Justice Committee

Criminal Justice and Licensing (Scotland) Bill

Written submission from Glasgow City Council

Part 1 – Sentencing

Section 2 (4) - The stated objectives of achieving consistency in sentencing practice and promoting greater awareness and understanding seem entirely appropriate. The third objective of assisting the development of policy is less clear. The policy is presumably that of the Scottish Government although this is not stated. Policy will vary over time and will be dependent upon the Government of the day.

Section 5 (5) – The Sentencing Council’s assessment of the costs and benefits of guidelines should seek to encompass an analysis of the costs and benefits to society in general and not simply those related to the Court process.

Section 6 - The proposed consultation on guidelines is extremely narrow. This contradicts the objective of promoting “greater awareness and understanding of sentencing policy and practice” as stated at section 4.

Section 10 - The Bill stipulates that the SCS must provide the Council with information relating to sentences imposed by Courts. If analysis of costs and benefits is to cover the wider implications for local authorities and society in general how is the Council to be expected to obtain this information and who would be responsible for the provision of such information. Section 10 (3) might benefit from a more prescriptive timescale.

Section 11 - “Scottish Ministers” are required to have regard to any advice or proposals from the Council. This provision could be used to change arrangements in relation to the early release of prisoners on Home Detention Curfew. This provision currently allows SPS to commute sentences without reference to the sentencing Court or the Parole Board.

Section 13 – The provision for an annual report to Parliament appears to ensure appropriate scrutiny and accountability. Parliamentary debate will in itself assist in raising public awareness of sentencing policy and practice.

Section 14 - The new CPO may include 1 or more of 7 conditions listed. There is no reference to other conditions which SER authors may deem appropriate for include as a condition of a CPO. This needs clarification. The use of multiple conditions may raise resource issues.
Section 15 - Existing legislation stipulates that a precondition for granting an NHO is that there must be a course of conduct amounting to harassment in considering an NHO (2 relevant incidents which result in prosecution). The provisions of the Bill will remove this, a very positive development.

This Bill will amend legislation to ensure that courts consider previous convictions and have access to relevant information to demonstrate the propensity for an offender to commit crimes of harassment.

In respect of domestic abuse where harassment of victims is not uncommon and part of a pattern of abusive and violence, the changes to current legislation are positive.

Section 16 – Minimum term of imprisonment is now 15 days (not 5). Depending on success of other elements of the bill this could obviously result in those previously detained for 5 days being detained for 15.

Section 17 - The language may not be strong enough to enact the change the Government is looking for here. May result in longer sentences being passed e.g. where judge previously considered a 3 month sentence they may now look at a 6 month.

Section 18 - There is a new definition - "short term custody and community prisoner". This might result in more offenders being released under statutory supervision. Those who are currently released automatically half way through a short term prison sentence would require supervision under the new bill. This would have resource requirements for CJSW.

Slight confusion around parts 4-6 of section 18. This may mean more statutory supervision (on short term community license).

Section 19 - It seems in most cases that removal will be after they have served one half of their sentence (there will not be a community element). In practice this will apply to very few cases.

Section 21 - This provision would significantly aid risk management and ultimately child protection/public protection for offences with significant sexual element. The provision would also ensure that offences such as Breach of the Peace are not viewed as ‘low tariff’ offending behaviour.

Section 23 – Welcome the requirement that the Court must now record how an aggravation has affected the sentence (if at all- and if not the reasons must be stated)

This is something which could be considered by the Sentencing Council once it has been established.
Part 2 – Criminal Law

Sections 25-28 – Glasgow City Council (GCC) agree with comments made by Glasgow Community Safety Services (GCSS) that the links between trafficking and serious organised crime are already well documented. Prostitution and trafficking of women is the third highest “black market” income earner globally after drugs and arms. Therefore, we would also support any measures which would strengthen the law linked to organised crime.

Section 29 - The Council welcomes the efforts to reduce the opportunities for serving criminals to have access to information and communication devices (mobile telephones etc) which allows their continued involvement in offending behaviour or permit further intimidation or targeting of witnesses and victims. The introduction of penalties for those introducing such devices and other prohibited items is welcomed.

