Justice Committee

Scottish Government’s Draft Budget 2013-14

Written submission from the Law Society of Scotland

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors and ensure we benefit from knowledge and expertise from both within and out with the solicitor profession.

The Law Society of Scotland’s Access to Justice welcomes the opportunity to consider the call for written evidence from the Justice Committee on the Scottish Government Draft Budget 2013-14 and has comments in three areas: the courts budget; the budget for police reform; financing the Commission on women Offenders’ recommendations.

COURTS

Department expenditure limits

The Scottish Court Service budget will see a significant reduction in 2013-14: from £77m in 2012-13 to £73.3m in 2013-14 (a 4.8% reduction), with plans for £69.4m expenditure in 2014-15 (a 9.9% reduction over the three financial years); in cash terms at 2012-13, this equates to a reduction from £77m in 2012-13 to £71.5m in 2013-14 (a 7.1% reduction) and £66.1m in 2014-15 (a 14.1% reduction over the three financial years).

The Scottish Government Draft Budget 2013-14 distributes expenditure between operating expenditure and capital as follows:

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<tbody>
<tr>
<td>Operating expenditure</td>
<td>£68.5m</td>
<td>£67.3m</td>
<td>£65.4m</td>
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<tr>
<td>Capital</td>
<td>£8.5m</td>
<td>£6.0m</td>
<td>£4.0m</td>
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<tr>
<td>Total</td>
<td>£77.0m</td>
<td>£73.3m</td>
<td>£69.4m</td>
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In common with other budgets across the range of public finances, there is significant reduction in the capital budget, from which the maintenance a court estate
valued at £413m. In 2010-11, for instance, £8.8m was spent on building maintenance and impairment, and the reduction of the capital budget is likely to place significant pressure on the maintenance of the court estate.

Policy proposals

The Draft Budget outlines a range of proposals that will be taken forward by Scottish Court Service in 2013-14. These include: the reforms from the Scottish Government’s Making Justice Work programme; the recommendations of the Carloway Review, the Bowen Review and others; the implementation of the Gill Review, including the introduction of a Scottish Civil Justice Council, the legislation for which is currently being scrutinized by the Justice Committee; and the development of a range of ways in which technology can promote access to justice. It is clear that this is a dynamic and wide-ranging programme of work. Previous responses from the Law Society have broadly welcomed and indeed contributed directly to the work of these reforms.

The reductions in operating and capital expenditure will have an impact on the development of these reforms. Scottish Court Service does not intend to meet these challenges with redundancies, and this is welcomed. A reduction in experience and staff capacity at this critical stage in the transformation programme for our court systems could only damage the implementation of these changes. However, the reduction in the capital budget, though common across the public sector, will present a number of challenges to Scottish Court Service. Capital expenditure does not solely include ‘bricks and mortar’ but also spending on IT and other services: an ambitious proposal to increase the use of videoconferencing may be challenged by the significant reduction in capital spending.

Shaping Scotland’s court services

Scottish Court Service has published a consultation paper that outlines the strategy for meeting the twin challenges of remaining within budget and also implementing the reforms required: responses are required to Scottish Court Service by 21 December.

There are four separate proposals: first, the rationalisation of the High Court circuit to three permanent venues (Aberdeen, Edinburgh, Glasgow); second, the introduction of summary sheriffs; third, the closure of court buildings where there are more than one in a town; and fourth, the closure of a court in a town.

It should be noted that, in looking to manage the twin objectives of budget and reform, there is little correlation between the two in the proposals made in the consultation paper. For instance, the implementation of the Carloway or Bowen Reviews does not require the closure of courts. The development of videoconferencing does not make the closure of courts imperative, though may

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1 Scottish Court Service Annual Report and Accounts 2010-11 (property plant and equipment net book value; of which buildings constitute £359m).

2 Shaping Scotland’s Court Services – A Public Consultation on Proposals for a Court Structure for the Future, Scottish Court Service, September 2012
facilitate consideration of how the estate should operate and where it should be located in the medium to long term.

The closure of courts is planned. Sheriff courts are proposed for closure: Dornoch, Duns, Kirkcudbright, Peebles and Rothesay as these have low volumes of business; Alloa, Arbroath, Cupar; Dingwall; Haddington and Stonehaven. Justice of the Peace courts are proposed for closure: Irvine, Coatbridge, Cumbernauld, Annan and Motherwell (and three further JP courts would be disestablished).

