



## **Criminal Justice and Licensing (Scotland) Bill**

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Bill Number:	SP Bill 24
Introduced on:	5 March 2009
Introduced by:	Kenny MacAskill MSP (Government Bill)
Passed:	30 June 2010
Royal Assent:	6 August 2010

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### **Passage of the Bill**

The [Criminal Justice and Licensing \(Scotland\) Bill](#) was introduced in the Parliament in March 2009. The Justice Committee, as lead committee, commenced taking stage 1 oral evidence on the general principles of the Bill in May 2009. The stage 1 debate took place in November 2009 and the [Bill was passed](#) following the stage 3 parliamentary debate in June 2010.

### **Provisions of the Bill**

The Bill contains provisions relating to a wide range of distinct policy proposals, including ones dealing with sentencing, criminal offences, criminal procedure, disclosure of evidence, licensing under the Civic Government (Scotland) Act 1982 and alcohol licensing. During the stage 3 debate, the Justice Secretary noted that:

The Bill as introduced contained provisions relating to around 80 different topics. After stage 2, that number has grown to around 100 topics. The Bill is a comprehensive piece of legislation that takes forward the Government's priorities to reform our justice system by providing measures that strengthen, simplify and modernise it." (Official Report 30 June 2010, col 27979)

### **Parliamentary consideration**

Key areas of debate during scrutiny of the Bill included:

- proposals for a sentencing council – the Bill as introduced sought to create a Scottish Sentencing Council tasked with preparing sentencing guidelines for the criminal courts. Amendments agreed during stage 2 altered the proposed composition of the Council and provided that any guidelines will only take effect following endorsement by the High Court
- use of short custodial sentences – the Bill as introduced included a provision seeking to discourage the use of short custodial sentences (defined as those of six months or less). The Justice Committee was divided on the extent to which the use of such sentences is appropriate and a stage 2 amendment, seeking to delete the relevant provision of the Bill, was agreed by majority (with the convener using his casting vote). Following vigorous debate, a stage 3 amendment adding a provision similar to that contained in the Bill as introduced, but with short custodial sentences defined as those of three months or less, was agreed by a small majority
- sentencing for carrying knives – a stage 2 amendment, agreed by a majority of the Justice Committee (with the convener using his casting vote), added a new provision to the Bill seeking to establish a custodial sentence of at least six months as the norm for any adult convicted of carrying a knife in a public place. A stage 3 amendment deleting the new provision was, after robust debate, agreed by a small majority
- serious organised crime – the Bill as introduced sought to create various new offences relating to serious organised crime. The Justice Committee’s stage 1 report expressed support for the underlying intention of the provisions but raised concerns about some of the specifics (eg the scope of an offence dealing with the failure to report serious organised crime). The Scottish Government sought to provide reassurance and the relevant provisions were passed with only limited amendment (despite continuing concerns amongst some members)
- stalking and breach of the peace – stage 2 amendments sought to create a specific offence of stalking and a wider offence of threatening, alarming or distressing behaviour. It was intended that the second offence (proposed by the Scottish Government) could be used to prosecute both stalking and other activities which might be difficult to successfully prosecute as a result of recent court decisions clarifying the scope of the existing common law offence of breach of the peace. The specific stalking offence was agreed at stage 2 (although amended somewhat at stage 3). The Government did not move its stage 2 amendment setting out the wider offence, but noted that it would bring forward an alternative amendment at stage 3. A Government amendment inserting a new offence of threatening or abusive behaviour was agreed at stage 3. Although somewhat narrower than the offence considered at stage 2, some members still had concerns about the scope of this new offence
- prostitution – a number of stage 2 amendments proposed new offences relating to prostitution and paid-for sexual activities. Following the consideration of additional evidence sought during stage 2, some members of the Justice Committee highlighted the need for more

detailed consideration of the issues before seeking to legislate. Although some of the proposals found support amongst members of the committee, relevant amendments were either rejected or not moved. A number of similar amendments were considered but rejected by a majority of members at stage 3. During the debate, the Justice Secretary argued that the outcome of ongoing research into prostitution and trafficking should be considered before legislating further on the topic

- age of criminal responsibility – the Bill as introduced sought to amend current legal provisions so as to prevent any child under the age of 12 being prosecuted in the criminal courts. It did not seek to alter the legal presumption that no child under the age of eight years can be guilty of any offence. The result of this would be that a child aged between eight and 12 could still be held to have the mental capacity to commit a crime but could, where some form of compulsory intervention is considered necessary, only be dealt with through the children’s hearings system. Some members of the Justice Committee were attracted to the possibility of going further and increasing to 12 the age below which a child is deemed to lack the mental capacity to commit a crime. One member lodged a stage 2 amendment to achieve this result. It was, however, rejected by the committee. The relevant provisions of the Bill were agreed without amendment
- retention of fingerprint and DNA data – the Bill as introduced included provisions to extend existing police powers in relation to the retention of such data where there has been an unsuccessful prosecution, or where a child is dealt with through the children’s hearings system in relation to certain sexual and violent offences. Various stage 2 amendments lodged by members of the Justice Committee, seeking to alter these provisions, were rejected by the committee. However, amendments lodged by another committee member, seeking to extend retention powers where an alleged offender accepts certain alternatives to prosecution (eg a fiscal fine), were agreed
- disclosure of evidence in criminal cases – the Bill as introduced set out a statutory framework for the disclosure of evidence, by the prosecution to the accused, in criminal cases. The Justice Committee’s stage 1 report indicated that it supported the general policy of clarifying the rules on disclosure but raised some concerns (eg in relation to the complex nature of the provisions). The Scottish Government sought to reassure the committee in relation to the detail of the provisions and noted that a scheme for disclosure in other parts of the UK has statutory provisions of a similar length to those proposed in the Bill

The Bill as amended at stage 3 was passed with the support of a majority of members (for 64, against 61, abstentions 0). Labour and Conservative members voted against the Bill on the basis that they did not support the approach taken on certain sentencing issues – in particular, in relation to the use of short custodial sentences.