



The Scottish Parliament  
Pàrlamaid na h-Alba

## JUSTICE COMMITTEE

### AGENDA

**11th Meeting, 2013 (Session 4)**

**Tuesday 16 April 2013**

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

1. **Decision on taking business in private:** The Committee will decide whether to take item 6 in private.
2. **Victims and Witnesses (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

David McKenna, Chief Executive, Victim Support Scotland;

Cliff Binning, Executive Director Field Services, Scottish Court Service;

David Harvie, Director of Serious Casework, Crown Office and Procurator Fiscal Service;

Superintendent Grahame Clarke, Safer Communities, Police Scotland;

and then from—

Sandy Brindley, National Co-ordinator, Rape Crisis Scotland;

Louise Johnson, National Worker - Legal Issues, Scottish Women's Aid;

Peter Morris, petitioner and campaigner.

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

Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 (SSI 2013/89);

Scottish Fire and Rescue Service (Framework and Appointed Day for Strategic Plan) Order 2013 (SSI 2013/97);

Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2013 (SSI 2013/100).

4. **Subordinate legislation:** The Committee will consider the following instrument which is not subject to any parliamentary procedure—

Act of Sederunt (Sheriff Court Rules) (Lay Representation) 2013 (SSI 2013/91).

5. **Budget Strategy Phase:** The Committee will consider its response to the Finance Committee on the Budget Strategy Phase.
6. **Scottish Court Service:** The Committee will consider its approach to the Scottish Court Service report 'Shaping Scotland's Court Service'.

Irene Fleming  
Clerk to the Justice Committee  
Room T2.60  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5195  
Email: [irene.fleming@scottish.parliament.uk](mailto:irene.fleming@scottish.parliament.uk)

The papers for this meeting are as follows—

**Agenda item 2**

[Copy of the Bill, accompanying documents and SPICe briefing](#)

[Written submission received on the Bill](#)

**Agenda item 3**

Paper by the clerk

J/S4/13/11/1

[Police Pensions \(Contributions\) Amendment \(Scotland\) Regulations 2013 \(SSI 2013/89\)](#)

[Scottish Fire and Rescue Service \(Framework and Appointed Day for Strategic Plan\) Order 2013 \(SSI 2013/97\)](#)

[Title Conditions \(Scotland\) Act 2003 \(Rural Housing Bodies\) Amendment Order 2013 \(SSI 2013/100\)](#)

**Agenda item 4**

Paper by the clerk

J/S4/13/11/2

[Act of Sederunt \(Sheriff Court Rules\) \(Lay Representation\) 2013 \(SSI 2013/91\)](#)

**Agenda item 5**

Paper by the clerk

J/S4/13/11/3

**Agenda item 6**

Paper by the clerk (private paper)

J/S4/13/11/4 (P)

[Scottish Court Service: Shaping Scotland's Court Services](#)

['Shaping Scotland's Court Services': An Analysis of Consultation Responses](#)

**Papers for information**

Report on EU Justice and Home Affairs Ministerial Council Meeting, Brussels, 7 and 8 March 2013

J/S4/13/11/5

**Justice Committee**

**11<sup>th</sup> Meeting, 2013 (Session 4), Tuesday, 16 April 2013**

**Subordinate legislation**

**Note by the clerk**

**Purpose**

1. This paper invites the Committee to consider the following negative instruments:

Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 (SSI 2013/89);

Scottish Fire and Rescue Service (Framework and Appointed Day for Strategic Plan) Order 2013 (SSI 2013/97); and

Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2013 (SSI 2013/100).

2. Further details of the procedure for negative instruments are set out in the Annexe to this paper.

## **Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 (SSI 2013/89)**

### **Purpose of instrument**

3. This instrument amends the Police Pensions Regulations 1987 (as regards Scotland) and the Police Pensions (Scotland) Regulations 2007 to adjust the pension contributions of police officers as from 1 April 2013. The instrument also corrects a number of errors in the 1987 and 2007 Regulations created by the Police Pensions (Contributions) Amendment (Scotland) Regulations 2012 (SSI 2012/71).
4. The main policy aim of this instrument is to apply the second stage of increases to members' pension contributions from 1 April 2013. The first increase was applied with effect from 1 April 2012, and introduced tiered contribution rates. This policy stems from the 2010 UK Spending Review, which set out the UK Government's intention to increase members' contribution rates in public service pension schemes by an average of 3.2 per cent of pay by April 2014 with the increase spread over three years.
5. The instrument came into force on 1 April 2013.
6. Further details on the purpose of the instrument can be found in the policy note on page 3 of this paper.
7. An electronic copy of the instrument is available at:  
<http://www.legislation.gov.uk/ssi/2013/89>

### **Consultation**

8. The policy confirms that a consultation on this instrument took place between 24 January and 20 February 2013.

### **Subordinate Legislation Committee consideration**

9. The Subordinate Legislation Committee considered this instrument at its meeting on 26 March and agreed to draw the Parliament's attention to the instrument on reporting ground (j) that there was a failure to lay the instrument at least 28 days before it comes into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. However, after seeking an explanation from the Scottish Government, the SLC considered that this failure was acceptable, given the consequences of this instrument not coming into force on 1 April 2013 in line with the rest of the UK.
10. The relevant extract of the SLC report on this instrument is reproduced on page 4 of this paper.

### **Justice Committee consideration**

11. Members are invited to consider the instrument and make any comment or recommendation on it.

12. Under Rule 10.3A, the Committee is obliged to consider the explanation given to the Presiding Officer for the breach of laying requirements. It may also draw this explanation to the attention of the Parliament in any report on the instrument. A copy of the letter to the Presiding Officer is attached at page 6 of this paper.

13. As already noted, the SLC was satisfied with the reason given for this breach of the laying requirements, although it concluded that the Scottish Ministers should have provided a more adequate explanation to the Presiding Officer as to why it was not possible properly to respect the laying requirements in making this instrument. The Committee is invited to endorse the SLC's conclusion.

14. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 22 April 2013.

**Policy Note: Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 (SSI 2013/89)**

1. The above instrument was made in exercise of the powers conferred by sections 1 to 8 of the Police Pensions Act 1976 and all other powers enabling them to do so. Functions under that Act as regards Scotland have been executively devolved to the Scottish Ministers. The instrument is subject to negative procedure.

*Policy Objectives*

2. The Police Pension Regulations 1987 (SI 1987/257) and the Police Pensions (Scotland) Regulations 2007 (SSI 2007/201) require members of both police pension schemes to pay contributions to the relevant scheme as a condition of membership. Although the Scottish Ministers have responsibility for the police schemes, wider policy for occupational pensions is reserved to the UK Government.

3. The 2010 UK Spending Review set out the UK Government's intention to increase members' contribution rates in public service pension schemes by an average of 3.2 per cent of pay by April 2014 with the increases spread across three years. The first increase was applied with effect from 1 April 2012 and also introduced "tiered" contribution rates which reflect that higher earners generally receive larger scheme benefits from final salary defined benefit schemes. Following further consideration of this policy and whether there were any viable alternatives, Scottish Ministers determined to apply the second round of increases. The above instrument makes provision to apply the second stage of increases to the members' contributions from 1 April 2013.

4. The instrument also includes corrections to amendments made to the police pension schemes by the Police Pensions (Contributions) Amendment Regulations 2012 (SSI 2012/71).

*Consultation*

5. To comply with the requirements of section 1(1) of the Police Pensions Act 1976 a formal consultation was undertaken which included the Police Negotiating Board from 24 January to 20 February 2013. The consultation was issued to representatives of police officers and employers and relevant Scottish and UK Government Departments. Staff associations remain opposed to any increases to members' contributions. 189 responses were received to the consultation and a summary of the

consultation responses will be made available on the Scottish Public Pensions Agency website [www.sppa.gov.uk](http://www.sppa.gov.uk).

*Impact Assessments*

6. An equality impact statement is being finalised for this instrument which builds on the assessment undertaken for the first year of members' contribution increases and will be published when finalised.

*Financial Effects*

7. The increases, as designed, are expected to raise in the region of an additional £7 million a year from 1 April 2013. This will add to the additional yields arising from the increases introduced from April 2012.

8. No Business and Regulatory Impact assessment has been prepared because no impact on the private or voluntary sector is foreseen.

Scottish Public Pensions Agency  
An Agency of the Scottish Government  
4 March 2013

**Extract from the Subordinate Legislation Committee 23rd Report 2013**

***Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 (SSI 2013/89)*** (Justice Committee)

1. This instrument amends the Police Pensions Regulations 1987 ("the 1987 Regulations") and the Police Pensions (Scotland) Regulations 2007 to provide for an increase in the contribution rates payable by police officers from 1 April 2013.

2. It also corrects a number of errors created in those instruments by the Police Pensions (Contributions) Amendment (Scotland) Regulations 2012.

