JUSTICE 1 COMMITTEE

AGENDA

13th Meeting, 2003 (Session 2)

Wednesday 19 November 2003

The Committee will meet at 10.00am in Committee Room 3.

1. **Sentencing and early release from prison**: The Committee will take evidence from—

   Professor Neil Hutton, Law School, University of Strathclyde;

   Mrs Megan Casserly, Vice Chairman, and Hugh Boyle, Secretary, Parole Board for Scotland and Alan Quinn, Head of Parole and Life Sentence Review Division, Scottish Executive.

2. **Subordinate legislation**: Hugh Henry MSP (Deputy Minister for Justice) to move the following motion—

   S2M-566 Cathy Jamieson: Draft Proceeds of Crime Act 2002 Amendment (Scotland) Order 2003—That the Justice 1 Committee recommends that the draft Proceeds of Crime Act 2002 Amendment (Scotland) Order 2003 be approved.

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

   The Victim Statements (Prescribed Offences) (Scotland) Amendment Order 2003 ([SSI 2003/519](#)).

4. **Sentencing**: The Committee will consider whether to proceed with an inquiry into sentencing and whether to appoint an adviser in relation to any such inquiry.

   Alison Walker
   Clerk to the Committee
   Tel: 0131 348 5195
The following papers are attached for this meeting—

**Agenda item 1**

- Note by the Clerk (private paper) J1/S2/03/13/1
- Note by the Clerk (private paper) J1/S2/03/13/2
- The Parole Board for Scotland, *Annual Report 2002* J1/S2/03/13/3
- The Parole Board for Scotland, *Decisions and Release Outcomes* J1/S2/03/13/4

**Agenda item 2**

- Note by the Clerk J1/S2/03/13/5

**Agenda item 3**

- Note by the Clerk J1/S2/03/13/6

**Agenda item 4**

- Note by the Clerk J1/S2/03/13/7

**Forthcoming meetings—**

- Monday 24 November 2003 – visit with the Justice 2 Committee to HM Prison Greenock
- Wednesday 26 November – Justice 1 Committee
- Wednesday 3 December – Justice 1 Committee
- Wednesday 10 December – Justice 1 Committee
- Wednesday 17 December – Justice 1 Committee
Justice 1 COMMITTEE

13th Meeting 2003 (Session 2)

The draft Proceeds of Crime Act 2002 Amendment (Scotland) Order 2003

Note by the Clerk

Purpose of the draft instrument

1. This instrument adds the offence of trafficking in prostitution to the list of lifestyle offences in schedule 4 of the Proceeds of Crime Act 2002 ("the 2002 Act").

Background

Proceeds of Crime Act 2002

2. Part 3 of the 2002 Act allows the courts to make confiscation orders against offenders who are convicted of an offence and deemed to have a criminal lifestyle. One of the tests determining whether the offender has a criminal lifestyle is that the offence must be listed in schedule 4 to the 2002 Act.

Schedule 4

3. The list of lifestyle offences in schedule 4 currently includes money laundering, drug trafficking, directing terrorism, people trafficking, arms trafficking, counterfeiting, intellectual property offences, pimping, brothel keeping and blackmail, including conspiring, inciting, aiding, abetting, counselling or procuring the commission of any such offence.

4. The Scottish Ministers have the power to amend schedule 4 under section 142(6) of the 2002 Act.

Trafficking in prostitution

5. The offence of trafficking in prostitution was created by section 22 of the Criminal Justice (Scotland) Act 2003. It involves the arranging or facilitation of travel to or from the United Kingdom for the purpose of sexual exploitation.

Other jurisdictions

6. Schedule 2 of the 2002 Act lists lifestyle offences for England and Wales and schedule 5 lists such offences for Northern Ireland; trafficking in prostitution was added to those schedules by virtue of schedule 7 of the Nationality, Immigration and Asylum Act 2002.

Financial consequences

7. The Scottish Executive’s note indicates that the instrument will have no financial consequences on Executive or local government expenditure. However, it is intended to result in confiscation orders against offenders convicted of trafficking in prostitution. Currently, 50% of monies generated from such orders made in Scotland are used in projects to alleviate the effects of crime.
Subordinate Legislation Committee

8. The Subordinate Legislation Committee considered this instrument at its meeting on 28 October 2003 and determined that the attention of the Parliament need not be drawn to it (Subordinate Legislation Committee, 9th Report, 2003 (Session 2)).

Procedure

9. The Justice 1 Committee has been designated lead committee and is required to report to the Parliament by 1 December 2003.

10. The instrument was laid on 10 October 2003. Under Rule 10.6, the draft order being subject to affirmative resolution, it is for the Justice 1 Committee to recommend to the Parliament whether the instrument should come into force. The Minister for Justice has, by motion S2M-566 (set out in the agenda), proposed that the Committee recommends the approval of the order. The Deputy Minister for Justice will attend in order to speak to and move the motion. The debate may last for up to 90 minutes.

11. At the end of the debate, the Committee must decide whether or not to agree to the motion, and then report to the Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendation.
Justice 1 COMMITTEE

9th Meeting 2003 (Session 2)

The Victim Statements (Prescribed Offences) (Scotland) Amendment Order 2003 (SSI 2003/519)

Note by the Clerk

Purpose of the instrument

1. This order adds the crime of robbery to the list of prescribed offences for which a victim will be afforded an opportunity to make a victim statement for the purposes of section 14(2) of the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”).

