

The logo for SPICe (The Information Centre) is located in the top left corner. It features the text 'SPICe' in a large, white, sans-serif font, with 'The Information Centre' in a smaller, white, sans-serif font directly below it. The logo is set against a dark purple background that has a dynamic, abstract design of white and light purple lines and arrows pointing towards the right.

SPICe

The Information Centre

SPICe Briefing

Community Justice (Scotland) Bill: Stage 3

9 February 2016

16/14

Frazer McCallum

Stage 3 proceedings on the Community Justice (Scotland) Bill are scheduled to take place on 11 February 2016.

This briefing considers a number of key issues highlighted by the Justice Committee in its stage 1 report, the Scottish Government's response to those issues and relevant stage 2 amendments.



The Scottish Parliament
Pàrlamaid na h-Alba

CONTENTS

EXECUTIVE SUMMARY.....	3
INTRODUCTION	4
MEANING OF COMMUNITY JUSTICE	5
COMMUNITY JUSTICE SCOTLAND.....	7
LOCAL ARRANGEMENTS	8
FUNDING.....	10
SOURCES.....	11
RELATED BRIEFINGS.....	12

EXECUTIVE SUMMARY

In May 2015, the Scottish Government introduced the Community Justice (Scotland) Bill with provisions seeking to establish new arrangements for the delivery and oversight of community justice services. Current arrangements would be replaced by a model involving:

- Scottish Ministers being responsible for a number of matters, including a national strategy and national performance framework for community justice, and holding Community Justice Scotland to account
- national leadership, oversight and support for community justice services by a new body called Community Justice Scotland
- local planning, delivery and monitoring of services by community justice partners
- Scottish Government funding for local services being allocated directly to local authorities
- duties on Community Justice Scotland and community justice partners to cooperate with each other

In its stage 1 report, the Justice Committee accepted that improvements to current community justice structures and arrangements were needed. It went on to state that it broadly supported the general principles of the Bill, whilst making a number of recommendations aimed at strengthening the proposals.

The general principles of the Bill were agreed without division following the stage 1 debate in November 2015.

Amendments agreed at stage 2 included ones widening the definition of community justice used in the Bill and emphasising the role of relevant third sector organisations in relation to community justice planning.

INTRODUCTION

The Scottish Government introduced the [Community Justice \(Scotland\) Bill](#) in the Parliament in May 2015. It seeks to establish new arrangements for the delivery and oversight of community justice services in Scotland. Current arrangements would be replaced by a model involving:

- Scottish Ministers being responsible for a number of matters, including a national strategy and national performance framework for community justice, and holding Community Justice Scotland to account
- national leadership, oversight and support for community justice services by a new body called Community Justice Scotland
- local planning, delivery and monitoring of services by community justice partners
- Scottish Government funding for local services being allocated directly to local authorities
- duties on Community Justice Scotland and community justice partners to cooperate with each other

The Scottish Government has indicated that it is aiming to fully implement the reforms by 1 April 2017.

The Parliament's Justice Committee was designated as lead committee for parliamentary consideration of the Bill. Its [stage 1 report](#) was published on 11 November and the Bill completed stage 1 with the [stage 1 debate](#) on 19 November 2015.

In its stage 1 report, the Justice Committee accepted that improvements to community justice structures and arrangements were needed, whilst noting that:

“In general, the evidence we received did not show any great enthusiasm for the exact model proposed in the Bill; however there was an acceptance that it would be difficult to achieve a model that all bodies involved in community justice would be wholly satisfied with. The Committee also recognises that this is enabling legislation, and that the detail of how the arrangements are to work in practice would be set out in the national strategy, national performance framework, and guidance.” (2015, p 8)

As part of an overview of the Bill, the stage 1 report also stated that:

“The Committee is of the view that any new model for community justice must achieve an appropriate balance between strong national leadership, to drive forward improvements in performance, and local flexibility in relation to the delivery of services. As such, the Committee sees merit in the general approach taken in the Bill. However, we have concerns that the detailed proposals in the Bill may not achieve the correct balance, and therefore recommend that the oversight functions of the national body are strengthened to provide the robust strategic leadership and accountability found to be lacking in the existing model.

