



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

31st Meeting, 2010 (Session 3)

Tuesday 16 November 2010

The Committee will meet at 10.00 am in Committee Room 2.

1. **Subordinate legislation:** The Committee will consider the following negative instrument—

the Criminal Legal Aid (Scotland) Amendment Regulations 2010 (SSI 2010/377).

2. **Double Jeopardy (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Patrick Layden QC, Commissioner, and Alastair Smith, Project Manager, Scottish Law Commission;

and then from—

Michelle Macleod, Head of Policy Division, Scott Pattison, Director of Operations, and Gertie Wallace, Head of Criminal Justice Policy, Crown Office and Procurator Fiscal Service.

3. **Double Jeopardy (Scotland) Bill (in private):** The Committee will consider the main themes arising from the oral evidence heard earlier in the meeting.
4. **Long Leases (Scotland) Bill (in private):** The Committee will consider a proposed approach to the scrutiny of the Bill at Stage 1.
5. **Subordinate legislation (in private):** The Committee will consider a draft report on two affirmative instruments considered at its meeting on 9 November 2010.
6. **Damages (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

J/S3/10/31/A

Andrew Mylne
Clerk to the Justice Committee
Room TG.01
The Scottish Parliament
Edinburgh
Tel: 0131 348 5195
Email: andrew.mylne@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda item 1

SSI cover note

J/S3/10/31/1

[The Criminal Legal Aid \(Scotland\) Amendment Regulations 2010 \(SSI 2010/377\)](#)

Agenda item 2

[Copy of the Double Jeopardy \(Scotland\) Bill and all accompanying documents](#)

[SPICe briefing: Double Jeopardy \(Scotland\) Bill](#)

Paper by SPICe (private paper)

J/S3/10/31/2 (P)

Agenda item 4

[Copy of the Long Leases \(Scotland\) Bill and all accompanying documents](#)

Paper by the Clerk

J/S3/10/31/3

Agenda item 5

Draft report (private paper)

J/S3/10/31/4 (P)

Agenda item 6

Draft report (private paper)

J/S3/10/31/5 (P)

Paper for information

Letter from the Cabinet Secretary for Justice on the Scottish Strategy for Victims of Crime review

J/S3/10/31/6

Justice Committee

31st Meeting, 2010 (Session 3), Tuesday 16 November 2010

SSI cover note

SSI title and number: The Criminal Legal Aid (Scotland) Amendment Regulations 2010
(SSI 2010/377)

Type of Instrument: Negative

Coming into force: 25 November 2010

Justice Committee deadline to consider SSI: 6 December 2010

Motion for annulment lodged: No

SSI drawn to Parliament's attention by Sub Leg Committee: No

Purpose of Instrument:

1. The Legal Aid (Scotland) Act 1986 will shortly be amended by section 64 of the Legal Profession and Legal Aid (Scotland) Act 2007 to transfer the function of granting criminal legal aid in relation to solemn proceedings from the courts to the Scottish Legal Aid Board. The principle purpose of this Order is to amend the Criminal Legal Aid (Scotland) Regulations 1996 to take account of these changes.

Justice Committee consideration:

2. The instrument was laid on 3 November 2010 and the Justice Committee has been designated as lead committee.
3. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Subordinate Legislation Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.
4. Each negative instrument appears on a committee agenda at the first opportunity after the Subordinate Legislation Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered

into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Justice Committee

31st Meeting, 2010 (Session 3), Tuesday 16 November 2010

Long Leases (Scotland) Bill – approach to Stage 1 scrutiny

Purpose

1. The Committee is invited to agree its approach to Stage 1 scrutiny of the Scottish Government bill on long leases introduced on 10 November 2010. It is expected that the Bureau will refer the Bill formally to the Justice Committee as lead committee at its meeting on 16 November. The Bill will also be considered by the Finance Committee (in relation to the Financial Memorandum) and the Subordinate Legislation Committee (in relation to the order-making powers).

The Bill

2. In his statement on the legislative programme in September 2010, the First Minister announced that the Government would bring forward a long leases bill which would convert ultra-long leases into ownership with tenants paying appropriate compensation to landlords.
3. The Bill has been some time in development. The Scottish Law Commission (SLC) first published a discussion paper on the conversion of long leases in 2001 (Scot Law Com 112). This was followed in 2006 by the SLC's Report on Conversion of Long Leases (Scot Law Com 204) which included a draft Bill.
4. This report was the final stage of the SLC's review of the structure of land law in Scotland which led to the Abolition of Feudal Tenure etc (Scotland) Act 2000, the Leasehold Casualties (Scotland) Act 2001, the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004. The Long Leases (Scotland) Bill now introduced is based largely on the draft bill prepared by the SLC although there are some differences (as set out in paragraph 9).
5. The SLC suggests that there are two types of long leases, firstly those of moderate length (anything from 20 to 125 years) and secondly "ultra-long" leases which are for 700 years or more, but typically for 999 years, many of which date from before 1900. A SLC survey disclosed 11 leases granted for a million years, all for property in Paisley.
6. The SLC recommended the introduction of a compulsory and automatic conversion scheme for ultra-long leases which would follow the scheme for conversion of feus introduced by the 2000 Act. The SLC also recommended that there should be the possibility of opt-out for the tenant and that the scheme would only apply to leases granted for more than 175 years which had more than 100 years left to run.

