

# REFORMING AND REVITALISING

REFORMING AND REVITALISING  
**REPORT OF THE REVIEW OF  
COMMUNITY PENALTIES**



**safer  
scotland**  
SCOTTISH GOVERNMENT

# REFORMING AND REVITALISING

© Crown copyright 2007

ISBN: 978-0-7559-5572-5

The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

Produced for the Scottish Government by RR Donnelley B53565 11/07



<b>Contents</b>	<b>Page</b>
<b>Foreword</b>	<b>1</b>
<b>Section 1 – Why Review Community Penalties?</b>	
1.1 Why have this review?	3
1.2 Community penalties – current role and use in the criminal justice system	4
1.3 The context – crime and imprisonment levels in Scotland	5
1.4 A coherent penal policy – what role should community penalties play?	7
1.5 The review process	8
1.6 Key findings of the review	8
<b>Section 2 – The Government’s Plan of Action</b>	
2.1 Paying back to the community – reparation and payback	11
2.2 A part of the community – rehabilitation and reintegration	16
2.3 The service that communities deserve – quality and enforcement	22
2.4 In the community, for the community – community engagement and involvement	28
Annex A – Summary of community penalties currently available in Scotland	31
Annex B – List of groups that participated in the review process	33
Annex C – Sample questions asked at review meetings and contact details	34



## MINISTERIAL FOREWORD



This Government is determined to develop a coherent penal policy that uses prison for serious and dangerous offenders but deals with lower-risk offenders in the community. I believe that is the best approach to take because it will reduce reoffending whilst ensuring that prisons can deal effectively with those who pose a genuine risk.

The use of community penalties such as community service and probation has been steadily increasing over the past 10 years. The fact that our courts are increasingly using these penalties is testament to those involved in the many effective schemes available across Scotland. However, I believe there is scope for more and improved use of them. In particular, we have not always done enough to make sure that offenders are *clearly paying back to the communities they have offended against – in a way which that community wants and can see*. And we have not always ensured that the penalty does everything it can to reduce reoffending.

Compared with 20 years ago, the number of crimes committed in Scotland has fallen by over 40,000 per year, but our prison population has increased by almost a third and continues to rise. We are spending more money on prison, and reoffending by those released from prison has not reduced. This suggests that short prison sentences are not the most effective way of dealing with offenders who do not pose a risk to the public. Crimes must be punished appropriately and effectively. Individual sentencing decisions are rightly for the courts to make. But the Government has a duty to use prison appropriately. It also has a duty to ensure that punishments do all they can to make offenders face up to their crimes whilst supporting them to return to a positive life in the community.

There are no simple answers in this area and the Government does not have a monopoly on good ideas. We wanted to listen and build consensus – that's why, in advance of producing this report, a series of meetings was held with a range of the key players, looking for their views on the obstacles to be overcome to improve the quality, effectiveness and perception of community penalties. A lot of good practice already exists, but there is room for improvement. It is on that basis that the recommendations in this report are provided. I would welcome any views on this report – but it is a plan of action, not a consultation. We are committed to taking forward a number of actions quickly as the report makes clear.

Our goal is to build a safer and stronger Scotland by reducing rates of offending and reoffending. Whilst that programme of work goes much wider than the operation of community penalties it makes sense to look at this area as a priority. I will be ensuring that the Independent Commission on the Purpose and Use of Prison takes the issues raised in this report into account as it forms its recommendations – in order to ensure that we deliver a coherent penal policy which uses punishment appropriately and effectively.

**Kenny MacAskill**

Cabinet Secretary for Justice

November 2007

# 01

## WHY REVIEW COMMUNITY PENALTIES?

The Government is determined to develop a coherent penal policy that uses prison for serious and dangerous offenders but deals with lower-risk offenders in the community. At the debate on the Government's strategic objective of a "safer and stronger" Scotland on 6 June the Cabinet Secretary for Justice made clear his desire to review community penalties, working across the political spectrum and with organisations throughout the criminal justice system. The aim of that review was to consider the current use and operation of community penalties, with a view to reforming and revitalising their use.

## 1.1 WHY HAVE THIS REVIEW?

**The Government believes that, when someone has committed a crime an appropriate penalty must be quickly and effectively imposed. But what should that penalty seek to achieve? Whilst individual sentencing decisions are a matter for the courts the Government believes that the main purposes of punishment should be:**

- **PUBLIC PROTECTION/SAFETY**  
Where an offender presents a real risk to the public they must be imprisoned in the interests of public safety. Where they do not a punishment in the community may be more likely to reduce future offending.
- **PUNISHMENT AND DETERRENCE**  
Offenders must realise that crime does not pay and that their action will lead to a stern consequence. Where a crime is particularly serious prison will rightly be regarded by the courts as the only viable sentencing option.
- **PAYBACK**  
Where an offender can remain in the community they should be made to pay back. Crime causes damage – wherever possible punishment should include an element of reparation to make good on that damage and force offenders to face up to their actions.
- **REHABILITATION AND REINTEGRATION**  
With the exception of a small number of very serious crimes “offenders” will return to (or remain in) a community. Where possible, penalties should do what they can to help people tackle underlying problems that contribute towards their offending and help them to move back towards a law-abiding lifestyle.

These purposes are not about being “tough” or “soft” – they are about ensuring that our penal policy delivers on its principal aim – to minimise offending and reoffending and help build a safer and stronger Scotland.

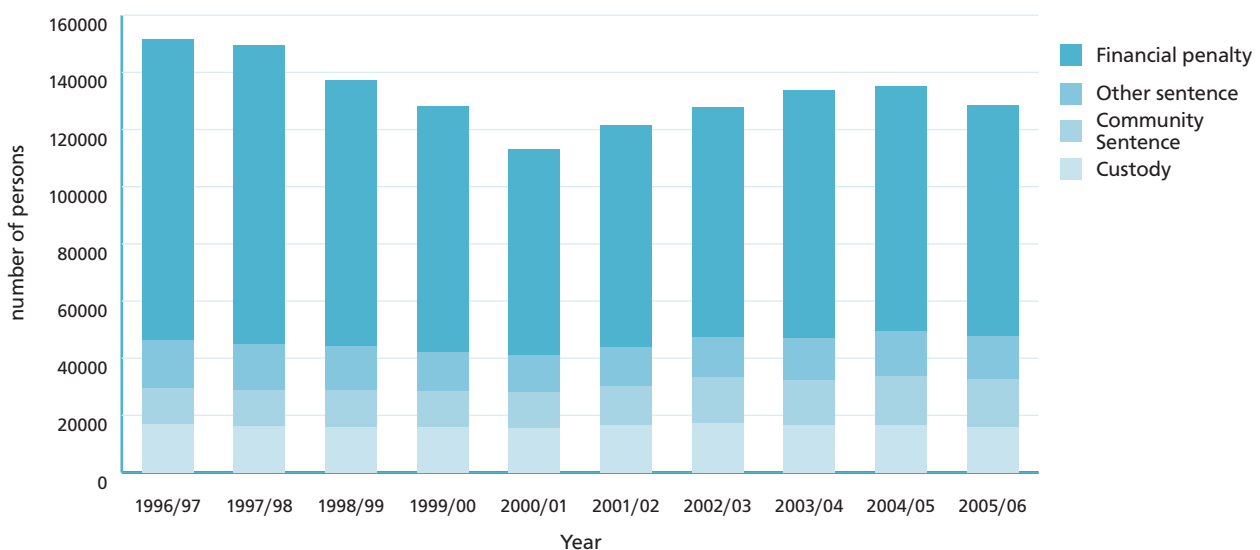
## 1.2 COMMUNITY PENALTIES

### Current role and use in the criminal justice system

The term “community penalty” refers to a number of statutory sentences which can be imposed by the court following a finding of guilt in a criminal case. The convicted person is not sent to prison – instead, their punishment is provided in the community and may take a number of forms such as carrying out unpaid work, undertaking activity to address the causes of their offending or submitting to treatment and testing to resolve an addiction problem. In some cases a combination of penalties may be imposed (e.g. to provide a clear punishment in addition to activity aimed at tackling the underlying causes of offending). The main community penalties used in Scotland are **community service and probation** although there are a number of other options available to the courts, including restriction of liberty orders (electronic tagging) and drug treatment and testing. **Annex A** provides a summary of the community penalties currently available in Scotland.