The Committee has doubts as to whether the measures proposed in the Bill would simplify the institutional landscape. We consider that more clarity on the duties of the national and local bodies and the balance of responsibilities between the two, and on how the model is expected to work in practice, could help clear up ambiguity over the new arrangements. We also urge the Scottish Government to monitor closely the operation of the Bill, if passed, to ensure that any unnecessary complexity within the system does not persist.” (2015, p 7)

In its [written response](#) to the stage 1 report, the Scottish Government welcomed the Committee's

“endorsement for the need to improve community justice structures, and its broad support for the general principles of the Bill.” (2016, p 1)

Amendments agreed at stage 2 included ones widening the definition of community justice used in the Bill and emphasising the role of relevant third sector organisations in relation to community justice planning.

Completion of stage 2 was followed by publication of the [Bill as amended at stage 2](#). The Government also produced [revised explanatory notes](#) and a [supplementary financial memorandum](#).

Stage 3 proceedings (final consideration) are scheduled to take place on 11 February 2016.

Key dates in the Parliament’s consideration of the Bill are set out in the following table:

Summary of Parliamentary Consideration

Bill introduced	7 May 2015
Stage 1: Justice Committee evidence sessions	1, 15 and 22 September, 6 October and 3 November 2015
Stage 1: Justice Committee report published	11 November 2015
Stage 1: plenary debate	19 November 2015
Stage 2: Justice Committee	19 and 26 January 2016

The rest of this briefing considers a number of key issues highlighted during stage 1 and stage 2 consideration of the Bill. An [earlier SPICe briefing](#) (McCallum 2015) provides additional information on the Bill as introduced.

MEANING OF COMMUNITY JUSTICE

The Bill as introduced defined community justice in terms of disposals and services relating to offenders (ie people who have already been convicted of an offence). In its stage 1 report, the Justice Committee noted that a large number of witnesses had argued that the definition “should be broadened to reflect not just post-conviction community justice but also prevention and early intervention” (2015, p 9). It went on to state that:

“The Committee is sympathetic to the views of some witnesses that prevention and early intervention should be reflected in the definition of ‘community justice’ and elsewhere in the Bill as appropriate to allow services to be aimed at averting offending behaviour as well as those dealing with reoffending. We note the Minister’s position that early intervention and the prevention of offending is being taken forward through other policies and initiatives, but we welcome his commitment to give further consideration to the definition of community justice, including to try to reflect the evidence heard on prevention and early intervention.” (2015, p 10)

In its written response to the stage 1 report, the Scottish Government stated that it was:

“looking to broaden the definition of community justice in the Bill so that it goes beyond its current focus on people who have been convicted, to facilitate earlier intervention and prevention of further offending”. (2016, p 2)

And also that the definition was being:

“reviewed with a view to broadening it to capture activity in relation to those who may have committed offences but not been prosecuted ie those on a diversion from prosecution order and those on bail who are awaiting trial”. (2016, p 2)

Government amendments agreed at stage 2 widened the definition of community justice used in the Bill to include disposals and services relating to people who have been: (a) arrested on suspicion of having committed an offence; or (b) given an alternative to prosecution in respect of an offence. They also expanded it to cover giving effect to bail conditions.

In evidence to the Committee at stage 2, the Minister said:

“At stage 1, the Committee and stakeholders called for a stronger element of prevention and early intervention to be reflected in the definition of community justice. That was to enable effective intervention to take place earlier, with the aim of reducing the likelihood of future offending.