Background

The Victim Statements (Prescribed Offences) (Scotland) Order 2003 (SSI 2003/441)

2. The Victim Statements (Prescribed Offences) (Scotland) Order 2003 (SSI 2003/441) prescribed offences in respect of which victims will be given an opportunity to make a written statement to the court about the impact of the crime on them, and was considered by the Justice 1 Committee at its 9th meeting 2003 (session 2) on 8 October 2003.

3. At that meeting, the Committee expressed concern that the list of prescribed offences may exclude some offences, where violence is threatened but not carried out, from the victim statements scheme. The Deputy Minister for Justice agreed to give consideration to this matter.

4. Following the Committee’s comments, it was decided to add the offence of robbery to those already prescribed. This will give to victims of robbery in cases raised in one of the pilot courts the right to submit a statement setting out the impact that the crime has had on them.

Subordinate Legislation Committee

5. The Subordinate Legislation Committee considered this instrument at its meeting on 11 November 2003 and had no points to raise —[Official Report, Subordinate Legislation Committee, 11 November 2003; c 201].

Procedure

6. This instrument is subject to negative procedure. Under Rule 10.4 of the Standing Orders, this means that it comes into force and remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.
7. The instrument was laid on 31 October 2003 and is subject to annulment under the Parliament’s Standing Orders until 9 December 2003.

8. In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee. The instrument is due to come into force on 24 November 2003.
Background

1. At its meeting on 17 September, the Committee agreed to give further consideration to sentencing as a potential area of inquiry. SPICe has now prepared a paper on sentencing which is attached for members’ information. The Committee has also sponsored a debate in the Parliament on the former Justice 1 Committee’s report on its inquiry on alternatives to custody, which took place on Wednesday 12 November. The Committee has also now received a response to the former Justice 1 Committee’s report, which was distributed to members last week.

Possible areas of inquiry

2. In earlier discussions, the Committee identified the following possible areas of inquiry within the sentencing remit.

Women prisoners

3. Evidence to the former Justice 1 Committee suggested that a substantial number of women are sent to prison due to a lack of appropriate programmes and facilities in the community. The Committee believed that non-residential aspects of the Time Out Centre in Glasgow should be made available to women across Scotland and that there should be adequate residential places across Scotland.

4. In its response, the Executive stated that non-residential elements of the Time Out programme began operation in August 2003 and the Centre itself is due to open and become fully operational in November. As far as the Executive know, this is the first such facility in the UK.

Fine default

5. The former Justice 1 Committee recommended that community disposals should be used for fine defaulters where the original offence would not in itself have led to a custodial sentence.

6. On 12 November 2003 the Deputy Justice Minister announced that the Executive intended to make use of existing legislation to pilot in certain courts mandatory use of Supervised Attendance Orders (SAO’s) for fine defaulters. This would in effect withdraw the sanction of custody for certain offenders. The mandatory use of SAO’s for fine default will be piloted in two test areas and an announcement on the areas to be covered will be made over the next few weeks.
Bail and Remand
7. The former Justice 1 Committee recommended that people should not be remanded in custody unless they represent a danger to the public. They believed that residential bail support schemes should be available.

8. The Executive responded that the reasons why the courts use bail or remand are complex and they have commissioned research to help inform policy in these matters. Issues such as sentencer confidence, effective practice and value for money must also be addressed. Given the complexity of the issues, they have asked the Sentencing Commission which has been recently announced, to review and make recommendations on the use of bail and remand. This is likely to be the first piece of work carried out by the Sentencing Commission.

The purpose of sentencing; consistency in sentencing and sentencing guidelines
9. Some members suggested that these issues could be examined in an inquiry. The former Justice 1 Committee examined information available to sentencers and supported the production of a national directory of community disposals and the expansion of the use of the sentencing information system to the sheriff court (currently only available in the High Court). The Executive has not entirely ruled out this recommendation, but believes that a great deal of planning and consultation would have to go into its possible extension to Scotland’s 49 Sheriff courts.

10. The Sentencing Commission will examine, as part of its remit, the scope to improve consistency of sentencing and the effectiveness of sentences in reducing offending. One area which the Committee might usefully examine is the effectiveness of prison in reducing reoffending through rehabilitation. The Home Affairs Committee at Westminster is currently conducting such an inquiry in England and Wales. That Committee recognises the context of prison overcrowding, and has agreed to focus on what can be achieved in overcrowded conditions. The Committee is considering the provision to prisoners of education, paid work and programmes addressing offending behaviour.

11. The Committee should also be aware that in the Partnership Agreement, the Executive pledged to publish proposals for consultation for a single agency to deliver custodial and non-custodial sentences in Scotland with the aim of reducing reoffending rates.

The Role of the Parole Board and remission
12. The Committee will receive evidence on the Parole Board and its role in recommending the release of prisoners at its meeting on 19 November. In the light of this evidence, the Committee may wish to
consider whether there are any issues which it wishes to investigate further.

Disposals available in other jurisdictions
13. Some members have expressed an interest in disposals utilised in other jurisdictions, such as periodic detention. The Committee agreed at its meeting on 17 September to bid for funding for research into the use of alternatives to custody in other jurisdictions. Periodic detention could be specified as an area to be covered by that research. The Committee will be invited to consider a draft research bid at a future meeting.

