JUSTICE 1 COMMITTEE

AGENDA

30th Meeting, 2004 (Session 2)

Wednesday 29 September 2004

The Committee will meet at 10.00 am in Committee Room 4.

1. **Declaration of interests:** New members of the committee will be invited to declare any relevant interests.

2. **Choice of Deputy Convener:** The Committee will choose a new Deputy Convener.

3. **Subordinate legislation:** Tavish Scott MSP (Deputy Minister for Finance and Public Services) to move the following motion—

   S2M-1749 Mr Andy Kerr: The Draft Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004— That the Justice 1 Committee recommends that the draft Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 be approved.

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


5. **Inquiry into the effectiveness of rehabilitation programmes in prisons:** The Committee will take evidence from—

   Professor Jacqueline Tombs, Director, Scottish Consortium on Crime and Criminal Justice, and Bernadette Monaghan, Director, Apex Scotland;


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

   The Register of Sasines (Application Procedure) Rules 2004 (SSI 2004/318);
The International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) Regulations 2004 (SSI 2004/360);


7. **Proposed bill to protect children and prevent sexual offences**: The Committee will consider whether to appoint an adviser and, if so, whether to consider in private at a future meeting a list of candidates for appointment.

Alison Walker
Clerk to the Committee
Tel: 0131 348 5195
Papers for the meeting—

Agenda item 3

Note by the clerk J1/S2/04/30/1

Agenda item 4

Note by the Clerk J1/S2/04/30/2

Agenda item 5

Scottish Consortium on Crime and Criminal Justice, response to the inquiry J1/S2/04/30/3
Scottish Consortium on Crime and Criminal Justice, Response to Scottish Executive Justice Department Consultation: ‘re:duce, re:habilitate, re:form’ J1/S2/04/30/4
Apex Scotland, response to the inquiry J1/S2/04/30/5
Association of Visiting Committees for Scottish Penal Establishments, response to the inquiry J1/S2/04/30/6

Note by the clerk (PRIVATE PAPER) J1/S2/04/30/7

Agenda item 6

Note by the Clerk (SSI 2004/318) J1/S2/04/30/8
Note by the Clerk (SSI 2004/360) J1/S2/04/30/9
Note by the Clerk (SSI 2004/370) J1/S2/04/30/10

Agenda item 7

Note by the Clerk J1/S2/04/30/11

Documents not circulated—

A copy of the following has been provided to the Clerk:

- Scottish Ministers’ Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002

A copy of this document is available for consultation in room T3.60. Additional copies may also be obtainable on request from the Document Supply Centre.
JUSTICE 1 COMMITTEE

Papers for the 30th Meeting of Justice 1, 2004 (Session 2)

Wednesday 29 September 2004

I attach the following papers:

**Agenda Item 5:** Inquiry into the effectiveness of rehabilitation programmes in prisons

| Correspondence from the Association of Visiting Committees for Scottish Penal Establishments | J1/S2/04/30/12 |

28 September 2004  
Tony Reilly
Justice 1 Committee

30th Meeting 2004 (Session 2)

The draft Freedom of Information (Fees for Required Disclosure)(Scotland) Regulations 2004

Note by the Clerk

Purpose of the draft instrument

1. These regulations make provision for the fees that may be charged by a Scottish public authority for disclosure of information that it is required to disclose under the Freedom of Information (Scotland) Act 2002 (“the Act”).

2. The associated Code of Practice on the discharge of functions by public authorities under the Act, prepared by the Scottish Ministers in consultation with the Scottish Information Commissioner, is also appended to the Regulations.

Background

Freedom of Information (Scotland) Act 2002

3. The Freedom of Information (Scotland) Act 2002 received Royal Assent on 28 May 2002. The purpose of the Act is to establish a legal right of access to information held by a broad range of Scottish public authorities; to balance this right with provisions protecting sensitive information; to establish a fully independent Scottish Information Commissioner to promote and enforce the freedom of information regime; to encourage the proactive disclosure of information by Scottish public authorities through a requirement to maintain a publication scheme and to make provision for the application of the freedom of information regime to historical records. The Act empowers Scottish Ministers to make fees regulations which will set out the legal framework that Scottish public authorities should comply with when charging for providing information under the Act.

4. The Committee responded to consultations on the draft Code of Practice and draft fees regulations in December 2003 and June 2004 respectively. Copies of these responses are attached as annexes A and B.

Provisions

5. This set of regulations has been made by the Scottish Ministers in exercise of the powers conferred by sections 9(4) and (5) and 12 of the Act. These provisions allow the Scottish Ministers, having consulted with the Scottish Information Commissioner, to make regulations as to the fee that may be charged by a Scottish public authority for the provision of information.

6. The purpose of the instrument is to set out the costs that public authorities may take into account in calculating the level of fee which may be charged for provision of information under the Act.
7. The fee which is payable is calculated by reference to the “projected costs”. Regulation 3 sets out how these are calculated. The Executive note explains that projected costs should be a reasonable estimate of the likely cost of locating, retrieving and providing the information requested and should be based on the estimated actual costs to the public authority. This will include direct outlays like postage and the cost of paper. Projected costs will also include reasonably attributable overheads such as the managerial or supervisory costs (indirect costs) of responding to an FOI request. Public authorities are not entitled to charge under the regulations for any costs associated with determining whether the information is held or for considering whether any exemptions under the Act apply to a particular request. Further, authorities may not charge in excess of £15 per hour per member of staff engaged in locating and retrieving the information, nor, as stipulated in sections 11 and 12 of the Act, can they pass on any costs likely to be incurred in fulfilling a duty under the Disability Discrimination Act 1995.

Code of practice

8. Section 60 of the Act requires the Scottish Ministers to issue guidance to public authorities on discharging their functions under the Act. The Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (“the Code”) has been prepared in consultation with the Scottish Information Commissioner.

9. The introduction to the Code explains that it applies to all Scottish public authorities as defined in section 3(1) of the Act. It provides best practice to these authorities and its adoption will help them to comply with their duties under it. The Scottish Information Commissioner will promote observance of the Code. Should an authority fail to comply with the Code, they may be failing in their duties under the Act.

10. The introduction also makes it clear that authorities should ensure that they also comply with existing duties under other legislation, for example the Disability Discrimination Act 1995, the Race Relations (Amendment) Act 2000, the Data Protection Act 1998 and the Environmental Information (Scotland) Regulations 2004.

Consultation

11. The instrument states that the Executive has consulted the Scottish Information Commissioner in accordance with section 9(6) and 12(5) of the Act during the preparation of the instrument.

12. A list of those organisations consulted on the proposed fees regulations is provided at annex A of the Executive note.

Financial consequences

13. The Scottish Executive’s note makes no reference to the financial effects on the Executive, local government or other public authorities.
Subordinate Legislation Committee

14. The Subordinate Legislation Committee considered this instrument at its meetings on 14 September 2004\(^1\) and 21 September\(^2\).

15. Regulation 4 (4) of these Regulations provides-

“The fees notice shall set out the manner in which the fee has been calculated”.

16. At its meeting on 14 September, the Subordinate Legislation Committee noted that the enabling power for regulation 4 appeared to be section 9(4) of the Freedom of Information (Scotland) Act 2002 which provides that “a fee charged under subsection (1) is to be determined by the authority in accordance with regulations made by the Scottish Ministers”. This suggested to the Committee that the purpose of the Regulations was to make provision regarding the calculation of the fee, not the content of the fees notice. The Committee therefore requested an explanation of the vires of regulation 4(4).

17. In its reply, reproduced at Appendix 1 of the Subordinate Legislation Committee’s 33rd Report, 2004 (Session 2), an extract copy of which is attached at annex C, the Executive accepts that section 9(4) of the enabling Act is the primary enabling power but considers that this section when read with section 9(5) which elaborates the power, is quite wide in its scope and would cover how a fee is to be stated in the fees notice. The Scottish Executive refers the Committee to the reference in sub-section (4) to the “fee charged under sub-section (1)” linking the sub-section (4) power to the notice under sub-section(1) and the reference in sub-section (5) to the “generality of sub-section (4)” explicitly suggesting that it goes beyond the specifics of calculation set out in sub-section (5).

18. A final reason that the Executive considers its approach to construction here to be reasonable is that having the calculation of the fee properly set out on the fees notice is more or less essential to enable the applicant to decide on an informed basis in relation to the fee whether or not to proceed with the application – a primary purpose of section 9.

Subordinate Legislation Committee Report

19. Section 9 of the 2002 Act provides as follows-

“ (1) A Scottish public authority receiving a request which requires it to comply with section 1(1) may…..give the applicant a notice in writing (in this Act referred to as a “fees notice”) stating that a fee of an amount specified in the notice is to be charged by the authority for so complying.

(2) Subsection (1) is subject to section 19.

(3) If a fees notice is given to the applicant, the authority is not obliged to give the requested information unless the fee is duly paid;

\(^1\) Subordinate Legislation Committee, 24th Meeting, 2004 (Session 2).
\(^2\) Subordinate Legislation Committee, 25th Meeting, 2004 (Session 2).
and for the purposes of this subsection and section 10(2) due payment is payment within the period of three months beginning with the day on which the notice is given.

(4) Subject to subsection (7) a fee charged under subsection (1) is to be determined by the authority in accordance with regulations made by the Scottish Ministers.

(5) Without prejudice to the generality of subsection (4), the regulations may in particular provide that-
(a) a fee is not to exceed such amount as may be specified in, or determined in accordance with the regulations;
(b) a fee is to be calculated in such manner as may be so specified; and
(c) no fee is payable in a case so specified.

(6)...

(7) Subsection (4) does not apply where provision is made, by or under any enactment, as to the fee that may be charged by the authority for the disclosure of the information.”

20. Section 19 of the Act referred to in subsection 2 provides-

“19 Content of certain notices

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1)) or 17(1) must contain particulars-

(a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
(b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1)”.

21. The Committee agrees that the powers to prescribe a fees notice are very wide and are not limited by the detail in subsection (5). However, as subsection (1) of section 9 clearly indicates, the prescription of the fee and the content of a fees notice are two different things. This is further evidenced by the fact that subsection (1) includes specific provision as to the content of the fees notice and is expressed as being subject to section 19 which contains further detailed provisions as to the content of such notices but not as subject also to regulations under subsection (4).

22. It also seems significant to the Committee that the details in subsection (5) are all related to the calculation of the fee rather than to how it is to be communicated to the applicant.

23. Had the 2002 Act contained the customary provision allowing for regulations to contain additional incidental provisions then it seems to the Committee that
there might have been an argument that this could provide sufficient cover for the provision but unfortunately there is no such provision. The wording of subsection (4) is very specific and, in the Committee’s view, appears to allow regulation to be made only for the purposes of the calculation of the relevant fees.

24. As regulation 4(4) may well have merit from a policy point of view, it is unfortunate from the Executive’s perspective that it appears to lack the power to make regulations for that purpose. However, the fact that a provision may be desirable does not therefore mean that the Scottish Ministers may include it in regulations if they lack appropriate enabling powers.

25. The Committee therefore draws the attention of the lead committee and the Parliament to the instrument on the grounds that (without prejudice to the merits of the provision) there are doubts as to whether regulation 4(4) is *intra vires*.

26. The Subordinate Legislation Committee does, however, observe that section 60 of the Act makes provision for the issue by the Scottish Ministers of a statutory code of practice for Scottish public authorities in relation to their functions under the Act which is required to be laid before the Parliament. Indeed, the proposed Code was laid before the Parliament together with these Regulations. It appears to the Committee that if the Executive is precluded from making formal provision in the Regulations it might nevertheless achieve the desired end by appropriate provision in such a Code of Practice.

**Procedure**

27. The Justice 1 Committee has been designated lead committee and is required to report to the Parliament by 4 October 2004.

28. The draft instrument was laid on 6 September 2004. Under Rule 10.6.1(b), the Code being subject to affirmative resolution before it can be made, it is for the Justice 1 Committee to recommend to the Parliament whether the instrument should be approved. The Minister for Finance and Public Services has, by motion S2M-1749 (set out in the agenda), proposed that the Committee recommends the approval of the regulations. The Deputy Minister for Finance and Public Services will attend in order to speak to and move the motion. The debate may last for up to 90 minutes.

29. 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.

**Consideration by the Parliament**

30. The instrument will be considered by the Parliament on 6 October 2004.
Dear Tavish,

Draft Code of Practice Under Section 60 Freedom of Information (Scotland) Act 2002

On 3 December, the Justice 1 Committee considered a paper on the draft Code of Practice from the Committee’s reporter, Michael Matheson MSP. The Committee agreed to write to the Executive setting out a number of points which it considers should be clarified, or addressed by the Code of Practice.

I should say at the outset that the Committee welcomes the detailed guidance to assist public authorities in carrying out their functions under the Act. It is further appreciated that the draft Code provides information on how to deal with vexatious requests and repeated requests, which goes beyond what is required by the Act.

The Committee would however like the situation regarding potential costs for producing information in alternative formats clarified and set out in the guidance as appropriate.

In relation to charging policy generally, the Committee considers that consistency of charging should be addressed in the guidance and that this should be linked to the records management draft code of practice.
Guidance should also be provided to public authorities when the cost limit is exceeded, but where the disclosure of the information is in the public interest. The Committee would also like to know what mechanism will be used to determine the upper cost limit and have sight the Fees Regulations before they are laid before Parliament. It would also be helpful to know when they will be available.

Another area where the Committee considers further explanation is necessary is as to why the former Justice 1 Committee’s recommendation on disclosure of Scottish Administration policy formulation has not been addressed in the guidance.

The Committee asks that the Executive considers strengthening the draft Code to encourage public authority officials to advise those making requests for information that they have a statutory right to do so. Additionally, the Committee seeks clarification as to whether the introduction forms part of the draft code of practice for the purposes of ensuring public authorities undertake appropriate training of staff.

With reference to the paragraph in the draft code of practice relating to the responsibilities of a freedom of information officer the Committee believes that this should be reviewed to reflect the likely duties of such an officer within a public authority.

Finally, the Committee believes the draft code of practice should provide guidance to authorities on setting up a disclosure log.

I attach the agreed paper which sets out the background to Committee’s conclusions.

Yours sincerely,

Pauline McNeill MSP
Convener, Justice 1 Committee
Dear Tavish,

Freedom of Information Scotland Act 2002: a consultation on charging fees

I am writing in reference to correspondence from your officials of 4 March 2004 inviting the Justice 1 Committee to comment on the draft fees regulations and associated guidance. This followed a commitment you gave in your letter of 6 January to allow the Committee to submit comments.

On 9 June, the Justice 1 Committee considered a paper on the draft fees regulations from the Committee’s reporter, Michael Matheson MSP. The Committee agreed to write to the Executive setting out its views in response to the consultation.

The Committee welcomes the draft regulations and guidance to public authorities on charging fees as the basis for establishing a clear and consistent scheme for applications made under the Freedom of Information (Scotland) Act 2002.

The Committee is pleased that the draft guidance provides helpful information on the provisions set out in the draft regulations and, in particular, clarification that costs involved in fulfilling the obligations of the...
Disability Discrimination Act 1995 do not fall within the definition of Prescribed Costs.

The Committee welcomes the inclusion of a framework for charging in the guidance which it considers will help to ensure that there is a consistency of charging between public authorities. The Committee is also content with the mechanism to be used to determine the upper cost limit.

Finally, the Committee welcomes the guidance on circumstances when the cost limit is exceeded, but recommends that the Executive monitor closely the implementation of this part of the Act to ensure that, if necessary, Regulations are amended to ensure that the £600 cost limit does not act as a barrier where the disclosure of the information is in the public interest.

