



The Scottish Parliament
Pàrlamaid na h-Alba

FINANCE COMMITTEE

AGENDA

9th Meeting, 2009 (Session 3)

Tuesday 21 April 2009

The Committee will meet at 2.00 pm in Committee Room 1.

1. **Criminal Justice and Licensing (Scotland) Bill:** The Committee will take evidence on the Financial Memorandum of the Criminal Justice and Licensing (Scotland) Bill from—

John Gilruth, Lead Officer, Criminal Justice and Substance Misuse Services, Perth and Kinross Council;

Jim Hunter, Chief Officer, North Strathclyde Community Justice Authority;

June Murray, Head of Legal Services, North Lanarkshire Council;

and then from—

Chris MacIntosh, Policy Division, Crown Office and Procurator Fiscal Service;

Alastair Merrill, Director of Corporate Services, Scottish Prison Service;

Tom Nelson, Director of Forensic Services, Scottish Police Services Authority;

Alastair Sim, Director of Policy and Strategy, Scottish Court Service;

and then from—

George Burgess, Deputy Director, Criminal Law and Licensing Division, George Dickson, Policy Division, Wilma Dickson, Deputy Director, Community Justice Services Division, Annette Sharp, Offender Management Strategy Division, and Rachael Weir, Criminal Procedure Division, Scottish Government.

2. **Decision on taking business in private:** The Committee will decide whether its consideration of a draft report on the Financial Memorandum of the Criminal Justice and Licensing (Scotland) Bill at a future meeting should be taken in private.
3. **Budget process - appointment of adviser:** The Committee will consider whether to seek approval for the appointment of an adviser.
4. **Public sector pay (in private):** The Committee will consider the evidence heard to date on public sector pay .

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The papers for this meeting are as follows—

Agenda item 1

PRIVATE PAPER

FI/S3/09/9/1 (P)

Note by the Clerk

FI/S3/09/9/2

Submissions

FI/S3/09/9/3

Correspondence from the Cabinet Secretary for Justice

FI/S3/09/9/4

The Criminal Justice and Licensing (Scotland) Bill and accompanying documents. These have been circulated to Members previously in hard copy, and are available from the Scottish Parliament's website, at:

<http://www.scottish.parliament.uk/business/bills/index.htm>

Agenda item 3

Draft specification for the role of budget adviser

FI/S3/09/9/5

Agenda item 4

PRIVATE PAPER

FI/S3/09/9/6 (P)

Correspondence from the Scottish Government

FI/S3/09/9/7

Finance Committee

9th Meeting, 2009 (Session 3), Tuesday, 21 April 2009

Scrutiny of Financial Memorandum – Criminal Justice and Licensing (Scotland) Bill

Background

1. At its meeting on 10 March, the Committee agreed to adopt a level three scrutiny in relation to the Financial Memorandum of the Criminal Justice and Licensing (Scotland) Bill.
2. This paper provides a background summary of the Bill and the estimated financial implications at the **Annexe**.

Oral evidence

3. The Committee will hear oral evidence from the following witnesses—
 - Panel 1: Criminal Justice Authorities and local authorities (see associated written evidence)
 - Panel 2: Crown Office and Procurator Fiscal Service, Scottish Court Service, Scottish Police Services Authority and Scottish Prison Service (see associated written evidence); and
 - Panel 3: Scottish Government Bill Team officials.

Written evidence

4. The Committee agreed to seek written evidence from the Scottish Police Services Authority (including the Scottish Crime and Drug Enforcement Agency), Scottish Court Service, Crown Office and Procurator Fiscal Service, Scottish Prison Service, Scottish Legal Aid Board, local authorities and from Community Justice Authorities. This evidence is included as Paper 3 (FI/S3/09/9/3).

