



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

30th Meeting, 2015 (Session 4)

Tuesday 3 November 2015

The Committee will meet at 10.00 am in the David Livingstone Room (CR6).

1. **Decisions on taking business in private:** The Committee will decide whether to take items 4 and 5 in private.
2. **Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill:** The Committee will consider the Bill at Stage 2.
3. **Community Justice (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Paul Wheelhouse, Minister for Community Safety and Legal Affairs, Andy Bruce, Deputy Director, Community Justice Division, Arlene Stuart, Head of Community Justice Operational Unit, and Carolyn O'Malley, Directorate for Legal Services, Scottish Government.
4. **Community Justice (Scotland) Bill:** The Committee will consider a draft Stage 1 report.
5. **Work programme:** The Committee will consider its work programme.

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The papers for this meeting are as follows—

Agenda item 2

[Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Bill and all associated documents](#)

Agenda item 3

Paper by the clerk

J/S4/15/30/1

Private paper

J/S4/15/30/2 (P)

[Community Justice \(Scotland\) Bill, accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

Agenda item 4

Private paper

J/S4/15/30/3 (P)

Agenda item 5

Private paper

J/S4/15/30/4 (P)

Justice Committee

30th Meeting, 2015 (Session 4), Tuesday, 3 November 2015

Community Justice (Scotland) Bill

Note by the Clerk

Purpose

1. This paper provides some background information in advance of the Committee's evidence session with the Minister for Community Safety and Legal Affairs on issues relating to the Community Justice (Scotland) Bill on 3 November.

Background

2. The Bill was introduced on 7 May 2015. The Policy Memorandum states that "the purpose of the Bill is to replace the existing model for community justice services, which is based on eight regional Community Justice Authorities¹ (CJAs), with a new model". Further background information on the Bill is provided in the SPICe briefing at:

<http://www.scottish.parliament.uk/parliamentarybusiness/91595.aspx>

3. Written submissions received on the Bill at Stage 1 are available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/89548.aspx>

4. Official reports of evidence sessions on the Bill at Stage 1 can be found at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29847.aspx>

Further evidence

5. At its last meeting on 27 October, the Committee agreed that it would be helpful, prior to reporting on the Bill, to receive further evidence from the Minister on two related policy developments which may have an impact on the Bill.

6. The Scottish Government is currently consulting on whether the presumption against short periods of imprisonment should be extended beyond three months and whether a more radical review of the use of short-term imprisonment is required. Decisions relating to the final configuration of women's prison(s) arising from the Commission on Women Offender's 2012 report are also awaited. Developments in these areas could lead to an increase in demand for community justice services.

7. The Committee wrote to the Minister requesting further details on how policy developments in these areas might interact with the measures in the Bill. It also sought reassurances that the model proposed for community justice in the Bill was the most suitable one to support any increase in demand for community disposals and to implement appropriate funding arrangements. The Minister's response is annexed to this paper.

Recommendation

8. The Committee is invited to question the Minister on the issues raised in his response at the evidence session on 3 November.

¹ The role of CJAs is to plan, co-ordinate, monitor and report on the delivery of offender services and to produce a strategic plan for their area in consultation with statutory and non-statutory partner bodies. The membership of CJAs is restricted to elected members.

ANNEXE**Response from Minister for Community Safety and Legal Affairs**

Thank you for your letter of 27 October requesting further information in relation to the Community Justice (Scotland) Bill. In particular, the Committee has asked about the interaction between the Bill and other relevant measures, including for female offenders and our recent consultation on strengthening the presumption against short prison sentences.

The Ministerial foreword to the consultation paper on the presumption against short sentences, prepared by the Cabinet Secretary for Justice, sets out clearly the drivers and vision for our approach to penal reform. As noted by the Cabinet Secretary, Scotland has a comparatively high imprisonment rate by international standards. Despite legislation by Parliament and positive work by justice agencies and other partners, our justice system continues to send far too many men and women to prison for short-term sentences, despite clear evidence of the adverse effects on housing, employment and family life, linked to poor outcomes in terms of rates of re-offending. We are determined to work with Parliament, local government, justice agencies, the third sector and other relevant stakeholders to take forward a range of legislative and non-legislative measures which can ensure a penal policy that reflects the values of a modern and progressive Scotland.

