The Committee will meet at 1.45 pm in Committee Room 1.

1. **Subordinate legislation:** Johann Lamont MSP (Deputy Minister for Justice) to move the following motion—

   S2M-5210 That the Justice 2 Committee recommends that the draft Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) (Scottish Legal Complaints Commission) Order 2006 be approved.

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

   S2M-5209 That the Justice 2 Committee recommends that the draft Criminal Legal Aid (Scotland) (Prescribed Proceedings) Amendment Regulations 2006 be approved.

3. **Subordinate legislation:** Johann Lamont MSP (Deputy Minister for Justice) to move the following motion—

   S2M-5208 That the Justice 2 Committee recommends that the draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2006 be approved.

4. **Petition PE863:** The Committee will consider Petition PE863 by Bill Alexander which calls for the Scottish Parliament to urge the Scottish Executive to amend the Solicitors (Scotland) Act 1980.

5. **Petition PE893:** The Committee will consider Petition PE893 by Paul Macdonald which calls for the Scottish Parliament to oppose the introduction of any ban on the sale or possession of swords in Scotland which are used for legitimate historical, cultural, artistic, sporting, economic and religious purposes.
6. **Tribunals, Courts and Enforcement Bill (UK Parliament legislation):** The Committee will consider the legislative consent memorandum lodged by Cathy Jamieson, Minister for Justice (LCM (S2) 10.1).

7. **Custodial Sentences and Weapons (Scotland) Bill (in private):** The Committee will consider the possible contents of its Stage 1 report.

   Tracey Hawe
   Clerk to the Committee
Papers for the meeting—

Agenda Item 1

Note by Clerk (including SSI and Executive Note) J2/S2/06/34/1

Agenda Item 2

Note by Clerk (including SSI and Executive Note) J2/S2/06/34/2

Agenda Item 3

Note by Clerk (including SSI and Executive Note) J2/S2/06/34/3

Agenda Item 4

Paper by Clerk J2/S2/06/34/4

Agenda Item 5

Paper by Clerk J2/S2/06/34/5

Agenda Item 6

Paper by Clerk J2/S2/06/34/6

Agenda Item 7

Discussion paper (PRIVATE PAPER) J2/S2/06/34/7

Submission from Governor of Cornton Vale J2/S2/06/34/8

Finance Committee report J2/S2/06/34/9

Documents not circulated—


Forthcoming meetings—

• Tuesday 12 December 2006, Committee Room 6, 2pm
• Tuesday 19 December 2006, Committee Room 3, 2pm
JUSTICE 2 COMMITTEE

34th Meeting 2006 (Session 2)

Tuesday 5 December 2006

SSI title and number: The draft Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) (Scottish Legal Complaints Commission) Order 2006

Type of Instrument: Affirmative

Meeting: 5 December 2006

Date circulated to members: 30 November 2006

Justice 2 Committee deadline to consider SSI: 11 December 2006

Deputy Minister for Justice to attend Justice 2 Committee meeting? Yes

SSI drawn to Parliament’s attention by Sub Leg Committee: No

1. The Subordinate Legislation Committee considered this instrument at its meeting on 14 November 2006. No points arose in relation to the instrument.

2. The Deputy Minister for Justice will attend this Committee meeting. The discussion will begin with an opportunity for members to ask any factual questions or ask for clarification whilst officials are seated at the table with the Minister. The Deputy Minister will then be asked to move the motion to open the debate. The Committee will then formally debate the motion. Officials cannot take part in that debate. The debate is limited to a maximum of 90 minutes (Rule 10.6.3), but may be much shorter. At the end of the debate, the Committee must decide whether or not to agree the motion and report to the Parliament accordingly.

3. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk to the Committee as soon as possible.

Clerk to the Committee
30 November 2006
JUSTICE 2 COMMITTEE

34th Meeting 2006 (Session 2)

Tuesday 5 December 2006

SSI title and number: The draft Criminal Legal Aid (Scotland) (Prescribed Proceedings) Amendment Regulations 2006

Type of Instrument: Affirmative

Meeting: 5 December 2006

Date circulated to members: 30 November 2006

Justice 2 Committee deadline to consider SSI: 11 December 2006

Deputy Minister for Justice to attend Justice 2 Committee meeting? Yes

SSI drawn to Parliament’s attention by Sub Leg Committee: No

1. The Subordinate Legislation Committee considered this instrument at its meeting on 21 November 2006. No points arose in relation to the instrument.

2. The Deputy Minister for Justice will attend this Committee meeting. The discussion will begin with an opportunity for members to ask any factual questions or ask for clarification whilst officials are seated at the table with the Minister. The Deputy Minister will then be asked to move the motion to open the debate. The Committee will then formally debate the motion. Officials cannot take part in that debate. The debate is limited to a maximum of 90 minutes (Rule 10.6.3), but may be much shorter. At the end of the debate, the Committee must decide whether or not to agree the motion and report to the Parliament accordingly.

3. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk to the Committee as soon as possible.

Clerk to the Committee
30 November 2006
JUSTICE 2 COMMITTEE

34th Meeting 2006 (Session 2)

Tuesday 5 December 2006

SSI title and number: The draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2006

Type of Instrument: Affirmative

Meeting: 5 December 2006

Date circulated to members: 30 November 2006

Justice 2 Committee deadline to consider SSI: 11 December 2006

Deputy Minister for Justice to attend Justice 2 Committee meeting? Yes

SSI drawn to Parliament’s attention by Sub Leg Committee: Yes

1. This draft instrument supercedes a previous draft laid on 10 November.

2. The Subordinate Legislation Committee, in its 43rd Report 2006 (Session 2) draws to the attention of the Justice 2 Committee the fact that, asked whether there were any plans to consolidate the Regulations, the Executive stated:

“The Executive is aware that the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 have now been amended several times. The Executive intends to consolidate these Regulations at the earliest available opportunity.”

3. The Deputy Minister for Justice will attend this Committee meeting. The discussion will begin with an opportunity for members to ask any factual questions or ask for clarification whilst officials are seated at the table with the Minister. The Deputy Minister will then be asked to move the motion to open the debate. The Committee will then formally debate the motion. Officials cannot take part in that debate. The debate is limited to a maximum of 90 minutes (Rule 10.6.3), but may be much shorter. At the end of the debate, the Committee must decide whether or not to agree the motion and report to the Parliament accordingly.
4. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk to the Committee as soon as possible.

Clerk to the Committee
30 November 2006
Petition PE863 by Bill Alexander

Note by Clerk

Background

1. This petition was lodged on 7 June 2005 by Mr Bill Alexander. The petitioner calls for the Scottish Parliament to urge the Scottish Executive to amend the Solicitors (Scotland) Act 1980 to allow limited companies to either be given the right to apply for legal aid or the right to represent themselves in court. The full petition is attached as Annex A. The petition was referred to the Justice 2 Committee for consideration as part of its scrutiny of the Legal Profession and Legal Aid (Scotland) Bill.

Consideration by Public Petitions Committee

2. The Public Petitions Committee took oral evidence from Bill Alexander at its meeting on 28 June 2005. In oral evidence (attached as Annex B) Bill Alexander told the Committee that the Solicitors (Scotland) Act 1980 makes it a criminal offence for a corporate body to draft or prepare a writ and that Scottish courts have used this to prevent companies in Scotland from acting on their own behalf in court proceedings. This means that if a company cannot afford legal representation it cannot defend itself when an action is raised against it or recover money that it is due when it has not been paid. Limited companies are not eligible for legal aid and nor are they able to represent themselves in court. Mr Alexander told the Committee that this situation was 'unfair and unjust.'

3. As part of its consideration of the petition the Public Petitions Committee sought written views from the Scottish Executive, the Federation of Small Businesses, the Law Society of Scotland, the Scottish Legal Aid Board and the Scottish Chambers of Commerce (these responses are attached as Annex C). Though the views of CBI Scotland were sought, no response was received. The petitioner's reply to these responses, dated 14 March 2006, is also attached as Annex C.

Consideration by Justice 2 Committee

4. Prior to the Justice 2 Committee’s consideration of the petition, the clerks requested confirmation from the Executive as to whether any of the changes made by the Legal Profession and Legal Aid (Scotland) Bill would address any of the concerns laid out in the petition. The Executive’s response, dated 2 November 2006 is attached as Annex D.

5. At its meeting on 7 November 2006 the Justice 2 Committee considered the petition and agreed to write to the Deputy Minister for Justice on the following issues:

- The relevance of the case of Karl Construction vs Pallisade Properties, in which the Court of Session decided that a limited company has human
rights, to the issue of whether limited companies should have direct representation in court;

- Whether there should be an extension of legal aid to limited companies; and
- Whether the provisions in the Legal Profession and Legal Aid (Scotland) Bill pertaining to the commencement of Sections 25 to 29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 would be put into effect by March 2007, as previously indicated by the Scottish Executive, and whether these provisions would affect the position of limited companies in relation to rights of representation in court.

6. The letter to the Deputy Minister is attached as Annex E.

Scottish Executive’s view

7. The Scottish Executive, in its letter dated 13 September 2005, states that the Solicitors Act (Scotland) 1980 is not directly relevant to either the issue of representation in court or that of legal aid. However, in his letter to the Public Petitions Committee dated 14 March 2006 Bill Alexander states that the Act ‘has been interpreted by the courts to include the situation where a director of a company lodging a writ or defences to a writ is effectively committing an offence.’ As the Scottish legal system relies on a written procedure ‘Sheriff Clerks use this fact to prevent limited companies getting past the stage in the proceedings where a write is to be warranted or defences lodged.’

8. The Scottish Executive indicates in its letter that it is ‘unaware of any significant call for legislative change’ on the issue of the eligibility of limited companies for legal aid, though legal aid is available to individuals including sole traders and self-employed persons for pre-litigation advice and legal representation in court.

9. Limited companies are not currently eligible for legal aid, although the Scottish Executive has indicated that it will carefully consider any ‘significant call’ for legislative change in this area. The Executive indicates that such calls would have to be considered carefully in the light of the overall pressures on the legal aid fund.

10. In relation to representation in court, it states that the present position is: ‘that, with some limited exceptions, representatives of a party involved in litigation who is a non-natural person require to be suitably qualified solicitors, advocates or solicitor/advocates. In the view of the Executive, this best serves the interests of both the court and litigants.’ The Executive does not believe that a general case has been made for allowing a non-natural person such as a limited company to represent itself in court, and does not agree that legislative change is required.

11. The Executive’s letter also suggests that it would be more appropriate for limited companies to ensure legal representation through use of legal insurance. However Bill Alexander, in his letter dated 14 March 2006, strongly
disagrees with this view, asking why a small limited company should carry the burden of insurance while a sole trader does not.

Other views

12. In its reply to the PPC the Federation of Small Businesses states that it 'sees no good reason why directors of a limited company should be barred from representing the company in court, just as an individual can represent him or herself' and agrees that the Scottish Executive should consider bringing forward proposals to amend the Solicitors (Scotland) Act 1980 on those terms.

13. The Scottish Chambers of Commerce states that it 'remains to be convinced that allowing limited companies to represent themselves would cause harm, provided the category of persons who can represent limited companies is clearly established and only includes what might reasonably be described as responsible persons.' It also states that as far as it is aware, it is possible under the terms of the Law Reform (Miscellaneous Provisions) (Scotland) Act for a company to be represented by a responsible person not necessarily a solicitor, subject to the approval of Scottish Ministers and the Lord President.

14. The Scottish Legal Aid Board points out that it is the Legal Aid (Scotland) Act 1986 which governs eligibility for legal aid, rather than the Solicitors (Scotland) Act 1980, and that though the issue has been raised from time to time, it is 'not aware of any significant demand for publicly funded legal assistance to be extended to corporate or unincorporated bodies'. SLAB also notes that there could be significant practical difficulties in implementing the proposal.

15. The Law Society of Scotland, FSB and SCC all point out that it is possible for the courts to allow authorised representatives in summary causes or small claims.

Relevance of the Legal Profession and Legal Aid (Scotland) Bill

16. The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 provided for rights to conduct litigation and rights of audience to be granted to members of professional and other bodies. Section 42 of the Legal Profession and Legal Aid (Scotland) Bill amends the Solicitors (Scotland) Act 1980 to allow members of these bodies to draw or prepare writs relating to actions or proceedings in courts.

17. The Executive’s letter dated 2 November 2006 confirms that the Bill will not allow limited companies and other non-natural persons to represent themselves in court. The letter reaffirms that the Executive does not believe that the petition makes a special case for the extension of such rights of representation.
18. The letter also confirms that the provisions in the Bill relating to legal aid do not extend eligibility for legal aid to limited companies.