Ministerial correspondence

5. The Cabinet Secretary for Justice wrote to the Convener on 26 March regarding the proposals on alcohol licensing in the Criminal Justice and Licensing (Scotland) Bill. The letter is included at Paper 4 (FI/S3/09/9/4).
6. It is the Government's intention that the following provisions will be removed from the Bill: the sale of alcohol to persons under the age of 21 (section 129) and on imposing a social responsibility levy (section 140). These proposals will be included in a new health bill that deals with a range of alcohol measures.

Lewis McNaughton
Senior Assistant Clerk to the Committee

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) BILL

BACKGROUND

1. The Criminal Justice and Licensing (Scotland) Bill was introduced in the Parliament on 5 March 2009. The Justice Committee has been designated as the lead committee on the Bill at Stage 1. In addition, the Health and Sport Committee has been designated as secondary committee for the purpose of considering Part 9, section 129 and Part 10, section 140 of the Bill at Stage 1.

2. The Bill provides for various changes under the general headings of criminal justice and licensing. The Bill contains around 85 distinct topics and is split into the following 10 main parts—

- Part 1 – Sentencing: creates a Scottish Sentencing Council and places on statute for the first time the purposes and principles of sentencing; and introduces a Community Payback Order to replace the existing range of community penalties;
- Part 2 – Criminal law: creates new serious organised crime offences and a new offence of possessing communication devices within prison; and creates new offences in relation to extreme pornography;
- Part 3 – Criminal procedure: raises the age of criminal responsibility of children from eight to 12 years old; implements Scottish Law Commission proposals on Crown right of appeals; and changes the system of retention and use of forensic samples, e.g. allowing fingerprints to be kept on the same basis as DNA;
- Part 4 – Evidence: confirms in statute that courts are able to allow witnesses to give evidence anonymously and via TV link (under certain circumstances); and allows all persons to be compelled to give evidence, ending the restriction that exempted spouses or civil partners could not be compelled;
- Part 5 – Criminal justice: increases the maximum age that someone is able to sit on criminal juries from 65 to 70; permits the police to close down premises associated with human exploitation; and permits public bodies to share information for the purpose of detecting fraud;
- Part 6 – Disclosure: provides in statute a regime for the disclosure of evidence in criminal cases;
- Part 7 – Mental disorder and unfitness for trial: modernises the law in the area of mental disorders in criminal proceedings;
- Part 8 – Licensing under Civic Government (Scotland) Act 1982: makes various changes to the Civic Government (Scotland) Act 1982 to improve the licensing of a number of businesses including metal dealers, entertainment operators and taxi and private hire firms;

- Part 9 – Alcohol licensing: places a duty on Licensing Boards to consider the detrimental impact of off-sales to under-21s, with a view to considering whether to apply a condition to some or all of the licences in their Board area requiring those purchasing off-sales alcohol to be aged 21 or over; and
- Part 10 – Miscellaneous: gives Scottish Ministers an enabling power to introduce a ‘Social Responsibility Levy’ to ensure that alcohol retailers and licensed premises whose activities can impact negatively on the wider community contribute towards the cost of this impact.

COSTS

3. The Financial Memorandum estimates the total annual financial impact of the Bill at £58.405m, with a total non-recurring cost of £2.633m. In arriving at these figures, the Financial Memorandum identifies five topics in the Bill that carry a “significant financial impact”, i.e. estimated as costing over £0.4m p.a. These topics are dealt with in Chapter 1 of the Financial Memorandum and are as follows—

- creation of a Scottish Sentencing Council (costing £1.1m p.a., plus one-off costs of £0.450m);
- introduction of Community Payback Orders/ presumption against short periods of imprisonment or detention/ reports about supervised persons (costing £10.670m p.a., plus one-off costs of £0.050m);
- new serious organised crime offences (costing £3.654m p.a., plus one-off costs of £0.005m);
- placing on statute a regime for the disclosure of evidence in criminal cases (costing £4.105m p.a., plus one-off costs of £1.816m); and
- provisions regarding the sale of alcohol to persons under the age of 21 (costing £38m p.a.).