7. The Government's Bill provides for the conversion of "qualifying" ultra-long leases into ownership. "Qualifying" leases are defined in the Bill as all those of over 175 years duration with more than 100 left to run. Nothing in either the SLC's report, or the Bill now introduced, will affect for example a 25-year commercial lease, a 60-year PFI/PPP lease or a 99-year ground lease.
8. The Bill provides that conversion can take place by nomination and in the event of dispute; a case can be taken to the Lands Tribunal. The Bill sets out a framework for the conversion of certain conditions in a lease into real burdens, a compensation scheme for landlords and provides details of exemptions.
9. The Bill now introduced makes three main changes to the SLC's draft Bill. These are:
 - excluding leases let solely to allow access for pipes and cables,
 - excluding leases with a rent of over £100, with the aim of excluding leases let on a commercial basis from the Bill, and
 - amending the provisions on calculating the duration of leases to make it clear that renewals which the landlord was under an obligation to grant, but which did not actually happen, still count for the purposes of the Bill.¹

Consultation

10. Written comments on the SLC's original discussion paper of 2001 were received from around 30 individuals and organisations including solicitors, academics, COSLA, the Council of Mortgage Lenders, the Faculty of Advocates, the Law Society of Scotland, the Keeper of the Registers of Scotland, the Lands Tribunal for Scotland, the Royal Institution of Chartered Surveyors in Scotland, the Scottish Landowners' Federation and Scottish Natural Heritage.
11. Following publication of the SLC's report, in March 2010 the Scottish Government launched its own consultation on the draft Bill. 15 responses were received and are available on the Scottish Government's website.²

Prospective evidence and witnesses

Call for evidence

12. A draft call for written evidence is included at Annexe A and the proposed deadline for submissions is 31 December 2010. This will allow 6 weeks for responses which is suggested as reasonable, given that this issue has been on the table for some time and has been consulted on relatively recently.

¹ Policy Memorandum, Paragraph 32

² <http://www.scotland.gov.uk/Publications/2010/07/15143717/0>

The draft call for evidence includes a short list of indicative questions to guide witnesses in making their responses.

13. A consultation period of 6 weeks (albeit that it extends over the Christmas period) is considerably less than the 12-week minimum recommended for consultation. However in view of the overall time-pressure in the closing months of a parliamentary session, a longer consultation period would be impractical.
14. The call for evidence will be published on the Committee's web-pages and brought to the attention of relevant media contacts. In addition, the clerks will draw it to the attention of those who responded to the consultations and academics known to have an interest in this subject.
15. The Committee is invited to identify any other individuals or organisations it would wish to target (i.e. to be alerted to the call for evidence).

Oral evidence

16. Given the initial work undertaken by the Scottish Law Commission it might be appropriate to invite it to give evidence at ideally the first evidence session (the lead commissioner on this was Professor George Gretton). The Commission would be able to give an overview of its report, the thinking behind its main recommendations and comment on the provisions in the introduced bill that differ from its published draft.
17. Three meetings will probably be sufficient (with up to two panels at each meeting) to take oral evidence. It is suggested that other potential candidates for the oral evidence sessions would be:
 - The Law Society of Scotland, the Scottish Law Agents Society, representatives of solicitor firms in the areas where ultra-long leases are prevalent and the Faculty of Advocates,
 - The Lands Tribunal for Scotland,
 - Royal Institution of Chartered Surveyors in Scotland, Scottish Property Federation, Scottish Rural Property and Business Association
 - Academics and independent commentators (dependant on whether, and if so who, the Committee decides to appoint as adviser)
18. If the Committee agrees who it wishes to invite for the initial four panels, that should (subject to witness availability) enable the first couple of meetings at which oral evidence is to be taken to be organised. Assuming the final oral evidence session will be limited (as is usual) to the Scottish Government, there will be scope for up to two further panels to be decided once written submissions have been considered.
19. The Scottish Government's bill team has also indicated a willingness to provide the Committee with an informal briefing on the bill in advance of the

formal evidence sessions. Should the Committee be interested in pursuing this offer, scheduling will be taken forward by clerks.

Timescales

20. When the Committee considered its work programme on 21 September, it agreed to give priority to the Double Jeopardy (Scotland) Bill over the Long Leases (Scotland) Bill. As the Long Leases Bill has only just been introduced, a period of time for written submissions will be required which will allow the work already underway on the Domestic Abuse Bill and the Double Jeopardy Bill to progress.
21. On the basis of the work already scheduled for the Committee it is not expected that oral evidence on the Long Leases Bill could start to be heard until mid-January. Allowing for three oral evidence sessions, this would take the Committee up to the beginning of February. An issues paper would follow prior to the February recess. A draft stage 1 report could be considered at the meetings on 22 February and 1 March with a stage 1 debate thereafter. Based on this timetable it must be doubtful whether this Bill can complete its passage before the Parliament dissolves around the end of March.
22. This potentially raises the question of what worth there is in starting work on a Bill for which there may be insufficient time to complete. As the Bill has been introduced and is expected to be referred to the Justice Committee, there is an expectation that, particularly as this is a Government Bill, every effort will be made by the Committee to scrutinise it. If the Bill does run out of time, as it is a technical bill and arguably not dependant to any great extent on political will, any work undertaken by way of stage 1 inquiry could be picked up relatively easily in the new session. It would still be the case however that a new Bill would have to be introduced and a further stage 1 (no matter how truncated) would require to be undertaken by the new committee.

