



**JUSTICE 2 COMMITTEE**

**AGENDA**

**29th Meeting, 2006 (Session 2)**

**Tuesday 7 November 2006**

The Committee will meet at 2.00 pm in Committee Room 6.

1. **Declaration of interests:** Michael Matheson MSP will be invited to declare any relevant interests.
2. **Custodial Sentences and Weapons (Scotland) Bill:** The Committee will take evidence from—

Alan Baird, Convener, Criminal Justice Standing Committee, Association of Directors of Social Work; and  
Lindsay MacGregor, Policy Manager, Councillor Eric Jackson and Councillor Alison Hay, COSLA;

and then from—

Superintendent William Manson and Detective Superintendent James Cameron, ACPOS;  
Clive Murray, National President, Association of Scottish Police Superintendents; and  
John Carnochan and Will Linden, Senior Intelligence Analyst, and Violence Reduction Unit, Strathclyde Police;

and then from—

Derek Turner, Assistant Secretary for Scotland, and Kenny Cassels, Vice Chair, Prison Officers Association.

3. **Petition PE863:** The Committee will consider Petition PE863 by Bill Alexander which calls for the Scottish Parliament to urge the Scottish Executive to amend the Solicitors (Scotland) Act 1980.
4. **Christmas Day and New Year's Day Trading (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

Tracey Hawe/Alison Walker  
Clerks to the Committee

## **Papers for the meeting—**

### Agenda Item 2

Written submissions	J2/S2/06/29/1
Lines of questioning (PRIVATE PAPER)	J2/S2/06/29/2

### Agenda Item 3

Note by Clerk	J2/S2/06/29/3
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### Agenda Item 4

Draft report (PRIVATE PAPER)	J2/S2/06/29/4
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## **Documents not circulated—**

- Annual Report 2005-2006 by HM Chief Inspector of Prisons for Scotland, published 1 November 2006:  
<http://www.scotland.gov.uk/Publications/2006/10/26121221/0>

## **Forthcoming meetings—**

- 14 November 2006, Committee Room 6, time to be confirmed

**J2/S2/06/29/1**

**Custodial Sentences and Weapons (Scotland) Bill: written submissions**

Please find attached written submissions to the Justice 2 Committee on the Custodial Sentences and Weapons (Scotland) Bill from:

- ADSW/COSLA
- Violence Reduction Unit
- Prison Officers Association

We understand that submissions from ACPOS and ASPSP will be provided to the Committee in advance of the Committee's meeting on Tuesday. These will be emailed to members and hard copies will be provided at the meeting.

Clerk to the Justice 2 Committee  
2 November 2006



## Written Submission to the Scottish Parliament Justice 2 Committee

### Custodial Sentences and Weapons (Scotland) Bill

#### Introduction

1. The Convention of Scottish Local Authorities (COSLA) and the Association of Directors of Social work welcome the opportunity given by the Scottish Parliament Justice 2 Committee to contribute to the scrutiny of the Custodial Sentences and Weapons (Scotland) Bill which has wide-ranging implications for local government. COSLA and ADSW support the overall policy objectives of the Bill which broadly represent an ambition to achieve safer communities and to prevent re-offending which is shared by all in local government.
2. However, COSLA considers that the Custodial Sentences and Weapons (Scotland) Bill needs to be scrutinised and further developed in a number of areas to ensure effective implementation. These areas are outlined below in:
  - Section one: Custodial Sentences
  - Section two: Weapons

#### Section one: Custodial Sentences

3. This evidence on the Custodial Sentences element of the Bill is provided jointly by COSLA and ADSW. Whilst we welcome the increased emphasis on community-based sentences as an approach to reduce reoffending, we recognise that **the measures contained in the Bill will result in considerable additional pressures on local government and on Criminal Justice Social Work services in particular.**
4. The Bill offers an opportunity not only to reduce the ever-growing prison population but also to tackle Scotland's high rates of re-offending. **While the Bill focuses on offenders sentenced to between 6 months and 4 years, there is a clear opening to make a much-needed impact on re-offending rates among those sentenced to between 15 days and 6 months.** To stop the revolving door of prison/re-offending we need to re-examine areas for improvement to meet the needs of this group.
5. Clearly, making provision to reduce re-offending based on individual risk of re-offending rather than length of sentence will require commensurate additional capacity. **COSLA and ADSW consider that for reasons of effectiveness and efficiency, qualified social workers should be deployed to work with high risk serious offenders while para-professionals focus their work on lower risk offenders.**

