



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

6th Meeting, 2016 (Session 4)

Tuesday 9 February 2016

The Committee will meet at 10.00 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, and Kerry Morgan, Community Justice Division, Scottish Government;

Colin McConnell, Chief Executive, Scottish Prison Service.
3. **Subordinate legislation:** The Committee will take evidence on the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No. 2) Order 2016 [draft] from—

Michael Matheson, Cabinet Secretary for Justice, Keith Main, Safer Communities Division, and Carla McCloy-Stevens, Directorate for Legal Services, Scottish Government.
4. **Subordinate legislation:** Michael Matheson (Cabinet Secretary for Justice) to move—

S4M-15427—That the Justice Committee recommends that the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No. 2) Order 2016 [draft] be approved.
5. **Subordinate legislation:** The Committee will take evidence on the Courts Reform (Scotland) Act 2014 (Consequential Provisions) Order 2016 [draft] from—

Paul Wheelhouse, Minister for Community Safety and Legal Affairs, Walter Drummond-Murray, Civil Law and Legal System Division, and Greig Walker, Directorate for Legal Services, Scottish Government.

6. **Subordinate legislation:** Paul Wheelhouse (Minister for Community Safety and Legal Affairs) to move—

S4M-15423—That the Justice Committee recommends that the Courts Reform (Scotland) Act 2014 (Consequential Provisions) Order 2016 [draft] be approved.

7. **Subordinate legislation:** The Committee will take evidence on the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Amendment Regulations 2016 [draft] from—

Paul Wheelhouse, Minister for Community Safety and Legal Affairs, Denise Swanson, Civil Law and Legal System Division, and Alastair Smith, Directorate for Legal Services, Scottish Government.

8. **Subordinate legislation:** Paul Wheelhouse (Minister for Community Safety and Legal Affairs) to move—

S4M-15426—That the Justice Committee recommends that the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Amendment Regulations 2016 [draft] be approved.

9. **Armed Forces Bill (UK Parliament legislation):** The Committee will consider a draft report on the legislative consent memorandum on the Armed Forces Bill (LCM(S4) 39.1).

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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk

J/S4/16/6/1

Private paper

J/S4/16/6/2 (P)

Agenda items 3 and 4

Paper by the clerk

J/S4/16/6/3

[Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Amendment \(No. 2\) Order 2016](#)

Agenda items 5 and 6

Paper by the clerk

J/S4/16/6/4

[Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions\) Order 2016](#)

Agenda items 7 and 8

Paper by the clerk

J/S4/16/6/5

[Advice and Assistance and Civil Legal Aid \(Financial Conditions and Contributions\) \(Scotland\) Amendment Regulations 2016](#)

Agenda item 9

Private paper

J/S4/16/6/6 (P)

Justice Committee

6th Meeting, 2016 (Session 4), Tuesday 9 February 2016

Commission on Women Offenders

Note by the clerk

Purpose

1. This paper provides background information on the Committee's annual evidence session with the Cabinet Secretary for Justice on progress in implementing the Commission on Women Offenders' recommendations. A cover letter from the Cabinet Secretary with an attachment (labelled "Annex A") is appended to this note.

Background

2. The Scottish Government established a Commission on Women Offenders in June 2011 following two consecutive inspection reports in which HM Chief Inspector of Prisons for Scotland criticised conditions at Cornton Vale prison and young offenders' institution. In its report published in April 2012, the Commission, chaired by Dame Elish Angiolini, recommended 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,
- mental health programmes and interventions for short-term prisoners should be designed so that they can continue in a seamless way in the community,
- fiscal work orders (unpaid work orders of between 10 and 50 hours) should be rolled out across Scotland for offenders as an alternative to prosecution,
- a pilot of a problem solving summary criminal court should be established for repeat offenders with multiple and complex needs who commit lower level crimes,
- structural change including creation of a new national service, called the Community Justice Service, to commission, provide and manage adult offender services in the community, and
- the Cabinet Secretary for Justice should report to the Scottish Parliament annually on the steps taken to implement the recommendations in the Commission's report.

3. Since the Committee's last evidence session in December 2014, the Cabinet Secretary announced¹ on 26 January 2015 that the planned replacement for Cornton Vale to be built at Inverclyde would no longer go ahead, following criticisms that the plans would run counter to the Commission's recommendations that women offenders should be placed in small

¹ [Scottish Government news release](#) (26 January 2015)

regional units. On 19 June 2015, the Cabinet Secretary announced² that the Scottish Government would build a new small national prison for women on the current site of Cornton Vale, accommodating 80 women, and five small community-based custodial units across Scotland, each providing around 20 places. This would be in addition to the 50 places at HMP Grampian.

Cabinet Secretary's latest update

4. A summary of the key points from the Cabinet Secretary's latest update of 3 February, attached at Annexe A, is set out below:

- alongside plans for the new-build female custodial estate referred to in paragraph 4 of this paper, elements of the existing female estate would be adapted or decommissioned over time, responding to the number of women in custody,
- £3m in development grants were provided between 2013 and 2015 "to support a range of projects delivering new or enhanced community justice services for women across Scotland". Additional one-off funding was allocated to 12 projects which, by Spring 2015, had yet to secure sustainable local funding,
- £1.5m was transferred from the Scottish Prison Service's 2015-16 budget to fund community justice provision for women, including £640,000 to extend support for the projects referred to in bullet point 1, and £840,000 distributed equally to the eight community justice authorities to support diversion from prosecution and bail supervision for women. This transfer of £1.5m would again take place in 2016-17,
- the Reducing Reoffending Change Fund is continuing to provide funding to services providing mentoring support for women in the criminal justice system,
- various health projects are continuing, including to examine good practice in the delivery mental health care for women offenders (in Edinburgh and Cornton Vale), and to provide police officers in Greater Glasgow out-of-hours telephone access to community psychiatric nurses for advice on support for individuals in distress,
- fiscal work orders (FWOs) were rolled out across all local authorities in April 2015. A National Implementation Group³ is overseeing the early operation of FWOs across Scotland,
- a project examining problem solving approaches in the summary court opened at Aberdeen Sheriff Court in November 2015 with funding allocated for two years. The first phase "will work with a cohort of women aged 16 and over who have committed repeat offences, have multiple and complex needs, and who commit low level crimes",
- projects aimed at reducing the use of remand and short sentences are being developed in a number of sheriff courts, initially focusing on three pathfinder sites based around Dundee, Hamilton and Paisley sheriff courts, and
- community justice reform would meet the Commission's recommendations on the leadership, structures and delivery of community justice provision.

Next steps

5. The Committee will take evidence from the Cabinet Secretary for Justice on progress in implementing the Commission on Women Offenders' recommendations on 9 February.

² [Cabinet Secretary for Justice's answer to written question S4W-26210](#) (answered 22 June 2015)

³ This Group is chaired by the Scottish Government and consists of representatives from COSLA, Social Work Scotland, Community Justice Authorities, and the Crown Office and Procurator Fiscal Service.

COVER LETTER FROM CABINET SECRETARY

Scottish Government's annual progress report on implementation of the recommendations of the Commission on Women Offenders (CWO) (2015-16)

As you know, the Commission recommended that the Scottish Government should provide this Parliament with an annual update on the progress made to implement its recommendations. This is the fourth such report.