I have reflected on those views and now propose a series of amendments that aim to broaden the definition of community justice in the Bill so that it applies to people at the point of arrest, rather than once a conviction has taken place, as had been set out previously. I recognise that, if we wait until someone has been convicted, that might be too late and we might have lost an opportunity to prevent offending behaviour from escalating.

Evidence shows that diverting individuals from the criminal justice system is an effective way of preventing further offending; that is especially true when the diversion is complemented by an intervention that is designed to address the underlying issues that contributed to the offending behaviour. That is why I propose amendments to broaden the definition of community justice, so that community justice services must be planned for people from the point of arrest onwards.” (Scottish Parliament 2016a, col 22)

In addition, the Committee agreed (by division) an amendment lodged by Alison McInnes expanding the definition of community justice to include “designing, managing and arranging general services for persons identified as at serious risk of first time offending” (section 1(1)(e) of the Bill as amended).¹ She explained that the amendment sought to:

“add the responsibility to consider persons who are identified as being at serious risk of first-time offending when activities that relate to community justice are considered and designed. The Bill as it stands focuses heavily on people who are already in the criminal justice system. However, we should strive to reduce first-time offending.” (Scottish Parliament 2016a, col 27)

The Government did not support her amendment, with the Minister stating that:

“I recognise that preventing people from offending in the first place is hugely important. That is why the Scottish Government is tackling primary prevention through a range of policies such as those on early years provision, raising educational attainment, tackling youth unemployment, health and housing. As I said, the Bill does not cover primary prevention; its focus is secondary and tertiary prevention, which is about taking action to stop people reoffending and to prevent the escalation of offending once people first present to the justice system.” (Scottish Parliament 2016a, col 26)

The supplementary financial memorandum, published along with the Bill as amended at stage 2, comments on the financial implications of using a broader definition of community justice.

¹ Another amendment, also lodged by Alison McInnes, which the Committee agreed (by division) at stage 2 sought to reflect the wider definition of community justice in the expected content of the planned national strategy for community justice.

COMMUNITY JUSTICE SCOTLAND

The Bill provides for the establishment of Community Justice Scotland as a new national body and sets out its key functions. It would be funded by and accountable to the Scottish Ministers.

Under the proposals set out in the Bill as introduced, the main functions of Community Justice Scotland were to:

- promote the national strategy in relation to community justice prepared by the Scottish Ministers
- oversee and keep the Scottish Ministers informed about performance in the provision of community justice
- promote and support improvement in the provision of community justice and in making best use of resources
- promote public awareness of the benefits of community justice

Community Justice Scotland itself would not provide community justice services. It could, however, be responsible for managing contracts for services procured on a national basis.

In relation to the proposed oversight function of Community Justice Scotland, the Justice Committee stated in its stage 1 report that:

“The Committee notes the difference of views amongst witnesses regarding the level of oversight that the national body should have, with local authority bodies preferring a ‘light-touch’ approach, and others, including Dame Elish Angiolini, Chair of the former Commission on Women Offenders, and Safeguarding Communities Reducing Offending (SACRO), supportive of local bodies being more accountable to Community Justice Scotland.

The Committee considers that, if the national body does not have adequate powers of oversight to measure and drive forward improvements in performance, there is a danger that weaknesses in relation to accountability, strategic leadership and the ability to properly measure outcomes in the existing arrangements will persist.” (2015, p 17)

The Scottish Government stated in its written response to the stage 1 report, that it shared the Committee’s view that “robust oversight arrangements are vital to the efficient operation of the new model for community justice”, but added that so too are “local leadership and ownership of community justice” (2016, p 2). The response went on to say that:

“The Scottish Government has reflected on the Committee’s comments and will propose a modest amendment to strengthen Community Justice Scotland’s oversight functions, particularly in relation to improving performance in community justice planning.” (2016, p 2)

Government amendments agreed at stage 2 made a number of changes aimed at achieving this (eg by making it clear that the oversight function of Community Justice Scotland includes monitoring, promoting and supporting improvement in community justice).