The closure of courts, simply, will damage access to justice. Court users will have to travel further and with greater cost, or may be disincentivised to attend at all, with the attendant churn that this could create for the court system. This will affect the public, lawyers, police, social workers and others. The proposals will have a far more significant effect in rural Scotland and will, as the Equality Impact Assessment being conducted by the Scottish Court Service indicates, impact more on those with protected characteristics.

In England and Wales, the Ministry of Justice announced the closure of 142 courts in December 2010. The Law Society Gazette reported in February 2012 that just five courts had been closed. The cost in maintaining unsold buildings was around £2.5m annually (the expected savings from the closures had been around £15m annually). 3 Courts closed had included specialist domestic violence courts (SDVCs) and family courts rated as centres of excellence.

A number of issues arise around the sale of court buildings. These are listed buildings and often difficult to sell. There are complexities around the pricing and bidding processes for these buildings. Sale below value may trigger issues around breach of state aid provisions. 4 Any capital receipts from their disposal have limited use for both time and purpose. Scottish Court Service estimate the closures will save around £1.4m annually, as well as providing maintenance backlog savings of around £4.3m and capital receipts of around £2.3m. However, there is some expenditure that would be incurred: one-off restructuring costs to prepare the buildings for disposal at around £645,000, additional court capacity at £1.4m, and short-term recurring retention costs of £155,000. These are significant costs for such a range of closures.

The cost for individual courts to remain open varies. Peebles, for instance, is considered for closure and the only cost to be saved is £17,000 each year in running costs, while Rothesay would be closed only to see a saving of £6,000. Others have more significant costs, Arbroath, for instance, with a recurring saving of £125,000 (£70,000 of which is running costs, the remainder depreciation) and a one-off saving of £132,000 in backlog maintenance. We believe that some of these courts, with the level of savings being negligible, should certainly not be considered for closure.

Also, there are complex issues around capacity (closing one court may lead to delays in another court which may already be busy, with resulting system costs) and the displacement of costs into other budgets. It is appreciated that in discussions

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3 *Millions Spent on Empty Court Buildings*, The Law Society Gazette, 23 February 2012
4 *Scottish Public Finance Manual*, Scottish Government
with the police, with Crown Office and with Scottish Legal Aid Board, Scottish Court Service have been assured that there will be no or negligible additional costs. It is anticipated, however, that there will be costs elsewhere, to the public, to local authorities, to lawyers and to others.

We fully appreciate the economic climate in which the Scottish Court Service budget is set and have sympathy for the difficulty that the Service face in providing proposals to meet the twin challenges of budget and reform. However, we believe that a reconsideration of the unintended consequences likely and the costs to the public and other justice sector groups is critical. Once a court is closed, there is no easy or cheap way to address the issues that its closure has caused.

**WOMEN OFFENDERS AND VICTIMS**

The Society broadly welcomes and supports the recommendations of the Commission on Women Offenders, and is pleased to note that additional capital funding for the Scottish Prison Service has been earmarked in 2014-15 to implement these recommendations. However, it is important to ensure sufficient funding is also in place for the non-capital elements of the recommendations, and that funding for other essential services is not compromised.

**OTHER BUDGET AREAS**

The Society notes that funding available for victim and witness support has remained frozen at £5.6m until 2014-15. We would note that this represents a cut in real terms, once the impact of inflation is taken into account.

The Society is supportive of the policy intent of the Scottish Government’s proposals relating to victims and witnesses but questions how the additional resource for the proposals will be provided, given the current funding constraints and financial cut backs affecting the criminal justice system, including COPFS and the police as well as the proposed restructuring of the courts. Victims and witnesses are anxious to avoid any further additional upset and stress and are keen that their case is managed in the most speedily and efficient way possible, however there is a risk of an increased level of anxiety and dissatisfaction may arise due to prolonged cases which are a result of insufficient and reduced resource. It is difficult to see how the proposed additional support will be delivered without additional resources being provided.

The Budget specifies that the Legal Aid Fund is to be reduced £138.1 million in 2013-14. We believe that this is figure is too low given that the budget is demand led and in light of previous years’ expenditure. We are of the view that the legal aid system is essential to ensuring that the justice system is accessible to those who cannot afford to pay for legal advice or representation and that access to justice through legal aid must be protected in so far as practicable in the current financial climate. We are working with the government and with SLAB on the challenges that the legal aid budget faces and the Justice Committee has recently considered the impact of the proposals for criminal legal aid contributions in the Scottish Civil Justice Council and Criminal Legal Assistance Bill.