#### **Provisions of the Bill requiring particular scrutiny**

6. *Minimum Custodial Sentences*  
While for some persistent, "low-level" offenders, a short prison sentence may provide sufficient impetus to break the offending cycle, for the majority of offenders very short

custodial sentences are ineffective in deterring, punishing, reforming or rehabilitating. There is also a disproportionately high financial cost to processing very short-term prisoners into and out of prison. **For reasons of both effectiveness and cost, therefore, COSLA and ADSW agree in principle that short sentences are ineffective and it is COSLA's view that they should be used only as a sentence of last resort for those most persistent low-level offenders.** Any resulting upward drift in sentence length, however, would clearly be unwelcome and should be closely monitored.

7. Alternatives to custody for breach of licence and for fine defaulting should be sought for the same reasons of effectiveness and cost. There are questions around whether breach always warrants custody. The current breach rate is around 25% and it is anticipated that breach rates will only further increase with the introduction of the Bill.
8. *Appropriate Authority*  
Subsection (4) defines the appropriate local authority as either the one in which the offender resided immediately prior to the offence or the one the offender intends to reside in upon beginning the community part of her or his sentence on licence. This **lack of clarity** as to appropriate authority will inevitably lead to uncertainty over exactly which authority is responsible and takes no account of the difficulties in tracking offenders effectively across boundaries, especially those on short-term sentences.
9. It is further suggested by COSLA and ADSW that **offenders should be imprisoned as close to their family or likely future accommodation as possible** to maximise the likelihood that they retain relationships and settle sustainably on their release. Young offenders and women offenders, in particular, currently face specific issues in being placed in institutes or prisons, respectively, often at a considerable distance from their home, and ways of overcoming this potential dislocation need to be sought.
10. *Risk Assessment*  
COSLA and ADSW welcome the recognition that joint working arrangements should be put in place between Scottish ministers and local authorities in relation to the assessment and management of the risk posed by custody and community prisoners. There are two elements of risk which require to be assessed and managed – risk of harm and risk of re-offending. It should also be noted that level of risk posed is not necessarily associated with the length of sentence. Domestic abuse, for example, can draw a relatively low tariff yet risks to partners and children can be extremely high.
11. **It is essential that Criminal Justice Social Workers are jointly involved in risk assessments together with colleagues from the Scottish Prison Service to ensure appropriate conditions are attached to licences, that key transitional arrangements are in place and that local provision is made available and used.** Indeed, COSLA and ADSW consider that it is essential that local authority social workers attached to prisons are actively engaged in sentence planning and delivery of appropriate interventions and programmes from the outset to assess and manage risk of harm and risk of re-offending. This joint process of risk assessment between Scottish Prison Service and local authority Social Workers raises difficulties related to the contract culture within SPS which would benefit from consideration.
12. There are **significant resource issues** arising from the assessment process. Criminal Justice Social Workers will be engaged in a large number of **additional risk assessments** as a consequence of this Bill and its requirement to assess the risk of harm from all those sentenced to 15 days or more.

