

Community Justice (Scotland) Bill

A summary of Stage 3

The Community Justice (Scotland) Bill was passed by the Scottish Parliament on 11th February 2016¹, following the Stage 3 debate. This briefing provides a summary of the outcomes of the debate that are likely to be of particular interest to third sector organisations.

Definition of Community Justice

The definition of community justice was broadened at Stage 2 to include activities relating to those who may have committed offences but not yet been prosecuted and services for individuals identified as being at serious risk of first time offending. At Stage 3, the Scottish Government brought forward further amendments in relation to the definition of community justice. These were voted through and the changes have reversed the decision taken by the Justice Committee at Stage 2 to include primary preventative activities (i.e. services for people identified as being at serious risk of first time offending) within the Bill. The definition of 'community justice' now reads as follows:

Meaning of "community justice"

(1) In this Act, "community justice" means—

- (a) giving effect to bail conditions, community disposals and post-release control requirements,*
- (b) managing and supporting persons falling within subsection (2A), (2D) or (2E) with a view to them not offending in future or, if that is not realistic, reducing future offending by them,*
- (c) arranging relevant general services in ways which facilitate persons falling within subsection (2A), (2D) or (2E) accessing and using them, 15*
- (d) preparing persons who have been convicted of offences and sentenced to imprisonment or detention in penal institutions for release,*
- (da) facilitating the provision of relevant general services which persons mentioned in paragraph (d) are likely to need immediately following their release.*

Further details about who is covered by subsection (2A), (2D) and (2E) are provided below. As agreed at Stage 2, the term 'offender' has been removed from the Bill. Instead, the following wording will be used.

(2A) – A person falls within this subsection if the person –

(a) "has, whether before or after this section comes in to force, been subject of an act mentioned in subsection (2B)² and

(b) "is not for the time being imprisoned or detained in a penal institution"

(2B) The acts referred to in subsection (2A)(a) are –

(a) Conviction for an offence,

(b) The making, in respect of an offence, of a relevant finding (see subsection (4)(b)),

¹The Official Report is available at:

www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10365&mode=pdf

- (c) Being given an alternative to prosecution in respect of an offence,
- (d) Arrest on suspicion of having committed an offence by any person having power to do so in respect of the offence

(2C) Subsection (2B) includes acts occurring anywhere in the world

(2D) A person falls within this subsection if the person is the subject of a recognised EU supervision measure³

(2E) A person falls within this subsection if the person –

- (a) is aged 16 or 17, and
- (b) is subject to a compulsory supervision order made by virtue of the ground mentioned in section 67(2)(j) of the Children's Hearing (Scotland) Act 2011.

Following the Stage 3 debate, 'general services' has also been clarified and will now include reference to specific types of services (as shown in the box below).

"relevant general services" means services and support provided to people generally in relation to –

- (a) Housing,
- (b) Employment,
- (c) Education,
- (d) Children,
- (e) Physical or mental health (including, in particular, alcohol and drug treatment services),
- (f) Social welfare,
- (g) Any other matter which does or may affect the likelihood of future offending by persons falling within section 1(2A), (2D) or (2E).

The role of the third sector in community justice

"There have been radical changes to the bill that mean it now properly includes the third sector"

- Margaret Mitchell, as quoted in the Official Report of the Meeting of the Scottish Parliament, 11th February 2016

"I fully recognise that the third sector is vital to the successful planning and delivery of effective and efficient services for individuals, and I am grateful for the positive contribution that the sector makes to community justice, at both a local and national level, which I hope will be even greater in the future."

- Paul Wheelhouse (Minister for Community Safety and Legal Affairs), as quoted in the Official Report of the Meeting of the Scottish Parliament, 11th February 2016

Following a series of amendments at Stage 2 and Stage 3, the third sector will now be defined within the Bill. There will also be requirements for statutory community justice partners to engage with them in relation to:

- Local planning and reporting of community justice services
- National strategic developments.

