The Committee will meet at 10.00 am in Committee Room 4.

1. **Decision on taking business in private**: The Committee will decide whether to take item 4 in private.

2. **Police reform**: The Committee will take evidence from—
   - Andrew Laing, Her Majesty’s Chief Inspector of Constabulary for Scotland;
   - Chief Constable Stephen House, Police Service of Scotland;
   - Vic Emery, Chair, Scottish Police Authority.

3. **Subordinate legislation**: The Committee will consider the following negative instruments—
   - Adults with Incapacity (Public Guardian’s Fees) (Scotland) Amendment Regulations 2012 (SSI 2012/289);
   - Court of Session etc. Fees Amendment Order 2012 (SSI 2012/290);
   - High Court of Justiciary Fees Amendment Order 2012 (SSI 2012/291);
   - Justice of the Peace Court Fees (Scotland) Order 2012 (SSI 2012/292);
   - Sheriff Court Fees Amendment Order 2012 (SSI 2012/293).

4. **Transfer of prison healthcare to the NHS**: The Committee will consider the evidence received and what further action to take.
The papers for this meeting are as follows—

**Agenda item 2**

Paper by the Clerk J/S4/12/34/1

*HMICS and Accounts Commission joint report on best value in police authorities and police forces in Scotland*

**Agenda item 3**

SSI cover note J/S4/12/34/2

*Adults with Incapacity (Public Guardian's Fees) (Scotland) Amendment Regulations 2012 (SSI 2012/289)*

SSI cover note J/S4/12/34/3

*Court of Session etc. Fees Amendment Order 2012 (SSI 2012/290)*

SSI cover note J/S4/12/34/4

*High Court of Justiciary Fees Amendment Order 2012 (SSI 2012/291)*

SSI cover note J/S4/12/34/5

*Justice of the Peace Court Fees (Scotland) Order 2012 (SSI 2012/292)*

SSI cover note J/S4/12/34/6

*Sheriff Court Fees Amendment Order 2012 (SSI 2012/293)*

**Agenda item 4**

Paper by the Clerk (private paper) J/S4/12/34/7 (P)

Written submission from NHS Forth Valley J/S4/12/34/8

Written submission from Scottish Prison Service J/S4/12/34/9
Justice Committee

34th Meeting, 2012 (Session 4), Tuesday 27 November 2012

Police reform

Note by the clerk

Background

1. At its meeting on 6 November, the Committee agreed to hold an evidence session on police reform with Andrew Laing, Her Majesty’s Inspector of Constabulary for Scotland, Stephen House, Chief Constable of the Police Service of Scotland, and Vic Emery, Chair of the Scottish Police Authority, on 27 November.

2. The Committee agreed that this evidence session would focus mainly on the governance of policing and the operational independence of the chief constable under arrangements for a single national police service. This paper provides background to (a) relevant provisions in the Police and Fire Reform (Scotland) Act 2012, and (b) recent developments on police reform.

Police and Fire Reform (Scotland) Act 2012

3. Governance of the eight police forces in Scotland is currently shared in a tripartite arrangement between the Scottish Ministers, the police authorities/joint police boards, and the eight chief constables. The Police and Fire Reform (Scotland) Act 2012 replaces the eight police forces with one single force, the Police Service of Scotland (PSoS), and the police authorities/joint police boards with a single Scottish Police Authority (SPA).¹ Further details of the new arrangements, which are to come into effect on 1 April 2013, are outlined below.

Scottish Police Authority

4. Section 2 of the Act sets out the main functions of the SPA², as follows:

- to maintain³ the PSoS;
- to promote the policing principles⁴;
- to promote and support continuous improvement in the policing of Scotland;
- to keep under review the policing of Scotland;
- to hold the chief constable to account for the policing of Scotland.

² The SPA Chair, Vic Emery, was appointed on 31 August 2012 and other members of the SPA were appointed on 24 October 2012.
³ Section 3 of the Act specifies what is meant by „maintain“ the PSoS, as follows: the SPA must pay constables pay and allowances, and reimburse any expenses reasonably incurred by a constable. The SPA may also provide and maintain anything necessary or desirable for the carrying out of police functions, including vehicles, equipment, information technology systems, land, buildings and other structures. It must provide to the chief constable before the start of each financial year details of how it intends to allocate financial resources it expects to have available to it in respect of that financial year.
⁴ The policing principles set out in section 32 of the 2012 Act are: (a) that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland, and (b) that the PSoS, working in collaboration with others where appropriate, should seek to achieve that main purpose by policing in a way which (i) is accessible to, and engages with local communities, and (ii) promotes measures to prevent crime, harm and disorder.
5. In relation to the provision of resources, the SPA will be directly responsible for providing forensic services to the PSoS (and a number of other bodies).

6. In addition, the SPA is responsible for appointing future chief constables (subject to approval of the Scottish Ministers) and appointing deputy and assistant chief constables (in consultation with the chief constable) (section 7).

7. Under section 26 of the Act, the SPA may appoint police staff to assist in the carrying out of police functions; however, the chief constable also has the power to make these appointments on behalf of the SPA. Police staff will be employed by the SPA (or be provided to the SPA under arrangements with a third party) and the SPA will determine their terms and conditions (section 27).

8. In addition, the SPA must prepare a strategic police plan setting out the main objectives for the SPA and for the policing of Scotland, which is to be reviewed at least every three years. This plan must have regard to the policing principles set out in section 32 of the Act and the strategic police priorities set by the Scottish Ministers. The SPA is required to involve the chief constable in preparing the plan and submit it to the Scottish Ministers for approval. The final plan must then be laid before the Scottish Parliament (section 34). Section 39 requires the SPA to produce an annual report providing an assessment of its performance in carrying out its functions and that of the PSoS. The annual report must also be laid before the Scottish Parliament.

9. Section 83 specifies that the SPA and chief constable may make arrangements under which the SPA is to provide assistance to the PSoS (such as SPA staff providing services to the PSoS). Arrangements may also be made under which the PSoS can provide assistance to the SPA (such as constables or police staff providing services to the SPA).

**Chief constable**

10. The chief constable is responsible, and must account to the SPA, for the policing of Scotland. Section 17 sets out the chief constable’s specific responsibilities as follows:

- direction and control of the PSoS;
- day to day administration of the PSoS, including the allocation and deployment of resources received from the SPA;
- involvement in the preparation of the strategic police plan and the SPA’s annual report;
- preparing annual police plans (see paragraph 14 below)
- seeking to secure continuous improvement in the policing of Scotland;
- designating local commanders and ensuring that adequate arrangements are in place for the policing of each local authority area; and
- providing the SPA with information relating to the PSoS, policing or the state of crime.

11. The chief constable must ensure that the policing of Scotland is “done with due regard to any recommendations made or guidance issued by the SPA on the policing of Scotland” (section 17).

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5 This provision replicates the provision in the Police Act 1967, which allows a police authority/joint police board to employ police staff on a contract basis as well as directly.