13. *Supervision*  
**“Supervision” is a wide term which requires closer definition as it can range from signposting and brokerage to monitoring and direct support and one-to-one programme delivery.** Local authority social workers support:
- rehabilitation and re-settlement of the offender, including support to secure appropriate housing, find employment, address substance misuse, and make a positive contribution to their community;
  - prevention or reduction of further offending through participation in programmes;
  - protection of the public from harm through monitoring and supervision, liaison with police, ensuring compliance with licence etc; and
  - the family of the offender.
14. There are currently around 4800 prisoners serving custodial sentences of 15 days to 6 months. The Bill sets out that only those sentenced to over 6 months in custody will be required to receive supervision. Those offenders sentenced to between 15 days and 6 months custody will be released on licence unless they are assessed as specifically needing supervision.
15. Whilst it is the case that not every prisoner released will require full supervision, **it is likely that the majority of offenders, including those at the lowest end of the tariff scale, would benefit from an assessment of their wider welfare needs** and, at the very least, signposting to provision – be it registering with a GP or accessing training. **We consider that more needs to be done at all levels of offending if we are to break the cycle of re-offending, building on the role of prison-based social workers.**
16. Across the Community Justice Authorities, there will be different organisations with the skills and knowledge to deliver this signposting or “brokerage” role. There may also be merit in exploring further the concept of “link centres” or hubs in the community which bring together the range of services and facilities to support offenders under one roof.
17. **COSLA and ADSW support the proposition that the level of “supervision” required should be proportionate and tailored to the risk of both harm and of re-offending that each individual offender presents.** Whilst for the purposes of assumptions for allocating resources and identifying additional needs, it is possible to identify around 3 different tiers of supervision (see appendix 1), in practice, each individual’s supervision package will need to be **individually tailored** to meet their specific requirements.
18. At the high end of the tariff scale, it should be noted that the impact which supervision can have on reducing further offending must be kept in perspective - **more can be expected by the public and media than can realistically be achieved.**
19. Supervision will, however, be a condition on the licence for:
- Life prisoners;
  - Custody and community prisoners with sentence of 6 months or more;
  - Prisoners released on compassionate grounds;
  - Extended sentence prisoners;
  - Sex offenders; and
  - Children.
20. There are currently around 3800 prisoners serving sentences of between 6 months and 4 years who will be eligible for supervision. **Criminal Justice Social Work currently supervise around 600 offenders across Scotland and, clearly, will be engaged in**

**supervising much higher numbers of offenders during the community part of the sentence and will require a commensurate increase in resources.**

21. *Community Sentences*

COSLA and ADSW welcome the community sentence element as an effective means of reducing re-offending. Offenders need to be seen to take responsibility for their behaviour in the community - punishment through deprivation of liberty alone does not necessarily result in reform. Community sentences focus on taking responsibility, making reparation and being assisted into an inclusive community.

22. The success of community sentences will, however, be dependent on:

- **research** into what works, with findings communicated to politicians and senior managers;
- the range of **fully-resourced measures in the community** to reduce re-offending and to help offenders rehabilitate;
- transitional care arrangements for **drug and alcohol addictions** widely available within prisons and linking effectively with service providers in the community;
- **universally-available programmes** based on effective practice, delivered to consistent, accredited standards.

23. There are also specific **gender** issues which are not addressed by the proposed legislation. Many of Scotland's short-term prisoners are women and we are not currently well-equipped to work with women offenders.

24. *Communication*

COSLA and ADSW perceive a need to publicise and explain community and hybrid sentences to the wider public and in particular, a need for **shared messages from Ministers, MSPs and Councillors**.

25. *Workforce issues*

It is anticipated that the proposed measures will only intensify existing recruitment, retention and training issues across Social Work. **There are capacity issues not only for Social Work Services but for voluntary sector and other partner agencies in securing sufficient people with the appropriate skills to deliver this challenging agenda.** We estimate, for example, that a 10% increase in Social Work staff would be required to deliver the measures in this Bill.

26. **We propose that qualified social workers should be deployed to work with the higher risk offenders while a range of para-professionals and voluntary organisations will be best placed to work effectively with lower risk offenders.** While the arrangements for who delivers the latter role and how it is commissioned or contracted will be best determined locally, through the Community Justice Authorities, agreement is required nationally on the skills, functions and menu of services which should be available to low risk offenders.

27. *Shared responsibility for successful delivery through partnership*

In order for the Bill to achieve its stated policy objectives it is crucial that partnership is built into the provisions, in particular to require all relevant agencies to work jointly and to contribute to the rehabilitation of offenders. This partnership also relates to the Judiciary as for this Bill to have any impact it is essential that the influential law professions are on board and recognise the impact that a combined structure sentence can have on the rehabilitation and resettlement of offenders.