*For decision*

19. The Committee is invited to decide how to proceed with the petition.

The Committee may wish to:

- Note the matters raised and the responses received, and close the petition;
- Seek further written evidence in relation to the matters raised by the petition;
- Seek further oral evidence from the petitioner, Minister, or any other relevant group or individual;
- Take any other competent action that it thinks appropriate.
Limited Companies (Court Representation) (PE863)

The Convener: Petition PE863, from Bill Alexander, calls on the Scottish Parliament to urge the Scottish Executive to amend the Solicitors (Scotland) Act 1980 to allow limited companies to be given either the right to apply for legal aid or the right to represent themselves in court. Bill Alexander will make a brief statement to the committee in support of his petition. You have three minutes or so to introduce the subject, Mr Alexander.

Bill Alexander: I will be brief. The Solicitors (Scotland) Act 1980 makes it a criminal offence for a corporate body to draft or prepare a writ. The Scottish courts have used that fact to prevent companies in Scotland from acting on their own behalf in court proceedings. Unfortunately, that means that a company that cannot afford a solicitor is denied the right to defend itself when an action is raised against it. It also means that a business that has not been paid and cannot afford a solicitor is not allowed to try to recover the moneys that it is due.

Corporate bodies in Scotland do not qualify for legal aid. The main victims of that abnormality are small businesses that do not have the resources to employ solicitors. I believe that this situation is unfair and unjust. Further, as the cost of legal representation increases, more businesses will find themselves in the predicament that I describe.

The courts have held that corporate bodies are entitled to human rights under article 6 of the Human Rights Act 1998 but will not allow them those rights unless they can afford a solicitor. Regrettably, the catch-22 is that any business that would like to challenge that interpretation of the act is denied the right to appear unless it has a solicitor. I believe that businesses should be given the right to represent themselves or, alternatively, be granted legal aid in the same way that individuals are.

Rob Gibson: You talk about limited companies, but businesses come in different forms. Small businesses are one thing, but some limited companies are large. You do not ask for any distinction to be made between large and small companies. Why is that? It might be more useful to try to highlight the problems of small businesses.

Bill Alexander: In practical terms, most of the instances that I have come across have been to do with small businesses. However, determining a financial limit as a point of law is difficult. How would we define what a small business is? A large business with cash-flow problems might face liquidation because it is not able to afford a solicitor. It is equally important that it be given the right to represent itself if the circumstances are suitable. The issue is about giving businesses access to justice in situations in which they cannot afford it.

Rob Gibson: Is there not a problem in the way we look at law with the acceptance of companies as persons? Would there not be a philosophical problem with going down the line that you suggest?

Bill Alexander: Under the Solicitors (Scotland) Act 1980, there is such a problem. However, in a case called Karl Construction v Palisade Properties, the inner house of the Court of Session determined that limited companies have human rights in that they have the right to a fair hearing at an impartial tribunal under article 6 of the Human Rights Act 1998. However, in some of the sheriff courts, the judges have decided that limited companies will not be able to get those rights unless they are represented by a solicitor, which has resulted in a strange situation developing in law.
Helen Eadie: Are you aware of the relevant policy of the Federation of Small Businesses?

Bill Alexander: No.

Helen Eadie: You have had no contact or discussion with the federation.

Bill Alexander: No.

Helen Eadie: Have you not thought about having such a discussion?

Bill Alexander: You are probably right—I have not thought about that. I was more interested in trying to get something done. I have usually found that if a matter has been raised in Parliament and has the committee's support, that has much more effect than operating through different bodies.

John Scott: Thank you for lodging your petition and for your frank answers. The issue must have been a problem for a considerable time, so why has it not been addressed before? The situation appears to be anomalous and I am curious as to why it has not been dealt with in amendments to legislation in the past.

Bill Alexander: Trying to change the justice system in Scotland can be difficult unless a person is a member of one of the bodies that the Executive likes to deal with. If someone is not from the Law Society of Scotland or the Faculty of Advocates, they tend not to have much credence with the Executive.

The other problem is one of reality. If a small business is struggling financially, cannot bring in money and stops trading, after which a different set of problems arises because personal guarantees have been given and the directors must deal with banks pursuing them or with liquidators, the principles behind the issue tend to fall away.

John Scott: The Faculty of Advocates appears now to support an extension of legal aid. Do you have any comment on that? I presume that you welcome that.

Bill Alexander: Yes, but the extension is being considered not for businesses but for individuals.

John Scott: Are you aware of why the faculty is not considering businesses? I am a layperson. Perhaps you could run through the arguments for me.

Bill Alexander: I can think of no reason not to extend legal aid to businesses, if they are not given the right to represent themselves. The honest truth is that I do not know.

Jackie Baillie: Can I have a sense of the scale of the problem? I understand that it prohibits any business from receiving legal aid, but I am not clear about the evidence that the problem is major. Have businesses approached you? Have surveys been conducted? Do data support your claim?

Bill Alexander: No research has been undertaken. My experience of trying to help small businesses is that they cannot go past a sheriff clerk, who will not accept a writ or allow a party to appear. A decree is awarded against a business, after which the insolvency process takes place. Insolvency practitioners rarely say that a business went under because it could not access the court. They will usually say that a business had cash-flow problems, bad debts or whatever.
Jackie Baillie: Is your experience from being a lawyer?

Bill Alexander: No.

Jackie Baillie: So you are not a lawyer.

Bill Alexander: I have a law degree, but I am not a lawyer. I do pro bono work for individuals and companies and I supplement my income by doing construction litigation. I speak just from practical experience.

Jackie Baillie: You have a good working knowledge of the law, so I wondered where that came from.

The Law Society, which you mentioned earlier, has said that businesses can obtain insurance against most legal risks for a relatively modest sum. Is the proper route for many small businesses not to take out an insurance policy that will cover their legal expenses for most risks?

Bill Alexander: I am not sure whether the insurance covers situations in which a company

pursues a party for bad debts; I think that it tends to cover situations in which a company is being pursued. I do not know what the cost of such insurance is. As with all insurance, the cost tends to go up, so slowly and surely some businesses will not be able to afford insurance.

Jackie Baillie: Do you agree that businesses are in a different position from individuals who apply for legal aid?

Bill Alexander: There is no question but that there are differences. Businesses do not have the same priority as individuals have in accessing justice. However, the issue is important and should be considered.

The Convener: Do members have comments or suggestions on how to progress the petition?

Jackie Baillie: I am not greatly persuaded by the petition, because I am not sure whether there is evidence to support the claim that there is a problem. However, it would be appropriate for the committee to write to the Executive to ascertain whether it has plans on the matter. We should also write to the Law Society of Scotland and the Scottish Legal Aid Board and pursue Helen Eadie’s suggestion by asking the Federation of Small Businesses whether it perceives that there is a problem.

John Scott: Should we also write to the Scottish Chambers of Commerce, which works on behalf of small businesses and the Confederation of British Industry, which perhaps represents larger businesses? Notwithstanding the petition, if those organisations tell us that there is not a problem, so be it. However, we should turn over all the stones and ensure that the petitioner’s concerns are thoroughly examined.

The Convener: Are members happy for us to contact all those organisations, to seek as full a picture as possible of the subject matter? Mr Alexander, we will update you when we receive responses to our queries.

Bill Alexander: Thank you.
Dear Steven

Thank you for your e-mail of 26 October seeking clarification as to whether the changes made by the Legal Profession and Legal Aid (Scotland) Bill, in particular section 42, would address the concerns laid out in petition PE863 from Mr Bill Alexander.

Briefly, neither section 42 of the Legal Profession and Legal Aid (Scotland) Bill nor any other provision in the Bill would have the effect of allowing limited companies and other non-natural persons to represent themselves in court. Section 42 paves the way for commencement of sections 25-29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (further detail about section 42 is provided in the annex to this letter). Commencement of sections 25-29 will widen the range of representatives available to limited companies and others, but will not enable limited companies to represent themselves where this is not possible now. We do not believe that a special case is made for the extension of such rights for the reasons set out in Paul Cackette’s letter of 13 September 2005.

On the issue relating to eligibility for legal aid, the Bill does not amend the Legal Aid (Scotland) Act 1986 so as to extend eligibility to limited companies. Section 45 will enable certain non-legally qualified advisers to receive advice and assistance payments from the Legal Aid Fund, but this will not change the eligibility of any client for advice and assistance (or legal aid).

I hope this will be of assistance to the Committee.

Yours sincerely

LOUISE MILLER
1. Section 42 amends section 32 of the Solicitors (Scotland) Act 1980 to remove a difficulty which would otherwise prevent an extension of rights to conduct litigation as envisaged by sections 25 to 29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. Section 32 of the 1980 Act makes it an offence for any unqualified person to draw or prepare any writ relating to any action or proceedings in any court. Sections 25 to 29 of the 1990 Act for their part provide for rights to conduct litigation (and rights of audience) to be granted to members of professional or other bodies, subject to the approval in each case of a scheme prescribing safeguards in relation to such matters as the training requirements to be imposed on members, the provision required for professional indemnity insurance and the arrangements for handling complaints against members.

2. The offence in section 32 of the Solicitors (Scotland) Act 1980 is not however dis applied by the 1990 Act in relation to a member of a professional or other body which has acquired rights to conduct litigation. A member of such a body who sought to exercise such rights in good faith would therefore be guilty of an offence. Section 42 resolves the difficulty by adding an exception to the offence in section 32 of the 1980 Act in respect of a member of a body which has made a successful application under section 25 of the 1990 Act, but only to the extent to which the member is exercising rights acquired by virtue of section 27 of the 1990 Act.
Dear Johann

Petition PE863

Petition PE863 by Bill Alexander, which calls for the Scottish Parliament to urge the Scottish Executive to amend the Solicitors (Scotland) Act 1980 to allow limited companies to be given either the right to apply for legal aid or the right to represent themselves in court, has been referred to the Justice 2 Committee for consideration.

The Committee seeks your views on the concerns raised in the petition, and on the following issues in particular.

Firstly, in correspondence to the Committee the petitioner drew our attention to the case of Karl Construction vs Pallisade Properties, in which the Court of Session decided that a limited company has human rights. The petitioner therefore argues that a limited company has a right under Article 6 of the European Convention of Human Rights to a fair hearing at an impartial tribunal, and that this requires access to a solicitor. I would be grateful for your views on the relevance of this case to the issues raised in the petition.

Secondly, the Committee seeks your views on whether, in principle, there should be an extension of legal aid to limited companies.

Thirdly, the Committee is aware that the Legal Profession and Legal Aid (Scotland) Bill provides for the commencement of sections 25 to 29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. Assuming the safe passage of the Bill, the Committee understands that commencement will take place by next March. I would be grateful if you could confirm that this is still the case. The Committee understands that these provisions will not affect the position of limited companies in
relation to rights of representation and I would be grateful if you could confirm whether this understanding is correct.

I enclose a full set of the papers considered by the Committee at its recent meeting for your information, together with a copy of the Official Report.

I would be grateful if you could provide a response to the Committee by Thursday 30 November 2006.

Yours sincerely

David Davidson
Convener
Justice 2 Committee
Petition PE893 by Paul Macdonald

Note by Clerk

Background

This petition was lodged on 10 October 2005 by Mr Paul Macdonald, on behalf of the Save Our Swords campaign. The petitioner calls for the Scottish Parliament to oppose the introduction of any ban on the sale or possession of swords in Scotland which are used for legitimate historical, cultural, artistic, sporting, economic and religious purposes. The full petition is attached as Annex A.

The Public Petitions Committee received written responses from the Scottish Executive and the Violence Reduction Unit at Strathclyde Police on the petition, and a letter from the petitioner in reply to these responses. These are attached as Annex B.

At its meeting on 15 November the Public Petitions Committee agreed to refer the petition to the Justice 2 Committee as part of its scrutiny of the Custodial Sentences and Weapons (Scotland) Bill.

Though the petition calls for the Parliament to oppose the introduction of any ban on the sale or possession of swords in Scotland, the petitioner's letter to the PPC dated 19 June 2006 indicates that he opposes any restriction or licensing scheme for non-domestic knives or swords.

In his letter of 19 June 2006 the petitioner argues that the restrictions on the sale of knives and swords and the imposition of the proposed licensing scheme 'will fail to effectively address the problem of street crime in Scotland'. The petitioner also argues that restrictions on the sale of swords are misguided as swords are rarely used in criminal activity.

Provisions of the Custodial Sentences and Weapons (Scotland) Bill

Part 3 of the Custodial Sentences and Weapons (Scotland) Bill enables Ministers to prohibit the sale of swords subject to specified defences. Section 45 of the Bill amends the Criminal Justice Act 1998 to allow for exceptions to a general ban on offensive weapons. Section 46 of the Bill would allow Ministers to introduce a ban on the sale of swords and to make the ban subject to specified defences.

The Executive proposes that there will be exceptions to the general ban on swords for religious purposes, cultural purposes, including Highland dancing, theatre, film, television, antique collecting, re-enactment and living history, and for sporting purposes, including fencing and martial arts activities that are organised on a recognised sporting basis. Exceptions will also be made for antique swords in line with the current provisions in firearms legislation. There

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1 Justice 2 Committee Official Report 24 October 2006, column 2860
will an exception for other activities that are carried out with the authority of the Scottish ministers, after application to them².

