



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

7th Meeting, 2015 (Session 4)

Tuesday 3 March 2015

The Committee will meet at 10.00 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
2. **Human Trafficking and Exploitation (Scotland) Bill:** The Committee will take evidence, in round-table format, on the Bill at Stage 1 from—

Gordon Macdonald, Abolition Scotland;

Lisa Gamble, Research and Policy Officer, Barnardo's Scotland;

Christopher Gaul, Head of Service, Victims of Slavery Support Services, Migrant Help;

Chloe Swift, Policy Officer, Scotland's Commissioner for Children and Young People;

Catriona MacSween, Service Manager, Scottish Guardianship Service;

Graham O'Neill, Policy Officer, Scottish Refugee Council;

Dr Pamela Cairns, Regional President, Soroptomist International - Scotland North Region;

Bronagh Andrew, Service Manager, Trafficking and Awareness Raising Alliance;

Nicola Merrin, Policy Officer, Victim Support Scotland.

3. **Prisoners (Control of Release) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Michael Matheson, Cabinet Secretary for Justice, and Neil Rennick, Acting Director, Justice, Scottish Government.

4. **Subordinate legislation:** The Committee will consider the following negative instruments—

Firefighters' Pension Scheme (Scotland) Regulations 2015 (SSI 2015/19);

Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Regulations 2015 (SSI 2015/53);

Scottish Administration (Offices) Order 2015 (SI 2015/200).

5. **Agricultural crime:** The Committee will consider its next steps in relation to its work on agricultural crime.

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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk

J/S4/15/7/1

Private paper

J/S4/15/7/2 (P)

[Human Trafficking and Exploitation \(Scotland\) Bill, accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

Agenda item 3

Paper by the clerk

J/S4/15/7/3

Private paper

J/S4/15/7/4 (P)

[Prisoners \(Control of Release\) \(Scotland\) Bill, accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

Agenda item 4

Paper by the clerk

J/S4/15/7/5

[Firefighters' Pension Scheme \(Scotland\) Regulations 2015 \(SSI 2015/19\)](#)

[Scottish Courts and Tribunals Service \(Procedure for Appointment of Members\) Regulations 2015 \(SSI 2015/53\)](#)

[Scottish Administration \(Offices\) Order 2015 \(SI 2015/200\)](#)

Agenda item 5

Private paper

J/S4/15/7/6 (P)

Justice Committee

7th Meeting, 2015 (Session 4), Tuesday 3 March 2015

Human Trafficking and Exploitation (Scotland) Bill

Note by the clerk

Background

1. The Committee begins taking evidence at Stage 1 of the Human Trafficking and Exploitation (Scotland) Bill at its meeting on 3 March. Further evidence sessions on the Bill are scheduled for 10, 17, 24 and 31 March.

The Bill

2. The Bill was introduced in the Parliament on 11 December 2014. The Justice Committee was designated as lead committee for Stage 1 consideration of the Bill on 6 January 2015. The Policy Memorandum states that “the overarching policy objectives of the Bill are to consolidate and strengthen the existing criminal law against human trafficking and the offence relating to slavery, servitude and forced or compulsory labour and enhance the status of and support for victims”.¹ The Bill would:

- create a single offence of human trafficking for all forms of exploitation for adults and children;
- strengthen the current slavery, servitude and forced labour offence by allowing the court to consider, in assessing whether a person has been a victim of an offence, the victim’s characteristics such as age, physical or mental illness, disability or family relationships. The maximum penalty would be increased from 14 years to life imprisonment;
- establish statutory aggravations (a) to any criminal offence where it can be proved that the offence had a connection with a human trafficking background, and (b) where a human trafficking offence has been committed by a public official while acting, or purporting to act, in the course of the official’s duties;
- place a duty on the Lord Advocate to publish guidance about the prosecution of credible trafficking victims who have committed offences;
- place a duty on Scottish Ministers to secure the provision of relevant immediate support and recovery services for adult victims² of trafficking;
- categorise all trafficking and exploitation offences as lifestyle offences in order to automatically trigger the confiscation procedures in the Proceeds of Crime Act 2002;
- create trafficking and exploitation prevention orders and risk orders;

¹ Policy Memorandum, paragraph 16.

² The Policy Memorandum explains that the provisions relating to support for victims are explicitly aimed at providing a statutory basis for the support and assistance of adult victims of trafficking because the necessary support for children who may be victims of trafficking is already enshrined in legislation which provides for all vulnerable children: the Children (Scotland) Act 1995, the Children’s Hearings (Scotland) Act 2011, and the Children and Young People (Scotland) Act 2014.

- place a duty on the Scottish Ministers to prepare, publish and regularly review and update a trafficking and exploitation strategy to be laid before the Parliament; and
- place a duty on public bodies to provide anonymised data about potential human trafficking and exploitation victims to Police Scotland.

3. The Committee issued a call for written evidence on 13 January, which closed on 24 February. Written submissions³ received from the witnesses attending on 3 March and others are available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86699.aspx>
[X](#)

Visits

4. Committee members visited the Trafficking Awareness Raising Alliance (TARA), Barnardo's Scotland Safer Choices Project and the Scottish Guardianship Service/Scottish Refugee Council on 17 February to inform the Committee's scrutiny of the Bill. Annexe A provides a summary of the key themes arising from the visits.