6 Stephen House was appointed as Chief Constable of the PSoS on 25 September 2012.
12. The chief constable is responsible for appointing constables (other than senior officers who are appointed by the SPA) (section 8) and special constables (section 9), and for assigning and promoting constables to ranks below that of assistant chief constable (section 11).

13. Section 21 specifies that constables, police staff and cadets are, in the carrying out of their functions, subject to the direction and control of the chief constable.

14. The chief constable is responsible for producing an annual police plan setting out (a) the proposed arrangements for the policing of Scotland, and (b) details of how these arrangements contribute towards achieving the objectives set out in the SPA’s strategic plan (section 35). The annual police plan must also have regard to the policing principles set out in the Act, the strategic police priorities set by the Scottish Ministers and the strategic police plan produced by the SPA. The chief constable is required to invite the SPA to comment on a draft plan and lay a copy of the final plan before the Scottish Parliament.

Scottish Ministers
15. The Policy Memorandum on the Police and Fire Reform (Scotland) Bill stated that, while Scottish Ministers would remain accountable to the Scottish Parliament for policing, the Bill would “provide a clear separation between the Scottish Ministers and the services by ensuring their role is primarily a strategic one”.

16. Under the 2012 Act, the Scottish Ministers are responsible for appointing members of the SPA (schedule 1), approving appointment of the chief constable (section 7), setting strategic police priorities (section 33), and approving the strategic police plan prepared by the SPA (section 34). The Scottish Ministers will agree a funding settlement which will be paid directly to the SPA, following the annual Parliamentary budget process.

17. Section 5 of the Act allows the Scottish Ministers to issue directions to the SPA which must be complied with. Such directions may not be given in respect of (a) a specific operation being or to be carried out by the PSoS, or (b) the way in which the PSoS is carrying out (or is to carry out) a specific operation. Directions must be published and laid before the Scottish Parliament.

Scottish Parliament
18. The Scottish Parliament must make arrangements for keeping under review the operation of the Act and must publish reports in pursuance of this (section 124).

Local authorities
19. The chief constable must designate a constable as local commander who may cover more than one local authority area (section 44). The local commander will be responsible for (a) preparing the local police plan which is to be approved by the local authority, and (b) reporting to local authorities on the carrying out of police functions in their local area (section 45).

20. The Act is silent on how local authorities should make arrangements for their scrutiny of local policing. During scrutiny of the legislation, the Committee heard that...

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7 Policy Memorandum on the Police and Fire Reform (Scotland) Bill, paragraph 87. Available at: http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/Poli cy_Memo.pdf [Accessed 22 November 2012].
8 Policy Memorandum on the Police and Fire Reform (Scotland) Bill, paragraph 119.
this was deliberate to allow local authorities flexibility in determining the most appropriate mechanisms to examine local policing and formalise their relationships with local commanders. A number of local authorities are running pathfinder projects to pilot local arrangements before 1 April 2013.

**Auditor General for Scotland**
21. Under the 2012 Act, responsibility for the audit of policing will transfer from the Accounts Commission to the Auditor General for Scotland. The Auditor General may also initiate examinations into the economy, efficiency and effectiveness of the PSoS and arrangements made by the chief constable in relation to securing best value (section 42).

**Her Majesty’s Inspector of Constabulary for Scotland**
22. Her Majesty’s Inspector of Constabulary for Scotland (HMICS) will be responsible for inspecting the SPA and PSoS and will take on the additional task of examining the delivery of best value (section 74). HMICS is to publish a plan setting out inquiry priorities and details of how these inquiries will be carried out in a proportionate, accountable and transparent way (section 75). This plan and any reports produced by HMICS must be presented to the SPA and laid before the Scottish Parliament.

**Police Investigations and Review Commissioner**
23. The Act renames the Police Complaints Commissioner for Scotland (PCCS) as the Police Investigations and Review Commissioner (PIRC). It also extends the PIRC’s remit to include, when directed to do so by the appropriate prosecutor, investigation of certain serious incidents involving the police and circumstances where a person serving with the police may have committed an offence (section 62). The PIRC will also be able to investigate any relevant police matter where it considers that it will be in the public interest to do so (section 65).

**Recent developments**

**Operational independence**
24. In recent weeks, concerns have been raised regarding the operational independence of the chief constable, following remarks made by Vic Emery that the SPA should take on the direct management and control of the finance, ICT, and human resources functions of the PSoS. In a letter to MSPs, Mr Emery said: “what we have indicated in our early discussions with the chief constable is that the conventional arrangements where all support functions and staff are automatically within the direction of the chief constable, require to be considered differently”. He added that he was looking for a way to allow Mr House and his team “to concentrate their focus on policing”.

25. On 9 November, The Herald newspaper reported the reaction of the President of the Association of Scottish Police Superintendents to Mr Emery’s comments: “we cannot support a position where the SPA may seek to give direction to the chief constable in relation to any matter relating to operational policing”. He added that “this

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9 Policy Memorandum on the Police and Fire Reform (Scotland) Bill, paragraph 221.
10 Any relevant matter is defined in section 65 of the Act as any matter relating to the SPA, the PSoS or a person serving with the police (subject to certain exceptions in relation to issues which have already been, or are being, investigated).
would fundamentally erode operational independence with all the dangers this brings to a democratic society”.

26. During scrutiny of the Scottish Government’s Draft Budget 2013-14, the Committee heard from the Scottish Police Federation that executive support, such as IT, human resources and finance must come under the direction and control of the Chief Constable rather than the SPA, otherwise it would be “a source for conflict as debate over primacy would take priority”. The Cabinet Secretary for Justice also commented on the dispute during budget scrutiny. He said that “both sides have accepted that the chief constable has operational responsibility” and that “discussions are continuing and I have no reason to believe that a happy accord over interpretation will not be reached”. He added that he understood the concerns of Members surrounding this issue and gave an assurance that matters are being “chivvied along”.

27. In an interview which appeared in the Holyrood magazine on 19 November, Mr House stated that “it’s no good to me just having police officers and not having anything to do with finance, HR, or ICT, because it’s all one machine or organism”. He reiterated that he did not agree that police staff reporting to the SPA directly was the right model and added that the dispute “needs to be resolved pretty quickly”.

Local policing
28. On 16 November, Mr House set out his plans for a new 14 divisional command structure, with each command area to be led by a local policing commander with responsibility for delivering the actions set out in each local policing plan. He further announced that every council ward in Scotland would have its own annual policing plan.

29. Mr House confirmed in the Holyrood article (19 November) that there would be 32 scrutiny committees looking at local policing, with a chief superintendent (acting as local commander) running each of the 14 divisions.

Strategic police priorities
30. As referred to earlier in this paper, the Act requires the Scottish Ministers to set strategic police priorities which will inform the SPA’s own three-year strategic plan and feed into the development of the chief constable’s annual plan and local plans.

31. On 20 November, the Scottish Government published draft strategic police priorities for consultation, as follows:

- to make communities safer and reduce crime by demonstrating pioneering approaches to partnership and collaboration at a national and local level.
- to strengthen Scotland’s reputation as a successful and safe country by demonstrating excellence in effectively planning for and responding to major national events and threats.