Section 32 - The imposition of considerable financial penalties may deter companies/bodies being involved, directly or indirectly in sexual exploitation of children. This would also make individuals within companies/bodies accountable – individual and corporate responsibility. A financial deterrent may also significantly reduce the resources which are made available to facilitate sexual exploitation of children. This legislation would also reinforce on a national and international level the criminality of child exploitation.

Section 34 - The proposal to increase the sentencing powers of Courts in relation to publishing, selling or distribution of extreme pornographic material will confirm the seriousness of this offence. In turn, this may increase the level of reporting of sexual offending against women.

We agree with GCSS comments that challenging the demand for extreme images is a step in the right direction towards generating public discussion on the issue of commercial sexual exploitation, raising awareness and changing attitudes towards pornography. We also support the fact that the Scottish proposals are going far beyond the arguably narrow definition of “extreme pornography” adopted in England and Wales. The Scottish offence, by covering all obscene pornographic images which realistically depicts rape or other non-consensual penetrative sexual activity, whether violent or otherwise, is necessarily broader which in turn increases the scope of images which can be targeted. We support proposed maximum sentence of 3 years for possession of extreme pornography. If effectively enforced this could provide a deterrent.

We also need to make sure that by only focusing on extreme pornography, that we are not sending out the message that other pornographic images are acceptable and any less harmful.
Section 35 - GCSS welcomes the Scottish Government’s intention to bring Scots Law in relation to trafficking of persons in line with England and Wales and ensure consistency in the protection of victims across the UK and GCC would agree with this. Glasgow has the highest number of people involved in the sex industry outside of London, and approximately 50% of those involved are from overseas (Scotland’s Slaves: An Amnesty International briefing on trafficking in Scotland, 2008).

It is clear that despite provision in the Criminal Justice (Scotland) Act 2003, there are still definite gaps in the current legal framework to protect victims of trafficking. It must be noted that we believe the only way that trafficking activity can truly be halted is to disrupt the market by challenging demand.

Part 3 – Criminal Procedure

Section 38 - We welcome any attempt to remove children from Criminal Justice Systems. It provides a guarantee for the small minority that this affects.

Section 47 - Would agree with reducing the number of remands.

Part 5 – Criminal Justice

Section 72 – We support GCSS view that the introduction of new powers within the Anti Social Behaviour (Scotland) Act 2004 for the closure of premises associated with human exploitation. We recommend that the new measures include not just only closing premises associated with trafficking, but covers flats and brothels in general where prostitution occurs. We believe that at the same time as instructing a closure order on premises, those caught purchasing sex indoors should be penalised and ask that consideration be given to criminalising the purchase of sex in any venue.

Section 73/Section 74 - Proposed changes to current legislation would undoubtedly aid risk management and place greater responsibility on the offender to engage in managing his own risk. Currently the legislation focuses on restrictions within SOPO/RSHO, e.g. no contact with children under the age of 16 years, however, this proposal would permit incorporating requirements of the individual, e.g. you shall participate in risk assessment process and report changes to circumstances.

In removing age restrictions, Courts will have discretion to impose SOPO based on assessed level of risk of sexual harm as opposed to age of offender or sentence imposed.

Section 80 - The Government’s intention here is not clear. This section may refer to any organisation which provides assistance to persons affected by an offence. It does not appear to apply specifically to Victim Support Scotland although this section may be used to provide grants to that organisation. If the Government’s intention is to provide security of funding to victim support...
organisations then this is a welcome development. However the wording of this section does not guarantee that outcome.

Part 7 - Mental Disorder and Unfitness for Trial

Sections 117-120 - This introduces a more explicit “test” for the courts in relation to diminished responsibility and the new term of unfit for trial.

Part 8 – Licensing under Civic Government (Scotland) Act 1982

Section 121- Subsection (3) introduces the concept of “mandatory” and “standard” licence conditions”. New section 3B indicates that licensing authorities “may determine conditions to which licences granted by them under this Act are to be subject”. These are the new “standard conditions”. The licensing authority are required to publish any standard conditions proposed by them. That being so there will have to be some “transitional provisions” to allow licensing authorities the time to draft, consider, publish & determine standard conditions for all licence types.

Section 123 – Makes the licensing of metal dealers one of the “optional provisions” requiring a resolution of the licensing authority to be of effect. Presumably this would retrospectively de-license metal dealers in areas where such a resolution is not made. Again would this require some transitional provisions for those areas wishing to retain the licensing of metal dealers?