28. *Finance*

The financial memorandum outlines that £7.45m will be available to oversee those subject

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

29. Caution must be exercised with regard to the estimates for additional financial burden. This is a new approach based on risk of harm rather than length of sentence but we only have information on **current** prisoners and patterns of activity. **Services such as probation and community sentences, court-based social work, throughcare, supervision, supported accommodation, services specifically for women offenders, and drug and alcohol rehabilitation all need to be properly resourced if the risk of harm and re-offending is to be effectively reduced and if offenders are to be fully integrated into their communities.** Local authority community-based disposals are not currently funded at a level which can realistically achieve the expected reduction in reoffending.
30. Increased levels of
- monitoring and supervision of attendance;
  - report writing, in particular Social Enquiry Reports;
  - brokering and signposting to appropriate support and interventions; and
  - license breaches

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

## **Section two: Weapons**

31. COSLA broadly agrees with the terms in Part 3 of the Custodial Sentences and Weapons (Scotland) Bill in relation to the regulation of knife and sword sales and welcomes the increased role of Local Authorities in the regulation of knife sales and the prevention of knife crime. The proposed Bill has the potential to bring a consistent approach to the licensing and regulation of the sale of knives and swords.

However, COSLA proposes a number of areas below that require further consideration.

32. *Unlicensed Dealers*  
Premises where unlicensed dealing in knives is suspected or where a dealer is suspected of breaching conditions of their licence may be entered in order to ascertain whether the provisions of the Act is being complied with. However, these powers are only available after a warrant has been granted by a sheriff or Justice of the Peace. The Bill, as it currently stands, supplies no provisions to enter an unlicensed premise without a warrant nor is this available under the Civic Government (Scotland) Act 1982.
33. COSLA suggests that the legislation be amended to **include powers allowing Local Authority Officers and Constables to enter unlicensed premises in order to check compliance with legislation.** In addition, if there is reasonable belief that an offence has been committed, there should be the **power to seize goods and documents.** COSLA also considers that a power to **test purchase** knives would be helpful.

34. *Private Sales*  
The provisions could be open to abuse by **second-hand dealers** who could sell knives, owned by private parties, for sale in their shop premises. These items could potentially be sold on behalf of another on a commission basis and this situation would not be subject to licensing and the consequent conditions. Similarly, non-domestic knives sold **privately at auction** will not invoke licensing conditions. COSLA considers that **due diligence** should be required of all sellers.
35. *Knife dealers' licence conditions*  
COSLA recommends that the Bill should be amended to place a condition on dealers to **display a notice** stating the offences in the Criminal Justice Act 1988 as amended regarding the sale of knives etc. to persons under 18 years. We also suggest that current provisions such as the Knives Act are taken into account to ensure that the **marketing** of knives is controlled and that inappropriate use is not promoted. Clarity is also required on **licensing of sales of knives and swords from temporary points of sale** across Scotland, for example at events and festivals.
36. *Definition*  
The Bill contains no definition of a "non domestic" knife. This could lead to enforcement problems. COSLA suggests that there should be an amendment to ensure that the Bill clearly **demonstrates a definition of "sword" and clarity to ensure craft knives, trimming knives, bush knives, and kukri or Ghurkha knives are captured within this definition.**
37. *Monitoring*  
We propose that knife crime should be monitored by the Police to capture the **types of knives used following the introduction of this legislation to ensure that knife purchase is not simply displaced from non-domestic to domestic or from points of sale in Scotland to points of sale in England or abroad, beyond the reach of the legislation.**
38. *Global Market*  
While internet and mail order sales from depots within Scotland can be monitored and regulated within the scope of this legislation, **sales made from England** or beyond will not be subject to such regulation.
39. *Resourcing*  
A cost recovery model is the suggested form of financing the licensing scheme. However, it must be recognised that over the years, **a number of small-scale, supposedly "cost neutral" schemes have been implemented by local authorities.** Being small-scale, they do not individually warrant a dedicated member of staff. However, **cumulatively, they represent a growing burden on local authorities. There are a relatively small number of businesses that sell knives and the cost recovery model suggested has potential to move the cost of the scheme on to local authorities through additional administration and regulation in ways which will not be "cost neutral".**
40. **Conclusion**  
COSLA and ADSW welcome the general direction of the Custodial Sentences and Weapons (Scotland) Bill. However, we propose that the potential it has for impacting on both community safety and reduced offending, will be very much dependent on its comprehensiveness, its integration with the wider community justice and community safety agendas, and the level of resourcing made available to implement it effectively.