Graph 1 indicates that, over the past 10 years, the use of community penalties has been steadily increasing (from 8% of charges proved in 1996/97 to 13% in 2005/06). For the last 2 years courts have used community penalties in a greater number of cases than they have used prison (13% of charges proved compared to 12%). This reflects the increasing range of options available to the courts and the fact that community penalties can offer a more effective punishment for minor offending than a short prison sentence.

Graph 1 – Number of persons with a charge proved in Scottish Courts by main penalty, 1996/97 to 2005/06<sup>1</sup>



<sup>1</sup> Source: Criminal Proceedings in Scottish Courts, 2005/06, accessible at <http://www.scotland.gov.uk/Publications/2007/03/21083652/0>.

The amount a penalty is used and its effectiveness in deterring reoffending are not necessarily related. The most recent data on incidences of reoffending following the imposition of a penalty<sup>2</sup> shows that 64% of individuals sentenced to prison will reoffend within 2 years. However, in the case of short prison sentences (under 6 months) that figure rises to 75%. This compares unfavourably with the figures for community penalties (e.g. only 39% of those given community service will reoffend within a 2-year period).

Whilst some caution must be exercised with such data (as it cannot take into account the detailed circumstances of each case and the individual offender) it suggests that the imposition of a community penalty may be more likely to reduce reoffending than a short prison sentence. This supports the Government's view that short prison sentences are often not the most effective way to deal with someone who has committed an offence – while they clearly punish, they would appear to fall short on the objectives of improving public safety in the long term, allowing an offender to pay back and helping the offender reintegrate into a law-abiding lifestyle.

## 1.3 THE CONTEXT

### Crime and imprisonment levels in Scotland

The level of recorded crime in Scotland has fallen slightly over the past 10 years (421,000 recorded crimes in 1996/7 compared with 419,000 in 2006/07). However, in the same period the average daily prison population has steadily increased, from 6,000 to just under 7,200 – a 20% increase<sup>3</sup>. Comparisons with 20 years ago make even more stark reading – recorded crime has dropped by 10%, but the prison population has increased by around a third. Clear-up rates have improved by 7% in the last 10 years but, even taking that into account, it can be seen that Scotland's increasing prison population cannot be attributed to increases in recorded crime. Our clear-up rates are almost double those in England and Wales and, in the last 20 years, recorded crime in England has more than doubled, whereas in Scotland it has fallen. Whilst these are all positive points, they make Scotland's increasing prison population even *more* of a peculiarity.

International comparisons<sup>4</sup> also indicate that Scotland imprisons a relatively high proportion of its population (141 per 100,000 in 2005/06) and that recent levels of increase have been above average. The proportion of people Scotland imprisons compared with countries of a similar size and nature is concerning (Denmark imprisons 70 per 100,000, Ireland 72 and Northern Ireland 84). Whilst caution must be exercised in making direct comparisons between jurisdictions, these statistics indicate that Scotland places a relatively heavy reliance on the use of imprisonment.

2 Source: Reconvictions of Offenders Discharged from Custody or Given Non-Custodial Sentences 2003/04, Scotland, accessible at <http://www.scotland.gov.uk/Publications/2007/10/09091559/0>

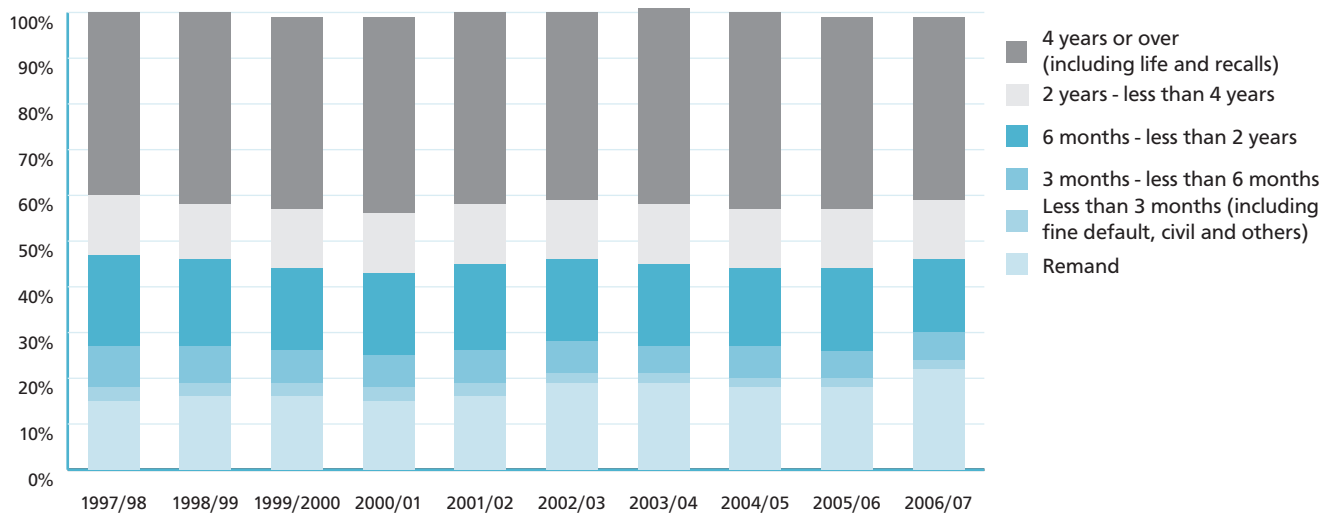
3 More information on prison population can be found in: Prisons Statistics Scotland, 2007, – <http://www.scotland.gov.uk/Publications/2007/08/31102446/0>

4 For a more detailed comparison of Scotland's imprisonment level with other countries see table 37 in *Prison Statistics Scotland 2007*.

By considering who takes up the spaces in Scotland's prisons on an average day (graph 2) it can be seen that the majority of spaces are taken up by those sentenced to fairly long periods of time (over 50% sentenced to 2 years or more and 70% sentenced to over 6 months). That is a position that this Government supports – serious and dangerous criminals should be sent to prison, to protect public safety. On an average day less than 10% of the prison population is made up of people sentenced to under 6 months.

Graph 2<sup>5</sup>

Proportion of the prison population taken up by each of the sentence types and lengths, 1997/98 – 2006/07



But if we are to allow our prisons to carry out effective rehabilitative work with serious criminals, we need to make sure that they can dedicate time to that work. At present a high proportion of time is spent dealing with *receptions* of prisoners serving short sentences into Scotland's jails. Although they only take up about 10% of prison capacity on any one day, last year there were some 14,000 receptions into Scotland's prisons for sentences of under 6 months. These do not relate to 14,000 different individuals – often the same individual will churn through a number of short sentences in a year at significant cost to the public and to seemingly little benefit.

<sup>5</sup> Source: Prison Statistics Scotland, 2007, *supra*

## 1.4 A COHERENT PENAL POLICY

### What role should community penalties play?

Faced with this position the Government is convinced that there is scope to make a greater use of community penalties in place of short prison sentences in appropriate cases, because:

- they appear to be more effective in reducing reoffending than short prison sentences;
- they make the offender 'pay something back' to the community, as opposed to the community having to pay considerable amounts for a short period of detention;
- they allow minor offenders to maintain links with family, work and the wider community whereas prison can break those links and distance an individual from society; and
- they allow meaningful rehabilitative work to be undertaken with serious offenders who are sent to prison, to reduce the real risk that they pose.

There are already examples of excellent community penalties being delivered across Scotland – the Government has no desire to upset that good practice. But in spite of the data and the arguments presented above, we are aware that community penalties are not well understood and are not held in particularly high regard by the general public. Problems often identified include:

- A perception that any penalty which does not involve prison is "soft" in comparison to the use of prison and will not deter further offending;
- The view that when an offender is given a community penalty they have "got away with it" because they are not immediately taken away to serve that penalty;
- Examples of penalties which have been poorly administered or failed to achieve their goals, strengthening the feeling that "only prison works"; and
- Low levels of understanding of what community penalties are and what they involve.

These concerns are valid and must be addressed, if an increasing use of community penalties by the courts is to form part of our coherent penal policy. The other element of that policy will see the Commission on the Purpose and Use of Prison consider the fundamental questions of how Scotland's prisons should be configured and used. It will report by June 2008. The Government's determination to improve and develop community penalties as an early priority resulted in this review being taken forward over the summer of 2007.