There have been a number of substantial developments in penal policy since my previous update to Parliament in December 2014. Before I outline in more detail progress made against the Commission's recommendations (set out in more detail in the annex to this letter), it is important to reflect on how the aims and principles that the Commission identified in its report sit within that wider context.

I am clear that this Government's vision for penal reform must reflect the values of a modern and progressive Scotland. Robust community sentences ensure that an offender pays back their debt to society, but can also help address the causes of their offending. Evidence shows that appropriate community sentences are more effective than short custodial sentences in reducing reoffending, and their use will help reduce the prison population. While these aims apply to both men and women, they clearly accord with the Commission's ambitions for how better outcomes could be achieved for women in Scotland's criminal justice system.

It is time to get away from preoccupations with "soft" or "strong" on crime – we need to develop policies that are smart and help to reduce reoffending. We must define what the role of prison is – and be clear that imprisonment is to be used as punishment, not for punishment. Imprisonment remains the ultimate sanction available to the Court – and will always be appropriate in certain cases – but it should not be imposed lightly.

Over the past year, I have clearly stated that we will prioritise efforts to reduce the prison population – for example by increasing support for robust community sentences; developing alternatives to remand; and re-examining the presumption on short term sentences – and this is why I decided not to proceed with proposals for HMP Inverclyde.

After a period of engagement and public consultation, and drawing on good practice elsewhere, I announced that a smaller national prison for women offenders would be built at the Cornton Vale site to accommodate those individuals who require greater security or particular support, along with a network of smaller community custody units that will house those women who will be better served by remaining closer to their families and community. But any development of a new female custodial estate must be seen in the context of a new, ambitious approach to penal policy.

The Commission recognised that many of the aims and principles advanced through its recommendations could be helpful and relevant to both men and women in the justice system, and many of the Commission's guiding principles are reflected in the future direction of our penal policy overall. For example, the Commission questioned the usefulness of short custodial sentences, and the recent consultation on strengthening the presumption against short term sentences gave an excellent opportunity to look critically at their use. The Commission also looked to strengthen the use of alternatives to remand – and work is now underway to enhance and expand those alternatives. The Commission also emphasised the importance of taking a holistic approach to respond to the needs of women offenders, and the work of the Ministerial Group on Offender Reintegration has recognised the important role that universal public services play in meeting the wider reintegration needs of both women and men leaving custody.

Since the Commission reported in 2012, additional funding has been made available by this Government to support the development of new or enhanced community justice services for women. This has provided local justice partners with a valuable opportunity to develop services that reflect local need. Independent evaluation of these projects has recognised the value of providing specialised community justice services for women, using different models and approaches.

In addition, a transfer of £1.5m from the Scottish Prison Service to support community justice services for women will now take place. In 2014-15 we used those funds to provide further financial support for the projects mentioned above, and to provide additional funding to support diversion from prosecution and bail supervision services.

The current process of restructuring community justice will deliver a number of changes that reflect the Commission's aspirations for a new regime that would enhance the leadership and visibility of the community justice sector, and strengthen the co-ordination and accountability for the delivery of community justice services. The Community Justice (Scotland) Bill reflects the aspirations of enhanced leadership, co-ordination, innovation, accountability and local strategic planning that the Commission identified.

The Ministerial Group on Offender Reintegration provided a forum to emphasise the important contribution that universal public services make to reintegration. The publication of the Ministerial Group's report in September 2015 outlined a series of commitments that aim to deliver improvements for those reintegrating back into our communities.

Access to appropriate, effective healthcare is a prime example of how a universal public service provides a crucial contribution to meeting the non-criminogenic needs of those with convictions. The activities of the National Prisoner Healthcare Network (NPHN) provides a useful forum for practitioners from the Health and Justice sectors to examine the needs of all prisoners, before, during and after their time in custody. The NPHN's work will address the concerns that the Commission expressed regarding the delivery of general and mental healthcare for women in the justice system.

When the Commission was established in 2012, the female prison population had steadily risen for more than ten years. Recent statistics on prison population show that this has stopped, and the female prison population has reduced. This is a welcome development, and is evidence of the shared view that the numbers of women going to prison was not acceptable – as well as of the range of efforts across the justice sector to recognise and address the needs and circumstances of women who offend. However, this is the beginning, and not an end to this work.

For certain women, their offending behaviour and history may make it appropriate for them to receive a custodial sentence. Where the court decides that is the case, the future development of the female custodial estate will provide facilities providing security and support for those individuals that need them. But it will also create community-facing facilities that will enable some women prisoners to remain closely connected to children and families, and to engage with other opportunities to rehabilitate and reintegrate themselves.

However, this effort to provide good quality custodial facilities sits alongside our aim to continue to reduce the numbers of women being placed in custody – whether serving short term sentences, or on remand – when a more productive alternative can be used. I am confident that this aim is shared across the justice sector, and we will continue to look to justice organisations, wider public services, the third sector, and Scottish society as a whole – to consider how their activities recognise and address the needs of women – and men – in

the justice system, and what more could usefully be done to assist them to change their lives for the better and to become contributing citizens in their communities.

This report is the last annual update to this Parliament, following the approach that the Commission recommended. There have been considerable changes in the time since the Commission reported, and while there have been notable improvements, I am confident that improving outcomes for women in our criminal justice system will continue to be a priority for this and future Governments. The changes that have begun both in the community and in custody are progressive and ambitious. The enthusiasm and aspiration that the Commission demonstrated will continue to inform our penal policy in the future, and the further development of stronger community-based provision will deliver better outcomes for both women and men.

I look forward to discussing these issues with the Committee when we meet on 9 February.

Michael Matheson MSP
Cabinet Secretary for Justice
3 February 2016

ANNEX ACommunity Justice Services for women

1. Between 2013-15 £3m in development grants was invested by the Scottish Government to support a range of projects delivering new or enhanced community justice services for women across Scotland. The previous annual update letter to the Justice Committee (dated 11 Dec 2014) provided details on the nature of the projects.
2. On 1 September 2015 an independent evaluation report was published. The evaluation's findings were that the extended provision of community services had supported women to make progress towards outcomes associated with desistance. The holistic approach taken by these projects was seen to have offered a genuinely enhanced service, compared with traditional social work supervision for women. Overall, the report considered that there is a strong rationale to continue an approach where locally defined services adopt holistic, gender-responsive, and flexible practice. The report also supported the approach taken by the Scottish Government to support the development of a range of projects that could reflect local need, resources and priorities – rather than attempting to impose a single model or method across all areas. The full report is available on the SG website, at: <http://www.gov.scot/Publications/2015/09/5053>
3. This grant funding was offered on a very clear, time-limited basis, with no offer of continuing funding. All the proposals were supported on the clear understanding that the project leads were expected to sustain their projects through sourcing local funding.
4. In Spring 2015, projects were asked to report on their financial position, and future sustainability. Where individual projects indicated that they had not yet secured full funding, the SG issued a further modest grant allocation to help them to sustain their operations, and to continue to pursue local sustainability. A total of £640k was allocated across 12 projects, drawn from the £1.5m budget transfer from Scottish Prison Service for community provision. This funding was again issued as a one-off development grant, and projects were clearly advised that future funding must come from local resources.
5. The insistence that these enhanced community justice services for women can and should be sustained locally reflects the Commission's position that improved services should be deliverable through the effective use of existing resources, rather than requiring additional resources from the centre.

