



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

19th Meeting, 2013 (Session 4)

Tuesday 11 June 2013

The Committee will meet at 10.00 am in Committee Room 1.

1. **Subordinate legislation:** The Committee will take evidence on the Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2013 [draft] from—

Kenny MacAskill, Cabinet Secretary for Justice;

Ian Fleming, Policy Manager, Carla McCloy-Stevens, Legal Services, and Carolyn Rae, Head of Public Protection, Scottish Government.

2. **Subordinate legislation:** Kenny MacAskill (Cabinet Secretary for Justice) to move—

S4M-06873—That the Justice Committee recommends that the Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2013 [draft] be approved.

3. **Subordinate legislation:** Lewis Macdonald to move—

S4M-06648—That the Justice Committee recommends that the Sheriff Court Districts Amendment Order 2013 (SSI 2013/152) be annulled.

S4M-06649—That the Justice Committee recommends that Justice of the Peace Courts (Scotland) Amendment Order 2013 (SSI 2013/153) be annulled.

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The papers for this meeting are as follows—

Agenda item 1

SSI cover note

J/S4/13/19/1

[Sexual Offences Act 2003 \(Notification Requirements\)
\(Scotland\) Regulations 2013 \[draft\]](#)

Agenda item 3

SSI cover note

J/S4/13/19/2

[Sheriff Court Districts Amendment Order 2013
\(SSI 2013/152\)](#)

[Justice of the Peace Courts \(Scotland\) Amendment Order
2013 \(SSI 2013/153\)](#)

[Scottish Court Service recommendations on a future court
service](#)

Justice Committee

19th Meeting, 2013 (Session 4), Tuesday 11 June 2013

Subordinate legislation

Purpose

1. This paper invites the Committee to consider the following affirmative instrument:
 - Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2013 [draft]
2. Further details of the procedure for affirmative instruments are set out in Annexe A to this paper.

Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2013 [draft]

Purpose of instrument

3. This instrument, which was laid under section 138(2) of the Sexual Offences Act 2003, amends the requirements regarding the personal information that offenders, who are subject to the notification requirements of Part 2 of the 2003 Act, must notify to the police. In particular, the instrument requires offenders to notify additional information, such as intended departure and return dates, foreign destinations and carriers, when they intend to travel outside the UK. It also replaces the existing requirement to notify foreign travel of three or more days with a requirement to notify all foreign travel. In addition, the instrument introduces a new requirement to notify weekly if the relevant offender does not have a sole or main residence in the UK.
4. The policy note explains that each of the additional requirements introduced by this instrument was identified by practitioners and experts as a priority area where action was required “to prevent relevant offenders from seeking to exploit gaps in the system”.¹ It further states that “the measures are considered to be proportionate, particularly when the slight inconvenience caused to relevant offenders of having to notify the required information more frequently is balanced against the reasons why relevant offenders are being required to notify this information (public protection and prevention of re-offending)”.²
5. The policy note also confirms that ECHR issues arising from the instrument, such as whether the additional requirements on relevant offenders would interfere with a right to private life in a way that could not be justified under Article 8 of ECHR, have been taken into account and are considered to be “compatible in this respect”.³
6. The instrument applies to Scotland only; however, similar provisions were introduced in England and Wales by the Home Office in July 2012.

¹ Policy Note, paragraph 11.

² Policy Note, paragraph 45.

³ Policy Note, paragraph 40.

7. Further details on the purpose of the instrument can be found in the policy note at Annexe B and an electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/sdsi/2013/9780111020609>

Consultation

8. The policy note confirms that the instrument forms part of the implementation of the Criminal Justice and Licensing (Scotland) Act 2010 and that the Police Service of Scotland, the Child Exploitation and Online Protection Agency, and ACPOS were consulted on it.

Subordinate Legislation Committee consideration

9. The Subordinate Legislation Committee (SLC) considered this instrument at its meeting on 28 June and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit.

Justice Committee consideration

10. The Justice Committee is required to report to the Parliament on this instrument by 28 June 2013.

ANNEXE A**Affirmative instruments: procedure**

11. The instrument is subject to affirmative procedure (Rule 10.6. of Standing Orders). The Cabinet Secretary for Justice has, by motion S4M-06775, proposed that the Committee recommends the approval of the instrument. The Cabinet Secretary will attend the Committee meeting on 4 June to answer any questions on the instrument, and then, under a separate agenda item, will be invited to speak to and move the motion for approval. It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament accordingly by 15 June 2013. The Committee is asked to delegate to the Convener authority to approve the report for publication.

Policy Note

Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2013

1. The above instrument was made in exercise of the powers conferred by sections 85(5)(a), 86 and 138(4) of the Sexual Offences Act 2003 ("the 2003 Act"), as amended. Section 86 of the 2003 Act was amended by section 102(3) of the Criminal Justice and Licensing (Scotland) Act 2010 ("the 2010 Act").
2. These Regulations represent the first use of the powers in section 86 of the 2003 Act.

Introduction

3. These Regulations amend the requirements as to the information which offenders, who are subject to the notification requirements of Part 2 of the 2003 Act, must notify to the police.
4. These Regulations amend the notification requirements in two ways. First, they require offenders to notify additional information when they intend to travel outside the United Kingdom (including replacing the existing requirement to notify foreign travel of three or more days with a requirement to notify all foreign travel). Secondly, they introduce a new requirement that offenders notify information to the police on a weekly basis where the offender does not have a sole or main residence in the UK.