3. The regulations are subject to the negative procedure and come into force on 1 April 2013.

4. As there has been a failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, the Scottish Ministers provided a letter to the Presiding Officer explaining that failure. The Committee considered that explanation and the further explanation provided by the Scottish Ministers following a request from the Committee. Section 28(2) sets out the rule that a Scottish statutory instrument which is subject to negative procedure must be laid before Parliament as soon as practicable after it is made, and in any event at least 28 days before the instrument comes into force. This is known as the "28 day rule".

5. This instrument comes into force on 1 April 2013. It was laid on 6 March 2013, meaning that 22 sitting days will have elapsed before the instrument comes into force, once the Easter recess is taken into account. Consequently, it does not comply with section 28(2).

**6. The Committee draws the instrument to the attention of the Parliament on reporting ground (j). There has been a failure to lay the instrument at least 28 days before it comes into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**

7. However, it is for the Committee to consider separately whether it is satisfied with the explanation provided by the Scottish Ministers. The Committee asked the Ministers for additional explanation of certain matters which they mentioned in their letter to the Presiding Officer.

8. The Committee also had regard to the statement made by the Cabinet Secretary for Finance, Employment and Sustainable Growth to the Parliament on 28 November 2012 when he advised that the Scottish Ministers would implement the second stage of increases for the Teachers', NHS, Police and Firefighters' pension schemes in Scotland. This instrument gives effect to that decision, as regards the police schemes.

9. In its letter of 4 March 2013, the Scottish Public Pensions Agency on behalf of the Scottish Ministers stated that the Home Office only confirmed to the Scottish Ministers the rates in respect of the police schemes on 1 March 2013, by which date it was too late for this instrument to meet the requirements of the 28 day rule if it was to come into force on 1 April 2013, as it must do in order to achieve consistency in the contribution rates throughout the UK. It appeared to the Committee that the letter of 4 March did not in any detail explain why these circumstances had arisen, although it does characterise them as "unavoidable". The Committee accordingly sought further clarification from the Scottish Ministers.

10. The Committee notes the terms of the response, in which the Ministers go on to argue that there is no link in law between the contribution rates applicable in England and those applicable in Scotland. The Committee does not disagree with that proposition, although it appears to cut across the arguments advanced in the letter of 4 March. It is quite clear to the Committee that it is a policy decision on the part of the Ministers to mirror the contribution rates applicable in the rest of the United Kingdom. In the Committee's view, however, this response does nothing to assist in explaining why the laying requirements in this Parliament were not respected.

**11. Despite that conclusion, the Committee recognises that, as a result of the policy adopted, it is necessary that this instrument come into force on 1 April 2013 in order to ensure consistency throughout the United Kingdom. It also recognises that its making was dependent upon receipt of confirmation from the Home Office of the applicable contribution rates. It accordingly considers the failure to be acceptable, having regard to the circumstances in which the Scottish Ministers found themselves and the consequences of failing to have this instrument come into force on 1 April.**

**12. In reaching this conclusion, the Committee has had regard, among other things, to the statement made by the Cabinet Secretary for Finance, Employment and Sustainable Growth to the Parliament on 28 November 2012, and the reasons given by the Cabinet Secretary for implementing the increased contribution rates. The Committee considers that the Cabinet Secretary's statement set out the consequences which would result should this instrument not come into force at the same time as the equivalent provisions in the rest of**



**the UK and it has taken that into account. The Committee considers that the Scottish Ministers might, however, have provided a more adequate explanation to the Presiding Officer as to why it was not possible properly to respect the laying requirements in making this instrument.**

13. The Executive Note to the Police Pensions Amendment (Scotland) Regulations 2010 narrated that a UK-wide consolidation of the 1987 Regulations was planned for later in 2010. However, it has not yet taken place and no reference was made to plans for consolidation in the Policy Note to this instrument. The Committee accordingly asked the Scottish Ministers to provide an update on this matter. In their response, the Scottish Ministers explain that consolidation has been delayed by the wide-ranging reforms to public service pensions which followed the change of administration in May 2010. However, they go on to explain that the Home Office indicated last week that it is working on a draft consolidating instrument. They further advise that the Scottish Government will do everything possible to assist with progressing that project.

**14. The Committee notes the update which the Scottish Ministers have provided in relation to the consolidation of the 1987 Regulations. It welcomes the news that the Home Office is currently working on a draft consolidating instrument, and further welcomes the commitment of the Scottish Ministers to do everything possible to assist with progressing that project.**

#### **Letter from the Scottish Public Pensions Agency to the Presiding Officer**

#### ***Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 (SSI 2013/89)***

The above instrument was made on 4th March 2013 under section 1 of the Police Pensions Act 1976. It is being laid before the Scottish Parliament on 6th March 2013 and comes into force on 1 April 2013.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with section 31(3) of that Act, this letter sets out why it is necessary to lay the instrument less than 28 days before it is brought into force.

This instrument fixes the pension contribution rates for police officers in Scotland under two public sector schemes applicable to Scotland. The schemes are reserved under the Scotland Act 1998, although the making of subordinate legislation in relation to the schemes is executively devolved.

On 28 October 2010 the UK Government set out its intent on delivering savings of £2.8bn per annum across the public sector pension schemes by 2014/15 by increasing employee contribution rates by an average of 3.25% of pay in three annual increments starting April 2012. Despite Scottish Ministers' principled opposition to increasing employee contributions at this time and in this way the UK Government refused to change its policy and indicated that if similar increases were not introduced to the schemes in Scotland then the Scottish Budget would be adjusted accordingly. Scottish Ministers reluctantly introduced the first year of increases in the NHS, Teachers', Police and Firefighter schemes from 1 April 2012.

In a statement to Parliament on 28 November 2012, the Cabinet Secretary for Finance, Employment and Sustainable Growth, John Swinney, announced the Scottish Government's decision to implement the second annual increment of UK Government proposed employee contribution increases for the Teachers', NHS, Police and Firefighters' schemes in Scotland.

Whilst the UK rates for the NHS and Teachers schemes were confirmed to allow the subsequent statutory instruments for the Scottish schemes to be laid within the necessary Parliamentary time limits the revised rates for the Police scheme in England and Wales were only confirmed to the Scottish Government on 1st March by the Home Office.

This instrument has been made as soon as possible after the details of the contribution rates for England and Wales were communicated to the Scottish Government and in line with contribution increases to the other affected schemes must come into force on 1 April 2013. I should finally add that this is the first occasion that SPPA has had to lay late in respect of the police schemes, and we are making this request due to the unavoidable circumstances outlined above.

Jim Preston  
For the Scottish Public Pensions Agency  
4 March 2013

## **Scottish Fire and Rescue Service (Framework and Appointed Day for Strategic Plan) Order 2013 (SSI 2013/97)**

### **Purpose of instrument**

1. Under section 40(1) of the Fire (Scotland) Act 2005, as amended by the Police and Fire Reform (Scotland) Act 2012, the Scottish Ministers are required to prepare a Fire and Rescue Framework for Scotland setting out priorities and objectives for the Scottish Fire and Rescue Service (SFRS) and any related guidance.
2. The main policy aim of this instrument is to bring the Fire and Rescue Framework for Scotland 2013 into effect. The [framework document](#) was published in March 2013 and replaces the Transitional Fire and Rescue Framework for Scotland 2012.
3. Under Section 41(A) of the 2005 Act, as inserted by the 2012 Act, the SFRS must prepare a strategic plan, which is subject to the Scottish Ministers' approval. The strategic plan will set out how the SFRS proposes to carry out its functions during the three-year period beginning on 1 October 2013, and the outcomes by which its performance will be measured. This instrument requires the SFRS "to use its best endeavours" to secure approval from the Scottish Ministers by 1 October 2013.
15. The instrument comes into force on 29 April 2013.
16. Further details on the purpose of the instrument can be found in the policy note on page 9 of this paper.
17. An electronic copy of the instrument is available at:  
<http://www.legislation.gov.uk/ssi/2013/97>

### **Consultation**

18. The policy note confirms that the Fire and Rescue Framework for Scotland 2013 was subject to full public consultation from 26 November 2012 to 18 February 2013. 43 organisations responded.

### **Subordinate Legislation Committee consideration**

19. The Subordinate Legislation Committee considered this instrument at its meeting on 26 March and agreed that there was no need to draw the Parliament's attention to the instrument on any grounds within its remit.

### **Justice Committee consideration**

20. Members are invited to consider the instrument and make any comment or recommendation on it.
21. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 22 April 2013.

**Policy Note: Scottish Fire and Rescue Service (Framework and Appointed Day for Strategic Plan) Order 2013 (SSI 2013/97)**

1. The above instrument was made in exercise of the powers conferred by sections 40(4) and 41A(7) of the Fire (Scotland) Act 2005 (“the 2005 Act”), as amended by the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”). The instrument is subject to negative procedure.