Funding transfer from SPS to community justice provision for women

6. In January 2015, the Cabinet Secretary announced that £1.5m would be transferred from the Scottish Prison Service budget to fund community justice provision for women.
7. As noted above, part of this resource has been used to extend support for projects developing enhanced support for women offenders.
8. The remaining £840k has been distributed equally between the eight Community Justice Authorities, to support diversion from prosecution, and the provision of bail supervision for women.
9. It has subsequently been decided that this transfer of £1.5m from SPS will take place again in the financial year 2016/17. This is an additional resource to support services for women in the community, in addition to the mainstream community justice budget.

Fiscal Work Orders

10. The national roll-out of Fiscal Work Orders (FWOs) took place as scheduled on 1 April 2015, meaning that these orders are now available in all 32 local authorities for relevant offences committed on or after that date. This fulfilled the Commission's recommendation that these measures be available nationally.
11. FWOs are available for both men and women, and provide constructive community work activities or programmes for individuals who are alleged to have committed offences which do not require a court hearing, allowing for the speedier and more appropriate resolution of these cases. Additional funding was made available to each CJA for the period 2015/16 to assist local authorities to either set up new schemes, or to make the transition from pilot scheme to mainstream service as appropriate.
12. To support the rollout, the Scottish Government has established a National Implementation Group to oversee the early operation of FWOs across Scotland. This group is chaired by the Scottish Government and consists of representatives from CoSLA, Social Work Scotland, Community Justice Authorities, and the Crown Office and Procurator Fiscal Service. The group will monitor the uptake and throughput of FWOs during the initial 12 months period following the national launch in the first instance, and will also be asked to provide advice or views on any emerging issues relating to the operation of FWOs during that time.

Consultation on the Presumption against Short Sentences

13. The Scottish Government recently consulted on proposals to strengthen the legislative presumption against custodial sentences of three months or less. We are clear that short sentences are ineffective at reducing reoffending and that imprisonment should be used appropriately as the option of last resort.
14. The consultation paper sought responses and views on two main points: first, should the current presumption be extended and if so by how much; and secondly is a more radical review of the presumption and the use of short-term imprisonment more generally, required?
15. The proposals contained within the paper form one part of the Scottish Government's on-going and wide-ranging work to reduce the use of short-term imprisonment in Scotland. Any proposed extension to the presumption, or any other changes to the use of short-term imprisonment, must be considered within the context of this wider work which is designed to deliver effective community-based sentences that enhance public safety and promote rehabilitation.
16. The consultation closed on Wednesday 16th December 2015. The responses to the consultation will be analysed, and used to inform any subsequent decisions on how best to address the use of short-term imprisonment.

New measures to reduce the use of remand and short custodial sentences

17. The Commission on Women Offenders report supports development of justice systems that will reduce the use of short sentences, and of remand, for women offenders. This aim has been reflected in on-going activities which the SG has led to examine how this could be implemented for both women and men.
18. As part of this approach, projects focused on reducing the use of remand and short sentences is being developed in a number of Sheriff Courts across the country. This initiative will use improvement methodology, which provides a mechanism to measure the impact of activities on an agreed aim (in this case, reductions in the use of remand and in

sentences of less than a year). Improvement methodology uses, and learns from, local real-time data, and provides the opportunity to test evidence-based changes in a controlled way.

19. The initial phase of this project is focused on three pathfinder sites, based around Dundee, Hamilton and Paisley Sheriff Courts, and is bringing together a range of partners who have a role in influencing and delivering alternatives to both remand and short custodial sentences.
20. Justice officials have spent the past few months working intensively with stakeholders in the three pathfinder sites to build a more complete picture of local processes and experience regarding use of remand and short sentences, along with what might help to drive reductions in these areas. This engagement has begun to identify a number of emerging themes around approaches which could support reductions in remand and short prison sentences. It is in these areas where practical tests of change are likely to be identified.
21. This project is still in the early stages of development. The specifics of these changes will vary between the pathfinder sites, and will be identified by the local project teams (which will include representatives from all relevant local stakeholders) on the basis of local needs and circumstances.

Expansion of use of Electronic Monitoring

22. As noted in the previous update to the Committee, Scottish Government fulfilled the Commission's specific recommendation of further consideration of the use of electronic monitoring as condition of bail by addressing the suggestion specifically in the public consultation on the future uses of electronic monitoring held in 2013-14.
23. That consultation returned a mixed response on the suggestion of utilising electronic monitoring as part of bail, with some positive views, but with a majority voicing concerns over the possibility of up-tariffing, or the degradation of risk management in the extension of bail. As such, the use of electronic monitoring for bail was not selected to be carried forward any further at that time.
24. The international evidence shows that electronic monitoring is most effective when used as part of a wider package of support. As well as providing an element of control, in line with public protection, electronic monitoring can help to build and maintain connections with a person's family, their community and any employer, all of which can help reduce the likelihood of re-offending.
25. The SG has convened an expert group on electronic monitoring, which is currently exploring the scope for enhanced use of electronic monitoring as part of a wider package of support. New uses which are being considered by the Expert Group include its use for bail for men and women, and any potential use in the new Women's Community Custodial Units. The expert group is also considering how the electronic monitoring service in Scotland can be enhanced with the introduction of new technology such as GPS and alcohol monitoring.
26. The expert working group will report its recommendations to the Cabinet Secretary for Justice in Spring 2016.

Problem-solving approaches in court

27. A new project examining the application of problem solving approaches in the summary court has been developed at Aberdeen Sheriff Court, and it was officially opened on 2 November 2015.
28. After careful consultation with stakeholders and justice partners, the first phase of a problem solving working model was agreed, and will work with a cohort of women aged 16 and over who have committed repeat offences, have multiple and complex needs, and who commit low level crimes.
29. At this time, the project has been allocated funding to continue for two years. A second phase is planned for 2016 and will include a male cohort, although the exact criteria has yet to be agreed with stakeholders and justice partners.
30. The basic process is for Criminal Justice Social Work staff to assess female offenders prior to trial, and where an individual is eligible for this project they will seek the Procurator Fiscal's agreement to refer the case to the "problem solving" court. An expedited CJSW report will be prepared for the court's information, including an assessment of whether the individual is suitable for this approach. If the court agrees, the individual will receive a Structured Deferred Sentence, and this will provide a basis for interaction with the court. All women enrolled in this process will also be referred to the Aberdeen Women's Justice Centre, and a wrap-around package of treatment, support, guidance and supervision will be put in place. If the individual subsequently completes the structured deferred sentence to the Sheriff's satisfaction, they will then be admonished.
31. This new project fulfils the Commission's recommendation that the problem-solving approach be trialled in the summary court.
32. It also acts on the Commission's recommendation regarding the use of a more rapid reporting process, as an expedited report will be provided by Social Work officials (typically within 48 hours of the offender pleading guilty), and the report will be available to the sheriff before a deferred sentencing to assist their decision.
33. Lastly, the project responds to the Commission's recommendation that where the court assigns subsequent progress hearings to be held, that the same sentencer should deal with subsequent hearings. A dedicated sheriff, procurator fiscal depute and clerk of court are assigned to problem solving cases. The dedicated sheriff deals with the offender from the first calling stage through to sentencing and subsequent reviews. The frequency of reviews will be determined by the sheriff who will be guided by Social Work reports, based on the offender's progress.
34. This approach to progress hearings is also applied in the Drug Court in Glasgow, and anecdotal evidence suggests that a similar approach has been deployed in other summary courts in relation to offenders fulfilment of Community Payback Orders.