Legislative context

5. An offender convicted of an offence which is listed in Schedule 3 to the 2003 Act ("a relevant offender") becomes subject to the notification requirements set out in sections 83 to 86 of the 2003 Act. A person must also comply with the notification requirements if they become subject to one of the civil preventative orders under the 2003 Act (a sexual offences prevention order, or notification order). In accordance with these requirements, relevant offenders must initially notify to the police certain personal information including (but not limited to) their name, address, date of birth, bank account, credit and debit card details, and national insurance number. Following this initial notification, relevant offenders must notify this information annually, and whenever there are any changes to it. These requirements are set out in sections 83 to 85 of the 2003 Act.
6. Moreover, there is a requirement under section 86 of the 2003 Act to notify intended travel outside the United Kingdom for three or more days; the information includes the intended departure and return dates, foreign destination(s) and carriers.
7. These Regulations will introduce a new requirement to notify weekly if the relevant offender does not have a sole or main residence in the UK. These Regulations will also amend the existing requirements to notify foreign travel whereby:
 - all foreign travel must be notified;
 - notification may be given 12 hours before intended departure (in place of the existing minimum period of 24 hours); and

- information must also be notified about the dates on which they plan to be in intended additional destination countries and accommodation in these countries (currently they must only provide details of their first night's accommodation outside the UK).

Territorial Extent and Application

8. These Regulations apply to Scotland only. The Criminal law (including the law governing aspects of the notification regime to which relevant offenders are subject) is a devolved matter. The Scottish Government continues to work closely with its counterparts in the rest of the UK to ensure that there is alignment in the systems, where possible, and believes that the need to maximise public protection requires that sex offender notification be considered in the context of the UK as a whole. Accordingly these Regulations replicate provisions introduced by the Home Office in July 2012, namely the Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 (SI 2012 No. 1876).

Policy Objectives

9. The 2003 Act was substantially brought into force in May 2004 and provides a comprehensive regime for the management of registered sex offenders. It amended the law, originally introduced in the Sex Offenders Act 1997, governing the notification requirements (commonly referred to as the 'sex offenders' register') and modified the civil preventative orders which are available for the purposes of managing individuals in the community who are considered to pose a risk of sexual harm.

10. The circumstances in which a person becomes subject to notification requirements are summarised in paragraph 5 above.

11. The notification requirements contained in the 2003 Act form an invaluable tool to the Police Service of Scotland and provide a robust framework for managing relevant offenders in the community. Public protection is a priority for the Scottish Government and it works closely with the police and other law enforcement agencies to ensure that the right tools and powers are available for the authorities to tackle serious sexual crimes and to bring perpetrators to justice. Each of the additional requirements introduced by these Regulations was identified by practitioners and experts as a priority area where action is required to prevent relevant offenders from seeking to exploit gaps in the system. The following paragraphs provide further information on the evidence informing this policy.

Foreign Travel

12. The police, along with a number of other public protection agencies and organisations, including CEOP (the Child Exploitation and Online Protection Agency) and ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes), have strongly lobbied for the "three-day loophole" to be closed to require notification of all foreign travel.

13. Indeed ECPAT UK published a report 'Off the Radar Protecting Children from British Sex Offenders who Travel' (February 2011) which highlights the problem of travelling sex offenders. It states that given how quick and easy it is to travel nowadays, *'British sex offenders can easily travel abroad (to European countries and beyond), commit child sex abuse offences and return home within this 3-day period.'*

This puts children at risk in countries such as Albania, and Romania, both of which are mentioned in this report and can be easily visited from the UK in under three days⁴.

14. Evidence from the ECPAT UK report also suggests that there may be displacement of sex offender activity from other travelling sex offender hot spots, such as South East Asia, due to proactive measures taken by countries to combat the crimes of travelling sex offenders suggesting that travelling sex offending in Europe may increase.

15. For its part CEOP records 20 per cent of activity by travelling sex offenders as having taken place in European countries in 2008/09, which, given their proximity to the UK, suggests that activity could have taken place within 3 days and so would not currently require notifying the police⁵.

16. CEOP also notes that over the last 20 years the number of visits abroad by UK residents has more than doubled. Low-cost travel also creates opportunities for those who travel abroad to offend⁶.

17. Figures on foreign travel produced in March 2013 by The Office for National Statistics show that the vast majority of foreign travel from the UK is to the European mainland. Indeed there is a continuing trend towards shorter haul trips abroad. Visits to European destinations from the UK have grown by 1% in the past 12 months while those to North America and Other Countries have fallen by 5% and 4% respectively⁷. Most European destinations can be reached within a few hours.

18. The current requirement to notify the police only of travel of three days or more has created a position where registered sex offenders can travel and, cumulatively, spend a significant period of time abroad out with the knowledge of the police.

19. The new requirement to notify all foreign travel will enable the police to engage more pro-actively with international enforcement agencies and, where appropriate, utilise existing tools such as foreign travel orders to manage any risk identified from the additional information notified.

Homeless Sex Offenders

20. The definition of "home address" in the 2003 Act includes a location at which the offender can be regularly found.

"(a) the address of his sole or main residence in the UK, or

(b) where he has no such residence, the address or location of a place in the UK where he can be regularly be found and, if there is more than one such place, such one of those places as the person may select"

⁴ http://www.ecpat.org.uk/sites/default/files/off_the_radar_-_protecting_children_from_british_sex_offenders_who_travel.pdf

⁵ http://ceop.police.uk/Documents/strategic_overview_2008-09.pdf

⁶ [http://ceop.police.uk/Documents/Strategic_Overview_2009-10_\(Unclassified\).pdf](http://ceop.police.uk/Documents/Strategic_Overview_2009-10_(Unclassified).pdf)

⁷ <http://www.ons.gov.uk/ons/rel/ott/overseas-travel-and-tourism---monthly-release/february-2013/stb-monthly-overseas-travel-and-tourism--february-2013.html#tab-Trends-in-visits-abroad-by-UK-Residents--Reference-tables-3-4-5->

21. This means that where an offender is homeless or has no fixed abode his “home address” is defined as an address or location where he can be regularly found. This might, for example, be a shelter, a friend’s house, a caravan or a park bench.

22. While it is the case that some offenders are genuinely homeless and, therefore, not able to notify a sole or main residence, there is some concern that the provisions as currently apply in Scotland could allow these offenders to abscond more easily and could be exploited by offenders who have a bona fide address but wish to evade the attention of the police.

23. Legislative changes were introduced in section 102 of the Criminal Justice and Licensing (Scotland) Act 2010 giving the Scottish Ministers the power to bring forward Regulations under the 2003 Act, which set out how frequently RSOs who do not have a sole or main residence in the UK, must verify their personal details to the police.