Adviser

23. The Committee is invited to consider whether it would wish to appoint an adviser to assist it with the scrutiny of this Bill. This is a technical bill and it is expected that there will be a number of suitable academics who could be approached if the Committee was so minded. The Committee will want to consider what significant additional value an adviser could bring – either in terms of practical experience, or in the case of this particular bill, specialised expertise – that could not otherwise be provided from in-house resources (primarily the clerking team and SPICe researchers).
24. This bill's main purpose, the conversion of long leases, is clear. However some of the considerations are very technical and would benefit from specialist knowledge. Within SPICe there is some expertise in this area and the Scottish Law Commission's report does provide a detailed consideration of the subject-matter. If the Committee does wish to consider appointing an

adviser, SPICe is confident that a shortlist of suitably qualified individuals could be prepared.

Conclusion

25. The Committee is invited to:

- agree the draft call for evidence in Annexe A
- identify any additional particular individuals or organisations to target with the call for written evidence
- identify the individuals or organisations it wishes to invite to the initial sessions of oral evidence
- indicate the likely witnesses to be invited for the 18 and 25 January meetings, and agree to take a final decision on 11 January in light of written responses
- decide whether to invite Scottish Government officials to provide an informal briefing prior to the commencement of oral evidence
- decide whether to seek the appointment of an adviser.

Annexe A: Draft call for evidence

The Scottish Parliament's Justice Committee is seeking views on the general principles of the Long Leases (Scotland) Bill, a Scottish Government Bill introduced on 10 November 2010.

The Bill, together with accompanying documents (including a Policy Memorandum, Explanatory Notes and Financial Memorandum) can be found on the Parliament's website <http://www.scottish.parliament.uk/s3/bills/61-LongLeases/index.htm>

The Bill is based on the report and draft bill published by the Scottish Law Commission in December 2006 (Scot Law Com 204) and aims to convert the rights of certain tenants under long leases to a right of ownership. A number of rights and responsibilities flow from that.

Stage 1 of the scrutiny process is concerned with the general principles of the Bill, although it is also an opportunity to flag up more specific concerns that could be addressed by amendment at later Stages.

The Justice Committee hopes to consider written submissions and to take oral evidence during January 2011 and to report on the Bill's general principles during March 2011.

As a first step, the Committee is inviting all interested parties to submit views on the Bill (or any provision of it) in writing.

The Committee welcomes views on any aspect of the Bill but would be particularly interested in views on any of the following:

- Whether the definition of "qualifying lease" (section 1) covers all long leases where tenants have interests akin to ownership
- Whether the compensation scheme proposed for landlords adequately protects their interests
- Whether the conversion scheme proposed by the Bill will operate effectively in practice
- Whether there are any other matters that ought to be considered

In making a submission, please indicate clearly whether or not you would wish to be invited to give oral evidence to the Committee to follow up on points made in your submission. (Please note that the Committee may not invite all those who wish to give oral evidence.) Submissions should be received, if possible, by no later than 31 December 2010.

How to submit written evidence

Before making a submission, please read the Parliament's [policy on treatment of written evidence by subject and mandatory committees](#).

Written submissions should normally be limited to around 4 sides of A4 but, if they need to be longer than this, they should be accompanied by a short summary of the main points. Submissions should be set out in numbered paragraphs. Where the submission refers to existing published material, it is preferable to provide hyperlinks or full citations (rather than extensive extracts). The Committee welcomes written evidence in English, Gaelic or any other language.

The Committee prefers to receive written submissions electronically (preferably in Microsoft Word format). These should be sent by e-mail to:

justice.committee@scottish.parliament.uk

However you may also make hard copy written submissions to:

Justice Committee
Room TG.01
The Scottish Parliament
Edinburgh
EH99 1SP

Any queries about written submissions should be addressed in the first instance to the Justice Committee clerking team at the above e-mail address or on (0131) 348 5220.

Annexe B: Scottish Law Commission summary of recommendations

1. There should be a conversion scheme for ultra-long leases which would closely follow the scheme for conversion of feus introduced by the 2000 Act.
2. The scheme would be compulsory and automatic, but with the possibility of opt-out by the tenant.
3. A lease will qualify if it had been granted for more than 175 years and had more than 100 years left to run (in practice most qualifying leases will have been granted for much longer periods such as 999 years).
4. On a specified day, to be known as the “appointed day”, all ultra-long leases would be converted into ownership and the residual ownership of the landlord would be extinguished.
5. Certain leasehold conditions would remain in force as real burdens (ie a type of title condition affecting land which survive changes of ownership of the affected land). Conditions concerned with facilities and services would always survive, as would conditions imposed under a common scheme on a group of related properties. Other conditions could be preserved if the (former) landlord owned suitable land in the neighbourhood to which enforcement rights could be attached or if they were capable of being personal real burdens.
6. Special provision is made for servitudes (a type of title condition involving use of another’s land for specified purposes).
7. Sporting rights could also be preserved.
8. The landlord would be entitled to compensation, calculated as a multiplier of the rent, and in some cases additional compensation would also be due.
9. Conversion would be prevented if the tenant registered a notice of exemption before the appointed day, but the exemption could be recalled at any time provide the lease had more than 100 years to run.

Justice Committee

31st Meeting, 2010 (Session 3) Tuesday 16 November 2010

Review of the Scottish Strategy for Victims of Crime

Letter from the Cabinet Secretary for Justice to the Convener

You and the Committee may wish to be aware of the progress that is being made in the review of the *Scottish Strategy for Victims of Crime* that I announced to the Scottish Parliament on 30 June 2010.