In evidence to the Committee at stage 2, the Minister explained that the amendments would:

“reframe and expand on existing provisions in the Bill to clarify the oversight powers that Community Justice Scotland will have and to set out more clearly that it can make local improvement recommendations to community justice partners and national improvement recommendations to Ministers”. (Scottish Parliament 2016a, col 36)

He went on to say that:

“the intention remains that the responsibility for resolving any local issues with planning or the quality of delivery and for achieving progress against improving outcomes rests with the statutory community justice partners in the local area. Existing accountability lines for individual statutory community justice partners remain through their respective organisations.

If partners request assistance on issues that they have not been able to resolve locally, Community Justice Scotland will be able to offer support and advice. Where there are persistent issues in achieving improved outcomes, Community Justice Scotland will be able to make recommendations to the Scottish Ministers. Recommendations could be made around the requirement for improvement plans, the potential for specific multi-agency inspections and, in exceptional circumstances, the establishment of a rescue task group to work with the local partners and relevant organisations to effect sustainable and long-lasting improvement. Recommendations could also be made at a national level. The amendments are intended to clarify that position without placing any further duties on community justice partners or materially changing Community Justice Scotland’s functions.” (Scottish Parliament 2016a, cols 37-38)

LOCAL ARRANGEMENTS

Under the proposed arrangements, community justice partners would be responsible for the local planning, delivery and monitoring of services. The Bill provides for the following community justice partners:

- local authorities
- health boards
- Police Scotland
- Scottish Fire and Rescue Service
- Skills Development Scotland
- health and social care integration joint boards
- Scottish Courts and Tribunals Service
- Scottish Ministers (in practice, the Scottish Prison Service)

The community justice partners for a particular local authority area would be that local authority, the relevant health board, any integration joint board for the area and the above mentioned national bodies.

The Justice Committee’s stage 1 report noted the concerns of some witnesses that the voice of relevant third sector organisations might be inadequately represented under the proposed arrangements. It went on to say that the Committee welcomed:

“the Minister’s commitment to listen to the third sector’s concerns regarding participation in the new arrangements, but ask the Scottish Government to reflect on whether the requirement in the Bill for statutory partners to only ‘consult’ with community bodies is strong enough to ensure effective collaboration and engagement with the third sector”.
(2015, p 24)

In its written response to the stage 1 report, the Scottish Government highlighted its view that a “statutory requirement to consult is one which must be taken seriously – consultation must be meaningful and genuine and not simply a cursory exercise” (2016, p 8). However, it added that:

“Nevertheless, the Scottish Government has considered the views of the Committee and stakeholders and will be proposing a stage 2 amendment to give a stronger participative voice to the third sector not only in planning community justice but also at a strategic level through contributing to the development of the National Strategy for Community Justice and the National Performance Framework.” (2016, p 8)

In relation to local planning, Government amendments agreed at stage 2 included ones seeking to emphasise the contribution of third sector bodies in working with community justice partners to prepare local plans for community justice. In evidence to the Committee at stage 2, the Minister noted that it was “always anticipated that relevant third sector bodies should be consulted” but that he had:

“listened to the concerns of the sector and of committee members, so the amendments in the group will make it absolutely clear – I hope that they will put it beyond doubt – that appropriate third sector bodies are to be consulted, thus ensuring that they have the opportunity to contribute their views on planning, reporting, the approach to commissioning of community justice services and the key national strategy and performance framework documents”. (Scottish Parliament 2016b, cols 2-3)

Another issue raised during stage 1 consideration was the role (if any) of community planning partnerships (CPPs) in relation to community justice. Unlike some of the documents published prior to its introduction, the Bill as introduced did not refer specifically to CPPs. The policy memorandum published along with the Bill stated that:

“There is a core set of existing and proposed community planning partners who have a significant contribution to make to community justice – these are referred to as community justice partners. A duty will be placed on these partners to co-operate with each other in carrying out planning activities, delivering and reporting on outcomes for community justice in their local area.” (para 25)

It went on to add that:

“The manner in which community justice planning partners will come together to plan largely follows the mechanisms set out in the Community Empowerment (Scotland) Bill² for Community Planning Partnerships (CPP). The role of a CPP is to prepare a plan for improving local outcomes, in consultation with community bodies and others. (...)

