

## **Criminal Justice and Licensing (Scotland) Act 2010**

### **Community Payback Orders**

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#### **1. SUMMARY**

The above Act effects the most profound change to the supervision of offenders in the community since the introduction of National Objectives and Standards and ring fenced funding in the 1990s and arguably since the Social Work Scotland Act 1968. The familiar landscape of Probation and Community Service will disappear (gradually) along with Supervised Attendance Orders, to be replaced by Community Payback Orders offering courts a suite of options incorporating many of the features of Probation, CS and SAO. These changes, alongside a presumption against custodial sentences of three months or less, reflect the legislative response to the recommendations of the report of the Scottish Prisons Commission (2008).

#### **2. RECOMMENDATIONS**

- 2.1 To note the issues involved in the development and implementation of the Community Payback Orders

#### **3. DETAIL**

- 3.1. In June 2008, Scotland's prison commission led by Henry McLeish published a wide-ranging review of penal policy, recommending key changes, including those on short sentences. The Government's response has led to the Criminal Justice and Licensing (Scotland) Act 2010 which will come into force on the 1<sup>st</sup> February 2011. The Act will bring about a coherent penal policy with a more streamlined sentencing regime to replace, what was seen as, an unnecessarily complex range of sentencing options not readily understood by the public.
- 3.2. The Act introduces Community Payback Orders (CPOs), replacing existing sentencing options, to create a robust and consistently delivered community sentence which enjoys public confidence, credibility with judges and requires individuals to make payback to the community by means of reparation, changing offending behaviour and provide opportunities to reintegrate themselves into society as law-abiding and contributing citizens.
- 3.3. The act introduces a presumption against custodial sentences of three months or less. This will bring an increase in community based sentences. Criminal justice social work business is predicted to rise by 10 - 20%.

- 3.4. The Act also introduces a requirement for local authorities to produce an annual report on the operation of CPOs and to consult with “prescribed persons” (wide ranging representatives of professional bodies and the public) regarding the nature and conduct of unpaid work (previously known as Community Service).
- 3.5. A CPO is to be a generic term for a suite of sentencing options available to the court. In principle their purpose is to facilitate:
- *Reparation* - restoring responsibility for harm through making amends,
  - *Reintegration* - restoring relationships and opportunities and strengthening external protective factors.
  - *Rehabilitation* – restoring self awareness, responsibility, skills and internal controls, and where required
  - *Restriction* - restoring public safety and boundaries
- 3.6. A CPO will contain one or more of the following 9 requirements:
- Supervision requirement
  - Unpaid work and other activity requirement
  - Programme requirement
  - Residence requirement
  - Drug treatment requirement
  - Alcohol treatment requirement
  - Compensation requirement.
  - Conduct requirement
- 3.7. The above requirements rely on greater use of the third sector organisations such as drug and alcohol groups, multi-agency involvement, and will establish longer term contact with support services based within the community that will last beyond the period of sentence.
- 3.8. Unpaid work will play a key role in offenders “paying back” to society for their behaviour. Unpaid work schemes will take on more visible projects and will improve public consultation on the range of tasks that will benefit the wider community. The public will see that offenders are making restitution to the community and offenders will have their reparative efforts recognised.
- 3.9. To support the introduction of Community Payback the Scottish Government has provided new “*National Outcome and Standards for Social Work Services in the Criminal Justice System*”, and operational guidance in respect of CPOs, a Criminal Justice Social Work Report (CJSWR) format, which replaces the old Social Enquiry Report, to assist sentencers, and Throughcare guidance for working with prisoners. The Government has also introduced a nationally agreed risk assessment tool called the Level of Service/Case Management Inventory (LS/CMI).
- 3.10. The new Standards and Guidance focus heavily on “immediacy and speed”; that Orders are served quickly (within 1 day), supervision/unpaid work is started within 7 days, and, in respect of unpaid work, orders are

completed within a maximum of 6 months. Electronic transfer of court information has been developed and local arrangements with the Courts revised to facilitate these matters.

- 3.11. All Argyll and Bute Criminal Justice staff have now been trained in the new standards, operational guidance and risk assessment tool and are prepared for the implementation of the Act.
- 3.12. The Criminal Justice Partnership of Argyll and Bute and East & West Dunbartonshire has undertaken a review of its service to ensure current resources are best placed to meet the demands of the Act and CPO.
- 3.13. At present there is no extra funding offered by the government in respect of the roll out of CPO and as such any resources to support the predicted increase in workload must be found from within the current budget i.e. via efficiency savings. All criminal justice services are predicting difficulties in effectively delivering CPO's within the current financial restrictions and are deploying stringent prioritisation and efficiency strategies.
- 3.14. The introduction of Community Payback Orders and new Standards comes at a challenging time however this radical shake up is welcomed by Criminal Justice Services - practitioners and managers alike present as highly motivated though share concerns about the lack of resources.

#### **4. CONCLUSION**

- 4.1. The Criminal Justice and Licensing (Scotland) Act 2010 will provide a cohesive framework of community based sentencing, replacing existing complex structures that will be more easily understood by the community and will focus on the principle of the offender "paying back" to the community for his/her behaviour. Payback will take the form of reparation, reintegration, rehabilitation and restriction. The Act will also reduce the number of offenders serving short-term prison sentences and there will be seen a subsequent increase in work for the community based criminal justice social work services.
- 4.2. The Act provides for greater involvement of the community in respect of reparation made via unpaid work
- 4.3. A new set of national standards and practice guidelines support the new Act and provide direction for the criminal justice services into the future. There is considerable motivation towards the Community Payback Order from criminal justice services.
- 4.4. The next few years will be a challenge within current resource constraints, especially as there are some crucial "unknowns" in respect of increasing workloads and responses by sentencers. However, as best as can be achieved, Argyll and Bute Criminal Justice Services are prepared for the implementation of the Act on 1<sup>st</sup> February 2011.

## **5. IMPLICATIONS**

**Policy** – The new order is consistent with council policies in respect of strengthening and developing our communities

**Financial** – The Argyll and Bute Criminal Justice Service is funded, as part of a Partnership with East and West Dunbartonshires, through a specific grant from the Scottish Government administered by the North Strathclyde Community Justice Authority. The Partnership arrangement is that any overspend is split equally between the three Local Authorities. The Partnership is expected to operate within budget, and efficiency savings to cover the new arrangements are being implemented. The Partnership, along with most CJ services, across the country will make representation to the Government via its funding administrators as the funding implications of the orders becomes clearer.

**Legal** – Services to offenders continue to be provided via the Social Work (Scotland) Act 1968 Section 27 and there are no changes in this arrangement. The new Act brings a statutory responsibility for the Local Authority to annually report on the operations of CPO (the format has yet to be determined) and consultation with a range of prescribed stakeholders.

**Personnel** – Three paraprofessional staff members are subject to changes in job description and duties - currently going through job evaluation. Other restructuring of resources has been achieved through opportunities provided by vacancies.

**Equal Opportunities** - None

**Executive Director of Community Services**  
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For further information contact: (insert report author and contact details)

Jon Belton  
Service Manager  
Criminal Justice Services  
01546 604567