

# Making Scotland **Safer**

IMPROVING THE CRIMINAL JUSTICE SYSTEM



SCOTTISH EXECUTIVE

**Making it work together**

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# foreword



In Scotland, we are rightly proud of our criminal justice system. It is a dynamic institution which can be adapted to take account of changes in society and society's expectations of the law, developments within our own court system and in the wider context of the European Convention on Human Rights.

Our aim as an Executive is to promote the safety and security of individuals and communities. But this is not a task for the criminal justice system alone. The reduction of crime and the promotion of a responsible society is an objective to which a wide range of agencies and influences contribute: our schools; parents; the press; our social polices designed to create opportunity and employment. However, our laws and our criminal justice system also have an important part to play.

This White Paper describes a number of changes we propose to make to our criminal law. All are designed to improve the system and to pursue our principles of effectiveness, efficiency and fairness.

I believe that the proposals set out in this paper together with those that we have already announced in a White Paper earlier this year for the treatment of serious violent and sexual offenders, represent a significant package of improvements to the criminal justice system. These measures are intended to increase protection for the public, to promote effective sentences and an efficient criminal justice system and keep the law up to date. I am confident that they will contribute to making Scotland a safer place for its citizens.

We intend to give effect to these measures in criminal justice legislation which we will bring before the Scottish Parliament in early 2002.

A handwritten signature in blue ink that reads "Jim Wallace". The signature is written in a cursive style and is underlined with a single horizontal stroke.

**JIM WALLACE QC, MSP**  
DEPUTY FIRST MINISTER AND MINISTER FOR JUSTICE

# chapterone

## INTRODUCTION

1. Protection under the law for all our citizens is a fundamental principle of the Scottish criminal justice system.

This chapter discusses:

- Proposals to give effect to certain of the recommendations in the Report of the Expert Panel on Sex Offending.
- How we will deliver on our commitment to provide a new power of arrest for breaching a Non-Harassment Order.
- The plans to strengthen and enhance the arrangements for issuing criminal record certificates for those who work with children and other vulnerable groups.
- The proposal to introduce a new Interim Anti-Social Behaviour Order.
- The Scottish Executive's Action Plan for Victims.

## SEX OFFENDING

2. Sex offending has become an issue of great public concern in recent years as its nature and true extent has become better understood. We were therefore very grateful to receive the Report from the Expert Panel on Sex Offending chaired by Lady Cosgrove entitled "Reducing the Risk: Improving the Response to Sex Offending" published on 12 June 2001. It has made an important contribution to the present debate.
3. The wide-ranging Report contains 73 recommendations covering education, risk management, personal change programmes, monitoring and supervision, housing issues and information exchange. The aim of the Expert Panel was to make recommendations to reduce the risk posed by sex offenders by building an integrated framework to improve the response of all the agencies involved. The Expert Panel's Report, together with the relevant part of our proposals resulting from the MacLean Committee Report on Serious Violent and Sexual Offenders, which was published in a White Paper on 11 June 2001, provides Scotland with a comprehensive response to the risks posed by sexual offenders. Scottish Ministers put the Expert Panel's Report out to consultation in the summer and the responses which have been submitted will now inform future policy decisions.
4. Most of the recommendations in the Expert Panel's Report can be implemented under existing powers and arrangements without legislation. However, new legislative powers are required in relation to procedures in Scottish courts. We are consulting on plans to legislate to ensure that the court's decisions in relation to sex offenders are founded on the best available information; that report writers have adequate time to prepare reports; and, that they have some objective information about the nature of the offence and any salient features on which to found their assessment of risk.
5. Lady Cosgrove's Expert Panel also made recommendations on the monitoring of sex offenders, in particular the system of registration set up by the Sex Offenders Act 1997. This Act has also been reviewed jointly by the Scottish Executive and the United Kingdom Government, and a review document was published for consultation on 30 July 2001.
6. We intend to legislate to strengthen the registration regime and will be considering the responses to consultation on the recommendations of both the Expert Panel and the joint review. It is important that the registration requirements are similar on both sides of the border and we will continue to work closely with our colleagues in the Home Office in finalising our legislative proposals.
7. We are considering the financial implications of our legislative proposals as part of our analysis of the consultation exercise. However, we have estimated that additional costs to provide for the legislative changes proposed for inclusion in the Bill are £0.2m annually, with a one off capital cost of £0.15m. We will be considering this issue further along with the financial implications of the other recommendations from the Expert Panel's Report.

# chapterone

## POWER OF ARREST: NON-HARASSMENT ORDER

8. Stalking and harassment can ruin the victim's life and has already been the subject of legislation. The Protection from Harassment Act 1997 strengthened both the civil and criminal law in Scotland on harassment. Victims of harassment can obtain an interdict that prohibits any person named in the Order from taking any action specified in the Order. The Act also introduced a system of Non-Harassment Orders (NHOs) which permits both the criminal and civil courts to make an Order prohibiting further harassment. The criminal courts may make such an Order after convicting a person of a criminal offence involving harassment, in addition to any other sentence for the offence.
9. NHOs prohibit further behaviour of the sort that has caused a victim distress. Breach of an Order is a criminal offence punishable on indictment by up to five years imprisonment.
10. At present there is no statutory power of arrest without warrant for breach of a Non-Harassment Order. The police have common law powers of arrest but some responses to last year's consultation on stalking and harassment suggested that these common law powers are seldom used in such circumstances.
11. We announced earlier this year as part of a package of measures to strengthen the protection for victims of stalking and harassment that we would introduce at the earliest opportunity a specific power of arrest without warrant where a Non-Harassment Order is breached. The proposed criminal justice legislation now gives us the opportunity to take the necessary power.
12. This power of arrest without warrant will be available for breach of a Non-Harassment Order and will enable the police to act immediately to stop any further or more serious harassment before it takes place.

## CRIMINAL RECORD CHECKS

13. Access to criminal record information is to be considerably increased from April 2002 through Part V of the Police Act 1997 to provide greater protection for children and vulnerable adults. Part V of the 1997 Act gives Scottish Ministers the power to issue criminal record certificates for the purpose of assessing the suitability of a person for certain types of employment or position.
14. There are three kinds of certificates –
  - criminal conviction certificates which record criminal convictions other than those which are spent under the Rehabilitation of Offenders Act 1974.
  - criminal record certificates which are certificates recording any convictions including those which are spent.
  - enhanced criminal record certificates which record -
    - (i) all convictions; and
    - (ii) any information which the relevant Chief Constable considers might be relevant for the purpose for which the certificate is required (that is, for considering the suitability of the applicant for certain types of employment or position).
15. Those applying for criminal record certificates or enhanced criminal record certificates must have their applications countersigned by a “registered person”. The registered person would be sent a copy of the certificate. Presently however, there are no explicit powers for Scottish Ministers to check the backgrounds of those applying to be registered persons. Moreover, Scottish Ministers cannot refuse registration to anyone who applies. And they may only cancel registration in limited circumstances unconnected with the person’s suitability.
16. We believe that this is unsatisfactory and we therefore intend to provide for powers to enable Scottish Ministers to:
  - carry out background checks on persons applying to be registered for purposes of countersigning applications for criminal record certificates and enhanced criminal record certificates;
  - refuse to register persons deemed unsuitable to be given access to criminal record information about others; and
  - cancel registration of persons already registered where information comes to light suggesting that such persons are unsuitable to be given access to criminal record information about others.