The review will be in three stages:-

- A draft framework for action on victims is being circulated to stakeholders for comment, and includes a number of specific questions about improving services for victims;
- I will chair a victims' summit in Edinburgh on 17 January 2011 at which responses to the draft framework will be considered; and
- A final framework will then be published that takes into account responses to the draft document and the discussions at the victims' summit.

I attach the draft framework for action for information. The document gives a brief background; places support for victims in the context of the Scottish Government's overall purpose; outlines the progress that has been made so far; summarises the current evidence base and sets out four principles for action: introducing clearer standards and information for victims, more focussed support, improved participation and improved co-ordination of policy and action. I would emphasise that this is a draft that is subject to further development and refinement, and that more detailed proposals within this framework are still to be finalised. This is the focus of further work.

As mentioned above, there will be a victims' summit on the morning of the 17 January 2011. The format for the event and the agenda will be finalised in light of responses to the draft framework for action. Thereafter a finalised document will be published that takes into account comments on the draft framework and discussions at the victims' summit. In the meantime, I would welcome the Committee's views on any aspect of the draft framework document.

I hope that this is helpful.

Kenny MacAskill MSP
Cabinet Secretary for Justice
8 November 2010

DRAFT

BETTER OUTCOMES FOR VICTIMS: A FRAMEWORK FOR ACTION**SECTION 1: INTRODUCTION**

1. How we treat victims of crime is a critical component of enhancing public confidence in the criminal justice system. The Scottish Government is determined to ensure that victims of crime receive justice, protection and appropriate support, and that their legitimate interests and needs are recognised by the criminal justice system. Victims should be seen as partners in the justice system, and not as passive recipients of services.

2. Although much has been achieved over the last ten years, this Framework proposes a number of practical measures that will ensure victims get the support they need, the information they are entitled to expect and the chances to participate in the criminal justice system they deserve.

Better Outcomes for Victims

3. This Framework shows how supporting communities and reducing victimisation make a significant contribution to the Scottish Government's national performance framework (paragraphs 5-8), and outlines the progress that has been made since 1999 (paragraphs 9-15). The evidence that has been gathered to inform preparation of the Framework (see paragraphs 16-24) leads into a set of priorities and actions that will deliver effective support and participation for victims, specifically:-

- 3.1 Clearer standards and information for victims (paragraphs 27 to 34);
- 3.2 More focussed support for victims (paragraphs 35 to 43);
- 3.3 Improved participation in the criminal justice system (paragraphs 44 to 49); and
- 3.4 Better co-ordinated policy and action (paragraphs 50 to 54).

4. Developments in supporting victims do not occur in a vacuum, and there is an increasing level of activity at EU level in this area. We have therefore been conscious of those wider developments in developing this framework.

Alignment with the Scottish Government's Purpose

5. Improving support to victims can make an important contribution to the Scottish Government's overall purpose¹, which is:-

¹ [Principles and Priorities: The Government's Programme for Scotland](#), September 2007

“To focus Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.”

6. The impact of crime is a brake on the economy. As well as obvious costs, such as time away from work, the impact of many types of crime can last longer than the immediate physical and psychological trauma or the loss or damage of property. For example, a wide range of children’s developmental outcomes may be compromised by exposure to domestic violence. Providing appropriate support for victims, including helping them engage with the criminal justice system, can help reduce some of the worst impacts of crime on individuals and minimise short and long term impacts on the community and economy.

7. To help achieve its Purpose and associated National Outcomes, the Scottish Government has a number of strategic objectives; the two most relevant to support for victims are:-

7.1 We live our lives safe from crime, disorder and danger; and

7.2 We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.

8. Communities can only flourish when people feel safe and secure from crime or antisocial behaviour, and can see that justice is done when the law is broken. A high priority is avoiding victimisation through strengthening families and communities, crime prevention measures, tackling underlying social problems related to drugs and alcohol, visible and effective policing, and initiatives to deter and divert people from crime. Where crime does occur, it is important that it is dealt with by a fair and transparent justice system that provides positive engagement, good information and high quality support for victims.

SECTION 2: ACHIEVEMENTS TO DATE

Scottish Strategy for Victims

9. The *Scottish Strategy for Victims*² set out a programme of action on victims' issues. It was based on three core principles:-

- 9.1 Victims should be provided with generic and case specific information;
- 9.2 They should receive appropriate support; and
- 9.3 Victims should have their voice heard.

10. Subsequently, the *National Standards for Victims of Crime*³ set out the level of service that victims and witnesses should expect in their dealings with the criminal justice or children's hearing systems.

11. The practical improvements outlined in the *Strategy* have largely been implemented. For example, the Scottish Government has:-

- 11.1 Extended the scope of the Victim Notification Scheme (VNS) to victims of prisoners sentenced to 18 months or more in custody;
- 11.2 Introduced victim statements in courts of solemn jurisdiction;
- 11.3 Provided record funding of over £4 million per year to Victim Support Scotland (VSS) and committed over £44 million in the period 2008-09 to 2010-11 in order to tackle violence against women, including domestic abuse; and
- 11.4 Made provision of £28 million a year to cover the cost of compensating victims of violent crime through the Criminal Injuries Compensation Scheme.