Sentencing options

35. The Commission recommended the creation of two new custodial sentences – a suspended sentence, and a composite sentence (comprising a custodial period, followed by a period under a suspended sentence). The Scottish Government deferred its decision on this recommendation – primarily due to the concern (which the Commission report recognised) that the creation of new short sentences might lead to up-tariffing, and the use of custodial options where they might not otherwise be applied.

36. Given the more progressive direction that this Government is taking regarding penal policies (including efforts to reduce the use of custody and remand wherever appropriate, reviewing the presumption on short sentences, and continuing to invest in robust community sentences) it would be out of step to implement new measures which would increase the options for the use of custody, and (even inadvertently) create conditions where courts might be more inclined to use custodial measures.
37. In light of this, the Scottish Government does not propose to implement the Commission's recommendations to create a suspended or composite sentence.
38. The Commission report indicates that the aim of these proposals was, in part, to devise a sentencing option that could secure the offender's compliance with efforts to engage them in rehabilitation and desistance. Where appropriate, the use of Structured Deferred Sentences (such as will be deployed in the "problem-solving" court project), already provide a method by which the court can defer a final sentencing decision whilst monitoring the individual's compliance with programmes and support measures.

Offender mentoring services

39. Through the Reducing Reoffending Change Fund (and in partnership with The Robertson Trust), the SG has continued to provide funding to a number of services which provide mentoring support to women in the criminal justice system.
40. The "Shine" Public Social Partnership have continued to deliver a national service to women leaving prison (and a number of women in the community or on remand), to provide a flexible one-to-one service to help them address the practical and personal problems which shape their behaviour, and cause them to offend.
41. The Shine PSP was recently awarded a Herald Society Award for excellence in partnership working, which is a vital characteristic for a service delivered by a partnership of third sector organisations, and which was co-designed and established through partnerships between third and public sector bodies.
42. Shine PSP has the capacity to support over 700 women a year, and has recently been enhancing its offer of support for women on remand, through the development of a "tracking system" so women on remand can be supported in a more consistent and effective manner, and reduce the risk of becoming disconnected from services which might otherwise benefit them.
43. The Reducing Reoffending Change Fund also provides funding to support the mentoring services provided by Tayside Council on Alcohol, and Voluntary Action South Lanarkshire. The extension of the Change Fund to March 2017 has provided an extended period of operation for these services, and representatives from the SG, and other stakeholders are in discussion with the PSPs to examine how mentoring services for men and women can be incorporated into the future development of community justice.

Future Custodial Estate for Women

44. Plans for the female custodial estate were announced in June 2015 in light of the decision not to proceed with HMP Inverclyde. Instead, a new small national prison for women on the current site of HMP Cornton Vale, accommodating around 80 women; and 5 small community-based custodial units across Scotland which would each provide around 20 places will be developed. This will deliver 180 new high quality gender specific places for women in addition to the 50 already available at HMP Grampian. Alongside this new build programme, elements of the existing female estate will be adapted or decommissioned

over time in response to the number of women in custody. This allows maximum flexibility in shifting from custodial to community-based solutions that are closer to the spirit of the Commission's recommendations.

Community Reintegration

45. The Commission report made clear that while women offenders should take a personal responsibility to address the issues that may be contributing to their offending behaviour, the Commission had concluded that successful social integration is not something that the individual can achieve on their own, and that there is a role for private, voluntary and statutory organisations to support the efforts of offenders to change their behaviour, and make a positive contribution to society. The Commission held that offenders – whether male or female – are citizens who hold rights to the range of services that are shared by everyone.

Ministerial Group on Offender Reintegration

46. The Ministerial Group on Offender Reintegration (MGOR) was established in October 2013 to address the demand for better integration between the justice system and wider universal services and to focus attention on the role of non-justice sector contributions to the reintegration of individuals transitioning from custody back to our communities.

47. The membership of the group was drawn from relevant Scottish Government Ministerial portfolios which contribute to an individual's reintegration journey post release from custody (Justice, Community Safety; Housing and Welfare; Fair work, Skills and Training; Youth and Women's Employment; Housing and Welfare; and Public Health).

48. The Group met five times from October 2013 to June 2015 to discuss a range of issues, including thematic meetings on housing, employability and welfare, and healthcare. It considered the evidence base, and called on knowledge and expertise from invited participants, in order to identify effective ways of facilitating an individual's access to, and continued engagement with, wider universal public services following release.

49. The *Report of the Ministerial Group for Offender Reintegration* was published on 16 September 2015 and contains 18 ministerial commitments agreed by the MGOR. Activities which have already taken place in response to the MGOR commitments include:

- the Working2Change Employability Summit held on 20 May 2015 at My Dynamic Earth (in conjunction with the SPS and Scottish Business in the Community);
- the National Prison Healthcare Network's commissioning of a workstream to review current psychological interventions within prison and through to the community;
- the publication of a national specification for a smoking cessation service, to be delivered in all prisons;
- publication of a comprehensive guidance in October 2014 for public service officials working with individuals in custody (including young offenders) on the Scottish Welfare Fund, and how local authorities can take account of the issues faced by those in our criminal justice system when engaging with the Fund.

Flexible release from prison to support reintegration

50. Given the practical problems that can be caused when individuals are liberated from prison on the days preceding weekends and public holidays (when it can be difficult, or impossible for an individual to access public services they need), the SG committed to introduce legislation to allow the Scottish Prison Service to address this matter.

Provisions were put forward in the Prisoners (Control of Release) (Scotland) Bill that will give SPS discretion to release an individual in custody, serving a sentence of more than 15 days, by up to two days before their release date for the purposes of community reintegration. The Act received Royal Assent on 4 August 2015 and came into force on 1 February 2016.

Healthcare

51. National Prisoner Healthcare Network's (NPHN) Female Offender Health workstream will be engaging with the developing plans for the creation of new custodial facilities for women, in order to support the development of high quality health and mental health provision for women placed in custody, and to support the engagement between these facilities and the local NHS Boards.
52. The Female Offender Health workstream is one in a number of thematic workstreams established by the NPHN. The complementary workstreams are co-ordinated within the NPHN overall work plan, and will link consideration of female offenders with the workstreams on mental health; offender throughcare; psychological therapies; substance misuse; and brain injury. Through the NPHN workstream's activities, a female offender pathway will be developed in line with the new approach to the custody of women, but also including community justice processes, and care in police custody.
53. The NPHN's workstreams on female offenders, mental health and psychological therapies will provide a range of opportunities to consider the provision of services for women with borderline personality disorders and PTSD. In light of this, the SG would not now aim to implement a separate review of the matter.
54. The work of two of the principle workstreams of the National Prisoner Healthcare Network is drawing to a conclusion with final reports now being widely circulated for comment and implementation. The Throughcare workstream which was a multi-agency group have made a number of recommendations that reflect and support the Ministerial Report on Offender Reintegration. The aim being to enable offenders to access healthcare that will improve their health and potentially reduce the possibility of them re-offending following liberation. The Mental Health workstream was a group formed to develop implementation proposals from the recommendations of an original Mental Health workstream. This work addresses a number of strands that will support NHS Boards, SPS and other agencies to support the high numbers of those in prisons with mental health problems. The workstream on psychological therapies has convened a reference group of psychology practitioners in prison, who are developing a specification for interventions in prisons. They have already mapped current provision of psychological interventions to the community stepped care matrix.
55. SG Mental Health Unit continues to fund work being undertaken by NHS Lothian, in collaboration with HMP Edinburgh and HMP Cornton Vale, to examine areas of good practice in the delivery of mental health services to women in prison, and on release. In addition to staff training and supervision for working with women with personality disorder, Interpersonal Psychological Therapy groups for women with depression, and Mentalisation-based Therapy groups for women with borderline personality disorders – these services have been providing clinical psychology services to women in HMP Edinburgh, and a practitioners group on Mentalisation therapies. A rolling programme of training has been established for prison staff on personality disorders, and training on mentalisation is being provided to SPS staff and related professionals.
56. In a related development, a "Community Triage" project has been implemented to provide operational police officers with local health service information, to ensure individuals in mental health crisis are assessed as quickly and appropriately as possible, and to reduce