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12 The Herald. *New police force in turf war over back room staff* (9 November 2012).
13 Scottish Police Federation. Written submission to the Justice Committee scrutiny of the Scottish Government Draft Budget 2013-14, paragraph 17.
• to provide an efficient, effective service and deliver the benefits of reform.
• to make communities stronger by increasing public confidence and reducing fear of crime, making the new PSoS an exemplar of visible and responsive policing.  

32. The consultation closes on 10 January 2013. Further details of the draft priorities are provided at Annexe A.

Report on best value in police authorities and police forces in Scotland
33. HMICS and the Accounts Commission published their joint report on best value in police authorities and police forces in Scotland on 20 November. The report highlights a number of issues regarding current policing arrangements, including:

• the effectiveness of existing police authorities and joint police boards is poor: “in many cases members have tended to take a largely passive role, for example, by approving budgets rather than being involved in their early development and by responding to force reports rather than actively identifying what they want reports on”;
• on average, forces have reduced the number of their police staff by 12 per cent over the past three years to balance their budgets;
• there are some indications that police staff posts are being covered by police officers in the short-term; and
• although forces have reported significant efficiencies in relation to their overall budgets, they do not currently have detailed information about the specific costs of their activities.

34. The report also highlights a number of key issues for the SPA, PSoS and local authorities to consider under the new policing arrangements. These issues are listed in an appendix to the report, which is reproduced at Annexe B.

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18 Scottish Government consultation on strategic police priorities launched 21 November 2012 (see Annexe A).
Scottish Government consultation on the strategic police priorities

The SPA and the Police Service of Scotland will deliver the policing principles and realise the statutory principles of policing as set out in the Police & Fire Reform (Scotland) Act 2012. The SPA is the national body responsible for the governance of policing in Scotland. It will allocate resources to the Chief Constable and hold him to account for the policing of Scotland and the delivery of statutory functions.

The priorities as drafted are intended to clearly incorporate the contribution which policing can make to achieving the Scottish Government’s national outcomes and the priorities within the Strategy for Justice. Consistent with our wider ambitions for public service reform, these are strongly underpinned by an ethos of prevention, rooted within a partnership approach.

They are intended to set clear national priorities but also to empower local commanders to work with partners in the public, private and third sectors, and local communities within the community planning framework to deliver greater integration of services at a local level driven by better partnership, collaboration and effective local delivery.

We expect that further specific and measurable deliverables relating to Scottish Government’s national outcomes will be included in the Strategic Plan which the SPA will draft on the basis of the strategic priorities.

The draft strategic priorities are:

**Make communities safer and reduce crime by demonstrating pioneering approaches to partnership and collaboration at a national and local level.**

Actively support a decisive shift towards prevention by promoting evidence based preventative practice and effective partnerships which make the most of collective resource, knowledge and expertise, especially around reducing violence, substance misuse, promoting better outcomes for young people who offend and protecting children, young people and vulnerable adults.

**Supports:**

National outcome 5: Our children have the best start in life and are ready to succeed
National outcome 8: We have improved the life chances for children, young people and families at risk
National outcome 9: We live our lives safe from crime, disorder and danger

**Strengthen Scotland’s reputation as a successful and safe country by demonstrating excellence in effectively planning for and responding to major national events and threats.**

Work across national, international and organisational boundaries to ensure a safe and secure Commonwealth Games; contribute effectively to multi agency arrangements to deal with emergencies; and minimise threats to our communities more generally.
Supports:

National outcome 9: We live our lives safe from crime, disorder and danger
National outcome 11: We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others

Provide an efficient, effective service and deliver the benefits of reform.
Deliver the three benefits of reform\(^20\) and work with others to ensure that the criminal justice system is fair and accessible, cost effective and efficient.

Supports:

National outcome 16: Our public services are high quality, continually improving, efficient and responsive to people’s needs

Make communities stronger by increasing public confidence and reducing fear of crime, making the new Police Service of Scotland an exemplar of visible and responsive policing.
Ensure that victims, witnesses and communities experience positive engagement with the police by providing inspirational leadership and embedding a culture, identity and values which provide a highly skilled and motivated workforce to deliver improved local services with the consent and involvement of communities.

Supports:

National outcome 7: We have tackled the significant inequalities in Scottish society.
National outcome 9: We live our lives safe from crime, disorder and danger
National outcome 11: We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others
National outcome 13: We take pride in a strong, fair and inclusive national identity
National outcome 16: Our public services are high quality, continually improving, efficient and responsive to local people’s needs

\(^{20}\) The three benefits are: (a) to protect and improve local services despite financial cuts, by stopping duplication of support services eight times over and not cutting front line services; (b) to create more equal access to specialist support and national capacity where and when they are needed, and (c) to strengthen the connection between services and communities, by creating a new formal relationship with each of the 32 local authorities, involving many more local councillors and better integrating with community planning partnerships.
## Key issues

### Strategic direction

The new Scottish Police Authority should ensure that it has strong arrangements in place to develop, in collaboration with the chief constable, the strategic policing plan for Scotland. In doing so, it should take account of the views of local authorities, HMICS and other stakeholders. It should also establish good arrangements for monitoring progress in achieving this plan.

Establishing an effective level of integration between partnership plans, local and national policing plans and SOAs will be critical to the success of new policing structures.

At the local level, it is important that the local policing plan clearly sets out the priorities and objectives for police services in that area, and that it is appropriately aligned with community planning arrangements. Local arrangements should also ensure that effective monitoring processes are in place.

Local commanders should ensure that local policing plans and priorities are clearly informed by feedback from local communities.

When planning and carrying out community engagement activity, local commanders should consider how best to coordinate this with other local engagement activity being carried out by partners.

### Governance and accountability

It is important that the new policing arrangements operate in a way that is consistent with recognised principles of good governance.

It is vital that the accountability arrangements are clearly articulated and that roles and responsibilities are understood and agreed.

Members of the SPA and local authorities should receive appropriate training on their respective roles and responsibilities and be provided with appropriate support to carry out these roles effectively.

There needs to be clarity about the respective roles of local police commanders and elected members in relevant partnerships and how this will support positive policing outcomes.

### Managing performance

Members of the SPA need to be clear about what performance information they expect to receive, and be able to scrutinise performance effectively.

Monitoring at a local level also needs to be supported by good-quality performance information, to allow local authorities and the local commander to improve service delivery and outcomes for local communities.

Public performance reporting needs to be informative and balanced. In addition to highlighting successes, it should clearly identify where goals have not been achieved and include better information on costs of activities and comparative performance to allow a clearer assessment of value for money.

### Managing resources

Decisions about policing priorities in both local and national policing plans will need to fully consider long-term resource implications.

In striving to make the targeted long-term efficiencies within policing, the Police Service of Scotland should have clear plans in place to deliver ongoing operating efficiencies as well as one-off cost savings or income streams.

The SPA should establish a long-term strategic financial plan, monitor how financial resources are being used, and whether efficiencies are being achieved.
The Police Service of Scotland needs to have a clear understanding of the costs of police activity.