## 1.5 THE REVIEW PROCESS

Following the announcement of the review in June a series of bilateral/multilateral meetings took place between officials and a range of organisations and individuals covering the key interests in the community penalties field throughout July and August 2007. A full list of the organisations involved can be found at **annex B** – in summary, the following interests were covered:

- Key interest and research groups in the penal policy field and leading Scottish Academics;
- Representatives of criminal justice social work and community justice authorities;
- Representatives of voluntary sector service providers; and
- The main public bodies and agencies in the criminal justice system.

A short series of focus groups was also held with members of the public to gauge the level of public awareness of community penalties, their use and impact.

Meetings followed a set format, with participants considering a list of questions in advance of a detailed discussion. The questions varied slightly from meeting to meeting (**annex C** provides a list of the most commonly asked questions) but were grouped around four main themes:

- Reparation and Payback;
- Rehabilitation and Reintegration;
- Quality and Enforcement; and
- Community Engagement.

A wide range of views were offered during the review – not all of them could be included in this report. But we were struck with the level of consensus on certain issues. A high level summary of the main points is provided below. Section 2 of this paper is divided into the four themes and provides more detail on the review's findings. It also sets out the Government's plan of action.

## 1.6 KEY FINDINGS OF THE REVIEW

The main message from the review was that reform of community penalties should build on the effective policies and practice which already exist – recognising positive developments in recent years rather than coming up with new ideas or penalties for the sake of something new. There was no desire for an expansion in the *range* of available sentencing options (which, as annex A illustrates, is already quite wide). The use of community penalties has been increasing in recent years and any reform should focus on developing a high performing service based on the principles of **effective practice**. But what is effective practice? Respondents told us that community penalties must be: high quality, effective, immediate, visible, flexible and relevant.

- **HIGH QUALITY**  
Penalties which have a reputation for consistent delivery standards.
- **EFFECTIVE**  
In reducing reoffending and delivering visible payback to communities.
- **IMMEDIATE**  
Penalties which result in action quickly after sentencing to counter any impression that offenders “walk free”.
- **VISIBLE**  
Penalties which show the community how it benefits from work carried out and give victims and the wider community a say in what that work should be.
- **FLEXIBLE**  
Penalties which are responsive to the needs of communities, victims, courts and offenders rather than designed around the needs of the service.
- **RELEVANT**  
Penalties which take opportunities to rehabilitate offenders by addressing underlying issues and helping them to move towards a crime-free lifestyle.

To deliver effective practice the system needs to focus its efforts on the core, high volume community penalties, ensuring that these work effectively across the country (i.e. community service and probation. These make up around three-quarters of all community penalties imposed).

Most respondents agreed that community penalties had an image problem, in that the public often perceived them as “soft”. Public awareness of the current range of penalties was low. This was not helped by the wide range of penalties available and a perception that breaches were not effectively acted upon. Arguments about their greater effectiveness or value for money over prison were often dismissed as inaccurate or as soft in themselves.

As a result of this, those we spoke to felt that a programme of positive change would be required to demonstrate that community penalties can be tough; that they can involve more effort and punishment than imprisonment; that they are more effective in preventing reoffending than short prison sentences and that (in the case of community service in particular) they involve **meaningful payback** to the community by the offender for the harm inflicted. That change in attitude could be partly achieved by improving community engagement/knowledge, but mainly by ensuring that penalties work effectively in practice. The public and sentencers will have confidence in community penalties if they see them working effectively in their communities.

# 02

## THE GOVERNMENT'S PLAN OF ACTION

Our plan of action will ensure that community penalties are used to their full potential in future. The public and sentencers will have more confidence in community penalties if they see them working effectively in their communities. We will take forward key actions based around the four themes of the review – Reparation and Payback; Rehabilitation and Reintegration; Quality and Enforcement; and Community Engagement.

## 2.1 PAYING BACK TO THE COMMUNITY

### Reparation and Payback

The Government believes that penalties which involve the offender having to give something back to their community should be increasingly used as an alternative to prison, in cases where prison is not a necessary response to protect public safety. Prison should not be used as 'bed and board' when the opportunity exists for victims and communities to benefit from penalties rather than pay for a second time. Reparative penalties are less costly and allow the offender to undertake work from which he or she may benefit – by acquiring new skills or, quite simply, getting back into some form of routine.

Under this theme, we sought views from respondents on how reparative penalties could be improved to ensure that they make offenders carry out meaningful work, both as a punishment and to pay back for the damage their offending has caused victims and the wider community.

### What did the review process tell us?

#### RATIONALISATION

Most respondents thought that the current range of reparative sentencing options was more complex than it needed to be – at present reparative work could be part of a community service order, supervised attendance order, community reparation order or an additional condition of probation. Simplification would result in a more coherent package of measures which would improve understanding amongst sentencers and the public. "Community Service" was the best known "brand" in this area and it could be developed to form the core of a reparative approach across all levels of community penalty. A recent evaluation of the pilot of community reparation orders<sup>6</sup> indicated that this lower level reparative order had been little used, was not well understood and was regarded by Sheriffs as an unnecessary addition to the system.

#### FLEXIBILITY

A community service order should be able to include some rehabilitative elements – in *addition* to the core payback element. Most respondents believed that a penalty which provides both payback and an opportunity for offenders to change their ways would be more effective (and command greater public confidence) than one which simply does one or the other. This reflects the fact that offending (and the circumstances of the offenders who commit it) is complex and needs to be tackled on a number of levels to reduce the likelihood of reoffending.

<sup>6</sup> "Forced to make amends – An evaluation of the Community Reparation Order Pilots", Scottish Government Social Research findings - 95/2007 – available at <http://www.scotland.gov.uk/Publications/2007/08/21134602/0>. The pilot of Community Reparation Orders comes to an end on 31 December 2007.

## VISIBILITY AND EFFECTIVENESS

Reparative sentences should require offenders to do something visible and meaningful, which gives something back to the victim and/or the wider community. This will require the development of innovative work programmes, forcing offenders to work hard for the benefit of the community but enabling them to enhance their skills/sense of reward/future employability at the same time. A balance needs to be struck so that penalties are sufficiently punitive and, at the same time, deliver some real benefit to local communities. Examples of such good practice were already in existence and should be developed – respondents agreed that it would be for Community Justice Authorities to develop suitable local approaches.

## IMMEDIACY

There was support for measures which made offenders start their orders as quickly as possible as delays contributed to the view that community penalties were “soft”. But there were also warnings against rushing offenders into unsuitable activities. A balance had to be struck between immediacy and appropriateness – getting that balance right would require local innovation, within an effective national framework.

## What we will do – transforming Community Service

Community Service (CS) is one of the best used and understood of all community penalties. But it could be argued that it has failed to keep up with the changing expectations of communities and the changing needs of offenders. The time has come for a new approach to CS to secure it respect as a high quality intervention, which balances the requirement that offenders pay back for their crimes to communities with opportunities to help them move their lives on. Consistently high standards of service for CS will allow the courts to use it more often.

In future we propose that Scotland will have a **single reparative community sentence to be known as a Community Service Order (CSO)**. The new CSO will subsume the existing Community Service Orders, Supervised Attendance Orders and Community Reparation Orders and will fit better with the public’s understanding of what community service involves. It will provide a single flexible sentence with a range from a minimum of 20 hours to a maximum of 300 hours in solemn cases and 240 hours in all other cases. This will allow the court to consider using a reparative penalty in response to a wide range of offending, where it believes that some form of payback to the community would be appropriate. Guidelines will assist courts in the use of the penalty and the appropriate number of hours to be imposed. In order to ensure that CSOs can be imposed swiftly at the lower end of the scale it will not be necessary for a court to obtain a Social Enquiry Report before imposing a CSO of under 100 hours (this replicates current practice with Supervised Attendance and Community Reparation Orders).

We will also take steps to reduce the period of time within which CS orders should be completed, to ensure they provide a focused period of activity for the offender – current

legislation provides that orders have to be completed within 12 months of their imposition. In future the expectation will be that orders are to be completed within 6 months – to ensure that the penalty does not drag on and the link between the offence and the punishment is maintained in the mind of the offender.