*Policy Objectives*

2. The 2012 Act established a single Scottish Fire and Rescue Service (“SFRS”) to replace the existing fire and rescue authorities and joint fire and rescue boards. It further amended the 2005 Act to require that a framework document and strategic plan be prepared in relation to the new Service. Accordingly, the purpose of this Order is twofold: it brings into effect the Fire and Rescue Framework for Scotland 2013 on 29 April 2013, and sets 1 October 2013 as the appointed day by which SFRS is to have used its best endeavours to secure the Scottish Ministers’ approval for its first strategic plan.

3. The Scottish Ministers have prepared the Fire and Rescue Framework for Scotland 2013 (“the framework document”) in accordance with their statutory duty under section 40(1) of the 2005 Act (as amended). Its purpose is to set out priorities and objectives for SFRS, in connection with the carrying out of its statutory functions, and provide such related guidance as the Scottish Ministers consider appropriate. The priorities and objectives have been set in line with the Scottish Government’s purpose and strategic objectives, and are aimed at bringing together the best from the existing fire and rescue services to build a modern, effective and efficient SFRS.

4. This Order (article 2) is required, by section 40(4) of the 2005 Act, to bring the framework document into effect. SFRS must have regard to the framework document in carrying out its functions, otherwise the Scottish Ministers can require it to do so under section 41 of the 2005 Act (as amended).

5. The framework document was published in March 2013 and is available on the Scottish Government’s website: <http://www.scotland.gov.uk/fireframework2013>. It will replace the Transitional Fire and Rescue Framework for Scotland 2012, which was brought into effect by the Fire and Rescue Services (Framework) (Scotland) Order 2012 (“SSI 2012/146”) and continues to apply to the existing fire and rescue authorities and joint fire and rescue boards until they are abolished on 1 April 2013 (by virtue of article 7 of the Police and Fire Reform (Scotland) Act 2012 (Commencement No. 1, Transitional, Transitory and Saving Provisions) Order 2012). Accordingly, this Order (article 4) revokes SSI 2012/146.

6. SFRS must prepare a strategic plan under section 41A of the 2005 Act (as inserted by the 2012 Act), which is subject to the Scottish Ministers’ approval. This Order (article 3) requires SFRS to use its best endeavours to secure that approval by 1 October 2013. The strategic plan will set out how SFRS proposes to carry out its functions during the three year period beginning on 1 October 2013, and also the outcomes by which its performance will be measured. SFRS must have regard to the framework document when preparing its strategic plan.

*Consultation*

7. The Fire and Rescue Framework for Scotland 2013 was subject to full public consultation from 26 November 2012 to 18 February 2013. This involved all statutory consultees listed in section 40(6) of the 2005 Act (as amended). A full list of those consulted, including the 43 organisations which responded, will be attached to the consultation report to be published on the Scottish Government's website. Responses were received from several local authorities, community planning partnerships, joint boards, voluntary organisations and, in addition, from:

- Scottish Fire and Rescue Service;
- Fire Brigades Union;
- Equality and Human Rights Commission;
- Maritime and Coastguard Agency;
- Chief Fire Officer Association (Scotland);
- NHS Scotland Resilience; and
- Association of Chief Police Officers in Scotland.

8. SFRS, when preparing its first strategic plan, will also be required to consult in accordance with section 41A of the 2005 Act (as inserted by the 2012 Act).

*Impact Assessments*

9. An equality impact assessment (EQIA) has been completed on the Fire and Rescue Framework for Scotland 2013. The EQIA accompanied the framework document during the consultation. While the Order itself has no specific equality impact issues, the framework document seeks to address a number of equality matters relating to SFRS. The EQIA is attached.

10. SFRS will be responsible for assessing the impact of its strategic plan.

*Financial Effects*

11. A Business and Regulatory Impact Assessment (BRIA) has been completed and accompanied the framework document during the consultation. The impact of the policy on business is negligible. The BRIA is attached.

Scottish Government  
Safer Communities Directorate  
March 2013

## **Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2013 (SSI 2013/100)**

### **Purpose of instrument**

1. This instrument amends the list of prescribed rural housing bodies, with the addition of the *West Harris Trust* and to take into account the change in name of and reorganisation of another already designated as a rural housing body; changing *Down to Earth Scottish Sustainable Self Build Housing Association Limited* to *Down to Earth Solutions Community Interest Company*.
2. When selling rural property or land, under the Title Conditions (Scotland) Act 2003, rural housing bodies are able to create burdens in titles giving them the opportunity to repurchase the land or property should it come up for sale at any point in the future. The Business and Regulatory Impact Assessment (BRIA) for the proposal to designate the *West Harris Trust* as a rural housing body notes that the objective of a rural housing burden is “to maintain a stock of affordable homes in rural areas”.
3. Further details on the purpose of the instrument can be found in the policy note on page 12 of this paper.
4. An electronic copy of the instrument is available at:  
<http://www.legislation.gov.uk/ssi/2013/100>

### **Consultation**

5. No consultation is required for this instrument.
6. The *Down to Earth Solutions Community Interest Company* was already a rural housing body and the instrument undertakes an administrative change to reflect the organisation’s change of name.
7. As part of the BRIA for the proposal to designate the *West Harris Trust* as a rural housing body, several firms and the local authority were consulted. All respondents were supportive of the proposal of *West Harris Trust* being designated a rural housing body.

### **Subordinate Legislation Committee consideration**

8. The Subordinate Legislation Committee considered this instrument at its meeting on 26 March and agreed that there was no need to draw the Parliament’s attention to the instrument on any grounds within its remit.

### **Justice Committee consideration**

9. Members are invited to consider the instrument and make any comment or recommendation on it.
10. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 6 May 2013.

**Policy Note: Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2013 (SSI 2013/100)**

1. The powers to make this Order are conferred by section 43(5) and (8) of the Title Conditions (Scotland) Act 2003 (“the 2003 Act”). It is subject to the negative parliamentary procedure.

*Policy Objective*

2. Section 43(5) of the 2003 Act provides that Scottish Ministers may prescribe such body as they think fit to be a rural housing body. A rural housing body will be able, when selling rural housing or land, to reserve a right to repurchase the property or land in the event of it coming up for sale. As a consequence, rural housing bodies will have the ability to control future sales. Ministers also have the power, under the 2003 Act, to determine that a body shall cease to be a rural housing body.

3. The right to repurchase may only be used over rural land. Rural land means land other than excluded land. Excluded land has the same meaning as in the Land Reform (Scotland) Act 2003, namely settlements of over 10,000 people.

4. This Order makes two amendments to the Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Order 2004 by adding one body, the West Harris Trust, as a designated rural housing body and reflecting the change in the name of an existing body, by replacing “Down to Earth Solutions Sustainable Self Build Housing Association Limited” with “Down to Earth Solutions Community Interest Company”.

5. The power to make this Order may only be exercised where the object or function, or one of the principal objects or functions, of the body concerned is to provide housing or land for housing (section 43(6)). The bodies dealt with by this Order comply with this requirement.

6. Previous amending Orders designating rural housing bodies were laid in 2004, 2006, 2007 and 2008.

*Consultation*

7. A consultation is not required as applicants either meet the terms of the legislation or they do not. However in undertaking the Business and Regulatory Impact Assessment (BRIA) a consultation with businesses in the area was undertaken, the results of which can be found in the BRIA. The change of name amendment is a straight-forward name change consequential on the name of the body changing.

*Regulatory Impact Assessment*

8. An equality impact assessment has not been undertaken on the basis that this policy does not have any impact on equality issues.

*Financial effects*

9. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that overall this is a positive impact on existing businesses in the area. By providing affordable housing this will work towards retaining local people. It may also attract new people to the area. This

will contribute to sustaining existing businesses and possibly have the potential to attract new businesses.

Civil Law and Legal System Division  
March 2013



**ANNEXE****Negative instruments: procedure**

Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Subordinate Legislation Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

Each negative instrument appears on the Justice Committee’s agenda at the first opportunity after the Subordinate Legislation Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

**Justice Committee**

**11<sup>th</sup> Meeting, 2013 (Session 4), Tuesday 16 April 2013**

**SSI cover note**

**SSI title and number:** Act of Sederunt (Sheriff Court Rules) (Lay Representation) 2013 (SSI 2013/91)

**Type of Instrument:** Not subject to parliamentary procedure

**Coming into force:** 4 April 2013

**Justice Committee deadline to consider SSI:** 22 April 2013

**SSI drawn to Parliament's attention by Sub Leg Committee:** Yes (see Annexe)

**Purpose of Instrument:**

1. The instrument amends the rules of court applicable in the sheriff court in order to make new provision for lay representation in the sheriff court. In doing so, it amends:

- Schedule 1 to the Sheriff Courts (Scotland) Act 1907 ("the Ordinary Cause Rules")
- the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 ("the Summary Application Rules")
- the Act of Sederunt (Summary Cause Rules) 2002 ("the Summary Cause Rules")
- the Act of Sederunt (Small Claim Rules) 2002 ("the Small Claim Rules")

2. An electronic copy of the instrument can be found at:

<http://www.legislation.gov.uk/ssi/2013/91/contents/made>

**Justice Committee consideration:**

3. The instrument was laid on 7 March 2013 and the Justice Committee has been designated as lead committee.

*Procedure*

4. This instrument is not subject to any parliamentary procedure. It has been referred to the Committee under Rule 10.1.3 of Standing Orders. However, there is no formal requirement for the Committee to consider it.