Within the context of maintaining a minimum number of police officers, the Police Service of Scotland and SPA should undertake strategic workforce planning to ensure that it makes best use of its people resources, with functions carried out by people with the right skills, knowledge and experience.

The eight current police forces and authorities need to manage very carefully the transition process in relation to the identification and transfer of assets and liabilities.

The SPA and the Police Service of Scotland need to manage the significant police assets across the country well to ensure they are used most efficiently.

### Equalities and sustainability

It is important that the Police Service of Scotland builds upon good practice developed by individual forces to ensure it has the most effective approach to managing and reporting on equalities issues.

Training programmes for members of the SPA and those involved in agreeing local policing plans should include an appropriate level of training on equalities duties.

Policing performance information should include appropriate outcome-focused equalities measures to inform effective monitoring and scrutiny of the impact of equalities work.

Members of the SPA need to be clear about their role in improving environmental performance and should be provided with good information to facilitate effective scrutiny in this area.

The Police Service of Scotland should establish a consistent approach to sustainability that not only continues and builds upon the good work done locally by Scottish forces but embraces the best practice examples from elsewhere.
Justice Committee

34th Meeting, 2012 (Session 4), Tuesday 27 November 2012

SSI cover note

SSI title and number: Adults with Incapacity (Public Guardian’s Fees) (Scotland) Amendment Regulations 2012 (SSI 2012/289)

Type of Instrument: Negative

Coming into force: 10 December 2012

Justice Committee deadline to consider SSI: 3 December 2012

Motion for annulment lodged: No

SSI drawn to Parliament’s attention by Sub Leg Committee: Yes (see Annexe A)

Purpose of Instrument:

1. The purpose of the instrument is to specify new fee levels payable to the Public Guardian to ensure that those who use these services meet or contribute towards the associated costs to the public purse where they can afford to do so. More details on the purpose of the instrument can be found in the policy note (see Annexe B).

2. An electronic copy of the instrument can be found at:


Justice Committee consideration:

3. The instrument was laid on 31 October 2012 and the Justice Committee has been designated as lead committee.

4. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Subordinate Legislation Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.

5. Each negative instrument appears on a committee agenda at the first opportunity after the Subordinate Legislation Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a
Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Annexe A

Extract from the Subordinate Legislation Committee’s 54th Report, 2012

Adults with Incapacity (Public Guardian’s Fees) (Scotland) Amendment Regulations 2012 (SSI 2012/289) (Justice Committee)

1. This instrument specifies new fee levels payable to the Public Guardian for certain matters under the Adults with Incapacity (Scotland) Act 2000 for the periods 10 December 2012 to 31 March 2013, 1 April 2013 to 31 March 2014 and from 1 April 2014 onwards. The fees previously set by SSI 2008/52 are revoked.

2. In considering the instrument, the Committee asked the Scottish Government for clarification on certain points. The correspondence is reproduced in the Appendix.

3. The Scottish Government agrees that the two minor drafting errors described below have been identified but does not propose to correct them since it considers that they are of no operational effect. The reference to the fee currently payable is illustrative only and has no effect upon the fee to be charged under the instrument. The Committee accepts this but considers that it is normal practice to identify the existing level of fee within the instrument so that readers can identify the changes to fees which are being made. The Committee considers that this purpose has been frustrated by the drafting errors made.

4. The Committee draws this instrument to the attention of the Parliament under the general reporting ground as it contains two minor drafting errors.

5. Column 3 of the table contained in Schedule 1 sets out the fee currently payable for services provided by the Public Guardian. In entry 19 of the table the fee currently payable for estates valued between £250,001 and £500,000 is £800 and not £600-800 as stated in the instrument and similarly in entry 20 the fee currently payable for estates valued between £250,001 and £500,000 is £860 and not £660-860 as stated.

6. The Committee reports the matter despite the lack of operational effect because this instrument is one in a series of instruments revising court fee levels four of which contain patent drafting errors. When taken with the errors identified with the other fees instruments and drawn to the attention of the Parliament in this report the Committee is dissatisfied with the overall quality of this suite of instruments. It appears that there must be a doubt as to whether an adequate quality control process has been applied in relation to these instruments and the Committee considers that the Scottish Government may wish to reflect on this to ensure that its quality control process is robust.
Appendix

Adults with Incapacity (Public Guardian’s Fees) (Scotland) Amendment Regulations 2012 (SSI 2012/289)

On 7 November 2012, the Scottish Government was asked:

Whether in the table of fees contained in Schedule 1 to the instrument, the fee set out in Column 3 as the fee formerly payable in respect of:

- entry 19 for estates with a value between £250,001 and £500,000 should read £800 rather than £600 - £800;
- entry 20 for estates with a value between £250,001 and £500,000 should read £860 rather than £660 - £860;

and, if so, whether the Scottish Government intends to correct this error.

The Scottish Government responded as follows:

The Scottish Government acknowledges that the reference to “600 - 800” should read as a reference to “800” and that the reference to “660 – 860” should read as a reference to “860” in entry 19 and 20 respectively, in column 3 of the table of fees contained in Schedule 1 to the instrument.

The Government does not consider that there is a need to amend the instrument to deal with this point as the error has no legal effect. The reference to a fee formerly payable is illustrative only and has no effect upon the fee to be charged under that instrument.

Annexe B

Policy Note

Adults with Incapacity (Public Guardian’s Fees) (Scotland) Amendment Regulations 2012 (SSI 2012/289)

The above instrument is made in exercise of the powers conferred by section 7(2) of the Adults with Incapacity (Scotland) Act 200 (asp 4). The instrument is subject to the negative resolution procedure.

Policy

Fees for services offered by the Office of the Public Guardian ensure that those who make use of these services meet or contribute towards the associated costs to the public purse, where they can afford to do so. The Scottish Government’s policy is to move toward fees which reflect the full cost of the processes involved with a well-targeted system of fee exemptions to protect access to justice.

Office of Public Guardian fees are already at a level that achieve full cost recovery. No above inflation increases are therefore being sought. In addition to reflect the introduction of the on-line power of attorney a number of fees are also being reduced or removed.
Consultation

There has been a public consultation on these proposals. More detailed information is given in the attached Business and Regulatory Impact Assessment.

Financial Effects

This Order makes provision for inflation increases of 5% from 10 December 2012 and 3% for both years from 1 April 2013 and 1 April 2014. The consumer price index (CPI) has been used to calculate the inflation increase. As no inflationary increase had been applied to the 2011-12 fees, the increase in December 2012 covers 2 years. It is anticipated that additional fee income of £8k, £50k and £66k will be raised in 2012-13, 2013-14 and 2014-15 respectively.

Business and Regulatory Impact Assessment

A composite business and regulatory impact assessment for 4 fee orders relating to the Scottish courts (Sheriff Court, Justice of the Peace Court, Court of Session, High Court of Justiciary) and 1 fee order relating to the Office of the Public Guardian has been prepared and will be published shortly at: http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/partial-assessments/full/2012.

Equalities Impact Assessment

A composite equality impact assessment for 4 fee orders relating to the Scottish courts (Sheriff Court, Justice of the Peace Court, Court of Session, High Court of Justiciary) and 1 fee order relating to the Office of the Public Guardian has been prepared and will be published shortly at: http://www.scotland.gov.uk/Publications/2012.