4. The Financial Memorandum estimates that other provisions in the Bill will also have cost implications, although each carrying a lesser financial impact than £0.4m p.a. These topics are described in Chapters 2 to 10 of the Financial Memorandum.

5. The Financial Memorandum contains substantial cost information, and explanation of policy background and assumptions underpinning the cost estimates. This paper includes only a brief summary.

Provisions with significant financial impact

Scottish Sentencing Council

6. Based on the running costs incurred by bodies of a likely similar size, and the assumption that administrative functions will be provided by the

Scottish Court Service (SCS), the Financial Memorandum estimates that an annual budget of £1.1m will be required. These costs include fees and expenses for Council members; cover for judicial absence (Council membership will include a practising judge, two sheriffs and one justice of the peace); support office costs including staff salaries; and research, publications and website costs. One-off set up costs of £450,000 are also anticipated.

7. These costs will be met entirely by the Scottish Government as an element of its funding of the SCS. The Financial Memorandum states that no costs will fall on local authorities or other bodies, individuals and businesses.

Community Payback Orders etc.

8. The new Community Payback Orders will replace the existing court disposals of probation orders, community service orders, supervised attendance orders and community reparation orders. The Financial Memorandum estimates the likely cost of these Orders as £10.670m per year. This figure is given as the mid-point between an additional cost per year of £8.237m (where there is a 10% increase in usage of Orders compared with existing sentences) and £13.103m (where there is a 20% increase in usage of Orders). It is also anticipated that there will be one-off costs of £0.050m relating to IT development.

9. These additional costs will be incurred by local authorities (although the cost will be reimbursed by the Scottish Government through its ring-fenced funding arrangements for criminal justice social work); the Scottish Court Service; and the electronic monitoring contractor (although the additional cost will be covered by a revised commercial contract to be met by the Scottish Government).

Serious organised crime offences

10. The Financial Memorandum estimates that the new serious organised crime offences will incur total eventual additional costs of £3.654m per year.

11. These costs will fall upon the Scottish Court Service, the Crown Office and Procurators Fiscal Service (COPFS) and the Scottish Prison Service. These costs will, therefore, ultimately be met by the Scottish Government. The Financial Memorandum states that the Government does not anticipate any costs to fall on local authorities or other bodies, individuals and businesses.

Disclosure

12. According to the Financial Memorandum, additional costs are expected to fall on the Scottish Government as follows—

- Scottish Police Service – additional operational and training costs as a result of the principles and changes to practices and procedures that will require to be adopted as a result of the legislation. The recurring costs are estimated at £2.2m p.a., with non-recurring costs estimated at £1.3m p.a.;

- Scottish Police Services Authority – additional staff costs relating to training, administration and defence access to SPSA sites are estimated at £205,000 p.a., with £143,000 in non-recurring costs;
- Scottish Crime and Drug Enforcement Agency – 10 additional Criminal Disclosure Officers will be required at an estimated cost of £495,000 p.a. However, depending on whether police officers or field officers undertake these roles, the cost could vary from £340,000 – £650,000 p.a.
- Crown Office and Procurator Fiscal Service – costs relating to IT development, staff training, time taken to complete a schedule and the review of disclosure following receipt of defence statements are expected to be £485,000 p.a., with non-recurring costs of £273,000;
- Scottish Court Service – additional court hearings are estimated to cost £164,000 p.a. and one-off IT development costs of £100,000.
- Scottish Legal Aid Board – the introduction of mandatory defence statements is estimated to cost £556,000 p.a.

13. The Financial Memorandum states that the Government does not anticipate any costs to fall on local authorities or other bodies, individuals and businesses.

Sale of alcohol to persons under the age of 21

14. The maximum estimated costs contained in the Financial Memorandum assume that every Licensing Board introduces a ban on the off-sale of alcohol to 18-20 year olds across their entire Board area. It is anticipated that no costs will fall on the Scottish Government, but it is likely that there will be financial implications for local authorities and for other bodies, individuals and businesses.