I attach the agreed paper which sets out the background to the Committee’s conclusions.

I can confirm that the Scottish Executive may publish this response and the associated paper.

Yours sincerely,

Pauline McNeill MSP
Convener, Justice 1 Committee
Background

1. Regulation 4 (4) of these Regulations provides-

   “The fees notice shall set out the manner in which the fee has been calculated”.

2. The Committee noted that the enabling power for regulation 4 appeared to be section 9(4) of the Freedom of Information (Scotland) Act 2002 which provides that “a fee charged under subsection (1) is to be determined by the authority in accordance with regulations made by the Scottish Ministers”. This suggested to the Committee that the purpose of the Regulations was to make provision regarding the calculation of the fee, not the content of the fees notice. The Committee therefore requested an explanation of the *vires* of regulation 4(4).

3. In its reply, reproduced at Appendix 1, the Executive accepts that section 9(4) of the enabling Act is the primary enabling power but considers that this section when read with section 9(5) which elaborates the power, is quite wide in its scope and would cover how a fee is to be stated in the fees notice. The Scottish Executive refers the Committee to the reference in sub-section (4) to the “fee charged under sub-section (1)” linking the sub-section (4) power to the notice under sub-section(1) and the reference in sub-section (5) to the “generality of sub-section (4)” explicitly suggesting that it goes beyond the specifics of calculation set out in sub-section (5).

4. A final reason that the Executive considers its approach to construction here to be reasonable is that having the calculation of the fee properly set out on the fees notice is more or less essential to enable the applicant to decide on an informed basis in relation to the fee whether or not to proceed with the application – a primary purpose of section 9.

Report

5. Section 9 of the 2002 Act provides as follows-

   “(1) A Scottish public authority receiving a request which requires it to comply with section 1(1) may……give the applicant a notice in writing (in this Act referred to as a “fees notice”) stating that a fee of an amount specified in the notice is to be charged by the authority for so complying.

   (2) Subsection (1) is subject to section 19.

   (3) If a fees notice is given to the applicant, the authority is not obliged to give the requested information unless the fee is duly paid; and for the purposes of this subsection and section 10(2) due payment
is payment within the period of three months beginning with the day on which the notice is given.

(4) Subject to subsection (7) a fee charged under subsection (1) is to be determined by the authority in accordance with regulations made by the Scottish Ministers.

(5) Without prejudice to the generality of subsection (4), the regulations may in particular provide that-
(a) a fee is not to exceed such amount as may be specified in, or determined in accordance with the regulations;
(b) a fee is to be calculated in such manner as may be so specified; and
(c) no fee is payable in a case so specified.

(6)...

(7) Subsection (4) does not apply where provision is made, by or under any enactment, as to the fee that may be charged by the authority for the disclosure of the information.”

6. Section 19 of the Act referred to in subsection 2 provides-

“19 Content of certain notices

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1)) or 17(1) must contain particulars-

(a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
(b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1)”.

7. The Committee agrees that the powers to prescribe a fees notice are very wide and are not limited by the detail in subsection (5). However, as subsection (1) of section 9 clearly indicates, the prescription of the fee and the content of a fees notice are two different things. This is further evidenced by the fact that subsection (1) includes specific provision as to the content of the fees notice and is expressed as being subject to section 19 which contains further detailed provisions as to the content of such notices but not as subject also to regulations under subsection (4).

8. It also seems significant to the Committee that that the details in subsection (5) are all related to the calculation of the fee rather than to how it is to be communicated to the applicant.

9. Had the 2002 Act contained the customary provision allowing for regulations to contain additional incidental provisions then it seems to the Committee that there might have been an argument that this could provide sufficient cover for the provision
but unfortunately there is no such provision. The wording of subsection (4) is very specific and, in the Committee’s view, appears to allow regulation to be made only for the purposes of the calculation of the relevant fees.

10. As regulation 4(4) may well have merit from a policy point of view, it is unfortunate from the Executive’s perspective that it appears to lack the power to make regulations for that purpose. However, the fact that a provision may be desirable does not therefore mean that the Scottish Ministers may include it in regulations if they lack appropriate enabling powers.

11. The Committee therefore draws the attention of the lead committee and the Parliament to the instrument on the grounds that (without prejudice to the merits of the provision) there are doubts as to whether regulation 4(4) is *intra vires*.

12. The Committee does, however, observe that section 60 of the Act makes provision for the issue by the Scottish Ministers of a statutory code of practice for Scottish public authorities in relation to their functions under the Act which is required to be laid before the Parliament. Indeed, the proposed Code was laid before the Parliament together with these Regulations. It appears to the Committee that if the Executive is precluded from making formal provision in the Regulations it might nevertheless achieve the desired end by appropriate provision in such a Code of Practice.
Justice 1 Committee

30th Meeting 2004 (Session 2)

The Freedom of Information (Fees for Disclosure under Section 13)(Scotland) Regulations 2004

Note by the Clerk

Purpose of the draft instrument

1. These regulations make provision for the fees which may be charged by a Scottish public authority for disclosure of information which is not required under the Freedom of Information (Scotland) Act 2002 (“the Act”) because the cost of compliance would exceed a prescribed amount and which is not otherwise required by law.

2. This note should be read in conjunction with the note on the Freedom of Information (Fees for Required Disclosure)(Scotland) Regulations 2004 (draft), which includes consideration of the associated Code of Practice on the discharge of functions by public authorities under the Act.

Background

Freedom of Information (Scotland) Act 2002

3. The Freedom of Information (Scotland) Act 2002 received Royal Assent on 28 May 2002. The purpose of the Act is to establish a legal right of access to information held by a broad range of Scottish public authorities; to balance this right with provisions protecting sensitive information; to establish a fully independent Scottish Information Commissioner to promote and enforce the freedom of information regime; to encourage the proactive disclosure of information by Scottish public authorities through a requirement to maintain a publication scheme and to make provision for the application of the freedom of information regime to historical records. The Act empowers Scottish Ministers to make fees regulations which will set out the legal framework that Scottish public authorities should comply with when charging for providing information under the Act.

Provisions

4. This set of regulations has been made by the Scottish Ministers in exercise of the powers conferred by section 13(1) of the Act. It covers the fees structure where a Scottish public authority receives a request for information under the Act but is not obliged to comply with it because the costs of providing the information are projected to exceed the £600 maximum (the prescribed amount). In such a case, the authority may be willing to comply with the request. If it complies, the authority is restricted to charging at the concessionary rates for projected costs up to £600 (i.e. what it would have charged had the projected costs not exceeded the cap of £600). For the projected costs above the £600, the authority may recoup all those costs, bearing in mind that staff time remains subject to the maximum rate of £15 per hour.
Consultation

5. The instrument states that the Executive has consulted the Scottish Information Commissioner in accordance with section 13(3) of the Act during the preparation of the instrument.

Financial consequences

6. The Scottish Executive’s note makes no reference to the financial effects on the Executive, on local government or other public authorities.

Subordinate Legislation Committee

7. The Subordinate Legislation Committee considered this instrument at its meetings on 14 September 2004\(^1\) and 21 September\(^2\).

8. At its meeting on 14 September, the Committee raised two related questions with the Executive.

9. The Committee noted that regulation 4 stated that where an authority proposed to communicate information the fee that it may charge shall be such fee as it shall notify “and agree with” the person who requests the information. The purpose of the words in quotes was not clear to the Committee. The Committee asked the Executive whether this meant that the authority cannot charge a fee if the person does not agree the fee.

10. The Committee also sought the Executive’s comment on whether the words were within the power conferred by the enabling Act which stated that an authority may charge “such fee as may be determined by it in accordance with regulations made by the Scottish Ministers”. This did not seem to the Committee to leave any room for obtaining the agreement of the person requesting the information.

Executive response

11. The Executive’s reply is reproduced at Appendix 6 of the Subordinate Legislation Committee’s 33rd Report, 2004 (Session 2); an extract of the report is annexed to this note.

12. The Executive considers that regulation 4 precludes an authority from charging a fee for information to which section 13(1) of the enabling Act applies, unless prior to its being communicated a fee is agreed. If an authority sent out the information first and then sought to charge, this would be precluded.

13. The purpose of the provision is the same as if there were a formal notice machinery (where there was an obligation to provide the information), namely to allow an applicant a chance not to proceed with an application if the applicant decided that he or she did not want to or could not afford the charge – a key aspect of the charging regime as far as Ministers were concerned during the passage of the enabling Act.

\(^1\) Subordinate Legislation Committee, 24th Meeting, 2004 (Session 2).
\(^2\) Subordinate Legislation Committee, 25th Meeting, 2004 (Session 2).
14. The Executive considers that the regulation making power in section 13(1) can reasonably be construed to allow considerable latitude as to how the fee is to be determined provided that the way it is arrived at is in accordance with the regulations. In line with that approach sub-section (2)(a) explicitly allows a “cap” on charging and sub-section (2)(b) allows complete discretion as to how any fee is to be calculated. These discretions are emphasised, however, as to be “without prejudice to the generality of sub-section (1)”. Accordingly, the Executive considers that it can reasonably interpret the sub-section (1) power as allowing the fee to be determined in the manner specified in regulation 4.

Subordinate Legislation Committee Report

15. The Subordinate Legislation Committee considers that the Executive has once again taken a very generous approach to the interpretation of the enabling powers in this Bill that the Committee finds difficult to concede.

16. The Committee agrees that during the passage of the Bill Ministers did indicate that information regarding fees would be given to persons requesting information before that information was provided so that those persons could have the opportunity to withdraw a request if they did not want to pay the fee. However it is not clear to the Committee that this is what the Regulations provide.

17. As the Committee observed at its meeting on 14th September, regulation 4 appears to indicate that the fee is open to negotiation, which does not appear to be within the scope of the enabling power.

18. Section 13 provides-

   “13 Fees for disclosure in certain circumstances

   (1) A Scottish public authority may charge for the communication of any information-

   (a) which by virtue of section 12(1) or (2) it is not obliged to communicate; and

   (b) which it is not otherwise required by law to communicate, such fee as may be determined by it in accordance with regulations made by the Scottish Ministers.

   (2) Without prejudice to the generality of subsection (1), the regulations may in particular provide that a fee-

   (a) is not to exceed such amount as may be specified in, or determined in accordance with, the regulations; and

   (b) is to be calculated in such manner as may be so specified.”

19. There is no provision in section 13 that would allow for the fee to be negotiated. It is for the public authority to determine the fee subject to the regulations.
20. Moreover, the Committee doubts whether it is open to the regulations to make provision as to prior notification of the fee in any event. Although the wording of subsection (2) is wide, it seems clear that the purpose of the regulations is to prescribe the fee rather than impose notification obligations on the public authority.

21. The Committee notes that the wording of section 13(1) follows closely the wording of section 9(4) (quoted above). It is significant that section 9, together with section 10, makes specific provision regarding notification of the amount of fee to an applicant for information and regarding payment of the fee. Accordingly, it would seem that the regulation-making power in section 13 is to be given a restrictive meaning in this respect given its similarity to the power in section 9.

22. It therefore appears to the Subordinate Legislation Committee that there are doubts as to whether regulation 4 is *intra vires* and it reports the instrument to the lead committee and the Parliament on that ground.

23. Again, the Committee observes that perhaps the policy objective might be achieved by way of the statutory guidance rather than legislative instrument.

**Procedure**

24. 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.

25. The instrument was laid on 6 September 2004 and is subject to annulment under the Parliament’s Standing Orders until 26 October 2004.

26. In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee. The instrument will come into force on 7 January 2005.
Background
1. The Committee raised two related questions with the Executive.

2. The Committee noted that regulation 4 stated that where an authority proposed to communicate information the fee that it may charge shall be such fee as it shall notify “and agree with” the person who requests the information. The purpose of the words in quotes was not clear to the Committee. The Committee asked the Executive whether this meant that the authority cannot charge a fee if the person does not agree the fee.

3. The Committee also sought the Executive’s comment on whether the words were within the power conferred by the enabling Act which stated that an authority may charge “such fee as may be determined by it in accordance with regulations made by the Scottish Ministers”. This did not seem to the Committee to leave any room for obtaining the agreement of the person requesting the information.

4. The Executive considers that regulation 4 precludes an authority from charging a fee for information to which section 13(1) of the enabling Act applies, unless prior to its being communicated a fee is agreed. If an authority sent out the information first and then sought to charge, this would be precluded.

5. The purpose of the provision is the same as if there were a formal notice machinery (where there was an obligation to provide the information), namely to allow an applicant a chance not to proceed with an application if the applicant decided that he or she did not want to or could not afford the charge – a key aspect of the charging regime as far as Ministers were concerned during the passage of the enabling Act.

6. The Executive considers that the regulation making power in section 13(1) can reasonably be construed to allow considerable latitude as to how the fee is to be determined provided that the way it is arrived at is in accordance with the regulations. In line with that approach sub-section (2)(a) explicitly allows a “cap” on charging and sub-section (2)(b) allows complete discretion as to how any fee is to be calculated. These discretions are emphasised, however, as to be “without prejudice to the generality of sub-section (1)”. Accordingly, the Executive considers that it can reasonably interpret the sub-section (1) power as allowing the fee to be determined in the manner specified in regulation 4. The Executive’s reply is reproduced at Appendix 6.

Report
7. It appears to the Committee that the Executive has once again taken a very generous approach to the interpretation of the enabling powers in this Bill that the Committee finds difficult to concede.
8. The Committee agrees that during the passage of the Bill Ministers did indicate that information regarding fees would be given to persons requesting information before that information was provided so that those persons could have the opportunity to withdraw a request if they did not want to pay the fee. However it is not clear to the Committee that this is what the Regulations provide.

9. As the Committee observed at its meeting on 14th September, regulation 4 appears to indicate that the fee is open to negotiation, which does not appear to be within the scope of the enabling power.

10. Section 13 provides-

"13 Fees for disclosure in certain circumstances

(1) A Scottish public authority may charge for the communication of any information-

(a) which by virtue of section 12(1) or (2) it is not obliged to communicate; and
(b) which it is not otherwise required by law to communicate,
such fee as may be determined by it in accordance with regulations made by the Scottish Ministers.

(2) Without prejudice to the generality of subsection (1), the regulations may in particular provide that a fee-

(a) is not to exceed such amount as may be specified in, or determined in accordance with, the regulations; and
(b) is to be calculated in such manner as may be so specified."

11. There is no provision in section 13 that would allow for the fee to be negotiated. It is for the public authority to determine the fee subject to the regulations.

12. Moreover, the Committee doubts whether it is open to the regulations to make provision as to prior notification of the fee in any event. Although the wording of subsection (2) is wide, it seems clear that the purpose of the regulations is to prescribe the fee rather than impose notification obligations on the public authority.

13. The Committee notes that the wording of section 13(1) follows closely the wording of section 9(4) (quoted above). It is significant that section 9, together with section 10, makes specific provision regarding notification of the amount of fee to an applicant for information and regarding payment of the fee. Accordingly, it would seem that the regulation-making power in section 13 is to be given a restrictive meaning in this respect given its similarity to the power in section 9.

14. It therefore appears to the Committee that there are doubts as to whether regulation 4 is *intra vires* and it reports the instrument to the lead committee and the Parliament on that ground.
Again, the Committee observes that perhaps the policy objective might be achieved by way of the statutory guidance rather than legislative instrument.
I refer to Mr Thornton’s letter of 10 March 2004 inviting written evidence for the Justice 1 Committee to assist its inquiry into rehabilitation programmes in prison.