# chapter one

17. We will also make the following further adjustments to the existing provisions:
  - to extend the scope of the statutory Code of Practice, with which registered persons must comply, to cover matters beyond the **use** of the information provided on the criminal record or enhanced criminal record certificates. For example: to require registered persons to take such steps as are practicable to verify the identity of those whose applications they countersign. Failure to comply with the Code will be a ground for deregistration.
  - to put beyond doubt that doctors, dentists, pharmacists and opticians and also prospective adoptive parents may be allowed enhanced criminal record certificates.
  - to ensure that enhanced criminal record certificates may be available to Children's Panels members, members of Children's Panel Advisory Committees, "safeguarders" and curators *ad litem*.
  - to recognise chief officers of police in the Channel Islands and the Isle of Man as chief officers for the purposes of supplying non-conviction information for the enhanced criminal record certificates.
  - to empower Scottish Ministers to notify employers where a person in respect of whom a criminal record certificate or an enhanced criminal record certificate has been issued, is convicted subsequent to the issue of the certificate or where new convictions come to light.
18. We believe that these changes will improve the effectiveness of Part V of the Police Act 1997 and will thereby provide better protection for children and vulnerable adults.

## INTERIM ANTI-SOCIAL BEHAVIOUR ORDERS

19. Protecting communities from the unacceptable behaviour of individuals is an important part of making communities safer. The Crime and Disorder Act 1998 introduced a new civil order – an Anti-Social Behaviour Order (ASBO) to help address the problem of anti-social behaviour. Local authorities can apply to the Sheriff for an Order prohibiting an individual over 16 from further anti-social behaviour which causes or is likely to cause alarm or distress. It is open to the courts to decide what each Order should prohibit, depending on the circumstances in each case. Breach of an Order is a criminal offence, punishable by a maximum of five years imprisonment and/or an unlimited fine.
20. Over 50 Orders were granted last year and the process is generally viewed as a helpful way forward in tackling anti-social behaviour. In particular, ASBOs can offer an alternative remedy to eviction. However, concerns have been raised by some local authorities about the time it can take to obtain Orders.
21. ASBOs were introduced to enable anti-social behaviour to be stopped effectively and quickly. Although the courts will attempt to process the applications as expeditiously as possible, whilst the court procedure is ongoing individuals and families may continue to be exposed to anti-social behaviour. It is essential that this legal remedy can be activated speedily. We will give the courts the power to make an Interim Anti-Social Behaviour Order to take effect pending the outcome of the substantive application. In order to strike the right balance such an Order can only be made if the court is satisfied that the person against whom the Order is sought has had an opportunity to be heard.

# chapter one

## VICTIMS

22. In improving our system of justice and pursuing the principles of effectiveness, efficiency and fairness, the role of victims is of major importance. We have given a commitment in Working Together for Scotland to put the needs of victims at the core of our policies. The Scottish Strategy for Victims, launched in January 2001, set itself the central aim of ensuring that victims are put at the heart of the criminal justice system in Scotland. The Justice Department's Action Plan developed the Scottish Strategy by setting out a detailed programme which will:
- improve the information provided to victims;
  - give victims opportunities to participate in the criminal justice process – we launched on 7 November a consultation paper on the Victim Statement Scheme; and
  - strengthen the support for victims of crime.
23. A Victims Unit has been set up in the Scottish Executive Justice Department and good progress is being made with implementing the strategy. All of the key agencies have produced action plans setting out how they will implement the strategy as far as they are concerned. Victim Support Scotland is continuing to roll out the Witness Service to all Sheriff Court areas. The Crown Office is piloting a Victim Liaison Office. The strategy is an extensive one.
24. We intend to establish a legislative base to implement key elements of the strategy. Further details will be announced soon.



# chapter two

## INTRODUCTION

25. We are committed to preventing crime whenever possible. However, when crime does take place, it is essential that the offenders are caught and given an effective sentence – one which will protect the public and reduce the risk of re-offending. Different approaches are needed to different types of crime and different types of offender.

This chapter gives details of our plans covering:

- Drug misusers who offend.
- Electronic monitoring of offenders (“tagging”).
- Supervised Attendance Orders.
- Measures dealing with the offenders’ sentences, particularly those on parole or serving life sentences.

## DRUG MISUSERS

### *Drug Treatment and Testing Orders*

26. During the 1990s drug-related crime became a major issue for the criminal justice system. Research confirms that the majority of individuals who offend are problem drug users. It has also been established that many offenders become involved in crime, especially in acquisitive crime, to fund their addiction. Criminal justice agencies have responded by adapting existing disposals to deal with the problems posed by drug misusers, but the scale of the problem has led us to conclude that new disposals are also required which specifically tackle the problem of drug-related crime. Drug Treatment and Testing Orders (DTTOs) have been introduced as a new community disposal which is being piloted in Glasgow and Fife. They are also being made available in Aberdeen and Aberdeenshire from December 2001 and it has been announced that they will now be extended to a further 7 Sheriff Courts (Edinburgh, Paisley, Greenock, Dundee, Arbroath, Forfar and Perth). DTTOs target offenders who have a long history of drug abuse. They provide access to treatment services, combined with testing and regular reviews in court.
27. In the light of experience of the working of DTTOs, it is intended that the Procurator Fiscal should have discretion whether or not to attend review hearings and we will provide that review hearings can take place in the absence of the Procurator Fiscal. The Procurator Fiscal will continue to present the case in proceedings for a breach of a DTTO.

### *Drug Courts*

28. Drug-related crime does not respect international boundaries. All countries face the criminal justice challenge which drug crime poses and so we in Scotland can learn from the experience of other countries. A number of other jurisdictions have responded by introducing special measures to tackle the problem. In particular, significant interest has focused on the development of special drug courts in certain countries. Whilst a number of factors are common to all drug courts, it is important that any drug court reflects the national traditions and institutions of that individual country. In the light of the advantages claimed for a special drug court by other jurisdictions, a Working Group was set up to develop a model for a pilot Drug Court in Glasgow.
29. The Working Group reported at the end of April 2001 and recommended a model for a drug court which will operate within the existing legal framework of Scotland. It is anticipated that Drug Treatment and Testing Orders will be one of the principal community disposals to be used by the Glasgow Drug Court pilot.

