
Report To: Health & Social Care Committee **Date:** 4 March 2010

Report By: Corporate Director (Designate) Health & Social Care **Report No:** SW/09/10/AH/BK

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Subject: Criminal Justice and Licensing (Scotland) Bill 2009

1.0 PURPOSE

1.1 To inform the Committee of the content of the Criminal Justice and Licensing (Scotland) Bill 2009 and the implications for criminal Justice Social Work.

2.0 SUMMARY

2.1 The Criminal Justice and Licensing (Scotland) Bill is a wide ranging piece of legislation, covering more than 80 topics.

2.2 For the purposes of this report the focus will be on the measures, which will impact directly on sentencing:

- The creation of a Scottish Sentencing Council;
- The presumption against short sentences and;
- The proposed Community Payback Order.

2.3 There is an intrinsic attempt within the legislation to tackle the issue of short sentencing which has not proven to be effective in the prevention of re-offending. The legislation seeks to develop consistency in sentencing practice, discourage the use of short sentences where other appropriate sentencing options are available and to introduce a new sentence that of "Community Payback Order", to be available as an alternative to short sentences.

3.0 RECOMMENDATION

3.1 Committee is asked to note the provisions of the Bill and to request the Corporate Director to submit further reports outlining the implications for service delivery and resources following the implementation of the legislation.

Robert Murphy
Corporate Director (Designate) Health & Social Care

4.0 BACKGROUND

4.1 The documents 'Reforming and Revitalising: Report of the Review of Community

Penalties' (2007), 'Scotland's Choice: Report of the Scottish Prison Commission' (2008), and 'Protecting Scotland's Communities: Fair, Fast and Flexible Justice' (2008) were part of a process of reviewing the Criminal Justice System in Scotland.

4.2 The Criminal Justice and Licensing (Scotland) Bill is the Scottish Government response to these documents but also includes other Government initiatives in the fields of Justice and Licensing.

4.3 The legislation included within the Bill is wide and complex and includes action to ; Create a Scottish Sentencing Council; Create a Community Payback Order; Create new serious organised crime offences; Tackle the use of mobile phones by prisoners; Raise the age at which a child can be prosecuted from eight to 12 years; Reform criminal law and court procedures; Assist in detection of crime through improvements in the law as regards when DNA and fingerprint data is able to be retained for use in detecting and prosecuting crime; Provide a statutory framework for the disclosure of evidence to the defence in criminal cases.

It had further been intended to deal with a number of alcohol related measures, however the Scottish Government decided to bring forward separate legislation in this respect.

5.0 PROPOSALS

5.1 The Bill was introduced into the Scottish Parliament in March 2009. On 26th November 2009 it passed Stage 1 of the parliamentary process. The Bill is expected to finish its parliamentary passage in 2010

5.2 SCOTTISH SENTENCING COUNCIL

5.3 The Bill will establish a Scottish Sentencing Council. This Council will consist of a combination of judicial and non-judicial members and will be chaired by the Lord Justice Clerk.

5.4 The role of the Council will be to promote consistency in sentencing practice, assist in the development of policy in relation to sentencing and promote greater awareness and understanding of sentencing policy and practice

5.5 One of its main functions will be to prepare and produce, after a process of consultation, sentencing guidelines for the courts on the sentencing of offenders. The guidelines can relate to the purposes and principles of sentencing and can also relate to sentencing levels and/or types of sentences that are appropriate for particular offences and offenders. In preparing guidelines the Sentencing Council will be required to make an assessment of their potential impact on prisons, community justice services and the criminal justice system in general.

5.6 Courts however will not be constrained by these guidelines. Where they believe they have good reason to depart from them, when sentencing an offender, they can do so although they will be obliged to state their reasons for doing so

5.7 PRESUMPTION AGAINST SHORT SENTENCES

5.8 Section 17 of the Bill seeks to discourage the use of short sentences – defined in the Bill as those of six months or less – in cases where other appropriate sentencing options are available. It is hoped by steering judges away from short sentences this would help to diminish the churn within the prison system and thus make it easier for the Scottish Prison Service to invest the time needed in intensive rehabilitation of more serious offenders

5.9 The Bill will not prevent courts from imposing short custodial sentences. It does, however, provide that a court may only impose such sentences where it 'considers

that no other method of dealing with the person is appropriate' (section 17(2) of the Bill). It goes on to state that the Court must state its reasons for reaching this view. The cogency of any justification put forward for imposing a short sentence could, where an offenders appeals against sentence, be considered by the appeal court.