The Bill adopts a similar collaborative approach to planning, monitoring and reporting and applies it to community justice partners. There is therefore a consistency of approach between community justice planning and wider community planning.” (paras 74-75)

In its stage 1 report, the Committee noted that it remained:

“unclear why the Bill does not specify that planning of community justice is a responsibility of community planning partnerships, as expected following the Scottish Government’s 2014 consultation and subsequent material on the new arrangements. We do not see merit in creating a new grouping of community justice partnerships and therefore recommend that the Bill clearly specifies that CPPs have responsibility for community justice planning with a view to making the new arrangements as clear and as simple as possible.” (2015, p 26)

The Scottish Government’s written response to the stage 1 report explained that:

² Now the Community Empowerment (Scotland) Act 2015.

“Community Planning Partnerships (CPPs) are not mentioned in the Bill because they are not statutory entities for accountability purposes – rather they are the sum of their partners and then only when carrying out community planning under the Community Empowerment (Scotland) Act 2005. Scottish Ministers cannot, therefore, assign duties direct to them. The new model confers the planning, monitoring and accountability functions instead on designated community justice partners – they can be held to account for their contribution to community justice outcomes in ways that CPPs cannot, since CPPs have no formal lines of accountability other than to local communities.

Some of the community planning partners do not have a sufficiently strong and direct interest in community justice planning to justify placing statutory planning duties on them. Therefore it would not have been fair or proportionate to do so. The eight statutory Community Justice Partners, have been chosen because of their unique role individually but also collectively in delivering services which, if planned and delivered appropriately and against an evidence-based approach, will improve community justice outcomes.

Nevertheless, the Scottish Government has always set the planning for community justice within the context of wider community planning. Indeed the collective knowledge of CPPs supports the multi-agency, holistic approach to reducing re-offending which is at the heart of the new model. The Scottish Government therefore expects CPPs to be at the core of the new model and community justice planning to take place using community planning structures.” (2016, p 9-10)

FUNDING

In its stage 1 report, the Justice Committee noted:

“the apparent imbalance in funding for the new arrangements, with Community Justice Scotland being allocated £615,000 in set-up costs and £2.2 million annual running costs, and the 32 local authorities being given a share of £1.6 million transitional funding for each of the next three years.” (2015, p 28)

The Committee went on to say that:

“We consider that, if the new arrangements are to work effectively, the local partnerships must be properly resourced to exercise their increased duties. We also have concerns that some successful projects may be at risk due to the lack of sustainable funding. However, we welcome the commitment given by the Scottish Government to the Finance Committee that it will work with COSLA throughout the transition period to identify any emerging issues and to review its position on funding at the end of the three-year period.” (2015, p 28)

The Scottish Government’s written response to the stage 1 report noted that its:

“position is to consider the evidence of how the three year transitional funding is being used before coming to a final view on what, if any, continued funding is required. The reports against the funding will identify how this funding has been utilised in supporting the change process. In the meantime, the Scottish Government will work with COSLA throughout the transition period to identify any emerging issues. Scottish Government will then review its position on funding at the end of the three-year period.” (2016, p 11)

SOURCES

Community Justice (Scotland) Bill [as introduced] Session 4 (2015). SP Bill 68. Edinburgh: Scottish Parliament. Available at:
[http://www.scottish.parliament.uk/S4/Bills/Community%20Justice%20\(Scotland\)%20Bill/b68s4-introd.pdf](http://www.scottish.parliament.uk/S4/Bills/Community%20Justice%20(Scotland)%20Bill/b68s4-introd.pdf)