The Consortium, which aims to reduce the incidence and alleviate the impact of crime in society by whatever morally acceptable means can be shown to be most effective, includes the leading voluntary organisations concerned with crime and criminal justice – the Howard League for Penal Reform in Scotland, APEX, NCH, SACRO and the Scottish Human Rights Centre. Associate members include a wide range of other organisations and academics. The Consortium very much welcomes the inquiry and our member organisations are responding to the detailed questions. This response comments briefly on rehabilitation programmes in prison though its main emphasis is on the importance of throughcare. This is not to argue against the positive effects of some prisoner programmes for some prisoners but rather to underline that, no matter how good the prisoner programme, any positive improvements will quickly dissipate if appropriate measures are not in place to promote community resettlement.

At the outset, it is important to stress that the Consortium views prison as a sentence of last resort, only for the punishment of the most serious offenders who present an unacceptable risk to society. Prison, by definition, is not an appropriate context in which to deliver effective rehabilitation and shows very poor results in terms of recidivism. In place of imprisonment, most offenders should be dealt with by community based sentences which can command public support and understanding. Such sentences should be oriented primarily towards rehabilitation, in their aims and in their administration.

Where prison is unavoidable, any rehabilitation programmes initiated in prison must be underpinned by humane conditions (ending overcrowding and slopping out) and providing a stimulating environment. Above all, programmes must be fully integrated with throughcare strategies.

Two consistent findings from the research literature are noteworthy.

- First, that the chance of treatment/rehabilitation in prison being successful is improved by the nature, quality and length of support after release.

- Second, that it is essential to have co-ordination and integration between whatever programmes and services are offered in prison and those offered by criminal justice social work services and other agencies to offenders in the community under post-release supervision (see, for example, Tombs, 2004; Kothari et al, 2002).
Linking prisoners to drug agencies and community projects is critical as is information exchange between prison and community in order to make agencies aware of the individual's previous treatment history and ongoing treatment needs (Kothari et al, 2002, Burrows et al, 2000). Community support groups can make an important contribution; especially those that include a strong component of advocacy in order to help ex-prisoners negotiate the increasingly inhospitable housing and labour markets. In short, the throughcare strategies with the most favourable results are ‘holistic’; that is, focused on the whole range of prisoners’ needs and integrated with support in the prison and in the community. This support is necessary not only in the early weeks of readjustment on release but also in the long term (see Peters and Steinberg, 2000).

Indispensable processes for successful ‘habilitation’, ‘integration’ or ‘resettlement’ include teaching prisoners basic skills, helping them to develop the capacity to cope with their ‘survival’ needs in the outside world and establishing meaningful links whilst in prison with a range of community services that can offer continuing and long term support. In particular, evaluations of supported work programmes in the USA for ex-prisoner addicts exposed to treatment during their prison sentences demonstrate a close link between treatment success and a stable job. These programmes have also been found to be highly cost effective (Currie, 1993). Indeed, finding a stable job remains a key predictor of successful resettlement in the community (Roberts, 2003).

The research literature consistently emphasises the need to develop practices that assist in opening up real possibilities for offenders to develop alternative ways of life. This means bringing together expertise and interventions from community based agencies and from within the prison to address key factors associated with offending – housing, employment, income, education, family relationships and addictions. Findings repeatedly draw attention to the importance of offenders having or acquiring some kind of ‘social stake’. This means making throughcare accessible; for example, through the ‘one-stop-shop’ model as originally developed in Edinburgh Prison (see Tombs, 2004). Integrating the work of prison staff and community based workers coming into the prison is crucial to opening up opportunities for change and to establishing and maintaining the connections necessary for transitional and ongoing support in the community.

Prisoners are most concerned about housing crises, health problems, the lack of jobs and skills, family and legal issues. Throughcare is therefore most likely to be effective in leading to rehabilitation and resettlement when it both builds capacities and increases opportunities. This means striking a balance between addressing offending behaviour through programmes and providing tangible help with family problems, basic literacy and social skills, work, housing and daily survival.

Approaches to rehabilitative efforts in prison must recognise the severity of the problems amongst the populations generally receiving throughcare services. Addressing factors associated with offending and assisting ex-prisoners to change their lives and desist from further offending is likely to involve several
experiences of throughcare processes. In such circumstances positive outcomes might mean that an ex-prisoner’s time in the community between prison sentences increases, that the rate of re-offending decreases and/or that progress is made in changing some areas of their lives previously associated with offending. Change should be viewed as an ongoing process of building alternative ways of living rather than an immediate or one-off dramatic shift in lifestyles (Tombs, 2004).

The Edinburgh Prison Throughcare Centre research identified positive short-term outcomes in relation to return to custody. The short-term follow up found that 86% of the sample had not returned to prison within six months. Put another way, the return to custody rate was 14%. A follow up exercise of the Apex clients in the Throughcare Centre who were liberated, based on Apex records and SPIN, found that 88% of clients who attended multiple Apex sessions (defined as three or more appointments plus an awareness session) did not return to custody within six months of release. In other words, the return to custody rate was 12%. While these results compare favourably with the SPS average across Scottish prisons of 22% within six months of release (SPS, 2002), this comparison is not direct and should therefore be treated with some caution.

Reconviction or return to custody is, however, only one kind of measure of impact. The research evidence is conclusive in showing that the effectiveness of throughcare cannot be judged in terms of crude measures of reconviction or return to custody. A more refined approach to effectiveness is required; an approach focused on ‘harm reduction’, one that is capable of discerning ‘improvement’ in those facets of people’s lives most closely associated with law breaking behaviours. In short, aiming for realistic throughcare outcomes requires an acknowledgement of the ongoing and frequently long-term nature of the change process. Some offenders may require access to support on several occasions, depending on the complexity of their needs, their history of offending behaviour, the availability and quality of throughcare services in the community and the development of an integrated approach to all stages in the throughcare process – from the point of sentence, through prison, on transition from the prison back into the community, and ongoing support in the community.

The Consortium hopes that these comments will be useful to Justice Committee’s inquiry.

Professor Jacqueline Tombs
Honorary Director
Scottish Consortium on Crime and Criminal Justice
5 May 2004

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1 It was not possible to identify outcomes in relation to alleged further offending or reconviction due to the absence of an information tracking system. For the same reason, longer-term outcomes could not be assessed.

2 The return to custody rate used in the SPS Bulletin is for releases in 1999, not for those released during the fieldwork period (2001). There are also issues regarding the release and inclusion criteria of the Throughcare Centre case study of prisoners. Given the different release years and the potentially different inclusion criteria, the comparisons drawn should be treated with caution.
References


The Scottish Consortium on Crime and Criminal Justice

From the Hon Director, Professor Jacqueline Tombs, 20 St Bernard's Row, Edinburgh EH4 1HW

Response to Scottish Executive Justice Department Consultation: 're:duce, re:habilitate, re:form'

Introduction

This note by the Scottish Consortium on Crime & Criminal Justice (The Consortium) may be helpful in preparing your response to the Scottish Executive Justice Department Consultation: 're:duce, re:habilitate, re:form'. The Consortium, which aims to reduce the incidence and alleviate the impact of crime in society by whatever morally acceptable means can be shown to be most effective, includes the leading voluntary organisations concerned with crime and criminal justice – the Howard League for Penal Reform in Scotland, APEX, NCH, SACRO and the Scottish Human Rights Centre. Associate members include a wide range of other organisations and academics.

The Consortium very much welcomes the consultation and wishes to encourage organisations and individuals to put forward their views to the Executive. Our member organisations will be responding to the detailed questions in the consultation document. This note focuses on questions at the heart of the debate about constructive approaches to reducing re-offending and the rehabilitation of offenders in terms of their reintegration into the community. Most importantly, it stresses that the answers to reducing re-offending and promoting rehabilitation do not lie primarily with the criminal justice system. The key to making significant reductions in the level and impact of crime lies in changing the way in which known and potential offenders relate to their communities, including victims, and to the wider society. These changes require the development and implementation of social and economic policies much wider than criminal and juvenile justice.

At the outset, therefore, there is a need for realism about what sentences – community or custodial – can and cannot be expected to achieve. Many recent policy proposals in Scotland – including many of those in the consultation document – are premised on the erroneous assumption that sentencing systems alone can have a significant impact on reducing re-offending. They cannot. In addition, there is no evidence that changing organisational structures will directly affect either levels of punishment or levels of crime. Other modes of social control and welfare provision in the community are what work to reduce criminality.

Prevention

The evidence shows that most adult offenders start committing offences as young people so that ‘true prevention’ should start early to be of greatest benefit. Early prevention
involves not only identifying young children at risk as soon as possible – before offending becomes established – but also changing organisational, institutional, structural and cultural arrangements which may adversely affect the socialisation of young people and increase their risk of becoming offenders. Of the range of preventive early intervention strategies, those which provide high quality pre-school education for the children of disadvantaged parents, intensive home visiting by health professionals during pregnancy and infancy, and education in parenting, have been shown to be the most effective.

For those who do become offenders, juvenile and criminal justice interventions can play an important part in reducing levels of crime, but only if they are implemented as part of a broader integrated social policy approach. Thus, for both young and adult offenders, crime reduction has repeatedly been shown to be more effective if the focus of specific strategies is on life experiences and circumstances that lie at the root of offending behaviour. Justice interventions aimed at reducing re-offending must, therefore, address these experiences and change these circumstances. These interventions necessarily involve the wider community and should, wherever possible, be located in the community.

Community Based Sentences

The Consortium fully supports the Executive’s goal that prison ‘be viewed by Scottish society as the ultimate sanction for the punishment of the most serious offenders and for those who present an unacceptable risk to society’.

In place of imprisonment, most offenders should be dealt with by community based sentences which can command public support and understanding. Such sentences should be oriented primarily towards rehabilitation, in their aims and in their administration. Rehabilitation not only offers the most humanely effective means of reducing re-offending but also enables those who have offended to move permanently into productive and worthwhile citizenship. In pursuing rehabilitative aims, community sentences can also be restorative; and, since they will impose heavy and properly enforced demands on offenders – rehabilitative programmes and requirements are very far from being a soft option – they will also constitute deterrents for the offenders themselves and for others.

However, as already noted, the assumption made in the consultation document that the goal of ‘reducing offending’ can and should be achieved by criminal justice interventions alone is mistaken. The most effective community (and indeed prison) sentences are those which are tied to other, broader, interventions in the offender’s life.

This means that while it is important that the offence or pattern of offending leading to conviction and sentence be directly addressed by any sentence or order, it is also important that literacy, employment, health, addiction, accommodation, social and intimate relationships and other problem areas in the offender’s life are addressed at the same time. For all but a minority of offenders to move away from offending the stepping stones need to be put in place so that they are not left in the same poor social and economic circumstances that provided the context and motivation for offending. It is
essential that sentences are integrated with other services that aim both to build offenders’ capabilities and provide realistic opportunities for moving away from lawbreaking lifestyles.

These broader services are not, and should not be, specific to offenders. This is partly for reasons of equity: offending should not become the main or only route for those in disadvantaged life circumstances to access housing, health or employment and training services. It is also because, just as prison ‘isolates offenders from the community and their family responsibilities and surrounds an offender with other criminals’ (page 4) so too do services which are specific to offenders. It is important to continually emphasise the offender’s relationship to the wider community and to promote and strengthen a ‘non-offending’ identity to allow an individual to escape from criminal associates and ways of life. Community sentences for offenders should incorporate the support necessary to access services that will provide routes out of offending. Provision for offenders must therefore be managed as part of the general planning and provision of services within the wider community.

Community Provision

Such community based provision for offenders would be best ensured within the overall community planning structure for an area. Community Plans bring together the planning and provision for health, community care, community safety, antisocial behaviour and children’s services within one overarching plan for all services in any one ‘community plan’ area. As well as the local councils, local enterprise companies, health boards and trusts, and police, all contribute to and sign up for the relevant aspects of the local community plan.

It is within this context that the Consortium believes discussion about whether or not to opt for a single agency combining prison and community criminal justice services, and other options such as a national community justice service, should take place. Indeed, the weight of the evidence indicates that it would be more appropriate to consider the feasibility of developing community prisons as part of community provision rather than to centralise the existing locally based community justice services with an already centralised prison system. Given that the vast majority of prisoners return to the communities from which they came in the first place, and that those offenders serving sentences in the community generally continue to live in their communities, these communities should have the ability to plan and make choices about priorities. What requires to be considered here is what kind of centralised administration is absolutely necessary to protect the public from the most dangerous and serious offenders.

Integration Not Centralisation

The ‘single agency’ proposal, in further divorcing criminal justice interventions from the communities in which crimes are committed, has a range of potential drawbacks. Two, in particular, stand out.
First, the danger that ‘the tail would wag the dog’. The experience from England and Wales is that the prison service, which should be the resource of last choice if we are to reach the goal of reserving prison for the dangerous and serious offender, becomes the dominant partner within the agency.

Second, when services are joined together, there is inevitably a negative effect on their connection to one or more services from which they are then organisationally severed. Therefore, even if the community aspect of a single agency were to be the dominant mode of delivery, separation from the network of community based support services that in practice are society’s first line of defence against crime would be an immense handicap.

These twin dangers, of the dominance of the prison service and loss of connection to wider community plans and services, seriously undermine any centralised ‘single agency’ approach.

On the other hand, the evidence from council and health planning and provision for community care is that effective ‘joining up’ of services can be achieved through bilateral agreement on joint aims and pooled budgeting, and is best measured by shared desired outcomes rather than through major organisational restructuring. This implies that the key task in relation to reducing re-offending is not organisational restructuring but setting explicit goals for all agencies to reach in relation to crime reduction and the rehabilitation of offenders and taking the action to ensure that these goals are achieved, especially within high crime communities.

Reducing Re-Offending

There is a growing body of evidence from various interventions in Scotland that properly resourced, community based disposals are more effective in reducing re-offending than imprisonment. The recent NCH ‘Where’s Kilbrandon Now?’ Inquiry, in particular, drew attention to programmes whose results are consistently better than imprisonment or secure care in reducing re-offending by young people. Among them are Barnardo’s Freagarrach project, the NCH/APEX Glasgow Partnership and NCH Greenock Intensive Probation Service (see www.nch.org.uk/kilbrandonnow). There are many others. What they all share in common is bringing together community services in local areas to address crime problems. The Consortium believes that it is these positive results that require to be built upon in promoting justice in the community for the community.

NOTE

Further information and references to the evidence on which this note is based can be found in the Consortium’s reports, Rethinking Criminal Justice in Scotland (Edinburgh, SCCC&CI, 2000) and Making Sense of Drugs and Crime (Edinburgh, SCCC&CI, 2002), both of which are available on the Consortium’s website www.scccj.org.uk.
Justice 1 Committee

The Rehabilitation of Prisoners Inquiry

Submission by APEX Scotland

Thank you for giving Apex Scotland the opportunity to contribute to the Justice 1 Committee's Inquiry into Rehabilitation Programmes in Prison.

Rather than attempt to respond to each individual question posed, our response is a more general one.

Firstly, we recognise and support the efforts of the Scottish Prison Service towards the goal of protecting the public and contributing towards reducing re-offending by providing a range of rehabilitative programmes and opportunities. Such efforts are undoubtedly hampered by problems of overcrowding and the volume of offenders sentenced to short sentences of 6 months or less.

In these circumstances, offenders will not benefit from any programmes to address their behaviour and are likely to see out their short sentence with others who will reinforce rather than challenge anti-social attitudes and behaviour. Their social and personal circumstances are also likely to be much worse following release.