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30. The Working Group was aware that reducing drug dependency is not easy and there may be relapses. Whilst the court must not only encourage and motivate, it must also, when the circumstances so merit, be able to sanction an offender who breaches a DTTO. The Working Group developed their recommendations within existing primary legislation but recognised that, unlike most of the drug courts in other jurisdictions, the pilot Glasgow Drug Court would not have access to appropriate intermediate sanctions that can be used when an offender lapses from an Order. At present, sanctions cannot be imposed without automatically terminating a DTTO. The use will send a powerful message to the offender about the necessity for compliance with the Order.
31. The intention is to introduce a provision to enable a court while sitting as a drug court to impose intermediate sanctions such as a short period of imprisonment or detention whilst allowing the conditions of an offender's Drug Treatment and Testing Order to continue.

## ELECTRONIC MONITORING

32. Electronic monitoring provides us with new opportunities to reconcile the need for public protection with the use of community sentences. At present the use of electronic monitoring is being piloted as a condition of a Restriction of Liberty Order (RLO), which are available to the Sheriff Courts at Aberdeen, Hamilton and Peterhead. An evaluation of these pilots found that sentencers considered them useful, adding to the range of alternatives to custody. Following on from this, we consulted on the future of electronic monitoring in Scotland. The findings indicated that:
- The use of electronic monitoring has established itself in Scotland.
  - It was accepted that the practical and organisational arrangements have worked well.
  - It was seen as having a continuing role within the range of community disposals.
33. We concluded from the consultation that there was broad support for extending the use of electronic monitoring. We announced our decision on 27 June 2001 to roll out the RLO programme which means that Scottish Ministers intend to designate additional courts which may make a RLO.
34. RLOs provide a means of restricting an offender to a specified place (usually home) for up to 12 hours per day. A RLO may also be used to restrict an offender from being in a specified place although this power has not been used to date. The decision to 'roll-out' means that RLOs can be developed to form an integrated part of the Scottish Executive's criminal justice policy. Legislation will be introduced to provide that a RLO is a direct alternative to custody.
35. A new power will also be introduced to allow the courts to impose electronic monitoring as a condition of a Probation Order or of a Drug Treatment and Testing Order either at the time when the court is sentencing the offender or when the offender breaches a condition of a DTTO or a Probation Order.
36. The power will also be taken to allow a court to transfer a Restriction of Liberty Order to another court. The provision will allow, for example, the continuation of a RLO when an offender subject to that Order moves to a new address in the jurisdiction of another court.
37. We also propose a new power to allow remote monitoring to be made a condition of a prisoner's release on licence.

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## **SUPERVISED ATTENDANCE ORDERS**

38. Supervised Attendance Orders (SAOs) were introduced in 1992 to provide the courts with an alternative to custody for dealing with fine defaults. A recent evaluation of the SAO arrangements found that SAOs represented a useful addition to the range of community disposals and the report pointed the way forward to future developments for their use. However, the evaluation suggests that the severity of the maximum penalty which applies on revocation of an Order appears to have an impact on its use, preventing it being used as much as it might be. We propose therefore that the provisions in relation to the maximum penalty for breaching an Order should be amended to 20 days for the District Courts; and 30 days for the Sheriff Court. Additional powers are also being introduced to allow SAOs to be used by the courts as a sentence of first disposal for people over 18 years old.

## PAROLE AND LIFE SENTENCE OFFENDERS

### ***Powers of the Parole Board to Release Prisoners on Licence and Order Recall to Custody***

39. Under arrangements prior to 8 October 2001, Scottish Ministers were obliged to release prisoners sentenced to terms of more than 4 years but less than 10 years if this was recommended by the Parole Board and they were similarly obliged to release designated life prisoners if directed to do so by the Board. From 8 October 2001, the Board now has the power to direct the release of all classes of life prisoner. The remaining classes of prisoner, over which Ministers continue to exercise discretion, following a favourable recommendation from the Board, are young offenders or adult prisoners sentenced to 10 years or more and children sentenced to a period of detention of 4 years or more.
40. We believe that it should not be a matter for Scottish Ministers to decide on the release on licence of any class of prisoner but that it should rather be for an independent body with experience and expertise in the assessment of risk. Consequently, we propose to provide the Parole Board with the power to direct the release, on licence, of young offenders or adult prisoners sentenced to 10 years or more and children sentenced to a period of detention of 4 years or more.
41. Where a prisoner is released on licence he or she is liable to recall to custody if their behaviour suggests that they present an unacceptable risk to the public. The Parole Board is normally consulted about whether or not a prisoner should be recalled to custody, though provision exists for Scottish Ministers to recall a prisoner where this is considered expedient in the public interest and it is not practicable to await the Board's recommendation. However, the Parole Board will always review any decision to recall and decide whether immediate re-release should be required. At present, where the Board recommends that a young offender or adult prisoner, sentenced to more than 4 years but less than 10 years, should be recalled to custody, Scottish Ministers are obliged to accept the Board's recommendation. In all other classes of case, Scottish Ministers exercise discretion over whether or not to accept the Board's recommendation. Because it is the Board to which Scottish Ministers look to assess whether a person presents an unacceptable risk to the public, it is proposed to make provision for Scottish Ministers to be obliged to accept recommendations for recall from the Board in all classes of case. Provision will continue to exist for Scottish Ministers to order recall where it is considered that it is expedient in the public interest to do so, although the Parole Board will continue to review all such decisions.

# chapter two

## ***Imposition of Consecutive Sentences***

42. There is no means at present by which a determinate sentence can be ordered to run otherwise than concurrently with a life sentence. This means, for example, that if a prisoner commits a serious crime in prison while serving the punishment part of a life sentence, he or she will only be required to serve an additional period in custody as punishment for this further crime if the period equal to half the new determinate sentence extends beyond the punishment part of the life sentence. The extent of the impact of the new sentence therefore depends upon when during the life sentence that the individual is convicted of the later crime. While the Parole Board will be able to take account of the further crime in terms of its assessment of the prisoner's risk to the public, this may have no practical effect on the timing of the Parole Board's review of the case.
43. The present situation is compounded by the creation, in the Convention Rights (Compliance) (Scotland) Act 2001, of punishment parts for all classes of life prisoner. If a prisoner is sentenced to life imprisonment and at a later date is given a further life sentence while serving the first sentence, there is no means by which the punishment part of the second life sentence can be made consecutive to the first. The effect of this is that, once the prisoner has reached the end of that punishment part which expires later, he will have the right to have his continued confinement reviewed.
44. To address this situation we propose to give the courts the power to order that a determinate sentence or a punishment part of a life sentence should be served consecutively to the punishment part of an existing life sentence. Similarly the court will be able to order that a punishment part should be served consecutively to a determinate sentence.