*For decision*

The Committee may wish to:

- Note the matters raised and agree to take forward consideration of the issues as part of its Stage 1 report on the Custodial Sentences and Weapons (Scotland) Bill. If this option is pursued the Committee may wish to formally conclude consideration of the petition.

- Seek further written evidence in relation to the matters raised by the petition.

- Seek further oral evidence from the petitioner, Minister, or any other relevant group or individual.

- Take any other competent action that it thinks appropriate.

Clerk to the Committee
29 November 2006

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² Justice 2 Committee Official Report 24 October 2006, column 2860
Legislative Consent Memorandum

Tribunals, Courts and Enforcement Bill

Note by the Clerk

Purpose
1. The attached legislative consent memorandum (LCM) from the Scottish Executive concerns the Tribunals, Courts and Enforcement Bill currently before the UK Parliament. This includes a draft motion, which will be lodged by the Minister for Justice, asking the Parliament to agree that the UK Parliament should consider certain provisions in the Bill which will legislate in devolved areas.

2. The Bill creates a new statutory framework for the work of tribunals and it contains several measures within the legislative competence of the Scottish Parliament. The Bill proposes the replacement of the Council on Tribunals (and its Scottish Committee) with a new body to be called the Administrative Justice and Tribunals Council (AJTC). This new body will continue to have a Scottish Committee. The Bill also proposes to transfer the appeals jurisdiction of the Criminal Injuries Compensation Appeals Panel (CICAP) into the new Tribunals service. The Bill further makes provision for the safeguarding from seizure of cultural artefacts on loan to Scottish museums and galleries. The detail of these provisions is set out in the memorandum.

3. This paper sets out the likely timetable for consideration of the LCM and invites the Committee to agree its approach.

Background
4. The Tribunals, Courts and Enforcement Bill was introduced in the House of Commons on 16 November 2006 and can be found on the UK Parliament website at: http://www.publications.parliament.uk/pa/pabills/200607/tribunals_courts_and_enforcement.htm

Timetable
5. The LCM was lodged on Thursday 30 November and will be considered by the Bureau on Tuesday 5 December. It is likely to be referred to the Justice 2 Committee.

6. It is understood that the final amending stage in the House of Lords will take place in the week beginning 5 February. It is normal for the Parliament’s consent to be sought before this stage. Standing Orders provide that a motion will not normally be taken earlier than the fifth sitting day after the day on which the lead committee’s report is published (rule 9B.2.3). A suggested timetable, which would allow the Committee to report in time for Parliament to consider the motion, is set out below.
5 December Committee requests any written evidence required

9 January Committee takes oral evidence

16 January Committee considers draft report (any amendments to the draft report would then have to be agreed by correspondence)

18 January Committee’s report published

31 January Motion considered by Parliament

**Oral Evidence**

7. The Committee will presumably wish to take evidence from the Minister for Justice. The Committee will also wish to consider whether it wishes to hear oral evidence from anyone else. The timetable for hearing any further oral evidence would be fairly limited given the Committee’s commitment to considering legislation. However, the majority of the session on 9 January could be given over to taking oral evidence. The Committee may wish to consider taking evidence from the Scottish Committee on Tribunals and the Scottish Tribunals Forum, which is chaired by Lord Abernethy.

- Does the Committee wish to seek oral evidence from the Minister for Justice?
- Does the Committee wish to seek any oral evidence in addition to this?

**Written evidence**

8. Organisations we have identified who might have an interest are:

- The National Galleries of Scotland and the National Museums of Scotland could be asked to comment on the provisions relating to the safeguarding of artefacts from seizure.
- The Law Society of Scotland could be asked for views in relation to the provisions on tribunals and the transfer of the jurisdiction of the CICAP. The Committee may also wish to seek written evidence from the Criminal Injuries Compensation Authority and the CICAP itself.

- Does the Committee wish to seek written evidence from the organisations listed above?
- Does the Committee wish to seek any written evidence in addition to that listed above?

**Conclusion**

9. The Committee is invited to agree its approach to this memorandum and to note the timetable required in order to stay in step with the Westminster Parliamentary timetable.

Clerk to the Committee

November 2006
LEGISLATIVE CONSENT MEMORANDUM
TRIBUNALS, COURTS AND ENFORCEMENT BILL

Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Minister for Justice, is:

“S2M-XXXX Cathy Jamieson: Tribunals, Courts and Enforcement Bill
Legislative Consent Motion - UK Legislation -That the Parliament agrees that
the relevant provisions of the Tribunals, Courts and Enforcement Bill, introduced
in the House of Lords on 16 November 2006, (a) relating to the establishment of
a new Tribunals Service and an Administrative Justice and Tribunals Council and
(b) providing immunity from seizure for international works of art on loan to
exhibitions in this country, so far as these matters fall within the legislative
competence of the Scottish Parliament, should be considered by the UK
Parliament.”

Background

2. This memorandum has been lodged by Cathy Jamieson, Minister for Justice, under
Rule 9.B.3.1(a) of the Parliament’s standing orders. The Tribunals, Courts and
Enforcement Bill was introduced in the House of Lords on 16 November 2006. This
Bill proposes a number of amendments to court and enforcement procedures
applicable to England and Wales only. It proposes the establishment of a UK
Tribunal Service principally relating to non-devolved tribunals, some of which
operate in Scotland. It also makes provision for the giving of immunity from seizure
in criminal and civil process for international works of art on loan to exhibitions in this
country.

TRIBUNAL REFORM

Background

3. In May 2000 Sir Andrew Leggatt was appointed by the then Lord Chancellor, Lord
Irvine, to undertake a review of the delivery of justice through tribunals. While
recognising an interaction with the administration of the Scottish legal system, the
scope of that review was limited to tribunals operating in reserved areas of law.

4. The Leggatt Report on the Review of Tribunals, which was published in August
2001, found that the current systems were incoherent and inefficient and made a
number of recommendations for improvement. The object of the review was to
recommend a system that would be independent, coherent, professional, cost
effective and user friendly.

5. In March 2003 Lord Irvine announced that a new unified tribunals system would be
created. The DCA issued its White Paper “Transforming Public Services: Complaints,
Redress and Tribunals” in July 2004 which accepted the Leggatt Report’s central recommendations about a unified system. The DCA set out a
broader strategy, in which tribunal reform does not stand alone, but as part of a
vision for improving administrative justice as a whole.
6. The Constitutional Reform Act which received Royal Assent on 24 March 2005 reformed a number of areas including the appointment process for Judges in England and Wales and tribunal members, where appointed by the Lord Chancellor, throughout the UK where they sit on reserved matters.

7. The Constitutional Reform Act 2005 established a Judicial Appointments Commission (JAC) which carries out similar functions to the Scottish non-statutory Judicial Appointments Board. The JAC became operative in April 2006 and will comprise 15 members. It will make recommendations to the Lord Chancellor in relation to these appointments. The Lord Chancellor may then accept or reject the recommendations or require the JAC to reconsider the recommendation made. In relation to tribunal members, where the appointment is of a person sitting wholly or mainly in Scotland, the Lord Chancellor is, under the Act, required to consult with Scottish Ministers prior to making his or her decision on accepting or rejecting or referring back for reconsideration.

8. The current UK Government proposals for tribunal reform in reserved areas include two distinct elements. They comprise both a new administrative agency to provide a more efficient service to tribunal users and provisions contained in the Tribunals, Courts and Enforcement Bill.

9. Primary legislation was not needed to create the new administrative Tribunals Service which was established as at April 2006, but its remit to improve the service offered to users of reserved tribunals will be enhanced by the Bill. The Bill will establish the position of Senior President of Tribunals and create a new flexible overarching structure. This structure will complement the constitutional reforms, bringing appointments under the auspices of the JAC, insofar as not already done. The Bill will clarify the relationship of reserved tribunals to the courts including both onward appeals and the supervisory jurisdiction of the courts.

10. The Bill contains a power for the Lord Chancellor by Order to transfer tribunal functions from the existing tribunal decision makers to one of the two new tribunals under the unified Tribunals Service, established by the Bill, namely the First Tier or Upper Tribunal.

**Issues that are subject to the consent of the Scottish Parliament**

11. The Bill interacts with devolved areas in respect of two public bodies which are at present cross-border public authorities designated under orders made at devolution by virtue of the Scotland Act.

**Administrative Justice and Tribunals Council**

12. Most significantly, these proposals relate to the abolition of the Council on Tribunals and its replacement with a structurally similar body to be known as the Administrative Justice and Tribunals Council. It is intended to have functions in relation to:

a. the keeping under review and reporting on the administrative justice system;

b. the considering and reporting on ways to make the system accessible, fair and efficient;
c. advising the Scottish Ministers on the development of the system in relation to Scotland;

d. referring proposals for change in the system to the Scottish Ministers; and

e. making proposals for research into the system.

13. The Council is to keep under review the operation of certain specified Tribunals including those having responsibility for Social Security, Asylum and Immigration and Taxation matters.

14. As with the Council on Tribunals at present, the Administrative Justice and Tribunals Council is proposed to have a Scottish Committee established by statute, on which will be conferred functions in relation to the operation in Scotland of the Council. It is proposed that the supervisory duties of the Scottish Committee should relate to Scottish Tribunals regardless of whether they are reserved or devolved in the same way as the Council will supervise Tribunals in England where that distinction does not come into play.

15. The Council on Tribunals was designated as a cross-border public authority at the time of devolution because it operated on a Great Britain wide basis and had mixed reserved and devolved functions. For those reasons, the creation of the new Council could not be achieved in a Scottish Bill. Although the new Council is not proposed to be designated as a cross-border public authority, the view of the Executive is that full and appropriate supervision can only be achieved by conferring symmetrical and complementary powers on the new Council (and in particular on its Scottish Committee) in relation to both reserved and devolved tribunals.

16. It is possible for the UK Government to proceed on the basis of the restriction of the supervisory functions of the new Council to reserved Tribunals only. However, that would remove an important part of the supervisory structure of the Tribunal system in Scotland (in relation to devolved tribunals) and leave Scottish Tribunal users significantly disadvantaged. The aspect for which the Scottish Parliament’s consent is sought relates to devolved tribunals. The Executive do not believe that any restriction to exclude devolved tribunals would serve the interest of tribunal users in Scotland well.

17. In the establishment of the new Council, it will be necessary to list by Order the names of the tribunals which will be supervised by it (and to add to that list any new tribunals established in future). The Bill contains provision which replicates the existing powers of the Scottish Ministers in connection with such listing.

_Criminal Injuries Compensation Appeals Panel_

18. The proposal to use the order making powers in the Bill to bring the substantive appeals jurisdiction of the Criminal Injuries Compensation Appeals Panel within the new Tribunal Service will also require the consent of the Parliament.

19. While criminal injuries is a devolved matter, the Panel, like the Criminal Injuries Compensation Authority, operates on a Great Britain wide basis and has been designated as a cross-border public authority. The statutory arrangements for the
Panel were modified in 1999 to reflect the reserved/devolved divide. All appointments to the Panel involve both UK and Scottish Ministers. The majority are made by UK Ministers after consultation with the Scottish Ministers, but the Scottish Ministers have power to appoint not fewer than five members of the Panel, in consultation with UK Ministers.

20. It is proposed that the arrangements for appointments will remain as now, but that in due course the functions of the Panel will be transferred into the new structure proposed to be established under the Bill. This will allow Panel users in Scotland as well as England and Wales to enjoy the benefits of inclusion within the new integrated Tribunal Service. For reserved tribunals, this will be achieved by the Bill conferring on the Lord Chancellor the power to transfer tribunal functions from the existing tribunals to the First Tier or Upper Tier tribunals established by the Bill. In relation to the Panel, that power will relate to the transfer of Panel functions to the First Tier only and requires the consent of the Scottish Ministers before this can be done. The Panel is already operating as part of the Tribunal Service on an administrative basis.

21. The Bill will also require Panel members to take the judicial oath. That oath, or the equivalent affirmation, is already taken in Scotland by Court of Session Judges, sheriffs and justices of the peace on taking up office.

22. These, and other consequential changes, redefine the constitution of the Panel and would require the consent of the Parliament. If that consent were not given (with the effect that the Panel was not able to be brought within the new Tribunal Service), the benefits of increased integration and transparency would be lost to an important body in its decision making processes, affecting appellants often in vulnerable positions.

Other tribunal related issues

23. The Executive would draw the attention of the Parliament to two further consequences of the proposals under this Bill relating to tribunals.

Power of appointment in relation to General Commissioners

24. The first relates to what is in effect the abolition of the office of General Commissioners (generally referred to as General Commissioners of Income Tax) and accordingly Ministers role in those appointments. The Scottish Ministers have responsibility for appointing General Commissioners in relation to Scotland, under executive devolution arrangements. These functions were conferred under the Taxes Management Act 1970 and were executively devolved to the Scottish Ministers in 1999.

25. As above, the Bill contains a power for the Lord Chancellor by Order to transfer tribunal functions from the existing tribunal decision makers to the First Tier or Upper Tribunal. It is anticipated that he will do so in due course in relation to the functions of General Commissioners. That will in effect abolish that office.