5. The Committee has agreed that these types of instruments will not normally be placed on a Committee agenda unless—

- the Subordinate Legislation Committee has drawn the instrument to the lead Committee's attention on technical grounds; or
- a Member of the Justice Committee has proposed to the Convener that the instrument goes on the agenda, and the Convener agrees.

6. In addition, where the clerks are aware of particular issues with an instrument not subject to parliamentary procedure, they will draw this to the Convener's attention, for consideration of whether to put it on the agenda.

*Subordinate Legislation Committee consideration*

7. The Subordinate Legislation Committee considered the instrument at its meeting on 26 March. The SLC raised a number of concerns in relation to the drafting of the instrument.

8. Given that the provisions of the instrument govern lay representation in the sheriff court, these are directed at people who by definition are not legally qualified. The SLC was therefore particularly concerned about the clarity of the drafting of the instrument.

9. The SLC did, however, welcome the proposal that the Sheriff Court Rules Council, which is due to be dissolved shortly, will suggest in its legacy paper that the new Scottish Civil Justice Council review all rules on lay representation as part of its wider policy remit.

10. An extract from the SLC's report on the instrument is attached in the annexe to this paper.

**Recommendation**

11. The Committee is invited to note the instrument and make any comment on it.

12. In particular, in light of the concerns raised by the SLC, the Committee is invited to endorse the conclusions reached in the SLC's report.

***Extract from the Subordinate Legislation Committee's 23<sup>rd</sup> Report, 2013*****Act of Sederunt (Sheriff Court Rules) (Lay representation) 2013 (SSI 2013/91)**  
*(Justice Committee)*

1. This instrument amends the rules of court applicable in the sheriff court in order to make new provision for lay representation in the sheriff court. In doing so, it amends:

- Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (“the Ordinary Cause Rules”)
- the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (“the Summary Application Rules”)
- the Act of Sederunt (Summary Cause Rules) 2002 (“the Summary Cause Rules”)
- the Act of Sederunt (Small Claim Rules) 2002 (“the Small Claim Rules”)

2. The instrument is not subject to any parliamentary procedure and comes into force on 4 April 2013.

3. In considering the instrument, the Committee asked the Lord President’s Private Office (“LPPO”) for clarification of certain points. The correspondence is reproduced in the Appendix.

4. Section 36(1) of the Sheriff Courts (Scotland) Act 1971 (“the 1971 Act”) enables the Court of Session to exercise its general rule-making power to permit representation in summary causes by persons who were neither an advocate nor a solicitor (i.e. lay representation). It has done so for summary causes (rule 2.1(1)(d) of the Summary Cause Rules) and for small claims (rule 2.1(1)(d) of the Small Claim Rules), small claims being a subset of summary causes. In small claims, an authorised lay representative may do anything that a party to the action could do himself or herself, including signing court documents and appearing in court. Similarly, in summary causes, an authorised lay representative may do anything that a party to the action could do. However, the ability to appear in court is restricted to the first hearing, or where the action is undefended.

5. By contrast, lay representation has not previously been permitted in ordinary causes or summary applications, except where statute expressly permits it – the principal example in this category is actions under the Debtors (Scotland) Act 1987.

6. Section 127 of the Legal Services (Scotland) Act 2010 now enables the Court of Session to make rules permitting lay representation in any civil proceedings before the sheriff, subject to the conditions in section 32(1)(n) and section 32A of the 1971 Act. This goes further than section 36(1), which is confined to summary causes. However, the lay representation which may be provided for under this new power is more limited than that which section 36(1) provides for in summary causes: in particular, the lay representative is only entitled to make oral submissions at hearings when he or she has been specifically authorised to do so, and the party must appear alongside the lay representative.

7. The Committee understands that the intention is that the existing rules for lay representation in rule 2.1 of the Summary Cause Rules and the Small Claim Rules are to be unaffected by this instrument, and the new provision made for each of those sets of rules is said to be without prejudice to any other provision of the rules which permits lay representation.

8. However, it was not clear to the Committee when the new Chapter 2A of the Small Claim Rules could apply given that lay representation is already permitted in all small claims at all stages, in terms of rule 2.1(1)(d). It accordingly asked LPPO for clarification as to how the new Chapter 2A would operate within the existing context of the Small Claim Rules.

9. As LPPO acknowledges in its response, in all small claims a party may be represented by an authorised lay representative, in terms of rule 2.1(1)(d) of the Small Claim Rules. LPPO points out that this is subject to the tests in rule 2.1(3). Rule 2.1(3) provides that, *where a sheriff finds that* the authorised lay representative is not a) a suitable person to represent the party or b) not in fact authorised, the authorised lay representative must cease to represent the party. The Committee observes that both of these matters are personal to the authorised lay representative in question: it does not consider that a sheriff could find that it would be inappropriate in principle for any authorised lay representative, say, to examine witnesses in a particular case. It appears to the Committee that were a sheriff to make a finding under rule 2.1(3), the party would be entitled to instruct a fresh authorised lay representative to appear.

10. In its response to question 1(b), LPPO confirms that it agrees that provision permitting lay representation in all small claims is in force. New rule 2A.1(1) provides that the new Chapter 2A on lay representation is "...without prejudice to... any other provision in these Rules... under which provision is... made for a party to a particular type of case before the sheriff to be represented by a lay representative." The Committee therefore understands that provision to mean that the new rules on lay representation will not affect any other provision in the Small Claim Rules which permit lay representation. Rule 2A.2 goes on to provide for lay representation "[i]n any proceedings in respect of which no provision as mentioned in rule 2A.1(1) is in force...". Where such a provision is in force, then logically rule 2A.2 cannot apply.

11. Although the words "a particular type of case" are not particularly apt given that rule 2.1(1)(d) provides for lay representation in *all* small claims, we do not consider that "a particular type of case" must mean only a subset of small claims. However, LPPO appears to contend for this position in its answer to question 1(c). LPPO appears to envisage that bespoke provision might be made to permit lay representation in certain types of small claim. The reality is, however, that as with this new Chapter, any such provision would be otiose given the breadth of the present rule 2.1(1)(d). The Committee considers it notable that, unlike the Ordinary Cause Rules and the Summary Cause Rules, no express provision is made in the Small Claim Rules in respect of the Debtors (Scotland) Act 1987 – the ordinary words of rule 2.1(1)(d) are more than broad enough to encompass representation for the purposes of that Act.

12. In practical terms, the Committee cannot see that the new Chapter 2A is capable of applying so long as rule 2.1(1)(d) permits lay representation in all small claims. The Committee does not agree with LPPO's view that, were a sheriff to find that an authorised lay representative was not a suitable person or was not in fact

authorised under rule 2.1(3), the sheriff could reasonably go on to permit that person to appear instead in terms of rule 2A.2..

13. For all of these reasons, the Committee concludes that the condition in rule 2A.2 of the Small Claim Rules can never be satisfied. In its view, it is always possible to be represented in a small claim by an authorised lay representative under rule 2.1(1)(d), subject to the application of rule 2.1(3) which is personal to each individual authorised lay representative. Accordingly, the Committee considers that there is always provision in force which permits lay representation in small claims, and so rule 2A.2 can never apply.

14. The Committee considers that the inclusion of this provision runs the risk of causing substantial confusion as to what lay representatives may and may not do in small claims. That confusion could potentially undermine their existing rights in terms of rule 2.1(1)(d). The new provisions bear to apply when, on the analysis the Committee has adopted, they can never apply and given that these rules are intended to facilitate lay representation the Committee recommends that this matter is addressed.

**15. The Committee draws the instrument to the attention of the Parliament on reporting ground (i). Paragraph 5 of this instrument appears to be defectively drafted in that it inserts a new Chapter 2A into the Small Claim Rules. By virtue of the provision in rule 2.1(1)(d) of the Small Claim Rules lay representation is already permitted in all small claims. However, rule 2A.2(1) only applies to enable lay representation in proceedings where no other provision which permits a party to be represented before the sheriff by a lay representative is in force. Given that lay representation is permitted in all small claims, it therefore appears that there are no circumstances in which Chapter 2A might apply.**

16. A rather different issue arises in relation to the amendment of the Summary Cause Rules where the Committee understands that lay representation has historically been relatively limited. In a number of circumstances, principally relating to housing matters, authorised lay representatives may appear at all stages. However, for the majority of summary causes lay representation is limited to initial procedural matters and undefended actions.

17. As a consequence, the provisions of the new Chapter 2A of the Summary Cause Rules will provide for the possibility of a lay representative appearing where previously that would not have been permitted. However, the Committee was concerned about the interplay between the situations where a lay representative would be permitted in terms of the existing rules (with the ability to do anything that the party might do personally) and those situations where a lay representative would be permitted to exercise the rather more limited rights conferred by Chapter 2A (including the requirement to be accompanied by the party, and being limited to oral submissions at a hearing).

