

# Criminal Justice Committee

## 25th Meeting, 2022 (Session 6), Wednesday 5 October 2022

### Recent correspondence

### Note by the clerk

### Purpose of the paper

1. This paper invites Members to consider several items of correspondence received by the Committee (see **Annex**), namely:

#### *From the Scottish Government*

- Letter from the Minister for Community Safety on the **commencement of various parts of the Fireworks and Pyrotechnics Articles Act** (page 3);
- Letter from Cabinet Secretary on **charging fees for access to court transcripts** (page 6);
- Letter from the Cabinet Secretary for Justice and Veterans on **risk assessment review and prison releases (LS/CMI)** (page 7); and
- Letter from the Minister for Drugs Policy on the **oversight of the national mission to tackle Scotland's rate of drug deaths** (page 11).

#### *Others*

- Letter from NHS Scotland on **medical prescriptions upon liberation** (page 12).

### Action

2. **Members are invited to consider the correspondence and any suggested follow-up and discuss what action, if any, they wish to take.**
3. For the convenience of Members, the suggested follow-up for each of the letters is as follows:

<b>Scottish Government</b>	
Letter from the Minister for Community Safety on the commencement of various parts of the Fireworks and Pyrotechnics Articles Act	To note the developments outlined in the Minister's letter, including the confirmation that certain parts of the Act will be implemented before Bonfire Night 2022, and to note the timetables for the other parts of the Act.
Letter from Cabinet Secretary on charging fees for access to court transcripts	To note the Cabinet Secretary's response. To reaffirm the Committee's view that this remains one of its priority areas as part of its <a href="#">Action Plan for reform of the justice sector</a> . To review progress again before the end of the calendar year.
Letter from the Cabinet Secretary for Justice and Veterans on risk assessment review and prison releases (LS/CMI)	To note the information provided.
Letter from the Minister for Drugs Policy on the oversight of the national mission to tackle Scotland's rate of drug deaths	To note the information provided.
<b>Others</b>	
Letter from NHS Scotland on medical prescriptions upon liberation	To welcome the detailed letter from NHS Scotland and note their offer to review any particular cases; "if more detail could be provided regarding where these issues are occurring the National Prison Care Network will investigate further". Therefore, the Committee may wish to write to the Wise Group, SACRO, SISCO and other groups who work with prisoners upon their liberation and to ask them for any information/material they wish the Committee to send to the National Prison Care Network.

## Annex

### Letter from the Minister for Community Safety on the commencement of certain provisions in the Fireworks and Pyrotechnics Articles Act (letter of 21 September 2022)

Dear Convener

#### **FIREWORKS AND PYROTECHNIC ARTICLES (SCOTLAND) ACT 2022**

During the parliamentary scrutiny process, I undertook to keep the Criminal Justice Committee updated on progress of implementation of measures within the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (“the Act”).

Following Royal Assent being received on 10 August, work to implement and commence measures is well underway and I am pleased to provide the Committee with an update on progress.

#### **Measures being commenced in October 2022**

As I indicated throughout the parliamentary scrutiny process, it was intended that the prohibition on providing fireworks or pyrotechnic articles to children (also known as ‘proxy purchase and supply’) would be in place for the upcoming fireworks season.

I am pleased to confirm that following discussions with stakeholders, including Police Scotland, Trading Standards, the Crown Office and Procurator Fiscal Service (COPFS) and the Scottish Courts and Tribunals Service (SCTS), about practical implementation of the offence, it will be possible to commence this offence in early October. A parliamentary slot has been identified to lay a commencement SSI in the coming days for that purpose, and it is intended that the new offence will come into force on 10 October. The offence will, therefore, be in place in advance of the traditional firework selling period, which begins on 15 October and lasts until 10 November, when fireworks are more readily available to the public. This will ensure that people who supply fireworks or pyrotechnic articles to children, under any circumstances, can be held accountable.

Information on the proxy purchase and supply offence is being included within the Scottish Government’s annual fireworks campaigns, which are delivered in partnership with stakeholders including the Scottish Fire and Rescue Service and Crimestoppers, to ensure that the public are aware that the new offence is in force.