For the first time District Courts (and the new justice of peace courts when established) will be given access to CSOs across Scotland (subject to a lower limit of hours that may be imposed, to reflect their jurisdiction). Courts will still be able to impose probation orders with a condition of unpaid work attached where a primarily rehabilitative penalty is considered appropriate. Provision will also be made for a CSO (subject to a lower maximum number of hours) to be imposed upon fine defaulters for non-payment of fines, where efforts have been made to collect the fine and the court concludes that the offender genuinely cannot pay. This will follow the successful operation of Supervised Attendance Orders and ensure that fine defaulters who cannot pay are made to give something back, rather than spend a short spell in prison.

At the lower end of the scale the use of CSOs will not be limited to particular types of offence (this was one of the difficulties faced by the Community Reparation Order pilot, which led to a lower than anticipated uptake of that order). We will also provide, for the first time, that a small proportion (not more than 15%) of the total number of hours imposed on a CSO may be spent engaging in activities other than unpaid work, such as skills development or counselling – in order to address the underlying causes of offending and/or provide access to tailored assistance and services that will support an individual who is looking to change. At present, legislation provides that community service should consist solely of reparative activity, with no direct help or assistance being offered as part of the penalty. That, in the Government's view, is a missed opportunity. We want to ensure that the balance of punishment and rehabilitation can be provided in as wide a range of cases as possible. This approach is not about being "tough" or "soft" – it is about ensuring that the penalties available are designed to reduce reoffending as effectively as possible, based on the available evidence.

We agree that steps should be taken to ensure that CSOs are regarded as tough and command public confidence. For this reason we are minded to give courts the power to impose an electronic monitoring (tagging) condition in combination with a CSO, where the court considers that appropriate. In cases where that option is used the offender would be subject to payback by day and curfew by night. This approach would also provide an offender with a greater degree of stability during the course of the penalty – aiding compliance and helping the offender establish a routine free from offending and the triggers that might lead to it. This proposal was not raised during the review, but we believe it will be generally supported. We will consider its feasibility with the main interests before taking any decisions – to ensure that it could operate effectively.

These changes will require legislation – the Government is committed to bringing that legislation before Parliament as part of a wider set of criminal justice reform measures.

## Guiding principles for the new CSO

Whilst it is for Community Justice Authorities (CJAs) in conjunction with local authorities, to develop and implement local CS schemes, we will work with them to ensure that the CSOs of the future adopt the following principles at the heart of their operation:

- **IMMEDIACY**

The review told us that for community service to be seen as credible it has to start quickly. When an offender is sentenced to a CSO they should not be allowed to leave the court with little prospect of punishment commencing for weeks. While it may not be possible to commence CSOs immediately following sentence we believe that, as a minimum, the assessment and induction process for the offender should start on the next working day.

- **FLEXIBILITY**

The new model will provide scope to develop a wider range of work placements, working with statutory, voluntary, social enterprise and community agencies. There will be a role for a resource manager and skilled CSO supervisors to develop innovative placements that balance payback with addressing an offender's needs. There may be more opportunities for night and weekend schemes, which will assist those in employment to take part in CSOs.

- **COMMUNITY ENGAGEMENT**

Communities must be able to have a say in what would be the most useful work that could be carried out by offenders on CSOs in their area. The Government will promote a legislative duty on the relevant service providers to carry out consultation in communities to identify the type of reparative work they would like carried out. It will be for those providers to satisfy that duty, but this would involve consultation with representative groups, victims' organisations and community councils. We will also work with CJAs to publicise the benefits of successful CSO schemes where these deliver real change for a community – demonstrating the benefits that this penalty can deliver.

## What will this look like in practice?

We envisage that CS will be provided in a more modular format in future, with payback as its main component but with an overall structure which will include:

- An early initial induction process including a needs assessment;
- Development of an individual action plan to focus on suitable payback but with opportunities to link into rehabilitative services. Resolution of preliminary issues (e.g. health and safety);

- The main element of the order – payback to the community;
- Where appropriate, a short period of rehabilitative activity – depending on the services available and the circumstances of the offender this could involve:
  - restorative activity, such as contact with members of the local community or victims;
  - a short period of counselling to address a particular offending issue;
  - skills training to tackle underlying causes of criminal behaviour – e.g. debt awareness/financial management, life and work skills;
  - support and assistance to help the offender move towards employment.

### **Taking the changes forward**

An implementation programme will be established to develop the practical and legislative changes required to deliver the new CSO. This will be led by the Government with the National Advisory Body on Offender Management and will involve Community Justice Authorities, national and local service providers and other interested community and victims groups. This is an ambitious and radical restructuring of the current range of reparative sentences available in Scotland, which will allow services on the ground to deliver effectively. It will build on the good practice already in place as opposed to disrupting it. Work to develop the necessary legislative change is already under way – we will develop these proposals with practitioners before bringing them to Parliament, to ensure that they will be effective and deliver real improvements. The implementation programme will ensure that services on the ground continue to adapt and improve (based on CJA area plans) and are well prepared to make best use of changes in the law.

### **Restorative Justice**

The issue of restorative justice was raised by a small number of respondents during the review process. Restorative justice brings an offender and victim together with the aim of holding the offender to account and allowing him or her to explain and/or apologise for their actions. It also allows the victim to explain to the offender the impact of his or her actions and to ask questions about the offence. The approach may allow the offender to become more aware of the impact of their crime (and reduce the likelihood of further offending). The victim may also benefit from a degree of “closure” as a result of the process. While the Government is of the view that the reformed CSO should focus principally on payback, there may be scope to explore restorative approaches as a part of probation or the proposed rehabilitative element of the CSO, which seeks to help an offender move back towards a law-abiding lifestyle. We will explore this option with practitioners as the new regime is developed.

## CASE STUDY

### Scout Association National Activity Centre, Hillend, Dunfermline

The National Activity Centre is based on 52 acres of land in Fife and is used by Scouts from all over the United Kingdom, as well as international visitors from the Scout Association Worldwide.

The centre provides an ongoing community justice project, which requires offenders on Community Service to undertake a variety of duties such as: erection/maintenance of fences, building barbeque areas, ground work for activity areas (such as climbing walls), building access ramps for the disabled, repairs/painting of accommodation blocks, other general maintenance and re-situation of huts to improve facilities.

This work improves the amenity of the site and helps keep it running efficiently. The successful work of the scheme was acknowledged in the Scout Association Annual Report.

## 2.2 A PART OF THE COMMUNITY

### Rehabilitation and Reintegration

Community penalties are imposed by the courts after someone has been found guilty of a crime. It is right that their principal aims should therefore be to punish and to provide payback. However, with the exception of a small number of people found guilty of the most serious crimes "offenders" will return to (or in a large number of cases remain in) a community. Often those who offend face a number of underlying problems, such as substance misuse, the lack of a stable home or having been a victim of crime themselves. Whilst these circumstances can never excuse criminal behaviour they should not be overlooked if our penal system has the reduction of reoffending as one of its main aims. And while it is not the job of the justice system alone to provide services and support to such individuals, community penalties should play their part in tackling underlying problems in order to move people towards a law-abiding lifestyle.

Under this theme, views were sought as to how community penalties could be most effectively used to help tackle underlying problems that offenders may have, which were likely to lead to further offending if left unchecked.

## What did the review process tell us?

### ADDICTION PROBLEMS

Respondents agreed that it was essential to tackle these in order to deliver any other form of meaningful intervention. Interventions had to be carefully selected to suit the offender's abilities and avoid "setting them up to fail". Drug treatment and testing orders (DTTOs) were identified as a successful (albeit costly) model for dealing with those who have addiction problems.

### MENTORING AND SUPPORT

A number of respondents saw a role for mentoring or the use of "link workers" in the adult criminal justice system – both to help offenders adhere to their penalty and to provide assistance in accessing other support services as they attempted to "move on".

### PROBATION

Some respondents questioned the value of the standard model of probation and called for a more structured/modular approach. Such an approach could focus on work that would help an offender from slipping back into offending (e.g. training in issues such as money management might be useful in addition to activity addressing specific offences).

### ACCESS TO SUPPORT SERVICES

The justice system had an important part to play in "signposting" offenders towards mainstream services (health/housing/skills) to ensure that they received the support they needed. Most took the view that the structures now in place (particularly with the inception of CJAs) would facilitate improved joint working arrangements in future.