For further information in relation to this COSLA / ADSW submission, please contact Lindsay Macgregor, Team Leader Community Resourcing - 0131 474 9270 [lindsay@cosla.gov.uk](mailto:lindsay@cosla.gov.uk)

## Appendix 1: A Tiered Approach to Post Custodial Supervision

<b>Tier One (voluntary sector provision)</b>	<b>Tier 2 (resettlement type services)</b>	<b>Tier 3</b>
Serving less than six months (excl fine default): average period on licence of 7 weeks (50%)	(a) Serving 6 mths -1 yr: average period on licence 4.5 mths (50%) (b) of those serving 1-4 years/assessed as not a risk of serious harm: average period on licence: 15 mths (50%)	Serving 1-4 years and assessed as risk of serious harm: average period on licence 7.5 mths (25%)
2005-06: 4,795 liberations	(a) 1,959 (b) 1,536 <sup>1</sup>  2005-6: 3,495	2005-6: 230 <sup>2</sup>
No involvement from SW in assessment	Risk assessment from Prison SW	Risk assessment from Prison SW
No case worker	Unqualified case worker	Qualified case worker
Sign posting to services – particular issue will be housing for any one who is in prison for more than 13 weeks	Provision of standard services/ accommodation (100%), employability (100%) and substance misuse key working (10%)	Provision of standard services: accommodation, employability and substance misuse key working (10%)
No involvement in offence-focussed work	(a) No involvement in offence-focused work (b) Some limited offence-focussed work if on licence for more than 6 months	Intensive offence-focused work if on licence for more than 6 mths (but in the absence of offence-focussed work undertaken in SPS this element would increase substantially)
No involvement of SW in breach	SW breach report (25%)	SW breach report (25%)
Notional unit cost of £700	Around £3,500 for a full year of service	Around £5,000 for a full year service
Cost for service around £ 3,500,000	Cost of service based on average length of licence: around £8,500,000	Cost for average of 7.5 mths to each client: £675,000

<sup>1</sup> 87% of the liberations in this sentence length i.e. excluding convictions of non-sexual crimes of violence and crimes of indecency

<sup>2</sup> 13% of the liberations in this sentence length i.e. those with convictions of non-sexual crimes of violence and crimes of indecency

These are broad costs and include management, accommodation etc. However it may be that the establishment of such a significant service will demand a major capital investment in accommodation. A very rough calculation suggests that an additional 100 staff would be required across Scotland to provide case-working and offence focussed work to the tier two and three services: an increase of about 10% in the staff group based on the 2005 figures. This is assuming that associated services e.g. accommodation, employability etc were provided by other agencies and therefore social work would not have a capital cost for their accommodation.



*Violence is preventable - not inevitable*

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### **Stage 1 of the Custody and Weapons (Scotland) Bill: Call for Evidence**

The proposal for the licensing of the sale of swords and knives is fully supported by the Violence Reduction Unit. Clearly many retailers will be unhappy about such a move but the problem of knife carrying and associated violence in Scotland is so acute that any legitimate objection against licensing must be weighed against the potential benefits of such a scheme. There is a need to limit the immediacy of access to such weapons and to place a barrier between those who wish to use such a weapon and the commission of such heinous acts.

The use of knives is neither a new or increasing problem in Scotland and in particular the West of Scotland. Over a 10-year period (1993-2002), there were 885 murders in Scotland, 669 of which were in Strathclyde, out of which approximately 50% were committed with a bladed weapon.

The use of knives is maybe historically linked to Glasgow and the West Coast, the knife is also one of the most common weapons currently used across the whole of Scotland, with the frequency of use dependent on the seriousness of the assault. For example, Tayside Police report that 45% of attempted murders, 12 % serious assaults where committed with a knife, whereas, Lothian & Borders report 31% for murder, 33% for attempted murder and 9.5% for Serious Assault. The pattern for the rest of the force areas is similar with knives being less common in less serious incidents.

Unlike a firearms assault, the seriousness of a knife injury is sometimes completely random and is influenced by many other situational factors such as availability of emergency services, speed of response, did the knife cut a major artery or organ. Even the most innocuous stab wounds with a blade less than 3 inches can be life threatening. Considering the random nature of knife assault, then the murder figure in Scotland could be significantly higher.