18. Given that these provisions of the Summary Cause Rules are, by their very nature, of interest principally to party litigants and to lay representatives who, by definition, are not legally qualified, the Committee asked LPPO whether it considered the position to be sufficiently clear.

19. LPPO appears to consider that Chapter 2A is capable of applying simultaneously with the existing rule 2.1(1)(d). Accordingly, it states that a lay representative could appear at the first hearing under either rule. No explanation is given as to why that could be the case, and it is difficult to reconcile with the provision in rule 2A.2(1) that representation under that rule is permissible “[i]n any proceedings in respect of which no provision as mentioned in rule 2A.1(1) is in force...”. The Committee considers that this underlines the complexity and lack of clarity of these provisions. It is particularly concerned that that the rules will not be easily understood by non-lawyers.

**20. The Committee draws the instrument to the attention of the Parliament on reporting ground (h). The form or meaning of paragraph 4 of this instrument could be clearer insofar as it inserts a new Chapter 2A into the Summary Cause Rules. Lay representation is presently permitted under those Rules only at certain hearings, but the interaction with the new Chapter 2A is complex. Given that the provisions on lay representation are directed at persons who by definition are not legally qualified, it appears that the position on lay representation in summary causes, as amended by Chapter 2A, could be clearer.**

**21. The Committee welcomes the suggestion that that the Sheriff Court Rules Council may propose to the Scottish Civil Justice Council that it undertake a review of all rules on lay representation as part of its wider policy remit once the Scottish Civil Justice Council takes up its functions.**

**Appendix****Act of Sederunt (Sheriff Court Rules) (Lay Representation) 2013 (SSI 2013/91)****On 15 March 2013, the Lord President's Private Office was asked:**

1. Paragraph 5(2) of this instrument inserts a new Chapter 2A (Lay representation) into the Small Claim Rules. Rule 2A.1(1) provides that Chapter 2A is without prejudice to any enactment, including any other provision in the Small Claim Rules, under which provision is made for a party to a particular type of case before the sheriff to be represented by a lay representative. Rule 2A.2(1) goes on to provide that – in any proceedings in respect of which no such provision is in force – the sheriff may, at the request of a party litigant, permit a lay representative to appear under certain conditions for certain purposes. However, rule 2.1(1)(d) provides that a party may be represented, subject to rule 2.1(3), by an authorised lay representative. It accordingly appears that in all small claims a party may be represented by an authorised lay representative in terms of rule 2.1(1)(d), subject to the suitability and continuing authorisation of that individual in terms of rule 2.1(3).

a. Does the Lord President's Private Office agree that, in all small claims, a party may be represented by an authorised lay representative in terms of rule 2.1(1)(d) – and if not, why not?

b. Does the Lord President's Private Office therefore agree that provision of the type mentioned in rule 2A.1(1) (i.e. permitting representation by a lay representative) is in force in respect of all small claims?

c. Given that rule 2A.2(1) applies only in relation to proceedings in respect of which no provision as mentioned in rule 2A.1(1) is in force, the Lord President's Private Office is asked to explain the circumstances in which it considers that rule 2A.2(1) could ever apply – or whether it agrees that, as the Small Claim Rules presently stand, this condition cannot be satisfied.

2. Paragraph 4(2) of this instrument inserts a new Chapter 2A (Lay representation) into the Summary Cause Rules. Rule 2A.1(1) provides that Chapter 2A is without prejudice to any enactment, including any other provision in the Summary Cause Rules, under which provision is made for a party to a particular type of case before the sheriff to be represented by a lay representative. Rule 2A.2(1) goes on to provide that – in any proceedings in respect of which no such provision is in force – the sheriff may, at the request of a party litigant, permit a lay representative to appear under certain conditions for certain purposes. However, rule 2.1(1)(d) provides that a party may be represented, subject to rule 2.1(2) and (4), by an authorised lay representative. It appears that the effect of rule 2.1(2) is that a party may be represented at the initial hearing under rule 8.2 and at any subsequent undefended hearing by an authorised lay representative.

a. By analogy with question 1, does the Lord President's Private Office agree that the consequence is that a lay representative under rule 2A.2(1) may not be appointed for the hearing under rule 8.2 and any subsequent undefended hearing, but may be appointed in respect of a subsequent hearing which is defended on the merits or on the amount of the sum due?



b. If so, the Lord President's Private Office is asked to explain why this interaction between rule 2.1 and Chapter 2A is considered to be sufficiently clear, especially as these provisions are directed at a) parties who are not legally represented and b) prospective lay representatives, who – by definition – are not legally qualified.

**The Lord President's Private Office responded as follows:**

1. It may be helpful to the Committee to preface the response with some introductory remarks.

Rule 2.1(1)(d) of the Small Claim Rules provides a *right of representation* for authorised lay representatives in all small claims. In accordance with rule 2.1(2) such an authorised lay representative can, in representing a party, do everything for the preparation and conduct of a small claim as may be done by an individual conducting his or her own claim – this would include lodging documents, examining witnesses, making oral submissions. This is, however, subject to the tests provided at rule 2.1(3)(a) and (b), which include a requirement that the sheriff finds that the authorised lay representative is suitable to represent the party. These rules were made further to section 36 of the Sheriff Courts (Scotland) Act 1971 and may be described as an “all or nothing” approach.

The right of representation that is introduced in new Chapter 2A is made in furtherance of section 127 of the Legal Services (Scotland) Act 2010, which expressly preserves section 36 of the 1971 Act. SSI 2013/91 makes similar provision in respect of all 4 main sheriff court rules – the Ordinary Cause Rules, the Summary Application Rules, the Summary Cause Rules and the Small Claim Rules. In each set of new rules it is provided that they are without prejudice to any enactment (including any other provision in those rules) under which provision is, or may be, made for a party to a particular type of case before the sheriff to be represented by a lay representative.

New Chapter 2A in the Small Claim Rules only permits a lay representative to make oral submissions on behalf of a litigant at a specified hearing; it does not permit a right to representation in all respects. It may be that a sheriff finds that an authorised lay representative under rule 2.1(1)(d) is not suitable to represent a party in all respects (e.g. because of concerns about examination of witnesses); but that under new rule 2A.2(1) and (3) the sheriff may consider that having a lay representative appear to make oral submissions at a specified hearing may assist the sheriff's consideration of the case.

a. The Lord President's Private Office agrees that in all small claims a party may be represented by an authorised lay representative in terms of rule 2.1(1)(d), subject to the tests in rule 2.1(3) being satisfied.

b. The Lord President's Private Office agrees that provision permitting representation by a lay representative is in force in respect of all small claims.

c. Rule 2A.1(1) refers to where provision is made in any enactment or rule “for a party to a *particular type of case* before the sheriff to be represented by a lay representative” (*italics added*). As rule 2A.1(1) is being inserted into the Small Claim Rules it has to be read in that context. Accordingly, rule 2A.1(1) means that Chapter

2A is without prejudice to any specific provision for lay representation in respect of a particular type of small claim, e.g. if specific provision for lay representation was made in the Small Claim Rules in respect of claims under regulated agreements under the Consumer Credit Act then those rules would apply rather than those provided under new Chapter 2A.

It is submitted that new rule 2A.2(1) applies to all small claim proceedings, except in particular types of small claim where specific provision for lay representation has been, or may be, made. Accordingly, the Lord President's Private Office disagrees with the suggestion that rule 2A.2(1) cannot ever be satisfied.

2. We would refer you to the introductory remarks above by way of background. New rule 2A.1(1) of the Summary Cause Rules refers to where provision is made "for a party to a *particular type of case* before the sheriff to be represented by a lay representative" (*italics added*).

Rule 2.1(1)(d) of the Summary Cause Rules provides a *right of representation* for authorised lay representatives in all summary causes. Under existing rule 2.1(2) and (3) an authorised lay representative can do everything for the preparation and conduct of a summary cause as may be done by an individual conducting his/her own claim except that he/she may not appear in court except at the calling date in terms of rule 8.2(1) and, unless the sheriff otherwise directs, any subsequent or other calling where the action is not defended on the merits or on the amount of the sum due. This is all subject to the tests set out at rule 2.1(4)(a) and (b).

The new rules sit in parallel with the existing rules. Thus a party may be represented in a summary cause by an authorised lay representative under existing rule 2.1 (save the restrictions on representation at hearings). Alternatively, in accordance with Chapter 2A such party may request that a lay representative appear at a specified hearing to make oral submissions on behalf of the litigant. As set out above, the conditions to be satisfied are different and the sheriff may therefore have different considerations in mind in respect of such categories of representatives.

a. The Lord President's Private Office submits that a party may be represented at the hearing under rule 8.2(1) by an authorised lay representative under rule 2.1(2) or by a lay representative under new rule 2A.2(1).

b. The rules were introduced to the Summary Cause Rules in furtherance of section 127 of the Legal Services (Scotland) Act 2010 to maintain consistency across all sets of sheriff court rules and to ensure that a party in a summary cause is not put at a disadvantage compared to litigants in other sorts of sheriff court actions.