### WOMEN OFFENDERS

The majority agreed that women offenders were often more "troubled" and likely to have multiple problems – including addictions and being a victim of crime/abuse themselves. Providing stability was often the critical first step towards reducing offending. A number of respondents felt that prison was sometimes being used by courts as a place of "respite" for women offenders, who would benefit more from structured assistance outwith custody.

### DIVERSIONARY ACTIVITIES

These were recognised as important to keep young people out of trouble in the first place and help develop a sense of self-esteem and interest in other activities.

## What we will do – punishment with a purpose

The Government wants to make sure that, in addition to punishing, every community penalty uses the opportunity of formal contact between the offender and the state to help move the offender towards a law-abiding lifestyle. Community penalties can act as a *catalyst* towards positive change – we must make sure that they do so wherever possible. A lot of good work is already carried out by criminal justice social work departments and other service providers across the country – but we propose to make a number of improvements.

## Tackling the root cause – drugs

Drug treatment and testing orders (DTTOs) have proved highly effective in managing problematic drug use amongst some more serious offenders. They target those whose offending is linked to their drug problem – for example those who steal to fund a drug habit. Their aim is to help offenders overcome a drug addiction, thereby eliminating or reducing offending. Offenders subject to a DTTO are required to undertake regular testing and treatment. They also appear before a Sheriff every month to account for their behaviour. Independent evaluations of DTTOs have found that they are effective in tackling the kind of substance misuse that can lead to involvement in crime<sup>7</sup> and that they have a very positive impact upon re-offending rates<sup>8</sup>.

In view of this evidence we believe that aspects of the DTTO approach should be applied to a wider range of offenders – allowing drug problems to be addressed *before* a criminal career progresses too far. We will therefore **develop and pilot the use of a new level of DTTO, which will be accessible both to lay Magistrates in the District/Justice of the Peace Courts and to Sheriff Summary Courts**, for dealing with lower level offenders who are offending as a consequence of drug addiction. This new level of DTTO will retain the following features, which have been crucial in ensuring the success of the current scheme:

- Access to a dedicated team of social work and medical professionals – to ensure a joined up approach which tackles addiction and offending problems in parallel;
- Regular drug testing throughout the order – to provide motivation to reduce or eliminate drug use and to demonstrate such reduction/elimination; and
- Case review – to provide, on the one hand, motivation to adhere to the order and, on the other, to demonstrate that compliance is taken seriously, with regular check-ups.

It is hoped that this approach will reduce the likelihood of offending from an earlier stage – bringing benefits to communities by stopping a potentially lengthy life of crime in its tracks.

7 "Drug Treatment & Testing Orders – Evaluation of Scottish Pilots", available at: [www.scotland.gov.uk/cru/kd01/green/dtts-00.asp](http://www.scotland.gov.uk/cru/kd01/green/dtts-00.asp)

8 "Reconviction following drug treatment and testing orders" available at: <http://www.scotland.gov.uk/cru/resfinds/rfdt-00.asp>

## CASE STUDY – THE ‘218 CENTRE’

The 218 Time Out Service is a project based in Glasgow for women involved in the criminal justice system. It provides diversion from prosecution and an alternative to custody (and services for women involved in the Criminal Justice Service not necessarily at risk of custody). It is designed to address the root causes of offending through programmes of care, support and development which tackle substance misuse and the trauma and poverty that drive it.

There is a day service with capacity to work with 35-45, and a residential unit which can accommodate 12. In its first 2 years of operation, it received over 1100 referrals, completed 400 assessments and 107 programmes. Some 2 out of 3 referrals have come via the court and criminal justice routes. A study\* of the centre concluded that it provided many benefits, including reductions in reoffending and drug use, improvements in health and the attainment of stable accommodation for a number of women.

\* Evaluation of the 218 Centre, available at:

<http://www.scotland.gov.uk/Publications/2006/04/24161157/0>

### Helping the most vulnerable address their difficulties – support for women offenders

We were struck by the number of respondents who took the view that an extra helping hand for some of the most vulnerable offenders might make the difference between further offending and the possibility of a community penalty helping that person “turn the corner”. We were also struck by the number of respondents who observed that a high proportion of female offenders are more “troubled” or face more challenging circumstances than the average male offender – circumstances which may require access to multiple services and forms of support.

We therefore propose to pilot a **mentoring/link worker scheme for adult female offenders** given community penalties, to provide them with additional support/advice throughout the period of their penalty (and for a short period thereafter). The aim of this pilot will be to provide extra support to those offenders who most need it and to assess whether that support makes it more likely that the penalty will be successfully completed (and whether the offender is more likely to lead a law-abiding lifestyle thereafter). This will be a new approach for the adult criminal justice system in Scotland. We will develop proposals for the pilot in liaison with CJAs, with a view to it commencing next year. A full evaluation will be conducted in order to assess its effectiveness.

## Joining-up services – the role of the NAB and CJAs

Ensuring that an effective strategy for the management of offenders exists at a national level, whilst allowing local good practice and innovation to develop is crucial. It is only through this combination of national co-operation and local innovation that front-line services can tackle the underlying causes of offending in the most effective and joined-up way. This was recognised by the previous administration, which established the National Advisory Body on Offender Management (NAB) and eight Community Justice Authorities (CJAs) in order to create a delivery structure that struck a balance between central consistency and local effectiveness.

The work of these bodies is at an early stage – CJAs formally took on their responsibilities in April this year and their 3-year plans for the period 2008-11 will be published around the end of the year. A lot of work has already gone into this process, which aims to improve service delivery at a grass roots level. The Government remains committed to this structure – the NAB has been tasked with supporting national-level discussion about partnership working and CJAs have been tasked to draw up area plans which identify “where closer joint working would best add value”.<sup>9</sup>

The Government will work with the NAB and CJAs to improve the effectiveness of community penalties. In particular we will support new approaches that improve the effectiveness of community penalties, provide more joined-up access to services, and help make communities safer by reducing the incidence of reoffending. Examples of good practice, such as the provision of a “one-stop-shop” approach to service provision for offenders (and the wider community) are already in place. The period from 2008-11 will allow CJAs to demonstrate the further benefits that can be delivered from a more joined-up approach.

## A new approach to probation – the Constructs/Positive Steps to Stop Offending Programme

We have listened to the calls for a more standardised and structured approach to be taken to probation, ensuring that it provides activities which have a proven record in reducing reoffending. We will therefore support delivery of the “Constructs” programme. Constructs is an externally accredited programme that has been developed for use in a wide variety of circumstances (meaning, for the first time, offenders in the community will receive the same rehabilitative programme as those sentenced to prison). It offers a structured approach to probation, based on evidence of what works to reduce reoffending. A high proportion of the programme is delivered in a group environment, backed up by robust assessment of every offender.

<sup>9</sup> ‘National Strategy for the Management of Offenders’, Scottish Executive May 2006 – p16. Accessible at: <http://www.scotland.gov.uk/Publications/2006/05/19094327/0>

The programme aims to reduce participants' likelihood of being involved in further offending by helping them change the way they *think* and *behave*. It is designed to help participants:

- Change their pro-criminal attitudes and beliefs;
- Learn and practice new ways about how they think about and respond to problems. This includes practicing a five-step, systematic method of problem solving;
- Learn and practice a number of other skills such as assertiveness, dealing with conflict, resisting peer group pressure and using time constructively; and
- Develop a detailed plan for avoiding offending in the future.

We are working with CJAs and local authorities to ensure that the programme is rolled out across Scotland. The first stage of implementation is already under way – four local authorities are already using the scheme (which will be used with the vast majority of male offenders aged over 18 who are given probation). Another seven authorities will go live in the next few months and 15 of Scotland's 32 local authorities should be using the programme by the end of this financial year. We will support the roll-out of the programme – ensuring that the quality of intervention delivered when the courts sentence an individual to probation is consistently high, tackles offending practically and is capable of being assessed (through an accreditation process) to ensure that local programmes deliver the high quality intervention that communities deserve.

### **A broader approach – prevention better than cure**

Whilst it is beyond the scope of this review, the Government has made clear that tackling the issue of offending and reoffending requires a broader focus on the underlying causes of such behaviour. Action needs to be taken across all fronts, to address the problems we face as a result of drink, drugs and deprivation. Positive opportunities need to be given to young people so that crime is not seen as a worthwhile option.