SPS measurements of effectiveness and efficiency are in terms of inputs or outputs, i.e. the number of programmes and approved activities completed and the number of prisoner learning hours, in relation to education. There is, however, no way of knowing the outcome of these interventions, in terms of reducing re-offending, until an individual has been released from prison to the community.

The voluntary sector, in particular, has a key role to play in carrying on the work started with an individual in prison in the community and providing feedback to SPS on outcomes and progress achieved.

Whilst a lot is known about the kinds of approaches that are likely to be effective in addressing offending behaviour and what effective programmes should look like, much less is known about why certain things work with certain people or do not, as the case may be.

We would offer a word of caution about psychologically-based cognitive skills programmes: Home Office research published in July 2003 found that these programmes, piloted by the prison service and the probation service in England and Wales, at an annual cost of £73 million to the latter, failed to make any difference to the reconviction rates for those who completed the programmes and those who failed to complete. This led the then Commissioner for Correctional Services, Martin Narey, to suggest that more emphasis on literacy and numeracy work with offenders and helping them to find employment could be the key to preventing a return to crime.
The important point is that any intervention has to be properly targeted and is unlikely to result in a one-off dramatic change in an offender's lifestyle. Change is more likely to be an ongoing process of helping them build alternative ways of living and for many, this will also depend on being able to resolve problems of substance misuse.

Any measurement of effectiveness has to take account of whether their time in the community between prison sentences increases, whether the nature and seriousness of their offending decreases and whether they feel they have made progress in changing some areas of their lives that are associated with offending.

People will stop offending when they acquire something of value that gives them a reason to re-evaluate their lives and resolve their difficulties and most commonly, this is the ability to get and hold down a job.

In conclusion therefore, Apex believes that a range of interventions is needed to address offending behaviour, address employability needs and equip those in prison with independent living skills and that any work started in prison needs to be continued and developed in the community after release.

I attach a copy of two Apex papers which may be of interest to the Committee: one is a proposal for a strategic approach to our work in prisons which also sets out the background to Apex involvement and our current work in prisons; the other is an article that will be shortly be published in the Edinburgh Evening News that provides information about our learning support work in HMYOI Polmont and the benefits received by one young man in particular.

I hope these and the foregoing are helpful. Should you or the Committee require any further information, please do not hesitate to get in touch.

Bernadette Monaghan
Director
APEX Scotland
22 April 2004
Learning plays a key role in promoting positive healthy lifestyles. The Scottish Adult Learning Partnership recognises that “Some young people are failed by traditional education, and becoming involved in community based opportunities offers them the chance to reshape their lives, the lives of others, find new interests, or fulfil their dreams and aspirations”.

The Young Adult Learners’ Awards honour the achievements of young people aged 16 to 26 who currently or have recently taken part in education or community based learning activities. A recent winner is Stuart, who worked with the Apex Learning Support Worker in Polmont Young Offenders Institution since the beginning of his sentence in April 2003, with a view to improving his literacy and numeracy skills and broadening his future employability options and prospects.

The experience of being imprisoned had a huge impact on Stuart and consequently, he immediately began to take stock of his previous actions and experiences that resulted in his first prison sentence. He resolved to move forward in his life with a positive and more responsible approach and so voluntarily accessed the Apex Scotland Learning Support Programme.

Stuart attained a good level of basic education from his primary school and also in his first and second year of secondary school. At this stage, however, his interest began to wane and he eventually left secondary school during his third year without having completed his exams.

Stuart was not lacking in ability and motivation, but his self-confidence was at a very low ebb. However, he applied himself totally to raising his academic standards in literacy and numeracy and attaining Highers English.

As a result, his self confidence increased immensely and he matured in his outlook and focus for the future.

In his Testimonial for the Award, he wrote:

“I went back to education / learning around April 2003. I went back because I got my first and last prison sentence in March 2003. It was like the whole world came tumbling down around me and I knew I was not ever wanting to come back. So the only way forward for me, both in here and for my release date was to get an education. I have been a waste of space most of my life so I wanted to further my education to make a difference to my life”.

“I could not even begin to say what I’ve learned in these last 10 /11 months. My writing is actually very readable compared to what it used to be. I’m actually doing that well with my writing, spelling and natural English, I’m ready to sit my highers”.

“Since I’ve been in prison working with Maggie from Apex, she has been helping me and other prisoners one hundred and ten per cent. She has helped me reach what I’m capable of doing and I’m very grateful. Since doing my maths and English, I’ve gained a great deal of confidence. I can even read
properly now and I’ve gained qualifications due to the help I’ve been getting. I am a pool life-guard, community sports leader and first aider. I’ve recently done a Youth at Risk course, Food handling and Food Preparation and I passed them all”.

“Because of this, I feel I’ve grown up a lot, I’m definitely a lot closer with family and friends and I also feel that I have a life and a future to look forward to, thanks to all the help I’ve received. All of this has changed my outlook on life because I’ve realised that anything is possible if you put your mind to it and commit yourself. Things don’t get change or get any better just by thinking about them”.

“I believe that if anybody puts their mind to a goal or a task, they’re more than capable of succeeding. If I can do it, anyone can do it. So I would recommend going back to learning to anyone who requires it. The whole experience has given me opportunities I’ve dream’t about. My goal is to achieve a profession at the highest level”.

“I still haven’t decided what I want to do in six months when I get released but I’m willing to explore every avenue that’s available to me. I know my criminal record will be with me for the rest of my life, but it’s not an excuse not to make a change in my life for me and my family. I’ve wasted too much of my life looking behind me. It’s time to look to the future”.

It is estimated, conservatively, that 25 per cent of those in our prisons have below functional levels of literacy and 33 per cent have problems with basic numeracy. In addition, typical Apex clients are likely to have experience of school exclusion and truanting, no qualifications, substance misuse, lack of accommodation and periods of homelessness, lack of family or other support and extremely low self-confidence.

The Apex Learning Support Worker based in HMYOI Polmont worked with 149 young men like Stuart between January 2003 and 22nd April 2004, of whom 130 completed their work with her in that period. To date, 35 of them have taken up local literacy support programmes on release, 11 went into a job that they have managed to sustain, 17 went on to other Apex community based initiatives and 4 enrolled on job-training college based courses. Most of the remainder were transferred to adult prisons.

What is most encouraging is that only 3 of them have since returned to Polmont, not because they have re-offended after release, but because of outstanding charges. All have again engaged with Apex.

Young men like Stuart will only stop offending if they have a reason to re-evaluate their lives and resolve their difficulties. Most often, this is because they are given the help they need to realise their potential for employment and the skills to get and hold down a job.
Employment is the single biggest factor in reducing re-offending, not only because it takes away the need to offend, but because it provides a structure to the person’s daily life and reduces their opportunities to offend.

Most importantly, it gives young people like Stuart a sense of purpose and self-worth that has previously been missing from their lives.
Apex Scotland Proposal for Services to Scottish Prisons

Introduction

Apex Scotland is a national voluntary organisation that aims to work with (ex) offenders and young people at risk to address their employability needs and move them on to a positive outcome.

Since 1987, it has worked with a range of partners and employers to improve the employment opportunities for those with a criminal record. In doing so, it is a unique catalyst for positive change by acting as the bridge between crime and the criminal justice field and employment.

By helping offenders and young people at risk to realise their potential for employment, we reduce crime, because the individual who finds and sustains a job is three times less likely to re-offend than if they are unemployed.

The considerable difficulties that Apex clients face in finding work should not be underestimated: On average, they will be aged 19, offending since the age of 14 with around 12 previous convictions. They are also likely to have a history of school exclusion and truanting, no educational or vocational qualifications and poor literacy and numeracy skills. Other issues likely to feature in their lives include substance misuse, lack of suitable accommodation and periods of homelessness, lack of family or other support and low self-confidence and expectations.

Apex is an active member of both the European Offender Employment Forum and the Scottish Offender Employment Forum.

It provides services that are tailored to individual need from 22 locations across Scotland, both in prisons and in the community. The range of services includes:

Employment and Guidance in partnership with 13 local authorities to those on Probation or Community Service orders;

Supervised Attendance Orders as an alternative to custody for fine default on behalf of 8 local authorities;

Prison Throughcare services;

Employment programmes on behalf of Jobcentre Plus, such as New Deal, Progress2Work and Progress2Work-linkup;

Services under the Scottish Enterprise New Futures Fund to help disadvantaged 16 to 35 year olds access mainstream training, education or employment;
Services to Local Enterprise Companies, including Get Ready for Work which offers vocational training and work experience for 16 to 18 year olds and Training for Work, aimed at the long term unemployed over 25.

Apex core services are designed to meet the key employability skills and competencies identified by Scottish Enterprise in their Skill Trends and Labour Market report. These include work on calculating convictions that require to be disclosed under the Rehabilitation of Offenders Act 1974, writing Disclosure Letters for employers, preparing CV’s, arranging mock interviews, Job Search activities and pre- and vocational training.
It also provides Learning Support and assistance with Basic Skills – reading, writing and numeracy – because it is conservatively estimated that 25% of those in prison in Scotland have below functional levels of literacy and 33% have problems with numeracy.

In addition, by addressing wider needs and skills – confidence building and assertiveness, attitudes and motivation, adaptability, trainability and reliability – it aims to equip clients with the skills necessary, not only to get a job, but to sustain it in the longer term.

Between April 2002 and the end of March 2003, a total of 6591 referrals were received across all services – an increase on the previous year’s figure of 4034. Of these, 4204 clients started on Apex programmes and 2280 completed with 832 achieving positive outcomes within this period. (These figures provide a snapshot in time as the organisation was still working with those clients who had not yet completed in this period).

Apex recognises 6 positive outcomes: full-time employment, part-time employment, further education, further training, voluntary work and an Intermediate Labour Market (ILM) placement.

Statistics for the first quarter of the current financial year (April 2003 to end September 2003) highlight that 2866 referrals were received, from which 1967 clients started on programmes and 1134 completed. Of the completers, 464 achieved the following positive outcomes:

- Full-time employment 193
- Part-time employment 11
- Further training 113
- Further education 113
- Voluntary work 27
- ILM placement 7

**Background**

Apex services within Scottish prisons developed over the years in a piecemeal and fragmented way. The level of funding received from SPS often did not allow it to employ extra staff specifically to carry out this work, with the result that these services were largely provided from within existing resources.

The result of this was to increase staff workloads and generate additional pressure for them. It also prevented the organisation from developing and delivering a level of service that it believed would be of greater benefit to SPS and ultimately to prisoners returning to the community.

Consequently, a review of Apex services in Scottish prisons was carried out between October 2002 and February 2003. The Director met with the Governors and relevant staff of all prisons in which services were provided in
order to discuss how Apex could more effectively meet the needs of individual establishments and clients. It was decided that this would best be achieved through a strategic approach, coupled with adequate resources to allow Apex to have a permanent member of staff in every prison from which offenders were released back into the community.

Historically, service provision was as follows:

**HMP Aberdeen** Sessions with individual prisoners delivered every Tuesday by an Employment Development Adviser (EDA) from the Aberdeen Unit. The sessions were designed to raise awareness about Apex and to offer an employability assessment, skills identification, CV preparation and assistance with completing application forms and interpreting job adverts.

Funding received: £150 per day

Referrals declined due to staff shortages within HMP Aberdeen, sometimes resulting in a lack of officers to escort clients from the halls to meet with the Apex EDA. Apex was involved in discussions to set up a Throughcare centre continue and provided prison officers with materials for prisoner induction packs as well as awareness training for staff.

**HMP Castle Huntly** A proposal to provide a joint service here and in HMP Noranside was submitted in early summer 2002 but no progress made.

**HMP Noranside** Apex provided a service twice monthly covering an employability assessment, Disclosure and the Rehabilitation of Offenders Act. This was delivered by Alan Young, then Team Leader with the Throughcare Centre in HMP Edinburgh, whose remit also included developing outreach services to other establishments. However, as a condition of securing SPS funding to continue the Throughcare Centre (when the original lottery grant expired) and negotiating a Service Level Agreement, Alan was no longer permitted to deliver outreach services. This service was therefore withdrawn in November 2002 due to lack of resources.

**HMP Glenochil** Three day courses delivered on a monthly basis. Day 1 covered the Rehabilitation of Offenders Act 1974, The Police Act 1997, and Disclosure. Day 2 covers Application Forms, Job Vacancies, CV, Speculative letters and
Self Assessment. Day 3 was a mock interview. Each participant received a Portfolio of work on completion.

Initial Pilot: £330 True Cost: £700

**HMP Inverness**

Groupwork provided on two afternoons, every third week of the month by an EDA from the Inverness unit. This included Disclosure, the Rehabilitation of offenders Act, Skills and Strengths, CV preparation, completing application forms and interview techniques.

Funding received: £45 per session

**HMP Perth**

A staff member from the Fife unit provided a service for 21 days per year. This comprised two groupwork sessions, one for short term prisoners and one for long term prisoners, each delivered over one and a half days every 7 weeks. The service included work on the value of employment, the Rehabilitation of Offenders Act, Disclosure, personal profiling and skills and strengths.

Funding: £100 per day / £300 per 3 day input

**HMP Cornton Vale**

A 3 day pre-release programme was delivered quarterly by an EDA from the Forth Valley Unit. Day 1 covered the Rehabilitation of Offenders Act 1974, The Police Act 1997, and Disclosure. Day 2 covered Application Forms, Job Vacancies, CV, Speculative letters and Self Assessment. Day 3 was a mock interview. Each participant received a Portfolio of work on completion.

Funding received: £330

**HMP Peterhead**

This 4 day course delivered SQA Job Seeking Skills Level 1, the content covered The Rehabilitation of Offenders Act 1974, The Exemptions Act 1975, The Police Act 1997 and Disclosure, Application Forms, C.V.s, Mock Interviews, Job Search Techniques.

Funding: £450 per course, which incurred significant cost to Apex Scotland
In addition, full-time members of staff delivered services within HMP Edinburgh, HMP Greenock and HMYOI Polmont. The service in HMP Edinburgh came to an end in June 2003. Services continue to operate in Greenock and Polmont.

Apex Scotland set up the Throughcare Centre, or “Chance for Change” Initiative as it was originally known in HMP Edinburgh in 1998, with the assistance of funding from the National Lottery. The Centre aimed to increase employment prospects for convicted prisoners and advocate for the retention of employment for those on remand. By addressing employability needs and providing a link with the outside community, the Centre aimed to make a positive impact on men’s lives: an impact that would, in the longer term reduce their likelihood of re-offending. It developed into a comprehensive one-stop shop that fundamentally altered the culture of SPS and continues to impact on all aspects of its service delivery.

Apex services in the Throughcare Centre were delivered by 4 full time members of staff and included employability assessments, work on the rehabilitation of Offenders Act 1974, Disclosure Letters, job Seeking Skills, Assertiveness, Communication and Learning Support.

Between 1 April 2002 and 31 March 2003, this service received 481 referrals and worked with 367 clients, 235 of whom finished programmes within this period. Given the difficulties of tracking this client group after release, we know that 75 have so far achieved the following positive outcomes:

- Full-time employment: 19
- Further training: 18
- Further education: 35
- Voluntary Work: 3

In addition, the Learning Support Service in HMP Edinburgh received 83 referrals last year and worked with 82 clients. Of the 73 who completed programmes within this period, 42 achieved the following positive outcomes:

- Full-time employment: 17
- Part-time employment: 1
- Further training: 10
- Further education: 12
- Voluntary Work: 1
- ILM placement: 1

Of the 28 men interviewed for the evaluation of the Throughcare Centre, 17 had accessed Apex services and only 2 did not express very positive views about them, one of whom was frustrated because he had not yet worked with
Apex. Four of the men, for example, could not read or write before coming to Apex for one-to-one learning support. All made progress in reading, writing and spelling and their self-esteem improved as a result. Two of them moved on to a Jobseeking Skills Level 1 SQA course. Another 4 completed Jobseeking Skills courses and were very positive about the support received.