A recent study of knives recovered within Strathclyde (Violence Reduction Unit) indicates that the most common weapon is the 'lock knife'. If this is extrapolated it would then suggest that this knife is the most common used in assaults, attempted murders and murders, challenging the stereotype that the knife mainly comes from the kitchen drawer. The fixed blade knife is next most common, which includes the kitchen knife, however, this group also contains a variety of other knives including hunting and the 'Rambo' style blade. Detailed examination of the knife type indicated that 77% of all knives either used in an assault or apprehended in a search were non-domestic in origin.<sup>1</sup>

The behaviour displayed with the knife may have a resultant effect on the type of knife carried (and vice versa), with locking knives being kept most usually in the carriers underwear, whereas, it is unlikely that fixed blade knives would be secreted in the same area (for personal safety reasons). Alternatively, kitchen knives may be predominantly used in domestic attacks and larger ceremonial knives/swords may just be primarily for intimidation purposes.

Where the knives are being sourced is important. There is some evidence to suggest that some are still being sourced in the home (primarily fixed blade) weapons. This is indicative of the availability of that type of weaponry in the family home. However, the more common lock knife is not being sourced from the home. Intelligence suggests that these are being sourced through shops and other outlets (not necessarily major retailers). Licensing retailers and applying appropriate proportionate condition will help to stem the number of knives available on the street.

Any person who seeks a licence to sell non-domestic knives should be a fit and proper person with no convictions for crimes of dishonesty or violence. Identity must be sought from customers seeking to purchase non-domestic knives and a record of said individuals should be kept. It is the opinion of the Violence Reduction Unit that non-domestic weapons must be stored in a secure way and not be openly displayed in shop windows.

Although swords may primarily be used for intimidation and show there have been a number more serious incidents involving a sword including 5 murders, 41 attempted murders and 196 serious assaults since 2000. In the last year alone there has been 10 attempted murders and 48 serious assaults where the primary weapon is a sword. (Strathclyde figures only).<sup>2</sup>

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<sup>1</sup> 05/7/04-04/7/05

<sup>2</sup> 27/10/2005-26/10/2006

It is the opinion of the VRU that the swords used in such attacks and threats are low-grade imitations such as the £30 set of three samurai swords. It is unlikely that the attacks would be carried out using a genuine samurai sword at a cost of thousands of pounds. Legislating for swords based on their relative merits such as quality and price would be difficult and even more difficult to police. It is therefore, the opinion of the Violence Reduction Unit that any such legislation should make provision for those with a genuine need to purchase said items such as sporting use or members of historical societies.

Legislating and licensing alone will not make a sustained substantial difference to the level of serious violence within Scotland. Tackling the problem will require societal change and work is ongoing in the long-term to achieve such ambitious goals, however by limiting the access to both swords and knives and decreasing the opportunity that these weapons are used in the commission of violence it will save lives.

## **RESPONSE TO CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) BILL**

The POA have been invited to give evidence to the Justice 2 committee of the Scottish Parliament on the above bill. We thank the committee and welcome the opportunity to do so.

In doing so we must first make our position clear on this Union commenting on sentencing policy. We have always in the past steadfastly refused to become involved in commenting on this area of the Criminal Justice System primarily because of our apolitical stance on these areas and also the fact that our membership in the main are Civil Servants whose role it is to implement Government policy without fear or favour.

It would therefore seem appropriate that we try to curtail our comments to the potential impact of the proposals on both the staff and the service itself.

Having read through the proposals it seems clear that the move from what is considered by most practitioners to be automatic 50% remission at present to a situation whereby Sheriffs and Judges can in some circumstances determine that an individual must serve 75% of the sentence in Prison custody will place an additional burden on already strained and overcrowded Prisons. The consultation itself seems to already recognize that there is little or no information available regarding those prisoners who have at present been released having served 50% of the sentence reoffending and being returned to serve the remaining 50% of their sentence. If as proposed there is greater scrutiny of a prisoner's time in the non custodial part of their sentence and they are made to return to serve the remaining part this again will place further pressures on overcrowding. We are not at this juncture advocating against merely point out the further pressures on a system which currently houses the highest prison population yet experienced.