The Community Justice (Scotland) Bill provides the legislative basis for the new model for Community Justice in Scotland. As the Committee is aware, the Bill includes provisions to establish a new national body, Community Justice Scotland; to place specific duties on certain statutory bodies in relation to the achievement of outcomes; and to introduce a new National Strategy and Performance Framework for community justice in Scotland.

The Bill takes forward those elements of the new model for community justice which require new legislation. Our clear intention is that further policy developments in relation to community justice and penal policy will complement and support the new model introduced by the Bill. The model is designed to be sufficiently flexible to respond to new policy developments and opportunities, and changing context at national and local levels.

The consultation to strengthen the presumption against short sentences was published in September and responses have been requested by 16 December. As set out in the consultation, evidence of current sentencing practice shows that, despite the current statutory presumption, 29% of custodial sentences imposed by the courts in 2013/14 were for 3 months or less, with a further 37% being for between 3 and 6 months. We will consider carefully the responses to the consultation and any extension to the current presumption would require further legislation to implement. Subject to those decisions, I am confident that the new model for community justice set out within the Bill would not only be able to support any increase in the use of community disposals implicit in such a move, but would provide greater assurance that such disposals are being delivered as effectively as possible.

The Committee has also asked about the links between provisions in the Bill and our proposals for the future provision of custodial and non-custodial services for female offenders. In June this year, the Cabinet Secretary set out our new approach for female offenders, including the development of a new small national prison with 80 places, alongside smaller community-based custodial units, each accommodating up to 20 women. The units will provide access to intensive support to help the women overcome the drivers of their offending behaviour, whilst maintaining links with families and communities. The Cabinet Secretary's announcement confirmed that, alongside new custodial facilities, there will be increased emphasis on the use of community-based alternatives, including encouraging

increased use of electronic monitoring. As with the presumption against short-term sentences, we are confident that the new model for community justice proposed within the Bill will both complement and support our vision for dealing with female offenders and the underlying factors that often drive the offending.

It is implicit within our proposals to strengthening the presumption against ineffective short-term sentences and for female offenders and, indeed, for our wider penal policy and community justice reforms, that we want to see a shift in resources from prisons to community-based disposals and alternative models. That shift is already being seen with resources transferred from the Scottish Prison Service (SPS) to invest in community-based services and work by the SPS to transform its role, for example with reference to throughcare and other services to help people leaving prison integrate back into the community.

The Scottish Government is also leading work with partners on a revised model for allocation of funding for criminal justice social work to ensure alignment with the national strategy and performance framework and to move to a 3 year funding agreement.

The Committee has also requested clarification about when the National Strategy for Community Justice will be produced, given that each local authority is expected to produce a transition plan by January 2016.

The transition plan due to be submitted by each authority by 31 January 2016 is not a community justice outcomes improvement plan. The transition plan will be focused on the structures, governance and resource arrangements partners intend to put in place to implement the new model locally. It will also set out each authority's plans for engagement and involvement with the Third Sector, service users, people with convictions, and communities in their local arrangements, planning and delivery in 2016/17. These transitional plans are not, therefore, reliant on the availability of the National Strategy.

The first community justice outcomes improvement plan from each authority is due to be submitted by January 2017. The National Strategy and the National Performance Framework will both be published once the Bill has received Royal Assent and the relevant sections have been commenced, which we hope will be in mid-2016. Work is currently underway to develop both the National Strategy and Performance Framework in partnership with the full range of community justice partners. Drafts of both documents will be shared with partners in advance of publication to aid the transition process.

In order to assist the Committee's consideration of its Stage 1 report on the Bill, the attached Annex A provides further information on how the new arrangements will operate in practice, along with an explanation of how the main components of the Scottish Government's plans for penal policy reform will be supported by the new model for community justice. Annex B provides two diagrams setting out how the various bodies impacted by the Bill will interact under the new arrangements; diagram (i) shows the new model in its entirety; diagram (ii) describes the assurance and improvement cycle including options for escalation in response to concerns over delivery of outcomes.

I am confident that the new model for community justice, and the proposals included within the Bill that support it, will support not only the developments described above, but also any future developments in relation to penal policy reform.

I hope the information provided in this letter and supporting Annex is helpful to the Committee in its consideration of its Stage 1 report on the Community Justice (Scotland) Bill. I would be

happy to provide any further clarification or information that the Committee requires, either in writing or in person.

Paul Wheelhouse MSP
Minister for Community Safety and Legal Affairs
29 October 2015

ANNEX A

New Model for Community Justice

Elements within the Bill (this is displayed in Annex B diagram (i)).