The study collected information on Apex clients who were liberated between 1 April 2001 and 2 February 2002. Excluding remand prisoners and those with outstanding convictions, the sample consisted of 51 clients with an average liberation date of 2 September 2001. Six of the sample returned to custody within 6 months (one on remand), whilst a further 6 returned to custody more than 6 months after liberation (one on remand). Therefore, 12% of Apex clients returned to custody within 6 months or 88% of clients did not. This compares favourably with the SPS average of 22% for adult prisoners returning to custody within 6 months.

Apex acknowledges that this is a crude measure of the effectiveness of the centre and we recognise that any measure of success needs to take account of whether a prisoners time in the community between sentences increases, whether the nature and seriousness of offending decreases and whether the clients themselves believe they have made progress in changing some areas of their lives that are associated with offending.

**Current Service Provision in Scottish Prisons**

*HMP Kilmarnock*

With the support of Ayrshire and Arran ADAT and HMP Kilmarnock, Apex successfully secured a “Better Off” grant from the New Opportunities Fund to set up a Throughcare Centre in HMP Kilmarnock. This was formally launched by the Minister for Justice on 15 December 2003.
The service aims to provide an holistic assessment of needs, starting on induction and continuing into the transition from prison to community. It is anticipated that, by developing more effective links with community based agencies for clients, the Centre will contribute to a reduction in re-offending and drug related deaths in the community.

**HMP Greenock**

Apex secured Community Fund monies in June 2003 to continue its employability service in HMP Greenock for a further 3 years. As well as addressing individual needs before release, this service involves signposting clients to other community-based services on release.

Between April 2002 and the end of March 2003, this service received 327 referrals, worked with 200 clients and completed work with 80 of them within that period. It is known that 4 of them achieved positive outcomes after release.

**HMYOI Polmont**

Two full-time members of staff and a Learning Support Worker provide an Employability and a Learning Support Service in HMYOI Polmont. The Employability Service received 607 referrals last year and worked with 288 young people, of whom 211 completed courses and 100 achieved positive outcomes;

- Full-time employment 37
- Part-time employment 3
- Further training 27
- Further education 33

The Learning Support Worker worked with 37 young people to improve their reading, writing and spelling, 19 of whom completed the work and 12 of whom achieved the following positive outcomes:

- Full-time employment 1
- Part-time employment 1
- Further training 7
- Further education 3

The first accredited programme between SPS and an external agency is the Apex Career Preparation Programme and the first course took place in the Links Centre in HMYOI Polmont in August 2003 with involvement from Careers Scotland and Jobcentre Plus.

The 5 young men who completed this course benefited from improved communication and presentation skills, understanding of the relevance of their
offences to their employment choices, the ability to handle disclosing their criminal record to an employer and an increase in their self-confidence.

**HMP Barlinnie**

The training and development initiative underway in HMP Barlinnie aims to enable prisoners to access employment in the construction and building sector on release. This initiative is being assisted by Laing O’Rourke Scotland in partnership with statutory and voluntary agencies. Apex secured funding from Scottish Enterprise to play a key role in preparing prisoners to take up this work and supporting them after release.

**Related Initiatives**

As a partner in the SPS / Cranstoun Transitional Care Initiative, Apex has community based Transitional Care Workers in Edinburgh and Fife, dealing with referrals from HMP Edinburgh and Perth. Transitional Care is a time limited signposting service that aims to link clients to relevant community agencies in the 12 weeks after release.

Transitional Care in Lothian received 314 referrals last year and worked with 157 clients and the service in Fife received 94 referrals and worked with 72 clients.

**The Proposal**

The proposal offers a full-time, dedicated Apex Keyworker in every Scottish prison in which there is a Link Centre to work in partnership with Jobcentre Plus and SPS to provide a comprehensive employability and aftercare service.

Link Centres, essentially throughcare centres, are currently up and running in 6 establishments – Polmont, Barlinnie, Cornton Vale, Glenochil, Aberdeen and Inverness – and are planned for a further 5: - Dumfries, Greenock, Low Moss, Shotts and Castle Huntly.

The proposal was initially discussed with the Director of Rehabilitation and Care, SPS, on 9 October 2003 who agreed to convene a meeting between SPS, Apex Scotland, Jobcentre Plus and Careers Scotland to discuss and clarify the role of Jobcentre Plus in the Link Centres and identify gaps in service which might effectively be filled by Apex Scotland. This meeting took place on 7 January 2004.

Meetings also took place with the Chief Executive of SPS and Head of Inclusion (7 November 2003), representatives from Jobcentre Plus (17 November 2003) and the Minister for Justice, Cathy Jamieson MSP (10 December 2003), all of whom endorsed the proposal and the need for the service offered. Discussions with the Governors of individual establishments are ongoing.
Background to the Proposal

The introduction of Employment and Benefit Surgeries in all Scottish prisons is designed to ensure that the employment and benefit needs of prisoners aged 18 and over are addressed at the start and the end of their period in custody. As Employment and Benefits issues are reserved matters, a UK wide approach to this development has been agreed with both HMPS and SPS in partnership with the Department for Work and Pensions through Jobcentre Plus.

The surgeries are offered at both the induction and pre-release phases and take-up is voluntary. The level of support offered by District Managers may vary but the minimum that should be provided is as follows:

Interview during the induction period to discuss final benefit payments, benefit for dependants and possible return to a previous employer;

Interview prior to release to provide assistance with completion of benefit claim forms, explain the Freshstart process and refer to employment, training or another programme such as Progress2Work, Action Team or New Deal.

Some districts may also be able to offer further support, for example, group discussions with prisoners nearing release on employment / jobsearch issues or assisting prisons to hold jobsfairs and other open days. It is clear, however, that Jobcentre Plus will not be providing specific employability /employment related courses in prisons or throughcare support.

Jobcentre plus has committed the equivalent of around 15 full time staff to work in Scottish prisons. Taking back-up into account, the true staff commitment will be around 40 ft equivalents. The resource devoted to each establishment equates to the following:

Peterhead  benefit / jobsearch seminars delivered quarterly
Aberdeen  1 member of staff, 2 full days per week
Shotts  2 staff, 2 mornings per week
Perth  1 full time member of staff
Castle Huntly 1 member of staff, 1 day per week
Noranside  provision as and when, but currently irregular
Dumfries  1 full time member of staff
Kilmarnock  2 full time members of staff
Porterfield  1 member of staff, 5 mornings per week
Greenock 1.2 members of staff full time plus further support when required
Cornton Vale 1 member of staff, virtually full time
Low Moss  1 member of staff 5 mornings per week
Polmont  1 member of staff, 2 days per week
Glenochil-infrequent
Barlinnie  4 full time members of staff
Edinburgh  1 full time member of staff and 1 member of staff 3.5 days per week.
Jobcentre Plus has requested training from Apex Scotland for these Employment and Benefit Surgery staff to help them gain a better understanding of the human issues faced by prisoners. This will take the form of 4 one day events around Scotland during February and March 2004, with 10 attendees at each.

The training programme consists of 4 constituent parts:

The first part will explore issues common to most individuals who come into contact with the criminal justice system and ultimately end up in prison, as well as the impact on families. This is followed by consideration of their life in prison and will include types of prisoners, the culture of the prison and relationships within the prison setting. It will also focus on assisting EBS staff to engage with individual prisoners.

The next session will consider support available within the prison, including the role of Personal Officers and Family Contact Development Officers, the Links Centre and any programmes. This will be followed by consideration of the time immediately prior to liberation, taking into account release arrangements, “gate fever”, recalls and general expectations.

Finally, the training will explore life immediately after release and will consider the support available on release, or not, as the case may be, from family and friends and from statutory and non-statutory agencies, as well as individual's perceptions of sometimes being passed from pillar to post around different agencies without understanding why.

**Key Elements of the Apex Service**

Apex Scotland welcomes the introduction of Employment and Benefit Surgeries in Scottish Prisons and believes that by working in partnership with SPS and Jobcentre Plus, it can address the employability gaps that will still remain for individual prisoners through a comprehensive menu of services and aftercare support.

Given that it is accepted that access to employment, housing and family support on release are the key factors in preventing re-offending, a central feature of the service would be the development of a tracking and aftercare service to ensure that clients received ongoing assistance in progressing to a positive outcome. The Keyworker would therefore link the client with a keyworker from a local Apex unit at least 6 weeks before release and would be responsible for monitoring progress thereafter at intervals of 2 and 6 weeks and 3, 6, 9 and 12 months. A pool of volunteer mentors would also be recruited to assist with the transition from prison to community.

The service would be monitored through the AIMS database (Apex Information Management System). All local units provide monthly returns for the database that allows Apex to monitor numbers of referrals, starters,
completers and those moving into positive outcomes for all services and for all 21 local units. Service Managers are provided with monthly information with which to monitor the performance against targets of each unit.

In addition, we provide datasets to SCRO who carry out recidivism checks on those clients who move into positive outcomes. This information is currently collected for our prison based services but would be enhanced by a more vigorous tracking system.

**Menu of Services**

The menu is based on the core competencies and basic skills that will help an individual progress into employment, education or training.

The service will use a range of personal development, training and learning techniques and will focus on the development and encouragement of personal responsibility. The design, content and delivery methods used will maximise the flexibility of the service in responding to individual need and to each establishment’s requirements.

Individually tailored, the starting point will be a detailed employability assessment that identifies employability skills, competence gaps and takes account of the individual’s employment and training preferences. This will establish a baseline against which individual progress can be measured. The assessment will take into account the sentence length and the period of custody before release to ensure the intervention is tailored to individual need. Where appropriate the interventions will be certificated by an awarding body.
The following information will form the basis for the assessment of individual need and progression.

**Personal Information:** details include criminal convictions, employment history, prison workshops attended, education and further education.

**Client Needs Assessment:** details employment and training aspirations and any barriers to those aspirations.

**Basic Skills Assessment:** details specific requirements in the Basic Skills of literacy, numeracy and IT and the Core Skills of Communication, Trainability, Team Work, Problem Solving, Adaptability and Reliability.

**Action Plan:** brings together all the information gathered and details the work that will be carried out. It details personal milestones to build motivation and chart progress.

**Progress Review:** completed by the individual so that they may evaluate and chart progress.

**Progress Review Form:** details progress made, records difficulties and charts progress made with the milestones detailed on the Action Plan. Further milestones are recorded.

**Exit Plan:** details information on local Apex units and contact person and other useful addresses prior to release. Records appointment details. Exit meeting will take place involving the Apex keyworker from the local unit, client and prison keyworker.

**Service Content**

The following work which focuses on areas of employability will be available to individuals on a one to one basis or where appropriate in a group setting.

- Specialist Assistance
- The Rehabilitation of Offenders Act 1974
- The Police Act 1997
- Working out spent convictions
- Relevance of offences regarding work
- Methods of Disclosure
- Preparing a letter of disclosure

The information aims to increase awareness of criminal record disclosure that arise from legislation and the responsibility of the individual to meet that requirement. This work is reinforced during work on application forms, interview techniques, job adverts and skill identification.

**Value of Training and Employment** These sessions look at the benefits that make the effort of work worthwhile. They
give information on vacancies, who can help and what type of vacancies are available within local areas. Any barriers are identified and solutions worked out.

**Skills Identification**

These sessions look at the skills and strengths an individual has to offer. It helps them to recognise they have something to offer employers and to maximise the skills and training gained whilst in Prison. It starts the process of information gathering for application forms, CV and Personal Statement.

**Application Forms**

These sessions provide time to look at the language used on application forms and the information required and how to express skills in the most appropriate way. Practice helps to improve neatness and use of language. The sessions also reinforce the information required when asked on application forms about previous convictions.

**Interview Techniques**

These sessions cover the types of questions asked at interviews and discuss appropriate answers. It provides a timetable of events from application form to success or rejection. Whenever possible a mock interview would be provided. The sessions also cover the questions that may arise at the interview regarding the information contained in the letter of disclosure.

**CV Compilation**

The sessions gather information to create an appropriate CV and answers questions regarding gaps due to prison sentences.

**Job Adverts**

These sessions give an awareness of local labour markets and the type of work and range of jobs available in the area. The sessions provide assistance in the interpreting and understanding of job adverts and job descriptions.

Practice helps to match skills and experience with available vacancies. Relevance of convictions play a major part in these sessions to ensure constant awareness on the part of the individual to the risk of re-offending and to be conscious of the views
that an employer may have regarding the risk of re-offending.

**Basic Letter Writing**

These sessions cover the language used in formal letters and prepare a speculative letter, a covering letter and letters of application. Questions regarding whether to disclose criminal convictions on these letters are also discussed.

**Literacy and Numeracy**

These one to one sessions will cover basic literacy and numeracy. Referrals will come from the education unit and the keyworker will work in partnership with them. The sessions will be relevant to the Prisoner’s goals and will be “learner-centred” to enable the Prisoner to use and practice literacy and numeracy in real life contexts. As confidence and skill improves a Prisoner can be referred back to Education.

**Team Work**

These sessions will increase the skills and understanding required to work as part of a team.

**Communication**

These sessions will help give a better understanding of how we communicate and identify situations where communication is difficult. The sessions will examine aspects of public speaking and increase practical communication skills, making verbal communication more effective.

**Behaviours**

This session raises awareness in the main types of behaviour and recognises the reason behind the behaviour types.

**Negotiation**

These sessions will give a clear understanding of what negotiation is and how we use it. They will increase awareness in the tactics used in negotiation situations and an understanding in the art of compromise.

**Get Into Enterprise**

These modules motivate individuals to take responsibility for projects and increase knowledge and understanding of the core and basic skills.

**Labour Market/Placements**

The service will provide a link between the Prisons and Employers by co-ordinating
Employer Placements where appropriate. This will build on the exiting contacts already established by the Prisons. The keyworker will contact Employers, Voluntary Agencies and Training Providers with the aim of placing Prisoners with appropriate training and work experience opportunities taking into account previous convictions, training and skills. Apex Scotland can use the knowledge and expertise of ASERT (Apex Scotland Employers Recruitment Training) to recruit Employers, Voluntary Agencies and Training Providers and to promote the skills, education and training the prisoners have learnt in prison.

Apex will act as a broker between the Prisoner and the placement and will ensure the Prisoners recognises the skills learnt on the placement and how these skills can be transferred to other areas of employment.
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Bernadette Monaghan  
Director  
APEX Scotland  
January 2004
I refer to your letter of 10 March, and now enclose the responses I have received from some of our visiting committees. As they are full and detailed replies to each bullet point in the three central themes, I have decided to submit them to you in unedited form since they describe assessments in four different types of prisons throughout Scotland, namely a female prison, a young offenders institution, the open estate and an adult male prison.

I am conscious that the response from Cornton Vale O21 Visiting Committee, in particular, is not short and concise as you requested, however, it seemed to Association members that the replies to your questions were so cogent that it would have been inappropriate to attempt to condense this response. I trust, therefore, that since these responses come from members of Visiting Committees who are dedicated to their statutory responsibilities and visit their prisons frequently, their replies will be seen to be well-informed and worthy of the Justice 1 Committee’s consideration in their entirety.