Correspondence

5. At an informal briefing on the Bill on 13 January, the Scottish Government's Bill Team agreed to provide further information on protection measures available to human trafficking victims who agree to participate in criminal proceedings. A response has been received and is attached at Annexe B. The Cabinet Secretary for Justice has also written to the Committee regarding amendments made to the UK Modern Slavery Bill in relation to a UK Anti-Slavery Commissioner. This letter is attached at Annexe C.

Next steps

6. The Committee will take evidence in a round-table format from: TARA; Migrant Help; Scottish Refugee Council; Abolition Scotland; Soroptomist International, Scotland; Victim Support Scotland; Scottish Guardianship Service; Barnardo's Scotland, and the office of Scotland's Commissioner for Children and Young People.

³ A pack of written submissions has been circulated to each member with their meeting papers.

ANNEXE A

Key themes arising from the Committee's visits in relation to the Human Trafficking and Exploitation (Scotland) Bill on 17 February 2015

1. The Committee conducted a series of visits on 17 February aimed at informing its scrutiny of the Human Trafficking and Exploitation (Scotland) Bill. This paper provides a summary of the projects visited by members and key themes arising from the visits.

Trafficking Awareness Raising Alliance (TARA)

2. Christian Allard MSP, Margaret Mitchell MSP and Gil Paterson MSP visited TARA in Glasgow on 17 February 2015.

3. TARA was established in 2005 to help identify and support women who may have been trafficked for the purpose of commercial sexual exploitation. The project currently sits with Community Safety Glasgow, although it has secured funding from the Scottish Government to ensure that the services it provides are available to women across Scotland. Women are eligible to access the services provided by TARA if they: (a) are over 18 years of age; (b) have been brought into and/or moved around the UK, and (c) have been commercially exploited. TARA works with these women to access safe accommodation; legal advice; psychological assessment; primary and sexual health care; advocacy; and safe return.

4. TARA is a first responder for the National Referral Mechanism (NRM), provides comprehensive assessment of needs including risk, and offers a range of support services.

Scottish Guardianship Service

5. Jayne Baxter MSP, Roderick Campbell MSP and Elaine Murray MSP visited the Scottish Guardianship Service in Glasgow on 17 February 2015.

6. The Service is a partnership between the Scottish Refugee Council and Aberlour Child Care Trust operating since 2010. The Service supports separated children and young people from outside the European Economic Area (EEA) who are in the asylum process. Approximately one third of the youngsters assisted by the Service to date have indicators of human trafficking across the main forms of exploitation, including committing offences as a direct consequence of their circumstances. There are an estimated 200 such children in Scotland and currently, the majority are between 16 and 17 and come from countries including Afghanistan, Vietnam, Nigeria and Iran. The Service allocates a guardian to a young person to assist them to understand, participate in and navigate the complex, immigration, legal and welfare processes.

7. The only project of its kind in the UK, the Service was praised in an independent evaluation (December 2011) carried out by Professor Ravi KS Kohli (University of Bedfordshire) and Professor Heaven Crawley (University of Swansea).

Barnardo's Safer Choices Project

8. Christine Grahame MSP, John Finnie MSP and Alison McInnes MSP visited Barnardo's Safer Choices Project in Glasgow on 17 February 2015. The Project provides support and a confidential crisis service to children and young people aged 18

years and under, to identify risk and devise strategies to minimise harm, particularly in relation to sexual exploitation. The Project assists and supports young people in a variety of situations, for example where they may be homeless, runaways, in temporary accommodation, or involved with drugs and/or alcohol. The Safer Choices team engages with children using a range of methods including direct 1:1 work, street work and a four-week prevention programme in schools.

9. The Project is also a 'first responder' for the National Referral Mechanism (NRM), a framework for identifying victims of human trafficking and ensuring they receive the appropriate protection and support.⁴

Key themes arising from the visits

10. The key themes arising from the visits are set out below.

Current issues

- the number of trafficked individuals continues to grow each year
- there are difficulties in getting individuals to recognise that they have been trafficked as they may consider the trafficker to be their 'boyfriend'
- there are difficulties in getting individuals to admit that they have been trafficked as they or their families who remain in their home country may have been threatened, or they have been told or come to believe they are illegal immigrants
- trafficking victims, particularly child victims, often have a sense of loyalty to those who have trafficked them
- there are difficulties in proving that a person has been trafficked
- the NRM is a complicated process that becomes more complex where a referral involves an asylum seeker
- support services, such as the Scottish Guardianship Service are involved from the start in often lengthy and complex legal processes with victims, but are often left out of the information loop at significant stages of those processes
- support services, such as TARA, only have 72 hours to gather information and complete referral forms to the NRM which is difficult where victims are extremely traumatised and when the focus at that early stage should be on providing support and building up trust
- there are concerns that the proposed replacement for the NRM, which follows a recent Home Office review, may not reflect Scottish context
- the NRM does not support EU or British nationals so they may not receive the support they need and there is a general lack of awareness of domestic trafficking and exploitation
- a need for awareness raising and training among local authorities, the judiciary and legal profession
- trafficked adults and children should be treated as victims first even where they are implicated in criminal activity
- technology is being used to facilitate trafficking
- ongoing pressure on resources affects the capacity of national and local government and the third sector to deal effectively with the issue

⁴ The referring authority is known as the 'first responder'. The NRM grants a minimum 45-day reflection and recovery period for victims of human trafficking. Trained case owners decide whether individuals referred to them should be considered to be victims of trafficking according to the definition in the Council of Europe Convention.

