

REPORT

To: GENERAL PURPOSES COMMITTEE		Subject: SUMMARY JUSTICE REFORM
From: DIRECTOR OF ADMINISTRATION		
Date: 18 April 2005	Ref: WBK/MK	

1. **PURPOSE OF REPORT**

1.1. The purpose of this report is to advise members of the proposals contained in the recently published Scottish Executive report on Summary Justice Reform.

2. **BACKGROUND**

2.1. In September 2001 the then Minister for Justice, Jim Wallace, announced proposals to review the provision of summary justice in Scotland. To take this forward, the Summary Justice Review Committee was appointed under the Chairmanship of Sheriff Principal John McInnes. The McInnes Committee's remit was "to review the provision of summary justice in Scotland, including the structures and procedures of the Sheriff Courts and District Courts as they relate to summary business and the inter-relation between the two levels of court, and to make recommendations for the more efficient and effective delivery of Summary Justice in Scotland."

2.2. The McInnes Committee undertook various forms of consultation as part of the review. In 2002 the Committee conducted a paper-based consultation exercise. In 2003 it held a series of events at which summary justice practitioners discussed a number of technical proposals considered by the Committee. The Committee also commissioned a large-scale public survey that was conducted in January and February 2003 and continued to develop its proposals through a series of bilateral meetings with interested groups in 2003.

2.3. The McInnes Report was published on 16 March 2004. It made recommendations on a number of significant issues, including the structure of the summary justice system, judges in the summary courts and the procedures to be followed in court cases. Before reaching any decisions on the recommendations made in the report, a period of open consultation was held by the Executive to obtain the views of organisations with an involvement or interest in the criminal justice system, as well as the public generally. A four month period of open consultation followed publication of the report. A total of 240 responses were received and these were analysed by independent consultants on behalf of the Executive. A copy of the analysis report has been deposited in the members' library. In the second half of 2004 the Executive commissioned further research in order to gather a wider range of views on the issues of community involvement in the justice system and the use of alternatives to prosecution.

2.4. In March 2005, Cathy Jamieson, Minister for Justice, launched a document outlining the Executive's plans for reforming summary criminal justice and procedure. A copy of the document has been deposited in the members' library.

### 3. MAIN PROPOSALS

#### 3.1. The Future for Lay Justice

- Retain lay justices to undertake court business with their current powers.
- Sitting lay justices will be appointed for fixed terms of five years which can be renewed until they reach the age of 70. Presumption in favour of re appointment unless one of a certain number of circumstances applies.
- Views being sought as to whether lay justices who sit on the bench should be given a more modern title and whether a clearer distinction should be drawn in the public mind between sitting and signing justices.
- Improve and develop lay justices by investing in recruitment, training and appraisal.
- Rigorous and transparent process for recruitment of lay justices.
- Current JPACs to be replaced with a new JPAC for each sheriffdom, to be chaired by a sheriff principal and including representatives from active lay justices and the wider community.
- Training to be managed on a national basis so that it is better and more consistent.
- Justices will be appraised regularly so that training and development needs can be identified and addressed.
- Signing justices to be retained. Views sought on whether local authorities should be able to nominate a higher proportion of councillors as signing justices.

#### 3.2. Court Administration and Fines Enforcement

- Proceed with unification of summary courts administration under control of the Scottish Court Service.
- Unification to be phased-in across Scotland on a sheriffdom by sheriffdom basis.
- New unified system will continue to see court business conducted in locations throughout Scotland, taking account of the needs of victims, witnesses and communities.
- Work to take place involving local authorities, district courts and other relevant partners to ensure that unification progresses smoothly.
- As unification proceeds the administration of all fines will become the responsibility of Scottish Court Service.
- Enhanced administrative arrangements to be developed to ensure effective enforcement of fines.

#### 3.3. Alternatives to Prosecution

- Commitment in principle to further extension of the use of fixed penalty notices, linked to monitoring the operation of the anti-social behaviour fixed penalty pilot scheme.