It is accepted that the framework for lay representation may benefit from a more fundamental review. The Sheriff Court Rules Council is of course shortly to be dissolved, but as part of its legacy paper for the new Scottish Civil Justice Council it is proposed that it will suggest that the new Council reviews all rules on lay representation as part of its wider policy remit.

**Justice Committee**

**11<sup>th</sup> Meeting, 2013 (Session 4), Tuesday, 16 April 2013**

**Budget Strategy Phase**

**Note by the clerk**

**Purpose**

1. This paper invites the Committee to identify those justice spending priorities from the spending review 2011 on which it wishes to receive progress updates from the Scottish Government as part of the Budget Strategy Phase.

**Background**

2. During Session 3, the previous Finance Committee agreed to introduce a Budget Strategy Phase (BSP) aimed at allowing the Parliament to examine, at the mid-point of a session, the Scottish Government's progress in delivering its spending priorities and to take a strategic overview of the public finances.

3. As part of this year's BSP, the Finance Committee agreed to write to all subject committees asking them to identify any specific areas from the spending priorities set out in the Scottish Government's spending review 2011 on which they would welcome an update. The Finance Committee will then write to the Scottish Government requesting an evaluation of performance in those areas identified by subject committees. This evaluation of performance will be published by the Scottish Government alongside the spending review 2013. Subject committees will then be able to examine the evaluation as part of the budget process in the autumn.

4. The Finance Committee's letter to subject committees is attached as Annexe A. Subject committee responses are requested by Friday 26 April.

**Spending Review 2011: justice spending priorities**

5. The Scottish Government set out its priorities for the 2011 spending review period in the 'Scottish Spending Review 2011 and Draft Budget 2012-13' (hereafter referred to as the 'Spending Review 2011'). Justice priorities, including Crown Office and Procurator Fiscal Service priorities, are reproduced at Annexe B of this paper.

6. In identifying particular justice priorities in relation to which updates are sought, the Committee may wish to have regard to (a) those issues which were the focus of its budget scrutiny during the last two years; and (b) any likely areas of focus for scrutiny of the 2014-15 draft budget.

7. During the past two years, the Committee has focused its budget scrutiny on (a) prisons, including financing the Commission on Women Offenders' recommendations; (b) the courts budget, including legal aid; and (c) the budget for police reform.

8. The Committee may wish to ask the Scottish Government what progress has been made in relation to the following areas of previous budget scrutiny, which appear to have been of particular interest to the Committee in recent years:

- reducing overcrowding in prisons, including addressing the increasing female prison population<sup>1</sup>;
- the development and resourcing of HMP Inverclyde for women prisoners, with a view to opening the prison by 2016<sup>2</sup>;
- work with providers of community penalties on assessing the cost and effectiveness of community penalties, so as to better inform plans for the punishment and rehabilitation of offenders<sup>3</sup>;
- tackling the backlog of maintenance on court buildings<sup>4</sup>;
- providing more opportunities for victims and witnesses to give evidence by video-conferencing where, as a result of court closures, intimidation is likely or unnecessary travel can be avoided<sup>5</sup>;
- how the Scottish Government and Scottish Court Service intends to monitor the effects and costs of any court closures on court users and other organisations, once implemented<sup>6</sup>;
- achieving the projected savings for police reform in 2013-14 and in subsequent years, particularly given the budget allocation document recently considered by the Scottish Police Authority<sup>7</sup> indicated that significant savings for 2013-14 still had to be identified<sup>8</sup>;
- ensuring that police staff redundancies do not result in widespread backfilling by front-line police officers<sup>9</sup>; and
- standardising ICT systems<sup>10</sup>.

9. The above list is not exhaustive and Committee members may wish to add to or remove any of these issues, taking into account the full list of recommendations from the Committee's two previous budget reports, which is attached at Annexe C. It is also recognised that the Scottish Government may need to work with the Scottish Prison Service, Scottish Court Service, Scottish Police Authority and Police Service of Scotland, in order to provide specific aspects of this evaluation of performance.

<sup>1</sup> This relates to the 2011 spending priorities of "creating a prison estate that is fit-for-purpose and provides a humane regime capable of contributing to maintaining public safety and reducing reoffending" and "addressing the increasing female prison population".

<sup>2</sup> This relates to the 2011 spending priority of "addressing the increasing female prison population".

<sup>3</sup> This relates to the 2011 spending priority of "community payback orders".

<sup>4</sup> This relates to the 2011 spending priority of "supporting victims and witnesses".

<sup>5</sup> This relates to the 2011 spending priority of "supporting victims and witnesses" and "investing in Scottish Court Service ICT".

<sup>6</sup> This relates to the 2011 spending priority of "supporting victims and witnesses".

<sup>7</sup> Scottish Police Authority (2013). '2013/14 budget allocation', considered by the SPA at its Board meeting on 28 March 2013

<sup>8</sup> This relates to the 2011 spending priority of "delivering a single police service".

<sup>9</sup> This relates to the 2011 spending priority of "delivering a single police service" and "maintaining 1,000 extra police officers in our communities".

<sup>10</sup> This relates to the 2011 spending priority of "delivering a single police service".

**10. The Committee is invited to identify those justice spending priorities from the Spending Review 2011 on which it wishes to receive a progress update from the Scottish Government as part of the Budget Strategy Phase.**

**ANNEXE A****Correspondence to Justice Committee from Finance Committee Convener on Budget Strategy Phase**

Following a review of the budget process ([Finance Committee, 5th Report, 2009, Report on the Review of the Budget Process](#)) in Session 3 the previous Finance Committee to introduce a strategic phase to the process which replaces the previous Stage 1 which had not been carried out since 2004. The aim of the Budget Strategy Phase (BSP) is to allow the Parliament to scrutinise the progress which the Scottish Government (SG) is making in delivering its own targets through its spending priorities and to take a strategic overview of the public finances around the mid-point of the current Parliament.

At its meeting on 16 January, the Committee considered its approach to the BSP and agreed in the first instance to write to each of the subject committees, the Welfare Reform Committee, the Equal Opportunities Committee and the European and External Relations Committee inviting them to identify any specific areas on which they would welcome an update from the SG regarding its progress in delivering its priorities as set out in the 2011 Spending Review.

The Committee would then consider the responses before writing to the SG requesting an evaluation of performance in specific areas with the aim of producing a more focused process. The SG would publish a performance evaluation document alongside Spending Review 2013 and the committees would then have the opportunity to scrutinise this document as part of the budget process in the Autumn. This suggested approach was of course, dependent on the agreement of the SG.

I wrote to the Cabinet Secretary for Finance, Employment and Sustainable Growth on 17 January setting out the Committee's suggested approach to the BSP. He responded on 28 January confirming that he was content with our proposals.

I would therefore be grateful if you would provide me with details of the specific areas on which you would welcome an update from the SG regarding its progress in delivering its priorities as set out in the 2011 Spending Review. Each portfolio chapter within the [Spending Review document](#) sets out the SG's priorities in that area.

As detailed above, the Finance Committee will then consider responses before requesting an evaluation of performance in these specific areas. The Committee has already stated in its report on the Draft Budget 2013-14 that the SG need to provide some linkage between spending and outcomes when evaluating its performance. The SG will then be invited to publish a performance evaluation document alongside Spending Review 2013.

The proposed timetable is as follows:

**Jan-April:** Committee consults with subject committees on performance information;

**May:** Committee writes to SG requesting specific performance information;

**September:** SG publishes performance evaluation document alongside Spending Review 2013

**Sep-Nov:** Committees scrutinise performance as part of budget process

The Committee would welcome a response by **Friday 26 April 2013**.

Kenneth Gibson MSP  
Convener, Finance Committee

**ANNEXE B****Spending Review 2011 – Justice Priorities**

The Justice portfolio will spend £1,344.1 million on making Scotland safer in 2012-13. This is £79.8 million or 6 per cent more than in 2011-12. Scottish communities feel safer and are safer. We have invested across the Justice portfolio to achieve this since 2007 and we are focusing our funding over this Spending Review period on the areas which will make the greatest impact in the future. The increase in the cash being made available to the portfolio will allow us to deliver our planned capital programme, meet the expected increases in the cost of police and fire pensions and pay for the short-term net costs associated with reforming our police and fire services. However, the portfolio still faces significant financial pressures across its areas of responsibility in order to support the services that our people expect.