- Scotland performs well in picking up on indicators and has strong support links
- the majority of women going to TARA have mental issues and need sustained support
- a lack of knowledge of the support services available in repatriating countries for women who are returned to their country of origin
- exploitation occurs in a range of areas, including cannabis cultivation, the food sector and independent nail salons, as well as in the sex industry
- there is a need to ensure that the UK Independent Commissioner (agreed to through a recent LCM) properly represents Scottish interests

Provisions of the Bill

- the Bill should specifically refer to children to provide clarity for 16 and 17 year olds
- the Bill should include either a reference to independent guardianship services, or to cross-reference the Bill with sections 22 and 25 of the Children and Young People (Scotland) Act 2014 to automatically confer looked after status on trafficked children, allowing them access to throughcare and aftercare until the age of 26
- there is a need to ensure no gender bias, as boys and men can also be trafficked for exploitation
- setting out specific support to be provided in legislation might restrict flexibility for support services
- the Bill should require the Crown Office and Procurator Fiscal Service to at least give consideration to not prosecuting where an individual has been trafficked and exploited, while also recognising the Lord Advocate's role
- the needs of children or adult dependents could be better reflected in the Bill

ANNEXE B**Correspondence from the Scottish Government Bill Team in relation protection measures available to human trafficking victims who agree to participate in criminal proceedings**

Further to the 13th January informal meeting on the Human Trafficking and Exploitation (Scotland) Bill I am writing as agreed to provide information on protection measures available to victims of human trafficking who agree to participate in criminal proceedings.

The openness of judicial proceedings is a fundamental principle enshrined in Article 6(1) of the European Convention on Human Rights (the right to a fair trial). This underpins the requirement for a prosecution witness to be identifiable not only to the accused, but also to the open court. It supports the ability of the accused to present his case and to test the prosecution case by cross-examination of prosecution witnesses. In some cases it may also encourage other witnesses to come forward. However, this openness may sometimes act as a bar to successful prosecutions as witnesses may fear that if their identity is revealed to the accused, his/her associates or the public generally then they or their friends and family may be at risk of serious harm.

In most cases the police will establish whether a witness is in fear and should inform the prosecutor and, based in the particular facts and circumstances of the case, a discussion about the type of 'protection' that should be applied for will take place. Outlined below are the range of protection measures that are available both to encourage witnesses to give evidence without fear of repercussions and to protect witnesses, potential witnesses and those close to them who may be at risk of harm due to their involvement in the justice process. Any of these measures could apply in relation to a victim of human trafficking if the requirements detailed below are met.

Special measures

The Scottish Government considers it is appropriate to create a presumption in criminal proceedings that victims such as those who are victims of serious offences, including human trafficking offences are vulnerable and should be entitled to the use of certain special measures when giving evidence, so long as the views of such individuals are taken into account before a final decision is made in each case. Sections 11 to 21 of the Victims and Witnesses (Scotland) Act 2014 ("the 2014 Act") amend the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") to redefine vulnerable witness to improve the identification and the support available to enable them to give their best evidence and sets out the special measures available to these witnesses along with the procedure to be followed in criminal proceedings to enable such special measures to be used.

Vulnerable witnesses for the prosecution will be identified at an early stage in proceedings by a member of Crown Office and Procurator Fiscal Service staff on the basis of the information provided by the police and also on their own observations. These witnesses will be sent information on the support available to them and they will also be referred to Victim Information and Advice (VIA). Witnesses can discuss with VIA staff how they have been personally affected by the crime and whether they would benefit from the use of special measures. Once the provisions in the 2014 Act come into force, standard special measures which are automatically available for a trafficked victim, who has agreed to give evidence include: -

- a live TV link
- a screen
- a supporter

In addition, the party citing such a witness will be able to apply to the court to use the following special measures:-

- giving evidence in chief in the form of a prior statement
- taking evidence by commissioner
- a closed court

For witnesses automatically classed as vulnerable, the party citing the witness will submit a Vulnerable Witness Notice (VWN) to the court, setting out that the witness falls within the relevant categories and requesting a particular standard special measure. If the VWN also requests a special measure, it will be for the court to decide, taking account of the views of the witness, whether to authorise the special measure.