Next steps

14. The Committee is invited to discuss the options for inquiry within the sentencing remit and to:

(a) identify whether it wishes to pursue an inquiry into a particular aspect of sentencing; or

(b) give further consideration to resourcing and the efficiency of the police – a further area identified by the Committee on 17 September as a possible area of inquiry. A paper on options for this line of inquiry is currently being prepared by SPICe.

15. If the Committee agrees to proceed with an inquiry into sentencing, it may wish to consider whether to appoint an adviser for the inquiry. An adviser could assist the Committee in further refining the remit of the inquiry.
Justice 1 Committee

Scoping Paper on Sentencing

Note by SPICe

This paper highlights some of the areas which have been suggested as possible topics for an inquiry into sentencing in Scotland. The paper looks at the criminal court system in Scotland; the various sentencing powers of those courts; recent sentencing outcomes in Scotland; a brief analysis of Supervised Attendance Orders; the Sentencing Commission; an overview of the powers and functions of the Parole Board in Scotland; and a brief synopsis of Scandinavian jurisdictions.

The Criminal Courts in Scotland

Scotland has a three-tier criminal court system. These are, in order of precedence, the High Court of Justiciary (the High Court), the sheriff courts and the district courts.¹ Three verdicts are available to a judge or jury: guilty; not guilty; and not proven. The implications of a ‘not proven’ verdict are the same as a ‘not guilty’ verdict in that the accused is acquitted and is free from further prosecution on the matter in question.

Criminal Procedure

Criminal procedure (ie the procedure for the investigation and prosecution of crime) is mainly regulated by the Criminal Procedure (Scotland) Act 1995 and is divided into solemn and summary procedures.

Solemn procedure involves the most serious of criminal cases and may ultimately lead to a trial on indictment, either before a judge in the High Court or before a sheriff in one of the sheriff courts. Trials under solemn procedure are conducted with a jury. It should be noted that most court cases, under both solemn and summary procedures are concluded without evidence being led at a trial. For example, in 2001-02 the percentages of court cases disposed of by an acceptable plea (including cases concluded by a plea at the court hearing at which a trial was scheduled to take place) were 66% of High Court cases; 73% of sheriff court cases under solemn procedure; 91% of sheriff court cases under summary procedure;² and 95% of district court cases (Scottish Executive 2003, p.8).

Summary procedure is used for less serious offences and may ultimately lead to a trial before a sheriff or, in district courts, before a bench of one or more lay justices of the peace.³ In Glasgow district Court, cases are also heard by

¹ There are also courts of special jurisdiction such as Courts Martial and Ecclesiastical courts.
² District court cases dealt with by stipendiary magistrates are included in the figure for summary sheriff court cases rather than in the figure for other district court cases.
³ In summary cases the charges are set out in a ‘complaint’ rather than an indictment.
legally qualified stipendiary magistrates. Trials under summary procedure are conducted without a jury.

The choice of whether to prosecute a case under solemn or summary procedure is made by the prosecution service, known as the Crown Office and Procurator Fiscal Service (headed by the Lord Advocate), and affects the sentences available to the court on conviction. The vast majority of cases are, in fact, dealt with under summary procedure – 96% of persons proceeded against in court during 2001 were dealt with in summary courts (Scottish Executive 2002, table 3).

**The High Court of Justiciary**

As a trial court, the High Court's jurisdiction extends over the whole of Scotland in respect of all crimes unless excluded specifically or through implication by statute. It has exclusive jurisdiction to try the most serious crimes such as treason, murder and rape and in practice deals with other serious crimes such as armed robbery, drug trafficking and sexual offences involving children, even where it is competent for these to be tried by a sheriff sitting with a jury. It sits regularly, in its role as a trial court, at various locations throughout the country. Cases are tried by a judge and jury under solemn procedure.

In its role as a court of appeal, it deals with appeals from the High Court acting as a trial court, and from the sheriff and district courts. It is the ultimate court of appeal in criminal cases, there being no appeal to the Appellate Committee of the House of Lords (this is in contrast to civil cases where there is the possibility of appeal from the Court of Session to the House of Lords). As a court of appeal, it only sits in Edinburgh. At least three judges will hear the case where there is an appeal against conviction. At least two judges will hear the case where the appeal is against sentence alone.

The Criminal Procedure (Scotland) Act 1995, section 123, provides that where a person tried on indictment (ie under solemn procedure) is acquitted or convicted of a charge, the Lord Advocate may refer a point of law which has arisen in relation to that charge to the High Court for their opinion. The opinion of the High Court on a point referred to it under this procedure does not affect the outcome of the trial from which the point arose (ie it is not the same as an appeal and does not affect the acquittal or conviction). It does, however, set a precedent for future cases.

Prosecutions in the High Court are brought in the public interest in the name of the Lord Advocate and are prosecuted by Advocates-Depute (appointed as representatives of the Lord Advocate). Private prosecutions are possible in Scotland but are extremely rare.
The Sheriff Courts

There are six sheriffdoms in Scotland each headed by a sheriff principal. Each sheriffdom, apart from Glasgow and Strathkelvin, is divided into sheriff courts districts for administrative convenience. There are a total of 49 sheriff courts throughout Scotland. A sheriff principal or sheriff deals with summary cases (sitting alone) or with solemn cases (sitting with a jury). In either case the prosecution is conducted by the local procurator-fiscal or one of the procurator-fiscal deputies.