Scottish Government
October 2012
Justice Committee

34th Meeting, 2012 (Session 4), Tuesday 27 November 2012

SSI cover note

SSI title and number: Court of Session etc. Fees Amendment Order 2012 (SSI 2012/290)

Type of Instrument: Negative

Coming into force: 10 December 2012

Justice Committee deadline to consider SSI: 3 December 2012

Motion for annulment lodged: No

SSI drawn to Parliament’s attention by Sub Leg Committee: Yes – the Scottish Government has agreed to amend the Order to address concerns raised by the SLC (see Annexe A)

Purpose of Instrument:

1. The purpose of the instrument is to ensure that those who make use of the services of the Court of Session meet or contribute towards the associated costs to the public purse where they are able to do so. More details on the purpose of the instrument can be found in the policy note (see Annexe B).

2. An electronic copy of the instrument can be found at:

   http://www.legislation.gov.uk/ssi/2012/290/contents/made

Justice Committee consideration:

3. The instrument was laid on 31 October 2012 and the Justice Committee has been designated as lead committee.

4. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Subordinate Legislation Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.

5. Each negative instrument appears on a committee agenda at the first opportunity after the Subordinate Legislation Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a
Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Annexe A

Extract from the Subordinate Legislation Committee’s 54th Report, 2012

Court of Session etc. Fees Amendment Order 2012 (SSI 2012/290) (Justice Committee)

1. This Order amends the Court of Session etc. Fees Order 1997, to specify new fee levels payable in the Offices of the Court, the Accountant of Court, and the Auditor of the Court.

2. The Order is subject to the negative procedure, and comes into force on 10 December 2012. Schedule 1 has a table of fees with the fees payable from that date. The table in Schedule 2 sets out the fees payable from 1 April 2013. The table in Schedule 3 sets out the fees payable from 1 April 2014.

3. In considering the instrument, the Committee asked the Scottish Government questions in relation to drafting errors. The correspondence is reproduced in the Appendix.

4. The Scottish Government has acknowledged that the errors described below have been made in the commencement provisions in article 1. The effect of this is that the increased fees under this instrument cannot properly be charged.

5. However the Scottish Government has undertaken to lay an amending order, to come into force on 9 December 2012, which will correct these errors prior to this Order coming into force.

6. The Scottish Government has also acknowledged that there is a minor drafting error in Schedule 1. A reference to £2035 as the fee formerly payable in Part II(H)(I)(1), column 3, of the table of fees in Schedule 1 is an error. It should read £20 – 35. This refers to a fee for registering a case and receiving and delivering up a bond of caution.

7. The Committee accepts that, as a reference to a fee formerly payable, the entry is illustrative only and has no effect upon the fees to be charged under this instrument but the Committee reports this error to the Parliament for the same reasons expressed in relation to the similar error in SSI 2012/289.

8. The Committee draws the Order to the attention of the Parliament on reporting ground (i).

9. The drafting of the Order appears to be defective. Article 1(2) brings article 5(b) into force on 1 April 2013 when article 5(a) ceases to have effect. Article 1(3) brings article 5(c) into force on 1 April 2014, when article 5(b) ceases to have effect. There are no such paragraphs (a) to (c) in article 5, and it is clear that the Order should have referred instead to the relevant paragraph of article 6. The effect of this is that the increased fees under this instrument cannot properly be charged.
10. The Committee welcomes that the Scottish Government has undertaken to lay an amending Order to correct the errors prior to this Order coming into force.

11. The Committee also draws the Order to the attention of the Parliament on the general reporting ground.

12. There is a minor drafting error in Part II(H)(I.)(1) of the table of fees in Schedule 1, in column 3. The fee formerly payable for registering a case and receiving and delivering up a bond of caution is narrated as £2035, when it should be £20 or £35. It is not considered that this error has any effect on the operation of the instrument.

13. The Committee welcomes that the Scottish Government has undertaken to correct this error in the amending Order to be laid to correct the errors in article 1.

Appendix

Court of Session etc. Fees Amendment Order 2012 (SSI 2012/290)

On 8 November 2012, the Scottish Government was asked:

1. It appears to be intended that article 6(b) is to come into force on 1 April 2013 (and article 6(a) cease to have effect on that date), and article 6(c) should come into force on 1 April 2014 (and article 6(b) cease to have effect on that date).

However, (i) article 1(2) brings article 5(b) into force on 1 April 2013 when article 5(a) ceases to have effect, and article 1(3) brings article 5(c) into force on 1 April 2014, when article 5(b) ceases to have effect, and (ii) there are no such paragraphs (a) to (c) of article 5.

Would you propose to correct these errors in the commencement of the provisions, by laying a revoking or amending instrument, timeously for the coming into force of certain provisions in the Order on 10 December 2012?

2. In Part II(H)(I.)(1) of the table of fees in Schedule 1 (on page 7), in column 3 the fee formerly payable for registering a case and receiving and delivering up a bond of caution is narrated as £2035, when it is plain from the footnote (b) that the previous fee in terms of S.I. 1997/688 is either £20 or £35.

Would you also propose to correct this by an amendment?

The Scottish Government responded as follows:

1. The Scottish Government acknowledges that the points raised above are errors and thanks the SLC legal advisors for bringing them to the Government's attention. The Government will lay an amending order, to come into force on 9 December 2012, which will correct these errors prior to this Order coming into force.

The amending order will also correct similar errors in the High Court of Justiciary Fees Amendment Order 2012 and the Sheriff Court Fees Amendment Order 2012.
2. The Scottish Government acknowledges that the reference to “2035” as the fee formerly payable in Part II(H)(I)(1) of the table of fees in Schedule 1 (on page 7), column 3, is an error and agrees the entry should read “20 – 35”. The government would point out that as a reference to a fee formerly payable, the entry is illustrative only and has no effect upon the fee to be charged under this instrument. However, given that the government is to amend this order in connection with the points raised in question 1, it will take this opportunity to correct the error.

Annexe B

Policy Note

Court of Session etc. Fees Amendment Order 2012 (SSI 2012/290)

The above instrument is made in exercise of the powers conferred by section 2 of the Courts of Law Fees (Scotland) Act 1895 (c. 14). The instrument is subject to negative resolution procedure.

Policy

Court fees and fees for services offered by the Court of Session ensure that those who make use of the court meet or contribute towards the associated costs to the public purse, where they can afford to do so. The Scottish Government’s policy is to move toward fees which reflect the full cost of the processes involved with a well-targeted system of fee exemptions to protect access to justice.

The Scottish Government is committed to bringing forward legislative proposals to reform the civil courts in Scotland and the Scottish Civil Justice Council and Criminal Legal Assistance Bill which is currently being considered by the Scottish Parliament will establish a Scottish Civil Justice Council to undertake the necessary review of civil court rules. This was one of the recommendations contained in the Report of the Scottish Civil Courts Review prepared at Minister’ request by the then Lord Justice Clerk, Lord Gill.