We are committed to developing a new strategy to tackle drug misuse, and to developing a national consensus around that strategy. Action is also being taken to tackle under-age and binge drinking. And we will place a new emphasis on diversion and prevention by offering more of our young people opportunities to do something positive and constructive with their lives. We have already announced a new approach to investing funds recovered under Proceeds of Crime legislation and we will look to ensure these funds are used to provide activities that build confidence and self esteem. Taken together, this approach will ensure that the causes of offending are addressed effectively *before* any offending takes place.

## 2.3 THE SERVICE THAT COMMUNITIES DESERVE

### Quality and Enforcement

Whilst there are a number of arguments in favour of an increased use of community penalties in appropriate cases many people think that they are mostly substandard, that large numbers go uncompleted and that no action is taken to deal with those who try to avoid them. This is not the case in – in 2005/06 for example, almost 6,000 community service orders were imposed. In the same period around 1,500 breach applications were made to the court (to deal with some form of misconduct). Of those applications only 16% (240) were serious enough to result in the order being revoked and a custodial sentence being imposed in its place.<sup>10</sup> Although these figures are encouraging there is clearly room for improvement. High quality community penalties have to be consistently available across the country if confidence in their use and effectiveness is to be improved. And high quality information is required to make the correct decisions in cases.

Under this theme, views were sought as to what steps could be taken to ensure that community penalties were of a consistently high quality and what steps could be taken to improve enforcement – to demonstrate that community penalties are not a soft option.

### What did the review process tell us?

#### QUALITY

A number of high quality community penalty schemes already exist. The challenge is to ensure that the standard delivered by the best is replicated across all schemes. Developing best practice nationwide would require effective joint working – the role of CJAs would be pivotal in that process. Robust assessment and quality assurance mechanisms also need to be in place, so that community penalties can demonstrate their effectiveness. A number of respondents felt there should be some form of reward/recognition framework to incentivise good practice.

#### SPEEDY ACTION TO DEAL WITH BREACH

This was identified as critical in maintaining the credibility of community penalties. A “breach” of a community penalty can take a number of forms – from failure to attend an appointment/work session (perhaps for good reason) at the minor end of the scale to the commission of a further criminal offence at the severe end. Speedy enforcement is necessary to demonstrate that misconduct will not be tolerated. It can also nip the problem of non-compliance in the bud, allowing the community penalty to stay on track.

<sup>10</sup> Data taken from section 4 of Criminal Justice Social Work Statistics, 2005-06, accessible at: <http://www.scotland.gov.uk/Resource/Doc/164220/0044767.pdf>

## FLEXIBLE ENFORCEMENT

At present all formal breach procedures involve a case returning to court – this takes time and involves a number of different agencies. Whilst court proceedings will always be required for serious breaches a majority of respondents called for new breach powers to be created which would allow formal action to be taken without the case returning to court. This would ensure speedier action, allowing the community penalty to successfully continue.

## CASE REVIEWS

The role of the judge in reviewing case progress was recognised as a key factor in the success of drug treatment and testing orders. Respondents recognised that this process was resource intensive but there were calls for court progress reviews to become a more regular feature of community penalties in cases where that would genuinely be of benefit.

## What we will do – promoting and ensuring best practice nationwide

Delivering effective practice has to take place on the ground – but the Government must provide the framework to improve quality, raise standards and promote consistency and effectiveness. National Standards are in place to support service delivery – these date from as early as 1989 – and whilst they have been edited over time to take account of changes in policy/practice, their core format has not changed in years. In our view these standards no longer reflect the context in which criminal justice social work services are delivered. In addition to new policies, there are increased expectations about how criminal justice social work services should be delivered. We believe that a **major revision of the standards** is long overdue and work on this has already begun. The new National Standards for criminal justice social work will provide a tool for driving up standards by reflecting what is currently known about effective practice and risk/needs assessment/management. They will reflect the need for an increased focus on outcomes rather than inputs and outputs and will articulate principles underpinning the practice of criminal justice social work. We anticipate that the core elements of the new standards will be:

- *Assessment*: assessing risks and needs as a pre-requisite in every service area;
- *Case management*: planning for, implementing and reviewing arrangements for supervision of offenders, in light of assessed levels of need and risk;
- *Frequency of contact*: minimum frequencies of contact associated with particular orders or disposals taking into account the assessment of the level of need and risk;
- *Information sharing*: ensuring that key relevant information is shared, according to nationally and locally agreed protocols, for the purposes of effective risk management;
- *Enforcement of orders*: expectations regarding discipline and enforcement and the consequences for the offender of non-compliance;
- *Timescales*: times within which essential tasks should be completed;
- *Recording*: reliable systems of recording essential information and evidencing decisions;
- *Monitoring and evaluation*: requirements for local service outcomes.

Development of new Standards will provide a major impetus to improving delivery. The revision is already under way and revised standards will be produced by the second half of 2008.

Work on a broader front is also being taken forward by the **Performance Improvement Strategy Group**. Launched last year, this cross-agency group has been established to develop a performance improvement strategy for Criminal Justice Social Work in the context of Community Justice Authorities. Its role is to promote consistently high quality work with offenders in the community, informed by evidence of what works. This is an ongoing programme of work which has been broken into seven workstreams: quality assurance; risk assessment and management; interventions; accreditation of programmes/delivery; national standards; evaluation and research.

The work of the Group has training embedded as a consideration in all seven workstreams and will contribute to the development of the National Training Strategy for Criminal Justice Social Work. A delivery accreditation process will commence in the spring of 2008 to promote the ongoing quality assurance of programmes delivered to offenders in the community.

Community Justice Authorities (CJAs) will also play a central role in ensuring that high quality, community penalties are consistently delivered. A balance needs to be struck between consistency and local flexibility and CJAs are well placed to strike it – by collating and sharing good practice from their areas and participating at a national level on high-level issues. In their 3-year plans for 2008-11 they will identify local priorities and have the responsibility for monitoring performance and allocating resources to local authority criminal justice social work services to address those priorities. CJAs have a legal duty to promote the sharing of good practice and will use existing partnership forums (such as community planning and community safety partnerships) to ensure that quality of service provision is considered across the board. We will support CJAs and local authorities where their plans suggest innovative approaches to tackle existing challenges. There is no “magic solution” that will ensure community penalties are of a high quality and consistently improve community safety – local approaches within a national framework will be encouraged.

### **Getting things right at the outset – a new approach to risk and needs management**

One example of the quality improvement work already under way relates to the development of a high quality, consistent approach to the assessment of an offender's risks and needs. The Level of Service/Case Management Inventory (**LS/CMI**) is a system which combines risk assessment and case management into one evidence-based system, allowing those working with offenders to assess their needs alongside their risk of recidivism and produce an assessment of the type of supervision that would be most likely to reduce reoffending and, at the same time assist the offender back towards a law-abiding lifestyle. The system provides a framework for case management to take place from an informed position, based on effective

practice and the changing circumstances of the individual. It is an electronic system that will allow information to be appropriately shared between areas and agencies – ensuring that a consistent approach is taken to risk and needs assessment across all of Scotland, both for offenders who are sent to prison and those who are given community penalties.

Social workers can continue to use the system to assist in case management and to consider the level and type of support an offender may require in order to minimise future reoffending. LS/CMI will also incorporate an assessment of risk of serious harm and, for the first time, the system incorporates a specific assessment for female offenders, taking account of the different risks and needs that they may pose or face.

All 32 of Scotland's local authorities and the Scottish Prison Service have given an in-principle commitment to adopt LS/CMI – the Government will work with them to commence roll-out next spring, with a view to the system being in place across the country by the summer of 2009.

## RESTRICTION OF LIBERTY ORDERS

Restriction of liberty orders (RLOs) are a community penalty supported by electronic monitoring ("tagging"). The monitoring of an offender is undertaken by a private company which reports directly to the court. The use of RLOs by the courts has steadily increased from 307 in 2002 to 1,651 in 2006.

Electronic monitoring gives the court flexibility to restrict the movement of an offender to (or from) a place at various times of the day or night; perhaps when that individual would be most prone to offending. The order can achieve this whilst allowing an offender to continue in employment, education or training and in close contact with his/her family. They can be used as a solely punitive order or as a condition of a Probation order or DTTO – improving the quality of intervention with an offender – particularly during the early months of an order when the pressures of adjusting from a chaotic lifestyle may seem insurmountable – and the likelihood of reoffending is at its highest.