Irene Cameron
Secretary
Association of Visiting Committees for Scottish Penal Establishments
29 April 2004
Introduction

Cornton Vale is Scotland’s only dedicated prison for women offenders. Members of the Over 21’s Visiting Committee visit Cornton Vale prison each week. Therefore our views are based on the many hours we have spent talking to prisoners and staff, to visitors and to those delivering services within the prison. Our perspectives are shaped by an understanding of the impact which prison has on the lives of women and their families. We therefore believe that all aspects of the management of Cornton Vale either on site or at SPS headquarters should take account of the particular needs of women and their families.

Much of the policy under which prisons operate is generated at the centre within the SPS. There is therefore a tendency to develop policy based on the criminogenic profile of men and of experiences in male prisons and thereafter to make adjustments (or not) to suit the different profile and needs of women. The PPS- Prisoner Supervision Scheme which designates the category of an offender and thereby determines security arrangements and access to regimes is not sensitive to women offenders. The result is that often women are given a higher category than is necessary. In all prisons, risk and needs assessment are the cornerstones of sentence management and the development of care plans. At present these tools used to measure risk are not sensitive to women.

As in all organisations there is the stated policy on the one hand and the day-to-day practice on the other. The Visiting Committee for Cornton Vale works at the interface between these.

Rehabilitation

There is an assumption that we all know what we mean when we use that term. Central to its management within the prison context is the idea that the prisoner will somehow change as a result of what happens to them in prison. The change, it is assumed will be for the better, both for them and for the communities into which they return.

When prisoners arrive in prison, their identities are embedded in previous experiences. Their sense of self is extremely important. In the main prisoners are judged on the basis of a label usually associated with their crime. Little recognition is given to the fact that they had a pre-institutionalised identity that cannot be discarded.

For prisoners, prison is a total institution. It is a change in their reality, indeed when they are removed from the world of the familiar they are locked between realities and so in order to survive they mentally occupy a different world, one which allows them to retain a sense of their own identity. This often clashes with the idea that prisoners should act like prisoners! The following quote is from a prisoner.
“I spend all my time and energy in practicing being a prisoner. It’s a full time job and I don’t get a day off”

An understanding of the impact imprisonment has on the concept of identity, particularly for women, is crucial to a consideration of the notion of rehabilitation

Policy

Are the aims of rehabilitation clearly articulated to staff?

The SPS talk of the need to integrate a comprehensive value system into the day-to-day running of the prison. At the most basic level is the question of what prison is supposed to do and whether those who run prisons and officers who are at the front line of delivering services have a common understanding and are able to translate the policies into action on the ground.

We consider that there is not a shared understanding among staff. This is not entirely their fault. Many of them signed up for a different job from the one now expected by managers, the SPS and society. The task of the front line prison officer is extremely complicated and they are given relatively little training. New staff receive only 6 weeks training, much of it devoted to Security and Restraint issues.

The complementary nature of security and good order on the one hand and positive relationships between officers and prisoners on the other has not always been made clear. Instead they are sometimes perceived as alternatives. Some officers would argue that you can have good security or positive regimes but not both. Where it exists, this kind of thinking makes it impossible to create the therapeutic environment necessary for rehabilitative approaches to work.

Although the prison service’s stated mission is articulated in terms of Care and Control, it is often the control element that imbues the service with its existing culture. Changing the culture of an organisation is extremely difficult and needs tackled from the top.

Whether the aims of rehabilitation have been clearly articulated to staff is difficult to say. What can be said is that if they have, then a significant number of staff do not agree with them or are not able to change their approach.

Are the aims of rehabilitation clearly articulated to prisoners?

Many prisoners see the completion of programmes as jumping through the hoops in order to get better parole reports. This is exacerbated by the drive to meet quantitative targets and the attitude of front line staff.

In Cornton Vale for almost all of the prisoners, addressing addiction problems is fundamental to any further rehabilitation process. The women understand this, but are not necessarily receptive to it. So the aims of rehabilitation can be as clearly articulated as we like - but we are dealing with women with multiple problems, often far too confused by drug
addiction, worried by childcare problems, or plagued by mental health problems, to cooperate wholeheartedly with rehabilitation programmes.

Those women who accept the fact of their incarceration, and make a conscious decision to use the time as profitably as possible by becoming actively involved in the rehab programmes on offer, are the exceptions that prove the rule. They usually are relatively well supported by family outside regarding child care and other matters - and they are often extremely frustrated by the way that bureaucracy in the prison system hampers their efforts to improve themselves.

For the large number of prisoners facing short-term periods of custody, is rehabilitation a realistic objective?

No. Record prison numbers, leading to overcrowding and huge strains on existing resources, (not to mention the 5% efficiency savings now being demanded by the Executive), make this a wholly unattainable objective.

One has only to witness-

- the problems caused by short-term sentences (re. childcare, tenancies, etc.)
- the administrative burdens on the prison and its Health Centre, Social Work team etc., and
- the effect of poor prisoner staff ratios on all the potentially rehabilitative aspects of prison life

to understand that there is no possibility of extending rehabilitation programmes to short term prisoners without a huge new infusion of resources.

Referral

Our understanding is that referral to any of the core programmes - Lifelines, Anger Management, Cognitive Skills, etc.- are decided by a combination of consideration of the original offence, and observation of the conduct of the prisoner in the prison environment - her interaction with both staff and other prisoners.

This is often a subjective process on the part of staff, and leads to many complaints from women about fairness of treatment in comparison with other prisoners. It will always be a difficult area to deal with. Judgements will always be necessary, and if the rehabilitative process is to succeed, there will have to be high quality staff training in this area.

Rehabilitation does not always have to be in relation to drugs or other substance abuse. They may only be the symptoms.

Induction Process

There have been major efforts to improve the induction process and all convicted prisoners now have access to a 2 week induction programme. This means that there are now opportunities to tell prisoners about the services that are available to them. Women are
certainly given a lot of information over a long enough period of time to allow them to absorb it.

This process has the potential to help offenders see that what happens to them is part of a bigger plan rather than a series of unconnected events or courses.

It might be helpful if front line staff could be present so that they would also know what prisoners had been told.

Following evaluation within Cornton Vale, the process has been shortened by a week from the original three weeks allocated. This was because women were complaining of boredom, and because a fair number of the sessions in the timetable were cancelled due to staff shortages - a recurrent theme in so many attempts, some of them very ambitious, to improve the rehabilitative elements in the prison environment.

**Assessment**

Experience here has been largely negative, being involved so often in trying to sort out situations where the assessment seemed too harsh, depriving the woman of the incentive to progress and co-operate.

However, many women pass smoothly through the process, most successfully when they “keep themselves to themselves” and “keep their heads down”. Whether this is the best preparation for eventual return to the community is worth discussing. It could be argued that it can result in a lowering of confidence and sociability which more than offsets any gains made through the formal rehabilitation process.

**Programmes**

There is a range of core programmes delivered to prisoners - Cognitive Skills, Lifelines, Drug relapse programme and Anger Management.

Staffing levels and the pressures of overcrowding play a big part in this area.

Core programmes are safeguarded against the vagaries of changing population numbers. However, a whole range of other potentially beneficial inputs - such as Education classes, P.E. and Recreation, Art and Drama classes - are regularly disrupted or put on the back burner when staff are not available to move women round the prison, or when staff shortages are so acute that there are lockups to maintain safety standards.

Often the staff are as excited about the programmes as the prisoners and there is nothing more destructive for both parties than cancellation.

A clear pattern has been detected, especially from May through to September, the period of staff holidays, when a whole range of activities are disrupted because of staff shortages. There seems to be a “domino effect” on staff levels at this time: as staff go off on holiday, those left shoulder extra burdens, and officers go off sick with stress-related illnesses, compounding the problems of understaffing.
Unfulfilled expectations, frustrations and disappointments, with regard to everything from family visits, extra lockups and problems with toilet facilities, to educational and recreational opportunities lead to many complaints from women at this time, year on year.

**Styles of Working**

This is open to different interpretations by different officers. Many see the core, SPS produced programmes as “Rehabilitation”, not accepting that the whole environment in the prison should be conducive to rehabilitation, rather than perhaps conflicting with it.

In general, staff who have become involved in specialist areas, closely tied in with the perceived aim of rehabilitation - and who therefore have been given extra training to allow them to fulfil their roles - show more sympathy with this holistic approach. In other words, training is crucial to success in this area.

**What are the respective roles of prisoner officers, agency workers and volunteers?**

The role of prison officers, as defined and limited by the SPS and their own view of the job, is first and foremost Security and Containment. The SPS and many officers would lay claim to a rehabilitative role, but this is always subordinated to the first two functions. This weighting is implicit in the very short initial training for new officers (compared with the two years required for Social Workers for example) and in the emphasis given to Security and Containment in that training.

Agency workers-such as Chaplaincy personnel, Social Workers, Health and Education staff, have the function of providing services that would normally be available outside, although they are now paid by the SPS, and so have lost much of their former independence.

They have also recently become involved in broad “areas of responsibility” defined by management. They are chosen for inclusion in these areas according to their area of expertise. This is a fairly recent development and results to date are unknown.

There is a very significant and mutually beneficial role for the deployment of suitable volunteers in the rehabilitation process. Other than the Visiting Committee, which has statutory powers and obligations, the voluntary organisations visiting the prison do so by permission of the Governor. These include: Alcoholics Anonymous; Cruse (bereavement Counselling), Open Secret (for survivors of sexual abuse) and Artlink (providing art and drama work).

All of these are crucial contributors to the rehabilitative function of the prison, providing prisoners with skilled help and support that staff have neither the training nor the time to offer.

They are in a sense bringing the community outside to the inmates, and that is surely an important element in the preparation for returning to that community.
The large statutory organisations such as APEX and SACRO are not discussed under this heading, as they exist as part of the rehabilitation programme, and are scrutinised and assessed constantly with regard to those roles and functions.

The SPS tend to regard the uptake of the services offered by non statutory voluntary organisations as optional, when in fact they are crucial to the successful transition of prisoners from incarceration to liberty, and resettlement in their communities.

They are of the communities, and they perform a function outwith the capabilities and experience of SPS.

In cases of best practice, is it possible to replicate?

The STOP programme will never be completely successfully replicated in another prison than PETERHEAD, or specialist prison like it. That is because the WHOLE prison population there is made up of like offenders, and run by a staff who have gradually become more and more specialised and expert in their work. Those officers who could not cope with the work transferred to other establishments, and others who were prepared to work with sex offenders took their place.

A section of a general prison could never supply as secure an environment as Peterhead. In addition, the opportunities offered for research into sex offending in a large prison population such as that of Peterhead, cannot be replicated with much smaller groups in local prisons. This must surely have implications for Rehabilitation of sex offenders throughout Scotland.

Providing the work was done in establishing links with relevant organisations in the community, and prisoners were prepared towards release, best practice in the Throughcare Centre at Saughton could be replicated.

Single Agency for custodial and non custodial sentences

Such a body would be a retrograde step, at a time when research into the beneficial effects of Restorative Justice and the use of imaginative, community based sanctions is proving very encouraging.

Custodial sentences would be - or certainly should be - reserved for relatively serious offences.

Non custodial sentences, by contrast, are - or should be - reserved for those who are no threat to the community. Community criminal justice agencies would have the necessary expertise and experience to punish these offenders appropriately, rather than handing the job to an agency whose experience was in relatively high security and containment, in establishments more or less cut off from the community.

Opportunity

Range of Rehabilitative Programmes
In terms of “core programmes” - Cognitive skills, Drug addiction programmes, Anger management, plus others mentioned above, and a range of Christian organisations such as Prison Fellowship, plus local organisations.

**Relationship between agency workers and prison staff.**

They act both through their separate, defined functions and sometimes collaboratively in the broad “areas of responsibility” laid down for them by management.

Communication difficulties between agency workers and prison staff lead to lost opportunities and frustration. The purpose of the Link Centre as a place to bring together all the agencies that work with offenders is appropriate in theory. In practice the logistics of getting the prisoner to the link centre, particularly those whose security rating demands that an officer accompany her, means that there are occasions when the two never meet.

There are also agencies that work in particularly sensitive areas e.g. Open Secret, who provide counselling for adult survivors of childhood sexual abuse. In the main abused adults have difficulty in disclosing and need to feel that they are in safe environment. In the past any prisoner would be able to approach the worker discreetly when she was on the block.

Now that the prisoner has to apply to see the worker and also has to be identified by an officer (who might in fact shout down the corridor that she is required) the numbers of women referring themselves has dropped. Also there is inadequate sound proofing in some of the cubicles in the Link Centre with the result that conversations can be overheard.

**Education**

Education should be able to counteract that sense of negativity and low self-esteem. Education is a way of empowering prisoners, enabling them to regain a sense of identity, a sense of self.

There is a tendency to ignore the great potential for change for the individual learner that can lie locked within education programmes. Learning for learning’s sake seems not to be an option that is welcomed or encouraged rather education has to fit into a ‘treatment’ model. Opportunities to develop and use creative skills are shut down in favour of an approach that places employability at the centre of the curriculum. This is a very narrow approach. In Cornton Vale it has seen the closure of general music classes, cookery classes and pottery classes.

There is also some difficulty in getting prisoners out of blocks or work parties to go to education. Again the front line staff has a role to encourage and assist but this does not always happen. Some officers do not value education and almost resent women who want to do higher education courses.

**Are programmes having an effect in addressing offending during custody?**
This is impossible to say with any certainty and the question demonstrates the thinking that programmes to rehabilitate exist in a vacuum. I am not sure if there has been a qualitative evaluation of the programmes delivered in Cornton Vale or any longitudinal study of the effects they might have post custody. It would also be interesting to study the Anger Management programme as it relates to women. It might be the case that women are expected to be compliant and not to show anger and are therefore assessed as needing this programme in circumstances where men would not.

Very short term prisoners and remanded prisoners, who create such pressure on the staffing and administrative working of the prison, are not involved in such programmes, and it is they who account largely for the high recidivism rate.

The programmes are probably most effective for medium and long term prisoners, who are facing a life changing experience, and have the time to come to terms with this, and consider their options in progressing towards their eventual release. It is not certain whether it is the programmes, or just time itself that changes many of these women during their imprisonment.

Better staffing levels would greatly improve the chances of rehabilitative efforts proving successful.

Post Custody

Addressing offending behaviour is an interesting concept in relation to women prisoners. Given that the majority of crimes are as a result of drug addiction or poverty, and that most women are being released into the same communities and with the same money problems, it is difficult to argue that programmes are going to have any effect post custody.

Stopping custodial sentences for minor offenders, and stopping the inappropriate use of remand, would free up resources for training and staffing, to allow rehabilitation programmes to be carried out perhaps more effectively.

Short Term prisoners

There has to be an end to the imprisonment of women for short periods of time. There is no chance that for them imprisonment will be anything other than a totally negative experience. The best that can be achieved is that they have some information about services within their community.

Conditions

Are vulnerable and difficult groups receiving adequate rehabilitation?

No. There is an overall budget, which is inadequate at present and which is about to be reduced by 5%. This means that resources of all sorts are being stretched to the limit. Every category mentioned is suffering and will suffer in future as a result.

Many specific examples could be given of women with mental health problems, women from ethnic minorities, and women with disabilities suffering insensitive and even harsh
treatment because of the pressure on resources. This can only hinder the rehabilitation prospects of such women.

Given concerns about overcrowding, are an adequate number of programmes being provided to rehabilitate prisoners?