² Acts mentioned in 2B are: (a) Conviction for an offence, (b) The making, in respect of an offence, of a relevant finding (c) Being given an alternative to prosecution in respect of an offence (d) Arrest on suspicion of having committed an offence. Further information about the definitions of each of these will be included in Section 1 of the Bill (See proposed amendment 19).

³ A 'recognised EU supervision measure' will be defined in the Bill as "a measure imposed in another member State of the European Union which is recognised in Scotland (with or without adaptation) under Schedule 2 to the Mutual Recognition of Supervision Measures in the European Union (Scotland) Regulations 2014 (S.S.I 2014/337)"

Definition of the third sector within the Bill

The term "third sector body" is defined in the Bill as: *"a body (whether or not formally constituted) established for purposes which consist of, or consist mainly of, providing benefits for society (but does not include a body established under an enactment)"*.

"Third sector bodies involved in community justice" are also defined within the Bill. The definition includes organisations that provide a relevant service as well as those that represent the interests of people affected by community justice. At Stage 3, amendments were introduced to include explicit mention of those representing or promoting the interests of families and/or victims (See box below for the revised definition).

Third sector bodies involved in community justice

(1) A third sector body is involved in community justice for the purposes of this Act if it –

(a) Provides a service falling within subsection (1A), or

(b) Represents or promotes the interests of –

(i) Persons mentioned in subsection (2), or

(ii) Other persons who are or may be affected by community justice (see subsection (2A)).

(1A) A service falls within this subsection if the service –

(a) Is provided to persons falling within section 1(2A), (2D) or (2E) and involves managing or supporting them with a view to eliminating or reducing future offending by them, or

(b) Is provided to persons who are being prepared for release, having been convicted of offences and sentenced to imprisonment or detention in penal institutions, and involves preparing them for that release.

(1B) In subsection (1A)(a), "supporting" has the same meaning as in section 1(1)(b).

(2) The persons referred to in subsection (1)(b)(i) are persons who –

(a) Fall within 1(2A), (2D) or (2E), or

(b) Are being prepared for release, having been convicted of offences and sentenced to imprisonment or detention in penal institutions.

(2A) The persons referred to in subsection (1)(b)(ii) include, in particular –

(a) Families of persons mentioned in subsection (2),

(b) Victims and families of victims.

(2B) In subsection (2A)(b), "victims" means persons who are, or appear to be, victims of offences or alleged offences.

(3) A third sector body is involved in community justice in relation to the area of a local authority for the purposes of this Act if it does a thing mentioned in subsection (1) in, or in relation to, the area.

Engagement of third sector bodies in local planning and reporting

The Bill requires local statutory partners to prepare a plan in relation to community justice for their area. In doing so, they must have regard to:

- The National Strategy for Community Justice
- The National Performance Framework for Community Justice
- Any Guidance that is issued by Scottish Ministers.

As agreed at Stage 2, there will be a requirement for local statutory partners to:

- Consider which relevant third sector bodies and local community bodies are likely to be able to contribute to the preparation of the local plan
- Make all reasonable efforts to secure the participation of such bodies in the preparation of the local plan.
- Consult appropriate third sector bodies when preparing their annual report.

Where a relevant third sector body or community body wishes to participate in the preparation of the plan to any extent, there is a requirement on local statutory partners to *"take such steps as are reasonable"* to enable their participation.

Reporting on local engagement with third sector bodies

Margaret McDougall brought forward a revised amendment at Stage 3, to introduce a specific reporting requirement around third sector engagement in the local planning process. During the debate, she noted that the intention of the amendment was: *"to ensure that the good intentions in section 18(3) on participation of the third sector in community justice outcomes improvement planning are not lost in practice. Too often, the role of the third sector can be confined to service delivery but, more often than not, the sector has the skills, expertise and knowledge to contribute to the strategic development and planning of services as well as front-line delivery."*

The Minister also welcomed this amendment: *"I know that third sector bodies and, indeed, community bodies play an important role in community justice. It is therefore right that the community justice partners should not only enable their participation in the preparation of the community justice outcomes improvement plans but be required to evidence how that participation took place. I am content that amendment 30 makes it absolutely clear how important the third sector bodies' role in the preparation of the plans is."*

This amendment was agreed to by the Parliament. As a result, there will now be a requirement on local statutory partners to report on:

- the action which they took to enable the participation of third sector and community bodies in the preparation of the local community justice plan
- which third sector and community bodies participated in the preparation of the local plan.