I am also delighted to advise that, following discussions with stakeholders and sign off from the cross-justice Integration of Scottish Criminal Justice Systems (ISCJIS) Data Standards Group, it will also be possible to commence the emergency workers aggravation provision in section 44 of the Act this year. It is proposed to include this in the commencement SSI mentioned above, and accordingly I intend that this will come into force on 10 October. Having the aggravation provision in place for the upcoming fireworks season sends a strong message that attacks on our emergency workers involving fireworks and pyrotechnic articles are completely unacceptable. As the Committee knows, this provision requires the courts to treat such offences as

aggravated and, amongst other matters, take it into account when determining the appropriate sentence.

Additionally, to ensure that the proxy purchase and supply offence and emergency workers aggravation can operate in practice, a number of additional sections of the Act will also be commenced, including those relating to procedural and enforcement matters.

My officials are developing a bespoke programme of communications with partners, in addition to the annual fireworks season campaigns, to support commencement of the proxy purchase and supply offence and emergency workers aggravation and publicise these coming into force.

### **Implementation of other measures**

Work to implement other measures within the Act is also being progressed broadly in line with the timescales set out in the accompanying documents when the Bill was introduced to Parliament. I therefore intend that the following measures will be commenced this parliamentary year:

- The offence of being in possession of a pyrotechnic article, excluding F1 fireworks, in a public place, without reasonable excuse; and the offence of being in possession of a pyrotechnic article, including all fireworks, at a designated sporting or music venue or event, without reasonable excuse. Secondary legislation is required before the measure can be implemented, and I intend to lay regulations in Parliament for consideration by spring next year.
- The provisions providing local authorities with the power to designate firework control zones are planned to commence in early summer next year. As I indicated during scrutiny of the Act, guidance will be developed in partnership with both communities and stakeholders. I will share a copy of the guidance with the Committee in advance of its publication for information.
- While the restricted days of supply and use of fireworks provisions do not require further substantive legislation before commencement of the provisions themselves, sufficient time will be given to businesses to adapt their processes and existing stock in line with the changes. In addition, a programme of engagement and evidence gathering with specialist firework retailers is being developed to inform the regulations required in relation to the compensation scheme. Current planning assumptions are that the restricted days of supply and use provisions will commence in late spring/early summer of next year.

### **Stakeholder Engagement**

I recognise that ongoing engagement with stakeholders will be key to successful implementation of the provisions within the Act. My officials are in the process of establishing appropriate governance structures with stakeholders to progress practical

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implementation. This includes setting up short life working groups to guide and support the implementation of each of the core policy provisions.

Productive meetings have recently taken place with officials and the British Fireworks Association and the British Pyrotechnists Association to discuss their involvement in this process. My officials are also continuing to liaise with major retail outlets, such as Aldi, Asda, Lidl, Morrison's and Tesco, and retail representative bodies through the Scottish Grocers Federation and the Scottish Retail Consortium to discuss practical implementation of the Act.

I hope that this update on progress is helpful, and I will ensure that I continue to keep the Committee updated at key points throughout the implementation process.

**Ash Regan**

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**Letter from Cabinet Secretary on charging fees for access to court transcripts**

Dear Convener

**CHARGES FOR ACCESS TO COURT TRANSCRIPTS**

Thank you for your letter of 27 June 2022 and apologies for the delay in replying.

I have read the comments from the Lord President and recognise the concerns that have been raised, including the Committee's views around providing additional funding to support a scheme in place to provide court transcripts to survivors of rape and other sexual offences.

As you will have appreciated from the previous correspondence, the matter is not entirely straightforward, not least because of existing contractual arrangements that are in place and the potential funding resource that could be required. There is also a wider question around the existing legislative framework, and the extent to which that might need to be amended.

However, we are committed to working with justice agencies in improving victims' experiences wherever possible and this includes consideration with Scottish Courts and Tribunals Service of the question of charges for transcripts to victims of rape and other sexual offences.

As the Committee recognises, this is an area which is part of our broader commitment towards providing a trauma-informed and person-centred justice system for victims of these crimes.

I will look to provide the Committee with an update on that work as it progresses.

**Keith Brown**

**Letter from the Cabinet Secretary for Justice and Veterans on risk assessment review and prison releases (LS/CMI) (27 September)**

Dear Convener

**UPDATE ON THE LEVEL OF SERVICE CASE MANAGEMENT INVENTORY (LS/CMI) IT SYSTEM AND RISK SCORING**

Following on from my letter to you of 28 June, I would like to provide you with a further update on the LS/CMI system.

