

Written Evidence from the Community Justice Authorities to the Scottish Parliament Criminal Justice and Licensing (Scotland) Bill – Call for Written Evidence

Community Justice Authorities

The then Scottish Executive established 8 Community Justice Authorities (CJAs) in Scotland in April 2007 under the Management of Offenders etc. Scotland Act (2005). The role of the CJAs is to provide locally a co-ordinated approach to the planning, monitoring and reporting on the delivery of offender services. Their aim is to reduce re-offending, improve the management of offenders and create safer communities by delivering the National Strategy for the Management of Offenders in their local area. CJAs are statutory bodies consisting of members who are councillors nominated from the constituent local authorities within the CJA area. CJAs have a wide range of statutory and other partners including local authorities, the Scottish Prison Service, Police, NHS and voluntary sector agencies.

Introduction

CJAs welcome the opportunity to provide views on the general principles of the Criminal Justice and Licensing (Scotland) Bill. Our response contains comments on the aspects of the Bill which are relevant to the CJAs:

- i. Section 3 – The Scottish Sentencing Council
- ii. Section 14 – Community Payback Orders
- iii. Section 17 – Presumptions Against Short Periods of Imprisonment or Detention
- iv. Section 18–Amendments of Custodial Sentences and Weapons (Scotland) Act 2007
- v. Section 73 – Sexual Offences Prevention Orders

Section 3 – The Scottish Sentencing Council

CJAs have previously provided feedback to the consultation on “Sentencing Guidelines and a Scottish Sentencing Council” and welcome the establishment of a body for the purposes of promoting consistency, improving transparency and public understanding about sentencing in Scotland.

Section 14 – Community Payback Orders

CJAs broadly welcome the introduction of Community Payback Orders (CPOs), in particular, the focus on visibility, immediacy and speed and the general principle that allows the tailoring of the sentence to the needs and risks of individual offenders to tackle re-offending. The CJAs further welcome the clarity around support and compliance set out in the Bill.

We do note that while the CPO is designed to replace most existing community sentences, this does not include the DTTO and RLO which remain in place. We believe there may be potential for confusion particularly between the DTTO and CPO with requirement of drug treatment.

227B – Community Payback Order: further Provision

The CJAs consider the Bill to be unclear with regard to the information to be provided to the author of the required Social Enquiry Report where a court is considering imposing a CPO with an unpaid work requirement. The CJAs suggest that the Sherriff or Justice of the Peace should give clear direction on whether the court is considering a level 1 or level 2 order when referring the matter for a Social Enquiry Report.

227C – Community Payback Orders: responsible officer

CJAs welcome the clarity in the Bill around accountability and the distinction between the responsibilities of the Chief Social Work Officer and nominated responsible officer with the specific duty to promote compliance.

227K – Allocation of Hours Between Unpaid Work and Other Activity

CJAs welcome the introduction of the ability to combine unpaid work with tackling criminogenic need. The 30% non work activity will allow for preparation for employability for example. Careful consideration will need to be given to the combination of requirements placed on a CPO to ensure that they meet individual needs.

227P – Programme Requirement

CJAs welcome the requirement for offenders to participate in specified programmes aimed at addressing offending behavioural needs. However, the Bill does not make reference to the availability or prioritisation of programmes. This concern is extended to sections 227R – Mental Health Treatment Requirement, 227U – Drug Treatment Requirement and 227V – Alcohol Treatment Requirement. Suitable programmes to meet individual offender needs would need to be available to meet the requirements of the CPO.

227W – Periodic Review of Community Payback Orders

CJA's welcome the inclusion of reviews within the legislation but think further guidance on the purpose and practice for reviews should be issued following consultation with stakeholders. This should ensure consistency in the operation of reviews. We look forward to further discussion to clarify:

- the purpose of the review; and
- an expectation of frequency in relation to reviews.

227ZD – Restricted Movement Requirement

CJAs welcome the opportunity for the Bill to impact on offending behaviour by sanctions that fall short of imprisonment.

227ZJ – Local Authorities: annual consultations about unpaid work

CJAs welcome the requirement to consult prescribed persons on the nature of unpaid work and other activities and welcome further involvement in the mechanisms to achieve this. We would support the specific inclusion of victims in this consultation as well as the wider community and stakeholders.

Section 17 – Presumptions Against Short Periods of Imprisonment or Detention

CJAs are disappointed that the Scottish Government did not take account of the Scottish Prisons Commission's recommendations in full i.e. the abolition of short sentences and hold the view that the text within section 17 needs to be strengthened in order to endorse the title. For example at 17(2)(4A) the CJA view is that the text should read 'the court may **not** pass a sentence of imprisonment for a term not exceeding 6 months'. The text as it stands within the Bill is at odds with the text within the accompanying policy memorandum which states at Page 12, section 17, point 69:

*"We want to make it clear that sentencers should **not** impose a custodial sentence of 6 months or less, unless the particular circumstances of the case lead them to believe that no other option would be appropriate. We are also legislating to provide that the sentencer must explain in court the circumstances which made them conclude that only a custodial sentence could be imposed."*

CJAs are also concerned that Section 17 of the Bill may have results that have not been foreseen and need further clarification, for example, the section has the potential to result in a significant rise in the number of Social Enquiry Reports requested or an increase in up-tariffing.

Section 18 – Amendments of Custodial Sentences and Weapons (Scotland) Act 2007

CJAs broadly support and welcome the Amendments of Custodial Sentences and Weapons (Scotland) Act, particularly, as it extends the ability to support people in the community. However, the CJAs hold the view that there needs to be clarity within the Bill on 'prescribed periods'.

Section 73 – Sexual Offences Prevention Orders

111A – SOPO and Interim SOPO Requirements: Scotland

CJAs welcome the move away from simply **prohibiting** the defendant from doing anything described in the order to **requiring** the defendant to do anything described in the order and believe that this will strengthen our ability to positively influence offender behaviour.

Additional Comments – Victims Issues

In addition to the comments noted above on specific areas of the Bill, the CJAs believe that there was a missed opportunity to recognise victim issues within the Bill. We are aware that the accredited programmes and many other programmes address the understanding of victim issues but suggest that this could be a standard requirement of a CPO.