Offender Management

24. One of the key purposes of the notification requirements is to allow for effective monitoring of registered sex offenders. It is arguable that homeless offenders typically lead more transient lifestyles and that more regular notification will help to make the monitoring process as effective as possible.

25. Assessing the suitability of the offender’s accommodation (as well as knowing their location) is a core part of offender management. Where the offender does not have a permanent residence, there appears to be a basis for suggesting that the environmental risk assessment is likely to be more difficult, due to the less stable situation. For example, the likely turn-over of residents in a hostel setting will inevitably impact on the process. Where, for example, an offender is sleeping rough or is a traveller, the challenges will most probably be exacerbated.

26. The National Accommodation Strategy for Sex Offenders in Scotland⁸ (NASSO) states that one of the key responsibilities of the Sex Offender Liaison Officer (SOLO) is to ‘*monitor, with the Responsible Authorities, where sex offenders under MAPPA are housed and identify any issues about the over-concentration of such offenders in particular areas*’. It may be more difficult to ascertain the position in relation to homeless offenders, and the input that would have been available if allocating housing will not be present.

27. In April 2005 the Social Work Inspection Agency report published a report into the management of a registered sex offender living in a homeless persons’ unit who abducted a two-year-old child from her home and sexually assaulted her with intent to rape. Among other things the report notes that ‘*Finding the right accommodation for sex offenders is a vital component of effective risk management. It contributes both to the effective protection of the public and to the personal safety of the offender. It is important to recognise that, for the most part, knowing where a sex offender is and being able to monitor and manage them effectively is one of the strongest safeguards for the public.*’⁹

28. The police recognise the benefits of weekly notification for those sex offenders who have abused their no fixed abode status as a way of evading notification and

⁸ <http://www.scotland.gov.uk/Publications/2012/02/7066/0>

⁹ http://www.scswis.com/index2.php?option=com_docman&task=doc_view&gid=196&Itemid=7

frustrating the police in their attempts to manage them. Among other things, it should reduce police time spent in ascertaining the whereabouts of relevant offenders between their annual notifications and monitoring them throughout the year, allowing police greater contact with such offenders so that they are better placed to assess risk. As outlined below, those offenders who are notifying as having no fixed abode are also considered to pose a greater risk and therefore would require closer management by police, which weekly notification should provide.

Homelessness and Offending

29. The link between homelessness and offending is well-established. The Criminal Justice Social Work Development Centre for Scotland published a briefing paper in April 2008 which examined the links between homelessness and offending, which, among other things found that the relationship between homelessness, offending and imprisonment was complex, with homelessness potentially increasing the chances of offending and/or being imprisoned, and imprisonment increasing the likelihood of becoming homeless¹⁰.

30. The 2008 briefing note also noted the following:

“McIvor and Taylor (2000) found evidence that offending is disproportionately high among those who are homeless. Research in England and Wales also found that a third of prisoners were not in stable accommodation before imprisonment and one in twenty were sleeping rough (Social Exclusion Unit, 2002). In Scotland, approximately 3,000 ex-prisoners submit homelessness applications each year (Pawson, Davidson & Netto, 2007). There is, therefore, a clear relationship between homelessness and offending. The causal relationships, if any, are, however, complex (Adamczuk, 2007; Hickey, 2002; Shelter Cymru, 2004).”

31. In taking these measures forward the following research endeavour and policy reviews were also noted.

32. The Scottish Office Social Work Services Inspectorate publication ‘A Commitment to Protect: Supervising Sex Offenders: Proposals for More Effective Practice’ (1997) stated that *‘Homeless and highly mobile offenders are very hard to monitor and supervise effectively’*.

33. A review in 2000, (Barkley and Collet) concluded that support, coupled with stable accommodation, directly addresses the dynamic risk factors associated with further offending, and enables individuals to benefit from supervision and other forms of treatment. The authors also cited (Roberts, 2000), which research, concluded that offenders whose main problem was housing or accommodation were significantly less likely to complete behaviour modification programmes than offenders who did not have the same problem.

34. The Report of the Expert Panel on Sex Offending (2001) made the following comments *‘those subject to the notification requirements who do not have permanent accommodation and are of no fixed abode often present an increased risk of re-offending linked to a lack of the stability that might otherwise be provided by suitable permanent accommodation’*.

¹⁰ <http://www.cjsw.ac.uk/sites/default/files/Briefing%20Paper%2011.pdf>

35. The Panel went on to comment that *'...such individuals and the transient nature of their lifestyle can cause difficulties for the police in keeping track of their movements'*.

36. Recommendation 2 of Professor George Irving's report, "Registering the Risk: Review of Notification Requirements, Risk Assessment and Risk Management of Sex Offenders" (July 2005) provided that *'Notifiable sex offenders of no fixed abode should be required to report daily or on a frequency set by the police to the office holding the register. It has been found from practice that many sex offenders initially claim to be homeless but that a requirement to report frequently often results in rapid disclosure of an address. Few have been found to be genuinely homeless'*.

37. In December 2008 the California Sex Offender Management Board published a report 'Homelessness Among Registered Sex Offenders in California: The Numbers, the Risks and the Response'¹¹. One conclusion reached was that *'The evidence shows that homelessness increases the risk that a sex offender may re-offend'*. This is supplemented by additional explanatory text.

38. Progressive homelessness legislation and policy means that, increasingly, a person should only find themselves with 'no fixed abode' in rare circumstances – raising the concern that those in such circumstances may have manufactured the situation in order to avoid monitoring and supervision.

39. This convincing body of evidence and opinion demonstrates a widespread shared belief among academics and practitioners that those of no fixed abode pose a greater risk of re-offending and that the further tightening of notification periods would reduce that risk. Moreover there is a general consensus that the theoretical risk is sufficient to justify introducing such a measure, the general view being that the numbers would be small and that, accordingly, resource implications, sanctions and other practicalities of implementing such further restriction would be minimal.