## ***Modification of Section 16 of the Prisoners and Criminal Proceedings (Scotland) Act 1993***

45. Section 16 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 makes provision for those prisoners released early from prison, whether on licence or not, who commit a further offence, punishable by imprisonment, during the period which runs from the date of early release until the date on which the sentence would have been served in full. Section 7 of the 1993 Act contains similar provisions in respect of children sentenced to detention under section 208 of the Criminal Procedure (Scotland) Act 1995.

46. These sections provide that the court which deals with an individual for the subsequent offence may, instead of, or in addition to, any penalty imposed for that offence, order return to custody for a period not exceeding the period between the date on which the new offence was committed and the date on which the individual would have served the earlier sentence in full (but for the early release). They further provide that the making of an order for the person's return to custody shall have the effect of revoking any release licence that is in force.
47. Section 17 of the 1993 Act enables Scottish Ministers to revoke a release licence. Such revocations are normally made following a recommendation from the Parole Board. Where Scottish Ministers revoke a release licence and recall the person to custody, the individual is then liable to be detained until the end of the sentence unless the Parole Board directs or subsequently recommends that the prisoner should be re-released on licence.
48. Where a court exercises the power to order an offender back to custody under section 16 or section 7(3) of the 1993 Act, the order is treated as a fresh sentence and the offender becomes eligible for release from it at the half way point. In the case of a prisoner whose release from the original offence was on licence, the question of whether he or she can be released then depends on a Parole Board decision on release from the original sentence (for which the licence has been revoked as an automatic consequence of the order) or on a Parole Board decision on both the original sentence and the order if the latter is long enough to constitute a long term sentence (that is, a determinate term of 4 years or more). For this reason our policy is, where practicable, to refer such individuals back to the Board for a decision on release by the time one half of the period under the order and (where applicable) any new sentence for the further offence has been served.
49. Operational difficulties arise where the court orders a short period of return under sections 16 or 7(3) of the 1993 Act. It may be quite impractical in the time before half the period ordered expires to assemble the reports which, under statute, must be provided to the Board in order that it can make an assessment of risk. This can result in an individual remaining incarcerated for a period beyond that which the court might have intended.

# chapter two

50. We propose to resolve this unsatisfactory situation by repealing the provisions in section 16(7) and section 7(4A) of the 1993 Act relating to licence revocation. A court will still be able to punish a person for committing a further offence before the expiry of the original sentence, but it will be a matter for Scottish Ministers, normally after consultation with the Parole Board, to decide whether the nature of the further offence suggests an unacceptable risk to the public such that the licence, in respect of the original sentence, should be revoked under section 17 of the 1993 Act.



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## INTRODUCTION

51. A successful criminal justice system never stands still. It must be continuously reviewed and modernised.

This chapter deals with a variety of reforms to criminal law and procedure. It covers proposals for:

- Modernising the law on certain sexual offences.
- Increasing the penalties for possession and distribution of child pornography.
- The repatriation of prisoners.
- Updating the law in relation to fingerprint evidence.

## SEXUAL OFFENCES

52. Two changes will be made to the sexual offences provisions in the Criminal Law (Consolidation) (Scotland) Act 1995 which reflect the need to keep the law up to date and in accord with the European Convention on Human Rights.
- Section 8(1) of the 1995 Act makes it an offence to take an unmarried girl under 18 out of the possession of her parents (or whoever has lawful charge of her) without their consent. The offence occurs whether or not the woman involved has agreed to leave. We consider that this is difficult to justify in a modern context since a woman of 16 is free to marry. We will repeal the existing provision. We will also ensure that no appropriate protections are lost and that it will still be an offence to abduct a woman.
  - We will repeal section 15 of the 1995 Act which creates the defence to a charge of indecent assault committed against a girl under 16 that the person so charged had reasonable cause to believe that the girl was his wife. There is no situation where indecent assault can be justified on a woman or girl of any age and so we intend to repeal it.

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## **PORNOGRAPHY**

53. We will also implement our commitment to increase the maximum sentences in the Civic Government (Scotland) Act 1982 for possession of, and possession and distribution of, child pornography from six months and three years to five and ten years respectively.

## PRISONERS

54. We will plug a loophole in the law to ensure that UK citizens who have been sentenced to a period of less than 4 years imprisonment in foreign countries are able to serve their sentence in Scotland if they meet the criteria for repatriation.
55. In general, prisoners transferred to Scotland will have to spend at least some time in custody in Scotland before being eligible for early release. However, this is not the case for prisoners serving a sentence of less than 4 years who have served half or more of their sentence before coming to Scotland. Such prisoners, in common with those sentenced for less than 4 years in Scotland, are entitled to unconditional release due to the fact that they have already served one half of their sentence. The sentencing State is unlikely to agree to the transfer of a prisoner where the transfer will be followed by immediate and unconditional release from custody, and therefore the current law can hinder the repatriation of prisoners who meet all the criteria for transfer.
56. We will therefore change the law to provide that offenders who are repatriated to Scotland and who are serving a sentence, imposed abroad, of less than 4 years will require to serve one half of the balance of their sentence that remains outstanding following their transfer before they are entitled to unconditional release. This brings the law in line with the provisions for offenders who are serving a sentence of 4 years or more. Such offenders are currently required to serve two-thirds of the balance of their sentence before they are entitled to release on licence.

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## **EVIDENCE CERTIFICATES OF FINGERPRINTS AND OTHER IMPRESSIONS**

57. Section 284(2) of the Criminal Procedure (Scotland) Act 1995 allows the prosecution to serve a certificate on an accused signed by an authorised person and stating that fingerprints or other similar impressions were taken from a named individual at a specified time, place and date. This has to be done not less than 14 days before the trial. The certificate is then deemed to be sufficient evidence of the facts contained in it.
58. There are concerns about the absence of any express right to challenge the certificate at the moment. We will amend section 284 of the 1995 Act to ensure that the accused has an opportunity to dispute the contents of the certificate.



# chapterfour

## INTRODUCTION

59. How the law succeeds in achieving its objectives also depends crucially upon how efficiently it operates.

This chapter deals with a package of measures which will contribute to improving the overall efficiency of the system.

These are:

- Enhanced powers for police support staff.
- Prisoner movement.
- Changes to police powers to take samples.
- Re-instatement of certain police ranks.
- A package of measures aimed at improving efficiency in criminal proceedings.
- Efficiency measures covering court practices.
- New groupings for local authority criminal justice social work services.