1. **The Bill requires Scottish Ministers to publish national strategy for community justice.** This will set out the Scottish Government's approach to reducing reoffending through *increasing* use of community sentences; *reducing* use of short term custodial sentences; and *improving* reintegration from custody to community;
2. **The Bill requires Community Justice Partners (CJPs) to work in partnership to produce a plan that responds to the national strategy, performance framework and local priorities for community justice.** In preparing the plan, CJPs must consult with community bodies and any others they consider appropriate, including the Third Sector.
3. **The Bill requires CJPs to publish an annual report on performance against their plan.** Performance will be measured against a set of national outcomes and indicators that are applicable at the local level. This will provide transparency on how local areas are performing on key issues, such as: provision of diversions; quality and quantity of community sentences; length of custodial sentences; and access to suitable, sustainable housing on release from prison.
4. **A new national body, Community Justice Scotland, will review all local plans, providing feedback to CJPs to share good practice. It will review reports to provide assurance to Scottish Ministers, Elected Members and all other partners on delivery of outcomes.** Where improvement is required, it will provide advice to local partners and targeted improvement support as required. Where performance issues persist, it will provide recommendations to Scottish Ministers on action required which may include a multi-agency inspection or, in exceptional circumstances, a rescue task group. Further detail on the assurance and improvement cycle, including options for escalation, is set out in Annex R diagram (ii)

Elements being developed alongside the Bill process

5. **Alongside the consideration of the Bill by Parliament, Scottish Government officials are leading work with partners onto develop:**
 - the draft National Strategy for Community Justice;
 - a consistent Performance Framework for Community Justice in Scotland;
 - a revised funding model for the allocation of circa £95m p.a. for criminal justice social work to ensure alignment with the Strategy and Performance Framework and move to 3 year funding agreement.

Wider Scottish Government Penal Policy Reform

The new model for community justice contributes towards Scottish Ministers wider vision for penal policy reform. Key elements of this reform process include:

1. Consultation on strengthening presumption against short sentences

The consultation, published in September and due to close in December, seeks views on strengthening the current presumption against short sentences of 3 months or less to 6 months, 1 year or more. Depending on outcome of consultation, any change to the presumption would require approval by Parliament, either through secondary legislation or, for more significant reform, primary legislation, separate from the Community Justice (Scotland) Bill. The consultation acknowledges that any decision to increase the presumption against short term sentences will increase the use of community disposals and associated provision. This would be taken into account in the National Strategy, Performance Framework and funding model.

2. Use of Electronic Monitoring (EM)

An expert group is currently exploring the scope for enhanced use of EM to support a proposed increase in use of community disposals and to aid desistance. The outcome of this work will be reflected in the National Strategy and Performance Framework. Certain new uses for EM would require primary legislation, including use for Bail and in community custodial units.

3. Penal Policy Improvement Project

The Improvement Methodology is recognised as a way of delivering measurable improvements in outcomes. Following dialogue with senior judiciary and key local partners, work at Paisley, Hamilton and Dundee Sheriff Courts aims to deliver measureable reductions in the use of short-term sentences and the unnecessary use of remand. This will not restrict sentencers' independent decision making, but will focus on building confidence in bail options and community sentences. If effective, the approaches will be shared across other locations.

4. Increased use of Community Disposals

There is an existing infrastructure in place which is supporting diversions from prosecution and is also delivering increased use of community sentences. Recent developments include: the national roll out of Fiscal Work Orders; increased investment in community-based justice services for women; and evidence of increased Shrieval confidence in Community Payback Orders. The National Strategy will promote the use of effective, evidence-based community disposals. The Performance Framework will also provide increased visibility of the use of both diversion from prosecution and the use of community sentences.

5. Female Custodial Estate

Following the decision not to proceed with the construction of a large new prison for women at HMP Inverclyde, the Cabinet Secretary for Justice set out in June a bold and innovative vision for the female custodial estate and reducing female offending. The Scottish Government's aims to reduce the use of custody with investment in a