The sheriff courts are the most important of the inferior criminal courts in terms of jurisdiction (sheriff courts also have jurisdiction in relation to civil matters). They can try any crime not reserved to the High Court including those which can be tried in the district courts. In relation to caseload, sheriff courts are the most important courts. Out of approximately 139,000 persons proceeded against in the Scottish criminal courts in 2001, 66% were dealt with in sheriff courts (3% under solemn procedure and 63% under summary procedure). By comparison, 33% of persons were proceeded against in district courts (29% before lay justices and 4% before stipendiary magistrates) and only 1% in the High Court (Scottish Executive 2002, table 3).

In relation to sentencing powers, the maximum sentence of imprisonment or detention which a sheriff court sitting as a court of summary jurisdiction can impose is three months or, for a second or subsequent offence of dishonesty or personal violence, six months. The maximum fine is £5,000. These limits are, where a statute has been contravened, subject to any higher or lower maximum provided for in the statute. When sitting as a court of solemn jurisdiction a sheriff court has a maximum sentencing power of three years imprisonment or detention and can impose an unlimited fine. Where the sheriff, dealing with a case under solemn procedure, considers that these sentencing powers are insufficient, he or she can remit the case to the High Court for sentencing.

The District Courts

The district courts were created in 1975 to replace the former Burgh Police Courts (for burghs) and Justice of the Peace Courts (for counties). There are currently 30 district courts. They are courts of summary criminal jurisdiction only, with cases being dealt with by a bench of one or more lay justices of the peace.

4 The sheriffdoms are: (a) Grampian, Highland & Islands; (b) Tayside, Central & Fife; (c) Lothian and Borders; (d) Glasgow and Strathkelvin; (e) North Strathclyde; and (f) South Strathclyde, Dumfries and Galloway.
5 In particularly difficult cases an Advocate-Depute may appear for the Crown.
6 Section 3(6) of the Criminal Procedure (Scotland) Act 1995 provides that, subject to any express statutory exclusion, “it shall be lawful to indict in the sheriff court all crimes except murder, treason, rape and breach of duty by magistrates”. The territorial jurisdiction of the court is regulated by section 4 of the 1995 Act.
peace or, in Glasgow District Court, by legally qualified stipendiary magistrates. The prosecution is conducted by the local procurator-fiscal or one of the procurator-fiscal deputes.

Each district court has jurisdiction within a Commission Area, coinciding with the associated local authority district boundary. They generally deal with less serious cases (e.g., speeding, breach of the peace, shoplifting, and simple assault), with jurisdiction to deal with many cases dealt with by the sheriff courts being excluded (e.g., robbery, or theft by housebreaking). In 2000, 45% of persons called to district courts presided over by lay justices had a motor vehicle offence as their main offence (Summary Justice Review Committee 2002, p. 26).

As the lowest level of criminal court, the district court has the most limited sentencing powers. Lay justices can impose sentences of imprisonment or detention up to a maximum of 60 days and can impose fines of up to £2,500 (unless a lower or higher statutory maximum is specified for a particular offence). However, stipendiary magistrates have the same sentencing powers as a sheriff sitting in a summary court.

**Sentence Outcomes**

The most common sentence imposed by Scottish courts is a fine. In 2001, for example, fines were the main penalty imposed in relation to 63% of convictions. Fines were followed in order of frequency by: custodial sentences (14%); caution or admonition (10%); probation (7%); and Community Service Orders (4%) (Scottish Executive 2002, table 7). Of those given custodial sentences in 2001, 82% were given sentences of six months or less, 12% were sentenced to between six months and two years, 2% were sentenced to between two and four years, and another 3% received sentences of four years or more (Scottish Executive 2002, table 10).

**Financial penalties**

Between 1991 and 2001, the use of fines fell both absolutely and as a proportion of all penalties imposed. This is, in part, a result of those offences most likely to be punished by fines increasingly being dealt with outside the court, for example by police conditional offers or “fiscal fines”. Fines were the main penalty imposed in 63% of convictions in 2001, two percentage points down on the proportion in 2000 and 13 percentage points below the 76% figure recorded for 1991. In 2001, a fine was the most frequent penalty imposed in convictions for motor vehicle offences (90%) and for miscellaneous offences (56%). Although less commonly used for crimes, a fine was still the main penalty in over half of convictions for ‘other’ crimes of indecency (55%), fraud (60%), drug offences (62%) and vandalism (60%).

The average fine imposed by courts in 2001 was £198, an increase of 8% on the average of £183 recorded for 2000. 56% of convictions resulting in a fine in 2001 were for over £100 while 15% were for £50 or less. Other financial penalties were used much less frequently. Compensation orders, used as a
main penalty, totalled 1,100 in 2001. They were most often used in addition to another penalty, generally a fine. In 2001, a total of 6,000 compensation orders were imposed as either a main or secondary penalty, an 11% increase compared with 2000. Compensation was ordered in 5% of convictions in 2001, most frequently in convictions for vandalism (50% of such convictions). The average value of compensation order awarded was £239 in 2001.

**Community sentences**

The number of convictions resulting in a community sentence in 2001 totalled 13,600, an increase of 9% compared with 2000 and 35% higher than in 1991. Community sentences have formed an increasing proportion of all sentences over the last ten years or so; they accounted for 11% of all sentences in 2001 compared with 6% in 1991.

The number of convictions resulting in a probation order was 8,200 (11% more than in 2000), including 1,400 sentences of probation with a requirement that the offender shall perform unpaid work. The proportion of convictions resulting in an offender being placed on probation was highest for lewd and indecent behaviour (38%) followed by ‘other violence’ (29%) and fire-raising (25%).