Witness Anonymity Order

The Criminal Justice & Licensing (Scotland) Act 2010 amended the Criminal Procedure (Scotland) Act 1995 by inserting new sections 271N – Z for the purposes of Witness Anonymity Orders. An application to the court for a Witness Anonymity Order can be made pre-trial by the prosecutor. The identity of the witness will be disclosed to the court but will not be disclosed to the accused or their legal representatives. The court may only make a Witness Anonymity Order if satisfied that:

- the order is necessary to protect the safety of the witness, or another person, or to prevent any serious damage to property, or to prevent real harm to the public interest,
- the effect of the order would be consistent with the accused's receiving a fair trial,
- the importance of the witness's testimony is such that in the interests of justice the witness ought to testify, and/or
- the witness would not testify if the proposed order were not made, or there would be real harm to the public interest if the witness were to testify without the order being made.

Reporting Restrictions

Section 15 of the 2014 Act will amend restrictions on reporting proceedings involving children in section 47 of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act), so that they apply to a person under 18, rather than under 16. Section 47 of the 1995 Act puts certain restrictions on newspapers to prevent them revealing the identity of persons under 16 (under 18 once implemented) who are involved in criminal proceedings (as the person against or in respect of whom the proceedings are taken, or as a witness). However, the court has discretion to dispense with these requirements if it is satisfied that it is in the public interest to do so. The provisions also apply to sound and television programmes.

Section 11 of the Contempt of Court Act 1981("the 1981 Act") allows the court to make directions prohibiting the publication of a name or matter in connection with the proceedings. Where a court has power to allow a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld. Also,

under section 4(2) of the 1981 Act the courts may make an order postponing publication of reports of proceedings.

Leave to Remain and Repatriation

Where a victim of trafficking agrees to assist in criminal investigations and proceedings but has no right to remain in the UK, then in accordance with the Council of Europe Convention Action against Trafficking in Human Beings, a period of one year temporary right of leave to remain in the UK may be granted. This period may be extended depending on the fact and circumstances of the specific case. Where a recognised victim of trafficking does not meet established criteria for further immigration leave, the expectation must be that they return to their own country. In all cases voluntary departure is the preferred option and repatriation would only be enforced where it was deemed safe and appropriate to do so in accordance with the UK's domestic and international obligations.

Witness Protection

In some very serious cases the risk to a witness (or potential witness) or a member of their family is so great that they may need to relocate to another part of the UK and even change their identity. Witness Protection is the means of providing protection measures for people involved in the criminal justice process who find themselves at risk of serious personal harm as a result of that involvement.

Witness Protection, as defined within Chapter 4 of Part 2 the Serious Organised Crime and Police Act 2005, is generally directed to those persons who have provided crucial evidence and against whom there is a substantial threat. However this definition does not preclude police forces and law enforcement agencies from offering protection measures to witnesses and others at risk.

It should be noted that the ramifications for individual witnesses who have to participate in Witness Protection are significant and are, therefore, used sparingly.

I hope the above is helpful and if you require any further information please let me know.

Ann Oxley
Human Trafficking
21 February 2014

ANNEXE C**Correspondence from the Cabinet Secretary for Justice on amendments to the UK Modern Slavery Bill in respect of the Anti-Slavery Commissioner**

I am writing to update you on further amendments that have been made by the UK Government in respect of the Anti-Slavery Commissioner.

On 16 December 2014 your Committee considered a Legislative Consent Motion (LCM) to extend the remit and functions of the Commissioner to Scotland and this was agreed by the Parliament on 15 January 2015. Since then I have been advised by Karen Bradley MP, UK Minister for Modern Slavery and Organise Crime, that as a response to pressure to strengthen the independence and scope of the role of the Commissioner a number of amendments to the Modern Slavery Bill ("the Bill") would be lodged in the UK Parliament. These were published on 16 February and include amendments to:

- allow the Secretary of State to provide a budget in order to enable the Commissioner to appoint staff;
- permit medical professionals not to disclose confidential patient information in response to a request from the Commissioner;
- provide that where Scottish Ministers exercise their power under secondary legislation to remove a specified public authority under a duty to co-operate with the Commissioner then that is subject to affirmative procedure other than where that authority ceases to exist.

A further amendment is being made to clarify the matters to which the Commissioner may have regard in carrying out functions under clause 41(1) of the Bill to include the provision of support and assistance to victims of slavery and human trafficking offences. I have written to the UK Minister saying that in the devolved context, we take that to mean that the Commissioner can have regard to victim support and assistance when encouraging good practice in the prevention, etc. of slavery and trafficking offences and the identification of victims. This simply clarifies the Commissioner's remit; it does not add a new function. I have requested that both the speaking notes relating to the amendment and the explanatory notes to the Bill make clear the limited reach of the amendment to ensure there is no confusion or implied crossover into devolved matters not mentioned in clause 41(1) and have asked for sight of these.

Although, we were aware that these amendments were being mooted at the time the LCM was considered, they were still being negotiated at UK level and as such we could not make reference to them. I am satisfied that these changes to the manner in which the policy was described in the original Memorandum are still within scope of the Motion considered by the Scottish Parliament and no further LCM is required. I have made the UK Government aware that consultation on all of these amendments, which impact on devolved issues, should have been made in a timelier manner.

I hope you find the above helpful.