- Increase the maximum fiscal fine to £500.
- Introduce fiscal compensation orders with an upper limit equivalent to level 5 on the standard scale (£5,000).
- Upon receipt of a fiscal fine or compensation order notice the accused should have to take positive steps to indicate if s/he would rather have a court hearing than pay the penalty.
- Timeous payment of the penalty will entitle the accused to a discount.
- Failure to make payment will result in the fine becoming registered at its full value.
- Unpaid fiscal fines and fiscal compensation orders should become registered fines and be enforced as if they had been imposed by a court.
- Prosecutors should be permitted to provide details of previously accepted fiscal fines in the event of a subsequent conviction but only for a period of two years following imposition of the penalty.
- Introduce a new option for fiscals to be able to offer reparation to the community rather than a financial penalty where appropriate.

#### 3.4. Better Case Handling for Better Outcomes

- Increase custodial and financial sentencing powers of sheriffs sitting summarily.
- National Criminal Justice Board and local criminal justice boards to set targets and goals for effective operation of the criminal justice system.
- Detailed procedural changes suggested in the McInnes Report to be rolled out.
- A reformed system of summary criminal legal aid to be developed in conjunction with the Scottish Legal Aid Board and legal profession.
- Legislation will provide for trial in absence in summary cases where the accused does not attend and the court considers that it is in the interests of justice to proceed.

3.5. Members will note one issue of direct interest relates to the nomination of members as Justices ex officio. At present local authorities may nominate up to one quarter of their serving Councillors as signing Justices and in the case of North Lanarkshire seventeen members have been so nominated. The Executive see no reason in principle why authorities should not be entitled to nominate a larger proportion of Councillors, provided that all nominees meet the normal criteria for being a Justice of the Peace (such as not having certain criminal convictions). The report indicates that the Executive would welcome views as to whether greater flexibility in this area would be useful. While it is anticipated that the views of local authorities on this issue are likely to be canvassed by COSLA, whether as part of its review of the report as a whole or as a separate item, members may see merit in reaching a preliminary view on this matter.

## 4. **NEXT STEPS – DELIVERING THE REFORM AGENDA**

4.1. The Executive have indicated that they will bring forward legislation in the lifetime of this Parliament to deliver a unified courts administration and that unification will

commence from 2007/08. As noted above, unification shall be phased-in across Scotland, on a Sheriffdom by Sheriffdom basis, and will be based firmly on the principle of strengthening the links between courts and communities. In relation to progressing the reform agenda generally, the Executive have proposed early and formal engagement with those directly interested in unification of court administration. There is intended to be collaborative work with clerks and justices and discussions with other stakeholders including public and defence. It is anticipated that issues affecting justices will be canvassed nationally via the District Courts Association and where local consideration is appropriate this will be through local Justices Committees. Issues affecting clerks and the estate of the district court are likely to be canvassed through COSLA.

## 5. CORPORATE/FINANCIAL CONSIDERATIONS

- 5.1. It is now evident that if legislation is passed by the Scottish Executive to develop the reform agenda in the manner detailed in the report, the Council will at some future stage relinquish responsibility for administering the District Court and collecting fines and other payments. There will be substantial impact on staffing and property and all relevant issues will be canvassed with the Directors of Finance and Housing and Property Services in order to properly inform the anticipated dialogue with the Executive through COSLA.

## 6. RECOMMENDATION

- 6.1. The Committee is asked to consider reaching a preliminary view on whether it supports the potential increase of the number of members who might be nominated as signing Justices of the Peace ex officio.
- 6.2. The Committee is asked to otherwise note the contents of this report.

*Walter B. Kilgour*

*W* **Director of Administration**

*Members seeking further information on the contents of this report are asked to contact Mitch Kerr, Chief Solicitor (District Courts and Licensing) at extension 2371.*