Improving victims' experience of the Criminal Justice System

12. As well as initiatives aimed at supporting victims directly, the Scottish Government's comprehensive package of reform of the criminal justice system has included measures that benefit victims. For example:-

- 12.1 Both High Court Reform and Summary Justice Reform have improved the experience of the justice system for victims. Many more cases are now settled at an earlier stage, avoiding a long and anxious process for victims, sparing them the stress of giving evidence and allowing them to get on with their lives as quickly as possible. A review of procedure in Sheriff and Jury trials has also now been completed, which puts forward a number of similar recommendations to improve the experience for victims and witnesses;

² [Scottish Strategy for Victims](#), January 2001.

³ [National Standards for Victims of Crime](#), February 2005

12.2 The Criminal Justice & Licensing (Scotland) Act 2010 brought forward measures to strengthen the criminal law and reform criminal procedure, ensuring local authorities, police, prosecutors and the courts are better equipped to prevent and tackle crime and support communities, including victims of crime. Those measures included: creating new witness anonymity orders; extending support for vulnerable witnesses to all criminal proceedings in Sheriff and High Courts, not just during trials; improving the courts' flexibility to award compensation, thus helping victims of crime achieve greater satisfaction; and making it easier for prosecutors to obtain criminal Non-Harassment Orders against offenders so that victims are protected from further harassment and repeat offending; and

12.3 The Sexual Offences (Scotland) Act 2009 replaces a patchwork of a common law and statutory provision with a single, clear legal framework that reflects the values of modern society and provides a much needed broadening of the definition of rape to make it better reflect women and men's experience of this very serious crime and therefore support wider work to improve the criminal justice system's response to sexual crime.

Support for Victims

13. In addition, there is a range of developments that reflect the heterogeneous nature of victims and the varied experience and impact of crime on different categories of victim, for example:-

13.1 Victims of domestic abuse can call the Scottish Domestic Abuse Helpline or the Men's Advice Line, children and young people experiencing domestic abuse can access support workers funded through the Children's Services Women's Aid Fund and there is a wide range of local services funded through the Violence Against Women Fund;

13.2 The Scottish Government funds the Scottish Rape Crisis Helpline, which provides confidential information, support and advice from 6 pm to midnight every day. In addition, local Rape Crisis Centres provide one to one support across Scotland;

13.3 The In-Care Survivors Service was launched in November 2008 to provide in-care survivors and their families with a national telephone support line, support and confidential counselling as well as advocacy and signposting services for access to records, the Criminal Injuries Compensation Scheme, and other relevant legal services;

13.4 Since the launch of the National Strategy for Survivors of Childhood Sexual Abuse the Scottish Government has provided £1.7 million through the Sexual Abuse Service Development Fund between 2007 and 2009, and £900,000 National Strategy funding for 2009-10 and 2010-11;

13.5 The Scottish Children's Reporter Administration delivers a dedicated service for victims of youth crime. This service ensures that victims of youth

crime receive the information and support that they are entitled to in a form that is accessible. It also ensures that the context of the Children's Hearings System is understood by victims. These services are provided by trained personnel so that quality of service is ensured and a consistent standard for victims of youth crime is delivered across Scotland;

13.6 Specialist services are provided to the families of victims of homicide through funding of People Experiencing Trauma and Loss (PETAL), which has been awarded a grant of about £208,000 in 2010-11. The organisation is currently expanding its services so that it can reach as many victims as possible across Scotland; and

13.7 About £256,000 was provided in 2009-10 to support suspected victims of human trafficking. This support is aimed at helping victims to come to terms with their experiences and to resume a normal life as soon as possible, and ensures that the Scottish Government fulfils its obligations under the *Council of Europe Convention on Action against Trafficking in Human Beings*.

14. In addition to the specialised support that is available to different categories of victim, the Scottish Government grants about £4 million a year to Victim Support Scotland (VSS), which provides local services across Scotland and, through its Witness Service, assists anyone attending a High or Sheriff Court as a witness.

15. Many victims appear at court as witnesses. This raises issues around the court process, its impact on them, and what support may be available to help them give their best possible evidence. A number of initiatives have contributed to improving the experience of being a witness in recent years, including:-

15.1 The introduction of VSS's Witness Service and improved information about being a witness;

15.2 The Vulnerable Witnesses (Scotland) Act 2004, which was phased in between 2005 and 2008 and provides statutory special measures to help give evidence;

15.3 Provisions in the Criminal Justice and Licensing (Scotland) Act 2010 to introduce witness anonymity orders; and ensure that victims of human trafficking offences are, up to age 18, automatically entitled to standard special measures to give evidence; and

15.4 Provisions in the current Children's Hearings (Scotland) Bill to improve protections for vulnerable witnesses in children's hearings court proceedings.

SECTION 3: UNDERSTANDING THE EVIDENCE BASE

16. The previous section sets out the progress that has been made in a range of areas, and that the major elements of the previous strategy are now in place. Before deciding future priorities it is helpful to look at research into what is effective in supporting victims and what is known about the priorities of victims themselves.

17. As part of the preparation for this Framework, the Scottish Government commissioned the Scottish Centre for Crime and Justice Research (SCCJR) to report on developments in other jurisdictions.