As you may recall, since the issues with the LS/CMI IT system were identified earlier this year, three forms of review have been underway as follows:

- Open Case review
- RMA review
- IT review

An update on each of these is set out below as I am keen to keep the Committee apprised on the progress of this work.

**Open Case review**

Users of the LSCMI system were asked to review 17,933 open cases as part of this review. This review was undertaken by users (justice social work) and focussed on a much higher number than the cases showing as potentially affected in March. The review looked at the wider open caseloads held by users in order to provide additional assurance.

The review was to report back to the Scottish Government in the first instance so we could:

- Understand the prevalence of the risk scoring/level issue and alcohol/drug scoring issue in all open cases.
- Receive assurance that where either of those issues were found, that overrides had been applied (so that cases are “correct” when the IT system returns to full operational use)\*
- Be assured that, if there were “IT errors” (scoring or level mis-matching) that they have not caused a public protection concern.
- Use any returns to spot patterns as a cross-check with the IT system wide review.
- Provide assurance that all cases have had the opportunity for justice social work professionals to look at each case and check details.

\*Use of the LS/CMI risk assessment tool permits an override to change a system generated final risk/need level through professional judgment when taking account of all factors used to determine offender management.

As of 6 September, 16,144 (90%) of the cases had been reviewed. The number of IT errors found in alcohol/drug scoring at that date was 187 (1.1% of 16,144). The number

of IT errors found in final risk/need level at that date was 179 (1.1% of 16,144). There are 1,789 cases still to review. Although there are returns still to be provided the number of cases affected by the risk/scoring level is at present lower than the 285 open cases that the systems reports in March suggested might have been affected. Final checks will be completed once all returns received but it is not expected that these are new affected cases, rather these are returns that appear to be reconciling towards that 285 open case number. Once the returns are complete the cases will also be cross-checked, as it is possible both errors may be present, so a case may feature in both lists of affected cases. No public protection issues have been flagged by justice social work to date. We are working with stakeholders to try and conclude the remaining cases as soon as possible, but it is likely to take several more weeks. The LS/CMI Review Group will, in a further phase of their review work, consider those open cases where the risk/need level IT error has been found, to establish if any have been considered already by their review group and to determine the form of that phase of the review. They will do so informed by the outcomes of their work to date, as we are keen to ensure the review processes are proportionate.

### **LS/CMI Review Group**

This work has been led by the Risk Management Authority (RMA), with membership from justice partner organisations, including inspection agencies and victims' groups.

The objectives of this work were:

- To determine which cases the LS/CMI scoring error affects. This includes initially closed cases and subsequently open cases. (The latter following SG review of open cases referenced above.)
- To conduct a gap analysis to determine “as was” scoring from “as should be” scoring.
- To determine for each case where such a gap exists, in the event of such a gap, and to the best that it can be determined, whether there was a material impact on how the case was subsequently dealt with in the justice system.
- To produce recommendations for each case where such a gap exists, how to amend all versions of records in the justice system so the correct scoring exists.
- To produce recommendations where there was a material impact on how the case was subsequently dealt with in the justice system what remedial action may be appropriate.
- To produce an action plan for Scottish Ministers as to how to take forward any response to the scoring issue and the analysis undertaken by the group.
- To make to Scottish Ministers any recommendations on matters of risk relevant to LS/CMI scoring which the group thinks are appropriate.

The review group were looking at 1032 closed cases where there was a difference between the actual risk/ needs level and the risk/needs level displayed on the system. The group have been able to significantly reduce the number of cases they need to consider further as a substantial number had an over-ride applied by social work that explained the difference or could be excluded for a range of other reasons, including

for some that no difference could be found when the case was manually examined. With the caveat that further assurance of the numbers is still required in the next phase, to date only 4% of these cases had an incorrect risk/ need level which had been used to inform a subsequent decision and therefore possible material impact was evaluated. These cases will now be explored in further detail by the review group in phase 3 of this work.

### **IT review**

This work was led by a third-party IT company, Leidos, who have now reported back to the Scottish Government on their findings.