ECHR

40. The ECHR issues which arise in respect of these Regulations have been considered. The key issues are whether imposing additional requirements on relevant offenders could be seen to be sufficiently burdensome to amount to a penalty in terms of Article 7 of the ECHR and whether they would interfere with a right to private life in a way that could not be justified (Article 8 of the ECHR). It is considered that the Regulations are compatible in this respect.

41. As set out in paragraphs 12-19 above, the requirement to provide details of all foreign travel set down in the Regulations is directed at public protection, particularly protecting children from British Sex Offenders who Travel abroad by ensuring that their location is known, even when outside the UK.

42. It is of note that the minimum notice period has been shortened to 12 hours, which will help to minimise the burden on short-notice travellers.

43. Regarding the more frequent notification requirements for offenders with no sole or main residence, the objective is to enhance the existing provisions which support

¹¹ http://www.cdcr.ca.gov/Parole/Sex_Offender_Facts/docs_SOMB/Housing_2008_Rev.pdf

the effective management of relevant offenders. A definitive timescale for notification is required as it is not competent to delegate this decision to the police or any other responsible authority. When deciding upon an appropriate timeframe, the rights of the offender must be balanced against the wider public interest. The decision was made that daily notification would be overly onerous. Weekly notification is deemed more proportionate and it also fits with the equivalent provision in England and Wales. Should more frequent notification be deemed necessary, there are other mechanisms available.

44. The notification requirements of Part 2 of the 2003 Act provide that a 'relevant offender' is required to notify the police of certain information. Section 87(1)(a) of the 2003 Act provides that such a person gives the required notifications by attending at any of the police stations prescribed by the Scottish Ministers, of which there are 85 throughout Scotland. Their geographic spread is aimed at ensuring that relevant offenders do not have to travel too far to notify their personal information or changes thereto.

45. The measures are considered to be proportionate, particularly when the slight inconvenience caused to relevant offenders of having to notify the required information more frequently is balanced against the reasons why relevant offenders are being required to notify this information (public protection and prevention of re-offending).

Consultation

46. These Regulations form part of the implementation of the Criminal Justice and Licensing (Scotland) Act 2010, which the Scottish Parliament approved in June 2010. The Association of Chief Police Officers in Scotland, the Police Service of Scotland and CEOP were consulted on the instrument.

Financial Effects

47. The instrument has no financial effects on the Scottish Government's program expenditure.

May 2013

Justice Committee

19th Meeting, 2013 (Session 4), Tuesday 11 June 2013

Subordinate legislation

Purpose

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

- Sheriff Court Districts Amendment Order 2013 (SSI 2013/152); and
- Justice of the Peace Courts (Scotland) Amendment Order 2013 (SSI 2013/153).

2. Further information on the Sheriff Court Districts Amendment Order 2013 (SSI 2013/152) is provided in Annexe A and further information on the Justice of the Peace Courts (Scotland) Amendment Order 2013 (SSI 2013/153) is provided in Annexe B. This includes details of the Subordinate Legislation Committee's consideration of the instruments.

3. The Justice Committee also took evidence on the proposals at its meetings on 21 May and 4 June and received a large number of written submissions in respect of the proposals. A summary of the Committee's consideration of the SCS's proposals is set out in Annexe C to this paper.

Negative procedure

4. Both of these are negative instruments and so they will come into force unless they are annulled. The negative procedure which governs this process is set out in rule 10.4¹ of standing orders. Set out below are details of the procedure and how this will be managed at the meeting.

5. The following motions to annul were lodged by Lewis Macdonald on 20 May and are both supported by Alison McInnes and John Lamont:

S4M-6648: That the Justice Committee recommends that the Sheriff Court Districts Amendment Order 2013 (SSI 2013/152) be annulled.

S4M-6649: That the Justice Committee recommends that the Justice of the Peace Courts (Scotland) Amendment Order 2013 (SSI 2013/153) be annulled.

6. The motions will be debated at the meeting. Although Lewis Macdonald is not a member of the Committee, both he and the Cabinet Secretary for Justice (as the member in charge of the instrument) are entitled to attend the committee meeting and participate in the proceedings for the purposes of debating the motions. However, they may not vote. Any other member who is not a member of the Committee may also participate in the debate at the Convener's discretion but may not vote.

¹ Chapter 10 of Standing Orders available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/26510.aspx>

7. The debate on a motion to annul can last up to 90 minutes. As the motions to annul have been proposed by the same member and relate to each other, the Convener proposes that the Committee debates both motions together. In which case, the debate on both motions may last up to three hours in total.

8. As the proceedings at the meeting will be the formal debate on the motions, only members will be able participate in proceedings (therefore any officials accompanying the Cabinet Secretary will not be able to contribute). Members will also be able to intervene if the member speaking is willing to give way.

9. The structure of the debate will be as follows—

- Lewis Macdonald to speak to and move both motions
- Open debate (Members called at the Convener's discretion)
- Cabinet Secretary to respond to the debate
- Lewis Macdonald to wind up

10. At the conclusion of the debate, separate questions will be put on each motion to annul. Any division will be conducted by a show of hands. In the event of a tie, the Convener will have a casting vote. According to the *Guidance for Conveners*, there are no agreed conventions on this point and so this is entirely a matter for the discretion of the Convener.

11. If a motion to annul is agreed to by the committee, the Parliamentary Bureau must then lodge a motion to annul the instrument which will be considered by the Parliament as a whole within 40 days of the instrument being laid.

12. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

13. If a motion to annul is not agreed to, the provisions will come into force in accordance with the timescale set out in the instrument.