We plan to radically reshape many significant areas and delivery mechanisms funded by the Justice portfolio's budget. In police and fire, our plans for reform will protect and improve local services and outcomes in communities and strengthen the connection with the public, delivering stronger accountability and ensuring that local services work effectively in partnership to deliver locally determined priorities. The reforms to the Scottish Courts following the recommendations of the Scottish Civil Courts (Gill) Review will free up the higher courts for the most serious and complex civil and criminal business, give judges the powers to manage cases efficiently, and introduce more accessible and informal procedures to resolve lower value disputes. We have already begun a major refocusing of legal aid and will set out plans for further reforms shortly, which will include legislation to require accused persons to make contributions to their defence where they can afford this. We have already delivered efficiencies in our spending on tribunals through bringing together administrative support in our new Scottish Tribunals Service. Consideration is also being given to devolution of currently reserved tribunals which would result in further efficiencies.

As the Christie Commission Report points out, the costs to Scotland and its public services of negative outcomes such as excessive alcohol consumption, drug addiction, violence and criminality are substantial. We will continue to invest in the prison estate so that those who need to be in custody are kept in conditions that ensure security and promote rehabilitation, including a commitment to build a new HMP Grampian. We will also support preventative spending focused on the early years while working to break the cycle of criminality later in life by investing in services that support offenders to choose a life free from crime. We will work to reduce offending and reoffending, through our investment in drug treatment and support, through continued support for the use of community payback orders, through the diversionary activity funded from *CashBack for Communities*, and through investment in a fit-for-purpose prison estate that allows early intervention amongst offenders. We will continue to work with the police, prisons and local authorities to reduce overcrowding in prisons, to meet the criteria set out in the Scottish Prisons Commission report thus allowing us to end automatic early release.

“Over the Spending Review period we will invest in:

- maintaining 1,000 extra police officers in our communities;



- delivering a single Fire and Rescue Service and a single Scottish Police Service;
- creating a prison estate that is fit-for-purpose and provides a humane regime capable of contributing to maintaining public safety and reducing reoffending;
- delivering the Scottish Crime Campus at Gartcosh;
- delivering the Parliament House project;
- continued funding for police and fire pensions;
- supporting the Scottish Court Service in improving the effectiveness of the collection of court fines;
- extending the *Cashback for Communities* scheme;
- community payback orders;
- addressing the increasing female prison population;
- the creation of the Civil Justice Council;
- extending the *No Knives Better Lives* campaign;
- taking forward the recommendations of the Gill Review and investing in Scottish Court Service ICT;
- introducing serious and organised crime prevention orders;
- tackling sectarianism by continuing the work of the Joint Action Group (JAG) on tackling unacceptable and offensive behaviour in football and funding a National Football Policing Unit, as well as supporting initiatives to tackle sectarianism across the board as part of a co-ordinated strategy;
- supporting victims and witnesses;
- further refining the Proceeds of Crime Act;
- developing more innovative and effective ways of reducing reoffending through a new change fund;
- supporting criminal justice social work services;
- supporting and targeting access to legal aid;
- continuing to fund services to help people recover from drug problems; and
- reforming the law of damages (pages 123-124).

### **Spending Review 2011 – Crown Office and Procurator Fiscal Service Priorities**

Our main priority will be to maintain operational delivery in what we recognise is a very challenging financial context. Our main functions will continue to be:

- the investigation and prosecution of crime;
- the investigation of sudden or suspicious deaths; and
- the investigation of complaints of criminal conduct against the police.

Operational delivery will include:

- the prosecution of serious, complex and organised crime, whether in the High Court or before a sheriff and jury, including the prosecution of terrorism, murder, serious assaults, sexual offences, drug and people trafficking, fraud and organised crime and recovering the proceeds of crime.
- efficient and timely action in respect of summary casework, which comprises in numerical terms the large majority of the 280,000 crime reports submitted each year. These cases relate to offending behaviour that would not attract a disposal at jury court level but merits imposition of a direct measure or prosecution in the justice of the peace and sheriff courts without a jury.
- the investigation of deaths, discharging the public function to investigate relevant categories of deaths promptly, appropriately and with sensitivity to the needs of the bereaved.
- the support of victims of crime and vulnerable witnesses (page 220).

Capital expenditure will primarily be invested in maintaining and, where possible, improving our information technology systems to increase case-processing efficiency.

**ANNEXE C**

**Recommendations from the Justice Committee's Report to the Finance  
Committee on the Scottish Government's Draft Budget 2012-13 and Spending  
Review 2011**

**Prisons - conclusions**

1. The Committee believes that in this area, as in so many others, prevention is better than treatment and therefore, endorses the Scottish Government's focus on preventative spend within the Draft Budget and Spending Review. Much preventative work that would have a significant impact on the Justice budget in the long term begins in other portfolios. The Committee therefore welcomes the establishment of the Early Intervention Change Fund of £50 million. The Committee would welcome further information on exactly which projects will be funded, by how much, and how their effectiveness will be assessed.
2. Similarly, the Committee also welcomes the Scottish Government's creation of a Reducing Reoffending Fund of £7.5 million.<sup>11</sup> The Committee understands that this funding will substantially be found from within the budget provision already allocated to Justice; therefore, the Committee would welcome further details of the funds that are to be reallocated, what new programmes they will support and how their effectiveness will be assessed.
3. The Committee acknowledges the real progress that has been made with the modernisation of the prison estate, but remains concerned about the number of prisoners and suitability of their accommodation, particularly at Cornton Vale. The Committee intends to follow up its on-going concerns regarding the female prison estate with a series of visits.
4. The Committee notes that overcrowding is projected to continue in the long-term, yet funding for community penalties appears to reduce in real terms over the Spending Review period. The Committee is still unclear as to how overcrowding is to be tackled in the long term and therefore urges the Scottish Government to clarify what action it intends to take to reduce overcrowding. The Committee is likely to return to this issue over the course of this Parliament.
5. The Committee heard that there was difficulty in establishing how much might be saved by greater use of community penalties and the potential impact on reoffending. It is therefore concerned that the funding available for community penalties appears to flatline over the Spending Review period. The Committee urges the Scottish Government to work with providers of community penalties to assess the cost and effectiveness of such schemes, so as to better inform plans for the punishment and rehabilitation of offenders (including the effective targeting of funding).
6. The Committee notes the Cabinet Secretary's intention to review throughcare and would welcome a timescale for the completion of this review. The Committee further recommends that the Scottish Government considers whether it would be cost-effective to extend the statutory duty on local authorities to produce throughcare plans for all offenders, rather than just for those with sentences of four years or more.

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<sup>11</sup> Scottish Parliament Justice Committee. *Official Report*, 1 November, Col 410.

7. The Committee accepts that remand prisoners are in a different legal position from those who have been convicted, and that this can throw up practical challenges for the prison authorities. Nevertheless, the Committee encourages the Scottish Government and SPS to consider what opportunities can be offered to remand prisoners on a voluntary basis to keep them stimulated while in custody.

### **The courts and legal aid - conclusions**

8. The Committee welcomes partnership working between justice bodies to tackle the constraints on their budgets, which appears to be complemented by the Scottish Government's "Making Justice Work" programme and proposals for legal aid reform. The Committee will wish to monitor whether this joint working succeeds in delivering the necessary cost reduction without compromising standards, and would welcome regular updates from the Cabinet Secretary. However, the Committee has some concerns that these changes may be piecemeal solutions and therefore urges clarification from the Scottish Government as to the extent to which it intends to implement Lord Gill's reforms as part of a more comprehensive strategy for civil justice reform.

9. The Committee recognises the benefits of a preventative approach and, to this end, believes that potential savings might be made through encouraging individuals to access advice before applying for legal aid to take their case through the courts. However, reductions to funding in the advice sector highlighted by Citizens' Advice Scotland are worrying and could result in more people taking their cases direct to the courts. The Committee welcomes the Scottish Government's commitment to protecting the advice centres it funds and would encourage local authorities to do the same.

10. The Committee accepts that rationalisation of court premises could make significant savings, including, for example, where there is duplication of sheriff court and justice of the peace court buildings. At times this may involve making difficult choices. The Committee would also encourage sharing of premises amongst other justice agencies, as has happened in some places already. The Committee would however urge the SCS to ensure that access to justice and local needs are both taken into consideration when deciding how best to rationalise the estate.

11. The Committee welcomes Audit Scotland's work on establishing the costs of inefficiencies in the justice system through churn of cases and the efforts being made across justice service providers to tackle this. It does however accept that it will never be possible to remove churn completely. The Committee would welcome in due course further details of whether greater efficiency and cash savings are being made through the improved preparation of cases and reduction of multiple court diets.

12. The Committee is disappointed at the apparent absence of progress in use of video-conferencing facilities in prison visits, court proceedings and police stations, given the potential for cost savings. It welcomes SLAB's investigation as to the reasons behind the lack of use as a first step to moving the project forward. The Committee notes that justice bodies, along with the Cabinet Secretary for Justice, are now committed to encouraging the roll out of video-conferencing through this SLAB-led project and would urge action on this as a matter of urgency.

## **The police - conclusions**

13. The Committee accepts that the Scottish Government's priority of maintaining front-line police numbers at 17,234 is well-intended; however, it suggests that the Scottish Government monitors closely the knock-on effect to civilian staff to ensure that police officers are not being deployed from the front line to civilian duties.