Michael Matheson MSP
Cabinet Secretary for Justice
17 February 2015

Justice Committee

7th Meeting, 2015 (Session 4), Tuesday 3 March 2015

Prisoners (Control of Release) (Scotland) Bill

Note by the clerk

Introduction

1. The Justice Committee will take further evidence from the Cabinet Secretary for Justice on the general principles of the Prisoners (Control of Release) (Scotland) Bill at its meeting on 3 March 2015.
2. This session, follows a round table session on 24 February on the terms of the Cabinet Secretary's letter to the Committee of 3 February 2015.¹

Provisions of the Bill

3. The Bill was introduced in the Parliament on 14 August 2014 and contains the following provisions relating to the release of offenders serving custodial sentences:
 - **restriction of automatic early release** – seeking to end automatic early release for sex offenders receiving determinate custodial sentences of four years or more and other offenders receiving determinate custodial sentences of ten years or more; and
 - **early release for community reintegration** – allowing the Scottish Prison Service to release sentenced prisoners up to two days early where this would help facilitate community reintegration (eg by allowing for early access to key public services).²
4. Further information on the Bill's provisions are available in SPICe briefing 14/60, *Prisoners (Control of Release) (Scotland) Bill*, published on 24 September 2014.³
5. The Justice Committee took evidence on the general principles of the Bill at Stage 1 on 13, 20 and 27 January.⁴
6. The Cabinet Secretary wrote to the Committee on 3 February indicating that the Scottish Government, in response to concerns raised in evidence to the Committee, would bring forward proposals at Stage 2 of the Bill to—

¹ Cabinet Secretary for Justice, letter to the Justice Committee, 3 February 2015. Available at: http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20150203_CSfJ_to_CG_AER_announcement.pdf.

² Copies of the Bill and accompanying documents are available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/80130.aspx>.

³ SPICe briefing 14/60, *Prisoners (Control of Release) (Scotland) Bill*. Available at: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-60.pdf.

⁴ The Official Reports of these meetings are available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29847.aspx>.

- guarantee that all long-term prisoners, i.e. anyone serving a determinate sentence of 4 years or more for any crime, being released from prison will be subject to a minimum period of compulsory supervision in the community; and
- extend the provisions to end the existing system of automatic early release for all long-term prisoners, i.e. those sentenced in future to sentences of 4 years or more, whether for sexual offences or any other form of offence.

7. A copy of the Cabinet Secretary's letter is annexed to this paper. The Official Report of the round table session on 24 February is available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9796&mode=pdf>.

Written submissions

8. All written submissions are available on the Committee's webpage⁵. This includes written submissions received in response to the Cabinet Secretary's letter.

Next Steps

9. The Committee will take evidence from the Cabinet Secretary on 3 March.

⁵ Responses to the Justice Committee's call for evidence on the Prisoners (Control of Release) (Scotland) Bill. Available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/85283.aspx>.

ANNEXE**Correspondence from the Cabinet Secretary for Justice to the Committee on the Scottish Government's intentions in response to evidence received**

I was grateful for the opportunity to provide evidence to the Committee last Tuesday 27 January as part of its consideration of the above Bill.

The Scottish Government is committed to ending the current system of automatic early release of prisoners, brought in by the then UK Government in 1993. Our Bill provides a step towards achieving that aim. However, we have stated our willingness to listen to views within Parliament and to relevant stakeholders to improve the current Bill and make further progress towards ending automatic early release.

I have reflected on the issues raised by Committee members during my evidence session last week and the earlier written and oral evidence from stakeholders. In light of this, I think it would be helpful, ahead of the Committee's Stage 1 Report on the Bill, to state clearly the Scottish Government's intentions in response to the issues raised.

Stakeholders, including victims' organisations and academics, have raised particular concern that, following the end of automatic early release, prisoners who are considered by the Parole Board to pose a continuing risk to public safety, could be released from prison at the end of their sentence without a period of supervision in the community. As I explained during my evidence, there are existing arrangements under which a court can impose supervision conditions on offenders which extend beyond the term of their custodial sentence, both for sexual offenders and people convicted of other types of crimes.

However, in light of the concerns raised, I can confirm formally that we will bring forward proposals at Stage 2 of the Bill to guarantee that all long-term offenders, i.e. anyone serving a sentence of 4 years or more for any crime, being released from prison will be subject to a minimum period of compulsory supervision in the community. The focus of such supervision will be on ensuring both the immediate and longer-term protection of public safety.

The question has also been raised whether the ending of automatic early release could be extended to wider categories of prisoners. The current focus of the Bill is on long-term prisoners serving 4 years or more for sexual offences and 10 years or more for other offences. Having considered this issue, I can confirm that we will also bring forward amendments at Stage 2 of the Bill to extend the provisions to end the existing system of automatic early release for all long-term prisoners, i.e. those sentenced in future to sentences of 4 years or more, whether for sexual offences or any other form of offence. Approximately 450 people convicted of crimes each year receive a custodial sentence from the courts of 4 years or more⁶.

⁶ Criminal Proceedings in Scotland 2013-14 (2014):
<http://www.scotland.gov.uk/Publications/2014/12/1343/downloads#res-1>

As you noted during the evidence session, the provisions in Part 1 of the Bill do not extend to short-term prisoners, who receive sentences from the courts of less than 4 years, who are subject to separate early release arrangements.