## POWERS FOR POLICE SUPPORT STAFF

60. We have been considering how a number of roles currently carried out by a mixture of police officers, prison officers and civilian support staff might be done more efficiently. We have also been examining whether any of these staff could usefully be given additional legal powers, such as powers to handcuff, search or fingerprint prisoners. These roles include:
- Turnkeys:** police support staff who look after prisoners in cells either in police stations or in court. These staff have no specific legal powers.
  - Prisoner Escorts:** police and prison officers who escort prisoners while they are in transit, for instance between police cells or prison and court, or are otherwise outside prison for temporary purposes. There are statutory provisions in the Criminal Justice and Public Order Act 1994 empowering Scottish Ministers to arrange for civilians or contractors to carry out this function. These are available to the Scottish Prison Service but not police forces.
  - Court Security Officers:** primarily police officers, (although eight civilian support staff were employed by Lothian and Borders Police as part of a pilot scheme in Edinburgh – these staff have no legal powers) providing security in courts and court premises and escorting prisoners to cells within court buildings.
61. We believe that each of these roles could be carried out effectively by civilian support staff if they had the necessary powers and training. However, at present Chief Constables have no power to delegate these roles to such staff. We therefore propose to legislate to allow Chief Constables to employ staff in each of these categories to carry out these functions, or to place contracts for them if they so wish. This will enable Chief Constables to make the most effective use of the resources available.
62. We do not consider that support staff carrying out these roles would require a full range of constabulary powers. However, the powers we are considering providing include power to search prisoners and visitors; power to fingerprint and photograph prisoners; power to restrain using minimum force, including handcuffs. We also envisage these staff having a power to detain to prevent escape and to remove people from court precincts.

# chapterfour

63. There are a number of other options for the employment status of these support staff. For example, they could either be employed directly by the Executive, or an Executive Agency, or they could be contractors engaged by the Executive. They could also be employed by local authorities. However, as we would expect the staff involved to be under the direction of the Chief Constable, employment by the Chief Constable would provide for the clearest accountability and management of these staff. We are also currently examining the scope for further integrating the prisoner escort functions currently carried out both by the police and the Scottish Prison Service. A review of options is currently underway and proposals will be brought forward when it is concluded. Its recommendations may affect the exercise of some of the provisions described above.
64. Ensuring the safety of all those who work in or attend court is of paramount importance. Nothing in these proposals is intended to undermine this basic principle. The purpose of the changes proposed to the legislation would be to enable Chief Constables to use appropriately trained civilians as well as officers in undertaking court duties with the intention of ensuring that best use is made of all staff in achieving the safe and orderly environment which is essential to the proper functioning of the courts.

## **PRODUCTION OF PRISONERS REQUESTED BY THE POLICE**

65. The police sometimes ask for a remand or convicted prisoner to be brought to a police station for interview, for an identity parade or for some other similar purpose (such as taking of DNA samples). The Scottish Prison Service's normal practice is to grant these requests. At present, the prisoner remains the responsibility of the Scottish Prison Service and must therefore be accompanied by prison officers throughout the period he is outside the prison. This requirement places a considerable extra demand on prison officers' time. The escorting prison officers are required to remain with a prisoner during the time at the police station even although the prisoner is also accompanied by police officers. This requirement causes practical problems for the police too, e.g. in carrying out identity parades.
66. We therefore propose to amend the present law to allow prisoners to be taken by the police to a police station or other place without requiring to be accompanied by prison officers. This would normally apply to instances where the police were seeking to exercise legal powers, for instance to compel a person's attendance at a police station, which are already conferred by law in respect of the public at large. The consent of prison governors would still be required, so that they could refuse a request or attach reasonable conditions to a grant of permission. The planned provision would also apply if the prisoner is being escorted by civilian support staff.

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## POWERS TO TAKE PRINTS AND SAMPLES

67. We are planning to legislate to allow the retention of fingerprint and DNA samples given voluntarily, and to remove the requirement in Scotland for an inspector to authorise taking of certain DNA samples. We have also considered whether there should be change to the legislation on the retention of prints and samples in cases where there has been an acquittal or a decision not to prosecute.

### *Retention of samples given voluntarily*

68. The Criminal Justice and Police Act 2001 includes a provision amending the Police and Criminal Evidence Act 1984 (PACE) to allow the police in England and Wales to retain, with consent, prints and samples given voluntarily for elimination purposes. This amendment arose from experience of mass screenings of particular communities following particular crimes, for example, screening of paedophiles after a sex attack on a child. Under PACE such samples had to be destroyed, and there were concerns that the same individuals were being repeatedly approached to take part in such mass screenings with the result that they were becoming reluctant to participate.

69. There is no provision in Scotland that would compel the destruction of samples given voluntarily (the statute requires only that samples taken from individuals arrested or detained on suspicion, need be destroyed). But current police practice is that such samples would be destroyed and that individuals give them on that basis.

70. In Scotland some 10,500 people have had samples taken in 17 voluntary mass screenings over the last five years. Although no figures are available for repeat screenings, it is believed that a number of individuals fall into this category. We believe that a measure allowing these samples to be retained would be useful in reducing both the use of police resources in profiling the same individuals and the inconvenience to individuals who are likely to be asked for repeated samples. It makes no sense for prints and samples given voluntarily to have to be destroyed if the individual consents to their retention. We will therefore legislate to allow the police to retain samples in these circumstances. In England and Wales, consent given to retention cannot be subsequently revoked by the individual giving the prints or samples. But we believe the individual should have the opportunity to withdraw consent. We do not believe that this makes a great deal of practical difference as withdrawing consent would bring suspicion on the individual. However, having the opportunity to revoke may encourage consent to be given in the first place.

### ***Authorisation by an inspector for taking samples by mouth swab***

71. Taking DNA samples by mouth swab is now a routine procedure in Scottish forces, similar to the taking of fingerprints. At the moment, the latter can be done by a constable without the authorisation of a higher ranking officer, but taking a mouth swab requires the consent of an inspector in line with taking other DNA samples (for example, hair samples, finger or toe nails, bodily fluids). There seems no reason in principle why the level of authorisation for taking a DNA sample by mouth swab without the use of force should be different to the taking of fingerprints. Both provide evidence to identify individuals. We will therefore remove the requirement for authorisation by an inspector to take DNA samples by mouth swab. The consent of an inspector will still be required if the sample were to be taken forcibly or by other, more intrusive methods, such as hair samples.

### ***Retention of prints and samples after acquittal or a decision not to prosecute***

72. The Criminal Justice and Police Act 2001 also introduced provisions for England and Wales allowing the police to retain all prints and samples lawfully taken, even if there is no prosecution or the individual is acquitted. Previously, such samples had to be destroyed, but ambiguity was introduced into the law in England and Wales by a judgement of the House of Lords that the court had discretion to admit evidence obtained from the use of samples that should have been destroyed.
73. We have considered the position in Scotland. We do not believe that prints and samples should be retained when a person goes through the criminal justice process and is not found guilty of an offence. We would therefore approach any comparable ambiguity in Scots law in a different way from the approach taken in England and Wales. However, there is no reason to believe that there is such an ambiguity at the moment. The general rule is that evidence which has been irregularly obtained is inadmissible, although the court has discretion to excuse the irregularity and admit the evidence, taking account of various factors, including the question of unfairness to the accused. Given a requirement in law for the police to destroy samples, the presumption would be that evidence obtained by the use of samples which had been illegally obtained or retained would be inadmissible. But we are aware that there is a possibility of the courts in Scotland addressing this question and a need for legislation to clarify the position in the future.