18. The SCCJR looked at research into the impact of crime on individuals, and the broad conclusions that could be drawn were:-

18.1 Most studies suggest that psychological distress is the most common reaction to being a victim of crime. Interpersonal crimes often have a long term impact through, for example, feelings of insecurity, impaired self-esteem, withdrawal, sleeping or eating disorders and troubled relationships. However, research suggests that the effect of violent crime varies according to a range of variables such as isolation, resources, vulnerability and previous experience;

18.2 A very small percentage of victims experience a disproportionate amount of crime, and some are so victimised that it becomes virtually impossible to distinguish the impact of discrete crimes from the generally impoverished quality of their lives; and

18.3 There is a growing body of research that shows that being a victim of crime can be an indicator of future difficulties, including the possibility of future offending. For example, a rapidly developing evidence base points to the impact of domestic violence on other family or household members. In particular, research suggests that a wide range of children's developmental outcomes are compromised by exposure to domestic violence, including social, emotional, behavioural, cognitive, and general health functioning, and that child abuse increases the level of emotional and behavioural problems above and beyond exposure to domestic abuse alone, with sexual forms of interpersonal violence causing greater levels of distress. This can mean that, in some circumstances, there is an overlap between the populations of offenders and victims of crime.

19. Despite the effect of crime on individuals, surveys suggest that victims are no more punitive than the general public, and many are willing to engage in direct mediation or to receive compensation from the offender. Most victims appear to want a criminal justice system that deters criminals, and do not believe that custodial sentences necessarily achieve that outcome.

20. The SCCJR also looked at different policies aimed at improving provision for victims. Over the past three decades the growing acknowledgement of victims with an interest in a crime and its aftermath, and as an actor without whose co-operation

in reporting, provision of evidence and appearance as a witness most crime would be unreported and impossible to prosecute, has been a powerful driver for reform. There are, broadly speaking, two approaches to victims' rights. The first is *service rights*, which means services to victims that do not affect procedure, such as information about case progress.

21. An alternative approach is to look at victims' *procedural rights*, such as rights of allocution, which give victims a voice in the criminal justice process. The introduction of procedural rights has to be considered in the context of maintaining the right of the accused to a fair trial, a right that is embedded in the European Convention on Human Rights (ECHR). Scottish Ministers are required, by virtue of the Scotland Act, to act in accordance with ECHR.

22. Attempts to introduce service rights are typically made through codes setting out minimum standards of service for victims. In England and Wales, two Victims' Charters were published in the 1990s, which were replaced by a Code of Practice published in 2006. Other jurisdictions (such as the USA, Australia, Canada and New Zealand) have published charters. In some jurisdictions the charters are legally binding, some are statutory instruments and others are looser guides or protocols. Charters have been criticised for not providing substantive rights for victims, being implemented in an *ad hoc* manner and not having sufficient funding to be effective.

23. Although debate on balancing a victim's rights against those of the accused continues, there has been, at least in some jurisdictions, an expansion of a victim's right to influence decisions relating to cautioning and charging, plea negotiation, sentencing, parole and release. For example, in England and Wales the Probation Service is under an obligation to contact victims of certain categories of offender so as to ascertain whether or not they have concerns about any conditions attached to the prisoner's release, and the Parole Board is required to take those concerns into account when determining licence conditions. Victim statements, which allow victims to explain the physical, financial social and emotional effect of an offence, have been introduced in a number of jurisdictions, including England and Wales, Australia and the Netherlands. There are concerns that statements do not meet victims' needs or expectations. The evidence in Scotland⁴ is that, although some victims, particularly victims of serious offences, value the right to make a statement, most victims do not wish to do so.

24. Both procedural and service rights for victims are important. However, procedural rights are likely to be more valuable to victims who have been seriously affected by crime, whereas all victims will gain from improved services. Indeed, the evidence is that victims of crime particularly value personal attention in the form of information, immediate practical help and someone to talk to. Most personal crime does not result in life-threatening, or even serious, physical or mental injury, but can result in inconvenience, anger, despair and affect a victim's sense of security and freedom to go about their lives. An efficient and compassionate response from across the criminal justice system can help reassure victims and the general public that victims and their concerns are taken seriously and acted upon.

⁴ [An Evaluation of the Pilot Victim Statement Schemes in Scotland](#), March 2007

SECTION 4: PRIORITIES FOR ACTION

25. After taking into account the evidence base, the progress already made in Scotland and the Scottish Government's overall objectives, this section identifies a number of priorities for further action.

26. Implementation of the priorities is informed by the following objectives:-

26.1 The needs of victims should be integral to the services provided by public agencies;

26.2 Targeted support, tailored to the needs of individuals and addressing the immediate impact of crime will be delivered as soon as possible; and

26.3 Victims concerns will be treated seriously and taken into account in decisions that affect their safety and security.

Priority 1: Clearer Standards and Information for Victims

27. Victims depend on public services in a range of ways – from investigation of the incident through to court proceedings and beyond. The quality of the engagement by public services at what is often a very stressful time for the victim is critical to victims' overall view of the justice system. It is therefore vital that public sector agencies place a strong focus on the quality of the engagement and information they provide.

28. The organisations that are likely to have the most contact with victims, as victims of crime, are police forces, COPFS, the Scottish Courts Service, the Criminal Injuries Compensation Authority, Scottish Children's Reporter Administration and the Scottish Prison Service (through its administration of the Victim Notification Scheme (VNS)).

29. To ensure that services will react quickly, effectively and sensitively, the Scottish Government will work with agencies to revisit the *National Standards for Victims of Crime* with a view to agreeing a way to ensure that victims receive the standards of service that they need. A review of the *National Standards* might cover:-

29.1 **[Question for consultees:** What might be covered by organisational codes of practice?]

30. In addition, the Scottish Government will discuss with agencies how they might publicise the work they do with victims, for example as part of their normal corporate annual reports, and what that publicity might include, for example:-

30.1 **[Question for consultees:** What might organisations publish about their work with victims?]