the incidence of such individuals being detained in police stations or hospitals, or becoming directed into the criminal justice system.

57. In a pilot project conducted between January and June last year by NHS staff and Police in Greater Glasgow, police officers were given out-of-hours telephone access to Community Psychiatric Nurses (CPNs) who provided professional support to people in distress. CPNs provided advice to officers or a telephone consultation to the individual about whom police were concerned. Where necessary, a face-to-face assessment was carried out, and if needed, hospital admission was arranged. Officers in the pilot came into contact with 234 individuals in distress and or suffering from mental health issues out of hours (45% of whom were women). A total of 96% of those people were fit and well enough to remain at home after being assessed by the CPNs, and in no need of further intervention at that time. Only nine people during the course of the pilot were admitted to hospital. Just six people were reported for offences, after being found to be fit and well by the CPNs. A related project has been developed in Lothian, and work is on-going to promote the use of this method amongst Police, NHS and local authority stakeholders.

Restructure of community justice

Commission's aspirations for community justice leadership & structure

58. T
 he Commission's report included their views on how improvements might be made in the leadership, structures and delivery of community justice provision. The basic recommendation was for the creation of a single community justice service which would deliver community justice services.
59. T
 he SG's response to the Commission indicated that it was generally accepted that the status quo in commissioning, providing and managing of community justice was no longer an option, and the Commission's views would be incorporated into a public consultation process which would examine the future structure and leadership of community justice.
60. W
 hile the specific proposal for unifying all the aspects of leadership, commissioning and service delivery under a single Community Justice Service to was not supported through the consultation, a 'New Model for Community Justice' has been designed to deliver a community solution to achieving improved outcomes for community justice; to reducing re-offending; and to support desistance. In doing so, it addresses a number of key concerns that the Commission identified - in particular by providing for strong leadership; an outcomes-based approach to planning and reporting; and opportunities for innovation and workforce learning.
61. T
 he Commission wished to see new leadership for the community justice sector, able to drive forward improvement, and engage with the judiciary, public and media in meaningful dialogue on the appropriate role and direction of community justice. The new body, Community Justice Scotland, will provide that leadership and strategic direction for the community justice sector. The Chief Executive of Community Justice Scotland will be tasked with championing the role and significance of community justice.
62. T
 he Commission also proposed that a new community justice structure should be better able to address performance management, and make services more accountable to commissioners and Parliament. The new national outcomes, performance and improvement framework will enable the consistent evaluation of progress in delivering

community justice outcomes. Transparency will be assured through the requirement to publish community justice plans and annual reports.

63.

In addition, the Commission anticipated that a new Community Justice service would deliver training and development activities, and be a focus for research and good practice. Community Justice Scotland will develop with partners and stakeholders a strategy for innovation, learning and development. It will operate a Hub for innovation, learning and development to promote good practice; develop or provide training; and commission research.

Future development of Community Justice Structures

64.

The Community Justice (Scotland) Bill was introduced by Parliament in May 2015 and passed Stage 1 on 19 November 2015 and Stage 2 on 26 January 2016. The Bill takes forward those elements of the model which require new legislation. Further policy developments in relation to community justice and penal policy will complement and support the new model introduced by the Bill. The model is designed to be sufficiently flexible to respond to new policy developments and opportunities, and changing context at national and local levels.

65.

The Bill includes provisions to establish a new national body, Community Justice Scotland; to place specific duties on certain statutory bodies in relation to the achievement of outcomes; and the introduction of a new National Strategy and Performance Framework for community justice in Scotland.

66. The new body, Community Justice Scotland, will be established in October 2016 and fully operational by 1 April 2017. It will work closely with statutory Community Justice Partners, the Third Sector and a range of other parties to provide support and leadership for community justice. The body will bring enhanced opportunities for innovation through the establishment of a Hub for the promotion of learning and development. It will also provide assurance to Scottish Ministers and Local Government leaders on the delivery of improved outcomes for community justice.

67. As the new model presents a more holistic and collaborative approach to community justice, partners will then plan and prepare together the activities they need to work on collectively to drive and deliver improvement with the common aim of securing better outcomes for communities across Scotland. The model places planning at the local level where decisions can be made by people who know their area best. A legal duty will be placed on a number of statutory Community Justice Partners to engage in this planning process.

68. Fundamentally, Community Justice Scotland will be established to support statutory Community Justice Partners, the Third Sector and others to work towards better outcomes for community justice in Scotland. To heighten the profile of Community Justice, the Chief Executive of Community Justice Scotland will be tasked with championing the role of community justice in parity with that for the custodial sector. The relationship between Community Justice Scotland and those involved in community justice, both across Scotland and locally, will be one of mutual support, characterised by open and transparent communication.

69. The Scottish Government is also leading work with partners on a revised model for allocation of funding for criminal justice social work to ensure alignment with the National Strategy and Performance Framework and to move to a 3 year funding agreement.

Justice Committee

6th Meeting, 2016 (Session 4), Tuesday 9 February 2016

Subordinate legislation

Note by the clerk

Purpose

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

REHABILITATION OF OFFENDERS ACT 1974 (EXCLUSIONS AND EXCEPTIONS) (SCOTLAND) AMENDMENT (NO. 2) ORDER 2016 [DRAFT]

Introduction

2. This instrument is made under sections 4(4), 7(4) and 10(1) of the Rehabilitation of Offenders Act 1974.

3. The instrument excludes air weapons licensing from the protections under section 4(1) and (2) of the 1974 Act in the same way as firearms licensing under the Firearms Act 1968 is currently excluded.

4. Further details on the purpose of the instrument can be found in the policy note (see below) and an electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/sdsi/2016/9780111030264/contents>

Delegated Powers and Law Reform Committee consideration

5. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 26 January 2016 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Justice Committee consideration

6. The Justice Committee is required to report to the Parliament on the instrument by 6 March 2016. The instrument is subject to affirmative procedure (Rule 10.6 of Standing Orders). The Cabinet Secretary for Justice has lodged motion S4M-15427 proposing that the Committee recommends approval of the instrument. The Cabinet Secretary is due to attend the meeting on 9 February 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. Thereafter, the Parliament will be invited to approve the instrument.