26. Given the likelihood of eventual transfer into the new overarching Tribunals Service (causing the office of General Commissioner to cease to exist), and since this power
relates clearly to the reserved function of taxation, we do not believe that it is sensible for the Executive to retain this power of appointment.

*Functions of the Lord President and powers of the Court*

27. It should also be noted that, consistent with the separation of powers as provided by the Constitutional Reform Act 2005, the Bill will result in the Lord President of the Court of Session relinquishing some of his powers to appoint tribunal members.

28. At present the Lord President has a limited role in relation to many appointments but enjoys the appointment function itself in relation most notably to legal members of VAT and Duties Tribunals and in relation to the Employment Tribunals that sit in Scotland.

29. When the jurisdictions transfer into the new tribunals established under the Bill the functions of the Lord President, as with the functions of Secretaries of State, will fall away, to be replaced by the more general provisions of the Act. For Scottish appointments these provisions require consultation with the Lord President prior to commencing a competition and during the course of the competition. The effect of this is to provide for consultation with the judiciary north and south of the Border in a consistent way.

30. Furthermore, the Bill provides for the transfer of judicial review cases in certain of these reserved tribunal areas to the Upper Tribunal, if considered by the Court to be appropriate.

*Financial implications*

31. In consequence of practical arrangements entered into around the time of devolution, administrative support and facilities for certain reserved tribunals such as Social Security Commissioners and VAT and Duties Tribunals are provided in practice by the Scottish Executive. It is not proposed that those arrangements change following the reorganisation described.

32. Accordingly, there are not considered to be any financial implications for Scotland of these UK Government proposals. Except in relation to supervision of their activities and in relation to the continued funding of an appropriate share in relation to the costs of the Criminal Injuries Compensation Appeals Panel, the proposals affect non-devolved Tribunals only and the creation of and running costs in relation to the Tribunal Service will be borne by DCA.

33. As far as supervision of their activities is concerned, the Council on Tribunals is a cross-border public authority the funding for which comes from the Lord Chancellor and it is proposed that the same arrangements will apply in relation to the new Administrative Justice and Tribunals Council.

*Conclusion in relation to Tribunals*

34. The view of the Executive is that full and effective supervision of tribunals operating in both reserved and devolved areas can only be achieved by having an experienced, credible and independent body with responsibility for carrying out that
function. The proposal to create an Administrative Justice and Tribunals Council achieves that and should be supported.

35. The Executive also believes that the Criminal Injuries Compensation Appeals Panel can enjoy the benefits of integration into the new tribunal arrangements and that this Bill is the most effective means of achieving that end.

IMMUNITY FROM SEIZURE

Background

36. At the moment the UK has no legislation granting immunity from seizure to works of art which are loaned to temporary exhibitions in this country. In this, it is becoming increasingly unusual. The United States (and some of the individual states), some Canadian provinces, France, Germany, Austria, Belgium and Switzerland have enacted such legislation.

37. The difficulties the lack of such legislation causes for the United Kingdom were illustrated in November last year when 55 Impressionist paintings from the collection of the Pushkin Museum which had been on loan to an exhibition in Switzerland were seized at the instigation of Noga, a Swedish company which sought the enforcement of debt (reputedly at least $70 million). In that case, the matter was resolved in three days. However it led the Director of the Hermitage Museum in Russia to state that no loan would be made from any of the Russian collections to any country which could not provide satisfactory guarantees that a cultural item which had been loaned would not be liable to seizure. This immediately put a number of exhibitions planned in this country in jeopardy (including all the exhibitions planned at the Courtauld Institute of Art’s Hermitage Rooms at Somerset House, the V&A Museum’s exhibition on Modernism, and an exhibition at the National Museums and Galleries of Scotland).

38. A number of other countries are also demanding guarantees that works of art loaned to the UK cannot be seized and, for example, have withdrawn promised loans from major exhibitions in our most prominent museums and galleries; and the prediction is that more will do so. Germany and France are increasingly asking for such assurance and private lenders from the US have long been concerned about the absence of such security. Ex-Communist countries (where the authorities may not be aware of the full provenance of items in their collections, and thus not able to forecast which may be subject to claims if moved to a third country) have also become increasingly unwilling to lend their works of art to UK exhibitions.

Potential reasons for seizure

39. Cultural objects which have been loaned to temporary exhibitions in this country will be potentially vulnerable to seizure in the course of civil or criminal proceedings. Loans to an exhibition may contain both items owned by the state and items of outstanding quality in private collections in that country. Proceedings may be brought in relation to a particular cultural object – for example claiming title to that object.

40. Cultural property which is temporarily in this country may also be at risk where the owner of the object concerned has heavy debts. They may be seized by creditors
seeking to enforce a judgment against the owner, or, where the owner is made bankrupt or gone into liquidation, by the liquidator or trustee in bankruptcy seeking to maximise the return to be made to creditors.

41. Thirdly, works of art in exhibitions may be at risk of being seized during the course of criminal investigations. A police constable lawfully on the premises of a museum can seize anything on the premises if he has reasonable grounds for believing that it has been obtained in consequence of the commission of an offence or that it is evidence in relation to an offence which he is investigating or any other offence, and that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed. A range of other powers of seizure are available to police, HM Revenue and Customs and other enforcement authorities under various enactments.

Proposal of the UK Government

42. The proposals of the UK Government will require only a limited extension of the scope of the Tribunals, Courts and Enforcement Bill.

43. The UK Government fully expects that these proposals will be welcomed by museums and international lenders – representatives from the major UK museums and galleries met the Secretary of State on 2 February 2006 to express their concerns. Such provisions will bring this country into line with other major European countries, the United States and Canada which already have immunity from seizure legislation. Subject to the agreement of the devolved administrations, the UK Government considers that it would be helpful if the legislation extends to the whole of the UK, so that immunity from seizure can be provided in relation to works of art lent to exhibitions held anywhere in the UK. The National Museums of Scotland, the National Galleries of Scotland and the Executive support this approach.

44. The provisions in the Bill are not intended to affect unduly the investigation and prosecution of crime in Scotland. If detailed consideration of the Bill identifies any changes necessary to give full effect to this intention, the required amendments would be made as the Bill progresses at Westminster.

Financial implications

45. There are not considered to be any financial implications for Scotland of these UK Government proposals. The intention is to have automatic immunity, rather than a system of application, and, therefore, minimal administrative costs.

Conclusion in relation to seizure

46. In order that museums and galleries in Scotland may benefit from loans from international collections on the same basis as the rest of the UK, and at the same time, the Scottish Executive proposes that the legislation providing immunity from seizure to international works of art which have been loaned to exhibitions taking place in the UK, should extend to Scotland.
Ian was asked by the Justice Committee yesterday to supply some stats on Home Detention Curfew. Here is the information requested:

- Total granted HDC = 64
- Total out on HDC at present = 25 (+ 1 being recalled - still at large)
- Total breaches to date = 5 (including 1 still at large)
- Total successes to date = 27
Finance Committee

Report on Custodial Sentencing and Weapons (Scotland) Bill

The Committee reports to the Justice 2 Committee as follows—

Introduction

1. Under Standing Orders, Rule 9.6, the lead Committee in relation to a Bill must consider and report on the Bill's financial memorandum at stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.

2. This report sets out the views of the Finance Committee on the Financial Memorandum (FM) of the Custodial Sentencing and Weapons (Scotland) Bill, for which the Justice 2 Committee has been designated by the Parliamentary Bureau as the lead committee at Stage 1.

3. The Committee agreed to adopt level 3 scrutiny in considering the Bill, which involved seeking written evidence from organisations financially affected by it, then taking oral evidence from the Scottish Prison Service and from the Executive Bill Team. The Committee took evidence from representatives of both organisations on 14 November 2006.

4. The Committee received submissions from the Association of Chief Police Officers in Scotland; COSLA; Crown Office and Procurator Fiscal Service; Scottish Legal Aid Board; and South Lanarkshire Council. All of this evidence is set out in the Annex to this report.

5. The Committee would like to express its thanks to all those who submitted their views.

Objectives and the Financial Memorandum

The Bill

6. The Bill is in two parts. The first part makes changes relating to custodial sentences to end automatic and unconditional early release of offenders. The Policy Memorandum and Explanatory notes set out the specific detail of these changes but broadly for sentences of 15 days or more, there will be a combined sentence comprising a period in custody (custody part) which will be a minimum of 50% of the sentence and a period on licence in
the community (community part). Courts will have powers to increase the custody part up to a maximum of 75% of the sentence. For sentences of less than 15 days, the offender will spend the full period in custody and will be released unconditionally.

7. The second part relates to knives and swords. The outcome of a review of knife crime was announced in 2005 and this set out a five-point plan. The first three points were implemented as part of the Police, Public Order and Criminal Justice (Scotland) Act 2006 and this Bill seeks to implement the final two points of the plan. These are: to introduce a licensing scheme for the sale of non-domestic knives and similar objects; and to ban the sale of swords.

Costs

Custodial Sentences
8. The total year 1 recurring costs on the Scottish Administration are estimated as £14.84 million. The total non-recurring costs in year 1 will either be in the range £25.2m - £37.2m or £102.2m - £162.2m. Eventual recurring costs are anticipated to be between £47.07m - £65.07m.

Prisoner population
9. The main costs will arise as a result of an increase in prisoner numbers, with the FM giving a range of between 700 and 1100 additional places required over and above the current projected increase in prison population. The table on page 30 of the Financial Memorandum shows additional recurring costs in the first year for the Scottish Prison Service (SPS) of £9m, with eventual recurring costs of between £37m - £55m. The FM implies that additional prisons could be required and a range of £25.2m - £37.2m is given if built by the private sector and £102.2m - £162.2m if public sector.

Appeals
10. It is assumed that the new arrangements could result in an increase in appeals and this is estimated to be £43,000. However it is indicated that the Scottish Court Service believes this can be absorbed into existing budgets.

The Parole Board for Scotland
11. Under the new proposals, continued detention will need to be considered by a Tribunal (the Parole Board for Scotland) (as is currently the case with life sentence prisoners). This is estimated to cost £675,000 which is an increase of £277,000. Legal aid could also be increased to £612,000.

12. The requirement for there to be an assessment of the risk of harm will apply to all those sentenced to 15 days or more. This is estimated to cost £5.5m to £6.5m. In addition, there could be increased IT costs of £200,000.
13. There would also be additional costs to the Parole Board as a result of an increase in the number of cases for consideration of re-release. This is estimated as £59,000.

“Community part”
14. As the vast majority of offenders will now have a community part of their sentence, then there will be additional costs to local authorities for community intervention or supervision (or Community Justice Authorities when they are established). This is estimated at £7,45m, which the FM suggests will be reimbursed by the Executive.

15. Electronic monitoring can be imposed as a licence condition and this is estimated as costing an additional £1.1m. The cost would fall on the Executive.

Police
16. The Association of Chief Police Officers in Scotland estimates that this part of the Bill will cost an additional £31,000.

Knives and Swords
17. There could be an increase in the number of offences due to the new licensing scheme and offence provisions, but the FM states that if the Bill is successful then there will be a reduction in the prevalence of knife/sword carrying and other knife-related violence and therefore, this could lead to a reduction in the resources required. However, this is not quantified.

18. Local authorities will incur costs through having to administer a licensing scheme. However, the Executive anticipates these will be recovered through licence fees.

Summary of evidence

Provision of funding
19. The Committee has discovered during its consideration of other financial memoranda, including the Adoption and Children (Scotland) Bill and the Adult Support and Protection (Scotland) Bill, that although the FMs reflect the resources required for the Bills, the resources had not been guaranteed by Ministers, pending the Spending Review process.

20. The submission from the SPS explicitly states that “SPS would need the new resources to be provided in line with the rate of increase in prison population.” Representatives of the SPS were asked whether they had received assurances from the Scottish Executive that such funding was secure for the implementation of the provisions within the Bill and responded stating:
“We see the decision on funding being taken through the spending review rather than the Executive giving a firm commitment at this time.”

21. This issue was followed up by the Committee during the evidence session with Executive officials who added that:

“The only thing I can say by way of assistance is that commitment is given in the financial memorandum that ministers recognise that the facilities and structures need to be in place before the new arrangements can be brought on stream.”

22. The Committee appreciates that Executive officials were not in a position to confirm in oral evidence that adequate funding will be provided and that the timing of this Bill is such that funding cannot be absolutely guaranteed until after the Spending Review process is complete.

23. However, given the importance of securing funding for the additional prison places anticipated to ensure this Bill does not compound issues of overcrowding, the Committee recommends that the lead Committee seeks assurances from the Minister that every effort will be made to secure adequate funding within cabinet negotiations during the Spending Review process.

