

MEMORANDUM

CRIMINAL JUSTICE BILL

Purpose

1. To provide details of the Criminal Justice Bill and to highlight those provisions which are within the competence of the Scottish Parliament and which the Parliament is invited to agree should be considered by the UK Parliament.

The Bill: background and contents

2. The Criminal Justice Bill, which was introduced in the House of Commons on 21 November, is the legislation which has emerged from the consultation which took place through the White Paper 'Justice for All', published in July 2002. (CM 5563) The White Paper set out the options which the UK Government had in mind with regard to reforms to the criminal justice system in England and Wales. The White Paper took account of Lord Auld's report into the practices and procedures of the criminal courts in England and Wales and also the Halliday report into sentencing framework, but also covered a wider spectrum of criminal justice issues, including police reform.

3. The Bill consists of a package of reforms to the criminal trials process from charge to verdict, including a package of reforms to the sentencing framework providing new sentencing options, provisions addressing drug-related offending, and juvenile sentencing. The Bill is a mix of new provision and re-enactments of previous legislation. It is in 14 Parts as follows:

- Part 1 – makes amendment to the Police and Criminal Evidence Act 1984 such as extension of powers to stop and search.
- Part 2 - makes certain provision in relation to bail, such as grant and conditions.
- Part 3 – contains measures in connection with conditional cautions given by the police.
- Part 4 – deals with the charging and release of persons in police detention and introduces a new method of instituting proceedings.
- Part 5 – makes various provision with regard to disclosure, including initial duties of disclosure by the prosecutor, defence disclosure and contents of defence statement.
- Part 6 – makes provision related to the allocation and transfer of offences, for instance, the transfer of cases to the Crown Court.
- Part 7 – makes certain arrangements in connection with trial procedure, including application by the prosecution for complex or lengthy trials, or where there is danger of jury tampering, to be conducted without a jury.
- Part 8 – deals with the provisions necessary to enable live links to be used in criminal proceedings, including matters relating to rules of court.

- Part 9 – is about prosecution appeals and includes restrictions on reporting and offences where this is contravened.
- Part 10 – makes provision for retrial for serious offences and covers matters such as new evidence, the interests of justice, restrictions on reporting and offences where this is contravened.
- Part 11 – on evidence, consists of three Chapters, the first in relation to evidence of “bad character”, the second dealing with hearsay evidence and its admissibility, and the third is supplementary.
- Part 12 – on sentencing, consists of 8 Chapters. Chapter 1 makes certain general provisions about sentencing, such as its purpose, reductions in sentences for guilty pleas, increases for racial or religious aggravation, definition of community sentence, etc. Chapter 2 deals with community orders and Chapter 3 with prison sentences of less than 12 months. Chapter 4 makes further provision about orders given under Chapters 2 and 3, such as the duties of a responsible officer, unpaid work requirement, drug rehabilitation requirement, etc. Chapter 5 makes provision in connection with dangerous offenders and, for example, specifies relevant offences. Chapter 6 deals with the release of prisoners on licence and includes provision for recall. Chapter 7 makes other provision about sentencing, such as deferment, and Chapter 8 is supplementary.
- Part 13 – miscellaneous, contains various provision such as guilty pleas and non-attendance at court, jury service, etc.
- Part 14 – general, deals with matters such as orders and rules, commencement, etc.

Matters within devolved competence

4. The provisions of the Criminal Justice Bill, relating as they do to reforms to the criminal justice system in England and Wales (with limited application to Northern Ireland), are almost entirely outwith the competence of the Scottish Parliament. There are, however, a few exceptions to this as explained in paragraphs 5 to 12 below.

Certain provision in relation to search warrants

5. The purpose of the proposed amendment, in Part 1 of the Bill, to section 2 of the Criminal Justice Act 1987, is to enable an "appropriate person" (either a member of the Serious Fraud Office or some other person authorised by the Director) accompanying a constable who is executing a search warrant under that section to exercise certain powers. These are the same powers that are currently available to the constable and amount to entering and searching premises and taking possession of or preserving documents. The appropriate person will only be able to exercise these powers in the company, and under the supervision, of a constable. Section 2 of the 1987 Act already extends to Scotland and it is proposed that this amendment will have similar extent. This will mean that where a fraud investigation is being undertaken by the Director of the Serious Fraud Office in England and Wales and Northern Ireland, the powers available to investigators acting on his behalf are consistent across the UK. As a matter of practice such warrants would not be executed without the involvement of Scottish police officers.