If the report indicates a deficiency in the participation of the third sector, it is intended that Community Justice Scotland can use its powers to make improvement recommendations to help rectify the situation.

Engagement of third sector bodies in national strategic developments

A National Strategy and a National Performance Framework for Community Justice are being developed and the documents are expected to be available in early summer 2016. As agreed at Stage 2, there will be a requirement on Scottish Ministers/ Community Justice Scotland to consult appropriate third sector bodies when:

- Preparing, reviewing and revising:
 - the National Performance Framework in relation to community justice
 - the National Strategy on Community Justice
 - the National Strategy for Innovation, Learning and Development
- Preparing Community Justice Scotland's:
 - Corporate Plan
 - Annual Report on the exercise of its functions
 - Annual Report on the achievement of national outcomes across Scotland
- Scottish Ministers require Community Justice Scotland to arrange a particular service
- Community Justice Scotland is identifying, designing or making arrangements for the provision of a service in relation to community justice.

Performance improvement

During the debate, the Minister spoke about the role of Community Justice Scotland and other partners in relation to performance improvement:

"I will be clear about the role of community justice partners and the Scottish ministers in performance improvement. The responsibility for resolving any local issues with planning or the quality of delivery, and for achieving progress against improving outcomes, rests with the statutory community justice partners of each local area. Existing accountability lines for individual statutory community justice partners remain through the respective organisations. If partners should request assistance on issues that they have not been able to resolve locally, community justice Scotland will be able to offer support and advice. Where there are persistent issues in achieving improved outcomes, community justice Scotland can make recommendations to the Scottish ministers. Recommendations could be made around the requirement for improvement plans; on the potential for specific multi-agency inspections; and in exceptional circumstances – I stress the word 'exceptional' – to establish a rescue task group to work with the local partners. Recommendations at a national level can also be made."

- Paul Wheelhouse, as quoted in the Official Report of the Meeting of the Scottish Parliament, 11th February 2016

As agreed at Stage 2, the new national body, Community Justice Scotland, will have the following powers in relation to performance:

- Identify, establish or promote good practice in relation to:
 - The provision of community justice
 - Community justice outcome improvement planning and reporting
- Provide advice, guidance or assistance to local community justice partners in relation to:
 - The provision of community justice
 - Community justice outcome improvement planning and reporting
- Make local and national improvement recommendations.

Local statutory community justice partners will be required to notify Community Justice Scotland of the action they have taken/ propose to take in response to any recommendations or to confirm their intention not to take any associated action.

Next steps

A copy of the [Bill \(as passed at Stage 3\)](#), is available on the Scottish Parliament website⁴.

Work is already underway to develop a number of national documents to accompany the Bill:

- The National Performance Framework for Community Justice
- The National Strategy for Community Justice
- The Guidance to accompany the Community Justice (Scotland) Act.

There will also be work to be done to develop a future commissioning model for community justice, to agree future funding arrangements and to continue to support the transition to the new model. Further information about each of these are provided below.

National commissioning of services

Section 26 allows for Community Justice Scotland to develop and arrange services at a national and multi-area level. This includes:

⁴ Available at:

[www.scottish.parliament.uk/S4/Bills/Community%20Justice%20\(Scotland\)%20Bill/SPBill68BS042016.pdf](http://www.scottish.parliament.uk/S4/Bills/Community%20Justice%20(Scotland)%20Bill/SPBill68BS042016.pdf)

- Identify a relevant desirable service
- Design an appropriate model for the provision of such a service
- Make arrangements for the provision of the service
- Encourage, assist or collaborate with any of the community justice partners to achieve the above.