31. Ensuring that services are delivered effectively at a local level is crucial and the Scottish Government will look at ways of improving co-ordination of services for victims:-

31.1 **[Question for consultees:** What needs to be done to improve capabilities at the local level?]

32. Victims often express a need for information about the case with which they are involved. The VNS was designed to provide victims with information about the release of an offender from prison. However, other needs for information have been identified. For example, HM Inspectorate of Constabulary in Scotland (HMICS) recommended that the Scottish Government and other agencies look at all information provided by the criminal justice system in order to ensure that information is provided in a way that respects the respective duties of different agencies but minimises the burden of uncertainty on victims and witnesses⁵. The thematic inspection addresses information supplied to victims and witnesses by the police, and work is underway to enhance the provision of case specific information for victims in cases reported by the police to the Procurator Fiscal. However, there are other areas where case specific information would be helpful:-

32.1 **[Question for consultees:** What other case specific information would victims welcome?]

33. As well as case specific information, there is a need for generic information that explains the workings of the criminal justice system and can help victims and witnesses to put case specific information into a broader context. The Scottish Government has a website for victims⁶, and also provides information for specific categories of victim, for example victims of rape and serious sexual assault⁷ or the families of homicide victims⁸. Further improvements to the provision of effective and usable generic information will bring about significant improvements in victims' understanding of the criminal justice system, which will lead to improved participation and a more responsive system.

34. Consequently, the Scottish Government will analyse existing information usage, consider different approaches, taking into account academic research and models used in other jurisdictions and work with stakeholders to design information resources that meet victims' needs.

34.1 **[Question for consultees:** Is there anything else that needs to be done to improve generic information for victims?]

⁵ [HMICS Thematic Inspection Quality of service and feedback to users of police services in Scotland](#), May 2008.

⁶ [Victims of crime in Scotland - www.victimsofcrimeinscotland.org.uk](http://www.victimsofcrimeinscotland.org.uk)

⁷ [Information and help after rape and sexual assault](#), April 2008

⁸ [Information Pack for victims families following murder or culpable homicide](#), March 2009

Priority 2: More focused support for victims

35. There are around 340,000 recorded crimes in Scotland each year, and perhaps the same number of unrecorded crimes. It is difficult to determine how many people are affected (some individuals will be repeat victims, some crimes will involve more than one victim), but the Scottish Crime and Justice Survey (SCJS) suggests that just under 950,000 Scots a year are victims of crime. Many of those crimes will have been relatively minor, and the SCJS indicated that around 90% of victims would not have wished emotional or practical support from agencies.

36. In cases where support is needed, it is clear from the evidence that emotional, practical and user-focused support delivered as soon as possible after a crime can help alleviate the worst consequences of a crime for an individual. Victims are not homogenous, and the Scottish Government addresses the needs of different categories of victims through a range of initiatives, as set out in Section 2.

37. Research indicates that the impact on victims varies widely, but for some victims the effect of a crime is long lasting and serious. This is particularly true of victims of violent crime and sex offences. The impact on these victims is particularly debilitating for the individual and has wider impact on the community and even the economy, as set out in Section 1. These victims need to receive a higher quality and greater intensity of support in order to help them move on with their lives as quickly as is possible.

38. The Scottish Government, together with third sector bodies, will review all of the funding that it provides for supporting victims, to ensure that all significant categories of victims (such as victims of homicide, victims of rape or serious sexual assault, repeat victims and so on) are covered, and that there are no gaps in provision. As part of that review the Scottish Government will seek to ensure that funding is focussed on those groups with the greatest need for support, taking into account its duties to promote equality and to tackle discrimination.

39. As part of that review the Scottish Government will work with third sector organisations that support victims in Scotland to devise a new approach that will promote more strategic engagement around policy development, including where appropriate the co-production of policy. The sorts of issues that might be considered could include: funding mechanisms, outcomes for victims or sharing of resources.

39.1 **Question for consultees:** Is there anything else that it would be helpful for the Scottish Government and third sector bodies to collectively consider?]

40. In addition, given the range of support provided to victims (see paragraph 13), the Scottish Government is keen to work with the third sector to ensure that victims' needs are being met and that they have a choice of providers where appropriate, whilst ensuring value for money for the taxpayer. The Scottish Government will ensure that, in return for funding, each organisation will show, as far as appropriate, the outcomes for victims that they are delivering. In particular:-

40.1 [**Question for consultees:** How can the outcomes being delivered be assessed and reported upon?]

Young Victims of Crime

41. Young people and children who are victims of crime have particular needs that can be different from those of adult victims, and are often victims of other young people, particularly if they are the victim of a relatively minor offence. Unfortunately, young victims can find it difficult to talk with adults, or to engage with traditional support agencies. To help empower young people and encourage their engagement, and the engagement of adults with young people, the following initiatives are underway:-

41.1 To help young victims (and adults) come to terms with an offence and help young offenders address their behaviour, the Restorative Justice Champions' Group has been created and has conducted a survey of what youth restorative justice services are being provided throughout Scotland. A clear work plan and targets has been established for the Champions' Group, which will enable its success to be monitored and measured;

41.2 The Scottish Children's Reporter Administration's led Victim Information Service (VIS), which informs victims of decisions made by the Children's Reporter in cases that affect them, was rolled-out nationally between September 2009 and March 2010. An evaluation to assess how well the VIS is operating from the perspective of victims of youth offending was carried out between 1 November 2009 and 31 May 2010, and was published in August 2010 and suggested a number of recommendations as to how the service could be improved;

41.3 Pilot media work was carried out in 2009 in Dumfries and Galloway and in Perth and Kinross. Each pilot area looked to increase opportunities for raising public perceptions of young people through the local media. A report of the media pilots has been carried out with the findings due to be published early in 2011;

41.4 Four intergenerational pilot projects were funded from January 2010 for six months, to explore the impact of and relationships between intergenerational practices, the youth work approach and community cohesion. The pilots were run in Edinburgh, Inverclyde, Dunoon and Tullibody. An evaluation of the pilots has taken place and a report is being drafted for publication in early 2011, however, initial findings are that intergenerational practice has potential to develop strong relationships between generations and can have an impact on lives and stereotypes of young people and older generations.