As a result of that work, we now have a good understanding of what has been causing the errors within the IT system. The IT errors have now been technically described and appear to be driven by a mix of technical design and misapplication of the business rules. A number of potential solutions to prevent them reoccurring can now be taken forward. As part of the review, newly developed user guides were also produced which we believe will greatly assist users of the system in future use of the LS/CMI IT system. Since 2 March 2022 users have been undertaking paper-based LS/CMI assessments and will continue to work in this way until such time as the IT errors have been remedied.

In parallel with this work the Scottish Government have been taking forward the procurement of a managed service provider for the IT system, work which was put on hold when the IT errors were discovered. That procurement has now concluded. The company who were previously providing the managed service, NVT Limited, will no longer be providing the managed service and instead the managed service will be provided by the company who were successful in that procurement exercise, Bridgeall Limited. Throughout September there will be activity required to move the IT system onto a new platform and thereafter we expect Bridgeall Limited to be in a position to undertake the necessary remediation work required to fix the IT errors. Our intention is that only once those errors have been remediated, and then assured by the third-party reviewer (Leidos), will the IT system be able to be returned to full operational use.

### **First Grant of Temporary Release (FGTR)**

Members of the Committee previously had a number of questions about the potential impact on the FGTR process. I am able to provide the following update.

There were originally eight individuals with FGTR cases where system reports suggested the assessment may have been affected. As part of the RMA led review, the SPS were provided with details of those cases and SPS then analysed this data against all relevant prison systems containing FGTR case information. The results were then provided to the RMA for evaluation.

The RMA evaluation concludes that no FGTR application which had been approved and given consent by the Scottish Ministers, used an assessment where the risk/ need level related to the LS/CMI IT system error.

While the error was found in some assessments for those individuals, most received a number of LSCMI assessments during their time in custody, so cases had to be examined as to whether any of those affected assessments were directly drawn on for the FGTR decision. The RMA looked at whether there was a material impact on how these FGTR cases were subsequently, and are currently, being dealt with in the justice system. They also concluded that the LS/CMI IT system error had no material impact on how any of these cases were managed within the justice system.

**Next steps**

The remaining open cases will be reviewed and the findings made available to Parliament and to the other review groups. The LS/CMI Review group, led by the RMA, will begin and conclude phase three of their work, with the outcome of phase three anticipated in November. Justice social worker practitioners continue to use the paper-based version of LS/CMI, but my officials have been exploring with them options as to how that data will be added back onto the system once in full operational use. Once the remediation work has been completed, we can provide an update on the timings of that work.

I would once again like to place on record my thanks to those individuals from a range of justice organisations who have been undertaking this review work, on top of what are often very demanding workloads. I am very much apprised of the need to provide the necessary public and Parliamentary assurance on these matters. While there are further phases of the work to go and I wish those to conclude before drawing firm conclusions, I think the findings to date substantiate my previous updates to the Committee that while LSCMI has an important role, a number of other processes are wrapped around the management of people within the Justice system relevant to the management of risk.

I will provide the Committee with further updates on this work as it progresses.

I hope that this information is helpful to you.

**Keith Brown**

**Letter from the Minister for Drugs Policy on the oversight of the national mission to tackle Scotland's rate of drug deaths**

Dear Audrey Nicoll MSP,

Thank you for your email and letter dated 14 September 2022 regarding Criminal Justice Committee members request for additional information on the National Mission Oversight Group.

As you are aware, the Oversight Group was established in June 2022 to provide challenge, scrutiny and advice to the Scottish Government and the wider sector. From meeting two, held on 22 September 2022, David Strang, former chair of the Drug Death Taskforce, is Chair of the group, ensuring its independence from government.

The group will meet virtually every three months to:

- scrutinise the Scottish Government's plan to deliver the national mission identify any gaps in the plan and share suggestions for how these may be addressed
- provide expert advice on policy areas and service delivery as requested by Scottish Ministers
- share best practice, including from other countries which have had success in reducing deaths and harms from drug use
- promote accountability in the system at a national and local level
- explore how recommendations from other governance groups could be implemented in the context of limited funding and resources.