The number of convictions in 2001 resulting in a community service order was 4,900, an increase of 4% compared with 2000 but lower than the annual average of 5,300 recorded during the 1990’s. Since April 1991, community service orders may only be imposed where otherwise the court intended to impose a custodial sentence. In 2001, the categories with the highest proportion of convictions resulting in a community service order were serious assault (19% of convictions) and handling an offensive weapon (14%). The average length of community service order imposed in 2001 was 151 hours.

Other forms of community sentence were available to courts in a number of pilot areas in 2001. They featured in a relatively small number of convictions and included restriction of liberty orders (201) and drug treatment and testing orders (DTTO’s) (276). The average length of DTTO imposed was 21 months.

**Custodial sentences**

The number of convictions resulting in a custodial sentence in 2001 increased by 8% to 16,500. As a proportion of all sentences, the use of custody has generally increased over the last decade, rising from 8% in 1991 to 14% in 2001. This upward trend was observed for most types of crime and offence, though as noted before this will in part be influenced by the increased use of alternatives to prosecution for less serious cases.

Custody is the most frequently used penalty for most types of crime involving violence. Excluding homicide, the categories with the highest proportions of convictions resulting in a custodial sentence were robbery (74%), sexual assault (62%), housebreaking (51%) and serious assault (51%). In 2001, 40%
of all custodial sentences were imposed on persons convicted for crimes of dishonesty. This compared with 51% in 1991.

The average length of determinate custodial sentences was 209 days in 2001, a little under the 2000 average of 217 days but 9% higher than the 1991 average of 192 days. Over half (54%) of all custodial sentences in 2001 were for three months or less; 83% were for six months or less. The average length of determinate custodial sentences was around 7 months because of the effect of the relatively small number of long sentences. Crimes of violence were the most likely to attract long custodial sentences. Just over 1% of custodial sentences for crimes of dishonesty were for over two years whereas the corresponding proportions for non-sexual crimes of violence and sexual assault were 36% and 73% respectively. In 2001, drug offences accounted for 28% of all custodial sentences of four years or more.

Other sentences

In 2001, admonishment or the use of caution was the main penalty in 10% of convictions, similar to the proportion in previous years. This type of sentence was the most common outcome in convictions for the “other” violence category (34% of convictions) and was also a relatively frequent outcome in convictions for crimes against public justice (27%), breach of the peace (18%) and “other” crimes of indecency (16%). Orders to find caution – where the offender is required to pledge a sum of money subject to their subsequent good behaviour – were rarely used, accounting for only 31 main penalties in 2001.

During the first session of the Scottish Parliament, the Justice 1 Committee published a report on its inquiry into alternatives to custody (Scottish Parliament, 2003). The Committee believed that short-term prison sentences offered limited opportunities for rehabilitation and recommended that community disposals should be actively promoted and resourced as an alternative to such sentences (where a longer term sentence is clearly not appropriate). The Committee also recommended that the Executive address the issue of imprisonment for fine defaulters and pledged support for concrete measures and targets to reduce the number of fine defaulters being sent to prison.

The Committee also stated, on the basis of widespread evidence, that there were a substantial number of women in prison in Scotland who did not need to be there as they did not represent a danger to the public. The evidence gathered suggested that many women were sent to prison as a result of a lack of appropriate programmes and facilities within the community. The Executive responded by re-emphasising its commitment to providing a ‘Time-Out’ Centre which would take women from Glasgow and other parts of Western Scotland and provide an alternative for the courts. The Centre is now due to become fully operational sometime in November 2003.

The Executive’s Partnership Agreement also committed the Executive to reducing the number of offenders sent to prison by more use of Supervised
Attendance Orders (SAOs). On 12 November 2003 the Deputy Justice Minister announced that the Executive intended to make use of existing legislation to pilot in certain courts mandatory use of SAO’s for fine defaulters. This would in effect withdraw the sanction of custody for certain offenders. The mandatory use of Supervised Attendance Orders for fine default will be piloted in two test areas and an announcement on the areas to be covered will be made over the next few weeks.

**Supervised Attendance Orders**

SAOs are a community-based alternative to imprisonment for fine default. They substitute the unpaid portion of a fine for a period of constructive activity designated by the social work department. They were first introduced in Scotland under Section 62 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 and were initially piloted in 1992. Following an evaluation of the pilot schemes, they were gradually introduced throughout Scotland during the mid-late 1990s.

The original legislation was amended by the Criminal Justice (Scotland) Act 1995 and the Criminal Procedure (Scotland) Act 1995. Together these Acts introduced several significant changes to the SAO legislation, including: the removal of the requirement that an offender's consent is obtained before an SAO is imposed; an increase in the custodial sentences available to the courts in the event of an order being breached; the introduction of SAOs as an alternative with further time to pay (Section 237 order); and the introduction in Dundee of a pilot scheme in which an SAO could be imposed as an alternative to a fine at first sentence for 16 and 17 year olds (Section 236 order).

In March 2001 the Scottish Executive Central Research Unit published an evaluation of SAO’s which was carried out by the Social Work Research Centre at the University of Stirling (Scottish Executive 2001). A brief summary of the evaluation follows.

