Justice Committee
Victims and Witnesses (Scotland) Bill

Written submission from the Scottish Prison Service

1. I very much welcome the opportunity to provide the Committee with the views of the Scottish Prison Service (SPS) in relation to the Victims and Witnesses (Scotland) Bill (the Bill).

Agency status of the SPS

2. The Committee will be aware that the SPS is an agency of the Scottish Government and that I am accountable to the Scottish Ministers for the operation of SPS; for advising them on policy on prisons; for the management of the SPS; and for planning its future development. I confirm as part of the Justice family I was consulted by the Scottish Government on the areas of the Bill which impact on us. I am therefore pleased to offer the Committee my views on the provisions of the Bill as they affect the SPS. By way of scene setting, the Committee may find it helpful if I describe the SPS's current role in contributing to the operation of the Victim Notification Scheme. I have also explained the impact of the additional requirements proposed in the Bill; and how we are planning for these changes.

Victim Notification Scheme (VNS)

3. The SPS together with the Parole Unit of the Scottish Government and the Parole Board for Scotland are responsible for providing information to victims at key points in an offender’s sentence through the VNS. This is one of the main interfaces that SPS has with victims and we have gained first-hand understanding of some of the issues that victims face. In our experience many victims find it difficult to come to terms with the injury or loss they have suffered.

4. The Scottish Strategy for Victims was published in 2001. It set out an action plan which was based on three core principles; that victims should be provided with generic and case specific information; that they should receive appropriate support; and that they should have their voice heard.

5. The VNS became a statutory scheme in 2004 following the introduction of sections 16 and 17 of the Criminal Justice (Scotland) Act 2003 (the 2003 Act). At the commencement of the 2003 Act eligibility to join the scheme extended only to victims of crime where the offender received a long term sentence (4 +years) for a crime of violence, a sexual or indecent crime, a crime involving firearms, housebreaking, a hate crime or fire-raising. In 2006 the scheme expanded when the eligibility criteria for joining the VNS changed and victims could join the scheme if the offender received a sentence of 18 months or more for the offences already described.

How VNS operates

6. The Crown Office and Procurator Fiscal Service (COPFS) are responsible for identifying victims who are eligible to join the scheme. Eligible victims are provided
with information and registration forms. Where a victim decides to join the scheme, they send the completed forms to us. Victims can register at any point up to the Sentence Expiry Date (SED) of the offender’s sentence.

7. There are two parts to the scheme and a victim can register under part one or part two only or part one and two: this is entirely at their discretion. If a victim registers for part one only they will receive information from the SPS on the key occurrences in the offender’s journey through their sentence. Victims who register under part two of the scheme can also make written representations to us about an offender’s release on Home Detention Curfew (HDC). These representations are considered by us in reaching a decision on release and, if released, may inform licence conditions.

The information that victims currently receive

8. At a minimum a victim will be notified twice (in practice by letter) by the SPS and, depending on the sentence length, there could be more contact. At present victims of the prescribed offences as detailed at paragraph five can receive information about the release of offenders and some other relevant information including:

- if the offender dies before the release date, notification of the date of death;
- if the offender has been transferred to a place outwith Scotland;
- that the offender has become eligible for temporary release;
- that the offender is unlawfully at large from a prison or young offenders institution; and
- where the offender has been released or has been unlawfully at large, the date of return to custody.

The provisions are set out in more detail in Annex 1.

The provisions of the Bill

9. The three relevant provisions in the Bill that impact on the SPS in terms of the operation of the VNS and our input and support for victims are as follows:

- Temporary release: victim’s right to make representations;
- Victim’s right to receive information about release of offender etc; and
- Duty on justice organisations to set out standards of service

In addition to the Bill provisions, as set out in the Policy Memorandum, the Scottish Government also intends to seek to lower the sentence threshold so that victims of offenders sentenced to 12 months or more are eligible to join the scheme. This change does not require to be made through this primary legislation but will be made through the existing order making powers in the 2003 Act.
Temporary release: victim’s right to make representations

10. Section 25 of the Bill adds a new section (17A) to the 2003 Act to allow victims, who are registered on VNS and who have expressed the wish to do so, to make written representations about the licence conditions that may be imposed when an offender first becomes eligible for temporary release from prison. The Prisons and Young Offenders Institutions (Scotland) Rules 2011 (the Rules) makes provision for temporary release and details the various forms of temporary release. The temporary release provisions in the Rules are provided at Annex 2.