Sheriff Court Districts Amendment Order 2013 (SSI 2013/152)

Purpose of instrument

1. This instrument closes certain sheriff courts, by providing that a sheriff court is to cease to be held at a certain place, and abolishes certain sheriff court districts. It specifies those sheriff courts to be closed and sheriff court districts to be abolished, including the dates of their closure and abolition, and details of the courts to which business will be transferred ('receiving' courts). A list of the sheriff courts to be closed and receiving courts are set out in the policy note on page 4 of this paper.
2. The instrument comes into force on 29 June.
3. Further details on the purpose of the instrument can be found in the policy note and an electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2013/152/contents/made>

Consultation

4. The Scottish Court Service (SCS) carried out a formal three-month consultation, 'Shaping Scotland's Court Services' from September to December 2012 and published their conclusions and recommendations in April 2013. The policy note explains that the Scottish Ministers accepted the SCS's recommendations on the basis that "the Order will close courts with substandard or inadequate facilities which require public funds to be diverted to bring them up to modern standards, and they will enable other savings to be made which will allow for improvements in the remaining court estate".²

Impact assessments

5. The Scottish Government has undertaken and published a joint [equality impact assessment](#) and [business and regulatory impact assessment](#) on this instrument and the Justice of the Peace Courts (Scotland) Amendment Order 2013 (SSI 2013/153), which is covered later in this paper.

Subordinate Legislation Committee consideration

6. The Subordinate Legislation Committee (SLC) considered this instrument at its meeting on 4 June and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit.

Justice Committee consideration

7. The Justice Committee is required to report to the Parliament on this instrument by 24 June 2013 following the debate on the motion.

² Policy Note, paragraph 5.

Policy Note

Sheriff Court Districts Amendment Order 2013 (SSI 2013/152)

Introduction

1. The above instrument was made by Scottish Ministers in exercise of the powers conferred by sections 3(2), 3(3) and 43 of the Sheriff Courts (Scotland) Act 1971 and all other powers enabling them so to do. The instrument is subject to negative procedure.

Policy Objectives

2. This Order closes certain sheriff courts and transfers each one's business to another court – the receiving court. The table below lists the closing courts, the receiving courts, and the date of each closure and transfer.

Closing Court	Receiving court	When
Arbroath	Forfar	31 st May 2014
Cupar	Dundee	31 st May 2014
Dingwall	Inverness	31 st January 2015
Dornoch	Tain	30 th November 2013
Duns	Jedburgh	31 st January 2015
Haddington	Edinburgh	31 st January 2015
Kirkcudbright	Dumfries	30 th November 2013
Peebles	Selkirk	31 st January 2015
Rothsay	Greenock	30 th November 2013
Stonehaven	Aberdeen	31 st May 2014

3. The Order provides in relation to each transfer that the closing court can, prior to its closure, plan for the transfer of business to the receiving court. Further it provides that after the date of closure that all cases are transferred to the receiving court. The Order also makes consequential amendments to the Sheriff Court Districts (Alteration of Boundaries) Order 1996 (SI 1996/1005) and provides for transitional arrangements.

Consultation

4. The provisions of this Order take account of recommendations made to Scottish Ministers by the Scottish Court Service ("the SCS"). The SCS carried out a formal three month public consultation, "Shaping Scotland's Court Services"³, from 21 September 2012 to December 2012 and provided Ministers with their conclusions and recommendations in April 2013.

5. The Scottish Ministers have decided to accept the SCS's recommendations: the Order will close courts with substandard or inadequate facilities which require public

³ The Scottish Court Service's consultation, analysis and responses are available at:
<http://www.scotcourts.gov.uk/about-the-scottish-court-service/consultations>

funds to be diverted to bring them up to modern standards; and, they will enable other savings to be made which will allow for improvements in the remaining court estate.

6. There are two categories by which the SCS's recommendations to close the courts were made: those with low volumes of business and those located in close proximity to other sheriff courts which have capacity to take their business.

Sheriff courts with low volumes of business

7. There has been careful consideration of what would be the most appropriate measure of business below which it becomes disproportionate and inefficient to maintain a sheriff court. The SCS concluded that the following criteria were appropriate, being a court:

- which is scheduled to sit on average two days or fewer each week;
- has an annual caseload of fewer than 200 new criminal cases; and
- fewer than 300 new civil cases.

8. The sheriff courts at Dornoch, Duns, Kirkcudbright, Peebles, and Rothesay fall below these criteria. Of these courts, only Kirkcudbright has a permanently staffed sheriff clerk's office. Dornoch has its own staff and the court offices are open for part of each week. The other courts are wholly administered from a neighbouring court, with court staff attending only on court days (Duns from Jedburgh, Peebles from Selkirk, and Rothesay from Greenock). Each of the courthouses has some significant limitation in the facilities it can provide court users.

9. Having considered the court capacity available in neighbouring sheriff court districts, and taking into account the *Principles for Provision of Access to Justice*⁴, the SCS recommended that these five courts should be closed and the business of those districts is transferred to the districts of neighbouring sheriff courts as listed in the table in paragraph 2 above.

Sheriff courts in proximity to each other

10. A number of sheriff courts are located close to another for reasons that are largely historical. Having taken account of the guiding Principles for Provision of Access to Justice and a wish to minimise excess travelling distances for court users, the SCS concluded that consideration should be given to those sheriff courts within twenty miles of another sheriff court location which has sufficient capacity to absorb the displaced business.

11. The courts identified were: Dornoch (which is covered above), Cupar, Dingwall, Arbroath, Stonehaven, and Haddington. These courts are located within 18 miles of the neighbouring court to which business would be transferred. The Scottish Ministers agreed with the SCS's recommendation that these courts should close and the business from their districts transferred to neighbouring sheriff courts which have the capacity to take all the court business – as listed in the table in paragraph 2 above.

12. The Lord President and the Scottish Court Service have given their consent to the making of this Order in terms of section 3(2A) of the Sheriff Courts (Scotland) Act 1971. In accordance with section 3(2B) of that Act, the Scottish Court Service consulted such persons as it considered appropriate before giving its consent.

⁴ These principles were set by the Lord President and the Sheriffs Principal – <http://bit.ly/ZWicXx> (Annex A)

Impact Assessments

13. An equality impact assessment has been completed on the draft SSI and is attached.

Financial Effects

14. A BRIA has been completed and is attached.

Scottish Government
Justice Directorate
May 2013

Annexe B**Justice of the Peace Courts (Scotland) Amendment Order 2013****Purpose of instrument**

14. This instrument disestablishes certain justice of the peace (JP) courts and makes provision for all cases of these courts to be transferred to specified 'receiving' courts and for closing courts to plan for this transfer of business prior to their closure. The JP courts disestablished by the instrument, date of closure and receiving courts are listed in the policy note on page 8 of this paper.