Our aim in ending the current system of automatic early release for all long-term prisoners is to improve public safety. Taken together, these new measures will ensure that decisions about the early release of all long-term prisoners will be taken by the Parole Board in the interests of public safety, whilst also guaranteeing that all long-term prisoners leaving custody will have a period of compulsory supervision in the community. This approach is consistent with the Scottish Government's vision for the use of custody, and the recommendations of both the McLeish Prisons Commission (2008) and Angiolini Commission on Women Offenders (2012), that prison is the right place for those offenders who commit the most serious crimes and who pose a continuing risk to public safety.

I hope the above information is helpful to the Committee as it takes forward its consideration of the Bill.

Michael Matheson MSP
Cabinet Secretary for Justice
3 February 2015

Justice Committee

7th Meeting, 2013 (Session 4), Tuesday 3 March 2015

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - Firefighters' Pension Scheme (Scotland) Regulations 2015 (SSI 2015/19);
 - Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Regulations 2015 (SSI 2015/53);
 - Scottish Administration (Offices) Order 2015 (SI 2015/200).
2. Further details on the procedure for negative instruments are set out in Annexe A attached to this paper.

Firefighters' Pension Scheme (Scotland) Regulations 2015 (SSI 2015/19)

Introduction

3. The purpose of this instrument is to provide, in implementation of the Public Service Pensions Act 2013, for a reformed pension scheme for firefighters in Scotland. A further instrument is being prepared that will complete the statutory arrangements for the reformed scheme and provide the necessary transitional arrangements for the current scheme.
4. The instrument comes into force on 1 April 2015.
5. 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/2015/19/contents/made>

Consultation

6. The policy note on the instrument states that to comply with the requirements of section 21 of the 2013 Act, a consultation was undertaken from 11 November 2014 to 6 January 2015. It further states that all stakeholders were consulted, including the Fire Brigades Union, Fire Officers Association and relevant Scottish and UK Government Departments, and that seven responses were received in total, four from individuals, two from firefighters' unions and one from the pension software provider.

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 17 February 2015 and agreed that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Justice Committee consideration

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

Policy Note: Firefighters' Pension Scheme (Scotland) Regulations 2015 (SSI 2015/19)

The above instrument was made in exercise of the powers conferred by section 1 (1) and (2)(d) of, and paragraph 6 (c) of Schedule 2 to, the Public Service Pensions Act 2013 ("the 2013 Act"). The instrument is subject to negative procedure.

Policy Objectives

The purpose of this instrument is to provide, in implementation of the 2013 Act, for a reformed pension scheme for firefighters in Scotland. A further instrument is being prepared that will complete the statutory arrangements for the reformed scheme and provide the necessary transitional arrangements for the current scheme.

Occupational pensions policy is reserved to the UK Government. The reforms initially recommended by the independent Public Service Pensions Commission which was led by Lord Hutton of Furness are now set out in the 2013 Act. The 2013 Act requires Scottish Ministers to introduce a reformed firefighters' pension scheme in Scotland from 1 April 2015. This instrument reflects that requirement and introduces a reform scheme which includes a pension based on the member's average career earnings, a normal pension age of 60 and a deferred pension age equal to the state pension age.

In addition, the instrument sets out the operation of a career average revaluation scheme (CARE). These Parts provide that each member will build up a pension each year calculated at $1/61.6^{\text{th}}$ of the member's pensionable earnings. The pension is held in a pension account and at the start of each financial year (i.e. 1 April) indexation is applied. Indexation is applied at different rates depending on the member's status in the scheme. An active member (that is a member who is participating in the scheme and paying contributions) receives a revaluation rate in line with average weekly earnings. Deferred members (former active members who have left the scheme without applying for benefits) and pensioner members receive indexation equal to the rate of the Consumer Prices Index.

The schemes offers partial retirement flexibilities, and provides for early retirement from age 55 either from an individual's choice whereby the pension is actuarially reduced to reflect its early payment or under an employer-initiated early retirement on the grounds of business efficiency with the actuarial reduction cost being met by the employer. Additionally the Regulations provide for a pension to be paid from age 55 where the individual is unable to meet the required fitness standards for the role and the employer confirms the conditions for retirement on these grounds are met. Retirement benefits can also be increased by the purchase of added pension.

Under the terms of the 2013 Act, protection against the introduction of the 2015 reform scheme is included for members of the existing firefighters' schemes. In addition to providing full protection to those members who were within 10 years of their scheme's normal pension age as at 1 April 2012, the Regulations also provide full protection for those firefighters who were within 10 years of being able to claim a full unreduced pension on completion of 30 years' service at that date. Partial protection provided on

a tapered basis is also provided for current scheme members who as at 1 April 2012 were between 14 and 10 years from either the scheme's normal pension age or being able to receive a full unreduced pension on completion of 30 years' service. At the end of the tapered protection period the member will automatically move to the 2015 CARE scheme with service accrued up to that point protected and linked to the individual's final salary at retirement.