Reporting restrictions

6. The Bill makes provision, in Part 9, to give the prosecution a right of appeal against judicial rulings that terminate the case early, before the jury has been given the opportunity to consider the evidence. The prosecution will be able to appeal such rulings made either at the pre-trial hearing or during the trial up to the conclusion of the prosecution case. It is proposed that there will be an interlocutory appeal system, which means that, depending on the circumstances of the case, either the trial will be adjourned or the jury will be discharged pending the outcome of the appeal. If the appeal is successful either the original trial will resume or a fresh trial will take place. Unsuccessful appeals will result in the acquittal of the defendant.

7. In order to preserve the integrity of the trial process and ensure that, if the appeal is successful, matters prejudicial to the continuing or fresh trial are not reported, it is proposed to restrict press and media reporting of the procedures relating to the appeal application and the appeal itself. Other matters relating to the trial would continue to be able to be reported. Details of the appeal would be able to be reported either at the conclusion of the appeal, if this resulted in the acquittal of the defendant, or at the conclusion of the trial, if the appeal was successful. Both the trial judge and the Court of Appeal will have power to vary the restriction after taking into account any objections from the defendant. Provisions in relation to such reporting restrictions are contained in Part 9 of the Bill and, in order to make them effective, it is proposed that these would apply also in Scotland.

8. The Bill also makes provision, in Part 10, to enable a fresh prosecution to be pursued for certain serious offences where new evidence may cast doubt on an acquittal. It is also proposed to bring in reporting restrictions in these instances to combat the risk of prejudicing the subsequent proceedings, so that the press and media would be prevented from reporting an application for a retrial or the details of the application. This would last until the application was dismissed or the retrial finished. Provisions in relation to such reporting restrictions are contained in Part 10 of the Bill and it is proposed that they apply to Scotland.

9. Finally, Part 13 makes certain changes in relation to reporting restrictions for preparatory hearings held in long and complex fraud cases so that these extend to Northern Ireland, which is not covered in the present legislation. The current legislation does extend to Scotland and it is proposed that this will continue to be the case in this re-enactment.

Certain provisions in relation to breach of sentence

10. Part 12 of the Bill makes provision in relation to sentencing. In particular, Chapter 3 makes certain arrangements in relation to prison sentences of less than 12 months and, inter alia, certain provision in relation to breach, revocation or amendment of suspended sentence order, and the effect of a further conviction. Where an offender is convicted in Scotland of an offence, and the court is informed that the offence was committed during the operational period of a suspended sentence passed in England and Wales, then it is proposed that the court must intimate the notice of the conviction to the court where the suspended sentence was passed. This is, in fact, a re-enactment of current provision in this respect.

Other sentencing matters

11. Chapter 7 of Part 12 makes certain miscellaneous changes to sentencing provision. Within these changes there are provisions made in relation to the alteration of maximum penalties for summary and either way offences, including amendment of paragraph 1 of schedule 2 of the European Communities Act 1972, which extends to Scotland. However the changes to that paragraph only alter the maximum penalties in relation to England and Wales.

Amendments

12. Finally, there are minor and consequential amendments to the Criminal Procedure (Scotland) Act 1995 and the Social Work (Scotland) Act 1968 to take account of the new definition of community order in England and Wales.

Consideration and proposal

13. The Executive considers that the matters within the Criminal Justice Bill that are within devolved competence should be considered by the UK Parliament. The Bill itself is concerned with changes to the criminal justice system in England and Wales, and there are no substantive changes to Scots law. In the interests of justice there is, however, a good argument that reporting restrictions should apply to the new procedures identified above across the UK and on a consistent timescale. It would be undesirable for gaps to be left in reporting restrictions, for example, after the legislation is passed and pending future legislative opportunities in the Scottish Parliament. The Executive therefore considers that the Sewel route is appropriate to cover reporting restrictions. On grounds of consistency and also in the interests of justice it is also proposed to extend to Scotland the provisions on search warrants. The provisions with regard to sentencing maintain the status quo as far as Scotland is concerned and other amendments are minor and consequential.

Scottish Executive

November 2002