Rehabilitation is not just about programmes. It is about the whole environment in prison. When prisoners feel humiliated and degraded by their treatment in prison - often as a result of budgetary constraints on staffing levels and training - they will not respond well to “Rehabilitative Programmes”, no matter how many or how few.

Do other factors related to conditions such as security measures inhibit rehabilitation?

They can where there is an imbalance, and over-emphasis on Security.

Many situations have been witnessed where women have been deprived of beneficial input - recreation, Education classes, visits, voluntary organisations - because of lack of sufficient staff to provide “Security”. The lack of an open prison for women in Scotland adds to this problem, with many non violent women being subjected to unnecessarily repressive of security.

Is physical space an issue in provision of rehabilitation?

Yes in the case of Cornton Vale, if you accept the premise that the whole prison environment is an important part of Rehabilitation.

There is no Central Dining Area for eating meals - an important socialising activity- and a very inadequate Visits Area. Classes are moved from pillar to post as attempts are made to find spaces for new or different requirements. All these pressures have an adverse effect on both staff and inmates.

Nutritional health and physical fitness

These could, and SHOULD, play a very important role. Unfortunately, both areas are bones of contention as far as Cornton Vale is concerned.

It would be very difficult to provide a healthy diet on a per capita budget of £1.57 per day (soon to be reduced as part of the 5% savings required).

At present, the V.C. at Cornton Vale are carrying out a special monitoring exercise, in response to the huge number of complaints from women about the food. The diet on offer is repetitive, high in fat content and unappealing. The conditions under which food is served are extremely basic with most meals eaten in cell. The language used by some officers who describe it as ‘feeding time’ denies the humanity and dignity which offenders have a right to.
The Visiting Committee is in the process of tasting the food in male prisons. So far it would appear that the food served there is of a higher quality - despite the fact of having the same budget. The reasons for this are being looked into in conjunction with the catering staff.

In terms of physical fitness, access to gym facilities is much less well developed than in male prisons. A deterioration in the facilities available to women who are health conscious has been noted. This again would be attributed to lack of staffing resources as numbers of prisoners have risen inexorably.

If the past few years are anything to go by, we will see women confined to the blocks more and more as the better spring and summer weather comes in. None of this is conducive to a receptive atmosphere for rehabilitative programmes.

**Conclusion**

Women’s prisons are sad places. The prison system maintains women in a state of poverty. They have few personal funds and are restricted in the spending of these. Wages are usually lower than those paid in a male prison and most wages go to buy necessary toiletries, stamps and phone cards to maintain contact with their families. The jobs women do are in catering, cleaning, laundry. 70% of the women will have had some form of mental illness. At present there are women with disabilities in Cornton Vale and the numbers of offenders over 50 has increased.

Currently women may have to use the sinks in their room as toilets when they need access during the night or at times when they are locked up during the day. At least in one block this should be rectified by June when CCTV is installed.

Overcrowding and staff shortages mean restricted regimes and longer time locked up. There is very little in the way of activities in the evenings and at weekends and in an environment where personal resources are in short supply bullying is endemic. The level of scrutiny that offenders are under is immense. They are assessed by a variety of people within the prison, e.g. Cranstoun, outside agencies, medical staff, social workers, residential staff, programmes staff, addiction staff, security staff. There is no guarantee that all these assessments are appropriately co-ordinated.

If staff are expected to treat prisoners decently then they themselves have to be treated decently by management. Many feel devalued and under threat. Like prisoners, staff should feel safe, supported and trusted.

To give the concept of rehabilitation any chance of success there is a view that it would be necessary to create a supportive, therapeutic environment throughout the whole prison. It is less than helpful to learn how to manage feelings of frustration and anger, only to be shouted at by the officer on the block. To see rehabilitation solely in the context of programme delivery is to fail to challenge the underlying bad practice that sees offenders as less than human.

The imprisonment of women requires a radical rethink.
If we are serious about rehabilitation, we require more resources - a solution which has just been proven to work very well in turning round the culture in, for example, the formerly notorious Feltham Young Offenders’ Institution, but to which government seems resistant.

Alternatively, we can substantially reduce the numbers in prison by the use of non custodial sanctions for minor, non violent offenders who represent no danger to the public - while maintaining a decent level of resources to work with our remaining prison population.
Justice 1 Committee

The Rehabilitation of Prisoners Inquiry

Submission by Charles Robertson, Noranside and Castle Huntly

Association of Visiting Committees for Scottish Penal Establishments

i) Policy

The dynamic of imprisonment in Scotland, as advocated by the Scottish Prison Service (SPS), is to integrate a comprehensive value system into the day-to-day running of prisons. Rehabilitation is a key part of this dynamic. Research shows that the feasibility of achieving the goal of rehabilitation is greater where staff are able to meaningfully articulate the importance of rehabilitation.'

• Are the aims of rehabilitation clearly articulated to staff? Yes
  Are the aims of rehabilitation clearly articulated to prisoners? Yes

• For the large number of prisoners facing short-term periods of custody, is rehabilitation a realistic objective? No

• Are staff able to meet qualitative assurance targets within current time-scales? No

• What are the mechanisms in the rehabilitation programmes? For example, how are prisoners referred? What is the induction process? How are prisoners assessed? How are programmes planned? What is the style of working under the remit of rehabilitation? What are the respective roles of prison officers, agency workers and volunteers? Any problems? Rehabilitation at present is a shambles. As far as the open estate is concerned ‘hot bed syndrome’ rules due to overcrowding.

• In cases of best practice, is it possible to replicate? The Committee will consider programmes, such as the STOP programme aimed at sex offenders and the Throughcare Centre at Saughton. No comment

• A single agency may be established to deliver custodial and noncustodial sentences - will this impact on the allocation and administration of rehabilitation programmes? Don’t know but would imagine there can only be an improvement

ii) Opportunity

• What is the range of rehabilitative programmes being offered in Scotland's prisons? Too restrictive and aimed at too wide a range of individuals.

• How do prison officers and inter-agency workers "act" to implement care and rehabilitation? Feel the ‘personal officer’ role has fallen by the wayside.
• Are the programmes having an effect in addressing offending during custody? If not, what should be done differently? Don’t know

• Are the programmes having an effect in reducing re-offending following custody? If not, what should be done differently? Don’t know

iii) Conditions

Linked to last point, are vulnerable and difficult groups of prisoners receiving adequate rehabilitation? Feel in general they are not. How are equalities issues addressed in the provision of rehabilitation services? Don’t know. In considering this question, the Committee will consider the following categories of prisoner: remands, short-term prisoners, young offenders, prisoners with mental health problems, women, ethnic minorities and disabled prisoners.

• Given concerns about overcrowding, are an adequate number of programmes being provided to rehabilitate prisoners? No

• Do other factors related to conditions such as security measures inhibit rehabilitation? Feel probably so

• Is physical space an issue in provision of rehabilitation? Not in Open Estate

• Prisoners’ diet: Nutritional health and physical fitness are often cited as factors leading to improvements in physical and mental well-being (improve self-esteem and self worth). How might these factors of prison “lifestyle” play a role in rehabilitation? Prisoners almost always come out of prison in much better physical condition than when they entered

Charles Robertson
Noranside and Castle Huntly
Association of Visiting Committees for Scottish Penal Establishments
Justice 1 Committee

The Rehabilitation of Prisoners Inquiry

Submission by Lady Cullen, Visiting Committee, Polmont Young Offenders Institution

Association of Visiting Committees for Scottish Penal Establishments

(i) Policy

We understand that SPS is now following a policy which is essentially about adopting a correctional policy and we would therefore raise the issue of whether rehabilitation is any longer the correct policy framework for these questions to be addressed to. It may be, of course, a linguistic issue - however correctional and rehabilitation are two distinct penal policy approaches.

Regarding the specific issues
On induction - Polmont YOI is a unique establishment with well planned induction. Induction in our view is essential to all establishments and sets the tone for the work that follows in an establishment.

- We hope so but it does depend on the staff
- No
- Yes although all interventions are dependent on the motivation, training and effectiveness of officers.
- These issues are introduced at induction.
- You can try but allowances have to be made for the differences in client groups.
- We cannot answer this question, as we have no knowledge of the situation.

(ii) Opportunity

The answers to these questions are mostly factual and in our view the research base to support these will be available from the Scottish Executive. Programmes should be tailored to specifically address the educational and employment needs of young offenders on release.

(iii) Conditions

- A number of re-habilitation programmes are in place. Again, we would stress that both the SPS and the Scottish Executive will be aware of, at least the accredited programmes on offer, and we would expect there to be details available of all others. Cognitive skills programmes, for example, are particularly pertinent to young offenders. This and other relevant programmes have been developed. The quality and relevance of the content of rehabilitation programmes are paramount.
- Probably not
- Another factor related to successful rehabilitation is the need for attention first to be given to the provision of basic skills i.e. intensive literacy work. Many rehabilitative programmes cannot operate unless core skills, reading and writing, have been attained.
- Not really
• Information on the influences of diet and exercise is available from a wide range of data sources. We did feel that if diet is to be considered as a factor leading to improvements in physical and mental well-being, then consideration should be given to increasing the quantity of food presented to young offenders at each meal. This is clearly a financial issue for establishments which operate within very tight financial allocations per prisoner.

Lady Cullen
Chair
Visiting Committee, Polmont Young Offenders Institution
14 April 2004
Justice 1 Committee

The Rehabilitation of Prisoners Inquiry

Submission by the Visiting Committee, HM Prison Inverness

Association of Visiting Committees for Scottish Penal Establishments

Policy

Are the aims of rehabilitation clearly articulated to staff? - Not known...

Are the aims of rehabilitation clearly articulated to prisoners? - Hope so...

Are staff able to meet qualitative assurance targets within current timescales? - Experienced frontline staff should be questioned on this...

In cases of best practice, is it possible to replicate? The Committee will consider programmes, such as the STOP programme aimed at sex offenders and the Throughcare Centre at Saughton - Best Practice should be replicated..

A single agency may be established to deliver custodial and non-custodial sentences - will this impact on the allocation and administration of rehabilitation programmes? - Two separate agencies are needed..

Conditions

Linked to last point, are vulnerable and difficult groups of prisoners receiving adequate rehabilitation? How are equalities issues addressed in the provision of rehabilitation services? In considering this question, the Committee will consider the following categories of prisoner: remands, short-term prisoners, young offenders, prisoners with mental health problems, women, ethnic minorities and disabled prisoners - Not known because of small numbers...

Do other factors related to conditions such as security measures inhibit rehabilitation? - Can do but should not...

Is physical space an issue in provision of rehabilitation? - Yes

Prisoners' diet: Nutritional health and physical fitness are often cited as factors leading to improvements in physical and mental well-being (improve self esteem and self worth). How might these factors of prison "lifestyle" play a role in rehabilitation? - They play a very worthwhile role...
All comments relating to Inverness Prison must be considered in relation to continued overcrowding which has a considerable impact on the effectiveness of any Policy. (A detrimental effect on Staff enthusiasm and energy.)

(i) Policy. Taking the points as raised in turn:

a. REHABILITATION as such is not necessarily clearly articulated to Staff in a way that is formally understood. Similarly with Prisoners.

There are still Staff who mainly see themselves in a JOB without considering the purpose and longer term aim. Again, this is likewise with some Prisoners, some give no consideration to rehabilitation just wish to do their time, etc., and nothing the Prison can do will effect any Change

b. REHABILITATION for short term Prisoners is much more difficult. Strong links with outside are required e.g. Social Work Criminal Justice and provision of short term Rolling Programmes within the Prison (if possible) Any effort/attempt is worth while.

c. The whole concept of Quality Assurance within a time scale seems an anathema when attempting to change the lifestyle of an individual. It is obviously the numbers game and should not be considered in relation to a human being.

d. In the short time I have been involved with Inverness Prison, it would appear that the questions raised in this section are all dealt with satisfactorily in theory. I am still getting to grips with the practical mechanisms.

e. ‘Best practice’ has a range of variables. What works in one Prison does not necessarily work in another (catchment area, cultural norms etc.) An adoption of programmes in relation to staffing and numbers must be considered first. (Further, the family contact development officer’s role is not clear.)

f. Single Agency. From past experience, I would see this as the essential future. I can see it that may have some impact on allocation, but would most certainly improve the delivery and administration of Rehabilitation programmes.

(ii) OPPORTUNITES.

a. As far as I am aware, the range is wide, with a number of new programmes on the stocks. E.g. Anger Management etc.

b. Reasonable well, though much more communication between parties should take place.

c. The Programmes are always aimed at reducing offending. But so much depends on the individual who is presenting the programme – i.e. do they believe in it and on the ability of the recipient to develop awareness?
d. The above similarly applies.

(iii) CONDITIONS.

a. Again numbers and staffing problems have a major impact here

b. Overcrowding – One has to accept that Inverness (on paper) is certainly making an effort.

c. Security – Always a major consideration, but should not preclude programmes.

d. If numbers were contained, this should not be an issue.

e. Diet. How can one install within an individual that Healthy Eating leads to good health etc. when often the norms of the home environment are quite different?

J.C. Hiddleston
Visiting Committee, HMP Inverness
14 April 2004
Purpose of the draft instrument

1. These rules prescribe the form to be used when making an application for recording of a deed in the Register of Sasines and set out requirements for completion of the application form. The rules regulate applications for recording and provide that a deed shall not be recorded in the Register of Sasines unless it is accompanied by a correctly completed application form and sufficient information to enable the Keeper of the Registers of Scotland to be satisfied that the correct recording fee has been tendered.

Background

Abolition of Feudal tenure etc. (Scotland) Act 2000

2. The instrument is made in exercise of the powers conferred by section 5(2) of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 and after consultation with the Lord President of the Court of Session.

Provisions

3. The purpose of the instrument is to prescribe the form and procedure to be used for applications made to the Keeper of the Registers of Scotland for the recording of a deed in the General Register of Sasines on and after 28 November 2004. The prescribed application form will replace the function of warrants of registration which are abolished by the Abolition of Feudal Tenure etc. (Scotland) Act 2000. There is currently a non-statutory form for applications for recording deeds and the rules will put application forms on a statutory basis.

Consultation

4. The Executive states that the Law Society of Scotland has been consulted during the preparation of the instrument.

Financial consequences

5. The Scottish Executive’s note states that there will be no financial effects on the Executive, on local government or on business.

Subordinate Legislation Committee

6. The Subordinate Legislation Committee considered this instrument at its meetings on 14 September 2004 and 21 September 2004.

7. At the meeting on 14 September, the Committee asked for explanation of the use of the word “registration” rather than “recording” in rule 6.

1 Subordinate Legislation Committee, 24th Meeting, 2004 (Session 2).
2 Subordinate Legislation Committee, 25th Meeting, 2004 (Session 2).
8. In response, the Executive agreed that the general conveyancing terminology is that deeds are "recorded" in the Register of Sasines and "registered" in the Land Register for Scotland. Rule 6, however, refers to "presented for registration". This is because this phrase used in the Land Registration (Scotland) Act 1868 and the Titles to Land Consolidation (Scotland) Act 1868 which refer to warrants "of registration".

9. In drafting the instrument, the Executive (with the agreement of Registers of Scotland) considered that there was in fact no substantive distinction between recording and registration. The changes to sections 3, 5 and 12 of the Land Registers (Scotland) Act 1868 made by paragraph 7 of Schedule 12 to the Abolition of Feudal Tenure etc (Scotland) Act 2000 themselves refer to applications for registration.