Feedback from offenders who have been subject to RLOs illustrates the benefits they can have:

*"I am no longer taking hard drugs and I'm now at college doing a computer course, which would not have been possible if not placed on the tag."*

The Government is committed to the appropriate use of electronic monitoring, both as a restrictive measure in itself and as a means of improving the effectiveness of other community penalties.

## Tackling breaches effectively

By their very nature, community penalties require a degree of co-operation from the offender. A minority of offenders will simply refuse to co-operate, so breach procedures will always be required. These need to ensure that breaches, whether serious or trivial, are dealt with as speedily and effectively as possible. For those who consistently refuse to co-operate prison will be the only option. But effective breach procedures can lead to improved compliance, nipping problems in the bud and allowing the order (which the court considered to be the most appropriate penalty in the first place) to continue towards a successful conclusion.

## The right action at the right time

We understand why some respondents suggested that those responsible for supervising offenders on community penalties should have formal methods of sanction beyond issuing warning letters to deal with breaches. Breach proceedings involve a number of agencies and can lead to delays. But where a breach is alleged and the offender *disputes* that fact the decision as to whether a breach has taken place needs to be made by an independent and impartial tribunal.

However, where the offender is willing to *admit* that a minor breach has taken place a procedure could be developed which allows the supervising officer to inform the offender that, in their view, a breach has been committed and they intend to impose a penalty. If the offender accepted that they had been in the wrong they could admit the breach and accept the penalty (which might take the form of additional hours on the penalty, or a fine). The offender would be given notice of the alleged breach, and the opportunity to seek advice before admitting to or denying it. They would be informed that if they disputed the alleged breach (or did not respond) their case would be referred to court. The court would then have available the full range of powers provided by law for dealing with a breach. In the event that the breach was admitted, the offender would still be entitled to challenge in court the level of penalty imposed by the supervising officer.

This proposal would improve the speed of enforcement action in cases of minor breach and would also make it more likely that the offender will adhere to the original penalty, by preventing delay and removing the uncertainty of a future court appearance. It would also improve the authority of the supervising officer and remove a certain amount of unnecessary cases from the courts. Legislation will be required to give effect to this proposal. We will develop legislative proposals in liaison with the practitioners who would use the power.

Formal breach procedures will, of course, continue to be necessary for cases of serious or repeated breach (and cases where the breach is disputed). Whilst we have no plans to alter the way in which the courts deal with such breaches (as it is right that they determine whether a breach has occurred and impose a suitable penalty) we will explore further what action could be taken to ensure that processes are quick and effective across the country.

## Managing compliance, not breach

We agree that the use of case reviews by the judge in the context of Drug Treatment and Testing Orders has been particularly effective. Rather than the penalty being imposed and the offender only returning to court where a breach has taken place, periodic reviews are used as a means of managing compliance and providing encouragement or compulsion where one or the other is required. We have already outlined our plans to pilot the use of the DTTO model in a wider range of cases (see section 2.2). Such a degree of judicial intervention would not necessarily be beneficial in other cases – but it is clear that case review can be effective in appropriate cases. We believe that the sheriff or judge is best placed to take that decision in individual cases (with the advice and support of social work where that is requested).

For this reason we propose that the court should be able to require an offender to return to court for a review hearing when any community penalty is imposed in future (or during a review of that order). Regular reviews are already a part of DTTOs. Powers exist allowing courts to schedule review hearings when a probation order is made where they consider this to be appropriate. We will introduce legislation which makes that option available to the court when it imposes a Community Service Order. This will give courts the power to manage compliance in appropriate cases as opposed to simply having to deal with breach. It may be particularly useful (for example) in ensuring compliance during the early stages of a community penalty, when the offender is most likely to reoffend and may be struggling to establish a routine. Combined with well-managed constructive work in local communities, the existence of a future “check-up” at the court may be sufficient to make the difference between an order failing and succeeding in its early stages.

## 2.4 IN THE COMMUNITY, FOR THE COMMUNITY

### Community Engagement and Involvement

In addition to seeking the views of respondents to the review on this theme the Government also considered available research and held a short series of focus groups with members of the public to gauge the level of public awareness of community penalties, their use and their impact.

#### What did the review process tell us?

##### PUBLIC PERCEPTIONS

If community penalties are to be regarded as credible, local communities must be convinced of their effectiveness. The views of respondents, backed up by research, demonstrate that the public have a low level of understanding of what community penalties are, their effectiveness and cost-effectiveness compared with short prison sentences. Research conducted for the Justice 1 Committee of the Scottish Parliament confirmed that while there is a high level of public interest, a gap exists between that interest and levels of knowledge<sup>11</sup>.

Further research reveals that, in the absence of detailed information, community penalties are regarded negatively, with 70% of those surveyed in one study perceiving them to be 'too soft' and ineffective in "teaching offenders their lesson".<sup>12</sup> However, where initial attitudes are challenged (for example, by providing more detailed case scenarios) people see that community penalties can be more effective than imprisonment.<sup>13</sup> This suggests that improving public awareness and community involvement in the system could lead to more informed attitudes towards 'constructive' penalties, provided these punish effectively and reduce offending.<sup>14</sup>

##### CRIME AND IMPRISONMENT RATES

The public as a whole feel that crime is rising, in spite of a fall in recorded crime levels of around 5% in the past 10 years. Fear of crime tends to generate an instinctive response for a greater use of prison. But the public are aware that short prison sentences are not without their own difficulties – the Scottish Crime Survey (2003) found that many respondents (80%) thought that offenders simply learn new ways to offend in prison.

##### SHOULD CHANGE BE FORCED?

These complex and contradictory messages reflect the fact that there is no magic solution to eliminate reoffending. A number of respondents thought that the judiciary should be compelled to make a greater use of community penalties. We do not believe that would be the correct approach at this point. By presenting evidence of their effectiveness, alongside improvements in the range, quality and enforcement of community penalties, sentencers will have confidence to use them increasingly in future. But the final decision as to what sentence should be imposed in a particular case will remain in the hands of the judiciary.

11 Anderson, S., Ingram, D., and Hutton, N. (2002). Public Attitudes Towards Sentencing and Alternatives to Imprisonment. Scottish Parliament Paper 488 session 1 2002. Edinburgh: HMSO. [http://www.scottish.parliament.uk/official\\_report/cttee/just1-02/jlr02-pats-01.htm](http://www.scottish.parliament.uk/official_report/cttee/just1-02/jlr02-pats-01.htm)

12 McMillan, K., Money, K., and Hillenbrand, C. (2004). The Reputation of Alternatives to Prison: Building Community and Magistrate Support. Rethinking Crime and Punishment. <http://www.rethinking.org.uk/informed/pdf/Henley.pdf>

13 Anderson, Ingram and Hutton, note 12, *supra*

14 Hutton, N. (2005). Beyond Populist Punitiveness? Punishment and Society 7(3), 243-258 <http://pun.sagepub.com/cgi/reprint/7/3/243>

## What we will do – awareness and involvement

The Government will challenge the perception that short prison sentences are “tough” whereas community penalties are “soft”. Community penalties can be more demanding than prison. They can require offenders to undertake work, paying back for the wrong they have done. They can involve offenders confronting the victim of their crime and facing up to the consequences of their actions. They can require offenders to develop skills that will enable them to find work and help them move on in life. And at a very basic level they can develop discipline by forcing the offender to adhere to a routine. We believe that making real improvements in the range, quality and enforcement of community penalties is more important than any “publicity drive” to improve their public image – however, there are steps that can be taken to improve public awareness and increase *community involvement* in their operation.

### Getting the law right

Local communities should be given a clear role in identifying the most useful work that could be carried out by offenders on community service in their area. Section 2.1 outlines our proposal to promote a legislative duty on service providers to carry out consultation with communities.

### Getting the practice right

Each of Scotland’s eight CJAs is currently developing a communications strategy as part of their 3-year area plans for 2008-11. Those strategies will promote understanding of the work carried out by offender management services and may include a number of innovative proposals to increase the profile of community penalties and levels of community involvement. Strategies will vary from area to area, but may include:

- The production of case studies showcasing effective penalties (and the benefits they deliver to victims, offenders and the community as a whole);
- Innovative ways of seeking local views (perhaps including surveys, public meetings, online initiatives and other forms of contact distinct from traditional consultation);
- The production of information (in various formats) explaining how members of the local community can get more involved in community justice initiatives;
- The development of plans to engage with the judiciary at a local level, to ensure they are aware of the penalties on offer, their benefits and completion/success rates; and
- Generating local publicity to recognise work that has been carried out – newsletters, annual reports and events to recognise improvements that have been delivered for an entire community – and the opportunities given to offenders to “turn their lives around”.