As standard procedure, the National Mission Oversight Group will approve the previous meeting minutes at the following meeting. Therefore, the minutes of the meeting held on 22 September 2022 will be published, once approved, following the meeting scheduled for December 2022. The minutes are then published on the Scottish Government website and can be accessed at: [National Drugs Mission Oversight Group](#).

I hope this response is helpful.

Yours sincerely

**Angela Constance**

**Letter from NHS Scotland on medical prescriptions upon liberation**

Dear Ms Nicoll

Thank you for your correspondence on behalf of the Criminal Justice Committee regarding the issuing of medical prescriptions to prisoners on their release.

My colleagues have consulted with Dr Craig Sayers, Clinical Lead at the National Prison Care Network and Tom Byrne, the National Prisons Pharmacy Advisor. Both advise that there has not been any change to the procedure for issuing medical prescriptions on liberation. Specifically, they advise that *“the prison prescribing system does not have the capacity to send electronic prescription requests to specific pharmacies and there has been no change in policy regarding the processes for providing medication on release”*.

I understand the process that is followed when someone is leaving prison to return to the community is as follows:

1. Patients have a prescription generated from Lloyds prior to liberation and are handed a supply of medication to them in person at the time of release, along with a handwritten letter to provide to their GP practice to inform the Community Primary Care team of active prescription items along with a summary of active health conditions, investigations, etc
2. Prescription items of potential abuse, where prescribers do not wish to provide a large supply of medication to an individual, may be generated on a handwritten GP10 prescription which is given to the patient prior to release. The patient then presents this prescription to the chemist on release. Such an example may be a prescription for Gabapentinoid medication where the prescriber wishes the patient to collect this medication daily or receive it on a daily supervised basis in the chemist.
3. In 2 prisons, Perth and Castle Huntly, all prescriptions are generated by printing onto GP10s which are then signed and presented to the patient on release to be taken to a chemist.
4. Medications prescribed for opioid dependency are usually generated by Community Addiction Teams (CAT) following throughcare communications prior to release.

This means that everyone leaving prison should do so with a supply of their medication and/or a paper copy of their prescription, depending on the risk of the items being prescribed.

In terms of opioid dependency prescriptions, prison healthcare teams engage with the CAT several weeks prior to release to arrange for them to generate a prescription for methadone/Buprenorphine along with a date, time and place for a keyworker appointment following release.

There may be very rare exceptions where a patient receives an immediate release with no notice (particularly on a Friday) where the prison healthcare team would write a prescription for the patient to cover a week or so of opioid substitute treatment until the CAT team can pick the patient up.

It is worth noting that the pressure for these prescriptions is greatly reduced for those on Buvidal as this is only required once every 4-weeks and doses can be moved by up to one week to allow administration prior to liberation for those who would be due a dose in the first few days after release.

Neither I, Dr Sayers or Tom Byrne have been made aware of any issues in the prescribing of medication as your letter outlines; however, if more detail could be provided regarding where these issues are occurring the National Prison Care Network will investigate further.

In 2020 the Scottish Government commissioned a review of Clinical IT systems in prisons to analyse use of the current systems and identify best practice. This review concluded that improvement was needed in the consistency and quality of the data recorded in medical records, and also that the current IT system used in prison would no longer be supported by the supplier. In response to these findings the Prison Digital Health & Care Provisioning Programme Board was established. The Board has been tasked to provide oversight of the development of an outline business case (OBC) to support a set of clinical IT solutions for prisons. The options will address the recommendations of the review and will support equity of care in prison healthcare settings.

To support the development of the OBC, the Programme Board has commissioned a patient journey mapping exercise and established two short life working groups to consider potential solutions in more detail.

Short Life Working Group One is considering solutions for prescribing, medicines administration and stock control, and for replacing the clinical system. Short Life Working Group Two is looking at access to clinical history, and continuity of care.

The OBC is expected in Autumn 2022, after which the Programme will present recommended options for progressing to a full business case. Based on the recommended options, advice on next steps will be provided to Ministers for their consideration.

To provide shorter term improvements, we are also currently considering the recruitment of three regional facilitators who will work with health centre staff in prisons to improve usage of the current system. This aims to address the issues identified in the review around the consistency of data recorded in clinical IT systems.

I hope this information is helpful to the Committee.

Yours sincerely

**Caroline Lamb**  
**Chief Executive of NHS Scotland and Director-General Health and Social Care**