Subordinate Legislation Committee Report

10. The Executive’s reply is reproduced at Appendix 4 of the report (Subordinate Legislation Committee, 33rd Report, 2004 (Session 2)); an extract of the report is annexed to this note.

11. The Subordinate Legislation Committee thanked the Executive for this explanation, drawing it to the attention of the lead committee and the Parliament for information.

Procedure

12. 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.

13. The instrument was laid on 6 July 2004 and is subject to annulment under the Parliament's Standing Orders until 26 October 2004.

14. In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee. The instrument will come into force on 28 November 2004.
Background
1. The Committee asked for explanation of the use of the word “registration” rather than “recording” in rule 6.

2. The Executive agrees that the general conveyancing terminology is that deeds are “recorded” in the Register of Sasines and “registered” in the Land Register for Scotland. Rule 6, however, refers to "presented for registration". This is because this phrase used in the Land Registration (Scotland) Act 1868 and the Titles to Land Consolidation (Scotland) Act 1868 which refer to warrants "of registration".

3. In drafting the instrument, the Executive (with the agreement of Registers of Scotland) considered that there was in fact no substantive distinction between recording and registration. The changes to sections 3, 5 and 12 of the Land Registers (Scotland) Act 1868 made by paragraph 7 of Schedule 12 to the Abolition of Feudal Tenure etc (Scotland) Act 2000 themselves refer to applications for registration. The Executive’s reply is reproduced at Appendix 4.

Report
4. The Committee thanks the Executive for this explanation drawing it to the attention of the lead committee and the Parliament for information.
Purpose of the draft instrument

1. These regulations make provision for the enforcement in Scotland of fines and forfeitures ordered by the International Criminal Court (“the ICC”) and of orders by the ICC against convicted persons specifying reparations to, or in respect of, victims.

Background

*International Criminal Court*

2. The ICC was established by the Rome Statute of the International Criminal Court on 17 July 1998, when the 120 states participating in the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, including the United Kingdom, adopted the statute.

3. The court was set up to investigate and, where appropriate, prosecute individuals for “the most serious crimes of international concern”, i.e. genocide, crimes against humanity and war crimes. The statute sets out the ICC’s jurisdiction, structure and functions and provides for its entry into force 60 days after 60 states have ratified or acceded to it. The 60th instrument of ratification was deposited with the Secretary General on 11 April 2002 and, accordingly, the statute entered into force on 1 July 2002. Anyone committing any of the crimes under the statute after that date will be liable for prosecution by the court.

*International Criminal Court (Scotland) Act 2001*

4. The International Criminal Court Act 2001 and the International Criminal Court (Scotland) Act 2001 made the necessary provisions to enable the United Kingdom to comply with its obligations under the Rome statute.

5. Under the statute, the ICC may impose fines, the forfeiture of proceeds, property and assets derived directly or indirectly from the crime for which the person has been convicted and reparation orders in respect of victims, including compensation.

6. These regulations are made under section 26 of the International Criminal Court (Scotland) Act 2001 in order to put into place the arrangements needed to enforce ICC orders in Scotland.

Financial consequences

7. The Scottish Executive’s note states that the instrument has no financial effects on the Executive, on local government or on business.
Subordinate Legislation Committee

8. The Subordinate Legislation Committee considered this instrument at its meetings on 14 and 21 September 2004 and determined that the attention of the Parliament should be drawn to it (Subordinate Legislation Committee, 33rd Report, 2004 (Session 2)).

9. An extract of the Subordinate Legislation Committee’s report is annexed to this note. The Committee raises concerns in respect of the instrument’s *vires* and the relative enforceability of any ICC order made under the terms of these regulations.

Procedure

10. 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.

11. The instrument was laid on 31 August 2004 and is subject to annulment under the Parliament’s Standing Orders until 25 October 2004.

12. 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 1 October 2004.
Background

56. The Committee asked the Executive to explain the vires of these Regulations in so far as regulation 3 authorises the Scottish Ministers to appoint the Lord Advocate as the person to enforce orders of the International Criminal Court and regulations 4 and 5 impose duties directly on the Lord Advocate rather than on the Scottish Ministers.

57. The Committee sought the explanation particularly in the light of (a) the enabling power and (b) the statements by the Minister to the Justice 2 Committee on 26 June 2001 and by the Deputy First Minister at Stage 3 of the International Criminal Court (Scotland) Bill on 13 September 2001 (Scottish Parliament Official Report columns 2434-2436) on the constitutional propriety of conferring statutory functions on the Lord Advocate (as an individual Scottish Minister) that do not relate to his positions as head of the system of criminal prosecution and investigation of deaths in Scotland."

58. The Executive replied that it considers that regulation 3 falls within the vires of section 26(2) of the International Criminal Court (Scotland) Act 2001 ("the 2001 Act"), which confers a power on the Scottish Ministers to appoint a person to act on behalf of the ICC. In terms of section 26, there is in the Executive’s view, no reason why the Lord Advocate should not be that “person”.

59. In relation to the imposition of duties directly on the Lord Advocate in regulations 4 and 6, the Executive considers that this falls within the vires of section 26(1) of the 2001 Act which allows the Scottish Ministers to make provision in Scotland for the enforcement of orders of the ICC.

60. The Executive further considers that the conferral of functions on the Lord Advocate under these Regulations falls within the constitutional arrangements envisaged by section 52 of the Scotland Act 1998. Section 52(6) allows statutory functions to continue to be conferred on the Lord Advocate alone after he ceases to be a Minister of the Crown. The effect of such a conferral is that those functions are known as “retained functions” and section 52(5) provides that section 52(3), which provides that any act or omission of any member of the Scottish Executive, shall be treated as an act or omission of each of them, does not apply in relation to retained functions of the Lord Advocate. Accordingly, the Executive considers that the functions conferred on the Lord Advocate under these Regulations become retained functions for which he alone is responsible. (Similar functions are conferred on the Lord Advocate directly in respect of
providing mutual assistance in criminal matters under Part 1 of the Crime (International Co-operation) Act 2003.)

61. In relation to the Committee’s reference to statements made by Ministers during discussion of the International Criminal Court (Scotland) Bill, the functions in question were formally conferred on Scottish Ministers collectively in primary legislation for the reasons set out in the section of the debate to which the Committee refers. For operational reasons it is the Lord Advocate who will exercise those functions in practice. As already stated, the Executive considers that it is within the *vires* of the 2001 Act and compatible with the constitutional arrangements envisaged by section 52 of the Scotland Act for the Lord Advocate to be appointed under section 26(2). The appointment is made by regulations (rather than primary legislation) those providing flexibility were Scottish Ministers to conclude that orders of the ICC should be enforced differently in future. The Executive’s reply is reproduced at Appendix 5.

Report

62. The Executive’s response is not unexpected. Unfortunately, there is nothing in the response to dissuade the Committee that not only is this instrument of doubtful *vires* under the enabling power in the usual sense but that it also raises a serious constitutional point regarding the collective responsibility of the Scottish Ministers as established by the Scotland Act 1998.

63. Section 26 (1) and (2) of the instrument provides—

**“26 Power to make provision for enforcement of orders**

(1) The Scottish Ministers may make provision by regulations for the enforcement in Scotland of-

(a) fines or forfeitures ordered by the ICC; and

(b) orders by the ICC against convicted persons specifying reparations to, or in respect of, victims.

(2) The regulations may authorise the Scottish Ministers-

(a) to appoint a person to act on behalf of the ICC for the purposes of enforcing the order; and

(b) to give such directions to the appointed person as appear to them necessary."

64. The Committee sees no indication that section 26(2) intended that the Scottish Ministers should appoint one of their own number. On the contrary, the fact that section 26(2)(b) also enables Scottish Ministers to give directions to the person appointed clearly rules this out as it cannot have been intended that the Scottish Ministers should give the Lord Advocate, or indeed any other Minister, directions as to how he or she is to carry out the functions.
65. It may also be said that, in any case, the specification by the regulations of the person to be appointed appears also to be of doubtful vires since it could be argued that the power is intended simply to authorise sub-delegation to Ministers the power to chose the person to be appointed and it is not for the regulations themselves to specify that person. The Committee notes that the English Regulations (SI 2001/2379 as amended) made under powers that are virtually identical to those contained in the 2001 Act confer powers to appoint “a person” rather than a named individual.

66. Furthermore, the effect of conferring functions directly on the Lord Advocate is (by virtue of section 52(6) of the Scotland Act) to make the functions in question part of the Lord Advocate’s retained functions and therefore to disapply section 52(4) of the Scotland Act so that the Scottish Ministers are no longer jointly responsible for the exercise of those functions which then become the sole responsibility of the Lord Advocate. This is clearly inconsistent with section 26(2)(b) and cannot in any event have been intended without express provision rather than simply as a consequence of appointing a person.

67. In the Committee’s view, if there were any doubt as to the intention behind the section 26 powers this is clarified beyond all reasonable doubt by the cogent Pepper v Hart statements made by the Ministers in charge of the Bill on two occasions during its passage through the Parliament. If it were inappropriate for the reasons given by the Ministers to confer powers directly on the Lord Advocate in the parent Act, it cannot be right to do so by delegated legislation under that Act.

68. In addition to the straightforward vires point, the Committee considers that the Regulations raise a more fundamental constitutional question as to how far it is appropriate for an enactment to confer functions directly on the Lord Advocate in terms of section 52(6)(b) of the Scotland Act when those functions relate to matters other than the Lord Advocate’s role as head of the systems of criminal prosecution and investigation of deaths in Scotland. Again, this is spelled out clearly in the Ministers’ statements referred to above to which there is nothing that the Committee need or, indeed, could add.

69. It seems quite clear that, despite the apparent width of section 52(6) of the Scotland Act, it was not the intention of Parliament when enacting that subsection that functions other than those relating to the Lord Advocate’s special role as head of the system of criminal prosecution and investigation of deaths should be conferred by legislation directly on the Lord Advocate if only because to do so would undermine the collective responsibility of the Scottish Ministers as established by section 52(4).

70. Although section 52(6) is not so limited in terms, if as the Committee believes, such limitation can be implied then it could be argued in addition that the regulations attempt to “modify” the Scotland Act and to that extent may be outwith devolved competence. The Committee considers that there is certainly an arguable case that they do and to that extent they also raise a serious devolution issue.
71. The Executive refers to Part 1 of the Crime (International Co-operation) Act 2003 which conferred certain functions on the Lord Advocate directly. The Committee observes that the provisions of that Act are of no relevance to the present Regulations which are made under an Act of the Scottish Parliament, are subject to the terms of the Scottish Act and to the overriding provisions of the Scotland Act, none of which are in any way affected by the Westminster Act.

72. The Committee draws the attention of the lead committee and the Parliament to this instrument on the grounds that there are doubts as to whether it is *intra vires* and, in so far as it may be considered to modify the Scotland Act 1998, it may raise a devolution issue. It also raises a very important point of principle with considerable implications for the collective identity of the Scottish Ministers as envisaged in the Scotland Act.

73. Finally, the Committee notes that this point of *vires* is important in purely practical terms. While it is not possible to state with any certainty the view that a court would take should the powers conferred by this instrument on the Lord Advocate be the subject of challenge, if such a challenge were to be successful, the order of the ICC could not be enforced. The Committee draws this point particularly to the attention of the lead committee and the Parliament as the unenforceability of an ICC order could well be a matter of very great seriousness.
Justice 1 Committee

29th Meeting 2004 (Session 2)

The Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland)
Amendment Regulations 2004

Note by the Clerk

Purpose of the draft instrument

1. These regulations amend the Schedule to the Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2004 (“the principal regulations”) by adding Falkirk Police Station, in the Central Scotland Police area, to the list of prescribed police stations.

Background

The Sexual Offences Act 2003

2. These regulations amend the principal regulations which form part of the implementation of the Sexual Offences Act 2003 (“the Act”), approved by the Scottish Parliament by Sewel motion on 20 March 2003. They are to be made in exercise of the powers conferred by section 87 of the Act.

Provisions

3. The regulations add Falkirk Police Station, in the Central Scotland Police area, to the list of prescribed police stations upon completion of the refurbishment of this station.

Consultation

4. The Executive note states that the Association of Chief Police Officers in Scotland was consulted on the principal regulations. Police forces provided the Scottish Executive with the list of stations that they proposed to designate. Central Scotland Police has now provided details of the newly refurbished police station at Falkirk.

Financial consequences

5. The Scottish Executive’s note indicates that the instrument will have no financial consequences on the Executive’s programme expenditure.

Subordinate Legislation Committee

6. The Subordinate Legislation Committee considered this instrument at its meeting on 14 September 2004¹ and determined that the attention of the Parliament need not be drawn to it (Subordinate Legislation Committee, 31st Report, 2004 (Session 2)).

Procedure

7. 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

¹ Subordinate Legislation Committee, 24th Meeting, 2004 (Session 2).
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.

8. The instrument was laid on 3 September 2004 and is subject to annulment under the Parliament’s Standing Orders until 25 October 2004.

9. 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 30 September 2004.
Justice 1 Committee

Appointment of adviser to the Committee for the proposed Protection of Children and Prevention of Sexual Offences (Scotland) Bill

Note by the Clerk

Background

1. The Protection of Children and Prevention of Sexual Offences (Scotland) Bill is expected to be introduced in October. It is expected that the Justice 1 Committee will be named as the lead Committee on the Bill. A Consultation Paper entitled “Protecting Children from Sexual Harm” was published by the Executive in July 2004. A draft Bill was attached to that document.

2. The Consultation Paper set out that the Bill is expected to make it an offence to meet or travel to meet children for purposes of committing a sexual offence, following grooming behaviour. There is also a proposal for Risk of Sexual Harm Orders which are aimed at protecting children from those who display inappropriate sexual behaviour towards them and for the further use of Sexual Offence Prevention Orders, so that they can be applied to those convicted of sex offences by the court when they are sentenced.

The need for an adviser

3. This Bill could potentially raise some complex legal and human rights issues. It is therefore proposed that the Committee should appoint an adviser to assist it in scrutinising the Bill at Stages 1, 2 and 3.

4. The Committee is invited to consider whether it wishes to appoint an adviser to assist it in its consideration of the proposed Protection of Children and Prevention of Sexual Offences (Scotland) Bill.

Adviser duties

5. The role of the adviser would be to assist the Committee in:
   - Understanding the policy and legal background to the Bill;
   - Analysing written evidence;
   - Assisting in the identification of relevant witnesses;
   - Preparing lines of questioning for witnesses;
   - Assisting the Committee in drawing conclusions at Stage 1;
   - Assisting the Committee in drafting its Stage 1 report;
   - Assisting with drafting and interpreting amendments at Stage 2 (and Stage 3 if necessary).
Person specification

6. The adviser would be expected to have a detailed understanding of criminal law and human rights law. The adviser would also be expected to have proven analytical and interpretative skills and the ability to analyse evidence from a wide range of sources. The adviser should also have good communication skills, the ability to present information in an accessible style and to work to short deadlines.

7. If the Committee agrees to appoint an adviser, it is invited to consider the above list of duties and person specification for the adviser.
Association of Visiting Committees for Scottish Penal Establishments

Justice 1 Committee’s Inquiry into the effectiveness of rehabilitation programmes in prisons

AVC Main Concerns

1. Overcrowding and sentencing policy.
2. Rehabilitation – what does it mean?
3. Officer training.
4. The 5% cuts in Governor’s budgets.
5. Workshops not appropriate to job opportunities after release.
6. Failure of drugs programmes.
7. Lack of continuity in top level management destabilising prisons.
8. Mental health issues/specific women’s issues.