Seventy per cent of SAOs imposed in Scotland in 1998-99 emanated from sheriff courts. Seven per cent of citations to Fine Enquiry Courts (FEC’s) in the sheriff courts and fewer than three per cent of citations to FECs in the district courts resulted in the imposition of an SAO. In most local authorities the proportionate use of SAOs and custody was lower in the district courts.

The number of SAOs imposed increased markedly following the national roll-out of schemes. Sheriff courts imposed fewer SAOs in 1999-2000 than in the previous year but the use of SAOs relative to the custodial alternative remained largely unchanged in both the sheriff and district courts between 1998 and 2000. SAOs comprised 16 per cent of alternative sentences (SAO and custody) in the sheriff courts and 14 per cent of alternatives in the district courts in 1999-00.
Suitability for an SAO

Most offenders were thought by SAO staff and sentencers to be suitable for an SAO though some of the latter suggested that SAOs were particularly appropriate for young offenders, women, single parents and offenders who were unemployed. Offenders with serious drug or alcohol problems and young offenders were said by staff often to have difficulty completing an SAO. Sentencers would usually determine if offenders were willing to complete an SAO before imposing an order and were generally reluctant to make an order in the knowledge that the offender would not comply.

The majority of SAOs in the six study areas were made in respect of men (85%). The proportion of young offenders given SAOs varied across schemes, being highest in Dundee, which operated the Section 236 pilot. The majority of offenders were unemployed and most had at least one previous conviction. More than half the orders had been made in sheriff courts. The mean amount of fine outstanding was £163 and in 70 per cent of cases no payment had been made towards the original fine. The mean length of SAO imposed was just under 35 hours.

Repeat orders

Twenty-two per cent of offenders had previously been subject to an SAO. Sentencers were happy to make repeat orders if a previous SAO had been successful but were reluctant to do so if a previous order had been breached. SAO staff reported that offenders who had been on a previous SAO usually had a positive attitude towards their new order.

Section 237 Orders

Relatively little use was made of Section 237 orders (SAO as the alternative following more time to pay). Sentencers expressed a preference for the offender to be present in court when the SAO was imposed so that the consequences of non-compliance could be clearly spelled out. SAO staff reported that offenders given Section 237 orders were more likely than those given standard orders not to comply.

Section 236 orders

The Section 236 pilot in Dundee proved problematic, largely on account of the high breach rate among 16 and 17 year olds given SAOs. The limited options open to sentencers in the event of an order being breached meant that some young people were being imprisoned at a very early point in their offending career. As a result of these concerns, the district courts had made less use of Section 236 orders over time and, following representations to the Scottish Executive by the social work department and by sentencers, the pilot was eventually withdrawn.
The nature of SAO activities

The study schemes had adopted different models of SAO provision. Four schemes provided a range of educational activities in addition to a core module, while in two schemes - both of which were largely rural in nature - unpaid work was the predominant form of SAO activity. Unpaid work was more likely than educational activities to be undertaken in the evenings or at weekends and was slightly more common among men than among women. Most offenders enjoyed the activities they undertook on their SAO and no clear overall preference for unpaid work or educational activities emerged.

Enforcement and completion of orders

Offenders were conversant with the rules and expectations associated with an SAO and considered enforcement procedures to be firm but fair. In the case study areas, 85 per cent of orders were completed successfully, three per cent were revoked and 12 per cent were breached. The breach rate decreased with age and was higher among Section 236 and 237 orders than among standard SAOs. The average custodial sentence imposed on breach was 27 days.

Sentencers and SAO staff expressed concern about the limited options available when an order was breached, with some of the former indicating that they had reservations about imposing the maximum prison term available because it would not have been warranted by the original offence or size of outstanding fine.

Reconviction following an SAO

Sixty-nine per cent of offenders had a further conviction within 12 months of receiving their SAO, though a significant proportion of these convictions would have been for 'old' offences. Further convictions were most often for property offences such as thefts, breaches of public order and breaches of bail. Fewer offenders who completed their SAO were convicted in the 12 months after being made subject to the order than in the 12 months before.

The effect of SAO on sentencing for fine default

The number of custodial alternatives imposed in the study courts decreased following the national roll-out of SAOs. This appeared attributable in part to the introduction of SAOs and in part to a reduction in FEC citations over the same time period. In the district courts there had been a marked reduction in the use of the custodial alternative since the SAO schemes were introduced.

The costs of SAOs

The mean direct cost of an SAO was £414 and the total mean cost per order was £733 when the additional costs associated with breaches and reviews were taken into account. Successfully completed orders were less expensive, while breached orders, principally because of the length of the custodial
sentences imposed, were associated with very high costs. SAO costs appeared to be higher in rural areas and in schemes that made use of other service providers to deliver SAO activities. Overall, however, the mean cost of an SAO was lower than the mean cost of an average custodial sentence for fine default (£837).

The research concluded that the national roll-out of SAO schemes across Scotland has been, in most respects, a success. Although concerns about the limited options for dealing with breaches remain, the SAO has, within a relatively short space of time, become established as a credible and effective option for dealing with non-payment of fines. The diversity of provision which exists is a reflection of the differing characteristics and needs of different parts of the country, with no model of SAO activity emerging as more effective than another. As long as they offer constructive experiences to offenders, SAO activities can benefit offenders in various ways and they may in some cases be effective in the longer term through helping offenders to access training or employment and reducing the likelihood that they will re-offend.