15. The Financial Memorandum states that additional costs are expected to fall on local authorities regarding the cost to Licensing Boards in considering the detrimental effect of alcohol sales to under-21s; and the cost of Licensing Standards Officers (LSOs) in ensuring compliance with any conditions laid down by Boards. The Financial Memorandum states that these costs are likely to be marginal and suggests that the cost of running the licensing system, including costs of LSOs, is generally recovered by Licensing Boards from fee income. No further details on possible costs or specific estimations are provided.

16. The Financial Memorandum suggests that individuals aged between 18 and 21 who are restricted in buying off-sales may be affected to the extent of reducing their total alcohol intake, or alternatively spending up to three times more on alcohol purchases. The average cost of a unit of alcohol in on-sales purchases is £1.28, compared with 40p in off-sales.

17. The financial impact on business will depend on the extent to which Boards choose to establish such conditions and the extent to which

purchasers switch to on-sales. The Financial Memorandum estimates that these provisions will result in a financial impact of £38m per year, which represents a loss of 63% of alcohol purchases made by 18-20 year olds. This figure includes £15m in lost annual sales revenue to business and £23m in lost VAT and alcohol duty per year to the UK Government.

Provisions with a lesser financial impact

18. The Financial Memorandum refers to the following provisions in the Bill as not having a significant financial impact—

- Extended supervision sentences for certain sexual offences: the estimated annual cost of £16,000 will be met by local authorities, which would be reimbursed by the Scottish Government through the criminal justice social work services funding;
- Offences aggravated by prejudice: annual recurring costs falling on the Scottish Court Service are estimated at £24,000, plus one-off costs of £5,000 for IT development;
- Articles banned in prison: the cost to the Scottish Prison Service is estimated at £215,000 per year;
- New offence of possession of extreme pornography: the estimated annual cost of £27,000 is expected to impact on the Scottish Crime and Drug Enforcement Agency, Scottish Legal Aid Board, Scottish Court Service and Scottish Prison Service;
- Witness statements and their use during trial: estimated annual cost to the Crown Office and Procurator Fiscal Service and Scottish Court Service of £218,000;
- Remand and committal of children and young people: eventual recurring costs of £65,000 are expected to fall on local authorities;
- Crown appeals: an estimated annual cost of £377,000 across the Scottish Court Service, Crown Office and Procurator Fiscal Service and Scottish Legal Aid Board;
- Retention and use of DNA and fingerprint samples: an estimated eventual annual recurring cost to the Scottish Police Services Authority of £25,000, plus one-off system change costs of £25,000;
- Limiting grounds for appeal on referrals from the Scottish Criminal Cases Review Commission: annual costs to the SCCRC are estimated at £30,000;
- Enabling evidence to be provided by television link: estimated annual cost to the Scottish Court Service of £47,000, plus one-off set up costs of £132,000 to equip courts;

- Amendments to Part V of the Police Act 1997: annual costs to Disclosure Scotland are estimated at £120,000, plus non-recurring costs of £150,000; and
- Taxi and private hire car licenses: annual cost to local authorities' licensing authorities is estimated at £8,000; and the cost to individual taxi firms is anticipated as being less than £1.00 per year.

SAVINGS

19. The Financial Memorandum states that the Government anticipates overall cost savings in relation to the provisions on early removal of certain short-term prisoners from the UK; bail review applications; and jury service. These savings are estimated at £40,000; £6,000; £250,000 per year, respectively.

Finance Committee

9th Meeting, 2009 (Session 3), Tuesday 21 April 2009

Criminal Justice and Licensing (Scotland) Bill

Submissions

Submissions have been received from the following organisations—

- Dumfries and Galloway Council;
- East Ayrshire Council;
- North Lanarkshire Council;
- Orkney Islands Council;
- Perth and Kinross Council;
- Community Justice Authorities;
- Crown Office and Procurator Fiscal Service;
- Scottish Court Service;
- Scottish Legal Aid Board; and
- Scottish Prison Service.