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

Policy Note: Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No. 2) Order 2016 [draft]

1. The above instrument is made in exercise of the powers conferred by sections 4(4), 7(4) and 10(1) of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”). It is subject to the affirmative procedure. For the purposes of this note the instrument will be called “the amending Order”.

Background

2. The 1974 Act contains protections that support the rehabilitation of offenders. It allows criminal convictions to be treated as “spent” after a certain period of time. Section 4(1) and (2) of the 1974 Act provide that once a conviction is spent, the convicted person can withhold information about it and cannot be prejudiced by it or by a failure to disclose it. However, this is subject to limitations which are aimed at striking a fair balance between (a) respecting a rehabilitated person’s privacy, and (b) permitting those with a legitimate interest to ask about, and take account of, a person’s criminal history in order to protect public safety.

3. In particular, the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (“the 2013 Order”) specifies certain categories of proceedings and questions which are excluded from the protections under section 4(1) and (2) of the 1974 Act. These include (a) proceedings under the Firearms Act 1968 (“the 1968 Act”) in respect of the grant, renewal, variation or revocation of a firearm certificate, shot gun certificate or specified permit, and (b) any question asked, say in an application form, for the purpose of assessing a person’s suitability to hold such a certificate or permit. Accordingly, applicants for a firearm or shot gun certificate must disclose *all* spent convictions when asked for this information, and the police may consider this information (regardless of the nature and date of the conviction(s)) when determining the application. Although recent amendments¹ to the 2013 Order have qualified the requirement to disclose *all* spent convictions, those qualifications do not apply to the exclusions relating to firearms licensing, which is about protecting the public from lethal weapons falling into the wrong hands.

4. Part 1 of the Air Weapons and Licensing (Scotland) Act 2015 (“the 2015 Act”) introduces new controls on the use, possession, purchase and acquisition of air weapons. Under section 2 anyone wishing to possess an air weapon in Scotland will be required to hold a valid air weapon certificate (AWC) or a permit issued under specific circumstances, subject to a number of exemptions set out in schedule 1 to the Act. As is the case with applications for a firearm or shot gun certificate under the 1968 Act, applications for an AWC or permit will be made to, and determined by, the Chief Constable of the Police Service of Scotland. The Scottish Government therefore considers it necessary to make the amending Order so that the Chief Constable is able to perform his licensing functions under Part 1 of the 2015 Act as effectively as those under the 1968 Act.

¹ See the amendments in [S.S.I. 2015/329](#) and the proposed amendments in [the Draft Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Amendment Order 2016](#).

Policy Objectives

5. The purpose of the amending Order, as part of a series of instruments which implement Part 1 of the 2015 Act, is to exclude air weapons licensing from the protections under section 4(1) and (2) of the 1974 Act in the same way as firearms licensing under the 1968 Act is currently excluded.

6. The amending Order adds to the list of excluded proceedings in Schedule 1 to the 2013 Order, proceedings under Part 1 of the 2015 Act in respect of the grant, renewal, variation or revocation of an AWC or specified permit. This is to allow the Chief Constable to ask about, and take account of, an individual's spent convictions when determining whether to grant an AWC or permit. An individual must disclose *all* spent convictions if asked about these during such proceedings. The amending Order also adds to the list of excluded questions in Schedule 3 to the 2013 Order, any question asked outwith those proceedings (say in an application form) to assess an individual's suitability to hold an AWC or specified permit granted under Part 1 of the 2015 Act. An individual must disclose *all* spent convictions in response to a question about such convictions or, otherwise, potentially face prosecution for an offence under section 31(1) of the 2015 Act (making false statements for the purpose of procuring an AWC or permit).

7. These amendments ensure that the licensing of air weapons under Part 1 of the 2015 Act is treated consistently with the licensing of other firearms and shot guns under the 1968 Act. This reflects the Scottish Government's view that, as air weapons are potentially lethal firearms, access to them should be subject to appropriate controls. Since public safety is paramount when determining whether to authorise the possession and use (etc.) of lethal firearms, the Scottish Government considers it necessary to require applicants for an AWC or permit to disclose all information about spent convictions. This will allow the Chief Constable to take the applicant's entire offending history into account when assessing whether or not the applicant is a fit and proper person to possess an air weapon.

8. The Police Service of Scotland has advised that it is possible that a significant number of new applicants for AWCs may have spent convictions. Not creating an exclusion in respect of air weapons licensing could, for example, result in situations where the Chief Constable is aware that an applicant has a number of previous convictions for animal cruelty but, due to the convictions' status as spent, is unable to consider this information when determining the application for an AWC. In deciding whether an individual is fit to be entrusted with an air weapon, and can be permitted to possess one without danger to the public safety or the peace, it is important that the Chief Constable is able to consider any and all spent convictions which might reveal a pattern of behaviour that indicates otherwise.

9. In addition, the Scottish Government believes that many AWC applicants will also hold a firearm or shot gun certificate and will seek to align their certificates under the provisions of section 9 of the 2015 Act. It would be inconsistent to allow the Chief Constable to take spent convictions into account when granting or renewing a firearm or shot gun certificate under the 1968 Act, but not when granting or renewing an AWC under Part 1 of the 2015 Act.

10. However, there are safeguards to these exclusions. Each case will be considered on its individual merits and the existence of a previous conviction will not be an automatic bar to obtaining an AWC or permit (unless the conviction results in the applicant being prohibited from possessing a firearm under section 21 of the 1968 Act). The exclusions apply for limited purposes only, and do not involve further disclosure of any information concerning spent convictions to third parties. Under section 6(1) of the Human Rights Act 1998, the Chief Constable must act compatibly with the Convention rights (including the right to respect for private and family life under Article 8 of the European Convention on Human Rights) when exercising any of his functions. Furthermore, section 34 of the 2015 Act provides for a person aggrieved by a decision of the Chief Constable (for example, a refusal to grant an AWC) to appeal against the decision to the sheriff.

Consultation

11. No formal consultation was carried out in relation to this Order. However, formal consultation took place before the Bill for the 2015 Act was introduced. Informal consultation with stakeholders took place during the Bill's parliamentary passage, and will continue during the implementation process. The relevant consultation documentation can be found at:

<http://www.scotland.gov.uk/Topics/Justice/crimes/Firearms/governmentaction/airweap onlicensing>

Financial Effects

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

Safer Communities Division
January 2016

Justice Committee

6th Meeting, 2016 (Session 4), Tuesday 9 February 2016

Subordinate legislation

Note by the clerk

Purpose

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

**COURTS REFORM (SCOTLAND) ACT 2014 (CONSEQUENTIAL PROVISIONS)
ORDER 2016 [DRAFT]**

Introduction

2. This instrument is made under section 137 of the Courts Reform (Scotland) Act 2014.
3. The instrument abolishes, on 1 April 2016, the office of stipendiary magistrate and introduces the office of summary sheriff, and transfers the remuneration of certain judicial office holders from the Scottish Government to the Scottish Courts and Tribunals Service.
4. Further details on the purpose of the instrument can be found in the policy note (see below) and an electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/sdsi/2016/9780111030707/contents>

Delegated Powers and Law Reform Committee consideration

5. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 26 January 2016 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Justice Committee consideration

6. The Justice Committee is required to report to the Parliament on the instrument by 2 March 2016. The instrument is subject to affirmative procedure (Rule 10.6 of Standing Orders). The Minister for Community Safety and Legal Affairs has lodged motion S4M-15423 proposing that the Committee recommends approval of the instrument. The Minister is due to attend the meeting on 9 February 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. Thereafter, the Parliament will be invited to approve the instrument.
7. **The Committee will be asked to delegate to the Convener authority to approve the report on the instrument for publication.**

Policy Note: Courts Reform (Scotland) Act 2014 (Consequential Provisions) Order 2016 [draft]

The above instrument is made in exercise of the powers conferred by section 137 of the Courts Reform (Scotland) Act 2014 (“the Act”). The instrument is subject to affirmative procedure.