In addition to inflationary increases the further increases being made to these fees will provide funding for that civil court reform and improvement. It is anticipated that the proposed increases will bring the current level of cost recovery at the Court of Session from 66% to 78%.

Consultation

There has been a public consultation on these proposals. More detailed information is given in the associated Business and Regulatory Impact Assessment

Financial Effects

This Order makes provision for inflation increases of 5% from 10 December 2012 and 3% for both years from 1 April 2013 and 1 April 2014. The consumer price index (CPI) has been used to calculate the inflation increase. As no inflationary increase had been applied to the 2011-12 fees, the increase in December 2012 covers 2 years. A further 1% increase has also been applied to some of the fees to provide funding for initial set up costs for civil court reform.
It is anticipated that additional fee income of £200k, £1.8m and £2m will be raised in 2012-13, 2013-14 and 2014-15 respectively.

**Business and Regulatory Impact Assessment**

There are 5 instruments being made at the same time relative to fees. A composite business and regulatory impact assessment for the 4 fee orders relating to the Scottish courts (Sheriff Court, Justice of the Peace Court, Court of Session, High Court of Justiciary) and the 1 set of fee regulations relating to the Office of the Public Guardian has been prepared and will be published shortly at: http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/partial-assessments/full/2012.

**Equalities Impact Assessment**

A composite equality impact assessment for the 4 fee orders relating to the Scottish courts (Sheriff Court, Justice of the Peace Court, Court of Session, High Court of Justiciary) and the 1 set of fee regulations relating to the Office of the Public Guardian has been prepared and will be published shortly at: http://www.scotland.gov.uk/Publications/2012.

Scottish Government
October 2012
Justice Committee

34th Meeting, 2012 (Session 4), Tuesday 27 November 2012

SSI cover note

SSI title and number: High Court of Justiciary Fees Amendment Order 2012 (SSI 2012/291)

Type of Instrument: Negative

Coming into force: 10 December 2012

Justice Committee deadline to consider SSI: 3 December 2012

Motion for annulment lodged: No

SSI drawn to Parliament’s attention by Sub Leg Committee: Yes - the Scottish Government has agreed to amend the Order to address concerns raised by the SLC (see Annexe A)

Purpose of Instrument:

1. The purpose of the instrument is to ensure that those who make use of the services of the High Court of Justiciary meet or contribute towards the associated costs to the public purse where they are able to do so. More details on the purpose of the instrument can be found in the policy note (see Annexe B).

2. An electronic copy of the instrument can be found at:


Justice Committee consideration:

3. The instrument was laid on 31 October 2012 and the Justice Committee has been designated as lead committee.

4. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Subordinate Legislation Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.

5. Each negative instrument appears on a committee agenda at the first opportunity after the Subordinate Legislation Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a
Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Annexe A

Extract from the Subordinate Legislation Committee’s 54th Report, 2012

High Court of Justiciary Fees Amendment Order 2012 (SSI 2012/291) (Justice Committee)

1. This Order amends the High Court of Justiciary Fees Order 1984, to specify new fee levels payable in the High Court of Justiciary.

2. The Order is subject to the negative procedure, and comes into force on 10 December 2012. Schedule 1 has a table of fees with the fees payable from that date. The table in Schedule 2 sets out the fees payable from 1 April 2013. The table in Schedule 3 sets out the fees payable from 1 April 2014.

3. In considering the instrument, the Committee asked the Scottish Government a question in connection with drafting errors. The correspondence is reproduced in the Appendix.

4. The Scottish Government has acknowledged that the errors described below have been made in the commencement provisions in article 1. The effect of this is that the increased fees under this instrument cannot properly be charged.

5. However the Scottish Government has undertaken to lay an amending order, to come into force on 9th December 2012, which will correct these errors prior to this Order coming into force.

6. The Committee draws the Order to the attention of the Parliament on reporting ground (i).

7. The drafting of the Order appears to be defective. Article 1(2) brings article 3(b) into force on 1 April 2013 when article 3(a) ceases to have effect. Article 1(3) brings article 3(c) into force on 1 April 2014, when article 3(b) ceases to have effect. There are no such paragraphs (a) to (c) in article 3, and it is clear that the Order should have referred instead to the relevant paragraph of article 4. The effect of this is that the increased fees under this instrument cannot properly be charged.

8. The Committee welcomes that the Scottish Government has undertaken to lay an amending Order to correct the errors prior to this Order coming into force.
Appendix

High Court of Justiciary Fees Amendment Order 2012 (SSI 2012/291)

On 8 November 2012, the Scottish Government was asked:

It appears to be intended that article 4(b) is to come into force on 1 April 2013 (and article 4(a) cease to have effect on that date), and article 4(c) should come into force on 1 April 2014 (and article 4(b) cease to have effect on that date).

However, (i) article 1(2) brings article 3(b) into force on 1 April 2013 when article 3(a) ceases to have effect, and article 1(3) brings article 3(c) into force on 1 April 2014, when article 3(b) ceases to have effect, and (ii) there are no such paragraphs (a) to (c) of article 3.

Would you propose to correct these errors in the commencement of the provisions, by laying a revoking or amending instrument, timeously for the coming into force of certain provisions in the Order on 10 December 2012?

The Scottish Government responded as follows:

1. The Scottish Government acknowledges that the points raised above are errors and thanks the SLC legal advisors for bringing them to the Government's attention. The Government will lay an amending order, to come into force on 9 December 2012, which will correct these errors prior to this Order coming into force.

The amending order will also correct similar errors in the Sheriff Court Fees Amendment Order 2012 and the Court of Session etc. Fees Amendment Order 2012.

Annexe B

Policy Note

High Court of Justiciary Fees Amendment Order 2012 (SSI 2012/291)

The above instrument is made in exercise of the powers conferred by section 2 of the Courts of Law Fees (Scotland) Act 1895 (c14). The instrument is subject to negative resolution procedure.

Policy

Court fees and fees for services offered by the High Court of Justiciary ensure that those who make use of the court meet or contribute towards the associated costs to the public purse, where they can afford to do so. The Scottish Government's policy is to move toward fees which reflect the full cost of the processes involved with a well-targeted system of fee exemptions to protect access to justice. In the case of High Court Fees however, our policy is to make provision for inflationary increases only.
Consultation

There has been a public consultation on these proposals. More detailed information is given in the associated Business and Regulatory Impact Assessment.

Financial Effects

This Order makes provision for inflation increases of 5% from 10 December 2012 and 3% for both years from 1 April 2013 and 1 April 2014. The consumer price index (CPI) has been used to calculate the inflation increase. As no inflationary increase had been applied to the 2011-12 fees, the increase in December 2012 covers 2 years. Increases in fee income for these fees are minimal.