Accommodating an increase in prisoner numbers

24. The Scottish Prison Service is currently undertaking investment to expand and modernise the prison estate. This includes extending four existing sites and seeking to build two new prisons. The proposed new prison on the existing Low Moss prison site is currently seeking planning permission and the development of a new private prison is underway in West Lothian. The evidence from SPS reflected that the additional places provided by these developments seek to address an existing shortfall in prison capacity:

“…over the next few years, we will try to build up sufficient capacity. We hope to align capacity with the projected prisoner population in a few years’ time. That is not taking into account any implications in the bill. The projection is that the prisoner population will continue to increase by about 100 to 200 prisoners per annum. So, in a few years’ time, we will have another shortfall of places if the figures fall out as they are projected. That will be addressed in the next phase of the development plan…

Over time, the opportunities to build more accommodation—more efficient prisons on the existing sites will dry up. If that happens, we will need to look at other ways of delivering that accommodation…We will need to consider other options such as new prison sites and the cost of delivering those.”

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1 Pretswell, Official Report Col 4184-5, 14 November 2006
2 Richardson, Official Report Col 4189, 14 November 2006
25. In relation to timescales for building new prisons, the Financial Memorandum states that: “A realistic estimate is that overall a new prison might take up to 8 years from the initial proposal to taking its first prisoners...” This estimate incorporates the potential for developments being delayed within the planning process.

26. The Financial Memorandum states that the Bill is likely to result in an additional 700 to 1100 prisoners. A number of the assumed costs in the FM are based on this figure. The SPS submission states that: “SPS was fully involved, with Ministers and Executive officials, in considering the impact of the measures and the costs...We therefore agree and support the figures in the Financial Memorandum which relate to the expected impact on the SPS.” In relation to accommodating these prisoners it also states that “as a rule of thumb a new prison might comprise 700 places.”

27. The progress of planning how to accommodate these additional prisoner places was explored during the evidence session with SPS representatives, including exploring the option of extending existing prisons or building new prisons on separate sites. The SPS responded that:

“At this stage, we have no plans for how we could deliver that provision, so we have tried to express it in financial terms in the financial memorandum, rather than presenting it as a fixed way of delivery.”

28. This statement raises concern as it shows that the planning process for the provision of adequate accommodation for the increase in prisoner numbers has not commenced. Set against a context of the prison service’s current development programme exhausting options for existing prison expansion to achieve adequate capacity for existing prisoner numbers, it would appear that any plans to implement the Bill would require at least one additional prison. Assuming a new prison is required and the lead in time for its opening is 8 years as suggested in the FM, it would seem the provision of additional accommodation required for the Bill is already behind schedule.

29. The anticipated further rises in prisoner numbers exclusive of the impact of the Bill, and long lead in times for new prisons opening would appear to further highlight the need for a greater sense of urgency in planning for increased capacity required as a result of the Bill.

30. The estimates provided within the FM appear to assume that accommodation will be provided in line with the increase in prisoner numbers. The Committee is therefore very concerned that the planning process for how the additional prisoners anticipated from the implementation of this Bill will be accommodated is at such an early stage. **Given the potential cost of delays in the provision of accommodation for 700 to 1100 additional prisoners, the Committee recommends that the lead committee raises this issue with the Minister.**
Anticipated savings for the Parole Board
31. The Parole Board for Scotland submission to the Justice 2 Committee states that:

“Paragraph 173 of the FM advises that savings of £50,000 will accrue as a result of the Parole Board not being required to consider cases involving the recall to custody of licences. That is not correct…Certainly there will not be fewer cases to be considered at each casework meeting as any reduction resulting from recall cases being considered only by the Scottish Ministers will be more than offset by the costs incurred in dealing with the anticipated increase in the number of recalled offenders who will have their cases referred to the Board for consideration of re-release.”

32. Members explored the basis for the assumption that a £50,000 saving will be realised, given the concerns of the Parole Board for Scotland, with Executive officials who stated that:

“we are in discussion with the board on a number of areas, including possible reductions in its workload in relation to the number of tribunals that it has to hold.”

33. The Committee acknowledges the logic that a reduction of the Parole Board’s workload in one sphere, when considered in isolation from other provisions of the Bill, could produce a saving. However, given the pivotal role which the Parole Board will be required to play in the new arrangements proposed by the Bill and the additional funding required to support this work, the Committee appreciates the concerns of the Board that any such savings could require to be re-allocated to another area of their work. The Committee recommends that the Executive Bill team should ensure this is taken into account during future discussions with the Parole Board.

Administrative burden on sentencing sheriffs
34. The Bill requires that information should be provided to the Parole Board about the offence or offences that resulted in long term imprisonment. At present High Court judges produce a report following an offender’s trial which is relied on by the Parole Board. The Parole Board for Scotland submission to the Justice 2 Committee suggests that, should sheriffs be required to produce similar reports under the Bill, this will present a considerable burden.

35. Executive officials confirmed in oral evidence that sheriffs would be expected to produce post-sentencing reports. Officials also explained that the implementation group, which has representation from the Sheriff Association, will look at any information that is required to be provided by judges and sheriffs.

3 Richardson, Col 4191, Official Report, 14 November 2006
4 Richardson, Col 4191, Official Report, 14 November 2006
36. The Committee considers that, as the Executive is aware of the increased burden of the production of information by sheriffs, including ensuring this issue is covered within the ongoing work of the implementation group, the estimated cost of this could have been factored into the FM. Members of the lead committee may wish to explore the possible costs of the administrative burden of the production of post-sentencing reports on sheriffs with the Minister.

Knives and swords
37. The FM states that local authorities will incur costs through having to administer a licensing scheme and anticipates these will be recovered through licence fees and therefore cost neutral. The COSLA submission suggests that cumulatively a number of small-scale, supposedly cost neutral policies represent a growing burden on local authorities. In addition, the ACPOS submission states that: “it is anticipated that there could be an additional volume of licensing queries, including background checks, to be dealt with by the police service. Forces may therefore seek reimbursement of costs from the licence fee levied by local authorities.”

38. In oral evidence Executive officials referred to local authorities’ ability to set fees to ensure their costs, including administrative costs mentioned by COSLA, are covered stating that it is the responsibility of local authorities to set a fee that covers all their costs. The Committee appreciates that the fee is within the gift of local authorities and would encourage them, in setting fees, to ensure that the possibility of the police service seeking reimbursement of costs is factored into the fee level set. The Committee suggests that COSLA may wish to enter into discussions with ACPOS on this basis.

Expected reduction in re-offending
39. The COSLA submission states that: “Services such as probation and community sentences, court-based social work, throughcare, supervision, supported accommodation, services specifically for women offenders, and drug and alcohol rehabilitation all need to be properly resourced if the risk of harm and re-offending is to be effectively reduced and if offenders are to be fully integrated into their communities. Local authority community-based disposals are not currently funded at a level which can realistically achieve the expected reduction in re-offending.”

40. Members explored whether the existing underfunding of local authority community based disposals had been taken into account in the preparation of the FM with Executive officials. Officials noted that the increased funding in this area in recent years (rising from £2.5m in 2002-03 to £9.3m in 2006-07) reflected the priority the Executive places on these services. As discussions are continuing on this issue between COSLA and the Executive, the Committee would encourage COSLA to calculate an estimate for the existing shortfall in funding and extrapolate from those

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5 McLaughlin, Col 4192, Official Report, 14 November 2006
figures the likely additional shortfall in funding resulting from the implementation of the Bill, to strengthen COSLA’s position in negotiations.

41. The supplementary evidence received from Executive officials states that funding for local authority criminal justice social work services for delivery of reports to courts and management of offenders in the community increased from £67m in 2002-03 to a projected £103m in 2007-08. The budget for the Scottish Prison Service has risen from £290.2m in 2002-03 to a projected £427.3m in 2007-08\(^6\).

42. The Committee notes the increasing funding requirements of the Scottish Prison Service between 2002-03 and 2007-08 a proportion of which reflects the growing problem of increases in prisoner numbers, in part as a result of re-offending. The Committee also notes the distinction in funding levels between this service and funding criminal justice social work services, which aims amongst other things to reduce re-offending. **As one of the key priorities of the Bill is a reduction in re-offending, the lead committee may wish to explore with the Minister whether strategic direction towards a reduction in re-offending is reflected within funding provision for criminal justice social work services.**

_Private sector / public sector prison construction_

43. The FM provides for a range of costs for any additional prisons required and a range of £25.2m - £37.2m is given if built by the private sector and £102.2m - £162.2m if public sector.

44. Members requested information from Executive officials on the cost of public versus private prisons over 25 years to clarify whether the substantial difference was because the figures provided in the FM only reflect a cost differential over 5 years.

45. The response provided from the Scottish Prison Service provides information on the cost per prisoner per annum for a 700 cell prison over 25 years and suggests that the Private Build Private Operate option would be the least expensive option compared to Private Build Public Operate or the Public Sector Comparator option. It goes on to state that the non-recurring costs range from £23m to £160m and reflects that the lower figure relates to private sector provision of a 700 place prison which is ‘off-balance sheet’ for SPS (like HMP Kilmarnock and HMP Addiewell) and the higher relates to 1,100 places via two new prisons which are provided either by the public or private sector but are not classified as off-balance sheet for SPS. The response also notes that the procurement exercise for the planned prison at Bishopbriggs will be an open competition between the private sector and the public sector (in the form of an in-house SPS bid). The Committee draws this supplementary information to the attention of the lead committee.

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\(^6\) The Scottish Executive Draft Budget 2007-08, p.169, Table 9.16
Conclusion

46. The Committee has serious concerns in relation to the provision of funding for the Bill and the provision of accommodation for the additional prisoners anticipated as a result of the Bill’s implementation.

47. On the issue of funding, given the importance of securing funding for the additional prison places anticipated to ensure this Bill does not compound issues of overcrowding, the Committee recommends that the lead Committee seeks assurances from the Minister that every effort will be made to secure adequate funding within cabinet negotiations during the Spending Review process. [paras 19 to 23]

48. On the issue of accommodation provision, the Committee is very concerned that the planning process for how the additional prisoners anticipated from the implementation of this Bill will be accommodated is at such an early stage. Given the potential cost of delays in the provision of accommodation for 700 to 1100 additional prisoners, the Committee recommends that the lead committee raises this issue with the Minister. [paras 24 to 30]
Annexe

Custodial Sentences and Weapons (Scotland) Bill

Approach paper

Background
The Custodial Sentences and Weapons (Scotland) Bill (‘the Bill’) is an Executive Bill.

The Bill
The Bill is in two parts. The first part makes changes relating to custodial sentences to end automatic and unconditional early release of offenders. The Policy Memorandum and Explanatory notes set out the specific detail of these changes but broadly for sentences of 15 days or more, there will be a combined sentence comprising a period in custody (custody part) which will be a minimum of 50% of the sentence and a period on licence in the community (community part). Courts will have powers to increase the custody part up to a maximum of 75% of the sentence. For sentences of less than 15 days, the offender will spend the full period in custody and will be released unconditionally.

The second part relates to knives and swords. The outcome of a review of knife crime was announced in 2005 and this set out a five-point plan. The first three points were implemented as part of the Police, Public Order and Criminal Justice (Scotland) Act 2006 and this Bill seeks to implement the final two points of the plan. These are: to introduce a licensing scheme for the sale of non-domestic knives and similar objects; and to ban the sale of swords.

Costs

Custodial Sentences
The total year 1 recurring costs on the Scottish Administration are estimated as £14.84 million. The total non-recurring costs in year 1 will either be in the range £25.2m - £37.2m or £102.2m - £162.2m. Eventual recurring costs are anticipated to be between £47.07m - £65.07m.

Prisoner population
The main costs will arise as a result of an increase in prisoner numbers, with the FM giving a range of between 700 and 1100 additional places required over and above the current projected increase in prison population. The table on page 30 of the Financial Memorandum shows additional recurring costs in the first year for the Scottish Prison Service (SPS) of £9m, with eventual recurring costs of between £37m - £55m. The FM implies that additional prisons could be required and a range pf £25.2m - £37.2m is given if built by the private sector and £102.2m - £162.2m if public sector.
**Appeals**

It is assumed that the new arrangements could result in an increase in appeals and this is estimated to be **£43,000**. However, it is indicated that the Scottish Court Service believes this can be absorbed into existing budgets.

**The Parole Board for Scotland**

Under the new proposals, continued detention will need to be considered by a Tribunal (the Parole Board for Scotland) (as is currently the case with life sentence prisoners). This is estimated to cost **£675,000** which is an increase of **£277,000**. Legal aid could also be increased to **£612,000**.

The requirement for there to be an assessment of the risk of harm will apply to all those sentenced to 15 days or more. This is estimated to cost **£5.5m to £6.5m**. In addition, there could be increased IT costs of **£200,000**.

There would also be additional costs to the Parole Board as a result of an increase in the number of cases for consideration of re-release. This is estimated as **£59,000**.

**“Community part”**

As the vast majority of offenders will now have a community part of their sentence, then there will be additional costs to local authorities for community intervention or supervision (or Community Justice Authorities when they are established). This is estimated at **£7.45m**, however this will be reimbursed by the Executive.