A submission from the Scottish Police Services Authority will follow as soon as it has been received.

SUBMISSION FROM DUMFRIES AND GALLOWAY COUNCIL

I would restrict views to Parts 8 and 9. Part 8 deals with amendments to Civic Government Licensing. The view is taken that there would be minimal costs to local authorities even in relation to the withdrawal of the exemption of community markets in respect of market operators licensing, the reference to money or money's worth within the definition of places of public entertainment and the introduction of the definition of food to late hours catering.

Local authorities have well established Civic Government Licensing systems and in respect of optional activities such as market operators, places of public entertainment and late hours catering have made resolutions. The Financial Memorandum seems to assume that with the proposed changes implemented, local authorities would then go for fresh resolutions to cover the widening of the definitions and, if appropriate, to specify what particular types of event would be exempted, such as small galas and perhaps community or charitable markets.

I had anticipated that the Council's previous resolutions would stand and thereafter the resolution could be varied under Section 9(9) of the 1982 Act.

If paragraph 978 is instead correct the local authority would require initial consultation, decision of intention to make a resolution and following newspaper notice and consideration of responses a decision to license together with newspaper notices. This would, if it were the case involve local authorities in substantial expense and use of resources. Consideration would have to be given as to the position of existing resolutions and the timeframe for new resolutions. The process would take at least 12-14 months. Even if this proves not to be the case the suggestion that fees for charitable and community markets or free music events and framework displays may be reduced or waived is not helpful as fee structures have been set, the consultation will be the same for these events and any weighing of fees will mean a substantial increase for commercial operators of markets and public entertainment.

The Social Responsibility Levy (Polluter Pays) will raise serious difficulties for local authorities including identifying relevant premises and substantiating this identification, recovery of the levy and action to be taken when the operator is unwilling or unable to pay.

Willie Taylor
Depute Clerk to the Licensing Boards

SUBMISSION FROM EAST AYRSHIRE COUNCIL

Consultation

1. *Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?*

East Ayrshire Council did not take part in the consultation exercise for the Bill.

2. *Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*

N/A

3. *Did you have sufficient time to contribute to the consultation exercise?*

N/A

Costs

4. *If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*

As the Committee will no doubt be aware criminal justice services in this local authority are funded in terms of section 27a funding via a funding distribution from the South West Community Justice Authority. We are aware that the Chief officers of the 8 CJA's in Scotland are meeting to discuss their response to any financial implications that may arise from a Criminal Justice perspective as a consequence of this Bill. This Authority is therefore not currently in a position to make specific comments in this respect. Following the removal of section 129 of the Bill, the only provision likely to have a financial impact on this Authority in relation to the licensing is in respect of the proposed notification process in the fare review process. The memorandum correctly identifies that any such additional costs incurred will be taken into account in licence fees applied by individual local authorities but does not recognise that, as such, they will indirectly be met by the general public.

5. *Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?*

As above.

6. *Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

From a criminal justice perspective the implications of the Bill (particularly in relation to the presumption against custodial sentences of less than 6 months) will potentially place significantly increased demands upon criminal justice services. Inevitably we would expect costs to rise considerably year upon year

as the Act comes into force. Our experience over the past few years is that there has been a considerable increase in the use of community sentences/requests for reports without making any significant impact upon the levels of custodial sentencing. The financial memorandum by using 10% to 20% assumptions does accurately reflect the margins of uncertainty about costs and timescales but there must be a greater uncertainty as to what impact the Bill will have upon short sentences to reduce the daily prison population and how this may require, in effect resource transfer, to facilitate a commensurate rise in community sentences/alternatives to custody. This Authority remains unclear about the financial implications surrounding the additional burden that might fall on local authorities through increased demands for alternative remand accommodation most likely in the form of secure accommodation. During the period April 2008 to March 2009 forty six juveniles appeared from custody at Kilmarnock Sheriff Court – six of whom were remanded in custody and eight placed in secure accommodation. At present there does not appear to be any mechanism to allow a juvenile to be transferred from a remand placement to secure accommodation.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Please refer to previous comments about the impact on custodial sentencing.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

A more accurate response to this question might be forthcoming from the CJA's. At present it is not possible for this Authority to estimate or quantify additional costs arising from either subordinate legislation or more developed guidance.

