

# Criminal Justice Committee

**16th Meeting, 2023 (Session 6), Wednesday, 24 May 2023**

## Subordinate legislation

### Note by the clerk

### Purpose of the paper

1. This paper invites the Committee to consider the following negative instrument:
  - [The Discontinuance of Cornton Vale Prison \(Scotland\) Order 2023 \(SSI 2023/132\)](#) [see page 3];
2. The purpose of the instrument is to formally discontinue the prison of Cornton Vale on 6 June 2023, the day the order comes into force.
3. If the Committee agrees to report to the Parliament on the instrument, it is required to do so by **29 May 2023**.

## Delegated Powers and Law Reform Committee Consideration

4. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 9 May 2023.
5. The DPLR Committee agreed that it did not need to draw the instrument to the attention of the Parliament on any grounds within its remit.

## Procedure for negative instruments

6. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. The annulment process would require a motion to be agreed in the Chamber.
7. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

8. 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.
9. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
10. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
11. Each negative instrument appears on the Criminal Justice Committee's agenda at the first opportunity after the Delegated Powers and Law Reform 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 the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
12. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

## **Guidance on subordinate legislation**

13. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:

<https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-delegated-powers-and-law-reform-committee>

14. **The Committee is invited to consider the instrument.**

**Clerks to the Committee  
May 2023**

## Policy Note

# The Discontinuance of Cornton Vale Prison (Scotland) Order 2023

## SSI 2023/132

1. The above instrument formally discontinues the prison of Cornton Vale and was made by the Scottish Ministers in exercise of the power conferred upon them by section 37(1) of the Prisons (Scotland) Act 1989. The instrument is subject to negative resolution procedure and comes into force on 6 June 2023. The discontinuance order is the formal legal act required to reflect that a prison has ceased to operate.

**Purpose of the instrument.** The purpose of this instrument is to formally discontinue the prison of Cornton Vale.

## Policy Objectives

2. In 2015, the then Cabinet Secretary for Justice announced plans for the future of the custodial estate for women. This included a new national prison for 80 women, which would replace HMP & YOI Cornton Vale prison.

3. HMP & YOI Stirling has been built on part of the HMP & YOI Cornton Vale site and is scheduled to open in May 2023, and it will become operational in June 2023. HMP & YOI Cornton Vale closed to prisoners in March 2023 and all prisoners were relocated to other SPS sites. Although the prison will already be closed to prisoners by the time this Order comes into force, this Order means that this property can no longer be used as a prison.

4. Staff from HMP & YOI Cornton Vale have been redeployed and will return to HMP & YOI Stirling this summer and there will be no compulsory redundancies following the closures of the prison.

## Consultation

5. The Women's strategy Programme consulted widely with stakeholders including NHS, Local Authority and voluntary Third Sector partners and there has also been consultation with SPS National Trade Union Partners.

## Impact Assessment

6. The replacement of HMP & YOI Cornton Vale with HMP & YOI Stirling is a component of the strategy for women in custody, which has been subject to an EHRIA.

## **Financial Effect**

7. The operational budget of HMP & YOI Cornton Vale has been allocated to take account of the closure of the site in June 2023 and an Operational Budget has been allocated for HMP & YOI Stirling for the latter part of the current financial year with provision made for a full operational budget for the next financial year.

8. The Cabinet Secretary for Justice and Home Affairs confirms that no Business and Regulatory Impact Assessment is necessary, as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Prison Service  
April 2023