5.10 It is clear that the Scottish Government hopes to encourage a move away from the use of short custodial sentences to greater use of community sentences

5.11 COMMUNITY PAYBACK ORDER

5.12 Alongside the introduction of the presumption against short sentences provisions have also been included to introduce a new sentence of the "Community Payback Order" which will be available as an alternative to short sentences.

5.13 There are a number of requirements which can be included in a Community Payback Order. They are aimed at addressing those areas of an offender's life which may need to change if he/she is to desist from further offending. Thus an order could include one or more of the following elements:-

- A supervision requirement – a requirement that an offender must attend, during the period of the order, appointments which have been made by a responsible officer or someone determined by the responsible officer, which have the purpose of promoting the offender's rehabilitation.
- An unpaid work or other activity requirement – a requirement that an offender must, for the specified number of hours, undertake unpaid work or another activity, the nature of which will be determined by the responsible officer.
- A programme requirement – a requirement that an offender attends a course or other planned set of activities provided to individuals or groups for purpose of addressing offending behaviour.
- A residence requirement – requires an offender to reside at a specified place for the duration of the period of the order.
- A mental health treatment requirement – a requirement that an offender must submit, during the period of an order, to treatment by or under the direction of a registered medical practitioner or a chartered psychologist (or both) with a view to improving the offender's mental health.
- A drug treatment requirement – a requirement that an offender must submit for the period of the order, to treatment by or under the direction of a specified person with a view to reducing or eliminating the offender's dependency on, or propensity to misuse, drugs.
- An alcohol treatment order – similar to the drug treatment requirement but seeking to reduce and/or eliminate an offender's dependency on alcohol

5.14 It is intended that this new Order will replace the present Orders of Probation, Community Service and Supervised Attendance. A significant change is that all people under 18 must have a supervision requirement which is different from the present situation where somebody under 18 can be placed on Community Service or Supervised Attendance without there being a requirement for supervision.

5.15 A Local Authority must appoint a responsible officer within 5 days of receiving a copy of a Community Payback Order from the Court. The responsible officer is responsible for making any arrangements which will enable the offender to comply with the requirements of the order and to promote compliance with those requirements. The responsible officer is also responsible for taking such steps as necessary to enforce compliance with the requirements of the order or to vary or discharge any of them.

5.16 There is provision in the Bill for a periodic review, in Court, of the Order which the offender must attend. A progress report can be provided by the responsible officer for this purpose.

5.17 Where the Order includes a requirement for unpaid work or other activity this can last from 20 to 300 hours. This must be completed within 6 months (instead of the current

12 months for community service), or 3 months where it is a sentence of 100 hours or less.

- 5.18 Justice of the peace courts will also be able to impose certain requirements under a Community Payback Order, including an unpaid work and activity requirement of between 20 and 100 hours.
- 5.19 If an offender subsequently breaches the terms of a Community Payback Order, the court will be able to impose an additional requirement of electronic monitoring. This will be one of a number of options available to the courts in dealing with breach cases.
- 5.20 With the creation of the Community Payback Order it is hoped that there will be a move away from the use of short custodial sentences. However, it is widely acknowledged that it is difficult to predict how these orders will impact on sentencing patterns.
- 5.21 It is proposed to further update the Committee on the implications for the Council's Criminal Justice Social Work Services once the parliamentary process has concluded.

6.0 IMPLICATIONS

- 6.1 As this point in time there are no Legal, Financial or Human Resource implications.

7.0 CONSULTATION

- 7.1 This change in legislation has been subject to wide consultation and this is still ongoing.

8.0 LIST OF BACKGROUND PAPERS

- 8.1 None