Business and Regulatory Impact Assessment

There are 5 instruments being made at the same time relative to fees. A composite business and regulatory impact assessment for the 4 fee orders relating to the Scottish courts (Sheriff Court, Justice of the Peace Court, Court of Session, High Court of Justiciary) and the 1 set of fee regulations relating to the Office of the Public Guardian has been prepared and will be published shortly at:

Equalities Impact Assessment

A composite equality impact assessment for the 4 fee orders relating to the Scottish courts (Sheriff Court, Justice of the Peace Court, Court of Session, High Court of Justiciary) and the 1 set of fee regulations relating to the Office of the Public Guardian has been prepared and will be published shortly at:

Scottish Government
October 2012
Justice Committee

34th Meeting, 2012 (Session 4), Tuesday 27 November 2012

SSI cover note

SSI title and number: Justice of the Peace Court Fees (Scotland) Order 2012 (SSI 2012/292)

Type of Instrument: Negative

Coming into force: 10 December 2012

Justice Committee deadline to consider SSI: 3 December 2012

Motion for annulment lodged: No

SSI drawn to Parliament’s attention by Sub Leg Committee: No

Purpose of Instrument:

1. The purpose of the instrument is to make provision for the fees payable to Justice of the Peace Courts in Scotland and to replace the District Court Fees Order 1984. More details on the purpose of the instrument can be found in the policy note (see Annexe A).

2. An electronic copy of the instrument can be found at:


Justice Committee consideration:

3. The instrument was laid on 31 October 2012 and the Justice Committee has been designated as lead committee.

4. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Subordinate Legislation Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.

5. Each negative instrument appears on a committee agenda at the first opportunity after the Subordinate Legislation Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a
Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Annexe A

Policy Note

Justice of the Peace Court Fees (Scotland) Order 2012 (SSI 2012/292)

The above instrument is made in exercise of the powers conferred by section 2 of the Courts of Law Fees (Scotland) Act 1895 (c. 14). The instrument is subject to negative resolution procedure.

Policy

Court fees and fees for services offered by the Justice of the Peace Courts ensure that those who make use of the court meet or contribute towards the associated costs to the public purse, where they can afford to do so. The Scottish Government’s policy is to move toward fees which reflect the full cost of the processes involved with a well-targeted system of fee exemptions to protect access to justice.

Consultation

There has been a public consultation on these proposals. More detailed information is given in the attached Business and Regulatory Impact Assessment.

Financial Effects

This Order replaces the District Court Fees Order 1984. These fees have not been updated since 1984 and we have taken the opportunity to review and update them and to introduce a fee for utility warrants.

Increases in fee income for these fees are minimal.

Business and Regulatory Impact Assessment

There are 5 instruments being made at the same time relative to fees. A composite business and regulatory impact assessment for the 4 fee orders relating to the Scottish courts (Sheriff Court, Justice of the Peace Court, Court of Session, High Court of Justiciary) and the 1 set of fee regulations relating to the Office of the Public Guardian has been prepared and will be published shortly at: http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/partial-assessments/full/2012.

Equalities Impact Assessment

A composite equality impact assessment for the 4 fee orders relating to the Scottish courts (Sheriff Court, Justice of the Peace Court, Court of Session, High Court of Justiciary) and the 1 set of fee regulations relating to the Office of the Public Guardian has been prepared and will be published shortly at: http://www.scotland.gov.uk/Publications/2012.

October 2012
Justice Committee

34th Meeting, 2012 (Session 4), Tuesday 27 November 2012

SSI cover note

SSI title and number: Sheriff Court Fees Amendment Order 2012 (SSI 2012/293)

Type of Instrument: Negative

Coming into force: 10 December 2012

Justice Committee deadline to consider SSI: 3 December 2012

Motion for annulment lodged: No

SSI drawn to Parliament’s attention by Sub Leg Committee: Yes - the Scottish Government has agreed to amend the Order to address concerns raised by the SLC (see Annexe A)

Purpose of Instrument:

1. The purpose of the instrument is to ensure that those who make use of the services of the Sheriff Courts meet or contribute towards the associated costs to the public purse where they are able to do so. More details on the purpose of the instrument can be found in the policy note (see Annexe B).

2. An electronic copy of the instrument can be found at:

   http://www.legislation.gov.uk/ssi/2012/293/contents/made

Justice Committee consideration:

3. The instrument was laid on 31 October 2012 and the Justice Committee has been designated as lead committee.

4. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Subordinate Legislation Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.

5. Each negative instrument appears on a committee agenda at the first opportunity after the Subordinate Legislation Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a
Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

**Annexe A**

*Extract from the Subordinate Legislation Committee’s 54th Report, 2012*

**Sheriff Court Fees Amendment Order 2012 (SSI 2012/293)
(Justice Committee)**

1. This Order amends the Sheriff Court Fees Order 1997, to specify new fee levels payable in the Sheriff Court.

2. The Order is subject to the negative procedure, and comes into force on 10 December 2012. Schedule 1 has a table of fees with the fees payable from that date. The table in Schedule 2 sets out the fees payable from 1 April 2013. The table in Schedule 3 sets out the fees payable from 1 April 2014.

3. In considering the instrument, the Committee asked the Scottish Government a question in connection with the drafting error. The correspondence is reproduced in Appendix 4.

4. The Scottish Government has acknowledged that errors described below have been made in the commencement provisions in article 1. The effect of this is that the increased fees under this instrument cannot properly be charged.

5. However the Scottish Government has undertaken to lay an amending order, to come into force on 9th December 2012, which will correct these errors prior to this Order coming into force.

6. The Committee draws the Order to the attention of the Parliament on reporting ground (i).

7. The drafting of the Order appears to be defective. Article 1(2) brings article 2(11)(b) into force on 1 April 2013 when article 2(11)(a) ceases to have effect. Article 1(3) brings article 2(11)(c) into force on 1 April 2014. There is no article 2(11), and it is clear that the Order should have referred instead to the relevant sub-paragraphs of article 2(10). The effect of this is that the increased fees under this instrument cannot properly be charged.

8. The Committee welcomes that the Scottish Government has undertaken to lay an amending Order to correct the errors prior to this Order coming into force.

**Appendix**

**Sheriff Court Fees Amendment Order 2012 (SSI 2012/293)**

On 7 November 2012, the Scottish Government was asked:

It appears to be intended that article 2(10)(b) is to come into force on 1 April 2013 (and article 2(10)(a) cease to have effect on that date), and article 2(10)(c) should
come into force on 1 April 2014 (and article 2(10)(b) cease to have effect on that date).

However, (i) article 1(2) brings article 2(11)(b) into force on 1 April 2013 when article 2(11)(a) ceases to have effect, and article 1(3) brings article 2(11)(c) into force on 1 April 2014, when article 2(11)(b) ceases to have effect, and (ii) there is no article 2(11).

Would you propose to correct these errors in the commencement of the provisions, by laying a revoking or amending instrument, timeously for the coming into force of certain provisions in the Order on 10 December 2012?

The Scottish Government responded as follows:

1. The Scottish Government acknowledges that the points raised above are errors and thanks the SLC legal advisors for bringing them to the Government's attention. The Government will lay an amending order, to come into force on 9 December 2012, which will correct these errors prior to this Order coming into force.

The amending order will also correct similar errors in the High Court of Justiciary Fees Amendment Order 2012 and the Court of Session etc. Fees Amendment Order 2012.