We will support CJAs, local authorities and partner bodies in this work but believe it should be carried out at a local level. Local solutions can be tailored to local circumstances. People are more likely to be interested in real change in their own area.

## Showcasing what community penalties can deliver

In order to promote innovation and excellence in the provision of “payback” schemes nationally, the Government will institute a **national payback scheme of the year award**. This award will recognise the development of innovative schemes that involve and benefit communities. It will also provide an opportunity to publicise work carried out across Scotland. This is not about celebrating what offenders have been rightly forced to do – it is about celebrating the benefits for local communities and promoting innovative schemes that will reduce reoffending. In 2005/06 the courts ordered offenders across Scotland to carry out over a million hours of unpaid work through community service and probation orders – work which, at its best, benefits communities, forces offenders to make amends and helps them move on to a life free of offending. Good practice should be highlighted and shared, in order to ensure that it becomes the norm. The development of high quality community penalties across Scotland as a whole will play a major part in the delivery of the coherent penal policy that Scotland deserves.

# ANNEX A

## SUMMARY OF COMMUNITY PENALTIES CURRENTLY AVAILABLE IN SCOTLAND

There is a wide a range of community penalties currently available in Scotland:

### PROBATION

The main purpose of probation is to work with offenders to prevent or reduce their reoffending by combining oversight and control with help to learn new behaviours and to deal with problems associated with offending. Probation orders can be used flexibly by the courts and additional conditions can be attached to them, for example: requiring the offender to undertake unpaid work; requiring financial recompense to the victim or attendance at a specialist programme such as alcohol or drug treatment. An offender can be placed on probation for a period of between 6 months and 3 years. 8,400 probation orders were made in 2005/06.

### COMMUNITY SERVICE ORDERS (CSOs)

Legislation currently restricts the use of CSOs to cases which would otherwise have resulted in imprisonment or detention. An offender given a CSO is required to carry out unpaid work of benefit to the community for 80-240 hours in summary cases and up to 300 hours in solemn cases. Work placements, are organised/supervised by local authority staff, and take many forms. 5,900 CSOs were imposed by courts in 2005/06.

### SUPERVISED ATTENDANCE ORDERS (SAOs)

SAOs are an alternative to custody for fine defaulters which provide a "fine on time". The participant is required to undertake a programme of activities to stimulate the constructive use of time which can include an educative element or involve unpaid work in the community. The maximum number of hours for one order is 100, to be completed within 12 months. In 2005/06, 3,849 SAOs were made by courts.

### RESTRICTION OF LIBERTY ORDERS (RLOs OR "TAGGING")

The offender, who must be 16 or over, may be restricted to a particular place(s) for up to 12 hours per day for up to 12 months. Compliance with the order is electronically monitored by a commercial contractor by means of a transmitter (tag) worn by the offender on his or her ankle. 1,651 RLOs were imposed in 2006.

### DRUG TREATMENT AND TESTING ORDERS (DTTOs)

DTTOs offer an intensive regime of drug treatment and testing with regular review by the courts. They target those whose offending is linked to a drug problem – e.g. stealing to fund a drug habit. DTTOs aim to help offenders overcome drug addiction, and reduce/eliminate the need to offend. Those placed on a DTTO are required to undertake regular testing and treatment. They also reappear before a sheriff every month to account for their behaviour. DTTOs are available in the High Court and sheriff courts. 599 DTTOs were imposed in 2005/06.

## Pilot Exercises

### SUPERVISED ATTENDANCE ORDERS

First Instance – At present, offenders have to default on a fine before a court can impose an SAO. A pilot is under way in two areas allowing an SAO to be used as a disposal of first instance where a fine might have been imposed, but the court considers that the offender would be unable to pay the fine. The pilot will be fully evaluated prior to any roll-out.

### STRUCTURED DEFERRED SENTENCES (SDS)

Deferment of sentence for good behaviour is frequently used by courts. SDS (currently being piloted in three areas) will allow work to take place with the offender during the deferment to address his or her needs as a lower level alternative to probation.

### COMMUNITY REPARATION ORDERS (CROs)

Ministers decided that pilots of CROs should end on 31 December 2007, based on independent research which found that they had not been effective<sup>15</sup>.

---

<sup>15</sup> "Forced to make amends – An evaluation of the CRO Pilots", – available at <http://www.scotland.gov.uk/Publications/2007/08/21134602/0>  
Section 2.1 of this report outlines what steps the Government will take to introduce a more effective alternative to CROs.

# ANNEX B

## REVIEW OF COMMUNITY PENALTIES

### PARTICIPANTS IN REVIEW MEETINGS

- Association of Directors of Social Work
- Convention of Scottish Local Authorities
- Key voluntary sector service providers including Turning Point, Phoenix Futures, NCH Scotland, Includem and Barnardos Scotland
- Academics including researchers from the Scottish Centre for Crime and Justice Research and the Universities of Edinburgh and Strathclyde
- Selected interest groups including the Howard League, the Scottish Association for the Study of Offenders, Scottish Consortium on Crime and the Airborne Initiative
- Community Justice Authorities Chief Officers
- Community Justice Authorities Conveners
- Criminal justice agencies – the Scottish Court Service, Crown Office and Procurator Fiscal Service, the Scottish Prison Service and the Social Work Services Inspection Agency
- Representatives from health/employment/training and housing bodies
- Community Service Supervisors and managers

In addition, a session on the review took place at a meeting of the National Advisory Body on Offender Management (which contains representatives from the following organisations)

- APEX
- Association of Chief Police Officers Scotland
- Criminal Justice Voluntary Sector Forum
- COSLA
- Crown Office
- Families Outside
- Includem
- Parole Board for Scotland
- Risk Management Authority
- SACRO
- Scottish Federation of Housing Associations
- Scottish Prison Service
- Academics from the Universities of Strathclyde, Edinburgh, London and Wales
- Association of Directors of Social Work
- Victim Support Scotland

A short series of focus groups were also held with members of the public to gauge the level of public awareness of community penalties, their use and their impact.

# ANNEX C

## SAMPLE QUESTIONS ASKED AT REVIEW MEETINGS

### Reparation and Payback

1. What would be the best way to re-configure or rationalise the existing range of reparative sentencing options to ensure that they effectively deal with offending from low to more serious levels?
2. Which features of the current reparative sentences should be developed to ensure achievement of an appropriate balance between the rehabilitative needs of offenders and the concerns of the wider community for some form of "payback"?

### Rehabilitation and Reintegration

3. What are the barriers to ensuring successful rehabilitation for people on community disposals and how might these issues be overcome?
4. What practical measures can we take in relation to community penalties:
  - which will be effective in managing prolific offenders, building on any successful measures or programmes already in place?
  - which will help tackle the rising young offender prison population?
5. Can you identify any effective alternatives to custody for women prisoners that could be delivered in the current environment?

### Quality and Enforcement

6. What makes a high quality community sentence? And what practical steps can be taken to ensure that the quality of all community sentences reaches that which can be seen in the current exemplars?
7. What changes could be made to the current enforcement arrangements for community sentences which will improve levels of compliance without increasing prisoner numbers?
8. Should we be targeting areas of high deprivation/high crime or does that lead to charges of postcode justice?

### Community Engagement

9. What can we do to increase the credibility and use of community penalties as an alternative to custody (as opposed to fines) and in a way which offers a better alternative to prison for the courts, the communities and the offender?

## Contact Details

If you have any comments or queries relating to this report you can contact us in one of the following ways:

- by email to [communitypenalties@scotland.gsi.gov.uk](mailto:communitypenalties@scotland.gsi.gov.uk)
- by phone – 0131 244 3549
- or by post to: Community Justice Services Division, the Scottish Government, Room GWR, St Andrew's House, Regent Road, Edinburgh EH1 3DG.



**The Scottish  
Government**

© Crown copyright 2007

This document is also available on the Scottish Government website: [www.scotland.gov.uk](http://www.scotland.gov.uk)

RR Donnelley B53565 11/07

ISBN: 0-978-7559-5572-5

**w w w . s c o t l a n d . g o v . u k**