Section 124 – Subsection (2) amends section 13 of the 1982 Act to require that anyone applying for a taxi or private hire car driver’s licence has to have held a “full driving” licence for the period of 12 months immediately prior to the date of application. This will further penalise anyone whose licence has been suspended by the Courts. The 12 month period will only start from the point when they are given back their licence. The previous provision did not penalise in this way.

Subsection (3) changes the requirements relative to the review of taxi fares. Previously the review had to be commenced within 18 months from the date when the previous fare tariff came into effect – so the outcome and the new fares thus fixed could come into effect well after the 18 month period. The new provision requires the process to be completed within the 18 month period. This could be problematic given that the consultation process etc can be long and tortuous. There seems to be a right of appeal given to taxi operators whether or not they made any representations to the licensing authority when publicising the proposals. It would seem better to only give such a right of appeal to those who responded to the consultation exercise. Subsection (5) deals with the requirements for the publication and coming into effect of taxi fares. It includes a requirement to publish in a newspaper which is curious given the ‘modern’ approach of the Licensing (Scotland) Act 2005 which permits advertising via a web-site.
Section 125 – This appears to repeal the Exemptions from the need to hold a market operators licence for such as charitable or community organisations. That being so, such organisations may in future consider that the cost of obtaining a licence, together with the costs of meeting the various requirements of the statutory consultees, are prohibitive and may thus lose out on established fund-raising ventures. Curious drafting would seem to repeal subsection (2) (a) of the current section 40 whilst leaving in a subsection (b).

Section 126 - In terms of the current provisions of the 1982 Act only those forms of entertainment for which a charge is made are license-able. This amendment would require the licensing of events which would be free to the public. Again the cost of applying for and obtaining a licence may prove prohibitive for such as community organisations that have previously held local events providing forms of entertainment. Curious drafting again re the amendment to current section 41(2) (d) – why not simply repeal “or Part II of the Gaming Act 1968”?

We agree with GCSS suggestion for a further amendment to section 41 of the Civic Government (Scotland) Act 1982 instead of just focusing on removing the existing exemption for free events.

The Criminal Justice and Licensing Bill also provides a valuable opportunity to reassess the current licensing of lap dancing venues.

Section 127 – This changes the requirement for a late hours catering licence from relating to the sale/consumption of “meals or refreshment” to the sale consumption of “food” – as defined in section 1 of the Food Safety Act 1990. This includes “drink” & “chewing gum” – but presumably not alcoholic drink as that can only be sold via a licence under the 2005 Act.

Section 128 – This amends various provisions of schedule 1 to the 1982 Act. Applications will now have to include the applicant’s date and place of birth. 28 days rather than 21 days will be given for the receipt of objections or representations. 14 days notice of any hearing of the application is to be given rather than the current 7 days. A new paragraph 8(5A) is to be introduced to allow a licensing authority “on good cause shown” to deem an application as being one of renewal notwithstanding that it is made up to 28 days after the expiry of the licence. This is very concerning from a regulatory perspective. It is assumed that it is being introduced due to some concept of saving applicants from the results of their own inadvertence in not renewing timeously. It is not know why they are less likely to forget 28 days after the expiry date than at the actual expiry date. Also knowing the date of the expiry of a licence is fairly crucial – both generally as regards whether an offence is being committed and also in taxi licensing terms (having regard to the power given to licensing authorities to limit the number of taxi licences for their area) as regards whether one of the limited number of taxi licences is now “available”? And at what point is “good cause shown”? Does there have to be a hearing? The period of notice as regards the date of a hearing is to be reduced from 21 days to 14 days. Reasons for decisions are to be sought by
a failed applicant or objector within 21 days rather than 28 days. Also changes are made to applications for sex shop licences as regulated by schedule 2 of the 1982 Act whereby applicants must also now given their date and place of birth.

Part 9 – Alcohol Licensing

Sections 130 – 138 - Glasgow City Council adopts the comments made by the City of Glasgow Licensing Board with regard to the liquor licensing aspects of the Bill, particularly as many of the substantive issues have been removed from this Bill and are to be included within a Health Bill later in the year.