Annexe B

Policy Note

Sheriff Court Fees Amendment Order 2012 (SSI 2012/293)

The above instrument is made in exercise of the powers conferred by section 2 of the Courts of Law Fees (Scotland) Act 1895 (c. 14). The instrument is subject to negative resolution procedure.

Policy

Court fees and fees for services offered by Sheriff Courts ensure that those who make use of the court meet or contribute towards the associated costs to the public purse, where they can afford to do so. The Scottish Government’s policy is to move toward fees which reflect the full cost of the processes involved with a well-targeted system of fee exemptions to protect access to justice.

The Scottish Government is committed to bringing forward legislative proposals to reforming the civil courts in Scotland and the Scottish Civil Justice Council and Criminal Legal Assistance Bill which is currently being considered by the Scottish Parliament will establish a Scottish Civil Justice Council to undertake the necessary review of civil court rules. This was one of the recommendations contained in the Report of the Scottish Civil Courts Review prepared at Minister’s request by the then Lord Justice Clerk, Lord Gill.

In addition to inflationary increases the further increases being made to these fees will provide funding for civil court reform and improvement. It is anticipated that the proposed increases will increase the level of cost recovery from 78% to 81%.
Consultation

There has been a public consultation on these proposals. More detailed information is given in the associated Business and Regulatory Impact Assessment.

Financial Effects

This Order makes provision for inflation increases of 5% from 10 December 2012 and 3% for both years from 1 April 2013 and 1 April 2014. The consumer price index (CPI) has been used to calculate the inflation increase. As no inflationary increase had been applied to the 2011-12 fees, the increase in December 2012 covers 2 years. A further 1% increase has also been applied to some of the fees to provide funding for initial set up costs for civil court reform.

It is anticipated that additional fee income of £200k, £1.2m and £1.7m will be raised in 2012-13, 2013-14 and 2014-15 respectively.

Business and Regulatory Impact Assessment

There are 5 instruments being made at the same time relative to fees. A composite business and regulatory impact assessment for the 4 fee orders relating to the Scottish courts (Sheriff Court, Justice of the Peace Court, Court of Session, High Court of Justiciary) and the 1 set of fee regulations relating to the Office of the Public Guardian has been prepared and will be published shortly at: http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/partial-assessments/full/2012.

Equalities Impact Assessment

A composite equality impact assessment for the 4 fee orders relating to the Scottish courts (Sheriff Court, Justice of the Peace Court, Court of Session, High Court of Justiciary) and the 1 set of fee regulations relating to the Office of the Public Guardian has been prepared and will be published shortly at: http://www.scotland.gov.uk/Publications/2012.

Scottish Government
October 2012
Justice Committee

Transfer of prison healthcare to the NHS

Written submission from NHS Forth Valley

Forth Valley Drug and Alcohol Integrated Pathway 2012 – Background Information

Following the transfer of healthcare from the Scottish Prison Service (SPS) to the NHS in November 2011 NHS Forth Valley have been working in partnership with Forth Valley Alcohol and Drugs Partnership (FVADP), managers from within the SPS setting and more recently with the Acting Assistant Director of Health and Care, to develop appropriate pathways for those in prisons who require support with alcohol and/or drug (including tobacco) addiction.

The main focus at transfer was to resolve any urgent matters that operational staff had with the prisoner care i.e. continuity of treatment regimes. These issues were recognised at a development day, staff from community and SPS setting were able to discuss and debate processes, seeking solutions where problems were identified. An action plan was subsequently developed and sub-groups convened, in the main those issues that were raised have been resolved.

There are some areas which still require more work i.e. drug testing guidelines, protocols etc. All of these have been transferred to the work plan of Forth Valley Treatment Services, Integrated Clinical Governance Group (ICGG). This group straddles both statutory and third sector provision; NHS prison healthcare staff are members of this group. The main focus of the ICGG work plan is to support the delivery of evidence based treatment interventions, service improvement, and monitor the overall governance and quality of the Forth Valley substance misuse treatment system.

More recently FVADP received an allocation from the Scottish Government to support the delivery of alcohol interventions within the three FV establishments; this focussed us on reviewing the available evidence from published research and the recent assessments that have been undertaken of prisoner need, including our local FV needs assessment for alcohol and drugs. From the evidence available we have worked in partnership to develop a pathway for alcohol and drug treatment and support. It is envisaged that the pathway will deliver a care planned person centred approach to treatment. This work is currently at the ‘draft’ stage.

It is anticipated that any future contract that NHS Forth Valley put in place within the SPS setting, would seek to improve the assessment process overall and support the delivery of a recovery focussed treatment pathway, which will emulate those interventions currently available in the Community. Forth Valley recently shared the draft pathway work at a national event hosted by NHS Health Scotland.

In addition we are currently developing the framework to capture outcomes data from those interventions currently delivered within the SPS setting.
Measuring the waiting time for drug and alcohol treatment has also been a focus; this remains a priority area for improvement work. A recent waiting time improvement event was attended by all NHS healthcare staff who work within the SPS setting. Forth Valley has significantly improved data quality and compliance, and will continue to work on recording all the treatment modalities which are included in the HEAT A11 target, which is designed to ensure faster access to drug and alcohol treatment in Scotland.

We have a complete overview of the Forth Valley ‘naloxone’ programme, capturing all activity within the SPS setting within one data collection system. NHS Forth Valley, in partnership with FVADP plans to take a whole system approach to reviewing the circumstances relating to any drug related death that may occur within the SPS setting. In addition we are currently developing the framework to capture outcomes data from the interventions delivered within the SPS setting.

It is our intention to report the SPS substance treatment expenditure alongside the global Forth Valley Community Substance Misuse Services, currently reported to FVADP, to support the review of all resources in this area ensuring treatment modalities are cost effective, efficient and sustainable.

Elaine Lawlor
Coordinator
Forth Valley Alcohol and Drug Partnership
Justice Committee

34th Meeting, 2012 (Session 4), Tuesday 27 November 2012

Transfer of prison healthcare to the NHS

Written submission from the Scottish Prison Service

I refer to the question raised by Graeme Pearson, MSP at the Justice Committee evidence session on the transfer of prisoner healthcare to NHS on 20 November.

The written response requested from the Scottish Prison Service is detailed below for the information of the Committee.

Question
“HM inspectorate of prisons for Scotland has reported that healthcare services in Dumfries operate under difficult conditions. Will someone in your organisation pick up on that comment and will they work through what those difficult situations are and repair them?”

Response
Management from HMP Dumfries have confirmed that the refurbishment of the health centre facilities at HMP Dumfries is complete and a full range of clinical services are now provided from that location and the satellite surgery in the residential area. The Prison Health Service is now fully staffed and has bank nurse provision if required. Medical service provision has not changed since hand over to the NHS and is operating without any issues. The Health Board has employed a full time mental health nurse at the establishment and regular Multi-Disciplinary Mental Health Team (MDMHT) meetings take place. The Health Board has invested additional resources to reduce the dental waiting list and the waiting time is now comparable with the community. All other aspects of care is commensurate with that which is available in the community.

Ruth Parker
Acting Assistant Director of Health & Care
Scottish Prison Service
23 November 2012