The Sentencing Commission

The Sentencing Commission was identified as a key priority in the Executive’s Partnership Agreement and will examine:

- The scope to improve consistency of sentencing;
- The effectiveness of sentences in reducing offending;
- The arrangements for early release from prison and supervision of short-term prisoners on their release;
- The basis on which fines are determined.

The Commission will also be asked to examine the use of bail and remand to meet the requirements of public safety and the efficient administration of justice. On 31 October 2003, High Court Judge Lord MacLean was appointed to the Chair of the Commission. The full Commission will be appointed shortly and its remit is expected to be divided into stages and will report to ministers on a rolling basis with recommendations for improvements to the sentencing system.
The Parole Board for Scotland

Statutory Powers and Functions

The Parole Board for Scotland exists under the provisions of the Prisons (Scotland) Act 1989, the Prisoners and Criminal Proceedings (Scotland) Act 1993 and the Convention Rights (Compliance) (Scotland) Act 2001.

The Board has powers to:

- direct the release of determinate sentence prisoners serving 4 years or more and it may also make directions as to the licence conditions of such prisoners;
- direct the release on life licence of life prisoners;
- direct the recall to custody of determinate sentence prisoners serving sentences of 4 years’ imprisonment or more, life sentence prisoners who have been released on parole or life licence and extended sentence prisoners in circumstances where such action is considered to be in the public interest.

The Board may direct the Scottish Ministers to re-release any prisoner who has been recalled to custody without a recommendation of the Board or any prisoner who has been recalled with such a recommendation and who makes representations against such recall to the Scottish Ministers and the Board. The cases of life prisoners and extended sentence prisoners who are recalled to custody must be considered by a Tribunal of the Board.

The Board also directs the Scottish Ministers on additional conditions to be attached to prisoners’ release licences.

Determinate sentence prisoners

The Scottish Ministers refer to the Board a dossier in respect of every prisoner who is eligible to be considered for parole. Such dossiers contain details of:

- the full name and date of birth of the prisoner;
- the establishment at which the prisoner is detained;
- the prisoner’s current sentence or sentences and an indication of the offence or offences for which that sentence or those sentences were imposed;
- any other offences of which a court has found the prisoner guilty together with a note of the sentence or other disposal ordered on such findings;
- reports prepared by those involved in supervising, caring for or counselling the prisoner which describe the prisoner’s circumstances (including home background) and behaviour and on his/her suitability for release on licence; and
- information about the prisoner’s plans, including employment prospects, on release.
At the same time as the dossier is referred to the Board, the Scottish Ministers send a copy to the prisoner. The prisoner is invited to submit to the Board any written representations about the terms of the reports contained in the dossier and is asked to state whether or not he/she wishes to be interviewed by a member of the Board. In the event of the prisoner requesting an interview, he/she will be interviewed by a Board member and be provided with a copy of the report of that interview. The prisoner’s written representations and the report of the interview are incorporated in the dossier and, several days before the prisoner’s case for early release is due to be considered at a meeting of the Board, a copy of the dossier is forwarded to each member who is scheduled to attend that meeting in order that they may fully acquaint themselves with the circumstances of the case. The Parole Board Rules provide that the powers of the Board may be exercised by any 3 members of the Board, but in general terms seven members of the Board attend each case work meeting.

In the event of the Board recommending that a prisoner be granted parole, Scottish Ministers are obliged to accept the recommendation. The licence runs from the date on which the prisoner is released until the end of the sentence.

Scottish Ministers also refer to the Board information received from supervising officers and/or the police where the licensees’ behaviour in the community is giving cause for concern. In such cases the Board may recommend that the licensee is recalled to custody.

**Life Prisoners**

All life prisoners must have their case for release on licence considered by a Tribunal of the Board.

A Tribunal of the Board consists of three members of The Parole Board for Scotland, appointed by the Chairman of the Board. The Chairman of the Tribunal must be qualified to hold judicial office.

A life prisoner is entitled to require Scottish Ministers to refer his case to the Parole Board once the punishment part, that is the period fixed by the courts to satisfy the requirements of retribution and deterrence, ignoring the period of confinement, if any, which may be necessary for the protection of the public, has been served.

In considering the case of a life prisoner a Tribunal has the power to give a direction to release the prisoner if it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.

In referring life prisoners’ cases to the Board, Scottish Ministers also request advice on certain matters in the event that no direction to release the prisoner is made. These matters are:
• the degree of risk posed by the prisoner and the steps needed to address this;
• the desirability of transfer of the prisoner to different conditions within the options available; and
• the date on which the prisoner’s case should next be reviewed. That date must be no later than two years after the date of the Tribunal’s decision to decline to direct the prisoners release.

The Parole Board may, however, at the request of a life prisoner in respect of whom it has fixed the date of the next consideration of his case, direct the Scottish Ministers to refer that case to the Board before that date.

Extended sentence prisoners

Section 86 of the Crime and Disorder Act 1998 introduced provisions to allow courts to impose additional post-release supervision on certain offenders where they consider such action to be necessary. The criterion for imposing the additional supervision, which forms part of an “extended sentence” is that any existing supervision would not be enough to protect the public from serious harm from the offender.

An extended sentence may be imposed in indictment cases on:

• sex offenders who would have received a determinate custodial sentence of any length; or
• violent offenders who would have received a determinate custodial sentence of 4 years or more.