During the debate, the Minister noted the *"policy position that community justice Scotland's main role in commissioning will be to work with partners and the third sector to develop and take forward a strategic approach to commissioning. That will ensure an evidence-led and co-ordinated long-term approach to commissioning for community justice in Scotland."*

Future resourcing of community justice services

Although the Bill does not specifically reference how resourcing of community justice services will work, a number of MSPs raised concerns about future funding arrangements during the debate and were keen to see this issue addressed over the coming months. In particular, they were keen to see community justice services adequately resourced, with a move away from annual funding to a three year model, to reduce uncertainty of service provision. The Minister's response to these concerns is provided below.

"As far as the on-going funding for community justice partners is concerned, the Government's position is to consider and reflect on the evidence on how the three-year transitional funding is being used. I picked up the fact that members across the chamber want to ensure that we help the third sector in particular to deal with the year-on-year chase for funding, and we are looking to review that as part of the review of section 27 funding... It is intended that the new funding formula for section 27 will go live in 2017-18. We are looking at the context of three-year funding cycles in that discussion."

- Paul Wheelhouse, as quoted in the Official Report of the Meeting of the Scottish Parliament, 11th February 2016

Transition to the new model

Transition funding is being provided to each Community Planning Partnership (CPP) and to the Criminal Justice Voluntary Sector Forum (CJVSF)⁵ to support the transition to the new model. The Scottish Government's intention is for the funding to be available for three years (2015/16-2017/18) but that position will be reviewed following the election and is subject to the outcome of future spending reviews.

The Scottish Government has also established a Transition workstream to support the move to the new model. The working group that supports that workstream includes representation from the Scottish Government, statutory community justice partners, CPPs, Community Justice Authorities, COSLA, people with convictions and CJVSF.

All CPPs were expected to have Transition Plans prepared for the end of January 2016, which set out the local plans for⁶:

- How CPPs plan to build links with and between community justice partners
- How CPPs plan to involve the Third Sector, service users, people with convictions, and communities in their local arrangements, planning and delivery in 2016/17

⁵ Further information about the Transition Project being led by CJVSF can be found here:

www.ccpscotland.org/cjvsf/hot-topics/strengthening-engagement-transition-project/

⁶ Further information can be found in the Scottish Government's letter to all CPP Chairs (dated 31st July 2015): www.cosla.gov.uk/system/files/private/cw150911item2-2appendixb.pdf

- How CPPs intend to work with CJAs to ensure that community justice issues that are led on by CJAs are picked up, where appropriate, by the relevant CPPs in 2016/17
- Looking to 2016/17 and beyond, what the local governance arrangements will be for:
 - community justice, including accountability lines
 - which organisations and individuals will be involved across the statutory, non-statutory and community sectors
 - how community justice arrangements will link into the wider CPP
 - how links will be made from broader community planning themes to the community justice agenda and vice versa
- How partner resources will be leveraged to support change and innovation locally, making the most effective use of transition funding.

We look forward to working with the Scottish Government and other community justice partners to ensure that the documents, commissioning model and future funding model are fit for purpose and that the activities support a more collaborative approach to community justice.

For further information, please contact:

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About CJVSF

The Criminal Justice Voluntary Sector Forum (CJVSF):

- Supports voluntary sector providers to continuously improve their own criminal justice services through collaboration and sharing of good practice
- Assists voluntary sector providers to understand, navigate and influence the complex and changing environment in which they operate
- Promotes broader awareness of the activities, value and impact of voluntary sector services within criminal justice.

The CJVSF is hosted by CCPS (the Coalition of Care and Support Providers in Scotland) and receives financial support from The Robertson Trust and The Monument Trust. Further details about the Forum can be found at: www.ccpscotland.org/cjvsf