹ of the EU Regulation.
5. The instrument comes into force on 11 January 2015.
6. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2014/333/contents/made>

Consultation

7. The policy note states that the UK Government and Scottish Government met with interested parties in Scotland while the EU Regulation was still being negotiated at EU level and that the general consensus from that meeting was for the UK to take part in the adoption and application of this Regulation. It advises that the Scottish Government has worked closely with the Scottish Court Service in preparing the 2014 Regulations and has also sent a policy paper on potential Rules of Court resulting from the EU Regulation to the Scottish Civil Justice Council.

¹ The definitions of 'protection measures' in Article 3 can be found in the Directive at:
http://ec.europa.eu/justice/criminal/files/directive_2011_99_on_epo_en.pdf

Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 9 December 2014 and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit.

Justice Committee consideration

9. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 19 January 2015.

Policy Note: Civil Jurisdiction and Judgements (Protection Measures) (Scotland) Regulations 2014 (SSI 2014/333)

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (“the 1972 Act”) and all other powers enabling them to do so. The instrument is subject to the negative procedure.

Policy Objectives

These Regulations make provision to facilitate the application in Scotland of Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (“the EU Regulation”).²

Article 22 of the EU Regulation provides that it applies to protection measures ordered on or after 11 January 2015.

The EU Regulation is directly applicable in Scotland. Therefore, the regulations made under section 2(2) of the 1972 Act only make provision insofar as this is needed to facilitate the application of the EU Regulation.

The EU Regulation is part of an EU legislative package which aims to strengthen the rights of victims by recognising civil protection measures across the EU. It is designed to complement Directive 2011/99/EU on the European Protection Order, which covers protection in criminal measures. Draft European Protection Order (Scotland) Regulations 2014 to implement Directive 2011/99/EU are due to be laid before the Scottish Parliament on 26 November 2014.

The EU Regulation provides for recognition across the EU³ of civil protection measures. This recognition only lasts for 12 months, given the terms of Article 4(3).

The UK Government, supported by the Scottish Government, decided that the United Kingdom should take part in the adoption and application of the Protection Measures Regulation: recital 40 of the preamble to the EU Regulation refers. The Scottish Government took this decision given that the EU Regulation is in line with the work being undertaken by the Government to tackle domestic abuse generally. The Scottish Government does not expect, however, that the EU Regulation will have a major effect on domestic abuse.

² EU Regulation 606/2013 is at

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:181:0004:0012:en:PDF>

³ Other than Denmark, which is not taking part. Please see recital 41 of the preamble to the EU Regulation.

The types of measures covered are defined in Article 3 of the EU Regulation. This definition is:

“ ‘ protection measure’ means any decision, whatever it may be called, ordered by the issuing authority of the Member State of origin in accordance with its national law and imposing one or more of the following obligations on the person causing the risk with a view to protecting another person, when the latter person’s physical or psychological integrity may be at risk:

(a) a prohibition or regulation on entering the place where the protected person resides, works, or regularly visits or stays:

(b) a prohibition or regulation of contact, in any form, with the protected person, including by telephone, electronic or ordinary mail, fax or any other means;

(c) a prohibition or regulation on approaching the protected person closer than a prescribed distance.”

The Scottish Government considers that this definition could, for example, cover interdicts and civil non-harassment orders.

Under Article 5 of the EU Regulation, a protected person who has been granted a protective order may then apply for a certificate so that the measure is recognised across the EU. This certificate is contained in a multi-lingual standard form established by the European Commission Under Article 6, the certificate may only be granted where the person causing the risk has been given an opportunity to be heard in the domestic proceedings. Under Article 9, the certificate may be rectified or withdrawn if there is a clerical error or it was clearly wrongly granted. Under Article 14, a further certificate may be granted reflecting any suspension, limitation or withdrawal of the original protection measure. The European Commission has established standard multi-lingual forms for the purposes of Articles 5 and 14⁴.

Regulation 3 of the Civil Jurisdiction and Judgments (Protection Measures) (Scotland) Regulations 2014 (“the 2014 Regulations”) makes provision so that the Court of Session or the sheriff court in Scotland which ordered the protection measure have jurisdiction in relation to the issue of outgoing EU certificates.

The EU Regulation makes provision which has the effect that protection measures ordered in other Member States are recognised in Scotland for up to 12 months: Article 4 refers. This is directly applicable in Scotland and no implementing provision in domestic legislation is required.

Regulation 4 of the 2014 Regulations make provision so that the Court of Session or a sheriff court in Scotland have jurisdiction to enforce an incoming protection measure; adjust a factual element of an incoming protection measure; refuse to recognise or enforce an incoming protection measure; and suspend or withdraw the effects of recognition or enforcement under Articles 4, 11, 13 and 14 of the EU Regulation respectively.

⁴ The multi-lingual forms established by the Commission are at:
http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1410275245533&uri=OJ:JOL_2014_263_R_0004

Regulation 5 of the 2014 Regulations makes further provision to lay down that for the purposes of enforcing incoming protection measures, the Court of Session and the sheriff courts will have the same powers and may undertake the same procedure for enforcement as if the incoming protection measure were in the form of an interdict granted by a domestic court. This reflects that the type of prohibitions contained in the definition of “protection measure” in Article 3 of the EU Regulation are along similar lines to prohibitions that might be contained in interdicts granted by the Scottish courts.

Treating incoming protection measures as interdicts means that a person with a protection measure can apply to the court under section 1 of the Protection from Abuse (Scotland) Act 2001 for a power of arrest to be attached to it and/or apply to the court under section 3 of the Domestic Abuse (Scotland) Act 2011 for the measure to be declared a domestic abuse interdict.

Consultation

The UK Government and the Scottish Government met with interested parties in Scotland while the EU Regulation was still being negotiated at EU level. The general consensus of that meeting was that the United Kingdom should take part in the adoption and application of this Regulation. The Scottish Government has worked closely with the Scottish Court Service while preparing the 2014 Regulations. The Scottish Government also sent the Scottish Civil Justice Council a policy paper for its meeting on 29 September 2014 on potential Rules of Court as a result of the EU Regulation. Rules of Court are made by the Lord President of the Court of Session.

Impact Assessments

There is no obvious impact on business and so a Business and Regulatory Impact Assessment has not been prepared.

An Equality Impact Assessment is being prepared to cover this EU Regulation and Directive 2011/99/EU. The main impact of the EU Regulation is expected to be around domestic abuse. The Scottish Government publishes statistics on domestic abuse interdicts recorded by the police⁵. These statistics show that incidents with a female victim and a male perpetrator represented 80% of all incidents of domestic abuse in 2012-13. Therefore, in relation to the Equality Act 2010 protected characteristic of sex, the EU Regulation and the 2014 Regulations will have particular benefits for women, given that most victims of domestic abuse are women. These benefits will be limited as the EU Regulation restricts recognition across the EU of civil protection measures to 12 months.

Financial Effects

No financial impact is expected on business. Financial impacts generally are expected to be low, given that it is not expected that there will be many cases arising under the EU Regulation.

**Scottish Government
Justice Directorate
November 2014**

⁵ The 2012-13 statistics on Domestic Abuse Recorded by the Police in Scotland are at:
<http://www.scotland.gov.uk/Publications/2013/10/2411>

ANNEXE A**Negative instruments: procedure**

Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

Each negative instrument appears on the Justice Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee’s web page at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/64215.aspx>