### **Recommendations from the Justice Committee's Report to the Finance Committee on the Scottish Government's Draft Budget 2013-14**

## **The police: conclusions**

14. The Committee welcomes the assurances from the new Chief Constable of the Police Service of Scotland and the Chair of the Scottish Police Authority that the police budget for 2013-14 will be achieved. However, following concerns we raised in our Stage 1 report on the Police and Fire Reform (Scotland) Act 2012 regarding the lack of detail in the Outline Business Case, we remain concerned that there still appears to be a lack of detailed financial information available for scrutiny on exactly how the savings will be achieved next year and in subsequent years. We would therefore require detailed financial plans for policing to be drawn up as a priority and then made available to the Committee. Given the imminent launch of the Police Service of Scotland, the Committee would welcome early sight of these plans.

15. The Committee noted its concerns during scrutiny of the 2012 Act as to the impact of civilian redundancies on the front-line. The Committee also noted the assurances from the Chief Constable regarding redundancies and backfilling, but our concerns remain. The Committee will continue to seek assurances that any cuts in support staff will not be on such a scale that it risks de-civilianisation of the police service and widespread 'backfilling' of support jobs by police officers.

16. The Committee notes that the Cabinet Secretary for Justice indicated that the estimated £14 million additional underspend will not be made available to the new service for 2013-14. ACPOS gave evidence of the value they attached to the use of this fund in the first year planning for the new service. We welcome the Cabinet Secretary's commitment to discuss funding priorities with the Committee.

17. The Committee is concerned regarding evidence received from Her Majesty's Inspectorate of Constabulary that ICT systems are not as advanced as expected at this stage of reform. We would therefore welcome further details from those in charge of the ICT projects identified as requirements for a single police force and an indication of when they will be completed and the implications if they are not ready for 1 April 2013.

18. The Committee looks forward to an effective conclusion to the discussions in relation to operational independence and its application as it pertains to budgetary priorities.

## **The courts: conclusions**

19. The Committee notes the concerns of some witnesses that court closures may compromise access to justice, particularly for victims and witnesses who may face longer travel distances and, additionally, the prospect of intimidation during travel to

court. We therefore recommend more opportunities for victims and witnesses to give evidence by video-conferencing where intimidation is likely or to avoid unnecessary travel.

20. The Committee reiterates the recommendation it made in its report on the Spending Review 2011 and Draft Budget 2012-13, calling on the SCS to ensure that both access to justice and local needs are taken into consideration when deciding how best to rationalise the court estate.

21. The Committee welcomes the detailed analysis of the postcodes of civilian witnesses compared with the location of the courts that the Crown Office and Procurator Fiscal Service is currently undertaking to identify any local issues. We would welcome early sight of this analysis when it becomes available to assist us in our scrutiny of any proposals arising from the consultation on court structures.

22. The Committee urges the Scottish Court Service to consider other options for saving costs, including using other buildings in communities for civil proceedings, using technology to simplify civil procedure, (e.g. by booking employment tribunals online) and centralising routine processes.

23. The Committee is concerned that the backlog of maintenance on court buildings, currently estimated at £57.1 million, is a 'ticking time bomb' for the Scottish Court Service. We therefore seek the Cabinet Secretary's views on whether the SCS can be assisted to address some of these maintenance costs before they become entirely unmanageable.

24. The Committee is sceptical that court closures will be cost neutral for court users and we therefore intend to monitor closely the effects of any closures on others if and when they are implemented.

25. The Committee notes the divergence of views on whether court closures should be delayed until implementation of justice reforms recommended in recent reviews by Lord Gill, Lord Carloway and Sheriff Principal Bowen. The Committee therefore urges that all reforms arising from these reviews and any other forthcoming reviews are considered carefully before any decisions on court structures are made.

### **The treatment of women offenders: conclusions**

26. The Committee welcomes the work of the Commission on Women Offenders in developing a momentum to properly address the needs of women prisoners. We also welcome the Scottish Government's response to the Commission's recommendations, including putting in place the necessary resources for their implementation. The Committee will continue to monitor progress in relation to implementing the Commission's findings to ensure that the strong momentum for change does not weaken.

27. The Committee welcomes the proposal by the Scottish Prison Service Chief Executive and accepted by the Cabinet Secretary for Justice to develop the planned prison at HMP Inverclyde for women prisoners, allowing it to be in place within four years. We urge the Scottish Government to find the necessary funds in subsequent budget rounds to provide facilities necessary to address the needs of women prisoners.

28. The Committee is interested in the potential for public-social partnerships which are being trialled in years 2 and 3 of the Reducing Reoffending Change Fund, to secure sustainability of projects. We would welcome further details of this approach from the Scottish Government.

29. The Committee notes the pilot projects that the Scottish Government and other agencies are undertaking in relation to providing suitable accommodation and access to benefits for women prisoners on release from custody and would welcome updates on these projects in due course.

## Justice Committee

11<sup>th</sup> Meeting, 2013 (Session 4), Tuesday, 16 April 2013

### Report on EU Justice and Home Affairs Ministerial Council Meeting, Brussels, 7 and 8 March 2013

#### Main outcomes of Council

##### Home Affairs Ministers:

- adopted two decisions concerning the establishment, operation and use of the second generation **Schengen Information System (SIS II)**
- had a state of play discussion on the full application of the provisions of the **Schengen acquis in the Republic of Bulgaria and in Romania**
- heard a presentation by the Commission on its “**Smart Borders Package**”
- were briefed by the Counter-Terrorism Coordinator, the Commission and the European External Action Service on the **security situation in the Sahel/Maghreb** and its **implications for EU internal security**

##### Justice Ministers:

- held an orientation debate on the proposal for a Regulation setting out a **General EU Framework for Data Protection**
- had a first exchange of views on the recent proposal for a Directive on the **Protection of the Euro and Other Currencies Against Counterfeiting**
- confirmed the compromise text of the agreement reached with the European Parliament on the Regulation on **Mutual Recognition of Protection Measures in Civil Matters**

The United Kingdom was represented on the interior day by the Home Secretary, Teresa May and by the Secretary of State for Justice, Chris Grayling on the justice day. The Minister for Community Safety and Legal Affairs, Roseanna Cunningham, represented the Scottish Government on the justice day. Items of further interest are elaborated on below.

#### **Data Protection**

The Presidency presented a progress report on the proposal for a Regulation establishing a General EU Framework for Data Protection. In addition, the report addressed two questions posed by the December JHA Council. Those were: (i) the possibility of injecting a more risk-based approach into the Regulation; and (ii) whether and how the Regulation can provide sufficient flexibility for the public sector. The report noted that significant progress had been made in completing a first read through of the text and proposing changes to the text on the rights of data subjects and the obligations on controllers and processors. It also set out the lines along which technical work on the proposal should continue. The Council held an orientation debate on the basis of the Presidency's report.



## **Protection of the Euro and other Currencies Against Counterfeiting**

This proposed Directive was tabled by the Commission on 5 February 2013 and will replace FD 2000/383/JHA. It aims to establish minimum rules on the definition of criminal offences and penalties in the area of counterfeiting the Euro and other currencies. It also introduces common provisions to strengthen the fight against those offences and to improve investigation of them. The Council had an exchange of views on this recent Commission proposal and the related Presidency paper. Most Member States welcomed the proposal as necessary given the scale of counterfeiting since the introduction of the Euro. However, a number expressed concerns about the introduction of mandatory minimum penalties, including the UK. The Council instructed its preparatory bodies to start discussions on this proposal.

## **Mutual Recognition of Protection Measures in Civil Matters**

This Regulation is part of a legislative package aimed at strengthening the protection of victims. Its objective is to establish a legal framework to ensure all civil protection measures taken in a Member State benefit from an efficient mechanism of recognition in other Member States. It will complement the Directive on mutual recognition of criminal protection orders. The Council confirmed the compromise text of the agreement reached with the European Parliament.

## **SIS II**

The Council adopted two decisions concerning the establishment, operation and use of SIS II. SIS is a database shared by participating Member States' border and migration authorities and law enforcement authorities. It contains information on persons and on lost and stolen objects, but is subject to stringent data protection rules. It is considered to be a vital security mechanism in the EU. SIS II is a more advanced version of the system with additional functionalities. It will consist of three components: a central system, Member State's national systems and a communication infrastructure between the central and national systems. These decisions fix the date of application for the coming into force of SIS II as 9 April 2013. The integration of SIS II in the UK is planned for the fourth quarter of 2014. As the UK does not participate in the abolition of borders within the EU, it will not have access to that part of the system, but it will participate in the law enforcement elements of SIS II.

## **Smart Borders Package**

The Council heard a presentation from the Commission on this package which aims to use new technology to speed up, facilitate and reinforce border check procedures for foreigners travelling to the EU. The UK will not be participating in any part of the Smart Borders Package as it builds on the part of the Schengen agreement in which the UK does not participate.