Electronic monitoring can be imposed as a licence conditions and this is estimated as costing an additional **£1.1m**. The cost would fall on the Executive.

**Police**

The Association of Chief Police Officers in Scotland estimates that this part of the Bill will cost an additional **£31,000**.

**Knives and Swords**

There could be an increase in the number of offences due to the new licensing scheme and offence provisions, but the FM states that if the Bill is successful then there will be a reduction in the prevalence of knife/sword carrying and other knife-related violence and therefore, this could lead to a reduction in the resources required. However, this is not quantified.

Local authorities will incur costs through having to administer a licensing scheme. However, it is anticipated these will be recovered through licence fees.
SUBMISSION FROM SCOTTISH PRISON SERVICE

Thank you for your letter of 18th October inviting me to give oral evidence on behalf of SPS on the above Bill on 14th November. I attach the SPS response to the questionnaire you circulated with your letter.

Unfortunately I shall be out of the country on 14th November and unable to give evidence in person. I would nominate Willie Pretswell (Finance Director), Rachel Gwyon (Director of Corporate Services) and Eric Murch (Director of Partnerships and Commissioning) to attend in my place and answer the Committee’s questions. I hope this arrangement is satisfactory.

Yours sincerely

Tony Cameron
Chief Executive

Questionnaire

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the Financial Memorandum for the Custodial Sentences and Weapons (Scotland) Bill. In addition to the questions below, please add any other comments you may have which would assist the Committee’s scrutiny.

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
3. Did you have sufficient time to contribute to the consultation exercise?

SPS was fully involved, with Ministers and Executive officials, in considering the impact of the measures and the costs ahead of publication of the Bill. We therefore agree and support the figures in the Financial Memorandum which relate to the expected impact on the SPS. The requirement is for additional running costs of £37-55 m p.a. by year 5 and capital provision of £25.5-162.2m. These resources, and the services to which they relate, would provide for the expected additional 700-1100 prisoners per day over that same time-frame. The funds would provide not only for accommodation and programmes, but other related services such as risk assessment and integrated case management, and escorting. I attach a chart showing how the impact of the provisions might look over time, compared with our existing population projections and availability of accommodation.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

SPS is funded through the Scottish Executive’s budgetary processes. SPS would need the resources set out in the Financial Memorandum to be made available through that process. As can be seen from the chart, not all the impact would be felt immediately on implementation. SPS would need the new resources to be provided in line with the rate of increase of prison population and for the new provision and services to be available before the extra prison numbers were experienced. The cost estimates are based on 2005-06 figures and do not build in an estimate for inflation.
6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Modelling the substantial effects of this legislation is complex. SPS statisticians already provide projections on an annual basis which use the observed trends in sentencing behaviour over the past 34 years to project the future prison population levels, assuming sentencing behaviour remains unchanged. For example our projections take no account of factors such as demography or recorded crime as no statistical relationship has been established. They have nonetheless a track record of accuracy over a number of years.

The Bill has required us to model predictions which apply certain assumptions about changes in arrangements. For example we have assumed that:

- All measures in the Bill relating to sentence management are implemented at the same time
- The Bill applies a “risk of harm” test which we have assumed to correlate to those convicted and sentenced to more than 1 year for a sexual or violent offence and with a history of such convictions
- 15% of those reaching the end of the “custody part” of their sentence are therefore likely to be referred to the Parole Board for a decision on whether they should remain in custody
- The Parole Board might direct 50% of those offenders to proceed to the community part of their sentence. Looking at the last 5 years of Parole Board cases 50.5% of those considered by the Board have been recommended for Parole. The remainder will remain in custody until the ¾ point of their sentence
- Once released, 15% of those with supervision (not just licence conditions) in the community might commit a breach of the terms sufficiently serious to require a recall to custody

The estimates in the Financial Memorandum will be accurate if, collectively, these assumptions are borne out in practice and shown to be accurate. We have used existing data on current trends, where possible, to inform and underpin our assumptions. Additionally the Financial Memorandum includes a range of likely increase in population. This is because the numbers are estimated to increase over time, for example quite markedly between years 4 and 5. SPS can also experience “spikes” on any given day or week over and above the average population, perhaps as high as 5%. The underlying trend of the prison population is also upwards and will affect the rate of increase in population due to the implementation of these measures. Detailed work has been done by SPS’ and Scottish Executive analysts and statisticians to prepare and support the predictions.

The timescales required for providing the resources and services for the estimated increase in prisoners numbers need to be considered. Precisely how prisoner places are best provided still needs to be worked through as an implementation issue. It may be possible to provide some places in houseblocks, as has been done recently at Cornton Vale. On the other hand a new prison, such as at Addiewell, provides extra accommodation on a different scale and at lower unit cost to the taxpayer. As a rough rule of thumb a new prison might comprise 700 places and require around £100m initial capital investment if provided in the public sector and circa £30m pa in running costs once open. As has been SPS experience at Low Moss, obtaining planning permission can be a slow process. A realistic estimate is that overall a new prison might take up to 8 years from the initial proposal to taking its first prisoners. The precise combination of methods selected to provide the extra places will need to ensure the new resources are available at the right rate to meet demand and are procured in the most economical, efficient and effective way possible.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The aims of the Bill to provide for improved sentence management throughout the full course of the sentence support the work already initiated by SPS. CJAs, criminal justice social work departments, the voluntary sector and police forces will be able to use SPS’s new Integrated Sentence Management System for managing offenders and reducing their re-offending. SPS is content that those costs are accurately reflected in the Financial Memorandum.
8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Scottish Ministers have supported the Scottish Prison Service over a number of years by enabling us to provide an estate fit for the 21st century. Around £1.5m per week is being invested. In recent times for example that funding has enabled SPS to eliminate slopping out at Barlinnie, Perth and Edinburgh. 240 new prisoner places have been provided at the Open Estate and Cornton Vale and modernised houseblocks and improved facilities have already been provided at Glenochil, Perth, Polmont and Edinburgh. There is more to come. This work will improve the facilities and services which can be offered to the existing prison population.

What the Financial Memorandum shows is the increased demand for additional prisoner places. Whilst the costs are shown to year 5 an important point is that these costs are ongoing. New accommodation could be expected to have a lifetime of 25 years. Each 700 places might therefore cost the public purse not too far off £1bn cash over the contract’s lifetime.

SPS is content that all the costs, which we envisage so far, are included in the Financial Memorandum.

SUBMISSION FROM ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND

I refer to your correspondence dated 18 October 2006 in connection with the above subject, which has been considered by members of the Finance Management Business Area and can now offer the following by way of comment.

As you will be aware, ACPOS recently provided written and oral evidence on the practical aspects of the Bill to the Justice 2 Committee. The following comments are offered in relation to the Financial Memorandum associated thereto.

Members note that it is anticipated that the majority of costs in relation to the custodial sentencing aspects of the Bill, will fall mainly on the Scottish Prison Service, Criminal Justice Social Work Services and the Parole Board for Scotland. Police forces will be involved through the proposed Multi Agency Public Protection Arrangements (MAPPA). It is difficult to accurately quantify costs relative to any new piece of legislation however, in general terms, funding will be required in this case for staff training and I.T. In addition, formal arrangements with other agencies will be necessary for the acquisition, storage, sharing and deletion of information, and costs associated with attending case conferences and carrying out risk assessments, will also need to be taken into account. The extent of the impact on the volume of work for the Scottish Police Service is not yet known.

ACPOS has previously commented on the additional burden arising from the increased volume of recall orders requiring enforcement and an enhanced volume of Police Reports. It has been estimated that this could cost around £31k per annum.

Weapons

Members welcome this part of the Bill which aims to reduce the number of bladed weapons in circulation and use. Whilst the responsibility for monitoring and enforcement will fall on trading standards officers, it is anticipated that there could be an additional volume of licensing queries, including background checks, to be dealt with by the police service. Forces may therefore seek reimbursement of costs from the licence fee levied by local authorities.

I trust that the foregoing is of assistance to you.

Yours sincerely

Harry Bunch
Acting General Secretary
SUBMISSION FROM COSLA

Background

1. The Convention of Scottish Local Authorities (COSLA) is the umbrella organisation representing 31 of Scotland’s 32 councils. We welcome the opportunity to give evidence to the Finance Committee on the financial memorandum attached to the Custodial Sentences and Weapons (Scotland) Bill which has wide-ranging implications for local government. COSLA supports the overall policy objectives of the Bill which broadly represent an ambition to achieve safer communities and to prevent re-offending which is shared by all in local government.

2. However, COSLA considers that the financial memorandum needs to be scrutinised and further developed in a number of areas to ensure effective implementation. These areas are outlined below in:
   • Section one: Custodial Sentences
   • Section two: Weapons

Section one: Custodial Sentences

3. The financial memorandum outlines that £7.45m will be available to oversee those subject to supervision over 6 months. This equates to £2,000 per offender. COSLA does not consider this allocation to be adequate. We estimate that the unit cost for supporting a high risk offender averages nearer £5,000 (including Social Enquiry Report costs, Keyworker Drug and Alcohol costs, employability services, resettlement facilitation, costs of breach, and offence-focussed work) and for lower risk offenders the unit cost is closer to £3,500, with a requirement for around £10m to oversee those subject to supervision over 6 months alone (see appendix 1).

4. Caution must be exercised with regard to the estimates for additional financial burden. This is a new approach based on risk of harm rather than length of sentence but we only have information on current prisoners and patterns of activity. Services such as probation and community sentences, court-based social work, throughcare, supervision, supported accommodation, services specifically for women offenders, and drug and alcohol rehabilitation all need to be properly resourced if the risk of harm and re-offending is to be effectively reduced and if offenders are to be fully integrated into their communities. Local authority community-based disposals are not currently funded at a level which can realistically achieve the expected reduction in re-offending.

30. Increased levels of
   • monitoring and supervision of attendance;
   • report writing, in particular Social Enquiry Reports;
   • brokering and signposting to appropriate support and interventions; and
   • license breaches

will all generate increased workloads and the need for additional staff and, in turn, additional office accommodation. There will be significant implications for prison-based, court-based and community-based Social Workers due to the increased assessments, reports and supervision required as a result of this legislation. There will also be an increased demand on accommodation and supported accommodation costs for prisoners released from prison.

Section two: Weapons

5. A cost recovery model is the suggested form of financing the licensing scheme. However, it must be recognised that over the years, a number of small-scale, supposedly “cost neutral” schemes have been implemented by local authorities. Being small-scale, they do not individually warrant a dedicated member of staff. However, cumulatively, they represent a growing burden on local authorities. There are a relatively small number of businesses that sell knives and the cost recovery model suggested has potential to move the cost of the
scheme on to local authorities through additional administration and regulation in ways which will not be “cost neutral”.

Conclusion

6. COSLA welcomes the general direction of the Custodial Sentences and Weapons (Scotland) Bill. However, we propose that the potential it has for impacting on both community safety and reduced offending, will be very much dependent on the level of resourcing made available to implement it effectively. As highlighted above we do not believe that financial memorandum adequately accounts for the costs which local authorities will incur from the introduction of this Bill.

Vicki Lewis
Policy Manager

Appendix 1: A Tiered Approach to Post Custodial Supervision

<table>
<thead>
<tr>
<th>Tier One (voluntary sector provision)</th>
<th>Tier 2 (resettlement type services)</th>
<th>Tier 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serving less than six months (excl fine default): average period on licence of 7 weeks (50%)</td>
<td>(a) Serving 6 mths -1 yr: average period on licence 4.5 mths (50%) (b) of those serving 1-4 years/assessed as not a risk of serious harm: average period on licence: 15 mths (50%)</td>
<td>Serving 1-4 years and assessed as risk of serious harm: average period on licence 7.5 mths (25%)</td>
</tr>
</tbody>
</table>

| 2005-06: 4,795 liberations | (a) 1,959 | 2005-6: 230
(b) 1,536 | 
| No involvement from SW in assessment | Risk assessment from Prison SW | Risk assessment from Prison SW |
| No case worker | Unqualified case worker | Qualified case worker |
| Sign posting to services – particular issue will be housing for any one who is in prison for more than 13 weeks | Provision of standard services: accommodation (100%), employability (100%) and substance misuse key working (10%) | Provision of standard services: accommodation, employability and substance misuse key working (10%) |
| No involvement in offence-focussed work | (a) No involvement in offence-focused work (b) Some limited offence-focussed work if on licence for more than 6 months | Intensive offence-focused work if on licence for more than 6 mths (but in the absence of offence-focussed work undertaken in SPS this element would increase substantially) |
| No involvement of SW in breach | SW breach report (25%) | SW breach report (25%) |
| Notional unit cost of £700 | Around £3,500 for a full year of service | Around £5,000 for a full year service |
| Cost for service around £3,500,000 | Cost of service based on average length of licence: around £8,500,000 | Cost for average of 7.5 mths to each client: £675,000 |

7 87% of the liberations in this sentence length i.e. excluding convictions of non-sexual crimes of violence and crimes of indecency

8 13% of the liberations in this sentence length i.e. those with convictions of non-sexual crimes of violence and crimes of indecency
SUBMISSION FROM CROWN OFFICE AND PROCURATOR FISCAL SERVICE

Consultation

As a Scottish Executive Department COPFS has not been involved in the formal consultation, but has been closely consulted by Justice Department in the development of the proposals and has been able to comment on relevant financial assumptions. COPFS’ views are accurately reflected in the Financial Memorandum. COPFS officials continue to work with Justice Department colleagues on the planning, and in due course, implementation of the Bill.