Stuart McCall
Legal and Procurement Services Manager

SUBMISSION FROM NORTH LANARKSHIRE COUNCIL

North Lanarkshire Council has not taken part in a prior consultation exercise for the Bill: questions 1 to 3 of the questionnaire are, accordingly, not applicable.

In respect of question 4 -6 in respect of cost there are only elements of, in particular, the licensing issues which will impact on local authorities such as North Lanarkshire Council. There are three main areas worthy of comment as follows:

(1) Section 124 relates to licensing of taxi and private hire cars and inter alia contains a proposal to extend the way in which local authorities carry out review of taxi fares. Local authorities are empowered by the Civic Government (Scotland) Act 1982 to set reasonable fees to meet the whole costs of administration of taxi licensing. Having conducted a substantial review of fees a number of years ago, recent practice has been to adopt an inflationary increase in fees for taxis (and other activities licensable under the 1982 Act) on 1 April in each year, in line with the council's overall approach to discretionary fees and charges generally. If the proposal to notify all taxi operators of taxi fares proposals passes into legislation, there will, following the methodology set out in paragraph 980 of the Explanatory Notes, be a cost impact on this authority of circa £1100 over a three year period. If the cost cannot be absorbed from existing income streams a very modest increase in fees would be required and this would be undertaken via the appropriate committee.

(2) Section 129 relates to a proposal to allow licensing boards a discretionary power to restrict the sale of alcohol to persons aged under 21 years from certain premises. Full consideration of this proposal by the Licensing Board can only take place after any legislation is passed. The Board will require at a minimum to consult with the licensed trade, the Chief Constable, the local Licensing Forum and other appropriate local groups and organisations who are not represented on the Forum as to any new policy which might be introduced and in what manner. Depending on any policy ultimately adopted there may be an impact on the administration of the application process or, more likely, variation of existing premises licence documentation. Any associated work will require to be absorbed within the existing licensing administration operation. There will also be an impact on the delivery of our Licensing Standards Officer service in relation to the provision of guidance to licence holders and regular inspection of premises, although again the extent will not be able to be assessed until decisions are made on policy by the Board. Paragraph 769 of the Explanatory Notes states " there is likely to be a marginal additional cost on Licensing Boards ...". It is impossible to assess at this stage whether that statement is true or not. The Licensing (Scotland) Act 2005 sets a mix of capped discretionary fees and mandatory fees for varying types of application. The North Lanarkshire Board has in the main adopted maximum fees where the capped maxima apply. Under present legislative powers there is very limited scope to address a trading deficit if the costs of administration of existing regulations (and any

new amendments) outweigh fee income. There is of course scope to reduce maximum fees if income outweighs costs. (When decisions on fees were made by the Board in January 2008 it was noted and accepted that meaningful review of fees by the Board could not in any event take place until the close of financial year 2009/10 at the earliest, the 2005 Act only coming into full operation on 1 September 2009).

(3) The impact of other proposals in relation to Civic Government Act activities – metal dealers, market operators, late night catering and public entertainment - is likely to be minimal in cost terms and would in any event be recovered through licence application fees.

In respect of the wider issues covered by questions 7 and 8 our position would have to be reserved until the 2005 Act is fully operational.