The employee contribution rate from 1 April 2015 will be determined following further discussion with stakeholders. The employer contribution rate will be set once the 2012 scheme valuation has concluded. The contribution rates will be included in the further instrument mentioned above.

Consultation

To comply with the requirements of section 21 of the 2013 Act, a consultation was undertaken from 11 November 2014 to 6 January 2015. All stakeholders were consulted, including the Fire Brigades Union, Fire Officers Association and relevant Scottish and UK Government Departments. Seven responses were received in total, four from individuals, two from firefighters' unions and one from the pension software provider. A copy of the consultation document and a summary of responses will be made available on the Scottish Public Pension Agency's website www.sppa.gov.uk.

Impact Assessments

The equality impact assessment has been completed and will be made available in due course. No impact is expected.

Financial Effects

In line with the reform of public service pensions, these changes will support the introduction of a reformed scheme from 2015 that is designed to ensure long-term sustainability and affordability.

Business and Regulatory Impact Assessment

This policy introduces reform to the pension scheme for firefighters in Scotland, following recommendations by the Independent Public Service Pensions Commission. This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these regulations.

Scottish Public Pensions Agency
An Agency of the Scottish Government
22 January 2015

Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Regulations 2015 (SSI 2015/53)

Introduction

7. The purpose of this instrument is to set out the procedure for the selection and nomination for appointment of members of the Scottish Courts and Tribunal Service.
8. The instrument comes into force on 16 March 2015.
9. 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/2015/53/contents/made>

Consultation

10. The policy note on the instrument states that the Lord President has been consulted on the terms of these Regulations and has confirmed that he is content. The policy note also confirms that the specified Tribunal Presidents and other relevant stakeholders (e.g. the Law Society of Scotland, the Faculty of Advocates and various disability groups) were consulted and made no comments on the Regulations.

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 17 February 2015 and agreed that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Justice Committee consideration

8. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 23 March 2015.

Policy Note: Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Regulations 2015 (SSI 2015/53)

1. The above Regulations are made in exercise of the powers conferred by paragraph 3(2) and (3) of schedule 3 to the Judiciary and Courts (Scotland) Act 2008 ("the Act"). They are subject to negative procedure.

Background

2. These Regulations are required, in part, as a result of changes made to the Act by the Court Reform (Scotland) Act 2014 ("the 2014 Act").
3. In particular, the 2014 Act amends the Act to create the Scottish Courts and Tribunal Service ("SCTS") merging the Scottish Tribunals Service into the existing Scottish Court Service. The merger is proposed to take effect on 1 April 2015.
4. The Act sets out the judicial and non-judicial members of SCTS. The 2014 Act amends the Act to provide that once the merger take effect, the members of SCTS must include a Chamber President of the First Tier Tribunal for Scotland or in the interim period until such persons take up position, a President from a specified list of

existing tribunals (e.g. the President of the Lands Tribunal for Scotland; the President of the Mental Health Tribunal for Scotland).¹ The office of Chamber President in the First Tier Tribunal for Scotland is created by the Tribunals Act 2014.² It is envisaged that the first Chamber President will be in place by December 2016.

5. It is for the Lord President to appoint the Chamber President or in the interim period, a President from the specified list of existing tribunals, in accordance with such procedure as Scottish Ministers may by regulations prescribe.³ The regulations that are currently in force⁴ require to be replaced with regulations which include the process for selecting this new member of SCTS. The entry into force of these Regulations will enable the Lord President to appoint this person on or around the date of the merger.

6. Further background on the content and passage of the 2014 Act may be found here: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/72771.asp>.

Policy Objectives

7. These Regulations set out the procedure to be followed by the Lord President in selecting and appointing members of the SCTS (except the Lord President, the Lord Justice Clerk, the President of the Scottish Tribunals and the Chief Executive who are members by virtue of their office). The sheriff, justice of the peace, advocate, solicitor, and three lay members are to be selected for appointment by a panel of three appointed by the Lord President. The panel must comprise at least one judicial and one lay member. The procedure set out mirrors existing law⁵ although the composition of the panel under these Regulations is more flexibly drawn (under existing law the panel must comprise a judge, a Sheriff Principal and the longest serving lay member whereas under these Regulations it must comprise at least one judicial and one lay member). This will allow the composition of the panel to be adapted according to the nature of the appointment to be made.

8. These Regulations also set out the procedure to be followed in appointing one Chamber President in the First Tier Tribunal for Scotland and one Sheriff-Principal. In essence, the Regulations require the Lord President to notify eligible persons of the vacancy and invite them to nominate themselves or their peers (ie the existing process for the appointment of the Sheriff Principal is unchanged). These members are not subject to the selection for appointment by the panel as the constituency from which they will be selected is suitably small to make nomination the most efficient and effective means of providing candidates which the Lord President may then appoint.

Consultation

9. In accordance with paragraph 3(4) of Schedule 3 to the Act, the Lord President has been consulted on terms of these Regulations. We also informally consulted the specified Tribunal Presidents and other relevant stakeholders (e.g. the Law Society of Scotland, the Faculty of Advocates and various disability groups). The Lord President

¹ See paragraph 1(8)(c) of schedule 4 (which amends the Judiciary and Courts (Scotland) Act 2008 by adding this person to the list of judicial members) and 3(3) of schedule 3 to the Act (a transitional provision).