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## **THE RANKS OF DEPUTY CHIEF CONSTABLE AND CHIEF SUPERINTENDENT**

74. As a result of recommendations made in the Inquiry into Police Responsibilities and Rewards (chaired by Sir Patrick Sheehy in 1993), the ranks of Deputy Chief Constable and Chief Superintendent were abolished in statute with effect from April 1995. The aim at the time was to simplify police hierarchies and to encourage forces to look at restructuring as a means of reducing costs.
75. However, as forces reorganised it became apparent that there was a place for Chief Superintendents, primarily as managers of groupings of Superintendents. Similarly, the current position whereby Chief Constables can designate a deputy to act in their absence was found to exclude police authorities who had previously appointed the Deputy Chief Constable. As a result of these considerations, measures to reinstate these ranks in statute in England and Wales were included in the Criminal Justice and Police Act 2001. We will now take similar steps to reinstate the Deputy Chief Constable and Chief Superintendent ranks in Scotland.

## CRIMINAL PROCEDURE

76. We will take this opportunity to make the following minor changes to criminal procedure which will improve the efficiency of the justice system.

### ***Continuing cases where the service of the complaint and citation has not been effected***

77. We will make provision that where a case calls and there is no evidence before the court that service has been effected of the accused it is to be competent for the court to continue the case to a further diet.

### ***Authorising the use of electronic signatures***

78. We consider that the efficiency of the criminal justice system could be improved by more effective use of electronic communication. We are examining how the available technology might best be applied to improve our system and will bring forward legislation as appropriate to allow documents in criminal proceedings to be sent electronically.

### ***Additional means of citation of accused***

79. We aim to create more flexibility in relation to the requirement that an accused receives details of criminal charges against him. We will modify the law in relation to service of an indictment or complaint to enable the police to leave a notice at an accused person's home that states when the case against the person will be heard in court and that a complaint or indictment should be collected from a specified police station.

### ***Extension of Jurisdiction of Sheriff Court in Relation to Sex Offences Committed Abroad***

80. We wish to ensure that offences under section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 can be tried in a Sheriff Court in addition to the High Court of Justiciary. The offences in question are sexual offences committed abroad, which constitute an offence in the relevant country and which would constitute a listed sexual offence if committed in Scotland. At present, however, a Sheriff Court has no jurisdiction over such offences committed abroad, and such offences could only be tried in the High Court.

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## ***Exclusion of Offenders Subject to Community Disposals from Jury Service***

81. We will amend existing legislation to prevent offenders subject to a Community Service Order, a Probation Order, a Drug Treatment and Testing Order or a Restriction of Liberty Order from serving on juries. It is thought that given the nature of these community disposals it is appropriate for offenders who receive such an order to be disqualified from serving on a jury for an appropriate period.

## ***Northern Ireland Warrants***

82. We will amend the Criminal Procedure (Scotland) Act 1995 to enable a search warrant issued in Northern Ireland to be executed in Scotland once it has been approved or “backed” by a Sheriff or Justice of the Peace.

## ***Aggregation of Offence and Non-Offence Terms of Imprisonment***

83. Section 5 of, and Schedule 1 to, the Prisoners and Criminal Proceedings (Scotland) Act 1993 deal with terms of imprisonment imposed for default in payment of a fine or contempt of court (referred to as a “non-offence” term of imprisonment) and regulate sentence calculation when a person is serving both a non-offence term and a sentence for an offence.
84. Operational difficulties have been experienced with the existing provisions, some of which are unclear, and this is affecting prisoners’ early release entitlements. We therefore propose to take steps to clarify how the existing provisions should operate.

## ***Detention in Scottish Prisons of Prisoners from Other United Kingdom Jurisdictions***

85. At present Scots Law does not allow the Governor of a Scottish penal establishment to admit a prisoner apprehended by the police in Scotland who is unlawfully at large from another United Kingdom jurisdiction. This can create administrative difficulties for the police because they require to deliver the prisoner into the custody of the authorities in the other jurisdiction rather than hand them into the custody of the Scottish Prison Service which can then arrange for the transfer of the prisoner to the authorities in the other jurisdiction.
86. We propose to make provision to allow the Scottish Prison Service to detain temporarily persons unlawfully at large from another UK jurisdiction pending their transfer to the parent jurisdiction.

### ***Extended sentences for abduction***

87. Section 210A of the Criminal Procedure (Scotland) Act 1995 allows the court to impose an extended sentence on a person convicted on indictment of a sexual or violent offence if it considers that such a sentence is necessary to protect the public from serious harm from the offender. The extended sentence combines a sentence of imprisonment with a further period during which the offender is subject to a licence. The length of this period is determined by the court's assessment of the need to protect the public. We intend to amend section 210A to allow the court to impose an extended sentence on a person convicted of abduction (even if violence is not used and there is no sexual motive). The act of abduction implies overpowering the will of the victim and as such is a serious enough offence for which the court ought to have the power to impose an extended sentence.

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## COURT PROCEDURES

### ***Live Television Link Between Courts and Prisons***

88. In solemn criminal procedure accused persons who are in custody require to be brought to court for routine hearings before trial. These hearings are procedural in nature and usually result in an accused being granted bail or committed for trial in custody.
89. In summary procedure accused persons in custody can be required to attend court for short procedural appearances at various stages of a case.
90. We will remove the need for remand prisoners to attend court for every routine hearing. Initially, it is intended to establish a live television link between HM Prison Barlinnie and Glasgow Sheriff Court for full committal proceedings, where the volume of prisoners in transit on a daily basis is the greatest. It is intended that solicitors at court will be able to have a confidential conversation with their client by using a sound proof booth which will be installed at the back of the courtroom.

### ***Juries: Overnight Seclusion***

91. At present when any jury have retired to consider their verdict they are enclosed in the jury room until they are ready to return their verdict. However, the presiding Judge or Sheriff has power to make arrangements for the overnight accommodation of the jury and for their continued seclusion if such accommodation is provided.
92. We will allow jurors not to be secluded overnight while deliberating a verdict, but to be allowed home. The court would however retain a discretion to order seclusion in appropriate cases. This would mirror the position in England and Wales.