15. The instrument comes into force on 29 June.

16. Further details on the purpose of the instrument can be found in the policy note and an electronic copy of the instrument is available at:

<http://www.legislation.gov.uk/ssi/2013/153>

Consultation

17. The Scottish Court Service (SCS) carried out a formal three-month consultation, 'Shaping Scotland's Court Services' from September to December 2012 and published their conclusions and recommendations in April 2013. The policy note explains that the Scottish Ministers accepted the SCS's recommendations on the basis that "the Order will close courts with substandard or inadequate facilities which require public funds to be diverted to bring them up to modern standards, and they will enable other savings to be made which will allow for improvements in the remaining court estate".⁵

Impact assessments

18. The Scottish Government has undertaken and published a joint [equality impact assessment](#) and [business and regulatory impact assessment](#) on this and the Sheriff Court Amendment Order 2013, which is covered later in this paper.

Subordinate Legislation Committee consideration

8. The Subordinate Legislation Committee (SLC) considered this instrument at its meeting on 4 June and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit. However, the Deputy Convener of the SLC did note that as "justice of the peace courts and sheriff courts have different sentencing powers, a higher sentence could be imposed on persons whose cases are transferred from a justice of the peace court that is closing to a sheriff court if they are convicted or sentenced after the transfer"⁶.

Justice Committee consideration

19. The Justice Committee is required to report to the Parliament on this instrument by 24 June 2013.

⁵ Policy Note, paragraph 5.

⁶ Official Report of the SLC, 4 June 2013, Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8192>

Policy Note

Justice of the Peace Courts (Scotland) Amendment Order 2013 (SSI 2013/153)

Introduction

1. The above instrument was made in exercise of the powers conferred by sections 59(6) and 81(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The instrument is subject to negative procedure.

Policy Objectives

2. This Order disestablishes certain justice of the peace (“JP”) courts, closing that court and transferring its business to another court – the receiving court. The table below lists the closing courts, the receiving courts, and the date of each closure and transfer.

Closing JP court	Receiving court	When
Annan	Dumfries JP court	30 th November 2013
Arbroath	Forfar JP court	31 st May 2014
Cumbernauld	Coatbridge JP court	30 th November 2013
Cupar	Dundee JP court	31 st May 2014
Dingwall	Inverness JP court	31 st January 2015
Dornoch	Tain JP court	30 th November 2015
Duns	Jedburgh JP court	31 st January 2015
Haddington	Edinburgh JP court	31 st January 2015
Irvine	Kilmarnock JP court	30 th November 2013
Kirkcudbright	Dumfries JP court	30 th November 2013
Motherwell	Hamilton JP court	30 th November 2013
Peebles	Selkirk JP court	31 st January 2015
Portree	Sheriff court held at Portree	30 th November 2013
Stonehaven	Aberdeen JP court	31 st May 2014
Stornoway	Sheriff court held at Stornoway	30 th November 2013
Wick	Sheriff court held at Wick	30 th November 2013

3. The Order provides in relation to each transfer that the closing court can, prior to its closure, plan for the transfer of business to the receiving court. Further it provides that after the date of closure that all cases are transferred to the receiving court. The Order also makes consequential amendments to the following orders:

- (a) the Justice of the Peace Courts (Sheriffdom of Grampian, Highland and Islands) Order 2008 (SSI 2008/93);
- (b) the Justice of the Peace Courts (Sheriffdom of Lothian and Borders) etc. Order 2008 (SSI 2008/31);

- (c) the Justice of the Peace Courts (Sheriffdom of Tayside, Central and Fife) Order 2008 (SSI 2008/363);
- (d) the Justice of the Peace Courts (Sheriffdom of North Strathclyde) etc. Order 2009 (SSI 2009/331); and
- (e) the Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) etc. Order 2009 (SSI 2009/332)

Consultation

4. The proposals in this Order take account of recommendations made to Scottish Ministers by the Scottish Court Service (“the SCS”). The SCS carried out a formal three month public consultation, “Shaping Scotland’s Court Services”⁷, from 21 September 2012 to December 2012 and provided Ministers with their conclusions and recommendations in April 2013.

5. The Scottish Ministers have decided to accept the SCS’s recommendations: the Order will close courts with substandard or inadequate facilities which require public funds to be diverted to bring them up to modern standards; and, they will enable other savings to be made which will allow for improvements in the remaining court estate.

6. The closures can be grouped into three separate categories.

Closure of justice of the peace courts where there is no co-located sheriff court

7. The Scottish Government considers that the JP courts in Annan, Irvine and Motherwell should transfer their business to a JP court sitting in the sheriff courthouse for their respective districts and that the JP court at Cumbernauld transfer to the JP court in Coatbridge. There is no permanent presence by the SCS in any of these JP court locations. Moreover, there is no public counter service and the clerk of court and the administrative staff are based in the sheriff court and travel to court on the days when the court is to sit. The facilities at each court are below the standard appropriate for a modern court facility and well below the facilities that are provided in the sheriff courthouse for the district.

8. Further factors influencing this decision are:

- these courts are relatively near (between 4 and 16 miles) to the receiving courts;
- these JP courts are scheduled to sit for three days or fewer each week (Annan sits only once a month); and
- the low volume of business is further reflected in the number of new summary criminal complaints being brought before these courts each year.

9. Costs are incurred by the SCS in keeping these courts in service to deal with a low volume of work and, in many cases, in buildings which offer poor facilities and a less than safe environment for court users. Consequently, the Scottish Government has concluded that all the JP court business in these courts should be transferred to courts which have sufficient business capacity to absorb the new business and that these JP courts be disestablished.

Closure of JP courts with low business volume

⁷ The Scottish Court Service’s consultation, analysis and responses are available at: <http://www.scotcourts.gov.uk/about-the-scottish-court-service/consultations>

10. It is considered that the following factors are an appropriate measure of business below which it becomes disproportionate and inefficient to maintain a sheriff court and, given the economies of scale, therefore the co-located JP court.