Paul Hughes
Head of Financial Services
North Lanarkshire Council

SUBMISSION FROM ORKNEY ISLANDS COUNCIL

Consultation

Questions 1-3 – N/A

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

No account appears to have been taken of the additional costs associated with operating in island, rural or remote environments. The same base costs would be incurred and in such localities the turnover is not there to cover the base costs that must be incurred to provide the service. This should be recognised and the appropriate funding provision addressed.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The financial costs on the licensing side which is already affected cannot be met without further funding being made available.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Not known

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Not known

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Yes – as with all new legislation future costs regularly arise and this should be recognised. One example on the criminal justice side is that there appears to be no indication of additional funding mentioned to address the training requirements of those involved in CJSW and related bodies

Fiona MacDonald, Solicitor to the Council
Orkney Islands Council

SUBMISSION FROM PERTH AND KINROSS COUNCIL

Consultation

1. *Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?*

I did not take part in the consultation exercise for the Bill and was not part of the discussion process which arrived at the financial assumptions set out in the Memorandum.

2. *Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*

Accordingly, it would not have been realistic for my views to have been taken into account prior to this point.

3. *Did you have sufficient time to contribute to the consultation exercise?*

As I was not part of the consultation process, the question concerning adequacy of time to contribute to it did not arise.

Costs

4. *If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*

The Bill has major financial consequences for my organisation, Perth and Kinross Council. Section 14 'Community Payback Orders' and Section 17 'Protection against Short Periods of Imprisonment or Detention' are the factors with greatest implications for us. In practice, the resource implications arise from two factors:

- The need to increase average unpaid work hours per offender per week by a factor of almost 100%.
- The need to make new Community Payback Orders available for a significant number of persons currently the subject of short sentences of imprisonment.

5. *Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?*

The national weekly average number of Community Service hours carried out per offender is of the order of 3.5 - 4 hours. Locally, we have managed to get this figure above 4 hours, but only after considerable effort, a variety of initiatives and the temporary provision of additional resources. In order to meet the Government's requirement of a 100 hour Unpaid Work Order being completed within three months (let alone their expectation that some Orders

in excess of 200 hours should be completed within six months), however, we would need to double our achievements of recent months.

Perth and Kinross covers 2,000 square miles and has a higher than average male employment rate. Consequently, not only do we suffer through the current funding formula for core Criminal Justice Social Work Services, but we also need to provide work at weekends – and pay people to supervise offenders at such times. We provide a wide variety of tasks, including both team and individual placements, but a doubling of the average hours per offender will be a **major undertaking**.

The Bill's expectation that we also absorb a very significant proportion of those persons currently sentenced to short terms of imprisonment imposes, if anything, even greater expectations on the Service. On the basis of figures provided from colleagues in the Scottish Prison Service, 170 persons from the Perth and Kinross area were imprisoned during the last year for which we have hard data. Even if only 150 of these were to end up on Community Payback Orders, this would equal the total number of persons currently sentenced to Probation here or exceed the numbers currently on Community Service Orders. In short, it amounts to a very significant increase in the numbers of persons subject to Community Supervision. Bearing in mind, that all of these persons would otherwise have received sentences of imprisonment, it seems reasonable to assume that their crimes would merit the equivalent of Probation or Community Service – both of which will now be subsumed within the new Community Payback Orders.

On the basis of the funding provided to increase Community Service hours last year, it would appear that the pro-rata allocation for Perth and Kinross from the proposed figure of £10million nationally might be of the order of £190,000. In order to oversee the additional offenders on Community Payback Orders, I would anticipate that between 2 and 3 Community Service Supervisors, 1.5 Community Service Officers and between 1 and 1.5 Social Workers will be required. These staff will need to be managed, clerically supported, accommodated and have their transport, training and supplies and services needs met. On this basis, I would anticipate that the cost to this Council of providing a robust, reliable service which meets the requirements of the Act would be closer to £250-280,000.

On the basis of the proposed additional allocation of resources, I am not content that this organisation could meet the costs associated with the Bill. Already, with a standstill Criminal Justice Social Work budget over the last four years, I am unable to keep up with existing infrastructure costs. As to how these additional costs should be met, perhaps a resource transfer from the Prisons division should be effected – reflecting the reducing number of persons entering the Prison system.