The maximum length of the extension period is 10 years for sex offenders and 5 years for violent offenders. There are two other restrictions, namely:

• if the sentence is imposed by a sheriff sitting with a jury, the maximum extension period is restricted to 3 years; and
• the maximum length of the whole extended sentence cannot exceed the statutory maximum for that offence.

Scottish Ministers consult the Parole Board about the additional conditions that are to be attached to the release licences of extended sentence prisoners where the combined custodial part and the extension is 4 years or more.

Scottish Ministers refer to the Board all cases involving grounds for recall of extended sentence prisoners.

In considering the case of grounds for recall of an extended sentence prisoner the Board, in recommending that the offender’s licence be revoked, must be satisfied that such action is necessary in order to protect the public from serious harm from the offender. In the event of an extended sentence prisoner being recalled to custody and submitting representations to Scottish Ministers, the case for re-release must be considered by a Tribunal of the Board. The Tribunal, if not recommending immediate re-release, must be satisfied that it
is necessary to hold the offender in custody in order to protect the public from serious harm.

Non-parole licences

Offenders sentenced to a term of 4 years imprisonment or more on or after 1 October 1993 are released on licence at the two thirds stage of their sentence and the licence runs to the sentence end date. The term non-parole licence is used to describe this non-discretionary period of supervision in the community. Offenders released on non-parole licence are mainly those prisoners whose conduct in prison and circumstances indicate that there is an unacceptable risk of re-offending on release. In general terms there will be indications that they have done little or no work on the factors such as drug or alcohol abuse which lay behind their offending, there may be evidence that they have continued with substance abuse in prison, they may have a history of failure during previous periods of supervision or they may have declined to be considered for early release on parole.

Scottish Ministers consult the Board about the terms of any additional conditions to be attached to the licences of prisoners who are released at the two thirds stage of their sentence.

Scottish Ministers also refer to the Board information received from licensees’ supervising officers and/or the police where the licensees’ behaviour in the community is giving cause for concern. In such cases the Board may recommend that the licensee is recalled to custody.

The Parole Board Rules

In dealing with a prisoner’s case, the Board may take into account any matter which it considers relevant including any of the following matters:-

- the nature and circumstances of any offence of which that person has been convicted or found guilty by a court of law;
- that person’s conduct since the date of his/her current sentence(s);
- the likelihood of that person committing any offence or causing harm to any other person if he/she were to be released on licence, remain on licence or be re-released on licence as the case may be;
- what that person intends to do if he/she were to be released on licence, remain on licence or be re-released on licence, as the case may be, and the likelihood of his/her fulfilling those intentions; and
- any written information or documents or written representations which the Scottish Ministers or the person concerned has sent to the Board or which the Board has otherwise obtained.

The Rules provide for prisoners having access to reports and other information contained in their review dossiers, with suitable safeguards in non-tribunal cases for the withholding of information that Scottish Ministers or the Board considers it would be damaging to disclose. The Rules also prescribe the procedures for tribunals.
Scandinavia

The following analysis is taken from a paper which was presented to the
Justice 1 Committee in the first session of the Parliament by Professor Neil
Hutton on 26 November 2002.

Finland

A significant reduction has been achieved in prison population since 1950 to
bring Finland into line with the overall Scandinavian level. However, there is
no simple explanation about how this has been achieved. Having started from
a high level (historical levels of punishment for theft and drunk driving),
Finland has always been suspicious of treatment and there is no expectation
in society that punishment should reduce offending or transform offenders.
Crime prevention became central in Finland in the 1970’s and 80’s.
Sentencing legislation was passed which placed a central emphasis on neo-
classical proportionality (just desserts). There was a strong political will to
reduce a prison population seen widely as far too high. All major stakeholders
shared this view and there was a strong shared commitment to the policy of
reducing the prison population.

More practically legislation reduced sentence lengths for property offences.
There is wide use of what in Finland are called “conditional prison sentences”.
A prison sentence is imposed but it is not served unless the offender commits
a new offence for which an unconditional (i.e. immediate) prison sentence is
imposed. In such cases the court can (though it does not have to) implement
the original prison sentence that was suspended. This is regarded as quite
successful, although has been criticised because there are too many
offenders who receive consecutive conditional sentences. Conditional
sentences are widely used in continental Europe.

Finland is widely respected for its almost unique success in reducing its prison
population. However, it has not made extensive use of community
programmes aimed at reducing offending behaviour because culturally Finns
have never had much faith in rehabilitation and do not see this as a significant
aim of punishment.

Denmark

The prison population in Denmark has remained stable over the last thirty
years despite a rise in levels of reported crime. The suspended sentence is
the third most used sanction after fines and imprisonment. It can be imposed
with or without supervision (around 20% have conditions imposed). There are
community based treatment programmes for drunk drivers, drug abusers and
sex offenders. These programmes are run by the Health Department not the
Prisons and Probation Department. Community Service is used with
increasing frequency and is the single most important community sanction.
There has been limited evaluation on the effectiveness of these programmes.
There is considerable support in Denmark for rehabilitative measures and the
range available and frequency of use of community sanctions is expected to increase.

Sweden

There is a “successful” system where offenders sentenced to short prison sentences could have these converted to home detention with electronic monitoring and intensive supervision including drug tests and home visits. All prison sentences of less than two years are referred to the department of prisons and probation for implementation. There is an administrative decision taken as to whether the sentence should be served in the community or in custody. There are rules and procedures governing the decision making of the agency. This policy has effectively reduced the number of prisoners serving short sentences in Swedish prisons.