Costs

Paragraph 142 (custodial sentences) and paragraphs 183-185 (restrictions on sale of knives and swords) accurately reflect the potential financial implications for COPFS. For the reasons stated in the Memorandum, it is not possible to quantify the costs (or, in the case of knives and swords, possible savings) but a modest increase in appeals against sentence could be absorbed within existing resources. The margin of uncertainty is associated with emerging sentencing practice in a novel area.

Wider Issues

COPFS has no reason to believe that the wider associated costs have not been accurately reflected in the Financial Memorandum and officials have not identified future unseen costs that might be caused by subordinate legislation or more developed guidance.

SUBMISSION FROM SCOTTISH LEGAL AID BOARD

Consultation

Q. 1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

A.1. The Board provided comments to the Justice Department on potential costs arising from proceedings before the parole Board.

Q.2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

A.2. Those comments have been reflected in the Financial Memorandum.

Q.3. Did you have sufficient time to contribute to the consultation exercise?

A.3. N/A.

Costs

Q.4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

A.4. The only legal aid costing relates to proceedings before the Parole Board, and appears to reasonably reflect the potential costs for the Scottish Legal Aid Fund.

Q.5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

A.5. As legal aid expenditure is demand-led, any additional expenditure will be met by the Scottish Executive.
Q.6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

A.6. The Financial Memorandum appears to reasonably reflect these matters.

Wider Issues

Q.7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

A.7. N/A.

Q.8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

A.8. Although there will be some resource cost in relation to considering any necessary changes to subordinate legislation, or developing guidance, this is unlikely to be significant.

SUBMISSION FROM SOUTH LANARKSHIRE COUNCIL

Questionnaire

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
   - N/A

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
   - N/A

3. Did you have sufficient time to contribute to the consultation exercise?
   - N/A

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
   - Financial implications are noted in the Bill in terms of the additional roles and responsibilities for Local Authorities. The Bill proposes that these would be self-financing, but as a local authority we would have to ensure that this was the case. Further, more detailed research would need to be carried out in this area.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
   - see answer to Q4 – further research required

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
   - the timescales are not discussed in the Financial Memorandum, however, we can assume that they will be consistent with the preparation for and implementation of the Bill. Cost estimates unknown at this stage.

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
   - no comment
8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
- until such times that Councils begin the preparation for the introduction of the Bill, associated costs can not be estimated with any certainty

Misc Comments:

The Bill proposes that Local Authorities will have the powers to set additional conditions relating to storage, security, proof of age/identity and packaging of mail order items. SLC would suggest that the Scottish Executive should set at least minimum standards rather than each local authority setting their own different standards.

SUPPLEMENTARY SUBMISSION FROM SCOTTISH EXECUTIVE

I refer to Mr McNulty's letter of 14 November enclosing a copy of the minute of the Committee's meeting during which consideration was given to the Custodial Sentence and Weapons (Scotland) Bill's Financial Memorandum. Scottish Prison Service colleagues will be providing separately the information on cost differentials between public and private sector prisons.

The Committee also asked for supplementary information on the year-on-year increases in funding for local authorities for community based disposals from 2005-06 and including the anticipated increase in 2007-08. Funding of local authority criminal justice social work services for delivery of reports to courts and management of offenders in the community is provided through section 27(1) of the Social Work (Scotland) Act 1968. The funding is ringfenced to ensure that resources are directed to the specific functions set out in section 27(1). Total provision of offender services has increased from £67m in 2002-03 to a projected figure of £103m in 2007-08. Within this overall sum the following funding has been allocated in recent years for delivery of throughcare i.e statutory supervision of prisoners on release from custody and voluntary assistance to eligible short term prisoners following completion of their sentence:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002-03</td>
<td>£2.5m</td>
</tr>
<tr>
<td>2003-04</td>
<td>£4.5m</td>
</tr>
<tr>
<td>2004-05</td>
<td>£5.3m</td>
</tr>
<tr>
<td>2005-06</td>
<td>£7.2m</td>
</tr>
<tr>
<td>2006-07</td>
<td>£9.3m</td>
</tr>
</tbody>
</table>

Funding of throughcare for 2007-08 has yet to be finalised.

I hope the Committee finds this helpful.

Yours sincerely

Jane Richardson
Parole and Life Sentence Review Division

SUPPLEMENTARY SUBMISSION FROM SCOTTISH PRISON SERVICE

I refer to Mr McNulty's letter of 14 November enclosing a copy of the minute of the Committee's meeting during which consideration was given to the Custodial Sentence and Weapons (Scotland) Bill's Financial Memorandum.

The Committee asked for supplementary information on the cost differential between a private sector prison and a public sector prison over a 25-year period. The most recent independent work on this question was carried by PricewaterhouseCoopers (PwC) and published in the document Financial Review of the Scottish Prison Service's Estates Review in 2002. This report concluded:
'On the basis of the work (carried out on the SPS Estates Review), the PPP Private Build Private Operate option, by a significant margin, offers a lower economic cost than either the PPP Private Build Public Operate option or the Public Sector Comparator (PSC). While the PPP Private Build Public Operate option potentially offers savings by comparison with the PSC, significant practical issues regarding its deliverability would require to be addressed in detail before it would be regarded as a viable option. Even if these practical issues were to be addressed, there remains a considerable gap between the most optimistic PPP Private Build Public Operate option and the PPP Private Build Private Operate option.'

The report also contained the following table showing the Net Present Value (NPV) figures in terms of Prisoner Place per Year for a 700 cell prison over 25 years for comparative purposes:

<table>
<thead>
<tr>
<th>Option</th>
<th>NPV per Prisoner Place per Annum (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PSC option</td>
<td>24,521</td>
</tr>
<tr>
<td>PPP Private Build Public Operate option</td>
<td>19,299-24,521</td>
</tr>
<tr>
<td>PPP Private</td>
<td>11,785</td>
</tr>
</tbody>
</table>

The proposed new prison at Bishopbriggs, East Dunbartonshire, subject to planning permission, will be procured by open competition between the private sector and public sector (in the form of an in-house SPS bid). The outcome of this process will provide a real and up-to-date comparison of the cost differential between alternative service providers.

In respect of the costs included in the Financial Memorandum, as I stated at the Committee meeting on 14 November, the additional places could be provided in a number of ways (eg additional places on existing sites, new places on new sites etc) however at this stage no decisions have been taken on the best option. Further work will be required to inform this decision-making process. The Financial Memorandum therefore contains a range of costs to reflect the range of additional prisoners resulting from the Bill and to accommodate the range of delivery options. We are content that the overall recurring costs and capital expenditure of providing 700-1,100 new places are covered in the financial figures.

The recurring costs associated with the Continued detention and recall to custody have been calculated as £40k per place (based on the SPS actual average cost per prisoner place for 2005-06 calculated on a resource accounting basis) – providing a cost range of £28-44m recurring cost for 700-1,100 additional prisoners.

The non-recurring costs (excluding £2m for land acquisition) range from £23-£160m reflecting the volume range of additional places to be provided (based on 700-1,100 prisoners) and the alternative ways of providing these places (additional houseblocks or new prisons). The bottom end of the range (£23m) relates to the provision of 700 new places via a new private sector prison which is off-balance sheet for SPS (like HMP Kilmarnock and HMP Addiewell) and is based on an estimate of the Reversionary interest value that would score as capital expenditure. The top of the range figure (£160m) relates to the provision of 1,100 new places via 2 new prisons which are provided either by the public sector (and would score as capital expenditure) or by the private sector but are not classified as off-balance sheet for SPS. The range would also accommodate a mixture of delivery options.

I hope the Committee finds this helpful.

Yours sincerely

Willie Pretswell
Director, Finance and Business Services
Dear Ms Peat

The Committee took evidence from Scottish Executive and Scottish Prison Service officials on Tuesday 24th October about the Custodial Sentences and Weapons (Scotland) Bill. The Convenor invited officials to write to the Committee with points of clarification where appropriate. We appreciate this opportunity and have provided further information below. I apologise for the delay in getting this information to you.

To set the context, I think it is worth keeping in mind that the proposals in the custodial sentences element of the Bill do not introduce an additional “sentencing option”. Their purpose is to reform the way sentences are managed so that offenders will be subject to restrictions from the beginning of their sentence through to the end. Other than for sentences of less than 15 days, all offenders will also now spend time on licence in the community in addition to the period in custody. This will allow offence-related and rehabilitative work begun in custody to be followed through to the community part, providing the prospect of true end-to-end offender management. The conditions placed on an individual on release from the custody element of the sentence will be informed by the joint risk assessment and his or her response to work begun in custody.

Areas where further clarification might be helpful to the Committee are preceded by the questions, shown in bold italics, below.

Parole Board

Was there a particular reason for the change [from a three member to a two member tribunal], or was it simply a question of efficiency and the fact that the new system has worked elsewhere?

What will happen if the two members of a tribunal cannot reach a unanimous decision?

The Committee will recall that officials confirmed at the evidence session on 28th October that neither of these matters are in the Bill. They are procedural issues for the Parole Board Rules (which the Committee will see). The outcome of the consideration on these matters will not affect the policy as set out in the Bill. As regards the matter of members on a tribunal, we are already consulting the Parole Board about the best structure while ensuring that the Board is able to do its business in the most efficient and effective way.
Mention was also made of the experience in England and Wales. However, the Parole Board for England and Wales’s report shows that tribunals there still comprise 3 members. Clearly we will keep this in mind in our ongoing discussions with the Parole Board for Scotland on the drafting of the Parole Board Rules. However, I can confirm that Scottish Ministers are committed to ensuring that the Board is legally competent and that it is properly resourced, but resourced in the most efficient and adequate way while at the same time securing best value for money.

The Committee noted the proposal for unanimity in Parole Board decisions. This is mentioned in paragraph 151 of the Financial Memorandum and is also commented upon in the Parole Board's evidence, in paragraph 10. It may be helpful to expand a little on the proposal. The intention is that when the Board sits as a tribunal (which we anticipate will be the case in most of the references under the Bill) the prisoner concerned may only have his or her release directed by the tribunal where both members agree that this direction is appropriate. In other words, both members will make up their minds about the case, but the tribunal itself may only direct release where that is the unanimous view of both members. Where there is no unanimous agreement on release, the tribunal must not direct release. This will mean that prisoners will no longer be released where one of the tribunal members is not satisfied that this is appropriate.

**Monitoring after end of sentence**

*It is possible that a recalled offender could spend almost 100% of the sentence in custody. In that situation, how will the offender be reintegrated into the community?*

Officials explained the community part licence process and confirmed that this would end when the sentence expired. However, the Committee might find it helpful to have some more information on the community component. We would like to take the opportunity to remind the Committee that all offenders receiving a custody and community sentence (those given a sentence of 15 days or more) will spend a period in custody and a period in the community on licence. Licence conditions will be tailored to individual risk and needs. This means that for the first time all offenders will be subject to some form of restriction for the entire length of the sentence. This offers additional support to a large group of offenders who under the current arrangements would be released automatically and unconditionally at the half-way point of sentence without any means of control or support.

While licence conditions that relate to a sentence expire when the sentence ends, other measures are in the process of being put in place with a view to improving public protection from the highest risk offenders. Joint working arrangements between the police, the local authorities and the Scottish Prison Service will be achieved by adopting the Multi Agency Public Protection Arrangements (MAPPA). The network of MAPPAs will ensure improved management of sexual and violent offenders in the community, including those offenders whose sentences are spent but who the statutory authorities consider to be people who may cause serious harm to the public. This group will, where needed, be able to apply for voluntary assistance from their local authority to assist with their re-integration. The Community Justice Authorities (established under the Management of Offenders (Scotland) Act 2005) have an important role to play in building the local partnerships that will offer the sorts of rehabilitative services that these offenders, and others, will need on their release.

As well as the arrangements described above, the “sex offenders register” was introduced in 1997 by the Sex Offenders Act 1997 (the provisions are now contained in the Sexual Offences Act 2003). It has proved an invaluable tool for the police to monitor convicted sex offenders within their area. There is no central register as such; individual sex offenders notify their details to the local police and are identified on the Scottish Criminal Records Office's Criminal History System. The police use the register to manage offenders within the community and to identify potential suspects when a sexual crime is committed. Provisions in the Police, Public Order and Criminal Justice (Scotland)
Act 2006 include giving the police the power to take data and samples from sex offenders if such
data is not already held; requiring registered sex offenders to provide passport details; and giving the
police powers to enter and search sex offenders homes for risk assessment purposes.