Background

The Act delivers an enabling framework to reform the civil courts both structurally and functionally in line with many of the recommendations of the Scottish Civil Courts Review. Reform of the civil courts forms part of the Scottish Government and multi-agency programme, ‘Making Justice Work’.

The policy objectives relating to the Act are fully described in the Policy Memorandum which accompanied the Bill for the Act (“the Bill”). The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/72771.aspx>

Policy objectives

This Order contains provision in consequence of provisions of the Act. The principal measures of the Act of relevance are the abolition of the office of stipendiary magistrate and introduction of the office of summary sheriff, and the transfer of the remuneration of certain judicial office holders from the Scottish Government to the Scottish Courts and Tribunals Service (“SCTS”). These measures take effect on 1st April 2016.

Separately, articles 3 and 4 update the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 and the Tribunals (Scotland) Act 2014 in consequence of provisions of the Act commenced on 1st April 2015.

Abolition of the office of stipendiary magistrates

This is provided for in section 128 of the Act. Paragraph 3 of Schedule 1 to the Order amends the Criminal Justice (Scotland) Act 2003 to remove a redundant reference to Justice of the Peace courts constituted by a stipendiary magistrate in the context of drugs courts.

Paragraph 4 of Schedule 1 to the Order amends the Criminal Justice and Licensing (Scotland) Act 2010 as regards the Scottish Sentencing Council to reflect that there can no longer be a stipendiary magistrate member on the Council. The reference to a stipendiary magistrate is therefore substituted with a reference to a summary sheriff.

Introduction of the office of summary sheriff

Under section 128 of the Act, a person holding office as a stipendiary magistrate is appointed as a summary sheriff unless they decline appointment. Further summary

sheriffs are to be appointed under section 5 of the Act with appointments expected in April 2016.

The judicial functions of summary sheriffs are provided for in sections 44 and 45 of the Act as regards civil and criminal functions respectively. Section 44 is to be read with schedule 1 to the Act. The judicial functions of summary sheriffs are a defined portion of the judicial functions of sheriffs. Sheriffs also, however, exercise certain non-judicial, administrative functions and the Order provides for certain specific functions also being exercisable by summary sheriffs. Paragraphs 2 and 5 of Schedule 1 to the Order amend the Prisons (Scotland) Act 1989 and the Police and Fire Reform (Scotland) Act 2012 so that summary sheriffs have the same right to visit prisons as sheriffs, and so that summary sheriffs can swear in constables or temporary constables of Police Scotland.

Under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, members of the judiciary are ineligible for jury service. Paragraph 1 of Schedule 1 to the Order therefore adds summary sheriffs to the relevant list of judicial office holders. The reference to stipendiary magistrates is not to be removed at this stage because a person is ineligible for jury service if they have held office as a listed judicial office holder at any point in the previous 10 years.

The modifications provided for in the Order are additional to those provided for in the Act itself, S.I. 2015/700, S.S.I. 2015/150, S.S.I. 2015/338 and S.I. 2015/402.

Commencement

The Order is scheduled to come into force on 1 April 2016.

Consultation

Technical engagement on the drafting of the Order has been had with the Lord President's Private Office and with the Crown Office and Procurator Fiscal Service. No formal consultation has taken place on the Order as it is being made as a consequence of the Act which has already been the subject of separate consultation exercises. The Scottish Government consulted on the Bill in early 2013. The consultations can be viewed on the Scottish Government website at www.scotland.gov.uk/Publications/2013/02/5302 and www.scotland.gov.uk/Publications/2013/05/6753.

The analyses of consultation responses, published on the Scottish Government website can be viewed at www.scotland.gov.uk/Publications/2013/09/8038 and www.scotland.gov.uk/Publications/2013/05/6753.

Impact assessments

An Equality Impact Assessment (EQIA) for the Bill was published on the Scottish Government website at <http://www.scotland.gov.uk/Publications/2014/03/9314> and the Bill was found to have no significant effects in relation to the protected characteristics.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) for the Bill was signed by the Cabinet Secretary for Justice on 5 March 2014 and published on the Scottish Government website at www.scotland.gov.uk/Resource/0044/00446226.pdf. The Bill has no significant financial effects on the Scottish Government, local government or on business.

Scottish Government
Courts Reform Team
Civil Law and Legal System Division
Justice Directorate

January 2016

Justice Committee

6th Meeting, 2016 (Session 4), Tuesday 9 February 2016

Subordinate legislation

Note by the clerk

Purpose

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

ADVICE AND ASSISTANCE AND CIVIL LEGAL AID (FINANCIAL CONDITIONS AND CONTRIBUTIONS) (SCOTLAND) AMENDMENT REGULATIONS 2016 [DRAFT]

Introduction

2. These Regulations amend the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (“the principal Regulations”).

3. Section 11(2) of the Legal Aid (Scotland) Act 1986 makes clients liable to pay financial contributions towards the cost of advice and assistance. These Regulations amend the principal Regulations to provide that section 11(2) is not to apply to advice and assistance made available in the circumstances referred to regulation 8 of those regulations (which provides for the automatic availability of advice and assistance to a person who has a right of access to a solicitor in terms of section 15A of the Criminal Procedure (Scotland) Act 1995 or section 25A of the Criminal Law (Consolidation) (Scotland) Act 1995 or a person detained under section 26 of that Act).

4. The amendment to the principal Regulations applies only in relation to a case where an application for advice and assistance is made on or after the day on which these Regulations come into force.

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

<http://www.legislation.gov.uk/sdsi/2016/9780111030356>

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 12 January 2016 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Justice Committee consideration

7. The Justice Committee is required to report to the Parliament on the instrument by 10 February 2016. The instrument is subject to affirmative procedure (Rule 10.6 of

Standing Orders). The Cabinet Secretary for Justice has lodged motion S4M-15426 proposing that the Committee recommends approval of the instrument. The Cabinet Secretary is due to attend the meeting on 9 February 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. Thereafter, the Parliament will be invited to approve the instrument.

8. The Committee has received a submission on the instrument from the Law Society Scotland (attached at Annexe A). While supportive of the instrument itself, the submission raises concerns about what it calls other “fundamental difficulties” regarding the payment mechanism for police station work.

9. The Minister for Community Safety and Legal Affairs has since responded to these concerns in a letter dated 2 February 2016 (attached at Annexe B). In the letter, the Minister explains that the instrument will remove some of the bureaucracy but also commits to considering the wider points raised by the Law Society and agrees to work with it and the Scottish Legal Aid Board to review legal aid provision more widely.

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

Policy Note: Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Amendment Regulations 2016 [draft]

The above instrument is made in exercise of the powers conferred by section 8A(1) and (1A) of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative procedure.