- The court is scheduled to sit on average 2 days or fewer each week.
- The court's annual caseload is fewer than 200 new criminal cases and 300 new civil cases.

11. The courts at Dornoch, Duns, Kirkcudbright and Peebles fall below this measure.

12. Having considered the court capacity available in neighbouring sheriff court districts, and taking into account the *Principles for Provision of Access to Justice*⁸, the Scottish Government proposes to close these four courts and transfer the business to the courts stated in the second column of the table in paragraph 2 above.

13. In addition, the Scottish Government considers that the JP courts at Portree, Stornoway, and Wick should be closed with all summary criminal business heard in the local sheriff court. All three have a very small caseload which is insufficient to justify maintaining a JP court in these areas. In these instances the Lord President has determined that a JP Court is not necessary after having regard to the level of summary business in the sheriffdom.

Closure of JP courts in close proximity to another

14. It is considered that the JP courts at Arbroath, Cupar, Dingwall, Haddington and Stonehaven should be disestablished and the court buildings and accommodation in those places should be closed. They are all in buildings that also house a sheriff court and are within 18 miles of another sheriff court location which also house a JP court. These JP courts have the capacity to take all the JP court business from those recommended to close.

15. In terms of section 59(7) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, the Lord President and the Scottish Court Service have given their consent to the making of this Order. In compliance with section 59(7A)(a) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, the Lord President has consulted with the sheriff principals in the sheriffdoms affected. Further in compliance with section 59(7A)(b) of that Act, the SCS has consulted with persons it considered appropriate.

Impact Assessments

16. An equality impact assessment has been completed on the SSI and is attached.

Financial Effects

17. A BRIA has been completed and is attached.

Scottish Government
Justice Directorate
May 2013

⁸ These principles were set by the Lord President and the Sheriffs Principal – <http://bit.ly/ZWicXx> (Annex A)

Annexe C**Justice Committee's scrutiny of the Scottish Court Service's (SCS) proposals for a future court structure in Scotland.****Introduction**

1. The Scottish statutory instruments closing sheriff and justice of the peace courts follows recommendations by the SCS for a future court structure in Scotland. The purpose of this Annexe is to outline the scrutiny the Committee has undertaken on the SCS's proposals.

Court Closures

2. The two SSIs close 10 sheriff and 16 justice of the peace courts. The tables set out in the Policy Notes accompanying each instrument list the courts affected by the proposals including which courts will be closed and where the relevant court business will be transferred to. The timetable set out in the SSIs specifies that the closures will take place between November 2013 and January 2015.

Committee's consideration of the SCS's proposals

3. After the publication of the SCS's report on "Shaping Scotland's Court Services" published on 9 April 2013¹, the Committee undertook a short and focused inquiry into the proposals contained in the report for a future court service.

Written evidence

4. The Committee issued a call for written views on 24 April 2013. The deadline for submissions was 21 May and the submissions can be found here: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/63442.aspx>

Oral evidence

5. At its meeting on 21 May, the Committee heard oral evidence from three panels of witnesses. The first panel comprised of representatives from the SCS; the second comprised of legal experts; and the third included lay users of the courts, a representative from the Public and Commercial Services trade union, and a chair of a Community Justice Authority.

6. The Official Report of the meeting on 21 May can be found here: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8170>

7. At its meeting on 4 June, the Committee heard evidence from the Cabinet Secretary for Justice and the Lord President on these proposals.

8. During the evidence session, the Cabinet Secretary indicated that he would provide the Committee with details of videoconference facilities being made available by the Scottish Court Service in places where courts are earmarked for closure. A letter from the Cabinet Secretary is included in this paper at Appendix A to this Annexe.

¹ Scottish Court Service 2013, *Shaping Scotland's Court Services - response to the consultation and recommendations for a future court structure in Scotland* [Online] Available at: <http://www.scotcourts.gov.uk/news/all-news/2013/04/09/scottish-court-service-publishes-court-structure-proposals%20>

9. The Official Report of the meeting on 4 June can be found here: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8193>

Consultation

10. Many respondents to the Committee's call for written views are concerned particularly about the proposal of their local court being closed. During oral evidence, local issues also were raised along with more general concerns, for example: a lack of an overall strategy for rural justice; victims and witnesses' proximity to the accused while making longer journeys on public transport; the robustness of the SCS's financial case; the capacity of receiving courts to efficiently take on business; and the economic and social impact of the closures.²

11. The SCS robustly supported their analysis and recommendations. Lord Gill, in his evidence, noted that the closures form part of a strategy of modernisation of the Scottish Court Service while it is facing significant cuts to its budget. He argued that "there is a good case to be made for having centres of specialisation and excellence and making the most efficient use of resources"³.

12. The SCS published an [analysis of the responses to its consultation](#) on its proposals (April 2013) in which it identifies the following themes amongst objections. Similar themes were also apparent in the Committee's scrutiny of the SCS's proposals.

Impact on Access to Justice

13. Respondents to the SCS consultation believed that local courts provide opportunities for members of the public to participate fully in the justice system as witnesses, jurors or simply interested parties. Another strand of this argument was that justice administered in communities allows justice to be seen to be done, both during proceedings and through reporting by the local media.

14. Some respondents argued that justice delivered locally means that the legal profession has an understanding of local issues and context. Similar claims were made for locally recruited juries.

15. Some criticism was made of the proposals as being contrary to the 'Principles for the Provision of Access to Justice', which is attached to this paper in Appendix B.

Impact on Court Users

16. Responses included concerns on the additional costs and inconvenience court users would experience should local courts close or court business move elsewhere.

17. It was argued that this will have an impact on "witnesses, jurors, victims, accused and their families, parties in civil cases, as well as to legal professionals, the police, and associated justice and other bodies, particularly local authority social work departments"⁴ It was further argued that this will disproportionately affect those from rural areas and disadvantaged or vulnerable groups.

Impact on Quality and Provision of Legal Services and the Administration of Justice

² Official Report of proceedings of the Justice Committee, 21 May and 4 June.

³ Official Report of proceedings of the Justice Committee, 4 June

⁴ Paragraph 18 of the consultation analysis.