11. The SPS already writes to victims to inform them that an offender is eligible to be considered for temporary release. The Bill therefore extends the rights of victims and we welcome that. Whilst we already takes account of victims’ views, where they are made known to us, when considering temporary release licence conditions, the provisions in the Bill ensures that victims, through their representations, are at the very core of such considerations and have their voice heard. The impact of this provision will mean that we will expand the information that we currently send to registered victims to include an invitation to submit written representations.

12. By way of context, in the financial year 2012-13, we wrote to more than 400 victims to inform them that the prisoner had become eligible to be considered for temporary release. The provisions in the Bill will therefore mean that more than 400 victims a year will now have the opportunity to input to the current process that informs the licence conditions for temporary release. Additional statistical information is provided at Annex 3.

Victim’s right to receive information about release of offender etc.

13. Section 23 amends section 16 of the 2003 Act to remove the list of prescribed offences. As a result, victims of any offence will be able to receive information under this section. The VNS is not currently open to all victims of crime but only those where the offender has committed an offence set out in the Victim Notification (Prescribed Offences)(Scotland) Order 2004 as detailed at paragraph five. The Scottish Government considers that access to the scheme should be extended to better reflect the European Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU). The Bill will therefore remove the list of prescribed offences in relation to the VNS, so that victims of all offences will be eligible. The SPS supports this measure.

14. It is difficult to assess the precise impact of the removal of the prescribed offences and the reduction of the minimum sentence length on the VNS. The number of victims who will be able to join the scheme to receive information will obviously increase. However the actual additional numbers is difficult to assess. It is estimated that up to 1500 more victims might register and therefore SPS has already agreed resources to manage this impact. The increase in the number of victims will be gradual and resources will be deployed incrementally as the number of victims seeking to join the scheme increases.
Duty on justice organisations to set out standards of service

15. The objective to create a duty on criminal justice agencies to set clear standards of service for victims and witnesses and to also set out, or make specific reference to, their complaints procedure is welcomed by SPS. The SPS website (www.sps.gov.uk) already contains information for victims including the National Standards for Victims of Crime that were published in 2005. In addition we have also set out our complaints procedure and how complaints will be managed, including an escalation procedure.

16. We have been working with Victim Support Scotland (VSS) over the past six months to better prepare our staff for working with victims and in turn explore how we might better support victims. We will continue to work with VSS to develop a clear set of standards of service for victims.

17. The SPS fully supports this Bill which puts victims’ interests at the heart of the on-going improvements to the justice system giving more victims access to more opportunities to have their voices heard.

Colin McConnell
Chief Executive
9 April 2013

ANNEX 1

Current provisions are contained in Sections 16 and 17 The Criminal Justice (Scotland) Act 2003

Victims of short term prisoners who elect join the scheme can be told:

- **The date of release of the offender from prison.** The earliest date of liberation of the prisoner is provided at the point at which the victim joins the scheme. In addition SPS will write to the victim about one month before the date of release (unless the prisoner is released on HDC.).

- **If the offender dies before being released, the date of death.** This information will be sent to the victim as soon as possible after the date of the death.

- **If the offender has been transferred out of Scotland, the date of the transfer.** It may be possible to make arrangements for victims to continue to receive information about the prisoner from the country that he/she has transferred to. SPS will make enquiries on behalf of victims should they wish to continue to receive information.

- **That the offender has become eligible for temporary release.** SPS will inform victims when the offender first becomes eligible for temporary release. Victims are not told about each individual period of temporary release.
• **If the offender has escaped or absconded.** Information about the offender escaping or absconding will be notified to victims if the offender remains at large after 48 hours. Victims are also told when the prisoner is returned to custody.

• **The date on which the convicted person has for any reason, in respect of a sentence, returned to a prison or young offenders institution before that sentence has been served in full.** This might occur, for example, when a prisoner who has been released from a sentence commits a further offence before the original sentence ends or following an order of the court.