It is also possible for a Sexual Offences Prevention Order (SOPO) to be made. The police and courts
must be satisfied that an offender has acted in such a way as to give reasonable cause to believe that
a SOPO is necessary to protect the public or any particular members of the public from serious
sexual harm from the offender. For example, in relation to an offender with convictions for sexually
assaulting children who is, following his release, found to be loitering around schools and talking to
children, the police may have reasonable cause to believe that there is a risk of the offender re-
offending, in which case he may apply to the court for a SOPO. The prohibitions are specific to each
case but, for example, an order could prohibit an offender who has a history of offending against
children from being alone in the company of children or from being involved with organisations that
would bring him into close contact with children. Any prohibition would need to be justified in
relation to the risk and would need to be capable of being policed effectively. The prohibition must
be necessary to protect the public or particular members of the public from serious sexual harm. A
SOPO has effect for a fixed period which will be specified in the order. The period must be no less
than 5 years. A person guilty of an offence of failing to comply with a SOPO is liable on conviction
on indictment, to 5 years imprisonment.

Courts will still be able to impose extended sentences for serious sexual and violent offenders. This
occurs at the point of sentencing and has the effect of adding an additional “extended” period to the
community part of the sentence, increasing the period during which licence conditions (and the
possibility of recall to custody if required) can be applied.

In addition, the courts now have at their disposal the Order for Lifelong Restriction (OLR). This a
new sentence which provides for the lifelong supervision of high risk violent and sexual offenders
and allows for a greater degree of intensive supervision than is the current norm. The OLR was
made available to the High Court to use from 20 June 2006. OLRs will target those offenders who
are assessed as posing the highest risk to the public. An offender who is sentenced to an OLR will,
for the first time, be subject to a risk management plan that will be in place for the rest of the
offender’s life whether in custody or on licence in the community. Once they have served the
punishment part of the sentence that the court considers is right for the crime itself, the Parole Board
for Scotland will consider when the risk they pose is acceptable enough to allow the offender to be
released into the community. This means that there is no guarantee that the offender will be released
immediately after the punishment part expires.

Prison population
Will the commitment of the Scottish Executive Justice Department and this Parliament to
reducing the overall numbers of people in prison be compromised by the measures in the bill that
seek to put people in jail and make them stay there, so that more people will be in jail for longer?

In line with the undertakings given on 24th October the chart showing the expected increase in the
prison population is attached at Annex 1. This shows the anticipated number of designed cells
available to SPS; what the population is expected to be without these measures; what it is estimated
to be with these measures; and the assumed breach rates during the community part of the sentence.
(An explanation of the dip in the design capacity can be found in the Scottish Prison Service’s
published Business Plan if required.)

SPS annual population projections, which have a track record of accuracy over a number of years,
use observed trends in sentencing behaviour over the last 34 years to project the population for future
years. They assume that sentencing behaviour remains unchanged. The methodology takes no
account of potentially related factors such as demographics or recorded crime as no statistical relationship has been established between those factors and the prison population.

The chart modelling the effects of the Bill’s measures contains, for the first time, predictions. These apply certain assumptions about change in behaviour. It is the first time that SPS has been required to model such potentially very large changes in population. The assumptions we have made are:

- Implementation affects all new sentences at the same time i.e. there is no phasing of implementation by sentence type or length;
- The “risk of harm” test might correlate to those convicted and sentenced to more than 1 year for a sexual or violent offence and with a history of such convictions. This “test” was applied to those leaving custody in 05-06;
- Around 15% of offenders reaching the 50% custody point might therefore be referred to the Parole Board for a decision on whether they should remain in custody;
- The Parole Board would direct 50% of those referred to proceed immediately to the community part of their sentence, with the remainder staying in custody until the ¾ point of their sentence. Our evidence is that, of those referred to the Parole Board over the last 5 years, the Board has recommended 50.5% for release;
- 15% of those on full supervision in the community (with an initial sentence over 4 years or related to sex or violence, and not previously covered by licence conditions such as attached to a life licence) will commit a breach of their licence serious enough to result in a return to custody. This assumption is based on rates of current community disposal breaches serious enough to result in custody, and in lifer recall rates.

If the above assumptions prove to be incorrect or under-stated, the estimated effect on the population will be different from that shown in the chart. The resources required to implement the measures would then be different. In this regard it might assist the Committee for us to clarify the point quoted from the SPICe briefing that “offenders who present as a high risk of re-offending and/or who pose an unacceptable threat to public safety will be referred to the Parole Board by Scottish Ministers. This is not correct in every regard. The test in the Bill is a test of “harm” not of risk of “re-offending”. That is very important in the context of the potential impact of these measures on the prison population. Re-offending and return to custody rates are also in the public domain and are closer to 50% than the 15% assumed here as meeting the “harm” test for referral to the Parole Board.

In reading the transcript, there is a point of clarification which might assist the Committee. The evidence pointed to the fact that it will be the Scottish Ministers who take the decision on whether or not to refer a prisoner to the Parole Board at the end of the custody part of his sentence. SPS and local authority criminal justice social work departments will have roles and responsibilities in relation to the risk assessment that will inform that decision. When the Bill was published on 3rd October it was also announced that an independent review would look at the Scottish Ministers’ involvement in the decision making process in individual cases including the role proposed for the Scottish Ministers in deciding whether an offender should be referred to the Parole Board. This review will clarify the precise arrangements which should apply to that decision making process as it is implemented. Recommendations on the implementation route are expected by the end of 2007.
Community part and supervision

**Are you confident that offenders will have access to appropriate rehabilitation opportunities?**

**Have the resource implications been considered?**

**What does supervision entail?**

The new arrangements for combined sentences will explicitly place the responsibility for taking up opportunities for rehabilitation and for future good behaviour on the offenders with a range of sanctions in place if they fail to comply with their licence conditions. Within this new approach, the nature of offender management will be tailored to the risks posed by, and the needs of, the offender rather than one standard package. This will require a new shared understanding of what is generally understood to be the nature of supervision with CoSLA, ADSW and the voluntary sector.

Supervision will be an automatic condition for sex offenders serving sentences of 6 months or longer, offenders given a custody part in excess of 50% by the courts, those whose cases have been referred to the Parole Board and those serving sentences of 4 years or longer who, historically, have been subject to statutory supervision requirements on release. The intention is therefore that all offenders serving a sentence of 6 months or longer will receive some form of statutory supervision as a condition of release on licence. The intensity of supervision will vary from offender to offender and will be informed by the joint risk assessment which will be carried out. The risk assessment will have regard to a range of factors including the nature of the offence, the offender’s response during the custody period and the anticipated circumstances on release.

Most of the under 6 month group will not require what we understand as the standard statutory supervision by qualified criminal justice social workers. The needs of this group – and the time available to work with them – suggests that we need to take a different approach. This is much more about getting this group into contact with the range of services that they need – such as drug treatment or accommodation services – to stabilise their lifestyles and to move them away from offending. It is a service more akin to signposting them on and brokering access to services than supervision by social work. It puts the onus, quite explicitly, on the offender to be of good behaviour, makes them responsible for what they do and provides the criminal justice system with sanctions if they fail to accept this responsibility.

For those serving 6 months or over, the intensity and nature of the supervision will be informed by the joint risk assessment, which will also suggest whether a qualified supervising officer is needed. The risk assessment will have regard to a range of factors including the nature of the offence, the offender’s response during the custody period and the anticipated circumstances on release. Offenders recalled to custody until the end of their sentence will, where needed, be able to apply for voluntary assistance from their local authority to assist with their re-integration.

Making all offenders subject to restrictions for the full sentence enhances public protection but recognise the considerable challenge in making sure that the community licence structure is delivered adequately and proportionately. The joint Planning Group is already looking at how best to deliver.

The Planning Group I mentioned above, which includes members from the Association of Directors of Social Work, COSLA, Sacro and the voluntary sector, will be looking amongst other issues at the most appropriate arrangements for supervision and will offer recommendations on how best these should be developed.
There are some offenders for whom a custodial sentence might not be the most effective way of getting them to change their offending behaviour. We are looking at ways in which community disposals might be better utilised. While this is not dealt with specifically within this Bill the Committee might find it useful to be reminded that this is just one of an ongoing serious of measures aimed at transforming Scotland’s criminal justice system.

Custody only

*Has any gender analysis of this proposal been carried out?*

The Committee was interested in the effects the legislation will have on fine defaulters in the context that many of these are women. While no specific research was carried out in relation to this for the purpose of this Bill, Ms Gwyon from Scottish Prison Service mentioned that she would make available a letter sent previously to the Justice 1 Committee on this matter. A copy of that letter is attached at Appendix 2.

The information in this letter has been contributed to and agreed by Scottish Prison Service.

I trust the Committee will find this information useful and of interest.

Jane Richardson

*Scottish Executive Justice Department*
Design Capacity vs Average Prisoner Population (financial years)

- Design Capacity
- SPS model with current breach level
- SPS model with an additional 15% breaches for 1-4 years
- November 2005 prison population projections

-415 places -710 places -910 places

-654 places -410 places

Dear Mr Campbell

CRIMINAL PROCEEDINGS ETC (REFORM) (SCOTLAND) BILL

Thank you for the follow-up queries from the Committee relating to any potentially differential impact of the Bill’s provisions on women or young people as regards prison numbers.

As we understood it, Committee members were interested in any breakdown we could provide relating to the figures we had already given. In addition, an interest was expressed in whether young people were more likely to offend whilst on bail or breach bail and whether this might have a statistically significant bearing on the likelihood of an aggravated sentence being given.

We have looked at the data we have on fine default. In 2004-05 the average daily prison population of fine defaulters was 61. 4 of these were women (6.6%). 7 were young offenders (under 21) (11.5%). These figures compare with the following proportions of our overall prison population: 4.9% female; 21.1% young offenders. The overall context is that 0.9% of the total prison population are fine defaulters compared with 0.9% of young offenders and 1.2% of women.

The numbers involved are very small and we have been advised that statistically it is hard to draw any conclusions. It seems that the female population is made up of a slightly higher proportion of fine defaulters than the male prison population so to the extent that the Bill’s fine enforcement arrangements should help reduce the numbers sentenced for fine default, it may be that women stand to benefit to a slightly greater extent.

Although it is possible to establish the proportions of those receiving bail that are women or young people, the figures showing those bailed and having previous convictions are not broken down in this way. As such it is not possible, using our current information, to provide a breakdown of the gender
or age impact for our estimate of the 25-35 potential extra prisoners per night arising from the new bail provisions. This figure was obtained by examining the numbers who had previously received bail for one of the offences set out whilst having a previous relevant conviction as set out in the Bill.

Finally we have looked at some research conducted by the Scottish Executive: Offending on Bail: An Analysis of the Use and the impact of Aggravated Sentences for Bail Offenders. This is published on the Scottish Executive website at www.scotland.gov.uk/Publications/2004/03/18848/32719. The research found that younger accused were more likely to offend on bail and females were less likely to offend. But it also found that “an offender’s gender, age and type of offence…committed were found to have no statistically significant bearing on the likelihood of an aggravated sentence being given”. The research also states that in the vast majority of cases (90%) where an aggravated sentence was given, the aggravation represented 50% or less of the total sentence.

It seems that within our initial estimate of an overall slight impact, we can establish no potentially differential impact on either women or young people of any statistical significance. I hope this additional information is helpful to the Committee.

Yours sincerely

RACHEL GWYON

RACHEL GWYON
Director, Corporate Services
Dear David

Thank you for your letter of 16 November concerning petition PE863 from Mr Bill Alexander.

In relation to your first point, the Executive does not consider that the case of Karl Construction v Pallisade Properties is relevant to the issues raised in the petition. This Court of Session decision concerned whether the automatic granting of warrant of inhibition on the dependence involved an infringement of the defender’s rights under Article 1 Protocol 1 of the Convention. The opening words of Article 1 Protocol 1 state that “Every natural or legal person is entitled to the peaceful enjoyment of his possessions”, which clearly shows that rights are conferred under this Article on both natural and non-natural persons, such as limited companies. Article 6 is drafted differently and there is no ECHR jurisprudence in relation to Article 6 requiring legal aid to be made available to limited companies.

The Executive is not in favour of extending legal aid to limited companies. While individuals are not excluded from legal aid simply because they are sole traders or self-employed, the Executive continues to take the view that for limited companies the potential need to litigate is a business risk which they should protect themselves against through insurance if necessary. Given the pressures on the Legal Aid Fund, I do not consider that extension of legal aid to limited companies would be the best use of available resources.

I confirm that it is still intended to commence sections 25-29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 next March. However, the Committee is correct in its understanding that this will not enable limited companies to represent themselves (for instance, through an employee) in court where that is not possible at present. What it will do is to widen the potential range of representatives a company might instruct to appear on its behalf, by permitting new organisations to acquire rights of audience and rights to conduct litigation on behalf of their members.

I hope this is helpful.

JOHANN LAMONT