18. In addition to the loss of local knowledge, concerns were raised about a reduction of legal professionals in areas where court business would be lost, and the problems of attracting solicitors to firms where there is likely to be little court experience.

19. It was argued that increases in travel time and costs could potentially increase non-attendance or late arrival at courts of accused, witnesses, jurors and parties in civil cases.

20. Concerns were raised that witnesses would be more likely to have to share public transport with accused and that this could result in an increased risk of witness intimidation.

21. It was claimed that smaller courts deliver services efficiently and the move of business to busier courts could increase delays.

Impact on Local Economy and Heritage

22. Respondents had concerns about the effect of court closures on ancillary businesses and many pointed to historically important courthouses as a source of civic pride.

Impact on Costs and Overall Public Expenditure

23. Concerns were raised that any costs saved by the SCS would be transferred to other parts of the public sector (eg legal aid and travel costs for members of other public services such as the police).

24. It was also argued by some that cost savings may not necessarily follow from the centralisation of services.

Flawed Premise and Underpinning Analysis of the Proposals

25. Respondents to the SCS consultation challenged the view that cost savings should be a driver for change above quality of service.

26. There was also scepticism about the figures the SCS presented (eg in relation travel costs, future volumes of business and estimated capital receipts from the sale of court buildings).

Appendix A

Letter from the Cabinet Secretary for Justice to the Convener

Court Closures – Video Links

At the evidence session about the Scottish Court Service's (SCS) report "Shaping Scotland's Court Services" on 4 June you requested details of where video links will be placed prior to any court closures.

The SCS has a well-established video technology infrastructure in place across courts and already operates a network of over twenty remote (non- court based) video link facilities throughout Scotland. Within the Scottish Government Making Justice Work Enabling Technologies Project the SCS is already working with Scottish Government and other agencies to make best use of video technology - the set-up of video link facilities in the vicinity of courts which are proposed for closure will build on those foundations.

SCS will work locally with Justice partners, Local Authorities and voluntary organisations making sure that video technology is in place prior to the closure of that court. The first phase of closures take place in November 2013 and this includes the Sheriff Courts in Dornoch, Kirkcudbright and Rothesay and implementation of video technologies in these areas will be prioritised if the Orders are passed by Parliament.

I hope that the Committee members find this information useful and SCS will be happy to provide an update to the Committee as implementation progresses.

Kenny MacAskill MSP
Cabinet Secretary for Justice
6 June 2013

Principles for Provision of Access to Justice¹

Preamble

A. The following principles have been prepared in discussion among the Lord President, the Lord Justice Clerk and the Sheriffs Principal. These set out broad principles to which they require SCS to have regard in making provision of support under sections 61 and 62 of Judiciary and Courts (Scotland) Act 2008 (2008 Act) concerning the places in which courts should be located and court services should be provided. In planning for the future of the court estate, account should be taken of anticipated demands including developments in the practice and procedures of both criminal and civil business and the requirement to consult publicly and seek approval from Parliament for any substantial changes to sheriff and justice of the peace court locations.

B. These principles should be read together. In certain circumstances one or more of the principles may need to take precedence over another. All of them must be construed within the statutory duty of the Lord President for the efficient disposal of business in the Scottish courts, and the responsibility of each Sheriff Principal for the efficient disposal of business in the courts within his or her sheriffdom. In providing services in support of the courts of Scotland, and the judiciary in those courts, SCS cannot be asked to provide services at a cost greater than the resources made available by the Scottish Parliament for that purpose.

Principles

C. The provision of services by SCS must be compliant with Article 6 of the ECHR: that is to say that it must support the determination of a citizen's rights and obligations or of any criminal charge against him or her by way of a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The manner in which compliance with this Article is achieved is not tied to the number of locations at which SCS provides its services, but it must not do so in a manner that effectively denies to the citizen access to the determination of a right or obligation in civil cases, for example, by reason of excessive cost or the inaccessibility of the venue, or effectively prevents a citizen accused of a criminal charge having a fair trial by reason of, for example, material difficulties in obtaining the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him.

D. Subject to the efficient disposal of business, it is desirable that criminal justice be delivered locally. Quite apart from the convenience of witnesses and the interest of victims, this engages the local community in the administration of justice, including providing the opportunity to serve as justices or jurors. What is involved in the delivery of criminal justice 'locally' may vary with the level of the jurisdiction being exercised.

E. The SCS should ensure that most people will be able to travel to their local court by public transport so as to arrive at the start of the case in which they are concerned, and be able to return home by public transport on the same day. That local court should as a minimum be able to hear and determine summary criminal cases and lower value, or more straightforward, civil matters. Provision of services beyond that

¹ As set out in the SCS consultation paper on shaping Scotland's court services (2012).

minimum will be determined by reference to the statutory duty of the Lord President and the Sheriffs Principal in respect of the efficient disposal of business in a particular area.

F. Within each courthouse appropriate facilities must be provided for criminal trials, civil proofs or other hearings where the physical presence of parties or witnesses is required. The use of video conferencing (for example in procedural stages of criminal proceedings or interlocutory or preliminary hearings in a civil case) which may avoid the need for parties to be physically present in a courtroom is in appropriate circumstances acceptable. The appropriateness of the use of video conferencing in a particular case must, subject to any rule of law, be a matter for the presiding judge or sheriff to determine.

G. SCS should seek to provide services that allow the administrative business of the courts (submission of documents in civil cases, payment of fines etc) to be undertaken without the need for physical attendance at a court or courthouse, particularly in respect of those parts of Scotland which are remote and where public transport provision is scarcer.

H. Save where the exceptions provided in Article 6(1) of the ECHR apply, judgment should be pronounced publicly. It is important therefore that court buildings and court proceedings are publicly accessible and that the courts provide information about their work to communities or individuals with particular interest in given cases and to the public more generally.

I. In providing the facilities for civil and criminal proceedings and in providing services to court users generally, the SCS must ensure that the accommodation or service is:

- i. fit for purpose;
- ii. accessible, safe and secure; and
- iii. consistent with future arrangements for expenditure of public funds.