### ***Transferring Business Between Sheriffdoms***

93. At present while it is possible to transfer cases between courts in a Sheriffdom, there is no legislation to transfer cases across a Sheriffdom boundary.
94. We will legislate to permit the transfer of business in such circumstances. This will not be used on a regular basis but will only be available for contingency purposes in the event of a major disruption of business. In order to ensure that there are appropriate safeguards in the use of this power, it is proposed that this will only be exercised with the agreement of the respective Sheriff Principal for the Sheriffdom concerned.

***Power to Sign Warrants Outwith Sheriffdom***

95. At present a Sheriff has no power to sign a warrant or other legal document while outwith his Sheriffdom. This was confirmed by the High Court in the case of Shields v Donnelly 1999 SCCR 890.
96. We will give a Sheriff the power to continue to conduct his duties in a lawful manner irrespective of where in Scotland he signs any warrants or legal documents requiring his signature.

***Fast Track for Breaches of Community Disposals***

97. At present where a Judge or Sheriff orders the citation of a person alleged to have breached a community disposal such as a Probation Order, a Community Service Order, a Supervised Attendance Order, a Supervised Release Order or a Restriction of Liberty Order, the citation to attend court is issued by the Procurator Fiscal.
98. We will remove an administration step in the existing procedure to allow the Clerk of Court (instead of the Procurator Fiscal) to issue such citations which will result in these cases being dealt with more expeditiously.

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## LOCAL AUTHORITY GROUPINGS AND FUNDING

99. In Scotland, local authority criminal justice social work services are responsible for planning and delivering a broad range of community disposals. This gives a local focus to criminal justice social work and helps to ensure that offenders receive the support from other mainstream services, such as housing and addiction services, that they require in their local communities. The structure of the service was reviewed in 1998 as part of the “Tough Option” consultation. As a result of this review the service is being restructured into 14 groupings (11 mainland and 3 island groupings) which will bring together individual authorities to provide a stronger base for criminal justice social work in Scotland.
100. The new groupings will come into operation in April 2002. The decision to retain criminal justice social work as a local authority function secures local accountability and the local delivery of services whilst strengthening its role in relation to other criminal justice agencies. It also opens the way for the service to place a renewed emphasis on effectiveness and the reduction of re-offending which is underpinned by the “What Works” agenda, being pursued in Scotland under the Getting Best Results banner.
101. Local authorities have prepared strategic plans for the new groupings and these will determine the shape and priorities of the service for the next 3 years. The Scottish Executive provides financial support for the service through the existing 100% funding provisions contained in the Social Work (Scotland) Act 1968. In response to the establishment of the groupings, legislative power will be taken to allow funding to be paid to these new groupings.
102. In addition, we propose a general power to allow for funding to be provided to local authorities for criminal justice social work services in respect of work carried out prior to the court stage. This will ensure that local authorities can develop new services at the pre-court stage, providing further opportunities for early intervention, at the start of an individual’s offending career.



# chapter five

## INTRODUCTION

103. This chapter deals with our proposals to protect children and to deal more effectively with young offenders.

It outlines :

- The changes proposed to the law on the chastisement of children.
- How we propose to implement the recommendation in the Report on Youth Crime for a pilot scheme to test the feasibility of a scheme under which, in appropriate circumstances, 16 and 17 year olds could also be dealt with by the Children's Hearing system.
- How we propose to clarify current legislation to ensure that children and young people facing criminal proceedings are placed in the most appropriate place while on remand.

104. We also explain the financial implications of the measures proposed for the Bill.

## PHYSICAL PUNISHMENT OF CHILDREN

105. The role of parents and other carers is crucial in giving children the best possible start in life and setting them an example to guide their own behaviour. It is important to bring up children within a framework of discipline that they can understand. We respect the privacy of family life and the right of parents to set the ground-rules for discipline within their own family.
106. However, the state has a role to protect everyone from violence and assault. The law has always recognised that parents' right to bring up children in accordance with their own beliefs and values must be tempered by the criminal law.
107. It is an offence under common law to assault another person – including a child. In addition, the Children & Young Persons (Scotland) Act 1937 makes it an offence for adults to assault, ill-treat, neglect or abandon a child for whom they have parental responsibilities and rights, or who is under their care. This Act did not interfere in the right of parents or anyone else having control of a child to administer reasonable chastisement. There is case law on what constitutes reasonable chastisement but such cases can be controversial. Parents do not always know where they stand.

### **Consultation**

108. In the case of *A – v – UK*, the European Court of Human Rights held that English law, which is very similar to Scottish law in this respect, did not adequately protect children from inhuman and degrading treatment. The case concerned the caning of a boy by his step-father to be. To aid consideration of whether the law required clarification in Scotland, we issued a consultation paper *the Physical Punishment of Children in Scotland*. This paper made it clear that we did not favour a total ban on physical punishment.
109. We received 220 responses and an analysis is available on our website at [www.scotland.gov.uk/justice/familylaw](http://www.scotland.gov.uk/justice/familylaw), together with the text of the responses.
110. Although this was not proposed in our paper, 34% of the responses were in favour of a total ban on physical punishment, following the model of Sweden and some other European countries. Of the rest, 43% were prepared to consider some clarification of the law; 17% thought the law required no change; and in 6% of responses no firm view was offered. Overall therefore, 77% of respondents favoured a change in the law to give increased protection to children and greater clarity to adults caring for them.

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## ***Our proposals***

111. Having considered the outcome of the consultation very carefully, we announced our intentions to the Scottish Parliament on 6 September 2001. These were that:
- statutory factors should be set out to guide the courts in determining the reasonableness of punishment, in particular:
    - The nature and context of the punishment.
    - Its duration and frequency.
    - Its physical and mental effects.
    - The sex, age and state of health of the child.
  - certain forms of punishment should never be permitted, namely:
    - Blows to the head.
    - Shaking.
    - The use of implements.
112. We also proposed that physical punishment of children up to and including the age of two should be prohibited. A child cannot learn from punishment unless it understands the relationship between the bad behaviour and the punishment. Before language skills have properly developed, many children will not be able to understand why they are being punished. There may be room for debate about the exact age which should be prescribed, but it is clear from our consultation responses that many people would regard punishment to be wrong or ineffective for children below a certain age.
113. This does not mean that children of two or younger should be permitted to put themselves or others into dangerous situations. Adults have a responsibility to ensure that very young children do not get into danger. Removing a child from danger or preventing it from seeking danger is not punishment.

## ***Guidance for parents***

114. Our proposals will provide welcome clarification for parents and others while safeguarding children from actions that could risk serious physical injury, such as shaking.

115. We recognise that parenting is both challenging and rewarding. We recognise too that parents do sometimes need advice and support. Advice on different methods of disciplining children is already available from various children's charities. We have been giving careful consideration to the development of parenting support in Scotland. There is a range of initiatives, including Sure Start Scotland, New Community Schools and Starting Well which include elements of parenting support and we are looking at how best to build upon this provision to help to support parents in their parenting role.