42. A particular concern is that young people who are victims of crime are vulnerable to becoming offenders later. It is therefore important that ways are found of reaching young victims. Consequently, Victim Support Scotland has developed a research proposal to clearly identify the needs of young victims of crime. The

findings, which are due in February 2011, will be used to determine the level and type of service required in future to meet fully the needs of young victims of crime.

Victims as Witnesses

43. It is important that services and support to witnesses remain fit for purpose, improve their experience of investigative and court processes, and help them give their best evidence. For example, work to update best practice guidance on interviewing child witnesses is nearly complete; attention is now turning to rolling out equipment to visually record joint investigative interviews with child witnesses in serious cases, and to training. In addition, the Scottish Government is, in consultation with stakeholders, currently reviewing legislative and other support for witnesses. The review will also consider how to improve support for those who work with witnesses so that the service they provide can contribute to an improved experience for all as well as identifying priorities for action and that will help form the basis for an agreed programme of work.

Priority 3: Improved participation in the Criminal Justice System

44. At the most basic level victims will find it easier to participate in a criminal justice system that is operating smoothly and effectively. As outlined in paragraph 12.1 steps have been taken to improve processes in both solemn and summary courts. In addition, HMICS and the Inspectorate of Prosecution in Scotland (IPS) have commenced a series of inspections on the treatment of victims in the criminal justice system, in particular the service provided by the police and COPFS to examine whether or not current policy is being delivered best meets the needs of victims of crime.

45. Procedural rights are also important to victims. Although the accused always has a right to fair trial, and where the accused is found guilty, sentencing should remain a matter for the courts after taking into account all the circumstances of the case, nonetheless victims should have a right to be consulted upon matters that affect them directly, particularly around matters of personal safety and wellbeing.

46. As mentioned already (see paragraph 11) the Scottish Government has taken a number of steps to improve victims' participation in the criminal justice system, including extending the VNS and introducing victim statements for serious crimes. Victims who are members of the VNS can already make representations before an offender is released on licence.

47. As a further step, the Scottish Government is looking at the possibility of allowing victims to make oral representations to the Parole Board prior to a hearing to consider an offender's release or the conditions that might be imposed when an offender is released. Discussions around this possibility encapsulate the issues that need to be addressed when introducing new initiatives to enhance victims' rights. For example, there is a need to avoid revictimisation, raising false expectations and to ensure that victims understand the roles of all of the parties involved as well as ensuring that the offender is not unfairly treated. Although no decisions have yet been made, it looks as if the best approach is to have separate meetings between the Parole Board and eligible victims in advance of the relevant hearing. It is

expected that a final decision on the best way to allow victims to make oral representations to the Parole Board will be made in early 2011.

48. There may be other areas, in addition to the initiatives outlined above, where it would be appropriate to improve victims' participation in the criminal justice system, and the Scottish Government will, therefore, review current decision making processes to see how best to incorporate victims' legitimate interests, including:-

48.1 **Question for consultees:** What areas need to be explored so as ensure victims' views are taken into account?]

Restorative Justice

49. Although there is a role for restorative justice practices within the criminal justice system, and there are examples of its use in some local authorities and in cases involving youth offenders, the current financial circumstances mean that, after careful consideration of the current evidence, the Scottish Government has concluded that a more general introduction of restorative practices is not possible at the moment. However, the Scottish Government will continue to review best practice, and may revisit the possibility of a national scheme in the future.

Priority 4: Co-ordinating Policy and Action

50. There are different models for ensuring that victims' interests are adequately protected and promoted within Scottish Government, including the existing informal approach of regular bilateral discussions with key stakeholders. There have also been proposals made for a victims' commissioner.

51. The Scottish Government has already made clear that it does not support the proposal for a victims' commissioner for a number of reasons, most notably that it would not add significantly to the quality of support for victims, and the expense would simply divert funds from front line services. The question then becomes what is the most efficient and effective means of co-ordinating policy and action to support victims.

52. A key principle that the current Scottish Government has followed since being elected in 2007 has been to empower service providers and local organisations, but within a common national framework. This document provides a key element of that framework, but will require co-ordination and communication to put into effect.

53. To fulfil this function, the Scottish Government will create a new Victims' Policy and Co-ordination Group with a membership that includes a broad range of organisations and experts. The remit will include consideration of both broad policy and service delivery issues, the identification of gaps and the propagation of good practice.

54. A key function of this group will be to keep policy under review in light of current and future developments at EU level. The European Commission is reviewing a number of framework decisions, including those on the standing of victims in criminal proceedings and compensation to victims of crime. The Group will

both help inform the Scottish position in relation to EU initiatives and provide a route for co-ordination of delivery.

SECTION 5: ACTION PLAN

55. This will be informed by the responses to the draft framework and the discussions at the victims' summit.