• **The date at which the original sentence ends.** If an offender has been returned to prison because a further offence has been committed before the original sentence has expired, the victim is informed that the original sentence has ended and that the offender remains in prison. The victim is no longer eligible to receive further information as the victim is only entitled to receive information up to the expiry of the sentence.

• **Home Detention Curfew.** The SPS will write to victims who have elected to join part 2 of the scheme to invite them to send written representations to the SPS which will be considered by the relevant Prison Governor before an offender is released on HDC. The SPS will inform the victim if the prisoner is to be released on HDC.

In addition to the information above victims of long term offenders, short term sex offenders and offenders with an extended sentence who elect to join part 2 of the scheme will have the opportunity to make written representations to the Parole Board or Scottish Ministers (in the case of short-term sex offenders) when they are due to consider release of the prisoner. In cases considered by the Parole Board, i.e. offenders serving sentences of 4 years or more in custody, the victim will be informed whether or not it has recommended or directed the offender’s release on licence. The victim will also be informed in all cases of the terms of any conditions which have been attached to the licence that relate to them. The Parole Board or Scottish Ministers will also write to victims who have opted into part 2 but did not send representations informing them of their decisions.

When an offender is granted parole at the halfway point of their sentence and has applied to be considered for release on Home Detention Curfew, the representations that had already been considered by the Parole Board can be considered, if the victim so desires, by the SPS. If an offender is approved for release on HDC, the victim will be informed of the date of release.

**Annex 2**

**Forms of Temporary Release**

“**home leave**” means the unescorted temporary release from prison of an eligible prisoner for the purpose of enabling the prisoner to visit his or her home or other approved place for a period not exceeding 7 nights excluding travelling time;
“unescorted day release” means the unescorted temporary release from prison of an eligible prisoner for a period not exceeding one day, including travelling time, for the purposes of enabling the prisoner, in preparation for eventual release—

(a) to develop further, or to re-establish, links with his or her family or community; or

(b) to develop educational or employment opportunities;

“unescorted day release for compassionate reasons” means the unescorted temporary release from prison of an eligible prisoner for a period not exceeding one day, excluding travelling time, for the purposes of enabling the prisoner—

(a) to visit any relative who it appears to the Governor is dangerously ill;

(b) to attend the funeral of a near relative;

(c) to visit a parent who is either too old or too ill to travel to the prison;

(d) to visit the prisoner’s spouse, civil partner or co-habiting partner who, for whatever reason, is unable to travel to the prison;

(e) to visit a child for whom they have parental responsibility and who, for whatever reason, is unable to travel to the prison; or

(f) to attend at any place for any other reason where the Governor is of the opinion that the circumstances warrant it;

“Temporary release for work” means the unescorted temporary release from prison of an eligible prisoner for a period not exceeding one day, excluding travelling time, for the purposes of enabling the prisoner—

(a) to undertake a work placement outside prison in terms of rule 84;

(b) to attend a college, university or other educational establishment in order to participate in vocational training or an educational class; or

(c) to undertake voluntary work outside the prison in terms of rule 84;

“unescorted day release for health reasons” means the unescorted temporary release from prison of an eligible prisoner for a period not exceeding one day, excluding travelling time, for the purposes of enabling the prisoner—

(a) to attend for treatment at a medical facility outwith the prison; or

(b) to attend counseling outwith the prison.
Annex 3

Statistical Information

By the end of the first year of the scheme in 2004, 278 victims had registered with SPS rising to 557 by the end of 2006. At the end of the financial year 2012-2013 more than 4000 victims had registered on the scheme and there are currently more than 1900 victims actively receiving information. These comprise of victims of 645 life sentence prisoners, 990 long term prisoners and 319 short term prisoners.

The successful operation of the VNS is largely dependent upon our IT system which alerts us to any changes in the circumstances of the prisoner against whom the victim is registered. Each change must be interrogated to establish whether the circumstances require further communication with the victim, for example, should the prisoner receive a further sentence as a result of an unconnected matter— we will write to tell the victim that the prisoner’s release date has changed. In a typical day we review around 30 “alerts”. Not all of these will require action but in the financial year 2012-13 we sent information to victims on more than 1200 occasions.

Scottish Prison Service