Turning to the proposal that sentences of 15 days or less should be served wholly in custody. It is difficult to try and understand what exactly the prison service is to do with these people other than to keep them in secure custody and whilst this is one of the primary aims of the service it is also incumbent on us to try to address offending behaviour. A sentence of 15 days or less does no more than allow us to warehouse prisoners who in the main given the level of sentencing will have committed a minor misdemeanour which would call into question whether prison was the most appropriate response or if some other alternative to prison should have been considered prior to sentencing.

The role of the Parole Board in the bill causes concern, certainly not over their competency in the ability to implement the new proposals, more so in the logistics of administering the new proposals in what we perhaps wrongly perceive

as a substantial increase in work load without it would appear a substantial increase in resources.

In summary, the proposals in our opinion have far reaching resource implications for a service that for the last five years has been subjected to a flat line budget on running costs which to date has seen us shed in the region of 700 operational prison officer jobs. This has been required to meet the needs of 5% savings year on year to take into account annual inflation and any negotiated increase in staff salaries and as far as this Union is concerned is a situation that is no longer sustainable. The implications in the Bill are such that there would be a considerable increase in the administration work required to be done by Prison Officers in providing the parole board with reports on more prisoners than has been required in the past and that the estimates by the Prison Service of an additional 18 to 19 staff per 1000 prisoners at a cost of £5-6million a year seems in our opinion very conservative.

We hope these brief written comments and short summary are helpful to the committee and are ones that we can hopefully elaborate or expand on during oral examination

## **Weapons**

It would not be our intention to comment in any great depth on the proposals to license non domestic knives and swords. However, given that it is an integral part of the Executive's strategy to combat knife crime we thought it incumbent on ourselves to draw to the committee's attention what we believe to be a serious anomaly in the current situation.

As it stands just now it is a crime to carry certain types of knives in public and anyone caught will be subject to prosecution. The anomaly exists in that a prisoner caught within the confines of a Prison is not subject to the same provisions and as far as our preliminary investigations can find out neither the police nor procurators fiscal are in a position to do anything about it under what we believe to be the wrong assumption that Prisons are not public places. This perception in our opinion is at complete odds with the Scottish Executive's smoking bill which quite clearly has designated Prisons for the purposes of the act public places. Whilst we appreciate that this current bill under consideration might not be able to address the problem we believe that it is of such a serious nature that it has be addressed as a matter of some urgency not only that it seems so wrong in principle but that it would appear to be in conflict with the Executive's campaign on zero tolerance to assaults on public sector workers.

Again if the committee feels that we can assist with anymore information during oral evidence then we are happy to do so.

**Petition PE863 by Bill Alexander**

**Note by Clerk**

*Background*

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

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

3. As part of its consideration of the petition the Public Petitions Committee sought written views from the Scottish Executive, the Federation of Small Businesses, the Law Society of Scotland, the Scottish Legal Aid Board and the Scottish Chambers of Commerce (these responses are attached at Annex C). Though the views of CBI Scotland were sought, no response was received.

*Scottish Executive's view*

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

5. The Scottish Executive indicates in its letter that it is 'unaware of any significant call for legislative change' on the issue of the eligibility of limited companies for legal aid, though legal aid is available to individuals including

sole traders and self-employed persons for pre-litigation advice and legal representation in court.

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

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

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

#### *Other views*

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

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

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

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

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

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

14. Committee Clerks requested confirmation from the Executive as to whether any of the changes made by the Legal Profession and Legal Aid (Scotland) Bill would address any of the concerns laid out in the petition. The Executive's reply, dated 2 November 2006 (attached as Annex E) confirms that no provision in the Bill would have the effect of allowing limited companies and other non-natural persons to represent themselves in court. The letter reaffirms that the Executive does not believe that the petition makes a special case for the extension of such rights of representation.

15. The letter also confirms that the provisions in the Bill relating to legal aid do not extend eligibility for legal aid to limited companies.

*For decision*

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

The Committee may wish to:

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



## SCOTTISH EXECUTIVE

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Your ref:  
Our ref:

2 November 2006

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Dear Steven

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

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

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

I hope this will be of assistance to the Committee.

Yours sincerely

**LOUISE MILLER**



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

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