Policy Objectives

Following the decision in *Cadder v HMA* in 2010, section 8A of the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) was introduced to allow Scottish Ministers to make regulations for criminal advice and assistance to be available without reference to the financial eligibility test that normally applies to advice and assistance in section 8 of that Act, and the circumstances in which it is available. Advice and assistance was made available to anyone to whom section 15A of the Criminal Procedure (Scotland) Act 1995 applies (those detained, arrested without charge or attending voluntarily for questioning on suspicion of having committed an offence) before questioning or at any point during questioning without a financial eligibility test. While anyone in those circumstances will qualify for advice and assistance, they may be required to pay a contribution under section 11 of the 1986 Act and a financial means assessment is therefore still necessary. Section 8A of the 1986 Act was later amended, allowing Scottish Ministers to make regulations so that a person receiving advice and assistance under that section would not have to pay a contribution. Lord Bonomy’s Final Report on the Post-corroboration Safeguards Review, published April 2015, stated that requiring a person present as a suspect to pay a contribution towards legal advice and assistance (the possibility is specifically stated in the Letter of Rights given to suspects) is likely to dissuade some suspects from taking up their right to legal advice. The policy aim is therefore to remove any requirement for suspects who are questioned by the police to pay a contribution toward the cost of

their advice and assistance. While section 15A of the 1995 Act will be repealed if Parliament passes the Criminal Justice Bill, the policy intention will remain the same and will apply in relation to the new provisions of the Bill.

Consultation

Draft provisions were shared with the Scottish Legal Aid Board and the Law Society of Scotland. Both were supportive of the regulations. The Law Society made wider comments on the fee rates and bureaucracy associated with advice and assistance provided at police stations. These comments will be taken into consideration as part of implementation of the Criminal Justice Bill, which will affect the delivery of advice and assistance in police stations.

Impact Assessments

An equality impact assessment has been completed on the draft SSI and is attached. There are no equality impact issues. A child rights and wellbeing impact assessment has been completed on the draft SSI and is attached. There are no child rights and wellbeing issues.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that solicitors providing legal advice in police stations will no longer have to calculate and collect a contribution from their client. The Scottish Legal Aid Board will therefore not need to check that contributions have been correctly calculated. The value of the contributions currently collected is around £18,000 per year. If removing contributions has a significant effect on the number of people accessing legal advice at the police station and the way in which solicitors provide that advice, the Scottish Legal Aid Board estimates that expenditure from the Legal Aid Fund may increase by between £200,000 and £650,000.

Scottish Government
Justice Directorate

ANNEXE A**Written submission from the Law Society Scotland****Comments**

Following the decision in *Cadder v HMA*,¹ legislation was passed to make legal assistance automatically available to suspects at the police station. Whilst this means a suspect is automatically entitled to legal advice, he or she might still be required to pay a contribution and a means test is therefore still necessary.

These regulations remove the requirement for suspects to pay a contribution toward the cost of their advice.

We have consistently maintained that contributions are not practical in police station advice cases.² We are therefore pleased that the Scottish Government is taking these steps and we welcome these regulations.

However, we would like to make clear that these regulations do nothing to resolve other fundamental difficulties regarding the payment mechanism for police station work.

- First, the Advice and Assistance (A&S) payment mechanism involves time-recording and requires solicitors to seek prior SLAB sanction for increases in the A&A grant. The administrative burden involved in these activities incurs the time and cost of both solicitors and SLAB staff. Removal of this additional bureaucracy would mean that solicitors could spend more time helping their clients.
- Second, the A&A payment rates do not adequately remunerate solicitors for the work involved. The rates, set out in the Advice and Assistance (Scotland) Regulations 1996, are currently £11.60 per quarter hour which increases only to £15.47 per quarter hour when work is undertaken between 10pm and 7am. The rates do not reflect the role of the solicitor during the interview to represent, protect and advance the legal interest and rights of a suspect as well as the length of time spent at the interviews and the out-of-office hours often involved in attendance. The rates do not reflect that firms require appropriate staffing levels for 24/7/365 staff cover or that firms have to ensure there are appropriate systems and infrastructure in place to travel to police stations, communicate with the SLAB helpline and submit forms online.

As set out in our recommendations paper, we believe the most efficient framework for providing suspects with free legal advice is through a system of block fees, automatically payable to the solicitor on completion of the work. Such a system would

¹ [2010] UKSC 43

² E.g. Our consultation response on the Introduction of Financial Contributions in Criminal Legal Aid and Changes to Financial Eligibility: <http://www.gov.scot/Resource/Doc/254431/0119256.pdf>

benefit clients, solicitors and SLAB and we query why this proposal has not yet been explored by the Government.

The Policy Note to the regulations states that our concerns in relation to the payment mechanism will be taken into consideration as part of implementation of the Criminal Justice Bill, which will further affect the delivery of advice and assistance in police stations. We are keen to work with the Scottish Government and the Scottish Legal Aid Board on these issues.

There is no doubt that these regulations are to be welcomed. Removal of contributions from police station advice cases will ensure that every member of the public who needs the services of a solicitor whilst questioned in a police station is able to get free automatic legal assistance thus increasing access to justice. It also removes the practical difficulties involved in trying to assess finances and collect contributions when the suspect will not have the relevant documentation to hand. Therefore, notwithstanding our ongoing concerns about the payment arrangements, we are pleased to support these regulations.

Law Society of Scotland
January 2016

ANNEXE B

Letter from the Minister for Community Safety and Legal Affairs

Following a commitment made by the Cabinet Secretary for Justice during the passage of the Criminal Justice (Scotland) Bill, I have laid the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Amendment Regulations 2016.

These regulations ensure that suspects being questioned at a police station will not have to pay any contribution toward the cost of the publicly-funded legal advice they receive. This not only removes any financial disincentive that might prevent suspects from accessing legal advice at this critical early stage, but also removes a piece of bureaucracy for solicitors who would otherwise have to assess and collect those contributions.

As the Committee is already aware, the Bill as passed will bring in a number of significant changes to the criminal justice process. This includes the earliest stages, such as questioning at a police station and the terms on which a person may be released from police custody. A number of changes to the structure of legal aid will be needed to support those reforms, which will be developed and discussed with the Scottish Legal Aid Board and the Law Society of Scotland ahead of implementing those measures.

In commenting on these regulations, the Law Society has taken the opportunity to raise two areas that it would like to be considered for review within the delivery of legal advice in police stations: the fees available, particularly for late night work; and the levels of bureaucracy involved in payment. While this instrument will remove some of that bureaucracy, I will be happy to consider these points as we restructure police station advice to facilitate implementation of the Criminal Justice Bill, in the context that remuneration for criminal legal aid work must be considered in the round.

Further, I have already made it clear to the Law Society that we plan to work with both them and the Scottish Legal Aid Board to review legal aid provision more widely. This is with a view to achieving a simpler and more efficient system, which manages expenditure while maintaining access to justice.

I expect these discussions to cover delivery as whole, including appropriate fee structures and administrative processes, to ensure that we have a sustainable legal aid system for Scotland.

The regulations I have laid therefore do not seek to make further alterations to publicly-funded legal advice in police stations ahead of those discussions. Instead, these regulations seek to make a straightforward change that will provide immediate benefit to both clients and solicitors.

Paul Wheelhouse
Minister for Community Safety and Legal Affairs
2 February 2016