² Section 21.

³ See paragraph 3 of schedule 3 to the Judiciary and Courts (Scotland) Act 2008 Act.

⁴ SSI 2009/303.

⁵ SSI 303/2009 which sets out the procedures for appointing members of the Scottish Court Service.

has confirmed he is content and no comments from any other stakeholders were received.

Impact Assessments

10. An equality impact assessment is available as regards these Regulations.

Alicia McKay
Learning and Justice Directorate

Scottish Administration (Offices) Order 2015 (SI 2015/200)

Introduction

11. The purpose of this instrument is to specify the Clerk to the Sheriff Appeal Court and Deputy Clerks to the Sheriff Appeal Court as offices in the Scottish Administration which are not ministerial offices for the purposes of the Scotland Act 1998. These are new offices and are to be office holders in the Scottish Administration in the same way as the existing posts of Sheriff Clerk and Sheriff Clerk Depute are such offices.

12. The instrument comes into force on 1 April 2015.

13. 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/ukSI/2015/200/contents/made>

Consultation

14. The policy note on the instrument states that there is no requirement in the Scotland Act 1998 to consult on this matter. However, although there has been no public consultation specific to the provisions of this Order, the UK Government departments with responsibility for the legislation which this Order affects have been consulted during the drafting of the Order. The Scottish Ministers have the agreement of the Parliamentary Under Secretary of State for Scotland to this Order and the Minister for the Cabinet Office and Paymaster General.

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 24 February 2015 and agreed that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Justice Committee consideration

8. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 23 March 2015.

Policy Note: Scottish Administration (Offices) Order 2015 (SI 2015/200)

The above instrument is to be made in exercise of the powers conferred by section 126(8)(b) of the Scotland Act 1998. The instrument is subject to annulment in pursuance of a resolution of either House of Parliament, or of the Scottish Parliament.

Background

The Courts Reform (Scotland) Act 2014 (“the 2014 Act”) implements the majority of the recommendations of the Scottish Civil Courts Review 2009, which was an independent review chaired by Lord Gill, the current Lord President. The 2014 Act is intended to make the civil justice system in Scotland more efficient, with most of that Act focusing on a restructure of the civil courts system in Scotland and additional provisions relating to criminal matters.

Chapter 1 of Part 2 of the 2014 Act establishes a court of law in Scotland to be known as the Sheriff Appeal Court. The court consists of judges each of whom is to be known as an Appeal Sheriff. Chapter 4 of Part 2 of the 2014 Act makes provision for the administration of the new Sheriff Appeal Court. Section 59 of the 2014 Act provides for the new office of Clerk of the Sheriff Appeal Court whilst section 60 provides for the new office of Deputy Clerk of the Sheriff Appeal Court. Section 61 makes additional provision in relation to these new offices, including provision that the Clerk and Deputy Clerks of the Sheriff Appeal Court are also members of staff of the Scottish Courts and Tribunals Service (which is created in Chapter 10 of the 2014 Act).

This Order is to be made in exercise of the power conferred by section 126(8)(b) of the Scotland Act 1998. Section 126(8)(b) of that Act enables Her Majesty by Order in Council to specify offices in the Scottish Administration which are not ministerial offices in addition to those specified in section 126(8)(a) of that Act.

Policy objectives

Whilst section 59 requires a sheriff clerk to hold the office of Clerk of the Sheriff Appeal Court and 60(4) of the 2014 Act allows sheriff clerks and their deputies to hold the office of Deputy Clerk of the Sheriff Appeal Court, the offices of Clerk and Deputy Clerk of the Sheriff Appeal Court are new offices.

The policy objective of this instrument is to ensure that both the Clerk of the Sheriff Appeal Court and Deputy Clerks of the Sheriff Appeal Court will be office holders in the Scottish Administration in the same way that sheriff clerks and their deputies are at present.

Consultation

Although there has been no public consultation specific to the provisions of this Order, the UK Government departments with responsibility for the legislation which this Order affects have been consulted during the drafting of this Order. There is no requirement in the Scotland Act 1998 to consult on this matter. The Scottish Ministers have the agreement of the Parliamentary Under Secretary of State for Scotland to this Order and the Minister for the Cabinet Office and Paymaster General.

With regard to wider consultation, the Scottish Government ran its *‘Making Justice Work: Courts Reform (Scotland) Bill - A consultation paper’* from 27th February 2013 – 24th May 2013. That consultation sought views on proposals to restructure the way civil cases and summary criminal cases are dealt with by the courts in Scotland. On 13th September 2013, the Scottish Government published its analysis of the 115 responses to that consultation. That analysis showed there to be a very clear majority

support for almost all proposals and concepts detailed in the consultation. The '*Courts Reform (Scotland) Bill - analysis of consultation responses*' can be viewed at: www.scotland.gov.uk/Publications/2013/09/8038.

Impact Assessments

There are no equality impact issues.

Financial Effects

The Cabinet Secretary for Justice confirms that no Business & Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Justice Directorate
February 2015

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>