6. *Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

I would not consider that the Financial Memorandum accurately reflects the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to rise – in relation to the expectations of local authorities. As and when the twin effects of introducing Community Payback Orders and restricting the use of short term custody come into effect, the impact upon Criminal Justice Social Work Services will be very significant and almost immediate.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Unless I am mistaken, the Bill does not make specific reference to the costs involved in providing part Custody/part Community Orders in further fulfilment of the recommendations of Scotland's Choice. This may require substantial resource transfer from the Prisons Division and may need to await the closure of an entire facility to free up such resources.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

I am not in a position to comment upon the possible future costs arising from subordinate legislation or more developed guidance. I am clear, however, that the costs associated with introducing community alternatives to custody for such a large number of current prisoners are not adequately reflected within the Financial Memorandum thus far – particularly for rural areas with a dispersed population and limited offender availability for work.

John Gilruth
Lead Officer, Criminal Justice and Substance Misuse Services
Perth and Kinross Council

SUBMISSION FROM COMMUNITY JUSTICE AUTHORITIES

Consultation

1. *Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?*

Community Justice Authorities were consulted regarding the Bill as outlined in the Policy Memorandum, however, we were not consulted on the financial assumptions as these were only made available to us on 13 March 2009.

2. *Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*

See above.

3. *Did you have sufficient time to contribute to the consultation exercise?*

There has been insufficient time to consider the financial implications of this Bill and to consult CJA Boards and other partners.

Costs

4. *If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*

CJAs have responsibility for the distribution of financial resources to Local Authority Criminal Justice Social Work Services across competing demands.

We welcome the commitment that costs will be fully reimbursed for the new arrangements (paragraphs 698 and 784).

However, we have some concerns around the financial assumptions in that they may not reflect a potential increase in SERs requested from Justice of the Peace Courts or from Sheriffs imposing short term sentences who will have to explain how a community disposal could not be made.

There is an assumption that the unit costs for probation, community service and supervised attendance orders which were used as the basis of costing for the new order were sufficient in the first place. The basis of the costings may also not reflect the qualitative change required in how community sentences are delivered alongside the anticipated increase in volume.

5. *Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?*

CJAs do not directly commission or deliver services. CJAs are required to make sure allocations are aligned against Government and local priorities and strive to ensure funds are available.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

CJAs recognise that estimates have been provided between 0% - 20% growth. There is no evidence to suggest whether this will meet margins of uncertainty

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

No, the Bill is part of wider policy initiatives; Protecting Scotland's Communities: Fair, Fast and Flexible Justice, Safer and Stronger Scotland, Reducing Reoffending, and Summary Justice Reforms and does not capture any savings from the intended reduction in short term prison sentences. It, therefore, provides an incomplete picture of the financial implications.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

There are many potential costs associated with the wider policy agendas, such as diversion schemes, addressing offending behaviour in the community and early years initiatives.

These increased demands will be met by Local Authorities, whilst any reduction in the use of imprisonment will not, at present, yield additional resources for redeployment.

The proposed requirement for sentencers to state why short term prison sentences are being imposed may lead to an increase in the demand for SERs.

Anne Pinkman
Chief Officer FFV CJA
On behalf of the Community Justice Authorities

SUBMISSION FROM THE CROWN OFFICE AND PROCURATOR FISCAL
SERVICE

Referring to the questions contained in the invitation letter I can confirm that the Crown Office and Procurator Fiscal Service was involved in the consultation exercise on the Bill and had sufficient time to contribute thereto. We did make comment on the financial assumptions made. These comments are accurately reflected in the Financial Memorandum.

The Bill does have financial implications for COPFS and these have been accurately reflected in the Financial Memorandum, together with the margins of uncertainty associated with the estimates. I am confident that the Service can meet these costs.

It would not be appropriate for the COPFS to address questions arising from the policy considerations behind the Bill. These are more appropriately addressed by the Scottish Government. Similarly it is a matter for the Scottish Government to address issues of additional costs in the future, associated with subordinate legislation or more developed guidance.

Chris MacIntosh
Principal Depute