Community Justice (Scotland) Bill: Policy Memorandum Session 4 (2015). SP Bill 68-PM. Edinburgh: Scottish Parliament. Available at:
[http://www.scottish.parliament.uk/S4/Bills/Community%20Justice%20\(Scotland\)%20Bill/b68s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4/Bills/Community%20Justice%20(Scotland)%20Bill/b68s4-introd-pm.pdf)

Community Justice (Scotland) Bill [as amended at stage 2] Session 4 (2016). SP Bill 68A. Edinburgh: Scottish Parliament. Available at:
[http://www.scottish.parliament.uk/S4/Bills/Community%20Justice%20\(Scotland\)%20Bill/SPBill68AS042016.pdf](http://www.scottish.parliament.uk/S4/Bills/Community%20Justice%20(Scotland)%20Bill/SPBill68AS042016.pdf)

Community Justice (Scotland) Bill [as amended at stage 2]: Revised Explanatory Notes Session 4 (2016). SP Bill 68A-EN. Edinburgh: Scottish Parliament. Available at:
[http://www.scottish.parliament.uk/S4/Bills/Community%20Justice%20\(Scotland\)%20Bill/SPBill68AENS042016.pdf](http://www.scottish.parliament.uk/S4/Bills/Community%20Justice%20(Scotland)%20Bill/SPBill68AENS042016.pdf)

Community Justice (Scotland) Bill [as amended at stage 2]: Supplementary Financial Memorandum Session 4 (2016). SP Bill 68A-FM. Edinburgh: Scottish Parliament. Available at:
[http://www.scottish.parliament.uk/S4/Bills/Community%20Justice%20\(Scotland\)%20Bill/SPBill68AFMS042016.pdf](http://www.scottish.parliament.uk/S4/Bills/Community%20Justice%20(Scotland)%20Bill/SPBill68AFMS042016.pdf)

McCallum, F. (2015) *Community Justice (Scotland) Bill*. SPICe Briefing 15/46. Available at:
http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_15-46_Community_Justice_Scotland_Bill.pdf [Accessed 9 February 2016]

Scottish Government. (2016) *Community Justice (Scotland) Bill – Scottish Government's Response to the Committee's Stage 1 Report*. Available at:
<http://www.scottish.parliament.uk/S4/JusticeCommittee/Inquiries/20160111SGresponsetoStage1Report.pdf> [Accessed 9 February 2016]

Scottish Parliament. (2015) *Official Report 19 November 2015 (Session 4) – Community Justice (Scotland) Bill: Stage 1*. Cols 35-92. Edinburgh: Scottish Parliament. Available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10213&mode=pdf>

Scottish Parliament. (2016a) *Official Report Justice Committee, 19 January 2016 (Session 4)*. Edinburgh: Scottish Parliament. Available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10322&mode=pdf>

Scottish Parliament. (2016b) *Official Report Justice Committee, 26 January 2016 (Session 4)*. Edinburgh: Scottish Parliament. Available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10338&mode=pdf>

Scottish Parliament Justice Committee. (2015) *18th Report, 2015 (Session 4): Stage 1 Report on the Community Justice (Scotland) Bill*. SP Paper 381. Edinburgh: Scottish Parliament. Available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/93907.aspx>

RELATED BRIEFINGS

SB 15-46 [Community Justice \(Scotland\) Bill](#)

Scottish Parliament Information Centre (SPICe) briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should, in relation to this briefing, contact Frazer McCallum on extension 85189 or email frazer.mccallum@scottish.parliament.uk.

Members of the public or external organisations may comment on this and other briefings by emailing us at SPICe@scottish.parliament.uk. However, researchers are unable to enter into personal discussion in relation to SPICe briefing papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at sp.info@scottish.parliament.uk.

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

www.scottish.parliament.uk