### ***Physical punishment in childcare settings***

116. Finally, we will ban smacking in all regulated childcare including by childminders. Smacking is already banned in publicly funded nurseries and extending the ban to all regulated childcare will give clarity and consistency. There was strong support during the consultation for this ban especially from childcare providers. Carers in the home would still be permitted to smack if they had specific permission from the parents, allowing for consistency in the approach to discipline within the home. The Regulation of Care (Scotland) Act 2001 contains powers to make the necessary regulations banning physical punishment in regulated care.
117. The aim of our policy is to reduce the level of violence in society, and it is well known that children learn their habits in later life by example. Physical punishment has its uses, but it may also teach a child that force is permissible to get your own way. By setting clear statutory limits on physical punishment, we aim to safeguard children while protecting responsible parents.

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## CHILDREN'S' HEARINGS: PILOTS FOR 16-17 YEAR OLDS

118. The Report of the Advisory Group on Youth Crime – **It's a Criminal Waste** – published in June 2000 recommended the setting up of pilot schemes to find out whether 16 and 17 years old offenders, particularly persistent minor offenders, could be more effectively dealt with by the Children's Hearings system rather than by the courts – an arrangement which results in significant numbers ending up in custody.
119. The Advisory Group Report made this recommendation on the basis that persistent young offenders in the 14-18 age group have problems which are in many cases transitional, that a multi-agency approach was needed to respond to the needs of this age group and that the Hearings system was best placed to assess those needs and provide services which would effectively tackle the offending behaviour.
120. We believe that it is essential to have in place effective measures to address offending behaviour by young people of whatever age. Such measures have to address both the offending behaviour and the needs of the young person in order to have a lasting impact on that behaviour. Research evidence points to greater success if programmes are targeted on the individual requirements of the offender. The Hearings system may be better placed to discuss and involve the young person in the process of tackling offending behaviour than the adult criminal justice system. We are therefore keen to explore whether this approach will lead to long-term improvement both to the behaviour of the young people concerned and to the communities in which they live. We therefore commissioned a feasibility study into the practical and legislative implications of a pilot scheme.

121. The study concluded that existing legislation would have to be amended to allow a pilot to proceed. Current legislation and practice provides for a Children's Hearing to become involved with 16/17 year old offenders only in the following limited circumstances:
- A Procurator Fiscal may refer a 16 or 17 year old to a Children's Hearing if a supervision requirement is already in place in respect of the young person.
  - The High Court may, and the Sheriff Court shall, refer a 16/17 year old to a Children's Hearing for advice as to treatment if the young person pleads guilty to or is found guilty of an offence and is the subject of a supervision requirement. On receipt of that advice the court may dispose of the case itself or remit the young person to a Children's Hearing for disposal.
  - Where a young person aged 16 to 17½ is charged summarily with an offence and pleads guilty to or has been found guilty of the offence and is not subject to a supervision requirement, the court may seek the advice of a Children's Hearing as to treatment. On receipt of that advice the court may dispose of the case itself, or, where the Hearing have so advised, remit the case to the Hearing for disposal.
122. These limitations mean that a 16/17 year old normally must go through the criminal process first and only in limited circumstances may a Hearing become involved. In order to enable Children's Hearings to consider the majority of minor offenders in the 16/17 age bracket, the legislation relating to the jurisdiction of the Children's Hearings will require to be amended for the purposes of the pilot.
123. Our prime aims are to continue to maintain public safety and to ensure that the measures available to deal with these minor offenders are robust and challenging. Before pilots are undertaken we wish to be satisfied that appropriate services and progressive programmes are in place and that the approach can be properly evaluated. Throughout the duration of the pilots the Lord Advocate will retain the right to prosecute any offence and particularly serious offending through the criminal justice system. With these safeguards, we believe that these proposals should be tested to assess whether we can deal more effectively with this age group than under present arrangements. If so, the long term interests of the public and communities will be better served.

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124. Any pilot would need careful preparation. The Children's Hearings members in the pilot areas would need relevant training. Crucially there would need to be an expansion of the range of effective community based disposals for this group of young offenders, building on the work already developed for offenders under 16 years. This would not be a question of referring 16 and 17 year olds simply to a Children's Hearing. The programmes and disposals available to the Hearings would have to be rigorous and well focused on offending behaviour. They would have a strong restorative justice element designed to bring home to the young offender the consequences of their offending behaviour and offer means of making some form of reparation, apology or recompense to the victim. The aim of the pilots would be to put increased pressure on the young person to change their behaviour and build on the Hearing's experience of regular reviews and discussion with the offender as opposed to the more rapid processing of the courts.
125. We will therefore introduce the necessary legislation to enable the pilot to proceed. The pilot will concentrate on minor offenders in the 16/17 age bracket. Where the circumstances of an offence require it, a young person in that age group will still be open to prosecution through the criminal justice system. Our intention is to identify those cases where consideration by the Children's Hearings system is more appropriate and to evaluate whether a better outcome in terms of offending behaviour is secured. The legislative changes will apply only in those pilot areas and will last only for as long as is necessary to evaluate the pilot properly.
126. Although resource requirements for the pilots cannot be accurately determined until the pilot areas have been chosen, preliminary estimates suggest that each pilot scheme is likely to cost around £0.5m per year per area. Each pilot should last for 2 years. We will provide the resources to cover the additional costs which the Scottish Children Reporter Administration (SCRA) and local authorities will incur in implementing these pilots.

## REMANDING OF UNDER-21S IN YOUNG OFFENDER INSTITUTIONS

127. We will change the current legislation to make it clear that children and young persons facing criminal proceedings can be remanded to a Young Offenders Institution (YOI) as well as to an adult prison.
128. There are situations where a secure place or a suitable place of safety is not available for a young person who has been charged with a criminal offence, or the court feels that the young person's behaviour is such that penal accommodation is the best option.
129. Section 51 of the Criminal Procedure (Scotland) Act 1995 provides for the remanding and committal for trial or for sentence of persons over 14 and under 21 years of age in certain circumstances. However, at present section 51 refers only to detention in a prison, where the vast majority of the prisoners will be adults, and not to detention in a YOI.
130. Placing a young remand prisoner in an adult prison may not always be the best option, although sometimes it will be appropriate (for instance, for security reasons or to facilitate family contact). Therefore, it is proposed to amend section 51 to provide explicitly for the use of YOIs for under-21 remand prisoners in circumstances where imprisonment would be possible at present, while maintaining the existing power to house such prisoners in prison. This will give the prison authorities maximum flexibility to place each such remand prisoner in the accommodation that most suits his or her own needs and operational requirements.

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## FINANCIAL IMPLICATIONS

131. With the exception of those areas discussed specifically in this Paper, any financial implications from our proposals will be met from within planned resources.