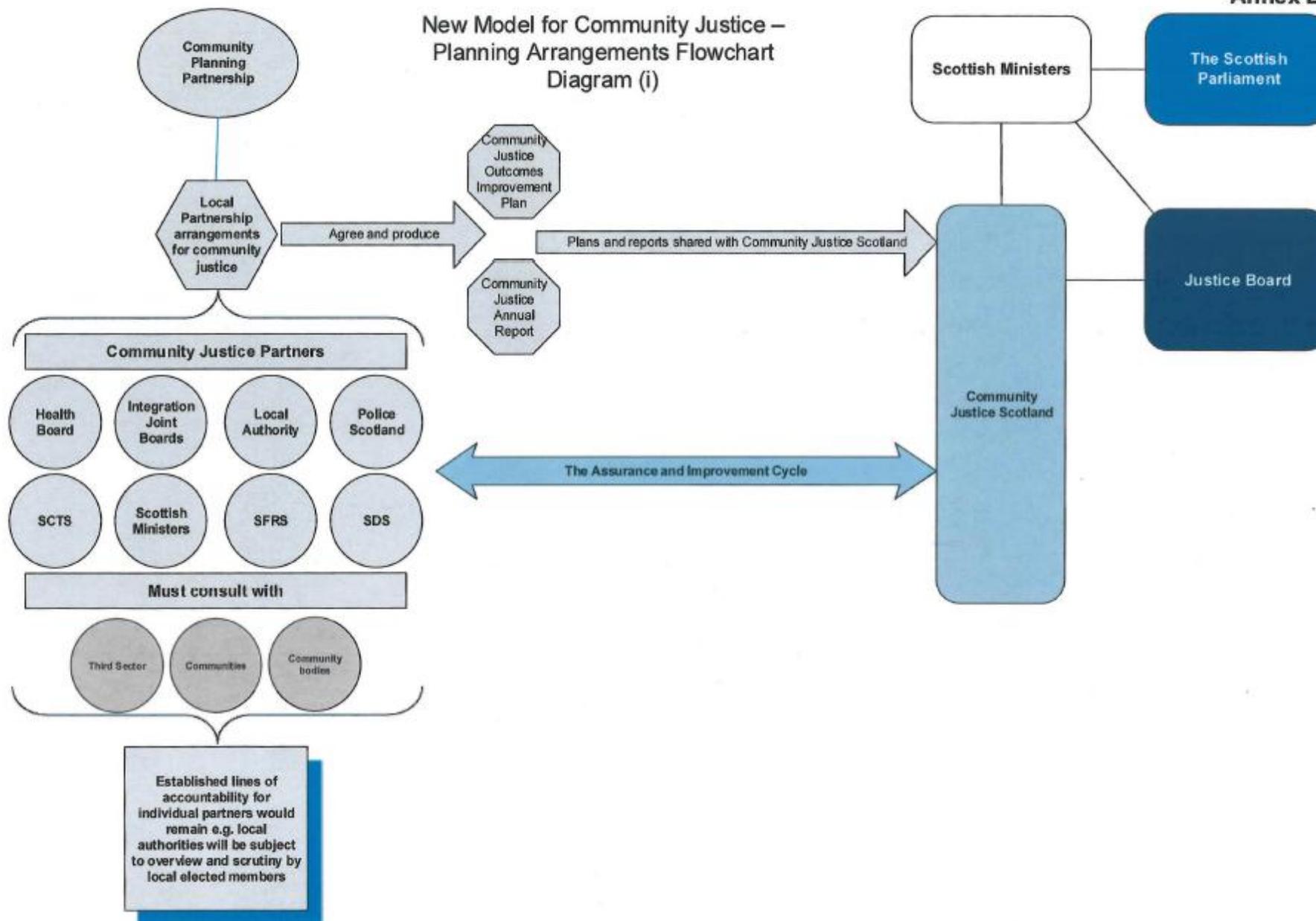
smaller custodial estate for women, including a small national facility and innovative community-based custodial units. The proposed Community Custodial Units will: support a recovery ethos; provide a level of security proportionate to the risk posed and allow women to be located as close as possible to communities.

6. Improved Community Reintegration

The work of the Ministerial Group on Offender Reintegration emphasised the need for Community Justice Partners to support more effective models of reintegration to the community. This was reflected in the legislative change to allow the Scottish Prison Service some flexibility to avoid Friday liberations, if this will assist in helping people leaving prison to access the services and support they need in the community. The proposed Performance Framework will identify how partners are supporting reintegration through indicators relating to areas such as speed of access to suitable, sustainable housing and access to healthcare (e.g. GP, substance misuse).

Annex B

**New Model for Community Justice –
Planning Arrangements Flowchart
Diagram (i)**



Annex B

New Model for Community Justice –
The Assurance and Improvement Cycle
Diagram (ii)

